

SENATE BILL No. 941

December 11, 2001, Introduced by Senators MC MANUS, SHUGARS, BULLARD, JOHNSON, SIKKEMA, GOUGEON, HAMMERSTROM, NORTH, GARCIA, SANBORN, SCHUETTE, GOSCHKA, STEIL, SCHWARZ and STILLE and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 4701 and 4702 (MCL 600.4701 and 600.4702),
section 4701 as amended by 2000 PA 184 and section 4702 as added
by 1988 PA 104.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 4701. As used in this chapter:
- 2 (a) "Crime" means committing, attempting to commit, conspir-
- 3 ing to commit, or soliciting another person to commit any of the
- 4 following offenses in connection with which the forfeiture of
- 5 property is sought:
- 6 (i) A violation of part 111 of the natural resources and
- 7 environmental protection act, 1994 PA 451, MCL 324.11101 to
- 8 ~~324.11152~~ 324.11153.

1 (ii) A violation of part 121 of the natural resources and
2 environmental protection act, 1994 PA 451, MCL 324.12101 to
3 324.12117.

4 (iii) A violation of section 4, 5, or 7 of the medicaid
5 false claim act, 1977 PA 72, MCL 400.604, 400.605, and 400.607.

6 (iv) A violation of section 2 or 3 of the Michigan antitrust
7 reform act, 1984 PA 274, MCL 445.772 and 445.773.

8 (v) A violation described in section 409 of the uniform
9 securities act, 1964 PA 265, MCL 451.809.

10 (vi) A violation of section 5 or 7 of 1978 PA 33, MCL
11 722.675 and 722.677.

12 (vii) A violation of section 49, 75, 94, 95, 96, 100, 104,
13 105, 106, 110, 112, 117, 118, 119, 120, 121, 124, 145c, 145d,
14 157q, 157r, 174, 175, 176, 180, 181, 182, 213, 214, 218, 219a,
15 224, 248, 249, 250, 251, 252, 253, 254, 255, 263, 264, 271, 272,
16 273, 274, 300, 356, 357, 357a, 359, 360, 529, 530, 531, 535,
17 540c, or 540g OR CHAPTER LXXXIII-A of the Michigan penal code,
18 1931 PA 328, MCL 750.49, 750.75, 750.94, 750.95, 750.96, 750.100,
19 750.104, 750.105, 750.106, 750.110, 750.112, 750.117, 750.118,
20 750.119, 750.120, 750.121, 750.124, 750.145c, 750.145d, 750.157q,
21 750.157r, 750.174, 750.175, 750.176, 750.180, 750.181, 750.182,
22 750.213, 750.214, 750.218, 750.219a, 750.224, 750.248, 750.249,
23 750.250, 750.251, 750.252, 750.253, 750.254, 750.255, 750.263,
24 750.264, 750.271, 750.272, 750.273, 750.274, 750.300, 750.356,
25 750.357, 750.357a, 750.359, 750.360, 750.529, 750.530, 750.531,
26 750.535, 750.540c, ~~and~~ 750.540g, AND 750.543A TO 750.543Z.

(viii) A violation of 1979 PA 53, MCL 752.791 to 752.797.

(b) "Instrumentality of a crime" means any property, other than real property, the use of which contributes directly and materially to the commission of a crime.

(c) "Person" means an individual, corporation, partnership, or other business entity, or an unincorporated or voluntary association.

(d) "Proceeds of a crime" means any property obtained through the commission of a crime, including any appreciation in the value of the property.

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

(f) "Substituted proceeds of a crime" means any property obtained or any gain realized by the sale or exchange of proceeds of a crime.

Sec. 4702. (1) Except as otherwise provided in this section, the following property is subject to seizure by, and forfeiture to, a local unit of government or this state under this chapter:

(a) All personal property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(b) All real property that is the proceeds of a crime or the substituted proceeds of a crime, except real property that is the primary residence of the spouse or a dependent child of the

1 owner, unless that spouse or dependent child had prior knowledge
2 of, and consented to the commission of, the crime.

3 (C) IN THE CASE OF A CRIME THAT IS A VIOLATION OF CHAPTER
4 LXXXIIII-A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.543A
5 TO 750.543Z, ALL PROPERTY DESCRIBED IN SUBDIVISIONS (A) AND (B)
6 AND ALL REAL PROPERTY OR PERSONAL PROPERTY THAT PERFORMED 1 OF
7 THE FOLLOWING FUNCTIONS:

8 (i) WAS USED OR WAS INTENDED TO BE USED IN THE COMMISSION OF
9 THE CRIME.

10 (ii) PROVIDED MATERIAL SUPPORT OR RESOURCES, OR WAS INTENDED
11 TO PROVIDE MATERIAL SUPPORT OR RESOURCES, FOR THE COMMISSION OF
12 THE CRIME.

13 (iii) WAS USED IN THE PREPARATION OF THE CRIME.

14 (iv) WAS USED TO CONCEAL THE CRIME.

15 (v) WAS USED TO ESCAPE FROM THE SCENE OF THE CRIME.

16 (vi) WAS USED TO CONCEAL THE IDENTITY OF 1 OR MORE OF THE
17 INDIVIDUALS WHO COMMITTED THE CRIME.

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

20 (a) The owner of the property did not have prior knowledge
21 of, or consent to the commission of, the crime.

22 (b) The owner served written notice of the commission of the
23 crime upon an appropriate law enforcement agency, and served a
24 written notice to quit upon the person who committed the crime.

25 (3) The forfeiture of property encumbered by a security
26 interest is subject to the interest of the holder of the security

1 interest who did not have prior knowledge of, or consent to the
2 commission of, the crime.

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

7 (5) The forfeiture of the substituted proceeds of a crime is
8 limited to the value of the proceeds of the crime plus the amount
9 by which any restitution or damages owed to the victim of the
10 crime exceeds the value of the proceeds of the crime.