

HOUSE BILL No. 4277

February 22, 1989, Introduced by Reps. Gire, Weeks, Bankes, Bartnik, Martin, Leland, Rocca, Kosteva, Gubow, Joe Young, Jr., Runco, Profit, Pitoniak, Dolan, Munsell, Fitzgerald, Honigman, Stabenow, DeMars, DeBeaussaert, Niederstadt, Hart, Johnson, Clack, Griffin, Maynard, Hertel, Stallworth, Kilpatrick, Harrison, Ciaramitaro, Miller, Knight, Bandstra, Bennane, Murphy, Wallace, Palamara and Van Regenmorter and referred to the Committee on Judiciary.

A bill to amend section 7523 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

as amended by Act No. 7 of the Public Acts of 1988, being section 333.7523 of the Michigan Compiled Laws; and to add sections 7525a, 7526, 7527, 7528, 7529, 7530, and 7530a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 7523 of Act No. 368 of the Public Acts
2 of 1978, as amended by Act No. 7 of the Public Acts of 1988,
3 being section 333.7523 of the Michigan Compiled Laws, is amended
4 and sections 7525a, 7526, 7527, 7528, 7529, 7530, and 7530a are
5 added to read as follows:

6 Sec. 7523. (1) In case of a seizure pursuant to section
7 7522, forfeiture proceedings shall be instituted promptly. If
8 seizure is made without process as provided under section 7522,

1 and the total value of the property seized does not exceed
2 \$100,000.00, the following procedure shall be used:

3 (a) The local unit of government seizing the property shall
4 cause, or if the property is seized by the state, the state shall
5 cause notice of the seizure of the property and the intention to
6 forfeit and dispose of the property according to this article to
7 be given to the owner of the property by delivering to the owner
8 the notice or by sending the notice to the owner by certified
9 mail. If the name and address of the owner are not reasonably
10 ascertainable, or delivery of the notice cannot be reasonably
11 accomplished, the notice shall be published in a newspaper of
12 general circulation in the county in which the property was
13 seized, for 10 successive publishing days.

14 (b) Unless all criminal proceedings involving or relating to
15 the property have been completed, the seizing agency shall imme-
16 diately 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 attor-
19 ney general of the seizure of the property and the intention to
20 forfeit and dispose of the property.

21 (c) Any person claiming an interest in property which is the
22 subject of a notice under subdivision (a) may, within 20 days
23 after receipt of the notice or of the date of the first publica-
24 tion of the notice, file a claim with the local unit of govern-
25 ment or the state expressing his or her interest in the
26 property. Upon the filing of the claim, and the giving of a bond
27 to the local unit of government or the state in the amount of

1 \$250.00 with sureties approved by the local unit of government or
2 the state conditioned that in case the property is ordered for-
3 feited by the court the obligor shall pay all costs and expenses
4 of the forfeiture proceedings, the local unit of government or
5 the state shall transmit the claim and bond with a list and
6 description of the property seized to the attorney general, the
7 prosecuting attorney for the county, or the city or township
8 attorney for the local unit of government in which the seizure
9 was made. The attorney general, the prosecuting attorney, or the
10 city or township attorney shall promptly institute forfeiture
11 proceedings after the expiration of the 20-day period. However,
12 unless all criminal proceedings involving or relating to the
13 property have been completed, a city or township attorney shall
14 not institute forfeiture proceedings without the consent of the
15 prosecuting attorney or, if the attorney general is actively han-
16 dling a case involving or relating to the property, the attorney
17 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 govern-
20 ment or the state shall declare the property forfeited and shall
21 dispose of the property according to section 7524. However,
22 unless all criminal proceedings involving or relating to the
23 property have been completed, the local unit of government or the
24 state shall not dispose of the property pursuant to this subdivi-
25 sion without the written consent of the prosecuting attorney or,
26 if the attorney general is actively handling a case involving or
27 relating to the property, the attorney general.

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

8 (a) Place the property under seal.

