

HOUSE BILL No. 4356

March 7, 1989, Introduced by Reps. Bennane, DeMars and Bartnik and referred to the Committee on Judiciary.

A bill to amend Act No. 328 of the Public Acts of 1931, entitled
"The Michigan penal code,"
as amended, being sections 750.1 to 750.568 of the Michigan Compiled Laws, by adding sections 462a, 462b, 462c, 462d, 462e, 462f, 462g, and 462h.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 328 of the Public Acts of 1931, as
2 amended, being sections 750.1 to 750.568 of the Michigan Compiled
3 Laws, is amended by adding sections 462a, 462b, 462c, 462d, 462e,
4 462f, 462g, and 462h to read as follows:

5 SEC. 462A. AS USED IN SECTIONS 462B TO 462H, "PROSTITUTION
6 OFFENSE" MEANS A VIOLATION OF SECTION 448, 449, 449A, 450, 452,
7 454, 455, 457, 458, OR 459.

1 SEC. 462B. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS
2 SECTION, THE FOLLOWING PROPERTY IS SUBJECT TO FORFEITURE UNDER
3 THIS CHAPTER:

4 (A) ANY REAL OR PERSONAL PROPERTY, THE USE OF WHICH CONTRIB-
5 UTED DIRECTLY AND MATERIALLY TO THE COMMISSION OF A PROSTITUTION
6 OFFENSE.

7 (B) ANY REAL OR PERSONAL PROPERTY OBTAINED THROUGH THE COM-
8 MISSION OF A PROSTITUTION OFFENSE.

9 (C) ANY REAL OR PERSONAL PROPERTY OBTAINED, OR ANY GAIN
10 REALIZED BY THE SALE OR EXCHANGE OF PROPERTY OBTAINED THROUGH THE
11 COMMISSION OF A PROSTITUTION OFFENSE.

12 (2) PROPERTY IS NOT SUBJECT TO FORFEITURE IF THE OWNER OF
13 THE PROPERTY DID NOT KNOW OF OR CONSENT TO THE COMMISSION OF THE
14 PROSTITUTION OFFENSE.

15 (3) THE FORFEITURE OF PROPERTY ENCUMBERED BY A BONA FIDE
16 SECURITY INTEREST OR BY AN UNPAID BALANCE ON A LAND CONTRACT IS
17 SUBJECT TO THE INTEREST OF THE SECURED PARTY OR LAND CONTRACT
18 VENDOR WHO DID NOT KNOW OF OR CONSENT TO THE COMMISSION OF THE
19 PROSTITUTION OFFENSE.

20 SEC. 462C. (1) PERSONAL PROPERTY SUBJECT TO FORFEITURE
21 UNDER THIS CHAPTER MAY BE SEIZED PURSUANT TO AN ORDER OF SEIZURE
22 ISSUED BY THE DISTRICT COURT HAVING JURISDICTION OVER THE PROP-
23 ERTY UPON A SHOWING OF PROBABLE CAUSE TO BELIEVE THAT THE PROP-
24 ERTY IS SUBJECT TO FORFEITURE.

25 (2) PERSONAL PROPERTY SUBJECT TO FORFEITURE UNDER THIS CHAP-
26 TER MAY BE SEIZED WITHOUT PROCESS UNDER 1 OR MORE OF THE
27 FOLLOWING CIRCUMSTANCES:

1 (A) THE SEIZURE IS INCIDENT TO A LAWFUL ARREST.

2 (B) THE SEIZURE IS PURSUANT TO A VALID SEARCH WARRANT.

3 (C) EXIGENT CIRCUMSTANCES EXIST THAT PRECLUDE THE OBTAINING
4 OF PROCESS AND THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROP-
5 ERTY IS SUBJECT TO FORFEITURE UNDER THIS SECTION.

6 (D) THE PROPERTY IS THE SUBJECT OF A PRIOR JUDGMENT IN FAVOR
7 OF THIS STATE IN A FORFEITURE PROCEEDING.

