

Act No. 129
Public Acts of 2006
Approved by the Governor
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STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006

Introduced by Reps. Van Regenmorter and David Law

ENROLLED HOUSE BILL No. 5823

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending sections 49, 159j, and 535a (MCL 750.49, 750.159j, and 750.535a), section 49 as amended by 1998 PA 38, section 159j as added by 1995 PA 187, and section 535a as amended by 1999 PA 185.

The People of the State of Michigan enact:

Sec. 49. (1) As used in this section, "animal" means a vertebrate other than a human.

(2) A person shall not knowingly do any of the following:

(a) Own, possess, use, buy, sell, offer to buy or sell, import, or export an animal for fighting or baiting, or as a target to be shot at as a test of skill in marksmanship.

(b) Be a party to or cause the fighting, baiting, or shooting of an animal as described in subdivision (a).

(c) Rent or otherwise obtain the use of a building, shed, room, yard, ground, or premises for fighting, baiting, or shooting an animal as described in subdivision (a).

(d) Permit the use of a building, shed, room, yard, ground, or premises belonging to him or her or under his or her control for any of the purposes described in this section.

(e) Organize, promote, or collect money for the fighting, baiting, or shooting of an animal as described in subdivisions (a) to (d).

(f) Be present at a building, shed, room, yard, ground, or premises where preparations are being made for an exhibition described in subdivisions (a) to (d), or be present at the exhibition, knowing that an exhibition is taking place or about to take place.

(g) Breed, buy, sell, offer to buy or sell, exchange, import, or export an animal the person knows has been trained or used for fighting as described in subdivisions (a) to (d), or breed, buy, sell, offer to buy or sell, exchange, import, or export the offspring of an animal the person knows has been trained or used for fighting as described in subdivisions (a) to (d). This subdivision does not prohibit owning, breeding, buying, selling, offering to buy or sell, exchanging, importing, or exporting an animal for agricultural or agricultural exposition purposes.

(h) Own, possess, use, buy, sell, offer to buy or sell, transport, or deliver any device or equipment intended for use in the fighting, baiting, or shooting of an animal as described in subdivisions (a) to (d).

(3) A person who violates subsection (2)(a) to (e) is guilty of a felony punishable by 1 or more of the following:

(a) Imprisonment for not more than 4 years.

(b) A fine of not less than \$5,000.00 or more than \$50,000.00.

(c) Not less than 500 or more than 1,000 hours of community service.

(4) A person who violates subsection (2)(f) to (h) is guilty of a felony punishable by 1 or more of the following:

(a) Imprisonment for not more than 4 years.

(b) A fine of not less than \$1,000.00 or more than \$5,000.00.

(c) Not less than 250 or more than 500 hours of community service.

(5) The court may order a person convicted of violating this section to pay the costs of prosecution.

(6) The court may order a person convicted of violating this section to pay the costs for housing and caring for the animal, including, but not limited to, providing veterinary medical treatment.

(7) As part of the sentence for a violation of subsection (2), the court shall order the person convicted not to own or possess an animal of the same species involved in the violation of this section for 5 years after the date of sentencing. Failure to comply with the order of the court pursuant to this subsection is punishable as contempt of court.

(8) If a person incites an animal trained or used for fighting or an animal that is the first or second generation offspring of an animal trained or used for fighting to attack a person and thereby causes the death of that person, the owner is guilty of a felony punishable by imprisonment for life or for a term of years greater than 15 years.

(9) If a person incites an animal trained or used for fighting or an animal that is the first or second generation offspring of an animal trained or used for fighting to attack a person, but the attack does not result in the death of the person, the owner is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(10) If an animal trained or used for fighting or an animal that is the first or second generation offspring of an animal trained or used for fighting attacks a person without provocation and causes the death of that person, the owner of the animal is guilty of a felony punishable by imprisonment for not more than 15 years.

(11) If an animal trained or used for fighting or an animal that is the first or second generation offspring of an animal trained or used for fighting attacks a person without provocation, but the attack does not cause the death of the person, the owner is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(12) Subsections (8) to (11) do not apply if the person attacked was committing or attempting to commit an unlawful act on the property of the owner of the animal.

(13) If an animal trained or used for fighting or an animal that is the first or second generation offspring of a dog trained or used for fighting goes beyond the property limits of its owner without being securely restrained, the owner is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$50.00 nor more than \$500.00, or both.

(14) If an animal trained or used for fighting or an animal that is the first or second generation offspring of a dog trained or used for fighting is not securely enclosed or restrained on the owner's property, the owner is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

(15) Subsections (8) to (14) do not apply to any of the following:

(a) A dog trained or used for fighting, or the first or second generation offspring of a dog trained or used for fighting, that is used by a law enforcement agency of the state or a county, city, village, or township.

