

1998 PUBLIC AND LOCAL ACTS

[No. 15]

(HB 4382)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 8904 (MCL 324.8904), as amended by 1995 PA 111, and by adding sections 8905a, 8905b, and 8905c.

The People of the State of Michigan enact:

324.8904 Presumptions; exception. [M.S.A. 13A.8904]

Sec. 8904. (1) Except as provided in subsection (3) involving litter from a leased vehicle or leased vessel, in a proceeding for a violation of this part involving litter from a motor vehicle or vessel, proof that the particular vehicle or vessel described in the citation, complaint, or warrant was used in the violation, together with proof that the defendant named in the citation, complaint, or warrant was the registered owner of the vehicle or vessel at the time of the violation, constitutes an evidentiary presumption that the registered owner of the vehicle or vessel was the driver of the vehicle or vessel at the time of the violation.

(2) The driver of a vehicle or vessel is presumed to be responsible for litter that is thrown, dumped, deposited, placed, or left from the vehicle or vessel on public or private property or water.

(3) In a proceeding for a violation of this part involving litter from a leased motor vehicle or leased vessel, proof that the particular vehicle or vessel described in the citation, complaint, or warrant was used in the violation, together with proof that the defendant named in the citation, complaint, or warrant was the lessee of the vehicle or vessel at the time of the violation, constitutes an evidentiary presumption that the lessee of the vehicle or vessel was the driver of the vehicle or vessel at the time of the violation.

(4) This section shall not apply if a sanction for the conduct is prescribed in section 8905a.

324.8905a Violations as state civil infractions; civil fines; default remedies; exception. [M.S.A. 13A.8905a]

Sec. 8905a. (1) A person who violates this part where the amount of the litter is less than 1 cubic foot in volume is responsible for a state civil infraction and is subject to a civil fine of not more than \$800.00.

(2) A person who violates this part where the amount of the litter is 1 cubic foot or more but less than 3 cubic feet in volume is responsible for a state civil infraction and is subject to a civil fine of not more than \$1,500.00.

(3) A person who violates this part where the amount of the litter is 3 cubic feet or more in volume is responsible for a state civil infraction and is subject to a civil fine of not more than \$2,500.00. A person found to have violated this subsection in a subsequent proceeding is subject to a civil fine of not more than \$5,000.00.

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(4) A default in the payment of a civil fine or costs ordered under this part or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(5) This section does not apply to a violation of section 8903 or 8905.

324.8905b Additional penalties or sanctions; community service. [M.S.A. 13A.8905b]

Sec. 8905b. (1) In addition to any other penalty or sanction provided in this part for a criminal or civil action brought under this part, the court may require the defendant to pay either or both of the following:

(a) The cost of removing all litter which is the subject of the violation and the cost of damages to any land, water, wildlife, vegetation, or other natural resource or to any facility damaged by the violation of this part. Money collected under this subdivision shall be distributed to the governmental entity bringing the enforcement action.

(b) The reasonable expense of impoundment under section 8905c. Money collected under this subdivision shall be distributed to the governmental entity that impounded the vehicle involved in the violation of this part.

(2) In addition to any other penalty or sanction provided for in this part, the court shall impose, under the supervision of the court, community service in the form of litter gathering labor, including, but not limited to, litter connected with the particular violation.

324.8905c Impoundment of vehicles; lien; forfeiture of bond; foreclosure sale; notice; distribution of proceeds. [M.S.A. 13A.8905c]

Sec. 8905c. (1) A peace officer may seize and impound a vehicle operated in the commission of a violation of this part if the operator of the vehicle has previously been convicted for a violation of this part. Upon impoundment, the vehicle is subject to a lien, subordinate to a prior lien of record, in the amount of any fine, costs, and damages that the defendant may be ordered to pay under this part. The defendant or a person with an ownership interest in the vehicle may post with the court a cash or surety bond in the amount of \$750.00. If such a bond is posted, the vehicle shall be released from impoundment. The vehicle shall also be released, and the lien shall be discharged, upon a judicial determination that the defendant is not responsible for the violation of this part or upon payment of the fine, costs, and damages. Additionally, if the defendant is determined to be not responsible for the violation of this part, the court shall assess against the governmental entity bringing the action costs, payable to the defendant, for any damages that the defendant has sustained due to the impoundment of the vehicle.

(2) If the court determines that the defendant is responsible for the violation of this part and the defendant defaults in the payment of any fine, costs, or damages, or any installment, as ordered pursuant to this part, any bond posted under subsection (1) shall be forfeited and applied to the fine, costs, damages, or installment. The court shall certify any remaining unpaid amount to the attorney for the governmental entity bringing the action. The attorney for the governmental entity may enforce the lien by a foreclosure sale. The foreclosure sale shall be conducted in the manner provided and subject to the same rights as apply in the case of execution sales under sections 6031, 6032, 6041, 6042, and 6044 to 6047 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6031, 600.6032, 600.6041, 600.6042, and 600.6044 to 600.6047.

(3) Not less than 21 days before the foreclosure sale under subsection (2), the attorney for the governmental entity bringing the action shall by certified mail send written notice of the time and place of the foreclosure sale to each person with a known ownership interest

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in or lien of record on the vehicle. In addition, not less than 10 days before the foreclosure sale, the attorney shall twice publish notice of the time and place of the foreclosure sale in a newspaper of general circulation in the county in which the vehicle was seized. The proceeds of the foreclosure sale shall be distributed in the following order of priority:

(a) To discharge any lien on the vehicle that was recorded prior to the creation of the lien under subsection (1).

(b) To the clerk of the court for the payment of the fine, costs, and damages, that the defendant was ordered to pay.

(c) To discharge any lien on the vehicle that was recorded after the creation of the lien under subsection (1).

(d) To the owner of the vehicle.

This act is ordered to take immediate effect.

Approved March 6, 1998.

Filed with Secretary of State March 9, 1998.
