

# HOUSE BILL No. 5656

December 8, 2009, Introduced by Reps. Espinoza, Polidori, Hansen, Byrnes, Tlaib and Neumann and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 159g, 159m, and 159q (MCL 750.159g, 750.159m, and 750.159q), section 159g as amended by 2002 PA 124 and sections 159m and 159q as added by 1995 PA 187.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 159g. As used in this chapter, "racketeering" means  
2 committing, attempting to commit, conspiring to commit, or aiding  
3 or abetting, soliciting, coercing, or intimidating a person to  
4 commit an offense for financial gain, involving any of the  
5 following:

6           (a) A felony violation of section 8 of the tobacco products  
7 tax act, 1993 PA 327, MCL 205.428, concerning tobacco product

1 taxes, or section 9 of former 1947 PA 265, concerning cigarette  
2 taxes.

3 (b) A violation of section 11151(3) of the natural resources  
4 and environmental protection act, 1994 PA 451, MCL 324.11151, or  
5 section 48(3) of former 1979 PA 64, concerning felonious disposal  
6 of hazardous waste.

7 (c) A felony violation of part 74 ~~or section 17766a~~ of the  
8 public health code, 1978 PA 368, MCL 333.7401 to 333.7461, ~~and~~  
9 ~~333.17766a~~, concerning controlled substances. ~~or androgenic~~  
10 ~~anabolic steroids.~~

11 (d) A felony violation of section 60 of the social welfare  
12 act, 1939 PA 280, MCL 400.60, concerning welfare fraud.

13 (e) A violation of section 4, 5, or 7 of the medicaid false  
14 claim act, 1977 PA 72, MCL 400.604, 400.605, and 400.607,  
15 concerning medicaid fraud.

16 (f) A felony violation of section 18 of the Michigan gaming  
17 control and revenue act, ~~the Initiated Law of 1996 IL 1~~, MCL  
18 432.218, concerning the business of gaming.

19 (g) A violation of section 409 of the uniform securities act,  
20 1964 PA 265, MCL 451.809, **OR, BEGINNING OCTOBER 1, 2009, A**  
21 **VIOLATION OF SECTION 508 OF THE UNIFORM SECURITIES ACT (2002), 2008**  
22 **PA 551, MCL 451.2508**, concerning securities fraud.

23 (h) A violation of section 5 or 7 of 1978 PA 33, MCL 722.675  
24 and 722.677, concerning the display or dissemination of obscene  
25 matter to minors.

26 **(I) A VIOLATION OF SECTION 49, CONCERNING ANIMAL FIGHTING.**

27 **(J) ~~(i)~~A felony violation of section 72, 73, 74, 75, or 77,**

1 concerning arson.

2 (K) ~~(j)~~—A violation of section 93, 94, 95, or 96, concerning  
3 bank bonds, bills, notes, and property.

4 (L) ~~(k)~~—A violation of section 110 or 110a, concerning breaking  
5 and entering or home invasion.

6 (M) ~~(l)~~—A violation of section 117, 118, 119, 120, 121, or 124,  
7 concerning bribery.

8 (N) ~~(m)~~—A violation of section 120a, concerning jury  
9 tampering.

10 (O) ~~(n)~~—A violation of section 145c, concerning child sexually  
11 abusive activity or material.

12 (P) ~~(o)~~—A felony violation of section 157n, 157p, 157q, 157r,  
13 157s, 157t, or 157u, concerning credit cards or financial  
14 transaction devices.

15 (Q) ~~(p)~~—A felony violation of section 174, 175, 176, 180, 181,  
16 or 182, concerning embezzlement.

17 (R) ~~(q)~~—A felony violation of chapter XXXIII, concerning  
18 explosives and bombs.

19 (S) ~~(r)~~—A violation of section 213, concerning extortion.

20 (T) ~~(s)~~—A felony violation of section 218, concerning false  
21 pretenses.

