

5- Judiciary
Amend & Do Pass 4/19/95 (p. 1319)
FILED APR 17 1995

SENATE FILE 482
BY HORN and RIFE

Passed Senate, Date 4/24/95 (p. 1356) Passed House, Date 2/5/96
Vote: Ayes 49 Nays 0 Vote: Ayes 94 Nays 2
Approved 4-17-96

A BILL FOR

1 An Act establishing economic and other penalties for certain
2 criminal activity.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

S.F. 482

DIVISION I

IOWA FORFEITURE REFORM ACT

Section 1. NEW SECTION. 809A.1 DEFINITIONS.

As used in this chapter:

1. "Conveyance" includes any vehicle, trailer, vessel, aircraft, or other means of transportation.

2. "Interest holder" means a secured party within the meaning of chapter 554, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest is perfected against a good faith purchaser for value. A person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an interest holder.

3. "Omission" means the failure to perform an act that is required by law.

4. "Owner" means a person, other than an interest holder, who has an interest in property. A person who holds property for the benefit of or for an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an owner.

5. "Proceeds" means property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

6. "Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible, or intangible.

7. "Prosecuting attorney" means an attorney who is

1 authorized by law to appear on the behalf of the state in a
2 criminal case, and includes the attorney general, an assistant
3 attorney general, the county attorney, an assistant county
4 attorney, or a special or substitute prosecutor whose
5 appearance is approved by a court having jurisdiction to try a
6 defendant for the offense with which the defendant is charged.

7 8. "Regulated interest holder" means an interest holder
8 that is a business authorized to do business in this state and
9 is under the jurisdiction of any state or federal agency
10 regulating banking, insurance, real estate, or securities.

11 9. "Seizing agency" means a department or agency of this
12 state or its political subdivisions that regularly employs law
13 enforcement officers, and that employs the law enforcement
14 officer who seizes property for forfeiture, or such other
15 agency as the department or agency may designate by its chief
16 executive officer or the officer's designee.

17 10. "Seizure for forfeiture" means seizure of property by
18 a law enforcement officer, including a constructive seizure,
19 accompanied by an assertion by the seizing agency or by a
20 prosecuting attorney that the property is seized for
21 forfeiture, in accordance with section 809A.6.

22 Sec. 2. NEW SECTION. 809A.2 JURISDICTION AND VENUE.

23 1. The district court has jurisdiction under this chapter
24 over:

25 a. All interests in property within this state at the time
26 a forfeiture action is filed.

27 b. The interest in the property of an owner or interest
28 holder who is subject to personal jurisdiction in this state.

29 2. In addition to the venue provided for under chapter 803
30 or any other provision of law, a proceeding for forfeiture
31 under this chapter may be maintained in the county in which
32 any part of the property is found or in the county in which a
33 civil or criminal action could be maintained against an owner
34 or interest holder for the conduct alleged to give rise to the
35 forfeiture.

1 Sec. 3. NEW SECTION. 809A.3 CONDUCT GIVING RISE TO
2 FORFEITURE.

3 The following conduct may give rise to forfeiture:

4 1. An act or omission which is a public offense and which
5 is a serious or aggravated misdemeanor or felony.

6 2. An act or omission occurring outside of this state,
7 that would be punishable by confinement of one year or more in
8 the place of occurrence and would be a serious or aggravated
9 misdemeanor or felony if the act or omission occurred in this
10 state.

11 3. An act or omission committed in furtherance of any act
12 or omission described in subsection 1, which is a serious or
13 aggravated misdemeanor or felony including any inchoate or
14 preparatory offense.

15 4. A violation of section 321J.4B, subsection 12, if
16 enacted by Senate File 446.

17 5. Notwithstanding subsections 1 through 4, violations of
18 chapter 321 or 321J, except section 321J.4B, subsection 12, if
19 enacted by Senate File 446, shall not be considered conduct
20 giving rise to forfeiture.

21 Sec. 4. NEW SECTION. 809A.4 PROPERTY SUBJECT TO
22 FORFEITURE.

23 The following are subject to forfeiture:

24 1. All controlled substances, raw materials, controlled
25 substance analogs, counterfeit controlled substances,
26 imitation controlled substances, or precursor substances, that
27 have been manufactured, distributed, dispensed, possessed, or
28 acquired in violation of the laws of this state.

29 2. a. All property, except as provided in paragraph "b",
30 including the whole of any lot or tract of land and any
31 appurtenances or improvements to real property, including
32 homesteads that are otherwise exempt from judicial sale
33 pursuant to section 561.16, that is either:

34 (1) Furnished or intended to be furnished by a person in
35 an exchange that constitutes conduct giving rise to

1 forfeiture.

2 (2) Used or intended to be used in any manner or part to
3 facilitate conduct giving rise to forfeiture.

4 b. If the only conduct giving rise to forfeiture is a
5 violation of section 124.401, subsection 3, real property is
6 not subject to forfeiture and other property subject to
7 forfeiture pursuant to paragraph "a", subparagraph (2), may be
8 forfeited only pursuant to section 809A.14.

9 3. All proceeds of any conduct giving rise to forfeiture.

10 4. All weapons possessed, used, or available for use in
11 any manner to facilitate conduct giving rise to forfeiture.

12 5. Any interest or security in, claim against, or property
13 or contractual right of any kind affording a source of control
14 over any enterprise that a person has established, operated,
15 controlled, or conducted through, or participated in the
16 conduct, giving rise to forfeiture.

17 6. a. Any property of a person up to the value of
18 property of either of the following:

19 (1) Described in subsection 2 that the person owned or
20 possessed for the purpose of a use described in subsection 2.

21 (2) Described in subsection 3 and is proceeds of conduct
22 engaged in by the person or for which the person is criminally
23 responsible.

24 b. Property described in this subsection may be seized for
25 forfeiture pursuant to a constructive seizure or an actual
26 seizure pursuant to section 809A.6. Actual seizure may only
27 be done pursuant to a seizure warrant issued on a showing, in
28 addition to the showing of probable cause for the forfeiture
29 of the subject property, that the subject property is not
30 available for seizure for reasons described in section
31 809A.15, subsection 1, and that the value of the property to
32 be seized is not greater than the total value of the subject
33 property, or pursuant to a constructive seizure. If property
34 of a defendant up to the total value of all interests in the
35 subject property is not seized prior to final judgment in an

1 action under this section, the remaining balance shall be
2 ordered forfeited as a personal judgment against the
3 defendant.

4 7. As used in this section, "facilitate" means to have a
5 substantial connection between the property and the conduct
6 giving rise to forfeiture.

7 Sec. 5. NEW SECTION. 809A.5 EXEMPTIONS.

8 1. All property, including all interests in property,
9 described in section 809A.4 is subject to forfeiture, except
10 that property is exempt from forfeiture if either of the
11 following occurs:

12 a. The owner or interest holder acquired the property
13 before or during the conduct giving rise to its forfeiture,
14 and did not know and could not reasonably have known of the
15 conduct or that the conduct was likely to occur, or acted
16 reasonably to prevent the conduct giving rise to forfeiture.

17 b. The owner or interest holder acquired the property,
18 including acquisition of proceeds of conduct giving rise to
19 forfeiture, after the conduct giving rise to its forfeiture
20 and acquired the property in good faith, for value and did not
21 knowingly take part in an illegal transaction.

22 2. Notwithstanding subsection 1, property is not exempt
23 from forfeiture, even though the owner or interest holder
24 lacked knowledge or reason to know that the conduct giving
25 rise to its forfeiture had occurred or was likely to occur, if
26 any of the following exists:

27 a. The person whose conduct gave rise to its forfeiture
28 had the authority to convey the property of the person
29 claiming the exemption to a good faith purchaser for value at
30 the time of the conduct.

31 b. The owner or interest holder is criminally responsible
32 for the conduct giving rise to its forfeiture, whether or not
33 the owner or interest holder is prosecuted or convicted.

34 c. The owner or interest holder acquired the property with
35 notice of its actual or constructive seizure for forfeiture

1 under section 809A.6, or with reason to believe that it was
2 subject to forfeiture.

3 Sec. 6. NEW SECTION. 809A.6 SEIZURE OF PROPERTY.

4 1. A peace officer may seize property for forfeiture upon
5 process issued by any district judge, district associate
6 judge, or magistrate. The court may issue a seizure warrant
7 on an affidavit under oath demonstrating that probable cause
8 exists for its forfeiture or that the property has been the
9 subject of a previous final judgment of forfeiture in the
10 courts of any state or of the United States. The court may
11 order that the property be seized on such terms and conditions
12 as are reasonable in the discretion of the court. The order
13 may be made on or in connection with a search warrant.

14 2. Peace officers may seize property for forfeiture
15 without process on probable cause to believe that the property
16 is subject to forfeiture under this chapter and if exigent
17 circumstances exist or if the property has already been seized
18 for a purpose other than forfeiture.

19 3. The seizure of inhabited residential real property for
20 forfeiture which is accompanied by removing or excluding its
21 residents shall be done pursuant to a preseizure adversarial
22 judicial determination of probable cause, except that this
23 determination may be made ex parte if the prosecuting attorney
24 has demonstrated exigent circumstances.

25 4. Property may be seized constructively by:

26 a. Posting notice of seizure for forfeiture or notice of
27 pending forfeiture on the property.

28 b. Giving notice pursuant to section 809A.8.

29 c. Filing or recording in the public records relating to
30 that type of property notice of seizure for forfeiture, notice
31 of pending forfeiture, a forfeiture lien, or a notice of lis
32 pendens.

33 Filings or recordings made pursuant to this subsection are
34 not subject to a filing fee or other charge.

35 5. The seizing agency, or the prosecuting attorney, shall

1 make a reasonable effort to provide notice of the seizure to
2 the person from whose possession or control the property was
3 seized and to any person who has a security interest in the
4 property. If no person is in possession or control of the
5 property, the seizing agency may attach the notice to the
6 property or to the place of its seizure or may make a
7 reasonable effort to deliver it to the owner of the property.
8 The notice shall contain a general description of the property
9 seized, the date and place of seizure, the name of the seizing
10 agency, and the address and telephone number of the seizing
11 officer or other person or agency from whom information about
12 the seizure may be obtained.

13 6. A person who acts in good faith and in a reasonable
14 manner to comply with an order of the court or a request of a
15 law enforcement officer is not liable to any person for acts
16 done in reasonable compliance with the order or request. In
17 addition, an inference of guilt shall not be drawn from the
18 fact that a person refuses a law enforcement officer's request
19 to deliver the property.

20 7. A possessory lien of a person from whose possession
21 property is seized is not affected by the seizure.

22 Sec. 7. NEW SECTION. 809A.7 PROPERTY MANAGEMENT AND
23 PRESERVATION.

24 1. Property seized for forfeiture under this chapter is
25 not subject to alienation, conveyance, sequestration,
26 attachment, or an application for return of seized property
27 under chapter 809.

28 2. The seizing agency or the prosecuting attorney may
29 authorize the release of the seizure for forfeiture on the
30 property if forfeiture or retention of actual custody is
31 unnecessary.

32 3. The prosecuting attorney may discontinue forfeiture
33 proceedings and transfer the action to another state or
34 federal agency or prosecuting attorney who has initiated
35 forfeiture proceedings.

1 4. Property seized for forfeiture under this chapter is
2 deemed to be in the custody of the district court subject only
3 to the orders and decrees of the court having jurisdiction
4 over the forfeiture proceedings and to the acts of the seizing
5 agency or the prosecuting attorney pursuant to this chapter.

6 5. An owner of property seized for forfeiture under this
7 chapter may obtain release of the property by posting with the
8 prosecuting attorney a surety bond or cash in an amount equal
9 to the full fair market value of the property as determined by
10 the prosecuting attorney. The state may refuse to release the
11 property if any of the following apply:

12 a. The bond tendered is inadequate.

13 b. The property is retained as contraband or as evidence.

14 c. The property is particularly altered or designed for
15 use in conduct giving rise to forfeiture.

16 If a surety bond or cash is posted and the property is
17 forfeited, the court shall forfeit the surety bond or cash in
18 lieu of the property.

19 6. If property is seized for forfeiture under this
20 chapter, the prosecuting attorney, subject to any need to
21 retain the property as evidence, may do any of the following:

22 a. Remove the property to an appropriate place designated
23 by the district court.

24 b. Place the property under constructive seizure.

25 c. Remove the property to a storage area for safekeeping
26 or, if the property is a negotiable instrument or money,
27 deposit it in an interest-bearing account.

28 d. Provide for another agency or custodian, including an
29 owner, secured party, mortgagee, or lienholder, to take
30 custody of the property and service, maintain, and operate it
31 as reasonably necessary to maintain its value, in any
32 appropriate location within the jurisdiction of the court.

33 e. Require the seizing agency to take custody of the
34 property and remove it to an appropriate location for
35 disposition in accordance with law.

1 7. As soon as practicable after seizure for forfeiture,
2 the seizing agency shall conduct a written inventory and
3 estimate the value of the property seized.

4 8. The court may order property which has been seized for
5 forfeiture sold, leased, rented, or operated to satisfy a
6 specified interest of any interest holder, or to preserve the
7 interests of any party on motion of such party. The court may
8 enter orders under this subsection after notice to persons
9 known to have an interest in the property, and an opportunity
10 for a hearing, if either of the following exist:

11 a. The interest holder has timely filed a proper claim and
12 is a regulated interest holder.

13 b. The interest holder has an interest which the
14 prosecuting attorney has stipulated is exempt from forfeiture.

15 9. A sale may be ordered under subsection 8 if the
16 property is liable to perish, to waste, or to be foreclosed
17 upon or significantly reduced in value, or if the expenses of
18 maintaining the property are disproportionate to its value. A
19 third party designated by the court shall dispose of the
20 property by commercially reasonable public sale and distribute
21 the proceeds in the following order of priority:

22 a. For the payment of reasonable expenses incurred in
23 connection with the sale or disposal.

24 b. For the satisfaction of exempt interests in the order
25 of their priority.

26 c. Any balance of the proceeds shall be preserved in the
27 actual or constructive custody of the court, in an interest-
28 bearing account, subject to the proceedings under this
29 chapter.

30 Sec. 8. NEW SECTION. 809A.8 COMMENCEMENT OF FORFEITURE
31 PROCEEDINGS -- PROPERTY RELEASE REQUIREMENTS.

32 1. Forfeiture proceedings shall be commenced as follows:

33 a. Property seized for forfeiture shall be released on the
34 request of an owner or interest holder to the owner's or
35 interest holder's custody, as custodian for the court, pending

1 further proceedings pursuant to this chapter if the
2 prosecuting attorney fails to do either of the following:

3 (1) File a notice of pending forfeiture against the
4 property within ninety days after seizure.

5 (2) File a judicial forfeiture proceeding within ninety
6 days after notice of pending forfeiture of property upon which
7 a proper claim has been timely filed pursuant to section
8 809A.11.

9 b. Within thirty days after the effective date of the
10 notice of pending forfeiture, an owner of or interest holder
11 in the property may elect to file with the prosecuting
12 attorney either of the following:

13 (1) A claim pursuant to section 809A.11.

14 (2) A petition for recognition of exemption pursuant to
15 section 809A.11, except that no petition may be filed after
16 the state commences a court action.

17 c. An extension of time for the filing of a claim shall
18 not be granted.

19 d. If a petition is timely filed, the prosecuting attorney
20 may delay filing a judicial forfeiture proceeding for one
21 hundred eighty days after the notice of pending forfeiture,
22 and the following procedures shall apply:

23 (1) The prosecuting attorney shall provide the seizing
24 agency and the petitioning party with a written recognition of
25 exemption and statement of nonexempt interests relating to any
26 or all interests in the property in response to each
27 petitioning party as follows:

28 (a) Within sixty days after the effective date of the
29 notice of pending forfeiture if the petitioner is a regulated
30 interest holder. The recognition of exemption shall recognize
31 the interest of the petitioner to the extent of documented
32 outstanding principal plus interest at the contract rate until
33 paid.

34 (b) Within one hundred twenty days after the effective
35 date of the notice of pending forfeiture for all other

1 petitioners.

2 (2) An owner or interest holder in any property declared
3 nonexempt may file a claim pursuant to section 809A.11 within
4 thirty days after the effective date of the notice of the
5 recognition of exemption and statement of nonexempt interest.

6 (3) If a petitioning party does not timely file a proper
7 claim under paragraph "b", the recognition of exemption and
8 statement of nonexempt interests becomes final, and the
9 prosecuting attorney shall proceed as provided in sections
10 809A.16 and 809A.17.

11 (4) The prosecuting attorney may elect to proceed under
12 this section for judicial forfeiture at any time.

13 (5) If a judicial forfeiture proceeding follows the
14 application of procedures in this paragraph, the following
15 apply:

16 (a) A duplicate or repetitive notice is not required. If
17 a proper claim has been timely filed pursuant to subparagraph
18 (2), the claim shall be determined in a judicial forfeiture
19 proceeding after the commencement of such a proceeding under
20 sections 809A.13, 809A.14, and 809A.15.

21 (b) The proposed recognition of exemption and statement of
22 nonexempt interest responsive to all petitioning parties who
23 subsequently filed claims are void and are regarded as
24 rejected offers to compromise.

25 e. If a proper petition for recognition of exemption or
26 proper claim is not timely filed, the prosecuting attorney
27 shall proceed as provided in sections 809A.16 and 809A.17.

28 2. a. Notice of pending forfeiture, service of an in rem
29 complaint or notice of a recognition of exemption and
30 statement of nonexempt interests required under the chapter,
31 shall be given in accordance with one of the following:

32 (1) If the owner's or interest holder's name and current
33 address are known, by either personal service by any person
34 qualified to serve process or by any law enforcement officer
35 or by mailing a copy of the notice by restricted certified

1 mail to that address.

2 (2) If the owner's or interest holder's name and address
3 are required by law to be on record with the county recorder,
4 secretary of state, the motor vehicle division of the state
5 department of transportation, or another state or federal
6 agency to perfect an interest in the property, and the owner's
7 or interest holder's current address is not known, by mailing
8 a copy of the notice by restricted certified mail to any
9 address of record with any of the described agencies.

10 (3) If the owner's or interest holder's address is not
11 known and is not on record as provided in subsection 2,
12 paragraph "a", subparagraph (2), or the owner or interest
13 holder's interest is not known, by publication in one issue of
14 a newspaper of general circulation in the county in which the
15 seizure occurred.

16 b. Notice is effective upon the earlier of personal
17 service, publication, or the mailing of a written notice,
18 except that notice of pending forfeiture of real property is
19 not effective until it is recorded. Notice of pending
20 forfeiture shall include a description of the property, the
21 date and place of seizure, the conduct giving rise to
22 forfeiture or the violation of law alleged, and a summary of
23 procedures and procedural rights applicable to the forfeiture
24 action.

25 Sec. 9. NEW SECTION. 809A.9 LIENS.

26 1. The prosecuting attorney may file, without a filing
27 fee, a lien for the forfeiture of property if any of the
28 following apply:

29 a. Upon the initiation of any civil or criminal proceeding
30 relating to conduct giving rise to forfeiture under this
31 chapter.

32 b. Upon seizure for forfeiture.

33 c. In connection with a proceeding or seizure for
34 forfeiture in any other state under a state or federal statute
35 substantially similar to the relevant provisions of this

1 chapter. The filing constitutes notice to any person claiming
2 an interest in the seized property or in property owned by the
3 named person.

4 2. The lienor, as soon as practical after filing a lien,
5 shall furnish to any person named in the lien a notice of the
6 filing of the lien. Failure to furnish notice under this
7 subsection shall not invalidate or otherwise affect the lien.

8 3. The lien notice shall set forth all of the following:

9 a. The name of the person and, in the discretion of the
10 lienor, any aliases, or the name of any corporation,
11 partnership, trust, or other entity, including nominees, that
12 are owned entirely or in part, or controlled by the person.

13 b. The description of the seized property or the criminal
14 or civil proceeding that has been brought relating to conduct
15 giving rise to forfeiture under the chapter.

16 c. The amount claimed by the lienor.

17 d. The name of the district court where the proceeding or
18 action has been brought.

19 e. The case number of the proceeding or action if known at
20 the time of the filing of the lien.

21 4. The notice of forfeiture lien shall be filed in
22 accordance with the provisions of the laws of this state
23 relating to the type of property that is subject to the lien.
24 The validity and priority of the forfeiture lien shall be
25 determined in accordance with applicable law pertaining to
26 liens.

27 5. A lien filed pursuant to this section applies to the
28 described property or to one named person, any aliases,
29 fictitious names, or other names, including the names of any
30 corporation, partnership, trust, or other entity, owned
31 entirely or in part, or controlled by the named person, and
32 any interest in real property owned or controlled by the named
33 person. A separate forfeiture lien shall be filed for each
34 named person.

35 6. The lien notice creates, upon filing, a lien in favor

1 of the lienor as it relates to the property or the named
2 person or related entities. The lien secures the amount of
3 potential liability for civil judgment, and, if applicable,
4 the fair market value of property relating to all proceedings
5 under this chapter enforcing the lien.

6 7. The lienor may amend or release, in whole or in part, a
7 lien filed under this section at any time by filing, without a
8 filing fee, an amended lien.

9 8. Upon entry of judgment in its favor, the state may
10 proceed to execute on the lien as provided by law.

11 Sec. 10. NEW SECTION. 809A.10 TRUSTEES.

12 1. Except as provided in subsection 2, a trustee,
13 constructive or otherwise, who has notice that a notice of
14 forfeiture lien, or a notice of pending forfeiture, or a civil
15 forfeiture proceeding has been filed against the property or
16 against any person or entity for whom the person holds title
17 or appears as record owner, shall furnish within fifteen days,
18 to the seizing agency, or the prosecuting attorney all of the
19 following:

20 a. The name and address of each person or entity for whom
21 the property is held.

22 b. The description of all other property whose legal title
23 is held for the benefit of the named person.

24 c. A copy of the applicable trust agreement or other
25 instrument, if any, under which the trustee or other person
26 holds legal title or appears as record owner of the property.

27 2. Subsection 1 is inapplicable if any of the following
28 applies:

29 a. A trustee is acting under a recorded subdivision trust
30 agreement or a recorded deed of trust.

31 b. All of the information is of record in the public
32 records giving notice of liens on that type of property.

33 3. A trustee with notice who knowingly fails to comply
34 with the provisions of this section commits a class "D"
35 felony, and shall be fined not less than ten thousand dollars

1 per day for each day of noncompliance.

2 4. A trustee with notice who fails to comply with
3 subsection 1 is subject to a civil penalty of three hundred
4 dollars for each day of noncompliance. The court shall enter
5 judgment ordering payment of three hundred dollars for each
6 day of noncompliance from the effective date of the notice
7 until the required information is furnished or the state
8 executes its judgment lien under this section.

9 5. To the extent permitted by the Constitution of the
10 United States and the Constitution of the State of Iowa, the
11 duty to comply with subsection 1 shall not be excused by any
12 privilege or provision of law of this state or any other state
13 or country which authorizes or directs that testimony or
14 records required to be furnished pursuant to subsection 1 are
15 privileged or confidential or otherwise may not be disclosed.

16 6. A trustee who furnishes information pursuant to
17 subsection 1 is immune from civil liability for the release of
18 information.

19 7. An employee of the seizing agency or the prosecuting
20 attorney who releases the information obtained pursuant to
21 subsection 1, except in the proper discharge of official
22 duties, commits a serious misdemeanor.

23 8. If any information furnished pursuant to subsection 1
24 is offered in evidence, the court may seal that portion of the
25 record or may order that the information be disclosed in a
26 designated way.

27 9. A judgment or an order of payment entered pursuant to
28 this section becomes a judgment lien against the property
29 alleged to be subject to forfeiture.

30 Sec. 11. NEW SECTION. 809A.11 CLAIMS -- PETITIONS FOR
31 RECOGNITION OF EXEMPTION.

32 1. Only an owner of or interest holder in property seized
33 for forfeiture may file a claim, and shall do so in the manner
34 provided in this section. The claim shall be mailed to the
35 seizing agency and to the prosecuting attorney by restricted

1 certified mail within thirty days after the effective date of
2 notice of pending forfeiture. An extension of time for the
3 filing of a claim shall not be granted.

4 2. The prosecuting attorney shall make an opportunity to
5 file a petition for recognition of exemption available by so
6 indicating in the notice of pending forfeiture described in
7 section 809A.8, subsection 2.

8 3. The claim or petition and all supporting documents
9 shall be in affidavit form, signed by the claimant under oath,
10 and sworn to by the affiant before one who has authority to
11 administer the oath, under penalty of perjury and shall set
12 forth all of the following:

13 a. The caption of the proceedings and identifying number,
14 if any, as set forth on the notice of pending forfeiture or
15 complaint, the name of the claimant or petitioner, and the
16 name of the prosecuting attorney who authorized the notice of
17 pending forfeiture or complaint.

18 b. The address where the claimant or petitioner will
19 accept mail.

20 c. The nature and extent of the claimant's or petitioner's
21 interest in the property.

22 d. The date, the identity of the transferor, and the
23 circumstances of the claimant's or petitioner's acquisition of
24 the interest in the property.

25 e. The specific provision of law relied on in asserting
26 that the property is not subject to forfeiture.

27 f. All essential facts supporting each assertion.

28 g. The specific relief sought.

29 Sec. 12. NEW SECTION. 809A.12 JUDICIAL PROCEEDINGS
30 GENERALLY.

31 1. A judicial forfeiture proceeding under this chapter is
32 subject to the provisions of this section.

33 2. The court, before or after the filing of a notice of
34 pending forfeiture or complaint and on application of the
35 prosecuting attorney, may do any of the following:

- 1 a. Enter a restraining order or injunction.
- 2 b. Require the execution of satisfactory performance
- 3 bonds.
- 4 c. Create receiverships.
- 5 d. Appoint conservators, custodians, appraisers,
- 6 accountants, or trustees.
- 7 e. Take any other action to seize, secure, maintain, or
- 8 preserve the availability of property subject to forfeiture
- 9 under this chapter, including a writ of attachment or a
- 10 warrant for its seizure.
- 11 3. The court, after five days' notice to the prosecuting
- 12 attorney, may issue an order to show cause to the seizing
- 13 agency, for a hearing on the sole issue of whether probable
- 14 cause for forfeiture of the property then exists if all of the
- 15 following exist:
 - 16 a. Property is seized for forfeiture or a forfeiture lien
 - 17 is filed without a previous judicial determination of probable
 - 18 cause, order of forfeiture, or a hearing under section
 - 19 809A.14, subsection 4.
 - 20 b. An owner of or interest holder in the property files an
 - 21 application for a hearing within ten days after notice of its
 - 22 seizure for forfeiture or lien, or actual knowledge of its
 - 23 seizure, whichever is earlier.
 - 24 c. The owner of or interest holder in the property
 - 25 complies with the requirements for claims or petitions in
 - 26 section 809A.11.
- 27 The hearing shall be held within thirty days of the order
- 28 to show cause unless continued for good cause on motion of
- 29 either party.
- 30 4. If the court finds in a hearing under subsection 3 that
- 31 no probable cause exists for forfeiture of the property, or if
- 32 the state elects not to contest the issue, the property shall
- 33 be released to the custody of the applicant, as custodian for
- 34 the court, or from the lien pending the outcome of a judicial
- 35 proceeding pursuant to this chapter. If the court finds that

1 probable cause for the forfeiture of the property exists, the
2 court shall not order the property released.

3 5. All applications filed within the ten-day period
4 prescribed by subsection 3 shall be consolidated for a single
5 hearing relating to each applicant's interest in the property
6 seized for forfeiture.

7 6. A defendant convicted in any criminal proceeding is
8 precluded from later denying the essential allegations of the
9 criminal offense of which the defendant was convicted in any
10 proceeding pursuant to this section. For the purposes of this
11 section, a conviction results from a verdict or a plea of
12 guilty. A defendant whose conviction is overturned on appeal
13 may file a motion to correct, vacate, or modify a judgment of
14 forfeiture under this subsection.

15 7. In any proceeding under this chapter, if a claim is
16 based on an exemption provided for in this chapter, the burden
17 of proving the existence of the exemption is on the claimant,
18 and it is not necessary for the state to negate the exemption
19 in any application or complaint.

20 8. In hearings and determinations pursuant to this
21 section, the court may receive and consider, in making any
22 determination of probable cause, all evidence admissible in
23 determining probable cause at a preliminary hearing or by a
24 judge pursuant to chapter 808 together with inferences
25 therefrom.

26 9. The fact that money or a negotiable instrument was
27 found in close proximity to any contraband or an
28 instrumentality of conduct giving rise to forfeiture shall
29 give rise to the presumption that the money or negotiable
30 instrument was the proceeds of conduct giving rise to
31 forfeiture or was used or intended to be used to facilitate
32 the conduct.

33 10. A presumption arises that any property of a person is
34 subject to forfeiture under this chapter if the state
35 establishes, by the standard of proof applicable to that

1 proceeding, any of the following:

2 a. The person has engaged in conduct giving rise to
3 forfeiture.

4 b. The property was acquired by the person during that
5 period of the conduct giving rise to forfeiture or within a
6 reasonable time after that period.

7 c. No likely source for acquisition of the property exists
8 other than the conduct giving rise to the forfeiture.

9 11. A finding that property is the proceeds of conduct
10 giving rise to forfeiture does not require proof that the
11 property is the proceeds of any particular exchange or
12 transaction.

13 12. A person who acquires property subject to forfeiture
14 is a constructive trustee of the property, and its fruits, for
15 the benefit of the state, to the extent that the person's
16 interest is not exempt from forfeiture. If property subject
17 to forfeiture has been commingled with other property, the
18 court shall order the forfeiture of the commingled property,
19 and of any fruits of the commingled property, to the extent of
20 the property subject to forfeiture, unless an owner or
21 interest holder proves that specified property does not
22 contain property subject to forfeiture, or that the person's
23 interest in specified property is exempt from forfeiture.

24 13. Title to all property declared forfeited under this
25 chapter vests in the state on the commission of the conduct
26 giving rise to forfeiture together with the proceeds of the
27 property after that time. Any such property or proceeds
28 subsequently transferred to any person remain subject to
29 forfeiture and thereafter shall be ordered forfeited unless
30 the transferee claims and establishes in a hearing under the
31 provisions of the chapter that the transferee's interest is
32 exempt under section 809A.5.

33 14. An acquittal or dismissal in a criminal proceeding
34 shall not preclude civil proceedings under this chapter.

35 15. For good cause shown, on motion by either party, the

1 court may stay discovery in civil forfeiture proceedings
2 during a criminal trial for a related criminal indictment or
3 information alleging the same conduct, after making provision
4 to prevent loss to any party resulting from the stay. Such a
5 stay shall not be available pending an appeal.

6 16. Except as otherwise provided by this chapter, all
7 proceedings hereunder shall be governed by the rules of civil
8 procedure.

9 17. An action brought pursuant to this chapter shall be
10 consolidated with any other action or proceeding brought
11 pursuant to this chapter or chapter 626 or 654 relating to the
12 same property on motion of the prosecuting attorney, and may
13 be consolidated on motion of an owner or interest holder.

14 Sec. 13. NEW SECTION. 809A.13 IN REM PROCEEDINGS.

15 1. A judicial in rem forfeiture proceeding may be brought
16 by the prosecuting attorney in addition to, or in lieu of,
17 civil in personam forfeiture procedures, and is also subject
18 to the provisions of this section. If a forfeiture is
19 authorized by this chapter, it shall be ordered by the court
20 in the in rem action.

21 2. An action in rem may be brought by the prosecuting
22 attorney pursuant to a notice of pending forfeiture or
23 verified complaint for forfeiture. The state may serve the
24 complaint in the manner provided in section 809A.8, subsection
25 2, or as provided by the rules of civil procedure.

26 3. Only an owner of or an interest holder in the property
27 who has timely filed a proper claim pursuant to section
28 809A.11 may file an answer in an action in rem. For the
29 purposes of this section, an owner of or interest holder in
30 property who has filed a claim and answer shall be referred to
31 as a claimant.

32 4. The answer shall be signed by the owner or interest
33 holder under penalty of perjury and shall be in accordance
34 with R.C.P. 72 and shall also set forth all of the following:

35 a. The caption of the proceedings and identifying number,

1 if any, as set forth on the notice of pending forfeiture or
2 complaint and the name of the claimant.

3 b. The address where the claimant will accept mail.

4 c. The nature and extent of the claimant's interest in the
5 property.

6 d. The date, the identity of the transferor, and the
7 circumstances of the claimant's acquisition of the interest in
8 the property.

9 e. The specific provision of this chapter relied on in
10 asserting that it is not subject to forfeiture.

11 f. All essential facts supporting each assertion.

12 g. The specific relief sought.

13 5. The answer, accompanied by a bond to the court, shall
14 be filed within twenty days after service on the claimant of
15 the civil in rem complaint. The bond amount shall at a
16 minimum be the greater of two thousand five hundred dollars or
17 ten percent of the estimated value of the property as alleged
18 in the complaint, or up to a maximum of two hundred fifty
19 thousand dollars. In lieu of a cost bond, a claimant may
20 under penalty of perjury move the court to proceed pursuant to
21 chapter 610. Any funds received by the court as cost bonds
22 shall be placed in an interest-bearing account pending final
23 disposition of the case. The court shall approve sureties
24 upon condition that the claimant shall pay all costs and
25 expense of the forfeiture proceedings as provided in section
26 809A.16 or 809A.17.

27 6. The rules of civil procedure shall apply to discovery
28 by the state and any claimant who has timely answered the
29 complaint.

30 7. The forfeiture hearing shall be held without a jury and
31 within sixty days after service of the complaint unless
32 continued for good cause. The prosecuting attorney shall have
33 the initial burden of proving the property is subject to
34 forfeiture by a preponderance of the evidence. If the state
35 so proves the property is subject to forfeiture, the claimant

1 has the burden of proving that the claimant has an interest in
2 the property which is exempt from forfeiture under this
3 chapter by a preponderance of the evidence.

4 8. The court shall order the interest in the property
5 returned or conveyed to the claimant if the prosecuting
6 attorney fails to meet the state's burden or the claimant
7 establishes by a preponderance of the evidence that the
8 claimant has an interest that is exempt from forfeiture. The
9 court shall order all other property forfeited to the state
10 and conduct further proceedings pursuant to sections 809A.16
11 and 809A.17.

