

SENATE BILL No. 815

November 10, 2011, Introduced by Senator HUNTER and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending section 625n (MCL 257.625n), as amended by 2010 PA 155.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 625n. (1) Except as otherwise provided in this section
2 and section 304 and in addition to any other penalty provided for
3 in this act, the judgment of sentence for a conviction for a
4 violation of section 625(1) described in section 625(9)(b) or (c),
5 a violation of section 625(3) described in section 625(11)(b) or
6 (c), a violation of section 625(4), (5), or (7), or a violation of
7 section 904(4) or (5), or, beginning October 31, 2010, a violation
8 of section 626(3) or (4), may require 1 of the following with

1 regard to the vehicle used in the offense if the defendant owns the
2 vehicle in whole or in part or leases the vehicle:

3 (a) Forfeiture of the vehicle if the defendant owns the
4 vehicle in whole or in part.

5 (b) Return of the vehicle to the lessor if the defendant
6 leases the vehicle.

7 (2) ~~The~~ **A vehicle DESCRIBED IN SUBSECTION (1)** may be seized
8 under a seizure order issued by the court having jurisdiction upon
9 a showing of probable cause that the vehicle is subject to
10 forfeiture or return to the lessor. **SECTION 2977 OF THE REVISED**
11 **JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.2977, APPLIES TO A**
12 **MOTOR VEHICLE THAT HAS BEEN SEIZED UNDER THIS SUBSECTION.**

13 (3) The forfeiture of a vehicle **UNDER THIS SECTION** is subject
14 to the interest of the holder of a security interest who did not
15 have prior knowledge of or consent to the violation.

16 (4) Within 14 days after the defendant's conviction for a
17 violation described in subsection (1), the prosecuting attorney may
18 file a petition with the court for the forfeiture of the vehicle or
19 to have the court order return of a leased vehicle to the lessor.
20 The prosecuting attorney shall give notice by first-class mail or
21 other process to the defendant and his or her attorney, to all
22 owners of the vehicle, and to any person holding a security
23 interest in the vehicle that the court may require forfeiture or
24 return of the vehicle.

25 (5) If a vehicle is seized before disposition of the criminal
26 proceedings, a defendant who is an owner or lessee of the vehicle
27 may move the court having jurisdiction over the proceedings to

1 require the seizing agency to file a lien against the vehicle and
2 to return the vehicle to the owner or lessee pending disposition of
3 the criminal proceedings. The court shall hear the motion within 7
4 days after the motion is filed. If the defendant establishes at the
5 hearing that he or she holds the legal title to the vehicle or that
6 he or she has a leasehold interest and that it is necessary for him
7 or her or a member of his or her family to use the vehicle pending
8 the outcome of the forfeiture action, the court may order the
9 seizing agency to return the vehicle to the owner or lessee. If the
10 court orders the return of the vehicle to the owner or lessee, the
11 court shall order the defendant to post a bond in an amount equal
12 to the retail value of the vehicle, and shall also order the
13 seizing agency to file a lien against the vehicle.

14 (6) Within 14 days after notice by the prosecuting attorney is
15 given under subsection (4), the defendant, an owner, lessee, or
16 holder of a security interest may file a claim of interest in the
17 vehicle with the court. Within 21 days after the expiration of the
18 period for filing claims, but before or at sentencing, the court
19 shall hold a hearing to determine the legitimacy of any claim, the
20 extent of any co-owner's equity interest, the liability of the
21 defendant to any co-lessee, and whether to order the vehicle
22 forfeited or returned to the lessor. In considering whether to
23 order forfeiture, the court shall review the defendant's driving
24 record to determine whether the defendant has multiple convictions
25 under section 625 or a local ordinance substantially corresponding
26 to section 625, or multiple suspensions, restrictions, or denials
27 under section 904, or both. If the defendant has multiple

1 convictions under section 625 or multiple suspensions,
2 restrictions, or denials under section 904, or both, that factor
3 shall weigh heavily in favor of forfeiture.

4 (7) If a vehicle is forfeited under this section, the unit of
5 government that seized the vehicle shall sell the vehicle pursuant
6 to the procedures under section 252g(1) and dispose of the proceeds
7 in the following order of priority:

8 (a) Pay any outstanding security interest of a secured party
9 who did not have prior knowledge of or consent to the commission of
10 the violation.

11 (b) Pay the equity interest of a co-owner who did not have
12 prior knowledge of or consent to the commission of the violation.

13 (c) Satisfy any order of restitution entered in the
14 prosecution for the violation.

15 (d) Pay any outstanding accrued towing and storage fees.

16 (e) Pay the claim of each person who shows that he or she is a
17 victim of the violation to the extent that the claim is not covered
18 by an order of restitution.

19 (f) Pay any outstanding lien against the property that has
20 been imposed by a governmental unit.

21 (g) Pay the proper expenses of the proceedings for forfeiture
22 and sale, including, but not limited to, expenses incurred during
23 the seizure process and expenses for maintaining custody of the
24 property, advertising, and court costs.

25 (h) The balance remaining after the payment of items **UNDER**
26 **SUBDIVISIONS** (a) ~~through~~ **TO** (g) shall be distributed by the court
27 having jurisdiction over the forfeiture proceedings to the unit or

1 units of government substantially involved in effecting the
2 forfeiture. Seventy-five percent of the money received by a unit of
3 government under this subdivision shall be used to enhance
4 enforcement of the criminal laws and 25% of the money shall be used
5 to implement the William Van Regenmorter crime victim's rights act,
6 1985 PA 87, MCL 780.751 to 780.834. A unit of government receiving
7 money under this subdivision shall report annually to the
8 department of management and budget the amount of money received
9 under this subdivision that was used to enhance enforcement of the
10 criminal laws and the amount that was used to implement the William
11 Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751
12 to 780.834.

13 (8) The court may order the defendant to pay to a co-lessee
14 any liability **TO THE CO-LESSEE** determined under subsection (6). The
15 order may be enforced in the same manner as a civil judgment.

16 (9) The return of a vehicle to the lessor under this section
17 does not affect or impair the lessor's rights or the defendant's
18 obligations under the lease.

19 (10) A person who knowingly conceals, sells, gives away, or
20 otherwise transfers or disposes of a vehicle with the intent to
21 avoid forfeiture or return of the vehicle to the lessor under this
22 section is guilty of a misdemeanor punishable by imprisonment for
23 not more than 1 year or a fine of not more than \$1,000.00, or both.

24 (11) The failure of the court or prosecutor to comply with any
25 time limit specified in this section does not preclude the court
26 from ordering forfeiture of a vehicle or its return to a lessor,
27 unless the court finds that the owner or claimant suffered

1 substantial prejudice as a result of that failure.

2 (12) The forfeiture provisions of this section do not preclude
3 the prosecuting attorney from pursuing a forfeiture proceeding
4 under any other law of this state or a local ordinance
5 substantially corresponding to this section.

6 Enacting section 1. This amendatory act does not take effect
7 unless Senate Bill No. 812

8 of the 96th Legislature is enacted into law.