

SUBSTITUTE FOR
HOUSE BILL NO. 4002

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7523 (MCL 333.7523), as amended by 2016 PA 418,
and by adding section 7523a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 7523. (1) ~~If~~ **Subject to section 7521a, if** property is
2 seized under section 7522, forfeiture proceedings ~~shall~~ **must** be
3 instituted promptly. If the property is seized without process
4 under section 7522, and the total value of the property seized does
5 not exceed \$50,000.00, the following procedure ~~shall~~ **must** be used:
6 (a) The local unit of government that seized the property or,
7 if the property was seized by this state, the state shall notify
8 the owner of the property that the property has been seized **and, if**



1 **charges have been filed against a person for a crime, the person**
2 **charged,** and that the local unit of government or, if applicable,
3 the state intends to forfeit and dispose of the property by
4 delivering a written notice to the owner of the property or by
5 sending the notice to the owner by certified mail. If the name and
6 address of the owner are not reasonably ascertainable, or delivery
7 of the notice cannot be reasonably accomplished, the notice ~~shall~~
8 **must** be published **on the local unit of government's or the**
9 **department of the attorney general's public website and** in a
10 newspaper of general circulation in the county in which the
11 property was seized, for 10 successive publishing days.

12 (b) Unless all criminal proceedings involving or relating to
13 the property have been completed, the seizing agency shall
14 immediately notify the prosecuting attorney for the county in which
15 the property was seized or, if the attorney general is actively
16 handling a case involving or relating to the property, the attorney
17 general of the seizure of the property and the intention to forfeit
18 and dispose of the property.

19 (c) Any person claiming an interest in property that is the
20 subject of a notice under subdivision (a) may, within 20 days after
21 receipt of the notice or of the date of the first publication of
22 the notice, file a written claim signed by the claimant with the
23 local unit of government or the state expressing his or her
24 interest in the property **and any objection to forfeiture. A claim**
25 **or an objection under this subsection must be written, verified,**
26 **and signed by the claimant, and include a detailed description of**
27 **the property and the property interest asserted. The verification**
28 **must include a certification under the penalty of perjury stating**
29 **that the undersigned has examined the claim and believes it to be,**



1 to the best of the claimant's knowledge, true and complete. A
2 written claim under this subsection must be made on the form
3 developed by the state court administrative office as required
4 under subsection (2). Upon the filing of the claim, the local unit
5 of government or, if applicable, this state shall transmit the
6 claim with a list and description of the property seized to the
7 attorney general, the prosecuting attorney for the county, or the
8 city or township attorney for the local unit of government in which
9 the seizure was made. The attorney general, the prosecuting
10 attorney, or the city or township attorney shall promptly institute
11 forfeiture proceedings after the expiration of the 20-day period.
12 However, unless all criminal proceedings involving or relating to
13 the property have been completed, a city or township attorney shall
14 not institute forfeiture proceedings without the consent of the
15 prosecuting attorney or, if the attorney general is actively
16 handling a case involving or relating to the property, the attorney
17 general.

18 (d) If no claim is filed within the 20-day period as described
19 in subdivision (c), the local unit of government or this state
20 shall declare the property forfeited and shall dispose of the
21 property as provided under section 7524. However, unless all
22 criminal proceedings involving or relating to the property have
23 been completed, the local unit of government or the state shall not
24 dispose of the property under this subdivision without the written
25 consent of the prosecuting attorney or, if the attorney general is
26 actively handling a case involving or relating to the property, the
27 attorney general.

28 (2) The state court administrative office shall develop and
29 make available to law enforcement agencies, courts, and the public



1 a form for asserting an ownership interest in seized property under
2 subsection (1) (c). The form must require a claimant to provide a
3 detailed description of the property, the claimant's ownership
4 interest in the property, and a signed attestation that the
5 claimant has a bona fide ownership interest in the property.

6 (3) ~~(2)~~—Property taken or detained under this article is not
7 subject to an action to recover personal property, but is deemed to
8 be in the custody of the seizing agency subject only to this
9 section or an order and judgment of the court having jurisdiction
10 over the forfeiture proceedings. When property is seized under this
11 article, the seizing agency may do any of the following:

12 (a) Place the property under seal.

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

14 (c) Require the administrator to take custody of the property
15 and remove it to an appropriate location for disposition in
16 accordance with law.

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

25 (4) ~~(3)~~—Title to real property forfeited under this article
26 ~~shall~~**must** be determined by a court of competent jurisdiction. A
27 forfeiture of real property encumbered by a bona fide security
28 interest is subject to the interest of the secured party who
29 neither had knowledge of nor consented to the act or omission.



(5) ~~(4)~~—An attorney for a person who is charged with a crime involving or related to the money seized under this article ~~shall~~ **must** be afforded a period of 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)~~. **(3)(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 article, the court shall order the return of the money, including any interest earned on money deposited into a financial institution under subsection ~~(2)(d)~~. **(3)(d)**.

Sec. 7523a. (1) If section 7521a applies to a forfeiture case under this article, the seized property is subject to forfeiture under section 7521, and a person has filed a claim as provided under section 7523, a civil forfeiture action under this act must be stayed during the pendency of the applicable criminal proceedings. The civil forfeiture action must proceed after the defendant is convicted of, or enters a guilty plea to, the offense involved, or 1 or more of the events described in section 7521a(2) applies.

(2) To the extent that it is practicable and consistent with the interests of justice, the court shall hold the hearing within 28 days of a plea or conviction described under section 7521a(1).

(3) At the forfeiture hearing, the plaintiff must prove 1 or both of the following, as applicable:

(a) The property is subject to forfeiture as provided in section 7521(1).

(b) If a person, other than the person who has been convicted of a violation of this article or entered into a plea agreement in



1 connection with a violation of this article as provided under
2 section 7521a(1), claims an ownership or security interest in the
3 property, that the person claiming the interest in the property had
4 prior knowledge of or consented to the commission of the crime.

5 (4) If the plaintiff fails to meet the burden of proof under
6 subsection (3), property seized under section 7522 must be returned
7 to the owner not more than 14 days from the date the court issues a
8 dispositive order.

9 (5) Except as otherwise provided in section 7521a, property
10 must be returned to the owner not more than 14 days after the
11 occurrence of any of the following:

12 (a) A warrant is not issued against a person for the
13 commission of a crime within 90 days after the property was seized.

14 (b) All charges against the person relating to the commission
15 of a crime are dismissed.

16 (c) The person charged with committing a crime is acquitted of
17 the crime.

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

20 (e) Entry of a court order under this article for the return
21 of the property.

22 (6) Property is not subject to seizure under section 7522 or
23 forfeiture under section 7521 if, upon learning of the commission
24 of a crime, the owner of the property served written and timely
25 notice of the commission of the crime upon an appropriate law
26 enforcement agency, and served a written and timely notice to quit
27 upon the person who committed the crime.

28 (7) A party to a forfeiture proceeding may seek an extension
29 of the time periods described in this section for good cause. The



1 court may grant a motion for an extension under this subsection for
2 good cause shown.

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

5 Enacting section 2. This amendatory act does not take effect
6 unless House Bill No. 4001 of the 100th Legislature is enacted into
7 law.