12 Sec. 14. NEW SECTION. 809A.14 IN PERSONAM PROCEEDINGS.

13 1. A judicial in personam forfeiture proceeding brought by
14 a prosecuting attorney pursuant to an in personam civil action
15 alleging conduct giving rise to forfeiture is subject to the
16 provisions of this section. If a forfeiture is authorized by
17 this chapter, it shall be ordered by the court in the in
18 personam action. This action shall be in addition to or in
19 lieu of in rem forfeiture procedures.

20 2. The court, on application of the prosecuting attorney,
21 may enter any order authorized by section 809A.12, or any
22 other appropriate order to protect the state's interest in
23 property forfeited or subject to forfeiture.

24 3. The court may issue a temporary restraining order on
25 application of the prosecuting attorney, if the state
26 demonstrates both of the following:

27 a. Probable cause exists to believe that in the event of a
28 final judgment, the property involved would be subject to
29 forfeiture under this chapter.

30 b. Provision of notice would jeopardize the availability
31 of the property for forfeiture.

32 4. Notice of the issuance of a temporary restraining order
33 and an opportunity for a hearing shall be given to persons
34 known to have an interest in the property. A hearing shall be
35 held at the earliest possible date in accordance with R.C.P.

1 326, and shall be limited to the following issues:

2 a. Whether a probability exists that the state will
3 prevail on the issue of forfeiture.

4 b. Whether the failure to enter the order will result in
5 the property being destroyed, conveyed, encumbered, removed
6 from the jurisdiction of the court, concealed, or otherwise
7 made unavailable for forfeiture.

8 c. Whether the need to preserve the availability of
9 property outweighs the hardship on any owner or interest
10 holder against whom the order is to be entered.

11 5. On a determination that a person committed conduct
12 giving rise to forfeiture under this chapter, the court shall
13 do both of the following:

14 a. Enter a judgment of forfeiture of the property found to
15 be subject to forfeiture described in the complaint.

16 b. Authorize the prosecuting attorney or designee or any
17 law enforcement officer to seize all property ordered
18 forfeited which was not previously seized or is not under
19 seizure.

20 6. Except as provided in section 809A.12, a person
21 claiming an interest in property subject to forfeiture under
22 this chapter shall not intervene in a trial or appeal of a
23 criminal action or in an in personam civil action involving
24 the forfeiture of the property.

25 7. Following the entry of an in personam forfeiture order,
26 the prosecuting attorney may proceed with an in rem action to
27 resolve the remaining interests in the property. The
28 following procedures shall apply:

29 a. The prosecuting attorney shall give notice of pending
30 forfeiture, in the manner provided in section 809A.8, to all
31 owners and interest holders who have not previously been given
32 notice.

33 b. An owner of or interest holder in property that has
34 been ordered forfeited and whose claim is not precluded may
35 file a claim as described in section 809A.11, within thirty

1 days after initial notice of pending forfeiture or after
2 notice under paragraph "a", whichever is earlier.

3 c. If the state does not recognize the claimed exemption,
4 the prosecuting attorney shall file a complaint and the court
5 shall hold an in rem forfeiture hearing as provided for in
6 section 809A.13.

7 d. In accordance with the findings made at the hearing,
8 the court may amend the order of forfeiture if it determines
9 that any claimant has established by a preponderance of the
10 evidence that the claimant has an interest in the property
11 which is exempt under the provisions of section 809A.5.

12 Sec. 15. NEW SECTION. 809A.15 SUBSTITUTED ASSETS --
13 SUPPLEMENTAL REMEDIES.

14 1. The court shall order the forfeiture of any other
15 property of a person, including a claimant, up to the value of
16 that person's property found by the court to be subject to
17 forfeiture under this chapter, if any of the following applies
18 to the person's forfeitable property:

19 a. The forfeitable property cannot be located.

20 b. The forfeitable property has been transferred or
21 conveyed to, sold to, or deposited with a third party.

22 c. The forfeitable property is beyond the jurisdiction of
23 the court.

24 d. The forfeitable property has been substantially
25 diminished in value while not in the actual physical custody
26 of the court, the seizing agency, the prosecuting attorney, or
27 their designee.

28 e. The forfeitable property has been commingled with other
29 property that cannot be divided without difficulty.

30 f. The forfeitable property is subject to any interest of
31 another person which is exempt from forfeiture under this
32 chapter.

33 2. a. The prosecuting attorney may institute a civil
34 action in district court against any person with notice or
35 actual knowledge who destroys, conveys, encumbers, removes

1 from the jurisdiction of the court, conceals, or otherwise
2 renders unavailable property alleged to be subject to
3 forfeiture if either of the following apply:

4 (1) A forfeiture lien or notice of pending forfeiture has
5 been filed and notice given pursuant to section 809A.8.

6 (2) A complaint pursuant to section 809A.13 alleging
7 conduct giving rise to forfeiture has been filed and notice
8 given pursuant to section 809A.8.

9 b. The court shall enter a final judgment in an amount
10 equal to the value of the lien not to exceed the fair market
11 value of the property, or if a lien does not exist, in an
12 amount equal to the fair market value of the property,
13 together with reasonable investigative expenses and attorney's
14 fees.

15 c. If a civil proceeding under this chapter is pending in
16 court, the action shall be heard by that court.

17 Sec. 16. NEW SECTION. 809A.16 DISPOSITION OF PROPERTY.

18 1. If notice of pending forfeiture is properly served in
19 an action in rem or in personam in which personal property,
20 having an estimated value of five thousand dollars or less, as
21 established by affidavit provided by the prosecuting attorney,
22 is seized, and no claim opposing forfeiture is filed within
23 thirty days of service of such notice, the prosecuting
24 attorney shall prepare a written declaration of forfeiture of
25 the subject property to the state and allocate the property
26 according to the provisions of section 809A.17.

27 2. Within one hundred eighty days of the date of a
28 declaration of forfeiture, an owner or interest holder in
29 property declared forfeited pursuant to subsection 1, may
30 petition the court to have the declaration of forfeiture set
31 aside, after making a prima facie showing that the state
32 failed to serve proper notice as provided by section 809A.13.
33 Upon such a showing the court shall allow the state to
34 demonstrate by a preponderance of the evidence that notice was
35 properly served. If the state fails to meet its burden of

1 proof, the court may order the declaration of forfeiture set
2 aside. The state may proceed with judicial proceedings
3 pursuant to this chapter.

4 3. Except as provided in subsection 1, if a proper claim
5 is not timely filed in an action in rem, or if a proper answer
6 is not timely filed in response to a complaint, the
7 prosecuting attorney may apply for an order of forfeiture and
8 an allocation of forfeited property pursuant to section
9 809A.17. Under such circumstance and upon a determination by
10 the court that the state's written application established the
11 court's jurisdiction, the giving of proper notice, and facts
12 sufficient to show probable cause for forfeiture, the court
13 shall order the property forfeited to the state.

14 4. After final disposition of all claims timely filed in
15 an action in rem, or after final judgment and disposition of
16 all claims timely filed in an action in personam, the court
17 shall enter an order that the state has clear title to the
18 forfeited property interest. Title to the forfeited property
19 interest and its proceeds shall be deemed to have vested in
20 the state on the commission of the conduct giving rise to the
21 forfeiture under this chapter.

22 5. The court, on application of the prosecuting attorney,
23 may release or convey forfeited personal property to a
24 regulated interest holder if any of the following applies:

25 a. The prosecuting attorney, in the attorney's discretion,
26 has recognized in writing that the regulated interest holder
27 has an interest in the property and informs the court that the
28 property interest is exempt from forfeiture.

29 b. The regulated interest holder's interest was acquired
30 in the regular course of business as a regulated interest
31 holder.

32 c. The amount of the regulated interest holder's
33 encumbrance is readily determinable and has been reasonably
34 established by proof made available by the prosecuting
35 attorney to the court.

1 d. The encumbrance held by the regulated interest holder
2 seeking possession is the only interest exempted from
3 forfeiture and the order forfeiting the property to the state
4 transferred all of the rights of the owner prior to
5 forfeiture, including rights to redemption, to the state.

6 6. After the court's release or conveyance under
7 subsection 5, the regulated interest holder shall dispose of
8 the property by a commercially reasonable public sale. Within
9 ten days of disposition the regulated interest holder shall
10 tender to the state the amount received at disposition less
11 the amount of the regulated interest holder's encumbrance and
12 reasonable expense incurred by the interest holder in
13 connection with the sale or disposal. For the purposes of
14 this section, "commercially reasonable" means a sale or
15 disposal that would be commercially reasonable under chapter
16 554, article 7.

17 7. On order of the court or declaration of forfeiture
18 forfeiting the subject property, the state may transfer good
19 and sufficient title to any subsequent purchaser or
20 transferee. The title shall be recognized by all courts and
21 agencies of this state, and any political subdivision. On
22 entry of judgment in favor of a person claiming an interest in
23 the property that is subject to forfeiture proceedings under
24 this chapter, the court shall enter an order that the property
25 or interest in property shall be released or delivered
26 promptly to that person free of liens and encumbrances under
27 this chapter, and that the person's cost bond shall be
28 discharged.

29 8. Upon motion by the prosecuting attorney, if it appears
30 after a hearing that reasonable cause existed for the seizure
31 for forfeiture or for the filing of the notice of pending
32 forfeiture or complaint, the court shall find all of the
33 following:

34 a. That reasonable cause existed, or that the action was
35 taken under a reasonable good faith belief that it was proper.

1 b. That the claimant is not entitled to costs or damages.

2 c. That the person or seizing agency who made the seizure
3 and the prosecuting attorney are not liable to suit or
4 judgment for the seizure, suit, or prosecution.

5 Sec. 17. NEW SECTION. 809A.17 DISPOSITION OF FORFEITED
6 PROPERTY.

7 1. A person having control over forfeited property shall
8 communicate that fact to the attorney general or the attorney
9 general's designee.

10 2. Forfeited property not needed as evidence in a criminal
11 case shall be delivered to the department of justice, or, upon
12 written authorization of the attorney general or the attorney
13 general's designee, the property may be destroyed, sold, or
14 delivered to an appropriate agency for disposal in accordance
15 with this section.

16 3. Forfeited property may be used by the department of
17 justice in the enforcement of the criminal law. The
18 department may give, sell, or trade property to any other
19 state agency or to any other law enforcement agency within the
20 state if, in the opinion of the attorney general, it will
21 enhance law enforcement within the state.

22 4. Forfeited property which is not used by the department
23 of justice in the enforcement of the law may be requisitioned
24 by the department of public safety or any law enforcement
25 agency within the state for use in enforcing the criminal laws
26 of this state. Forfeited property not requisitioned may be
27 delivered to the director of the department of general
28 services to be disposed of in the same manner as property
29 received pursuant to section 18.15.

30 5. Notwithstanding subsection 1, 2, 3, or 4, the following
31 apply:

32 a. Forfeited property which is a controlled substance or a
33 simulated, counterfeit, or imitation-controlled substance
34 shall be disposed of as provided in section 124.506.

35 b. Forfeited property which is a weapon or ammunition

1 shall be deposited with the department of public safety to be
2 disposed of in accordance with the rules of the department.
3 All weapons or ammunition may be held for use in law
4 enforcement, testing, or comparison by the criminalistics
5 laboratory, or destroyed. Ammunition and firearms which are
6 not illegal and are not offensive weapons as defined by
7 section 724.1 may be sold by the department as provided in
8 section 809.21.

9 c. Material in violation of chapter 728 shall be
10 destroyed.

11 d. Property subject to the rules of the natural resource
12 commission shall be delivered to that commission for disposal
13 in accordance with its rules.

14 Sec. 18. NEW SECTION. 809A.18 POWERS OF ENFORCEMENT
15 PERSONNEL.

16 1. A prosecuting attorney may conduct an investigation of
17 any conduct that gives rise to forfeiture. The prosecuting
18 attorney is authorized, before the commencement of a
19 proceeding or action under this chapter, to subpoena
20 witnesses, and compel their attendance, examine them under
21 oath, and require the production of documentary evidence for
22 inspection, reproducing, or copying. Except as otherwise
23 provided by this section, the prosecuting attorney shall
24 proceed under this subsection with the same powers and
25 limitations, and judicial oversight and enforcement, and in
26 the manner provided by this chapter and by the Iowa rules of
27 civil procedure. Any person compelled to appear under a
28 demand for oral testimony under this section may be
29 accompanied, represented, and advised by counsel.

30 2. The examination of all witnesses under this section
31 shall be conducted by the prosecuting attorney before an
32 officer authorized to administer oaths. The testimony shall
33 be taken by a certified shorthand reporter or by a sound
34 recording device and shall be transcribed or otherwise
35 preserved. The prosecuting attorney may exclude from the

1 examination all persons except the witness, the witness'
2 counsel, the officer before whom the testimony is to be taken,
3 law enforcement officials, and a certified shorthand reporter.
4 Prior to oral examination, the person shall be advised of the
5 person's right to refuse to answer any questions on the basis
6 of the privilege against self-incrimination. The examination
7 shall be conducted in a manner consistent with the rules
8 dealing with the taking of depositions.

9 3. Except as otherwise provided in this section, prior to
10 the filing of a civil or criminal proceeding or action
11 relating to such a proceeding, documentary material,
12 transcripts, or oral testimony, in the possession of the
13 prosecuting attorney, shall not be available for examination
14 by any individual other than a law enforcement official or
15 agent of such official without the consent of the person who
16 produced the material, transcripts, or oral testimony.

17 4. A person shall not knowingly remove from any place,
18 conceal, withhold, destroy, mutilate, alter, or by any other
19 means falsify any documentary material that is the subject of
20 a subpoena, with intent to avoid, evade, prevent, or obstruct
21 compliance in whole or in part by any person with any duly
22 served subpoena of the prosecuting attorney under this
23 section. A violation of this subsection is a class "D"
24 felony. The prosecuting attorney shall investigate and
25 prosecute suspected violations of this subsection.

26 5. Acts or omissions by the prosecuting attorneys in the
27 course of their duties in the enforcement of any of the
28 provisions of this chapter, including provision of any legal
29 services prior to charging, complaint, or seizure, are
30 prosecutorial and shall not subject the attorneys or their
31 principals to civil liability.

32 Sec. 19. NEW SECTION. 809A.19 IMMUNITY ORDERS.

33 1. If a person is or may be called to produce evidence at
34 a deposition, hearing, or trial under this chapter or at an
35 investigation brought by the prosecuting attorney under

1 section 809A.18, the district court in which the deposition,
2 hearing, trial, or investigation is or may be held shall, upon
3 certification in writing of a request of the prosecuting
4 attorney, issue an order, ex parte or after a hearing,
5 requiring the person to produce evidence, notwithstanding that
6 person's refusal to do so on the basis of the privilege
7 against self-incrimination.

8 2. The prosecuting attorney may certify in writing a
9 request for an ex parte order under subsection 1 if in the
10 prosecuting attorney's judgment both of the following apply:

11 a. The production of the evidence may be necessary to the
12 public interest.

13 b. The person has refused or is likely to refuse to
14 produce evidence on the basis of the privilege against self-
15 incrimination.

16 3. A person shall not refuse to comply with an order
17 issued under subsection 1 on the basis of a self-incrimination
18 privilege. If the person refuses to comply with the order
19 after being informed of its existence by the presiding
20 officer, the person may be compelled or punished by the
21 district court issuing an order for civil or criminal
22 contempt.

23 4. The production of evidence compelled by order issued
24 under subsection 1, and any information directly or indirectly
25 derived from the production of evidence, shall not be used
26 against the person in a subsequent criminal case, except in a
27 prosecution for perjury, false swearing, or an offense
28 otherwise involving a failure to comply with the order.

29 Sec. 20. NEW SECTION. 809A.20 STATUTE OF LIMITATIONS.

30 A civil action under this chapter shall be commenced within
31 five years after the last conduct giving rise to forfeiture or
32 the cause of action becomes known or should have become known,
33 excluding any time during which either the property or
34 defendant is out of the state or in confinement, or during
35 which criminal proceedings relating to the same conduct are

1 pending.

2 Sec. 21. NEW SECTION. 809A.21 SUMMARY FORFEITURE OF
3 CONTROLLED SUBSTANCES.

4 Controlled substances included in chapter 124 which are
5 contraband and any controlled substance whose owners are
6 unknown are summarily forfeited to the state. The court may
7 include in any judgment under this chapter an order forfeiting
8 any controlled substance involved in the conduct giving rise
9 to forfeiture to the extent of the defendant's interest.

10 Sec. 22. NEW SECTION. 809A.22 BAR TO COLLATERAL ACTION.

11 A person claiming an interest in property subject to
12 forfeiture shall not commence or maintain any action against
13 the state concerning the validity of the alleged interest
14 other than as provided in this chapter.

15 Sec. 23. NEW SECTION. 809A.23 STATUTORY CONSTRUCTION.

16 The provisions of this chapter shall be liberally construed
17 to effectuate its remedial purposes. Civil remedies under
18 this chapter shall be supplemental and not mutually exclusive.
19 The civil remedies do not preclude and are not precluded by
20 any other provision of law.

21 Sec. 24. NEW SECTION. 809A.24 UNIFORMITY OF APPLICATION.

22 1. The provisions of this chapter shall be applied and
23 construed to effectuate its general purpose to make uniform
24 the law with respect to the subject of this chapter among
25 states enacting this law.

26 2. The attorney general may enter into reciprocal
27 agreements with the attorney general or chief prosecuting
28 attorney of any state to effectuate the purposes of this
29 chapter.

30

DIVISION II

31

IOWA ONGOING CRIMINAL CONDUCT ACT

32 Sec. 25. NEW SECTION. 706A.1 DEFINITIONS.

33 In this chapter, unless the context otherwise requires:

34 1. "Criminal network" means any combination of persons
35 engaging, for financial gain on a continuing basis, in conduct

1 which is an indictable offense under the laws of this state
2 regardless of whether such conduct is charged or indicted. As
3 used in this subsection, persons combine if they collaborate
4 or act in concert in carrying on or furthering the activities
5 or purposes of a network even though such persons may not know
6 each other's identity, membership in the network changes from
7 time to time, or one or more members of the network stand in a
8 wholesaler-retailer, service provider, or other arm's length
9 relationship with others as to conduct in the furtherance of
10 the financial goals of the network.

11 2. "Enterprise" includes any sole proprietorship,
12 partnership, corporation, trust, or other legal entity, or any
13 unchartered union, association, or group of persons associated
14 in fact although not a legal entity, and includes unlawful as
15 well as lawful enterprises.

16 3. "Proceeds" means property acquired or derived directly
17 or indirectly from, produced through, realized through, or
18 caused by an act or omission and includes any property of any
19 kind.

20 4. "Property" means anything of value, and includes any
21 interest in property, including any benefit, privilege, claim,
22 or right with respect to anything of value, whether real or
23 personal, tangible, or intangible, without reduction for
24 expenses incurred for acquisition, maintenance, production, or
25 any other purpose.

26 5. "Specified unlawful activity" means any act, including
27 any preparatory or completed offense, committed for financial
28 gain on a continuing basis, that is punishable as an
29 indictable offense under the laws of the state in which it
30 occurred and under the laws of this state.

31 Sec. 26. NEW SECTION. 706A.2 VIOLATIONS.

32 1. SPECIFIED UNLAWFUL ACTIVITY INFLUENCED ENTERPRISES.

33 a. It is unlawful for any person who has knowingly
34 received any proceeds of specified unlawful activity to use or
35 invest, directly or indirectly, any part of such proceeds in

1 the acquisition of any interest in any enterprise or any real
2 property, or in the establishment or operation of any
3 enterprise.

4 b. It is unlawful for any person to knowingly acquire or
5 maintain, directly or indirectly, any interest in or control
6 of any enterprise or real property through specified unlawful
7 activity.

8 c. It is unlawful for any person to knowingly conduct the
9 affairs of any enterprise through specified unlawful activity
10 or to knowingly participate, directly, or indirectly, in any
11 enterprise that the person knows is being conducted through
12 specified unlawful activity.

13 d. It is unlawful for any person to conspire or attempt to
14 violate or to solicit or facilitate the violations of the
15 provisions of paragraphs "a", "b", or "c".

16 2. FACILITATION OF A CRIMINAL NETWORK. It is unlawful for
17 a person acting with knowledge of the financial goals and
18 criminal objectives of a criminal network to knowingly
19 facilitate criminal objectives of the network by doing any of
20 the following:

21 a. Engaging in violence or intimidation or inciting or
22 inducing another to engage in violence or intimidation.

23 b. Inducing or attempting to induce a person believed to
24 have been called or who may be called as a witness to
25 unlawfully withhold any testimony, testify falsely, or absent
26 themselves from any official proceeding to which the potential
27 witness has been legally summoned.

28 c. Attempting by means of bribery, misrepresentation,
29 intimidation, or force to obstruct, delay, or prevent the
30 communication of information or testimony relating to a
31 violation of any criminal statute to a peace officer,
32 magistrate, prosecutor, grand jury, or petit jury.

33 d. Injuring or damaging another person's body or property
34 because that person or any other person gave information or
35 testimony to a peace officer, magistrate, prosecutor, or grand

1 jury.

2 e. Attempting to suppress by an act of concealment,
3 alteration, or destruction any physical evidence that might
4 aid in the discovery, apprehension, prosecution, or conviction
5 of any person.

6 f. Making any property available to a member of the
7 criminal network.

8 g. Making any service other than legal services available
9 to a member of the criminal network.

10 h. Inducing or committing any act or omission by a public
11 servant in violation of the public servant's official duty.

12 i. Obtaining any benefit for a member of a criminal
13 network by means of false or fraudulent pretenses,
14 representation, promises or material omissions.

15 j. Making a false sworn statement regarding a material
16 issue, believing it to be false, or making any statement,
17 believing it to be false, regarding a material issue to a
18 public servant in connection with an application for any
19 benefit, privilege, or license, or in connection with any
20 official investigation or proceeding.

21 3. MONEY LAUNDERING. It is unlawful for a person to
22 commit money laundering as defined in chapter 706B.

23 4. ACTS OF SPECIFIED UNLAWFUL ACTIVITY. It is unlawful
24 for a person to commit specified unlawful activity as defined
25 in section 706A.1.

26 5. NEGLIGENT EMPOWERMENT OF SPECIFIED UNLAWFUL ACTIVITY.

27 a. It is unlawful for a person to negligently allow
28 property owned or controlled by the person or services
29 provided by the person, other than legal services, to be used
30 to facilitate specified unlawful activity, whether by
31 entrustment, loan, rent, lease, bailment, or otherwise.

32 b. Damages for negligent empowerment of specified unlawful
33 activity shall include all reasonably foreseeable damages
34 proximately caused by the specified unlawful activity,
35 including, in a case brought or intervened in by the state,

1 the costs of investigation and criminal and civil litigation
2 of the specified unlawful activity incurred by the government
3 for the prosecution and defense of any person involved in the
4 specified unlawful activity, and the imprisonment, probation,
5 parole, or other expense reasonably necessary to detain,
6 punish, and rehabilitate any person found guilty of the
7 specified unlawful activity, except for the following:

8 (1) If the person empowering the specified unlawful
9 activity acted only negligently and was without knowledge of
10 the nature of the activity and could not reasonably have known
11 of the unlawful nature of the activity or that it was likely
12 to occur, damages shall be limited to the greater of the
13 following:

14 (a) The cost of the investigation and litigation of the
15 person's own conduct plus the value of the property or service
16 involved as of the time of its use to facilitate the specified
17 unlawful activity.

18 (b) All reasonably foreseeable damages to any person,
19 except any person responsible for the specified unlawful
20 activity, and to the general economy and welfare of the state
21 proximately caused by the person's own conduct.

22 (2) If the property facilitating the specified unlawful
23 activity was taken from the possession or control of the
24 person without that person's knowledge and against that
25 person's will in violation of the criminal law, damages shall
26 be limited to reasonably foreseeable damages to any person,
27 except persons responsible for the taking or the specified
28 unlawful activity, and to the general economy and welfare of
29 the state proximately caused by the person's negligence, if
30 any, in failing to prevent its taking.

31 (3) If the person was aware of the possibility that the
32 property or service would be used to facilitate some form of
33 specified unlawful activity and acted to prevent the unlawful
34 use, damages shall be limited to reasonably foreseeable
35 damages to any person, except any person responsible for the

1 specified unlawful activity, and to the general economy and
2 welfare of the state proximately caused by the person's
3 failure, if any, to act reasonably to prevent the unlawful
4 use.

5 (4) The plaintiff shall carry the burden of proof by a
6 preponderance of the evidence that the specified unlawful
7 activity occurred and was facilitated by the property or
8 services. The defendant shall have the burden of proof by a
9 preponderance of the evidence as to circumstances constituting
10 lack of negligence and on the limitations on damages in this
11 subsection.

12 Sec. 27. NEW SECTION. 706A.3 CIVIL REMEDIES -- ACTIONS.

13 1. The prosecuting attorney or an aggrieved person may
14 institute civil proceedings against any person in district
15 court seeking relief from conduct constituting a violation of
16 this chapter or to prevent, restrain, or remedy such
17 violation.

18 2. The district court has jurisdiction to prevent,
19 restrain, or remedy such violations by issuing appropriate
20 orders. Prior to a determination of liability such orders may
21 include, but are not limited to, entering restraining orders
22 or injunctions, requiring the execution of satisfactory
23 performance bonds, creating receiverships, and enforcing
24 constructive trusts in connection with any property or
25 interest subject to damages, forfeiture, or other remedies or
26 restraints pursuant to this chapter.

27 3. If the plaintiff in such a proceeding proves the
28 alleged violation by a preponderance of the evidence, the
29 district court, after making due provision for the rights of
30 innocent persons, shall grant relief by entering any
31 appropriate order or judgment, including any of the following:

32 a. Ordering any defendant to divest the defendant of any
33 interest in any enterprise, or in any real property.

34 b. Imposing reasonable restrictions upon the future
35 activities or investments of any defendant, including, but not

1 limited to, prohibiting any defendant from engaging in the
2 same type of endeavor as any enterprise in which the defendant
3 was engaged in a violation of this chapter.

4 c. Ordering the dissolution or reorganization of any
5 enterprise.

6 d. Ordering the payment of all reasonable costs and
7 expenses of the investigation and prosecution of any
8 violation, civil or criminal, including reasonable attorney
9 fees in the trial and appellate courts. Such payments
10 received by the state, by judgment, settlement, or otherwise,
11 shall be considered forfeited property and disposed of
12 pursuant to section 809A.17.

13 e. Ordering the forfeiture of any property subject to
14 forfeiture under chapter 809A, pursuant to the provisions and
15 procedures of that chapter.

16 f. Ordering the suspension or revocation of any license,
17 permit, or prior approval granted to any person by any agency
18 of the state.

19 g. Ordering the surrender of the certificate of existence
20 of any corporation organized under the laws of this state or
21 the revocation of any certificate authorizing a foreign
22 corporation to conduct business within this state, upon
23 finding that for the prevention of future violations, the
24 public interest requires the certificate of the corporation to
25 be surrendered and the corporation dissolved or the
26 certificate revoked.

27 4. Relief under subsection 3, paragraphs "e", "f", and "g"
28 shall not be granted in civil proceedings instituted by an
29 aggrieved person unless the prosecuting attorney has
30 instituted the proceedings or intervened. In any action under
31 this section brought by the state or in which the state has
32 intervened, the state may employ any of the powers of seizure
33 and restraint of property as are provided for forfeiture actions
34 under chapter 809A, or as are provided for the collection of
35 taxes payable and past due, and whose collection has been

1 determined to be in jeopardy.

2 5. In a proceeding initiated under this section,
3 injunctive relief shall be granted in conformity with the
4 principles that govern the granting of relief from injury or
5 threatened injury in other civil cases, but no showing of
6 special or irreparable injury is required. Pending final
7 determination of a proceeding initiated under this section, a
8 temporary restraining order or a preliminary injunction may be
9 issued upon a showing of immediate danger of significant
10 injury, including the possibility that a judgment for money
11 damages might be difficult to execute, and, in a proceeding
12 initiated by a nongovernmental aggrieved person, upon the
13 execution of proper bond against injury for an injunction
14 improvidently granted.

15 6. Any person who is in possession or control of proceeds
16 of any violation of this chapter, is an involuntary trustee
17 and holds the property in constructive trust for the benefit
18 of the person entitled to remedies under this chapter, unless
19 the holder acquired the property as a bona fide purchaser for
20 value who was not knowingly taking part in an illegal
21 transaction.

22 7. Any person whose business or property is directly or
23 indirectly injured by conduct constituting a violation of this
24 chapter, by any person, may bring a civil action, subject to
25 the in pari delicto defense and shall recover threefold the
26 actual damages sustained and the costs and expenses of the
27 investigation and prosecution of the action including
28 reasonable attorney fees in the trial and appellate courts.
29 Damages shall not include pain and suffering. Any person
30 injured shall have a claim to any property against which any
31 fine, or against which treble damages under subsection 10 or
32 11 may be imposed, superior to any right or claim of the state
33 to the property, up to the value of actual damages and costs
34 awarded in an action under this subsection. The state shall
35 have a right of subrogation to the extent that an award made

1 to a person so injured is satisfied out of property against
2 which any fine or civil remedy in favor of the state may be
3 imposed.

4 8. a. If liability of a legal entity is based on the
5 conduct of another, through respondent superior or otherwise,
6 the legal entity shall not be liable for more than actual
7 damages and costs, including a reasonable attorney's fee, if
8 the legal entity affirmatively shows by a preponderance of the
9 evidence that both of the following apply:

10 (1) The conduct was not engaged in, authorized, solicited,
11 commanded, or recklessly tolerated by the legal entity, by the
12 directors of the legal entity or by a high managerial agent of
13 the legal entity acting within the scope of employment.

14 (2) The conduct was not engaged in by an agent of the
15 legal entity acting within the scope of employment and in
16 behalf of the legal entity.

17 b. For the purposes of this subsection:

18 (1) "Agent" means any officer, director, or employee of
19 the legal entity, or any other person who is authorized to act
20 in behalf of the legal entity.

21 (2) "High managerial agent" means any officer of the legal
22 entity or, in the case of a partnership, a partner, or any
23 other agent in a position of comparable authority with respect
24 to the formulation of policy of the legal entity.

25 (3) Notwithstanding any other provision of law, any
26 pleading, motion, or other paper filed by a nongovernmental
27 aggrieved party in connection with a proceeding or action
28 under subsection 7 shall be verified. If such aggrieved
29 person is represented by an attorney, such pleading, motion,
30 or other paper shall be signed by at least one attorney of
31 record in the attorney's individual name, whose address shall
32 be stated.

33 If such pleading, motion, or other paper includes an
34 averment of fraud, coercion, accomplice, respondent superior,
35 conspiratorial, enterprise, or other vicarious accountability,

1 it shall state, insofar as practicable, the circumstances with
2 particularity. The verification and the signature by an
3 attorney required by this subsection shall constitute a
4 certification by the signor that the attorney has carefully
5 read the pleading, motion, or other paper and, based on a
6 reasonable inquiry, believes that all of the following exist:

7 (a) It is well-grounded in fact.

8 (b) It is warranted by existing law, or a good faith
9 argument for the extension, modification, or reversal of
10 existing law.

11 (c) It is not made for an improper purpose, including to
12 harass, to cause unnecessary delay, or to impose a needless
13 increase in the cost of litigation.

14 The court may, after a hearing and appropriate findings of
15 fact, impose upon any person who verified the complaint,
16 cross-claim or counterclaim, or any attorney who signed it in
17 violation of this subsection, or both, a fit and proper
18 sanction, which may include an order to pay to the other party
19 or parties the amount of the reasonable expenses incurred
20 because of the complaint or claim, including reasonable
21 attorney fees. If the court determines that the filing of a
22 complaint or claim under subsection 7 by a nongovernmental
23 party was frivolous in whole or in part, the court shall award
24 double the actual expenses, including attorney fees, incurred
25 because of the frivolous portion of the complaint or claim.

26 9. Upon the filing of a complaint, cross-claim, or
27 counterclaim under this section, an aggrieved person, as a
28 jurisdictional prerequisite, shall immediately notify the
29 attorney general of its filing and serve one copy of the
30 pleading on the attorney general. Service of the notice on
31 the attorney general does not limit or otherwise affect the
32 right of the state to maintain an action under this section or
33 intervene in a pending action and does not authorize the
34 aggrieved person to name the state or the attorney general as
35 a party to the action. The attorney general, upon timely

1 application, may intervene or appear as amicus curiae in any
2 civil proceeding or action brought under this section if the
3 attorney general certifies that, in the opinion of the
4 attorney general, the proceeding or action is of general
5 public importance. In any proceeding or action brought under
6 this section by an aggrieved person, the state shall be
7 entitled to the same relief as if it had instituted the
8 proceeding or action.

9 10. a. Any prosecuting attorney may bring a civil action
10 on behalf of a person whose business or property is directly
11 or indirectly injured by conduct constituting a violation of
12 this chapter, and shall recover threefold the damages
13 sustained by such person and the costs and expenses of the
14 investigation and prosecution of the action, including
15 reasonable attorney fees in the trial and appellate courts.
16 The court shall exclude from the amount of monetary relief
17 awarded any amount of monetary relief which is any of the
18 following:

19 (1) Which duplicates amounts which have been awarded for
20 the same injury.

21 (2) Which is properly allocable to persons who have
22 excluded their claims under paragraph "c".

23 b. In any action brought under this subsection, the
24 prosecuting attorney, at such times, in such manner, and with
25 such content as the court may direct, shall cause notice of
26 the action to be given by publication. If the court finds
27 that notice given solely by publication would deny due process
28 to any person, the court may direct further notice to such
29 person according to the circumstances of the case.

30 c. A person on whose behalf an action is brought under
31 this subsection may elect to exclude from adjudication the
32 portion of the state claim for monetary relief attributable to
33 the person by filing notice of such election within such time
34 as specified in the notice given under this subsection.

35 d. A final judgment in an action under this subsection

1 shall preclude any claim under this subsection by a person on
2 behalf of whom such action was brought who fails to give
3 notice of exclusion within the times specified in the notice
4 given under paragraph "b".

