

CIVIL ASSET FORFEITURE FOR DRUG CRIMES

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Senate Bill 2 as passed by the Senate
Sponsor: Sen. Peter J. Lucido
House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 2-18-19

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

BRIEF SUMMARY:

Senate Bill 2 would amend the Public Health Code to do all of the following:

- 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.
- Limit the bill's provisions to seizures of property valued at \$50,000 or less (excluding the value of the contraband).
- Apply the bill to forfeiture proceedings pending on, or initiated on or after, January 1, 2020.
- Require the State Court Administrative Office (SCAO) to develop and make available a form to relinquish a property right and also a form for a property owner to file a written objection regarding forfeiture of property seized without a warrant.

The bill would take effect 90 days after it is enacted.

DETAILED SUMMARY:

Senate Bill 2 would add a new section 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 the defendant is convicted of a controlled substance violation under Article 7 or enters into a plea agreement approved by the presiding criminal court.
- No person claims any interest in the property as provided under section 7523.
- The owner of the property relinquishes ownership of the property on a signed form 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 were 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

Under the bill, the 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 (FOIA).

Applicability

The bill would apply only to forfeiture proceedings pending on, or initiated on or after, January 1, 2020, 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 for which there was no warrant

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.

MCL 333.7523 and proposed MCL 333.7521a

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 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:

Senate Bill 2 would have an indeterminate, but potentially significant, fiscal impact on both the Department of State Police (MSP) 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 controlled substances civil asset forfeiture cases do not result in: criminal convictions or plea agreements, no person claiming an interest in the seized property, or the property owner not relinquishing ownership of the property; as such cases would no longer be subject to civil asset forfeiture in instances where the value of the seized property is less than \$50,000. Changes to asset forfeiture proposed in the bill could result in law enforcement agencies requiring funding from other sources to supplant controlled substance-related forfeiture revenues, depending on the amount of forfeited assets obtained by law enforcement agencies and the extent to which these funds are used to support law enforcement operations.

The bill 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 bill. However, the bill would likely lead to a decrease in the number of cases resulting in forfeiture revenue, due to the limitation of forfeitures of \$50,000 or less to cases resulting in convictions, plea agreements, no claims of an interest in the property, or owner relinquishment of 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 MSP, 278 law enforcement entities received funds from asset forfeiture during the calendar year 2017 reporting period. 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 never resulted in criminal violation charges; 220 resulted in charges but not convictions; and 2,876 resulted in 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%).

The bill would have an indeterminate fiscal impact on the State Court Administrative Office. The bill would require SCAO to develop and make available forms for owners to relinquish seized property and for claimants to assert ownership interest in seized property. The costs for developing the forms and making them available are likely to be nominal and should be able to be covered by existing appropriations.

The bill would not result in any additional direct costs for the Department of Attorney General.

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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.