

## THE MICHIGAN PENAL CODE (EXCERPT)

### Act 328 of 1931

#### CHAPTER XXVA

#### CRIMINAL ENTERPRISES

##### **750.159f Definitions generally.**

Sec. 159f. As used in this chapter:

(a) "Enterprise" includes an individual, sole proprietorship, partnership, corporation, limited liability company, trust, union, association, governmental unit, or other legal entity or a group of persons associated in fact although not a legal entity. Enterprise includes illicit as well as licit enterprises.

(b) "Instrumentality" means an interest, real or personal property, or other thing of value, the use of which contributes directly and materially to the commission of an offense included in the definition of racketeering.

(c) "Pattern of racketeering activity" means not less than 2 incidents of racketeering to which all of the following characteristics apply:

(i) The incidents have the same or a substantially similar purpose, result, participant, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated acts.

(ii) The incidents amount to or pose a threat of continued criminal activity.

(iii) At least 1 of the incidents occurred within this state on or after the effective date of the amendatory act that added this section, and the last of the incidents occurred within 10 years after the commission of any prior incident, excluding any period of imprisonment served by a person engaging in the racketeering activity.

(d) "Person" means an individual, sole proprietorship, partnership, cooperative, association, corporation, limited liability company, personal representative, receiver, trustee, assignee, or other legal or illegal entity.

(e) "Proceeds" means any real, personal, or intangible property obtained through the commission of an offense included in the definition of racketeering, including any appreciation in the value of the property.

(f) "Prosecuting agency" means the attorney general of this state, or his or her designee, or the prosecuting attorney of a county, or his or her designee.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

##### **750.159g "Racketeering" defined.**

Sec. 159g. As used in this chapter, "racketeering" means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain by obtaining money, property, or any other thing of value, involving any of the following:

(a) A felony violation of section 8 of the tobacco products tax act, 1993 PA 327, MCL 205.428, concerning tobacco product taxes, or section 9 of former 1947 PA 265, concerning cigarette taxes.

(b) A violation of section 11151(3) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11151, or section 48(3) of former 1979 PA 64, concerning felonious disposal of hazardous waste.

(c) A felony violation of part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, concerning controlled substances.

(d) A felony violation of section 7340, 7340c, or 17766c of the public health code, 1978 PA 368, MCL 333.7340, 333.7340c, and 333.17766c, concerning ephedrine or pseudoephedrine.

(e) A felony violation of section 60 of the social welfare act, 1939 PA 280, MCL 400.60, concerning welfare fraud.

(f) A violation of section 4, 5, or 7 of the medicaid false claim act, 1977 PA 72, MCL 400.604, 400.605, and 400.607, concerning Medicaid fraud.

(g) A felony violation of section 18 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.218, concerning the business of gaming.

(h) A felony violation of section 909(4) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1909, concerning the illegal sale, delivery, or importation of spirits.

(i) A violation of section 508 of the uniform securities act (2002), 2008 PA 551, MCL 451.2508, concerning fraud.

(j) A violation of section 5 or 7 of 1978 PA 33, MCL 722.675 and 722.677, concerning the display or dissemination of obscene matter to minors.

(k) A violation of section 49, concerning animal fighting.

(l) A felony violation of section 72, 73, 74, 75, or 77, concerning arson.

(m) A violation of section 93, 94, 95, or 96, concerning bank bonds, bills, notes, and property.

(n) A violation of section 110 or 110a, concerning breaking and entering or home invasion.

