

HOUSE BILL NO. 4001

January 09, 2019, Introduced by Rep. Wentworth and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7521 (MCL 333.7521), as amended by 2015 PA 154,
and by adding section 7521a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 7521. (1) The following property is subject to
- 2 forfeiture:
- 3 (a) A prescription form, controlled substance, an imitation
- 4 controlled substance, a controlled substance analogue, or other
- 5 drug that has been manufactured, distributed, dispensed, used,

1 possessed, or acquired in violation of this article.

2 (b) A raw material, product, or equipment of any kind that is
3 used, or intended for use, in manufacturing, compounding,
4 processing, delivering, importing, or exporting a controlled
5 substance, a controlled substance analogue, or other drug in
6 violation of this article; or a raw material, product, or equipment
7 of any kind that is intended for use in manufacturing, compounding,
8 processing, delivering, importing, or exporting an imitation
9 controlled substance in violation of section 7341.

10 (c) Property that is used, or intended for use, as a container
11 for property described in subdivision (a) or (b).

12 (d) Except as provided in subparagraphs (i) to (iv), a
13 conveyance, including an aircraft, vehicle, or vessel used or
14 intended for use, to transport, or in any manner to facilitate the
15 transportation, for the purpose of sale or receipt of property
16 described in subdivision (a) or (b):

17 (i) A conveyance used by a person as a common carrier in the
18 transaction of business as a common carrier is not subject to
19 forfeiture unless it appears that the owner or other person in
20 charge of the conveyance is a consenting party or privy to a
21 violation of this article.

22 (ii) A conveyance is not subject to forfeiture by reason of any
23 act or omission established by the owner of that conveyance to have
24 been committed or omitted without the owner's knowledge or consent.

25 (iii) A conveyance is not subject to forfeiture for a violation
26 of section 7403(2)(c) or (d), section 7404, or section 7341(4).

27 (iv) A forfeiture of a conveyance encumbered by a bona fide
28 security interest is subject to the interest of the secured party
29 who neither had knowledge of nor consented to the act or omission.

1 (e) Books, records, and research products and materials,
2 including formulas, microfilm, tapes, and data used, or intended
3 for use, in violation of this article.

4 (f) Any thing of value that is furnished or intended to be
5 furnished in exchange for a controlled substance, an imitation
6 controlled substance, or other drug in violation of this article
7 that is traceable to an exchange for a controlled substance, an
8 imitation controlled substance, or other drug in violation of this
9 article or that is used or intended to be used to facilitate any
10 violation of this article including, but not limited to, money,
11 negotiable instruments, or securities. To the extent of the
12 interest of an owner, a thing of value is not subject to forfeiture
13 under this subdivision by reason of any act or omission that is
14 established by the owner of the item to have been committed or
15 omitted without the owner's knowledge or consent. Any money that is
16 found in close proximity to any property that is subject to
17 forfeiture under subdivision (a), (b), (c), (d), or (e) is presumed
18 to be subject to forfeiture under this subdivision. This
19 presumption may be rebutted by clear and convincing evidence.

20 (g) Any other drug paraphernalia not described in subdivision
21 (b) or (c).

22 (2) ~~The~~ **Except as provided in section 7521a or 7523a, the**
23 plaintiff in a forfeiture action under this article has the burden
24 of proving a violation of this article by clear and convincing
25 evidence. This subsection applies to forfeiture proceedings
26 commenced under this article on or after ~~the effective date of the~~
27 ~~amendatory act that added this subsection.~~ **January 18, 2016.**

28 (3) As used in this section, "imitation controlled substance"
29 means that term as defined in section 7341.

1 Sec. 7521a. (1) Except as otherwise provided in this section,
2 property may be seized as provided in section 7522 for a violation
3 of this article, but is not subject to forfeiture under section
4 7521 or disposition under section 7524 unless 1 of the following
5 applies:

6 (a) A criminal proceeding involving or relating to the
7 property has been completed and the defendant is convicted of a
8 violation of this article.

9 (b) A criminal proceeding involving or relating to the
10 property has been completed and the defendant enters into a plea
11 agreement.

12 (c) No person claims any interest in the property as provided
13 under section 7523.

14 (2) Subsection (1) does not prohibit the immediate destruction
15 of property that may not be lawfully possessed by any person or
16 that is dangerous to the health or safety of the public regardless
17 of whether the person is convicted of a violation of this article.

18 (3) This section applies to forfeiture proceedings that are
19 pending on, or initiated on or after, the effective date of this
20 amendatory act.

21 (4) This section does not apply to forfeiture proceedings in
22 which the aggregate net equity value of the property and currency
23 seized exceeds \$50,000.00, excluding the value of contraband.

24 Enacting section 1. This amendatory act takes effect 90 days
25 after the date it is enacted into law.

26 Enacting section 2. This amendatory act does not take effect
27 unless Senate Bill No.____ or House Bill No 4002 (request no.
28 01190'19) of the 100th Legislature is enacted into law.