



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

BILL ANALYSIS



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

House Bills 4500 and 4503 (as passed by the House)
House Bill 4504 (Substitute H-1 as passed by the House)
House Bills 4506 and 4507 (as passed by the House)
Sponsor: Representative Jim Runestad (H.B. 4500)
Representative Triston Cole (H.B. 4503)
Representative Klint Kesto (H.B. 4504)
Representative Jason M. Sheppard (H.B. 4506)
Representative Brandt Iden (H.B. 4507)

House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 8-19-15

CONTENT

House Bill 4504 (H-1) would enact the "Uniform Forfeiture Reporting Act" to do the following:

- **Require each reporting agency (a local unit of government, State department, or State agency that seized or forfeited property) to submit an annual report to the Department of State Police regarding the reporting agency's forfeiture activities.**
- **Require the report to contain specific information, including the number of forfeiture proceedings instituted, the number of forfeitures effectuated without a court proceeding, an inventory of property received, and the net total proceeds of property forfeited.**
- **Require the records of a reporting agency regarding property forfeiture to be audited in accordance with the Uniform Budgeting and Accounting Act or Public Act 71 of 1919.**
- **Require the Department of State Police to compile the reported information and file an annual report of its findings with the Secretary of the Senate and the Clerk of the House of Representatives, and post a copy on the Department's website.**

The bill also would repeal a section of the Public Health Code that requires local units of government to report forfeiture activities related to controlled substance offenses, and provides that the records of a local unit regarding forfeiture are subject to audit.

House Bills 4500, 4503, 4506, and 4507 would amend various statutes to do the following:

- **Require reporting agencies to report seizure and forfeiture activities to the Department of State Police, as required by the proposed Uniform Forfeiture Reporting Act, beginning February 1, 2016.**
- **Provide that reporting agencies would be subject to audit, as required by the proposed Act, beginning February 1, 2016.**
- **Define "reporting agency" as the term would be defined in the proposed Act.**

House Bill 4500 would amend the Identity Theft Protection Act. House Bill 4503 would amend Chapter 47 of the Revised Judicature Act (RJA), which provides for the seizure and forfeiture of the proceeds of a crime. House Bill 4506 would amend Article 7 (Controlled Substances) of the Public Health Code. House Bill 4507 would amend Chapter 38 (Public Nuisances) of the RJA.

(For a description of the forfeiture provisions in those statutes, please see **BACKGROUND**, below.)

House Bills 4504 (H-1) and 4506 would take effect on February 1, 2016. House Bills 4500, 4503, and 4507 would take effect 90 days after they were enacted.

House Bill 4500 is tie-barred to House Bill 4504. House Bills 4503, 4504 (H-1), 4506, and 4507 are tie-barred to each other.

A detailed description of House Bill 4504 (H-1) follows.

Definitions

The term "reporting agency" would mean one of the following:

- If property is seized by or forfeited to a local unit of government, that local unit of government.
- If property is seized by or forfeited to the State, the State department or agency effectuating the seizure or forfeiture.

"Local unit of government" would mean a city, village, township, or county.

Reporting Requirement

Before February 1 of each year, every reporting agency would have to submit to the Department of State Police a report summarizing the agency's activities for the preceding calendar year regarding the forfeiture of property under Sections 7521 to 7533 of the Public Health Code (i.e., forfeiture involving controlled substance offenses), Section 79d of the Identity Theft Protection Act (the section proposed by House Bill 4500), and Chapters 38 and 47 of the Revised Judicature Act.

A reporting agency that did not engage in any forfeitures during the reporting period would have to file a null report.

A reporting agency would be allowed to use forfeiture proceeds to pay the reasonable costs associated with compiling, analyzing, and reporting data under the proposed Act.

Information in all Reports

A reporting agency's annual report would have to contain the following information, as applicable:

- The number of forfeiture proceedings the reporting agency instituted in the circuit court.
- The number of forfeiture proceedings instituted by the reporting agency that were concluded in the circuit court.
- The number of forfeiture proceedings instituted by the reporting agency that were pending in the circuit court at the end of the year.
- The number of forfeitures the reporting agency effectuated without a forfeiture proceeding in the circuit court.