- (o) A violation of section 117, 118, 119, 120, 121, or 124, concerning bribery.
- (p) A violation of section 120a, concerning jury tampering.
- (q) A violation of section 145c, concerning child sexually abusive activity or material.
- (r) A violation of section 145d, concerning internet or computer crimes.
- (s) A felony violation of section 157n, 157p, 157q, 157r, 157s, 157t, or 157u, concerning credit cards or financial transaction devices.
- (t) A felony violation of section 174, 175, 176, 180, 181, or 182, concerning embezzlement.
- (u) A felony violation of chapter XXXIII, concerning explosives and bombs.
- (v) A violation of section 213, concerning extortion.
- (w) A felony violation of section 218, concerning false pretenses.
- (x) A felony violation of section 223(2), 224(1)(a), (b), or (c), 224b, 224c, 224e(1), 226, 227, 234a, 234b, or 237a, concerning firearms or dangerous weapons.
- (y) A felony violation of chapter XLI, concerning forgery and counterfeiting.
- (z) A violation of section 271, 272, 273, or 274, concerning securities fraud.
- (aa) A violation of section 300a, concerning food stamps or coupons or access devices.
- (bb) A violation of section 301, 302, 303, 304, 305, 305a, or 313, concerning gambling.
- (cc) A violation of section 316 or 317, concerning murder.
- (dd) A violation of section 330, 331, or 332, concerning horse racing.
- (ee) A violation of section 349, 349a, or 350, concerning kidnapping.
- (ff) A felony violation of chapter LII, concerning larceny.
- (gg) A violation of section 411k, concerning money laundering.
- (hh) A violation of section 422, 423, 424, or 425, concerning perjury or subornation of perjury.
- (ii) A violation of section 452, 455, 457, 458, or 459, concerning prostitution.
- (jj) A violation of chapter LXVIIA, concerning human trafficking.
- (kk) A violation of section 529, 529a, 530, or 531, concerning robbery.
- (ll) A felony violation of section 535 or 535a, concerning stolen, embezzled, or converted property.
- (mm) A violation of chapter LXXXIII-A, concerning terrorism.
- (nn) A violation of section 5 of 1984 PA 343, MCL 752.365, concerning obscenity.
- (oo) A felony violation of the identity theft protection act, 2004 PA 452, MCL 445.61 to 445.79d.
- (pp) A violation of section 4 of the organized retail crime act, 2012 PA 455, MCL 752.1084.
- (qq) An offense committed within this state or another state that constitutes racketeering activity as defined in 18 USC 1961(1).
- (rr) An offense committed within this state or another state in violation of a law of the United States that is substantially similar to a violation listed in subdivisions (a) through (qq).
- (ss) An offense committed in another state in violation of a statute of that state that is substantially similar to a violation listed in subdivisions (a) through (qq).

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996;—Am. 1997, Act 75, Imd. Eff. July 17, 1997;—Am. 2002, Act 124, Eff. Apr. 22, 2002;—Am. 2009, Act 82, Imd. Eff. Aug. 31, 2009;—Am. 2010, Act 176, Imd. Eff. Sept. 30, 2010;—Am. 2010, Act 362, Eff. Apr. 1, 2011;—Am. 2012, Act 172, Imd. Eff. June 19, 2012;—Am. 2012, Act 351, Imd. Eff. Dec. 13, 2012;—Am. 2014, Act 300, Eff. Jan. 1, 2015;—Am. 2019, Act 174, Eff. Mar. 19, 2020;—Am. 2022, Act 174, Eff. Oct. 19, 2022.

## **750.159h “Records” or “documenting materials” and “substituted proceeds” defined.**

Sec. 159h. As used in this chapter:

(a) "Records" or "documentary materials" means a book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer program or printout, any other data compilation from which information can be obtained or translated into usable form, or any other functionally similar tangible item.

(b) "Substituted proceeds" means any real, personal, or intangible property obtained or any gain realized by the sale or exchange of proceeds.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

## **750.159i Prohibited conduct.**

Sec. 159i. (1) A person employed by, or associated with, an enterprise shall not knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity.

(2) A person shall not knowingly acquire or maintain an interest in or control of an enterprise or real or personal property used or intended for use in the operation of an enterprise, directly or indirectly, through a pattern of racketeering activity.

(3) A person who has knowingly received any proceeds derived directly or indirectly from a pattern of

rackeering activity shall not directly or indirectly use or invest any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the establishment or operation of an enterprise, or the acquisition of any title to, or a right, interest, or equity in, real or personal property used or intended for use in the operation of an enterprise.

(4) A person shall not conspire or attempt to violate subsection (1), (2), or (3).

