

HOUSE BILL No. 5265

October 15, 1991, Introduced by Reps. Anthony, Bartnik, Alley, Weeks, Baade, Wallace, Olshove, Pitoniak, Gagliardi and Clack and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend sections 4701, 4702, 4703, 4704, 4705, 4706, 4707, and 4708 of Act No. 236 of the Public Acts of 1961, entitled as amended

"Revised judicature act of 1961,"

as added by Act No. 104 of the Public Acts of 1988, being sections 600.4701, 600.4702, 600.4703, 600.4704, 600.4705, 600.4706, 600.4707, and 600.4708 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 4701, 4702, 4703, 4704, 4705, 4706,
2 4707, and 4708 of Act No. 236 of the Public Acts of 1961, as
3 added by Act No. 104 of the Public Acts of 1988, being sections
4 600.4701, 600.4702, 600.4703, 600.4704, 600.4705, 600.4706,
5 600.4707, and 600.4708 of the Michigan Compiled Laws, are amended
6 to read as follows:

1 Sec. 4701. As used in this chapter:

2 (A) "CIVIL OFFENSE" MEANS A FINDING OF RESPONSIBILITY FOR
3 VIOLATION OF ACT NO. 106 OF THE PUBLIC ACTS OF 1963, BEING SEC-
4 TIONS 752.901 TO 752.906 OF THE MICHIGAN COMPILED LAWS, IN A
5 CIVIL PROCEEDING.

6 (B) ~~(a)~~ "Crime" means 1 of the following offenses in con-
7 nection with which the forfeiture of property is sought:

8 (i) A violation of section 4, 5, or 7 of the medicaid false
9 claim act, Act No. 72 of the Public Acts of 1977, being sections
10 400.604, 400.605, and 400.607 of the Michigan Compiled Laws.

11 (ii) A violation of section 2 or 3 of the Michigan antitrust
12 reform act, Act No. 274 of the Public Acts of 1984, being sec-
13 tions 445.772 and 445.773 of the Michigan Compiled Laws.

14 (iii) A violation of section 409 of the uniform securities
15 act, Act No. 265 of the Public Acts of 1964, being section
16 451.809 of the Michigan Compiled Laws.

17 (iv) A violation of section 5 or 7 of Act No. 33 of the
18 Public Acts of 1978, being sections 722.675 and 722.677 of the
19 Michigan Compiled Laws.

20 (v) A violation of section 75, 94, 95, 96, 100, 104, 105,
21 106, 110, 112, 117, 118, 119, 120, 121, 124, 145c, 157q, 157r,
22 174, 175, 176, 180, 181, 182, 213, 214, 218, 224, 248, 249, 250,
23 251, 252, 253, 254, 255, 271, 272, 273, 274, 300, 356, 357, 357a,
24 359, 360, 529, 530, 531, or 535 of the Michigan penal code, Act
25 No. 328 of the Public Acts of 1931, being sections 750.75,
26 750.94, 750.95, 750.96, 750.100, 750.104, 750.105, 750.106,
27 750.110, 750.112, 750.117, 750.118, 750.119, 750.120, 750.121,

1 750.124, 750.145c, 750.157q, 750.157r, 750.174, 750.175, 750.176,
2 750.180, 750.181, 750.182, 750.213, 750.214, 750.218, 750.224,
3 750.248, 750.249, 750.250, 750.251, 750.252, 750.253, 750.254,
4 750.255, 750.271, 750.272, 750.273, 750.274, 750.300, 750.356,
5 750.357, 750.357a, 750.359, 750.360, 750.529, 750.530, 750.531,
6 and 750.535 of the Michigan Compiled Laws.

7 (vi) A violation of section 219a of Act No. 328 of the
8 Public Acts of 1931, being section 750.219a of the Michigan
9 Compiled Laws, if the total value of the telephone service
10 obtained is over \$100.00.

11 (vii) A VIOLATION OF ACT NO. 236 OF THE PUBLIC ACTS OF 1961
12 IN A CRIMINAL PROCEEDING.

13 (viii) ~~(vii)~~ Conspiracy to commit an offense listed in
14 subparagraphs (i) to ~~(vi)~~ (vii).

15 (C) ~~(b)~~ "Instrumentality of a crime OR CIVIL OFFENSE"
16 means any property, other than real property, the use of which
17 contributes directly and materially to the commission of a crime
18 OR CIVIL OFFENSE.