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

10 (c) Require the administrator to take custody of the prop-
11 erty and remove it to an appropriate location for disposition in
12 accordance with law.

13 ~~(3) Title to real property forfeited under this article~~
14 ~~shall be determined by a court of competent jurisdiction. A for-~~
15 ~~feiture of real property encumbered by a bona fide security~~
16 ~~interest is subject to the interest of the secured party who nei-~~
17 ~~ther had knowledge of nor consented to the act or omission.~~

18 SEC. 7525A. AS USED IN SECTIONS 7526 TO 7530A:

19 (A) "CRIME" MEANS A VIOLATION OF THIS ARTICLE IN CONNECTION
20 WITH WHICH THE FORFEITURE OF REAL PROPERTY IS SOUGHT.

21 (B) "PROCEEDS OF A CRIME" MEANS ANY REAL PROPERTY OBTAINED
22 THROUGH THE COMMISSION OF A CRIME, INCLUDING ANY APPRECIATION IN
23 THE VALUE OF THE REAL PROPERTY.

24 (C) "SUBSTITUTED PROCEEDS OF A CRIME" MEANS ANY REAL PROP-
25 erty OBTAINED OR ANY GAIN REALIZED BY THE SALE OR EXCHANGE OF
26 PROCEEDS OF A CRIME.

1 SEC. 7526. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS
2 SECTION, AND IN ADDITION TO PROPERTY THAT IS SUBJECT TO
3 FORFEITURE UNDER SECTION 7521, ALL REAL PROPERTY THAT IS THE PRO-
4 CEEDS OF A CRIME OR THE SUBSTITUTED PROCEEDS OF A CRIME IS
5 SUBJECT TO FORFEITURE UNDER THIS SECTION, SECTION 7524, AND SEC-
6 TIONS 7527 TO 7530A.

7 (2) REAL PROPERTY IS NOT SUBJECT TO FORFEITURE UNDER THIS
8 SECTION IF EITHER OF THE FOLLOWING CIRCUMSTANCES EXISTS:

9 (A) THE OWNER OF THE PROPERTY DID NOT KNOW OF, OR CONSENT
10 TO, THE COMMISSION OF THE CRIME.

11 (B) THE PROPERTY IS THE PRIMARY RESIDENCE OF THE SPOUSE OR A
12 DEPENDENT CHILD OF THE OWNER, AND THAT SPOUSE OR DEPENDENT CHILD
13 DID NOT KNOW OF, AND CONSENT TO, THE COMMISSION OF THE CRIME.

14 (3) THE FORFEITURE OF REAL PROPERTY ENCUMBERED BY A BONA
15 FIDE SECURITY INTEREST IS SUBJECT TO THE INTEREST OF THE SECURED
16 PARTY, IF THE SECURED PARTY DID NOT KNOW OF OR CONSENT TO THE
17 COMMISSION OF THE CRIME.

18 (4) THE FORFEITURE OF REAL PROPERTY ENCUMBERED BY AN UNPAID
19 BALANCE ON A LAND CONTRACT IS SUBJECT TO THE INTEREST OF THE LAND
20 CONTRACT VENDOR, IF THE LAND CONTRACT VENDOR DID NOT KNOW OF OR
21 CONSENT TO THE COMMISSION OF THE CRIME.

22 (5) THE FORFEITURE OF THE SUBSTITUTED PROCEEDS OF A CRIME IS
23 LIMITED TO THE VALUE OF THE PROCEEDS OF THE CRIME PLUS THE AMOUNT
24 OF ANY RESTITUTION OR DAMAGES OWED TO THE VICTIM OF THE CRIME
25 THAT IS IN EXCESS OF THE VALUE OF THE PROCEEDS OF THE CRIME.

26 SEC. 7527. THE ATTORNEY GENERAL OR THE PROSECUTING ATTORNEY
27 FOR THE COUNTY OR THE CITY OR TOWNSHIP ATTORNEY FOR THE LOCAL

1 UNIT OF GOVERNMENT IN WHICH REAL PROPERTY IS LOCATED MAY APPLY EX
2 PARTE TO THE COURT HAVING JURISDICTION AND, UPON A PETITION SUP-
3 PORTED BY A SWORN AFFIDAVIT, OBTAIN AN ORDER AUTHORIZING THE
4 FILING OF A LIEN NOTICE AGAINST REAL PROPERTY SUBJECT TO FORFEI-
5 TURE UNDER SECTION 7526. AN ORDER AUTHORIZING THE FILING OF A
6 LIEN NOTICE MAY BE ISSUED UPON A SHOWING OF PROBABLE CAUSE TO
7 BELIEVE THAT THE REAL PROPERTY IS THE PROCEEDS OF A CRIME OR THE
8 SUBSTITUTED PROCEEDS OF A CRIME.

9 SEC. 7528. (1) WITHIN 7 DAYS AFTER A LIEN NOTICE IS FILED
10 AGAINST REAL PROPERTY UNDER SECTION 7527, THE ATTORNEY GENERAL,
11 THE PROSECUTING ATTORNEY, OR THE CITY OR TOWNSHIP ATTORNEY SHALL
12 GIVE NOTICE OF THE FILING OF THE LIEN NOTICE AND THE INTENT TO
13 FORFEIT AND DISPOSE OF THE REAL PROPERTY ACCORDING TO THIS SEC-
14 TION, SECTION 7524, AND SECTIONS 7526 TO 7530A TO EACH OF THE
15 FOLLOWING PERSONS:

16 (A) IF CHARGES HAVE BEEN FILED AGAINST A PERSON FOR A CRIME,
17 THE PERSON CHARGED.

18 (B) EACH PERSON WITH A KNOWN OWNERSHIP INTEREST IN THE REAL
19 PROPERTY.

20 (C) EACH PERSON WITH A KNOWN SECURITY INTEREST IN THE REAL
21 PROPERTY.

22 (2) THE NOTICE REQUIRED UNDER SUBSECTION (1) SHALL BE A
23 WRITTEN NOTICE PERSONALLY DELIVERED TO THE PERSON OR SENT TO THE
24 PERSON BY CERTIFIED MAIL. IF THE NAME AND ADDRESS OF THE PERSON
25 ARE NOT REASONABLY ASCERTAINABLE OR DELIVERY OF THE NOTICE CANNOT
26 REASONABLY BE ACCOMPLISHED, THE NOTICE SHALL BE PUBLISHED IN A

1 NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE REAL
2 PROPERTY IS LOCATED FOR 10 SUCCESSIVE PUBLISHING DAYS.

3 SEC. 7529. (1) A PERSON WHO RECEIVES NOTICE UNDER SECTION
4 7528(1) OF THE FILING OF A LIEN NOTICE AGAINST REAL PROPERTY MAY
5 MOVE THE COURT HAVING JURISDICTION TO DISCHARGE THE LIEN NOTICE
6 ON THE GROUNDS THAT THE REAL PROPERTY IS NOT SUBJECT TO FORFEI-
7 TURE UNDER SECTION 7526 OR THAT THE PERSON HAS AN OWNERSHIP OR
8 SECURITY INTEREST IN THE REAL PROPERTY AND DID NOT KNOW OF OR
9 CONSENT TO THE COMMISSION OF THE CRIME. THE COURT SHALL SET THE
10 MOTION FOR HEARING AT THE EARLIEST POSSIBLE TIME.

11 (2) AT THE HEARING ON THE MOTION FILED UNDER SUBSECTION (1),
12 THE ATTORNEY GENERAL OR THE PROSECUTING ATTORNEY FOR THE COUNTY
13 OR THE CITY OR TOWNSHIP ATTORNEY FOR THE LOCAL UNIT OF GOVERNMENT
14 IN WHICH THE LIEN NOTICE WAS FILED SHALL ESTABLISH PROBABLE CAUSE
15 TO BELIEVE THAT THE REAL PROPERTY IS SUBJECT TO FORFEITURE UNDER
16 SECTION 7526 AND THAT THE PERSON FILING THE MOTION KNEW OF OR
17 CONSENTED TO THE COMMISSION OF THE CRIME.

18 (3) IF THE ATTORNEY GENERAL, PROSECUTING ATTORNEY, OR CITY
19 OR TOWNSHIP ATTORNEY FAILS TO SUSTAIN HIS OR HER BURDEN OF PROOF
20 UNDER SUBSECTION (2), THE COURT SHALL ORDER THE DISCHARGE OF THE
21 LIEN NOTICE.

22 (4) THE TESTIMONY OF A PERSON AT A HEARING HELD UNDER THIS
23 SECTION IS NOT ADMISSIBLE AGAINST HIM OR HER IN ANY CRIMINAL PRO-
24 CEEDING EXCEPT IN A CRIMINAL PROSECUTION FOR PERJURY, NOR SHALL
25 SUCH TESTIMONY CONSTITUTE A WAIVER OF THE PERSON'S CONSTITUTIONAL
26 RIGHT AGAINST SELF-INCRIMINATION.

1 SEC. 7530. EXCEPT AS OTHERWISE PROVIDED BY LAW, A LIEN
2 NOTICE FILED AGAINST REAL PROPERTY UNDER SECTION 7527 SHALL BE
3 DISCHARGED WITHIN 7 DAYS AFTER THE OCCURRENCE OF 1 OF THE
4 FOLLOWING:

5 (A) A WARRANT IS NOT ISSUED AGAINST A PERSON FOR THE COMMIS-
6 SION OF A CRIME WITHIN 7 DAYS AFTER THE LIEN NOTICE IS FILED.

7 (B) ALL CHARGES AGAINST THE CONSENTING LEGAL OWNER OF THE
8 REAL PROPERTY RELATING TO THE COMMISSION OF A CRIME ARE
9 DISMISSED.

10 (C) THE CONSENTING LEGAL OWNER OF THE REAL PROPERTY WHO IS
11 CHARGED WITH COMMITTING A CRIME IS ACQUITTED OF THE CRIME.

12 (D) IN THE CASE OF MULTIPLE DEFENDANTS, ALL PERSONS CHARGED
13 WITH COMMITTING A CRIME ARE ACQUITTED OF THE CRIME.

14 (E) ENTRY OF A COURT ORDER PURSUANT TO SECTION 7529 FOR THE
15 DISCHARGE OF THE LIEN.

16 SEC. 7530A. (1) IF REAL PROPERTY SUBJECT TO FORFEITURE
17 UNDER SECTION 7526 HAS A TOTAL VALUE OF LESS THAN \$100,000.00,
18 THE STATE OR LOCAL UNIT OF GOVERNMENT SEEKING FORFEITURE OF THE
19 REAL PROPERTY SHALL GIVE NOTICE OF THE FILING OF THE LIEN NOTICE,
20 AND THE INTENT TO BEGIN PROCEEDINGS TO FORFEIT AND DISPOSE OF THE
21 PROPERTY TO EACH OF THE PERSONS TO WHOM NOTICE IS REQUIRED TO BE
22 GIVEN UNDER SECTION 7528. NOTICE SHALL BE GIVEN WITHIN 7 DAYS
23 AFTER THE CONVICTION OF A PERSON OF A CRIME, AND SHALL BE GIVEN
24 IN THE SAME MANNER AS REQUIRED UNDER SECTION 7528.

25 (2) WITHIN 21 DAYS AFTER RECEIPT OF THE NOTICE OR OF THE
26 DATE OF THE FIRST PUBLICATION OF THE NOTICE UNDER SUBSECTION (1),
27 A PERSON CLAIMING AN INTEREST IN REAL PROPERTY SUBJECT TO THE

1 NOTICE MAY FILE A CLAIM WITH THE LOCAL UNIT OF GOVERNMENT OR THE
2 STATE EXPRESSING HIS OR HER INTEREST IN THE PROPERTY.

3 (3) IF NO CLAIM IS FILED WITHIN THE 21-DAY PERIOD AS
4 DESCRIBED IN SUBSECTION (2), THE LOCAL UNIT OF GOVERNMENT OR THE
5 STATE SHALL DECLARE THE PROPERTY FORFEITED AND SHALL DISPOSE OF
6 THE PROPERTY ACCORDING TO SECTION 7524.

7 (4) IF A CLAIM IS FILED WITHIN THE 21-DAY PERIOD AS
8 DESCRIBED IN SUBSECTION (2), THE LOCAL UNIT OF GOVERNMENT OR THE
9 STATE SHALL TRANSMIT THE CLAIM WITH A DESCRIPTION OF THE REAL
10 PROPERTY TO THE ATTORNEY GENERAL OR TO THE PROSECUTING ATTORNEY
11 FOR THE COUNTY OR THE CITY OR TOWNSHIP ATTORNEY FOR THE LOCAL
12 UNIT OF GOVERNMENT IN WHICH THE REAL PROPERTY IS LOCATED. THE
13 ATTORNEY GENERAL, THE PROSECUTING ATTORNEY, OR THE CITY OR TOWN-
14 SHIP ATTORNEY SHALL INSTITUTE A CIVIL ACTION FOR FORFEITURE
15 WITHIN 7 DAYS AFTER THE EXPIRATION OF THE 21-DAY PERIOD.

16 (5) IF REAL PROPERTY SUBJECT TO FORFEITURE UNDER
17 SECTION 7526 HAS A TOTAL VALUE OF MORE THAN \$100,000.00, THE
18 ATTORNEY GENERAL OR THE PROSECUTING ATTORNEY FOR THE COUNTY OR
19 THE CITY OR TOWNSHIP ATTORNEY FOR THE LOCAL UNIT OF GOVERNMENT IN
20 WHICH THE REAL PROPERTY IS LOCATED SHALL INSTITUTE A CIVIL ACTION
21 FOR FORFEITURE WITHIN 7 DAYS AFTER THE CONVICTION OF A PERSON OF
22 A CRIME.

23 (6) IT IS THE PLAINTIFF'S BURDEN AT THE FORFEITURE PROCEED-
24 ING TO PROVE THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

25 (A) THAT THE REAL PROPERTY IS THE PROCEEDS OF A CRIME OR THE
26 SUBSTITUTED PROCEEDS OF A CRIME.

1 (B) IF A PERSON, OTHER THAN THE PERSON CONVICTED OF THE
2 CRIME, CLAIMS AN OWNERSHIP OR SECURITY INTEREST IN THE REAL
3 PROPERTY, THAT THE PERSON CLAIMING THE INTEREST IN THE REAL PROP-
4 ERTY KNEW OF OR CONSENTED TO THE COMMISSION OF THE CRIME.

5 (7) IF THE PLAINTIFF FAILS TO MEET THE BURDEN OF PROOF UNDER
6 SUBSECTION (6), THE REAL PROPERTY SHALL BE RETURNED WITHIN 7 DAYS
7 AFTER THE DATE OF THE FORFEITURE PROCEEDING TO THE OWNER OR THE
8 PERSON WITH A BONA FIDE SECURITY INTEREST IN THE REAL PROPERTY.
9 HOWEVER, THE REAL PROPERTY SHALL NOT BE RETURNED TO A PERSON WITH
10 A SECURITY INTEREST IN THE REAL PROPERTY WHICH IS LESS THAN THE
11 MARKET VALUE OF THE REAL PROPERTY UNLESS THE PERSON PAYS TO THE
12 PLAINTIFF THE DIFFERENCE BETWEEN THE MARKET VALUE AND THE VALUE
13 OF THE SECURED INTEREST.