

HOUSE BILL No. 5667

February 9, 2006, Introduced by Reps. Leland, Accavitti, Tobocman, Lipsey, Condino, Adamini, Hunter, McConico, Virgil Smith, Meisner and Alma Smith 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, the
3 judgment of sentence for a conviction for a violation of section
4 625(1) described in section ~~625(8)(b) or (e)~~ **625(9)(B) OR (C)**, a
5 violation of section 625(3) described in section ~~625(10)(b) or (e)~~
6 **625(11)(B) OR (C)**, a violation of section 625(4), (5), or (7), or a
7 violation of section 904(4) or (5) may require 1 of the following
8 with regard to the vehicle used in the offense if the defendant

1 owns the vehicle in whole or in part or leases the vehicle:

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

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

6 (2) ~~The~~ **A vehicle DESCRIBED IN SUBSECTION (1)** may be seized
7 pursuant to an order of seizure issued by the court having
8 jurisdiction upon a showing of probable cause that the vehicle is
9 subject to forfeiture or return to the lessor. **SECTION 2975 OF THE**
10 **REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.2975, APPLIES**
11 **TO A MOTOR VEHICLE THAT HAS BEEN SEIZED.**

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

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

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

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

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

1 restrictions, or denials under section 904, or both, that factor
2 shall weigh heavily in favor of 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 of
8 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 violation.

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

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

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

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

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

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

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

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

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

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

25 (12) The forfeiture provisions of this section do not preclude
26 the prosecuting attorney from pursuing a forfeiture proceeding
27 under any other law of this state or a local ordinance

1 substantially corresponding to this section.

2 Enacting section 1. This amendatory act does not take effect
3 unless Senate Bill No.____ or House Bill No. 5665 (request no.
4 04010'05) of the 93rd Legislature is enacted into law.