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BILL ANALYSIS



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Senate Bill 761 (as introduced 1-29-20)
Sponsor: Senator Curtis S. VanderWall
Committee: Judiciary and Public Safety

Date Completed: 3-4-20

CONTENT

The bill would amend Part 75 (Enforcement and Administration) of the Public Health Code to exempt from certain forfeiture proceedings property seized by law enforcement officers appointed by a public airport authority or by a regional airport authority.

Under Section 7521a, except as otherwise provided, property may be seized as provided in Section 7522 for a violation of Article 7 (Controlled Substance) of the Code, but is not subject to forfeiture under Section 7521 or disposition under Section 7524 (see **BACKGROUND** for more information on those sections) unless a criminal proceeding involving or relating to the property has been completed and the defendant pleads guilty to or is convicted of a violation of Article 7. A criminal conviction or guilty plea is not required if one or more of a list of circumstances apply.

Under Section 7523a, if Section 7521a applies to a forfeiture case under Article 7, the seized property is subject to forfeiture under Section 7521, and a person has filed a claim to property or an objection to forfeiture, a civil asset forfeiture action must be stayed while applicable criminal proceedings are pending. The action must proceed after the defendant is convicted of, or enters a guilty plea to, the offense involved, or one or more events described in Section 7521a applies.

Under the bill, Sections 7521a and 7523a would not apply to forfeiture proceedings initiated in connection with the seizure of property by law enforcement officers appointed by a public airport authority or by a regional airport authority.

MCL 333.7521a & 333.7523a

BACKGROUND

Under Section 7521 of the Public Health Code, the following property is subject to forfeiture:

- A controlled substance that has been manufactured, distributed, used, possessed, or acquired in violation of Article 7.
- Raw material, product, or equipment that is used, or intended for use, in manufacturing, compounding, processing, or delivering a controlled substance in violation of Article 7.
- Property that is used or intended for use as a container for property described in either of the first two provisions.
- A conveyance, including an aircraft, vehicle, or vessel used or intended for use to transport property described in either of the first two provisions, for the purpose of sale or receipt, subject to several exceptions.

- Books, records, and research products and materials used, or intended for use, in violation of Article 7.
- Any thing of value that is furnished or intended to be furnished in exchange for a controlled substance in violation of Article 7 that is traceable to the exchange, including money, negotiable instruments, or securities.
- Any other drug paraphernalia.

Section 7522 specifies that property that is subject to forfeiture under Article 7 or pursuant to Section 7521 may be seized upon process issued by the circuit court having jurisdiction over the property. Seizure without process may be made under any of the following circumstances:

- Incident to lawful arrest, pursuant to a search warrant, or pursuant to an inspection under an administrative inspection warrant.
- The property is the subject of a prior judgment in favor of the State in an injunction or forfeiture proceeding under Article 7.
- There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.
- There is probable cause to believe that the property was used or is intended to be used in violation of Article 7.

Under Section 7524, when property is forfeited under Article 7, the local unit of government that seized the property may do any of the following, or if the property is seized by or in the custody of the State, the State may do any of the following:

- Retain the property for official use.
- Sell the property that is not required to be destroyed by law and that is not harmful to the public.
- Require the Michigan Board of Pharmacy to take custody of the property and remove it for disposition in accordance with the law.
- Forward it to the Drug Enforcement Administration (within the United States Department of Justice) for disposition.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have an indeterminate positive fiscal impact on local governments that operate a public airport authority or a regional airport authority. It would remove restrictions as to when law enforcement agencies could seize cash and property related to crimes under the Public Health Code, specifically controlled substance violations. The Act generally restricts forfeiture of property for controlled substance violations to those instances in which a conviction eventually follows, either by trial or plea agreement. The bill would exempt seizure by law enforcement officers appointed by a public airport authority or a regional airport authority. It is unknown what amount of property or cash would go to airport authorities or local law enforcement agencies, but it is likely the provisions of the bill would increase revenue from forfeiture by some amount.

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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.