

HOUSE BILL No. 5213

July 16, 2009, Introduced by Reps. Donigan, Bauer, Gonzales, Robert Jones, Coulouris and Barnett and referred to the Committee on Intergovernmental and Regional Affairs.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7523, 7524, and 7524a (MCL 333.7523, 333.7524, and 333.7524a), section 7523 as amended by 2006 PA 130, section 7524 as amended by 2006 PA 558, and section 7524a as amended by 1994 PA 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7523. (1) If property is seized ~~pursuant to~~**UNDER** section
2 7522, forfeiture proceedings shall be instituted promptly. If the
3 property is seized without process as provided under section 7522,
4 and the total value of the property seized does not exceed
5 \$50,000.00, the following procedure shall be used:

1 (a) The local unit of government that seized the property or,
2 if the property was seized by the state, the state shall notify the
3 owner of the property that the property has been seized, and that
4 the local unit of government or, if applicable, the state intends
5 to forfeit and dispose of the property by delivering a written
6 notice to the owner of the property or by sending the notice to the
7 owner by certified mail. If the name and address of the owner are
8 not reasonably ascertainable, or delivery of the notice cannot be
9 reasonably accomplished, the notice shall be published in a
10 newspaper of general circulation in the county in which the
11 property was seized, for 10 successive publishing days. **FOR**
12 **PURPOSES OF THIS SUBDIVISION, DISPOSING OF PROPERTY INCLUDES**
13 **DISPOSAL UNDER SECTION 7524(3).**

14 (b) Unless all criminal proceedings involving or relating to
15 the property have been completed, the seizing agency shall
16 immediately notify the prosecuting attorney for the county in which
17 the property was seized or, if the attorney general is actively
18 handling a case involving or relating to the property, the attorney
19 general of the seizure of the property and the intention to forfeit
20 and dispose of the property.

21 (c) Any person claiming an interest in property that is the
22 subject of a notice under subdivision (a) may, within 20 days after
23 receipt of the notice or of the date of the first publication of
24 the notice, file a written claim signed by the claimant with the
25 local unit of government or the state expressing his or her
26 interest in the property. Upon the filing of the claim and the
27 giving of a bond to the local unit of government or the state in

1 the amount of 10% of the value of the claimed property, but not
2 less than \$250.00 or greater than \$5,000.00, with sureties approved
3 by the local unit of government or the state containing the
4 condition that if the property is ordered forfeited by the court
5 the obligor shall pay all costs and expenses of the forfeiture
6 proceedings. The local unit of government or, if applicable, the
7 state shall transmit the claim and bond with a list and description
8 of the property seized to the attorney general, the prosecuting
9 attorney for the county, or the city or township attorney for the
10 local unit of government in which the seizure was made. The
11 attorney general, the prosecuting attorney, or the city or township
12 attorney shall promptly institute forfeiture proceedings after the
13 expiration of the 20-day period. However, unless all criminal
14 proceedings involving or relating to the property have been
15 completed, a city or township attorney shall not institute
16 forfeiture proceedings without the consent of the prosecuting
17 attorney or, if the attorney general is actively handling a case
18 involving or relating to the property, the attorney general.

19 (d) If no claim is filed or bond given within the 20-day
20 period as described in subdivision (c), the local unit of
21 government or the state shall declare the property forfeited and
22 shall dispose of the property as provided under section 7524.
23 However, unless all criminal proceedings involving or relating to
24 the property have been completed, the local unit of government or
25 the state shall not dispose of the property under this subdivision
26 without the written consent of the prosecuting attorney or, if the
27 attorney general is actively handling a case involving or relating

1 to the property, the attorney general.

2 (2) Property taken or detained under this article shall not be
3 subject to an action to recover personal property, but is deemed to
4 be in the custody of the seizing agency subject only to this
5 section or an order and judgment of the court having jurisdiction
6 over the forfeiture proceedings. When property is seized under this
7 article, the seizing agency may do any of the following:

8 (a) Place the property under seal.

9 (b) Remove the property to a place designated by the court.

10 (c) Require the administrator to take custody of the property
11 and remove it to an appropriate location for disposition in
12 accordance with law.

13 (d) Deposit money seized under this article into an interest-
14 bearing account in a financial institution. As used in this
15 subdivision, "financial institution" means a state or nationally
16 chartered bank or a state or federally chartered savings and loan
17 association, savings bank, or credit union whose deposits are
18 insured by an agency of the United States government and that
19 maintains a principal office or branch office located in this state
20 under the laws of this state or the United States.