(b) A certified leader dog recognized and trained by a national guide dog association for the blind or for persons with disabilities.

(c) A corporation licensed under the private security business and security alarm act, 1968 PA 330, MCL 338.1051 to 338.1083, when a dog trained or used for fighting, or the first or second generation offspring of a dog trained or used for fighting, is used in accordance with the private security business and security alarm act, 1968 PA 330, MCL 338.1051 to 338.1083.

(16) An animal that has been used to fight in violation of this section or that is involved in a violation of subsections (8) to (14) shall be confiscated as contraband by a law enforcement officer and shall not be returned to the owner, trainer, or possessor of the animal. The animal shall be taken to a local humane society or other animal welfare agency. If an animal owner, trainer, or possessor is convicted of violating subsection (2) or subsections (8) to (14), the court shall award the animal involved in the violation to the local humane society or other animal welfare agency.

(17) Upon receiving an animal confiscated under this section, or at any time thereafter, an appointed veterinarian, the humane society, or other animal welfare agency may humanely euthanize the animal if, in the opinion of that

veterinarian, humane society, or other animal welfare agency, the animal is injured or diseased past recovery or the animal's continued existence is inhumane so that euthanasia is necessary to relieve pain and suffering.

(18) A humane society or other animal welfare agency that receives an animal under this section shall apply to the district court or municipal court for a hearing to determine whether the animal shall be humanely euthanized because of its lack of any useful purpose and the public safety threat it poses. The court shall hold a hearing not more than 30 days after the filing of the application and shall give notice of the hearing to the owner of the animal. Upon a finding by the court that the animal lacks any useful purpose and poses a threat to public safety, the humane society or other animal welfare agency shall humanely euthanize the animal. Expenses incurred in connection with the housing, care, upkeep, or euthanasia of the animal by a humane society or other animal welfare agency, or by a person, firm, partnership, corporation, or other entity, shall be assessed against the owner of the animal.

(19) Subject to subsections (16) to (18), all animals being used or to be used in fighting, equipment, devices and money involved in a violation of subsection (2) shall be forfeited to the state. All other instrumentalities, proceeds, and substituted proceeds of a violation of subsection (2) are subject to forfeiture under chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

(20) The seizing agency may deposit money seized under subsection (19) into an interest-bearing account in a financial institution. As used in this subsection, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

(21) An attorney for a person who is charged with a violation of subsection (2) involving or related to money seized under subsection (19) shall be afforded a period of 60 days within which to examine that money. This 60-day period shall begin to run after notice of forfeiture is given but before the money is deposited into a financial institution under subsection (20). If the attorney general, prosecuting attorney, or city or township attorney fails to sustain his or her burden of proof in forfeiture proceedings under subsection (19), the court shall order the return of the money, including any interest earned on money deposited into a financial institution under subsection (20).

(22) This section does not apply to conduct that is permitted by and is in compliance with any of the following:

- (a) Part 401 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.40101 to 324.40119.
- (b) Part 435 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.43501 to 324.43561.
- (c) Part 427 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.42701 to 324.42714.
- (d) Part 417 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.41701 to 324.41712.

(23) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law that is committed by that person while violating this section.

Sec. 159j. (1) A person who violates section 159i is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$100,000.00, or both.

(2) In addition to any penalty imposed under subsection (1), the court may do 1 or more of the following with respect to a person convicted under section 159i:

(a) Order the person to pay court costs.

(b) Order the person to pay to the state or local law enforcement agency that handled the investigation and prosecution the costs of the investigation and prosecution that are reasonably incurred.

(3) The court shall hold a hearing to determine the amount of court costs and other costs to be imposed under subsection (2).

(4) The court shall order a person convicted of a violation of section 159i to criminally forfeit to the state any real, personal, or intangible property in which he or she has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 159i, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation. The court's authority under this subsection also includes, but is not limited to, the authority to do any of the following:

(a) Order the convicted person to divest himself or herself of any interest, direct or indirect, in the enterprise.

(b) Impose reasonable restrictions on the future activities or investments of the convicted person, including prohibiting the convicted person from engaging in the same type of endeavor as the enterprise engaged in.

(c) Order the dissolution or reorganization of an enterprise upon finding that, for the prevention of future criminal activity, the public interest requires the dissolution or reorganization. This subdivision does not apply to the extent that an order of dissolution or reorganization is preempted by chapter 7 of the national labor relations act, 29 USC 141 to 187.

(d) Order the suspension or revocation of a license, permit, or prior approval granted to an enterprise by any agency of the state, county, or other political subdivision upon finding that, for the prevention of future criminal activity, the public interest requires the suspension or revocation.

