

# SENATE BILL NO. 232

March 19, 2019, Introduced by Senator RUNESTAD and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending sections 3801, 3810, 3815, and 3825 (MCL 600.3801,  
600.3810, 600.3815, and 600.3825), sections 3801, 3810, and 3825 as  
amended by 2014 PA 387 and section 3815 as amended by 2015 PA 153.

## **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.

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

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

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

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

12 (f) It is used for conduct prohibited by chapter LXVIIA of the  
13 Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h.

14 (g) It is used to facilitate armed violence in connection with  
15 the unlawful use of a firearm or other dangerous weapon.

16 (2) ~~All~~ **Subject to subsection (5), all** furniture, fixtures,  
17 and contents of a building, vehicle, boat, aircraft, or place  
18 described in subsection (1) and all intoxicating liquors in the  
19 building, vehicle, boat, aircraft, or place are also declared a  
20 nuisance.

21 (3) All controlled substances and nuisances ~~shall~~ **must** be  
22 enjoined 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) **Subsection (2) does not apply to any portion of the**  
27 **contents of a building, vehicle, boat, aircraft, or place described**  
28 **in subsection (1) if the prosecuting attorney of a county has**  
29 **determined that a portion of the contents are not nuisances under**

1 subsection (2) and are legally owned by a person that is not a  
 2 party to an action or order of abatement under this chapter.

3 (6) ~~(5)~~—As used in this section, "controlled substance" means  
 4 that term as defined in section 7104 of the public health code,  
 5 1978 PA 368, MCL 333.7104.

6 Sec. 3810. (1) For purposes of this chapter, the grantee or  
 7 vendee of the last recorded deed or contract that describes the  
 8 premises, or any part of the premises, on which a nuisance exists  
 9 as described in section 3801 is considered to be the owner of the  
 10 premises. The naming of a grantee or vendee as a party defendant in  
 11 an action under this chapter gives the court authority to abate the  
 12 nuisance by closing the premises and the defendant is subject to  
 13 the order and judgment of the court.

14 (2) For purposes of this chapter, any person in whose name a  
 15 vehicle, boat, or aircraft is titled, and any secured party or  
 16 other lien holder whose secured interest in or lien against the  
 17 vehicle, boat, or aircraft has been filed with the secretary of  
 18 state or in the office of the register of deeds before the  
 19 commencement of an action under this chapter, is considered to be  
 20 the owner of the vehicle, boat, or aircraft. The plaintiff shall  
 21 join any such secured party or lien holder as a party defendant to  
 22 an action under this chapter.

23 (3) A court shall not enter an order or judgment against a  
 24 defendant under this chapter ~~unless~~**if the prosecuting attorney**  
 25 **determines the property at issue must be returned under section**  
 26 **3815(5) or if** a copy of the summons and complaint has **not** been  
 27 served on the defendant as provided by Michigan court rules and the  
 28 defendant **has not been** given an opportunity to be heard.

29 Sec. 3815. (1) ~~In~~**All of the following apply to** an action

1 under this chapter: ~~7-evidence~~

2 (a) **Evidence** of the general reputation of the building,  
3 vehicle, boat, aircraft, or place is admissible for the purpose of  
4 proving the existence of the nuisance.

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

8 (c) ~~(3) In an action under this chapter, it~~ **It** is not  
9 necessary for the court to find the property involved was being  
10 used as and for a nuisance at the time of the hearing, or for the  
11 plaintiff to prove that the nuisance was continuing at the time the  
12 complaint was filed, if the complaint is filed within 90 days after  
13 any act, any violation, or the existence of a condition described  
14 in section 3801 as a nuisance.

15 (2) **The law enforcement agency that is investigating or**  
16 **responding to an alleged nuisance shall immediately provide notice**  
17 **to the prosecuting attorney of the county if any property is seized**  
18 **by the law enforcement agency. The law enforcement agency shall**  
19 **provide a list of the property that was seized to the prosecutor**  
20 **and to the owner of the property.**

21 (3) **If the owner of property seized under subsection (2)**  
22 **disputes that the property is a nuisance, the owner may seek the**  
23 **return of the property by filing a motion in the district court**  
24 **having jurisdiction in the location where the property was seized.**

25 (4) **If a motion is filed under subsection (3), the prosecutor**  
26 **shall review the list of property provided by the seizing law**  
27 **enforcement agency under subsection (2) and determine all of the**  
28 **following:**

29 (a) **Whether or not all or a portion of the property seized**

1 under subsection (2) likely constitutes a nuisance.