21 (3) Title to real property forfeited under this article shall
22 be determined by a court of competent jurisdiction. A forfeiture of
23 real property encumbered by a bona fide security interest is
24 subject to the interest of the secured party who neither had
25 knowledge of nor consented to the act or omission.

26 (4) An attorney for a person who is charged with a crime
27 involving or related to the money seized under this article shall

1 be afforded a period of 60 days within which to examine that money.
2 This 60-day period shall begin to run after notice is given under
3 subsection (1)(a) but before the money is deposited into a
4 financial institution under subsection (2)(d). If the attorney
5 general, prosecuting attorney, or city or township attorney fails
6 to sustain his or her burden of proof in forfeiture proceedings
7 under this article, the court shall order the return of the money,
8 including any interest earned on money deposited into a financial
9 institution under subsection (2)(d).

10 (5) THE SEIZING AGENCY MAY REQUEST EXPEDITED PROCEEDINGS UNDER
11 THIS SECTION ON GROUNDS THAT A BUILDING OR STRUCTURE SUBJECT TO
12 FORFEITURE UNDER THIS ACT CONSTITUTES A HEALTH OR SAFETY HAZARD AND
13 THE SEIZING AGENCY INTENDS TO DEMOLISH THE BUILDING OR STRUCTURE
14 UPON FORFEITURE. A REQUEST FOR EXPEDITED PROCEEDINGS MAY BE FILED
15 AT ANY TIME DURING THE FORFEITURE PROCEEDINGS BUT SHALL BE FILED
16 ONLY WITH THE APPROVAL OF THE COUNTY PROSECUTING ATTORNEY OR THE
17 STATE ATTORNEY GENERAL. IF A REQUEST IS FILED UNDER THIS SECTION
18 FOR EXPEDITED PROCEEDINGS, THE COURT SHALL CONDUCT AND CONCLUDE THE
19 FORFEITURE PROCEEDINGS BEFORE ALL OTHER CASES NOT HAVING PRIORITY
20 BY STATUTE. EACH PARTY HAVING AN OWNERSHIP, POSSESSORY, OR SECURED
21 INTEREST IN THE BUILDING OR STRUCTURE SHALL BE NOTIFIED OF THE
22 EXPEDITED PROCEEDINGS AND SHALL BE PROVIDED WITH AN OPPORTUNITY TO
23 BE HEARD REGARDING FORFEITURE. IF THE COURT ORDERS PROPERTY TO BE
24 FORFEITED UNDER THIS SECTION, THE ORDER MAY PROVIDE FOR IMMEDIATE
25 DEMOLITION OF THE BUILDING OR STRUCTURE AT THE DISCRETION OF THE
26 SEIZING AGENCY SUBJECT ONLY TO A STAY OF PROCEEDINGS PENDING AN
27 APPEAL. IF ANY REAL PROPERTY IS TO BE SOLD OR TRANSFERRED BY THE

1 SEIZING AGENCY TO ANOTHER ENTITY AFTER FORFEITURE, THE COURT MAY,
2 WITH THE APPROVAL OF THE COUNTY PROSECUTING ATTORNEY OR STATE
3 ATTORNEY GENERAL, ALSO EXECUTE THE NECESSARY DOCUMENTS AT THE TIME
4 OF FORFEITURE TO COMPLETE THAT SALE OR TRANSFER.

5 Sec. 7524. (1) When property is forfeited under this article,
6 the local unit of government that seized the property may do any of
7 the following, or if the property is seized by or in the custody of
8 the state, the state may do any of the following, subject to
9 section 7523(1)(d):

10 (a) Retain it for official use.

11 (b) Sell that which is not required to be destroyed by law and
12 which is not harmful to the public. The proceeds and any money,
13 negotiable instruments, securities, or any other thing of value as
14 described in section 7521(1)(f) that are forfeited ~~pursuant to~~
15 **UNDER** this article shall be deposited with the treasurer of the
16 entity having budgetary authority over the seizing agency and
17 applied as follows:

18 (i) For the payment of proper expenses of the proceedings for
19 forfeiture and sale, including expenses incurred during the seizure
20 process, maintenance of custody, advertising, and court costs,
21 except as otherwise provided in subsection ~~(4)~~-(6).