5 e. An action under this subsection on behalf of a person
6 other than the state shall not be dismissed or compromised
7 without the approval of the court, and notice of any proposed
8 dismissal or compromise shall be given in such manner as the
9 court directs.

10 11. The attorney general may bring a civil action as
11 parens patriae on behalf of the general economy, resources,
12 and welfare of this state, and shall recover threefold the
13 proceeds acquired, maintained, produced, or realized by or on
14 behalf of the defendant by reason of a violation of this
15 chapter, plus the costs and expenses of the investigation and
16 prosecution of the action, including reasonable attorney fees
17 in the trial and appellate courts.

18 a. A person who has knowingly conducted or participated in
19 the conduct of an enterprise in violation of section 706A.2,
20 subsection 1, paragraph "c" is also jointly and severally
21 liable for the greater of threefold the damage sustained
22 directly or indirectly by the state by reason of conduct in
23 furtherance of the violation or threefold the total of all
24 proceeds acquired, maintained, produced, or realized by, or on
25 behalf of any person by reason of participation in the
26 enterprise except for the following:

27 (1) A person is not liable for conduct occurring prior to
28 the person's first knowing participation in or conduct of the
29 enterprise.

30 (2) If a person shows that, under circumstances
31 manifesting a voluntary and complete renunciation of culpable
32 intent, the person withdrew from the enterprise by giving a
33 complete and timely warning to law enforcement authorities or
34 by otherwise making a reasonable and substantial effort to
35 prevent the conduct or result which is the criminal objective

1 of the enterprise, the person is not liable for conduct
2 occurring after the person's withdrawal.

3 b. A person who has facilitated a criminal network in
4 violation of section 706A.2, subsection 2, is also jointly and
5 severally liable for all of the following:

6 (1) The damages resulting from the conduct in furtherance
7 of the criminal objectives of the criminal network, to the
8 extent that the person's facilitation was of substantial
9 assistance to the conduct.

10 (2) The proceeds of conduct in furtherance of the criminal
11 objectives of the criminal network, to the extent that the
12 person's facilitation was of substantial assistance to the
13 conduct.

14 (3) A person who has engaged in money laundering in
15 violation of chapter 706B is also jointly and severally liable
16 for the greater of threefold the damages resulting from the
17 person's conduct or threefold the property that is the subject
18 of the violation.

19 Sec. 28. NEW SECTION. 706A.4 CRIMINAL SANCTIONS.

20 A person who violates section 706A.2, subsection 1, 2, or
21 4, commits a class "B" felony.

22 Sec. 29. NEW SECTION. 706A.5 UNIFORMITY OF CONSTRUCTION
23 AND APPLICATION.

24 1. The provisions of this chapter shall be liberally
25 construed to effectuate its remedial purposes. Civil remedies
26 under this chapter shall be supplemental and not mutually
27 exclusive. Civil remedies under this chapter do not preclude
28 and are not precluded by other provisions of law.

29 2. The provisions of this chapter shall be applied and
30 construed to effectuate its general purpose to make uniform
31 the law with respect to the subject of this chapter among
32 states enacting the law.

33 3. The attorney general may enter into reciprocal
34 agreements with the attorney general or chief prosecuting
35 attorney of any state to effectuate the purposes of this

1 chapter.

2

DIVISION III

3

IOWA MONEY LAUNDERING ACT

4

Sec. 30. NEW SECTION. 706B.1 DEFINITIONS.

5

In this chapter, unless the context otherwise requires:

6

1. "Proceeds" means property acquired or derived directly
7 or indirectly from, produced through, realized through, or
8 caused by an act or omission and includes any property of any
9 kind.

10

2. "Property" means anything of value, and includes any
11 interest in property, including any benefit, privilege, claim,
12 or right with respect to anything of value, whether real or
13 personal, tangible or intangible.

14

3. "Specified unlawful activity" means any act, including
15 any preparatory or completed offense, committed for financial
16 gain on a continuing basis, that is punishable by confinement
17 of one year or more under the laws of this state, or, if the
18 act occurred outside this state, would be punishable by
19 confinement of one year or more under the laws of the state in
20 which it occurred and under the laws of this state.

21

4. "Transaction" includes a purchase, sale, trade, loan,
22 pledge, investment, gift, transfer, transmission, delivery,
23 deposit, withdrawal, payment, transfer between accounts,
24 exchange of currency, extension of credit, purchase, or sale
25 of any monetary instrument, use of a safe deposit box, or any
26 other acquisition or disposition of property by whatever means
27 effected.

28

5. "Unlawful activity" means any act which is chargeable
29 or indictable as a public offense of any degree under the laws
30 of the state in which the act occurred or under federal law
31 and, if the act occurred in a state other than this state,
32 would be chargeable or indictable as a public offense of any
33 degree under the laws of this state or under federal law.

34

Sec. 31. NEW SECTION. 706B.2 MONEY LAUNDERING PENALTY --

35

CIVIL REMEDIES.

- 1 1. It is unlawful for a person to do any of the following:
- 2 a. To knowingly transport, receive, or acquire property or
- 3 to conduct a transaction involving property, knowing that the
- 4 property involved is the proceeds of some form of unlawful
- 5 activity, when, in fact, the property is the proceeds of
- 6 specified unlawful activity.
- 7 b. To make property available to another, by transaction,
- 8 transportation, or otherwise, knowing that it is intended to
- 9 be used for the purpose of committing or furthering the
- 10 commission of specified unlawful activity.
- 11 c. To conduct a transaction knowing that the property
- 12 involved in the transaction is the proceeds of some form of
- 13 unlawful activity with the intent to conceal or disguise the
- 14 nature, location, source, ownership, or control of the
- 15 property or the intent to avoid a transaction-reporting
- 16 requirement under chapter 529, the Iowa financial transaction
- 17 reporting Act, or federal law.
- 18 d. To knowingly engage in the business of conducting,
- 19 directing, planning, organizing, initiating, financing,
- 20 managing, supervising, or facilitating transactions involving
- 21 property, knowing that the property involved in the
- 22 transaction is the proceeds of some form of unlawful activity,
- 23 that, in fact, is the proceeds of specified unlawful activity.
- 24 2. A person who violates:
- 25 a. Subsection 1, paragraphs "a", "b", or "c", commits a
- 26 class "C" felony, and may be fined not more than ten thousand
- 27 dollars or twice the value of the property involved, whichever
- 28 is greater, or by imprisonment for not more than 10 years, or
- 29 both.
- 30 b. Subsection 1, paragraph "d", commits a class "D"
- 31 felony, and may be fined not more than five thousand dollars
- 32 or twice the value of the property involved, whichever is
- 33 greater, or by imprisonment for not more than five years, or
- 34 both.
- 35 3. A person who violates subsection 1, paragraph "a", "b",

1 "c", or "d", is subject to a civil penalty of three times the
2 value of the property involved in the transaction, in addition
3 to any criminal sanction imposed.

4 4. A person who is found guilty of a violation under this
5 section also may be charged with violations of chapter 706A,
6 and property involved in a violation under this chapter is
7 subject to forfeiture under chapter 809A.

8 Sec. 32. NEW SECTION. 706B.3 UNIFORMITY OF CONSTRUCTION
9 AND APPLICATION.

10 1. The provisions of this chapter shall be liberally
11 construed to effectuate its remedial purposes. Civil remedies
12 under this chapter shall be supplemental and not mutually
13 exclusive. The civil remedies do not preclude and are not
14 precluded by other provision of law.

15 2. The provisions of this chapter shall be applied and
16 construed to effectuate its general purpose to make uniform
17 the law with respect to the subject of this chapter among
18 states enacting the law.

19 3. The attorney general may enter into reciprocal
20 agreements with the attorney general or chief prosecuting
21 attorney of any state to effectuate the purposes of this
22 chapter.

23 DIVISION IV

24 IOWA FINANCIAL TRANSACTION REPORTING ACT

25 Sec. 33. NEW SECTION. 529.1 DEFINITIONS.

26 In this chapter, unless the context otherwise requires:

27 1. "Authorized delegate" means a person designated by the
28 licensee.

29 2. "Check cashing" means exchanging for compensation a
30 check, draft, money order, traveler's check, or a payment
31 instrument of a licensee for money delivered to the presenter
32 at the time and place of the presentation.

33 3. "Compensation" means any fee, commission, or other
34 benefit.

35 4. "Conduct the business" means engaging in activities of

1 a licensee or money transmitter more than ten times in any
2 calendar year for compensation.

3 5. "Foreign money exchange" means exchanging for
4 compensation money of the United States government or a
5 foreign government to or from money of another government at a
6 conspicuously posted exchange rate at the time and place of
7 the presentation of the money to be exchanged.

8 6. "Licensee" means a person licensed under this chapter.

9 7. "Location" means a place of business at which activity
10 conducted by a licensee or money transmitter occurs.

11 8. "Money" means a medium of exchange authorized or
12 adopted by a domestic or foreign government as a part of its
13 currency and that is customarily used and accepted as a medium
14 of exchange in the country of issuance.

15 9. "Money transmitter" means a person who is located or
16 doing business in this state, including a check cashier and a
17 foreign money exchanger, and who does any of the following:

18 a. Sells or issues payment instruments.

19 b. Conducts the business of receiving money for the
20 transmission of or transmitting money.

21 c. Conducts the business of exchanging payment instruments
22 or money into any form of money or payment instrument.

23 d. Conducts the business of receiving money for obligors
24 for the purpose of paying obligors' bills, invoices, or
25 accounts.

26 e. Meets the definition of a bank, financial agency, or
27 financial institution as prescribed by 31 U.S.C. § 5312 or 31
28 C.F.R. § 103.11 and any successor provisions.

29 10. "Payment instrument" means a check, draft, money
30 order, traveler's check, or other instrument or order for the
31 transmission or payment of money, sold to one or more persons,
32 whether or not that instrument or order is negotiable.

33 "Payment instrument" does not include an instrument that is
34 redeemable by the issuer in merchandise or service, a credit
35 card voucher, or a letter of credit.

1 11. "Proceeds" means anything of value, and includes any
2 interest in property, including any benefit, privilege, claim,
3 or right with respect to anything of value, whether real or
4 personal, tangible or intangible, without reduction for
5 expenses incurred for acquisition, maintenance, production, or
6 any other purpose.

7 12. "Superintendent" means the superintendent of banking
8 or the superintendent of credit unions.

9 13. "Transaction" includes a purchase, sale, trade, loan,
10 pledge, investment, gift, transfer, transmission, delivery,
11 deposit, withdrawal, payment, transfer between accounts,
12 exchange of currency, extension of credit, purchase, or sale
13 of any monetary instrument, use of a safe deposit box, or any
14 other acquisition or disposition of property by whatever means
15 effected.

16 14. "Transmitting money" includes the transmission of
17 money by any means including transmission within this country
18 or to or from locations abroad by payment instrument, wire,
19 facsimile, or electronic transfer, courier, or otherwise.

20 15. "Traveler's check" means an instrument identified as a
21 traveler's check on its face or commonly recognized as a
22 traveler's check and issued in a money multiple of United
23 States or foreign currency with a provision for a specimen
24 signature of the purchaser to be completed at the time of
25 purchase and a countersignature of the purchaser to be
26 completed at the time of negotiation.

27 Sec. 34. NEW SECTION. 529.2 REPORTS.

28 1. A licensee, authorized delegate, or money transmitter
29 required to file a report regarding business conducted in this
30 state pursuant to the federal Currency and Foreign
31 Transactions Reporting Act, 31 U.S.C. § 5311 through 5326 and
32 31 C.F.R. pt. 103, or 12 C.F.R. § 21.11, shall file a
33 duplicate of that report with the department of public safety.

34 2. All persons engaged in a trade or business who are
35 required to file a report pursuant to 26 U.S.C. § 6050i and 26

1 C.F.R. § 1.6050I, and any successor provisions, concerning
2 returns relating to cash received in trade or business, shall
3 file a copy of the report with the department of public
4 safety.

5 3. A licensee, authorized delegate, or money transmitter
6 that is regulated under the federal Currency and Foreign
7 Transaction Reporting Act, 31 U.S.C. § 5325 and 31 C.F.R. pt.
8 103, and that is required to make available prescribed records
9 to the secretary of the United States department of treasury
10 upon request at any time, shall follow the same prescribed
11 procedures and create and maintain the same prescribed records
12 relating to a transaction and shall make these records
13 available to the department of public safety pursuant to a
14 prosecuting attorney subpoena.

15 4. a. The timely filing of a report required by this
16 section with the appropriate federal agency shall be deemed
17 compliance with the reporting requirements of this section,
18 unless the attorney general or the department of public safety
19 has notified the superintendent that reports of that type are
20 not being regularly and comprehensively transmitted by that
21 federal agency to the department of public safety.

22 b. This chapter does not preclude a licensee, authorized
23 delegate, money transmitter, financial institution, or a
24 person engaged in a trade or business, in its discretion, from
25 instituting contact with, and thereafter communicating with
26 and disclosing customer financial records to appropriate state
27 or local law enforcement agencies if the licensee, authorized
28 delegate, money transmitter, financial institution, or person
29 has information that may be relevant to a possible violation
30 of any criminal statute or to the evasion or attempted evasion
31 of any reporting requirement of this chapter.

32 c. A licensee, authorized delegate, money transmitter,
33 financial institution, person engaged in a trade or business,
34 or any officer, employee, agent, or authorized delegate of any
35 of them, or any public official or governmental employee who

1 keeps or files a record pursuant to this section or who
2 communicates or discloses information or records under
3 paragraph "b", is not liable to its customer, to a state or
4 local agency, or to any person for any loss or damage caused
5 in whole or in part by the making, filing, or governmental use
6 of the report, or any information contained in that report.

7 5. The attorney general or the department of public safety
8 may report any possible violations indicated by analysis of
9 the reports required by this chapter to any appropriate law
10 enforcement agency for use in the proper discharge of its
11 official duties. The attorney general or the department of
12 public safety shall provide copies of the reports required by
13 this chapter to any appropriate prosecutorial or law
14 enforcement agency upon being provided with a written request
15 for records relating to a specific individual or entity and
16 stating that the agency has an articulable suspicion that such
17 individual or entity has committed a felony offense or a
18 violation of this chapter to which the reports are relevant.
19 A person who releases information received pursuant to this
20 subsection except in the proper discharge of the person's
21 official duties is guilty of a serious misdemeanor.

22 6. It shall be unlawful for any person to do any of the
23 following:

24 a. With intent to disguise the fact that money or a
25 payment instrument is the proceeds of criminal conduct, or
26 with intent to promote, manage, establish, carry on, or
27 facilitate the promotion, management, establishment, or
28 carrying on of any criminal conduct, to knowingly furnish or
29 provide to a licensee, authorized delegate, money transmitter,
30 financial institution, person engaged in a trade or business,
31 or any officer, employee, agent or authorized delegate of any
32 of them, or to the attorney general or department of public
33 safety, any false, inaccurate, or incomplete information; or
34 to knowingly conceal a material fact in connection with a
35 transaction for which a report is required to be filed

1 pursuant to this section.

2 b. With the intent to disguise the fact that money or a
3 payment instrument is the proceeds of criminal conduct, or
4 with intent to promote, manage, establish, carry on, or
5 facilitate the promotion, management, establishment, or
6 carrying on of any criminal conduct, or with intent to evade
7 the making or filing of a report required under this chapter,
8 or with intent to cause the making or filing of a report that
9 contains a material omission or misstatement of fact, or with
10 intent to conduct or structure a transaction or series of
11 transactions by or through one or more licensees, authorized
12 delegates, money transmitters, financial institutions, or
13 persons engaged in a trade or business.

14 7. A person who violates subsection 6 is guilty of a class
15 "C" felony and is also subject to a civil penalty of three
16 times the value of the property involved in the transaction,
17 or, if no transaction is involved, five thousand dollars.

18 8. Notwithstanding any other provision of law, each
19 violation of this section constitutes a separate, punishable
20 offense.

21 9. Any report, record, information, analysis, or request
22 obtained by the attorney general or department of public
23 safety pursuant to this chapter is not a public record as
24 defined in chapter 22 and is not subject to disclosure.

25 Sec. 35. NEW SECTION. 529.3 INVESTIGATIONS.

26 1. The attorney general or county attorney may conduct
27 investigations within or outside this state to determine if
28 any licensee, authorized delegate, money transmitter, or
29 person engaged in a trade or business has failed to file a
30 report required by this chapter or has engaged or is engaging
31 in any act, practice, or transaction that constitutes a
32 violation of this chapter.

33 2. Upon presentation of a subpoena from a prosecuting
34 attorney, all licensees, authorized delegates, money
35 transmitters, and financial institutions shall make their

1 books and records available to the attorney general or county
2 attorney or peace officer during normal business hours for
3 inspection and examination in connection with an investigation
4 pursuant to this section.

5 Sec. 36. NEW SECTION. 529.4 UNIFORMITY OF CONSTRUCTION
6 AND APPLICATION.

7 1. The provisions of this chapter shall be liberally
8 construed to effectuate its remedial purposes. Civil remedies
9 under this chapter shall be supplemental and not mutually
10 exclusive. The civil remedies do not preclude and are not
11 precluded by other provisions of law.

12 2. The provisions of this chapter shall be applied and
13 construed to effectuate its general purpose to make uniform
14 the law with respect to the subject of this chapter among
15 states enacting the law and to make the reporting requirements
16 regarding financial transactions under Iowa law uniform with
17 the reporting requirements regarding financial transactions
18 under federal law.

19 3. The attorney general is authorized to enter into
20 reciprocal agreements with the attorney general or chief
21 prosecuting attorney of any state to effectuate the purposes
22 of this chapter.

23 DIVISION V

24 CONFORMING AMENDMENTS

25 Sec. 37. Section 80.39, subsection 1, Code 1995, is
26 amended to read as follows:

27 1. Personal property, except for motor vehicles subject to
28 sale pursuant to section 321.89, and seizable ~~or-forfeitable~~
29 property subject to disposition pursuant to chapter 809, which
30 personal property is found or seized by, turned in to, or
31 otherwise lawfully comes into the possession of the department
32 of public safety and which the department does not own, shall
33 be disposed of pursuant to this section. If by examining the
34 property the owner or lawful custodian of the property is
35 known or can be readily ascertained, the department shall

1 notify the owner or custodian by certified mail directed to
2 the owner's or custodian's last known address, as to the
3 location of the property. If the identity or address of the
4 owner cannot be determined, notice by one publication in a
5 newspaper of general circulation in the area where the
6 property was found is sufficient notice. A published notice
7 may contain multiple items.

8 Sec. 38. Section 123.20, subsection 7, Code 1995, is
9 amended to read as follows:

10 7. To accept intoxicating liquors ordered delivered to the
11 alcoholic beverages division pursuant to chapter 809 809A, and
12 offer for sale and deliver the intoxicating liquors to class
13 "E" liquor control licensees, unless the administrator
14 determines that the intoxicating liquors may be adulterated or
15 contaminated. If the administrator determines that the
16 intoxicating liquors may be adulterated or contaminated, the
17 administrator shall order their destruction.

18 Sec. 39. Section 321.232, subsection 3, Code 1995, is
19 amended to read as follows:

20 3. A radar jamming device may be seized by a peace officer
21 subject to forfeiture as provided by chapter 809 or 809A.

22 Sec. 40. Section 321J.10, subsection 7, Code 1995, is
23 amended to read as follows:

24 7. Specimens obtained pursuant to warrants issued under
25 this section are not subject to disposition under section
26 808.9 or chapter 809 or 809A.

27 Sec. 41. Section 455B.103, subsection 4, paragraph d,
28 subparagraph (2), Code 1995, is amended to read as follows:

29 (2) In a reasonable manner, and any property seized shall
30 be treated in accordance with the provisions of chapters 808,
31 and 809, and 809A.

32 Sec. 42. Section 602.6405, subsection 1, Code 1995, is
33 amended to read as follows:

34 1. Magistrates have jurisdiction of simple misdemeanors,
35 including traffic and ordinance violations, and preliminary

1 hearings, search warrant proceedings, county and municipal
2 infractions, and small claims. Magistrates have jurisdiction
3 to determine the disposition of livestock or another animal,
4 as provided in sections 717.5 and 717B.4, if the magistrate
5 determines the value of the livestock or animal is less than
6 ten thousand dollars. Magistrates have jurisdiction to
7 exercise the powers specified in sections 556F.2 and 556F.12,
8 and to hear complaints or preliminary informations, issue
9 warrants, order arrests, make commitments, and take bail.
10 Magistrates have jurisdiction over violations of section
11 123.49, subsection 2, paragraph "h". Magistrates who are
12 admitted to the practice of law in this state have
13 jurisdiction over all proceedings for the involuntary
14 commitment, treatment, or hospitalization of individuals under
15 chapters 125 and 229, except as otherwise provided under
16 section 229.6A; nonlawyer magistrates have jurisdiction over
17 emergency detention and hospitalization proceedings under
18 sections 125.91 and 229.22. Magistrates have jurisdiction to
19 conduct hearings authorized under section 809.4 and section
20 ~~809.10, subsection 2.~~

21 Sec. 43. Section 809.1, subsection 2, Code 1995, is
22 amended by striking the subsection.

23 Sec. 44. Section 809.17, Code 1995, is amended to read as
24 follows:

25 809.17 PROCEEDS APPLIED TO VARIOUS PROGRAMS.

26 Except as provided in section 809.21, proceeds from the
27 disposal of seized ~~or forfeited~~ property pursuant to this
28 chapter may be transferred in whole or in part to the victim
29 compensation fund created in section 912.14 at the discretion
30 of the recipient agency, political subdivision, or department.

31 Sec. 45. Sections 809.6 through 809.14, Code 1995, are
32 repealed.

33 EXPLANATION

34 New chapter 809A, the Iowa Forfeiture Reform Act, does the
35 following:

1 Provides civil procedures so the state can obtain a
2 personal forfeiture judgment against an offender which can be
3 satisfied from in-state or out-of-state assets.

4 Defines conduct triggering forfeiture to include out-of-
5 state conduct which would be a triggering offense in the state
6 initiating the action and conduct committed in furtherance of
7 a triggering offense.

8 Defines forfeitable property to include: (1) real or
9 personal property furnished or intended to be furnished in
10 exchange for the unlawful conduct, or used, or intended to be
11 used, to facilitate the illegal activity (the Act excludes
12 real property from forfeiture in simple drug possession cases
13 and requires personal property used to facilitate simple
14 possession cases to be forfeited in a civil in personam
15 action); (2) proceeds derived from illegal activity; (3)
16 enterprise interests which are interests affording a source of
17 influence over an enterprise established, controlled, or
18 participated in through illegal activity (e.g., corporate
19 stocks); and (4) substitute assets if the original forfeitable
20 property is subject to an exempt interest or otherwise
21 unavailable. The substitute asset is forfeitable up to the
22 value of the property that was owned or possessed for the
23 purpose of facilitating illegal activity or that is proceeds
24 of illegal activity or for which the wrongdoer is criminally
25 responsible. In addition, a seizure warrant is required to
26 seize a substitute asset.

27 Requires the state as well as the claimant in contested
28 forfeiture cases to meet a preponderance of the evidence
29 standard.

30 Creates presumptions that property is forfeitable if it was
31 acquired during a person's conduct giving rise to forfeiture
32 or within a reasonable time thereafter and there is no other
33 likely source for the property or money or a negotiable
34 instrument found in close proximity to contraband or an
35 instrumentality is proceeds of, or was used or intended to be

1 used to further, conduct giving rise to forfeiture.

2 Exempts an interest if:

3 1. The owner or interest holder:

4 a. Obtained the interest prior to or during the illegal
5 activity without knowledge or reason to know of the illegal
6 activity or its likelihood of occurrence; or

7 b. Obtained the interest prior to or during the illegal
8 activity with knowledge, or reason to know of the offense or
9 its likelihood of occurrence, but took reasonable steps to
10 prevent the offense (e.g., notification of authorities or
11 cancellation of a lease); or

12 c. Purchased the interest in good faith and without
13 knowledge of the unlawful conduct; and

14 2. The owner or interest holder:

15 a. Is not criminally responsible for the wrongdoer's
16 conduct (e.g., not a co-conspirator); and

17 b. Was not in a relationship with the wrongdoer that
18 permitted the wrongdoer to convey the property to a good faith
19 purchaser for value; and

20 c. Had no notice of the seizure or reason to believe the
21 property was forfeitable.

22 The bill also does the following:

23 Allows release of seized property if the state deems
24 retention unnecessary because a case is weak or forfeiture
25 would not serve justice.

26 Allows an owner or interest holder to file a petition with
27 the state requesting recognition of an exempt interest. If
28 the state denies the request, the petitioner has recourse to
29 the courts.

30 Permits interlocutory sale, lease, or operation by interest
31 holders with uncontroverted or presumptively legitimate
32 interest when property will be foreclosed or significantly
33 reduced in value before final judgment. If the property is
34 sold, the proceeds are used to pay sale costs and satisfy
35 exempt interests. Any remaining balance is deposited into an

1 interest-bearing account and becomes the subject of the
2 litigation.

3 Permits the filing of a lien or constructive seizure
4 (posting notice) to establish the state's interest and avoid
5 unnecessarily displacing residents.

6 Requires an adversarial judicial finding of probable cause
7 to evict residents, except in emergencies.

8 Releases property to an owner or interest holder pending
9 final judgment if the state fails to file judicial proceedings
10 within specified time limits, the owner posts a bond or cash
11 equal to the fair market value of the property (the bond or
12 cash is forfeited in lieu of the property), the court finds no
13 probable cause for the forfeiture of the property in an
14 expedited hearing on that issue (the hearing is available upon
15 application by an owner or interest holder).

16 Authorizes states to enter into a custodian agreement with
17 an owner or interest holder to maintain the property pending
18 final judgment.

19 Authorizes the court to create a receivership or appoint a
20 conservator, custodian, or trustee to preserve the property's
21 value.

22 Permits the deposit of seized moneys or negotiable
23 instruments into an interest-bearing account.

24 Allows an interlocutory sale by interest holders with
25 uncontroverted or presumptively legitimate interests to avoid
26 spoilage or waste of perishable assets.

27 Provides the state's title to forfeited property is vested
28 from the time of the commission of the conduct giving rise to
29 the forfeiture. Explicitly excludes exempted property from
30 application of the relation back doctrine.

31 Designates anyone receiving nonexempt property which is
32 subject to forfeiture as a constructive trustee for the
33 benefit of the state.

34 Requires a trustee with notice of the forfeiture action to
35 provide the state with specified information about the person

1 for whose benefit the forfeitable property is held.

2 Authorizes the state, in uncontested cases, to declare the
3 forfeiture of personal property of a value up to \$5,000.

4 Provides probable cause is the state's burden of proof in
5 unopposed cases requiring a judicial order so the state can
6 summarize its evidence.

7 Provides an option that creates independent funding bases
8 for law enforcement, within the state.

9 New chapter 706A, the Ongoing Criminal Conduct Act, does
10 the following:

11 Creates the following five violations, each a type of
12 economic crime or facilitation of economic crime:

13 1. The infiltration of legitimate commerce through
14 investment of illegal proceeds, the control of an enterprise
15 through crime itself (as by an extortionate takeover), and
16 conducting an enterprise through specified unlawful activity.

17 2. The knowing facilitation of a criminal network by
18 engaging in subsidiary crimes, such as obstruction of justice,
19 extortion, facilitation of the network by providing property
20 or services (other than legal services) and fraud.

21 3. Money laundering, by reference to the Iowa Money
22 Laundering Act.

23 4. The commission of specified unlawful activity under
24 circumstances in which the acts are for financial gain.

25 5. The negligent empowerment of specified unlawful
26 activity. The bill provides only civil remedies for this
27 violation. It fixes limited financial responsibility in the
28 nature of a tort remedy for negligently providing property or
29 services that facilitate specified unlawful activity.

30 Creates special civil remedies for violations, including
31 private treble damages actions, actions by the state to obtain
32 damage on behalf of the citizens of the state, and injunctive
33 relief.

34 Defines the scope of civil liability to assure protection
35 of legal entities and to clarify the measure of damages and

1 statutory liability for the acts of joint ventures and other
2 persons acting in concert.

3 New chapter 706B, the Iowa Money Laundering Act, does the
4 following:

5 Guides the application of financial remedies and allows
6 reciprocal agreements encouraging interstate cooperation and
7 uniformity through special purpose and uniformity sections.

8 Creates the following four violations:

9 1. Knowingly dealing in the proceeds of unlawful activity.

10 2. Making property available to another for the purpose of
11 furthering specified unlawful activity.

12 3. Knowingly conducting transactions that conceal or
13 disguise illegal proceeds or avoid transaction reporting
14 requirements.

15 4. Engaging in money laundering as a business (this
16 violation carries with it an enhanced penalty).

17 Imposes a civil treble damages sanction in addition to
18 criminal penalties to deter individuals who provide services
19 to the drug industry for profit.

20 Provides that money laundering is conduct giving rise to
21 forfeiture, and integrates the chapter with new chapter 809A.

22 New chapter 529, the Iowa Financial Transaction Reporting
23 Act, does the following:

24 Parallels current federal transaction reporting
25 requirements for who must make reports, the contents of the
26 reports, and the circumstances that trigger the obligation to
27 report.

28 Designs the reports to provide data from which law
29 enforcement may make general resource decisions; improve
30 geographic and business sector targeting; focus on specific
31 individuals and businesses; and assist in the proof of cases
32 under investigation. The reports under chapter 529 are:

33 1. Currency and Foreign Transactions Reporting Act
34 Reports. These requirements apply only to money transmitters
35 and only impose a duty to report if the transmitter is

1 required to file under 31 U.S.C. § 5311-26 and the relevant
2 federal regulations.

3 2. Reports of Receipt of Cash in a Trade or Business. All
4 persons (not just money transmitters) engaged in a trade or
5 business who must file certain reports pursuant to federal law
6 and regulation must file a report of transactions relating to
7 cash received. The report is to contain the information
8 contained in the federal IRS form 8300 and required by federal
9 regulations.

10 3. \$3,000 Logs. All money transmitters who are required
11 by federal law to keep so-called "\$3,000 logs" must also keep
12 them for the state department of public safety as well. The
13 logs must be available for inspection at any time.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

**SENATE FILE 482
FISCAL NOTE**

The estimate for Senate File 482 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 482 adds Chapter 809A, the Iowa Forfeiture Reform Act, to the Code of Iowa. The Bill provides civil procedures so the State can obtain a personal forfeiture judgement against an offender which can be satisfied from in-state or out-of-state assets, defines conduct triggering forfeiture to include out-of-state conduct, defines forfeitable property, requires the State as well as the claimant in contested forfeiture cases to meet the preponderance of the evidence, creates presumptions relating to property forfeiture, creates five violations, and specifies other conditions relating to forfeiture proceedings.

Assumptions:

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
3. Four class "B" convictions may occur each year as a result of unlawful activities relating to enterprises and criminal networks.
4. Four class "C" convictions may occur each year as a result of knowingly transporting, making property available, and conducting certain transactions on properties for money laundering activities. Each conviction may include a fine of not more than \$10,000 or twice the value of the property involved.
5. Four class "D" convictions may occur each year as a result of engaging in the business of conducting, directing, or facilitating transactions on properties for money laundering activities. Each conviction may include a fine of not more than \$5,000 or twice the value of the property involved.
6. Four class "C" convictions may occur each year as a result of certain criminal conduct activities as specified under Section 34.7 of the Bill. Each conviction may include a civil penalty three times the value of property involved.

Correctional Impact:

A total of 16 convictions may occur each year for unlawful activities relating to enterprises, criminal networks, money laundering activities, and certain criminal conduct activities due to the adoption of SF 482, resulting in the following correctional impact on prisons and Community-Based Corrections populations:

-2-

Increase in Admissions to Prison

| <u>Prison</u> | <u>FY 1996</u> | <u>FY 1997</u> | <u>FY 2000</u> |
|---------------------|----------------|----------------|----------------|
| Admissions | 5 | 7 | 7 |
| Population Increase | 5 | 10 | 22 |

Increase in Admissions: Community-Based Corrections

| <u>Probation/Parole</u> | <u>FY 1996</u> | <u>FY 1997</u> | <u>FY 2000</u> |
|-------------------------|----------------|----------------|----------------|
| Admissions | 3 | 5 | 5 |

Fiscal Effect:

The estimated fiscal effect to the State General Fund for the Department of Corrections includes:

| | <u>FY 1996</u> | <u>FY 1997</u> | <u>FY 2000</u> |
|-----------------------------|------------------|------------------|------------------|
| Prison | \$ 20,000 | \$ 28,000 | \$ 28,000 |
| Community-Based Corrections | | | |
| Probation/Parole | 1,900 | 3,200 | 3,200 |
| Total | \$ 21,900 | \$ 31,200 | \$ 31,200 |

Assumptions:

The average marginal cost per year for a prison inmate is estimated to be \$4,000. The FY 1994 average daily costs for an inmate on probation/parole in Community-Based Corrections is \$1.76.

The cost to the General Fund for each case tried at the District Court level is estimated to be \$3,899 and \$44,440 at the Appellate Court level.

There is not sufficient information available to determine the amount of revenues from fines and civil penalties which may be generated as a result of the adoption of SF 482.

Sources: Criminal Juvenile Justice Planning
 Department of Corrections
 Judicial Department

(LSB 2643ss, LAM)

FILED APRIL 24, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 482

S-3488

1 Amend Senate File 482 as follows:

2 1. Page 54, by inserting after line 21 the
3 following:

4 "Sec. ____ . Section 321J.4B, subsection 12, as
5 enacted by 1995 Iowa Acts, Senate File 446, is amended
6 to read as follows:

7 12. Operating a motor vehicle on a street or
8 highway in this state in violation of an order of
9 impoundment or immobilization is a serious
10 misdemeanor. A motor vehicle which is subject to an
11 order of impoundment or immobilization that is
12 operated on a street or highway in this state during
13 ~~the period of impoundment or immobilization in~~
14 violation of the order shall be seized and forfeited
15 to the state under chapter 809."

