

# HOUSE BILL No. 5230

January 22, 2014, Introduced by Reps. Cavanagh, Heise, Lamonte, Hovey-Wright, LaVoy, Lauwers, Price, Rogers, Slavens, Darany, Singh, Brinks, Haveman, Kowall, Zorn, O'Brien, Barnett, Driskell, Roberts, Haugh, Brown, Banks, McCready, Lyons, Lane, Tlaib, Irwin and Kivela and referred to the Committee on Criminal Justice.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending sections 3801, 3805, 3810, 3815, 3820, 3825, and 3835  
(MCL 600.3801, 600.3805, 600.3810, 600.3815, 600.3820, 600.3825,  
and 600.3835), section 3801 as amended by 2012 PA 352.

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

1           Sec. 3801. (1) A building, vehicle, boat, aircraft, or place  
2 is a nuisance if 1 or more of the following apply:

3           (a) It is used for the purpose of lewdness, assignation,  
4 prostitution, or gambling.

5           (b) It is used by, or kept for the use of, prostitutes or  
6 other disorderly persons.

1 (c) It is used for the unlawful manufacture, transporting,  
2 sale, keeping for sale, bartering, or furnishing of a controlled  
3 substance.

4 (d) It is used for the unlawful manufacture, transporting,  
5 sale, keeping for sale, bartering, or furnishing of vinous, malt,  
6 brewed, fermented, spirituous, or intoxicating liquors or mixed  
7 liquors or beverages, any part of which is intoxicating.

8 (e) It is used for conduct prohibited by section 49 of the  
9 Michigan penal code, 1931 PA 328, MCL 750.49.

10 (F) IT IS USED FOR CONDUCT PROHIBITED BY CHAPTER LXVIIIA OF THE  
11 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.462A TO 750.462J.

12 (G) IT IS USED TO FACILITATE ARMED VIOLENCE IN CONNECTION WITH  
13 THE UNLAWFUL USE OF A FIREARM OR OTHER DANGEROUS WEAPON.

14 (H) IT IS A DANGEROUS BUILDING USED TO COMMIT AN UNLAWFUL ACT  
15 OR ANY OTHER ACTIVITY DECLARED BY STATE LAW OR LOCAL ORDINANCE TO  
16 BE A PUBLIC NUISANCE.

17 (2) All furniture, fixtures, and contents of a building,  
18 vehicle, boat, aircraft, or place described in subsection (1) and  
19 all intoxicating liquors in the building, vehicle, boat, aircraft,  
20 or place are also declared a nuisance.

21 (3) All controlled substances and nuisances shall be enjoined  
22 and abated as provided in this act and the court rules.

23 (4) A person, or a servant, agent, or employee of the person,  
24 who owns, leases, conducts, or maintains a building, vehicle, or  
25 place described in subsection (1) is guilty of a nuisance.

26 (5) As used in this section: ~~,"controlled~~

27 (A) "CONTROLLED substance" means that term as defined in

1 section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

2 (B) "DANGEROUS BUILDING" MEANS A BUILDING THAT IS A DANGEROUS  
3 BUILDING UNDER SECTION 139(G) OF THE HOUSING LAW OF MICHIGAN, 1917  
4 PA 167, MCL 125.539.

5 Sec. 3805. The attorney general ~~of the state of Michigan,~~ OR  
6 the prosecuting attorney or any ~~citizen~~ RESIDENT of the county, ~~IN~~  
7 WHICH A NUISANCE DESCRIBED IN SECTION 3801 IS LOCATED may maintain  
8 an action for equitable relief in the name of the state of  
9 Michigan, ~~upon~~ ON the relation of ~~such~~ THE attorney general,  
10 prosecuting attorney, or ~~citizen~~ RESIDENT to abate ~~said~~ THE  
11 nuisance and to perpetually enjoin any person, ~~his~~ OR A servant,  
12 agent, or employee OF THE PERSON, who ~~shall own, lease, conduct or~~  
13 ~~maintain such~~ OWNS, LEASES, CONDUCTS, OR MAINTAINS THE building,  
14 vehicle, boat, aircraft, or place ~~from~~ permitting or suffering  
15 ~~such~~ THE building, vehicle, boat, ~~or~~ aircraft, or place owned,  
16 leased, conducted, or maintained by ~~him,~~ THE PERSON, or any other  
17 building, vehicle, boat, aircraft, or place conducted or maintained  
18 by ~~him~~ THE PERSON to be used for any of the purposes or ACTS OR by  
19 any of the persons ~~set forth~~ DESCRIBED in section 3801. ~~or for~~  
20 ~~any of the acts enumerated in said section. When the~~ AFTER AN  
21 injunction ~~has been~~ IS granted, ~~UNDER THIS SECTION~~ it shall be IS  
22 binding on the defendant throughout ~~the judicial circuit in which~~  
23 ~~it was issued.~~ THIS STATE.

