



**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536



**BILL ANALYSIS**

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

House Bill 4001 (Substitute H-2 as passed by the House)  
House Bill 4002 (Substitute H-3 as passed by the House)  
Sponsor: Representative Jason Wentworth (H.B. 4001)  
Representative David LaGrand (H.B. 4002)  
House Committee: Judiciary  
Senate Committee: Judiciary and Public Safety

Date Completed: 4-17-19

**CONTENT**

**House Bill 4001 (H-2) would amend Article 7 (Controlled Substances) the Public Health Code to do the following:**

- Specify that property seized for a violation of Article 7 would not be subject to forfeiture or disposition unless a criminal proceeding involving or relating to the property had been completed and the defendant plead guilty to or was convicted of a violation of Article 7.
- Require a prosecuting attorney or, if applicable, the Attorney General, to review the seizure of the property and approve its forfeiture, if a person relinquished ownership of the property.
- Specify that the bill would not apply to forfeiture proceedings in which the aggregate fair market value of the property and currency seized exceeded \$50,000.

**House Bill 4002 (H-3) would amend Article 7 of the Code to do the following:**

- Require a local unit of government to notify a person, if charges had been filed against him or her, that property had been seized.
- Allow a person claiming an interest in certain property that was seized without process to file a written claim expressing any objection to forfeiture.
- Require the State Court Administrative Office (SCAO) to develop and make available forms for relinquishing ownership of property, and forms to assert an ownership interest in seized property valued at less than \$50,000.
- Require a plaintiff to prove one or more requirements at a forfeiture hearing.
- Require property to be returned to an owner within 14 days in certain circumstances, including if the plaintiff failed to meet his or her burden of proof, a warrant was not issued within 90 days of a seizure, or the person charged with the crime was acquitted.

The bills are tie-barred. Each bill would take 90 days after its enactment.

**House Bill 4001 (H-2)**

Under the bill, except as otherwise provided, property could be seized as provided in Section 7522 for a violation of Article 7 of the Code, but would not be subject to forfeiture under

Section 7521 or disposition under Section 7524 (see **BACKGROUND** for more information on those sections) unless a criminal proceeding involving or relating to the property had been completed and the defendant pleaded guilty to or was convicted of a violation of Article 7.

A criminal conviction or guilty plea would not be required if one or more of the following applied:

- No person claimed any interest in the property or the owner withdrew his or her claim in the property.
- The owner waived the criminal conviction or plea requirement described above and elected to proceed with the civil forfeiture proceeding.
- A criminal charged had been filed and one or both of the following applied: the defendant was outside the State and could not reasonably be extradited or bought back to the State for prosecution; or reasonable efforts had been made by law enforcement authorities to locate and arrest the defendant, but he or she could not be located.

If a person withdrew his or her plea, the prosecuting attorney for the county in which the property was seized or, if the Attorney General were actively handling a case involving or relating to the property, the Attorney General, would have to review the seizure and approve the forfeiture of the property before it could be forfeited.

The bill's prohibition against forfeiture of property would not prohibit the immediate destruction of property that could not be lawfully possessed by any person or that was dangerous to the health or safety of the public regardless of whether the person was convicted of a violation of Article 7.

The provisions described above would apply to forfeiture proceedings that were initiated on or after the bill's effective date.

Those provisions also would not apply to forfeiture proceedings in which the aggregate fair market value of the property and currency seized exceeded \$50,000, excluding the value of contraband.

### **House Bill 4002 (H-3)**

#### **Objection to Forfeiture**

Section 7523 of the Code specifies that if property is seized under Section 7522, forfeiture proceedings must be instituted promptly. Under the bill, this requirement would be subject to Section 7521a (which House Bill 4001 (H-2) would add).

Section 7523 also prescribes the procedure to be used if property is seized without process under Section 7522, and the total value of the property seized does not exceed \$50,000. The procedure requires the local unit of government that seized the property or, if the property was seized by the State, the State, to notify the property owner that the property has been seized, and that the local unit of government or, if applicable, the State, intended to forfeit and dispose of the property by delivering a written notice to the owner or by sending the notice by certified mail. If the owner's name and address is not reasonably ascertainable, or delivery of the notice cannot be reasonably accomplished, the notice must be published in a newspaper of general circulation in the county in which the property was seized, for 10 successive publishing days.

Under the bill, the local unit also would have to notify the owner if charges had been filed against the person for a crime. In addition to publishing in a newspaper, the local unit also would have to publish the notice on its or the Attorney General's public website.

Section 7523 specifies that unless all criminal proceedings involving or relating to the property have been completed, the seizing agency immediately must notify the prosecuting attorney for the county in which the property was seized or, the Attorney General, as applicable, of the seizure of the property and the intention to forfeit and dispose of it.

A person claiming an interest in property that is subject of a notice may, within 20 days after receiving it or of the date it was first published, file a written claim signed by the claimant with the local unit of government or the State expressing his or her interest in the property.

Under the bill, a person claiming an interest in the property also could file an objection to forfeiture. A claim or objection would have to be written, verified, and signed by the claimant, and would have to include a detailed description of the property and the property interest asserted. The verification would have to be notarized and include a certification under the penalty of perjury stating that the undersigned had examined the claim and believed it to be, to the best of his or her knowledge, true and complete. A written claim would have to be made on a form developed by the SCAO.

The SCAO would have to develop and make available to law enforcement agencies, courts, and the public a form for asserting an ownership interest in property seized without process as provided under the bill. The form would have to require a claimant to provide a detailed description of the property, his or her ownership interest in the property, and a signed attestation that the claimant had a bona fide ownership interest in the property.

