

Act No. 314  
Public Acts of 2010  
Approved by the Governor  
December 21, 2010  
Filed with the Secretary of State  
December 21, 2010  
EFFECTIVE DATE: April 1, 2011

**STATE OF MICHIGAN  
95TH LEGISLATURE  
REGULAR SESSION OF 2010**

Introduced by Reps. Spade, DeShazor, Lemmons, Tlaib, Leland, Switalski and Bauer

# **ENROLLED HOUSE BILL No. 4325**

AN ACT to amend 2004 PA 452, entitled "An act to prohibit certain acts and practices concerning identity theft; to require notification of a security breach of a database that contains certain personal information; to provide for the powers and duties of certain state and local governmental officers and entities; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," (MCL 445.61 to 445.77) by adding sections 19a, 19b, and 19c.

*The People of the State of Michigan enact:*

Sec. 19a. Property that is subject to forfeiture under this act may be seized upon process issued by the circuit court having jurisdiction over the property. Seizure without process may be made under any of the following circumstances:

- (a) The property is seized incident to a lawful arrest, pursuant to a search warrant, or pursuant to an inspection under an administrative inspection warrant.
- (b) The property is the subject of a prior judgment in favor of this state in an injunction or forfeiture proceeding under this act.
- (c) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.
- (d) There is probable cause to believe that the property was used or is intended to be used in violation of this act.
- (e) There is probable cause to believe that the property is the proceeds from activity in violation of this act.

Sec. 19b. (1) If property is seized pursuant to section 19a, forfeiture proceedings shall be instituted promptly. If the property is seized without process as provided under section 19a and the total value of the property seized does not exceed \$50,000.00, the following procedure shall be used:

- (a) The local unit of government that seized the property or, if the property was seized by the state, the state shall notify the owner of the property that the property has been seized and that the local unit of government or, if applicable, the state intends to forfeit and dispose of the property by delivering a written notice to the owner of the property or by sending the notice to the owner by certified mail. If the name and address of the owner are not reasonably ascertainable or delivery of the notice cannot be reasonably accomplished, the notice shall be published in a newspaper of general circulation in the county in which the property was seized, for 10 successive publishing days.
- (b) Unless all criminal proceedings involving or relating to the property have been completed, the seizing agency shall immediately notify the prosecuting attorney for the county in which the property was seized or, if the attorney general is actively handling a case involving or relating to the property, the attorney general of the seizure of the property and the intention to forfeit and dispose of the property.

(c) Any person claiming an interest in property that is the subject of a notice under subdivision (a) may, within 20 days after receipt of the notice or of the date of the first publication of the notice, file a written claim signed by the claimant with the local unit of government or the state expressing his or her interest in the property. The person filing the claim shall give a bond to the local unit of government or the state in the amount of 10% of the value of the claimed property, but not less than \$250.00 or greater than \$5,000.00, with sureties approved by the local unit of government or the state containing the condition that if the property is ordered forfeited by the court the obligor shall pay all costs and expenses of the forfeiture proceedings. The local unit of government or, if applicable, the state shall transmit the claim and bond with a list and description of the property seized to the attorney general, the prosecuting attorney for the county, or the city or township attorney for the local unit of government in which the seizure was made. The attorney general, the prosecuting attorney, or the city or township attorney shall promptly institute forfeiture proceedings after the expiration of the 20-day period. However, unless all criminal proceedings involving or relating to the property have been completed, a city or township attorney shall not institute forfeiture proceedings without the consent of the prosecuting attorney or, if the attorney general is actively handling a case involving or relating to the property, the attorney general.

(d) If no claim is filed or bond given within the 20-day period as described in subdivision (c), the local unit of government or the state shall declare the property forfeited and shall dispose of the property as provided under section 19c. However, unless all criminal proceedings involving or relating to the property have been completed, the local unit of government or the state shall not dispose of the property under this subdivision without the written consent of the prosecuting attorney or, if the attorney general is actively handling a case involving or relating to the property, the attorney general.

(2) Property taken or detained under this act is not subject to an action to recover personal property, but is considered to be in the custody of the seizing agency subject only to this section or an order and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this act, the seizing agency may do any of the following:

- (a) Place the property under seal.
- (b) Remove the property to a place designated by the court.
- (c) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) Deposit money seized under this act into an interest-bearing account in a financial institution. As used in this subdivision, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

(3) Title to real property forfeited under this act shall be determined by a court of competent jurisdiction. A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.

(4) An attorney for a person who is charged with a crime involving or related to the money seized under this act has 60 days within which to examine that money. This 60-day period begins to run after notice is given under subsection (1)(a) but before the money is deposited into a financial institution under subsection (2)(d). If the attorney general, prosecuting attorney, or city or township attorney fails to sustain his or her burden of proof in forfeiture proceedings under this act, the court shall order the return of the money, including any interest earned on money deposited into a financial institution under subsection (2)(d).

Sec. 19c. (1) When property is forfeited under this act, the local unit of government that seized the property may do any of the following or, if the property is seized by or in the custody of the state, the state may do any of the following:

- (a) Retain it for official use.
- (b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and any money, negotiable instruments, securities, or any other thing of value as described in section 19(d) that are forfeited under this act shall be deposited with the treasurer of the entity having budgetary authority over the seizing agency and applied as follows:

(i) For the payment of proper expenses of the proceedings for forfeiture and sale, including expenses incurred during the seizure process, maintenance of custody, advertising, and court costs, except as otherwise provided in subsection (3).

(ii) The balance remaining after the payment of expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the treasurer of the entity having budgetary authority over the seizing agency. If more than 1 agency was substantially involved in effecting the forfeiture, the court having jurisdiction over the forfeiture proceeding shall equitably distribute the money among the treasurers of the entities having budgetary authority over the seizing agencies. The money received by a seizing agency under this subparagraph and all interest and other

earnings on money received by the seizing agency under this subparagraph shall be used to enhance law enforcement efforts as appropriated by the entity having budgetary authority over the seizing agency. A distribution made under this subparagraph shall serve as a supplement to, and not a replacement for, the funds budgeted on the date that the amendatory act that added this section takes effect for law enforcement efforts pertaining to this act.

(c) Take custody of the property and remove it for disposition in accordance with law.

(2) In the course of selling real property under subsection (1)(b), the court that has entered an order of forfeiture may, on motion of the agency to whom the property has been forfeited, appoint a receiver to dispose of the real property forfeited. The receiver shall be entitled to reasonable compensation. The receiver shall have authority to do all of the following:

(a) List the forfeited real property for sale.

(b) Make whatever arrangements are necessary for the maintenance and preservation of the forfeited real property.

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

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

(3) If a court enters an order of forfeiture, the court may order a person who claimed an interest in the forfeited property under section 19b(1)(c) to pay the expenses of the proceedings of forfeiture to the entity having budgetary authority over the seizing agency.

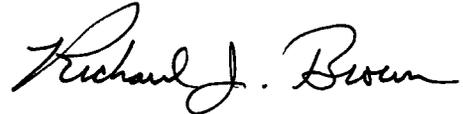
Enacting section 1. This amendatory act takes effect April 1, 2011.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 95th Legislature are enacted into law:

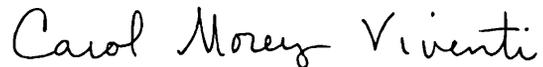
(a) Senate Bill No. 223.

(b) Senate Bill No. 225.

(c) Senate Bill No. 226.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor