



**House
Legislative
Analysis
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Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

DRUG-RELATED FORFEIT OF REAL ESTATE

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House Bill 4277

Sponsor: Rep. Sharon L. Gire

Committee: Judiciary

Mich. State Law Library

Complete to 4-4-89

A SUMMARY OF HOUSE BILL 4277 AS INTRODUCED 2-22-89

The forfeiture law within the Public Health Code authorizes state and local units of government to seize, under civil law, property acquired through or used in drug trafficking. The law specifies that forfeiture of real estate encumbered by a bona fide security interest is subject to the interest of the secured party if he or she had no knowledge of the drug-related crime. The bill would amend the drug forfeiture law to replace the above-described provision with explicit procedures much like those in the recently-enacted general forfeiture law (Public Act 104 of 1988).

Generally, real estate that was used for or obtained through the commission of a drug-related crime would be subject to forfeiture through the filing of a lien against it. However, property would not be subject to forfeiture either (1) if the property was the primary residence of the criminal's spouse or dependent child (unless the spouse or child knew of, and consented to, the crime); or (2) if the owner did not know of or consent to the crime. Forfeiture of property encumbered by a bona fide security interest or an unpaid balance on a land contract would be subject to the interest of the secured party or land contract vendor. Forfeiture of property obtained by the sale or exchange of proceeds of a crime ("the substituted proceeds of a crime") would be limited to the crime's proceeds plus any amount necessary to bring the sum equal to the amount of restitution or damages owed the victim.

Lien filing. Real property would in effect be "seized" through the filing of a lien against it. The court, upon a showing of probable cause by the attorney general, local prosecutor or city attorney, could authorize the filing of the lien. Within seven days after the lien filing, the prosecutor or city attorney would notify various interested parties of the pending forfeiture and disposal of the property.

Discharge of lien. Someone notified of a lien filing could ask the court to discharge the lien on either of the following grounds: that the person had an ownership or security interest in the property and did not know of or consent to the commission of the crime, or that the property was not subject to forfeiture under the bill. The court would hold a hearing at the earliest possible time. At the hearing, the prosecutor (or attorney general or city attorney) would have the burden of establishing probable cause to believe that the property was subject to forfeiture under the bill and that the person seeking discharge of the lien knew of or consented to the commission of the crime. If the prosecutor failed to sustain the burden of proof, the court would order the lien discharged.

In addition, a lien notice would be discharged within seven days after any of the following occurred: a warrant was not issued within seven days after the lien filing; all charges against the consenting legal owner had been dismissed; the consenting legal owner was acquitted or, in the case of multiple defendants, all those charged with the crime were acquitted; or the

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court ordered discharge of the lien.

Forfeiture proceedings. Drug-related forfeiture proceedings for real property could not commence until after conviction for the crime. Different procedures would apply for property worth less than \$100,000 and property worth more than \$100,000. For property worth less than \$100,000, the state or local unit of government would notify interested parties and would declare the property forfeited if no claim of interest in the property were filed within 21 days. If a claim was filed, or if the property was worth more than \$100,000, the government would have to file a civil action for forfeiture. At a forfeiture proceeding, the government would have to prove by a preponderance of the evidence that the property in question was either the proceeds or the substituted proceeds of a crime, and that a person claiming an interest in the property either knew of or consented to the crime.

If the government failed to meet its burden of proof, the property would be returned to the owner or secured party within seven days. However, real property would not be returned to a person whose security interest was less than the property's market value unless the person paid the government the difference between the market value and the amount of secured interest.

MCL 333.7523 et al.