16 2. Page 55, by inserting after line 32 the
17 following:

18 "DIVISION VI
19 ASSAULTS

20 Sec. ____ . Section 708.2, subsection 2, Code 1995,
21 is amended to read as follows:

22 2. A person who commits an assault, as defined in
23 ~~section 708.1, without the intent to inflict a serious~~
24 ~~injury upon another,~~ and who causes bodily injury or
25 ~~disabling~~ mental illness, is guilty of a serious
26 misdemeanor.

27 Sec. ____ . Section 708.2A, subsection 2, paragraph
28 b, Code 1995, is amended to read as follows:

29 b. A serious misdemeanor, if the domestic abuse
30 ~~assault is committed without the intent to inflict a~~
31 ~~serious injury upon another,~~ and the assault causes
32 bodily injury or ~~disabling~~ mental illness.

33 Sec. ____ . Section 708.2C, subsection 3, Code 1995,
34 is amended to read as follows:

35 3. A person who commits an assault in violation of
36 ~~individual rights without the intent to inflict a~~
37 ~~serious injury upon another,~~ and who causes bodily
38 injury or ~~disabling~~ mental illness, is guilty of an
39 aggravated misdemeanor.

40 Sec. ____ . NEW SECTION. 708.4A INTENTIONAL
41 ASSAULT CAUSING INJURY.

42 Any person who does an act which is not justified
43 and which is intended to cause serious injury to
44 another, but which causes bodily injury or mental
45 illness which is not a serious injury, commits a class
46 "D" felony."

47 3. By numbering, renumbering, and changing
48 internal references as necessary.

BY COMMITTEE ON JUDICIARY

RANDAL J. GIANNETTO, Chairperson

S-3488 FILED APRIL 19, 1995

Adopted 4/24/95 (p. 1356)

SENATE FILE 482

S-3505

- 1 Amend Senate File 482 as follows:
2 1. Page 50, by inserting after line 4 the
3 following:
4 "____. A person receiving more than ten thousand
5 dollars in cash in any single transaction, which is
6 not otherwise subject to a reporting requirement,
7 shall complete and forward to the department of public
8 safety within ten days of the transaction a report of
9 private currency transaction. The report shall be on
10 a form prescribed by the department and shall include
11 the date of the transaction and the name and address
12 of the person providing the cash. A person who
13 knowingly violates this subsection commits a serious
14 misdemeanor."
15 2. By renumbering and correcting internal
16 references as necessary.

By RANDAL J. GIANNETTO
TONY BISIGNANO

S-3505 FILED APRIL 20, 1995

Adopted 4/24/95 (p. 1356)

SENATE FILE 482 .

S-3513

- 1 Amend Senate File 482 as follows:
2 1. Page 30, by striking lines 26 through 31.
By RANDAL J. GIANNETTO

S-3513 FILED APRIL 20, 1995

Adopted 4/24/95 (p. 1356)

DIVISION I

IOWA FORFEITURE REFORM ACT

Section 1. NEW SECTION. 809A.1 DEFINITIONS.

As used in this chapter:

1. "Conveyance" includes any vehicle, trailer, vessel, aircraft, or other means of transportation.

2. "Interest holder" means a secured party within the meaning of chapter 554, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest is perfected against a good faith purchaser for value. A person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an interest holder.

3. "Omission" means the failure to perform an act that is required by law.

4. "Owner" means a person, other than an interest holder, who has an interest in property. A person who holds property for the benefit of or for an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an owner.

5. "Proceeds" means property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

6. "Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible, or intangible.

7. "Prosecuting attorney" means an attorney who is

1 authorized by law to appear on the behalf of the state in a
2 criminal case, and includes the attorney general, an assistant
3 attorney general, the county attorney, an assistant county
4 attorney, or a special or substitute prosecutor whose
5 appearance is approved by a court having jurisdiction to try a
6 defendant for the offense with which the defendant is charged.

7 8. "Regulated interest holder" means an interest holder
8 that is a business authorized to do business in this state and
9 is under the jurisdiction of any state or federal agency
10 regulating banking, insurance, real estate, or securities.

11 9. "Seizing agency" means a department or agency of this
12 state or its political subdivisions that regularly employs law
13 enforcement officers, and that employs the law enforcement
14 officer who seizes property for forfeiture, or such other
15 agency as the department or agency may designate by its chief
16 executive officer or the officer's designee.

17 10. "Seizure for forfeiture" means seizure of property by
18 a law enforcement officer, including a constructive seizure,
19 accompanied by an assertion by the seizing agency or by a
20 prosecuting attorney that the property is seized for
21 forfeiture, in accordance with section 809A.6.

22 Sec. 2. NEW SECTION. 809A.2 JURISDICTION AND VENUE.

23 1. The district court has jurisdiction under this chapter
24 over:

25 a. All interests in property within this state at the time
26 a forfeiture action is filed.

27 b. The interest in the property of an owner or interest
28 holder who is subject to personal jurisdiction in this state.

29 2. In addition to the venue provided for under chapter 803
30 or any other provision of law, a proceeding for forfeiture
31 under this chapter may be maintained in the county in which
32 any part of the property is found or in the county in which a
33 civil or criminal action could be maintained against an owner
34 or interest holder for the conduct alleged to give rise to the
35 forfeiture.

1 Sec. 3. NEW SECTION. 809A.3 CONDUCT GIVING RISE TO
2 FORFEITURE.

3 The following conduct may give rise to forfeiture:

4 1. An act or omission which is a public offense and which
5 is a serious or aggravated misdemeanor or felony.

6 2. An act or omission occurring outside of this state,
7 that would be punishable by confinement of one year or more in
8 the place of occurrence and would be a serious or aggravated
9 misdemeanor or felony if the act or omission occurred in this
10 state.

11 3. An act or omission committed in furtherance of any act
12 or omission described in subsection 1, which is a serious or
13 aggravated misdemeanor or felony including any inchoate or
14 preparatory offense.

15 4. A violation of section 321J.4B, subsection 12, if
16 enacted by Senate File 446.

17 5. Notwithstanding subsections 1 through 4, violations of
18 chapter 321 or 321J, except section 321J.4B, subsection 12, if
19 enacted by Senate File 446, shall not be considered conduct
20 giving rise to forfeiture.

21 Sec. 4. NEW SECTION. 809A.4 PROPERTY SUBJECT TO
22 FORFEITURE.

23 The following are subject to forfeiture:

24 1. All controlled substances, raw materials, controlled
25 substance analogs, counterfeit controlled substances,
26 imitation controlled substances, or precursor substances, that
27 have been manufactured, distributed, dispensed, possessed, or
28 acquired in violation of the laws of this state.

29 2. a. All property, except as provided in paragraph "b",
30 including the whole of any lot or tract of land and any
31 appurtenances or improvements to real property, including
32 homesteads that are otherwise exempt from judicial sale
33 pursuant to section 561.16, that is either:

34 (1) Furnished or intended to be furnished by a person in
35 an exchange that constitutes conduct giving rise to

1 forfeiture.

2 (2) Used or intended to be used in any manner or part to
3 facilitate conduct giving rise to forfeiture.

4 b. If the only conduct giving rise to forfeiture is a
5 violation of section 124.401, subsection 3, real property is
6 not subject to forfeiture and other property subject to
7 forfeiture pursuant to paragraph "a", subparagraph (2), may be
8 forfeited only pursuant to section 809A.14.

9 3. All proceeds of any conduct giving rise to forfeiture.

10 4. All weapons possessed, used, or available for use in
11 any manner to facilitate conduct giving rise to forfeiture.

12 5. Any interest or security in, claim against, or property
13 or contractual right of any kind affording a source of control
14 over any enterprise that a person has established, operated,
15 controlled, or conducted through, or participated in the
16 conduct, giving rise to forfeiture.

17 6. a. Any property of a person up to the value of
18 property of either of the following:

19 (1) Described in subsection 2 that the person owned or
20 possessed for the purpose of a use described in subsection 2.

21 (2) Described in subsection 3 and is proceeds of conduct
22 engaged in by the person or for which the person is criminally
23 responsible.

24 b. Property described in this subsection may be seized for
25 forfeiture pursuant to a constructive seizure or an actual
26 seizure pursuant to section 809A.6. Actual seizure may only
27 be done pursuant to a seizure warrant issued on a showing, in
28 addition to the showing of probable cause for the forfeiture
29 of the subject property, that the subject property is not
30 available for seizure for reasons described in section
31 809A.15, subsection 1, and that the value of the property to
32 be seized is not greater than the total value of the subject
33 property, or pursuant to a constructive seizure. If property
34 of a defendant up to the total value of all interests in the
35 subject property is not seized prior to final judgment in an

1 action under this section, the remaining balance shall be
2 ordered forfeited as a personal judgment against the
3 defendant.

4 7. As used in this section, "facilitate" means to have a
5 substantial connection between the property and the conduct
6 giving rise to forfeiture.

7 Sec. 5. NEW SECTION. 809A.5 EXEMPTIONS.

8 1. All property, including all interests in property,
9 described in section 809A.4 is subject to forfeiture, except
10 that property is exempt from forfeiture if either of the
11 following occurs:

12 a. The owner or interest holder acquired the property
13 before or during the conduct giving rise to its forfeiture,
14 and did not know and could not reasonably have known of the
15 conduct or that the conduct was likely to occur, or acted
16 reasonably to prevent the conduct giving rise to forfeiture.

17 b. The owner or interest holder acquired the property,
18 including acquisition of proceeds of conduct giving rise to
19 forfeiture, after the conduct giving rise to its forfeiture
20 and acquired the property in good faith, for value and did not
21 knowingly take part in an illegal transaction.

22 2. Notwithstanding subsection 1, property is not exempt
23 from forfeiture, even though the owner or interest holder
24 lacked knowledge or reason to know that the conduct giving
25 rise to its forfeiture had occurred or was likely to occur, if
26 any of the following exists:

27 a. The person whose conduct gave rise to its forfeiture
28 had the authority to convey the property of the person
29 claiming the exemption to a good faith purchaser for value at
30 the time of the conduct.

31 b. The owner or interest holder is criminally responsible
32 for the conduct giving rise to its forfeiture, whether or not
33 the owner or interest holder is prosecuted or convicted.

34 c. The owner or interest holder acquired the property with
35 notice of its actual or constructive seizure for forfeiture

1 under section 809A.6, or with reason to believe that it was
2 subject to forfeiture.

3 Sec. 6. NEW SECTION. 809A.6 SEIZURE OF PROPERTY.

4 1. A peace officer may seize property for forfeiture upon
5 process issued by any district judge, district associate
6 judge, or magistrate. The court may issue a seizure warrant
7 on an affidavit under oath demonstrating that probable cause
8 exists for its forfeiture or that the property has been the
9 subject of a previous final judgment of forfeiture in the
10 courts of any state or of the United States. The court may
11 order that the property be seized on such terms and conditions
12 as are reasonable in the discretion of the court. The order
13 may be made on or in connection with a search warrant.

14 2. Peace officers may seize property for forfeiture
15 without process on probable cause to believe that the property
16 is subject to forfeiture under this chapter and if exigent
17 circumstances exist or if the property has already been seized
18 for a purpose other than forfeiture.

19 3. The seizure of inhabited residential real property for
20 forfeiture which is accompanied by removing or excluding its
21 residents shall be done pursuant to a preseizure adversarial
22 judicial determination of probable cause, except that this
23 determination may be made ex parte if the prosecuting attorney
24 has demonstrated exigent circumstances.

25 4. Property may be seized constructively by:

26 a. Posting notice of seizure for forfeiture or notice of
27 pending forfeiture on the property.

28 b. Giving notice pursuant to section 809A.8.

29 c. Filing or recording in the public records relating to
30 that type of property notice of seizure for forfeiture, notice
31 of pending forfeiture, a forfeiture lien, or a notice of lis
32 pendens.

33 Filings or recordings made pursuant to this subsection are
34 not subject to a filing fee or other charge.

35 5. The seizing agency, or the prosecuting attorney, shall

1 make a reasonable effort to provide notice of the seizure to
2 the person from whose possession or control the property was
3 seized and to any person who has a security interest in the
4 property. If no person is in possession or control of the
5 property, the seizing agency may attach the notice to the
6 property or to the place of its seizure or may make a
7 reasonable effort to deliver it to the owner of the property.
8 The notice shall contain a general description of the property
9 seized, the date and place of seizure, the name of the seizing
10 agency, and the address and telephone number of the seizing
11 officer or other person or agency from whom information about
12 the seizure may be obtained.

13 6. A person who acts in good faith and in a reasonable
14 manner to comply with an order of the court or a request of a
15 law enforcement officer is not liable to any person for acts
16 done in reasonable compliance with the order or request. In
17 addition, an inference of guilt shall not be drawn from the
18 fact that a person refuses a law enforcement officer's request
19 to deliver the property.

20 7. A possessory lien of a person from whose possession
21 property is seized is not affected by the seizure.

22 Sec. 7. NEW SECTION. 809A.7 PROPERTY MANAGEMENT AND
23 PRESERVATION.

24 1. Property seized for forfeiture under this chapter is
25 not subject to alienation, conveyance, sequestration,
26 attachment, or an application for return of seized property
27 under chapter 809.

28 2. The seizing agency or the prosecuting attorney may
29 authorize the release of the seizure for forfeiture on the
30 property if forfeiture or retention of actual custody is
31 unnecessary.

32 3. The prosecuting attorney may discontinue forfeiture
33 proceedings and transfer the action to another state or
34 federal agency or prosecuting attorney who has initiated
35 forfeiture proceedings.

1 4. Property seized for forfeiture under this chapter is
2 deemed to be in the custody of the district court subject only
3 to the orders and decrees of the court having jurisdiction
4 over the forfeiture proceedings and to the acts of the seizing
5 agency or the prosecuting attorney pursuant to this chapter.

6 5. An owner of property seized for forfeiture under this
7 chapter may obtain release of the property by posting with the
8 prosecuting attorney a surety bond or cash in an amount equal
9 to the full fair market value of the property as determined by
10 the prosecuting attorney. The state may refuse to release the
11 property if any of the following apply:

12 a. The bond tendered is inadequate.

13 b. The property is retained as contraband or as evidence.

14 c. The property is particularly altered or designed for
15 use in conduct giving rise to forfeiture.

16 If a surety bond or cash is posted and the property is
17 forfeited, the court shall forfeit the surety bond or cash in
18 lieu of the property.

19 6. If property is seized for forfeiture under this
20 chapter, the prosecuting attorney, subject to any need to
21 retain the property as evidence, may do any of the following:

22 a. Remove the property to an appropriate place designated
23 by the district court.

24 b. Place the property under constructive seizure.

25 c. Remove the property to a storage area for safekeeping
26 or, if the property is a negotiable instrument or money,
27 deposit it in an interest-bearing account.

28 d. Provide for another agency or custodian, including an
29 owner, secured party, mortgagee, or lienholder, to take
30 custody of the property and service, maintain, and operate it
31 as reasonably necessary to maintain its value, in any
32 appropriate location within the jurisdiction of the court.

33 e. Require the seizing agency to take custody of the
34 property and remove it to an appropriate location for
35 disposition in accordance with law.

1 7. As soon as practicable after seizure for forfeiture,
2 the seizing agency shall conduct a written inventory and
3 estimate the value of the property seized.

4 8. The court may order property which has been seized for
5 forfeiture sold, leased, rented, or operated to satisfy a
6 specified interest of any interest holder, or to preserve the
7 interests of any party on motion of such party. The court may
8 enter orders under this subsection after notice to persons
9 known to have an interest in the property, and an opportunity
10 for a hearing, if either of the following exist:

11 a. The interest holder has timely filed a proper claim and
12 is a regulated interest holder.

13 b. The interest holder has an interest which the
14 prosecuting attorney has stipulated is exempt from forfeiture.

15 9. A sale may be ordered under subsection 8 if the
16 property is liable to perish, to waste, or to be foreclosed
17 upon or significantly reduced in value, or if the expenses of
18 maintaining the property are disproportionate to its value. A
19 third party designated by the court shall dispose of the
20 property by commercially reasonable public sale and distribute
21 the proceeds in the following order of priority:

22 a. For the payment of reasonable expenses incurred in
23 connection with the sale or disposal.

24 b. For the satisfaction of exempt interests in the order
25 of their priority.

26 c. Any balance of the proceeds shall be preserved in the
27 actual or constructive custody of the court, in an interest-
28 bearing account, subject to the proceedings under this
29 chapter.

30 Sec. 8. NEW SECTION. 809A.8 COMMENCEMENT OF FORFEITURE
31 PROCEEDINGS -- PROPERTY RELEASE REQUIREMENTS.

32 1. Forfeiture proceedings shall be commenced as follows:

33 a. Property seized for forfeiture shall be released on the
34 request of an owner or interest holder to the owner's or
35 interest holder's custody, as custodian for the court, pending

1 further proceedings pursuant to this chapter if the
2 prosecuting attorney fails to do either of the following:

3 (1) File a notice of pending forfeiture against the
4 property within ninety days after seizure.

5 (2) File a judicial forfeiture proceeding within ninety
6 days after notice of pending forfeiture of property upon which
7 a proper claim has been timely filed pursuant to section
8 809A.11.

9 b. Within thirty days after the effective date of the
10 notice of pending forfeiture, an owner of or interest holder
11 in the property may elect to file with the prosecuting
12 attorney either of the following:

13 (1) A claim pursuant to section 809A.11.

14 (2) A petition for recognition of exemption pursuant to
15 section 809A.11, except that no petition may be filed after
16 the state commences a court action.

17 c. An extension of time for the filing of a claim shall
18 not be granted.

19 d. If a petition is timely filed, the prosecuting attorney
20 may delay filing a judicial forfeiture proceeding for one
21 hundred eighty days after the notice of pending forfeiture,
22 and the following procedures shall apply:

23 (1) The prosecuting attorney shall provide the seizing
24 agency and the petitioning party with a written recognition of
25 exemption and statement of nonexempt interests relating to any
26 or all interests in the property in response to each
27 petitioning party as follows:

28 (a) Within sixty days after the effective date of the
29 notice of pending forfeiture if the petitioner is a regulated
30 interest holder. The recognition of exemption shall recognize
31 the interest of the petitioner to the extent of documented
32 outstanding principal plus interest at the contract rate until
33 paid.

34 (b) Within one hundred twenty days after the effective
35 date of the notice of pending forfeiture for all other

1 petitioners.

2 (2) An owner or interest holder in any property declared
3 nonexempt may file a claim pursuant to section 809A.11 within
4 thirty days after the effective date of the notice of the
5 recognition of exemption and statement of nonexempt interest.

6 (3) If a petitioning party does not timely file a proper
7 claim under paragraph "b", the recognition of exemption and
8 statement of nonexempt interests becomes final, and the
9 prosecuting attorney shall proceed as provided in sections
10 809A.16 and 809A.17.

11 (4) The prosecuting attorney may elect to proceed under
12 this section for judicial forfeiture at any time.

13 (5) If a judicial forfeiture proceeding follows the
14 application of procedures in this paragraph, the following
15 apply:

16 (a) A duplicate or repetitive notice is not required. If
17 a proper claim has been timely filed pursuant to subparagraph
18 (2), the claim shall be determined in a judicial forfeiture
19 proceeding after the commencement of such a proceeding under
20 sections 809A.13, 809A.14, and 809A.15.

21 (b) The proposed recognition of exemption and statement of
22 nonexempt interest responsive to all petitioning parties who
23 subsequently filed claims are void and are regarded as
24 rejected offers to compromise.

25 e. If a proper petition for recognition of exemption or
26 proper claim is not timely filed, the prosecuting attorney
27 shall proceed as provided in sections 809A.16 and 809A.17.

28 2. a. Notice of pending forfeiture, service of an in rem
29 complaint or notice of a recognition of exemption and
30 statement of nonexempt interests required under the chapter,
31 shall be given in accordance with one of the following:

32 (1) If the owner's or interest holder's name and current
33 address are known, by either personal service by any person
34 qualified to serve process or by any law enforcement officer
35 or by mailing a copy of the notice by restricted certified

1 mail to that address.

2 (2) If the owner's or interest holder's name and address
3 are required by law to be on record with the county recorder,
4 secretary of state, the motor vehicle division of the state
5 department of transportation, or another state or federal
6 agency to perfect an interest in the property, and the owner's
7 or interest holder's current address is not known, by mailing
8 a copy of the notice by restricted certified mail to any
9 address of record with any of the described agencies.

10 (3) If the owner's or interest holder's address is not
11 known and is not on record as provided in subsection 2,
12 paragraph "a", subparagraph (2), or the owner or interest
13 holder's interest is not known, by publication in one issue of
14 a newspaper of general circulation in the county in which the
15 seizure occurred.

16 b. Notice is effective upon the earlier of personal
17 service, publication, or the mailing of a written notice,
18 except that notice of pending forfeiture of real property is
19 not effective until it is recorded. Notice of pending
20 forfeiture shall include a description of the property, the
21 date and place of seizure, the conduct giving rise to
22 forfeiture or the violation of law alleged, and a summary of
23 procedures and procedural rights applicable to the forfeiture
24 action.

25 Sec. 9. NEW SECTION. 809A.9 LIENS.

26 1. The prosecuting attorney may file, without a filing
27 fee, a lien for the forfeiture of property if any of the
28 following apply:

29 a. Upon the initiation of any civil or criminal proceeding
30 relating to conduct giving rise to forfeiture under this
31 chapter.

32 b. Upon seizure for forfeiture.

33 c. In connection with a proceeding or seizure for
34 forfeiture in any other state under a state or federal statute
35 substantially similar to the relevant provisions of this

1 chapter. The filing constitutes notice to any person claiming
2 an interest in the seized property or in property owned by the
3 named person.

4 2. The lienor, as soon as practical after filing a lien,
5 shall furnish to any person named in the lien a notice of the
6 filing of the lien. Failure to furnish notice under this
7 subsection shall not invalidate or otherwise affect the lien.

8 3. The lien notice shall set forth all of the following:

9 a. The name of the person and, in the discretion of the
10 lienor, any aliases, or the name of any corporation,
11 partnership, trust, or other entity, including nominees, that
12 are owned entirely or in part, or controlled by the person.

13 b. The description of the seized property or the criminal
14 or civil proceeding that has been brought relating to conduct
15 giving rise to forfeiture under the chapter.

16 c. The amount claimed by the lienor.

17 d. The name of the district court where the proceeding or
18 action has been brought.

19 e. The case number of the proceeding or action if known at
20 the time of the filing of the lien.

21 4. The notice of forfeiture lien shall be filed in
22 accordance with the provisions of the laws of this state
23 relating to the type of property that is subject to the lien.
24 The validity and priority of the forfeiture lien shall be
25 determined in accordance with applicable law pertaining to
26 liens.

27 5. A lien filed pursuant to this section applies to the
28 described property or to one named person, any aliases,
29 fictitious names, or other names, including the names of any
30 corporation, partnership, trust, or other entity, owned
31 entirely or in part, or controlled by the named person, and
32 any interest in real property owned or controlled by the named
33 person. A separate forfeiture lien shall be filed for each
34 named person.

35 6. The lien notice creates, upon filing, a lien in favor

1 of the lienor as it relates to the property or the named
2 person or related entities. The lien secures the amount of
3 potential liability for civil judgment, and, if applicable,
4 the fair market value of property relating to all proceedings
5 under this chapter enforcing the lien.

6 7. The lienor may amend or release, in whole or in part, a
7 lien filed under this section at any time by filing, without a
8 filing fee, an amended lien.

9 8. Upon entry of judgment in its favor, the state may
10 proceed to execute on the lien as provided by law.

11 Sec. 10. NEW SECTION. 809A.10 TRUSTEES.

12 1. Except as provided in subsection 2, a trustee,
13 constructive or otherwise, who has notice that a notice of
14 forfeiture lien, or a notice of pending forfeiture, or a civil
15 forfeiture proceeding has been filed against the property or
16 against any person or entity for whom the person holds title
17 or appears as record owner, shall furnish within fifteen days,
18 to the seizing agency, or the prosecuting attorney all of the
19 following:

20 a. The name and address of each person or entity for whom
21 the property is held.

22 b. The description of all other property whose legal title
23 is held for the benefit of the named person.

24 c. A copy of the applicable trust agreement or other
25 instrument, if any, under which the trustee or other person
26 holds legal title or appears as record owner of the property.

27 2. Subsection 1 is inapplicable if any of the following
28 applies:

29 a. A trustee is acting under a recorded subdivision trust
30 agreement or a recorded deed of trust.

31 b. All of the information is of record in the public
32 records giving notice of liens on that type of property.

33 3. A trustee with notice who knowingly fails to comply
34 with the provisions of this section commits a class "D"
35 felony, and shall be fined not less than ten thousand dollars

1 per day for each day of noncompliance.

2 4. A trustee with notice who fails to comply with
3 subsection 1 is subject to a civil penalty of three hundred
4 dollars for each day of noncompliance. The court shall enter
5 judgment ordering payment of three hundred dollars for each
6 day of noncompliance from the effective date of the notice
7 until the required information is furnished or the state
8 executes its judgment lien under this section.

9 5. To the extent permitted by the Constitution of the
10 United States and the Constitution of the State of Iowa, the
11 duty to comply with subsection 1 shall not be excused by any
12 privilege or provision of law of this state or any other state
13 or country which authorizes or directs that testimony or
14 records required to be furnished pursuant to subsection 1 are
15 privileged or confidential or otherwise may not be disclosed.

16 6. A trustee who furnishes information pursuant to
17 subsection 1 is immune from civil liability for the release of
18 information.

19 7. An employee of the seizing agency or the prosecuting
20 attorney who releases the information obtained pursuant to
21 subsection 1, except in the proper discharge of official
22 duties, commits a serious misdemeanor.

23 8. If any information furnished pursuant to subsection 1
24 is offered in evidence, the court may seal that portion of the
25 record or may order that the information be disclosed in a
26 designated way.

27 9. A judgment or an order of payment entered pursuant to
28 this section becomes a judgment lien against the property
29 alleged to be subject to forfeiture.

30 Sec. 11. NEW SECTION. 809A.11 CLAIMS -- PETITIONS FOR
31 RECOGNITION OF EXEMPTION.

32 1. Only an owner of or interest holder in property seized
33 for forfeiture may file a claim, and shall do so in the manner
34 provided in this section. The claim shall be mailed to the
35 seizing agency and to the prosecuting attorney by restricted

1 certified mail within thirty days after the effective date of
2 notice of pending forfeiture. An extension of time for the
3 filing of a claim shall not be granted.

4 2. The prosecuting attorney shall make an opportunity to
5 file a petition for recognition of exemption available by so
6 indicating in the notice of pending forfeiture described in
7 section 809A.8, subsection 2.

8 3. The claim or petition and all supporting documents
9 shall be in affidavit form, signed by the claimant under oath,
10 and sworn to by the affiant before one who has authority to
11 administer the oath, under penalty of perjury and shall set
12 forth all of the following:

13 a. The caption of the proceedings and identifying number,
14 if any, as set forth on the notice of pending forfeiture or
15 complaint, the name of the claimant or petitioner, and the
16 name of the prosecuting attorney who authorized the notice of
17 pending forfeiture or complaint.

18 b. The address where the claimant or petitioner will
19 accept mail.

20 c. The nature and extent of the claimant's or petitioner's
21 interest in the property.

22 d. The date, the identity of the transferor, and the
23 circumstances of the claimant's or petitioner's acquisition of
24 the interest in the property.

25 e. The specific provision of law relied on in asserting
26 that the property is not subject to forfeiture.

27 f. All essential facts supporting each assertion.

28 g. The specific relief sought.

29 Sec. 12. NEW SECTION. 809A.12 JUDICIAL PROCEEDINGS
30 GENERALLY.

31 1. A judicial forfeiture proceeding under this chapter is
32 subject to the provisions of this section.

33 2. The court, before or after the filing of a notice of
34 pending forfeiture or complaint and on application of the
35 prosecuting attorney, may do any of the following:

- 1 a. Enter a restraining order or injunction.
- 2 b. Require the execution of satisfactory performance
- 3 bonds.
- 4 c. Create receiverships.
- 5 d. Appoint conservators, custodians, appraisers,
- 6 accountants, or trustees.
- 7 e. Take any other action to seize, secure, maintain, or
- 8 preserve the availability of property subject to forfeiture
- 9 under this chapter, including a writ of attachment or a
- 10 warrant for its seizure.
- 11 3. The court, after five days' notice to the prosecuting
- 12 attorney, may issue an order to show cause to the seizing
- 13 agency, for a hearing on the sole issue of whether probable
- 14 cause for forfeiture of the property then exists if all of the
- 15 following exist:
 - 16 a. Property is seized for forfeiture or a forfeiture lien
 - 17 is filed without a previous judicial determination of probable
 - 18 cause, order of forfeiture, or a hearing under section
 - 19 809A.14, subsection 4.
 - 20 b. An owner of or interest holder in the property files an
 - 21 application for a hearing within ten days after notice of its
 - 22 seizure for forfeiture or lien, or actual knowledge of its
 - 23 seizure, whichever is earlier.
 - 24 c. The owner of or interest holder in the property
 - 25 complies with the requirements for claims or petitions in
 - 26 section 809A.11.
 - 27 The hearing shall be held within thirty days of the order
 - 28 to show cause unless continued for good cause on motion of
 - 29 either party.
- 30 4. If the court finds in a hearing under subsection 3 that
- 31 no probable cause exists for forfeiture of the property, or if
- 32 the state elects not to contest the issue, the property shall
- 33 be released to the custody of the applicant, as custodian for
- 34 the court, or from the lien pending the outcome of a judicial
- 35 proceeding pursuant to this chapter. If the court finds that

1 probable cause for the forfeiture of the property exists, the
2 court shall not order the property released.

3 5. All applications filed within the ten-day period
4 prescribed by subsection 3 shall be consolidated for a single
5 hearing relating to each applicant's interest in the property
6 seized for forfeiture.

7 6. A defendant convicted in any criminal proceeding is
8 precluded from later denying the essential allegations of the
9 criminal offense of which the defendant was convicted in any
10 proceeding pursuant to this section. For the purposes of this
11 section, a conviction results from a verdict or a plea of
12 guilty. A defendant whose conviction is overturned on appeal
13 may file a motion to correct, vacate, or modify a judgment of
14 forfeiture under this subsection.

15 7. In any proceeding under this chapter, if a claim is
16 based on an exemption provided for in this chapter, the burden
17 of proving the existence of the exemption is on the claimant,
18 and it is not necessary for the state to negate the exemption
19 in any application or complaint.

20 8. In hearings and determinations pursuant to this
21 section, the court may receive and consider, in making any
22 determination of probable cause, all evidence admissible in
23 determining probable cause at a preliminary hearing or by a
24 judge pursuant to chapter 808 together with inferences
25 therefrom.

26 9. The fact that money or a negotiable instrument was
27 found in close proximity to any contraband or an
28 instrumentality of conduct giving rise to forfeiture shall
29 give rise to the presumption that the money or negotiable
30 instrument was the proceeds of conduct giving rise to
31 forfeiture or was used or intended to be used to facilitate
32 the conduct.

33 10. A presumption arises that any property of a person is
34 subject to forfeiture under this chapter if the state
35 establishes, by the standard of proof applicable to that

- 1 proceeding, any of the following:
- 2 a. The person has engaged in conduct giving rise to
- 3 forfeiture.
- 4 b. The property was acquired by the person during that
- 5 period of the conduct giving rise to forfeiture or within a
- 6 reasonable time after that period.
- 7 c. No likely source for acquisition of the property exists
- 8 other than the conduct giving rise to the forfeiture.
- 9 11. A finding that property is the proceeds of conduct
- 10 giving rise to forfeiture does not require proof that the
- 11 property is the proceeds of any particular exchange or
- 12 transaction.
- 13 12. A person who acquires property subject to forfeiture
- 14 is a constructive trustee of the property, and its fruits, for
- 15 the benefit of the state, to the extent that the person's
- 16 interest is not exempt from forfeiture. If property subject
- 17 to forfeiture has been commingled with other property, the
- 18 court shall order the forfeiture of the commingled property,
- 19 and of any fruits of the commingled property, to the extent of
- 20 the property subject to forfeiture, unless an owner or
- 21 interest holder proves that specified property does not
- 22 contain property subject to forfeiture, or that the person's
- 23 interest in specified property is exempt from forfeiture.
- 24 13. Title to all property declared forfeited under this
- 25 chapter vests in the state on the commission of the conduct
- 26 giving rise to forfeiture together with the proceeds of the
- 27 property after that time. Any such property or proceeds
- 28 subsequently transferred to any person remain subject to
- 29 forfeiture and thereafter shall be ordered forfeited unless
- 30 the transferee claims and establishes in a hearing under the
- 31 provisions of the chapter that the transferee's interest is
- 32 exempt under section 809A.5.
- 33 14. An acquittal or dismissal in a criminal proceeding
- 34 shall not preclude civil proceedings under this chapter.
- 35 15. For good cause shown, on motion by either party, the

1 court may stay discovery in civil forfeiture proceedings
2 during a criminal trial for a related criminal indictment or
3 information alleging the same conduct, after making provision
4 to prevent loss to any party resulting from the stay. Such a
5 stay shall not be available pending an appeal.

6 16. Except as otherwise provided by this chapter, all
7 proceedings hereunder shall be governed by the rules of civil
8 procedure.

9 17. An action brought pursuant to this chapter shall be
10 consolidated with any other action or proceeding brought
11 pursuant to this chapter or chapter 626 or 654 relating to the
12 same property on motion of the prosecuting attorney, and may
13 be consolidated on motion of an owner or interest holder.

14 Sec. 13. NEW SECTION. 809A.13 IN REM PROCEEDINGS.

15 1. A judicial in rem forfeiture proceeding may be brought
16 by the prosecuting attorney in addition to, or in lieu of,
17 civil in personam forfeiture procedures, and is also subject
18 to the provisions of this section. If a forfeiture is
19 authorized by this chapter, it shall be ordered by the court
20 in the in rem action.

21 2. An action in rem may be brought by the prosecuting
22 attorney pursuant to a notice of pending forfeiture or
23 verified complaint for forfeiture. The state may serve the
24 complaint in the manner provided in section 809A.8, subsection
25 2, or as provided by the rules of civil procedure.

26 3. Only an owner of or an interest holder in the property
27 who has timely filed a proper claim pursuant to section
28 809A.11 may file an answer in an action in rem. For the
29 purposes of this section, an owner of or interest holder in
30 property who has filed a claim and answer shall be referred to
31 as a claimant.

