

# SENATE BILL NO. 655

November 13, 2019, Introduced by Senators SANTANA, MCBROOM and MACDONALD and referred to the Committee on Insurance and Banking.

A bill to amend 2004 PA 452, entitled "Identity theft protection act," by amending sections 19 and 19b (MCL 445.79 and 445.79b), section 19 as added by 2010 PA 315 and section 19b as added by 2010 PA 314.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 19. (1) ~~Except as provided in subsection (2), the~~ **Subject**  
2 **to subsections (2), (3), and (4), the** following property is subject  
3 to forfeiture:

4           (a) Any personal or real property that has been used,  
5 possessed, or acquired in a felony violation of this act.

1 (b) Except as provided in subparagraphs (i) to (iii), a  
2 conveyance, including an aircraft, vehicle, or vessel, used or  
3 intended for use to transport, or in any manner to facilitate the  
4 transportation of, for the purpose of sale or receipt, property  
5 described in subdivision (a):

6 (i) A conveyance used by a person as a common carrier in the  
7 transaction of business as a common carrier is not subject to  
8 forfeiture unless it is determined that the owner or other person  
9 in charge of the conveyance is a consenting party or privy to a  
10 violation of this act.

11 (ii) A conveyance is not subject to forfeiture by reason of any  
12 act or omission established by the owner of that conveyance to have  
13 been committed or omitted without the owner's knowledge or consent.

14 (iii) A forfeiture of a conveyance encumbered by a bona fide  
15 security interest is subject to the interest of the secured party  
16 who neither had knowledge of nor consented to the act or omission.

17 (c) Books, records, computers, electronic equipment, and  
18 research products and materials, including microfilm, digital  
19 media, tapes, and data, used or intended for use in violation of  
20 this act.

21 (d) Any money, negotiable instruments, securities, or any  
22 other thing of value that is found in close proximity to any  
23 property that is subject to forfeiture under subdivision (a), (b),  
24 or (c) is presumed to be subject to forfeiture. This presumption  
25 may be rebutted by clear and convincing evidence.

26 (2) Property ~~used to commit a violation of this act~~ **that is**  
27 **subject to seizure under section 19a** is not subject to forfeiture  
28 unless ~~the owner of the property actively participates in or~~  
29 ~~consents to the violation of this act.~~ **a criminal proceeding**

1 involving or related to the property has been completed and the  
2 defendant pleads guilty to or is convicted after a trial of a  
3 violation of this act.

4 (3) A criminal conviction or guilty plea under subsection (2)  
5 is not required if 1 or more of the following apply:

6 (a) No person claims any interest in the property as provided  
7 under section 19b or the owner of the property withdraws his or her  
8 claim in the property.

9 (b) The owner of the property waives the criminal conviction  
10 or plea requirement under subsection (2) and elects to proceed with  
11 the civil forfeiture proceeding.

12 (c) A criminal charge has been filed and 1 or both of the  
13 following apply:

14 (i) The defendant is outside this state and cannot reasonably  
15 be extradited or brought back to this state for prosecution.

16 (ii) Reasonable efforts have been made by law enforcement  
17 authorities to locate and arrest the defendant, but the defendant  
18 has not been located.

19 (4) If a person withdraws his or her claim under subsection  
20 (3) (a), the prosecuting attorney for the county in which the  
21 property was seized or, if the attorney general is actively  
22 handling a case involving or related to the property, the attorney  
23 general, must review the seizure of the property and approve the  
24 forfeiture of the property before the property may be forfeited.

25 (5) Subsection (2) does not prohibit the immediate destruction  
26 of property that may not be lawfully possessed by any person or  
27 that is dangerous to the health or safety of the public regardless  
28 of whether the person is convicted of a violation of this act.

29 (6) This section applies to forfeiture proceedings under this

1 act that are initiated on or after the effective date of the  
2 amendatory act that added this subsection.

3 (7) Subsections (2), (3), and (4) do not apply to forfeiture  
4 proceedings in which the aggregate fair market value of the  
5 property and currency seized exceeds \$50,000.00, excluding the  
6 value of contraband.

