



Senate Fiscal Agency
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BILL ANALYSIS

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House Bills 5490, 5823, and 5824 (as passed by the Senate)
Sponsor: Representative David Law (H.B. 5490 & 5824)
Representative William Van Regenmorter (H.B. 5823)
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 4-26-06

RATIONALE

Under various provisions of Michigan law, property that is used in, or the proceeds of, certain criminal activity may be seized by law enforcement officials. The property then is subject to forfeiture to the government. The statutory provisions dealing with the seizure of property provide for it to be stored pending the forfeiture proceedings and, in some cases, the criminal proceedings. This apparently can pose a problem when the property involved is money, because there is no authorization in current law to deposit the money in a financial institution, and storing large amounts of cash raises security concerns. Some people believe that law enforcement agencies seizing money that is subject to forfeiture should be allowed to deposit it into an interest-bearing account in a financial institution.

CONTENT

House Bills 5490, 5823, and 5824 would amend, respectively, the Revised Judicature Act (RJA), the Michigan Penal Code, and the Public Health Code, to do all of the following:

- **Allow an agency that seized money subject to forfeiture laws to deposit the money into an interest-bearing account in a financial institution.**
- **Give an attorney for a person charged with a violation involving or related to seized money 60 days to examine the money.**
- **Require that seized money deposited into a financial institution be returned, with interest, if the**

prosecution failed to meet its burden of proof.

"Financial institution" would mean a State or nationally chartered bank or a State or Federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the U.S. government and that maintains a principal office or branch office located in this State under Michigan or Federal law.

House Bill 5490

Under the RJA, the following property generally is subject to seizure by, and forfeiture to, a local unit of government or the State:

- All personal property that is the proceeds of a crime, the substitute proceeds of a crime, or an instrumentality of a crime.
- All real property that is the proceeds of a crime or the substituted proceeds of a crime, except real property that is the primary residence of the spouse or a dependent child of the owner, unless that spouse or dependent child had prior knowledge of, and consented to the commission of, the crime.
- In the case of a violation of the Michigan Anti-Terrorism Act (Chapter 83-A of the Penal Code), all property described above and all real property or personal property that contributed directly and materially to the commission of the crime, was used to conceal the crime, was used to escape from the scene of the crime, or was used to conceal the identity of one or more of the individuals who committed the crime.

When property is seized under the RJA, the seizing agency may place the property under seal and/or remove it to a place designated by a court. Under the bill, the seizing agency could deposit seized money into an interest-bearing account in a financial institution.

An attorney for a person charged with a crime would have to be afforded a period of 60 days within which to examine seized money. The 60-day period would have to begin running after the charged person was notified of the seizure and intent to forfeit the property but before the money was deposited into a financial institution.

Under the Act, if the Attorney General, prosecuting attorney, or city or township attorney fails to sustain his or her burden of proof in a challenge to the seizure and forfeiture of property, the court must order the return of the property or the discharge of a lien. Under the bill, the return of property would include any interest earned on seized money deposited in a financial institution.

When property is forfeited under the RJA, the unit of government that seized or filed a lien against it may sell the 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 in a specified order of priority. Under the bill, this would include any interest earned on seized money deposited in a financial institution.

House Bill 5823

Section 49 of the Michigan Penal Code prohibits various activities relating to the use of an animal for fighting or baiting, or as a shooting target. All animals being used or to be used in fighting, equipment, devices, and money involved in those violations must be forfeited to the State.

Section 159j of the Code requires the court to order a person convicted of racketeering to forfeit to the State any real, personal, or intangible property in which he or she has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through racketeering activity. All property ordered forfeited under Section 159j must be retained by the law

enforcement agency that seized it, for disposal pursuant to the Code.

Section 535a of the Code prohibits a person from knowingly owning, operating, or conducting a chop shop or knowingly aiding and abetting another person in owning, operating, or conducting a chop shop. Under Section 535a, various property, including money, is subject to forfeiture and may be seized by a State or local law enforcement agency. The seizing law enforcement agency must place the property under seal, remove it to a designated storage area, or petition the court to appoint a custodian to take custody of the property and remove it to an appropriate location for disposition pursuant to law.

The bill would allow the seizing agency under Section 49, 159j, or 535a to deposit seized money into an interest-bearing account in a financial institution.

An attorney for a person charged with a violation of Section 49, 159j, or 535a involving or related to money seized by a law enforcement agency would have to be afforded a period of 60 days within which to examine the money. The 60-day period would have to begin running after notice of seizure and forfeiture was given but before the money was deposited into a financial institution. If the city or township attorney, Attorney General, or prosecuting attorney, as applicable, failed to sustain his or her burden of proof in forfeiture proceedings under Section 49, or in criminal proceedings under Section 159j or 535a, the court would have to order the return of the money, including any interest earned on money deposited into a financial institution.

House Bill 5824

Under Article 7 (Controlled Substances) of the Public Health Code, certain property related to a violation of that article, including money, is subject to seizure and forfeiture. When property is seized under Article 7, the seizing agency may place it under seal, remove it to a place designated by the court, or require the administrator (i.e., the Michigan Board of Pharmacy or its designated or established authority) to take custody of the property and remove it to an appropriate location for disposition pursuant to law. The bill also would allow the seizing agency to deposit money seized under

Article 7 into an interest-bearing account in a financial institution.

An attorney for a person who was charged with a crime involving or related to money seized under Article 7 would have to be afforded a period of 60 days within which to examine the money. The 60-day period would have to begin running after the property owner was given notice of seizure and intent to forfeit but before the money was deposited into a financial institution. If the Attorney General, prosecuting attorney, or city or township attorney failed to sustain his or her burden of proof in forfeiture proceedings under Article 7, the court would have to order the return of the seized money, including any interest earned on money deposited into a financial institution.

MCL 600.4703 et al. (H.B. 5490)
750.49 et al. (H.B. 5823)
333.7523 (H.B. 5824)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Storing large sums of cash in police property rooms poses a security threat, because the money must be guarded against break-ins and embezzlement. It also is inconvenient to store money in this manner because of potential damage to the property. Reportedly, in one case in Oakland County, about \$1.6 million in cash had to be stored in an evidence cage for about five years while the criminal case ran its course. Not only was the money susceptible to theft, but it deteriorated and became moldy while being stored. The bills would provide a viable solution to these problems by allowing a law enforcement agency to deposit seized cash into an interest-bearing account after notifying the property owner and giving the defendant's attorney an opportunity to examine the property. Interest earned would be treated in the same manner as the seized cash: It would be returned to the owner if the prosecution failed to meet its burden and it would be forfeited along with other property if the prosecution prevailed.

Supporting Argument

The bill would protect a defendant's due process rights by requiring that a defense

attorney for a person charged with a crime in relation to money seized under State law be given a reasonable opportunity to examine the money before it could be deposited into an interest-bearing account.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have a minimal fiscal impact on local and State law enforcement agencies. The Department of State Police asserts that a law enforcement agency commonly does not, in current practice, deposit money subject to forfeiture into an interest-bearing account in a financial institution. The bills, therefore, could increase revenue for the State and local units.

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.