24 Sec. 3810. (1) ~~An owner of the premises within the meaning~~ FOR  
25 PURPOSES of this chapter, ~~is deemed to be~~ the grantee or vendee of  
26 the last recorded deed or contract ~~which~~ THAT describes the  
27 premises, or any part ~~thereof upon~~ OF THE PREMISES, ON which any A

1 nuisance exists as heretofore defined, and the **DESCRIBED IN SECTION**  
 2 **3801 IS CONSIDERED TO BE THE OWNER OF THE PREMISES. THE** naming of  
 3 ~~such person~~ **A GRANTEE OR VENDEE AS** a party defendant **IN AN ACTION**  
 4 **UNDER THIS CHAPTER** gives the court authority to abate the nuisance  
 5 by closing the premises and ~~such~~ **THE** defendant is subject to the  
 6 order and judgment of the court.

7 (2) ~~An owner of a vehicle within the meaning~~ **FOR PURPOSES** of  
 8 this chapter, ~~is deemed to be the~~ **ANY** person in whose name ~~the~~ **A**  
 9 vehicle, **BOAT, OR AIRCRAFT** is titled, and any ~~chattel mortgagee or~~  
 10 ~~assignee thereof~~ **SECURED PARTY** or other lien holder whose **SECURED**  
 11 **INTEREST IN OR** lien **AGAINST THE VEHICLE, BOAT, OR AIRCRAFT** has been  
 12 filed **WITH THE SECRETARY OF STATE OR** in the office of the register  
 13 of deeds ~~prior to~~ **BEFORE** the commencement of ~~suit, and the~~ **AN**  
 14 **ACTION UNDER THIS CHAPTER, IS CONSIDERED TO BE THE OWNER OF THE**  
 15 **VEHICLE, BOAT, OR AIRCRAFT. THE** plaintiff shall join **ANY** such  
 16 ~~mortgagee, assignee~~ **SECURED PARTY** or lien holder as a party  
 17 ~~defendant.~~ **DEFENDANT TO AN ACTION UNDER THIS CHAPTER.**

18 Sec. 3815. (1) In ~~any~~ **AN** action ~~brought~~ under this chapter,  
 19 evidence of the general reputation of the building, vehicle, boat,  
 20 aircraft, or place is admissible for the purpose of proving the  
 21 existence of the nuisance.

22 (2) ~~Proof~~ **IN AN ACTION UNDER THIS CHAPTER, PROOF** of knowledge  
 23 of the existence of the nuisance on the part of **1 OR MORE OF** the  
 24 ~~defendants or any of them,~~ is not required.

25 (3) ~~It~~ **IN AN ACTION UNDER THIS CHAPTER, IT** is not necessary  
 26 for the court to find the property involved was being used as and  
 27 for a nuisance at the time of the hearing, or for the plaintiff to

1 prove that the nuisance was continuing at the time ~~of the filing of~~  
 2 the complaint **WAS FILED**, if the complaint is filed within ~~30-90~~  
 3 days after any act, any violation, or the existence of a condition  
 4 ~~herein defined~~ **DESCRIBED IN SECTION 3801** as a nuisance, but on  
 5 finding that the material allegations of the complaint are true,  
 6 the court shall ~~render~~ **ENTER A** judgment and order of abatement as  
 7 ~~hereinafter~~ provided **IN THIS CHAPTER**.

8       Sec. 3820. (1) If ~~any~~ **AN** order or injunction granted under ~~the~~  
 9 ~~provisions of this chapter is violated~~, the court may summarily try  
 10 and punish the offender as for contempt, and the person so  
 11 offending ~~shall be punished by~~ **IS SUBJECT TO PUNISHMENT OF** a fine  
 12 of not more than ~~\$1,000.00~~ **\$25,000.00**, or ~~by~~ imprisonment in the  
 13 county jail **FOR** not more than 6 months, or ~~by both, fine and~~  
 14 ~~imprisonment~~ in the discretion of the court. ~~Such~~

15       (2) **A violation OF AN ORDER OR INJUNCTION GRANTED UNDER THIS**  
 16 **CHAPTER** shall be charged by a motion supported by affidavit, and  
 17 the court, if satisfied ~~of the sufficiency thereof~~, **THAT THE MOTION**  
 18 **AND AFFIDAVIT ARE SUFFICIENT**, shall immediately issue a bench  
 19 warrant for the arrest of ~~such~~ **THE** offender and to bring him **OR HER**  
 20 before ~~such~~ **THE** court to answer for ~~such~~ **THE** misconduct. The court  
 21 may, in its discretion, permit ~~such~~ **THE** person arrested to give  
 22 bail and fix the amount ~~thereof~~ **OF BAIL** pending hearing of the  
 23 ~~matters charged in such motion~~.

