

SENATE BILL No. 223

February 12, 2009, Introduced by Senators BASHAM, JELINEK and JACOBS and referred to the Committee on Judiciary.

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.

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

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

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

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

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

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

27 (6) Subsection (1) does not apply to a violation of a statute

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

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

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

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

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

26 (b) Solicit to extend credit to a consumer who does not have
27 an existing line of credit, or has not had or applied for a line of

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

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

21 (d) Extend credit to a consumer without exercising reasonable
22 procedures to verify the identity of that consumer. Compliance with
23 regulations issued for depository institutions, and to be issued
24 for other financial institutions, by the United States department
25 of treasury under section 326 of the USA patriot act of 2001, 31
26 USC 5318, is considered compliance with this subdivision. This
27 subdivision does not apply to a purchase of a credit obligation in

1 an acquisition, merger, purchase of assets, or assumption of
2 liabilities or any change to or review of an existing credit
3 account.

4 (2) A person who knowingly or intentionally violates
5 subsection (1) 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, 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, OR BOTH.**

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

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

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

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

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

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

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

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

22 (a) A delay is necessary in order for the person or agency to
23 take any measures necessary to determine the scope of the security
24 breach and restore the reasonable integrity of the database.
25 However, the agency or person shall provide the notice required
26 under this subsection without unreasonable delay after the person
27 or agency completes the measures necessary to determine the scope

1 of the security breach and restore the reasonable integrity of the
2 database.

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

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

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

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

17 (i) The recipient has expressly consented to receive electronic
18 notice.

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

24 (iii) The person or agency conducts its business primarily
25 through internet account transactions or on the internet.

26 (c) If not otherwise prohibited by state or federal law,
27 notice given by telephone by an individual who represents the

1 person or agency if all of the following are met:

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

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

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

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

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

23 (iii) Notifying major statewide media. A notification under this
24 subparagraph shall include a telephone number or a website address
25 that a person may use to obtain additional assistance and
26 information.

27 (6) A notice under this section shall ~~meet~~**DO** all of the

1 following:

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

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

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

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

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

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

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

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

22 (8) Except as provided in this subsection, after a person or
23 agency provides a notice under this section, the person or agency
24 shall notify each consumer reporting agency that compiles and
25 maintains files on consumers on a nationwide basis, as defined in
26 15 USC 1681a(p), of the security breach without unreasonable delay.
27 A notification under this subsection shall include the number of

1 notices that the person or agency provided to residents of this
2 state and the timing of those notices. This subsection does not
3 apply if either of the following is met:

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

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

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

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

25 (11) A public utility that sends monthly billing or account
26 statements to the postal address of its customers may provide
27 notice of a security breach to its customers in the manner

1 described in subsection (5), or alternatively by providing all of
2 the following:

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

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

6 (c) Conspicuous posting of the notice of the security breach
7 on the website of the public utility.

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

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

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

18 **(B) FOR A SECOND VIOLATION, BY IMPRISONMENT FOR NOT MORE THAN**
19 **93 DAYS OR A FINE OF NOT MORE THAN \$500.00 FOR EACH VIOLATION, OR**
20 **BOTH.**

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

24 (13) Subject to subsection (14), a person that knowingly fails
25 to provide any notice of a security breach required under this
26 section may be ordered to pay a civil fine of not more than \$250.00
27 for each failure to provide notice. The attorney general or a

1 prosecuting attorney may bring an action to recover a civil fine
2 under this section.

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

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

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

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

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

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

24 (2) A person shall not distribute an advertisement or make any
25 other solicitation that is substantially similar to a notice
26 required under section 12(5) or by federal law, if the form of that
27 notice is prescribed by state or federal law, rule, or regulation.

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

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

6 (B) FOR A SECOND VIOLATION, BY IMPRISONMENT FOR NOT MORE THAN
7 93 DAYS OR A FINE OF NOT MORE THAN \$2,000.00 FOR EACH VIOLATION, OR
8 BOTH.

9 (C) FOR A THIRD OR SUBSEQUENT VIOLATION, BY IMPRISONMENT FOR
10 NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$3,000.00 FOR EACH
11 VIOLATION, OR BOTH.

12 (4) SUBSECTION (3) does not affect the availability of any
13 civil remedy for a violation of this section or any other state or
14 federal law.

15 SEC. 19. THE FOLLOWING PROPERTY IS SUBJECT TO FORFEITURE:

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

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

23 (i) A CONVEYANCE USED BY A PERSON AS A COMMON CARRIER IN THE
24 TRANSACTION OF BUSINESS AS A COMMON CARRIER IS NOT SUBJECT TO
25 FORFEITURE UNLESS IT IS DETERMINED THAT THE OWNER OR OTHER PERSON
26 IN CHARGE OF THE CONVEYANCE IS A CONSENTING PARTY OR PRIVY TO A
27 VIOLATION OF THIS ACT.

