



Senate Fiscal Agency
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House Bills 5823 and 5824 (as reported without amendment)
Sponsor: Representative William Van Regenmorter (H.B. 5823)
Representative David Law (H.B. 5824)
House Committee: Judiciary
Senate Committee: Judiciary

CONTENT

House Bills 5823 and 5824 would amend the Michigan Penal Code and the Public Health Code, respectively, to do the following:

- Allow an agency that seized money for certain violations 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.

House Bill 5823 would amend Sections 49, 159j, and 535a of the Penal Code. Section 49 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 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 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. Various property, including money, is subject to forfeiture and may be seized by a State or local law enforcement agency. The seizing 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.

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 would amend Article 7 (Controlled Substances) of the Public Health Code, under which certain property related to a violation of the article, including money, is subject to seizure and forfeiture. When property is seized, 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 given 60 days in 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 750.49 et al. (H.B. 5823)
333.7523 (H.B. 5824)

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 State and local units.

Date Completed: 4-19-06

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.