

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5233

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 4702, 4703, 4704, 4705, 4706, 4707, and 4708
(MCL 600.4702, 600.4703, 600.4704, 600.4705, 600.4706, 600.4707,
and 600.4708), section 4702 as amended by 2012 PA 350, sections
4703, 4704, 4705, and 4708 as amended by 2006 PA 128, and sections
4706 and 4707 as added by 1988 PA 104.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 4702. (1) Except as otherwise provided in this section,
- 2 the following property is subject to seizure by, and forfeiture to,
- 3 a local unit of government or this state under this chapter:
- 4 (a) All personal property that is the proceeds of a crime, the
- 5 substituted proceeds of a crime, or an instrumentality of a crime.

1 (b) All real property that is the proceeds of a crime, ~~or the~~
2 substituted proceeds of a crime, **OR AN INSTRUMENTALITY OF A CRIME**,
3 except real property that is the primary residence of the spouse or
4 a dependent child of the owner, unless that spouse or dependent
5 child had prior knowledge of, and consented to the commission of,
6 the crime.

7 (c) In the case of a crime that is a violation of section 49,
8 **CHAPTER LXVIIA**, or chapter LXXXIII-A of the Michigan penal code,
9 1931 PA 328, MCL 750.49, **750.462A TO 750.462H**, and 750.543a to
10 750.543z, all property described in subdivisions (a) and (b), and
11 all real property or personal property that performed 1 of the
12 following functions:

13 (i) Contributed directly and materially to the commission of
14 the crime.

15 (ii) Was used to conceal the crime.

16 (iii) Was used to escape from the scene of the crime.

17 (iv) Was used to conceal the identity of 1 or more of the
18 individuals who committed the crime.

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

21 (a) The owner of the property did not have prior knowledge of,
22 or consent to the commission of, the crime, **IF THE LACK OF PRIOR**
23 **KNOWLEDGE IS NOT THE RESULT OF THE OWNER'S WILLFUL BLINDNESS.**

24 (b) ~~The~~ **UPON LEARNING OF THE COMMISSION OF THE CRIME, THE**
25 owner **OF THE PROPERTY** served written **AND TIMELY** notice of the
26 commission of the crime upon an appropriate law enforcement agency,
27 and served a written **AND TIMELY** notice to quit upon the person who

1 committed the crime.

2 (3) The forfeiture of property encumbered by a security
3 interest is subject to the interest of the holder of the security
4 interest who did not have prior knowledge of, or consent to the
5 commission of, the crime.

6 (4) The forfeiture of property encumbered by an unpaid balance
7 on a land contract is subject to the interest of the land contract
8 vendor, if the vendor did not have prior knowledge of, or consent
9 to the commission of, the crime.

10 (5) The forfeiture of the substituted proceeds of a crime is
11 limited to the value of the proceeds of the crime ~~plus the~~ **IN**

12 **ADDITION TO BOTH OF THE FOLLOWING:**

13 **(A) THE** amount by which any restitution or damages owed to the
14 victim of the crime exceeds the value of the proceeds of the crime.

15 **(B) THE AMOUNT BY WHICH ANY REASONABLE EXPENSES OF THE**
16 **FORFEITURE PROCEEDINGS AND SALE, INCLUDING, BUT NOT LIMITED TO,**
17 **EXPENSES FOR MAINTAINING CUSTODY OF THE PROPERTY, AS WELL AS**
18 **ADVERTISING AND PROSECUTION COSTS, EXCEEDS THE VALUE OF THE**
19 **PROCEEDS OF THE CRIME.**

20 Sec. 4703. (1) Personal property subject to forfeiture under
21 this chapter may be seized pursuant to an order of seizure issued
22 by the court having jurisdiction over the property upon a showing
23 of probable cause that the property is subject to forfeiture.

24 (2) Personal property subject to forfeiture under this chapter
25 may be seized without process under any of the following
26 circumstances:

27 (a) The property is the proceeds of a crime, **THE SUBSTITUTED**

1 **PROCEEDS OF A CRIME**, or an instrumentality of a crime and the
2 seizure is incident to a lawful arrest.