32 4. The answer shall be signed by the owner or interest
33 holder under penalty of perjury and shall be in accordance
34 with R.C.P. 72 and shall also set forth all of the following:

35 a. The caption of the proceedings and identifying number,

1 if any, as set forth on the notice of pending forfeiture or
2 complaint and the name of the claimant.

3 b. The address where the claimant will accept mail.

4 c. The nature and extent of the claimant's interest in the
5 property.

6 d. The date, the identity of the transferor, and the
7 circumstances of the claimant's acquisition of the interest in
8 the property.

9 e. The specific provision of this chapter relied on in
10 asserting that it is not subject to forfeiture.

11 f. All essential facts supporting each assertion.

12 g. The specific relief sought.

13 5. The answer, accompanied by a bond to the court, shall
14 be filed within twenty days after service on the claimant of
15 the civil in rem complaint. The bond amount shall at a
16 minimum be the greater of two thousand five hundred dollars or
17 ten percent of the estimated value of the property as alleged
18 in the complaint, or up to a maximum of two hundred fifty
19 thousand dollars. In lieu of a cost bond, a claimant may
20 under penalty of perjury move the court to proceed pursuant to
21 chapter 610. Any funds received by the court as cost bonds
22 shall be placed in an interest-bearing account pending final
23 disposition of the case. The court shall approve sureties
24 upon condition that the claimant shall pay all costs and
25 expense of the forfeiture proceedings as provided in section
26 809A.16 or 809A.17.

27 6. The rules of civil procedure shall apply to discovery
28 by the state and any claimant who has timely answered the
29 complaint.

30 7. The forfeiture hearing shall be held without a jury and
31 within sixty days after service of the complaint unless
32 continued for good cause. The prosecuting attorney shall have
33 the initial burden of proving the property is subject to
34 forfeiture by a preponderance of the evidence. If the state
35 so proves the property is subject to forfeiture, the claimant

1 has the burden of proving that the claimant has an interest in
2 the property which is exempt from forfeiture under this
3 chapter by a preponderance of the evidence.

4 8. The court shall order the interest in the property
5 returned or conveyed to the claimant if the prosecuting
6 attorney fails to meet the state's burden or the claimant
7 establishes by a preponderance of the evidence that the
8 claimant has an interest that is exempt from forfeiture. The
9 court shall order all other property forfeited to the state
10 and conduct further proceedings pursuant to sections 809A.16
11 and 809A.17.

12 Sec. 14. NEW SECTION. 809A.14 IN PERSONAM PROCEEDINGS.

13 1. A judicial in personam forfeiture proceeding brought by
14 a prosecuting attorney pursuant to an in personam civil action
15 alleging conduct giving rise to forfeiture is subject to the
16 provisions of this section. If a forfeiture is authorized by
17 this chapter, it shall be ordered by the court in the in
18 personam action. This action shall be in addition to or in
19 lieu of in rem forfeiture procedures.

20 2. The court, on application of the prosecuting attorney,
21 may enter any order authorized by section 809A.12, or any
22 other appropriate order to protect the state's interest in
23 property forfeited or subject to forfeiture.

24 3. The court may issue a temporary restraining order on
25 application of the prosecuting attorney, if the state
26 demonstrates both of the following:

27 a. Probable cause exists to believe that in the event of a
28 final judgment, the property involved would be subject to
29 forfeiture under this chapter.

30 b. Provision of notice would jeopardize the availability
31 of the property for forfeiture.

32 4. Notice of the issuance of a temporary restraining order
33 and an opportunity for a hearing shall be given to persons
34 known to have an interest in the property. A hearing shall be
35 held at the earliest possible date in accordance with R.C.P.

1 326, and shall be limited to the following issues:

2 a. Whether a probability exists that the state will
3 prevail on the issue of forfeiture.

4 b. Whether the failure to enter the order will result in
5 the property being destroyed, conveyed, encumbered, removed
6 from the jurisdiction of the court, concealed, or otherwise
7 made unavailable for forfeiture.

8 c. Whether the need to preserve the availability of
9 property outweighs the hardship on any owner or interest
10 holder against whom the order is to be entered.

11 5. On a determination that a person committed conduct
12 giving rise to forfeiture under this chapter, the court shall
13 do both of the following:

14 a. Enter a judgment of forfeiture of the property found to
15 be subject to forfeiture described in the complaint.

16 b. Authorize the prosecuting attorney or designee or any
17 law enforcement officer to seize all property ordered
18 forfeited which was not previously seized or is not under
19 seizure.

20 6. Except as provided in section 809A.12, a person
21 claiming an interest in property subject to forfeiture under
22 this chapter shall not intervene in a trial or appeal of a
23 criminal action or in an in personam civil action involving
24 the forfeiture of the property.

25 7. Following the entry of an in personam forfeiture order,
26 the prosecuting attorney may proceed with an in rem action to
27 resolve the remaining interests in the property. The
28 following procedures shall apply:

29 a. The prosecuting attorney shall give notice of pending
30 forfeiture, in the manner provided in section 809A.8, to all
31 owners and interest holders who have not previously been given
32 notice.

33 b. An owner of or interest holder in property that has
34 been ordered forfeited and whose claim is not precluded may
35 file a claim as described in section 809A.11, within thirty

1 days after initial notice of pending forfeiture or after
2 notice under paragraph "a", whichever is earlier.

3 c. If the state does not recognize the claimed exemption,
4 the prosecuting attorney shall file a complaint and the court
5 shall hold an in rem forfeiture hearing as provided for in
6 section 809A.13.

7 d. In accordance with the findings made at the hearing,
8 the court may amend the order of forfeiture if it determines
9 that any claimant has established by a preponderance of the
10 evidence that the claimant has an interest in the property
11 which is exempt under the provisions of section 809A.5.

12 Sec. 15. NEW SECTION. 809A.15 SUBSTITUTED ASSETS --
13 SUPPLEMENTAL REMEDIES.

14 1. The court shall order the forfeiture of any other
15 property of a person, including a claimant, up to the value of
16 that person's property found by the court to be subject to
17 forfeiture under this chapter, if any of the following applies
18 to the person's forfeitable property:

19 a. The forfeitable property cannot be located.

20 b. The forfeitable property has been transferred or
21 conveyed to, sold to, or deposited with a third party.

22 c. The forfeitable property is beyond the jurisdiction of
23 the court.

24 d. The forfeitable property has been substantially
25 diminished in value while not in the actual physical custody
26 of the court, the seizing agency, the prosecuting attorney, or
27 their designee.

28 e. The forfeitable property has been commingled with other
29 property that cannot be divided without difficulty.

30 f. The forfeitable property is subject to any interest of
31 another person which is exempt from forfeiture under this
32 chapter.

33 2. a. The prosecuting attorney may institute a civil
34 action in district court against any person with notice or
35 actual knowledge who destroys, conveys, encumbers, removes

1 from the jurisdiction of the court, conceals, or otherwise
2 renders unavailable property alleged to be subject to
3 forfeiture if either of the following apply:

4 (1) A forfeiture lien or notice of pending forfeiture has
5 been filed and notice given pursuant to section 809A.8.

6 (2) A complaint pursuant to section 809A.13 alleging
7 conduct giving rise to forfeiture has been filed and notice
8 given pursuant to section 809A.8.

9 b. The court shall enter a final judgment in an amount
10 equal to the value of the lien not to exceed the fair market
11 value of the property, or if a lien does not exist, in an
12 amount equal to the fair market value of the property,
13 together with reasonable investigative expenses and attorney's
14 fees.

15 c. If a civil proceeding under this chapter is pending in
16 court, the action shall be heard by that court.

17 Sec. 16. NEW SECTION. 809A.16 DISPOSITION OF PROPERTY.

18 1. If notice of pending forfeiture is properly served in
19 an action in rem or in personam in which personal property,
20 having an estimated value of five thousand dollars or less, as
21 established by affidavit provided by the prosecuting attorney,
22 is seized, and no claim opposing forfeiture is filed within
23 thirty days of service of such notice, the prosecuting
24 attorney shall prepare a written declaration of forfeiture of
25 the subject property to the state and allocate the property
26 according to the provisions of section 809A.17.

27 2. Within one hundred eighty days of the date of a
28 declaration of forfeiture, an owner or interest holder in
29 property declared forfeited pursuant to subsection 1, may
30 petition the court to have the declaration of forfeiture set
31 aside, after making a prima facie showing that the state
32 failed to serve proper notice as provided by section 809A.13.
33 Upon such a showing the court shall allow the state to
34 demonstrate by a preponderance of the evidence that notice was
35 properly served. If the state fails to meet its burden of

1 proof, the court may order the declaration of forfeiture set
2 aside. The state may proceed with judicial proceedings
3 pursuant to this chapter.

4 3. Except as provided in subsection 1, if a proper claim
5 is not timely filed in an action in rem, or if a proper answer
6 is not timely filed in response to a complaint, the
7 prosecuting attorney may apply for an order of forfeiture and
8 an allocation of forfeited property pursuant to section
9 809A.17. Under such circumstance and upon a determination by
10 the court that the state's written application established the
11 court's jurisdiction, the giving of proper notice, and facts
12 sufficient to show probable cause for forfeiture, the court
13 shall order the property forfeited to the state.

14 4. After final disposition of all claims timely filed in
15 an action in rem, or after final judgment and disposition of
16 all claims timely filed in an action in personam, the court
17 shall enter an order that the state has clear title to the
18 forfeited property interest. Title to the forfeited property
19 interest and its proceeds shall be deemed to have vested in
20 the state on the commission of the conduct giving rise to the
21 forfeiture under this chapter.

22 5. The court, on application of the prosecuting attorney,
23 may release or convey forfeited personal property to a
24 regulated interest holder if any of the following applies:

25 a. The prosecuting attorney, in the attorney's discretion,
26 has recognized in writing that the regulated interest holder
27 has an interest in the property and informs the court that the
28 property interest is exempt from forfeiture.

29 b. The regulated interest holder's interest was acquired
30 in the regular course of business as a regulated interest
31 holder.

32 c. The amount of the regulated interest holder's
33 encumbrance is readily determinable and has been reasonably
34 established by proof made available by the prosecuting
35 attorney to the court.

1 d. The encumbrance held by the regulated interest holder
2 seeking possession is the only interest exempted from
3 forfeiture and the order forfeiting the property to the state
4 transferred all of the rights of the owner prior to
5 forfeiture, including rights to redemption, to the state.

6 6. After the court's release or conveyance under
7 subsection 5, the regulated interest holder shall dispose of
8 the property by a commercially reasonable public sale. Within
9 ten days of disposition the regulated interest holder shall
10 tender to the state the amount received at disposition less
11 the amount of the regulated interest holder's encumbrance and
12 reasonable expense incurred by the interest holder in
13 connection with the sale or disposal. For the purposes of
14 this section, "commercially reasonable" means a sale or
15 disposal that would be commercially reasonable under chapter
16 554, article 7.

17 7. On order of the court or declaration of forfeiture
18 forfeiting the subject property, the state may transfer good
19 and sufficient title to any subsequent purchaser or
20 transferee. The title shall be recognized by all courts and
21 agencies of this state, and any political subdivision. On
22 entry of judgment in favor of a person claiming an interest in
23 the property that is subject to forfeiture proceedings under
24 this chapter, the court shall enter an order that the property
25 or interest in property shall be released or delivered
26 promptly to that person free of liens and encumbrances under
27 this chapter, and that the person's cost bond shall be
28 discharged.

29 8. Upon motion by the prosecuting attorney, if it appears
30 after a hearing that reasonable cause existed for the seizure
31 for forfeiture or for the filing of the notice of pending
32 forfeiture or complaint, the court shall find all of the
33 following:

34 a. That reasonable cause existed, or that the action was
35 taken under a reasonable good faith belief that it was proper.

- 1 b. That the claimant is not entitled to costs or damages.
- 2 c. That the person or seizing agency who made the seizure
- 3 and the prosecuting attorney are not liable to suit or
- 4 judgment for the seizure, suit, or prosecution.

5 Sec. 17. NEW SECTION. 809A.17 DISPOSITION OF FORFEITED
6 PROPERTY.

- 7 1. A person having control over forfeited property shall
- 8 communicate that fact to the attorney general or the attorney
- 9 general's designee.
- 10 2. Forfeited property not needed as evidence in a criminal
- 11 case shall be delivered to the department of justice, or, upon
- 12 written authorization of the attorney general or the attorney
- 13 general's designee, the property may be destroyed, sold, or
- 14 delivered to an appropriate agency for disposal in accordance
- 15 with this section.
- 16 3. Forfeited property may be used by the department of
- 17 justice in the enforcement of the criminal law. The
- 18 department may give, sell, or trade property to any other
- 19 state agency or to any other law enforcement agency within the
- 20 state if, in the opinion of the attorney general, it will
- 21 enhance law enforcement within the state.
- 22 4. Forfeited property which is not used by the department
- 23 of justice in the enforcement of the law may be requisitioned
- 24 by the department of public safety or any law enforcement
- 25 agency within the state for use in enforcing the criminal laws
- 26 of this state. Forfeited property not requisitioned may be
- 27 delivered to the director of the department of general
- 28 services to be disposed of in the same manner as property
- 29 received pursuant to section 18.15.
- 30 5. Notwithstanding subsection 1, 2, 3, or 4, the following
- 31 apply:
 - 32 a. Forfeited property which is a controlled substance or a
 - 33 simulated, counterfeit, or imitation-controlled substance
 - 34 shall be disposed of as provided in section 124.506.
 - 35 b. Forfeited property which is a weapon or ammunition

1 shall be deposited with the department of public safety to be
2 disposed of in accordance with the rules of the department.
3 All weapons or ammunition may be held for use in law
4 enforcement, testing, or comparison by the criminalistics
5 laboratory, or destroyed. Ammunition and firearms which are
6 not illegal and are not offensive weapons as defined by
7 section 724.1 may be sold by the department as provided in
8 section 809.21.

9 c. Material in violation of chapter 728 shall be
10 destroyed.

11 d. Property subject to the rules of the natural resource
12 commission shall be delivered to that commission for disposal
13 in accordance with its rules.

14 Sec. 18. NEW SECTION. 809A.18 POWERS OF ENFORCEMENT
15 PERSONNEL.

16 1. A prosecuting attorney may conduct an investigation of
17 any conduct that gives rise to forfeiture. The prosecuting
18 attorney is authorized, before the commencement of a
19 proceeding or action under this chapter, to subpoena
20 witnesses, and compel their attendance, examine them under
21 oath, and require the production of documentary evidence for
22 inspection, reproducing, or copying. Except as otherwise
23 provided by this section, the prosecuting attorney shall
24 proceed under this subsection with the same powers and
25 limitations, and judicial oversight and enforcement, and in
26 the manner provided by this chapter and by the Iowa rules of
27 civil procedure. Any person compelled to appear under a
28 demand for oral testimony under this section may be
29 accompanied, represented, and advised by counsel.

30 2. The examination of all witnesses under this section
31 shall be conducted by the prosecuting attorney before an
32 officer authorized to administer oaths. The testimony shall
33 be taken by a certified shorthand reporter or by a sound
34 recording device and shall be transcribed or otherwise
35 preserved. The prosecuting attorney may exclude from the

1 examination all persons except the witness, the witness'
2 counsel, the officer before whom the testimony is to be taken,
3 law enforcement officials, and a certified shorthand reporter.
4 Prior to oral examination, the person shall be advised of the
5 person's right to refuse to answer any questions on the basis
6 of the privilege against self-incrimination. The examination
7 shall be conducted in a manner consistent with the rules
8 dealing with the taking of depositions.

9 3. Except as otherwise provided in this section, prior to
10 the filing of a civil or criminal proceeding or action
11 relating to such a proceeding, documentary material,
12 transcripts, or oral testimony, in the possession of the
13 prosecuting attorney, shall not be available for examination
14 by any individual other than a law enforcement official or
15 agent of such official without the consent of the person who
16 produced the material, transcripts, or oral testimony.

17 4. A person shall not knowingly remove from any place,
18 conceal, withhold, destroy, mutilate, alter, or by any other
19 means falsify any documentary material that is the subject of
20 a subpoena, with intent to avoid, evade, prevent, or obstruct
21 compliance in whole or in part by any person with any duly
22 served subpoena of the prosecuting attorney under this
23 section. A violation of this subsection is a class "D"
24 felony. The prosecuting attorney shall investigate and
25 prosecute suspected violations of this subsection.

*26 Sec. 19. NEW SECTION. 809A.19 IMMUNITY ORDERS.

27 1. If a person is or may be called to produce evidence at
28 a deposition, hearing, or trial under this chapter or at an
29 investigation brought by the prosecuting attorney under
30 section 809A.18, the district court in which the deposition,
31 hearing, trial, or investigation is or may be held shall, upon
32 certification in writing of a request of the prosecuting
33 attorney, issue an order, ex parte or after a hearing,
34 requiring the person to produce evidence, notwithstanding that
35 person's refusal to do so on the basis of the privilege

1 against self-incrimination.

2 2. The prosecuting attorney may certify in writing a
3 request for an ex parte order under subsection 1 if in the
4 prosecuting attorney's judgment both of the following apply:

5 a. The production of the evidence may be necessary to the
6 public interest.

7 b. The person has refused or is likely to refuse to
8 produce evidence on the basis of the privilege against self-
9 incrimination.

10 3. A person shall not refuse to comply with an order
11 issued under subsection 1 on the basis of a self-incrimination
12 privilege. If the person refuses to comply with the order
13 after being informed of its existence by the presiding
14 officer, the person may be compelled or punished by the
15 district court issuing an order for civil or criminal
16 contempt.

17 4. The production of evidence compelled by order issued
18 under subsection 1, and any information directly or indirectly
19 derived from the production of evidence, shall not be used
20 against the person in a subsequent criminal case, except in a
21 prosecution for perjury, false swearing, or an offense
22 otherwise involving a failure to comply with the order.

23 Sec. 20. NEW SECTION. 809A.20 STATUTE OF LIMITATIONS.

24 A civil action under this chapter shall be commenced within
25 five years after the last conduct giving rise to forfeiture or
26 the cause of action becomes known or should have become known,
27 excluding any time during which either the property or
28 defendant is out of the state or in confinement, or during
29 which criminal proceedings relating to the same conduct are
30 pending.

31 Sec. 21. NEW SECTION. 809A.21 SUMMARY FORFEITURE OF
32 CONTROLLED SUBSTANCES.

33 Controlled substances included in chapter 124 which are
34 contraband and any controlled substance whose owners are
35 unknown are summarily forfeited to the state. The court may

1 include in any judgment under this chapter an order forfeiting
2 any controlled substance involved in the conduct giving rise
3 to forfeiture to the extent of the defendant's interest.

4 Sec. 22. NEW SECTION. 809A.22 BAR TO COLLATERAL ACTION.

5 A person claiming an interest in property subject to
6 forfeiture shall not commence or maintain any action against
7 the state concerning the validity of the alleged interest
8 other than as provided in this chapter.

9 Sec. 23. NEW SECTION. 809A.23 STATUTORY CONSTRUCTION.

10 The provisions of this chapter shall be liberally construed
11 to effectuate its remedial purposes. Civil remedies under
12 this chapter shall be supplemental and not mutually exclusive.
13 The civil remedies do not preclude and are not precluded by
14 any other provision of law.

15 Sec. 24. NEW SECTION. 809A.24 UNIFORMITY OF APPLICATION.

16 1. The provisions of this chapter shall be applied and
17 construed to effectuate its general purpose to make uniform
18 the law with respect to the subject of this chapter among
19 states enacting this law.

20 2. The attorney general may enter into reciprocal
21 agreements with the attorney general or chief prosecuting
22 attorney of any state to effectuate the purposes of this
23 chapter.

24 DIVISION II

25 IOWA ONGOING CRIMINAL CONDUCT ACT

26 Sec. 25. NEW SECTION. 706A.1 DEFINITIONS.

27 In this chapter, unless the context otherwise requires:

28 1. "Criminal network" means any combination of persons
29 engaging, for financial gain on a continuing basis, in conduct
30 which is an indictable offense under the laws of this state
31 regardless of whether such conduct is charged or indicted. As
32 used in this subsection, persons combine if they collaborate
33 or act in concert in carrying on or furthering the activities
34 or purposes of a network even though such persons may not know
35 each other's identity, membership in the network changes from

1 time to time, or one or more members of the network stand in a
2 wholesaler-retailer, service provider, or other arm's length
3 relationship with others as to conduct in the furtherance of
4 the financial goals of the network.

5 2. "Enterprise" includes any sole proprietorship,
6 partnership, corporation, trust, or other legal entity, or any
7 unchartered union, association, or group of persons associated
8 in fact although not a legal entity, and includes unlawful as
9 well as lawful enterprises.

10 3. "Proceeds" means property acquired or derived directly
11 or indirectly from, produced through, realized through, or
12 caused by an act or omission and includes any property of any
13 kind.

14 4. "Property" means anything of value, and includes any
15 interest in property, including any benefit, privilege, claim,
16 or right with respect to anything of value, whether real or
17 personal, tangible, or intangible, without reduction for
18 expenses incurred for acquisition, maintenance, production, or
19 any other purpose.

20 5. "Specified unlawful activity" means any act, including
21 any preparatory or completed offense, committed for financial
22 gain on a continuing basis, that is punishable as an
23 indictable offense under the laws of the state in which it
24 occurred and under the laws of this state.

25 Sec. 26. NEW SECTION. 706A.2 VIOLATIONS.

26 1. SPECIFIED UNLAWFUL ACTIVITY INFLUENCED ENTERPRISES.

27 a. It is unlawful for any person who has knowingly
28 received any proceeds of specified unlawful activity to use or
29 invest, directly or indirectly, any part of such proceeds in
30 the acquisition of any interest in any enterprise or any real
31 property, or in the establishment or operation of any
32 enterprise.

33 b. It is unlawful for any person to knowingly acquire or
34 maintain, directly or indirectly, any interest in or control
35 of any enterprise or real property through specified unlawful

1 activity.

2 c. It is unlawful for any person to knowingly conduct the
3 affairs of any enterprise through specified unlawful activity
4 or to knowingly participate, directly, or indirectly, in any
5 enterprise that the person knows is being conducted through
6 specified unlawful activity.

7 d. It is unlawful for any person to conspire or attempt to
8 violate or to solicit or facilitate the violations of the
9 provisions of paragraphs "a", "b", or "c".

10 2. FACILITATION OF A CRIMINAL NETWORK. It is unlawful for
11 a person acting with knowledge of the financial goals and
12 criminal objectives of a criminal network to knowingly
13 facilitate criminal objectives of the network by doing any of
14 the following:

15 a. Engaging in violence or intimidation or inciting or
16 inducing another to engage in violence or intimidation.

17 b. Inducing or attempting to induce a person believed to
18 have been called or who may be called as a witness to
19 unlawfully withhold any testimony, testify falsely, or absent
20 themselves from any official proceeding to which the potential
21 witness has been legally summoned.

22 c. Attempting by means of bribery, misrepresentation,
23 intimidation, or force to obstruct, delay, or prevent the
24 communication of information or testimony relating to a
25 violation of any criminal statute to a peace officer,
26 magistrate, prosecutor, grand jury, or petit jury.

27 d. Injuring or damaging another person's body or property
28 because that person or any other person gave information or
29 testimony to a peace officer, magistrate, prosecutor, or grand
30 jury.

31 e. Attempting to suppress by an act of concealment,
32 alteration, or destruction any physical evidence that might
33 aid in the discovery, apprehension, prosecution, or conviction
34 of any person.

35 f. Making any property available to a member of the

1 criminal network.

2 g. Making any service other than legal services available
3 to a member of the criminal network.

4 h. Inducing or committing any act or omission by a public
5 servant in violation of the public servant's official duty.

6 i. Obtaining any benefit for a member of a criminal
7 network by means of false or fraudulent pretenses,
8 representation, promises or material omissions.

9 j. Making a false sworn statement regarding a material
10 issue, believing it to be false, or making any statement,
11 believing it to be false, regarding a material issue to a
12 public servant in connection with an application for any
13 benefit, privilege, or license, or in connection with any
14 official investigation or proceeding.

15 3. MONEY LAUNDERING. It is unlawful for a person to
16 commit money laundering as defined in chapter 706B.

17 4. ACTS OF SPECIFIED UNLAWFUL ACTIVITY. It is unlawful
18 for a person to commit specified unlawful activity as defined
19 in section 706A.1.

20 5. NEGLIGENT EMPOWERMENT OF SPECIFIED UNLAWFUL ACTIVITY.

21 a. It is unlawful for a person to negligently allow
22 property owned or controlled by the person or services
23 provided by the person, other than legal services, to be used
24 to facilitate specified unlawful activity, whether by
25 entrustment, loan, rent, lease, bailment, or otherwise.

26 b. Damages for negligent empowerment of specified unlawful
27 activity shall include all reasonably foreseeable damages
28 proximately caused by the specified unlawful activity,
29 including, in a case brought or intervened in by the state,
30 the costs of investigation and criminal and civil litigation
31 of the specified unlawful activity incurred by the government
32 for the prosecution and defense of any person involved in the
33 specified unlawful activity, and the imprisonment, probation,
34 parole, or other expense reasonably necessary to detain,
35 punish, and rehabilitate any person found guilty of the

1 specified unlawful activity, except for the following:

2 (1) If the person empowering the specified unlawful
3 activity acted only negligently and was without knowledge of
4 the nature of the activity and could not reasonably have known
5 of the unlawful nature of the activity or that it was likely
6 to occur, damages shall be limited to the greater of the
7 following:

8 (a) The cost of the investigation and litigation of the
9 person's own conduct plus the value of the property or service
10 involved as of the time of its use to facilitate the specified
11 unlawful activity.

12 (b) All reasonably foreseeable damages to any person,
13 except any person responsible for the specified unlawful
14 activity, and to the general economy and welfare of the state
15 proximately caused by the person's own conduct.

16 (2) If the property facilitating the specified unlawful
17 activity was taken from the possession or control of the
18 person without that person's knowledge and against that
19 person's will in violation of the criminal law, damages shall
20 be limited to reasonably foreseeable damages to any person,
21 except persons responsible for the taking or the specified
22 unlawful activity, and to the general economy and welfare of
23 the state proximately caused by the person's negligence, if
24 any, in failing to prevent its taking.

25 (3) If the person was aware of the possibility that the
26 property or service would be used to facilitate some form of
27 specified unlawful activity and acted to prevent the unlawful
28 use, damages shall be limited to reasonably foreseeable
29 damages to any person, except any person responsible for the
30 specified unlawful activity, and to the general economy and
31 welfare of the state proximately caused by the person's
32 failure, if any, to act reasonably to prevent the unlawful
33 use.

34 (4) The plaintiff shall carry the burden of proof by a
35 preponderance of the evidence that the specified unlawful

1 activity occurred and was facilitated by the property or
2 services. The defendant shall have the burden of proof by a
3 preponderance of the evidence as to circumstances constituting
4 lack of negligence and on the limitations on damages in this
5 subsection.

6 Sec. 27. NEW SECTION. 706A.3 CIVIL REMEDIES -- ACTIONS.

7 1. The prosecuting attorney or an aggrieved person may
8 institute civil proceedings against any person in district
9 court seeking relief from conduct constituting a violation of
10 this chapter or to prevent, restrain, or remedy such
11 violation.

12 2. The district court has jurisdiction to prevent,
13 restrain, or remedy such violations by issuing appropriate
14 orders. Prior to a determination of liability such orders may
15 include, but are not limited to, entering restraining orders
16 or injunctions, requiring the execution of satisfactory
17 performance bonds, creating receiverships, and enforcing
18 constructive trusts in connection with any property or
19 interest subject to damages, forfeiture, or other remedies or
20 restraints pursuant to this chapter.

21 3. If the plaintiff in such a proceeding proves the
22 alleged violation by a preponderance of the evidence, the
23 district court, after making due provision for the rights of
24 innocent persons, shall grant relief by entering any
25 appropriate order or judgment, including any of the following:

26 a. Ordering any defendant to divest the defendant of any
27 interest in any enterprise, or in any real property.

28 b. Imposing reasonable restrictions upon the future
29 activities or investments of any defendant, including, but not
30 limited to, prohibiting any defendant from engaging in the
31 same type of endeavor as any enterprise in which the defendant
32 was engaged in a violation of this chapter.

33 c. Ordering the dissolution or reorganization of any
34 enterprise.

35 d. Ordering the payment of all reasonable costs and

1 expenses of the investigation and prosecution of any
2 violation, civil or criminal, including reasonable attorney
3 fees in the trial and appellate courts. Such payments
4 received by the state, by judgment, settlement, or otherwise,
5 shall be considered forfeited property and disposed of
6 pursuant to section 809A.17.

7 e. Ordering the forfeiture of any property subject to
8 forfeiture under chapter 809A, pursuant to the provisions and
9 procedures of that chapter.

10 f. Ordering the suspension or revocation of any license,
11 permit, or prior approval granted to any person by any agency
12 of the state.

13 g. Ordering the surrender of the certificate of existence
14 of any corporation organized under the laws of this state or
15 the revocation of any certificate authorizing a foreign
16 corporation to conduct business within this state, upon
17 finding that for the prevention of future violations, the
18 public interest requires the certificate of the corporation to
19 be surrendered and the corporation dissolved or the
20 certificate revoked.

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

31 5. In a proceeding initiated under this section,
32 injunctive relief shall be granted in conformity with the
33 principles that govern the granting of relief from injury or
34 threatened injury in other civil cases, but no showing of
35 special or irreparable injury is required. Pending final

1 determination of a proceeding initiated under this section, a
2 temporary restraining order or a preliminary injunction may be
3 issued upon a showing of immediate danger of significant
4 injury, including the possibility that a judgment for money
5 damages might be difficult to execute, and, in a proceeding
6 initiated by a nongovernmental aggrieved person, upon the
7 execution of proper bond against injury for an injunction
8 improvidently granted.

9 6. Any person who is in possession or control of proceeds
10 of any violation of this chapter, is an involuntary trustee
11 and holds the property in constructive trust for the benefit
12 of the person entitled to remedies under this chapter, unless
13 the holder acquired the property as a bona fide purchaser for
14 value who was not knowingly taking part in an illegal
15 transaction.

16 7. Any person whose business or property is directly or
17 indirectly injured by conduct constituting a violation of this
18 chapter, by any person, may bring a civil action, subject to
19 the in pari delicto defense and shall recover threefold the
20 actual damages sustained and the costs and expenses of the
21 investigation and prosecution of the action including
22 reasonable attorney fees in the trial and appellate courts.
23 Damages shall not include pain and suffering. Any person
24 injured shall have a claim to any property against which any
25 fine, or against which treble damages under subsection 10 or
26 11 may be imposed, superior to any right or claim of the state
27 to the property, up to the value of actual damages and costs
28 awarded in an action under this subsection. The state shall
29 have a right of subrogation to the extent that an award made
30 to a person so injured is satisfied out of property against
31 which any fine or civil remedy in favor of the state may be
32 imposed.

33 8. a. If liability of a legal entity is based on the
34 conduct of another, through respondent superior or otherwise,
35 the legal entity shall not be liable for more than actual

1 damages and costs, including a reasonable attorney's fee, if
2 the legal entity affirmatively shows by a preponderance of the
3 evidence that both of the following apply:

4 (1) The conduct was not engaged in, authorized, solicited,
5 commanded, or recklessly tolerated by the legal entity, by the
6 directors of the legal entity or by a high managerial agent of
7 the legal entity acting within the scope of employment.

8 (2) The conduct was not engaged in by an agent of the
9 legal entity acting within the scope of employment and in
10 behalf of the legal entity.

11 b. For the purposes of this subsection:

12 (1) "Agent" means any officer, director, or employee of
13 the legal entity, or any other person who is authorized to act
14 in behalf of the legal entity.

15 (2) "High managerial agent" means any officer of the legal
16 entity or, in the case of a partnership, a partner, or any
17 other agent in a position of comparable authority with respect
18 to the formulation of policy of the legal entity.

19 (3) Notwithstanding any other provision of law, any
20 pleading, motion, or other paper filed by a nongovernmental
21 aggrieved party in connection with a proceeding or action
22 under subsection 7 shall be verified. If such aggrieved
23 person is represented by an attorney, such pleading, motion,
24 or other paper shall be signed by at least one attorney of
25 record in the attorney's individual name, whose address shall
26 be stated.

27 If such pleading, motion, or other paper includes an
28 averment of fraud, coercion, accomplice, respondent superior,
29 conspiratorial, enterprise, or other vicarious accountability,
30 it shall state, insofar as practicable, the circumstances with
31 particularity. The verification and the signature by an
32 attorney required by this subsection shall constitute a
33 certification by the signor that the attorney has carefully
34 read the pleading, motion, or other paper and, based on a
35 reasonable inquiry, believes that all of the following exist:

1 (a) It is well-grounded in fact.

2 (b) It is warranted by existing law, or a good faith
3 argument for the extension, modification, or reversal of
4 existing law.

5 (c) It is not made for an improper purpose, including to
6 harass, to cause unnecessary delay, or to impose a needless
7 increase in the cost of litigation.

8 The court may, after a hearing and appropriate findings of
9 fact, impose upon any person who verified the complaint,
10 cross-claim or counterclaim, or any attorney who signed it in
11 violation of this subsection, or both, a fit and proper
12 sanction, which may include an order to pay to the other party
13 or parties the amount of the reasonable expenses incurred
14 because of the complaint or claim, including reasonable
15 attorney fees. If the court determines that the filing of a
16 complaint or claim under subsection 7 by a nongovernmental
17 party was frivolous in whole or in part, the court shall award
18 double the actual expenses, including attorney fees, incurred
19 because of the frivolous portion of the complaint or claim.

20 9. Upon the filing of a complaint, cross-claim, or
21 counterclaim under this section, an aggrieved person, as a
22 jurisdictional prerequisite, shall immediately notify the
23 attorney general of its filing and serve one copy of the
24 pleading on the attorney general. Service of the notice on
25 the attorney general does not limit or otherwise affect the
26 right of the state to maintain an action under this section or
27 intervene in a pending action and does not authorize the
28 aggrieved person to name the state or the attorney general as
29 a party to the action. The attorney general, upon timely
30 application, may intervene or appear as amicus curiae in any
31 civil proceeding or action brought under this section if the
32 attorney general certifies that, in the opinion of the
33 attorney general, the proceeding or action is of general
34 public importance. In any proceeding or action brought under
35 this section by an aggrieved person, the state shall be

1 entitled to the same relief as if it had instituted the
2 proceeding or action.