19 (D) ~~(c)~~ "Person" means an individual, corporation, part-
20 nership, or other business entity, or an unincorporated or volun-
21 tary association.

22 (E) ~~(d)~~ "Proceeds of a crime OR CIVIL OFFENSE" means any
23 property obtained through the commission of a crime OR CIVIL
24 OFFENSE, including any appreciation in the value of the
25 property.

1 (F) ~~(e)~~ "Security interest" means any interest in real or
2 personal property that secures payment or performance of an
3 obligation.

4 (G) ~~(f)~~ "Substituted proceeds of a crime OR CIVIL OFFENSE"
5 means any property obtained or any gain realized by the sale or
6 exchange of proceeds of a crime OR CIVIL OFFENSE.

7 Sec. 4702. (1) Except as otherwise provided in this sec-
8 tion, the following property is subject to seizure by, and for-
9 feiture to, a local unit of government or this state under this
10 chapter:

11 (a) All personal property that is the proceeds of a crime OR
12 CIVIL OFFENSE, the substituted proceeds of a crime OR CIVIL
13 OFFENSE, or an instrumentality of a crime OR CIVIL OFFENSE.

14 (b) All real property that is the proceeds of a crime OR
15 CIVIL OFFENSE or the substituted proceeds of a crime OR CIVIL
16 OFFENSE, except real property that is the primary residence of
17 the spouse or a dependent child of the owner, unless that spouse
18 or dependent child had prior knowledge of, and consented to the
19 commission of, the crime OR CIVIL OFFENSE.

20 (2) Property is not subject to seizure or forfeiture if
21 either of the following circumstances exists:

22 (a) The owner of the property did not have prior knowledge
23 of, or consent to the commission of, the crime OR CIVIL OFFENSE.

24 (b) The owner served written notice of the commission of the
25 crime OR CIVIL OFFENSE upon an appropriate law enforcement
26 agency, and served a written notice to quit upon the person who
27 committed the crime OR CIVIL OFFENSE.

1 (3) The forfeiture of property encumbered by a security
2 interest is subject to the interest of the holder of the security
3 interest who did not have prior knowledge of, or consent to the
4 commission of, the crime OR CIVIL OFFENSE.

5 (4) The forfeiture of property encumbered by an unpaid bal-
6 ance on a land contract is subject to the interest of the land
7 contract vendor, if the vendor did not have prior knowledge of,
8 or consent to the commission of, the crime OR CIVIL OFFENSE.

9 (5) The forfeiture of the substituted proceeds of a crime OR
10 CIVIL OFFENSE is limited to the value of the proceeds of the
11 crime OR CIVIL OFFENSE plus the amount by which any restitution
12 or damages owed to the victim of the crime OR CIVIL OFFENSE
13 exceeds the value of the proceeds of the crime OR CIVIL OFFENSE.

14 Sec. 4703. (1) Personal property subject to forfeiture
15 under this chapter may be seized pursuant to an order of seizure
16 issued by the court having jurisdiction over the property upon a
17 showing of probable cause that the property is subject to
18 forfeiture.

19 (2) Personal property subject to forfeiture under this chap-
20 ter may be seized without process under any of the following
21 circumstances:

22 (a) The property is the proceeds of a crime OR CIVIL OFFENSE
23 or an instrumentality of a crime OR CIVIL OFFENSE and IN THE CASE
24 OF A CRIME the seizure is incident to a lawful arrest.

25 (b) The seizure is pursuant to a valid search warrant.

26 (c) The seizure is pursuant to an inspection under a valid
27 administrative inspection warrant.

1 (d) There is probable cause to believe that the property is
2 directly or indirectly dangerous to health or safety.

3 (e) Exigent circumstances exist that preclude the obtaining
4 of a court order, and there is probable cause to believe that the
5 property is the proceeds of a crime OR CIVIL OFFENSE or an
6 instrumentality of a crime OR CIVIL OFFENSE.

7 (f) The property is the subject of a prior judgment in favor
8 of this state in a forfeiture proceeding.

