

# HOUSE BILL NO. 4002

January 09, 2019, Introduced by Rep. LaGrand 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,  
and by adding section 7523a.

## 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:

1 (a) The local unit of government that seized the property or,  
2 if the property was seized by this state, the state shall notify  
3 the owner of the property that the property has been seized **or, if**  
4 **charges have been filed against a person for a crime, the person**  
5 **charged,** and that the local unit of government or, if applicable,  
6 the state intends to forfeit and dispose of the property by  
7 delivering a written notice to the owner of the property or by  
8 sending the notice to the owner by certified mail. If the name and  
9 address of the owner are not reasonably ascertainable, or delivery  
10 of the notice cannot be reasonably accomplished, the notice ~~shall~~  
11 **must** be published in a newspaper of general circulation in the  
12 county in which the property was seized, for 10 successive  
13 publishing days.

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

21 (c) Any person claiming an interest in property that is the  
22 subject of a notice under subdivision (a) may, within 20 days after  
23 receipt of the notice or of the date of the first publication of  
24 the notice, file a written claim signed by the claimant with the  
25 local unit of government or the state expressing his or her  
26 interest in the property **and any objection to forfeiture. An**  
27 **objection under this subsection must be written, verified, and**  
28 **signed by the claimant, and include a detailed description of the**  
29 **property and the property interest asserted. The verification must**

1 be notarized and include a certification stating that the  
2 undersigned has examined the claim and believes it to be, to the  
3 best of the claimant's knowledge, true and complete. A written  
4 claim under this subsection must be made on the form developed by  
5 the state court administrative office as required under subsection  
6 (2). Upon the filing of the claim, the local unit of government or,  
7 if applicable, this state shall transmit the claim with a list and  
8 description of the property seized to the attorney general, the  
9 prosecuting attorney for the county, or the city or township  
10 attorney for the local unit of government in which the seizure was  
11 made. The attorney general, the prosecuting attorney, or the city  
12 or township attorney shall promptly institute forfeiture  
13 proceedings after the expiration of the 20-day period. However,  
14 unless all criminal proceedings involving or relating to the  
15 property have been completed, a city or township attorney shall not  
16 institute forfeiture proceedings without the consent of the  
17 prosecuting attorney or, if the attorney general is actively  
18 handling a case involving or relating to the property, the attorney  
19 general.

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

(2) The state court administrative office shall develop and make available to law enforcement agencies, courts, and the public a form for asserting an ownership interest in seized property under subsection (1)(c). The form must require a claimant to provide a detailed description of the property, the claimant's ownership interest in the property, and a signed attestation that the claimant has a bona fide ownership interest in the property.

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

(a) Place the property under seal.

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

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

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

(3) Title to real property forfeited under this article ~~shall~~ **must** be determined by a court of competent jurisdiction. A forfeiture of real property encumbered by a bona fide security

1 interest is subject to the interest of the secured party who  
2 neither had knowledge of nor consented to the act or omission.

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

14 **Sec. 7523a. (1) If section 7521a applies to a forfeiture case**  
15 **under this article, the seized property is subject to forfeiture**  
16 **under section 7521, and a person has filed a claim as provided**  
17 **under section 7523, the plaintiff must institute a forfeiture**  
18 **action under this article not more than 28 days after a criminal**  
19 **proceeding involving or related to the property has been completed**  
20 **and the defendant has been convicted or entered into a plea**  
21 **agreement.**

22 (2) At the forfeiture hearing, the plaintiff must prove 1 or  
23 both of the following, as applicable:

24 (a) The property is the proceeds of a crime, the substituted  
25 proceeds of a crime, or an instrumentality of a crime.

26 (b) If a person, other than the person who has been convicted  
27 of a violation of this article or entered into a plea agreement in  
28 connection with a violation of this article as provided under  
29 section 7521a(1)(a) or (b), claims an ownership or security

1 interest in the property, that the person claiming the interest in  
2 the property had prior knowledge of or consented to the commission  
3 of the crime.

4 (3) If the plaintiff fails to meet the burden of proof under  
5 subsection (2), property seized under section 7522 must be returned  
6 to the owner not more than 7 days from the date the court issues a  
7 dispositive order.

8 (4) Except as otherwise provided in section 7521a, property  
9 must be returned to the owner not more than 7 days after the  
10 occurrence of any of the following:

11 (a) A warrant is not issued against a person for the  
12 commission of a crime within 28 days after the property was seized.

13 (b) All charges against the person relating to the commission  
14 of a crime are dismissed.

15 (c) The person charged with committing a crime is acquitted of  
16 the crime.

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

19 (e) Entry of a court order under this article for the return  
20 of the property.

21 (5) Property is not subject to seizure under section 7522 or  
22 forfeiture under section 7521 if, upon learning of the commission  
23 of a crime, the owner of the property served written and timely  
24 notice of the commission of the crime upon an appropriate law  
25 enforcement agency, and served a written and timely notice to quit  
26 upon the person who committed the crime.

27 (6) A person may move the court having jurisdiction to return  
28 seized property on the grounds that the property was illegally  
29 seized, that the property is not subject to forfeiture, or that the

1 person has an ownership or security interest in the property and  
2 did not have prior knowledge of or consent to the commission of the  
3 crime. The court must hear a motion made under this subsection not  
4 more than 28 days after the date it was filed. At a hearing on a  
5 motion under this subsection, the plaintiff has the burden of  
6 establishing probable cause to believe that the property is subject  
7 to forfeiture under this article, that the property was properly  
8 seized, or that the person filing the motion has prior knowledge  
9 of, or consented to, the commission of a crime, as applicable.

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

12 Enacting section 2. This amendatory act does not take effect  
13 unless Senate Bill No. \_\_\_\_ or House Bill No. 4001 (request no.  
14 01189'19) of the 100th Legislature is enacted into law.