8 (3) THE ATTORNEY GENERAL OR THE PROSECUTING ATTORNEY FOR THE
9 COUNTY OR THE CITY OR TOWNSHIP ATTORNEY FOR THE LOCAL UNIT OF
10 GOVERNMENT IN WHICH THE PROPERTY IS LOCATED MAY APPLY EX PARTE TO
11 THE COURT HAVING JURISDICTION AND, UPON A PETITION SUPPORTED BY A
12 SWORN AFFIDAVIT, OBTAIN AN ORDER AUTHORIZING THE FILING OF A LIEN
13 NOTICE AGAINST REAL PROPERTY SUBJECT TO FORFEITURE UNDER THIS
14 CHAPTER. AN ORDER AUTHORIZING THE FILING OF A LIEN NOTICE MAY BE
15 ISSUED UPON A SHOWING OF PROBABLE CAUSE TO BELIEVE THAT THE PROP-
16 ERTY IS SUBJECT TO FORFEITURE.

17 (4) IF PROPERTY IS SEIZED UNDER THIS SECTION, THE SEIZING
18 AGENCY SHALL DO 1 OR MORE OF THE FOLLOWING:

19 (A) PLACE THE PROPERTY UNDER SEAL.

20 (B) REMOVE THE PROPERTY TO A DESIGNATED STORAGE AREA.

21 (C) PETITION THE COURT HAVING JURISDICTION TO APPOINT A CUS-
22 TODIAN TO TAKE CUSTODY OF THE PROPERTY AND TO REMOVE IT TO AN
23 APPROPRIATE LOCATION FOR DISPOSITION IN ACCORDANCE WITH LAW.

24 SEC. 462D. (1) WITHIN 7 DAYS AFTER PERSONAL PROPERTY IS
25 SEIZED OR A LIEN NOTICE IS FILED AGAINST REAL PROPERTY UNDER SEC-
26 TION 462C, THE SEIZING AGENCY, OR IF THE PROPERTY IS REAL
27 PROPERTY, THE ATTORNEY GENERAL, THE PROSECUTING ATTORNEY, OR THE

1 CITY OR TOWNSHIP ATTORNEY SHALL GIVE NOTICE OF THE SEIZURE OF THE
2 PROPERTY AND THE INTENT TO FORFEIT AND DISPOSE OF THE PROPERTY
3 UNDER THIS CHAPTER TO EACH OF THE FOLLOWING PERSONS:

4 (A) IF CHARGES HAVE BEEN FILED AGAINST A PERSON FOR A PROS-
5 TITUTION OFFENSE, THE PERSON CHARGED.

6 (B) EACH PERSON WITH A KNOWN OWNERSHIP INTEREST IN THE
7 PROPERTY.

8 (C) EACH PERSON WITH A KNOWN SECURITY INTEREST IN THE
9 PROPERTY.

10 (D) EACH VICTIM OF THE PROSTITUTION OFFENSE.

11 (2) THE NOTICE REQUIRED UNDER SUBSECTION (1) SHALL BE A
12 WRITTEN NOTICE DELIVERED TO THE PERSON OR SENT TO THE PERSON BY
13 CERTIFIED MAIL. IF THE NAME AND ADDRESS OF THE PERSON ARE NOT
14 REASONABLY ASCERTAINABLE OR DELIVERY OF THE NOTICE CANNOT REASON-
15 ABLY BE ACCOMPLISHED, THE NOTICE SHALL BE PUBLISHED IN A NEWSPA-
16 PER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE PERSONAL
17 PROPERTY WAS SEIZED OR THE REAL PROPERTY IS LOCATED FOR 10 SUC-
18 CESSIVE PUBLISHING DAYS.

19 (3) IF PERSONAL PROPERTY WAS SEIZED, THE SEIZING AGENCY
20 SHALL IMMEDIATELY NOTIFY THE PROSECUTING ATTORNEY FOR THE COUNTY
21 IN WHICH THE PROPERTY WAS SEIZED OR, IF THE ATTORNEY GENERAL IS
22 ACTIVELY HANDLING A CASE INVOLVING OR RELATING TO THE PROPERTY,
23 THE ATTORNEY GENERAL, OF THE SEIZURE OF THE PROPERTY AND THE
24 INTENT TO FORFEIT AND DISPOSE OF THE PROPERTY ACCORDING TO THIS
25 CHAPTER.

26 SEC. 462E. (1) A PERSON WHO RECEIVES NOTICE UNDER SECTION
27 462D OF THE SEIZURE OF OR THE FILING OF A LIEN AGAINST PROPERTY

1 MAY MOVE THE COURT HAVING JURISDICTION TO RETURN THE PROPERTY OR
2 DISCHARGE THE LIEN ON THE GROUNDS THAT THE PROPERTY WAS ILLEGALLY
3 SEIZED, THAT THE PROPERTY IS NOT SUBJECT TO FORFEITURE UNDER THIS
4 CHAPTER, OR THAT THE PERSON HAS AN OWNERSHIP OR SECURITY INTEREST
5 IN THE PROPERTY AND DID NOT KNOW OF OR CONSENT TO THE COMMISSION
6 OF THE PROSTITUTION OFFENSE. THE COURT SHALL SET THE MOTION FOR
7 HEARING AT THE EARLIEST POSSIBLE TIME.

8 (2) AT THE HEARING ON THE MOTION FILED UNDER SUBSECTION (1),
9 THE ATTORNEY GENERAL OR THE PROSECUTING ATTORNEY FOR THE COUNTY
10 OR THE CITY OR TOWNSHIP ATTORNEY FOR THE LOCAL UNIT OF GOVERNMENT
11 IN WHICH THE PROPERTY WAS SEIZED OR THE LIEN WAS FILED SHALL
12 ESTABLISH THE FOLLOWING:

13 (A) PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY IS SUBJECT
14 TO FORFEITURE UNDER THIS CHAPTER AND THAT THE PERSON FILING THE
15 MOTION KNEW OF OR CONSENTED TO THE COMMISSION OF THE PROSTITUTION
16 OFFENSE.

17 (B) IF THE PERSON FILING THE MOTION CLAIMS THE PROPERTY WAS
18 ILLEGALLY SEIZED, THAT THE PROPERTY WAS PROPERLY SEIZED.

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

23 (4) IF A MOTOR VEHICLE IS SEIZED UNDER SECTION 462C, THE
24 OWNER OF THE VEHICLE MAY MOVE THE COURT HAVING JURISDICTION TO
25 REQUIRE THE SEIZING AGENCY TO FILE A LIEN AGAINST THE VEHICLE AND
26 TO RETURN THE VEHICLE TO THE OWNER. THE COURT SHALL SET THE
27 MOTION FOR HEARING AT THE EARLIEST POSSIBLE TIME. IF THE OWNER

1 OF THE VEHICLE ESTABLISHES AT THE HEARING THAT HE OR SHE HOLDS
2 THE LEGAL TITLE OF THE VEHICLE AND THAT IT IS NECESSARY FOR HIM
3 OR HER OR HIS OR HER FAMILY TO USE THE VEHICLE PENDING THE OUT-
4 COME OF THE FORFEITURE ACTION, THE COURT MAY ORDER THE SEIZING
5 AGENCY TO RETURN THE VEHICLE TO THE OWNER. IF THE COURT ORDERS
6 THE RETURN OF THE VEHICLE TO THE OWNER, THE COURT SHALL ORDER THE
7 SEIZING AGENCY TO FILE A LIEN AGAINST THE VEHICLE.

8 (5) THE TESTIMONY OF A PERSON AT A HEARING HELD UNDER THIS
9 SECTION IS NOT ADMISSIBLE AGAINST HIM OR HER IN A CRIMINAL PRO-
10 CEEDING EXCEPT IN A CRIMINAL PROSECUTION FOR PERJURY, AND THE
11 TESTIMONY DOES NOT CONSTITUTE A WAIVER OF THE PERSON'S CONSTITU-
12 TIONAL RIGHT AGAINST SELF-INCRIMINATION.

13 SEC. 462F. EXCEPT AS OTHERWISE PROVIDED BY LAW, PERSONAL
14 PROPERTY SEIZED PURSUANT TO SECTION 462C SHALL BE RETURNED TO THE
15 OWNER, OR A LIEN FILED AGAINST REAL PROPERTY UNDER SECTION 462C
16 OR AGAINST A MOTOR VEHICLE UNDER SECTION 462E SHALL BE DISCHARGED
17 WITHIN 7 DAYS AFTER THE OCCURRENCE OF 1 OF THE FOLLOWING:

18 (A) A WARRANT IS NOT ISSUED AGAINST A PERSON FOR THE COMMIS-
19 SION OF A PROSTITUTION OFFENSE WITHIN 7 DAYS AFTER THE PROPERTY
20 IS SEIZED OR, IF THE PROPERTY IS REAL PROPERTY, WITHIN 7 DAYS
21 AFTER THE LIEN IS FILED.

22 (B) ALL CHARGES RELATING TO THE COMMISSION OF A PROSTITUTION
23 OFFENSE ARE DISMISSED.

24 (C) ALL PERSONS CHARGED WITH COMMITTING A PROSTITUTION
25 OFFENSE ARE ACQUITTED OF THE CHARGE.

26 (D) ENTRY OF A COURT ORDER PURSUANT TO THIS CHAPTER FOR THE
27 RETURN OF THE PROPERTY OR THE DISCHARGE OF THE LIEN.

1 SEC. 462G. (1) IF PROPERTY SUBJECT TO FORFEITURE UNDER THIS
2 CHAPTER HAS A TOTAL VALUE OF LESS THAN \$100,000.00, WITHIN 7 DAYS
3 AFTER THE CONVICTION OF A PERSON OF A PROSTITUTION OFFENSE, THE
4 STATE OR LOCAL UNIT OF GOVERNMENT SEEKING FORFEITURE OF THE PROP-
5 ERTY SHALL GIVE NOTICE OF THE SEIZURE OF THE PROPERTY OR, IF A
6 LIEN HAS BEEN FILED, NOTICE OF THE FILING OF THE LIEN AND THE
7 INTENT TO BEGIN PROCEEDINGS TO FORFEIT AND DISPOSE OF THE PROP-
8 ERTY ACCORDING TO THIS CHAPTER TO EACH OF THE PERSONS TO WHOM
9 NOTICE IS REQUIRED TO BE GIVEN UNDER SECTION 462D. NOTICE SHALL
10 BE GIVEN IN THE SAME MANNER AS REQUIRED UNDER SECTION 462D.

11 (2) WITHIN 21 DAYS AFTER RECEIPT OF THE NOTICE OR OF THE
12 DATE OF THE FIRST PUBLICATION OF THE NOTICE UNDER SUBSECTION (1),
13 A PERSON CLAIMING AN INTEREST IN PROPERTY SUBJECT TO THE NOTICE
14 MAY FILE A CLAIM WITH THE LOCAL UNIT OF GOVERNMENT OR THE STATE
15 EXPRESSING HIS OR HER INTEREST IN THE PROPERTY.

16 (3) IF NO CLAIM IS FILED WITHIN THE 21-DAY PERIOD AS
17 DESCRIBED IN SUBSECTION (2), THE LOCAL UNIT OF GOVERNMENT OR THE
18 STATE SHALL DECLARE THE PROPERTY FORFEITED AND SHALL DISPOSE OF
19 THE PROPERTY ACCORDING TO SECTION 462H.

20 (4) IF A CLAIM IS FILED WITHIN THE 21-DAY PERIOD AS
21 DESCRIBED IN SUBSECTION (2), THE LOCAL UNIT OF GOVERNMENT OR THE
22 STATE SHALL TRANSMIT THE CLAIM WITH A LIST AND DESCRIPTION OF THE
23 PROPERTY TO THE ATTORNEY GENERAL OR TO THE PROSECUTING ATTORNEY
24 FOR THE COUNTY OR THE CITY OR TOWNSHIP ATTORNEY FOR THE LOCAL
25 UNIT OF GOVERNMENT IN WHICH THE PERSONAL PROPERTY WAS SEIZED OR
26 THE REAL PROPERTY IS LOCATED. THE ATTORNEY GENERAL, THE
27 PROSECUTING ATTORNEY, OR THE CITY OR TOWNSHIP ATTORNEY SHALL

1 INSTITUTE A CIVIL ACTION FOR FORFEITURE WITHIN 7 DAYS AFTER THE
2 EXPIRATION OF THE 21-DAY PERIOD.

3 (5) IF PROPERTY SUBJECT TO FORFEITURE UNDER THIS CHAPTER HAS
4 A TOTAL VALUE OF MORE THAN \$100,000.00, THE ATTORNEY GENERAL OR
5 THE PROSECUTING ATTORNEY FOR THE COUNTY OR THE CITY OR TOWNSHIP
6 ATTORNEY FOR THE LOCAL UNIT OF GOVERNMENT IN WHICH THE PERSONAL
7 PROPERTY WAS SEIZED OR THE REAL PROPERTY IS LOCATED SHALL INSTI-
8 TUTE A CIVIL ACTION FOR FORFEITURE WITHIN 7 DAYS AFTER THE CON-
9 VICTION OF A PERSON OF A PROSTITUTION OFFENSE.

10 (6) AT THE FORFEITURE PROCEEDING, THE PLAINTIFF SHALL PROVE
11 THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

12 (A) THAT THE PROPERTY IS SUBJECT TO FORFEITURE UNDER THIS
13 CHAPTER.

