

**House File 250 - Introduced**

HOUSE FILE 250

BY SHIPLEY

**A BILL FOR**

1 An Act relating to forfeiture of property for criminal  
2 offenses.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 809B.1 Definitions.

2 As used in this chapter, unless the context otherwise  
3 requires:

4 1. "*Abandoned property*" means personal property left by an  
5 owner who intentionally relinquishes all rights to the control  
6 of the personal property. "*Abandoned property*" does not include  
7 real property.

8 2. "*Actual knowledge*" means direct and clear awareness of  
9 information, a fact, or a condition.

10 3. "*Constructive knowledge*" means knowledge that is  
11 imputed to family or household members of the defendant if the  
12 defendant admitted guilt or was adjudicated guilty three or  
13 more times for the same or similar offense, as specified in  
14 statute, in the ten years prior to the alleged offense.

15 4. "*Contraband*" means goods that are unlawful to import,  
16 export, or possess, including controlled substances without a  
17 valid prescription.

18 5. "*Conveyance*" means a device used for transportation and  
19 includes a motor vehicle, trailer, snowmobile, airplane, and  
20 vessel, and any attached equipment. "*Conveyance*" does not  
21 include property that is stolen or taken in violation of the  
22 law.

23 6. "*Instrumentality*" means property otherwise lawful to  
24 possess that is used in the furtherance or commission of an  
25 offense of a law subject to forfeiture. "*Instrumentality*"  
26 includes land, buildings, containers, a conveyance, equipment,  
27 materials, products, a computer, computer software, a  
28 telecommunications device, a firearm, ammunition, a tool,  
29 money, securities, and negotiable instruments and other means  
30 of exchange.

31 7. "*Law enforcement agency*" means any nonfederal police  
32 force, or other local, county, or state agency that has the  
33 authority under state law to engage in seizure and forfeiture.

34 8. "*Law subject to forfeiture*" means a state law that  
35 carries a felony penalty and that explicitly includes

1 forfeiture as a punishment or sanction for the offense.

2 Sec. 2. NEW SECTION. 809B.2 Purpose.

3 This chapter's purpose is to deter criminal activity by  
4 reducing crime's economic incentive, increase the pecuniary  
5 loss from criminal activity, protect against the wrongful  
6 forfeiture of property, and ensure that only criminal  
7 forfeiture is allowed in this state.

8 Sec. 3. NEW SECTION. 809B.3 Criminal forfeiture — property  
9 subject to forfeiture.

10 When a person is convicted of violating a law subject to  
11 forfeiture, the court, consistent with this chapter, may order  
12 the person to forfeit any of the following:

13 1. Property the person derived from the commission of the  
14 offense.

15 2. Property directly traceable to property derived from the  
16 commission of the offense.

17 3. Instrumentalities the person used in the commission of  
18 the offense.

19 Sec. 4. NEW SECTION. 809B.4 Exemptions.

20 Real property that is a homestead, a motor vehicle of less  
21 than ten thousand dollars in market value, and United States  
22 currency totaling two hundred dollars or less are exempt from  
23 forfeiture.

24 Sec. 5. NEW SECTION. 809B.5 Contraband.

25 A property right does not exist in contraband. Contraband  
26 is subject to seizure and shall be disposed of according to  
27 state law. Contraband is not subject to forfeiture under this  
28 chapter.

29 Sec. 6. NEW SECTION. 809B.6 Conviction required — standard  
30 of proof.

31 1. Property may only be forfeited under this chapter if the  
32 offense is of a state law subject to forfeiture, the offense is  
33 established by proof of a criminal conviction, and the state  
34 establishes that the property is forfeitable under this chapter  
35 by clear and convincing evidence.

1     2. This chapter does not prevent property from being  
2 forfeited by plea agreement approved by the presiding criminal  
3 court.

4     3. *a.* The court may waive the requirement of proof of a  
5 criminal conviction if the prosecuting authority shows by a  
6 preponderance of the evidence any of the following:

7       (1) The suspect died.

8       (2) The suspect was deported by the United States  
9 government.

