

Legislative Analysis



IDENTITY THEFT: FORFEITURE OF PROPERTY USED IN CRIMES

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House Bill 5954

Sponsor: Rep. Dudley Spade

Committee: Judiciary

Complete to 7-22-08

A SUMMARY OF HOUSE BILL 5934 AS INTRODUCED 4-8-08

The bill would add several new sections to the Identity Theft Protection Act (MCL 445.74 et al.) to identify property subject to forfeiture, establish forfeiture procedures, authorize the seizing agency to retain or sell seized property, and require a seizing agency to submit a summary report annually to the attorney general for forwarding to the legislature regarding forfeiture of property. The provisions are similar to those in the Public Health Code regarding the seizure and forfeiture of property related to crimes involving controlled substances.

Property Subject to Forfeiture

The bill would subject the following property to forfeiture when used (or intended to be used) to commit a crime of identity theft:

- Equipment of any kind.
- With some exceptions, a conveyance used or intended to be used to facilitate the transportation of property. "Conveyance" would include aircraft, vehicles, and watercraft.
- Books, records, and research products and materials, including formulas, microfilm, tapes, and data.
- Any thing of value furnished or intended to be furnished in exchange for identity information obtained in violation of the act. This would include, but not be limited to, money, negotiable instruments, or securities. Money found in close proximity to property subject to forfeiture would be presumed to also be subject to forfeiture; this presumption could be rebutted by clear and convincing evidence. If the owner of the thing of value could establish that an act or omission had been committed or omitted without his or her knowledge or consent, the item would not be subject to forfeiture.

Process for Seizure

Property subject to forfeiture could be seized upon process issued by the circuit court with jurisdiction over the property. Seizure without process could be made incident to a lawful arrest, under a search warrant, or under an administrative inspection warrant; if the property was the subject of a prior judgment in favor of Michigan in an injunction or

forfeiture proceeding under the act; if probable cause existed to believe the property was directly or indirectly dangerous to health or safety; or if probable cause existed to believe the property was used or intended to be used to violate the act.

Forfeiture Proceedings

A forfeiture proceeding would have to be instituted promptly if property were seized under the above provisions.

If the property had been seized without process and the total value of the seized property did not exceed \$50,000, certain notification requirements would apply as detailed in the bill. A person claiming an interest in the property could file a claim within 20 days, but would also have to post a bond of 10 percent of the unclaimed property's value, subject to minimum and maximum amounts specified in the bill; the obligor would be responsible for all costs and expenses of the forfeiture proceedings. The seizing agency would have to transmit the claim and bond, along with a list of the seized property, to the attorney general, county prosecutor, or city or township attorney for the local unit of government in which the seizure had been made. However, a city or township attorney could not institute forfeiture proceedings without the consent of the county prosecutor or attorney general if he or she were actively handling a case involving or relating to the property. Property that was not claimed within 20 days could be declared as forfeited and the property would then be disposed of as provided in the bill.

Property taken or detained under the bill would not be subject to an action to recover personal property; it would be considered to be in the custody of the seizing agency and subject only to this provision or an order or judgment of the court.

The seizing agency could place the seized property under seal, remove it to a place designated by the court, or require the administrator to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Money seized under the act would have to be deposited into an interest-bearing account in a financial institution, defined to mean a state or nationally chartered bank, or federally chartered savings and loan association, savings bank, or credit union whose deposits were federally insured and that maintained a principal or branch office within the state. The attorney for a person charged with a crime related to or involving the money would have to be given 60 days within which to examine the money, beginning with the day notice had been given to the property's owner but before the money had been deposited. If a county prosecutor, city or township attorney, or the attorney general fails to sustain his or her burden of proof in the forfeiture proceedings, the court would have to order the money returned, including any interest earned while deposited.

Title to real property forfeited under the act would be determined by a court of competent jurisdiction. If the real property were encumbered by a bona fide security interest, it would be subject to the interest of the secured party who neither had knowledge of nor consented to the crime.

If a court entered an order of forfeiture, the court could order a person who claimed an interest in the forfeited property to pay the expenses of the proceedings of forfeiture to the entity having budgetary authority over the seizing agency (local unit of government or State of Michigan).

Disposition of Forfeited Property

The seizing agency could do any of the following:

- Retain the property for official use.
- Sell whatever is not required to be destroyed by law or harmful to the public. The proceeds of the sale and any money or other thing of value forfeited would have to be deposited with the treasurer of the entity having budgetary authority over the seizing agency. These funds would be applied to cover expenses relating to the forfeiture and sale. The remaining balance would be distributed equitably among the agencies involved in the forfeiture. Money and all interest and other earnings on forfeited money received by a seizing agency would have to be used to enhance law enforcement efforts pertaining to identity theft. A seizing agency could direct its portion of the forfeiture to nonprofit organizations whose primary activity is to assist law enforcement agencies with criminal investigations and obtaining information for solving crimes related to identity theft (for example, Crime Stoppers).
- Require the administrator to take custody of the property and remove it for disposition in accordance with law. (The term "administrator" is not defined in the act, but a similar provision in the Public Health Code regarding forfeiture of property related to crimes involving controlled substances defines the term to mean the administrator of the Office of Substance Abuse Services.)
- Forward it to the bureau for disposition. (The term "bureau" is not defined in the act, but a similar provision in the Public Health Code as described above defines the term as meaning the federal Bureau of Drug Enforcement Administration.)

A receiver could be court-appointed to dispose of real property that had been forfeited. The receiver would be entitled to reasonable compensation and could list the forfeited real property for sale; arrange for necessary maintenance and preservation of the property; accept purchase offers; and/or execute instruments transferring title to the property.

Reporting Duties

Before February 1 of each year, each local unit of government that -- during its preceding fiscal year -- had forfeiture proceedings pending in the circuit court; had seized property without a court order as allowed in the bill; or had received money, negotiable instruments, or any other thing of value would have to submit a report to the attorney general for analysis and transmittal to the Secretary of the Senate and Clerk of the House of Representatives. The report would have to summarize the local unit of government's

activities regarding forfeiture of property and include information as specified in the bill such as the number of forfeiture proceedings instituted, still pending, or concluded in the circuit court; the number accomplished without a court order; the net total proceeds of all property forfeited statutorily required to be accounted for and reported to the state treasurer; an inventory of the property received; and a statement explaining how the money received by the local unit had been used or was being used to enhance the law enforcement efforts pertaining to the Identity Theft Protection Act.

Further, the records of a local unit of government regarding the forfeiture of property would have to be audited in accordance with either Public Act 71 of 1919 or the Uniform Budgeting and Accounting Act. The records could also be audited by an auditor of the local unit of government.

FISCAL IMPACT:

House Bill 5954 will have an indeterminate fiscal impact on the judiciary. The bill creates new procedures for handling forfeiture of property proceedings under the ID Theft Protection Act, which would increase the administrative workload and casework with the presumed increase in forfeiture proceedings. However, language within the bill indicates that in those instances that the property is deemed forfeited, the local unit of government may use the proceeds from the sale of the property for the payment of proper expenses of the proceedings for forfeiture and sale. This provision would seemingly reduce the fiscal burden this bill would have on the judiciary.

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