

# Legislative Analysis

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## HUMAN TRAFFICKING: DECLARE PREMISES A NUISANCE & REVISE OMNIBUS FORFEITURE ACT

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### House Bill 5230

Sponsor: Rep. Philip M. Cavanagh

### House Bill 5233

Sponsor: Rep. Klint Kesto

### Committee: Criminal Justice

Complete to 3-18-14

## A SUMMARY OF HOUSE BILLS 5230 AND 5233 AS INTRODUCED 1-22-14

House Bill 5230 would declare the following as a nuisance: a dangerous building and a building, vehicle, boat, aircraft, or other place where human trafficking or the unlawful use of a firearm or dangerous weapon is conducted. The bill also would make revisions to the seizure and forfeiture provisions pertaining to nuisances.

House Bill 5233 would make numerous revisions to the Omnibus Forfeiture Act (1) to allow seizure and forfeiture for home invasion and felony criminal sexual conduct offenses, (2) subject "willfully blind" property owners to the act, (3) establish parity of treatment for real and personal property, (4) prohibit fraudulent transfers of property connected to a crime, and (5) extend various time frames, including those for a seizing entity to file a notice of intent to forfeit and dispose of the property.

House Bills 5230 and 5233 are part of a multi-bill package of legislation that addresses the crime of human trafficking and adopts recommendations made by the Michigan Commission on Human Trafficking in its *2013 Report on Human Trafficking*.

House Bill 5230 amends Chapter 38 of the Revised Judicature Act, entitled "Public Nuisances" (MCL 600.3801 et al.). Under current law, property used as a public nuisance may be seized and forfeited by local units of government. The bill would:

- Expand the definition of "nuisance" to include:
  - A building, vehicle, boat, aircraft, or place that is used for conduct related to human trafficking or
  - A building, vehicle, boat, aircraft, or place that is used to facilitate armed violence in connection with the unlawful use of firearm or other dangerous weapon.
  - A dangerous building that is used to commit an unlawful act or any other activity declared by state law or local ordinance to be a public nuisance. "Dangerous building" would mean a building or structure damaged by fire, wind, or flood, or that is dilapidated and becomes an attractive nuisance to

children or a harbor for vagrants or criminals, or enables persons to commit a nuisance or an unlawful or immoral act on the premises.

- Increase the maximum fine for violating a court order or injunction for nuisance abatement from \$1,000 to \$25,000. The current maximum term of imprisonment of six months in the county jail would remain unchanged.
- Increase from 30 days to 90 days the time period for filing a nuisance complaint after any act, violation, or condition constituting a nuisance for which proof of the nuisance continuing at the time of filing the complaint or the court hearing would not have to be given.
- Revise the distribution of proceeds from the sale of items seized. Under the bill, first the prosecution costs would be paid (after deducting the expenses of the storage and sale of personal property and paying all secured interests and liens). Any balance remaining would go to the state unless the nuisance being abated involved human trafficking, in which case part or all of the remaining balance would be paid to the victim.
- For the purpose of determining the amount due to a victim, the court would consider the loss suffered as the proximate result of the conduct (and could use as guidance provisions in the William Van Regenmorter Crime Victim's Rights Act.)
- Require the balance of proceeds of the sale of personal property, if any, after paying the costs of the action and the abatement, to be paid to qualified secured parties and lien holders and then toward the costs incurred in the prosecution of the action, including reasonable attorney fees for services necessitated as determined by the court, with the balance paid to persons entitled as ordered by the court, or if applicable, to victims of human trafficking as described above.

**House Bill 5233** amends Chapter 47 of the Revised Judicature Act, known as the Omnibus Forfeiture Act (MCL 4701 et al.). Michigan law provides for the forfeiture to the government of property used in connection with certain crimes. The bill would do the following:

General revisions to Chapter 47:

- ❖ Include the following as crimes for which property could be seized and forfeited: home invasion; first-, second-, or third-degree criminal sexual conduct; and assault with intent to commit first-, second-, or third-degree criminal sexual conduct.
- ❖ Allow real and personal property that are the proceeds of a crime, substituted proceeds of a crime, or an instrumentality of a crime, with some exceptions, to be subject to seizure and forfeiture.