7 (8) ~~(3)~~—Property of any of the following providers is not  
8 subject to forfeiture under this act unless it is determined that  
9 the provider is a consenting party or privy to a violation of this  
10 act:

- 11 (a) A telecommunication provider.
- 12 (b) An internet service provider.
- 13 (c) A computer network service provider.
- 14 (d) An interactive computer service provider.

15 Sec. 19b. (1) ~~¶~~**Subject to section 19(2), (3), and (4), if**  
16 property is seized pursuant to section 19a, forfeiture proceedings  
17 ~~shall~~**must** be instituted promptly. If the property is seized  
18 without process as provided under section 19a and the total value  
19 of the property seized does not exceed \$50,000.00, the following  
20 procedure ~~shall~~**must** be used:

21 (a) The local unit of government that seized the property or,  
22 if the property was seized by the state, the state shall notify the  
23 owner of the property that the property has been seized **and, if**  
24 **charges have been filed against a person for a crime, the person**  
25 **charged,** and that the local unit of government or, if applicable,  
26 the state intends to forfeit and dispose of the property by  
27 delivering a written notice to the owner of the property or by  
28 sending the notice to the owner by certified mail. If the name and  
29 address of the owner are not reasonably ascertainable or delivery

1 of the notice cannot be reasonably accomplished, the notice ~~shall~~  
2 **must** be published **on the local unit of government's or the**  
3 **department of the attorney general's website and** in a newspaper of  
4 general circulation in the county in which the property was seized,  
5 for 10 successive publishing days.

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

13 (c) Any person claiming an interest in property that is the  
14 subject of a notice under subdivision (a) may, within 20 days after  
15 receipt of the notice or of the date of the first publication of  
16 the notice, file a written claim signed by the claimant with the  
17 local unit of government or the state expressing his or her  
18 interest in the property **and any objection to the forfeiture. A**  
19 **claim or an objection under this subsection must be written,**  
20 **verified, and signed by the claimant, and include a detailed**  
21 **description of the property and the property interest asserted. The**  
22 **verification must include a certification under the penalty of**  
23 **perjury stating that the undersigned has examined the claim and**  
24 **believes it to be, to the best of the claimant's knowledge, true**  
25 **and complete. A written claim under this subsection must be made on**  
26 **the form developed by the state court administrative office as**  
27 **required under subsection (2).** The person filing the claim shall  
28 give a bond to the local unit of government or the state in the  
29 amount of 10% of the value of the claimed property, but not less

1 than \$250.00 or greater than \$5,000.00, with sureties approved by  
2 the local unit of government or the state containing the condition  
3 that if the property is ordered forfeited by the court the obligor  
4 shall pay all costs and expenses of the forfeiture proceedings. The  
5 local unit of government or, if applicable, the state shall  
6 transmit the claim and bond with a list and description of the  
7 property seized to the attorney general, the prosecuting attorney  
8 for the county, or the city or township attorney for the local unit  
9 of government in which the seizure was made. The attorney general,  
10 the prosecuting attorney, or the city or township attorney shall  
11 promptly institute forfeiture proceedings after the expiration of  
12 the 20-day period. However, unless all criminal proceedings  
13 involving or relating to the property have been completed, a city  
14 or township attorney shall not institute forfeiture proceedings  
15 without the consent of the prosecuting attorney or, if the attorney  
16 general is actively handling a case involving or relating to the  
17 property, the attorney general.

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

28 **(2) The state court administrative office shall develop and**  
29 **make available to law enforcement agencies, courts, and the public**

1 a form for asserting an ownership interest in seized property under  
2 subsection (1) (c). The form must require a claimant to provide a  
3 detailed description of the property, and a signed attestation that  
4 the claimant has a bona fide interest in the property.

