

FORFEITURE UNDER PUBLIC HEALTH CODE

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House Bill 5702 as introduced
Sponsor: Rep. Jim Runestad

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

House Bill 5703 as introduced
Sponsor: Rep. Gary Glenn

House Bill 5704 as introduced
Sponsor: Rep. Beau Matthew LaFave

Committee: Judiciary
Complete to 3-19-18

SUMMARY:

House Bills 5702 and 5704 would amend the Public Health Code to prescribe a new procedure for unclaimed property seized under forfeiture proceedings and to prohibit a local unit of government from enacting an ordinance regulating that process. House Bill 5703 would amend the Michigan Commission on Law Enforcement Standards (MCOLES) Act to require training for law enforcement officers in lawfully seizing property that is subject to forfeiture. Each bill would take effect 90 days after being enacted.

House Bills 5702 and 5704

Section 7523 of the Public Health Code currently provides a procedure to be followed if property was seized under Section 7522 without process (warrant) and the total value of the seized property is \$50,000 or less. If no claim of interest in the property is filed within 20 days after the owner receives notice that the property will be forfeited and disposed of, the local unit of government or the state must declare the property forfeited and dispose of the property under Section 7524 (see **Background**, below). However, the government cannot dispose of the property unless all criminal proceedings involving or relating to the property have been completed or the prosecuting attorney or attorney general handling the case gives written consent.

HB 5702 would amend this procedure to require that, if no claim is filed within 20 days of receiving notice, the following procedure would be used:

- The seizing agency would immediately provide a second notice of intent to forfeit and dispose of the property to the prosecuting attorney for the county where the property was seized or the attorney general handling the case *and* to the owner of the property.
- The seizing agency would provide a list of the property seized to the prosecuting attorney for the county where the property was seized or the attorney general handling the case *and* to the owner of the property.
- The prosecuting attorney for the county where the property was seized or the attorney general handling the case would review the list of property seized. After the review, if any of the property would be lawfully subject to seizure and forfeiture under the Public Health Code, the prosecutor or attorney general would seek a court order approving the seizure and forfeiture and affirming that

the property will not be moved, sold, transferred, or destroyed while forfeiture proceedings are pending.

- After obtaining an order, the prosecutor or attorney general would notify the seizing agency of the determination and the local unit of government or the state would declare the property forfeited and dispose of the property under Section 7524 (see **Background**, below).
- If the prosecuting attorney or attorney general does not approve of the seizure, then the seizing agency would return the property to the person from whom it was seized. However, property that is required to be destroyed by law, is harmful to the public, or is evidence in a criminal investigation or proceeding would not be returned.

MCL 333.7523

HB 5704 would add a new section to the Public Health Code to prohibit a *local unit of government* (a city, village, or township) from adopting, enacting, or enforcing a local ordinance that in any manner regulates the process for seizure and forfeiture of property that is subject to seizure and forfeiture under the Public Health Code.

Proposed MCL 333.7524c

House Bill 5703

The Michigan Commission on Law Enforcement Standards (MCOLES) Act provides for universal training standards for any individual seeking to become licensed as a law enforcement officer, as defined in Section 2 of the Act.

HB 5703 would add a training requirement for certain individuals seeking to become licensed under the Act. Under the bill, an individual would have to complete training that is designed to assist law enforcement officers in lawfully seizing property that is subject to forfeiture and in following the procedures regarding forfeiture provided under the Public Health Code.

A law enforcement officer licensed before January 1, 2019 who has not previously completed this new training would have to complete the training no later than January 1, 2020 to maintain his or her licensure. Additionally, the bill would require the MCOLES to promulgate rules to establish the minimum standards for the required training.

The new training requirement mandated by HB 5703 would apply to all of the following:

- Law enforcement officers, except sheriffs.
- Tribal law enforcement officers who are subject to written instruments authorizing them to enforce the laws of the state.
- Fire arson investigators from fire departments within villages, cities, townships, or counties in the state who are sworn and fully empowered by the chiefs of police of those villages, cities, townships, or counties.
- Private college security officers under Section 37 of the Private Security Business and Security Alarm Act who seek licensure under the MCOLES Act

and who are sworn and fully empowered by a chief of police of a village, city, or township law enforcement agency or are deputized by a county sheriff as a deputy sheriff, excluding deputization as a special deputy.

The bill would take effect 90 days after being enacted.

MCL 28.609 et al.

BACKGROUND:

Article 7 of the Public Health Code (Controlled Substances) 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 7523, among other things, 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.

Section 7524 allows the local unit of government, or the state, that seized the property to retain it for official use or sell any property that is not required by law to be destroyed and 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:

House Bill 5702 would require the Department of Attorney General to undertake additional legal services associated with reviewing property seizures. It is not yet known what additional resources would be required to satisfy the requirements put forth in the bill. Should the department require additional personnel, the cost of an additional attorney FTE is approximately \$180,000.

The bill would not have a substantive fiscal impact on the Department of State Police or local law enforcement agencies. Any administrative costs incurred would be minor and would result from additional reporting requirements to the Attorney General or county prosecutors regarding property seized as a result of controlled substance violations of the Public Health Code.

House Bill 5703 would have an indeterminate fiscal impact on the Michigan Commission on Law Enforcement Standards, the Department of State Police, and local law enforcement agencies.

The requirement to promulgate rules regarding minimum training standards for the seizure of property as a result of controlled substance violations of the Public Health Code would likely not result in any increased administrative costs for the Michigan Commission on Law Enforcement Standards. Any cost increases would likely be covered by existing appropriations.

The requirement that licensed law enforcement officers receive training regarding the seizure of property as a result of controlled substance violations of the Public Health Code would result in increased one-time training costs for the Department of State Police and local law enforcement agencies in order to administer the training to all currently licensed law enforcement officers, as well as increased ongoing training costs for the Department of State Police or local law enforcement agencies that administer their own officer recruit schools.

House Bill 5704 would have no fiscal impact on local law enforcement agencies.

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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.