

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4629

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7523 and 7524 (MCL 333.7523 and 333.7524),
section 7523 as amended by 2006 PA 130 and section 7524 as amended
by 2011 PA 161.

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:

6 (a) The local unit of government that seized the property or,
7 if the property was seized by ~~the~~ **THIS** state, the state shall
8 notify the owner of the property that the property has been seized,

1 and that the local unit of government or, if applicable, the state
2 intends to forfeit and dispose of the property by delivering a
3 written notice to the owner of the property or by sending the
4 notice to the owner by certified mail. If the name and address of
5 the owner are not reasonably ascertainable, or delivery of the
6 notice cannot be reasonably accomplished, the notice shall be
7 published in a newspaper of general circulation in the county in
8 which the property was seized, for 10 successive publishing days.

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

16 (c) Any person claiming an interest in property that is the
17 subject of a notice under subdivision (a) may, within 20 days after
18 receipt of the notice or of the date of the first publication of
19 the notice, file a written claim signed by the claimant with the
20 local unit of government or the state expressing his or her
21 interest in the property. Upon the filing of the claim, ~~and the~~
22 ~~giving of a bond to the local unit of government or the state in~~
23 ~~the amount of 10% of the value of the claimed property, but not~~
24 ~~less than \$250.00 or greater than \$5,000.00, with sureties approved~~
25 ~~by the local unit of government or the state containing the~~
26 ~~condition that if the property is ordered forfeited by the court~~
27 ~~the obligor shall pay all costs and expenses of the forfeiture~~

1 ~~proceedings. The~~ **THE** local unit of government or, if applicable,
2 ~~the~~ **THIS** state shall transmit the claim ~~and bond~~ with a list and
3 description of the property seized to the attorney general, the
4 prosecuting attorney for the county, or the city or township
5 attorney for the local unit of government in which the seizure was
6 made. The attorney general, the prosecuting attorney, or the city
7 or township attorney shall promptly institute forfeiture
8 proceedings after the expiration of the 20-day period. However,
9 unless all criminal proceedings involving or relating to the
10 property have been completed, a city or township attorney shall not
11 institute forfeiture proceedings without the consent of the
12 prosecuting attorney or, if the attorney general is actively
13 handling a case involving or relating to the property, the attorney
14 general.

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

25 (2) Property taken or detained under this article ~~shall~~ **IS** not
26 ~~be~~ subject to an action to recover personal property, but is deemed
27 to be in the custody of the seizing agency subject only to this

1 section or an order and judgment of the court having jurisdiction
2 over the forfeiture proceedings. When property is seized under this
3 article, the seizing agency may do any of the following:

4 (a) Place the property under seal.

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

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

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

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

22 (4) An attorney for a person who is charged with a crime
23 involving or related to the money seized under this article shall
24 be afforded a period of 60 days within which to examine that money.
25 This 60-day period ~~shall begin~~ **BEGINS** to run after notice is given
26 under subsection (1)(a) but before the money is deposited into a
27 financial institution under subsection (2)(d). If the attorney

1 general, prosecuting attorney, or city or township attorney fails
2 to sustain his or her burden of proof in forfeiture proceedings
3 under this article, the court shall order the return of the money,
4 including any interest earned on money deposited into a financial
5 institution under subsection (2)(d).

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

11 (a) Retain ~~it~~**THE PROPERTY** for official use.

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

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

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

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

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

1 units of government may limit the number of lights and scales
2 available to each requestor.

3 (3) In the course of selling real property under subsection
4 (1)(b), the court that has entered an order of forfeiture may, on
5 motion of the agency to whom the property has been forfeited,
6 appoint a receiver to dispose of the real property forfeited. The
7 receiver ~~shall be~~ **IS** entitled to reasonable compensation. The
8 receiver ~~shall have~~ **HAS** authority to do all of the following:

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

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

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

13 (d) Execute instruments transferring title to the forfeited
14 real property.

15 (4) If a court enters an order of forfeiture, the court may
16 order a person who claimed an interest in the forfeited property
17 under section 7523(1)(c) to pay the expenses of the proceedings of
18 forfeiture to the entity having budgetary authority over the
19 seizing agency.

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