



HOUSE BILL No. 5564

February 8, 1996, Introduced by Reps. Gire, DeMars, LaForge, Olshove, Dobronski, DeHart, Kelly, Dolan, Middleton and Hertel and referred to the Committee on Regulatory Affairs.

A bill to amend sections 4701 and 4703 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," section 4701 as amended by Act No. 245 of the Public Acts of 1993 and section 4703 as added by Act No. 104 of the Public Acts of 1988, being sections 600.4701 and 600.4703 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 4701 and 4703 of Act No. 236 of the
2 Public Acts of 1961, section 4701 as amended by Act No. 245 of
3 the Public Acts of 1993 and section 4703 as added by Act No. 104
4 of the Public Acts of 1988, being sections 600.4701 and 600.4703
5 of the Michigan Compiled Laws, are amended to read as follows:

6 Sec. 4701. As used in this chapter:

1 (a) "Crime" means 1 of the following offenses in connection
2 with which the forfeiture of property is sought:

3 (i) A violation of section 4, 5, or 7 of the medicaid false
4 claim act, Act No. 72 of the Public Acts of 1977, being sections
5 400.604, 400.605, and 400.607 of the Michigan Compiled Laws.

6 (ii) A violation of section 2 or 3 of the Michigan antitrust
7 reform act, Act No. 274 of the Public Acts of 1984, being sec-
8 tions 445.772 and 445.773 of the Michigan Compiled Laws.

9 (iii) A violation of section 409 of the uniform securities
10 act, Act No. 265 of the Public Acts of 1964, being section
11 451.809 of the Michigan Compiled Laws.

12 (iv) A violation of section 5 or 7 of Act No. 33 of the
13 Public Acts of 1978, being sections 722.675 and 722.677 of the
14 Michigan Compiled Laws.

15 (v) A violation of section 75, 94, 95, 96, 100, 104, 105,
16 106, 110, 112, 117, 118, 119, 120, 121, 124, 145c, 157q, 157r,
17 174, 175, 176, 180, 181, 182, 213, 214, 218, 224, 248, 249, 250,
18 251, 252, 253, 254, 255, 271, 272, 273, 274, 300, 356, 357, 357a,
19 359, 360, 529, 530, 531, or 535 of the Michigan penal code, Act
20 No. 328 of the Public Acts of 1931, being sections 750.75,
21 750.94, 750.95, 750.96, 750.100, 750.104, 750.105, 750.106,
22 750.110, 750.112, 750.117, 750.118, 750.119, 750.120, 750.121,
23 750.124, 750.145c, 750.157q, 750.157r, 750.174, 750.175, 750.176,
24 750.180, 750.181, 750.182, 750.213, 750.214, 750.218, 750.224,
25 750.248, 750.249, 750.250, 750.251, 750.252, 750.253, 750.254,
26 750.255, 750.271, 750.272, 750.273, 750.274, 750.300, 750.356,

1 750.357, 750.357a, 750.359, 750.360, 750.529, 750.530, 750.531,
2 and 750.535 of the Michigan Compiled Laws.

3 (vi) A violation of section 219a of Act No. 328 of the
4 Public Acts of 1931, being section 750.219a of the Michigan
5 Compiled Laws, if the total value of the telephone service
6 obtained is over \$100.00.

7 (vii) Conspiracy to commit an offense listed in subpara-
8 graphs (i) to (vi).

9 (viii) A violation of the recreational trespass act, Act
10 No. 323 of the Public Acts of 1976, being sections 317.171 to
11 317.181 of the Michigan Compiled Laws, that is punishable under
12 section 9(2) of the recreational trespass act, Act No. 323 of the
13 Public Acts of 1976, being section 317.179 of the Michigan
14 Compiled Laws.

15 (ix) A VIOLATION OF THE FIREWORKS ACT.

16 (b) "Instrumentality of a crime" means any property, other
17 than real property, the use of which contributes directly and
18 materially to the commission of a crime.

19 (c) "Person" means an individual, corporation, partnership,
20 or other business entity, or an unincorporated or voluntary
21 association.

22 (d) "Proceeds of a crime" means any property obtained
23 through the commission of a crime, including any appreciation in
24 the value of the property.

25 (e) "Security interest" means any interest in real or per-
26 sonal property that secures payment or performance of an
27 obligation.

1 (f) "Substituted proceeds of a crime" means any property
2 obtained or any gain realized by the sale or exchange of proceeds
3 of a crime.

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

9 (2) ~~Personal~~ EXCEPT AS PROVIDED IN SUBSECTION (3),
10 PERSONAL property subject to forfeiture under this chapter may be
11 seized without process under any of the following circumstances:

12 (a) The property is the proceeds of a crime or an instrumen-
13 tality of a crime and the seizure is incident to a lawful
14 arrest.

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

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

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

20 (e) Exigent circumstances exist that preclude the obtaining
21 of a court order, and there is probable cause to believe that the
22 property is the proceeds of a crime or an instrumentality of a
23 crime.

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

1 (3) PROPERTY IS NOT SUBJECT TO SEIZURE WITHOUT PROCESS FOR
2 AN ALLEGED VIOLATION OF THE FIREWORKS ACT IF BOTH OF THE
3 FOLLOWING CIRCUMSTANCES EXIST:

4 (A) THE ALLEGED VIOLATION INVOLVES THE SALE OR STORAGE OF
5 FIREWORKS FROM A BUILDING OR NONMOVABLE STRUCTURE.

6 (B) THE ALLEGED VIOLATION INVOLVES THE SALE OR STORAGE OF
7 FIREWORKS BY AN INDIVIDUAL LICENSED UNDER THE GENERAL SALES TAX
8 ACT, ACT NO. 167 OF THE PUBLIC ACTS OF 1933, BEING SECTIONS
9 205.51 TO 205.78 OF THE MICHIGAN COMPILED LAWS, TO ENGAGE IN AND
10 CONDUCT THAT BUSINESS.

11 (4) ~~(3)~~ The attorney general, or the prosecuting attorney
12 or the city or township attorney for the local unit of government
13 in which the property is located, may apply ex parte for an order
14 authorizing the filing of a lien notice against real property
15 subject to forfeiture under this chapter. The application shall
16 be supported by a sworn affidavit setting forth probable cause
17 for a forfeiture action pursuant to this chapter. An order
18 authorizing the filing of a lien notice may be issued upon a
19 showing of probable cause to believe that the property is the
20 proceeds of a crime or the substituted proceeds of a crime.

21 (5) ~~(4)~~ Property that belongs to the victim of a crime
22 shall promptly be returned to the victim, except in the following
23 circumstances:

24 (a) If the property is contraband.

25 (b) If the ownership of the property is disputed until the
26 dispute is resolved.

1 (c) If the property is required to be retained as evidence
2 pursuant to section 4(4) of the crime victim's rights act, Act
3 No. 87 of the Public Acts of 1985, being section 780.754 of the
4 Michigan Compiled Laws.

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

12 (a) Place the property under seal.

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

14 Section 2. This amendatory act shall not take effect unless
15 Senate Bill No. _____ or House Bill No. 5565 (request
16 no. 03823'95) of the 88th Legislature is enacted into law.