

Act No. 333
Public Acts of 2014
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STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014

Introduced by Reps. Kesto, Heise, Haines, Lamonte, Hovey-Wright, LaVoy, Lauwers, Price, Rogers, Slavens, Singh, Darany, Brinks, Haveman, Kowall, Zorn, O'Brien, Driskell, Haugh, Roberts, Brown, Tlaib, Banks, McCready, Lyons, Kivela and Lane

ENROLLED HOUSE BILL No. 5233

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending sections 4702, 4703, 4704, 4705, 4706, 4707, and 4708 (MCL 600.4702, 600.4703, 600.4704, 600.4705, 600.4706, 600.4707, and 600.4708), section 4702 as amended by 2012 PA 350, sections 4703, 4704, 4705, and 4708 as amended by 2006 PA 128, and sections 4706 and 4707 as added by 1988 PA 104.

The People of the State of Michigan enact:

Sec. 4702. (1) Except as otherwise provided in this section, the following property is subject to seizure by, and forfeiture to, a local unit of government or this state under this chapter:

(a) All personal property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(b) All real property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime, except real property that is the primary residence of the spouse or a dependent child of the owner, unless that spouse or dependent child had prior knowledge of, and consented to the commission of, the crime.

(c) In the case of a crime that is a violation of section 49, chapter LXVIIA, or chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.49, 750.462a to 750.462h, and 750.543a to 750.543z, all property described in subdivisions (a) and (b), and all real property or personal property that performed 1 of the following functions:

(i) Contributed directly and materially to the commission of the crime.

(ii) Was used to conceal the crime.

(iii) Was used to escape from the scene of the crime.

(iv) Was used to conceal the identity of 1 or more of the individuals who committed the crime.

(2) Property is not subject to seizure or forfeiture if either of the following circumstances exists:

(a) The owner of the property did not have prior knowledge of, or consent to the commission of, the crime, if the lack of prior knowledge is not the result of the owner's willful blindness.

(b) Upon learning of the commission of the crime, the owner of the property served written and timely notice of the commission of the crime upon an appropriate law enforcement agency, and served a written and timely notice to quit upon the person who committed the crime.

(3) The forfeiture of property encumbered by a security interest is subject to the interest of the holder of the security interest who did not have prior knowledge of, or consent to the commission of, the crime.

(4) The forfeiture of property encumbered by an unpaid balance on a land contract is subject to the interest of the land contract vendor, if the vendor did not have prior knowledge of, or consent to the commission of, the crime.

(5) The forfeiture of the substituted proceeds of a crime is limited to the value of the proceeds of the crime in addition to both of the following:

(a) The amount by which any restitution or damages owed to the victim of the crime exceeds the value of the proceeds of the crime.

(b) The amount by which any reasonable expenses of the forfeiture proceedings and sale, including, but not limited to, expenses for maintaining custody of the property, as well as advertising and prosecution costs, exceeds the value of the proceeds of the crime.

Sec. 4703. (1) Personal property subject to forfeiture under this chapter may be seized pursuant to an order of seizure issued by the court having jurisdiction over the property upon a showing of probable cause that the property is subject to forfeiture.

(2) Personal property subject to forfeiture under this chapter may be seized without process under any of the following circumstances:

(a) The property is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime and the seizure is incident to a lawful arrest.

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

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

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

(e) Exigent circumstances exist that preclude the obtaining of a court order, and there is probable cause to believe that the property is subject to forfeiture under this chapter.

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

(3) The attorney general, or the prosecuting attorney or the city or township attorney for the local unit of government in which the property is located, may apply ex parte for an order authorizing the filing of a lien notice against real property subject to forfeiture under this chapter. The application shall be supported by a sworn affidavit setting forth probable cause for a forfeiture action pursuant to this chapter. An order authorizing the filing of a lien notice may be issued upon a showing of probable cause to believe that the property is subject to forfeiture under this chapter.

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

(a) The property is contraband.

(b) The ownership of the property is disputed until the dispute is resolved.

(c) The property is required to be retained as evidence under section 4(4) of the crime victim's rights act, 1985 PA 87, MCL 780.754.

(5) Personal property seized under this chapter is not subject to any other action to recover personal property, but is considered to be in the custody of the seizing agency subject only to subsection (4) and sections 4705 to 4707, or to an order and judgment of the court having jurisdiction over the forfeiture proceedings. Except as provided in subsection (6), when property is seized under this chapter, the seizing agency may do either or both of the following:

(a) Place the property under seal.

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

(6) The seizing agency may deposit money seized under this chapter into an interest-bearing account in a financial institution. As used in this subsection, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

(7) Title to all property subject to forfeiture under this chapter vests in the plaintiff upon the commission of the conduct giving rise to forfeiture, together with the proceeds of the property after the property vests under this subsection. Any subsequent property transfer that occurs before the final disposition of the forfeiture proceeding is void against the plaintiff unless the transferee claims and establishes all of the following:

(a) The transferee has an interest of record in the property.

(b) The transferee purchased the property in good faith and for fair value.

(c) The property interest was acquired without notice of the forfeiture proceeding or the facts that gave rise to the proceeding.

Sec. 4704. (1) Within 28 days after personal property is seized or a lien notice is filed against real property under section 4703, the seizing agency or, if the property is real property, the attorney general, the prosecuting attorney, or the city or township attorney shall give notice of the seizure of the property and the intent to forfeit and dispose of the property according to this chapter to each of the following persons:

(a) If charges have been filed against a person for a crime, the person charged.

(b) Each person with a known ownership interest in the property.

(c) Each mortgagee, person holding a security interest, or person having a lien that appears on the certificate of title or is on file with the secretary of state or appropriate register of deeds, if the property is real property, a mobile home, motor vehicle, watercraft, or other personal property.

(d) Each holder of a preferred ship mortgage of record in the appropriate public office pursuant to 46 USC 30101, 31301-31343, if the property is a watercraft more than 28 feet long or a watercraft that has a capacity of 5 net tons or more.

(e) Each person whose security interest is recorded with the appropriate public office pursuant to the federal aviation act of 1958, Public Law 85-726, if the property is an aircraft, aircraft engine, or aircraft propeller, or a part of an aircraft, aircraft engine, or aircraft propeller.

(f) Each person with a known security interest in the property.

(g) Each victim of the crime.

(2) The notice required under subsection (1) shall be a written notice delivered to the person or sent to the person by certified mail. If the name and address of the person are not reasonably ascertainable or delivery of the notice cannot reasonably be accomplished, the notice shall be published in a newspaper of general circulation in the county in which the personal property was seized or the real property is located for 10 successive publishing days. Proof of written notice or publication shall be filed with the court having jurisdiction over the seizure or forfeiture.

(3) If personal property was seized, the seizing agency shall immediately notify the prosecuting attorney for the county in which the property was seized or, if the attorney general is actively handling a case involving or relating to the property, the attorney general of the seizure of the property and the intent to forfeit and dispose of the property according to this chapter.

(4) An attorney for a person described in subsection (1)(a) shall be afforded a period of 56 days within which to examine money seized under section 4703. This 56-day period shall begin to run after notice is given under subsection (1) but before the money is deposited into a financial institution.

Sec. 4705. (1) A person who did not have prior knowledge of, or consent to the commission of, the crime, or a transferee under section 4703(7), may move the court having jurisdiction to return the property or discharge the lien on the grounds that the property was illegally seized, that the property is not subject to forfeiture under this chapter, or that the person has an ownership or security interest in the property and did not have prior knowledge of, or consent to the commission of, the crime, or acquired an ownership or security interest by a transfer that is not void under section 4703(7). The court shall hear the motion within 28 days after the motion is filed.

