

SENATE BILL No. 262

March 6, 2003, Introduced by Senators LELAND, SCHAUER, BERNERO, EMERSON, CHERRY, JACOBS, CLARK-COLEMAN, THOMAS, PATTERSON, CASSIS, GARCIA, TOY, GOSCHKA, CLARKE, OLSHOVE and BRATER 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 1998 PA
 349.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 625n. (1) Except as otherwise provided in this section
 2 and in addition to any other penalty provided for in this act,
 3 the judgment of sentence for a conviction for a violation of
 4 section 625(1) described in section 625(8)(b) or (c), a violation
 5 of section 625(3) described in section 625(10)(b) or (c), a
 6 violation of section 625(4), (5), or (7), or a violation of
 7 section 904(4) or (5) may require 1 of the following with regard
 8 to the vehicle used in the offense if the defendant owns the
 9 vehicle in whole or in part or leases the vehicle:

10 (a) Forfeiture of the vehicle if the defendant owns the

1 vehicle in whole or in part.

2 (b) Return of the vehicle to the lessor if the defendant
3 leases the vehicle.

4 (2) ~~The~~ **A vehicle described in subsection (1)** may be seized
5 pursuant to an order of seizure issued by the court having
6 jurisdiction upon a showing of probable cause that the vehicle is
7 subject to forfeiture or return to the lessor. **Section 2974 of**
8 **the revised judicature act of 1961, 1961 PA 236, MCL 600.2974,**
9 **applies to a motor vehicle that has been seized.**

10 (3) The forfeiture of a vehicle **under this section** is subject
11 to the interest of the holder of a security interest who did not
12 have prior knowledge of or consent to the violation.

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

22 (5) If a vehicle is seized before disposition of the criminal
23 proceedings, a defendant who is an owner or lessee of the vehicle
24 may move the court having jurisdiction over the proceedings to
25 require the seizing agency to file a lien against the vehicle and
26 to return the vehicle to the owner or lessee pending disposition
27 of the criminal proceedings. The court shall hear the motion

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

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

1 section 904, or both, that factor shall weigh heavily in favor of
2 forfeiture.

3 (7) If a vehicle is forfeited under this section, the unit of
4 government that seized the vehicle shall sell the vehicle and
5 dispose of the proceeds in the following order of priority:

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

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

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

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

17 (e) Pay any outstanding lien against the property that has
18 been imposed by a governmental unit.

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

23 (g) The balance remaining after the payment of items (a)
24 through (f) shall be distributed by the court having jurisdiction
25 over the forfeiture proceedings to the unit or units of
26 government substantially involved in effecting the forfeiture.
27 Seventy-five percent of the money received by a unit of

1 government under this subdivision shall be used to enhance
2 enforcement of the criminal laws and 25% of the money shall be
3 used to implement the crime victim's rights act, 1985 PA 87,
4 MCL 780.751 to 780.834. A unit of government receiving money
5 under this subdivision shall report annually to the department of
6 management and budget the amount of money received under this
7 subdivision that was used to enhance enforcement of the criminal
8 laws and the amount that was used to implement the crime victim's
9 rights act, 1985 PA 87, MCL 780.751 to 780.834.

10 (8) The court may order the defendant to pay to a co-lessee
11 any liability **to the co-lessee** determined under subsection (6).
12 The order may be enforced in the same manner as a civil
13 judgment.

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

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

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

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

5 Enacting section 1. This amendatory act does not take
6 effect unless Senate Bill No. 259
7 of the 92nd Legislature is enacted into
8 law.