3 (b) The seizure is pursuant to a valid search warrant.

4 (c) The seizure is pursuant to an inspection under a valid
5 administrative inspection warrant.

6 (d) There is probable cause to believe that the property is
7 directly or indirectly dangerous to health or safety.

8 (e) Exigent circumstances exist that preclude the obtaining of
9 a court order, and there is probable cause to believe that the
10 property is ~~the proceeds of a crime or an instrumentality of a~~

11 ~~crime~~. **SUBJECT TO FORFEITURE UNDER THIS CHAPTER.**

12 (f) The property is the subject of a prior judgment in favor
13 of this state in a forfeiture proceeding.

14 (3) The attorney general, or the prosecuting attorney or the
15 city or township attorney for the local unit of government in which
16 the property is located, may apply ex parte for an order
17 authorizing the filing of a lien notice against real property
18 subject to forfeiture under this chapter. The application shall be
19 supported by a sworn affidavit setting forth probable cause for a
20 forfeiture action pursuant to this chapter. An order authorizing
21 the filing of a lien notice may be issued upon a showing of
22 probable cause to believe that the property is ~~the proceeds of a~~
23 ~~crime or the substituted proceeds of a crime~~. **SUBJECT TO FORFEITURE**
24 **UNDER THIS CHAPTER.**

25 (4) Property that belongs to the victim of a crime shall
26 promptly be returned to the victim, except in the following
27 circumstances:

1 (a) ~~If the~~ **THE** property is contraband.

2 (b) ~~If the~~ **THE** ownership of the property is disputed until the
3 dispute is resolved.

4 (c) ~~If the~~ **THE** property is required to be retained as evidence
5 ~~pursuant to~~ **UNDER** section 4(4) of the crime victim's rights act,
6 1985 PA 87, MCL 780.754.

7 (5) Personal property seized under this chapter is not subject
8 to any other action to recover personal property, but is considered
9 to be in the custody of the seizing agency subject only to
10 subsection (4) and sections 4705 to 4707, or to an order and
11 judgment of the court having jurisdiction over the forfeiture
12 proceedings. Except as provided in subsection (6), when property is
13 seized under this chapter, the seizing agency may do either or both
14 of the following:

15 (a) Place the property under seal.

16 (b) Remove the property to a place designated by the court.

17 (6) The seizing agency may deposit money seized under this
18 chapter into an interest-bearing account in a financial
19 institution. As used in this subsection, "financial institution"
20 means a state or nationally chartered bank or a state or federally
21 chartered savings and loan association, savings bank, or credit
22 union whose deposits are insured by an agency of the United States
23 government and that maintains a principal office or branch office
24 located in this state under the laws of this state or the United
25 States.

26 **(7) TITLE TO ALL PROPERTY SUBJECT TO FORFEITURE UNDER THIS**
27 **CHAPTER VESTS IN THE PLAINTIFF UPON THE COMMISSION OF THE CONDUCT**

1 GIVING RISE TO FORFEITURE, TOGETHER WITH THE PROCEEDS OF THE
2 PROPERTY AFTER THE PROPERTY VESTS UNDER THIS SUBSECTION. ANY
3 SUBSEQUENT PROPERTY TRANSFER THAT OCCURS BEFORE THE FINAL
4 DISPOSITION OF THE FORFEITURE PROCEEDING IS VOID AGAINST THE
5 PLAINTIFF UNLESS THE TRANSFEREE CLAIMS AND ESTABLISHES ALL OF THE
6 FOLLOWING:

7 (A) THE TRANSFEREE HAS AN INTEREST OF RECORD IN THE PROPERTY.

8 (B) THE TRANSFEREE PURCHASED THE PROPERTY IN GOOD FAITH AND
9 FOR FAIR VALUE.

10 (C) THE PROPERTY INTEREST WAS ACQUIRED WITHOUT NOTICE OF THE
11 FORFEITURE PROCEEDING OR THE FACTS THAT GAVE RISE TO THE
12 PROCEEDING.

