

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4325

A bill to amend 2004 PA 452, entitled
"Identity theft protection act,"
(MCL 445.61 to 445.77) by adding sections 19a, 19b, and 19c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 19A. PROPERTY THAT IS SUBJECT TO FORFEITURE UNDER THIS
2 ACT MAY BE SEIZED UPON PROCESS ISSUED BY THE CIRCUIT COURT HAVING
3 JURISDICTION OVER THE PROPERTY. SEIZURE WITHOUT PROCESS MAY BE MADE
4 UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

5 (A) THE PROPERTY IS SEIZED INCIDENT TO A LAWFUL ARREST,
6 PURSUANT TO A SEARCH WARRANT, OR PURSUANT TO AN INSPECTION UNDER AN
7 ADMINISTRATIVE INSPECTION WARRANT.

8 (B) THE PROPERTY IS THE SUBJECT OF A PRIOR JUDGMENT IN FAVOR
9 OF THIS STATE IN AN INJUNCTION OR FORFEITURE PROCEEDING UNDER THIS

1 ACT.

2 (C) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY IS
3 DIRECTLY OR INDIRECTLY DANGEROUS TO HEALTH OR SAFETY.

4 (D) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY WAS
5 USED OR IS INTENDED TO BE USED IN VIOLATION OF THIS ACT.

6 (E) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY IS
7 THE PROCEEDS FROM ACTIVITY IN VIOLATION OF THIS ACT.

8 SEC. 19B. (1) IF PROPERTY IS SEIZED PURSUANT TO SECTION 19A,
9 FORFEITURE PROCEEDINGS SHALL BE INSTITUTED PROMPTLY. IF THE
10 PROPERTY IS SEIZED WITHOUT PROCESS AS PROVIDED UNDER SECTION 19A
11 AND THE TOTAL VALUE OF THE PROPERTY SEIZED DOES NOT EXCEED
12 \$50,000.00, THE FOLLOWING PROCEDURE SHALL BE USED:

13 (A) THE LOCAL UNIT OF GOVERNMENT THAT SEIZED THE PROPERTY OR,
14 IF THE PROPERTY WAS SEIZED BY THE STATE, THE STATE SHALL NOTIFY THE
15 OWNER OF THE PROPERTY THAT THE PROPERTY HAS BEEN SEIZED AND THAT
16 THE LOCAL UNIT OF GOVERNMENT OR, IF APPLICABLE, THE STATE INTENDS
17 TO FORFEIT AND DISPOSE OF THE PROPERTY BY DELIVERING A WRITTEN
18 NOTICE TO THE OWNER OF THE PROPERTY OR BY SENDING THE NOTICE TO THE
19 OWNER BY CERTIFIED MAIL. IF THE NAME AND ADDRESS OF THE OWNER ARE
20 NOT REASONABLY ASCERTAINABLE OR DELIVERY OF THE NOTICE CANNOT BE
21 REASONABLY ACCOMPLISHED, THE NOTICE SHALL BE PUBLISHED IN A
22 NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE
23 PROPERTY WAS SEIZED, FOR 10 SUCCESSIVE PUBLISHING DAYS.

24 (B) UNLESS ALL CRIMINAL PROCEEDINGS INVOLVING OR RELATING TO
25 THE PROPERTY HAVE BEEN COMPLETED, THE SEIZING AGENCY SHALL
26 IMMEDIATELY NOTIFY THE PROSECUTING ATTORNEY FOR THE COUNTY IN WHICH
27 THE PROPERTY WAS SEIZED OR, IF THE ATTORNEY GENERAL IS ACTIVELY

1 HANDLING A CASE INVOLVING OR RELATING TO THE PROPERTY, THE ATTORNEY
2 GENERAL OF THE SEIZURE OF THE PROPERTY AND THE INTENTION TO FORFEIT
3 AND DISPOSE OF THE PROPERTY.