22 (U) ~~(t)~~—A felony violation of section 223(2), 224(1)(a), (b),  
23 or (c), 224b, 224c, 224e(1), 226, 227, 234a, 234b, or 237a,  
24 concerning firearms or dangerous weapons.

25 (V) ~~(u)~~—A felony violation of chapter XLI, concerning forgery  
26 and counterfeiting.

27 (W) ~~(v)~~—A violation of section 271, 272, 273, or 274,

1 concerning securities fraud.

2       **(X)** ~~(w)~~—A violation of section 300a, concerning food stamps or  
3 coupons or access devices.

4       **(Y)** ~~(x)~~—A violation of section 301, 302, 303, 304, 305, 305a,  
5 or 313, concerning gambling.

6       **(Z)** ~~(y)~~—A violation of section 316 or 317, concerning murder.

7       **(AA)** ~~(z)~~—A violation of section 330, 331, or 332, concerning  
8 horse racing.

9       **(BB)** ~~(aa)~~—A violation of section 349, 349a, or 350, concerning  
10 kidnapping.

11       **(CC)** ~~(bb)~~—A felony violation of chapter LII, concerning  
12 larceny.

13       **(DD)** ~~(cc)~~—A violation of section 411k, concerning money  
14 laundering.

15       **(EE)** ~~(dd)~~—A violation of section 422, 423, 424, or 425,  
16 concerning perjury or subornation of perjury.

17       **(FF)** ~~(ee)~~—A violation of section 452, 455, 457, 458, or 459,  
18 concerning prostitution.

19       **(GG)** ~~(ff)~~—A violation of section 529, 529a, 530, or 531,  
20 concerning robbery.

21       **(HH)** ~~(gg)~~—A felony violation of section 535, 535a, or 536a,  
22 concerning stolen, embezzled, or converted property.

23       **(II)** ~~(hh)~~—A violation of chapter LXXXIII-A, concerning  
24 terrorism.

25       **(JJ)** ~~(ii)~~—A violation of section 5 of 1984 PA 343, MCL  
26 752.365, concerning obscenity.

27       **(KK)** ~~(jj)~~—An offense committed within this state or another

1 state that constitutes racketeering activity as defined in ~~section~~  
 2 ~~1961(1) of title 18 of the United States Code, 18 U.S.C. USC~~ 1961.

3 (II) ~~(kk)~~—An offense committed within this state or another  
 4 state in violation of a law of the United States that is  
 5 substantially similar to a violation listed in subdivisions (a)  
 6 through ~~(ii)~~—(JJ).

7 (MM) ~~(ll)~~—An offense committed in another state in violation of  
 8 a statute of that state that is substantially similar to a  
 9 violation listed in subdivisions (a) through ~~(ii)~~—(JJ).

10 Sec. 159m. (1) Except as otherwise provided in this section,  
 11 all real, personal, or intangible property of a person convicted of  
 12 a violation of section 159i that is the proceeds of racketeering,  
 13 the substituted proceeds of racketeering, or an instrumentality of  
 14 racketeering, is subject to civil in rem forfeiture to a local unit  
 15 of government or the state under this section and sections 159n to  
 16 159q.

17 (2) ~~Real property that is the primary residence of the spouse~~  
 18 ~~of the owner is not subject to civil in rem forfeiture under this~~  
 19 ~~section and sections 159n to 159q, unless that spouse had prior~~  
 20 ~~actual knowledge of, and consented to and participated in the~~  
 21 ~~commission of, the racketeering activity.~~ Real property that is the  
 22 primary residence of a dependent minor child of the owner is not  
 23 subject to civil in rem forfeiture under this section and sections  
 24 159n to 159q.

25 (3) Property is not subject to civil in rem forfeiture if  
 26 either of the following circumstances exists:

27 (a) The owner of the property did not have prior actual

1 knowledge of the commission of the racketeering activity.

