

Legislative Analysis



DRUG CRIMES: CIVIL ASSET FORFEITURE

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<http://www.house.mi.gov/hfa>

House Bill 4001 as introduced
Sponsor: Rep. Jason Wentworth

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4002 as introduced
Sponsor: Rep. David LaGrand

Committee: Judiciary
Complete to 2-8-19

BRIEF SUMMARY:

House Bill 4001 would:

- Prohibit civil asset forfeitures for crimes involving controlled substances unless there is a conviction or plea agreement, no one claims the property, or the property owner relinquishes the property that was seized.
- Apply only to seizures of property valued at \$50,000 or less (excluding the value of the contraband).
- Limit applicability of the above to forfeiture proceedings pending on, or initiated on or after, the bill's effective date.

House Bill 4002 would:

- Require a person charged with a drug crime to be notified of the seizing entity's intent to forfeit and dispose of the property and require objections to forfeiture of the property to be filed on a form developed by the State Court Administrative Office (this applies to seizures without a warrant that do not exceed \$50,000 in value).
- Require property to be returned to an owner if a warrant for commission of a crime is not issued within 28 days of the seizure, charges are dismissed, or the person charged with the crime is acquitted.
- Provide an exemption to seizure or forfeiture if the owner of the property notified law enforcement of the commission of the crime and had served an eviction notice.
- Allow a person to petition to have the seized property returned if certain conditions are met.

Each bill would take effect 90 days after it is enacted. The bills are tie-barred to each other, which means that neither bill could take effect unless both bills were enacted into law.

DETAILED SUMMARY:

House Bill 4001 would add section 7521a to Article 7 (Controlled Substances) of the Public Health Code to prohibit property seized for a violation of Article 7, as provided in section 7522, from being subject to forfeiture under section 7521 or a disposition under section 7524 (see **Background Information**, below) unless one of the following applies:

- A criminal proceeding involving or relating to the property has been completed and either the defendant is convicted of a controlled substance violation under Article 7 or the defendant enters into a plea agreement.
- No person claims any interest in the property as provided under section 7523.

The bill would not prohibit the immediate destruction of property that is not lawfully possessed by any person or that is dangerous to the health or safety of the public, regardless of whether the person is convicted of a violation of Article 7.

Applicability

The bill would apply only to forfeiture proceedings pending on, or initiated on or after, the bill's effective date, and only to a forfeiture proceeding in which the aggregate net equity value of the property and currency seized was \$50,000 or less, excluding the value of contraband.

MCL 333.7521 and proposed MCL 333.7521a

House Bill 4002 would revise section 7523 of the Public Health Code and add section 7523a. Section 7523 of the Code provides a procedure to be followed if the property was seized under section 7522 without process (warrant) and the total value of the seized property is \$50,000 or less. Among other things, the procedure requires the seizing entity to notify the property's owner of the seizure and of the intent to forfeit and dispose of the property. Any person claiming an interest in that property has 20 days to file a signed, written claim expressing interest in the property. The bill would require that, if criminal charges were filed against a person, the person charged would also have to be notified of the entity's intent to forfeit and dispose of the property.

Further, the bill would add that the written claim expressing interest in the seized property and any objection to forfeiture would have to be made on a form to be developed by the State Court Administrative Office (described below). An objection would have to be written, verified, and signed by the claimant and include a detailed description of the property and the property interest asserted. The verification would have to be notarized and include a certification stating that the undersigned has examined the claim and believes it to be, to the best of his or her knowledge, true and complete.

Form asserting a claim for property less than \$50,000 when seized without a warrant

The bill would require the State Court Administrative Office to develop and make available to law enforcement agencies, courts, and the public a form for asserting an ownership interest in seized property. The form would have to require a claimant to provide a detailed

description of the property, the claimant's ownership interest in the property, and a signed attestation that the claimant has a bona fide ownership interest in the property.

Forfeiture action by plaintiff

The bill would add section 7523a to require a plaintiff to institute a forfeiture action under Article 7 not more than 28 days after a criminal proceeding involving or related to the property has been completed and the defendant has been convicted or entered into a plea agreement. This would apply in the following circumstance:

- Section 7521a (as proposed by HB 4001) applies;
- The seized property is subject to forfeiture under section 7521; and
- A claim expressing an interest in the property has been filed as described above.

At the forfeiture hearing, the plaintiff would have to prove one or both of the following, as applicable:

- That the property is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.
- That the person claiming an ownership or security interest in the property had prior knowledge of or had consented to the commission of the crime if the person claiming the interest is other than the person who has been convicted of, or entered into a plea agreement in connection with, a violation of Article 7.

If the plaintiff cannot meet the burden of proof, the property must be returned to the owner not more than seven days from the date the court issues a dispositive order. Further, except as otherwise provided in section 7521a (HB 4001), property would have to be returned to the owner not more than seven days after any of the following occurs:

- A warrant is not issued against a person for the commission of a crime within 28 days after the property had been seized.
- All charges against the person relating to the commission of a crime are dismissed.
- The person charged with committing a crime is acquitted of that crime.
- In the case of multiple defendants, all persons charged with committing a crime are acquitted of the crime.
- Entry of a court order for the return of the property.