3 10. a. Any prosecuting attorney may bring a civil action
4 on behalf of a person whose business or property is directly
5 or indirectly injured by conduct constituting a violation of
6 this chapter, and shall recover threefold the damages
7 sustained by such person and the costs and expenses of the
8 investigation and prosecution of the action, including
9 reasonable attorney fees in the trial and appellate courts.
10 The court shall exclude from the amount of monetary relief
11 awarded any amount of monetary relief which is any of the
12 following:

13 (1) Which duplicates amounts which have been awarded for
14 the same injury.

15 (2) Which is properly allocable to persons who have
16 excluded their claims under paragraph "c".

17 b. In any action brought under this subsection, the
18 prosecuting attorney, at such times, in such manner, and with
19 such content as the court may direct, shall cause notice of
20 the action to be given by publication. If the court finds
21 that notice given solely by publication would deny due process
22 to any person, the court may direct further notice to such
23 person according to the circumstances of the case.

24 c. A person on whose behalf an action is brought under
25 this subsection may elect to exclude from adjudication the
26 portion of the state claim for monetary relief attributable to
27 the person by filing notice of such election within such time
28 as specified in the notice given under this subsection.

29 d. A final judgment in an action under this subsection
30 shall preclude any claim under this subsection by a person on
31 behalf of whom such action was brought who fails to give
32 notice of exclusion within the times specified in the notice
33 given under paragraph "b".

34 e. An action under this subsection on behalf of a person
35 other than the state shall not be dismissed or compromised

1 without the approval of the court, and notice of any proposed
2 dismissal or compromise shall be given in such manner as the
3 court directs.

4 11. The attorney general may bring a civil action as
5 parens patriae on behalf of the general economy, resources,
6 and welfare of this state, and shall recover threefold the
7 proceeds acquired, maintained, produced, or realized by or on
8 behalf of the defendant by reason of a violation of this
9 chapter, plus the costs and expenses of the investigation and
10 prosecution of the action, including reasonable attorney fees
11 in the trial and appellate courts.

12 a. A person who has knowingly conducted or participated in
13 the conduct of an enterprise in violation of section 706A.2,
14 subsection 1, paragraph "c" is also jointly and severally
15 liable for the greater of threefold the damage sustained
16 directly or indirectly by the state by reason of conduct in
17 furtherance of the violation or threefold the total of all
18 proceeds acquired, maintained, produced, or realized by, or on
19 behalf of any person by reason of participation in the
20 enterprise except for the following:

21 (1) A person is not liable for conduct occurring prior to
22 the person's first knowing participation in or conduct of the
23 enterprise.

24 (2) If a person shows that, under circumstances
25 manifesting a voluntary and complete renunciation of culpable
26 intent, the person withdrew from the enterprise by giving a
27 complete and timely warning to law enforcement authorities or
28 by otherwise making a reasonable and substantial effort to
29 prevent the conduct or result which is the criminal objective
30 of the enterprise, the person is not liable for conduct
31 occurring after the person's withdrawal.

32 b. A person who has facilitated a criminal network in
33 violation of section 706A.2, subsection 2, is also jointly and
34 severally liable for all of the following:

35 (1) The damages resulting from the conduct in furtherance

1 of the criminal objectives of the criminal network, to the
2 extent that the person's facilitation was of substantial
3 assistance to the conduct.

4 (2) The proceeds of conduct in furtherance of the criminal
5 objectives of the criminal network, to the extent that the
6 person's facilitation was of substantial assistance to the
7 conduct.

8 (3) A person who has engaged in money laundering in
9 violation of chapter 706B is also jointly and severally liable
10 for the greater of threefold the damages resulting from the
11 person's conduct or threefold the property that is the subject
12 of the violation.

13 Sec. 28. NEW SECTION. 706A.4 CRIMINAL SANCTIONS.

14 A person who violates section 706A.2, subsection 1, 2, or
15 4, commits a class "B" felony.

16 Sec. 29. NEW SECTION. 706A.5 UNIFORMITY OF CONSTRUCTION
17 AND APPLICATION.

18 1. The provisions of this chapter shall be liberally
19 construed to effectuate its remedial purposes. Civil remedies
20 under this chapter shall be supplemental and not mutually
21 exclusive. Civil remedies under this chapter do not preclude
22 and are not precluded by other provisions of law.

23 2. The provisions of this chapter shall be applied and
24 construed to effectuate its general purpose to make uniform
25 the law with respect to the subject of this chapter among
26 states enacting the law.

27 3. The attorney general may enter into reciprocal
28 agreements with the attorney general or chief prosecuting
29 attorney of any state to effectuate the purposes of this
30 chapter.

31 DIVISION III

32 IOWA MONEY LAUNDERING ACT

33 Sec. 30. NEW SECTION. 706B.1 DEFINITIONS.

34 In this chapter, unless the context otherwise requires:

35 1. "Proceeds" means property acquired or derived directly

1 or indirectly from, produced through, realized through, or
2 caused by an act or omission and includes any property of any
3 kind.

4 2. "Property" means anything of value, and includes any
5 interest in property, including any benefit, privilege, claim,
6 or right with respect to anything of value, whether real or
7 personal, tangible or intangible.

8 3. "Specified unlawful activity" means any act, including
9 any preparatory or completed offense, committed for financial
10 gain on a continuing basis, that is punishable by confinement
11 of one year or more under the laws of this state, or, if the
12 act occurred outside this state, would be punishable by
13 confinement of one year or more under the laws of the state in
14 which it occurred and under the laws of this state.

15 4. "Transaction" includes a purchase, sale, trade, loan,
16 pledge, investment, gift, transfer, transmission, delivery,
17 deposit, withdrawal, payment, transfer between accounts,
18 exchange of currency, extension of credit, purchase, or sale
19 of any monetary instrument, use of a safe deposit box, or any
20 other acquisition or disposition of property by whatever means
21 effected.

22 5. "Unlawful activity" means any act which is chargeable
23 or indictable as a public offense of any degree under the laws
24 of the state in which the act occurred or under federal law
25 and, if the act occurred in a state other than this state,
26 would be chargeable or indictable as a public offense of any
27 degree under the laws of this state or under federal law.

28 Sec. 31. NEW SECTION. 706B.2 MONEY LAUNDERING PENALTY --
29 CIVIL REMEDIES.

30 1. It is unlawful for a person to do any of the following:
31 a. To knowingly transport, receive, or acquire property or
32 to conduct a transaction involving property, knowing that the
33 property involved is the proceeds of some form of unlawful
34 activity, when, in fact, the property is the proceeds of
35 specified unlawful activity.

1 b. To make property available to another, by transaction,
2 transportation, or otherwise, knowing that it is intended to
3 be used for the purpose of committing or furthering the
4 commission of specified unlawful activity.

5 c. To conduct a transaction knowing that the property
6 involved in the transaction is the proceeds of some form of
7 unlawful activity with the intent to conceal or disguise the
8 nature, location, source, ownership, or control of the
9 property or the intent to avoid a transaction-reporting
10 requirement under chapter 529, the Iowa financial transaction
11 reporting Act, or federal law.

12 d. To knowingly engage in the business of conducting,
13 directing, planning, organizing, initiating, financing,
14 managing, supervising, or facilitating transactions involving
15 property, knowing that the property involved in the
16 transaction is the proceeds of some form of unlawful activity,
17 that, in fact, is the proceeds of specified unlawful activity.

18 2. A person who violates:

19 a. Subsection 1, paragraphs "a", "b", or "c", commits a
20 class "C" felony, and may be fined not more than ten thousand
21 dollars or twice the value of the property involved, whichever
22 is greater, or by imprisonment for not more than 10 years, or
23 both.

24 b. Subsection 1, paragraph "d", commits a class "D"
25 felony, and may be fined not more than five thousand dollars
26 or twice the value of the property involved, whichever is
27 greater, or by imprisonment for not more than five years, or
28 both.

29 3. A person who violates subsection 1, paragraph "a", "b",
30 "c", or "d", is subject to a civil penalty of three times the
31 value of the property involved in the transaction, in addition
32 to any criminal sanction imposed.

33 4. A person who is found guilty of a violation under this
34 section also may be charged with violations of chapter 706A,
35 and property involved in a violation under this chapter is

1 subject to forfeiture under chapter 809A.

2 Sec. 32. NEW SECTION. 706B.3 UNIFORMITY OF CONSTRUCTION
3 AND APPLICATION.

4 1. The provisions of this chapter shall be liberally
5 construed to effectuate its remedial purposes. Civil remedies
6 under this chapter shall be supplemental and not mutually
7 exclusive. The civil remedies do not preclude and are not
8 precluded by other provision of law.

9 2. The provisions of this chapter shall be applied and
10 construed to effectuate its general purpose to make uniform
11 the law with respect to the subject of this chapter among
12 states enacting the law.

13 3. The attorney general may enter into reciprocal
14 agreements with the attorney general or chief prosecuting
15 attorney of any state to effectuate the purposes of this
16 chapter.

17 DIVISION IV

18 IOWA FINANCIAL TRANSACTION REPORTING ACT

19 Sec. 33. NEW SECTION. 529.1 DEFINITIONS.

20 In this chapter, unless the context otherwise requires:

21 1. "Authorized delegate" means a person designated by the
22 licensee.

23 2. "Check cashing" means exchanging for compensation a
24 check, draft, money order, traveler's check, or a payment
25 instrument of a licensee for money delivered to the presenter
26 at the time and place of the presentation.

27 3. "Compensation" means any fee, commission, or other
28 benefit.

29 4. "Conduct the business" means engaging in activities of
30 a licensee or money transmitter more than ten times in any
31 calendar year for compensation.

32 5. "Foreign money exchange" means exchanging for
33 compensation money of the United States government or a
34 foreign government to or from money of another government at a
35 conspicuously posted exchange rate at the time and place of

1 the presentation of the money to be exchanged.

2 6. "Licensee" means a person licensed under this chapter.

3 7. "Location" means a place of business at which activity
4 conducted by a licensee or money transmitter occurs.

5 8. "Money" means a medium of exchange authorized or
6 adopted by a domestic or foreign government as a part of its
7 currency and that is customarily used and accepted as a medium
8 of exchange in the country of issuance.

9 9. "Money transmitter" means a person who is located or
10 doing business in this state, including a check cashier and a
11 foreign money exchanger, and who does any of the following:

12 a. Sells or issues payment instruments.

13 b. Conducts the business of receiving money for the
14 transmission of or transmitting money.

15 c. Conducts the business of exchanging payment instruments
16 or money into any form of money or payment instrument.

17 d. Conducts the business of receiving money for obligors
18 for the purpose of paying obligors' bills, invoices, or
19 accounts.

20 e. Meets the definition of a bank, financial agency, or
21 financial institution as prescribed by 31 U.S.C. § 5312 or 31
22 C.F.R. § 103.11 and any successor provisions.

23 10. "Payment instrument" means a check, draft, money
24 order, traveler's check, or other instrument or order for the
25 transmission or payment of money, sold to one or more persons,
26 whether or not that instrument or order is negotiable.

27 "Payment instrument" does not include an instrument that is
28 redeemable by the issuer in merchandise or service, a credit
29 card voucher, or a letter of credit.

30 11. "Proceeds" means anything of value, and includes any
31 interest in property, including any benefit, privilege, claim,
32 or right with respect to anything of value, whether real or
33 personal, tangible or intangible, without reduction for
34 expenses incurred for acquisition, maintenance, production, or
35 any other purpose.

1 12. "Superintendent" means the superintendent of banking
2 or the superintendent of credit unions.

3 13. "Transaction" includes a purchase, sale, trade, loan,
4 pledge, investment, gift, transfer, transmission, delivery,
5 deposit, withdrawal, payment, transfer between accounts,
6 exchange of currency, extension of credit, purchase, or sale
7 of any monetary instrument, use of a safe deposit box, or any
8 other acquisition or disposition of property by whatever means
9 effected.

10 14. "Transmitting money" includes the transmission of
11 money by any means including transmission within this country
12 or to or from locations abroad by payment instrument, wire,
13 facsimile, or electronic transfer, courier, or otherwise.

14 15. "Traveler's check" means an instrument identified as a
15 traveler's check on its face or commonly recognized as a
16 traveler's check and issued in a money multiple of United
17 States or foreign currency with a provision for a specimen
18 signature of the purchaser to be completed at the time of
19 purchase and a countersignature of the purchaser to be
20 completed at the time of negotiation.

21 Sec. 34. NEW SECTION. 529.2 REPORTS.

22 1. A licensee, authorized delegate, or money transmitter
23 required to file a report regarding business conducted in this
24 state pursuant to the federal Currency and Foreign
25 Transactions Reporting Act, 31 U.S.C. § 5311 through 5326 and
26 31 C.F.R. pt. 103, or 12 C.F.R. § 21.11, shall file a
27 duplicate of that report with the department of public safety.

28 2. All persons engaged in a trade or business who are
29 required to file a report pursuant to 26 U.S.C. § 6050i and 26
30 C.F.R. § 1.6050I, and any successor provisions, concerning
31 returns relating to cash received in trade or business, shall
32 file a copy of the report with the department of public
33 safety.

34 3. A person receiving more than ten thousand dollars in
35 cash in any single transaction, which is not otherwise subject

1 to a reporting requirement, shall complete and forward to the
2 department of public safety within ten days of the transaction
3 a report of private currency transaction. The report shall be
4 on a form prescribed by the department and shall include the
5 date of the transaction and the name and address of the person
6 providing the cash. A person who knowingly violates this
7 subsection commits a serious misdemeanor.

8 4. A licensee, authorized delegate, or money transmitter
9 that is regulated under the federal Currency and Foreign
10 Transaction Reporting Act, 31 U.S.C. § 5325 and 31 C.F.R. pt.
11 103, and that is required to make available prescribed records
12 to the secretary of the United States department of treasury
13 upon request at any time, shall follow the same prescribed
14 procedures and create and maintain the same prescribed records
15 relating to a transaction and shall make these records
16 available to the department of public safety pursuant to a
17 prosecuting attorney subpoena.

18 5. a. The timely filing of a report required by this
19 section with the appropriate federal agency shall be deemed
20 compliance with the reporting requirements of this section,
21 unless the attorney general or the department of public safety
22 has notified the superintendent that reports of that type are
23 not being regularly and comprehensively transmitted by that
24 federal agency to the department of public safety.

25 b. This chapter does not preclude a licensee, authorized
26 delegate, money transmitter, financial institution, or a
27 person engaged in a trade or business, in its discretion, from
28 instituting contact with, and thereafter communicating with
29 and disclosing customer financial records to appropriate state
30 or local law enforcement agencies if the licensee, authorized
31 delegate, money transmitter, financial institution, or person
32 has information that may be relevant to a possible violation
33 of any criminal statute or to the evasion or attempted evasion
34 of any reporting requirement of this chapter.

35 c. A licensee, authorized delegate, money transmitter,

1 financial institution, person engaged in a trade or business,
2 or any officer, employee, agent, or authorized delegate of any
3 of them, or any public official or governmental employee who
4 keeps or files a record pursuant to this section or who
5 communicates or discloses information or records under
6 paragraph "b", is not liable to its customer, to a state or
7 local agency, or to any person for any loss or damage caused
8 in whole or in part by the making, filing, or governmental use
9 of the report, or any information contained in that report.

10 6. The attorney general or the department of public safety
11 may report any possible violations indicated by analysis of
12 the reports required by this chapter to any appropriate law
13 enforcement agency for use in the proper discharge of its
14 official duties. The attorney general or the department of
15 public safety shall provide copies of the reports required by
16 this chapter to any appropriate prosecutorial or law
17 enforcement agency upon being provided with a written request
18 for records relating to a specific individual or entity and
19 stating that the agency has an articulable suspicion that such
20 individual or entity has committed a felony offense or a
21 violation of this chapter to which the reports are relevant.
22 A person who releases information received pursuant to this
23 subsection except in the proper discharge of the person's
24 official duties is guilty of a serious misdemeanor.

25 7. It shall be unlawful for any person to do any of the
26 following:

27 a. With intent to disguise the fact that money or a
28 payment instrument is the proceeds of criminal conduct, or
29 with intent to promote, manage, establish, carry on, or
30 facilitate the promotion, management, establishment, or
31 carrying on of any criminal conduct, to knowingly furnish or
32 provide to a licensee, authorized delegate, money transmitter,
33 financial institution, person engaged in a trade or business,
34 or any officer, employee, agent or authorized delegate of any
35 of them, or to the attorney general or department of public

1 safety, any false, inaccurate, or incomplete information; or
2 to knowingly conceal a material fact in connection with a
3 transaction for which a report is required to be filed
4 pursuant to this section.

5 b. With the intent to disguise the fact that money or a
6 payment instrument is the proceeds of criminal conduct, or
7 with intent to promote, manage, establish, carry on, or
8 facilitate the promotion, management, establishment, or
9 carrying on of any criminal conduct, or with intent to evade
10 the making or filing of a report required under this chapter,
11 or with intent to cause the making or filing of a report that
12 contains a material omission or misstatement of fact, or with
13 intent to conduct or structure a transaction or series of
14 transactions by or through one or more licensees, authorized
15 delegates, money transmitters, financial institutions, or
16 persons engaged in a trade or business.

17 8. A person who violates subsection 7 is guilty of a class
18 "C" felony and is also subject to a civil penalty of three
19 times the value of the property involved in the transaction,
20 or, if no transaction is involved, five thousand dollars.

21 9. Notwithstanding any other provision of law, each
22 violation of this section constitutes a separate, punishable
23 offense.

24 10. Any report, record, information, analysis, or request
25 obtained by the attorney general or department of public
26 safety pursuant to this chapter is not a public record as
27 defined in chapter 22 and is not subject to disclosure.

28 Sec. 35. NEW SECTION. 529.3 INVESTIGATIONS.

29 1. The attorney general or county attorney may conduct
30 investigations within or outside this state to determine if
31 any licensee, authorized delegate, money transmitter, or
32 person engaged in a trade or business has failed to file a
33 report required by this chapter or has engaged or is engaging
34 in any act, practice, or transaction that constitutes a
35 violation of this chapter.

1 2. Upon presentation of a subpoena from a prosecuting
2 attorney, all licensees, authorized delegates, money
3 transmitters, and financial institutions shall make their
4 books and records available to the attorney general or county
5 attorney or peace officer during normal business hours for
6 inspection and examination in connection with an investigation
7 pursuant to this section.

8 Sec. 36. NEW SECTION. 529.4 UNIFORMITY OF CONSTRUCTION
9 AND APPLICATION.

10 1. The provisions of this chapter shall be liberally
11 construed to effectuate its remedial purposes. Civil remedies
12 under this chapter shall be supplemental and not mutually
13 exclusive. The civil remedies do not preclude and are not
14 precluded by other provisions of law.

15 2. The provisions of this chapter shall be applied and
16 construed to effectuate its general purpose to make uniform
17 the law with respect to the subject of this chapter among
18 states enacting the law and to make the reporting requirements
19 regarding financial transactions under Iowa law uniform with
20 the reporting requirements regarding financial transactions
21 under federal law.

22 3. The attorney general is authorized to enter into
23 reciprocal agreements with the attorney general or chief
24 prosecuting attorney of any state to effectuate the purposes
25 of this chapter.

26 DIVISION V

27 CONFORMING AMENDMENTS

28 Sec. 37. Section 80.39, subsection 1, Code 1995, is
29 amended to read as follows:

30 1. Personal property, except for motor vehicles subject to
31 sale pursuant to section 321.89, and seizable ~~or-forfeitable~~
32 property subject to disposition pursuant to chapter 809, which
33 personal property is found or seized by, turned in to, or
34 otherwise lawfully comes into the possession of the department
35 of public safety and which the department does not own, shall

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

11 Sec. 38. Section 123.20, subsection 7, Code 1995, is
12 amended to read as follows:

13 7. To accept intoxicating liquors ordered delivered to the
14 alcoholic beverages division pursuant to chapter 809 809A, and
15 offer for sale and deliver the intoxicating liquors to class
16 "E" liquor control licensees, unless the administrator
17 determines that the intoxicating liquors may be adulterated or
18 contaminated. If the administrator determines that the
19 intoxicating liquors may be adulterated or contaminated, the
20 administrator shall order their destruction.

21 Sec. 39. Section 321.232, subsection 3, Code 1995, is
22 amended to read as follows:

23 3. A radar jamming device may be seized by a peace officer
24 subject to forfeiture as provided by chapter 809 or 809A.

25 Sec. 40. Section 321J.4B, subsection 12, as enacted by
26 1995 Iowa Acts, Senate File 446, is amended to read as
27 follows:

28 12. Operating a motor vehicle on a street or highway in
29 this state in violation of an order of impoundment or
30 immobilization is a serious misdemeanor. A motor vehicle
31 which is subject to an order of impoundment or immobilization
32 that is operated on a street or highway in this state during
33 the-period-of-impoundment-or-immobilization in violation of
34 the order shall be seized and forfeited to the state under
35 chapter 809.

1 Sec. 41. Section 321J.10, subsection 7, Code 1995, 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
5 808.9 or chapter 809 or 809A.

6 Sec. 42. Section 455B.103, subsection 4, paragraph d,
7 subparagraph (2), Code 1995, is amended to read as follows:

8 (2) In a reasonable manner, and any property seized shall
9 be treated in accordance with the provisions of chapters 808,
10 and 809, and 809A.

11 Sec. 43. Section 602.6405, subsection 1, Code 1995, is
12 amended to read as follows:

13 1. Magistrates have jurisdiction of simple misdemeanors,
14 including traffic and ordinance violations, and preliminary
15 hearings, search warrant proceedings, county and municipal
16 infractions, and small claims. Magistrates have jurisdiction
17 to determine the disposition of livestock or another animal,
18 as provided in sections 717.5 and 717B.4, if the magistrate
19 determines the value of the livestock or animal is less than
20 ten thousand dollars. Magistrates have jurisdiction to
21 exercise the powers specified in sections 556F.2 and 556F.12,
22 and to hear complaints or preliminary informations, issue
23 warrants, order arrests, make commitments, and take bail.
24 Magistrates have jurisdiction over violations of section
25 123.49, subsection 2, paragraph "h". Magistrates who are
26 admitted to the practice of law in this state have
27 jurisdiction over all proceedings for the involuntary
28 commitment, treatment, or hospitalization of individuals under
29 chapters 125 and 229, except as otherwise provided under
30 section 229.6A; nonlawyer magistrates have jurisdiction over
31 emergency detention and hospitalization proceedings under
32 sections 125.91 and 229.22. Magistrates have jurisdiction to
33 conduct hearings authorized under section 809.4 ~~and-section~~
34 ~~809.10,--subsection-2.~~

35 Sec. 44. Section 809.1, subsection 2, Code 1995, is

1 amended by striking the subsection.

2 Sec. 45. Section 809.17, Code 1995, is amended to read as
3 follows:

4 809.17 PROCEEDS APPLIED TO VARIOUS PROGRAMS.

5 Except as provided in section 809.21, proceeds from the
6 disposal of seized ~~or forfeited~~ property pursuant to this
7 chapter may be transferred in whole or in part to the victim
8 compensation fund created in section 912.14 at the discretion
9 of the recipient agency, political subdivision, or department.

10 Sec. 46. Sections 809.6 through 809.14, Code 1995, are
11 repealed.

12 DIVISION VI

13 ASSAULTS

14 Sec. 47. Section 708.2, subsection 2, Code 1995, is
15 amended to read as follows:

16 2. A person who commits an assault, as defined in section
17 708.1, without-the-intent-to-inflict-a-serious-injury-upon
18 another, and who causes bodily injury or disabling mental
19 illness, is guilty of a serious misdemeanor.

20 Sec. 48. Section 708.2A, subsection 2, paragraph b, Code
21 1995, is amended to read as follows:

22 b. A serious misdemeanor, if the domestic abuse assault is
23 committed-without-the-intent-to-inflict-a-serious-injury-upon
24 another, and-the-assault causes bodily injury or disabling
25 mental illness.

26 Sec. 49. Section 708.2C, subsection 3, Code 1995, is
27 amended to read as follows:

28 3. A person who commits an assault in violation of
29 individual rights without-the-intent-to-inflict-a-serious
30 injury-upon-another, and who causes bodily injury or disabling
31 mental illness, is guilty of an aggravated misdemeanor.

32 Sec. 50. NEW SECTION. 708.4A INTENTIONAL ASSAULT CAUSING
33 INJURY.

34 Any person who does an act which is not justified and which
35 is intended to cause serious injury to another, but which

1 causes bodily injury or mental illness which is not a serious
2 injury, commits a class "D" felony.

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

**SENATE FILE 482
FISCAL NOTE**

The estimate for Senate File 482 as amended and passed by the Senate is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 482 adds Chapter 809A, the Iowa Forfeiture Reform Act, to the Code of Iowa. The Bill provides civil procedures so the State can obtain a personal forfeiture judgement against an offender which can be satisfied from in-state or out-of-state assets, defines conduct triggering forfeiture to include out-of-state conduct, defines forfeitable property, requires the State as well as the claimant in contested forfeiture cases to meet the preponderance of the evidence, creates presumptions relating to property forfeiture, creates five violations, provides penalties for assaults, specifies penalties for violation of an order of impoundment or immobilization of a motor vehicle, and specifies other conditions relating to forfeiture proceedings.

Assumptions:

1. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
2. Four class "B" convictions may occur each year as a result of unlawful activities relating to enterprises and criminal networks.
3. Four class "C" convictions may occur each year as a result of knowingly transporting, making property available, and conducting certain transactions on properties for money laundering activities. Each conviction may include a fine of not more than \$10,000 or twice the value of the property involved.
4. Four class "D" convictions may occur each year as a result of engaging in the business of conducting, directing, or facilitating transactions on properties for money laundering activities. Each conviction may include a fine of not more than \$5,000 or twice the value of the property involved.
5. Four class "C" convictions may occur each year as a result of certain criminal conduct activities as specified under Section 34.7 of the Bill. Each conviction may include a civil penalty three times the value of property involved.
6. In FY 1992, 303 persons were convicted of assault with the intent to inflict serious injury. Approximately 288 persons will be convicted of a class "D" felony offense for assault with the intent to inflict serious injury.
7. Jail admissions are expected to increase as a result of individuals violating an order of impoundment or immobilization of motor vehicles.

Correctional Impact:

A total of 16 convictions may occur each year for unlawful activities relating to enterprises, criminal networks, money laundering activities, and certain

-2-

criminal conduct activities due to the adoption of SF 482, resulting in the following correctional impact on prisons and Community-Based Corrections populations:

Increase in Admissions to Prison

| <u>Prison</u> | <u>FY 1996</u> | <u>FY 1997</u> | <u>FY 2000</u> |
|---------------------|----------------|----------------|----------------|
| Admissions | 35 | 66 | 66 |
| Population Increase | 35 | 113 | 125 |

Increase in Admissions: Community-Based Corrections

| <u>Description</u> | <u>FY 1996</u> | <u>FY 1997</u> | <u>FY 2000</u> |
|------------------------------------|----------------|----------------|----------------|
| Community-Based Corrections | | | |
| Admissions | 4 | 8 | 8 |
| Probation/Parole | | | |
| Admissions | 15 | 30 | 30 |

Fiscal Effect:

The estimated fiscal effect to the State General Fund for the Department of Corrections includes:

| | <u>FY 1996</u> | <u>FY 1997</u> | <u>FY 2000</u> |
|-----------------------------|------------------|------------------|------------------|
| Prison | \$140,000 | \$264,000 | \$264,000 |
| Community-Based Corrections | | | |
| Facilities | 85,000 | 170,000 | 170,000 |
| Probation/Parole | 9,600 | 19,000 | 19,000 |
| Total | \$234,600 | \$453,000 | \$453,000 |

Assumptions:

The average marginal cost per year for a prison inmate is estimated to be \$4,000. The FY 1994 average daily costs for an inmate to serve in a Community-Based Corrections facility is \$58.10 and \$1.76 for probation/parole.

Judicial Department - The cost to the General Fund for each case tried at the District Court level is estimated to be \$3,899 and \$44,440 at the Appellate Court level.

County Funding:

The cost savings to counties is as follows:

| | <u>FY 1996</u> | <u>FY 1997</u> | <u>FY 2000</u> |
|------|----------------|----------------|----------------|
| Jail | \$ 67,400 | \$136,000 | \$136,000 |

-3-

NOTE: The FY 1994 average daily cost for an individual to serve a jail sentence was estimated to be \$51.07. The total cost savings provided is based on the assumption that the average length of stay is 30 days for each admission.

Revenues:

There is not sufficient information available to determine the amount of revenues from fines and civil penalties which may be generated as a result of the adoption of SF 482.

Sources: Criminal Juvenile Justice Planning
Department of Corrections
Judicial Department

(LSB 2643ss.2, LAM)

FILED APRIL 28, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE AMENDMENT TO
SENATE FILE 482

S-5036

- 1 Amend Senate File 482, as amended, passed, and
2 reprinted by the Senate, as follows:
- 3 1. Page 3, lines 15 and 16, by striking the words
4 ", if enacted by Senate File 446".
 - 5 2. Page 3, lines 18 and 19, by striking the words
6 "if enacted by Senate File 446,".
 - 7 3. Page 7, line 14, by inserting after the word
8 "manner" the following: "pursuant to this section".
 - 9 4. Page 8, by striking lines 8 through 12 and
10 inserting the following: "court a surety bond or cash
11 in an amount determined by the court to be reasonable
12 in light of the fair market value of the property.
13 Property shall not be released if any of the following
14 apply:
15 a. The owner fails to post the required bond."
16 5. Page 10, line 12, by striking the word
17 "either" and inserting the following: "any".
 - 18 6. Page 10, by inserting after line 16 the
19 following:
20 "(3) A request for an extension of time in which
21 to file a claim or petition for recognition of
22 exemption."
23 7. Page 10, by striking line 18 and inserting the
24 following: "only be granted for good cause shown for
25 mistake, inadvertence, surprise, excusable neglect, or
26 unavoidable casualty."
 - 27 8. Page 13, line 4, by inserting after the word
28 "practical" the following: ", but not later than ten
29 days,".
 - 30 9. Page 14, line 17, by inserting after the word
31 "days" the following: "of such notice".
 - 32 10. Page 16, line 1, by inserting after the word
33 "mail" the following: "or other service which
34 indicates the date on which the claim was received by
35 the seizing agency and prosecuting attorney".
 - 36 11. Page 16, line 3, by striking the words "not
37 be granted" and inserting the following: "only be
38 granted for good cause shown for mistake,
39 inadvertence, surprise, excusable neglect, or
40 unavoidable casualty".
 - 41 12. Page 18, line 17, by striking the word
42 "claimant," and inserting the following: "claimant."
 - 43 13. Page 18, by striking lines 18 and 19 and
44 inserting the following: "However, once the claimant
45 comes forward with some evidence supporting the
46 existence of the exemption, the state must provide
47 some evidence to negate the assertion of the
48 exemption. The state's evidence must be substantial,
49 though not necessarily rising to the level of a
50 preponderance of the evidence, and more than a simple

S-5036

S-5036

Page 2

1 assertion of the claimant's interest in the property."
2 14. Page 18, by inserting before line 20 the
3 following: "The agency or political subdivision
4 bringing the forfeiture action shall pay the
5 reasonable attorneys fees and costs, as determined by
6 the court, incurred by a claimant who prevails on a
7 claim for exemption in a proceeding under this
8 chapter."

9 15. Page 18, line 33, by striking the word "A"
10 and inserting the following: "Subject to the
11 exemptions contained in section 809A.5, a".

12 16. By striking page 18, line 35, through page
13 19, line 1, and inserting the following: "establishes
14 any of the following:".

15 17. Page 21, by striking lines 13 through 26 and
16 inserting the following:

17 "5. The answer shall be filed within twenty days
18 after service on the claimant of the civil in rem
19 complaint."

20 18. Page 26, line 24, by inserting after the word
21 "holder" the following: "or interest holder".

22 19. Page 26, line 26, by inserting after the word
23 "holder" the following: "or interest holder".

24 20. Page 26, line 29, by inserting after the word
25 "holder's" the following: "or interest holder's".

26 21. Page 26, line 31, by inserting after the word
27 "holder" the following: "or interest holder".

28 22. Page 26, line 32, by inserting after the word
29 "holder's" the following: "or interest holder's".

30 23. Page 27, line 1, by inserting after the word
31 "holder" the following: "or interest holder".

32 24. Page 27, line 7, by inserting after the word
33 "holder" the following: "or interest holder".

34 25. Page 27, line 9, by inserting after the word
35 "holder" the following: "or interest holder".

36 26. Page 27, line 11, by inserting after the word
37 "holder's" the following: "or interest holder's".

38 27. Page 27, line 12, by inserting after the word
39 "the" the following: "regulated interest holder or".

40 28. Page 46, line 25, by striking the words "five
41 thousand" and inserting the following: "seven
42 thousand five hundred".

43 29. By striking page 49, line 34, through page
44 50, line 7.

45 30. Page 53, by inserting before line 28 the
46 following:

47 "Sec. ____ . Section 22.7, Code Supplement 1995, is
48 amended by adding the following new subsection:

49 NEW SUBSECTION. 33. A record required under the
50 Iowa financial transaction reporting Act listed in

S-5036

-2-

S-5036

Page 3

1 section 529.2, subsection 10."

2 31. Page 54, by striking lines 25 through 35 and
3 inserting the following:

4 "Sec. _____. Section 321J.4B, subsection 12, Code
5 Supplement 1995, is amended to read as follows:

6 12. Operating a motor vehicle on a street or
7 highway in this state in violation of an order of
8 impoundment or immobilization is a serious
9 misdemeanor. A motor vehicle which is subject to an
10 order of impoundment or immobilization that is
11 operated on a street or highway in this state in
12 violation of the order shall be seized and forfeited
13 to the state under chapter chapters 809 and 809A."

