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BILL ANALYSIS

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House Bill 4778 (Substitute H-3)

Sponsor: Representative Justine Barns

House Committee: Judiciary

Senate Committee: Criminal Justice, Urban Affairs, and Economic Development

Date Completed: 1-20-88

SUMMARY OF HOUSE BILL 4778**(Substitute H-3) as passed by the House:**

House Bill 4778 (H-3) would add a new chapter to the Revised Judicature Act to provide for the forfeiture of real and personal property used for or obtained through the commission of any of some 60 crimes specified by the bill. Those crimes include arson, bribery, burglary, embezzlement, securities fraud, larceny, robbery, Medicaid fraud, and distribution of obscene material to a minor. The bill would do all of the following:

- Describe the types of property that would be subject to forfeiture.
- Specify the procedure for the seizure of property subject to forfeiture.
- Require certain notices to be given after a seizure or the filing of a lien.
- Outline the procedures for the return of seized property, the forfeiture process, and the distribution of forfeited proceeds.
- Specify the court of jurisdiction for forfeiture proceedings.

The bill would take effect on April 1, 1988.

Scope of the Bill

Generally, property used for or obtained through the commission of a crime named by the bill would be subject to forfeiture. Property would not be subject to forfeiture, however, if the owner did not know of or consent to the commission of 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. Real property used in committing a crime or that was the primary residence of a spouse or dependent child of the owner would be exempted, unless that spouse or dependent child had knowledge of and consented to the commission of the crime. Forfeiture of property obtained by the sale or exchange of proceeds of a crime (termed "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.

Seizure

Personal property could be seized without process if any of the following applied:

- The property was used in committing a crime or constituted proceeds of it, and the seizure was incident to a lawful arrest.
- The seizure was made under a valid search or inspection warrant.
- There was probable cause to believe that the property was dangerous to health or safety.

- Exigent circumstances precluded obtaining process or there was probable cause to believe that the property was the proceeds or instrumentality of a crime.
- The property was the subject of a prior judgment in favor of the State in a forfeiture proceeding.

Seized personal property would not be subject to an action to recover personal property, but rather would be considered to be in the custody of the "seizing agency" subject only to applicable portions of the bill or an order and judgment of the court.

Real property could be "seized" through the filing of a lien against it. The district court, upon a showing of probable cause from the Attorney General or local prosecutor, could authorize the filing of the lien.

Notices

Within seven days after seizure or the filing of a lien, the police (or for real property, the Attorney General, prosecutor, or city or township attorney) would have to notify various interested parties of the pending forfeiture and disposal. The police immediately would have to notify the local prosecutor, or, if applicable, the Attorney General, of the seizure of personal property.

Return of Property

Noncontraband property belonging to a victim would have to be returned promptly unless ownership was disputed or the property was needed for evidence pursuant to the Crime Victim's Rights Act.

Each person formally notified of a seizure or lien filing could ask the district court to return the property or discharge the lien on any of the following grounds:

- The property was seized illegally.
- The property was not subject to forfeiture under the bill.
- The person had an ownership or security interest in the property and neither knew of nor consented to the crime.

The court would have to hold a hearing on the matter at the earliest possible time. At that hearing, the prosecutor (or Attorney General or city or township attorney) would have the burden of establishing probable cause to believe that the property was subject to forfeiture, and that the person seeking return knew of or consented to the crime, and, if illegal seizure were claimed, that the property was legally seized. If the prosecutor failed to sustain the burden of proof, the court would have to order the property returned or lien discharged. Testimony at a hearing on property's return could not be used at a criminal proceeding other than for perjury, nor would it constitute a waiver of the constitutional right against self-incrimination.

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For a seized motor vehicle, the owner could ask the court to require the police to file a lien on the vehicle and return it. If the owner established that he or she held legal title and that use of the vehicle was necessary for the owner or his or her family, the court could order the vehicle's return, as long as it also ordered a lien placed on the vehicle.

Property would have to be returned or a lien discharged within seven days after one of the following occurred:

- A warrant was not issued within seven days after seizure or lien filing.
- All charges against the consenting legal owner had been dropped.
- The consenting legal owner was acquitted.
- In the case of multiple defendants, all persons charged had been acquitted.
- The court ordered return or discharge.

Forfeiture Proceedings

Forfeiture proceedings could not commence until after conviction for the crime. Separate forfeiture procedures would be established depending on the total value of the property. For property whose value was less than \$100,000, the State or local unit of government would have to notify interested parties and, if no claim were filed within 21 days, could declare the property forfeited. If a claim were filed, or if the property's value were more than \$100,000, the unit of government seeking forfeiture would have to file a civil action.

To prevail at a forfeiture proceeding, the government would have to prove the following by a preponderance of the evidence:

- For personal property, that the property constituted crime proceeds (or substituted proceeds) or was used in committing the crime.
- For real property, that the property constituted proceeds or substituted proceeds.
- If someone other than the convicted criminal claimed an ownership or security interest, that the person knew of or consented to the crime.

If the government failed to meet its burden of proof, the property would have to be returned within seven days to the owner or person with the security interest. Property could not be returned to a person with a security interest that was less than the property's market value, however, unless the person paid the government the difference between market value and the secured interest.

Distribution of Forfeiture Proceeds

The government could sell any forfeited property that was not required by law to be destroyed and was not considered harmful to the public, and could distribute the proceeds and any other money or thing of value obtained under the bill in the following order of priority:

- To satisfy any order of restitution in the prosecution for the crime.
- To pay the claim of each person who showed that he or she was a victim of the crime to the extent that the claim was not covered by an order of restitution.
- To pay any outstanding lien against the property that had been imposed by a governmental unit.
- To pay the proper expenses of the proceedings for forfeiture and sale, including expenses incurred during the seizure process, maintenance of custody, advertising, and court costs.

The balance would have to be distributed by the court to the unit or units of government involved in effecting the forfeiture. Of the amount received by a unit of government, 75% would have to be used to enhance law enforcement and 25% to implement the Crime Victim's Rights Act. The governmental unit would have to report annually on these uses to the Department of Management and Budget.

If the government requested, the court could appoint a receiver to dispose of forfeited real property. The receiver would be entitled to reasonable compensation and would be authorized to maintain and sell the property.

Jurisdiction

The bill specifies that the forfeiture actions and related proceedings it provides for would have to be brought in the district court pursuant to that court's equity jurisdiction that would be established under the bill. In a local unit of government that has a municipal court, however, the circuit court would have original jurisdiction. The bill also specifies that an appeal from a judgment or order of the district court would have to be to the court of appeals.

MCL 608.308 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate impact on State and local government. The amount and value of property that could be seized under the provisions of this bill are not determinable.

Fiscal Analyst: B. Bowerman

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.