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

**750.159j Violation as felony; penalties; imposition of costs; order to criminally forfeit property; additional authority of court; conditions for entering order of criminal forfeiture; attorney fees; determination of extent of property; property not reachable; retention of property by law enforcement agency; disposition of money seized; seizure; other criminal or civil remedies not precluded.**

Sec. 159j. (1) A person who violates section 159i is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$100,000.00, or both.

(2) In addition to any penalty imposed under subsection (1), the court may do 1 or more of the following with respect to a person convicted under section 159i:

(a) Order the person to pay court costs.

(b) Order the person to pay to the state or local law enforcement agency that handled the investigation and prosecution the costs of the investigation and prosecution that are reasonably incurred.

(3) The court shall hold a hearing to determine the amount of court costs and other costs to be imposed under subsection (2).

(4) The court shall order a person convicted of a violation of section 159i to criminally forfeit to the state any real, personal, or intangible property in which he or she has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 159i, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation. The court's authority under this subsection also includes, but is not limited to, the authority to do any of the following:

(a) Order the convicted person to divest himself or herself of any interest, direct or indirect, in the enterprise.

(b) Impose reasonable restrictions on the future activities or investments of the convicted person, including prohibiting the convicted person from engaging in the same type of endeavor as the enterprise engaged in.

(c) Order the dissolution or reorganization of an enterprise upon finding that, for the prevention of future criminal activity, the public interest requires the dissolution or reorganization. This subdivision does not apply to the extent that an order of dissolution or reorganization is preempted by chapter 7 of the national labor relations act, 29 USC 141 to 187.

(d) Order the suspension or revocation of a license, permit, or prior approval granted to an enterprise by any agency of the state, county, or other political subdivision upon finding that, for the prevention of future criminal activity, the public interest requires the suspension or revocation.

(e) Order the surrender of the charter of a corporation organized under the laws of this state or the revocation of a certificate authorizing a foreign corporation to conduct business within this state upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, authorized or engaged in racketeering and, for the prevention of future criminal activity, that the public interest requires that the charter or certificate of the corporation be surrendered or revoked.

(5) A sentence ordering criminal forfeiture under this section shall not be entered unless the indictment or information alleges the extent of the property subject to forfeiture, or unless the sentence requires the forfeiture of property that was not reasonably foreseen to be subject to forfeiture at the time of the indictment or information, if the prosecuting agency gave prompt notice to the defendant of the property not reasonably foreseen to be subject to forfeiture when it was discovered to be forfeitable.

(6) Reasonable attorney fees for representation in an action under this chapter are not subject to criminal forfeiture under this chapter.

(7) At sentencing and following a hearing, the court shall determine the extent of the property subject to forfeiture, if any, and shall enter an order of forfeiture. The court may base its determination on evidence in the trial record.

(8) If any property included in the order of forfeiture under this section cannot be located or has been sold to a bona fide purchaser for value, placed beyond the jurisdiction of the court, substantially diminished in value by the conduct of the defendant, or commingled with other property that cannot be divided without difficulty or undue injury to innocent persons, the court shall order forfeiture of any other reachable property of the defendant up to the value of the property that is unreachable.

(9) All property ordered forfeited under this section shall be retained by the law enforcement agency that seized it for disposal pursuant to section 159r.

(10) The seizing agency may deposit money seized under this section into an interest-bearing account in a financial institution. As used in this subsection, "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.

(11) An attorney for a person who is charged with a violation of section 159i involving or related to money seized by a law enforcement agency that is subject to criminal forfeiture under this section shall be afforded a period of 60 days within which to examine that money. This 60-day period shall begin to run after notice of forfeiture is given but before the money is deposited into a financial institution under subsection (10). If the prosecuting agency fails to sustain its burden of proof in criminal proceedings under section 159i, the court shall order the return of the money, including any interest earned on money deposited into a financial institution under subsection (10).

(12) An order of criminal forfeiture entered under this section shall authorize an appropriate law enforcement agency to seize the property declared criminally forfeited under this section upon those terms and conditions relating to the time and manner of seizure the court determines proper.

(13) Criminal penalties under this section are not mutually exclusive and do not preclude the application of any other criminal or civil remedy under this section or any other provision of law.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996;—Am. 2006, Act 129, Imd. Eff. May 5, 2006.