22 (ii) The balance remaining after the payment of expenses shall
23 be distributed by the court having jurisdiction over the forfeiture
24 proceedings to the treasurer of the entity having budgetary
25 authority over the seizing agency. If more than 1 agency was
26 substantially involved in effecting the forfeiture, the court
27 having jurisdiction over the forfeiture proceeding shall equitably

1 distribute the money among the treasurers of the entities having
2 budgetary authority over the seizing agencies. A seizing agency may
3 direct that the funds or a portion of the funds it would otherwise
4 have received under this subsection be paid to nonprofit
5 organizations whose primary activity is to assist law enforcement
6 agencies with drug-related criminal investigations and obtaining
7 information for solving crimes. The money received by a seizing
8 agency under this subparagraph and all interest and other earnings
9 on money received by the seizing agency under this subparagraph
10 shall be used to enhance law enforcement efforts pertaining to this
11 article, as appropriated by the entity having budgetary authority
12 over the seizing agency. A distribution made under this
13 subparagraph shall serve as a supplement to, and not a replacement
14 for, the funds budgeted on January 1, 1991, for law enforcement
15 efforts pertaining to this article.

16 (c) Require the administrator to take custody of the property
17 and remove it for disposition in accordance with law.

18 (d) Forward it to the bureau for disposition.

19 **(E) IF THE PROPERTY IS REAL PROPERTY, DISPOSE OF THE PROPERTY**
20 **UNDER SUBSECTION (3).**

21 (2) Notwithstanding subsection (1), this state or local units
22 of government may donate lights for plant growth or scales
23 forfeited under this article to elementary or secondary schools or
24 institutions of higher education that request in writing to receive
25 those lights or scales ~~pursuant to~~ **UNDER** this subsection, for
26 educational purposes. This state or local units of government shall
27 donate lights and scales ~~pursuant to~~ **UNDER** this subsection to

1 elementary or secondary schools or institutions of higher education
2 in the order in which the written requests are received. This state
3 or local units of government may limit the number of lights and
4 scales available to each requestor.

5 (3) IF REAL PROPERTY IS FORFEITED UNDER THIS PART, THE LOCAL
6 UNIT OF GOVERNMENT THAT SEIZED THE PROPERTY MAY DISPOSE OF THE
7 PROPERTY BY DOING ANY OF THE FOLLOWING WITH THE CONSENT OF THE
8 COUNTY PROSECUTING ATTORNEY OR THE STATE ATTORNEY GENERAL:

9 (A) PRESERVE THE PROPERTY FOR HISTORIC PURPOSES.

10 (B) CONVERT THE PROPERTY TO A PARK OR NATURAL AREA.

11 (C) DEMOLISH THE PROPERTY.

12 (D) CONVEY THE PROPERTY TO THIS STATE, A LOCAL UNIT OF
13 GOVERNMENT OF THIS STATE, OR A NONPROFIT ENTITY FOR ANY OF THE
14 FOLLOWING PURPOSES:

15 (i) USE AS A FACILITY IN WHICH TO PROVIDE SUBSTANCE ABUSE
16 TREATMENT AND REHABILITATION SERVICES.

17 (ii) USE AS A FACILITY IN WHICH TO PROVIDE DRUG RESISTANCE
18 EDUCATION OR CRIME PREVENTION EDUCATION.

19 (iii) USE AS A FACILITY IN WHICH TO PROVIDE JOB TRAINING SKILLS
20 TO MEMBERS OF THE COMMUNITY.

21 (iv) USE AS A FACILITY TO PROVIDE HOUSING TO INDIVIDUALS WITHIN
22 THE COMMUNITY WHO ARE DISPLACED DUE TO DRUG CRIME.

23 (4) SUBSECTION (3) DOES NOT PROHIBIT THE LOCAL UNIT OF
24 GOVERNMENT THAT SEIZED THE PROPERTY FROM DISPOSING OF THE PROPERTY
25 IN ANY OTHER MANNER AUTHORIZED UNDER THIS PART.

26 (5) ~~(3)~~—In the course of selling real property pursuant to
27 UNDER subsection (1)(b) OR (3), the court that has entered an order

1 of forfeiture may, on motion of the agency to whom the property has
2 been forfeited, appoint a receiver to dispose of the real property
3 forfeited. The receiver shall be entitled to reasonable
4 compensation. The receiver shall have authority to do all of the
5 following:

6 (a) List the forfeited real property for sale.

7 (b) Make whatever arrangements are necessary for the
8 maintenance and preservation of the forfeited real property.

9 (c) Accept offers to purchase the forfeited real property.

10 (d) Execute instruments transferring title to the forfeited
11 real property.

12 (6) ~~(4)~~—If a court enters an order of forfeiture, the court
13 may order a person who claimed an interest in the forfeited
14 property ~~pursuant to~~ **UNDER** section 7523(1)(c) to pay the expenses
15 of the proceedings of forfeiture to the entity having budgetary
16 authority over the seizing agency.

