

SUBSTITUTE FOR
SENATE BILL NO. 223

A bill to amend 2004 PA 452, entitled
"Identity theft protection act,"
by amending sections 9, 11, 12, and 12b (MCL 445.69, 445.71,
445.72, and 445.72b), sections 12 and 12b as added by 2006 PA 566,
and by adding sections 19, 19a, 19b, and 19c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) Subject to subsection (6), a person who violates
2 section 5 or 7 is guilty of a felony punishable **AS FOLLOWS:**

3 **(A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (B) AND (C),**
4 by imprisonment for not more than 5 years or a fine of not more
5 than \$25,000.00, or both.

1 (B) IF THE VIOLATION IS A SECOND VIOLATION OF SECTION 5 OR 7,
2 BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A FINE OF NOT MORE
3 THAN \$50,000.00, OR BOTH.

4 (C) IF THE VIOLATION IS A THIRD OR SUBSEQUENT VIOLATION OF
5 SECTION 5 OR 7, BY IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A
6 FINE OF NOT MORE THAN \$75,000.00, OR BOTH.

7 (2) Sections 5 and 7 apply whether an individual who is a
8 victim or intended victim of a violation of 1 of those sections is
9 alive or deceased at the time of the violation.

10 (3) This section does not prohibit a person from being charged
11 with, convicted of, or sentenced for any other violation of law
12 committed by that person using information obtained in violation of
13 this section or any other violation of law committed by that person
14 while violating or attempting to violate this section.

15 (4) The court may order that a term of imprisonment imposed
16 under this section be served consecutively to any term of
17 imprisonment imposed for a conviction of any other violation of law
18 committed by that person using the information obtained in
19 violation of this section or any other violation of law committed
20 by that person while violating or attempting to violate this
21 section.

22 (5) A person may assert as a defense in a civil action or as
23 an affirmative defense in a criminal prosecution for a violation of
24 section 5 or 7, and has the burden of proof on that defense by a
25 preponderance of the evidence, that the person lawfully
26 transferred, obtained, or attempted to obtain personal identifying
27 information of another person for the purpose of detecting,

1 preventing, or deterring identity theft or another crime or the
2 funding of a criminal activity.

3 (6) Subsection (1) does not apply to a violation of a statute
4 or rule administered by a regulatory board, commission, or officer
5 acting under authority of this state or the United States that
6 confers primary jurisdiction on that regulatory board, commission,
7 or officer to authorize, prohibit, or regulate the transactions and
8 conduct of that person, including, but not limited to, a state or
9 federal statute or rule governing a financial institution and the
10 insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, if
11 the act is committed by a person subject to and regulated by that
12 statute or rule, or by another person who has contracted with that
13 person to use personal identifying information.

14 Sec. 11. (1) A person shall not do any of the following in the
15 conduct of trade or commerce:

16 (a) Deny credit or public utility service to or reduce the
17 credit limit of a consumer solely because the consumer was a victim
18 of identity theft, if the person had prior knowledge that the
19 consumer was a victim of identity theft. A consumer is presumed to
20 be a victim of identity theft for the purposes of this subdivision
21 if he or she provides both of the following to the person:

22 (i) A copy of a police report evidencing the claim of the
23 victim of identity theft.

24 (ii) Either a properly completed copy of a standardized
25 affidavit of identity theft developed and made available by the
26 federal trade commission ~~pursuant to~~ **UNDER** 15 USC 1681g or an
27 affidavit of fact that is acceptable to the person for that

1 purpose.

2 (b) Solicit to extend credit to a consumer who does not have
3 an existing line of credit, or has not had or applied for a line of
4 credit within the preceding year, through the use of an unsolicited
5 check that includes personal identifying information other than the
6 recipient's name, address, and a partial, encoded, or truncated
7 personal identifying number. In addition to any other penalty or
8 remedy under this act or the Michigan consumer protection act, 1976
9 PA 331, MCL 445.901 to 445.922, a credit card issuer, financial
10 institution, or other lender that violates this subdivision, and
11 not the consumer, is liable for the amount of the instrument if the
12 instrument is used by an unauthorized user and for any fees
13 assessed to the consumer if the instrument is dishonored.

14 (c) Solicit to extend credit to a consumer who does not have a
15 current credit card, or has not had or applied for a credit card
16 within the preceding year, through the use of an unsolicited credit
17 card sent to the consumer. In addition to any other penalty or
18 remedy under this act or the Michigan consumer protection act, 1976
19 PA 331, MCL 445.901 to 445.922, a credit card issuer, financial
20 institution, or other lender that violates this subdivision, and
21 not the consumer, is liable for any charges if the credit card is
22 used by an unauthorized user and for any interest or finance
23 charges assessed to the consumer.

24 (d) Extend credit to a consumer without exercising reasonable
25 procedures to verify the identity of that consumer. Compliance with
26 regulations issued for depository institutions, and to be issued
27 for other financial institutions, by the United States department

1 of treasury under section 326 of the USA patriot act of 2001, 31
2 USC 5318, is considered compliance with this subdivision. This
3 subdivision does not apply to a purchase of a credit obligation in
4 an acquisition, merger, purchase of assets, or assumption of
5 liabilities or any change to or review of an existing credit
6 account.

7 (2) A person who knowingly or intentionally violates
8 subsection (1) is guilty of a misdemeanor punishable **AS FOLLOWS:**

9 (A) **EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (B) AND (C),**
10 by imprisonment for not more than ~~30~~**93** days or a fine of not more
11 than \$1,000.00, or both. ~~This subsection~~

12 (B) **FOR A SECOND VIOLATION, BY IMPRISONMENT FOR NOT MORE THAN**
13 **93 DAYS OR A FINE OF NOT MORE THAN \$2,000.00, OR BOTH.**

14 (C) **FOR A THIRD OR SUBSEQUENT VIOLATION, BY IMPRISONMENT FOR**
15 **NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$3,000.00, OR**
16 **BOTH.**

17 (3) **SUBSECTION (2)** does not ~~affect the availability of~~
18 **PROHIBIT A PERSON FROM BEING LIABLE FOR** any civil remedy for a
19 violation of this act, the Michigan consumer protection act, 1976
20 PA 331, MCL 445.901 to 445.922, or any other state or federal law.

21 Sec. 12. (1) Unless the person or agency determines that the
22 security breach has not or is not likely to cause substantial loss
23 or injury to, or result in identity theft with respect to, 1 or
24 more residents of this state, a person or agency that owns or
25 licenses data that are included in a database that discovers a
26 security breach, or receives notice of a security breach under
27 subsection (2), shall provide a notice of the security breach to

1 each resident of this state who meets 1 or more of the following:

2 (a) That resident's unencrypted and unredacted personal
3 information was accessed and acquired by an unauthorized person.

4 (b) That resident's personal information was accessed and
5 acquired in encrypted form by a person with unauthorized access to
6 the encryption key.

7 (2) Unless the person or agency determines that the security
8 breach has not or is not likely to cause substantial loss or injury
9 to, or result in identity theft with respect to, 1 or more
10 residents of this state, a person or agency that maintains a
11 database that includes data that the person or agency does not own
12 or license that discovers a breach of the security of the database
13 shall provide a notice to the owner or licensor of the information
14 of the security breach.

15 (3) In determining whether a security breach is not likely to
16 cause substantial loss or injury to, or result in identity theft
17 with respect to, 1 or more residents of this state under subsection
18 (1) or (2), a person or agency shall act with the care an
19 ordinarily prudent person or agency in like position would exercise
20 under similar circumstances.

21 (4) A person or agency shall provide any notice required under
22 this section without unreasonable delay. A person or agency may
23 delay providing notice without violating this subsection if either
24 of the following is met:

25 (a) A delay is necessary in order for the person or agency to
26 take any measures necessary to determine the scope of the security
27 breach and restore the reasonable integrity of the database.

1 However, the agency or person shall provide the notice required
2 under this subsection without unreasonable delay after the person
3 or agency completes the measures necessary to determine the scope
4 of the security breach and restore the reasonable integrity of the
5 database.

6 (b) A law enforcement agency determines and advises the agency
7 or person that providing a notice will impede a criminal or civil
8 investigation or jeopardize homeland or national security. However,
9 the agency or person shall provide the notice required under this
10 section without unreasonable delay after the law enforcement agency
11 determines that providing the notice will no longer impede the
12 investigation or jeopardize homeland or national security.

13 (5) Except as provided in subsection (11), an agency or person
14 shall provide any notice required under this section by providing 1
15 or more of the following to the recipient:

16 (a) Written notice sent to the recipient at the recipient's
17 postal address in the records of the agency or person.

18 (b) Written notice sent electronically to the recipient if any
19 of the following are met:

20 (i) The recipient has expressly consented to receive electronic
21 notice.

22 (ii) The person or agency has an existing business relationship
23 with the recipient that includes periodic electronic mail
24 communications and based on those communications the person or
25 agency reasonably believes that it has the recipient's current
26 electronic mail address.

27 (iii) The person or agency conducts its business primarily

1 through internet account transactions or on the internet.

2 (c) If not otherwise prohibited by state or federal law,
3 notice given by telephone by an individual who represents the
4 person or agency if all of the following are met:

5 (i) The notice is not given in whole or in part by use of a
6 recorded message.

7 (ii) The recipient has expressly consented to receive notice by
8 telephone, or if the recipient has not expressly consented to
9 receive notice by telephone, the person or agency also provides
10 notice under subdivision (a) or (b) if the notice by telephone does
11 not result in a live conversation between the individual
12 representing the person or agency and the recipient within 3
13 business days after the initial attempt to provide telephonic
14 notice.

15 (d) Substitute notice, if the person or agency demonstrates
16 that the cost of providing notice under subdivision (a), (b), or
17 (c) will exceed \$250,000.00 or that the person or agency has to
18 provide notice to more than 500,000 residents of this state. A
19 person or agency provides substitute notice under this subdivision
20 by doing all of the following:

21 (i) If the person or agency has electronic mail addresses for
22 any of the residents of this state who are entitled to receive the
23 notice, providing electronic notice to those residents.

24 (ii) If the person or agency maintains a website, conspicuously
25 posting the notice on that website.

26 (iii) Notifying major statewide media. A notification under this
27 subparagraph shall include a telephone number or a website address

1 that a person may use to obtain additional assistance and
2 information.

3 (6) A notice under this section shall ~~meet~~ DO all of the
4 following:

5 (a) For a notice provided under subsection (5)(a) or (b), be
6 written in a clear and conspicuous manner and contain the content
7 required under subdivisions (c) to (g).

8 (b) For a notice provided under subsection (5)(c), clearly
9 communicate the content required under subdivisions (c) to (g) to
10 the recipient of the telephone call.

11 (c) Describe the security breach in general terms.

12 (d) Describe the type of personal information that is the
13 subject of the unauthorized access or use.

14 (e) If applicable, generally describe what the agency or
15 person providing the notice has done to protect data from further
16 security breaches.

17 (f) Include a telephone number where a notice recipient may
18 obtain assistance or additional information.

19 (g) Remind notice recipients of the need to remain vigilant
20 for incidents of fraud and identity theft.

21 (7) A person or agency may provide any notice required under
22 this section pursuant to an agreement between that person or agency
23 and another person or agency, if the notice provided pursuant to
24 the agreement does not conflict with any provision of this section.

25 (8) Except as provided in this subsection, after a person or
26 agency provides a notice under this section, the person or agency
27 shall notify each consumer reporting agency that compiles and

1 maintains files on consumers on a nationwide basis, as defined in
2 15 USC 1681a(p), of the security breach without unreasonable delay.
3 A notification under this subsection shall include the number of
4 notices that the person or agency provided to residents of this
5 state and the timing of those notices. This subsection does not
6 apply if either of the following is met:

7 (a) The person or agency is required under this section to
8 provide notice of a security breach to 1,000 or fewer residents of
9 this state.

10 (b) The person or agency is subject to ~~title V of the Gramm-~~
11 ~~Leach-Bliley act,~~ 15 USC 6801 to 6809.

12 (9) A financial institution that is subject to, and has
13 notification procedures in place that are subject to examination by
14 the financial institution's appropriate regulator for compliance
15 with, the interagency guidance on response programs for
16 unauthorized access to customer information and customer notice
17 prescribed by the board of governors of the federal reserve system
18 and the other federal bank and thrift regulatory agencies, or
19 similar guidance prescribed and adopted by the national credit
20 union administration, and its affiliates, is considered to be in
21 compliance with this section.

22 (10) A person or agency that is subject to and complies with
23 the health insurance portability and accountability act of 1996,
24 Public Law 104-191, and with regulations promulgated under that
25 act, 45 CFR parts 160 and 164, for the prevention of unauthorized
26 access to customer information and customer notice is considered to
27 be in compliance with this section.

1 (11) A public utility that sends monthly billing or account
2 statements to the postal address of its customers may provide
3 notice of a security breach to its customers in the manner
4 described in subsection (5), or alternatively by providing all of
5 the following:

6 (a) As applicable, notice as described in subsection (5)(b).

7 (b) Notification to the media reasonably calculated to inform
8 the customers of the public utility of the security breach.

9 (c) Conspicuous posting of the notice of the security breach
10 on the website of the public utility.

11 (d) Written notice sent in conjunction with the monthly
12 billing or account statement to the customer at the customer's
13 postal address in the records of the public utility.

