

ELIMINATE HEALTH CODE REQUIREMENT THAT BOND BE PROVIDED TO RECOVER SEIZED PROPERTY

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House Bill 4629 as enacted
Public Act 418 of 2016
Sponsor: Rep. Peter J. Lucido
House Committee: Oversight and Ethics
Senate Committee: Judiciary
Complete to 1-11-17

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

SUMMARY:

House Bill 4629 would amend civil forfeiture provisions in Article 7 of the Public Health Code (Controlled Substances) that allow local units of government and the state to seize property related to criminal activity connected with controlled substances. The bill would apply in cases where property is seized without process. In such cases, the bill eliminates the requirement that a bond be provided by a person claiming interest in property subject to forfeiture proceedings to cover the costs and expenses of those proceedings.

The Health Code allows property to be seized without process in certain circumstances, including incident to a lawful arrest, pursuant to a search warrant, or pursuant to an inspection under an administrative inspection warrant; and when there is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

Under Section 7523, the local unit that seizes property must notify the property owner of the seizure and the intent to forfeit and dispose of the property in writing. Then a person claiming an interest in the property may file a written claim. When property is seized without process and its value does not exceed \$50,000, any person claiming an interest in the property may file a written claim with the local unit of government or the state (depending on who seized the property) expressing the interest in the property. The filing must be accompanied by a bond equal to 10% of the value of the claimed property, but not less than \$250 or more than \$5,000. As noted, the bill eliminates the bond requirement.

MCL 333.7523 & 7524

BACKGROUND:

The bill was supported by the American Civil Liberties Union of Michigan and the National Federation of Independent Business, among others, and opposed by the Michigan State Police, the Michigan Sheriffs' Association, and the Wayne County Prosecutor's Office, among others.

Advocates for the bill argued that under the Public Health Code, citizens and small businesses are required to post a bond to seek return of property seized by law enforcement in cases related to controlled substances, even when no charges are ever brought or no convictions obtained. The NFIB cited cases where small business owners find themselves

suspected of illegal activity because they are carrying large amounts of cash to purchase supplies. The cash is subjected to civil forfeiture and then to seek its return they must put up a cash bond, which can prove difficult when their money has been seized. The ACLU also argues this discriminates against those without the financial means to contest forfeiture and ought to be found unconstitutional.

Representatives of law enforcement say that civil asset forfeiture is an important weapon in the fight against illegal drug trafficking. Not only does it remove property used in the commission of drug crimes (weapons, vehicles, drug houses, etc.) from the hands of criminal enterprises but it also prevents criminals from profiting from criminal activity or using those profits to defend themselves. Moreover, the availability of civil forfeiture serves as a deterrent to committing crime, and is a useful tool to employ against lower level participants to build cases against major offenders. Law enforcement agencies have argued that the reason that few property owners challenge forfeiture is not the burdensomeness of the process but because of their involvement in criminal activity. Proceeds from forfeiture benefit law enforcement and nonprofit agencies by helping to fund their operations, which also is of benefit to taxpayers.

(For information on other recent amendments to civil forfeiture laws generally, see the analysis on the Michigan Legislature site for House Bills 4499–4500 and 4503–4507 from the 2015–16 session, which became Public Acts 148–154.)

FISCAL IMPACT:

This bill would have an indeterminate fiscal impact on the state and local units of government.

The State Police report that in 2015 total net proceeds resulting from asset forfeitures amounted to approximately \$20.5 million, which includes \$12.1 million to local law enforcement agencies, \$3.7 million to multi-jurisdictional task forces, \$1.9 million to the State Police, and \$2.8 million to county sheriff's departments. The extent to which HB 4629 would result in a decrease in asset forfeiture revenue depends on the resulting increase in forfeiture cases going to trial.

According to the State Police, a total of 994 asset forfeiture cases were instituted in circuit court during 2015, while a total of 8,558 administrative forfeitures— forfeitures that do not go to court—occurred in the same year. The removal of a bonding requirement to contest asset forfeiture would likely result in a decrease in administrative forfeitures as more individuals choose, or become able to choose, to contest the seizure of their property. Any resulting decrease in forfeited assets would depend upon the outcomes of the additional court cases.

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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.