14 32. Page 55, by inserting before line 1 the
15 following:

16 "Sec. _____. Section 321J.4B, subsections 13 and 16,
17 Code Supplement 1995, are amended to read as follows:

18 13. Once the period of impoundment or
19 immobilization has expired, the owner of the motor
20 vehicle shall have thirty days to claim the motor
21 vehicle and pay the fees and charges imposed under
22 this section. If the owner or the owner's designee
23 has not claimed the vehicle and paid the fees and
24 charges imposed under this section within seven days
25 from the date of expiration of the period, the clerk
26 shall send written notification to the motor vehicle
27 owner, at the owner's last known address, notifying
28 the owner of the date of expiration of the period of
29 impoundment or immobilization and of the period in
30 which the motor vehicle must be claimed. If the motor
31 vehicle owner fails to claim the motor vehicle and pay
32 the fees and charges imposed within the thirty-day
33 period, the motor vehicle shall be forfeited to the
34 state under chapter chapters 809 and 809A.

35 16. Notwithstanding the requirements of this
36 section, the holder of a security interest in a
37 vehicle which is impounded or immobilized pursuant to
38 this section or forfeited in the manner provided in
39 chapter chapters 809 and 809A shall be notified of the
40 impoundment, immobilization, or forfeiture within
41 seventy-two hours of the seizure of the vehicle and
42 shall have the right to claim the motor vehicle
43 without payment of any fees or surcharges unless the
44 value of the vehicle exceeds the value of the security
45 interest held by the creditor."

46 33. Page 55, line 35, by inserting after the word
47 "Code" the following: "Supplement".

48 34. Page 56, by inserting after line 1, the
49 following:

50 "Sec. _____. Section 809.4, Code 1995, is amended to

S-5036

S-5036

Page 4

1 read as follows:

2 809.4 HEARING -- APPEAL.

3 An application for the return of seized property
4 shall be set for hearing not less than five nor more
5 than thirty days after the filing of the application
6 and shall be tried to the court. All claims to the
7 same property shall be heard in one proceeding unless
8 it is shown that the proceeding would result in
9 prejudice to one or more of the parties. If the total
10 value of the property sought to be returned is less
11 than five thousand dollars, the proceeding may be
12 conducted by a magistrate or a district associate
13 judge with appeal to be as in the case of small
14 claims. In all other cases, the hearing shall be
15 conducted by a district judge, with appeal as provided
16 in section ~~809.12~~ 809.12A.

17 Sec. ____ . NEW SECTION. 809.12A APPEALS.

18 An appeal from a denial of an application for the
19 return of seized property or from an order for the
20 return of seized property shall be made within thirty
21 days after the entry of a judgment order. The
22 appellant, other than the state, shall post a bond of
23 a reasonable amount as the court may fix and approve,
24 conditioned to pay all costs of the proceedings if the
25 appellant is unsuccessful on appeal. The appellant,
26 other than the state, may be required to post a
27 supersedeas bond or other security, as the court finds
28 to be reasonable, in order to stay the operation of a
29 forfeiture order under section 809A.16.

30 Sec. ____ . Section 809.15, Code 1995, is amended to
31 read as follows:

32 809.15 COMBINING PROCEEDINGS.

33 In cases involving seized property and forfeitable
34 property subject to forfeiture pursuant to section
35 809A.4, the court may order that the proceedings be
36 combined for purposes of this chapter."

37 35. By striking page 56, line 12, through page
38 57, line 2.

39 36. By renumbering, relettering, and correcting
40 internal references as necessary.

RECEIVED FROM THE HOUSE

S-5036 FILED FEBRUARY 5, 1996

Senate Rules
3/20/96
(p. 906)

SENATE FILE 482

-5035

1 Amend Senate File 482, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 3, lines 15 and 16, by striking the words
4 ", if enacted by Senate File 446".
5 2. Page 3, lines 18 and 19, by striking the words
6 "if enacted by Senate File 446,".
7 3. Page 7, line 14, by inserting after the word
8 "manner" the following: "pursuant to this section".
9 4. Page 8, by striking lines 8 through 12 and
10 inserting the following: "court a surety bond or cash
11 in an amount determined by the court to be reasonable
12 in light of the fair market value of the property.
13 Property shall not be released if any of the following
14 apply:
15 a. The owner fails to post the required bond."
16 5. Page 10, line 12, by striking the word
17 "either" and inserting the following: "any".
18 6. Page 10, by inserting after line 16 the
19 following:
20 "(3) A request for an extension of time in which
21 to file a claim or petition for recognition of
22 exemption."
23 7. Page 10, by striking line 18 and inserting the
24 following: "only be granted for good cause shown for
25 mistake, inadvertence, surprise, excusable neglect, or
26 unavoidable casualty."
27 8. Page 13, line 4, by inserting after the word
28 "practical" the following: ", but not later than ten
29 days,".
30 9. Page 14, line 17, by inserting after the word
31 "days" the following: "of such notice".
32 10. Page 16, line 1, by inserting after the word
33 "mail" the following: "or other service which
34 indicates the date on which the claim was received by
35 the seizing agency and prosecuting attorney".
36 11. Page 16, line 3, by striking the words "not
37 be granted" and inserting the following: "only be
38 granted for good cause shown for mistake,
39 inadvertence, surprise, excusable neglect, or
40 unavoidable casualty".
41 12. Page 18, line 17, by striking the word
42 "claimant," and inserting the following: "claimant."
43 13. Page 18, by striking lines 18 and 19 and
44 inserting the following: "However, once the claimant
45 comes forward with some evidence supporting the
46 existence of the exemption, the state must provide
47 some evidence to negate the assertion of the
48 exemption. The state's evidence must be substantial,
49 though not necessarily rising to the level of a
50 preponderance of the evidence, and more than a simple

-5035

-1-

H-5035

Page 2

1 assertion of the claimant's interest in the property."
2 14. Page 18, by inserting before line 20 the
3 following: "The agency or political subdivision
4 bringing the forfeiture action shall pay the
5 reasonable attorneys fees and costs, as determined by
6 the court, incurred by a claimant who prevails on a
7 claim for exemption in a proceeding under this
8 chapter."
9 15. Page 18, line 33, by striking the word "A"
10 and inserting the following: "Subject to the
11 exemptions contained in section 809A.5, a".
12 16. By striking page 18, line 35, through page
13 19, line 1, and inserting the following: "establishes
14 any of the following:".
15 17. Page 21, by striking lines 13 through 26 and
16 inserting the following:
17 "5. The answer shall be filed within twenty days
18 after service on the claimant of the civil in rem
19 complaint."
20 18. Page 26, line 24, by inserting after the word
21 "holder" the following: "or interest holder".
22 19. Page 26, line 26, by inserting after the word
23 "holder" the following: "or interest holder".
24 20. Page 26, line 29, by inserting after the word
25 "holder's" the following: "or interest holder's".
26 21. Page 26, line 31, by inserting after the word
27 "holder" the following: "or interest holder".
28 22. Page 26, line 32, by inserting after the word
29 "holder's" the following: "or interest holder's".
30 23. Page 27, line 1, by inserting after the word
31 "holder" the following: "or interest holder".
32 24. Page 27, line 7, by inserting after the word
33 "holder" the following: "or interest holder".
34 25. Page 27, line 9, by inserting after the word
35 "holder" the following: "or interest holder".
36 26. Page 27, line 11, by inserting after the word
37 "holder's" the following: "or interest holder's".
38 27. Page 27, line 12, by inserting after the word
39 "the" the following: "regulated interest holder or".
40 28. Page 46, line 25, by striking the words "five
41 thousand" and inserting the following: "seven
42 thousand five hundred".
43 29. By striking page 49, line 34, through page
44 50, line 7.
45 30. Page 53, by inserting before line 28 the
46 following:
47 "Sec. ____ . Section 22.7, Code Supplement 1995, is
48 amended by adding the following new subsection:
49 NEW SUBSECTION. 33. A record required under the
50 Iowa financial transaction reporting Act listed in

H-5035

-2-

H-5035

Page 3

1 section 529.2, subsection 10."

2 31. Page 54, by striking lines 25 through 35 and
3 inserting the following:

4 "Sec. _____. Section 321J.4B, subsection 12, Code
5 Supplement 1995, is amended to read as follows:

6 12. Operating a motor vehicle on a street or
7 highway in this state in violation of an order of
8 impoundment or immobilization is a serious
9 misdemeanor. A motor vehicle which is subject to an
10 order of impoundment or immobilization that is
11 operated on a street or highway in this state in
12 violation of the order shall be seized and forfeited
13 to the state under chapter chapters 809 and 809A."

14 32. Page 55, by inserting before line 1 the
15 following:

16 "Sec. _____. Section 321J.4B, subsections 13 and 16,
17 Code Supplement 1995, are amended to read as follows:

18 13. Once the period of impoundment or
19 immobilization has expired, the owner of the motor
20 vehicle shall have thirty days to claim the motor
21 vehicle and pay the fees and charges imposed under
22 this section. If the owner or the owner's designee
23 has not claimed the vehicle and paid the fees and
24 charges imposed under this section within seven days
25 from the date of expiration of the period, the clerk
26 shall send written notification to the motor vehicle
27 owner, at the owner's last known address, notifying
28 the owner of the date of expiration of the period of
29 impoundment or immobilization and of the period in
30 which the motor vehicle must be claimed. If the motor
31 vehicle owner fails to claim the motor vehicle and pay
32 the fees and charges imposed within the thirty-day
33 period, the motor vehicle shall be forfeited to the
34 state under chapter chapters 809 and 809A.

35 16. Notwithstanding the requirements of this
36 section, the holder of a security interest in a
37 vehicle which is impounded or immobilized pursuant to
38 this section or forfeited in the manner provided in
39 chapter chapters 809 and 809A shall be notified of the
40 impoundment, immobilization, or forfeiture within
41 seventy-two hours of the seizure of the vehicle and
42 shall have the right to claim the motor vehicle
43 without payment of any fees or surcharges unless the
44 value of the vehicle exceeds the value of the security
45 interest held by the creditor."

46 33. Page 55, line 35, by inserting after the word
47 "Code" the following: "Supplement".

48 34. Page 56, by inserting after line 1, the
49 following:

50 "Sec. _____. Section 809.4, Code 1995, is amended to

H-5035

H-5035

Page 4

1 read as follows:

2 809.4 HEARING -- APPEAL.

3 An application for the return of seized property
4 shall be set for hearing not less than five nor more
5 than thirty days after the filing of the application
6 and shall be tried to the court. All claims to the
7 same property shall be heard in one proceeding unless
8 it is shown that the proceeding would result in
9 prejudice to one or more of the parties. If the total
10 value of the property sought to be returned is less
11 than five thousand dollars, the proceeding may be
12 conducted by a magistrate or a district associate
13 judge with appeal to be as in the case of small
14 claims. In all other cases, the hearing shall be
15 conducted by a district judge, with appeal as provided
16 in section ~~809.12~~ 809.12A.

17 Sec. ____ . NEW SECTION. 809.12A APPEALS.

18 An appeal from a denial of an application for the
19 return of seized property or from an order for the
20 return of seized property shall be made within thirty
21 days after the entry of a judgment order. The
22 appellant, other than the state, shall post a bond of
23 a reasonable amount as the court may fix and approve,
24 conditioned to pay all costs of the proceedings if the
25 appellant is unsuccessful on appeal. The appellant,
26 other than the state, may be required to post a
27 supersedeas bond or other security, as the court finds
28 to be reasonable, in order to stay the operation of a
29 forfeiture order under section 809A.16.

30 Sec. ____ . Section 809.15, Code 1995, is amended to
31 read as follows:

32 809.15 COMBINING PROCEEDINGS.

33 In cases involving seized property and ~~forfeitable~~
34 property subject to forfeiture pursuant to section
35 809A.4, the court may order that the proceedings be
36 combined for purposes of this chapter."

37 35. By striking page 56, line 12, through page
38 57, line 2.

39 36. By renumbering, relettering, and correcting
40 internal references as necessary.

By COMMITTEE ON JUDICIARY

HURLEY of Fayette, Chairperson

H-5035 FILED JANUARY 31, 1996

(P. 232) adopted 2/5/96

SENATE FILE 482

S-5081

1 Amend the House amendment, S-5036, to Senate File
2 482, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 2, by inserting after line 39, the
5 following:

6 "____. Page 32, by inserting after line 23, the
7 following:

8 "Sec. ____ . NEW SECTION. 809A.25 RULEMAKING.

9 The attorney general shall adopt, amend, or repeal
10 rules pursuant to chapter 17A to carry out the
11 provisions of this chapter.""

12 2. Page 4, by inserting after line 36, the
13 following:

14 "Sec. ____ . Section 809.16, Code 1995, is amended
15 to read as follows:

16 809.16 RULEMAKING.

17 The attorney general ~~may~~ shall adopt, amend, or
18 repeal rules pursuant to chapter 17A to carry out the
19 provisions of this chapter.""

S-5081

By BERL E. PRIEBE
JOHN P. KIBBIE

Filled Date
Feb-19, 1996

adopted
3/20/96

(P. 906)

SENATE AMENDMENT TO HOUSE AMENDMENT TO SENATE FILE 482
H-5494

1 Amend the House amendment, S-5036, to Senate File
2 482, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 2, by inserting after line 39, the
5 following:

6 "____. Page 32, by inserting after line 23, the
7 following:

8 "Sec. ____ . NEW SECTION. 809A.25 RULEMAKING.

9 The attorney general shall adopt, amend, or repeal
10 rules pursuant to chapter 17A to carry out the
11 provisions of this chapter."

12 2. Page 4, by inserting after line 36, the
13 following:

14 "Sec. ____ . Section 809.16, Code 1995, is amended
15 to read as follows:

16 809.16 RULEMAKING.

17 The attorney general ~~may~~ shall adopt, amend, or
18 repeal rules pursuant to chapter 17A to carry out the
19 provisions of this chapter."

RECEIVED FROM THE SENATE

H-5494 FILED MARCH 20, 1996

House concurred 4/3/96 (p. 1379)

SENATE FILE 482 .

AN ACT
ESTABLISHING ECONOMIC AND OTHER PENALTIES FOR CERTAIN
CRIMINAL ACTIVITY.

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

DIVISION I

IOWA FORFEITURE REFORM ACT

Section 1. NEW SECTION. 809A.1 DEFINITIONS.

As used in this chapter:

1. "Conveyance" includes any vehicle, trailer, vessel, aircraft, or other means of transportation.
2. "Interest holder" means a secured party within the meaning of chapter 554, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest is perfected against a good faith purchaser for value. A person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an interest holder.
3. "Omission" means the failure to perform an act that is required by law.
4. "Owner" means a person, other than an interest holder, who has an interest in property. A person who holds property for the benefit of or for an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an owner.

5. "Proceeds" means property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

6. "Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible, or intangible.

7. "Prosecuting attorney" means an attorney who is authorized by law to appear on the behalf of the state in a criminal case, and includes the attorney general, an assistant attorney general, the county attorney, an assistant county attorney, or a special or substitute prosecutor whose appearance is approved by a court having jurisdiction to try a defendant for the offense with which the defendant is charged.

8. "Regulated interest holder" means an interest holder that is a business authorized to do business in this state and is under the jurisdiction of any state or federal agency regulating banking, insurance, real estate, or securities.

9. "Seizing agency" means a department or agency of this state or its political subdivisions that regularly employs law enforcement officers, and that employs the law enforcement officer who seizes property for forfeiture, or such other agency as the department or agency may designate by its chief executive officer or the officer's designee.

10. "Seizure for forfeiture" means seizure of property by a law enforcement officer, including a constructive seizure, accompanied by an assertion by the seizing agency or by a prosecuting attorney that the property is seized for forfeiture, in accordance with section 809A.6.

Sec. 2. NEW SECTION. 809A.2 JURISDICTION AND VENUE.

1. The district court has jurisdiction under this chapter over:

- a. All interests in property within this state at the time a forfeiture action is filed.

b. The interest in the property of an owner or interest holder who is subject to personal jurisdiction in this state.

2. In addition to the venue provided for under chapter 803 or any other provision of law, a proceeding for forfeiture under this chapter may be maintained in the county in which any part of the property is found or in the county in which a civil or criminal action could be maintained against an owner or interest holder for the conduct alleged to give rise to the forfeiture.

Sec. 3. NEW SECTION. 809A.3 CONDUCT GIVING RISE TO FORFEITURE.

The following conduct may give rise to forfeiture:

1. An act or omission which is a public offense and which is a serious or aggravated misdemeanor or felony.
2. An act or omission occurring outside of this state, that would be punishable by confinement of one year or more in the place of occurrence and would be a serious or aggravated misdemeanor or felony if the act or omission occurred in this state.
3. An act or omission committed in furtherance of any act or omission described in subsection 1, which is a serious or aggravated misdemeanor or felony including any inchoate or preparatory offense.
4. A violation of section 321J.4B, subsection 12.
5. Notwithstanding subsections 1 through 4, violations of chapter 321 or 321J, except section 321J.4B, subsection 12, shall not be considered conduct giving rise to forfeiture.

Sec. 4. NEW SECTION. 809A.4 PROPERTY SUBJECT TO FORFEITURE.

The following are subject to forfeiture:

1. All controlled substances, raw materials, controlled substance analogs, counterfeit controlled substances, imitation controlled substances, or precursor substances, that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state.

2. a. All property, except as provided in paragraph "b", including the whole of any lot or tract of land and any appurtenances or improvements to real property, including homesteads that are otherwise exempt from judicial sale pursuant to section 561.16, that is either:

(1) Furnished or intended to be furnished by a person in an exchange that constitutes conduct giving rise to forfeiture.

(2) Used or intended to be used in any manner or part to facilitate conduct giving rise to forfeiture.

b. If the only conduct giving rise to forfeiture is a violation of section 124.401, subsection 3, real property is not subject to forfeiture and other property subject to forfeiture pursuant to paragraph "a", subparagraph (2), may be forfeited only pursuant to section 809A.14.

3. All proceeds of any conduct giving rise to forfeiture.

4. All weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture.

5. Any interest or security in, claim against, or property or contractual right of any kind affording a source of control over any enterprise that a person has established, operated, controlled, or conducted through, or participated in the conduct, giving rise to forfeiture.

6. a. Any property of a person up to the value of property of either of the following:

(1) Described in subsection 2 that the person owned or possessed for the purpose of a use described in subsection 2.

(2) Described in subsection 3 and is proceeds of conduct engaged in by the person or for which the person is criminally responsible.

b. Property described in this subsection may be seized for forfeiture pursuant to a constructive seizure or an actual seizure pursuant to section 809A.6. Actual seizure may only be done pursuant to a seizure warrant issued on a showing, in addition to the showing of probable cause for the forfeiture of the subject property, that the subject property is not

available for seizure for reasons described in section 809A.15, subsection 1, and that the value of the property to be seized is not greater than the total value of the subject property, or pursuant to a constructive seizure. If property of a defendant up to the total value of all interests in the subject property is not seized prior to final judgment in an action under this section, the remaining balance shall be ordered forfeited as a personal judgment against the defendant.

7. As used in this section, "facilitate" means to have a substantial connection between the property and the conduct giving rise to forfeiture.

Sec. 5. NEW SECTION. 809A.5 EXEMPTIONS.

1. All property, including all interests in property, described in section 809A.4 is subject to forfeiture, except that property is exempt from forfeiture if either of the following occurs:

a. The owner or interest holder acquired the property before or during the conduct giving rise to its forfeiture, and did not know and could not reasonably have known of the conduct or that the conduct was likely to occur, or acted reasonably to prevent the conduct giving rise to forfeiture.

b. The owner or interest holder acquired the property, including acquisition of proceeds of conduct giving rise to forfeiture, after the conduct giving rise to its forfeiture and acquired the property in good faith, for value and did not knowingly take part in an illegal transaction.

2. Notwithstanding subsection 1, property is not exempt from forfeiture, even though the owner or interest holder lacked knowledge or reason to know that the conduct giving rise to its forfeiture had occurred or was likely to occur, if any of the following exists:

a. The person whose conduct gave rise to its forfeiture had the authority to convey the property of the person claiming the exemption to a good faith purchaser for value at the time of the conduct.

b. The owner or interest holder is criminally responsible for the conduct giving rise to its forfeiture, whether or not the owner or interest holder is prosecuted or convicted.

c. The owner or interest holder acquired the property with notice of its actual or constructive seizure for forfeiture under section 809A.6, or with reason to believe that it was subject to forfeiture.

Sec. 6. NEW SECTION. 809A.6 SEIZURE OF PROPERTY.

1. A peace officer may seize property for forfeiture upon process issued by any district judge, district associate judge, or magistrate. The court may issue a seizure warrant on an affidavit under oath demonstrating that probable cause exists for its forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The court may order that the property be seized on such terms and conditions as are reasonable in the discretion of the court. The order may be made on or in connection with a search warrant.

2. Peace officers may seize property for forfeiture without process on probable cause to believe that the property is subject to forfeiture under this chapter and if exigent circumstances exist or if the property has already been seized for a purpose other than forfeiture.

3. The seizure of inhabited residential real property for forfeiture which is accompanied by removing or excluding its residents shall be done pursuant to a preseizure adversarial judicial determination of probable cause, except that this determination may be made ex parte if the prosecuting attorney has demonstrated exigent circumstances.

4. Property may be seized constructively by:

a. Posting notice of seizure for forfeiture or notice of pending forfeiture on the property.

b. Giving notice pursuant to section 809A.8.

c. Filing or recording in the public records relating to that type of property notice of seizure for forfeiture, notice of pending forfeiture, a forfeiture lien, or a notice of lis pendens.

Filings or recordings made pursuant to this subsection are not subject to a filing fee or other charge.

5. The seizing agency, or the prosecuting attorney, shall make a reasonable effort to provide notice of the seizure to the person from whose possession or control the property was seized and to any person who has a security interest in the property. If no person is in possession or control of the property, the seizing agency may attach the notice to the property or to the place of its seizure or may make a reasonable effort to deliver it to the owner of the property. The notice shall contain a general description of the property seized, the date and place of seizure, the name of the seizing agency, and the address and telephone number of the seizing officer or other person or agency from whom information about the seizure may be obtained.

6. A person who acts in good faith and in a reasonable manner pursuant to this section to comply with an order of the court or a request of a law enforcement officer is not liable to any person for acts done in reasonable compliance with the order or request. In addition, an inference of guilt shall not be drawn from the fact that a person refuses a law enforcement officer's request to deliver the property.

7. A possessory lien of a person from whose possession property is seized is not affected by the seizure.

Sec. 7. NEW SECTION. 809A.7 PROPERTY MANAGEMENT AND PRESERVATION.

1. Property seized for forfeiture under this chapter is not subject to alienation, conveyance, sequestration, attachment, or an application for return of seized property under chapter 809.

2. The seizing agency or the prosecuting attorney may authorize the release of the seizure for forfeiture on the property if forfeiture or retention of actual custody is unnecessary.

3. The prosecuting attorney may discontinue forfeiture proceedings and transfer the action to another state or

federal agency or prosecuting attorney who has initiated forfeiture proceedings.

4. Property seized for forfeiture under this chapter is deemed to be in the custody of the district court subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings and to the acts of the seizing agency or the prosecuting attorney pursuant to this chapter.

5. An owner of property seized for forfeiture under this chapter may obtain release of the property by posting with the court a surety bond or cash in an amount determined by the court to be reasonable in light of the fair market value of the property. Property shall not be released if any of the following apply:

- a. The owner fails to post the required bond.
- b. The property is retained as contraband or as evidence.
- c. The property is particularly altered or designed for use in conduct giving rise to forfeiture.

If a surety bond or cash is posted and the property is forfeited, the court shall forfeit the surety bond or cash in lieu of the property.

6. If property is seized for forfeiture under this chapter, the prosecuting attorney, subject to any need to retain the property as evidence, may do any of the following:

- a. Remove the property to an appropriate place designated by the district court.
- b. Place the property under constructive seizure.
- c. Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, deposit it in an interest-bearing account.
- d. Provide for another agency or custodian, including an owner, secured party, mortgagee, or lienholder, to take custody of the property and service, maintain, and operate it as reasonably necessary to maintain its value, in any appropriate location within the jurisdiction of the court.
- e. Require the seizing agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

7. As soon as practicable after seizure for forfeiture, the seizing agency shall conduct a written inventory and estimate the value of the property seized.

8. The court may order property which has been seized for forfeiture sold, leased, rented, or operated to satisfy a specified interest of any interest holder, or to preserve the interests of any party on motion of such party. The court may enter orders under this subsection after notice to persons known to have an interest in the property, and an opportunity for a hearing, if either of the following exist:

a. The interest holder has timely filed a proper claim and is a regulated interest holder.

b. The interest holder has an interest which the prosecuting attorney has stipulated is exempt from forfeiture.

9. A sale may be ordered under subsection 8 if the property is liable to perish, to waste, or to be foreclosed upon or significantly reduced in value, or if the expenses of maintaining the property are disproportionate to its value. A third party designated by the court shall dispose of the property by commercially reasonable public sale and distribute the proceeds in the following order of priority:

a. For the payment of reasonable expenses incurred in connection with the sale or disposal.

b. For the satisfaction of exempt interests in the order of their priority.

c. Any balance of the proceeds shall be preserved in the actual or constructive custody of the court, in an interest-bearing account, subject to the proceedings under this chapter.

Sec. 8. NEW SECTION. 809A.8 COMMENCEMENT OF FORFEITURE PROCEEDINGS -- PROPERTY RELEASE REQUIREMENTS.

1. Forfeiture proceedings shall be commenced as follows:

a. Property seized for forfeiture shall be released on the request of an owner or interest holder to the owner's or interest holder's custody, as custodian for the court, pending further proceedings pursuant to this chapter if the prosecuting attorney fails to do either of the following:

(1) File a notice of pending forfeiture against the property within ninety days after seizure.

(2) File a judicial forfeiture proceeding within ninety days after notice of pending forfeiture of property upon which a proper claim has been timely filed pursuant to section 809A.11.

b. Within thirty days after the effective date of the notice of pending forfeiture, an owner of or interest holder in the property may elect to file with the prosecuting attorney any of the following:

(1) A claim pursuant to section 809A.11.

(2) A petition for recognition of exemption pursuant to section 809A.11, except that no petition may be filed after the state commences a court action.

(3) A request for an extension of time in which to file a claim or petition for recognition of exemption.

c. An extension of time for the filing of a claim shall only be granted for good cause shown for mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty.

d. If a petition is timely filed, the prosecuting attorney may delay filing a judicial forfeiture proceeding for one hundred eighty days after the notice of pending forfeiture, and the following procedures shall apply:

(1) The prosecuting attorney shall provide the seizing agency and the petitioning party with a written recognition of exemption and statement of nonexempt interests relating to any or all interests in the property in response to each petitioning party as follows:

(a) Within sixty days after the effective date of the notice of pending forfeiture if the petitioner is a regulated interest holder. The recognition of exemption shall recognize the interest of the petitioner to the extent of documented outstanding principal plus interest at the contract rate until paid.

(b) Within one hundred twenty days after the effective date of the notice of pending forfeiture for all other petitioners.

(2) An owner or interest holder in any property declared nonexempt may file a claim pursuant to section 809A.11 within thirty days after the effective date of the notice of the recognition of exemption and statement of nonexempt interest.

(3) If a petitioning party does not timely file a proper claim under paragraph "b", the recognition of exemption and statement of nonexempt interests becomes final, and the prosecuting attorney shall proceed as provided in sections 809A.16 and 809A.17.

(4) The prosecuting attorney may elect to proceed under this section for judicial forfeiture at any time.

(5) If a judicial forfeiture proceeding follows the application of procedures in this paragraph, the following apply:

(a) A duplicate or repetitive notice is not required. If a proper claim has been timely filed pursuant to subparagraph (2), the claim shall be determined in a judicial forfeiture proceeding after the commencement of such a proceeding under sections 809A.13, 809A.14, and 809A.15.

(b) The proposed recognition of exemption and statement of nonexempt interest responsive to all petitioning parties who subsequently filed claims are void and are regarded as rejected offers to compromise.

e. If a proper petition for recognition of exemption or proper claim is not timely filed, the prosecuting attorney shall proceed as provided in sections 809A.16 and 809A.17.

2. a. Notice of pending forfeiture, service of an in rem complaint or notice of a recognition of exemption and statement of nonexempt interests required under the chapter, shall be given in accordance with one of the following:

(1) If the owner's or interest holder's name and current address are known, by either personal service by any person qualified to serve process or by any law enforcement officer

or by mailing a copy of the notice by restricted certified mail to that address.

(2) If the owner's or interest holder's name and address are required by law to be on record with the county recorder, secretary of state, the motor vehicle division of the state department of transportation, or another state or federal agency to perfect an interest in the property, and the owner's or interest holder's current address is not known, by mailing a copy of the notice by restricted certified mail to any address of record with any of the described agencies.

(3) If the owner's or interest holder's address is not known and is not on record as provided in subsection 2, paragraph "a", subparagraph (2), or the owner or interest holder's interest is not known, by publication in one issue of a newspaper of general circulation in the county in which the seizure occurred.

b. Notice is effective upon the earlier of personal service, publication, or the mailing of a written notice, except that notice of pending forfeiture of real property is not effective until it is recorded. Notice of pending forfeiture shall include a description of the property, the date and place of seizure, the conduct giving rise to forfeiture or the violation of law alleged, and a summary of procedures and procedural rights applicable to the forfeiture action.

Sec. 9. NEW SECTION. 809A.9 LIENS.

1. The prosecuting attorney may file, without a filing fee, a lien for the forfeiture of property if any of the following apply:

a. Upon the initiation of any civil or criminal proceeding relating to conduct giving rise to forfeiture under this chapter.

b. Upon seizure for forfeiture.

c. In connection with a proceeding or seizure for forfeiture in any other state under a state or federal statute substantially similar to the relevant provisions of this

chapter. The filing constitutes notice to any person claiming an interest in the seized property or in property owned by the named person.

2. The lienor, as soon as practical, but not later than ten days, after filing a lien, shall furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection shall not invalidate or otherwise affect the lien.

3. The lien notice shall set forth all of the following:

a. The name of the person and, in the discretion of the lienor, any aliases, or the name of any corporation, partnership, trust, or other entity, including nominees, that are owned entirely or in part, or controlled by the person.

b. The description of the seized property or the criminal or civil proceeding that has been brought relating to conduct giving rise to forfeiture under the chapter.

c. The amount claimed by the lienor.

d. The name of the district court where the proceeding or action has been brought.

e. The case number of the proceeding or action if known at the time of the filing of the lien.

4. The notice of forfeiture lien shall be filed in accordance with the provisions of the laws of this state relating to the type of property that is subject to the lien. The validity and priority of the forfeiture lien shall be determined in accordance with applicable law pertaining to liens.

5. A lien filed pursuant to this section applies to the described property or to one named person, any aliases, fictitious names, or other names, including the names of any corporation, partnership, trust, or other entity, owned entirely or in part, or controlled by the named person, and any interest in real property owned or controlled by the named person. A separate forfeiture lien shall be filed for each named person.

6. The lien notice creates, upon filing, a lien in favor of the lienor as it relates to the property or the named person or related entities. The lien secures the amount of potential liability for civil judgment, and, if applicable, the fair market value of property relating to all proceedings under this chapter enforcing the lien.

7. The lienor may amend or release, in whole or in part, a lien filed under this section at any time by filing, without a filing fee, an amended lien.

8. Upon entry of judgment in its favor, the state may proceed to execute on the lien as provided by law.

Sec. 10. NEW SECTION. 809A.10 TRUSTEES.

1. Except as provided in subsection 2, a trustee, constructive or otherwise, who has notice that a notice of forfeiture lien, or a notice of pending forfeiture, or a civil forfeiture proceeding has been filed against the property or against any person or entity for whom the person holds title or appears as record owner, shall furnish within fifteen days of such notice, to the seizing agency, or the prosecuting attorney all of the following:

a. The name and address of each person or entity for whom the property is held.

b. The description of all other property whose legal title is held for the benefit of the named person.

c. A copy of the applicable trust agreement or other instrument, if any, under which the trustee or other person holds legal title or appears as record owner of the property.

2. Subsection 1 is inapplicable if any of the following applies:

a. A trustee is acting under a recorded subdivision trust agreement or a recorded deed of trust.

b. All of the information is of record in the public records giving notice of liens on that type of property.

3. A trustee with notice who knowingly fails to comply with the provisions of this section commits a class "D" felony, and shall be fined not less than ten thousand dollars per day for each day of noncompliance.

4. A trustee with notice who fails to comply with subsection 1 is subject to a civil penalty of three hundred dollars for each day of noncompliance. The court shall enter judgment ordering payment of three hundred dollars for each day of noncompliance from the effective date of the notice until the required information is furnished or the state executes its judgment lien under this section.

5. To the extent permitted by the Constitution of the United States and the Constitution of the State of Iowa, the duty to comply with subsection 1 shall not be excused by any privilege or provision of law of this state or any other state or country which authorizes or directs that testimony or records required to be furnished pursuant to subsection 1 are privileged or confidential or otherwise may not be disclosed.

6. A trustee who furnishes information pursuant to subsection 1 is immune from civil liability for the release of information.

7. An employee of the seizing agency or the prosecuting attorney who releases the information obtained pursuant to subsection 1, except in the proper discharge of official duties, commits a serious misdemeanor.

8. If any information furnished pursuant to subsection 1 is offered in evidence, the court may seal that portion of the record or may order that the information be disclosed in a designated way.

9. A judgment or an order of payment entered pursuant to this section becomes a judgment lien against the property alleged to be subject to forfeiture.

Sec. 11. NEW SECTION. 809A.11 CLAIMS -- PETITIONS FOR RECOGNITION OF EXEMPTION.

1. Only an owner of or interest holder in property seized for forfeiture may file a claim, and shall do so in the manner provided in this section. The claim shall be mailed to the seizing agency and to the prosecuting attorney by restricted certified mail or other service which indicates the date on which the claim was received by the seizing agency and

prosecuting attorney within thirty days after the effective date of notice of pending forfeiture. An extension of time for the filing of a claim shall only be granted for good cause shown for mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty.

2. The prosecuting attorney shall make an opportunity to file a petition for recognition of exemption available by so indicating in the notice of pending forfeiture described in section 809A.8, subsection 2.

