

HOUSE BILL No. 5730

December 18, 2009, Introduced by Reps. Bettie Scott, Valentine, Tlaib, Melton, Womack, Geiss, Constan, Liss and Cushingberry and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 159n and 535a (MCL 750.159n and 750.535a),
section 159n as added by 1995 PA 187 and section 535a as amended by
2006 PA 129.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 159n. (1) A civil in rem forfeiture proceeding under this
2 chapter is a proceeding against property subject to forfeiture
3 under section 159m instituted by the filing of a petition by the
4 prosecuting agency.

5 (2) Personal or intangible property subject to civil in rem
6 forfeiture under section 159m may be seized pursuant to an order of
7 seizure issued by the court having jurisdiction over the property.

8 (3) Upon an ex parte application by the prosecuting agency,

1 before or after the initiation of a civil in rem forfeiture
2 proceeding, the court may determine ex parte whether there is
3 probable cause to believe that personal or intangible property is
4 subject to civil in rem forfeiture under section 159m and that
5 notice to those persons having or claiming an interest in the
6 property before seizure would cause the loss or destruction of the
7 property. In making this determination, the court shall, as a
8 matter of law, make a determination that the property constituted
9 an interest in, means of control over, or influence over an
10 enterprise involved in a violation of section 159i. If the court
11 finds that probable cause does not exist to believe the property is
12 subject to forfeiture under this act, the court shall dismiss the
13 plaintiff prosecuting agency's application and, if a civil in rem
14 forfeiture proceeding has been initiated, shall dismiss the
15 petition. If the court finds that probable cause does exist to
16 believe the property is subject to forfeiture but there is not
17 probable cause to believe that prior notice would result in loss or
18 destruction of the property, the court shall order service on all
19 persons known to have or claim an interest in the property before a
20 further hearing on whether an order of seizure should issue. If the
21 court finds that there is probable cause to believe that the
22 property is subject to forfeiture and to believe that prior notice
23 would cause loss or destruction of the property, the court shall
24 issue an order of seizure directing the sheriff or other law
25 enforcement officer in the county where the property is found to
26 seize it.

27 (4) Personal or intangible property subject to civil in rem

1 forfeiture under this chapter may be seized without process under
2 any of the following circumstances:

3 (a) The seizure is incident to a lawful arrest.

4 (b) The seizure is pursuant to a valid search warrant.

5 (c) The seizure is pursuant to an inspection under a valid
6 administrative inspection warrant.

7 (d) There is probable cause to believe that the property is
8 directly or indirectly dangerous to health or safety.

9 (e) Exigent circumstances exist that preclude the obtaining of
10 a court order, and there is probable cause to believe that the
11 property is subject to civil in rem forfeiture under section 159m.

12 (f) The property is the subject of a prior judgment in favor
13 of this state in a forfeiture proceeding.

14 (5) The prosecuting agency may apply ex parte for an order
15 authorizing the filing of a lien notice against real property
16 subject to civil in rem forfeiture under section 159m. The
17 application shall be supported by a sworn affidavit setting forth
18 probable cause for a civil in rem forfeiture action pursuant to
19 sections 159m to 159q. An order authorizing the filing of a lien
20 notice may be issued upon a showing of probable cause to believe
21 that the property is subject to civil in rem forfeiture under
22 section 159m.

23 (6) Real property shall not be seized without notice and a
24 hearing.

25 (7) Property that belongs to the victim of a crime shall
26 promptly be returned to the victim, except in the following
27 circumstances:

1 (a) The property is contraband.

2 (b) If the ownership of the property is disputed, until the
3 dispute is resolved.

4 (c) The property is required to be retained as evidence
5 pursuant to section 4(4) of the **WILLIAM VAN REGENMORTER** crime
6 victim's rights act, ~~Act No. 87 of the Public Acts of 1985, being~~
7 ~~section 780.754 of the Michigan Compiled Laws 1985 PA 87, MCL~~
8 **780.754.**

9 (8) Personal or intangible property seized under this section
10 is not subject to any other action to recover personal property,
11 but is considered to be in the custody of the seizing agency
12 subject only to this chapter, or to an order and judgment of the
13 court having jurisdiction over the civil in rem forfeiture
14 proceedings. When property is seized under this section, the
15 seizing agency may do 1 or more of the following:

16 (a) Place the property under seal.

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

18 **(9) SECTION 2977 OF THE REVISED JUDICATURE ACT OF 1961, 1961**
19 **PA 236, MCL 600.2977, APPLIES TO A MOTOR VEHICLE THAT HAS BEEN**
20 **SEIZED UNDER THIS SECTION BUT NOT FINALLY FORFEITED.**

21 Sec. 535a. (1) As used in this section:

22 (a) "Bona fide purchaser for value" means a person who
23 purchases property for value in good faith and without notice of
24 any adverse claim to the property.

