

Legislative Analysis



UNIFORM FORFEITURE REPORTING ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4500 as introduced
Sponsor: Rep. Jim Runestad

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

House Bill 4503 as introduced
Sponsor: Rep. Triston Cole

House Bill 4506 as introduced
Sponsor: Rep. Jason M. Sheppard

House Bill 4504 as introduced
Sponsor: Rep. Clint Kesto

House Bill 4507 as introduced
Sponsor: Rep. Brandt Iden

Committee: Judiciary
Complete to 5-11-15

SUMMARY:

House Bill 4504 creates a new act to require annual reports to be submitted to the Department of State Police (MSP) by governmental entities regarding seized and forfeited property, and require MSP to compile that information and issue an annual report to the legislature and post the report on the department's website.

The remaining bills similarly amend various statutes to require a local government or state department or agency to report all seizure and forfeiture activities to the Department of State Police, and subject the reporting entity to an audit under House Bill 4504, if required.

Currently, property suspected of being used to further certain criminal activities or that may have been derived from certain criminal activities are subject to seizure and may be forfeited (sold by the seizing entity) under statutory provisions.

House Bill 4504

The bill creates the Uniform Forfeiture Reporting Act to require, before February 1 of each year, each reporting agency to submit a report to the Department of State Police summarizing the agency's activities for the preceding calendar year regarding the forfeiture of property under the Public Health Code (controlled substance violations) and Revised Judicature Act (nuisance abatement and general forfeiture laws). "*Reporting agency*" would refer to a local government that seized property or had property forfeited to it or to a state department or agency that effectuated a seizure or forfeiture. "Local government" would mean a village, city, township, or county.

Annual Report

The annual report would contain the following information for proceedings commenced on or after the bill's effective date:

- The number of forfeiture proceedings instituted and number concluded by the reporting agency in the circuit court, as well as the number pending at the end of the year.
- The number of forfeitures effectuated by the reporting agency without a forfeiture proceeding in the circuit court.
- The number of forfeiture proceedings subject to a plea or any other similar agreement involving the property owner and reporting agency.
- An inventory of property received by the reporting agency according to categories listed in the bill (e.g., whether residential, industrial or commercial, or agricultural real property; money; weapons; motor vehicles; or other personal property of value). Each property inventoried must include a description as required in the bill such as the date the property was seized, the estimated value of the property, the alleged violation or nuisance leading to the forfeiture and whether any person was charged and ultimately convicted of the violation, final disposition of the property, number of claimants to the property, and whether the forfeiture resulted from an adoptive seizure (see bill for a definition).
- Net proceeds of all property forfeited through actions instituted by the reporting agency for which it is required to account for and report to the state treasurer under either the Uniform System of Accounting Act or Uniform Budgeting and Accounting Act.
- Certain statements pertaining to the use of money and net proceeds for forfeiture proceedings under the Public Health Code (regarding controlled substance violations) and proceedings under the Revised Judicature Act (nuisance and general forfeiture laws).

The last three bullet points above would apply only to proceedings that have been finalized for purposes of appeal.

A null report would be filed by a reporting agency that did not engage in any forfeitures during the reporting period. Forfeiture proceeds could be used to pay the reasonable costs associated with compiling, analyzing, and reporting data under the bill. Records of a reporting agency regarding the forfeiture of any property required to be reported under the bill would have to be audited in accordance with the Uniform System of Accounting Act or Uniform Budgeting and Accounting Act.

Department of State Police Report

The MSP would have to compile the information reported to it and beginning January 1, 2016, file an annual report of its findings with the Secretary of the Senate and Clerk of the House of Representatives, as well as posting a copy on its departmental website. The report, which must be filed no later than July 1 of each year, would have to identify any state departments or agencies or local units of government that failed to properly report the required information to the MSP.

Repealer

The bill would repeal Section 7524a of the Public Health Code which requires annual reports by a local government having forfeiture proceedings pertaining to controlled substance violations in the preceding calendar year.

The bill would take effect February 1, 2016, and is tie-barred to House Bills 4503, 4506, and 4507.

