

House File 417 - Introduced

HOUSE FILE 417

BY KAUFMANN

A BILL FOR

1 An Act relating to asset forfeiture due to public offense
2 convictions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 809A.1, subsection 4, Code 2015, is
2 amended to read as follows:

3 4. "*Proceeds*" means property acquired directly or indirectly
4 from, produced through, realized through, or caused by an act
5 or omission constituting a public offense and includes any
6 property of any kind without reduction for expenses incurred
7 for acquisition, maintenance, production, or any other purpose.

8 Sec. 2. Section 809A.2, subsection 2, Code 2015, is amended
9 to read as follows:

10 2. In addition to the venue provided for under chapter 803
11 or any other provision of law, a proceeding for forfeiture
12 under this chapter may be maintained in the county in which
13 any part of the property is found or in the county in which a
14 ~~civil or the criminal action could be maintained~~ was brought or
15 a civil action could be brought against an owner or interest
16 holder for the conduct ~~alleged to give~~ which gave rise to the
17 forfeiture.

18 Sec. 3. Section 809A.3, Code 2015, is amended to read as
19 follows:

20 **809A.3 Conduct giving rise to forfeiture.**

21 1. The following conduct may give rise to forfeiture:

22 a. ~~An act or omission which is~~ A conviction of a public
23 offense and, including an inchoate or preparatory offense,
24 which is a serious or aggravated misdemeanor or felony.

25 b. ~~An act or omission occurring~~ A conviction outside of
26 this state, that ~~would be~~ is punishable by confinement of one
27 year or more in the place of occurrence and would be a serious
28 or aggravated misdemeanor or felony if the act or omission
29 occurred in this state.

30 c. ~~An act or omission committed in furtherance of any act~~
31 ~~or omission described in paragraph "a", which is a serious or~~
32 ~~aggravated misdemeanor or felony, including any inchoate or~~
33 ~~preparatory offense.~~

34 2. Notwithstanding subsection 1, ~~violations of~~ convictions
35 under chapter 321 or 321J shall not be considered conduct

1 giving rise to forfeiture, except for ~~violations~~ convictions
2 of the following:

3 a. Section 321.232.

4 b. A second or subsequent violation of section 321J.4B,
5 subsection 2, paragraph "a", subparagraph (2).

6 c. Section 321J.4B, subsection 9.

7 3. For purposes of this section, "conviction" includes
8 a finding of guilt, a plea of guilty, deferred judgment,
9 deferred or suspended sentence, adjudication of delinquency,
10 or circumstance where a person is not charged with a criminal
11 offense that is a serious or aggravated misdemeanor or felony
12 related to the action for forfeiture based in whole or in part
13 of the person's agreement to provide information regarding the
14 criminal activity of another person.

15 Sec. 4. Section 809A.5, subsection 2, paragraph b, Code
16 2015, is amended to read as follows:

17 b. The owner or interest holder is ~~criminally responsible~~
18 convicted of a public offense, including an inchoate or
19 preparatory offense, that is a serious or aggravated
20 misdemeanor or felony, or is convicted outside of this state
21 for a crime that is punishable by confinement of one year or
22 more in the place of occurrence and would be a serious or
23 aggravated misdemeanor or felony in this state for the conduct
24 giving rise to its the forfeiture, whether or not the owner or
25 interest holder is prosecuted or convicted.

26 Sec. 5. Section 809A.8, subsection 1, paragraph a,
27 subparagraph (2), Code 2015, is amended to read as follows:

28 (2) File a judicial forfeiture proceeding within ninety
29 days after ~~notice of pending forfeiture of property upon which~~
30 ~~a proper claim has been timely filed pursuant to section~~
31 ~~809A.11~~ the conclusion of the criminal prosecution.

32 Sec. 6. Section 809A.8, subsection 1, paragraph d,
33 unnumbered paragraph 1, Code 2015, is amended to read as
34 follows:

35 If a petition is timely filed, the prosecuting attorney may

1 delay filing a judicial forfeiture proceeding for one hundred
2 eighty days after the ~~notice of pending forfeiture conclusion~~
3 of the criminal prosecution, and the following procedures shall
4 apply:

5 Sec. 7. Section 809A.12, Code 2015, is amended by adding the
6 following new subsections:

7 NEW SUBSECTION. 1A. A judicial forfeiture proceeding
8 is independent of any criminal prosecution and shall not
9 be brought unless the criminal prosecution resulted in a
10 conviction, as defined under section 809A.3.

11 NEW SUBSECTION. 7A. The state must prove by clear and
12 convincing evidence that the property is an instrument or
13 represents the proceeds of the underlying offense.

14 Sec. 8. Section 809A.12, subsection 6, Code 2015, is amended
15 to read as follows:

16 ~~6. A defendant convicted in any criminal proceeding is~~
17 ~~precluded from later denying the essential allegations of the~~
18 ~~criminal offense of which the defendant was convicted in any~~
19 ~~proceeding pursuant to this section. For the purposes of this~~
20 ~~section, a conviction results from a verdict or a plea of~~
21 ~~guilty.~~ A defendant whose conviction is overturned on appeal
22 may file a motion to correct, vacate, or modify a judgment of
23 forfeiture under this subsection.

24 Sec. 9. Section 809A.12, subsection 10, paragraph a, Code
25 2015, is amended by striking the paragraph.

26 Sec. 10. Section 809A.12, subsections 14 and 15, Code 2015,
27 are amended by striking the subsections.

28 EXPLANATION

29 The inclusion of this explanation does not constitute agreement with
30 the explanation's substance by the members of the general assembly.

31 This bill relates to asset forfeiture proceedings due to
32 public offense convictions.

33 Asset forfeiture is a process by which contraband and
34 proceeds or instrumentalities related to criminal activity may
35 be seized by the state and sold.

1 Under current law, conduct giving rise to forfeiture is an
2 act or omission which is a crime. However, an acquittal or
3 dismissal in a criminal proceeding does not preclude forfeiture
4 proceedings.

5 The bill requires a criminal conviction before a person's
6 property is subject to forfeiture. "Conviction" includes
7 a finding of guilt, a plea of guilty, deferred judgment,
8 deferred or suspended sentence, adjudication of delinquency,
9 or circumstance where a person is not charged with a criminal
10 offense that is a serious or aggravated misdemeanor or felony
11 related to the action for forfeiture, based in whole or in part
12 of the person's agreement to provide information regarding the
13 criminal activity of another person.

14 The bill provides that forfeiture proceedings may only be
15 brought after a criminal conviction.

16 In order for the court to order forfeiture of property, the
17 bill provides that the state must prove by clear and convincing
18 evidence that the property was an instrument or represents the
19 proceeds of the underlying criminal offense.