

# Legislative Analysis



## INCREASE BURDEN OF PROOF IN CERTAIN FORFEITURE ACTIONS

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

**House Bill 4499 as introduced**  
**Sponsor: Rep. Gary Glenn**

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

**House Bill 4505 as introduced**  
**Sponsor: Rep. Peter J. Lucido**

**House Bill 4508 as introduced**  
**Sponsor: Rep. Jeff Irwin**

**Committee: Judiciary**  
**Complete to 5-18-15**

### SUMMARY:

**House Bill 4499** amends Chapter 38 of the Revised Judicature Act, entitled "Public Nuisances" (MCL 600.3815). Failure to remedy property declared to be a public nuisance can subject the property to seizure and forfeiture. First, however, the existence of a nuisance must be proved and a judgment and order of abatement entered by the court.

The bill would specify that the plaintiff in an action under Chapter 38 has the burden of proving the existence of the nuisance by clear and convincing evidence.

**House Bills 4505 and 4508** each amend Section 7521 of the Public Health Code (MCL 333.7521). Section 7521 lists the property subject to forfeiture for a violation of Article 7, entitled "Controlled Substances."

House Bill 4505 would specify that in a forfeiture action under Article 7, the plaintiff would have the burden of proving a violation by clear and convincing evidence. The bill would take effect 90 days after enactment.

House Bill 4508 would specify that a conveyance used to purchase marijuana for personal use would not be subject to forfeiture. The purchase of one ounce or less would be presumed to be for personal use. This presumption could be rebutted by clear and convincing evidence. (A "conveyance" includes an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in Section 7521; e.g., a controlled substance, prescription form, or raw material or equipment used in manufacturing.)

These bills are part of a larger package addressing criminal and civil forfeitures. The other bills are House Bill 4500, 4503-4504, and House Bills 4506-4507. For a summary of those bills, see:

<http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-4500-D27DB7CB.pdf>

## **FISCAL IMPACT:**

HBs 4499 and 4505 could have a fiscal impact on the Department of State Police (MSP) and local law enforcement agencies to the extent that by raising the burden of proof, the bills reduce the amount of assets forfeited to the MSP and local law enforcement agencies.

In addition, HBs 4499 and 4505 have an indeterminate fiscal impact on the Attorney General and local prosecutors. There could be an increased cost in prosecutions due to the higher burden of proof for the state and local governments, with a potential reduction in asset forfeiture impacting revenues of prosecuting offices. Due to the numerous factors involved, such as an unknown increase of cost in an unknown number of court cases, a potential cost cannot be calculated.

HB 4508 would not have a significant fiscal impact on the state or local units of government.

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