(2) At the hearing on the motion filed under subsection (1), the attorney general, or the prosecuting attorney or the city or township attorney for the local unit of government in which the property was seized or the lien was filed, shall establish the following:

(a) Probable cause to believe that the property is subject to forfeiture under this chapter and that the person filing the motion had prior knowledge of, or consented to the commission of, the crime, or acquired his or her interest by a transfer that is void under section 4703(7). Prior written notice of illegal use of the property to the interest holder constitutes prima facie evidence of knowledge of the crime.

(b) If the person filing the motion claims the property was illegally seized, that the property was properly seized.

(3) If the attorney general, prosecuting attorney, or city or township attorney fails to sustain his or her burden of proof under subsection (2), the court shall order the return of the property, including any interest earned on money deposited in a financial institution as defined in section 4703(6), or the discharge of the lien.

(4) If a motor vehicle is seized under section 4703, the owner of the vehicle may move the court having jurisdiction over the forfeiture proceedings to require the seizing agency to file a lien against the vehicle and to return the vehicle to the owner. The court shall hear the motion within 7 days after the motion is filed. If the owner of the vehicle establishes at the hearing that he or she holds the legal title of the vehicle and that it is necessary for him or her or his or her family to use the vehicle pending the outcome of the forfeiture action, the court may order the seizing agency to return the vehicle to the owner. If the court orders the return of the vehicle to the owner, the court shall order the seizing agency to file a lien against the vehicle and the owner to post a bond in an amount equal to the value of the vehicle.

(5) The testimony of a person at a hearing held under this section is not admissible against him or her in any criminal proceeding except in a criminal prosecution for perjury. The testimony of a person at a hearing held under this section does not waive the person's constitutional right against self-incrimination.

Sec. 4706. (1) Except as otherwise provided by law, personal property seized under section 4703 shall be returned to the owner, or a lien filed against real property under section 4703 or against a motor vehicle under section 4705 shall be discharged, within 7 days after the occurrence of any of the following:

(a) A warrant is not issued against a person for the commission of a crime within 28 days after the property is seized or, if the property is real property, within 28 days after the lien is filed.

(b) All charges against the consenting legal owner relating to the commission of a crime are dismissed.

(c) The consenting legal owner charged with committing a crime is acquitted of the crime.

(d) In the case of multiple defendants, all persons charged with committing a crime are acquitted of the crime.

(e) Entry of a court order under this chapter for the return of the property or the discharge of the lien.

(2) Before the expiration of period of time prescribed under section (1)(a), the prosecuting attorney, attorney general, or the city or township attorney of the local unit of government where the property is seized or located may petition the court ex parte for not more than an additional 28 days to complete its investigation and issue charges or return the property. The court shall grant an extension under this subsection to the extent necessary upon determining that there is good cause shown for the extension.

Sec. 4707. (1) If property subject to forfeiture under this chapter has a total value of less than \$100,000.00, within 28 days after the conviction of a person of a crime, the state or local unit of government seeking forfeiture of the property shall give notice of the seizure of the property or, if a lien has been filed, the filing of the lien, and the intent to begin proceedings to forfeit and dispose of the property according to this chapter to each of the persons to whom notice is required to be given under section 4704. Notice shall be given in the same manner as required under section 4704.

(2) Within 28 days after receipt of the notice or of the date of the first publication of the notice under subsection (1), a person claiming an interest in property subject to the notice may file a claim with the local unit of government or the state expressing his or her interest in the property and any objection to forfeiture. The objection shall be written, verified, and signed by the claimant, and include a description of the property interest asserted. The verification shall be notarized and include a certification stating that the undersigned has examined the claim and answer and believes it to be, to the best of his or her knowledge, true and complete.

(3) Except in the case of real property, if no claim is filed within the 28-day period as described in subsection (2), the local unit of government or the state shall declare the property forfeited and shall dispose of the property according to section 4708.

(4) If a claim is filed within the 28-day period as described in subsection (2), the local unit of government or the state shall transmit the claim with a list and description of the property to the attorney general or to the prosecuting attorney or the city or township attorney for the local unit of government in which the personal property was seized or the real property is located. The attorney general, the prosecuting attorney, or the city or township attorney shall institute a civil action for forfeiture within 28 days after the expiration of the 28-day period.

