

Act No. 336
Public Acts of 1990
Approved by the Governor
December 20, 1990
Filed with the Secretary of State
December 21, 1990

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990**

Introduced by Reps. Martin, Runco, Stupak, Profit, Bandstra, London, Sikkema, DeMars, Brown, Emerson, Power, DeBeaussaert, Munsell, Fitzgerald, Jondahl, Emmons, Law, Hoffman, Griffin, Webb, Porreca, Gubow and Bankes

ENROLLED HOUSE BILL No. 5327

AN ACT to amend sections 7523 and 7524 of Act No. 368 of the Public Acts of 1978, entitled as amended "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," as amended by Act No. 30 of the Public Acts of 1990, being sections 333.7523 and 333.7524 of the Michigan Compiled Laws; and to add section 7524a.

The People of the State of Michigan enact:

Section 1. Sections 7523 and 7524 of Act No. 368 of the Public Acts of 1978, as amended by Act No. 30 of the Public Acts of 1990, being sections 333.7523 and 333.7524 of the Michigan Compiled Laws, are amended and section 7524a is added to read as follows:

Sec. 7523. (1) If property is seized pursuant to section 7522, forfeiture proceedings shall be instituted promptly. If the property is seized without process as provided under section 7522, and the total value of the property seized does not exceed \$50,000.00, the following procedure shall be used:

(a) The local unit of government that seized the property, or, if the property was seized by the state, the state shall notify the owner of the property that the property has been seized, and that the local unit of government or, if applicable, the state intends to forfeit and dispose of the property by delivering a written notice to the owner of the property or by sending the notice to the owner by certified mail. If the name and address of the owner are not reasonably ascertainable, or delivery of the notice cannot be reasonably accomplished, the notice shall be published in a newspaper of general circulation in the county in which the property was seized, for 10 successive publishing days.

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

(c) Any person claiming an interest in property which is the subject of a notice under subdivision (a) may, within 20 days after receipt of the notice or of the date of the first publication of the notice, file a written claim signed by the claimant with the local unit of government or the state expressing his or her interest in the property. Upon the filing of the claim, and the giving of a bond to the local unit of government or the state in the amount of 10% of the value of the claimed property, but not less than \$250.00 or greater than \$5,000.00, with sureties approved by the local unit of government or the state conditioned that if the property is ordered forfeited by the court the obligor shall pay all costs and expenses of the forfeiture proceedings. The local unit of government or, if applicable, the state shall transmit the claim and bond with a list and description of the property seized to the attorney general, the prosecuting attorney for the county, or the city or township attorney for the local unit of government in which the seizure was made. The attorney general, the prosecuting attorney, or the city or township attorney shall promptly institute forfeiture proceedings after the expiration of the 20-day period. However, unless all criminal proceedings involving or relating to the property have been completed, a city or township attorney shall not institute forfeiture proceedings without the consent of the prosecuting attorney or, if the attorney general is actively handling a case involving or relating to the property, the attorney general.

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

(2) Property taken or detained under this article or pursuant to section 17766a shall not be 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 or pursuant to section 17766a, 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.

(3) Title to real property forfeited under this article or pursuant to section 17766a shall be determined by a court of competent jurisdiction. A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.

Sec. 7524. (1) When property is forfeited under this article or pursuant to section 17766a, the local unit of government that seized the property may do any of the following, or if the property is seized by or in the custody of the state, the state may do any of the following, subject to section 7523(1)(d):

(a) Retain it for official use.

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and any money, negotiable instruments, securities, or any other thing of value as described in section 7521(1)(f) that are forfeited pursuant to this article shall be deposited with the treasurer of the entity having budgetary authority over the seizing agency and applied as follows:

(i) For the payment of proper expenses of the proceedings for forfeiture and sale, including expenses incurred during the seizure process, maintenance of custody, advertising, and court costs, except as otherwise provided in subsection (3).

(ii) The balance remaining after the payment of expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the treasurer of the entity having budgetary authority over the seizing agency. If more than 1 agency was substantially involved in effecting the forfeiture, the court having jurisdiction over the forfeiture proceeding shall equitably distribute the money among the treasurers of the entities having budgetary authority over the seizing agencies. The money received under this subparagraph and all interest and other earnings on money received under this subparagraph shall be used to enhance law enforcement efforts pertaining to this article or section 17766a, as appropriated by the entity having budgetary authority over the seizing agency. A distribution made under this subparagraph shall serve as a supplement to, and not a replacement for, the funds budgeted on January 1, 1991, for law enforcement efforts pertaining to this article or section 17766a.

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

(d) Forward it to the bureau for disposition.

(2) In the course of selling real property pursuant to subsection (1)(b), the court that has entered an order of forfeiture may, on motion of the agency to whom the property has been forfeited, appoint a receiver to dispose of the real property forfeited. The receiver shall be entitled to reasonable compensation. The receiver shall have authority to do all of the following:

(a) List the forfeited real property for sale.

(b) Make whatever arrangements are necessary for the maintenance and preservation of the forfeited real property.

(c) Accept offers to purchase the forfeited real property.

(d) Execute instruments transferring title to the forfeited real property.

(3) If a court enters an order of forfeiture, the court may order a person who claimed an interest in the forfeited property pursuant to section 7523(1)(c) to pay the expenses of the proceedings of forfeiture to the entity having budgetary authority over the seizing agency.

Sec. 7524a. (1) Before February 1 of each year, each local unit of government that had forfeiture proceedings pending in the circuit court pursuant to section 7523; or effectuated a forfeiture of property pursuant to section 7523 without a forfeiture proceeding in the circuit court; or received money, negotiable instruments, securities, or any other thing of value pursuant to section 7524 during the fiscal year for the local unit of government ending in the immediately preceding calendar year shall submit a report to the office of drug agencies for analysis and transmittal to the secretary of the senate and the clerk of the house of representatives. The annual report shall be a summary of the local unit of government's activities regarding the forfeiture of property under this article and pursuant to section 17766a for the fiscal year and shall contain the following information, as applicable:

(a) The number of forfeiture proceedings that were instituted in the circuit court by the local unit of government.

(b) The number of forfeiture proceedings instituted by the local unit of government that were concluded in the circuit court.

(c) The number of all forfeiture proceedings instituted by the local unit of government that were pending in the circuit court at the end of the year.

(d) The number of forfeitures accomplished by the local unit of government without filing a forfeiture proceeding in the circuit court.

(e) The net total proceeds of all property forfeited under this article and pursuant to section 17766a through forfeitures instituted by the local unit of government that the local unit of government is required to account for and report to the state treasurer pursuant to either of the following, as applicable:

(i) Act No. 71 of the Public Acts of 1919, being sections 21.41 to 21.53 of the Michigan Compiled Laws.

(ii) The uniform budgeting and accounting act, Act No. 2 of the Public Acts of 1968, being sections 141.421 to 141.440a of the Michigan Compiled Laws.

(f) An inventory of property received by the local unit of government pursuant to section 7524 and section 17766a, including, but not limited to, all of the following:

(i) all of the following real property:

(A) Single-family residential.

(B) Multiple-family residential.

(C) Industrial.

(D) Commercial.

(E) Agricultural.

(ii) Any type of conveyance described in section 7521(1)(d), including the year, make, and model.

(iii) Money, negotiable instruments, and securities.

(iv) The total value of personal property, excluding personal property described in subparagraphs (ii) and (iii).

(g) A statement explaining how the money received by the local unit of government pursuant to section 7524(1)(b)(ii) has been used or is being used to enhance the law enforcement efforts pertaining to this article or section 17766a.

(2) The records of a local unit of government described in subsection (1) regarding the forfeiture of property under this article or pursuant to section 17766a shall be audited in accordance with 1 of the following, as applicable:

(a) Act No. 71 of the Public Acts of 1919, being sections 21.41 to 21.53 of the Michigan Compiled Laws.

(b) The uniform budgeting and accounting act, Act No. 2 of the Public Acts of 1968, being sections 141.421 to 141.440a of the Michigan Compiled Laws.

(3) The records of a local unit of government described in subsection (1) regarding the forfeiture of property under this article or pursuant to section 17766a may be audited by an auditor of the local unit of government.

Section 2. This amendatory act shall take effect April 1, 1991.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.