

HOUSE BILL No. 5490

December 8, 2005, Introduced by Reps. David Law, Farrah, Hune, Mortimer, Kahn, Jones, Gleason, Garfield, Schuitmaker, Stakoe, Hansen, Dillon and Huizenga and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 4703, 4704, 4705, and 4708 (MCL 600.4703, 600.4704, 600.4705, and 600.4708), as added by 1988 PA 104.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (2) Personal property subject to forfeiture under this chapter
6 may be seized without process under any of the following
7 circumstances:

8 (a) The property is the proceeds of a crime or an

1 instrumentality of a crime and the seizure is incident to a lawful
2 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.

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.

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

27 (a) If the property is contraband.

1 (b) If the ownership of the property is disputed until the
2 dispute is resolved.

3 (c) If the property is required to be retained as evidence
4 pursuant to section 4(4) of the crime victim's rights act, ~~Act No.~~
5 ~~87 of the Public Acts of 1985, being section 780.754 of the~~
6 ~~Michigan Compiled Laws~~ **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. ~~When~~ **EXCEPT AS PROVIDED IN SUBSECTION (6), WHEN**
13 **property is seized under this chapter, the seizing agency may do**
14 **either or both 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 Sec. 4704. (1) Within 7 days after personal property is seized
27 or a lien notice is filed against real property under section 4703,

1 the seizing agency or, if the property is real property, the
2 attorney general, the prosecuting attorney, or the city or township
3 attorney shall give notice of the seizure of the property and the
4 intent to forfeit and dispose of the property according to this
5 chapter to each of the following persons:

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

8 (b) Each person with a known ownership interest in the
9 property.

10 (c) Each mortgagee, person holding a security interest, or
11 person having a lien that appears on the certificate of title or is
12 on file with the secretary of state or appropriate register of
13 deeds, if the property is real property, a mobile home, motor
14 vehicle, watercraft, or other personal property.

15 (d) Each holder of a preferred ship mortgage of record in the
16 appropriate public office pursuant to ~~the ship mortgage act, 1920,~~
17 ~~chapter 250, 41 Stat. 1000, 46 U.S.C. App. 911, 921 to 927, 941,~~
18 ~~951 to 954, 961, 971 to 975, and 981 to 984~~ **46 USC 30101, 31301-**
19 **31343**, if the property is a watercraft more than 28 feet long or a
20 watercraft that has a capacity of 5 net tons or more.

21 (e) Each person whose security interest is recorded with the
22 appropriate public office pursuant to the federal aviation act of
23 1958, Public Law 85-726, ~~27 Stat. 731,~~ if the property is an
24 aircraft, aircraft engine, or aircraft propeller, or a part of an
25 aircraft, aircraft engine, or aircraft propeller.

26 (f) Each person with a known security interest in the
27 property.

1 (g) Each victim of the crime.

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

12 (3) If personal property was seized, the seizing agency shall
13 immediately notify the prosecuting attorney for the county in which
14 the property was seized or, if the attorney general is actively
15 handling a case involving or relating to the property, the attorney
16 general of the seizure of the property and the intent to forfeit
17 and dispose of the property according to this chapter.

18 **(4) AN ATTORNEY FOR A PERSON DESCRIBED IN SUBSECTION (1)(A)**
19 **SHALL BE AFFORDED A PERIOD OF 60 DAYS WITHIN WHICH TO EXAMINE MONEY**
20 **SEIZED UNDER SECTION 4703. THIS 60-DAY PERIOD SHALL BEGIN TO RUN**
21 **AFTER NOTICE IS GIVEN UNDER SUBSECTION (1) BUT BEFORE THE MONEY IS**
22 **DEPOSITED INTO A FINANCIAL INSTITUTION.**

23 Sec. 4705. (1) A person who did not have prior knowledge of,
24 or consent to the commission of, the crime may move the court
25 having jurisdiction to return the property or discharge the lien on
26 the grounds that the property was illegally seized, that the
27 property is not subject to forfeiture under this chapter, or that

1 the person has an ownership or security interest in the property
2 and did not have prior knowledge of, or consent to the commission
3 of, the crime. The court shall hear the motion within 30 days after
4 the motion is filed.

5 (2) At the hearing on the motion filed under subsection (1),
6 the attorney general, or the prosecuting attorney or the city or
7 township attorney for the local unit of government in which the
8 property was seized or the lien was filed, shall establish the
9 following:

10 (a) Probable cause to believe that the property is subject to
11 forfeiture under this chapter and that the person filing the motion
12 had prior knowledge of, or consented to the commission of, the
13 crime.

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

16 (3) If the attorney general, prosecuting attorney, or city or
17 township attorney fails to sustain his or her burden of proof under
18 subsection (2), the court shall order the return of the property,
19 **INCLUDING ANY INTEREST EARNED ON MONEY DEPOSITED IN A FINANCIAL**
20 **INSTITUTION AS DESCRIBED IN SECTION 4703(6)**, or the discharge of
21 the lien.

22 (4) If a motor vehicle is seized under section 4703, the owner
23 of the vehicle may move the court having jurisdiction over the
24 forfeiture proceedings to require the seizing agency to file a lien
25 against the vehicle and to return the vehicle to the owner. The
26 court shall hear the motion within 7 days after the motion is
27 filed. If the owner of the vehicle establishes at the hearing that

1 he or she holds the legal title of the vehicle and that it is
2 necessary for him or her or his or her family to use the vehicle
3 pending the outcome of the forfeiture action, the court may order
4 the seizing agency to return the vehicle to the owner. If the court
5 orders the return of the vehicle to the owner, the court shall
6 order the seizing agency to file a lien against the vehicle.

7 (5) The testimony of a person at a hearing held under this
8 section is not admissible against him or her in any criminal
9 proceeding except in a criminal prosecution for perjury. The
10 testimony of a person at a hearing held under this section does not
11 waive the person's constitutional right against self-incrimination.

12 Sec. 4708. (1) When property is forfeited under this chapter,
13 the unit of government that seized or filed a lien against the
14 property may sell the property that is not required to be destroyed
15 by law and that is not harmful to the public and may dispose of the
16 proceeds and any money, **INCLUDING ANY INTEREST EARNED ON MONEY**
17 **DEPOSITED IN A FINANCIAL INSTITUTION AS DESCRIBED IN SECTION**
18 **4703(6)**, negotiable instrument, security, or other thing of value
19 that is forfeited pursuant to this chapter in the following order
20 of priority:

21 (a) Pay any outstanding security interest of a secured party
22 who did not have prior knowledge of, or consent to the commission
23 of, the crime.

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

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

1 an order of restitution.

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

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

8 (f) The balance remaining after the payment of restitution,
9 the claims of victims, outstanding liens, and expenses shall be
10 distributed by the court having jurisdiction over the forfeiture
11 proceedings to the unit or units of government substantially
12 involved in effecting the forfeiture. Seventy-five percent of the
13 money received by a unit of government under this subdivision shall
14 be used to enhance enforcement of the criminal laws and 25% of the
15 money shall be used to implement the crime victim's rights act,
16 ~~Act No. 87 of the Public Acts of 1985, being sections 780.751 to~~
17 ~~780.775 of the Michigan Compiled Laws—~~ **1985 PA 87, MCL 780.751 TO**
18 **780.834.** A unit of government receiving money under this
19 subdivision shall report annually to the department of management
20 and budget the amount of money received under this subdivision that
21 was used to enhance enforcement of the criminal laws and the amount
22 that was used to implement the crime victim's rights act.

23 (2) In the course of selling real property pursuant to
24 subsection (1), the court that enters an order of forfeiture, on
25 motion of the unit of government to whom the property is forfeited,
26 may appoint a receiver to dispose of the real property forfeited.
27 The receiver is entitled to reasonable compensation. The receiver

1 has authority to do all of the following:

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

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

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

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