

# HOUSE BILL No. 5149

(As passed the Senate, December 13, 2002)

October 9, 2001, Introduced by Reps. Toy, Caul, Vander Veen, DeWeese, Middaugh, Anderson, Drolet, Plakas, Birkholz, Stewart and Ehardt and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 535 (MCL 750.535), as amended by 1998 PA  
311.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 535. (1) A person shall not buy, receive, possess,  
2 conceal, or aid in the concealment of stolen, embezzled, or con-  
3 verted money, goods, or property knowing the money, goods, or  
4 property is stolen, embezzled, or converted.  
5       (2) If any of the following apply, a person who violates  
6 subsection (1) is guilty of a felony punishable by imprisonment  
7 for not more than 10 years or a fine of not more than \$15,000.00  
8 or 3 times the value of the property purchased, received,  
9 possessed, or concealed, whichever is greater, or both  
10 imprisonment and a fine:

1 (a) The property purchased, received, possessed, or  
2 concealed has a value of \$20,000.00 or more.

3 (b) The person violates subsection (3)(a) and has 2 or more  
4 prior convictions for committing or attempting to commit an  
5 offense under this section. For purposes of this subdivision,  
6 however, a prior conviction does not include a conviction for a  
7 violation or attempted violation of subsection (4)(b) or (5).

8 (3) If any of the following apply, a person who violates  
9 subsection (1) is guilty of a felony punishable by imprisonment  
10 for not more than 5 years or a fine of not more than \$10,000.00  
11 or 3 times the value of the property purchased, received, pos-  
12 sessed, or concealed, whichever is greater, or both imprisonment  
13 and a fine:

14 (a) The property purchased, received, possessed, or con-  
15 cealed has a value of \$1,000.00 or more but less than  
16 \$20,000.00.

17 (b) The person violates subsection (4)(a) and has 1 or more  
18 prior convictions for committing or attempting to commit an  
19 offense under this section. For purposes of this subdivision,  
20 however, a prior conviction does not include a conviction for a  
21 violation or attempted violation of subsection (4)(b) or (5).

22 (4) If any of the following apply, a person who violates  
23 subsection (1) is guilty of a misdemeanor punishable by imprison-  
24 ment for not more than 1 year or a fine of not more than  
25 \$2,000.00 or 3 times the value of the property purchased,  
26 received, possessed, or concealed, whichever is greater, or both  
27 imprisonment and a fine:

1 (a) The property purchased, received, possessed, or  
2 concealed has a value of \$200.00 or more but less than  
3 \$1,000.00.

4 (b) The person violates subsection (5) and has 1 or more  
5 prior convictions for committing or attempting to commit an  
6 offense under this section or a local ordinance substantially  
7 corresponding to this section.

8 (5) If the property purchased, received, possessed, or con-  
9 cealed has a value of less than \$200.00, a person who violates  
10 subsection (1) is guilty of a misdemeanor punishable by imprison-  
11 ment for not more than 93 days or a fine of not more than \$500.00  
12 or 3 times the value of the property purchased, received, pos-  
13 sessed, or concealed, whichever is greater, or both imprisonment  
14 and a fine.

15 (6) The values of property purchased, received, possessed,  
16 or concealed in separate incidents pursuant to a scheme or course  
17 of conduct within any 12-month period may be aggregated to deter-  
18 mine the total value of property purchased, received, possessed,  
19 or concealed.

20 (7) A PERSON SHALL NOT BUY, RECEIVE, POSSESS, CONCEAL, OR  
21 AID IN THE CONCEALMENT OF A STOLEN MOTOR VEHICLE KNOWING THAT THE  
22 MOTOR VEHICLE IS STOLEN, EMBEZZLED, OR CONVERTED. A PERSON WHO  
23 VIOLATES THIS SUBSECTION IS GUILTY OF A FELONY PUNISHABLE BY  
24 IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A FINE OF NOT MORE THAN  
25 \$10,000.00 OR 3 TIMES THE VALUE OF THE MOTOR VEHICLE PURCHASED,  
26 RECEIVED, POSSESSED, OR CONCEALED, WHICHEVER IS GREATER, OR BOTH  
27 IMPRISONMENT AND A FINE. A PERSON WHO IS CHARGED WITH, CONVICTED

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1 OF, OR PUNISHED FOR A VIOLATION OF THIS SUBSECTION SHALL NOT BE  
2 CONVICTED OF OR PUNISHED FOR A VIOLATION OF ANOTHER PROVISION OF  
3 THIS SECTION ARISING FROM THE PURCHASE, RECEIPT, POSSESSION, CON-  
4 CEALMENT, OR AIDING IN THE CONCEALMENT OF THE SAME MOTOR VEHICLE.  
[THIS SUBSECTION DOES NOT PROHIBIT THE PERSON FROM BEING CHARGED,  
CONVICTED, OR PUNISHED UNDER ANY OTHER APPLICABLE LAW.]

5 (8) ~~-(7)-~~ If the prosecuting attorney intends to seek an  
6 enhanced sentence based upon the defendant having 1 or more prior  
7 convictions, the prosecuting attorney shall include on the com-  
8 plaint and information a statement listing the prior conviction  
9 or convictions. The existence of the defendant's prior convic-  
10 tion or convictions shall be determined by the court, without a  
11 jury, at sentencing or at a separate hearing for that purpose  
12 before sentencing. The existence of a prior conviction may be  
13 established by any evidence relevant for that purpose, including,  
14 but not limited to, 1 or more of the following:

15 (a) A copy of the judgment of conviction.

16 (b) A transcript of a prior trial, plea-taking, or  
17 sentencing.

18 (c) Information contained in a presentence report.

19 (d) The defendant's statement.

20 (9) ~~-(8)-~~ A person who is a dealer in or collector of mer-  
21 chandise or personal property, or the agent, employee, or repre-  
22 sentative of a dealer or collector of merchandise or personal  
23 property who fails to reasonably inquire whether the person sell-  
24 ing or delivering the stolen, embezzled, or converted property to  
25 the dealer or collector has a legal right to do so or who buys or  
26 receives stolen, embezzled, or converted property that has a  
27 registration, serial, or other identifying number altered or

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1 obliterated on an external surface of the property, is presumed  
2 to have bought or received the property knowing the property is  
3 stolen, embezzled, or converted. This presumption is  
4 rebuttable.

5 (10) ~~-(9)-~~ If the sentence for a conviction under this sec-  
6 tion is enhanced by 1 or more prior convictions, those prior con-  
7 victions shall not be used to further enhance the sentence for  
8 the conviction pursuant to section 10, 11, or 12 of chapter IX of  
9 the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11,  
10 and 769.12.

[Enacting section 1. This amendatory act takes effect April 1,  
2003.]