**750.159k Order of criminal forfeiture; notice; hearing to determine validity of claim of property interest; petition; consolidation of hearings; testimony and evidence; amendment of order.**

Sec. 159k. (1) Upon the entry of the order of criminal forfeiture pursuant to section 159j, the court shall cause notice of the order to be sent by certified mail to all persons known to have, or appearing to have, an interest in the property to be forfeited. To assist the court in determining whom to notify, the prosecuting agency shall conduct a search of county, state, and federal public records where notice of liens and security interests are normally recorded. If the name and address of the person are not reasonably ascertainable or delivery of the notice cannot reasonably be accomplished, the notice shall be published in a newspaper of general circulation in the county in which the prosecution occurred for 10 successive publishing days. Proof of written notice or publication shall be filed with the court entering the order of criminal forfeiture.

(2) Within 21 days after receipt of the notice or after the date of the completion of the publication under subsection (1), a person, other than the defendant, who claims an interest in the property subject to criminal forfeiture may petition the court for a hearing to determine the validity of the claim. The petition shall be signed and sworn to by the petitioner and shall set forth the nature and extent of the petitioner's interest in the property, the date and circumstances of the petitioner's acquisition of the interest, any additional allegations supporting the claim, and the relief sought. The petitioner shall furnish the prosecuting agency with a copy of the petition.

(3) To the extent practicable and consistent with the interests of justice, the court shall hold the hearing within 28 days after the filing of the petition. The court may consolidate the hearings on all petitions filed by third party claimants under this section. At the hearing, the petitioner may testify and present evidence on his or her own behalf and may cross-examine witnesses. The prosecuting agency may present evidence and witnesses in rebuttal and in defense of the claim of the state to the property and may cross-examine witnesses. The court, in making its determination, shall consider the testimony and evidence presented at the hearing and the relevant portions of the record of the criminal proceeding that resulted in the order of criminal forfeiture.

(4) If the court determines 1 or more of the following, by a preponderance of the evidence, the court shall amend the order of criminal forfeiture in accordance with its determination to protect the rights of innocent persons:

(a) The petitioner has a legal right, title, or interest in the property that, at the time of the commission of the acts giving rise to the forfeiture of the property, was vested in the petitioner and not in the defendant or was superior to the right, title, or interest of the defendant, and the petitioner did not have prior actual knowledge of the racketeering activity.

(b) The petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of the purchase reasonably without cause to believe that the property was subject to forfeiture under section 159j.

(c) The property is encumbered by a security interest and the holder of the security interest did not have prior actual knowledge of the racketeering activity.

(d) The property is encumbered by an unpaid balance on a land contract and the land contract vendor did not have prior actual knowledge of the racketeering activity.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

#### **750.159l Jurisdiction of court; notification of persons with property interest.**

Sec. 159l. (1) In a prosecution under section 159i, the court has jurisdiction to enter such restraining orders or injunctions or to take other action by order, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property subject to criminal forfeiture under section 159j, as the court considers proper.

(2) Within 14 days after the entry of an order described in subsection (1), the prosecuting agency shall notify all persons known to have or appearing to have an interest in the property of the order, by certified mail. In determining whom to notify under this subsection, the prosecuting agency shall conduct a search of county, state, and federal public records where notices of liens and security interests are normally recorded.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

#### **750.159m Property subject to civil in rem forfeiture; exceptions; encumbrances; attorney fees.**

Sec. 159m. (1) Except as otherwise provided in this section, all real, personal, or intangible property of a person convicted of a violation of section 159i that is the proceeds of racketeering, the substituted proceeds of racketeering, or an instrumentality of racketeering, is subject to civil in rem forfeiture to a local unit of government or the state under this section and sections 159n to 159q.

(2) Real property that is the primary residence of the spouse of the owner is not subject to civil in rem forfeiture under this section and sections 159n to 159q, unless that spouse had prior actual knowledge of, and consented to and participated in the commission of, the racketeering activity. Real property that is the primary residence of a dependent minor child of the owner is not subject to civil in rem forfeiture under this section and sections 159n to 159q.

