

HOUSE BILL No. 5876

March 15, 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 2000 PA 403, entitled
"Motor fuel tax act,"
by amending section 130 (MCL 207.1130).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 130. (1) As soon as possible, but not more than 5
2 business days after seizure of a motor vehicle and its cargo under
3 section 129, the person making the seizure shall deliver personally
4 or by registered mail to the last known address of the person from
5 whom the seizure was made, if known, an inventory statement of the
6 motor vehicle, motor fuel, or other property seized. A copy of the
7 inventory statement shall also be filed with the department.

8 (2) In addition to notice of the property seized, the
9 inventory statement **REQUIRED BY SUBSECTION (1)** shall contain a

1 notice that unless demand for a hearing as provided in this section
2 is made within 10 business days after the date the inventory
3 statement was delivered, the property is forfeited to the state.

4 (3) If the person from whom ~~the~~ **A seizure DESCRIBED IN**
5 **SUBSECTION (1)** was made is not known, the person making the seizure
6 shall ~~cause~~ **HAVE** a copy of the inventory statement ~~, together~~
7 ~~with the notice provided for in this section, to be~~ **REQUIRED BY**
8 **SUBSECTION (1) AND THE NOTICE UNDER SUBSECTION (2)** published not
9 less than 3 times in a newspaper of general circulation in the
10 county where the seizure was made.

11 (4) Within 10 business days after the date of service of the
12 inventory statement **REQUIRED UNDER SUBSECTION (1)** or, ~~in the case~~
13 ~~of publication~~ **IF THE NOTICE IS PUBLISHED UNDER SUBSECTION (3)**,
14 within 10 business days after the date of last publication, the
15 person from whom the property was seized or any person claiming an
16 interest in the property may by registered mail, facsimile
17 transmission, or personal service file with the department a demand
18 for a hearing before the commissioner for a determination ~~as to~~
19 whether the property was lawfully subject to seizure and
20 forfeiture. The person shall verify a request for hearing filed by
21 facsimile transmission by also providing a copy of the original
22 request for hearing by registered mail or personal service.

23 (5) ~~The~~ **A person ~~or persons are~~ WHO DEMANDS A HEARING**
24 **UNDER SUBSECTION (4) IS** entitled to appear at ~~a~~ **THE** hearing
25 before the department, to be represented by counsel, and to present
26 testimony and argument.

27 (6) ~~Upon receipt of a request for hearing, the~~ **THE**

1 department shall hold ~~the~~ **A** hearing **REQUESTED UNDER SUBSECTION**
2 **(4)** within 15 business days **AFTER RECEIVING THE REQUEST**. The
3 hearing is not a contested case proceeding and is not subject to
4 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
5 to 24.328.

6 (7) ~~After the hearing, the~~ **THE** department shall render ~~its~~
7 **A** decision in writing within 10 business days after the hearing
8 **HELD UNDER SUBSECTION (4)** and, by order, shall either declare the
9 seized property subject to seizure and forfeiture, or declare the
10 property returnable in whole or in part to the person entitled to
11 possession.

12 (8) If, within 10 business days after the date of service of
13 the inventory statement **REQUIRED BY SUBSECTION (1)**, the person from
14 whom the property was seized or any person claiming an interest in
15 the property does not file with the department a demand for a
16 hearing before the department, the property seized shall be
17 considered forfeited to the state by operation of law and may be
18 disposed of by the department as provided in this section.

19 (9) If, after a hearing, the department determines that the
20 property **DESCRIBED IN SUBSECTION (1)** is lawfully subject to seizure
21 and forfeiture and the person from whom the property was seized or
22 any persons claiming an interest in the property do not take an
23 appeal to the circuit court of the county in which the seizure was
24 made within the time prescribed in this section, the property
25 seized shall be considered forfeited to the state by operation of
26 law and may be disposed of by the department as provided in this
27 section.

1 (10) ~~If a person is aggrieved by the~~ **A PERSON AGGRIEVED BY A**
2 decision of the department ~~, that person~~ **UNDER THIS SECTION** may
3 appeal to the circuit court of the county where the seizure was
4 made to obtain a judicial determination of the lawfulness of the
5 seizure and forfeiture. The action shall be commenced within 20
6 days after notice of the department's determination is sent to the
7 person or persons claiming an interest in the seized property. The
8 court shall hear the action and determine the issues of fact and
9 law involved in accordance with rules of practice and procedure as
10 in other in rem proceedings. If a judicial determination of the
11 lawfulness of the seizure and forfeiture cannot be made before
12 deterioration of any of the property seized, the court shall order
13 the sale of the property with public notice as determined by the
14 court and require the proceeds to be deposited with the court until
15 the lawfulness of the seizure and forfeiture is finally
16 adjudicated.

17 (11) **SECTION 2975 OF THE REVISED JUDICATURE ACT OF 1961, 1961**
18 **PA 236, MCL 600.2975, APPLIES TO A MOTOR VEHICLE THAT HAS BEEN**
19 **SEIZED UNDER THIS ACT BUT NOT FINALLY FORFEITED.**

20 (12) ~~(11)~~ During the pendency of any ~~filing for~~ appeal,
21 hearing, or ~~rendering of~~ decision, the aggrieved person and the
22 department may by mutual consent agree to sale of the fuel in order
23 to facilitate release of the vehicle containing the fuel. The
24 proceeds from the sale shall be held in escrow by the department
25 pending the department's decision and an appeal, if any, from the
26 department's decision.

27 (13) ~~(12)~~ The department may sell fuel forfeited under this

1 act at public sale. Public notice of the sale shall be given at
2 least 5 days before the date of sale. The department may pay an
3 amount not to exceed 25% of the proceeds of the sale to the local
4 governmental unit whose law enforcement agency performed the
5 seizure. The balance of the proceeds derived from the sale by the
6 department shall be credited to the Michigan transportation fund.

7 Enacting section 1. This amendatory act does not take effect
8 unless Senate Bill No.____ or House Bill No. 5665(request no.
9 04010'05) of the 93rd Legislature is enacted into law.