4 (C) ANY PERSON CLAIMING AN INTEREST IN PROPERTY THAT IS THE
5 SUBJECT OF A NOTICE UNDER SUBDIVISION (A) MAY, WITHIN 20 DAYS AFTER
6 RECEIPT OF THE NOTICE OR OF THE DATE OF THE FIRST PUBLICATION OF
7 THE NOTICE, FILE A WRITTEN CLAIM SIGNED BY THE CLAIMANT WITH THE
8 LOCAL UNIT OF GOVERNMENT OR THE STATE EXPRESSING HIS OR HER
9 INTEREST IN THE PROPERTY. THE PERSON FILING THE CLAIM SHALL GIVE A
10 BOND TO THE LOCAL UNIT OF GOVERNMENT OR THE STATE IN THE AMOUNT OF
11 10% OF THE VALUE OF THE CLAIMED PROPERTY, BUT NOT LESS THAN \$250.00
12 OR GREATER THAN \$5,000.00, WITH SURETIES APPROVED BY THE LOCAL UNIT
13 OF GOVERNMENT OR THE STATE CONTAINING THE CONDITION THAT IF THE
14 PROPERTY IS ORDERED FORFEITED BY THE COURT THE OBLIGOR SHALL PAY
15 ALL COSTS AND EXPENSES OF THE FORFEITURE PROCEEDINGS. THE LOCAL
16 UNIT OF GOVERNMENT OR, IF APPLICABLE, THE STATE SHALL TRANSMIT THE
17 CLAIM AND BOND WITH A LIST AND DESCRIPTION OF THE PROPERTY SEIZED
18 TO THE ATTORNEY GENERAL, THE PROSECUTING ATTORNEY FOR THE COUNTY,
19 OR THE CITY OR TOWNSHIP ATTORNEY FOR THE LOCAL UNIT OF GOVERNMENT
20 IN WHICH THE SEIZURE WAS MADE. THE ATTORNEY GENERAL, THE
21 PROSECUTING ATTORNEY, OR THE CITY OR TOWNSHIP ATTORNEY SHALL
22 PROMPTLY INSTITUTE FORFEITURE PROCEEDINGS AFTER THE EXPIRATION OF
23 THE 20-DAY PERIOD. HOWEVER, UNLESS ALL CRIMINAL PROCEEDINGS
24 INVOLVING OR RELATING TO THE PROPERTY HAVE BEEN COMPLETED, A CITY
25 OR TOWNSHIP ATTORNEY SHALL NOT INSTITUTE FORFEITURE PROCEEDINGS
26 WITHOUT THE CONSENT OF THE PROSECUTING ATTORNEY OR, IF THE ATTORNEY
27 GENERAL IS ACTIVELY HANDLING A CASE INVOLVING OR RELATING TO THE

House Bill No. 4325 (S-1) as amended December 2, 2010
1 PROPERTY, THE ATTORNEY GENERAL.

2 (D) IF NO CLAIM IS FILED OR BOND GIVEN WITHIN THE 20-DAY
3 PERIOD AS DESCRIBED IN SUBDIVISION (C), THE LOCAL UNIT OF
4 GOVERNMENT OR THE STATE SHALL DECLARE THE PROPERTY FORFEITED AND
5 SHALL DISPOSE OF THE PROPERTY AS PROVIDED UNDER SECTION 19C.
6 HOWEVER, UNLESS ALL CRIMINAL PROCEEDINGS INVOLVING OR RELATING TO
7 THE PROPERTY HAVE BEEN COMPLETED, THE LOCAL UNIT OF GOVERNMENT OR
8 THE STATE SHALL NOT DISPOSE OF THE PROPERTY UNDER THIS SUBDIVISION
9 WITHOUT THE WRITTEN CONSENT OF THE PROSECUTING ATTORNEY OR, IF THE
10 ATTORNEY GENERAL IS ACTIVELY HANDLING A CASE INVOLVING OR RELATING
11 TO THE PROPERTY, THE ATTORNEY GENERAL.

12 (2) PROPERTY TAKEN OR DETAINED UNDER THIS ACT IS NOT SUBJECT
13 TO AN ACTION TO RECOVER PERSONAL PROPERTY, BUT IS CONSIDERED TO BE
14 IN THE CUSTODY OF THE SEIZING AGENCY SUBJECT ONLY TO THIS SECTION
15 OR AN ORDER AND JUDGMENT OF THE COURT HAVING JURISDICTION OVER THE
16 FORFEITURE PROCEEDINGS. WHEN PROPERTY IS SEIZED UNDER THIS ACT, THE
17 SEIZING AGENCY MAY DO ANY OF THE FOLLOWING:

18 (A) PLACE THE PROPERTY UNDER SEAL.

