

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

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.