- The number of seizures and forfeiture proceedings subject to a consent judgment, settlement, or any other similar agreement involving the property owner and reporting agency.
- An inventory of property received by the reporting agency, categorized by residential real property; industrial or commercial real property; agricultural real property; money, negotiable instruments, and securities; weapons; motor vehicles and other conveyances; and other personal property of value.

Information in Report after Proceedings Finalized

A reporting agency's annual report would have to contain the information described below with respect to proceedings that had been finalized for purposes of appeal.

Each property inventory would have to include a description that contained the following information, as applicable:

- The date the property was seized.
- The final disposition of the property, including the date it was ordered forfeited or disposed of.
- The estimated value of the property.
- The violation or nuisance alleged to have been committed for which forfeiture was authorized.
- Whether any person was charged with the violation for which forfeiture was authorized and whether that person was ultimately convicted of the violation.
- Whether any person claimed an interest in the property and the number of claimants.
- Whether the property was seized pursuant to a search or arrest warrant or incident to an arrest.
- Whether a controlled substance was found in the course of the investigation that resulted in the forfeiture.
- Whether the forfeiture resulted from an adoptive seizure.

(A seizure would be an "adoptive seizure" if all of the following applied:

- The seizure resulted from a violation of State law and there was a Federal basis for the forfeiture action.
- All of the pre-seizure activity and related investigations were performed by the State or the local reporting agency before a request was made to the Federal government for adoption.
- The seizure did not result from a joint investigation or task force case.)

A reporting agency's annual report also would have to indicate the net total proceeds of all property forfeited through actions instituted by the reporting agency that it was required to account for and report to the State Treasurer under either the Uniform Budgeting and Accounting Act or Public Act 71 of 1919.

(Public Act 71 of 1919 provides for a uniform system of accounting for counties, prescribes annual audit requirements for counties, and contains certain reporting requirements for State departments, offices, and institutions.)

Use of Proceeds

In addition to the information described above, a reporting agency's report would have to contain the information about the use of the proceeds, depending on the statute under which the proceedings took place, with respect to proceedings that had been finalized for purposes of appeal.

For forfeiture proceedings instituted under the Public Health Code, the annual report would have to include the following:

- A statement explaining how any money received by the agency under Section 7524(1)(b)(ii) of the Code had been used or was being used for law enforcement purposes.
- A statement of the number of lights for plant growth or scales donated under Section 7524(2), the total value of those lights or scales, and the elementary or secondary schools or institutions of higher education to which they were donated.

(Under Section 7524(1)(b)(ii), if a seizing agency receives proceeds from the sale of forfeited property, it must use the funds only for law enforcement purposes. Section 7524(2) allows the State or a local unit to donate forfeited lights for plant growth or scales to elementary or secondary schools or institutions of higher education, upon request, for educational purposes.)

For nuisance proceedings instituted under Chapter 38 of the RJA, the annual report would have to include a statement explaining how net proceeds were directed under Section 3835 of the Act. (That section requires the proceeds of the sale of personal property to be applied to the costs of the action and abatement, and requires the balance, if any, to be paid to qualified secured parties and lien holders and then toward the costs incurred in the prosecution of the action. Any remaining balance must be paid to the people entitled to the money as ordered by the court or, if applicable, to a victim of human trafficking.)

For forfeiture proceedings instituted under Chapter 47 of the RJA, the annual report would have to include the amount of money received under Section 4708(1)(f) of the Act that was used to enhance enforcement of criminal laws and the amount of money that was used to implement the Crime Victim's Rights Act. (Under that section, after the payment of other items that have priority, the balance of proceeds from the sale of forfeited property or forfeited money must be distributed to the unit or units of government involved in effectuating the forfeiture. Of those funds, 75% must be used to enhance enforcement of the criminal laws and 25% must be used to implement the Crime Victim's Rights Act.)

Audit Requirement

The records of a reporting agency regarding the forfeiture of property required to be reported under the proposed Act would have to be audited in accordance with either Public Act 71 of 1919 or the Uniform Budgeting and Accounting Act.

Those records also could be audited by an auditor of the local unit of government.