13 Sec. 4704. (1) Within ~~7~~28 days after personal property is
14 seized or a lien notice is filed against real property under
15 section 4703, the seizing agency or, if the property is real
16 property, the attorney general, the prosecuting attorney, or the
17 city or township attorney shall give notice of the seizure of the
18 property and the intent to forfeit and dispose of the property
19 according to this chapter to each of the following persons:

20 (a) If charges have been filed against a person for a crime,
21 the person charged.

22 (b) Each person with a known ownership interest in the
23 property.

24 (c) Each mortgagee, person holding a security interest, or
25 person having a lien that appears on the certificate of title or is
26 on file with the secretary of state or appropriate register of
27 deeds, if the property is real property, a mobile home, motor

1 vehicle, watercraft, or other personal property.

2 (d) Each holder of a preferred ship mortgage of record in the
3 appropriate public office pursuant to 46 USC 30101, 31301-31343, if
4 the property is a watercraft more than 28 feet long or a watercraft
5 that has a capacity of 5 net tons or more.

6 (e) Each person whose security interest is recorded with the
7 appropriate public office pursuant to the federal aviation act of
8 1958, Public Law 85-726, if the property is an aircraft, aircraft
9 engine, or aircraft propeller, or a part of an aircraft, aircraft
10 engine, or aircraft propeller.

11 (f) Each person with a known security interest in the
12 property.

13 (g) Each victim of the crime.

14 (2) The notice required under subsection (1) shall be a
15 written notice delivered to the person or sent to the person by
16 certified mail. If the name and address of the person are not
17 reasonably ascertainable or delivery of the notice cannot
18 reasonably be accomplished, the notice shall be published in a
19 newspaper of general circulation in the county in which the
20 personal property was seized or the real property is located for 10
21 successive publishing days. Proof of written notice or publication
22 shall be filed with the court having jurisdiction over the seizure
23 or forfeiture.

24 (3) If personal property was seized, the seizing agency shall
25 immediately notify the prosecuting attorney for the county in which
26 the property was seized or, if the attorney general is actively
27 handling a case involving or relating to the property, the attorney

1 general of the seizure of the property and the intent to forfeit
2 and dispose of the property according to this chapter.

3 (4) An attorney for a person described in subsection (1)(a)
4 shall be afforded a period of ~~60~~**56** days within which to examine
5 money seized under section 4703. This ~~60-day~~**56-DAY** period shall
6 begin to run after notice is given under subsection (1) but before
7 the money is deposited into a financial institution.

8 Sec. 4705. (1) A person who did not have prior knowledge of,
9 or consent to the commission of, the crime, **OR A TRANSFEREE UNDER**
10 **SECTION 4703(7)**, may move the court having jurisdiction to return
11 the property or discharge the lien on the grounds that the property
12 was illegally seized, that the property is not subject to
13 forfeiture under this chapter, or that the person has an ownership
14 or security interest in the property and did not have prior
15 knowledge of, or consent to the commission of, the crime, **OR**
16 **ACQUIRED AN OWNERSHIP OR SECURITY INTEREST BY A TRANSFER THAT IS**
17 **NOT VOID UNDER SECTION 4703(7)**. The court shall hear the motion
18 within ~~30~~**28** days after the motion is filed.

19 (2) At the hearing on the motion filed under subsection (1),
20 the attorney general, or the prosecuting attorney or the city or
21 township attorney for the local unit of government in which the
22 property was seized or the lien was filed, shall establish the
23 following:

24 (a) Probable cause to believe that the property is subject to
25 forfeiture under this chapter and that the person filing the motion
26 had prior knowledge of, or consented to the commission of, the
27 crime, **OR ACQUIRED HIS OR HER INTEREST BY A TRANSFER THAT IS VOID**

1 UNDER SECTION 4703(7). PRIOR WRITTEN NOTICE OF ILLEGAL USE OF THE
2 PROPERTY TO THE INTEREST HOLDER CONSTITUTES PRIMA FACIE EVIDENCE OF
3 KNOWLEDGE OF THE CRIME.