10      (3) The suspect fled the jurisdiction after being arrested,  
11 charged with a crime subject to forfeiture of property, and  
12 released on bail.

13      *b.* Property forfeitable under this subsection remains  
14 subject to claims by innocent owners, creditors, and other  
15 third parties pursuant to this chapter.

16     Sec. 7. NEW SECTION. **809B.7 Substitution of assets.**

17     Upon the state's motion following conviction, the court  
18 may order the forfeiture of substitute property owned by the  
19 defendant up to the value of unreachable property that is  
20 beyond the court's jurisdiction or cannot be located through  
21 due diligence only if the state proves by a preponderance of  
22 the evidence that the defendant intentionally transferred,  
23 sold, or deposited property with a third party to avoid the  
24 court's jurisdiction.

25     Sec. 8. NEW SECTION. **809B.8 No additional remedies.**

26     The state shall not seek personal money judgments or other  
27 remedies not provided for in this chapter.

28     Sec. 9. NEW SECTION. **809B.9 No joint-and-several liability.**

29     A defendant is not jointly and severally liable for  
30 forfeiture awards owed by other defendants. When ownership is  
31 unclear, a court may order each defendant to forfeit property  
32 on a pro rata basis or by another means the court finds  
33 equitable.

34     Sec. 10. NEW SECTION. **809B.10 Seizure of personal property**  
35 **with process.**

1 At the request of the state at any time, a court may issue an  
2 ex parte preliminary order to attach, seize, or secure personal  
3 property for which forfeiture is sought and to provide for  
4 custody of such property. Application, issuance, execution,  
5 and return are subject to this Code statute or court rules.

6 Sec. 11. NEW SECTION. **809B.11 Seizure of personal property**  
7 **without process.**

8 Personal property subject to forfeiture may be seized at any  
9 time without a court order if any of the following apply:

10 1. The seizure of personal property is incident to a lawful  
11 arrest or a search lawfully conducted.

12 2. The personal property subject to seizure has been the  
13 subject of a prior judgment in favor of the state.

14 3. The state has probable cause to believe that the delay  
15 occasioned by the necessity to obtain process would result in  
16 the removal or destruction of the personal property and that  
17 the personal property is forfeitable under this chapter.

18 Sec. 12. NEW SECTION. **809B.12 Seizure of real property with**  
19 **process.**

20 1. Seizure of real property requires a court order. A court  
21 may issue an order to seize or secure real property for which  
22 forfeiture is sought only after proper notice to the property  
23 owner and an opportunity for a contested hearing to determine  
24 the sufficiency of probable cause for the seizure.

25 2. This section does not prohibit the prosecuting authority  
26 from seeking a lis pendens or restraining order to hinder the  
27 sale or destruction of the real property.

28 3. Application, issuance, execution, and return of any  
29 order are subject to this Code or court rules.

30 Sec. 13. NEW SECTION. **809B.13 Receipt.**

31 When property is seized, the law enforcement officer shall  
32 give an itemized receipt to the person possessing the property,  
33 or in the absence of a person, leave a receipt in the place  
34 where the property was found, if reasonably possible.

35 Sec. 14. NEW SECTION. **809B.14 Title.**

1 1. At the time of seizure or entry of a restraining order,  
2 the state acquires provisional title to the seized property.  
3 Provisional title authorizes the state to hold and protect the  
4 property.

5 2. Title to the property vests with the state when the trier  
6 of fact renders a final forfeiture verdict and relates back to  
7 the time when the state acquired provisional title. However,  
8 this title is subject to claims by third parties adjudicated  
9 under this chapter.

10 Sec. 15. NEW SECTION. **809B.15 Pretrial replevin hearing.**

11 1. Following the seizure of property, a defendant or  
12 claimant has a right to a pretrial hearing to determine the  
13 validity of the seizure.

14 2. The defendant or claimant may claim at any time prior  
15 to sixty days before trial of the related criminal offense the  
16 right to possession of property by motion to the court to issue  
17 a writ of replevin.

18 3. The defendant or claimant shall file a motion  
19 establishing the validity of the alleged interest in the  
20 property.

21 4. The court shall hear the motion no more than thirty days  
22 after the motion is filed.

23 5. The state shall file an answer showing probable cause  
24 for the seizure, or cross motions at least ten days before the  
25 hearing.

26 6. Either party may, by agreement or for good cause,  
27 move the court to delay the hearing for one extension of no  
28 more than ten days. Any such motion may be supported by an  
29 affidavit or other submission.

30 7. The court shall grant the motion if the court finds that  
31 any of the following apply:

32 a. The final judgment will likely be that the state must  
33 return the property to the claimant.

34 b. The property is not reasonably required to be held for  
35 investigatory reasons.

1     *c.* The property is the only reasonable means for a defendant  
2 to pay for legal representation in the forfeiture or criminal  
3 proceeding. At the court's discretion under paragraph "b", the  
4 court may order the return of funds or property sufficient to  
5 obtain legal counsel but less than the total amount seized, and  
6 require an accounting.

7     8. In lieu of ordering the issuance of the writ, the court  
8 may order the state to give security or written assurance for  
9 satisfaction of any judgment, including damages, that may be  
10 rendered in the action, or order other relief as may be just.

11     Sec. 16. NEW SECTION. **809B.16 Discovery.**

12     Discovery is subject to the rules of criminal procedure.

13     Sec. 17. NEW SECTION. **809B.17 Trial proceedings.**

14     The litigation related to the forfeiture of property shall  
15 be held in a single proceeding following the trial of the  
16 related alleged criminal offense. The litigation of whether  
17 property of less than ten thousand dollars in value shall be  
18 forfeited shall be held before only a judge.

19     Sec. 18. NEW SECTION. **809B.18 Proportionality hearing.**

20     1. At any time following determination by the trier of fact,  
21 the defendant may petition the court to determine whether the  
22 forfeiture is unconstitutionally excessive under the state or  
23 federal constitution.

24     2. The defendant has the burden of establishing the  
25 forfeiture is grossly disproportional to the seriousness of  
26 the offense by a preponderance of the evidence at a hearing  
27 conducted by the court without a jury.

28     3. In determining whether the forfeiture of an  
29 instrumentality is unconstitutionally excessive, the court may  
30 consider all relevant factors, including but not limited to all  
31 of the following:

32     *a.* The seriousness of the offense and the offense's impact  
33 on the community, including the duration of the activity and  
34 the harm caused by the defendant.

35     *b.* The extent to which the defendant participated in the

1 offense.

2 *c.* The extent to which the property was used in committing  
3 the offense.

4 *d.* The sentence imposed for committing the offense subject  
5 to forfeiture.

6 *e.* Whether the offense was completed or attempted.

7 4. In determining the value of the instrumentality subject  
8 to forfeiture, the court may consider relevant factors,  
9 including but not limited to any of the following:

10 *a.* The fair market value of the property.

11 *b.* The value of the property to the defendant including  
12 hardship to the defendant if the forfeiture is realized.

13 *c.* The hardship from the loss of a motor vehicle or other  
14 property to the defendant's family members or others if the  
15 property is forfeited.

16 5. The court shall not consider the value of the  
17 instrumentality to the state in determining whether the  
18 forfeiture of an instrumentality is constitutionally excessive.

19 **Sec. 19. NEW SECTION. 809B.19 Secured interest.**

20 1. Property encumbered by a valid security interest or  
21 subject to a lease or rental agreement is not subject to  
22 forfeiture. A person claiming a security interest must  
23 establish by a preponderance of the evidence the validity  
24 of the perfected security interest, a lease, or a rental  
25 agreement.

26 2. The prosecuting authority shall summarily return  
27 property to the person with a valid security interest in the  
28 property, to the lessor, or to the person who is renting out  
29 the property.

30 3. If the person alleges a valid security interest or that  
31 the property is subject to a lease or rental agreement but  
32 the state seeks to proceed with the forfeiture against the  
33 property, the state shall prove by a preponderance of the  
34 evidence that the person had actual knowledge of the underlying  
35 offense giving rise to the forfeiture.



