

SENATE BILL NO. 761

January 29, 2020, Introduced by Senator VANDERWALL and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7521a and 7523a (MCL 333.7521a and 333.7523a),
section 7521a as added by 2019 PA 7 and section 7523a as added by
2019 PA 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 7521a. (1) Except as otherwise provided in this section,
- 2 property may be seized as provided in section 7522 for a violation

1 of this article, but is not subject to forfeiture under section
2 7521 or disposition under section 7524 unless a criminal proceeding
3 involving or relating to the property has been completed and the
4 defendant pleads guilty to or is convicted of a violation of this
5 article.

6 (2) A criminal conviction or guilty plea under subsection (1)
7 is not required if 1 or more of the following apply:

8 (a) No person claims any interest in the property as provided
9 under section 7523 or the owner of the property withdraws his or
10 her claim in the property.

11 (b) The owner of the property waives the criminal conviction
12 or plea requirement under subsection (1) and elects to proceed with
13 the civil forfeiture proceeding.

14 (c) A criminal charge has been filed and 1 or both of the
15 following apply:

16 (i) The defendant is outside this state and cannot reasonably
17 be extradited or brought back to the state for prosecution.

18 (ii) Reasonable efforts have been made by law enforcement
19 authorities to locate and arrest the defendant, but the defendant
20 has not been located.

21 (3) If a person withdraws his or her claim under subsection
22 (2)(a), the prosecuting attorney for the county in which the
23 property was seized or, if the attorney general is actively
24 handling a case involving or related to the property, the attorney
25 general, must review the seizure of the property and approve the
26 forfeiture of the property before the property may be forfeited.

27 (4) Subsection (1) does not prohibit the immediate destruction
28 of property that may not be lawfully possessed by any person or
29 that is dangerous to the health or safety of the public regardless

1 of whether the person is convicted of a violation of this article.

2 (5) This section applies to forfeiture proceedings that are
 3 initiated on or after ~~the effective date of this amendatory~~
 4 ~~act.~~**August 7, 2019.**

5 (6) This section does not apply to forfeiture proceedings in
 6 which the aggregate fair market value of the property and currency
 7 seized exceeds \$50,000.00, excluding the value of contraband.

8 **(7) This section does not apply to forfeiture proceedings**
 9 **initiated in connection with the seizure of property by law**
 10 **enforcement officers appointed by a public airport authority**
 11 **created under section 110 of the aeronautics code of the state of**
 12 **Michigan, 1945 PA 327, MCL 259.110, or by a regional airport**
 13 **authority created under section 139 of the aeronautics code of the**
 14 **state of Michigan, 1945 PA 327, MCL 259.139.**

15 Sec. 7523a. (1) If section 7521a applies to a forfeiture case
 16 under this article, the seized property is subject to forfeiture
 17 under section 7521, and a person has filed a claim as provided
 18 under section 7523, a civil forfeiture action under this act must
 19 be stayed during the pendency of the applicable criminal
 20 proceedings. The civil forfeiture action must proceed after the
 21 defendant is convicted of, or enters a guilty plea to, the offense
 22 involved, or 1 or more of the events described in section 7521a(2)
 23 applies.

24 (2) At the forfeiture hearing, the plaintiff must prove 1 or
 25 both of the following, as applicable:

26 (a) The property is subject to forfeiture as provided in
 27 section 7521(1).

28 (b) If a person, other than the person who has been convicted
 29 of a violation of this article or entered into a plea agreement in

1 connection with a violation of this article as provided under
2 section 7521a(1), claims an ownership or security interest in the
3 property, that the person claiming the interest in the property had
4 prior knowledge of or consented to the commission of the crime.

5 (3) If the plaintiff fails to meet the burden of proof under
6 subsection (2), property seized under section 7522 must be returned
7 to the owner not more than 14 days from the date the court issues a
8 dispositive order.

9 (4) Except as otherwise provided in section 7521a, property
10 must be returned to the owner not more than 14 days after the
11 occurrence of any of the following:

12 (a) A warrant is not issued against a person for the
13 commission of a crime within 90 days after the property was seized.

14 (b) All charges against the person relating to the commission
15 of a crime are dismissed.

16 (c) The person charged with committing a crime is acquitted of
17 the crime.

18 (d) In the case of multiple defendants, all persons charged
19 with committing a crime are acquitted of the crime.

20 (e) Entry of a court order under this article for the return
21 of the property.

22 (5) A party to a forfeiture proceeding may seek an extension
23 of the time periods described in this section for good cause. The
24 court may grant a motion for an extension under this subsection for
25 good cause shown.

26 **(6) This section does not apply to forfeiture proceedings**
27 **initiated in connection with the seizure of property by law**
28 **enforcement officers appointed by a public airport authority**
29 **created under section 110 of the aeronautics code of the state of**

1 Michigan, 1945 PA 327, MCL 259.110, or by a regional airport
2 authority created under section 139 of the aeronautics code of the
3 state of Michigan, 1945 PA 327, MCL 259.139.