State Police Compilation & Report

The Department of State Police would have to compile the information reported to it under the proposed Act. Beginning January 1, 2017, the Department would have to file an annual report of its findings with the Secretary of the Senate and the Clerk of the House of Representatives, and place a copy of the report on its departmental website. The report would have to be filed by July 1 each year.

The report would have to identify any State departments or agencies or local units of government that had failed to properly report to the Department of State Police as required.

Repeal

The bill would repeal Section 7524a of the Public Health Code, which requires each local unit of government to submit an annual report if the local unit, during the preceding fiscal year, had forfeiture proceedings pending in the circuit court, or effectuated a forfeiture of property

without a forfeiture proceeding, under Article 7; or received forfeited money, negotiable instruments, securities, or any other thing of value under Article 7. The report must be submitted to the Department of State Police for analysis and transmittal to the Secretary of the Senate and the Clerk of the House.¹ The report must contain generally the same information that the bill would require each reporting agency's report to include (except that the currently required information is limited to forfeiture under the Public Health Code).

Section 7524a also requires the records of a local unit of government regarding forfeiture under the Code to be audited according to Public Act 71 of 1919 or the Uniform Budgeting and Accounting Act, and permits the records to be audited by an auditor of the local unit.

Proposed MCL 445.79d (H.B. 4500)
Proposed MCL 600.4710 (H.B. 4503)
Proposed MCL 333.7524b (H.B. 4506)
Proposed MCL 600.3841 (H.B. 4507)

BACKGROUND

Chapter 47 of the Revised Judicature Act

Chapter 47 provides for the civil forfeiture of personal property and real property that is the proceeds of a crime (as defined in the chapter), the substituted proceeds of a crime, or an instrumentality of a crime. This property is subject to seizure by, and forfeiture to, a local unit of government or the State. Real property that is the primary residence of the spouse or a dependent child of the owner, however, is not subject to seizure and forfeiture unless the spouse or child had prior knowledge of, and consented to, the commission of the crime. For violations of the Michigan Penal Code involving human trafficking, terrorism, or animal fighting, baiting, or shooting, seizure and forfeiture also apply to property used for certain functions, such as concealing the crime or the identity of the offender, or escaping from the scene of the crime.

(The definition of "crime" includes a violation of specified sections of the Michigan Penal Code, the Natural Resources and Environmental Protection Act, the Medicaid False Claim Act, the Michigan Antitrust Reform Act, the Uniform Securities Act, and several other statutes.)

Property is not subject to seizure and forfeiture if a) the owner did not have prior knowledge, or consent to the commission, of the crime, or b) upon learning of the commission of the crime, the owner notified a law enforcement agency and served a notice to quit on the person who committed it.

Personal property subject to forfeiture may be seized pursuant to a court order upon a showing of probable cause that the property is subject to forfeiture. Personal property also may be seized without process under certain circumstances (e.g., pursuant to a search warrant or incident to an arrest). In the case of real property, the Attorney General, a prosecuting attorney, or a city or township attorney may apply for an order authorizing a lien against the property.

¹ Although Section 7524a requires the reports to be submitted to the "office of drug agencies", a series of Executive Orders abolished that office (which was in the Department of Management and Budget), transferred its functions to the Office of Drug Control Policy in the Department of Community Health (DCH), abolished the Office of Drug Control Policy, transferred its functions to the DCH, and then transferred some of those responsibilities to the Departments of State Police and Education. Currently, the forfeiture reports are submitted to and compiled by the Grants and Community Services Division of the Department of State Police.

Except as otherwise provided, personal property that is seized is not subject to any action to recover personal property, but is considered to be in the custody of the seizing agency.

Title to all property subject to forfeiture under Chapter 47 vests in the plaintiff upon the commission of the conduct that gives rise to forfeiture. Any subsequent property transfer that occurs before the final disposition of the forfeiture proceeding is void unless the transferee establishes that the transferee has an interest of record in the property and purchased it in good faith and for fair value, and the property interest was acquired without notice of the forfeiture proceeding or the facts that gave rise to it.

Notice of the seizure of property and the intent to forfeit and dispose of it must be given to certain individuals or entities, including a person charged with a crime, each person having an ownership interest in the property, each person with a secured interest in the property, and each victim of the crime.