14 (B) IF A PERSON OTHER THAN THE PERSON CONVICTED OF THE PROS-
15 TITUTION OFFENSE CLAIMS AN OWNERSHIP OR SECURITY INTEREST IN THE
16 PROPERTY, THAT THE PERSON CLAIMING THE INTEREST IN THE PROPERTY
17 KNEW OF OR CONSENTED TO THE COMMISSION OF THE PROSTITUTION
18 OFFENSE.

19 (7) IF THE PLAINTIFF FAILS TO MEET THE BURDEN OF PROOF UNDER
20 SUBSECTION (6), THE PROPERTY SHALL BE RETURNED WITHIN 7 DAYS TO
21 THE OWNER OR THE PERSON WITH A BONA FIDE SECURITY INTEREST IN THE
22 PROPERTY. HOWEVER, THE PROPERTY SHALL NOT BE RETURNED TO A
23 PERSON WITH A SECURITY INTEREST IN THE PROPERTY THAT IS LESS THAN
24 THE MARKET VALUE OF THE PROPERTY UNLESS THE PERSON PAYS TO THE
25 PLAINTIFF THE DIFFERENCE BETWEEN THE MARKET VALUE AND THE VALUE
26 OF THE SECURED INTEREST.

1 SEC. 462H. (1) WHEN PROPERTY IS FORFEITED UNDER THIS
2 CHAPTER OR IS RETAINED UNDER SECTION 462G(7), OR WHEN MONEY IS
3 RECEIVED BY THE PLAINTIFF UNDER SECTION 462G(7) UPON THE RETURN
4 OF PROPERTY TO A PERSON WITH A SECURITY INTEREST, THE UNIT OF
5 GOVERNMENT THAT SEIZED OR FILED A LIEN AGAINST THE PROPERTY MAY
6 SELL THE PROPERTY THAT IS NOT REQUIRED TO BE DESTROYED BY LAW AND
7 THAT IS NOT HARMFUL TO THE PUBLIC AND MAY DISPOSE OF THE PROCEEDS
8 AND ANY MONEY, NEGOTIABLE INSTRUMENT, SECURITY, OR OTHER THING OF
9 VALUE THAT IS FORFEITED PURSUANT TO THIS CHAPTER OR RETAINED OR
10 RECEIVED UNDER SECTION 462G(7) IN THE FOLLOWING ORDER OF
11 PRIORITY:

12 (A) SATISFY ANY ORDER OF RESTITUTION IN THE PROSECUTION FOR
13 THE PROSTITUTION OFFENSE.

14 (B) PAY THE CLAIM OF EACH PERSON WHO SHOWS THAT HE OR SHE IS
15 A VICTIM OF THE PROSTITUTION OFFENSE TO THE EXTENT THAT THE CLAIM
16 IS NOT COVERED BY AN ORDER OF RESTITUTION.

17 (C) PAY THE PROPER EXPENSES OF THE PROCEEDINGS FOR FORFEI-
18 TURE AND SALE, INCLUDING EXPENSES INCURRED DURING THE SEIZURE
19 PROCESS, MAINTENANCE OF CUSTODY, ADVERTISING, AND COURT COSTS.

20 (D) TRANSMIT THE BALANCE REMAINING TO THE CRIME VICTIMS COM-
21 PENSATION FUND.

22 (2) IN THE COURSE OF SELLING REAL PROPERTY PURSUANT TO SUB-
23 SECTION (1), THE COURT THAT ENTERS AN ORDER OF FORFEITURE, ON THE
24 MOTION OF THE UNIT OF GOVERNMENT TO WHOM THE PROPERTY IS FOR-
25 FEITED, MAY APPOINT A RECEIVER TO DISPOSE OF THE REAL PROPERTY
26 FORFEITED. THE RECEIVER SHALL BE ENTITLED TO REASONABLE

1 COMPENSATION. THE RECEIVER SHALL HAVE AUTHORITY TO DO ALL OF THE
2 FOLLOWING:

3 (A) LIST THE FORFEITED REAL PROPERTY FOR SALE.

4 (B) MAKE WHATEVER ARRANGEMENTS ARE NECESSARY FOR THE MAINTENANCE AND PRESERVATION OF THE FORFEITED REAL PROPERTY.

6 (C) ACCEPT OFFERS TO PURCHASE THE FORFEITED REAL PROPERTY.

7 (D) EXECUTE INSTRUMENTS TRANSFERRING TITLE TO THE FORFEITED
8 REAL PROPERTY.