(3) Property is not subject to civil in rem forfeiture if either of the following circumstances exists:

(a) The owner of the property did not have prior actual knowledge of the commission of the racketeering activity.

(b) The owner of the property served notice of the commission of the crime upon an appropriate law enforcement agency.

(4) The civil in rem forfeiture of property encumbered by a security interest is subject to the interest of the holder of the security interest who did not have prior actual knowledge of the racketeering activity.

(5) The civil in rem forfeiture of property encumbered by an unpaid balance on a land contract is subject to the interest of the land contract vendor who did not have prior actual knowledge of the racketeering activity.

(6) Reasonable attorney fees for representation in an action under this chapter are not subject to civil in rem forfeiture under this chapter.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

#### **750.159n Seizure of property subject to civil in rem forfeiture; petition; filing; personal or intangible property; determination by court; seizure without process; circumstances; lien notice against real property; notice and hearing required; return of property to crime victim; exceptions; custody of property by seizing agency.**

Sec. 159n. (1) A civil in rem forfeiture proceeding under this chapter is a proceeding against property subject to forfeiture under section 159m instituted by the filing of a petition by the prosecuting agency.

(2) Personal or intangible property subject to civil in rem forfeiture under section 159m may be seized pursuant to an order of seizure issued by the court having jurisdiction over the property.

(3) Upon an ex parte application by the prosecuting agency, before or after the initiation of a civil in rem forfeiture proceeding, the court may determine ex parte whether there is probable cause to believe that personal or intangible property is subject to civil in rem forfeiture under section 159m and that notice to those persons having or claiming an interest in the property before seizure would cause the loss or destruction of the property. In making this determination, the court shall, as a matter of law, make a determination that the property constituted an interest in, means of control over, or influence over an enterprise involved in a violation of section 159i. If the court finds that probable cause does not exist to believe the property is subject to forfeiture under this act, the court shall dismiss the plaintiff prosecuting agency's application and, if a civil in rem forfeiture proceeding has been initiated, shall dismiss the petition. If the court finds that probable cause does exist to believe the property is subject to forfeiture but there is not probable cause to believe that prior notice would result in loss or destruction of the property, the court shall order service on all persons known to



have or claim an interest in the property before a further hearing on whether an order of seizure should issue. If the court finds that there is probable cause to believe that the property is subject to forfeiture and to believe that prior notice would cause loss or destruction of the property, the court shall issue an order of seizure directing the sheriff or other law enforcement officer in the county where the property is found to seize it.

(4) Personal or intangible property subject to civil in rem forfeiture under this chapter may be seized without process under any of the following circumstances:

- (a) The seizure is incident to a lawful arrest.
- (b) The seizure is pursuant to a valid search warrant.
- (c) The seizure is pursuant to an inspection under a valid administrative inspection warrant.
- (d) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(e) Exigent circumstances exist that preclude the obtaining of a court order, and there is probable cause to believe that the property is subject to civil in rem forfeiture under section 159m.

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

(5) The prosecuting agency may apply ex parte for an order authorizing the filing of a lien notice against real property subject to civil in rem forfeiture under section 159m. The application shall be supported by a sworn affidavit setting forth probable cause for a civil in rem forfeiture action pursuant to sections 159m to 159q. An order authorizing the filing of a lien notice may be issued upon a showing of probable cause to believe that the property is subject to civil in rem forfeiture under section 159m.

(6) Real property shall not be seized without notice and a hearing.

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

- (a) The property is contraband.
- (b) If the ownership of the property is disputed, until the dispute is resolved.
- (c) The property is required to be retained as evidence pursuant to section 4(4) of the crime victim's rights act, Act No. 87 of the Public Acts of 1985, being section 780.754 of the Michigan Compiled Laws.