14 (12) A person that provides notice of a security breach in the
15 manner described in this section when a security breach has not
16 occurred, with the intent to defraud, is guilty of a misdemeanor
17 punishable **AS FOLLOWS:**

18 **(A) EXCEPT AS OTHERWISE PROVIDED UNDER SUBDIVISIONS (B) AND**
19 **(C), by imprisonment for not more than 30-93 days or a fine of not**
20 **more than \$250.00 for each violation, or both.**

21 **(B) FOR A SECOND VIOLATION, BY IMPRISONMENT FOR NOT MORE THAN**
22 **93 DAYS OR A FINE OF NOT MORE THAN \$500.00 FOR EACH VIOLATION, OR**
23 **BOTH.**

24 **(C) FOR A THIRD OR SUBSEQUENT VIOLATION, BY IMPRISONMENT FOR**
25 **NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$750.00 FOR EACH**
26 **VIOLATION, OR BOTH.**

27 (13) Subject to subsection (14), a person that knowingly fails

1 to provide any notice of a security breach required under this
2 section may be ordered to pay a civil fine of not more than \$250.00
3 for each failure to provide notice. The attorney general or a
4 prosecuting attorney may bring an action to recover a civil fine
5 under this section.

6 (14) The aggregate liability of a person for civil fines under
7 subsection (13) for multiple violations of subsection (13) that
8 arise from the same security breach shall not exceed \$750,000.00.

9 (15) Subsections (12) and (13) do not affect the availability
10 of any civil remedy for a violation of state or federal law.

11 (16) This section applies to the discovery or notification of
12 a breach of the security of a database that occurs on or ~~after the~~
13 ~~effective date of the amendatory act that added this section~~ **JULY**
14 **2, 2006.**

15 (17) This section does not apply to the access or acquisition
16 by a person or agency of federal, state, or local government
17 records or documents lawfully made available to the general public.

18 (18) This section deals with subject matter that is of
19 statewide concern, and any charter, ordinance, resolution,
20 regulation, rule, or other action by a municipal corporation or
21 other political subdivision of this state to regulate, directly or
22 indirectly, any matter expressly set forth in this section is
23 preempted.

24 Sec. 12b. (1) A person shall not distribute an advertisement
25 or make any other solicitation that misrepresents to the recipient
26 that a security breach has occurred that may affect the recipient.

27 (2) A person shall not distribute an advertisement or make any

1 other solicitation that is substantially similar to a notice
2 required under section 12(5) or by federal law, if the form of that
3 notice is prescribed by state or federal law, rule, or regulation.

4 (3) A person who knowingly or intentionally violates this
5 section is guilty of a misdemeanor punishable **AS FOLLOWS:**

6 (A) **EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (B) AND (C),**
7 by imprisonment for not more than ~~30~~**93** days or a fine of not more
8 than \$1,000.00 for each violation, or both. ~~This subsection~~

9 (B) **FOR A SECOND VIOLATION, BY IMPRISONMENT FOR NOT MORE THAN**
10 **93 DAYS OR A FINE OF NOT MORE THAN \$2,000.00 FOR EACH VIOLATION, OR**
11 **BOTH.**

12 (C) **FOR A THIRD OR SUBSEQUENT VIOLATION, BY IMPRISONMENT FOR**
13 **NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$3,000.00 FOR EACH**
14 **VIOLATION, OR BOTH.**

15 (4) **SUBSECTION (3)** does not affect the availability of any
16 civil remedy for a violation of this section or any other state or
17 federal law.

18 **SEC. 19. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE**
19 **FOLLOWING PROPERTY IS SUBJECT TO FORFEITURE:**

20 (A) **ANY PERSONAL OR REAL PROPERTY THAT HAS BEEN USED,**
21 **POSSESSED, OR ACQUIRED IN VIOLATION OF THIS ACT.**

22 (B) **EXCEPT AS PROVIDED IN SUBPARAGRAPHS (i) TO (iii), A**
23 **CONVEYANCE, INCLUDING AN AIRCRAFT, VEHICLE, OR VESSEL, USED OR**
24 **INTENDED FOR USE TO TRANSPORT, OR IN ANY MANNER TO FACILITATE THE**
25 **TRANSPORTATION OF, FOR THE PURPOSE OF SALE OR RECEIPT, PROPERTY**
26 **DESCRIBED IN SUBDIVISION (A):**

27 (i) **A CONVEYANCE USED BY A PERSON AS A COMMON CARRIER IN THE**

Senate Bill No. 223 as amended November 9, 2010

1 TRANSACTION OF BUSINESS AS A COMMON CARRIER IS NOT SUBJECT TO
2 FORFEITURE UNLESS IT IS DETERMINED THAT THE OWNER OR OTHER PERSON
3 IN CHARGE OF THE CONVEYANCE IS A CONSENTING PARTY OR PRIVY TO A
4 VIOLATION OF THIS ACT.

5 (ii) A CONVEYANCE IS NOT SUBJECT TO FORFEITURE BY REASON OF ANY
6 ACT OR OMISSION ESTABLISHED BY THE OWNER OF THAT CONVEYANCE TO HAVE
7 BEEN COMMITTED OR OMITTED WITHOUT THE OWNER'S KNOWLEDGE OR CONSENT.