2 (b) The owner of the property served notice of the commission  
3 of the crime upon an appropriate law enforcement agency.

4 (4) The civil in rem forfeiture of property encumbered by a  
5 security interest is subject to the interest of the holder of the  
6 security interest who did not have prior actual knowledge of the  
7 racketeering activity.

8 (5) The civil in rem forfeiture of property encumbered by an  
9 unpaid balance on a land contract is subject to the interest of the  
10 land contract vendor who did not have prior actual knowledge of the  
11 racketeering activity.

12 (6) Reasonable attorney fees for representation in an action  
13 under this chapter are not subject to civil in rem forfeiture under  
14 this chapter.

15 Sec. 159q. (1) At the civil in rem forfeiture proceeding, the  
16 court shall act as trier of fact. The prosecuting agency has the  
17 burden of proving both of the following by clear and convincing  
18 evidence:

19 (a) The property is subject to civil in rem forfeiture under  
20 section 159m.

21 (b) The person claiming an ownership interest in the property  
22 had prior actual knowledge of the commission of an offense listed  
23 in the definition of racketeering.

24 (2) At the civil in rem forfeiture proceeding, the person  
25 claiming an ownership interest in the property has the burden of  
26 proving, by a preponderance of the evidence, that he or she served  
27 notice of the commission of the crime upon an appropriate law

1 enforcement agency.

2 (3) At the civil in rem forfeiture proceeding, the prosecuting  
3 agency has the burden of proving, by a preponderance of the  
4 evidence, that a person claiming a security interest in the  
5 property or a person claiming an interest as a land contract vendor  
6 had prior actual knowledge of the commission of the racketeering  
7 activity.

8 (4) If the prosecuting agency fails to meet the burden of  
9 proof under subsection (1), or if the person claiming an ownership  
10 interest in the property meets his or her burden of proof under  
11 subsection (2), the property shall be returned to the owner within  
12 28 days after a written order is entered to return the property,  
13 unless an appellate court stays the order. ~~In addition, the~~  
14 ~~prosecuting agency shall reimburse the owner for reasonable~~  
15 ~~attorney fees and damages related to towing costs, storage fees and~~  
16 ~~expenses, foreclosure costs, and other similar expenses.~~

17 (5) If the prosecuting agency meets the burden of proof under  
18 subsection (1) and the person claiming an ownership interest in the  
19 property does not meet the burden of proof under subsection (2),  
20 the property shall be disposed of ~~pursuant to~~ **UNDER** section 159r.

21 (6) Within 7 days after personal property is returned to the  
22 owner, or a lien filed against real property or a motor vehicle is  
23 discharged, the prosecuting agency that gave notice of the seizure  
24 of the property and the intent to forfeit and dispose of the  
25 property ~~pursuant to~~ **UNDER** section 159o shall give notice to the  
26 persons who received notice pursuant to section 159o that the  
27 property has been returned to the owner or that the lien has been

1 discharged.

2 (7) The notice required under subsection (6) shall be a  
3 written notice delivered to the person or sent to the person by  
4 certified mail. If the name and address of the person are not  
5 reasonably ascertainable or delivery of the notice cannot  
6 reasonably be accomplished, the notice shall be published in a  
7 newspaper of general circulation in the county in which the  
8 personal property was seized or the real property is located for 10  
9 successive publishing days.

10 (8) A defendant convicted in a criminal proceeding is estopped  
11 from subsequently denying in a civil action the essential  
12 allegations of the criminal offense of which he or she was  
13 convicted.

14 (9) The testimony of a person at a civil in rem forfeiture  
15 proceeding held under this chapter is not admissible against him or  
16 her, except for the purpose of impeachment, in a criminal  
17 proceeding other than a criminal prosecution for perjury. The  
18 testimony of a person at a civil in rem forfeiture proceeding held  
19 under this chapter does not waive the person's constitutional right  
20 against self-incrimination.