17 Sec. 7524a. (1) Before February 1 of each year, each local
18 unit of government that had forfeiture proceedings pending in the
19 circuit court ~~pursuant to~~ **UNDER** section 7523; or effectuated a
20 forfeiture of property ~~pursuant to~~ **UNDER** section 7523 without a
21 forfeiture proceeding in the circuit court; or received money,
22 negotiable instruments, securities, or any other thing of value
23 ~~pursuant to~~ **UNDER** section 7524 during the fiscal year for the local
24 unit of government ending in the immediately preceding calendar
25 year shall submit a report to the office of drug agencies for
26 analysis and transmittal to the secretary of the senate and the
27 clerk of the house of representatives. The annual report shall be a

1 summary of the local unit of government's activities regarding the
2 forfeiture of property under this article ~~and pursuant to section~~
3 ~~17766a~~ for the fiscal year and shall contain the following
4 information, as applicable:

5 (a) The number of forfeiture proceedings that were instituted
6 in the circuit court by the local unit of government.

7 (b) The number of forfeiture proceedings instituted by the
8 local unit of government that were concluded in the circuit court.

9 (c) The number of all forfeiture proceedings instituted by the
10 local unit of government that were pending in the circuit court at
11 the end of the year.

12 (d) The number of forfeitures accomplished by the local unit
13 of government without filing a forfeiture proceeding in the circuit
14 court.

15 (e) The net total proceeds of all property forfeited under
16 this article ~~and pursuant to section 17766a~~ through forfeitures
17 instituted by the local unit of government that the local unit of
18 government is required to account for and report to the state
19 treasurer ~~pursuant to~~ **UNDER** either of the following, as applicable:

20 (i) ~~Act No. 71 of the Public Acts of 1919, being sections 21.41~~
21 ~~to 21.53 of the Michigan Compiled Laws 1919 PA 71, MCL 21.41 TO~~
22 ~~21.55.~~

23 (ii) The uniform budgeting and accounting act, ~~Act No. 2 of the~~
24 ~~Public Acts of 1968, being sections 141.421 to 141.440a of the~~
25 ~~Michigan Compiled Laws 1968 PA 2, MCL 141.421 TO 141.440A.~~

26 (f) An inventory of property received by the local unit of
27 government ~~pursuant to~~ **UNDER** section 7524, ~~and section 17766a,~~

1 including, but not limited to, all of the following:

2 (i) all of the following real property:

3 (A) Single-family residential.

4 (B) Multiple-family residential.

5 (C) Industrial.

6 (D) Commercial.

7 (E) Agricultural.

8 (ii) Any type of conveyance described in section 7521(1)(d),
9 including the year, make, and model.

10 (iii) Money, negotiable instruments, and securities.

11 (iv) The total value of personal property, excluding personal
12 property described in subparagraphs (ii) and (iii).

13 (g) A statement explaining how the money received by the local
14 unit of government ~~pursuant to~~ **UNDER** section 7524(1)(b)(ii) has been
15 used or is being used to enhance the law enforcement efforts
16 pertaining to this article. ~~or section 17766a.~~

17 **(H) A STATEMENT OF ALL REAL PROPERTY DISPOSED OF UNDER SECTION**
18 **7524(3), THE MEANS OF DISPOSAL, THE TOTAL VALUE OF THE PROPERTY,**
19 **AND IF THE PROPERTY IS BEING USED FOR AN AUTHORIZED PURPOSE, THE**
20 **NATURE OF THAT USE.**

21 **(I)** ~~(h)~~ A statement of the number of lights for plant growth
22 or scales donated under section 7524(2), the total value of those
23 lights or scales, and the elementary or secondary schools or
24 institutions of higher education to which they were donated.

25 (2) The records of a local unit of government described in
26 subsection (1) regarding the forfeiture of property under this
27 article ~~or pursuant to section 17766a~~ shall be audited in

1 accordance with 1 of the following, as applicable:

2 (a) ~~Act No. 71 of the Public Acts of 1919, being sections~~
3 ~~21.41 to 21.53 of the Michigan Compiled Laws 1919 PA 71, MCL 21.41~~
4 ~~TO 21.55.~~

5 (b) The uniform budgeting and accounting act, ~~Act No. 2 of the~~
6 ~~Public Acts of 1968, being sections 141.421 to 141.440a of the~~
7 ~~Michigan Compiled Laws 1968 PA 2, MCL 141.421 TO 141.440A.~~

8 (3) The records of a local unit of government described in
9 subsection (1) regarding the forfeiture of property under this
10 article ~~or pursuant to section 17766a~~ may be audited by an auditor
11 of the local unit of government.