8 (iii) A FORFEITURE OF A CONVEYANCE ENCUMBERED BY A BONA FIDE
9 SECURITY INTEREST IS SUBJECT TO THE INTEREST OF THE SECURED PARTY
10 WHO NEITHER HAD KNOWLEDGE OF NOR CONSENTED TO THE ACT OR OMISSION.

11 (C) BOOKS, RECORDS, COMPUTERS, ELECTRONIC EQUIPMENT, AND
12 RESEARCH PRODUCTS AND MATERIALS, INCLUDING MICROFILM, DIGITAL
13 MEDIA, TAPES, AND DATA, USED OR INTENDED FOR USE IN VIOLATION OF
14 THIS ACT.

15 (D) ANY MONEY, NEGOTIABLE INSTRUMENTS, SECURITIES, OR ANY
16 OTHER THING OF VALUE THAT IS FOUND IN CLOSE PROXIMITY TO ANY
17 PROPERTY THAT IS SUBJECT TO FORFEITURE UNDER SUBDIVISION (A), (B),
18 OR (C) IS PRESUMED TO BE SUBJECT TO FORFEITURE. THIS PRESUMPTION
19 MAY BE REBUTTED BY CLEAR AND CONVINCING EVIDENCE.

20 <<(2) PROPERTY USED TO COMMIT A VIOLATION OF THIS ACT IS NOT
21 SUBJECT TO FORFEITURE UNLESS THE OWNER OF THE PROPERTY ACTIVELY
22 PARTICIPATES IN OR CONSENTS TO THE VIOLATION OF THIS ACT.

(3) PROPERTY OF ANY OF THE FOLLOWING PROVIDERS IS NOT SUBJECT TO
FORFEITURE UNDER THIS ACT UNLESS IT IS DETERMINED THAT THE PROVIDER IS A
CONSENTING PARTY OR PRIVY TO A VIOLATION OF THIS ACT:

(A) A TELECOMMUNICATION PROVIDER.

(B) AN INTERNET SERVICE PROVIDER.

(C) A COMPUTER NETWORK SERVICE PROVIDER.

(D) AN INTERACTIVE COMPUTER SERVICE PROVIDER.>>

23 SEC. 19A. PROPERTY THAT IS SUBJECT TO FORFEITURE UNDER THIS
24 ACT MAY BE SEIZED UPON PROCESS ISSUED BY THE CIRCUIT COURT HAVING
25 JURISDICTION OVER THE PROPERTY. SEIZURE WITHOUT PROCESS MAY BE MADE
26 UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

27 (A) THE PROPERTY IS SEIZED INCIDENT TO A LAWFUL ARREST,

1 PURSUANT TO A SEARCH WARRANT, OR PURSUANT TO AN INSPECTION UNDER AN
2 ADMINISTRATIVE INSPECTION WARRANT.

3 (B) THE PROPERTY IS THE SUBJECT OF A PRIOR JUDGMENT IN FAVOR
4 OF THIS STATE IN AN INJUNCTION OR FORFEITURE PROCEEDING UNDER THIS
5 ACT.

6 (C) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY IS
7 DIRECTLY OR INDIRECTLY DANGEROUS TO HEALTH OR SAFETY.

8 (D) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY WAS
9 USED OR IS INTENDED TO BE USED IN VIOLATION OF THIS ACT.

10 (E) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY IS
11 THE PROCEEDS FROM ACTIVITY IN VIOLATION OF THIS ACT.

12 SEC. 19B. (1) IF PROPERTY IS SEIZED PURSUANT TO SECTION 19A,
13 FORFEITURE PROCEEDINGS SHALL BE INSTITUTED PROMPTLY. IF THE
14 PROPERTY IS SEIZED WITHOUT PROCESS AS PROVIDED UNDER SECTION 19A
15 AND THE TOTAL VALUE OF THE PROPERTY SEIZED DOES NOT EXCEED
16 \$50,000.00, THE FOLLOWING PROCEDURE SHALL BE USED:

17 (A) THE LOCAL UNIT OF GOVERNMENT THAT SEIZED THE PROPERTY OR,
18 IF THE PROPERTY WAS SEIZED BY THE STATE, THE STATE SHALL NOTIFY THE
19 OWNER OF THE PROPERTY THAT THE PROPERTY HAS BEEN SEIZED AND THAT
20 THE LOCAL UNIT OF GOVERNMENT OR, IF APPLICABLE, THE STATE INTENDS
21 TO FORFEIT AND DISPOSE OF THE PROPERTY BY DELIVERING A WRITTEN
22 NOTICE TO THE OWNER OF THE PROPERTY OR BY SENDING THE NOTICE TO THE
23 OWNER BY CERTIFIED MAIL. IF THE NAME AND ADDRESS OF THE OWNER ARE
24 NOT REASONABLY ASCERTAINABLE OR DELIVERY OF THE NOTICE CANNOT BE
25 REASONABLY ACCOMPLISHED, THE NOTICE SHALL BE PUBLISHED IN A
26 NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE
27 PROPERTY WAS SEIZED, FOR 10 SUCCESSIVE PUBLISHING DAYS.