9 (3) The attorney general, or the prosecuting attorney or the
10 city or township attorney for the local unit of government in
11 which the property is located, may apply ex parte for an order
12 authorizing the filing of a lien notice against real property
13 subject to forfeiture under this chapter. The application shall
14 be supported by a sworn affidavit setting forth probable cause
15 for a forfeiture action pursuant to this chapter. An order
16 authorizing the filing of a lien notice may be issued upon a
17 showing of probable cause to believe that the property is the
18 proceeds of a crime OR CIVIL OFFENSE or the substituted proceeds
19 of a crime OR CIVIL OFFENSE.

20 (4) Property that belongs to the victim of a crime OR CIVIL
21 OFFENSE shall promptly be returned to the victim, except in the
22 following circumstances:

23 (a) If the property is contraband.

24 (b) If the ownership of the property is disputed until the
25 dispute is resolved.

26 (c) If the property is required to be retained as evidence
27 pursuant to section 4(4) of the crime victim's rights act, Act

1 No. 87 of the Public Acts of 1985, being section 780.754 of the
2 Michigan Compiled Laws.

3 (5) Personal property seized under this chapter is not
4 subject to any other action to recover personal property, but is
5 considered to be in the custody of the seizing agency subject
6 only to subsection (4) and sections 4705 to 4707, or to an order
7 and judgment of the court having jurisdiction over the forfeiture
8 proceedings. When property is seized under this chapter, the
9 seizing agency may do either or both of the following:

10 (a) Place the property under seal.

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

12 Sec. 4704. (1) Within 7 days after personal property is
13 seized or a lien notice is filed against real property under sec-
14 tion 4703, the seizing agency or, if the property is real proper-
15 ty, the attorney general, the prosecuting attorney, or the city
16 or township attorney shall give notice of the seizure of the
17 property and the intent to forfeit and dispose of the property
18 according to this chapter to each of the following persons:

19 (a) If charges have been filed against a person for a crime,
20 the person charged.

21 (B) IF AN ACTION IS BROUGHT FOR A VIOLATION OF A CIVIL
22 OFFENSE, THE PERSON NAMED IN THE COMPLAINT.

23 (C) ~~(b)~~ Each person with a known ownership interest in the
24 property.

25 (D) ~~(c)~~ Each mortgagee, person holding a security inter-
26 est, or person having a lien that appears on the certificate of
27 title or is on file with the secretary of state or appropriate

1 register of deeds, if the property is real property, a mobile
2 home, motor vehicle, watercraft, or other personal property.

3 (E) ~~(d)~~ Each holder of a preferred ship mortgage of record
4 in the appropriate public office pursuant to the ship mortgage
5 act, 1920, chapter 250, 41 Stat. 1000, 46 U.S.C. App. 911, 921
6 to 927, 941, 951 to 954, 961, 971 to 975, and 981 to 984, if the
7 property is a watercraft more than 28 feet long or a watercraft
8 that has a capacity of 5 net tons or more.

9 (F) ~~(e)~~ Each person whose security interest is recorded
10 with the appropriate public office pursuant to the federal avia-
11 tion act of 1958, Public Law 85-726, 27 Stat. 731, if the prop-
12 erty is an aircraft, aircraft engine, or aircraft propeller, or a
13 part of an aircraft, aircraft engine, or aircraft propeller.

14 (G) ~~(f)~~ Each person with a known security interest in the
15 property.

16 (H) ~~(g)~~ Each victim of the crime OR CIVIL OFFENSE.

17 (2) The notice required under subsection (1) shall be a
18 written notice delivered to the person or sent to the person by
19 certified mail. If the name and address of the person are not
20 reasonably ascertainable or delivery of the notice cannot reason-
21 ably be accomplished, the notice shall be published in a newspa-
22 per of general circulation in the county in which the personal
23 property was seized or the real property is located for 10 suc-
24 cessive publishing days. Proof of written notice or publication
25 shall be filed with the court having jurisdiction over the sei-
26 zure or forfeiture.

1 (3) If personal property was seized, the seizing agency
2 shall immediately notify the prosecuting attorney for the county
3 in which the property was seized or, if the attorney general is
4 actively handling a case involving or relating to the property,
5 the attorney general of the seizure of the property and the
6 intent to forfeit and dispose of the property according to this
7 chapter.

8 Sec. 4705. (1) A person who did not have prior knowledge
9 of, or consent to the commission of, the crime OR CIVIL OFFENSE
10 may move the court having jurisdiction to return the property or
11 discharge the lien on the grounds that the property was illegally
12 seized, that the property is not subject to forfeiture under this
13 chapter, or that the person has an ownership or security interest
14 in the property and did not have prior knowledge of, or consent
15 to the commission of, the crime OR CIVIL OFFENSE. The court
16 shall hear the motion within 30 days after the motion is filed.

