

Legislative Analysis



EXEMPT CERTAIN SEIZED PROPERTY FROM CERTAIN FORFEITURE PROCEEDINGS

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<http://www.house.mi.gov/hfa>

House Bill 4631 as reported from committee
Sponsor: Rep. Graham Filler

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

House Bill 4632 as reported from committee
Sponsor: Rep. Alex Garza

Committee: Judiciary
Complete to 5-26-21

BRIEF SUMMARY: Taken together, House Bills 4631 and 4632 would amend Article 7 (Controlled Substances) of the Public Health Code to allow cash or property seized in connection with drug offenses to be subject to forfeiture without a conviction or guilty plea being required if the value of the cash or property exceeds \$20,000 and it is seized by law enforcement officers appointed by specified airport authorities. Currently, forfeiture without a conviction is allowed only for seizures of cash or property with a value exceeding \$50,000. (Note that, under both current law and the bill, the value of the cash or property excludes the value of the drugs themselves.)

FISCAL IMPACT: House Bills 4631 and 4632 would have an indeterminate fiscal impact on public airport authorities and regional airport authorities, though revenues resulting from asset forfeitures in controlled substances cases would likely increase under the bill, since asset forfeiture would be allowed in an increased number of cases. The increase in revenue would depend on several factors (namely, the value of property subject to civil asset forfeiture) and the amount of the projected increase is presently indeterminate.

THE APPARENT PROBLEM:

2019 PAs 7 and 8 respectively added sections 7521a and 7523a to the Public Health Code.¹ Those sections generally require a criminal conviction or guilty plea before money or property that is seized in a drug-related case and that has a value of \$50,000 or less can go through forfeiture proceedings.

Specifically, section 7521a prohibits property seized for a violation of Article 7, as provided in section 7522, from being subject to forfeiture unless a criminal proceeding related to the property has been completed and the defendant is convicted of or pleads guilty to a controlled substance violation under Article 7. However, those provisions apply only to a forfeiture proceeding in which the aggregate net equity value of the property and currency seized is \$50,000 or less, excluding the value of contraband.

Section 7523a provides that a civil forfeiture action must be stayed until the applicable criminal proceedings are over if the provisions of section 7521a apply, the seized property is subject to forfeiture under section 7521, and a person has filed a claim under section 7523.

¹ See <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-4001-BD845DBB.pdf>

Some feel that the current \$50,000 amount is too high with respect to drug enforcement activities in certain contexts—namely, at the state’s two busiest airports. Enforcement activities there often involve attempts to curtail criminal enterprises that use international airports to move large amounts of drugs and money, and trafficking seizures are typically over \$10,000. Airport law enforcement agencies have said that the prohibition against preconviction asset forfeiture in cases involving up to \$50,000 has removed one of their most effective tools against drug trafficking and in steadily building cases against the criminal organizations behind that activity. According to committee testimony, the recent changes to the law concerning drug-related forfeitures have allowed illicit money to pass easily through Michigan’s major airports. Because in this context illicit money can quickly disappear on a flight out of Michigan, some believe that airport security should be able to seize larger amounts of money below the \$50,000 threshold without first needing completion of a criminal proceeding related to the forfeiture. Legislation has been offered to apply the requirement of a conviction or guilty plea in these cases only to money or property valued at \$20,000 or less.

THE CONTENT OF THE BILLS:

House Bills 4631 and 4632 would respectively amend sections 7521a and 7523a of the Public Health Code to provide that their requirement of a conviction or guilty plea before forfeiture proceedings can move forward does not apply when the aggregate fair market value of property and currency seized is more than \$20,000, excluding the value of contraband, and the forfeiture proceedings are initiated in connection with the seizure of property by law enforcement officers appointed under the Aeronautics Code by a public airport authority (i.e., the Wayne County Airport Authority) or a regional airport authority (i.e., the Gerald R. Ford International Airport). (For a description of these airport authorities, see **Background Information**, below.)

MCL 333.7521a (HB 4631) and 333.7523a (HB 4632)

BACKGROUND INFORMATION:

Public and regional airport authorities

The Public Airport Authority Act, which in 2002 was added as Chapter VIA to the Aeronautics Code of the State of Michigan, established the Wayne County Airport Authority as the owner-operator of the Detroit Metropolitan Wayne County Airport effective March 26, 2002. Before that, the Detroit Metropolitan Airport was an administrative unit within Wayne County government. The Wayne County Airport Authority also owns and operates Willow Run Airport in Ypsilanti.

The Regional Airport Authority Act, added to the Aeronautics Code in 2015 as Chapter VIIA, provides for the organization of a regional airport authority. The Gerald R. Ford International Airport (Grand Rapids) is currently the only Michigan airport organized as a regional authority under its provisions.

Note that other state airports may elect to organize under the Regional Airport Authority Act. In November 2020, the Grand Traverse County Board of Commissioners and the Leelanau Board of Commissioners each approved separate resolutions in support of creating a regional airport authority under the Regional Airport Authority Act to operate the Cherry Capital Airport in Traverse City. That airport is currently operated by the Northwestern Regional Airport Commission under a joint operating agreement with the two counties. In December 2020, articles of incorporation were approved and filed with the state and federal regulatory agencies.

The transition of the airport's governing structure from airport commission to airport authority is expected to be completed by October 2021.

Detroit Metropolitan Wayne County is the state's busiest airport, with 16.8 million 2016 enplanements. The Gerald R. Ford International Airport is the second busiest in the state, with 1.3 million enplanements in 2016.

Seizure and forfeiture under Article 7

Article 7 of the Public Health Code prohibits certain activities, including 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. In addition to 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 be seized and forfeited if used to commit or facilitate a drug violation. Anything of value, including cash, may 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: among other things, to cover expenses related to the maintenance of the property while in custody or costs associated with the sale of the property. Lights for plant growth or scales that were forfeited may be donated to schools or colleges for educational purposes.

ARGUMENTS:

For:

Civil asset forfeiture deprives criminal enterprises of money and other resources used to commit crimes. While the 2019 reform of that process for property seized in connection with a drug crime that is valued at \$50,000 or less was a well-intentioned effort to curb real or potential abuse, it also essentially eliminated an effective tool used by the agencies working to intercept and prevent the movement of illegal drugs at their point of entry into this state and country. Supporters of the bills argue that airports are a common place for money and illicit goods to pass through. However, requiring a guilty conviction before being able to seize the money in a forfeiture proceeding enables these individuals to slip through the criminal system and continue to traffic in illicit goods.

Against:

Critics of the bills argue that the law concerning forfeiture proceedings was recently amended to provide protections for innocent people from the seizure and disposal of their property and that those protections should not depend on where in Michigan the seizure and forfeiture take place. The previous procedures failed to operate on the presumption of innocent until proven guilty, and these bills would revert to those practices to allow certain airport security to seize and forfeit assets without a guilty conviction.

POSITIONS:

A representative of the Wayne County Airport Authority testified in support of the bills.
(5-4-21)

The following entities indicated opposition for the bills:

- American Civil Liberties Union of Michigan (4-27-21)
- Americans for Prosperity (5-11-21)

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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.