1 (B) UNLESS ALL CRIMINAL PROCEEDINGS INVOLVING OR RELATING TO
2 THE PROPERTY HAVE BEEN COMPLETED, THE SEIZING AGENCY SHALL
3 IMMEDIATELY NOTIFY THE PROSECUTING ATTORNEY FOR THE COUNTY IN WHICH
4 THE PROPERTY WAS SEIZED OR, IF THE ATTORNEY GENERAL IS ACTIVELY
5 HANDLING A CASE INVOLVING OR RELATING TO THE PROPERTY, THE ATTORNEY
6 GENERAL OF THE SEIZURE OF THE PROPERTY AND THE INTENTION TO FORFEIT
7 AND DISPOSE OF THE PROPERTY.

8 (C) ANY PERSON CLAIMING AN INTEREST IN PROPERTY THAT IS THE
9 SUBJECT OF A NOTICE UNDER SUBDIVISION (A) MAY, WITHIN 20 DAYS AFTER
10 RECEIPT OF THE NOTICE OR OF THE DATE OF THE FIRST PUBLICATION OF
11 THE NOTICE, FILE A WRITTEN CLAIM SIGNED BY THE CLAIMANT WITH THE
12 LOCAL UNIT OF GOVERNMENT OR THE STATE EXPRESSING HIS OR HER
13 INTEREST IN THE PROPERTY. THE PERSON FILING THE CLAIM SHALL GIVE A
14 BOND TO THE LOCAL UNIT OF GOVERNMENT OR THE STATE IN THE AMOUNT OF
15 10% OF THE VALUE OF THE CLAIMED PROPERTY, BUT NOT LESS THAN \$250.00
16 OR GREATER THAN \$5,000.00, WITH SURETIES APPROVED BY THE LOCAL UNIT
17 OF GOVERNMENT OR THE STATE CONTAINING THE CONDITION THAT IF THE
18 PROPERTY IS ORDERED FORFEITED BY THE COURT THE OBLIGOR SHALL PAY
19 ALL COSTS AND EXPENSES OF THE FORFEITURE PROCEEDINGS. THE LOCAL
20 UNIT OF GOVERNMENT OR, IF APPLICABLE, THE STATE SHALL TRANSMIT THE
21 CLAIM AND BOND WITH A LIST AND DESCRIPTION OF THE PROPERTY SEIZED
22 TO THE ATTORNEY GENERAL, THE PROSECUTING ATTORNEY FOR THE COUNTY,
23 OR THE CITY OR TOWNSHIP ATTORNEY FOR THE LOCAL UNIT OF GOVERNMENT
24 IN WHICH THE SEIZURE WAS MADE. THE ATTORNEY GENERAL, THE
25 PROSECUTING ATTORNEY, OR THE CITY OR TOWNSHIP ATTORNEY SHALL
26 PROMPTLY INSTITUTE FORFEITURE PROCEEDINGS AFTER THE EXPIRATION OF
27 THE 20-DAY PERIOD. HOWEVER, UNLESS ALL CRIMINAL PROCEEDINGS

1 INVOLVING OR RELATING TO THE PROPERTY HAVE BEEN COMPLETED, A CITY
2 OR TOWNSHIP ATTORNEY SHALL NOT INSTITUTE FORFEITURE PROCEEDINGS
3 WITHOUT THE CONSENT OF THE PROSECUTING ATTORNEY OR, IF THE ATTORNEY
4 GENERAL IS ACTIVELY HANDLING A CASE INVOLVING OR RELATING TO THE
5 PROPERTY, THE ATTORNEY GENERAL.

6 (D) IF NO CLAIM IS FILED OR BOND GIVEN WITHIN THE 20-DAY
7 PERIOD AS DESCRIBED IN SUBDIVISION (C), THE LOCAL UNIT OF
8 GOVERNMENT OR THE STATE SHALL DECLARE THE PROPERTY FORFEITED AND
9 SHALL DISPOSE OF THE PROPERTY AS PROVIDED UNDER SECTION 19C.
10 HOWEVER, UNLESS ALL CRIMINAL PROCEEDINGS INVOLVING OR RELATING TO
11 THE PROPERTY HAVE BEEN COMPLETED, THE LOCAL UNIT OF GOVERNMENT OR
12 THE STATE SHALL NOT DISPOSE OF THE PROPERTY UNDER THIS SUBDIVISION
13 WITHOUT THE WRITTEN CONSENT OF THE PROSECUTING ATTORNEY OR, IF THE
14 ATTORNEY GENERAL IS ACTIVELY HANDLING A CASE INVOLVING OR RELATING
15 TO THE PROPERTY, THE ATTORNEY GENERAL.