(e) Order the surrender of the charter of a corporation organized under the laws of this state or the revocation of a certificate authorizing a foreign corporation to conduct business within this state upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, authorized or engaged in racketeering and, for the prevention of future criminal activity, that the public interest requires that the charter or certificate of the corporation be surrendered or revoked.

(5) A sentence ordering criminal forfeiture under this section shall not be entered unless the indictment or information alleges the extent of the property subject to forfeiture, or unless the sentence requires the forfeiture of property that was not reasonably foreseen to be subject to forfeiture at the time of the indictment or information, if the prosecuting agency gave prompt notice to the defendant of the property not reasonably foreseen to be subject to forfeiture when it was discovered to be forfeitable.

(6) Reasonable attorney fees for representation in an action under this chapter are not subject to criminal forfeiture under this chapter.

(7) At sentencing and following a hearing, the court shall determine the extent of the property subject to forfeiture, if any, and shall enter an order of forfeiture. The court may base its determination on evidence in the trial record.

(8) If any property included in the order of forfeiture under this section cannot be located or has been sold to a bona fide purchaser for value, placed beyond the jurisdiction of the court, substantially diminished in value by the conduct of the defendant, or commingled with other property that cannot be divided without difficulty or undue injury to innocent persons, the court shall order forfeiture of any other reachable property of the defendant up to the value of the property that is unreachable.

(9) All property ordered forfeited under this section shall be retained by the law enforcement agency that seized it for disposal pursuant to section 159r.

(10) The seizing agency may deposit money seized under this section into an interest-bearing account in a financial institution. As used in this subsection, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

(11) An attorney for a person who is charged with a violation of section 159i involving or related to money seized by a law enforcement agency that is subject to criminal forfeiture under this section shall be afforded a period of 60 days within which to examine that money. This 60-day period shall begin to run after notice of forfeiture is given but before the money is deposited into a financial institution under subsection (10). If the prosecuting agency fails to sustain its burden of proof in criminal proceedings under section 159i, the court shall order the return of the money, including any interest earned on money deposited into a financial institution under subsection (10).

(12) An order of criminal forfeiture entered under this section shall authorize an appropriate law enforcement agency to seize the property declared criminally forfeited under this section upon those terms and conditions relating to the time and manner of seizure the court determines proper.

(13) Criminal penalties under this section are not mutually exclusive and do not preclude the application of any other criminal or civil remedy under this section or any other provision of law.

Sec. 535a. (1) As used in this section:

(a) "Bona fide purchaser for value" means a person who purchases property for value in good faith and without notice of any adverse claim to the property.

(b) "Chop shop" means any of the following:

(i) Any area, building, storage lot, field, or other premises or place where 1 or more persons are engaged or have engaged in altering, dismantling, reassembling, or in any way concealing or disguising the identity of a stolen motor vehicle or of any major component part of a stolen motor vehicle.

(ii) Any area, building, storage lot, field, or other premises or place where there are 3 or more stolen motor vehicles present or where there are major component parts from 3 or more stolen motor vehicles present.

(c) "Major component part" means 1 of the following parts of a motor vehicle:

(i) The engine.

(ii) The transmission.

(iii) The right or left front fender.

(iv) The hood.

(v) A door allowing entrance to or egress from the passenger compartment of the vehicle.

(vi) The front or rear bumper.

(vii) The right or left rear quarter panel.

(viii) The deck lid, tailgate, or hatchback.

(ix) The trunk floor pan.

(x) The cargo box of a pickup.

(xi) The frame, or if the vehicle has a unitized body, the supporting structure or structures that serve as the frame.

(xii) The cab of a truck.

(xiii) The body of a passenger vehicle.

(xiv) An airbag or airbag assembly.

(xv) A wheel or tire.

(xvi) Any other part of a motor vehicle that the secretary of state determines is comparable in design or function to any of the parts listed in subparagraphs (i) to (xv).

(d) "Motor vehicle" means either of the following:

(i) A device in, upon, or by which a person or property is or may be transported or drawn upon a highway that is self-propelled or that may be connected to and towed by a self-propelled device.

(ii) A land-based device that is self-propelled but not designed for use upon a highway, including, but not limited to, farm machinery, a bulldozer, or a steam shovel.

(2) Except as provided in subsection (3), a person who knowingly owns, operates, or conducts a chop shop or who knowingly aids and abets another person in owning, operating, or conducting a chop shop is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$250,000.00, or both.

(3) Upon a second or subsequent conviction under this section, the person convicted may be imprisoned for not more than 10 years and shall be fined not less than \$10,000.00 or more than \$250,000.00, or both.

(4) In addition to any other punishment, a person convicted of violating this section shall be ordered to make restitution to the rightful owner of a stolen motor vehicle or of a stolen major component part, or to the owner's insurer if the owner has already been compensated for the loss by the insurer, for any financial loss sustained as a result of the theft of the motor vehicle or a major component part. Restitution shall be imposed in addition to, but not instead of, any imprisonment or fine imposed.