1     Sec. 20. NEW SECTION.   **809B.20**   **Innocent owner.**

2     1. The property of an innocent owner shall not be forfeited.  
3 Whether a person is an innocent owner shall be determined in  
4 accordance with this section.

5     2. A person who has an ownership interest in property  
6 subject to forfeiture existing at the time the illegal conduct  
7 giving rise to forfeiture occurred and who claims to be an  
8 innocent owner has the burden of proving by a preponderance  
9 of the evidence that the person has a legal right, title, or  
10 interest in the property seized under this chapter.

11    3. If subsection 2 is satisfied and the state seeks to  
12 proceed with the forfeiture against the property, the state  
13 shall prove by a preponderance of the evidence that the person  
14 had actual or constructive knowledge of the underlying offense  
15 giving rise to the forfeiture.

16    4. A person who acquired an ownership interest in property  
17 subject to forfeiture after the commission of an offense giving  
18 rise to the forfeiture and who claims to be an innocent owner  
19 has the burden of proving by a preponderance of the evidence  
20 that the person has legal right, title, or interest in the  
21 property seized under this chapter.

22    5. If subsection 4 is satisfied and the state seeks to  
23 proceed with the forfeiture against the property, the state  
24 shall prove by a preponderance of the evidence that at the time  
25 the person acquired the property any of the following applied:

26     *a.* The person had actual or constructive knowledge that the  
27 property was subject to forfeiture.

28     *b.* The person was not a bona fide purchaser without notice  
29 of any defect in title and for valuable consideration.

30    6. If the state fails to meet the state's burden in  
31 subsection 3 or 5, the court shall find that the person is an  
32 innocent owner and shall order the state to relinquish all  
33 claims of title to the property.

34    7. The suspect or convicted offender may invoke the right  
35 against self-incrimination or the marital privilege during

1 the forfeiture-related stage of the prosecution. The trier  
2 of fact at the hearing may draw an adverse inference from the  
3 invocation of the right or privilege.

4 Sec. 21. NEW SECTION. **809B.21 Appeal.**

5 A party to forfeiture litigation may appeal the district  
6 court's decision regarding the seizure, forfeiture, and  
7 distribution of property under this chapter.

8 Sec. 22. NEW SECTION. **809B.22 Disposition of property and  
9 proceeds.**

10 1. At any time when unclaimed property or contraband held  
11 for evidentiary purposes is no longer needed for that purpose,  
12 the court may order unclaimed property to be delivered to the  
13 treasurer of state within thirty days, or, in the case of  
14 contraband, be destroyed within thirty days.

15 2. If the forfeiture is granted, the court may order the  
16 property be delivered to the treasurer of state within thirty  
17 days.

18 3. Upon motion, the court may order that a portion of the  
19 currency seized or proceeds from public auction be used to pay  
20 reasonable nonpersonnel expenses of the seizure, storage, and  
21 maintenance of custody of any forfeited items.

22 4. All abandoned property shall be delivered to the  
23 treasurer of state within thirty days.

24 5. The treasurer of state shall dispose of all noncurrency  
25 forfeited property at public auction. The auction proceeds and  
26 forfeited currency shall first be used to pay all outstanding  
27 recorded liens on the forfeited property, then to comply with  
28 an order of the court to pay reasonable nonpersonnel expenses,  
29 with all remaining funds to be deposited in the general fund  
30 of the state.

31 Sec. 23. NEW SECTION. **809B.23 Prohibition on retaining  
32 property — sale restrictions.**

33 A law enforcement agency shall not retain forfeited property  
34 or sell forfeited property directly or indirectly to any  
35 employee of the agency, to a person related by consanguinity or

1 affinity to an employee of the agency within the third degree,  
2 or to another law enforcement agency.