17 (2) At the hearing on the motion filed under subsection (1),
18 the attorney general, or the prosecuting attorney or the city or
19 township attorney for the local unit of government in which the
20 property was seized or the lien was filed, shall establish the
21 following:

22 (a) Probable cause to believe that the property is subject
23 to forfeiture under this chapter and that the person filing the
24 motion had prior knowledge of, or consented to the commission of,
25 the crime OR CIVIL OFFENSE.

26 (b) If the person filing the motion claims the property was
27 illegally seized, that the property was properly seized.

1 (3) If the attorney general, prosecuting attorney, or city
2 or township attorney fails to sustain his or her burden of proof
3 under subsection (2), the court shall order the return of the
4 property or the discharge of the lien.

5 (4) If a motor vehicle is seized under section 4703, the
6 owner of the vehicle may move the court having jurisdiction over
7 the forfeiture proceedings to require the seizing agency to file
8 a lien against the vehicle and to return the vehicle to the
9 owner. The court shall hear the motion within 7 days after the
10 motion is filed. If the owner of the vehicle establishes at the
11 hearing that he or she holds the legal title of the vehicle and
12 that it is necessary for him or her or his or her family to use
13 the vehicle pending the outcome of the forfeiture action, the
14 court may order the seizing agency to return the vehicle to the
15 owner. If the court orders the return of the vehicle to the
16 owner, the court shall order the seizing agency to file a lien
17 against the vehicle.

18 (5) The testimony of a person at a hearing held under this
19 section is not admissible against him or her in any criminal pro-
20 ceeding except in a criminal prosecution for perjury. The testi-
21 mony of a person at a hearing held under this section does not
22 waive the person's constitutional right against
23 self-incrimination.

24 Sec. 4706. Except as otherwise provided by law, personal
25 property seized pursuant to section 4703 shall be returned to the
26 owner, or a lien filed against real property under section 4703
27 or against a motor vehicle under section 4705 shall be

1 discharged, within 7 days after the occurrence of any of
2 following:

3 (a) A warrant is not issued against a person for the commis-
4 sion of a crime within 7 days after the property is seized or, if
5 the property is real property, within 7 days after the lien is
6 filed.

7 (b) All charges against the consenting legal owner relating
8 to the commission of a crime are dismissed.

9 (c) The consenting legal owner charged with committing a
10 crime is acquitted of the crime.

11 (d) In the case of multiple defendants, all persons charged
12 with committing a crime are acquitted of the crime.

13 (e) Entry of a court order pursuant to this chapter for the
14 return of the property or the discharge of the lien.

15 (F) THE ACTION AGAINST THE PERSON CHARGED WITH A VIOLATION
16 OF A CIVIL OFFENSE IS DISMISSED, OR THE PERSON IS FOUND TO BE NOT
17 RESPONSIBLE FOR COMMISSION OF THE CIVIL OFFENSE.

18 Sec. 4707. (1) If property subject to forfeiture under this
19 chapter has a total value of less than \$100,000.00, within 7 days
20 after the conviction of a person of a crime OR A FINDING OF
21 RESPONSIBILITY FOR A VIOLATION OF A CIVIL OFFENSE, the state or
22 local unit of government seeking forfeiture of the property shall
23 give notice of the seizure of the property or, if a lien has been
24 filed, the filing of the lien, and the intent to begin proceed-
25 ings to forfeit and dispose of the property according to this
26 chapter to each of the persons to whom notice is required to be

1 given under section 4704. Notice shall be given in the same
2 manner as required under section 4704.

3 (2) Within 21 days after receipt of the notice or of the
4 date of the first publication of the notice under subsection (1),
5 a person claiming an interest in property subject to the notice
6 may file a claim with the local unit of government or the state
7 expressing his or her interest in the property.

8 (3) If no claim is filed within the 21-day period as
9 described in subsection (2), the local unit of government or the
10 state shall declare the property forfeited and shall dispose of
11 the property according to section 4708.