- ❖ Include human trafficking as one of the listed crimes for which all property used to conceal the crime or identity of a trafficker is subject to forfeiture.
- ❖ Prohibit a "willfully blind" property owner from being exempt from the act for lack of prior knowledge of a listed crime. "Willful blindness" would mean the intentional disregard of objective fact that would lead a reasonable person to conclude that the property was derived from unlawful activity or would be used for an unlawful purpose.
- ❖ In determining the forfeiture of the substituted proceeds of a crime, add the amount by which any reasonable expenses of the forfeiture proceedings and sale exceeds the value of the proceeds of the crime. This would include, but not be limited to, expenses for maintaining custody of the property, as well as advertising and prosecution costs.
- ❖ If a court orders the seizing agency to file a lien against a vehicle and return it to the owner for use during the forfeiture proceeding, the court would also have to require the owner to post a bond in an amount equal to the value of the vehicle.
- ❖ In a forfeiture proceeding in which a claimant prevails, the property would be returned to the owner within seven days *after the court issues a dispositive order*.
- ❖ Include the reasonable costs of prosecution in the list of expenses for which payment could be made from money seized and forfeited or from the proceeds of property that was forfeited and sold.
- ❖ Regarding an owner who is also the person convicted of the crime underlying the forfeiture action, allow a court to order forfeiture of any other reachable property up to the value of the property that is unreachable. This applies to property included in the order of forfeiture under Chapter 47 that 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.

Transfers of property subject to forfeiture:

- ❖ Unless the person to whom property subject to forfeiture was transferred can establish certain claims (such as purchasing the property in good faith), the transfer would be voided [proposed Section 4703(7)].
- ❖ The transferee could petition the court to return the property or discharge the lien on the grounds the ownership or security interest was acquired by a transfer that is not void under Section 4703(7).
- ❖ At the hearing on the above motion, require the government to show probable cause that the transferee acquired the interest by a transfer void under Section 4703(7). Prior written notice of illegal use of the property to the interest holder would constitute prima facie evidence of knowledge of the crime.

- ❖ At the forfeiture proceeding, require the plaintiff (the seizing agency) to prove by a preponderance of the evidence that a person (other than the person convicted of the crime) who claims an ownership or security interest in the property acquired that property by transfer subsequent to the criminal conduct giving rise to the forfeiture. If the plaintiff carries that burden of proof, the burden of proof would then shift to the claimant to prove by a preponderance of the evidence that the transfer was not void under Section 4703(7).
- ❖ Require payment from money seized and forfeited or from the proceeds of the sale of forfeited property to a party having an outstanding security interest and who did not acquire that interest in the money or property as the result of a transfer under Section 4703(7).

Revision of various deadlines:

- For giving notice of the seizure of property and intent to forfeit (from 7 to 56 days).
- For a defendant's attorney to examine seized money (from 60 to 56 days).
- For a court to hear a motion that the property was illegally seized (from 30 to 28 days after the motion is filed).
- For issuing a warrant for the commission of a crime after the property was seized or a lien filed against real property (from 7 days to 56 days). Before the 56 days expires, the prosecuting attorney, attorney general, or city or township attorney of the seizing entity could petition the court ex parte for an additional 56 days to either complete its investigation and issue charges or return the property. An extension would have to be granted to the extent necessary upon the court's determination that there is good cause shown for the extension.
- For giving notice of seizure or filing of lien and intent to begin forfeiture proceedings for property less than \$100,000 in value (from 7 to 28 days after conviction of a crime).
- For when a person claiming an interest in property may file a claim with the seizing entity (from 21 days to 28 days after notice given of the pending forfeiture). Also, allow the person to include any objection to forfeiture in the claim. The objection would have to be written, verified, and signed by the claimant, include a description of the property interest asserted, and be notarized with a certification as specified in the bill.
- For when a civil action for forfeiture must be instituted by the seizing agency after a claim is filed by a person claiming an interest (from 7 to 28 days after the 28-day filing period described above expires).
- For instituting a civil action for forfeiture of property valued at more than \$100,000 or for real property (from 7 days to 28 days after conviction of a crime).

**FISCAL IMPACT:**

It is not known how many orders or injunctions will be granted and violated, and it is not known how many persons will continue to use buildings/places that have been ordered to

be closed. Imprisonment in the county jail would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Increases in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.