19 (B) REMOVE THE PROPERTY TO A PLACE DESIGNATED BY THE COURT.

20 (C) [] TAKE CUSTODY OF THE PROPERTY
21 AND REMOVE IT TO AN APPROPRIATE LOCATION FOR DISPOSITION IN
22 ACCORDANCE WITH LAW.

23 (D) DEPOSIT MONEY SEIZED UNDER THIS ACT INTO AN INTEREST-
24 BEARING ACCOUNT IN A FINANCIAL INSTITUTION. AS USED IN THIS
25 SUBDIVISION, "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONALLY
26 CHARTERED BANK OR A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN
27 ASSOCIATION, SAVINGS BANK, OR CREDIT UNION WHOSE DEPOSITS ARE

1 INSURED BY AN AGENCY OF THE UNITED STATES GOVERNMENT AND THAT
2 MAINTAINS A PRINCIPAL OFFICE OR BRANCH OFFICE LOCATED IN THIS STATE
3 UNDER THE LAWS OF THIS STATE OR THE UNITED STATES.

4 (3) TITLE TO REAL PROPERTY FORFEITED UNDER THIS ACT SHALL BE
5 DETERMINED BY A COURT OF COMPETENT JURISDICTION. A FORFEITURE OF
6 REAL PROPERTY ENCUMBERED BY A BONA FIDE SECURITY INTEREST IS
7 SUBJECT TO THE INTEREST OF THE SECURED PARTY WHO NEITHER HAD
8 KNOWLEDGE OF NOR CONSENTED TO THE ACT OR OMISSION.

9 (4) AN ATTORNEY FOR A PERSON WHO IS CHARGED WITH A CRIME
10 INVOLVING OR RELATED TO THE MONEY SEIZED UNDER THIS ACT HAS 60 DAYS
11 WITHIN WHICH TO EXAMINE THAT MONEY. THIS 60-DAY PERIOD BEGINS TO
12 RUN AFTER NOTICE IS GIVEN UNDER SUBSECTION (1) (A) BUT BEFORE THE
13 MONEY IS DEPOSITED INTO A FINANCIAL INSTITUTION UNDER SUBSECTION
14 (2) (D). IF THE ATTORNEY GENERAL, PROSECUTING ATTORNEY, OR CITY OR
15 TOWNSHIP ATTORNEY FAILS TO SUSTAIN HIS OR HER BURDEN OF PROOF IN
16 FORFEITURE PROCEEDINGS UNDER THIS ACT, THE COURT SHALL ORDER THE
17 RETURN OF THE MONEY, INCLUDING ANY INTEREST EARNED ON MONEY
18 DEPOSITED INTO A FINANCIAL INSTITUTION UNDER SUBSECTION (2) (D).

19 SEC. 19C. (1) WHEN PROPERTY IS FORFEITED UNDER THIS ACT, THE
20 LOCAL UNIT OF GOVERNMENT THAT SEIZED THE PROPERTY MAY DO ANY OF THE
21 FOLLOWING OR, IF THE PROPERTY IS SEIZED BY OR IN THE CUSTODY OF THE
22 STATE, THE STATE MAY DO ANY OF THE FOLLOWING:

23 (A) RETAIN IT FOR OFFICIAL USE.

24 (B) SELL THAT WHICH IS NOT REQUIRED TO BE DESTROYED BY LAW AND
25 WHICH IS NOT HARMFUL TO THE PUBLIC. THE PROCEEDS AND ANY MONEY,
26 NEGOTIABLE INSTRUMENTS, SECURITIES, OR ANY OTHER THING OF VALUE AS
27 DESCRIBED IN SECTION 19(D) THAT ARE FORFEITED UNDER THIS ACT SHALL

House Bill No. 4325 (S-1) as amended December 2, 2010

1 BE DEPOSITED WITH THE TREASURER OF THE ENTITY HAVING BUDGETARY
2 AUTHORITY OVER THE SEIZING AGENCY AND APPLIED AS FOLLOWS:

3 (i) FOR THE PAYMENT OF PROPER EXPENSES OF THE PROCEEDINGS FOR
4 FORFEITURE AND SALE, INCLUDING EXPENSES INCURRED DURING THE SEIZURE
5 PROCESS, MAINTENANCE OF CUSTODY, ADVERTISING, AND COURT COSTS,
6 EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3).