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

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

7 (C) BOOKS, RECORDS, COMPUTERS, ELECTRONIC EQUIPMENT, AND
8 RESEARCH PRODUCTS AND MATERIALS, INCLUDING MICROFILM, DIGITAL
9 MEDIA, TAPES, AND DATA, USED OR INTENDED FOR USE IN VIOLATION OF
10 THIS ACT.

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

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

20 (A) THE PROPERTY IS SEIZED INCIDENT TO A LAWFUL ARREST,
21 PURSUANT TO A SEARCH WARRANT, OR PURSUANT TO AN INSPECTION UNDER AN
22 ADMINISTRATIVE INSPECTION WARRANT.

23 (B) THE PROPERTY IS THE SUBJECT OF A PRIOR JUDGMENT IN FAVOR
24 OF THIS STATE IN AN INJUNCTION OR FORFEITURE PROCEEDING UNDER THIS
25 ACT.

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

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

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

5 SEC. 19B. (1) IF PROPERTY IS SEIZED PURSUANT TO SECTION 19A,
6 FORFEITURE PROCEEDINGS SHALL BE INSTITUTED PROMPTLY. IF THE
7 PROPERTY IS SEIZED WITHOUT PROCESS AS PROVIDED UNDER SECTION 19A
8 AND THE TOTAL VALUE OF THE PROPERTY SEIZED DOES NOT EXCEED
9 \$50,000.00, THE FOLLOWING PROCEDURE SHALL BE USED:

10 (A) THE LOCAL UNIT OF GOVERNMENT THAT SEIZED THE PROPERTY OR,
11 IF THE PROPERTY WAS SEIZED BY THE STATE, THE STATE SHALL NOTIFY THE
12 OWNER OF THE PROPERTY THAT THE PROPERTY HAS BEEN SEIZED AND THAT
13 THE LOCAL UNIT OF GOVERNMENT OR, IF APPLICABLE, THE STATE INTENDS
14 TO FORFEIT AND DISPOSE OF THE PROPERTY BY DELIVERING A WRITTEN
15 NOTICE TO THE OWNER OF THE PROPERTY OR BY SENDING THE NOTICE TO THE
16 OWNER BY CERTIFIED MAIL. IF THE NAME AND ADDRESS OF THE OWNER ARE
17 NOT REASONABLY ASCERTAINABLE OR DELIVERY OF THE NOTICE CANNOT BE
18 REASONABLY ACCOMPLISHED, THE NOTICE SHALL BE PUBLISHED IN A
19 NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE
20 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.

1 (C) ANY PERSON CLAIMING AN INTEREST IN PROPERTY THAT IS THE
2 SUBJECT OF A NOTICE UNDER SUBDIVISION (A) MAY, WITHIN 20 DAYS AFTER
3 RECEIPT OF THE NOTICE OR OF THE DATE OF THE FIRST PUBLICATION OF
4 THE NOTICE, FILE A WRITTEN CLAIM SIGNED BY THE CLAIMANT WITH THE
5 LOCAL UNIT OF GOVERNMENT OR THE STATE EXPRESSING HIS OR HER
6 INTEREST IN THE PROPERTY. THE PERSON FILING THE CLAIM SHALL GIVE A
7 BOND TO THE LOCAL UNIT OF GOVERNMENT OR THE STATE IN THE AMOUNT OF
8 10% OF THE VALUE OF THE CLAIMED PROPERTY, BUT NOT LESS THAN \$250.00
9 OR GREATER THAN \$5,000.00, WITH SURETIES APPROVED BY THE LOCAL UNIT
10 OF GOVERNMENT OR THE STATE CONTAINING THE CONDITION THAT IF THE
11 PROPERTY IS ORDERED FORFEITED BY THE COURT THE OBLIGOR SHALL PAY
12 ALL COSTS AND EXPENSES OF THE FORFEITURE PROCEEDINGS. THE LOCAL
13 UNIT OF GOVERNMENT OR, IF APPLICABLE, THE STATE SHALL TRANSMIT THE
14 CLAIM AND BOND WITH A LIST AND DESCRIPTION OF THE PROPERTY SEIZED
15 TO THE ATTORNEY GENERAL, THE PROSECUTING ATTORNEY FOR THE COUNTY,
16 OR THE CITY OR TOWNSHIP ATTORNEY FOR THE LOCAL UNIT OF GOVERNMENT
17 IN WHICH THE SEIZURE WAS MADE. THE ATTORNEY GENERAL, THE
18 PROSECUTING ATTORNEY, OR THE CITY OR TOWNSHIP ATTORNEY SHALL
19 PROMPTLY INSTITUTE FORFEITURE PROCEEDINGS AFTER THE EXPIRATION OF
20 THE 20-DAY PERIOD. HOWEVER, UNLESS ALL CRIMINAL PROCEEDINGS
21 INVOLVING OR RELATING TO THE PROPERTY HAVE BEEN COMPLETED, A CITY
22 OR TOWNSHIP ATTORNEY SHALL NOT INSTITUTE FORFEITURE PROCEEDINGS
23 WITHOUT THE CONSENT OF THE PROSECUTING ATTORNEY OR, IF THE ATTORNEY
24 GENERAL IS ACTIVELY HANDLING A CASE INVOLVING OR RELATING TO THE
25 PROPERTY, THE ATTORNEY GENERAL.