16 (2) PROPERTY TAKEN OR DETAINED UNDER THIS ACT IS NOT SUBJECT
17 TO AN ACTION TO RECOVER PERSONAL PROPERTY, BUT IS CONSIDERED TO BE
18 IN THE CUSTODY OF THE SEIZING AGENCY SUBJECT ONLY TO THIS SECTION
19 OR AN ORDER AND JUDGMENT OF THE COURT HAVING JURISDICTION OVER THE
20 FORFEITURE PROCEEDINGS. WHEN PROPERTY IS SEIZED UNDER THIS ACT, THE
21 SEIZING AGENCY MAY DO ANY OF THE FOLLOWING:

22 (A) PLACE THE PROPERTY UNDER SEAL.

23 (B) REMOVE THE PROPERTY TO A PLACE DESIGNATED BY THE COURT.

24 (C) REQUIRE THE ADMINISTRATOR TO TAKE CUSTODY OF THE PROPERTY
25 AND REMOVE IT TO AN APPROPRIATE LOCATION FOR DISPOSITION IN
26 ACCORDANCE WITH LAW.

27 (D) DEPOSIT MONEY SEIZED UNDER THIS ACT INTO AN INTEREST-

1 BEARING ACCOUNT IN A FINANCIAL INSTITUTION. AS USED IN THIS
2 SUBDIVISION, "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONALLY
3 CHARTERED BANK OR A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN
4 ASSOCIATION, SAVINGS BANK, OR CREDIT UNION WHOSE DEPOSITS ARE
5 INSURED BY AN AGENCY OF THE UNITED STATES GOVERNMENT AND THAT
6 MAINTAINS A PRINCIPAL OFFICE OR BRANCH OFFICE LOCATED IN THIS STATE
7 UNDER THE LAWS OF THIS STATE OR THE UNITED STATES.

8 (3) TITLE TO REAL PROPERTY FORFEITED UNDER THIS ACT SHALL BE
9 DETERMINED BY A COURT OF COMPETENT JURISDICTION. A FORFEITURE OF
10 REAL PROPERTY ENCUMBERED BY A BONA FIDE SECURITY INTEREST IS
11 SUBJECT TO THE INTEREST OF THE SECURED PARTY WHO NEITHER HAD
12 KNOWLEDGE OF NOR CONSENTED TO THE ACT OR OMISSION.

13 (4) AN ATTORNEY FOR A PERSON WHO IS CHARGED WITH A CRIME
14 INVOLVING OR RELATED TO THE MONEY SEIZED UNDER THIS ACT HAS 60 DAYS
15 WITHIN WHICH TO EXAMINE THAT MONEY. THIS 60-DAY PERIOD BEGINS TO
16 RUN AFTER NOTICE IS GIVEN UNDER SUBSECTION (1) (A) BUT BEFORE THE
17 MONEY IS DEPOSITED INTO A FINANCIAL INSTITUTION UNDER SUBSECTION
18 (2) (D). IF THE ATTORNEY GENERAL, PROSECUTING ATTORNEY, OR CITY OR
19 TOWNSHIP ATTORNEY FAILS TO SUSTAIN HIS OR HER BURDEN OF PROOF IN
20 FORFEITURE PROCEEDINGS UNDER THIS ACT, THE COURT SHALL ORDER THE
21 RETURN OF THE MONEY, INCLUDING ANY INTEREST EARNED ON MONEY
22 DEPOSITED INTO A FINANCIAL INSTITUTION UNDER SUBSECTION (2) (D).

23 SEC. 19C. (1) WHEN PROPERTY IS FORFEITED UNDER THIS ACT, THE
24 LOCAL UNIT OF GOVERNMENT THAT SEIZED THE PROPERTY MAY DO ANY OF THE
25 FOLLOWING OR, IF THE PROPERTY IS SEIZED BY OR IN THE CUSTODY OF THE
26 STATE, THE STATE MAY DO ANY OF THE FOLLOWING:

27 (A) RETAIN IT FOR OFFICIAL USE.