25 (b) "Chop shop" means any of the following:

26 (i) Any area, building, storage lot, field, or other premises
27 or place where 1 or more persons are engaged or have engaged in

1 altering, dismantling, reassembling, or in any way concealing or
2 disguising the identity of a stolen motor vehicle or of any major
3 component part of a stolen motor vehicle.

4 (ii) Any area, building, storage lot, field, or other premises
5 or place where there are 3 or more stolen motor vehicles present or
6 where there are major component parts from 3 or more stolen motor
7 vehicles present.

8 (c) "Major component part" means 1 of the following parts of a
9 motor vehicle:

10 (i) The engine.

11 (ii) The transmission.

12 (iii) The right or left front fender.

13 (iv) The hood.

14 (v) A door allowing entrance to or egress from the passenger
15 compartment of the vehicle.

16 (vi) The front or rear bumper.

17 (vii) The right or left rear quarter panel.

18 (viii) The deck lid, tailgate, or hatchback.

19 (ix) The trunk floor pan.

20 (x) The cargo box of a pickup.

21 (xi) The frame, or if the vehicle has a unitized body, the
22 supporting structure or structures that serve as the frame.

23 (xii) The cab of a truck.

24 (xiii) The body of a passenger vehicle.

25 (xiv) An airbag or airbag assembly.

26 (xv) A wheel or tire.

27 (xvi) Any other part of a motor vehicle that the secretary of

1 state determines is comparable in design or function to any of the
2 parts listed in subparagraphs (i) to (xv).

3 (d) "Motor vehicle" means either of the following:

4 (i) A device in, upon, or by which a person or property is or
5 may be transported or drawn upon a highway that is self-propelled
6 or that may be connected to and towed by a self-propelled device.

7 (ii) A land-based device that is self-propelled but not
8 designed for use upon a highway, including, but not limited to,
9 farm machinery, a bulldozer, or a steam shovel.

10 (2) Except as provided in subsection (3), a person who
11 knowingly owns, operates, or conducts a chop shop or who knowingly
12 aids and abets another person in owning, operating, or conducting a
13 chop shop is guilty of a felony punishable by imprisonment for not
14 more than 10 years or a fine of not more than \$250,000.00, or both.

15 (3) Upon a second or subsequent conviction under this section,
16 the person convicted may be imprisoned for not more than 10 years
17 and shall be fined not less than \$10,000.00 or more than
18 \$250,000.00, or both.

19 (4) In addition to any other punishment, a person convicted of
20 violating this section shall be ordered to make restitution to the
21 rightful owner of a stolen motor vehicle or of a stolen major
22 component part, or to the owner's insurer if the owner has already
23 been compensated for the loss by the insurer, for any financial
24 loss sustained as a result of the theft of the motor vehicle or a
25 major component part. Restitution shall be imposed in addition to,
26 but not instead of, any imprisonment or fine imposed.

27 (5) All of the following are subject to seizure and, if a

1 person is charged with a violation or attempted violation of
2 subsection (2) and is convicted of a violation or attempted
3 violation of subsection (2) or section 415, 416, 535, or 536a,
4 subject to forfeiture:

5 (a) An engine, tool, machine, implement, device, chemical, or
6 substance used or designed for altering, dismantling, reassembling,
7 or in any other way concealing or disguising the identity of a
8 stolen motor vehicle or any major component part.

9 (b) A stolen motor vehicle or major component part found at
10 the site of a chop shop or a motor vehicle or major component part
11 ~~for which~~ **THAT** there is probable cause to believe ~~that it is~~
12 stolen.

13 (c) A wrecker, car hauler, or any other motor vehicle that is
14 used or has been used to convey or transport a stolen motor vehicle
15 or major component part.

16 (d) Any book, record, money, negotiable instrument, or other
17 personal property or real property, except real property that is
18 the primary residence of the spouse or a dependent child of the
19 owner, that is or has been used in a chop shop operation.

20 (6) Except as provided in subsection (7), property described
21 in subsection (5) may be seized by a state or local law enforcement
22 agency upon process issued by ~~the recorder's court of the city of~~
23 ~~Detroit or~~ the district or circuit court having jurisdiction over
24 the property. Seizure without process may be made in any of the
25 following cases:

26 (a) The seizure is incident to an arrest or pursuant to a
27 search warrant or an inspection under an administrative inspection

1 warrant.

