

DRUG CRIMES: CIVIL ASSET FORFEITURE

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House Bill 4158 (proposed substitute H-4)

Sponsor: Rep. Peter J. Lucido

Committee: Judiciary

Complete to 4-30-18

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

SUMMARY:

House Bill 4158 would prohibit the forfeiture or disposition of property under provisions of the Public Health Code that pertain to violations involving controlled substances unless the defendant was convicted of a violation involving a controlled substance or satisfied another of several listed circumstances. The bill would not apply to property seizures having a net value of over \$50,000.

Specifically, the bill would add a new section to Article 7 of the Public Health Code (Controlled Substances) 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 the defendant is convicted of a controlled substance violation under Article 7 *or* enters into a plea agreement approved by the presiding criminal court.
- The owner of the property is deported by the U.S. government.
- No person claims any interest in the property as provided under Section 7523.
- The owner of the property relinquishes ownership of the property, in writing, and provides that form to the seizing law enforcement agency. This would trigger a requirement for the prosecuting attorney for the county in which the property had been seized or the attorney general (if the attorney general was actively handling a case involving or related to the property) to review the seizure of the property and approve the forfeiture before the property could be forfeited.

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.

Form to relinquish property

The State Court Administrator's Office (SCAO) would be required to develop and make available to law enforcement agencies, the courts, and the public the form described in the bill. An executed form would be confidential and would not be subject to disclosure under the Freedom of Information Act.

Applicability

The bill would apply only to forfeiture proceedings pending on, or initiated on or after, January 1, 2019, 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.

Property valued below \$50,000

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.

To the current procedure, the bill would add that any objection to forfeiture can be included in the claim on a form to be developed by the SCAO. 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 had 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

The SCAO would be required 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, his or her ownership interest in the property, and a signed attestation that he or she has a bona fide ownership interest in the property.

The bill would take effect 90 days after being enacted.

MCL 333.7523 and proposed MCL 333.7521a

BACKGROUND INFORMATION:

Article 7 of the Public Health Code (Controlled Substances) 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 local unit of government, or the state, 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 expenses related to the maintenance of the property while in custody, for instance, 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:

House Bill 4158 would have an indeterminate, yet possibly substantive, fiscal impact on the Department of State Police and local law enforcement agencies. The effect on law enforcement agencies' budgets would depend upon the prevalence of civil asset forfeiture in controlled substance cases in which criminal convictions, plea agreements, deportations, or no contest pleas on forfeited assets are not realized, and the extent to which these funds are relied upon to support a law enforcement agency's operations. In some cases, the changes to asset forfeiture law proposed in House Bill 4158 could result in a law enforcement agency's requiring additional funds from other sources to replace forgone controlled substance-related forfeiture revenues.

The bill would not affect forfeitures in which the aggregate value of the forfeited property and currency exceeds \$50,000. However, because the bill limits forfeiture to those cases that result in convictions, plea agreements, deportations, or no contest pleas from property owners, the bill is likely to decrease the number of cases for which forfeiture revenue could be realized. Law enforcement agencies that do not substantively rely on revenues from civil asset forfeitures from controlled substance cases involving \$50,000 or less would likely see little to no decrease in forfeiture revenues. It is not clear how prevalent forfeiture cases involving assets valuing, in aggregate, greater than \$50,000 are statewide.

According to the Department of State Police 2017 Asset Forfeiture Report,¹ of the 1,277 state and local agencies and local units of government that reported on asset forfeiture between February and December of 2016, 266 law enforcement entities filed reports that included asset forfeiture. During the same reporting period, a total of 4,955 forfeitures were related to violations of the Public Health Code, and of *all* cases reported statewide in which forfeiture was authorized, 523 were not linked to criminal charges; 196 were linked to charges that did not result in convictions; and 2,490 were linked to convictions, with an additional 1,547 charges that were still pending as of the reporting period. Total net statewide forfeiture proceeds were approximately \$12.3 million during the reporting period, and of the proceeds resulting from forfeitures under violations of the Public Health Code, the largest proportions were utilized to support costs for law enforcement equipment (30%) and personnel (10%), with an additional 21% equally distributed among costs for vehicles (7%), training (7%), and supplies and materials (7%).

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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.

¹ 2017 Asset Forfeiture Report, Department of State Police, Grants and Community Services Division:
http://www.michigan.gov/documents/msp/2017_Asset_Forfeiture_Report-2017-06-30_-FINAL_606009_7.pdf