

# HOUSE BILL No. 5729

December 18, 2009, Introduced by Reps. Leland, Valentine, Tlaib, Melton, Womack, Geiss, Constan, Liss and Cushingberry 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 2006 PA 130.

**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 or,  
7 if the property was seized by the state, the state shall notify the  
8 owner of the property that the property has been seized, and that  
9 the local unit of government or, if applicable, the state intends

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

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

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

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

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

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

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

4 (a) Place the property under seal.

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

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

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

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

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

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

6 (5) SECTION 2977 OF THE REVISED JUDICATURE ACT OF 1961, 1961  
7 PA 236, MCL 600.2977, APPLIES TO A MOTOR VEHICLE THAT HAS BEEN  
8 SEIZED UNDER THIS ARTICLE BUT NOT FINALLY FORFEITED.

9 Enacting section 1. This amendatory act does not take effect  
10 unless Senate Bill No. \_\_\_\_ or House Bill No. 5725(request no.  
11 01506'09) of the 95th Legislature is enacted into law.