2 (b) The property subject to seizure has been the subject of a
3 prior judgment in favor of this state in a forfeiture proceeding
4 based upon this section.

5 (c) Exigent circumstances exist that preclude obtaining
6 process and there is probable cause to believe that the property
7 was used or is intended to be used in violation of this section.

8 (7) To retain property for which seizure and forfeiture are
9 sought under this section pending the forfeiture hearing, a
10 licensed used or secondhand vehicle parts dealer or the owner may
11 post a bond in the amount of 1-1/2 times the value of the property.
12 This subsection does not apply to a motor vehicle or major
13 component part that is to be used as evidence in a criminal
14 proceeding.

15 (8) If property other than real property is seized under
16 subsection (6), the seizing law enforcement agency shall do 1 or
17 more of the following, subject to subsection (10):

18 (a) Place the property under seal.

19 (b) Remove the property to a designated storage area.

20 (c) Petition the district or circuit court to appoint a
21 custodian to take custody of the property and to remove it to an
22 appropriate location for disposition in accordance with law.

23 (9) The seizing agency may deposit money seized under
24 subsection ~~(8)~~-(6) into an interest-bearing account in a financial
25 institution. As used in this subsection, "financial institution"
26 means a state or nationally chartered bank or a state or federally
27 chartered savings and loan association, savings bank, or credit

1 union whose deposits are insured by an agency of the United States
2 government and that maintains a principal office or branch office
3 located in this state under the laws of this state or the United
4 States.

5 (10) An attorney for a person who is charged with a violation
6 of this section involving or related to money seized by a law
7 enforcement agency under this section shall be afforded a period of
8 60 days within which to examine that money. This 60-day period
9 shall begin to run after notice is given under subsection (12) but
10 before the money is deposited into a financial institution under
11 subsection (9). If the attorney general or prosecuting attorney
12 fails to sustain his or her burden of proof in criminal proceedings
13 under this section, the court shall order the return of the money,
14 including any interest earned on money deposited into a financial
15 institution under subsection (9).

16 (11) If property is seized without process under subsection
17 (6), within 14 days after the seizure, the seizing agency shall
18 return the property to the person from whom it was seized unless a
19 hearing has been scheduled to determine whether the seizure was
20 proper and reasonable notice of the hearing has been given.

21 (12) The rightful owner of any property that is to be
22 forfeited under subsection (5) shall be served notice at least 10
23 days before the matter is to be heard regarding the forfeiture and,
24 if the rightful owner did not know of and did not consent to the
25 commission of the crime, the property shall be returned to the
26 rightful owner. If the rightful owner of the property is not known
27 or cannot be found, notice may be served by publishing notice of

1 the forfeiture hearing not less than 10 days before the date of the
2 hearing in a newspaper of general circulation in the county where
3 the hearing is to be held. The notice shall contain a general
4 description of the property and any serial or registration numbers
5 on the property.

6 (13) A forfeiture of property encumbered by a bona fide
7 security interest is subject to the interest of the secured party
8 who did not know of or consent to the act or omission in violation
9 of this section.

10 (14) Any property seized under subsection (6) that was stolen
11 shall be returned to its rightful owner if that ownership can be
12 established to the satisfaction of the seizing law enforcement
13 agency. Any stolen property that is unclaimed after seizure may be
14 sold as provided by law.

15 (15) **SECTION 2977 OF THE REVISED JUDICATURE ACT OF 1961, 1961**
16 **PA 236, MCL 600.2977, APPLIES TO A MOTOR VEHICLE THAT HAS BEEN**
17 **SEIZED UNDER THIS SECTION BUT NOT FINALLY FORFEITED.**

18 (16) ~~(15)~~ Any property forfeited under this section may be
19 sold pursuant to an order of the court. The proceeds of the sale
20 shall be distributed by the court having jurisdiction over the
21 forfeiture proceeding to the entity having budgetary authority over
22 the seizing law enforcement agency. If more than 1 law enforcement
23 agency was substantially involved in effecting the forfeiture, the
24 court having jurisdiction over the forfeiture proceeding shall
25 distribute equitably the proceeds of the sale among the entities
26 having budgetary authority over the seizing law enforcement
27 agencies. Twenty-five percent of the money received by an entity

1 under this subsection shall be used to enhance law enforcement
2 efforts pertaining to this section.

3 (17) ~~(16)~~ This section does not apply to a person who is a
4 bona fide purchaser for value of the motor vehicle or major
5 component parts. ~~described in subsection (1).~~

6 Enacting section 1. This amendatory act does not take effect
7 unless Senate Bill No. ____ or House Bill No. 5725(request no.
8 01506'09) of the 95th Legislature is enacted into law.