26 (D) IF NO CLAIM IS FILED OR BOND GIVEN WITHIN THE 20-DAY
27 PERIOD AS DESCRIBED IN SUBDIVISION (C), THE LOCAL UNIT OF

1 GOVERNMENT OR THE STATE SHALL DECLARE THE PROPERTY FORFEITED AND
2 SHALL DISPOSE OF THE PROPERTY AS PROVIDED UNDER SECTION 19C.
3 HOWEVER, UNLESS ALL CRIMINAL PROCEEDINGS INVOLVING OR RELATING TO
4 THE PROPERTY HAVE BEEN COMPLETED, THE LOCAL UNIT OF GOVERNMENT OR
5 THE STATE SHALL NOT DISPOSE OF THE PROPERTY UNDER THIS SUBDIVISION
6 WITHOUT THE WRITTEN CONSENT OF THE PROSECUTING ATTORNEY OR, IF THE
7 ATTORNEY GENERAL IS ACTIVELY HANDLING A CASE INVOLVING OR RELATING
8 TO THE PROPERTY, THE ATTORNEY GENERAL.

9 (2) PROPERTY TAKEN OR DETAINED UNDER THIS ACT IS NOT SUBJECT
10 TO AN ACTION TO RECOVER PERSONAL PROPERTY, BUT IS CONSIDERED TO BE
11 IN THE CUSTODY OF THE SEIZING AGENCY SUBJECT ONLY TO THIS SECTION
12 OR AN ORDER AND JUDGMENT OF THE COURT HAVING JURISDICTION OVER THE
13 FORFEITURE PROCEEDINGS. WHEN PROPERTY IS SEIZED UNDER THIS ACT, THE
14 SEIZING AGENCY MAY DO ANY OF THE FOLLOWING:

15 (A) PLACE THE PROPERTY UNDER SEAL.

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

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

20 (D) DEPOSIT MONEY SEIZED UNDER THIS ACT INTO AN INTEREST-
21 BEARING ACCOUNT IN A FINANCIAL INSTITUTION. AS USED IN THIS
22 SUBDIVISION, "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONALLY
23 CHARTERED BANK OR A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN
24 ASSOCIATION, SAVINGS BANK, OR CREDIT UNION WHOSE DEPOSITS ARE
25 INSURED BY AN AGENCY OF THE UNITED STATES GOVERNMENT AND THAT
26 MAINTAINS A PRINCIPAL OFFICE OR BRANCH OFFICE LOCATED IN THIS STATE
27 UNDER THE LAWS OF THIS STATE OR THE UNITED STATES.

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

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

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

20 (A) RETAIN IT FOR OFFICIAL USE.

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

27 (i) FOR THE PAYMENT OF PROPER EXPENSES OF THE PROCEEDINGS FOR

1 FORFEITURE AND SALE, INCLUDING EXPENSES INCURRED DURING THE SEIZURE
2 PROCESS, MAINTENANCE OF CUSTODY, ADVERTISING, AND COURT COSTS,
3 EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3).

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

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

23 (2) IN THE COURSE OF SELLING REAL PROPERTY UNDER SUBSECTION
24 (1)(B), THE COURT THAT HAS ENTERED AN ORDER OF FORFEITURE MAY, ON
25 MOTION OF THE AGENCY TO WHOM THE PROPERTY HAS BEEN FORFEITED,
26 APPOINT A RECEIVER TO DISPOSE OF THE REAL PROPERTY FORFEITED. THE
27 RECEIVER SHALL BE ENTITLED TO REASONABLE COMPENSATION. THE RECEIVER

1 SHALL HAVE AUTHORITY TO DO ALL OF THE FOLLOWING:

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

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

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

6 (D) EXECUTE INSTRUMENTS TRANSFERRING TITLE TO THE FORFEITED
7 REAL PROPERTY.

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

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

16 (a) Senate Bill No. 226.

17

18 (b) Senate Bill No. 225.

19

20 (c) Senate Bill No. 224.

21