2 (b) Whether or not the owner of the property is a party to an  
3 action brought under this chapter.

4 (c) Whether or not the property is evidence in a pending  
5 criminal proceeding, or in an ongoing criminal investigation.

6 (d) Whether or not the property presents a hazard to public  
7 safety or is otherwise safe to return to the owner.

8 (5) If the prosecutor determines based upon his or her review  
9 of the list provided under subsection (2) that all or a portion of  
10 the property seized under subsection (2) may be returned to the  
11 owner, the prosecutor shall provide a list of returnable property  
12 to the seizing law enforcement agency and ensure that the property  
13 is returned.

14 (6) If the prosecutor determines that the property must not be  
15 returned under subsection (5), the prosecutor must object to the  
16 return of the property by a motion in writing to the district  
17 court.

18 (7) If the prosecutor objects under subsection (6), the  
19 property must not be returned until the final disposition of an  
20 abatement action under this chapter.

21 (8) ~~(4)~~—In an action under this chapter, on finding that the  
22 plaintiff has satisfied the burden of proof and that the material  
23 allegations of the complaint are true, the court shall enter a  
24 judgment and order of abatement as provided in this chapter.  
25 However, if the plaintiff seeks abatement of a nuisance by  
26 forfeiture or sale of a vehicle, boat, aircraft, or other personal  
27 property, the plaintiff has the burden of proving by clear and  
28 convincing evidence that the vehicle, boat, aircraft, or property  
29 was used for or in furtherance of the activity or conduct that

1 constituted the nuisance as described in section 3801.

2       Sec. 3825. (1) If the existence of the nuisance is established  
3 in an action under this chapter, the court shall enter an order of  
4 abatement as a part of the judgment in the action. The order of  
5 abatement may order all of the following:

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

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

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

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

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

18          **(3) If the existence of the nuisance is not established with**  
19 **respect to all or some portion of property seized under this**  
20 **chapter, the court shall enter an order requiring the return of**  
21 **that property to the owner.**

22          **(4)** ~~(3)~~ On the sale of any furniture, fixtures, contents,  
23 vehicle, boat, or aircraft as provided in this section, the officer  
24 executing the order of the court shall do the following in the  
25 following order:

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

28           (b) Pay all secured interests and liens according to their  
29 priorities as established by intervention or otherwise at the

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

6 (c) Subject to subsection ~~(5)~~, **(6)**, pay the costs incurred in  
7 the prosecution of the action, including reasonable attorney fees  
8 for services necessitated as determined by the court.

9 (d) Subject to subsection ~~(5)~~, **(6)**, pay the balance to the  
10 state treasurer to be credited to the general fund of this state.

11 **(5)** ~~(4)~~—If any person uses a building or place ordered to be  
12 closed under this section with knowledge that the building or place  
13 is closed by order of the court, the person is subject to  
14 punishment for contempt as provided in section 3820.

15 **(6)** ~~(5)~~—If the court in an action under this chapter declares  
16 property to be a nuisance under section 3801(1)(f), the officer  
17 executing the order of the court shall first pay from the proceeds  
18 any amount determined by the court to be due to the victim. If  
19 there is any balance remaining, the officer shall pay the costs of  
20 prosecution as provided in subsection (3). For purposes of  
21 determining the amount due to a victim under this subsection, the  
22 court shall consider the loss suffered by the victim as a proximate  
23 result of the conduct and ~~may~~**shall** use as guidance the items of  
24 loss enumerated in section 16b of the William Van Regenmorter crime  
25 victim's rights act, 1985 PA 87, MCL 780.766b.

26 Enacting section 1. This amendatory act takes effect 90 days  
27 after the date it is enacted into law.