House Bills 4500, 4503, 4506, and 4507

The bills each add a new section to various acts to specify that beginning February 1, 2016, each reporting agency must report all seizure and forfeiture activities to the Department of State Police as required by the Uniform Forfeiture Reporting Act (proposed by House Bill 4504). The bills would take effect 90 days after enactment.

House Bill 4500 amends the Identity Theft Protection Act (MCL 445.79d). The bill is tie-barred to House Bill 4504.

House Bill 4503 amends Chapter 47 of the Revised Judicature Act, known as the Omnibus Forfeiture Act (MCL 600.4710). The bill is tie-barred to House Bills 4504, 4506, and 4507.

House Bill 4506 amends Article 7 of the Public Health Code (MCL 333.7524b). The bill is tie-barred to House Bills 4503, 4504, and 4507.

House Bill 4507 amends Chapter 38 of the Revised Judicature Act, entitled "Public Nuisances" (MCL 600.3841). The bill is tie-barred to House Bill 4503, 4504, and 4506.

FISCAL IMPACT:

State Impact: The legislation would increase costs to the Michigan Department of State Police (MSP) to process, compile, and report the additional information required to be submitted under the bills. Under the controlled substances provisions of the Public Health Code, the MSP Grants and Community Services Division (GCSD) already compiles an annual report regarding drug forfeitures.¹ While these bills would continue to require an annual report, the information submitted to MSP-GCSD is more expansive, and also applies to seizures and forfeitures under Chapters 38 and 47 of the Revised Judicature Act. It would require additional staff time and resources to compile this information, increasing GF/GP expenditures for MSP-GCSD.

MSP would also be affected to the extent that it receives forfeiture funds and would be subject to the additional reporting requirements. House Bill 4504 provides that a reporting agency (including MSP's criminal investigation activities) could use forfeiture proceeds to pay for any reasonable costs associated with compiling, analyzing, and reporting data under the bill. Any increased costs paid from forfeiture funds to comply with the expanded reporting requirements necessarily reduces the amount of those funds that may be used for other things, including personnel costs, vehicles, equipment, informant fees, buy money, training, and prevention services— i.e., those categories of expenditures on which the bill requires a report.

¹ http://www.michigan.gov/msp/0,4643,7-123-1593_34040_34043-224991--,00.html.

Additionally, the bills require ("shall") that reporting agencies be audited regarding the seizure and forfeiture of property. This could require MSP to hire additional staff to conduct these audits, although the act permits ("may") local auditors to conduct an audit of these forfeitures. (MSP's use of forfeiture funds are already subject to audit by the Office of Auditor General.)

Local Impact: Similar to the state impact noted above, the bills would increase the costs of local government agencies, including courts, police departments, sheriff's departments, and prosecuting attorneys, to comply with the expanded reporting requirements.²

Again, HB 4504 provides that a reporting agency could use forfeiture proceeds to pay for any reasonable costs associated with compiling, analyzing and reporting data under the bill. Any increased costs paid from forfeiture funds to comply with the expanded reporting requirements necessarily reduces the amount of those funds that may be used for other things, including personnel costs, vehicles, equipment, informant fees, buy money, training, prevention services and other expenditures that further law enforcement efforts or crime victim support.³

MSP's 2013 controlled substance asset forfeiture report indicates that 286 of 691 agencies submitted information indicating they expended forfeiture proceeds. Another 349 agencies submitted a null report indicating they did not engage in seizure or forfeiture, and 56 agencies did not submit a report at all.⁴

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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.

² Section 4708 of the Revised Judicature Act (MCL 600.4708) already requires that agencies receiving forfeiture funds to provide an annual report on the use of those funds to the Department of Technology, Management, and Budget. Although the bills do not delete this reporting requirement, it doesn't appear that that provision is enforced or complied with.

³ Section 4708 of the Revised Judicature Act (MCL 600.4708) specifies that local units receiving forfeiture proceeds shall allocate 75% of any remaining amount (after payment of various costs) for the enhanced enforcement of the criminal laws and 25% to implement the Crime Victim's Rights Act. Additionally, Section 7524 of the Public Health Code provides that forfeiture proceeds shall be used, after the payment of various costs, for "law enforcement purposes."

⁴ http://www.michigan.gov/documents/msp/2013_Asset_Forfeiture_Final_427690_7.pdf.