(8) Personal or intangible property seized under this section is not subject to any other action to recover personal property, but is considered to be in the custody of the seizing agency subject only to this chapter, or to an order and judgment of the court having jurisdiction over the civil in rem forfeiture proceedings. When property is seized under this section, the seizing agency may do 1 or more of the following:

- (a) Place the property under seal.
- (b) Remove the property to a place designated by the court.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

### **750.159o Notice requirements.**

Sec. 159o. (1) Within 14 days after personal or intangible property is seized or a lien notice is filed against real property under section 159n, the prosecuting agency shall give notice pursuant to this section of the seizure of the property and the intent to forfeit and dispose of the property according to this chapter. This 14-day notice period is not jurisdictional. The prosecuting agency may move for an extension of the notice period for good cause shown. The prosecuting agency shall give the notice to each of the following persons:

- (a) If charges have been filed against a person for a crime, the person charged.
- (b) Each person known to have or appearing to have an ownership interest in the property.
- (c) Each mortgagee, person holding a security interest, or person having a lien that appears on the certificate of title or is on file with the secretary of state or appropriate register of deeds, if the property is real property, a mobile home, motor vehicle, watercraft, or other personal property.

(d) Each holder of a preferred ship mortgage of record in the appropriate public office pursuant to chapter 313 of subtitle III of title 46 of the United States Code, if the property is a watercraft more than 28 feet long or a watercraft that has a capacity of 5 net tons or more.

(e) Each person whose security interest is recorded with the appropriate public office pursuant to the federal aviation act of 1958, Public Law 85-726, 72 Stat. 731, if the property is an aircraft, aircraft engine, or aircraft propeller, or a part of an aircraft, aircraft engine, or aircraft propeller.

(f) Each person known to have or appearing to have a security interest in the property.

(g) Each victim of the crime.

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

jurisdiction over the seizure or forfeiture.

(3) If personal or intangible property is seized, the seizing agency shall immediately notify the prosecuting agency of the seizure of the property and the intent to forfeit and dispose of the property according to this chapter.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

#### **750.159p Verified claim stating interest in property or proceeds.**

Sec. 159p. (1) At any time within 28 days after the date of the completion of the publication pursuant to section 159o or within 21 days after receipt of actual notice pursuant to section 159o, a person claiming an interest in property or proceeds subject to forfeiture may file with the prosecuting agency a verified claim stating his or her interest in the property or proceeds.

(2) If no claim is filed within the period specified in subsection (1), the prosecuting agency shall declare the property forfeited and shall dispose of the property according to section 159r.

(3) If a claim is filed within the period specified in subsection (1), the prosecuting agency shall institute a civil in rem forfeiture action within 7 days after the expiration of the period specified in subsection (1).

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

#### **750.159q Burden of proof; evidence; return or disposal of property; notice; estoppel from denial of allegations in civil trial; admissibility of testimony.**

Sec. 159q. (1) At the civil in rem forfeiture proceeding, the court shall act as trier of fact. The prosecuting agency has the burden of proving both of the following by clear and convincing evidence:

(a) The property is subject to civil in rem forfeiture under section 159m.

(b) The person claiming an ownership interest in the property had prior actual knowledge of the commission of an offense listed in the definition of racketeering.

(2) At the civil in rem forfeiture proceeding, the person claiming an ownership interest in the property has the burden of proving, by a preponderance of the evidence, that he or she served notice of the commission of the crime upon an appropriate law enforcement agency.

(3) At the civil in rem forfeiture proceeding, the prosecuting agency has the burden of proving, by a preponderance of the evidence, that a person claiming a security interest in the property or a person claiming an interest as a land contract vendor had prior actual knowledge of the commission of the racketeering activity.

(4) If the prosecuting agency fails to meet the burden of proof under subsection (1), or if the person claiming an ownership interest in the property meets his or her burden of proof under subsection (2), the property shall be returned to the owner within 28 days after a written order is entered to return the property, unless an appellate court stays the order. In addition, the prosecuting agency shall reimburse the owner for reasonable attorney fees and damages related to towing costs, storage fees and expenses, foreclosure costs, and other similar expenses.

(5) If the prosecuting agency meets the burden of proof under subsection (1) and the person claiming an ownership interest in the property does not meet the burden of proof under subsection (2), the property shall be disposed of pursuant to section 159r.