5 (3) ~~(2)~~—Property taken or detained under this act is not  
6 subject to an action to recover personal property, but is  
7 considered to be in the custody of the seizing agency subject only  
8 to this section or an order and judgment of the court having  
9 jurisdiction over the forfeiture proceedings. When property is  
10 seized under this act, the seizing agency may do any of the  
11 following:

12 (a) Place the property under seal.

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

14 (c) Take custody of the property and remove it to an  
15 appropriate location for disposition in accordance with law.

16 (d) Deposit money seized under this act into an interest-  
17 bearing account in a financial institution. As used in this  
18 subdivision, "financial institution" means a state or nationally  
19 chartered bank or a state or federally chartered savings and loan  
20 association, savings bank, or credit union whose deposits are  
21 insured by an agency of the United States government and that  
22 maintains a principal office or branch office located in this state  
23 under the laws of this state or the United States.

24 (4) ~~(3)~~—Title to real property forfeited under this act ~~shall~~  
25 **must** be determined by a court of competent jurisdiction. A  
26 forfeiture of real property encumbered by a bona fide security  
27 interest is subject to the interest of the secured party who  
28 neither had knowledge of nor consented to the act or omission.

29 (5) ~~(4)~~—An attorney for a person who is charged with a crime

1 involving or related to the money seized under this act has 60 days  
2 within which to examine that money. This 60-day period begins to  
3 run after notice is given under subsection (1) (a) but before the  
4 money is deposited into a financial institution under subsection  
5 ~~(2) (d)~~. **(3) (d)**. If the attorney general, prosecuting attorney, or  
6 city or township attorney fails to sustain his or her burden of  
7 proof in forfeiture proceedings under this act, the court shall  
8 order the return of the money, including any interest earned on  
9 money deposited into a financial institution under subsection  
10 ~~(2) (d)~~. **(3) (d)**.

11 **(6) If property is subject to forfeiture under section 19,**  
12 **section 19(2), (3), and (4) apply, and a person has filed a claim**  
13 **under this section, a civil forfeiture action under this act must**  
14 **be stayed during the pendency of the applicable criminal**  
15 **proceedings. The civil forfeiture action must proceed after the**  
16 **defendant is convicted of, or enters a guilty plea to, the offense**  
17 **involved, or 1 or more of the events described in section 19(3)**  
18 **apply.**

19 **(7) At the forfeiture hearing, the plaintiff must prove 1 or**  
20 **both of the following, as applicable:**

21 **(a) The property is subject to forfeiture as provided in**  
22 **section 19(1).**

23 **(b) If a person, other than the person who has been convicted**  
24 **of a violation of this act or entered into a plea agreement for a**  
25 **violation of this act as provided under section 19(2), claims an**  
26 **ownership or security interest in the property, that the person**  
27 **claiming the interest in the property had prior knowledge of or**  
28 **consented to the commission of the crime.**

29 **(8) If the plaintiff fails to meet the burden of proof under**



1 subsection (7), property seized under section 19a must be returned  
2 to the owner not more than 14 days from the date the court issues a  
3 dispositive order.

4 (9) Except as otherwise provided in section 19, property must  
5 be returned to the owner not more than 14 days after the occurrence  
6 of any of the following:

7 (a) A warrant is not issued against a person for the  
8 commission of a crime within 90 days after the property was seized.

9 (b) All charges against the person relating to the commission  
10 of the crime are dismissed.

11 (c) The person charged with committing a crime is acquitted of  
12 the crime.

13 (d) In the case of multiple defendants, all persons charged  
14 with committing a crime are acquitted of the crime.

15 (e) Entry of a court order under this act for the return of  
16 the property.

17 (10) A party to a forfeiture proceeding may seek an extension  
18 of the time periods described in subsections (8) and (9) for good  
19 cause. The court may grant a motion under this subsection for good  
20 cause shown.

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

23 Enacting section 2. This amendatory act does not take effect  
24 unless all of the following bills of the 100th Legislature are  
25 enacted into law:

26 (a) Senate Bill No. 653.

27

28 (b) Senate Bill No. 654.

29

1 (c) Senate Bill No. 652.  
2