4 (b) If the person filing the motion claims the property was
5 illegally seized, that the property was properly seized.

6 (3) If the attorney general, prosecuting attorney, or city or
7 township attorney fails to sustain his or her burden of proof under
8 subsection (2), the court shall order the return of the property,
9 including any interest earned on money deposited in a financial
10 institution as ~~described~~ **DEFINED** in section 4703(6), or the
11 discharge of the lien.

12 (4) If a motor vehicle is seized under section 4703, the owner
13 of the vehicle may move the court having jurisdiction over the
14 forfeiture proceedings to require the seizing agency to file a lien
15 against the vehicle and to return the vehicle to the owner. The
16 court shall hear the motion within 7 days after the motion is
17 filed. If the owner of the vehicle establishes at the hearing that
18 he or she holds the legal title of the vehicle and that it is
19 necessary for him or her or his or her family to use the vehicle
20 pending the outcome of the forfeiture action, the court may order
21 the seizing agency to return the vehicle to the owner. If the court
22 orders the return of the vehicle to the owner, the court shall
23 order the seizing agency to file a lien against the vehicle **AND THE**
24 **OWNER TO POST A BOND IN AN AMOUNT EQUAL TO THE VALUE OF THE**
25 **VEHICLE.**

26 (5) The testimony of a person at a hearing held under this
27 section is not admissible against him or her in any criminal

1 proceeding except in a criminal prosecution for perjury. The
2 testimony of a person at a hearing held under this section does not
3 waive the person's constitutional right against self-incrimination.

4 Sec. 4706. (1) Except as otherwise provided by law, personal
5 property seized ~~pursuant to~~ **UNDER** section 4703 shall be returned to
6 the owner, or a lien filed against real property under section 4703
7 or against a motor vehicle under section 4705 shall be discharged,
8 within 7 days after the occurrence of any of following:

9 (a) A warrant is not issued against a person for the
10 commission of a crime within ~~7-28~~ days after the property is seized
11 or, if the property is real property, within ~~7-28~~ days after the
12 lien is filed.

13 (b) All charges against the consenting legal owner relating to
14 the commission of a crime are dismissed.

15 (c) The consenting legal owner charged with committing a crime
16 is acquitted of the crime.

17 (d) In the case of multiple defendants, all persons charged
18 with committing a crime are acquitted of the crime.

19 (e) Entry of a court order ~~pursuant to~~ **UNDER** this chapter for
20 the return of the property or the discharge of the lien.

21 **(2) BEFORE THE EXPIRATION OF PERIOD OF TIME PRESCRIBED UNDER**
22 **SECTION (1) (A), THE PROSECUTING ATTORNEY, ATTORNEY GENERAL, OR THE**
23 **CITY OR TOWNSHIP ATTORNEY OF THE LOCAL UNIT OF GOVERNMENT WHERE THE**
24 **PROPERTY IS SEIZED OR LOCATED MAY PETITION THE COURT EX PARTE FOR**
25 **NOT MORE THAN AN ADDITIONAL 28 DAYS TO COMPLETE ITS INVESTIGATION**
26 **AND ISSUE CHARGES OR RETURN THE PROPERTY. THE COURT SHALL GRANT AN**
27 **EXTENSION UNDER THIS SUBSECTION TO THE EXTENT NECESSARY UPON**

1 **DETERMINING THAT THERE IS GOOD CAUSE SHOWN FOR THE EXTENSION.**

2 Sec. 4707. (1) If property subject to forfeiture under this
3 chapter has a total value of less than \$100,000.00, within ~~7~~28
4 days after the conviction of a person of a crime, the state or
5 local unit of government seeking forfeiture of the property shall
6 give notice of the seizure of the property or, if a lien has been
7 filed, the filing of the lien, and the intent to begin proceedings
8 to forfeit and dispose of the property according to this chapter to
9 each of the persons to whom notice is required to be given under
10 section 4704. Notice shall be given in the same manner as required
11 under section 4704.

12 (2) Within ~~21~~28 days after receipt of the notice or of the
13 date of the first publication of the notice under subsection (1), a
14 person claiming an interest in property subject to the notice may
15 file a claim with the local unit of government or the state
16 expressing his or her interest in the property **AND ANY OBJECTION TO**
17 **FORFEITURE. THE OBJECTION SHALL BE WRITTEN, VERIFIED, AND SIGNED BY**
18 **THE CLAIMANT, AND INCLUDE A DESCRIPTION OF THE PROPERTY INTEREST**
19 **ASSERTED. THE VERIFICATION SHALL BE NOTARIZED AND INCLUDE A**
20 **CERTIFICATION STATING THAT THE UNDERSIGNED HAS EXAMINED THE CLAIM**
21 **AND ANSWER AND BELIEVES IT TO BE, TO THE BEST OF HIS OR HER**
22 **KNOWLEDGE, TRUE AND COMPLETE.**

23 (3) ~~If~~**EXCEPT IN THE CASE OF REAL PROPERTY, IF** no claim is
24 filed within the ~~21-day~~**28-DAY** period as described in subsection
25 (2), the local unit of government or the state shall declare the
26 property forfeited and shall dispose of the property according to
27 section 4708.

1 (4) If a claim is filed within the ~~21-day~~**28-DAY** period as
2 described in subsection (2), the local unit of government or the
3 state shall transmit the claim with a list and description of the
4 property to the attorney general or to the prosecuting attorney or
5 the city or township attorney for the local unit of government in
6 which the personal property was seized or the real property is
7 located. The attorney general, the prosecuting attorney, or the
8 city or township attorney shall institute a civil action for
9 forfeiture within ~~7-28~~ days after the expiration of the ~~21-day~~**28-**
10 **DAY** period.

11 (5) If property subject to forfeiture under this chapter has a
12 total value of more than \$100,000.00 **OR IS REAL PROPERTY**, the
13 attorney general, or the prosecuting attorney or the city or
14 township attorney for the local unit of government in which the
15 personal property was seized or the real property is located, shall
16 institute a civil action for forfeiture within ~~7-28~~ days after the
17 conviction of a person of a crime.

18 (6) At the forfeiture proceeding, the plaintiff shall prove
19 **ALL** the following by a preponderance of the evidence:

20 (a) ~~If the property is personal property, that~~**THAT** the
21 property is the proceeds of a crime, the substituted proceeds of a
22 crime, or an instrumentality of a crime.

23 ~~—— (b) If the property is real property, that the property is the~~
24 ~~proceeds of a crime or the substituted proceeds of a crime.~~

25 **(B)** ~~(c)~~ If a person, other than the person convicted of the
26 crime, claims an ownership or security interest in the property,
27 that the person claiming the interest in the property had prior

1 knowledge of, or consented to the commission of, the crime.

2 (C) IF A PERSON, OTHER THAN THE PERSON CONVICTED OF THE CRIME,
3 CLAIMS AN OWNERSHIP OR SECURITY INTEREST IN THE PROPERTY UNDER
4 SECTION 4703(7), THAT THE TRANSFER OCCURRED SUBSEQUENT TO THE
5 CRIMINAL CONDUCT THAT GAVE RISE TO FORFEITURE.

6 (7) IF THE PLAINTIFF CARRIES THE BURDEN OF PROOF DESCRIBED IN
7 SUBSECTION (6)(C), THE BURDEN OF PROOF SHIFTS TO THE CLAIMANT TO
8 PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THE TRANSFER WAS NOT
9 VOID UNDER SECTION 4703(7).