(6) Within 7 days after personal property is returned to the owner, or a lien filed against real property or a motor vehicle is discharged, the prosecuting agency that gave notice of the seizure of the property and the intent to forfeit and dispose of the property pursuant to section 159o shall give notice to the persons who received notice pursuant to section 159o that the property has been returned to the owner or that the lien has been discharged.

(7) The notice required under subsection (6) shall be a written notice delivered to the person or sent to the person by certified mail. If the name and address of the person are not reasonably ascertainable or delivery of the notice cannot reasonably be accomplished, the notice shall be published in a newspaper of general circulation in the county in which the personal property was seized or the real property is located for 10 successive publishing days.

(8) A defendant convicted in a criminal proceeding is estopped from subsequently denying in a civil action the essential allegations of the criminal offense of which he or she was convicted.

(9) The testimony of a person at a civil in rem forfeiture proceeding held under this chapter is not admissible against him or her, except for the purpose of impeachment, in a criminal proceeding other than a criminal prosecution for perjury. The testimony of a person at a civil in rem forfeiture proceeding held under this chapter does not waive the person's constitutional right against self-incrimination.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

**750.159r Sale of seized property by unit of government; disposal of received money; order of priority; appointment, compensation, and duties of receiver.**

Sec. 159r. (1) If property is criminally or civilly forfeited under this chapter, the unit of government that seized or filed a lien against the property may sell the property that is not required to be destroyed by law and that is not harmful to the public and may dispose of the money received from the sale of the property and any money, negotiable instrument, security, or other thing of value that is forfeited pursuant to this chapter in the following order of priority:

(a) Pay any outstanding security interest or unpaid land contract balance of a secured party or land contract vendor who did not have prior actual knowledge of, or consent to the commission of, the crime.

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

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

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

(e) Pay the proper expenses of the proceedings for forfeiture and sale, including, but not limited to, expenses incurred during the seizure process and expenses for maintaining custody of the property, advertising, and court costs.

(f) The balance remaining after the payment of restitution, the claims of victims, outstanding liens, and expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the unit or units of government substantially involved in effecting the forfeiture. The money received by a unit of government under this subdivision shall be used to enhance enforcement of the criminal laws.

(2) In the course of selling real property pursuant to subsection (1), the court that enters an order or sentence of forfeiture, on motion of the unit of government to which the property is forfeited, may appoint a receiver to dispose of the real property forfeited. The receiver is entitled to reasonable compensation. The receiver may do all of the following:

(a) List the forfeited real property for sale.

(b) Make whatever arrangements are necessary for maintaining and preserving the forfeited real property.

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

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

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

**750.159s Commencement of action.**

Sec. 159s. A civil in rem forfeiture action under this chapter related to an offense included in the definition of racketeering or a violation of section 159i shall be commenced within 6 years after the activity terminates or the cause of action accrues, whichever is later.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

**750.159t Seizure of constitutionally protected materials.**

Sec. 159t. Notwithstanding any provision in this chapter, the prosecuting agency shall not seize materials presumptively protected by the first amendment to the constitution of the United States in a manner that violates that constitutional provision.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

**750.159u Civil cause of action not created by chapter.**

Sec. 159u. Except as expressly provided, this chapter does not create a civil cause of action between 2 or more persons.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

**750.159v Forfeiture proceeding under other law not precluded.**

Sec. 159v. This chapter does not preclude a prosecuting agency from pursuing a forfeiture proceeding under any other law of this state.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.

**750.159w Activities unrelated to prohibited activities of enterprise.**

Sec. 159w. This chapter shall not be construed to permit the termination, suspension, or interruption of the legitimate activities of an enterprise that are unrelated to any felonious or racketeering activity forming the object of the criminal case or civil in rem forfeiture action and that may cause harm to innocent employees or members of the enterprise.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.



**750.159x Notice of proposed investigation to attorney general.**

Sec. 159x. Before conducting an investigation of activity suspected to constitute a violation of section 159i, a prosecuting agency who is the prosecuting attorney of a county or his or her designee shall notify the department of the attorney general of the proposed investigation.

**History:** Add. 1995, Act 187, Eff. Apr. 1, 1996.