

# SENATE BILL No. 140

February 2, 2005, Introduced by Senators LELAND, GARCIA, CLARKE, BARCIA, BRATER and GEORGE 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

1 inventory statement **REQUIRED BY SUBSECTION (1)** shall contain a  
2 notice that unless demand for a hearing as provided in this section  
3 is made within 10 business days after the date the inventory  
4 statement was delivered, the property is forfeited to the state.

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

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

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

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

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

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

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

1 section.

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

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

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

1           (13) ~~—(12)—~~ The department may sell fuel forfeited under this  
2 act at public sale. Public notice of the sale shall be given at  
3 least 5 days before the date of sale. The department may pay an  
4 amount not to exceed 25% of the proceeds of the sale to the local  
5 governmental unit whose law enforcement agency performed the  
6 seizure. The balance of the proceeds derived from the sale by the  
7 department shall be credited to the Michigan transportation fund.

8           Enacting section 1. This amendatory act does not take effect  
9 unless Senate Bill No. 138

10                   of the 93rd Legislature is enacted into law.