

HOUSE BILL No. 4629

May 20, 2015, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

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,
 9 and that the local unit of government or, if applicable, the state

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

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

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

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

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

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

1 over the forfeiture proceedings. When property is seized under this
2 article, the seizing agency may do any of the following:

3 (a) Place the property under seal.

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

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

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

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

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

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

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~~**THIS** state, the state may do any of the following, subject to
9 section 7523(1)(d):

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

11 (b) Sell ~~that which is~~**THE PROPERTY THAT IS** not required to be
12 destroyed by law and ~~which~~**THAT** is not harmful to the public. The
13 proceeds and any money, negotiable instruments, securities, or any
14 other thing of value as described in section 7521(1)(f) that are
15 forfeited under this article shall be deposited with the treasurer
16 of the entity having budgetary authority over the seizing agency
17 and 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. ~~7~~
21 ~~except as otherwise provided in subsection (4).~~

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 only for law enforcement purposes, as appropriated by
11 the entity having budgetary authority over the seizing agency. A
12 distribution made under this subparagraph shall serve as a
13 supplement to, and not a replacement for, funds otherwise budgeted
14 for law enforcement purposes.

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

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

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

1 available to each requestor.

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

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

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

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

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

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

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