7 (ii) THE BALANCE REMAINING AFTER THE PAYMENT OF EXPENSES SHALL
8 BE DISTRIBUTED BY THE COURT HAVING JURISDICTION OVER THE FORFEITURE
9 PROCEEDINGS TO THE TREASURER OF THE ENTITY HAVING BUDGETARY
10 AUTHORITY OVER THE SEIZING AGENCY. IF MORE THAN 1 AGENCY WAS
11 SUBSTANTIALLY INVOLVED IN EFFECTING THE FORFEITURE, THE COURT
12 HAVING JURISDICTION OVER THE FORFEITURE PROCEEDING SHALL EQUITABLY
13 DISTRIBUTE THE MONEY AMONG THE TREASURERS OF THE ENTITIES HAVING
14 BUDGETARY AUTHORITY OVER THE SEIZING AGENCIES. THE MONEY RECEIVED
15 BY A SEIZING AGENCY UNDER THIS SUBPARAGRAPH AND ALL INTEREST AND
16 OTHER EARNINGS ON MONEY RECEIVED BY THE SEIZING AGENCY UNDER THIS
17 SUBPARAGRAPH SHALL BE USED TO ENHANCE LAW ENFORCEMENT EFFORTS AS
18 APPROPRIATED BY THE ENTITY HAVING BUDGETARY AUTHORITY OVER THE
19 SEIZING AGENCY. A DISTRIBUTION MADE UNDER THIS SUBPARAGRAPH SHALL
20 SERVE AS A SUPPLEMENT TO, AND NOT A REPLACEMENT FOR, THE FUNDS
21 BUDGETED ON THE DATE THAT THE AMENDATORY ACT THAT ADDED THIS
22 SECTION TAKES EFFECT FOR LAW ENFORCEMENT EFFORTS PERTAINING TO THIS
23 ACT.

24 (C) [] TAKE CUSTODY OF THE PROPERTY
25 AND REMOVE IT FOR DISPOSITION IN ACCORDANCE WITH LAW.

26 (2) IN THE COURSE OF SELLING REAL PROPERTY UNDER SUBSECTION
27 (1) (B), THE COURT THAT HAS ENTERED AN ORDER OF FORFEITURE MAY, ON

1 MOTION OF THE AGENCY TO WHOM THE PROPERTY HAS BEEN FORFEITED,
2 APPOINT A RECEIVER TO DISPOSE OF THE REAL PROPERTY FORFEITED. THE
3 RECEIVER SHALL BE ENTITLED TO REASONABLE COMPENSATION. THE RECEIVER
4 SHALL HAVE AUTHORITY TO DO ALL OF THE FOLLOWING:

5 (A) LIST THE FORFEITED REAL PROPERTY FOR SALE.

6 (B) MAKE WHATEVER ARRANGEMENTS ARE NECESSARY FOR THE
7 MAINTENANCE AND PRESERVATION OF THE FORFEITED REAL PROPERTY.

8 (C) ACCEPT OFFERS TO PURCHASE THE FORFEITED REAL PROPERTY.

9 (D) EXECUTE INSTRUMENTS TRANSFERRING TITLE TO THE FORFEITED
10 REAL PROPERTY.

11 (3) IF A COURT ENTERS AN ORDER OF FORFEITURE, THE COURT MAY
12 ORDER A PERSON WHO CLAIMED AN INTEREST IN THE FORFEITED PROPERTY
13 UNDER SECTION 19B(1)(C) TO PAY THE EXPENSES OF THE PROCEEDINGS OF
14 FORFEITURE TO THE ENTITY HAVING BUDGETARY AUTHORITY OVER THE
15 SEIZING AGENCY.

16 Enacting section 1. This amendatory act takes effect April 1,
17 2011.

18 Enacting section 2. This amendatory act does not take effect
19 unless all of the following bills of the 95th Legislature are
20 enacted into law:

21 (a) Senate Bill No. 223.

22 (b) Senate Bill No. 225.

23 (c) Senate Bill No. 226.