#### Forfeiture Action

Under the bill, if Section 7521a applied to a forfeiture case under Article 7, the seized property was subject to forfeiture under Section 7521, and a person had filed a claim to property or an objection to forfeiture, a civil asset forfeiture action would have to be stayed while applicable criminal proceedings were pending. The action would have to proceed after the defendant was convicted of, or entered a guilty plea to, the offense involved, or one or more event described in Section 7521a applied.

To the extent that it was practicable and consistent with the interests of justice, a court would have to hold the hearing within 28 days of a plea or conviction.

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

- The property was subject to forfeiture under Section 7521 (please see **BACKGROUND** for property subject to forfeiture).
- If a person, other than the person who had been convicted of a violation of Article 7 or entered into a plea agreement in connection with a violation of Article 7 claimed an ownership or security interest in the property, that the person claiming the interest had prior knowledge of or consented to the commission of the crime.

If the plaintiff failed to meet his or her burden of proof, property seized under Section 7522 would have to be returned to the owner within 14 days from the date the court issued a dispositive order.

Except as otherwise provided, property would have to be returned to the owner within 14 days after any of the following occurred:

- A warrant was not issued against a person for the commission of a crime within 90 days after the property was seized.
- All crimes against the person relating to the commission of a crime were dismissed.
- The person charged with committing a crime was acquitted.
- In the case of multiple defendants, all individuals charged with committing a crime were acquitted.
- Entry of a court order for the return of the property.

A party to a forfeiture proceeding could seek an extension of the time periods described above for good cause. The court could grant a motion for an extension for good cause shown.

#### Exemption to Seizure or Forfeiture

Property would not be subject to seizure or forfeiture if, upon learning of the commission of a crime, the property owner served written and timely notice of the commission of the crime upon an appropriate law enforcement agency, and upon the person who committed the crime.

Proposed MCL 333.7521a (H.B. 4001)  
MCL 333.7523 et al. (H.B. 4002)

#### **BACKGROUND**

Under Section 7521 of the Public Health Code, the following property is subject to forfeiture:

- A controlled substance that has been manufactured, distributed, used, possessed, or acquired in violation of Article 7.
- Raw material, product, or equipment that is used, or intended for use, in manufacturing, compounding, processing, or delivering a controlled substance in violation of Article 7.
- Property that is used or intended for use as a container for property described in either of the first two provisions.
- A conveyance, including an aircraft, vehicle, or vessel used or intended for use to transport property described in either of the first two provisions, for the purpose of sale or receipt, subject to several exceptions.
- Books, records, and research products and materials used, or intended for use, in violation of Article 7.
- Any other drug paraphernalia.

Section 7522 specifies that property that is subject to forfeiture under Article 7 or pursuant to Section 7521 may be seized upon process issued by the circuit court having jurisdiction over the property. Seizure without process may be made under any of the following circumstances:

- Incident to lawful arrest, pursuant to a search warrant, or pursuant to an inspection under an administrative inspection warrant.
- The property is the subject of a prior judgment in favor of the State in an injunction or forfeiture proceeding under Article 7.
- There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.
- There is probable cause to believe that the property was used or is intended to be used in violation of Article 7.

Under Section 7524, when property is forfeited under Article 7, the local unit of government that seized the property may do any of the following, or if the property is seized by or in the custody of the State, the State may do any of the following:

- Retain the property for official use.
- Sell the property that is not required to be destroyed by law and that is not harmful to the public.
- Require the Michigan Board of Pharmacy to take custody of the property and remove it for disposition in accordance with the law.
- Forward it to the Drug Enforcement Administration (within the United States Department of Justice) for disposition.

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

Collectively, the bills would have an indeterminate negative impact upon the Michigan State Police (MSP) and local law enforcement agencies and a minimal impact on the State Court Administrative Office (SCAO).

The bills would add restrictions as to when law enforcement agencies could seize cash and property related to crimes under the Public Health Code, specifically controlled substance violations. Chiefly, the bills would restrict forfeiture of property for controlled substance violations to those instances in which a conviction eventually followed, either by trial or plea agreement.

According to the 2018 Asset Forfeiture Report compiled by the MSP, over \$13.1 million in cash and property was awarded to law enforcement agencies across Michigan for calendar year 2017. This includes awards to MSP and local law enforcement agencies. This amount covers 6,662 forfeitures, of which 5,558, or 83%, were made because of violations of the Public Health Code. Of those 6,662 forfeitures, 2,368 concerned instances in which formal charges were brought and a conviction eventually followed, 2,876 concerned instances in which charges were brought but a conviction is still pending. The remaining 1,418 (21%) concerned forfeiture instances that did not result in a conviction, or a conviction was not verified by the reporting data. The bills would prohibit forfeiture of property without a corresponding conviction. It cannot be determined what percentage of property or cash went to the MSP or local law enforcement agencies. Also, additional data indicating the amount of money seized under the Code are not available, but it is likely the bills would reduce revenue from forfeiture by several million dollars statewide.

Additionally, House Bill 4002 (H-3) would require the SCAO to create and make available two forms: one for the owner of seized property to relinquish that property, and one for claimants to assert an ownership interest in seized property valued at less than \$50,000. The cost for creating and distributing these forms likely would be nominal.

Fiscal Analyst: Bruce Baker  
Michael Siracuse

SAS\S1920\s4001sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.