

HOUSE BILL No. 6299

November 12, 1998, Introduced by Reps. Scott, DeHart, Kelly and Schermesser and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 3825 (MCL 600.3825) and by adding section 3801a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3801A. (1) A BUILDING, VEHICLE, BOAT, AIRCRAFT, OR
2 PLACE IS A NUISANCE IF USED FOR EITHER OF THE FOLLOWING
3 PURPOSES:
4 (A) THE UNLAWFUL SALE OF ALCOHOLIC LIQUOR AS DEFINED IN SEC-
5 TION 105 OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58,
6 MCL 436.1105, TO A PERSON UNDER 21 YEARS OF AGE.
7 (B) BY A RETAIL LICENSEE TO SELL, GIVE, OR FURNISH A CIGA-
8 RETTE, CIGAR, CHEWING TOBACCO, TOBACCO SNUFF, OR TOBACCO IN ANY
9 OTHER FORM TO A PERSON UNDER 18 YEARS OF AGE IN VIOLATION OF
10 SECTION 1 OF THE YOUTH TOBACCO ACT, 1915 PA 31, MCL 722.641.

1 (2) IF A BUILDING, VEHICLE, BOAT, AIRCRAFT, OR PLACE IS A
2 NUISANCE UNDER SUBSECTION (1), THE FURNITURE, FIXTURES, AND CON-
3 TENTS OF THE BUILDING, VEHICLE, BOAT, AIRCRAFT, OR PLACE AND ALL
4 ALCOHOLIC LIQUOR OR CIGARETTE, CIGAR, CHEWING TOBACCO, TOBACCO
5 SNUFF, OR TOBACCO IN ANY OTHER FORM DESCRIBED IN SUBSECTION (1)
6 ARE ALSO DECLARED A NUISANCE. A NUISANCE SHALL BE ENJOINED AND
7 ABATED AS PROVIDED IN THIS CHAPTER AND AS PROVIDED IN COURT
8 RULES. A RETAIL LICENSEE, OR HIS OR HER AGENT, OR EMPLOYEE WHO
9 OWNS, LEASES, OR MAINTAINS A BUILDING, VEHICLE, OR PLACE USED FOR
10 1 OR MORE OF THE PURPOSES OR ACTS DESCRIBED IN SUBSECTION (1) IS
11 RESPONSIBLE FOR A NUISANCE.

12 (3) AS USED IN THIS SECTION, "RETAIL LICENSEE" MEANS A
13 PERSON WHOSE ORDINARY COURSE OF BUSINESS CONSISTS, IN WHOLE OR IN
14 PART, OF THE RETAIL SALE OF TOBACCO PRODUCTS SUBJECT TO STATE
15 SALES TAX OR THE RETAIL SALE OF ALCOHOLIC LIQUOR UNDER THE
16 MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL 436.1101 TO
17 436.2303.

18 Sec. 3825. (1) If the existence of the nuisance is estab-
19 lished in an action as provided in this chapter, an order of
20 abatement shall be entered as a part of the judgment in the case.
21 ~~, which~~ THE order shall direct the removal from the building or
22 place of all furniture, fixtures, and OTHER contents ~~therein~~ IN
23 THE BUILDING OR PLACE and shall direct the sale ~~thereof~~ OF THE
24 FURNITURE, FIXTURES, AND OTHER CONTENTS in the manner provided
25 for the sale of chattels under execution, and the effectual clos-
26 ing of the building or place against its use for any purpose, and

1 so keeping it closed for a period of 1 year, unless sooner
2 released as PROVIDED in this chapter. ~~provided.~~

3 (2) ~~Any~~ A vehicle, boat, or aircraft found by the court to
4 be a nuisance within the meaning of this chapter, is subject to
5 the same order and judgment as ~~any~~ furniture, fixtures, and
6 contents as ~~herein~~ provided IN THIS CHAPTER.

7 (3) Upon the sale of any furniture, fixtures, contents,
8 vehicle, boat, or aircraft as provided in this section, the offi-
9 cer executing the order of the court shall, after deducting the
10 expenses of keeping ~~such~~ THE property and costs of ~~such~~ THE
11 sale, pay all liens according to ~~their~~ THE priorities ~~which~~
12 THAT may be established by intervention or otherwise at the hear-
13 ing or in other proceedings brought for that purpose as being
14 bona fide and as having been created without the lienor having
15 ~~any~~ notice that ~~such~~ THE property was being used or was to be
16 used for the maintenance of a nuisance as ~~herein~~ defined ~~,~~
17 ~~and~~ IN THIS CHAPTER. THE OFFICER EXECUTING THE ORDER OF THE
18 COURT shall pay the balance to the state treasurer to be credited
19 to the general fund of the state EXCEPT AS PROVIDED IN
20 SUBSECTION (5).

21 (4) If ~~any~~ A person uses a building or place ~~so~~ directed
22 to be closed, with knowledge that ~~such~~ THE building or place is
23 closed by order of the court, he OR SHE shall be punished as for
24 contempt, as provided in section 3820.

25 (5) UPON THE SALE OF ANY FURNITURE, FIXTURES, CONTENTS,
26 VEHICLE, BOAT, OR AIRCRAFT AS PROVIDED IN THIS SECTION FOR A
27 VIOLATION OF SECTION 3801A, THE OFFICER EXECUTING THE ORDER OF

1 THE COURT SHALL, AFTER DEDUCTING THE EXPENSES OF KEEPING THE
2 PROPERTY AND COSTS OF THE SALE, PAY ALL LIENS ACCORDING TO THE
3 PRIORITIES THAT MAY BE ESTABLISHED BY INTERVENTION OR OTHERWISE
4 AT THE HEARING OR IN OTHER PROCEEDINGS. THE OFFICER EXECUTING
5 THE ORDER OF THE COURT SHALL THEN PAY THE BALANCE TO THE LAW
6 ENFORCEMENT AGENCY CHARGED WITH ENFORCING THIS SUBSECTION. THE
7 LAW ENFORCEMENT AGENCY RECEIVING THE BALANCE SHALL PAY 25% OF THE
8 BALANCE TO THE LOCAL HEALTH DEPARTMENT, 25% OF THE BALANCE TO THE
9 COUNTY OR CITY PROSECUTOR WITH JURISDICTION OVER THE LOCAL GOV-
10 ERNMENTAL UNIT WHERE THE RETAIL LICENSEE IS LOCATED, AND 50% OF
11 THE BALANCE TO THE SQUAD WITHIN THE LAW ENFORCEMENT AGENCY
12 CHARGED WITH ENFORCING THIS SUBSECTION. THE LOCAL HEALTH DEPART-
13 MENT, THE COUNTY OR CITY PROSECUTOR, AND THE LAW ENFORCEMENT
14 AGENCY SHALL USE THE MONEY RECEIVED UNDER THIS SUBSECTION EXCLU-
15 SIVELY FOR IMPLEMENTING OR PUBLICIZING, OR BOTH, THE PROVISIONS
16 OF THIS SECTION AND SECTION 3801A. AS USED IN THIS SUBSECTION,
17 "LOCAL HEALTH DEPARTMENT" MEANS THAT TERM AS DEFINED IN
18 SECTION 1105 OF THE PUBLIC HEALTH CODE, 1978 PA 368,
19 MCL 333.1105.

20 Enacting section 1. This amendatory act does not take
21 effect unless all of the following bills of the 89th Legislature
22 are enacted into law:

23 (a) Senate Bill No. ____ or House Bill No. ____ (request no.
24 06245'98).

25 (b) Senate Bill No. ____ or House Bill No. ____ (request no.
26 06245'98 a).

06401'98

1 (c) Senate Bill No. ____ or House Bill No. ____ (request
2 no. 06400'98).