



Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 4325 (as discharged)
House Bill 4326 (Substitute H-2 as discharged)
Sponsor: Representative Dudley Spade (H.B. 4325)
Representative Lee Gonzales (H.B. 4326)
House Committee: Judiciary
Senate Committee: Judiciary

CONTENT

House Bill 4325 would amend the Identity Theft Protection Act to subject certain property to seizure and forfeiture, and outline forfeiture proceedings for seized property. The following property would be subject to forfeiture:

- Equipment of any kind that was used or intended to be used to commit a felony violation of the Act.
- Except as otherwise provided, a conveyance, including an aircraft, vehicle, or vessel, used or intended to be used to facilitate the transportation of equipment used or intended to be used to commit a felony violation of the Act.
- Books, records, and research products and materials, including formulas, microfilm, tapes, and data, used or intended for use to commit a felony violation of the Act.
- Any thing of value furnished or intended to be furnished in exchange for identity information obtained in a felony violation of the Act, or used or intended to be used to facilitate a felony violation of the Act, including money, negotiable instruments, or securities.

Property subject to forfeiture could be seized upon process issued by the circuit court. Seizure without process could be made under certain circumstances. If property were seized, forfeiture proceedings would have to be instituted promptly. The bill sets forth procedures that would apply if the property were seized without process and its total value did not exceed \$50,000.

When property was seized, the seizing agency could place the property under seal, remove it to a place designated by the court, require the Michigan Department of State Police (MSP) to take custody of the property and remove it to an appropriate location for disposition in accordance with law, or deposit seized money into an interest-bearing account in a financial institution.

When property was forfeited, the local unit that seized it, or the State, if property were seized by the State, could retain it for official use, sell that which was not required to be destroyed by law and was not harmful to the public, or forward it to the MSP for disposition.

If a court entered an order of forfeiture, the court could order a person who claimed an interest in the forfeited property to pay the expenses of the forfeiture proceedings to the entity having budgetary authority over the seizing agency.

The bill also includes reporting and auditing requirements relating to forfeited property.

House Bill 4326 (H-2) would amend the Michigan Penal Code to add both of the following to the predicate offenses that constitute racketeering:

- A violation of Section 145d of the Penal Code, which prohibits the use of the internet or a computer, computer program, computer network, or computer system to communicate with another person for the purpose of committing certain crimes.
- A felony violation of the Identity Theft Protection Act.

Under the Penal Code, "racketeering" means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit, for financial gain, an offense listed in the definition. The bill would include a violation of the Identity Theft Protection Act among those offenses.

(A person who commits a pattern of racketeering activity (two or more incidents of racketeering to which certain characteristics apply) is guilty of a felony punishable by up to 20 years' imprisonment and/or a maximum fine of \$100,000. The sentencing court also may order the person to pay court costs and the costs of the investigation and prosecution.)

Proposed MCL 445.74-445.74d (H.B. 4325)
MCL 750.159g (H.B. 4326)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 4325 would have an indeterminate impact on the court forfeiture proceedings and future revenue related to forfeitures.

House Bill 4326 (H-1) would have an indeterminate fiscal impact on State or local government. There are no data to indicate how many offenders would be convicted of a pattern of racketeering activity due to the inclusion of identity theft violations and violations of Section 145d of the Penal Code as predicate offenses.

Date Completed: 12-1-10

Fiscal Analyst: Matthew Grabowski

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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.