3 Sec. 24. NEW SECTION. **809B.24 Reporting.**

4 1. On an annual basis, each law enforcement agency shall  
5 report to the department of revenue the following information  
6 about seizures and forfeitures completed by the law enforcement  
7 agency under state forfeiture law and federal forfeiture law:

8 a. The total number of seizures of currency.

9 b. The total number of seizures and the number of items in  
10 each class of property seized including vehicles, houses, and  
11 other types of property.

12 c. The market value of each class of property seized  
13 including currency, vehicles, houses, and other types of  
14 property.

15 d. The total number of occurrences of each class of offense  
16 underlying the forfeitures including controlled substances,  
17 driving while intoxicated, and other offenses.

18 2. The department of revenue may require that information  
19 not specified in this section also be reported. The department  
20 of revenue shall develop standard forms, processes, and  
21 deadlines for electronic data entry for annual submission of  
22 forfeiture data by law enforcement agencies.

23 3. Each law enforcement agency shall file with the  
24 department of revenue the report required under subsection  
25 1 for the law enforcement agency and the corresponding  
26 prosecutor's office. The law enforcement agency shall  
27 file separate reports for forfeitures completed under state  
28 forfeiture law and federal forfeiture law. A report shall be  
29 filed by a law enforcement agency even if the law enforcement  
30 agency did not engage in seizures or forfeitures during the  
31 reporting period. The department of revenue shall compile the  
32 submissions and issue an aggregate report of all forfeitures  
33 in the state.

34 4. By April 1 of each year, the department of revenue shall  
35 make available on the department's internet site the reports

1 submitted by law enforcement agencies and the aggregate report  
2 prepared by the department under subsection 3.

3 Sec. 25. NEW SECTION. **809B.25 Return of property, damages,**  
4 **and costs.**

5 1. The law enforcement agency that holds the property shall  
6 return property to the owner within a reasonable period of time  
7 not to exceed five days after any of the following:

8 a. The court finds that the owner has a bona fide security  
9 interest.

10 b. The court finds that the owner is an innocent owner.

11 c. The owner's acquittal of or the dismissal of the criminal  
12 charge that is the basis of the forfeiture proceedings.

13 d. The disposal of the criminal charge that is the basis of  
14 the forfeiture proceedings by nolle prosequi.

15 2. The law enforcement agency that holds the property is  
16 responsible for any damages, storage fees, and related costs  
17 applicable to property returned under subsection 1.

18 Sec. 26. NEW SECTION. **809B.26 Transfer of forfeitable**  
19 **property to federal government.**

20 A law enforcement agency, joint taskforce of any kind,  
21 or prosecuting authority shall not directly or indirectly  
22 transfer or refer seized property to any federal agency unless  
23 the seized property includes seized United States currency in  
24 excess of fifty thousand dollars.

25 Sec. 27. NEW SECTION. **809B.27 Preemption.**

26 This chapter preempts laws by county, city, township, and  
27 other tribal or local governments in the state which regulate  
28 civil and criminal forfeiture.

29 Sec. 28. Section 80.39, subsection 1, Code 2019, is amended  
30 to read as follows:

31 1. Personal property, except for motor vehicles subject to  
32 sale pursuant to [section 321.89](#), and seizable property subject  
33 to disposition pursuant to [chapter 809](#) or ~~809A~~, which personal  
34 property is found or seized by, turned in to, or otherwise  
35 lawfully comes into the possession of the department or a local

1 law enforcement agency and which the department or agency does  
2 not own, shall be disposed of pursuant to [this section](#). If by  
3 examining the property the owner or lawful custodian of the  
4 property is known or can be readily ascertained, the department  
5 or agency shall notify the owner or custodian by certified mail  
6 directed to the owner's or custodian's last known address, as  
7 to the location of the property. If the identity or address of  
8 the owner cannot be determined, notice by one publication in a  
9 newspaper of general circulation in the area where the property  
10 was found is sufficient notice. A published notice may contain  
11 multiple items.

12 Sec. 29. Section 123.9, subsection 7, Code 2019, is amended  
13 by striking the subsection.

14 Sec. 30. Section 321.232, subsection 3, Code 2019, is  
15 amended to read as follows:

16 3. A speed detection jamming device sold, operated, or  
17 possessed in violation of [subsection 1](#) may be seized by a peace  
18 officer and is subject to forfeiture as provided by [chapter 809](#)  
19 ~~or [809A](#)~~.

20 Sec. 31. Section 321J.4B, subsections 6, 9, and 10, Code  
21 2019, are amended to read as follows:

22 6. Upon conviction of the defendant for a second  
23 or subsequent violation of [subsection 2](#), paragraph "a",  
24 subparagraph (2), the court shall order, if the convicted  
25 person is the owner of the motor vehicle used in the commission  
26 of the offense, that that motor vehicle be seized and forfeited  
27 to the state pursuant to [chapters 809](#) and ~~[809A](#)~~ [809B](#).

28 9. Operating a motor vehicle on a street or highway in this  
29 state in violation of an order of impoundment or immobilization  
30 is a serious misdemeanor. A motor vehicle which is subject to  
31 an order of impoundment or immobilization that is operated on a  
32 street or highway in this state in violation of the order shall  
33 be seized and forfeited to the state under [chapters 809](#) and  
34 ~~[809A](#)~~ [809B](#).

35 10. Once the period of impoundment or immobilization has

1 expired, the owner of the motor vehicle shall have thirty  
2 days to claim the motor vehicle and pay all fees and charges  
3 imposed under [this section](#). If the owner or the owner's  
4 designee has not claimed the vehicle and paid all fees and  
5 charges imposed under [this section](#) within seven days from the  
6 date of expiration of the period, the clerk shall send written  
7 notification to the motor vehicle owner, at the owner's last  
8 known address, notifying the owner of the date of expiration of  
9 the period of impoundment or immobilization and of the period  
10 in which the motor vehicle must be claimed. If the motor  
11 vehicle owner fails to claim the motor vehicle and pay all fees  
12 and charges imposed within the thirty-day period, the motor  
13 vehicle shall be forfeited to the state under [chapters 809](#) and  
14 [809A 809B](#).

15 Sec. 32. Section 321J.4B, subsection 12, paragraph a,  
16 subparagraph (2), Code 2019, is amended to read as follows:

17 (2) The holder of a security interest in a vehicle which is  
18 impounded or immobilized pursuant to [this section](#) or forfeited  
19 in the manner provided in [chapters 809](#) and [809A 809B](#) shall be  
20 notified of the impoundment, immobilization, or forfeiture  
21 within seventy-two hours of the seizure of the vehicle and  
22 shall have the right to claim the motor vehicle without  
23 payment of any fees or surcharges unless the value of the  
24 vehicle exceeds the value of the security interest held by the  
25 creditor.

26 Sec. 33. Section 321J.10, subsection 7, Code 2019, is  
27 amended to read as follows:

28 7. Specimens obtained pursuant to warrants issued under  
29 this section are not subject to disposition under [section 808.9](#)  
30 or [chapter 809](#) or [809A 809B](#).

31 Sec. 34. Section 455B.103, subsection 4, paragraph d,  
32 subparagraph (2), Code 2019, is amended to read as follows:

33 (2) In a reasonable manner, and any property seized shall be  
34 treated in accordance with the provisions of [chapters 808, 809,](#)  
35 and [809A 809B](#).

1 Sec. 35. Section 462A.14D, subsection 7, Code 2019, is  
2 amended to read as follows:

3 7. Specimens obtained pursuant to warrants issued under  
4 this section are not subject to disposition under [section 808.9](#)  
5 or [chapter 809](#) or ~~809A~~ [809B](#).

6 Sec. 36. Section 706A.3, subsection 3, paragraphs d and e,  
7 Code 2019, are amended to read as follows:

8 *d.* Ordering the payment of all reasonable costs and expenses  
9 of the investigation and prosecution of any violation, civil  
10 or criminal, including reasonable attorney fees in the trial  
11 and appellate courts. Such payments received by the state,  
12 by judgment, settlement, or otherwise, shall be considered  
13 forfeited property and disposed of pursuant to ~~section~~  
14 ~~809A.17~~ [chapter 809B](#).

15 *e.* Ordering the forfeiture of any property subject to  
16 forfeiture under [chapter 809A 809B](#), pursuant to the provisions  
17 and procedures of that chapter.

18 Sec. 37. Section 706A.3, subsection 4, Code 2019, is amended  
19 to read as follows:

20 4. Relief under [subsection 3](#), paragraphs “e”, “f”, and  
21 “g”, shall not be granted in civil proceedings instituted  
22 by an aggrieved person unless the prosecuting attorney has  
23 instituted the proceedings or intervened. In any action under  
24 this section brought by the state or in which the state has  
25 intervened, the state may employ any of the powers of seizure  
26 and restraint of property as are provided for forfeiture  
27 actions under [chapter 809A 809B](#), or as are provided for the  
28 collection of taxes payable and past due, and whose collection  
29 has been determined to be in jeopardy.

30 Sec. 38. Section 706B.2, subsection 4, Code 2019, is amended  
31 to read as follows:

32 4. A person who is found guilty of a violation under this  
33 section also may be charged with violations of [chapter 706A](#),  
34 and property involved in a violation under [this chapter](#) is  
35 subject to forfeiture under [chapter 809A 809B](#).

1     Sec. 39. Section 715A.8, subsection 6, Code 2019, is amended  
2 to read as follows:

3     6. Any real or personal property obtained by a person as  
4 a result of a violation of [this section](#), including but not  
5 limited to any money, interest, security, claim, contractual  
6 right, or financial instrument that is in the possession of the  
7 person, shall be subject to seizure and forfeiture pursuant to  
8 chapter ~~809A~~ [809B](#). A victim injured by a violation of this  
9 section, or a financial institution that has indemnified a  
10 victim injured by a violation of [this section](#), may file a claim  
11 as an interest holder pursuant to [section ~~809A.11~~ 809B.15](#) for  
12 payment of damages suffered by the victim including costs of  
13 recovery and reasonable attorney fees.

14     Sec. 40. Section 716A.7, Code 2019, is amended to read as  
15 follows:

16     **716A.7 Forfeitures for violations of chapter.**

17     All property, including all income or proceeds earned but  
18 not yet received from a third party as a result of a violation  
19 of [this chapter](#), used in connection with a violation of this  
20 chapter, known by the owner thereof to have been used in  
21 violation of [this chapter](#), shall be subject to seizure and  
22 forfeiture pursuant to [chapter ~~809A~~ 809B](#).

23     Sec. 41. Section 724.26, subsection 4, Code 2019, is amended  
24 to read as follows:

25     4. Except as provided in [section ~~809A.17~~, subsection 5](#),  
26 ~~paragraph "b"~~ [chapter 809B](#), a court that issues an order or  
27 that enters a judgment of conviction described in subsection  
28 2 and that finds the subject of the order or conviction to be  
29 in possession of any firearm, offensive weapon, or ammunition  
30 shall order that such firearm, offensive weapon, or ammunition  
31 be sold or transferred by a date certain to the custody of a  
32 qualified person in this state, as determined by the court.  
33 The qualified person must be able to lawfully possess such  
34 firearm, offensive weapon, or ammunition in this state. If  
35 the court is unable to identify a qualified person to receive



1 such firearm, offensive weapon, or ammunition, the court  
2 shall order that the firearm, offensive weapon, or ammunition  
3 be transferred by a date certain to the county sheriff or  
4 a local law enforcement agency designated by the court for  
5 safekeeping until a qualified person is identified to receive  
6 the firearm, offensive weapon, or ammunition, until such order  
7 is no longer in effect, until such conviction is vacated, or  
8 until the person's rights have been restored in accordance  
9 with [section 724.27](#). If the firearm, offensive weapon, or  
10 ammunition is to be transferred to the sheriff's office or a  
11 local law enforcement agency, the court shall assess the person  
12 the reasonable cost of storing the firearm, offensive weapon,  
13 or ammunition, payable to the county sheriff or the local law  
14 enforcement agency.

15 Sec. 42. Section 809.5, subsection 1, paragraph f,  
16 subparagraph (1), Code 2019, is amended to read as follows:

17 (1) If the aggregate fair market value of the property is  
18 greater than five hundred dollars, forfeiture proceedings shall  
19 be initiated pursuant to the provisions of [chapter 809A 809B](#).  
20 If the court does not order the property forfeited to the state  
21 in the forfeiture proceedings pursuant to [chapter 809A 809B](#),  
22 the seizing agency shall become the owner of the property and  
23 may dispose of it in any reasonable manner.

24 Sec. 43. Section 809.12A, Code 2019, is amended to read as  
25 follows:

26 **809.12A Appeals.**

27 An appeal from a denial of an application for the return  
28 of seized property or from an order for the return of seized  
29 property shall be made within thirty days after the entry of  
30 a judgment order. The appellant, other than the state, shall  
31 post a bond of a reasonable amount as the court may fix and  
32 approve, conditioned to pay all costs of the proceedings if  
33 the appellant is unsuccessful on appeal. The appellant, other  
34 than the state, may be required to post a supersedeas bond  
35 or other security, as the court finds to be reasonable, in

1 order to stay the operation of a forfeiture order under ~~section~~  
2 ~~809A.16~~ chapter 809B.

3 Sec. 44. Section 809.15, Code 2019, is amended to read as  
4 follows:

5 **809.15 Combining proceedings.**

6 In cases involving seized property and property subject to  
7 forfeiture pursuant to section 809A.4 809B.3, the court may  
8 order that the proceedings be combined for purposes of this  
9 chapter.

10 Sec. 45. REPEAL. Chapter 809A, Code 2019, is repealed.

11 Sec. 46. APPLICABILITY. This Act applies to forfeiture  
12 proceedings that arise on or after or that are pending as of  
13 the effective date of this Act.

14 EXPLANATION

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

17 This bill relates to criminal asset forfeiture.

18 Asset forfeiture is a process by which contraband and  
19 proceeds or instrumentalities related to criminal activity  
20 may be seized by the state and sold. Under current law,  
21 asset forfeiture is governed by Code chapter 809A. The bill  
22 repeals Code chapter 809A and replaces it with new Code chapter  
23 809B. Currently under Code chapter 809A, a conviction for a  
24 criminal offense is not required for an asset to be subject  
25 to forfeiture for property valued at \$5,000 and less, and  
26 forfeiture need not be expressly authorized as a penalty in  
27 the criminal statute. The bill provides that property is not  
28 subject to forfeiture until a person has been convicted of  
29 a felony for which forfeiture is expressly authorized as a  
30 penalty.

31 Under current law, forfeiture is provided as a remedy for  
32 certain driving while intoxicated offenses and for violations  
33 of Code chapters 706B (money laundering), 715A (forgery and  
34 related fraudulent criminal acts), and 716A (electronic mail).

35 The bill exempts homestead real property, motor vehicles of

1 less than \$10,000 in market value, and United States currency  
2 totaling \$200 or less from forfeiture.

3 The bill provides that a defendant is not jointly and  
4 severally liable for forfeiture awards owed by other  
5 defendants.

6 The bill provides for a proportionality hearing, where  
7 the defendant may petition the court that the forfeiture is  
8 unconstitutionally excessive.

9 The bill requires law enforcement agencies to provide annual  
10 reports to the department of revenue regarding forfeitures  
11 completed by the law enforcement agencies. The bill requires  
12 the department of revenue to prepare an annual report  
13 aggregating the results and to post the aggregate report on the  
14 department's internet site.

15 The bill provides that new Code chapter 809B preempts laws by  
16 county, city, township, and other tribal and local governments  
17 in the state which regulate civil and criminal forfeiture.

18 The bill makes conforming changes relating to the repeal of  
19 Code chapter 809A and new Code chapter 809B.

20 The bill applies to forfeiture proceeding that arise on or  
21 after or that are pending as of the effective date of the bill.