A person who did not have prior knowledge, or consent to the commission, of the crime may move the court to return the property or discharge the lien. If a motor vehicle is seized, the owner may move the court to require the seizing agency to file a lien against the vehicle and return it.

Personal property that has been seized must be returned to the owner, or a lien that has been filed against real property or a motor vehicle must be discharged, if any of the following occur: a) a warrant has not been issued against a person for the commission of a crime within 28 days after the property was seized or the lien was 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; d) in the case of multiple defendants, all are acquitted; or e) a court order is entered for return of the property or the discharge of the lien.

After a person has been convicted of a crime, the Attorney General, prosecuting attorney, or city or village attorney must institute a civil action for forfeiture if either of the following applies:

- The property subject to forfeiture has a total value of more than \$100,000 or is real property.
- The property subject to forfeiture has a total value of less than \$100,000 and a person claiming an interest in the property files a claim with the State or the local unit of government.

If no claim is filed for property with a total value of less than \$100,000, the State or the local unit must declare the property forfeited and dispose of it as provided in Chapter 47.

At a forfeiture proceeding, the plaintiff must prove, by a preponderance of the evidence, that the property is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime; that a person claiming an interest in the property, if any, had prior knowledge, or consented to the commission, of the crime; and, if a person claims an interest in the property and the property had been transferred to the person, that the transfer occurred after the criminal conduct. If the plaintiff fails to meet the burden of proof, the property must be returned to the owner.

When property is forfeited under Chapter 47, the unit of government that seized or filed a lien against the property may sell property that is not required by law to be destroyed and that is not harmful to the public, and may dispose of the proceeds and any money, negotiable instrument, security, or other thing of value that is forfeited, in the following order of priority:

- To pay any outstanding security interest of a secured party who did not have prior knowledge, or consent to the commission, of the crime, or did not acquire his or her interest as a result of a transfer that is void.
- To satisfy any order of restitution in the prosecution of the crime.
- To pay the claim of each victim of the crime, to the extent that the claim is not covered by an order of restitution.
- To pay any outstanding lien against the property that has been imposed by a governmental unit.
- To pay the expenses of the forfeiture and sale proceedings.

The court must distribute the remaining balance to the unit or units of government substantially involved in effecting the forfeiture. Of the money received by a unit of government, 75% must be used to enhance enforcement of the criminal laws, and 25% must be used to implement the Crime Victim's Rights Act.

Article 7 of the Public Health Code

Property that is subject to forfeiture under Article 7 of the Public Health Code includes the following:

- A controlled substance that has been manufactured, distributed, used, possessed, or acquired in violation of Article 7.
- Raw material, a 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.
- Any other drug paraphernalia.

Property that is subject to forfeiture may be seized upon process issued by the circuit court. Property also may be seized without process under certain circumstances (e.g., pursuant to a search warrant or incident to an arrest).

When property is seized, forfeiture proceedings must be instituted promptly. If property is seized without process and its value does not exceed \$50,000, the owner must be notified and a person claiming an interest in the property may file a claim. If a claimant files a bond as required, forfeiture proceedings must be instituted. If no claim is filed, the property must be declared forfeited and disposed of.

Property that is taken or detained under Article 7 is not subject to an action to recover personal property, but is considered to be in the custody of the seizing agency subject only to these provisions or an order and judgment of the court.

When property is forfeited under Article 7, the local unit of government that seized it, or the State if the property was seized by or in the custody of the State, may retain it for official use, sell that which is not required by law to be destroyed and is not harmful to the public, require the Michigan Board of Pharmacy to take custody of the property and remove it for disposition, or forward it to the U.S. Department of Justice's Drug Enforcement Administration for disposition.

If the local unit or the State sells the property, the proceeds must be deposited with the treasurer or treasurers of the entity or entities having budgetary authority over the seizing agency or agencies, and used to pay expenses of the forfeiture and sale. The court must distribute the balance to the treasurer or treasurers. Money received by a seizing agency and

all interest and other earnings on the money must be used only for law enforcement purposes, as appropriated by the entity with budgetary authority.