12 (4) If a claim is filed within the 21-day period as
13 described in subsection (2), the local unit of government or the
14 state shall transmit the claim with a list and description of the
15 property to the attorney general or to the prosecuting attorney
16 or the city or township attorney for the local unit of government
17 in which the personal property was seized or the real property is
18 located. The attorney general, the prosecuting attorney, or the
19 city or township attorney shall institute a civil action for for-
20 feiture within 7 days after the expiration of the 21-day period.

21 (5) If property subject to forfeiture under this chapter has
22 a total value of more than \$100,000.00, the attorney general, or
23 the prosecuting attorney or the city or township attorney for the
24 local unit of government in which the personal property was
25 seized or the real property is located, shall institute a civil
26 action for forfeiture within 7 days after the conviction of a

1 person of a crime OR A FINDING OF RESPONSIBILITY FOR A VIOLATION
2 OF A CIVIL OFFENSE.

3 (6) At the forfeiture proceeding, the plaintiff shall prove
4 the following by a preponderance of the evidence:

5 (a) If the property is personal property, that the property
6 is the proceeds of a crime OR CIVIL OFFENSE, the substituted pro-
7 ceeds of a crime OR CIVIL OFFENSE, or an instrumentality of a
8 crime OR CIVIL OFFENSE.

9 (b) If the property is real property, that the property is
10 the proceeds of a crime OR CIVIL OFFENSE or the substituted pro-
11 ceeds of a crime OR CIVIL OFFENSE.

12 (c) If a person, other than the person convicted of the
13 crime OR CIVIL OFFENSE, claims an ownership or security interest
14 in the property, that the person claiming the interest in the
15 property had prior knowledge of, or consented to the commission
16 of, the crime OR CIVIL OFFENSE.

17 (7) If the plaintiff fails to meet the burden of proof under
18 subsection (6), the property shall be returned to the owner
19 within 7 days.

20 Sec. 4708. (1) When property is forfeited under this chap-
21 ter, the unit of government that seized or filed a lien against
22 the property may sell the property that is not required to be
23 destroyed by law and that is not harmful to the public and may
24 dispose of the proceeds and any money, negotiable instrument,
25 security, or other thing of value that is forfeited pursuant to
26 this chapter in the following order of priority:

1 (a) Pay any outstanding security interest of a secured party
2 who did not have prior knowledge of, or consent to the commission
3 of, the crime OR CIVIL OFFENSE.

4 (b) Satisfy any order of restitution in the prosecution for
5 the crime OR CIVIL OFFENSE.

6 (c) Pay the claim of each person who shows that he or she is
7 a victim of the crime OR CIVIL OFFENSE to the extent that the
8 claim is not covered by an order of restitution.

9 (d) Pay any outstanding lien against the property that has
10 been imposed by a governmental unit.

11 (e) Pay the proper expenses of the proceedings for forfei-
12 ture and sale, including, but not limited to, expenses incurred
13 during the seizure process and expenses for maintaining custody
14 of the property, advertising, and court costs.

15 (f) The balance remaining after the payment of restitution,
16 the claims of victims, outstanding liens, and expenses shall be
17 distributed by the court having jurisdiction over the forfeiture
18 proceedings to the unit or units of government substantially
19 involved in effecting the forfeiture. Seventy-five percent of
20 the money received by a unit of government under this subdivision
21 shall be used to enhance enforcement of the criminal laws AND
22 OTHER LAWS SUBJECT TO THE FORFEITURE PROVISIONS OF THIS CHAPTER
23 and 25% of the money shall be used to implement the crime
24 victim's rights act, Act No. 87 of the Public Acts of 1985, being
25 sections 780.751 to 780.775 of the Michigan Compiled Laws. A
26 unit of government receiving money under this subdivision shall
27 report annually to the department of management and budget the

1 amount of money received under this subdivision that was used to
2 enhance enforcement of the criminal laws AND OTHER LAWS SUBJECT
3 TO THE FORFEITURE PROVISIONS OF THIS CHAPTER and the amount that
4 was used to implement the crime victim's rights act.

5 (2) In the course of selling real property pursuant to sub-
6 section (1), the court that enters an order of forfeiture, on
7 motion of the unit of government to whom the property is for-
8 feited, may appoint a receiver to dispose of the real property
9 forfeited. The receiver is entitled to reasonable compensation.
10 The receiver has authority to do all of the following:

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

12 (b) Make whatever arrangements are necessary for the mainte-
13 nance and preservation of the forfeited real property.

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

15 (d) Execute instruments transferring title to the forfeited
16 real property.