(5) All of the following are subject to seizure and, if a person is charged with a violation or attempted violation of subsection (2) and is convicted of a violation or attempted violation of subsection (2) or section 415, 416, 535, or 536a, subject to forfeiture:

(a) An engine, tool, machine, implement, device, chemical, or substance used or designed for altering, dismantling, reassembling, or in any other way concealing or disguising the identity of a stolen motor vehicle or any major component part.

(b) A stolen motor vehicle or major component part found at the site of a chop shop or a motor vehicle or major component part for which there is probable cause to believe that it is stolen.

(c) A wrecker, car hauler, or any other motor vehicle that is used or has been used to convey or transport a stolen motor vehicle or major component part.

(d) Any book, record, money, negotiable instrument, or other personal property or real property, except real property that is the primary residence of the spouse or a dependent child of the owner, that is or has been used in a chop shop operation.

(6) Except as provided in subsection (7), property described in subsection (5) may be seized by a state or local law enforcement agency upon process issued by the recorder's court of the city of Detroit or the district or circuit court having jurisdiction over the property. Seizure without process may be made in any of the following cases:

(a) The seizure is incident to an arrest or pursuant to a search warrant or an inspection under an administrative inspection warrant.

(b) The property subject to seizure has been the subject of a prior judgment in favor of this state in a forfeiture proceeding based upon this section.

(c) Exigent circumstances exist that preclude obtaining process and there is probable cause to believe that the property was used or is intended to be used in violation of this section.

(7) To retain property for which seizure and forfeiture are sought under this section pending the forfeiture hearing, a licensed used or secondhand vehicle parts dealer or the owner may post a bond in the amount of 1-1/2 times the value of the property. This subsection does not apply to a motor vehicle or major component part that is to be used as evidence in a criminal proceeding.

(8) If property other than real property is seized under subsection (6), the seizing law enforcement agency shall do 1 or more of the following, subject to subsection (10):

(a) Place the property under seal.

(b) Remove the property to a designated storage area.

(c) Petition the district or circuit court to appoint a custodian to take custody of the property and to remove it to an appropriate location for disposition in accordance with law.

(9) The seizing agency may deposit money seized under subsection (8) into an interest-bearing account in a financial institution. As used in this subsection, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

(10) An attorney for a person who is charged with a violation of this section involving or related to money seized by a law enforcement agency under this section shall be afforded a period of 60 days within which to examine that money. This 60-day period shall begin to run after notice is given under subsection (12) but before the money is deposited into a financial institution under subsection (9). If the attorney general or prosecuting attorney fails to sustain his or her burden of proof in criminal proceedings under this section, the court shall order the return of the money, including any interest earned on money deposited into a financial institution under subsection (9).

(11) If property is seized without process under subsection (6), within 14 days after the seizure, the seizing agency shall return the property to the person from whom it was seized unless a hearing has been scheduled to determine whether the seizure was proper and reasonable notice of the hearing has been given.

(12) The rightful owner of any property that is to be forfeited under subsection (5) shall be served notice at least 10 days before the matter is to be heard regarding the forfeiture and, if the rightful owner did not know of and did not consent to the commission of the crime, the property shall be returned to the rightful owner. If the rightful owner of the property is not known or cannot be found, notice may be served by publishing notice of the forfeiture hearing not less than 10 days before the date of the hearing in a newspaper of general circulation in the county where the hearing is to be held. The notice shall contain a general description of the property and any serial or registration numbers on the property.

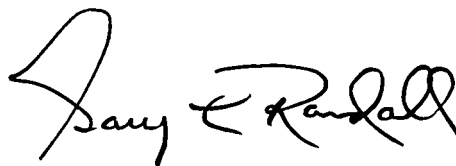
(13) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party who did not know of or consent to the act or omission in violation of this section.

(14) Any property seized under subsection (6) that was stolen shall be returned to its rightful owner if that ownership can be established to the satisfaction of the seizing law enforcement agency. Any stolen property that is unclaimed after seizure may be sold as provided by law.

(15) Any property forfeited under this section may be sold pursuant to an order of the court. The proceeds of the sale shall be distributed by the court having jurisdiction over the forfeiture proceeding to the entity having budgetary authority over the seizing law enforcement agency. If more than 1 law enforcement agency was substantially involved in effecting the forfeiture, the court having jurisdiction over the forfeiture proceeding shall distribute equitably the proceeds of the sale among the entities having budgetary authority over the seizing law enforcement agencies. Twenty-five percent of the money received by an entity under this subsection shall be used to enhance law enforcement efforts pertaining to this section.

(16) This section does not apply to a person who is a bona fide purchaser for value of the motor vehicle or major component parts described in subsection (1).

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor