

SENATE BILL NO. 2

January 15, 2019, Introduced by Senator LUCIDO and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 7523 (MCL 333.7523), as amended by 2016 PA 418, and by adding section 7521a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 7521a. (1) Except as otherwise provided in this section,**
2 **property may be seized as provided in section 7522 for a violation**
3 **of this article, but is not subject to forfeiture under section**
4 **7521 or disposition under section 7524 unless 1 of the following**
5 **applies:**

1 (a) A criminal proceeding involving or relating to the
2 property has been completed and the defendant is convicted of a
3 violation of this article.

4 (b) A criminal proceeding involving or relating to the
5 property has been completed and the defendant enters into a plea
6 agreement that is approved by the presiding criminal court.

7 (c) No person claims any interest in the property as provided
8 under section 7523.

9 (d) The owner of the property executes a signed form stating
10 that he or she is relinquishing ownership of the property and
11 provides that form to the law enforcement agency that seized the
12 property.

13 (2) If a person executes a form under subsection (1) (d), the
14 prosecuting attorney for the county in which the property was
15 seized or, if the attorney general is actively handling a case
16 involving or related to the property, the attorney general, must
17 review the seizure of the property and approve the forfeiture of
18 the property before the property may be forfeited.

19 (3) The state court administrator's office shall develop and
20 make available to law enforcement agencies, the courts, and the
21 public the form described in subsection (1) (d).

22 (4) A form executed under subsection (1) (d) is confidential
23 and is not subject to disclosure under the freedom of information
24 act, 1976 PA 442, MCL 15.231 to 15.246.

25 (5) Subsection (1) does not prohibit the immediate destruction
26 of property that may not be lawfully possessed by any person or
27 that is dangerous to the health or safety of the public regardless
28 of whether the person is convicted of a violation of this article.

29 (6) This section applies to forfeiture proceedings that are

1 pending on, or initiated on or after, January 1, 2020.

2 (7) This section does not apply to forfeiture proceedings in
3 which the aggregate net equity value of the property seized exceeds
4 \$50,000.00, excluding the value of contraband.

5 Sec. 7523. (1) If property is seized under section 7522,
6 forfeiture proceedings ~~shall~~**must** be instituted promptly. If the
7 property is seized without process under section 7522, and the
8 total value of the property seized does not exceed \$50,000.00, the
9 following procedure ~~shall~~**must** be used:

10 (a) The local unit of government that seized the property or,
11 if the property was seized by this state, the state shall notify
12 the owner of the property that the property has been seized, and
13 that the local unit of government or, if applicable, the state
14 intends to forfeit and dispose of the property by delivering a
15 written notice to the owner of the property or by sending the
16 notice to the owner by certified mail. If the name and address of
17 the owner are not reasonably ascertainable, or delivery of the
18 notice cannot be reasonably accomplished, the notice ~~shall~~**must** be
19 published in a newspaper of general circulation in the county in
20 which the property was seized, for 10 successive publishing days.

21 (b) Unless all criminal proceedings involving or relating to
22 the property have been completed, the seizing agency shall
23 immediately notify the prosecuting attorney for the county in which
24 the property was seized or, if the attorney general is actively
25 handling a case involving or relating to the property, the attorney
26 general of the seizure of the property and the intention to forfeit
27 and dispose of the property.

28 (c) Any person claiming an interest in property that is the
29 subject of a notice under subdivision (a) may, within 20 days after

1 receipt of the notice or of the date of the first publication of
2 the notice, file a written claim signed by the claimant with the
3 local unit of government or the state expressing his or her
4 interest in the property **and any objection to forfeiture. An**
5 **objection under this subsection must be written, verified, and**
6 **signed by the claimant, and include a detailed description of the**
7 **property and the property interest asserted. The verification must**
8 **be notarized and include a certification stating that the**
9 **undersigned has examined the claim and believes it to be, to the**
10 **best of his or her knowledge, true and complete. A written claim**
11 **under this subsection must be made on the form developed by the**
12 **state court administrator's office as required under subsection**
13 **(2).** Upon the filing of the claim, the local unit of government or,
14 if applicable, this state shall transmit the claim with a list and
15 description of the property seized to the attorney general, the
16 prosecuting attorney for the county, or the city or township
17 attorney for the local unit of government in which the seizure was
18 made. The attorney general, the prosecuting attorney, or the city
19 or township attorney shall promptly institute forfeiture
20 proceedings after the expiration of the 20-day period. However,
21 unless all criminal proceedings involving or relating to the
22 property have been completed, a city or township attorney shall not
23 institute forfeiture proceedings without the consent of the
24 prosecuting attorney or, if the attorney general is actively
25 handling a case involving or relating to the property, the attorney
26 general.

27 (d) If no claim is filed within the 20-day period as described
28 in subdivision (c), the local unit of government or this state
29 shall declare the property forfeited and shall dispose of the

1 property as provided under section 7524. However, unless all
 2 criminal proceedings involving or relating to the property have
 3 been completed, the local unit of government or the state shall not
 4 dispose of the property under this subdivision without the written
 5 consent of the prosecuting attorney or, if the attorney general is
 6 actively handling a case involving or relating to the property, the
 7 attorney general.

8 **(2) The state court administrator's office shall develop and**
 9 **make available to law enforcement agencies, courts, and the public**
 10 **a form for asserting an ownership interest in seized property under**
 11 **subsection (1) (c). The form must require a claimant to provide a**
 12 **detailed description of the property, his or her ownership interest**
 13 **in the property, and a signed attestation that the claimant has a**
 14 **bona fide ownership interest in the property.**

15 **(3) ~~(2)~~—**Property taken or detained under this article is not
 16 subject to an action to recover personal property, but is deemed to
 17 be in the custody of the seizing agency subject only to this
 18 section or an order and judgment of the court having jurisdiction
 19 over the forfeiture proceedings. When property is seized under this
 20 article, the seizing agency may do any of the following:

21 (a) Place the property under seal.

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

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

26 (d) Deposit money seized under this article into an interest-
 27 bearing account in a financial institution. As used in this
 28 subdivision, "financial institution" means a state or nationally
 29 chartered bank or a state or federally chartered savings and loan

1 association, savings bank, or credit union whose deposits are
2 insured by an agency of the United States government and that
3 maintains a principal office or branch office located in this state
4 under the laws of this state or the United States.

5 **(4)** ~~(3)~~—Title to real property forfeited under this article
6 ~~shall~~**must** be determined by a court of competent jurisdiction. A
7 forfeiture of real property encumbered by a bona fide security
8 interest is subject to the interest of the secured party who
9 neither had knowledge of nor consented to the act or omission.

10 **(5)** ~~(4)~~—An attorney for a person who is charged with a crime
11 involving or related to the money seized under this article ~~shall~~
12 **must** be afforded a period of 60 days within which to examine that
13 money. This 60-day period begins to run after notice is given under
14 subsection (1) (a) but before the money is deposited into a
15 financial institution under subsection ~~(2) (d)~~. **(3) (d)**. If the
16 attorney general, prosecuting attorney, or city or township
17 attorney fails to sustain his or her burden of proof in forfeiture
18 proceedings under this article, the court shall order the return of
19 the money, including any interest earned on money deposited into a
20 financial institution under subsection ~~(2) (d)~~. **(3) (d)**.

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