

# SENATE BILL No. 138

February 2, 2005, Introduced by Senators LELAND, GARCIA, CLARKE, BARCIA, BRATER, GEORGE and BISHOP and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 4706 and 8733 (MCL 600.4706 and 600.8733), section 4706 as added by 1988 PA 104 and section 8733 as amended by 2003 PA 95, and by adding section 2975.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           SEC. 2975. A MOTOR VEHICLE SEIZED BY THE STATE OR A LOCAL UNIT  
2 OF GOVERNMENT THAT IS SUBJECT TO FORFEITURE UNDER A LAW OF THIS  
3 STATE OR AN ORDINANCE OF A LOCAL UNIT OF GOVERNMENT SHALL BE  
4 RETURNED TO THE OWNER WITHIN 7 DAYS AND ANY FORFEITURE FEES OR FEES  
5 FOR IMPOUNDING THE VEHICLE SHALL BE WAIVED, IF 1 OF THE FOLLOWING  
6 OCCURS:

7           (A) THE OWNER IS ARRESTED OR DETAINED BECAUSE OF CIRCUMSTANCES

1 RELATED TO THE SEIZURE OF THE MOTOR VEHICLE AND IS RELEASED WITHOUT  
2 BEING CHARGED WITH A CRIME, CIVIL INFRACTION, OR CIVIL VIOLATION.

3 (B) IF THE OWNER IS CHARGED WITH COMMITTING A CRIME BECAUSE OF  
4 CIRCUMSTANCES RELATED TO THE SEIZURE OF THE MOTOR VEHICLE, THE  
5 OWNER IS ACQUITTED OF THE CRIME.

6 (C) IF THE OWNER IS CHARGED WITH COMMITTING A CIVIL INFRACTION  
7 OR CIVIL VIOLATION BECAUSE OF CIRCUMSTANCES RELATED TO THE SEIZURE  
8 OF THE MOTOR VEHICLE, THE OWNER IS FOUND TO BE NOT RESPONSIBLE FOR  
9 THE CIVIL INFRACTION OR CIVIL VIOLATION.

10 Sec. 4706. (1) Except as otherwise provided by law, personal  
11 property seized ~~pursuant to~~ UNDER section 4703 shall be returned  
12 to the owner, or a lien filed against real property under section  
13 4703 or against a motor vehicle under section 4705, shall be  
14 discharged — within 7 days after the occurrence of any of **THE**  
15 following:

16 (a) A warrant is not issued against a person for the  
17 commission of a crime within 7 days after the property is seized  
18 or, if the property is real property, within 7 days after the lien  
19 is filed.

20 (b) All charges against the consenting legal owner relating to  
21 the commission of a crime are dismissed.

22 (c) The consenting legal owner charged with committing a crime  
23 is acquitted of the crime.

24 (d) In the case of multiple defendants, all persons charged  
25 with committing a crime are acquitted of the crime.

26 (e) Entry of a court order ~~pursuant to~~ UNDER this chapter  
27 for the return of the property or the discharge of the lien.

1           (2) SECTION 2975 ALSO APPLIES TO A MOTOR VEHICLE THAT HAS BEEN  
2 SEIZED UNDER THIS CHAPTER.

3           Sec. 8733. (1) An authorized local official may seize and  
4 impound a vehicle operated in the commission of a trailway  
5 municipal civil infraction. Upon impoundment, the vehicle is  
6 subject to a lien, subordinate to a prior lien of record, in the  
7 amount of any fine, costs, or assessment that the defendant may be  
8 ordered to pay under section 8727 and any expenses described in  
9 subsection (2) that the defendant may be ordered to pay under  
10 section 8727. The defendant or a person with an ownership interest  
11 in the vehicle may post with the court a cash or surety bond in the  
12 amount of \$750.00. If such a bond is posted, the vehicle shall be  
13 released from impoundment. The vehicle shall also be released, and  
14 the lien shall be discharged, ~~upon a judicial determination that~~  
15 ~~the defendant is not responsible for the trailway municipal civil~~  
16 ~~infraction~~ **IF REQUIRED BY SECTION 2975** or upon payment of the  
17 fine, costs, assessment, and damages and expenses.

18           (2) In a trailway municipal civil infraction action, an order  
19 under section 8727 may require the defendant to pay 1 or both of  
20 the following:

21           (a) The amount of damages to any land, water, wildlife,  
22 vegetation, or other natural resource or to any facility damaged by  
23 the violation of the ordinance. Money collected under this  
24 subdivision shall be distributed to the governmental entity that  
25 has jurisdiction over the recreational trailway.

26           (b) The reasonable expense of impoundment under subsection  
27 (1). Money collected under this subdivision shall be distributed to

1 the governmental entity employing the authorized local official who  
2 impounded the vehicle involved in the trailway municipal civil  
3 infraction.

4 (3) If the court determines that the defendant is responsible  
5 for the trailway municipal civil infraction and the defendant  
6 defaults in the payment of the fine, costs, assessment, or damages  
7 or expenses, or in any installment, as ordered pursuant to section  
8 8727, any bond posted under subsection (1) shall be forfeited and  
9 applied to the fine, costs, assessment, damages, expenses, or  
10 installment. The court shall certify any remaining unpaid amount to  
11 the attorney for the governmental entity whose ordinance was  
12 violated. The attorney for the governmental entity may enforce the  
13 lien by a foreclosure sale. The foreclosure sale shall be conducted  
14 in the manner provided and subject to the same rights as apply in  
15 the case of execution sales under sections 6031, 6032, 6041, 6042,  
16 and 6044 to 6047.

17 (4) Not less than 21 days before the foreclosure sale, the  
18 attorney for the governmental entity whose ordinance was violated  
19 shall by certified mail send written notice of the time and place  
20 of the foreclosure sale to each person with a known ownership  
21 interest in or lien of record on the vehicle. In addition, not less  
22 than 10 days before the foreclosure sale, the attorney shall twice  
23 publish notice of the time and place of the foreclosure sale in a  
24 newspaper of general circulation in the county in which the vehicle  
25 was seized. The proceeds of the foreclosure sale shall be  
26 distributed in the following order of priority:

27 (a) To discharge any lien on the vehicle that was recorded

1 prior to the creation of the lien under subsection (1).

2 (b) To the clerk of the court for the payment of the fine,  
3 costs, assessment, damages, and expenses that the defendant was  
4 ordered to pay under section 8727.

5 (c) To discharge any lien on the vehicle that was recorded  
6 after the creation of the lien under subsection (1).

7 (d) To the owner of the vehicle.