

HOUSE BILL No. 5702

March 8, 2018, Introduced by Reps. Runestad, Hornberger, Tedder, Glenn, Leutheuser, Reilly, Bizon, Howrylak, Vaupel, Lucido, Howell and LaFave 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 2016 PA 418.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

6 (a) The local unit of government that seized the property or,
 7 if the property was seized by this state, the state shall notify
 8 the owner of the property that the property has been seized, and
 9 that the local unit of government or, if applicable, the state
 10 intends to forfeit and dispose of the property by delivering a

1 written notice to the owner of the property or by sending the
2 notice to the owner by certified mail. If the name and address of
3 the owner are not reasonably ascertainable, or delivery of the
4 notice cannot be reasonably accomplished, the notice ~~shall~~**MUST** be
5 published in a newspaper of general circulation in the county in
6 which the property was seized, for 10 successive publishing days.

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

14 (c) Any person claiming an interest in property that is the
15 subject of a notice under subdivision (a) may, within 20 days after
16 receipt of the notice or of the date of the first publication of
17 the notice, file a written claim signed by the claimant with the
18 local unit of government or the state expressing his or her
19 interest in the property. Upon the filing of the claim, the local
20 unit of government or, if applicable, this state shall transmit the
21 claim with a list and description of the property seized to the
22 attorney general, the prosecuting attorney for the county, or the
23 city or township attorney for the local unit of government in which
24 the seizure was made. The attorney general, the prosecuting
25 attorney, or the city or township attorney shall promptly institute
26 forfeiture proceedings after the expiration of the 20-day period.
27 However, unless all criminal proceedings involving or relating to

1 the property have been completed, a city or township attorney shall
2 not institute forfeiture proceedings without the consent of the
3 prosecuting attorney or, if the attorney general is actively
4 handling a case involving or relating to the property, the attorney
5 general.

6 (d) If no claim is filed within the 20-day period as described
7 in subdivision (c), ~~the local unit of government or this state~~
8 ~~shall declare the property forfeited and shall dispose of the~~
9 ~~property as provided under section 7524. However, unless all~~
10 ~~criminal proceedings involving or relating to the property have~~
11 ~~been completed, the local unit of government or the state shall not~~
12 ~~dispose of the property under this subdivision without the written~~
13 ~~consent of the prosecuting attorney or, if the attorney general is~~
14 ~~actively handling a case involving or relating to the property, the~~
15 ~~attorney general.~~ **THE FOLLOWING PROCEDURE MUST BE USED:**

16 (i) **THE SEIZING AGENCY SHALL IMMEDIATELY PROVIDE A SECOND**
17 **NOTICE TO THE PROSECUTING ATTORNEY FOR THE COUNTY IN WHICH THE**
18 **PROPERTY WAS SEIZED OR, IF THE ATTORNEY GENERAL IS ACTIVELY**
19 **HANDLING A CASE INVOLVING OR RELATING TO THE PROPERTY, THE ATTORNEY**
20 **GENERAL, AND THE OWNER OF THE PROPERTY IN THE SAME MANNER AS**
21 **PROVIDED UNDER SUBDIVISION (A) OF THE SEIZURE OF THE PROPERTY AND**
22 **THE INTENTION TO FORFEIT AND DISPOSE OF THE PROPERTY.**

23 (ii) **THE SEIZING AGENCY SHALL PROVIDE A LIST OF THE PROPERTY**
24 **SEIZED TO THE PROSECUTING ATTORNEY FOR THE COUNTY IN WHICH THE**
25 **PROPERTY WAS SEIZED OR, IF THE ATTORNEY GENERAL IS ACTIVELY**
26 **HANDLING A CASE INVOLVING OR RELATING TO THE PROPERTY, THE ATTORNEY**
27 **GENERAL, AND THE OWNER OF THE PROPERTY IN THE SAME MANNER AS THE**

1 OWNER WAS PROVIDED NOTICE UNDER SUBDIVISION (A).

2 (iii) THE PROSECUTING ATTORNEY FOR THE COUNTY IN WHICH THE
3 PROPERTY WAS SEIZED OR, IF THE ATTORNEY GENERAL IS ACTIVELY
4 HANDLING A CASE INVOLVING OR RELATING TO THE PROPERTY, THE ATTORNEY
5 GENERAL, SHALL REVIEW THE LIST OF THE PROPERTY SEIZED. IF AFTER A
6 REVIEW OF THE SEIZURE THE PROSECUTING ATTORNEY OR ATTORNEY GENERAL
7 DETERMINES THAT ALL OR SOME OF THE PROPERTY SEIZED IS LAWFULLY
8 SUBJECT TO SEIZURE AND FORFEITURE UNDER THIS ARTICLE, THE
9 PROSECUTOR OR ATTORNEY GENERAL SHALL SEEK A COURT ORDER APPROVING
10 THE SEIZURE AND FORFEITURE AND AFFIRMING THAT THE PROPERTY WILL NOT
11 BE MOVED, SOLD, TRANSFERRED, OR DESTROYED WHILE FORFEITURE
12 PROCEEDINGS ARE PENDING.

13 (iv) AFTER OBTAINING AN ORDER UNDER SUBPARAGRAPH (iii), THE
14 PROSECUTOR OR ATTORNEY GENERAL SHALL NOTIFY THE SEIZING AGENCY OF
15 THE DETERMINATION UNDER SUBPARAGRAPH (iii) AND THE LOCAL UNIT OF
16 GOVERNMENT OR THIS STATE SHALL DECLARE THE PROPERTY FORFEITED AND
17 SHALL DISPOSE OF THE PROPERTY AS PROVIDED UNDER SECTION 7524.

18 (v) EXCEPT AS TO PROPERTY THAT IS REQUIRED TO BE DESTROYED BY
19 LAW, THAT IS HARMFUL TO THE PUBLIC, OR THAT IS EVIDENCE IN A
20 CRIMINAL INVESTIGATION OR PROCEEDING, IF THE PROSECUTING ATTORNEY
21 OR ATTORNEY GENERAL DOES NOT APPROVE THE SEIZURE OF THE PROPERTY
22 UNDER SUBPARAGRAPH (iii), THE SEIZING AGENCY SHALL RETURN THE
23 PROPERTY TO THE PERSON FROM WHOM IT WAS SEIZED.

24 (2) Property taken or detained under this article is not
25 subject to an action to recover personal property, but is deemed to
26 be in the custody of the seizing agency subject only to this
27 section or an order and judgment of the court having jurisdiction

1 over the forfeiture proceedings. When property is seized under this
2 article, the seizing agency may do any of the following:

3 (a) Place the property under seal.

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

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

8 (d) Deposit money seized under this article into an interest-
9 bearing account in a financial institution. As used in this
10 subdivision, "financial institution" means a state or nationally
11 chartered bank or a state or federally chartered savings and loan
12 association, savings bank, or credit union whose deposits are
13 insured by an agency of the United States government and that
14 maintains a principal office or branch office located in this state
15 under the laws of this state or the United States.

16 (3) Title to real property forfeited under this article ~~shall~~
17 **MUST** be determined by a court of competent jurisdiction. A
18 forfeiture of real property encumbered by a bona fide security
19 interest is subject to the interest of the secured party who
20 neither had knowledge of nor consented to the act or omission.

21 (4) An attorney for a person who is charged with a crime
22 involving or related to the money seized under this article ~~shall~~
23 **MUST** be afforded a period of 60 days within which to examine that
24 money. This 60-day period begins to run after notice is given under
25 subsection (1) (a) but before the money is deposited into a
26 financial institution under subsection (2) (d). If the attorney
27 general, prosecuting attorney, or city or township attorney fails

1 to sustain his or her burden of proof in forfeiture proceedings
2 under this article, the court shall order the return of the money,
3 including any interest earned on money deposited into a financial
4 institution under subsection (2) (d).

5 Enacting section 1. This amendatory act takes effect 90 days
6 after the date it is enacted into law.