

# SENATE BILL No. 261

March 6, 2003, Introduced by Senators LELAND, SCHAUER, BERNERO, EMERSON, CHERRY, JACOBS, CLARK-COLEMAN, THOMAS, PATTERSON, CASSIS, GARCIA, TOY, GOSCHKA, CLARKE, OLSHOVE and BRATER 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  
 3 under section 129, the person making the seizure shall deliver  
 4 personally or by registered mail to the last known address of the  
 5 person from whom the seizure was made, if known, an inventory  
 6 statement of the motor vehicle, motor fuel, or other property  
 7 seized. A copy of the inventory statement shall also be filed  
 8 with the department.

9       (2) In addition to notice of the property seized, the  
 10 inventory statement **required by subsection (1)** shall contain a  
 11 notice that unless demand for a hearing as provided in this

1 section is made within 10 business days after the date the  
2 inventory statement was delivered, the property is forfeited to  
3 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  
6 seizure shall ~~cause~~ **have** a copy of the inventory statement ~~—~~  
7 ~~together with the notice provided for in this section, to be~~  
8 **required by subsection (1) and the notice under subsection (2)**  
9 published not less than 3 times in a newspaper of general  
10 circulation in the 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~~  
13 ~~case of publication~~ **if the notice is published under subsection**  
14 **(3)**, within 10 business days after the date of last publication,  
15 the person from whom the property was seized or any person  
16 claiming an interest in the property may by registered mail,  
17 facsimile transmission, or personal service file with the  
18 department a demand for a hearing before the commissioner for a  
19 determination ~~as to~~ whether the property was lawfully subject  
20 to seizure and forfeiture. The person shall verify a request for  
21 hearing filed by facsimile transmission by also providing a copy  
22 of the original request for hearing by registered mail or  
23 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  
27 present 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,  
6 MCL 24.201 to 24.328.

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

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

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

1 operation of law and may be disposed of by the department as  
2 provided in this section.

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

19       **(11) Section 2974 of the revised judicature act of 1961, 1961**  
20 **PA 236, MCL 600.2974, applies to a motor vehicle that has been**  
21 **seized under this act but not finally forfeited.**

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

1 any, from the department's decision.

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

10 Enacting section 1. This amendatory act does not take  
11 effect unless Senate Bill No. 259  
12 of the 92nd Legislature is enacted into  
13 law.