10 (8) ~~(7)~~—If the plaintiff fails to meet the burden of proof
11 under subsection (6), the property shall be returned to the owner
12 within 7 days **AFTER THE COURT ISSUES A DISPOSITIVE ORDER.**

13 Sec. 4708. (1) When property is forfeited under this chapter,
14 the unit of government that seized or filed a lien against the
15 property may sell the property that is not required to be destroyed
16 by law and that is not harmful to the public and may dispose of the
17 proceeds and any money, including any interest earned on money
18 deposited in a financial institution as described in section
19 4703(6), negotiable instrument, security, or other thing of value
20 that is forfeited ~~pursuant to~~ **UNDER** this chapter in the following
21 order of priority:

22 (a) Pay any outstanding security interest of a secured party
23 who did not have prior knowledge of, or consent to the commission
24 of, the crime, **OR DID NOT ACQUIRE HIS OR HER INTEREST AS THE RESULT**
25 **OF A TRANSFER THAT IS VOID UNDER SECTION 4703(7).**

26 (b) Satisfy any order of restitution in the prosecution for
27 the crime.

1 (c) Pay the claim of each person who shows that he or she is a
2 victim of the crime to the extent that the claim is not covered by
3 an order of restitution.

4 (d) Pay any outstanding lien against the property that has
5 been imposed by a governmental unit.

6 (e) Pay the proper expenses of the proceedings for forfeiture
7 and sale, including, but not limited to, expenses incurred during
8 the seizure process and expenses for maintaining custody of the
9 property, advertising, **AS WELL AS REASONABLE PROSECUTION** and court
10 costs.

11 (f) The balance remaining after the payment of restitution,
12 the claims of victims, outstanding liens, and expenses shall be
13 distributed by the court having jurisdiction over the forfeiture
14 proceedings to the unit or units of government substantially
15 involved in effecting the forfeiture. Seventy-five percent of the
16 money received by a unit of government under this subdivision shall
17 be used to enhance enforcement of the criminal laws and 25% of the
18 money shall be used to implement the **WILLIAM VAN REGENMORTER** crime
19 victim's rights act, 1985 PA 87, MCL 780.751 to 780.834. A unit of
20 government receiving money under this subdivision shall report
21 annually to the department of management and budget the amount of
22 money received under this subdivision that was used to enhance
23 enforcement of the criminal laws and the amount that was used to
24 implement the **WILLIAM VAN REGENMORTER** crime victim's rights act,
25 **1985 PA 87, MCL 780.751 TO 780.834.**

26 (2) In the course of selling real property ~~pursuant to~~ **UNDER**
27 subsection (1), the court that enters an order of forfeiture, on

1 motion of the unit of government to whom the property is forfeited,
2 may appoint a receiver to dispose of the real property forfeited.
3 The receiver is entitled to reasonable compensation. The receiver
4 has authority to do all of the following:

5 (a) List the forfeited real property for sale.

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

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

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

11 (3) IF ANY PROPERTY INCLUDED IN THE ORDER OF FORFEITURE UNDER
12 THIS CHAPTER CANNOT BE LOCATED OR HAS BEEN SOLD TO A BONA FIDE
13 PURCHASER FOR VALUE, PLACED BEYOND THE JURISDICTION OF THE COURT,
14 SUBSTANTIALLY DIMINISHED IN VALUE BY THE CONDUCT OF THE DEFENDANT,
15 OR COMMINGLED WITH OTHER PROPERTY THAT CANNOT BE DIVIDED WITHOUT
16 DIFFICULTY OR UNDUE INJURY TO INNOCENT PERSONS, THE COURT MAY ORDER
17 FORFEITURE OF ANY OTHER REACHABLE PROPERTY OF THE OWNER UP TO THE
18 VALUE OF THE PROPERTY THAT IS UNREACHABLE AS DESCRIBED IN THIS
19 SUBSECTION. THIS SUBSECTION ONLY APPLIES AGAINST AN OWNER THAT IS
20 ALSO THE PERSON CONVICTED OF THE CRIME UNDERLYING THE FORFEITURE
21 ACTION.

22 Enacting section 1. This amendatory act takes effect 90 days
23 after the date it is enacted into law.

24 Enacting section 2. This amendatory act does not take effect
25 unless House Bill No. 5234 of the 97th Legislature is enacted into
26 law.