

SENATE BILL No. 142

February 2, 2005, Introduced by Senators LELAND, GARCIA, CLARKE, BARCIA, BRATER, GEORGE and BISHOP and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 7523 (MCL 333.7523), as amended by 1990 PA 336.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7523. (1) If property is seized pursuant to section 7522,
2 forfeiture proceedings shall be instituted promptly. If the
3 property is seized without process as provided under section 7522,
4 and the total value of the property seized does not exceed
5 \$50,000.00, the following procedure shall be used:

6 (a) The local unit of government that seized the property —
7 or, if the property was seized by the state, the state shall notify
8 the owner of the property that the property has been seized — and

1 that the local unit of government or, if applicable, the state
2 intends to forfeit and dispose of the property by delivering a
3 written notice to the owner of the property or by sending the
4 notice to the owner by certified mail. If the name and address of
5 the owner are not reasonably ascertainable, or delivery of the
6 notice cannot be reasonably accomplished, the notice shall be
7 published in a newspaper of general circulation in the county in
8 which the property was seized, for 10 successive publishing days.

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

16 (c) Any person claiming an interest in property which is the
17 subject of a notice under subdivision (a) may, within 20 days after
18 receipt of the notice or of the date of the first publication of
19 the notice, file a written claim signed by the claimant with the
20 local unit of government or the state expressing his or her
21 interest in the property. Upon the filing of the claim, and the
22 giving of a bond to the local unit of government or the state in
23 the amount of 10% of the value of the claimed property, but not
24 less than \$250.00 or greater than \$5,000.00, with sureties approved
25 by the local unit of government or the state conditioned that if
26 the property is ordered forfeited by the court the obligor shall
27 pay all costs and expenses of the forfeiture proceedings, ~~The~~ **THE**

1 local unit of government or, if applicable, the state shall
2 transmit the claim and bond with a list and description of the
3 property seized to the attorney general, the prosecuting attorney
4 for the county, or the city or township attorney for the local unit
5 of government in which the seizure was made. The attorney general,
6 the prosecuting attorney, or the city or township attorney shall
7 promptly institute forfeiture proceedings after the expiration of
8 the 20-day period. However, unless all criminal proceedings
9 involving or relating to the property have been completed, a city
10 or township attorney shall not institute forfeiture proceedings
11 without the consent of the prosecuting attorney or, if the attorney
12 general is actively handling a case involving or relating to the
13 property, the attorney general.

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

24 (2) Property taken or detained under this article or pursuant
25 to **FORMER** section 17766a shall not be subject to an action to
26 recover personal property, but is deemed to be in the custody of
27 the seizing agency subject only to this section or an order and

1 judgment of the court having jurisdiction over the forfeiture
2 proceedings. When property is seized under this article or pursuant
3 to **FORMER** section 17766a, the seizing agency may do any of the
4 following:

5 (a) Place the property under seal.

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

7 (c) Require the administrator to take custody of the property
8 and remove it to an appropriate location for disposition in
9 accordance with law.

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

16 **(4) SECTION 2975 OF THE REVISED JUDICATURE ACT OF 1961, 1961**
17 **PA 236, MCL 600.2975, APPLIES TO A MOTOR VEHICLE THAT HAS BEEN**
18 **SEIZED UNDER THIS ARTICLE BUT NOT FINALLY FORFEITED.**

19 Enacting section 1. This amendatory act does not take effect
20 unless Senate Bill No. 138

21 of the 93rd Legislature is enacted into law.