24       Sec. 3825. (1) If the existence of the nuisance is established  
 25 in an action ~~as provided in~~ **UNDER** this chapter, **THE COURT SHALL**  
 26 **ENTER** an order of abatement ~~shall be entered as a part of the~~  
 27 judgment in the ~~case, which~~ **ACTION. THE** order **OF ABATEMENT** shall

1 ~~direct the~~ **ORDER ALL OF THE FOLLOWING:**

2 (A) **THE** removal from the building or place of all furniture,  
3 fixtures, and contents. ~~therein and shall direct the~~

4 (B) **THE** sale thereof ~~OF THE FURNITURE, FIXTURES, AND CONTENTS~~  
5 in the manner provided for the sale of ~~chattels~~ **GOODS** under  
6 execution. ~~and the~~

7 (C) **THE** effectual closing of the building or place against its  
8 use for any purpose, and so keeping it closed for a period of 1  
9 year, unless sooner released as **PROVIDED** in this chapter. ~~provided.~~

10 (2) Any vehicle, boat, or aircraft found by the court to be a  
11 nuisance ~~within the meaning of~~ **UNDER** this chapter ~~is~~ subject to  
12 the same order and judgment as any furniture, fixtures, and  
13 contents ~~as herein provided.~~ **UNDER SUBSECTION (1).**

14 (3) ~~Upon~~ **ON** the sale of any furniture, fixtures, contents,  
15 vehicle, boat, or aircraft as provided in this section, the officer  
16 executing the order of the court shall ~~after deducting~~ **DO THE**  
17 **FOLLOWING IN THE FOLLOWING ORDER:**

18 (A) **DEDUCT** the expenses of keeping ~~such~~ **THE** property and **THE**  
19 costs of ~~such~~ **THE** sale. ~~pay.~~

20 (B) **PAY** all **SECURED INTERESTS AND** liens according to their  
21 priorities ~~which may be~~ **AS** established by intervention or otherwise  
22 at the hearing or in other proceedings brought for that purpose as  
23 being bona fide and as having been created without the ~~liene~~  
24 **SECURED PARTY OR LIEN HOLDER** having any notice that ~~such~~ **THE**  
25 property was being used or was to be used for the maintenance of a  
26 nuisance as ~~herein defined, and shall pay~~ **DESCRIBED IN SECTION 3801.**

27 (C) **PAY THE COSTS INCURRED IN THE PROSECUTION OF THE ACTION,**

1 INCLUDING REASONABLE ATTORNEY FEES FOR SERVICES NECESSITATED AS  
2 DETERMINED BY THE COURT.

3 (D) SUBJECT TO SUBSECTION (5), PAY the balance to the state  
4 treasurer to be credited to the general fund of ~~the~~ THIS state.

5 (4) If any person uses a building or place ~~so directed~~ ORDERED  
6 to be closed ~~,~~ UNDER THIS SECTION with knowledge that ~~such~~ THE  
7 building or place is closed by order of the court, ~~he shall be~~  
8 ~~punished as~~ THE PERSON IS SUBJECT TO PUNISHMENT for contempt, as  
9 provided in section 3820.

10 (5) IF THE COURT IN AN ACTION UNDER THIS CHAPTER DECLARES  
11 PROPERTY TO BE A NUISANCE UNDER SECTION 3801(1)(F), THE OFFICER  
12 EXECUTING THE ORDER OF THE COURT SHALL, AFTER PAYING THE COSTS OF  
13 PROSECUTION AS PROVIDED IN SUBSECTION (3), PAY PART OR ALL OF THE  
14 REMAINING BALANCE TO THE VICTIM OF THE CONDUCT CONSTITUTING THE  
15 NUISANCE AS ORDERED BY THE COURT. FOR PURPOSES OF DETERMINING THE  
16 AMOUNT DUE TO A VICTIM UNDER THIS SUBSECTION, THE COURT SHALL  
17 CONSIDER THE LOSS SUFFERED BY THE VICTIM AS A PROXIMATE RESULT OF  
18 THE CONDUCT AND MAY USE AS GUIDANCE THE ITEMS OF LOSS ENUMERATED IN  
19 SECTION 16B OF THE WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS  
20 ACT, 1985 PA 87, MCL 780.766B.

21 Sec. 3835. The proceeds of the sale of the personal property,  
22 as provided in section 3830, shall be applied in payment of the  
23 costs of the action and abatement, and the balance, if any, shall  
24 be paid TO QUALIFIED SECURED PARTIES AND LIEN HOLDERS AND THEN  
25 TOWARD THE COSTS INCURRED IN THE PROSECUTION OF THE ACTION,  
26 INCLUDING REASONABLE ATTORNEY FEES FOR SERVICES NECESSITATED AS  
27 DETERMINED BY THE COURT, AND ANY REMAINING BALANCE SHALL BE PAID to

1 the persons entitled thereto ~~TO THEM~~ as ORDERED BY the court may  
2 ~~direct~~. OR, IF APPLICABLE, AS ORDERED UNDER SECTION 3825(5).