Exemption to seizure or forfeiture

Property would not be subject to seizure under section 7522 or forfeiture under section 7521 if the owner of the property, upon learning of the commission of a crime, had served written and timely notice of the crime upon an appropriate law enforcement agency and also had served a written and timely notice to quit upon the person who committed the crime (i.e., an eviction notice). [Note: As written, it is unclear whether this provision would apply to any and all forfeitures regardless of the value of the property seized or be limited to forfeitures of property valued at \$50,000 or less.]

Motion to have seized property returned

Under the bill, a person could petition a court to return seized property on the following grounds:

- The property was illegally seized.

- The property is not subject to forfeiture.
- The person has an ownership or security interest in the property but did not have prior knowledge of or consent to the commission of the crime.

The motion would have to be heard within 28 days after filing. The plaintiff would have the burden of establishing probable cause to believe that the property was subject to forfeiture under Article 7, the property was properly seized, or the person filing the motion had prior knowledge of, or had consented to, the commission of a crime. [Note: As written, it is unclear whether this provision would apply to any and all forfeitures regardless of the value of the property seized or be limited to forfeitures of property valued at \$50,000 or less.]

MCL 333.7523 and proposed MCL 333.7523a

BACKGROUND INFORMATION:

Article 7 (Controlled Substances) of the Public Health Code prohibits certain activities, such as the manufacture, delivery, and possession of controlled substances, and establishes penalties for violations. Under section 7522, certain property involved in drug crimes may be seized with a warrant, or without a warrant under certain circumstances such as incident to a lawful arrest. The types of property subject to forfeiture are listed in section 7521. Besides obvious objects such as the illegal drugs and associated paraphernalia and books and records (including formulas) related to drug offenses, vehicles such as cars, boats, and planes can also be seized and forfeited if used to commit or facilitate a drug violation. Anything of value, including cash, may also be seized and subject to forfeiture if used or intended to be used to facilitate a violation or if furnished or intended to be furnished in exchange for a controlled substance, imitation controlled substance, or other drug in violation of Article 7 and traceable to the exchange.

Section 7524 allows the state or the local unit of government that seized the property to retain it for official use or sell any property that is not required by law to be destroyed and that is not harmful to the public. The proceeds, and any money or other things of value, must be deposited with the state treasurer if the state was the seizing entity or with the appropriate treasurer having budgetary authority of a local seizing entity, and must be disposed of as specified: to cover, for instance, expenses related to the maintenance of the property while in custody or costs associated with the sale of the property, among other things. Lights for plant growth or scales that were forfeited may be donated to elementary or secondary schools or colleges or universities for educational purposes.

FISCAL IMPACT:

Jointly examined, House Bills 4001 and 4002 would have an indeterminate, but potentially significant, fiscal impact on both the Department of State Police and local law enforcement agencies, due to potential revenue reductions resulting from proposed changes to civil asset forfeiture. The impact on law enforcement agencies would depend on the number of instances where civil asset forfeiture in controlled substance cases does not result in

criminal convictions or plea agreements, and in which no person claims an interest in the seized property, as such cases would no longer be subject to civil asset forfeiture. Changes to asset forfeiture proposed in the bills could result in law enforcement agencies requiring funding from other sources to supplant controlled substance-related forfeiture revenues, depending on the amount of assets obtained by law enforcement agencies through civil asset forfeiture and the extent to which these funds are used to support law enforcement operations.

The bills would have no impact on forfeiture cases where the aggregate value of the forfeited property and currency exceeds \$50,000. Law enforcement agencies with low reliance on revenues from controlled substance civil asset forfeiture cases involving \$50,000 or less would also not experience significant revenue reductions from the bills. However, the bills would likely lead to a decrease in the number of cases resulting in forfeiture revenue, due to the bills' limiting of forfeitures of \$50,000 or less to cases resulting in convictions, plea agreements, and no claims of an interest in the property.

The statewide volume of forfeiture cases under the Public Health Code involving assets with an aggregate value less than \$50,000 is indeterminate. According to the 2018 Asset Forfeiture Report issued by the Department of State Police, 278 law enforcement entities received funds from asset forfeiture during a reporting period between January and December of 2017. During that reporting period, a total of 5,558 forfeitures were related to violations of the Public Health Code. Of all statewide reported cases of asset forfeiture (6,662 in total), 736 were not charged with a criminal violation; 220 were charged but not convicted; and 2,876 were associated with convictions, with an additional 2,368 charges pending at the conclusion of the reporting period. Total net statewide forfeiture proceeds were approximately \$13.1 million during the reporting period. The largest uses of proceeds from forfeitures under violations of the Public Health Code were as follows: law enforcement equipment (36%), vehicles (9%), personnel (8.5%), and supplies and materials (7%).

House Bill 4002 would have a minimal fiscal impact on SCAO, as it would be responsible for developing and making available to law enforcement agencies, courts, and the public a form for asserting an ownership interest in seized property. Costs for developing the form would be supported by existing appropriations.

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