

HOUSE BILL No. 5779

April 11, 2018, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 3815 and 3825 (MCL 600.3815 and 600.3825),
section 3815 as amended by 2015 PA 153 and section 3825 as amended
by 2014 PA 387.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3815. (1) In an action under this chapter, evidence of
2 the general reputation of the building, vehicle, boat, aircraft, or
3 place is admissible for the purpose of proving the existence of the
4 nuisance.

5 (2) ~~In~~ **SUBJECT TO SUBSECTION (4), IN** an action under this
6 chapter, proof of knowledge of the existence of the nuisance on the
7 part of 1 or more of the defendants is not required.

8 (3) In an action under this chapter, it is not necessary for
9 the court to find the property involved was being used as and for a

1 nuisance at the time of the hearing, or for the plaintiff to prove
2 that the nuisance was continuing at the time the complaint was
3 filed, if the complaint is filed within 90 days after any act, any
4 violation, or the existence of a condition described in section
5 3801 as a nuisance.

6 (4) In an action under this chapter, on finding that the
7 plaintiff has satisfied the burden of proof and that the material
8 allegations of the complaint are true, the court shall enter a
9 judgment and order of abatement as provided in this chapter.

10 However, if the plaintiff seeks abatement of a nuisance by
11 forfeiture or sale of a vehicle, boat, aircraft, or other personal
12 property, the ~~plaintiff has the burden of proving by clear and~~
13 ~~convincing evidence~~ **FORFEITURE OR SALE OF THE VEHICLE, BOAT,**
14 **AIRCRAFT, OR OTHER PERSONAL PROPERTY MAY NOT PROCEED UNLESS 1 OF**
15 **THE FOLLOWING APPLIES:**

16 (A) **AN OWNER OF** that ~~the~~ vehicle, boat, aircraft, or **OTHER**
17 **PERSONAL** property **IS CONVICTED OF AN OFFENSE DESCRIBED IN SECTION**
18 **3801 AND THE VEHICLE, BOAT, AIRCRAFT, OR OTHER PERSONAL PROPERTY**
19 was used for or in furtherance of the activity or conduct that
20 constituted the ~~nuisance~~ **OFFENSE OF CONVICTION** as described in
21 section 3801.

22 (B) **AN OWNER OF THAT VEHICLE, BOAT, AIRCRAFT, OR OTHER**
23 **PERSONAL PROPERTY ENTERS INTO A PLEA AGREEMENT FOR A VIOLATION**
24 **DESCRIBED IN SECTION 3801 THAT IS APPROVED BY THE PRESIDING**
25 **CRIMINAL COURT.**

26 (C) **AN OWNER OF THAT VEHICLE, BOAT, AIRCRAFT, OR OTHER**
27 **PERSONAL PROPERTY IS DEPORTED BY THE UNITED STATES GOVERNMENT.**

1 (D) AN OWNER OF THAT VEHICLE, BOAT, AIRCRAFT, OR OTHER
2 PERSONAL PROPERTY FAILS TO CLAIM ANY INTEREST IN THE PROPERTY.

3 Sec. 3825. (1) ~~If~~**SUBJECT TO THE REQUIREMENTS OF SECTION**
4 **3815(4) REGARDING THE SALE OR FORFEITURE OF PROPERTY, IF** the
5 existence of the nuisance is established in an action under this
6 chapter, the court shall enter an order of abatement as a part of
7 the judgment in the action. The order of abatement may order all of
8 the following:

9 (a) The removal from the building or place of all furniture,
10 fixtures, and contents.

11 (b) The sale of the furniture, fixtures, and contents in the
12 manner provided for the sale of goods under execution.

13 (c) The effectual closing of the building or place against its
14 use for any purpose, and so keeping it closed for a period of 1
15 year, unless sooner released as provided in this chapter.

16 (d) Any other equitable relief the court considers necessary.

17 (2) Any vehicle, boat, or aircraft found by the court to be a
18 nuisance under this chapter is subject to the same order and
19 judgment as any furniture, fixtures, and contents under subsection
20 (1).

21 (3) On the sale of any furniture, fixtures, contents, vehicle,
22 boat, or aircraft as provided in this section, the officer
23 executing the order of the court shall do the following in the
24 following order:

25 (a) Deduct the expenses of keeping the property and the costs
26 of the sale.

27 (b) Pay all secured interests and liens according to their

1 priorities as established by intervention or otherwise at the
2 hearing or in other proceedings brought for that purpose as being
3 bona fide and as having been created without the secured party or
4 lien holder having any notice that the property was being used or
5 was to be used for the maintenance of a nuisance as described in
6 section 3801.

7 (c) Subject to subsection (5), pay the costs incurred in the
8 prosecution of the action, including reasonable attorney fees for
9 services necessitated as determined by the court.

10 (d) Subject to subsection (5), pay the balance to the state
11 treasurer to be credited to the general fund of this state.

12 (4) If any person uses a building or place ordered to be
13 closed under this section with knowledge that the building or place
14 is closed by order of the court, the person is subject to
15 punishment for contempt as provided in section 3820.

16 (5) If the court in an action under this chapter declares
17 property to be a nuisance under section 3801(1)(f), the officer
18 executing the order of the court shall first pay from the proceeds
19 any amount determined by the court to be due to the victim. If
20 there is any balance remaining, the officer shall pay the costs of
21 prosecution as provided in subsection (3). For purposes of
22 determining the amount due to a victim under this subsection, the
23 court shall consider the loss suffered by the victim as a proximate
24 result of the conduct and may use as guidance the items of loss
25 enumerated in section 16b of the William Van Regenmorter crime
26 victim's rights act, 1985 PA 87, MCL 780.766b.

27 Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.