(5) If property subject to forfeiture under this chapter has a total value of more than \$100,000.00 or is real property, the attorney general, or the prosecuting attorney or the city or township attorney for the local unit of government in which the personal property was seized or the real property is located, shall institute a civil action for forfeiture within 28 days after the conviction of a person of a crime.

(6) At the forfeiture proceeding, the plaintiff shall prove all the following by a preponderance of the evidence:

(a) That the property is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(b) If a person, other than the person convicted of the crime, claims an ownership or security interest in the property, that the person claiming the interest in the property had prior knowledge of, or consented to the commission of, the crime.

(c) If a person, other than the person convicted of the crime, claims an ownership or security interest in the property under section 4703(7), that the transfer occurred subsequent to the criminal conduct that gave rise to forfeiture.

(7) If the plaintiff carries the burden of proof described in subsection (6)(c), the burden of proof shifts to the claimant to prove by a preponderance of the evidence that the transfer was not void under section 4703(7).

(8) If the plaintiff fails to meet the burden of proof under subsection (6), the property shall be returned to the owner within 7 days after the court issues a dispositive order.

Sec. 4708. (1) When property is forfeited under this chapter, the unit of government that seized or filed a lien against the property may sell the property that is not required to be destroyed by law and that is not harmful to the public and may dispose of the proceeds and any money, including any interest earned on money deposited in a financial institution

as described in section 4703(6), negotiable instrument, security, or other thing of value that is forfeited under this chapter in the following order of priority:

(a) Pay any outstanding security interest of a secured party who did not have prior knowledge of, or consent to the commission of, the crime, or did not acquire his or her interest as the result of a transfer that is void under section 4703(7).

(b) Satisfy any order of restitution in the prosecution for the crime.

(c) Pay the claim of each person who shows that he or she is a victim of the crime to the extent that the claim is not covered by an order of restitution.

(d) Pay any outstanding lien against the property that has been imposed by a governmental unit.

(e) Pay the proper expenses of the proceedings for forfeiture and sale, including, but not limited to, expenses incurred during the seizure process and expenses for maintaining custody of the property, advertising, as well as reasonable prosecution and court costs.

(f) The balance remaining after the payment of restitution, the claims of victims, outstanding liens, and expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the unit or units of government substantially involved in effecting the forfeiture. Seventy-five percent of the money received by a unit of government under this subdivision shall be used to enhance enforcement of the criminal laws and 25% of the money shall be used to implement the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834. A unit of government receiving money under this subdivision shall report annually to the department of management and budget the amount of money received under this subdivision that was used to enhance enforcement of the criminal laws and the amount that was used to implement the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

(2) In the course of selling real property under subsection (1), the court that enters an order of forfeiture, on motion of the unit of government to whom the property is forfeited, may appoint a receiver to dispose of the real property forfeited. The receiver is entitled to reasonable compensation. The receiver has authority to do all of the following:

(a) List the forfeited real property for sale.

(b) Make whatever arrangements are necessary for the maintenance and preservation of the forfeited real property.

(c) Accept offers to purchase the forfeited real property.

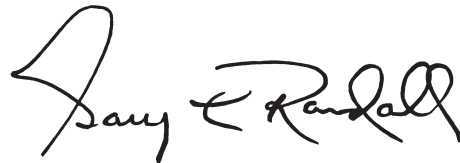
(d) Execute instruments transferring title to the forfeited real property.

(3) If any property included in the order of forfeiture under this chapter cannot be located or has been sold to a bona fide purchaser for value, placed beyond the jurisdiction of the court, substantially diminished in value by the conduct of the defendant, or commingled with other property that cannot be divided without difficulty or undue injury to innocent persons, the court may order forfeiture of any other reachable property of the owner up to the value of the property that is unreachable as described in this subsection. This subsection only applies against an owner that is also the person convicted of the crime underlying the forfeiture action.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5234 of the 97th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor