

HOUSE BILL No. 5824

March 2, 2006, Introduced by Rep. David Law and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7523 (MCL 333.7523), as amended by 1990 PA 336.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7523. (1) If property is seized pursuant to section 7522,
2 forfeiture proceedings shall be instituted promptly. If the
3 property is seized without process as provided under section 7522,
4 and the total value of the property seized does not exceed
5 \$50,000.00, the following procedure shall be used:

6 (a) The local unit of government that seized the property —
7 or, if the property was seized by the state, the state shall notify
8 the owner of the property that the property has been seized, and

1 that the local unit of government or, if applicable, the state
2 intends to forfeit and dispose of the property by delivering a
3 written notice to the owner of the property or by sending the
4 notice to the owner by certified mail. If the name and address of
5 the owner are not reasonably ascertainable, or delivery of the
6 notice cannot be reasonably accomplished, the notice shall be
7 published in a newspaper of general circulation in the county in
8 which the property was seized, for 10 successive publishing days.

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

16 (c) Any person claiming an interest in property ~~which~~ **THAT**
17 is the subject of a notice under subdivision (a) may, within 20
18 days after receipt of the notice or of the date of the first
19 publication of the notice, file a written claim signed by the
20 claimant with the local unit of government or the state expressing
21 his or her interest in the property. Upon the filing of the claim
22 ~~—~~ and the giving of a bond to the local unit of government or the
23 state in the amount of 10% of the value of the claimed property,
24 but not less than \$250.00 or greater than \$5,000.00, with sureties
25 approved by the local unit of government or the state ~~conditioned~~
26 **CONTAINING THE CONDITION** that if the property is ordered forfeited
27 by the court the obligor shall pay all costs and expenses of the

1 forfeiture proceedings. The local unit of government or, if
2 applicable, the state shall transmit the claim and bond with a list
3 and description of the property seized to the attorney general, the
4 prosecuting attorney for the county, or the city or township
5 attorney for the local unit of government in which the seizure was
6 made. The attorney general, the prosecuting attorney, or the city
7 or township attorney shall promptly institute forfeiture
8 proceedings after the expiration of the 20-day period. However,
9 unless all criminal proceedings involving or relating to the
10 property have been completed, a city or township attorney shall not
11 institute forfeiture proceedings without the consent of the
12 prosecuting attorney or, if the attorney general is actively
13 handling a case involving or relating to the property, the attorney
14 general.

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

25 (2) Property taken or detained under this article ~~or pursuant~~
26 ~~to section 17766a~~ shall not be subject to an action to recover
27 personal property, but is deemed to be in the custody of the

1 seizing agency subject only to this section or an order and
2 judgment of the court having jurisdiction over the forfeiture
3 proceedings. When property is seized under this article, ~~or~~
4 ~~pursuant to section 17766a,~~ the seizing agency may do any of the
5 following:

6 (a) Place the property under seal.

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

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

11 **(D) DEPOSIT MONEY SEIZED UNDER THIS ARTICLE INTO AN INTEREST-**
12 **BEARING ACCOUNT IN A FINANCIAL INSTITUTION. AS USED IN THIS**
13 **SUBDIVISION, "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONALLY**
14 **CHARTERED BANK OR A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN**
15 **ASSOCIATION, SAVINGS BANK, OR CREDIT UNION WHOSE DEPOSITS ARE**
16 **INSURED BY AN AGENCY OF THE UNITED STATES GOVERNMENT AND THAT**
17 **MAINTAINS A PRINCIPAL OFFICE OR BRANCH OFFICE LOCATED IN THIS STATE**
18 **UNDER THE LAWS OF THIS STATE OR THE UNITED STATES.**

19 (3) Title to real property forfeited under this article ~~or~~
20 ~~pursuant to section 17766a~~ shall be determined by a court of
21 competent jurisdiction. A forfeiture of real property encumbered by
22 a bona fide security interest is subject to the interest of the
23 secured party who neither had knowledge of nor consented to the act
24 or omission.

25 **(4) AN ATTORNEY FOR A PERSON WHO IS CHARGED WITH A CRIME**
26 **INVOLVING OR RELATED TO THE MONEY SEIZED UNDER THIS ARTICLE SHALL**
27 **BE AFFORDED A PERIOD OF 60 DAYS WITHIN WHICH TO EXAMINE THAT MONEY.**

1 THIS 60-DAY PERIOD SHALL BEGIN TO RUN AFTER NOTICE IS GIVEN UNDER
2 SUBSECTION (1)(A) BUT BEFORE THE MONEY IS DEPOSITED INTO A
3 FINANCIAL INSTITUTION UNDER SUBSECTION (2)(D). IF THE ATTORNEY
4 GENERAL, PROSECUTING ATTORNEY, OR CITY OR TOWNSHIP ATTORNEY FAILS
5 TO SUSTAIN HIS OR HER BURDEN OF PROOF IN FORFEITURE PROCEEDINGS
6 UNDER THIS ARTICLE, THE COURT SHALL ORDER THE RETURN OF THE MONEY,
7 INCLUDING ANY INTEREST EARNED ON MONEY DEPOSITED INTO A FINANCIAL
8 INSTITUTION UNDER SUBSECTION (2)(D).