1 (B) SELL THAT WHICH IS NOT REQUIRED TO BE DESTROYED BY LAW AND
2 WHICH IS NOT HARMFUL TO THE PUBLIC. THE PROCEEDS AND ANY MONEY,
3 NEGOTIABLE INSTRUMENTS, SECURITIES, OR ANY OTHER THING OF VALUE AS
4 DESCRIBED IN SECTION 19(D) THAT ARE FORFEITED UNDER THIS ACT SHALL
5 BE DEPOSITED WITH THE TREASURER OF THE ENTITY HAVING BUDGETARY
6 AUTHORITY OVER THE SEIZING AGENCY AND APPLIED AS FOLLOWS:

7 (i) FOR THE PAYMENT OF PROPER EXPENSES OF THE PROCEEDINGS FOR
8 FORFEITURE AND SALE, INCLUDING EXPENSES INCURRED DURING THE SEIZURE
9 PROCESS, MAINTENANCE OF CUSTODY, ADVERTISING, AND COURT COSTS,
10 EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3).

11 (ii) THE BALANCE REMAINING AFTER THE PAYMENT OF EXPENSES SHALL
12 BE DISTRIBUTED BY THE COURT HAVING JURISDICTION OVER THE FORFEITURE
13 PROCEEDINGS TO THE TREASURER OF THE ENTITY HAVING BUDGETARY
14 AUTHORITY OVER THE SEIZING AGENCY. IF MORE THAN 1 AGENCY WAS
15 SUBSTANTIALLY INVOLVED IN EFFECTING THE FORFEITURE, THE COURT
16 HAVING JURISDICTION OVER THE FORFEITURE PROCEEDING SHALL EQUITABLY
17 DISTRIBUTE THE MONEY AMONG THE TREASURERS OF THE ENTITIES HAVING
18 BUDGETARY AUTHORITY OVER THE SEIZING AGENCIES. THE MONEY RECEIVED
19 BY A SEIZING AGENCY UNDER THIS SUBPARAGRAPH AND ALL INTEREST AND
20 OTHER EARNINGS ON MONEY RECEIVED BY THE SEIZING AGENCY UNDER THIS
21 SUBPARAGRAPH SHALL BE USED TO ENHANCE LAW ENFORCEMENT EFFORTS AS
22 APPROPRIATED BY THE ENTITY HAVING BUDGETARY AUTHORITY OVER THE
23 SEIZING AGENCY. A DISTRIBUTION MADE UNDER THIS SUBPARAGRAPH SHALL
24 SERVE AS A SUPPLEMENT TO, AND NOT A REPLACEMENT FOR, THE FUNDS
25 BUDGETED ON THE DATE THAT THE AMENDATORY ACT THAT ADDED THIS
26 SECTION TAKES EFFECT FOR LAW ENFORCEMENT EFFORTS PERTAINING TO THIS
27 ACT.

1 (C) REQUIRE THE ADMINISTRATOR TO TAKE CUSTODY OF THE PROPERTY
2 AND REMOVE IT FOR DISPOSITION IN ACCORDANCE WITH LAW.

3 (2) IN THE COURSE OF SELLING REAL PROPERTY UNDER SUBSECTION
4 (1) (B), THE COURT THAT HAS ENTERED AN ORDER OF FORFEITURE MAY, ON
5 MOTION OF THE AGENCY TO WHOM THE PROPERTY HAS BEEN FORFEITED,
6 APPOINT A RECEIVER TO DISPOSE OF THE REAL PROPERTY FORFEITED. THE
7 RECEIVER SHALL BE ENTITLED TO REASONABLE COMPENSATION. THE RECEIVER
8 SHALL HAVE AUTHORITY TO DO ALL OF THE FOLLOWING:

9 (A) LIST THE FORFEITED REAL PROPERTY FOR SALE.

10 (B) MAKE WHATEVER ARRANGEMENTS ARE NECESSARY FOR THE
11 MAINTENANCE AND PRESERVATION OF THE FORFEITED REAL PROPERTY.

12 (C) ACCEPT OFFERS TO PURCHASE THE FORFEITED REAL PROPERTY.

13 (D) EXECUTE INSTRUMENTS TRANSFERRING TITLE TO THE FORFEITED
14 REAL PROPERTY.

15 (3) IF A COURT ENTERS AN ORDER OF FORFEITURE, THE COURT MAY
16 ORDER A PERSON WHO CLAIMED AN INTEREST IN THE FORFEITED PROPERTY
17 UNDER SECTION 19B(1) (C) TO PAY THE EXPENSES OF THE PROCEEDINGS OF
18 FORFEITURE TO THE ENTITY HAVING BUDGETARY AUTHORITY OVER THE
19 SEIZING AGENCY.

20 Enacting section 1. This amendatory act does not take effect
21 unless all of the following bills of the 95th Legislature are
22 enacted into law:

23 (a) Senate Bill No. 224.

24 (b) Senate Bill No. 225.

25 (c) Senate Bill No. 226.