Identity Theft Protection Act

The following property is subject to forfeiture under the Identity Theft Protection Act:

- Any personal or real property that has been used, possessed, or acquired in a felony violation of the Act.
- A conveyance, including an aircraft, vehicle, or vessel, used or intended to be used to transport, or facilitate the transportation of, property described above, for sale or receipt, subject to several exceptions.
- Books, records, computers, electronic equipment, and research products and materials used or intended for use in violation of the Act.

Also, there is a rebuttable presumption that any money, negotiable instruments, securities, or other thing of value that is found in close proximity to any property listed above is subject to forfeiture.

The Act contains generally the same provisions as in Article 7 of the Public Health Code concerning the seizure of property with or without process, and the institution of forfeiture proceedings, and that the property is not subject to an action to recover personal property.

When property is forfeited under the Act, the local unit of government that seized it may do any of the following:

- Retain it for official use.
- Sell that which is not required by law to be destroyed.
- Take custody of the property and remove it for disposition in accordance with law.

The proceeds of a sale and forfeited money, negotiable instruments, securities, or other thing of value must be deposited with or distributed to the treasurer of the entity having budgetary authority over the seizing agency, and applied first for payment of the expenses of the forfeiture and sale proceedings. The balance must be used to enhance law enforcement efforts, as appropriated by that entity.

Chapter 38 of the Revised Judicature Act

Under Chapter 38 of the RJA, a building, vehicle, boat, aircraft, or place is a nuisance if it is used for illegal activities described in Section 3801 (e.g., prostitution; gambling; the unlawful manufacture, transportation, or sale of a controlled substance or alcoholic beverage; animal fighting; or human trafficking). Chapter 38 allows the Attorney General, a county prosecutor, or the resident of a county to maintain an action in the name of the State to enjoin any person from using property for any of the specified purposes.

A court may not enter an order against a defendant under Chapter 38 unless the defendant has been served and given an opportunity to be heard. If the existence of a nuisance is established, the court must enter an order of abatement as part of the judgment.

An order of abatement may order the removal of all furniture, fixtures, and contents from a building or place; the sale of the furniture, fixtures, and contents; the closing of the building or place; and any other equitable relief the court considers necessary. Any vehicle, boat, or aircraft found to be a nuisance is subject to the same order and judgment as any furniture, fixtures, and contents.

Upon the sale of the furniture, fixtures, contents, vehicle, boat, or aircraft, the officer executing the sale must do the following, in the following order:

- Deduct the expenses of keeping the property and the costs of the sale.
- Pay all secured interests and liens according to their priorities, if the secured party or lien holder did not have notice that the property was used for the maintenance of a nuisance.
- Pay the costs of prosecution, including reasonable attorney fees.
- Pay the balance to the State Treasurer to be credited to the State's General Fund.

If property is declared to be a nuisance because it has been used for human trafficking, any amount determined to be due to the victim must be paid from the proceeds before the costs of prosecution are paid and any balance is paid to the State Treasurer.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would increase costs to the Michigan Department of State Police (MSP) and local governmental agencies, including courts, police departments, sheriffs' departments, and prosecuting attorneys' offices, to comply with the expanded reporting requirements under the bills. While House Bill 4504 (H-1) provides that a reporting agency could use forfeiture proceeds to pay for any reasonable costs associated with compiling, analyzing, and reporting data, this expenditure would reduce the amount of forfeiture funds available for other law enforcement purposes within an agency.

Regarding the MSP, the Department currently prepares an annual Asset Forfeiture Report that compiles the reports submitted by local agencies under the Public Health Code, and includes information about the MSP's drug forfeitures. Under the bills, however, the report would be expanded to include forfeitures instituted for other violations of law. According to the MSP, the compilation of this statewide report with the additional forfeiture data required under the bills would require, at a minimum, the support of an additional 0.5 FTE, or approximately \$50,000. The bills also would require that reporting agencies be audited regarding the seizure and forfeiture of property.

According to recent data from the controlled substance asset forfeiture report required under the Public Health Code, approximately 40% of 691 agencies submitted information indicating that they spent forfeiture proceeds in 2013.

Fiscal Analyst: Bruce Baker

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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.