3. The claim or petition and all supporting documents shall be in affidavit form, signed by the claimant under oath, and sworn to by the affiant before one who has authority to administer the oath, under penalty of perjury and shall set forth all of the following:

a. The caption of the proceedings and identifying number, if any, as set forth on the notice of pending forfeiture or complaint, the name of the claimant or petitioner, and the name of the prosecuting attorney who authorized the notice of pending forfeiture or complaint.

b. The address where the claimant or petitioner will accept mail.

c. The nature and extent of the claimant's or petitioner's interest in the property.

d. The date, the identity of the transferor, and the circumstances of the claimant's or petitioner's acquisition of the interest in the property.

e. The specific provision of law relied on in asserting that the property is not subject to forfeiture.

f. All essential facts supporting each assertion.

g. The specific relief sought.

Sec. 12. NEW SECTION. 809A.12 JUDICIAL PROCEEDINGS GENERALLY.

1. A judicial forfeiture proceeding under this chapter is subject to the provisions of this section.

2. The court, before or after the filing of a notice of pending forfeiture or complaint and on application of the prosecuting attorney, may do any of the following:

- a. Enter a restraining order or injunction.
- b. Require the execution of satisfactory performance bonds.
- c. Create receiverships.
- d. Appoint conservators, custodians, appraisers, accountants, or trustees.
- e. Take any other action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this chapter, including a writ of attachment or a warrant for its seizure.

3. The court, after five days' notice to the prosecuting attorney, may issue an order to show cause to the seizing agency, for a hearing on the sole issue of whether probable cause for forfeiture of the property then exists if all of the following exist:

- a. Property is seized for forfeiture or a forfeiture lien is filed without a previous judicial determination of probable cause, order of forfeiture, or a hearing under section 809A.14, subsection 4.

- b. An owner of or interest holder in the property files an application for a hearing within ten days after notice of its seizure for forfeiture or lien, or actual knowledge of its seizure, whichever is earlier.

- c. The owner of or interest holder in the property complies with the requirements for claims or petitions in section 809A.11.

The hearing shall be held within thirty days of the order to show cause unless continued for good cause on motion of either party.

4. If the court finds in a hearing under subsection 3 that no probable cause exists for forfeiture of the property, or if the state elects not to contest the issue, the property shall be released to the custody of the applicant, as custodian for the court, or from the lien pending the outcome of a judicial proceeding pursuant to this chapter. If the court finds that probable cause for the forfeiture of the property exists, the court shall not order the property released.

5. All applications filed within the ten-day period prescribed by subsection 3 shall be consolidated for a single hearing relating to each applicant's interest in the property seized for forfeiture.

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

7. In any proceeding under this chapter, if a claim is based on an exemption provided for in this chapter, the burden of proving the existence of the exemption is on the claimant. However, once the claimant comes forward with some evidence supporting the existence of the exemption, the state must provide some evidence to negate the assertion of the exemption. The state's evidence must be substantial, though not necessarily rising to the level of a preponderance of the evidence, and more than a simple assertion of the claimant's interest in the property. The agency or political subdivision bringing the forfeiture action shall pay the reasonable attorneys fees and costs, as determined by the court, incurred by a claimant who prevails on a claim for exemption in a proceeding under this chapter.

8. In hearings and determinations pursuant to this section, the court may receive and consider, in making any determination of probable cause, all evidence admissible in determining probable cause at a preliminary hearing or by a judge pursuant to chapter 808 together with inferences therefrom.

9. The fact that money or a negotiable instrument was found in close proximity to any contraband or an instrumentality of conduct giving rise to forfeiture shall give rise to the presumption that the money or negotiable

instrument was the proceeds of conduct giving rise to forfeiture or was used or intended to be used to facilitate the conduct.

10. Subject to the exemptions contained in section 809A.5, a presumption arises that any property of a person is subject to forfeiture under this chapter if the state establishes any of the following:

a. The person has engaged in conduct giving rise to forfeiture.

b. The property was acquired by the person during that period of the conduct giving rise to forfeiture or within a reasonable time after that period.

c. No likely source for acquisition of the property exists other than the conduct giving rise to the forfeiture.

11. A finding that property is the proceeds of conduct giving rise to forfeiture does not require proof that the property is the proceeds of any particular exchange or transaction.

12. A person who acquires property subject to forfeiture is a constructive trustee of the property, and its fruits, for the benefit of the state, to the extent that the person's interest is not exempt from forfeiture. If property subject to forfeiture has been commingled with other property, the court shall order the forfeiture of the commingled property, and of any fruits of the commingled property, to the extent of the property subject to forfeiture, unless an owner or interest holder proves that specified property does not contain property subject to forfeiture, or that the person's interest in specified property is exempt from forfeiture.

13. Title to all property declared forfeited under this chapter vests in the state on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing under the

provisions of the chapter that the transferee's interest is exempt under section 809A.5.

14. An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this chapter.

15. For good cause shown, on motion by either party, the court may stay discovery in civil forfeiture proceedings during a criminal trial for a related criminal indictment or information alleging the same conduct, after making provision to prevent loss to any party resulting from the stay. Such a stay shall not be available pending an appeal.

16. Except as otherwise provided by this chapter, all proceedings hereunder shall be governed by the rules of civil procedure.

17. An action brought pursuant to this chapter shall be consolidated with any other action or proceeding brought pursuant to this chapter or chapter 626 or 654 relating to the same property on motion of the prosecuting attorney, and may be consolidated on motion of an owner or interest holder.

Sec. 13. NEW SECTION. 809A.13 IN REM PROCEEDINGS.

1. A judicial in rem forfeiture proceeding may be brought by the prosecuting attorney in addition to, or in lieu of, civil in personam forfeiture procedures, and is also subject to the provisions of this section. If a forfeiture is authorized by this chapter, it shall be ordered by the court in the in rem action.

2. An action in rem may be brought by the prosecuting attorney pursuant to a notice of pending forfeiture or verified complaint for forfeiture. The state may serve the complaint in the manner provided in section 809A.8, subsection 2, or as provided by the rules of civil procedure.

3. Only an owner of or an interest holder in the property who has timely filed a proper claim pursuant to section 809A.11 may file an answer in an action in rem. For the purposes of this section, an owner of or interest holder in property who has filed a claim and answer shall be referred to as a claimant.

4. The answer shall be signed by the owner or interest holder under penalty of perjury and shall be in accordance with R.C.P. 72 and shall also set forth all of the following:
 - a. The caption of the proceedings and identifying number, if any, as set forth on the notice of pending forfeiture or complaint and the name of the claimant.
 - b. The address where the claimant will accept mail.
 - c. The nature and extent of the claimant's interest in the property.
 - d. The date, the identity of the transferor, and the circumstances of the claimant's acquisition of the interest in the property.
 - e. The specific provision of this chapter relied on in asserting that it is not subject to forfeiture.
 - f. All essential facts supporting each assertion.
 - g. The specific relief sought.
5. The answer shall be filed within twenty days after service on the claimant of the civil in rem complaint.
6. The rules of civil procedure shall apply to discovery by the state and any claimant who has timely answered the complaint.
7. The forfeiture hearing shall be held without a jury and within sixty days after service of the complaint unless continued for good cause. The prosecuting attorney shall have the initial burden of proving the property is subject to forfeiture by a preponderance of the evidence. If the state so proves the property is subject to forfeiture, the claimant has the burden of proving that the claimant has an interest in the property which is exempt from forfeiture under this chapter by a preponderance of the evidence.
8. The court shall order the interest in the property returned or conveyed to the claimant if the prosecuting attorney fails to meet the state's burden or the claimant establishes by a preponderance of the evidence that the claimant has an interest that is exempt from forfeiture. The court shall order all other property forfeited to the state

and conduct further proceedings pursuant to sections 809A.16 and 809A.17.

Sec. 14. NEW SECTION. 809A.14 IN PERSONAM PROCEEDINGS.

1. A judicial in personam forfeiture proceeding brought by a prosecuting attorney pursuant to an in personam civil action alleging conduct giving rise to forfeiture is subject to the provisions of this section. If a forfeiture is authorized by this chapter, it shall be ordered by the court in the in personam action. This action shall be in addition to or in lieu of in rem forfeiture procedures.
2. The court, on application of the prosecuting attorney, may enter any order authorized by section 809A.12, or any other appropriate order to protect the state's interest in property forfeited or subject to forfeiture.
3. The court may issue a temporary restraining order on application of the prosecuting attorney, if the state demonstrates both of the following:
 - a. Probable cause exists to believe that in the event of a final judgment, the property involved would be subject to forfeiture under this chapter.
 - b. Provision of notice would jeopardize the availability of the property for forfeiture.
4. Notice of the issuance of a temporary restraining order and an opportunity for a hearing shall be given to persons known to have an interest in the property. A hearing shall be held at the earliest possible date in accordance with R.C.P. 326, and shall be limited to the following issues:
 - a. Whether a probability exists that the state will prevail on the issue of forfeiture.
 - b. Whether the failure to enter the order will result in the property being destroyed, conveyed, encumbered, removed from the jurisdiction of the court, concealed, or otherwise made unavailable for forfeiture.
 - c. Whether the need to preserve the availability of property outweighs the hardship on any owner or interest holder against whom the order is to be entered.

5. On a determination that a person committed conduct giving rise to forfeiture under this chapter, the court shall do both of the following:

a. Enter a judgment of forfeiture of the property found to be subject to forfeiture described in the complaint.

b. Authorize the prosecuting attorney or designee or any law enforcement officer to seize all property ordered forfeited which was not previously seized or is not under seizure.

6. Except as provided in section 809A.12, a person claiming an interest in property subject to forfeiture under this chapter shall not intervene in a trial or appeal of a criminal action or in an in personam civil action involving the forfeiture of the property.

7. Following the entry of an in personam forfeiture order, the prosecuting attorney may proceed with an in rem action to resolve the remaining interests in the property. The following procedures shall apply:

a. The prosecuting attorney shall give notice of pending forfeiture, in the manner provided in section 809A.8, to all owners and interest holders who have not previously been given notice.

b. An owner of or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim as described in section 809A.11, within thirty days after initial notice of pending forfeiture or after notice under paragraph "a", whichever is earlier.

c. If the state does not recognize the claimed exemption, the prosecuting attorney shall file a complaint and the court shall hold an in rem forfeiture hearing as provided for in section 809A.13.

d. In accordance with the findings made at the hearing, the court may amend the order of forfeiture if it determines that any claimant has established by a preponderance of the evidence that the claimant has an interest in the property which is exempt under the provisions of section 809A.5.

Sec. 15. NEW SECTION. 809A.15 SUBSTITUTED ASSETS -- SUPPLEMENTAL REMEDIES.

1. The court shall order the forfeiture of any other property of a person, including a claimant, up to the value of that person's property found by the court to be subject to forfeiture under this chapter, if any of the following applies to the person's forfeitable property:

a. The forfeitable property cannot be located.

b. The forfeitable property has been transferred or conveyed to, sold to, or deposited with a third party.

c. The forfeitable property is beyond the jurisdiction of the court.

d. The forfeitable property has been substantially diminished in value while not in the actual physical custody of the court, the seizing agency, the prosecuting attorney, or their designee.

e. The forfeitable property has been commingled with other property that cannot be divided without difficulty.

f. The forfeitable property is subject to any interest of another person which is exempt from forfeiture under this chapter.

2. a. The prosecuting attorney may institute a civil action in district court against any person with notice or actual knowledge who destroys, conveys, encumbers, removes from the jurisdiction of the court, conceals, or otherwise renders unavailable property alleged to be subject to forfeiture if either of the following apply:

(1) A forfeiture lien or notice of pending forfeiture has been filed and notice given pursuant to section 809A.8.

(2) A complaint pursuant to section 809A.13 alleging conduct giving rise to forfeiture has been filed and notice given pursuant to section 809A.8.

b. The court shall enter a final judgment in an amount equal to the value of the lien not to exceed the fair market value of the property, or if a lien does not exist, in an amount equal to the fair market value of the property,

together with reasonable investigative expenses and attorney's fees.

c. If a civil proceeding under this chapter is pending in court, the action shall be heard by that court.

Sec. 16. NEW SECTION. 809A.16 DISPOSITION OF PROPERTY.

1. If notice of pending forfeiture is properly served in an action in rem or in personam in which personal property, having an estimated value of five thousand dollars or less, as established by affidavit provided by the prosecuting attorney, is seized, and no claim opposing forfeiture is filed within thirty days of service of such notice, the prosecuting attorney shall prepare a written declaration of forfeiture of the subject property to the state and allocate the property according to the provisions of section 809A.17.

2. Within one hundred eighty days of the date of a declaration of forfeiture, an owner or interest holder in property declared forfeited pursuant to subsection 1, may petition the court to have the declaration of forfeiture set aside, after making a prima facie showing that the state failed to serve proper notice as provided by section 809A.13. Upon such a showing the court shall allow the state to demonstrate by a preponderance of the evidence that notice was properly served. If the state fails to meet its burden of proof, the court may order the declaration of forfeiture set aside. The state may proceed with judicial proceedings pursuant to this chapter.

3. Except as provided in subsection 1, if a proper claim is not timely filed in an action in rem, or if a proper answer is not timely filed in response to a complaint, the prosecuting attorney may apply for an order of forfeiture and an allocation of forfeited property pursuant to section 809A.17. Under such circumstance and upon a determination by the court that the state's written application established the court's jurisdiction, the giving of proper notice, and facts sufficient to show probable cause for forfeiture, the court shall order the property forfeited to the state.

4. After final disposition of all claims timely filed in an action in rem, or after final judgment and disposition of all claims timely filed in an action in personam, the court shall enter an order that the state has clear title to the forfeited property interest. Title to the forfeited property interest and its proceeds shall be deemed to have vested in the state on the commission of the conduct giving rise to the forfeiture under this chapter.

5. The court, on application of the prosecuting attorney, may release or convey forfeited personal property to a regulated interest holder or interest holder if any of the following applies:

a. The prosecuting attorney, in the attorney's discretion, has recognized in writing that the regulated interest holder or interest holder has an interest in the property and informs the court that the property interest is exempt from forfeiture.

b. The regulated interest holder's or interest holder's interest was acquired in the regular course of business as a regulated interest holder or interest holder.

c. The amount of the regulated interest holder's or interest holder's encumbrance is readily determinable and has been reasonably established by proof made available by the prosecuting attorney to the court.

d. The encumbrance held by the regulated interest holder or interest holder seeking possession is the only interest exempted from forfeiture and the order forfeiting the property to the state transferred all of the rights of the owner prior to forfeiture, including rights to redemption, to the state.

6. After the court's release or conveyance under subsection 5, the regulated interest holder or interest holder shall dispose of the property by a commercially reasonable public sale. Within ten days of disposition the regulated interest holder or interest holder shall tender to the state the amount received at disposition less the amount of the regulated interest holder's or interest holder's encumbrance

and reasonable expense incurred by the regulated interest holder or interest holder in connection with the sale or disposal. For the purposes of this section, "commercially reasonable" means a sale or disposal that would be commercially reasonable under chapter 554, article 7.

7. On order of the court or declaration of forfeiture forfeiting the subject property, the state may transfer good and sufficient title to any subsequent purchaser or transferee. The title shall be recognized by all courts and agencies of this state, and any political subdivision. On entry of judgment in favor of a person claiming an interest in the property that is subject to forfeiture proceedings under this chapter, the court shall enter an order that the property or interest in property shall be released or delivered promptly to that person free of liens and encumbrances under this chapter, and that the person's cost bond shall be discharged.

8. Upon motion by the prosecuting attorney, if it appears after a hearing that reasonable cause existed for the seizure for forfeiture or for the filing of the notice of pending forfeiture or complaint, the court shall find all of the following:

- a. That reasonable cause existed, or that the action was taken under a reasonable good faith belief that it was proper.
- b. That the claimant is not entitled to costs or damages.
- c. That the person or seizing agency who made the seizure and the prosecuting attorney are not liable to suit or judgment for the seizure, suit, or prosecution.

Sec. 17. NEW SECTION. 809A.17 DISPOSITION OF FORFEITED PROPERTY.

1. A person having control over forfeited property shall communicate that fact to the attorney general or the attorney general's designee.

2. Forfeited property not needed as evidence in a criminal case shall be delivered to the department of justice, or, upon written authorization of the attorney general or the attorney

general's designee, the property may be destroyed, sold, or delivered to an appropriate agency for disposal in accordance with this section.

3. Forfeited property may be used by the department of justice in the enforcement of the criminal law. The department may give, sell, or trade property to any other state agency or to any other law enforcement agency within the state if, in the opinion of the attorney general, it will enhance law enforcement within the state.

4. Forfeited property which is not used by the department of justice in the enforcement of the law may be requisitioned by the department of public safety or any law enforcement agency within the state for use in enforcing the criminal laws of this state. Forfeited property not requisitioned may be delivered to the director of the department of general services to be disposed of in the same manner as property received pursuant to section 18.15.

5. Notwithstanding subsection 1, 2, 3, or 4, the following apply:

a. Forfeited property which is a controlled substance or a simulated, counterfeit, or imitation-controlled substance shall be disposed of as provided in section 124.506.

b. Forfeited property which is a weapon or ammunition shall be deposited with the department of public safety to be disposed of in accordance with the rules of the department. All weapons or ammunition may be held for use in law enforcement, testing, or comparison by the criminalistics laboratory, or destroyed. Ammunition and firearms which are not illegal and are not offensive weapons as defined by section 724.1 may be sold by the department as provided in section 809.21.

c. Material in violation of chapter 728 shall be destroyed.

d. Property subject to the rules of the natural resource commission shall be delivered to that commission for disposal in accordance with its rules.

Sec. 18. NEW SECTION. 809A.18 POWERS OF ENFORCEMENT PERSONNEL.

1. A prosecuting attorney may conduct an investigation of any conduct that gives rise to forfeiture. The prosecuting attorney is authorized, before the commencement of a proceeding or action under this chapter, to subpoena witnesses, and compel their attendance, examine them under oath, and require the production of documentary evidence for inspection, reproducing, or copying. Except as otherwise provided by this section, the prosecuting attorney shall proceed under this subsection with the same powers and limitations, and judicial oversight and enforcement, and in the manner provided by this chapter and by the Iowa rules of civil procedure. Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel.

2. The examination of all witnesses under this section shall be conducted by the prosecuting attorney before an officer authorized to administer oaths. The testimony shall be taken by a certified shorthand reporter or by a sound recording device and shall be transcribed or otherwise preserved. The prosecuting attorney may exclude from the examination all persons except the witness, the witness' counsel, the officer before whom the testimony is to be taken, law enforcement officials, and a certified shorthand reporter. Prior to oral examination, the person shall be advised of the person's right to refuse to answer any questions on the basis of the privilege against self-incrimination. The examination shall be conducted in a manner consistent with the rules dealing with the taking of depositions.

3. Except as otherwise provided in this section, prior to the filing of a civil or criminal proceeding or action relating to such a proceeding, documentary material, transcripts, or oral testimony, in the possession of the prosecuting attorney, shall not be available for examination by any individual other than a law enforcement official or

agent of such official without the consent of the person who produced the material, transcripts, or oral testimony.

4. A person shall not knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any documentary material that is the subject of a subpoena, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the prosecuting attorney under this section. A violation of this subsection is a class "D" felony. The prosecuting attorney shall investigate and prosecute suspected violations of this subsection.

Sec. 19. NEW SECTION. 809A.19 IMMUNITY ORDERS.

1. If a person is or may be called to produce evidence at a deposition, hearing, or trial under this chapter or at an investigation brought by the prosecuting attorney under section 809A.18, the district court in which the deposition, hearing, trial, or investigation is or may be held shall, upon certification in writing of a request of the prosecuting attorney, issue an order, ex parte or after a hearing, requiring the person to produce evidence, notwithstanding that person's refusal to do so on the basis of the privilege against self-incrimination.

2. The prosecuting attorney may certify in writing a request for an ex parte order under subsection 1 if in the prosecuting attorney's judgment both of the following apply:

a. The production of the evidence may be necessary to the public interest.

b. The person has refused or is likely to refuse to produce evidence on the basis of the privilege against self-incrimination.

3. A person shall not refuse to comply with an order issued under subsection 1 on the basis of a self-incrimination privilege. If the person refuses to comply with the order after being informed of its existence by the presiding officer, the person may be compelled or punished by the district court issuing an order for civil or criminal contempt.

4. The production of evidence compelled by order issued under subsection 1, and any information directly or indirectly derived from the production of evidence, shall not be used against the person in a subsequent criminal case, except in a prosecution for perjury, false swearing, or an offense otherwise involving a failure to comply with the order.

Sec. 20. NEW SECTION. 809A.20 STATUTE OF LIMITATIONS.

A civil action under this chapter shall be commenced within five years after the last conduct giving rise to forfeiture or the cause of action becomes known or should have become known, excluding any time during which either the property or defendant is out of the state or in confinement, or during which criminal proceedings relating to the same conduct are pending.

Sec. 21. NEW SECTION. 809A.21 SUMMARY FORFEITURE OF CONTROLLED SUBSTANCES.

Controlled substances included in chapter 124 which are contraband and any controlled substance whose owners are unknown are summarily forfeited to the state. The court may include in any judgment under this chapter an order forfeiting any controlled substance involved in the conduct giving rise to forfeiture to the extent of the defendant's interest.

Sec. 22. NEW SECTION. 809A.22 BAR TO COLLATERAL ACTION.

A person claiming an interest in property subject to forfeiture shall not commence or maintain any action against the state concerning the validity of the alleged interest other than as provided in this chapter.

Sec. 23. NEW SECTION. 809A.23 STATUTORY CONSTRUCTION.

The provisions of this chapter shall be liberally construed to effectuate its remedial purposes. Civil remedies under this chapter shall be supplemental and not mutually exclusive. The civil remedies do not preclude and are not precluded by any other provision of law.

Sec. 24. NEW SECTION. 809A.24 UNIFORMITY OF APPLICATION.

1. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform

the law with respect to the subject of this chapter among states enacting this law.

2. The attorney general may enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this chapter.

Sec. 25. NEW SECTION. 809A.25 RULEMAKING.

The attorney general shall adopt, amend, or repeal rules pursuant to chapter 17A to carry out the provisions of this chapter.

DIVISION II

IOWA ONGOING CRIMINAL CONDUCT ACT

Sec. 26. NEW SECTION. 706A.1 DEFINITIONS.

In this chapter, unless the context otherwise requires:

1. "Criminal network" means any combination of persons engaging, for financial gain on a continuing basis, in conduct which is an indictable offense under the laws of this state regardless of whether such conduct is charged or indicted. As used in this subsection, persons combine if they collaborate or act in concert in carrying on or furthering the activities or purposes of a network even though such persons may not know each other's identity, membership in the network changes from time to time, or one or more members of the network stand in a wholesaler-retailer, service provider, or other arm's length relationship with others as to conduct in the furtherance of the financial goals of the network.

2. "Enterprise" includes any sole proprietorship, partnership, corporation, trust, or other legal entity, or any unchartered union, association, or group of persons associated in fact although not a legal entity, and includes unlawful as well as lawful enterprises.

3. "Proceeds" means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.

4. "Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible, or intangible, without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

5. "Specified unlawful activity" means any act, including any preparatory or completed offense, committed for financial gain on a continuing basis, that is punishable as an indictable offense under the laws of the state in which it occurred and under the laws of this state.

Sec. 27. NEW SECTION. 706A.2 VIOLATIONS.

1. SPECIFIED UNLAWFUL ACTIVITY INFLUENCED ENTERPRISES.

a. It is unlawful for any person who has knowingly received any proceeds of specified unlawful activity to use or invest, directly or indirectly, any part of such proceeds in the acquisition of any interest in any enterprise or any real property, or in the establishment or operation of any enterprise.

b. It is unlawful for any person to knowingly acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through specified unlawful activity.

c. It is unlawful for any person to knowingly conduct the affairs of any enterprise through specified unlawful activity or to knowingly participate, directly, or indirectly, in any enterprise that the person knows is being conducted through specified unlawful activity.

d. It is unlawful for any person to conspire or attempt to violate or to solicit or facilitate the violations of the provisions of paragraphs "a", "b", or "c".

2. FACILITATION OF A CRIMINAL NETWORK. It is unlawful for a person acting with knowledge of the financial goals and criminal objectives of a criminal network to knowingly facilitate criminal objectives of the network by doing any of the following:

a. Engaging in violence or intimidation or inciting or inducing another to engage in violence or intimidation.

b. Inducing or attempting to induce a person believed to have been called or who may be called as a witness to unlawfully withhold any testimony, testify falsely, or absent themselves from any official proceeding to which the potential witness has been legally summoned.

c. Attempting by means of bribery, misrepresentation, intimidation, or force to obstruct, delay, or prevent the communication of information or testimony relating to a violation of any criminal statute to a peace officer, magistrate, prosecutor, grand jury, or petit jury.

d. Injuring or damaging another person's body or property because that person or any other person gave information or testimony to a peace officer, magistrate, prosecutor, or grand jury.

e. Attempting to suppress by an act of concealment, alteration, or destruction any physical evidence that might aid in the discovery, apprehension, prosecution, or conviction of any person.

f. Making any property available to a member of the criminal network.

g. Making any service other than legal services available to a member of the criminal network.

h. Inducing or committing any act or omission by a public servant in violation of the public servant's official duty.

i. Obtaining any benefit for a member of a criminal network by means of false or fraudulent pretenses, representation, promises or material omissions.

j. Making a false sworn statement regarding a material issue, believing it to be false, or making any statement, believing it to be false, regarding a material issue to a public servant in connection with an application for any benefit, privilege, or license, or in connection with any official investigation or proceeding.

3. MONEY LAUNDERING. It is unlawful for a person to commit money laundering as defined in chapter 706B.

4. ACTS OF SPECIFIED UNLAWFUL ACTIVITY. It is unlawful for a person to commit specified unlawful activity as defined in section 706A.1.

5. NEGLIGENT EMPOWERMENT OF SPECIFIED UNLAWFUL ACTIVITY.

a. It is unlawful for a person to negligently allow property owned or controlled by the person or services provided by the person, other than legal services, to be used to facilitate specified unlawful activity, whether by entrustment, loan, rent, lease, bailment, or otherwise.

b. Damages for negligent empowerment of specified unlawful activity shall include all reasonably foreseeable damages proximately caused by the specified unlawful activity, including, in a case brought or intervened in by the state, the costs of investigation and criminal and civil litigation of the specified unlawful activity incurred by the government for the prosecution and defense of any person involved in the specified unlawful activity, and the imprisonment, probation, parole, or other expense reasonably necessary to detain, punish, and rehabilitate any person found guilty of the specified unlawful activity, except for the following:

(1) If the person empowering the specified unlawful activity acted only negligently and was without knowledge of the nature of the activity and could not reasonably have known of the unlawful nature of the activity or that it was likely to occur, damages shall be limited to the greater of the following:

(a) The cost of the investigation and litigation of the person's own conduct plus the value of the property or service involved as of the time of its use to facilitate the specified unlawful activity.

(b) All reasonably foreseeable damages to any person, except any person responsible for the specified unlawful activity, and to the general economy and welfare of the state proximately caused by the person's own conduct.

(2) If the property facilitating the specified unlawful activity was taken from the possession or control of the person without that person's knowledge and against that person's will in violation of the criminal law, damages shall be limited to reasonably foreseeable damages to any person, except persons responsible for the taking or the specified unlawful activity, and to the general economy and welfare of the state proximately caused by the person's negligence, if any, in failing to prevent its taking.

(3) If the person was aware of the possibility that the property or service would be used to facilitate some form of specified unlawful activity and acted to prevent the unlawful use, damages shall be limited to reasonably foreseeable damages to any person, except any person responsible for the specified unlawful activity, and to the general economy and welfare of the state proximately caused by the person's failure, if any, to act reasonably to prevent the unlawful use.

(4) The plaintiff shall carry the burden of proof by a preponderance of the evidence that the specified unlawful activity occurred and was facilitated by the property or services. The defendant shall have the burden of proof by a preponderance of the evidence as to circumstances constituting lack of negligence and on the limitations on damages in this subsection.

Sec. 28. NEW SECTION. 706A.3 CIVIL REMEDIES -- ACTIONS.

1. The prosecuting attorney or an aggrieved person may institute civil proceedings against any person in district court seeking relief from conduct constituting a violation of this chapter or to prevent, restrain, or remedy such violation.

2. The district court has jurisdiction to prevent, restrain, or remedy such violations by issuing appropriate orders. Prior to a determination of liability such orders may include, but are not limited to, entering restraining orders or injunctions, requiring the execution of satisfactory

performance bonds, creating receiverships, and enforcing constructive trusts in connection with any property or interest subject to damages, forfeiture, or other remedies or restraints pursuant to this chapter.

3. If the plaintiff in such a proceeding proves the alleged violation by a preponderance of the evidence, the district court, after making due provision for the rights of innocent persons, shall grant relief by entering any appropriate order or judgment, including any of the following:

- a. Ordering any defendant to divest the defendant of any interest in any enterprise, or in any real property.
- b. Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as any enterprise in which the defendant was engaged in a violation of this chapter.
- c. Ordering the dissolution or reorganization of any enterprise.
- d. Ordering the payment of all reasonable costs and expenses of the investigation and prosecution of any violation, civil or criminal, including reasonable attorney fees in the trial and appellate courts. Such payments received by the state, by judgment, settlement, or otherwise, shall be considered forfeited property and disposed of pursuant to section 809A.17.
- e. Ordering the forfeiture of any property subject to forfeiture under chapter 809A, pursuant to the provisions and procedures of that chapter.
- f. Ordering the suspension or revocation of any license, permit, or prior approval granted to any person by any agency of the state.
- g. Ordering the surrender of the certificate of existence of any corporation organized under the laws of this state or the revocation of any certificate authorizing a foreign corporation to conduct business within this state, upon finding that for the prevention of future violations, the

public interest requires the certificate of the corporation to be surrendered and the corporation dissolved or the certificate revoked.

4. Relief under subsection 3, paragraphs "e", "f", and "g" shall not be granted in civil proceedings instituted by an aggrieved person unless the prosecuting attorney has instituted the proceedings or intervened. In any action under this section brought by the state or in which the state has intervened, the state may employ any of the powers of seizure and restraint of property as are provided for forfeiture actions under chapter 809A, or as are provided for the collection of taxes payable and past due, and whose collection has been determined to be in jeopardy.

5. In a proceeding initiated under this section, injunctive relief shall be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other civil cases, but no showing of special or irreparable injury is required. Pending final determination of a proceeding initiated under this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that a judgment for money damages might be difficult to execute, and, in a proceeding initiated by a nongovernmental aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.

6. Any person who is in possession or control of proceeds of any violation of this chapter, is an involuntary trustee and holds the property in constructive trust for the benefit of the person entitled to remedies under this chapter, unless the holder acquired the property as a bona fide purchaser for value who was not knowingly taking part in an illegal transaction.

7. Any person whose business or property is directly or indirectly injured by conduct constituting a violation of this chapter, by any person, may bring a civil action, subject to

the in pari delicto defense and shall recover threefold the actual damages sustained and the costs and expenses of the investigation and prosecution of the action including reasonable attorney fees in the trial and appellate courts. Damages shall not include pain and suffering. Any person injured shall have a claim to any property against which any fine, or against which treble damages under subsection 10 or 11 may be imposed, superior to any right or claim of the state to the property, up to the value of actual damages and costs awarded in an action under this subsection. The state shall have a right of subrogation to the extent that an award made to a person so injured is satisfied out of property against which any fine or civil remedy in favor of the state may be imposed.

8. a. If liability of a legal entity is based on the conduct of another, through respondent superior or otherwise, the legal entity shall not be liable for more than actual damages and costs, including a reasonable attorney's fee, if the legal entity affirmatively shows by a preponderance of the evidence that both of the following apply:

(1) The conduct was not engaged in, authorized, solicited, commanded, or recklessly tolerated by the legal entity, by the directors of the legal entity or by a high managerial agent of the legal entity acting within the scope of employment.

(2) The conduct was not engaged in by an agent of the legal entity acting within the scope of employment and in behalf of the legal entity.

b. For the purposes of this subsection:

(1) "Agent" means any officer, director, or employee of the legal entity, or any other person who is authorized to act in behalf of the legal entity.

(2) "High managerial agent" means any officer of the legal entity or, in the case of a partnership, a partner, or any other agent in a position of comparable authority with respect to the formulation of policy of the legal entity.

(3) Notwithstanding any other provision of law, any pleading, motion, or other paper filed by a nongovernmental aggrieved party in connection with a proceeding or action under subsection 7 shall be verified. If such aggrieved person is represented by an attorney, such pleading, motion, or other paper shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated.

If such pleading, motion, or other paper includes an averment of fraud, coercion, accomplice, respondent superior, conspiratorial, enterprise, or other vicarious accountability, it shall state, insofar as practicable, the circumstances with particularity. The verification and the signature by an attorney required by this subsection shall constitute a certification by the signor that the attorney has carefully read the pleading, motion, or other paper and, based on a reasonable inquiry, believes that all of the following exist:

(a) It is well-grounded in fact.

(b) It is warranted by existing law, or a good faith argument for the extension, modification, or reversal of existing law.

(c) It is not made for an improper purpose, including to harass, to cause unnecessary delay, or to impose a needless increase in the cost of litigation.

The court may, after a hearing and appropriate findings of fact, impose upon any person who verified the complaint, cross-claim or counterclaim, or any attorney who signed it in violation of this subsection, or both, a fit and proper sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the complaint or claim, including reasonable attorney fees. If the court determines that the filing of a complaint or claim under subsection 7 by a nongovernmental party was frivolous in whole or in part, the court shall award double the actual expenses, including attorney fees, incurred because of the frivolous portion of the complaint or claim.

9. Upon the filing of a complaint, cross-claim, or counterclaim under this section, an aggrieved person, as a jurisdictional prerequisite, shall immediately notify the attorney general of its filing and serve one copy of the pleading on the attorney general. Service of the notice on the attorney general does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action and does not authorize the aggrieved person to name the state or the attorney general as a party to the action. The attorney general, upon timely application, may intervene or appear as amicus curiae in any civil proceeding or action brought under this section if the attorney general certifies that, in the opinion of the attorney general, the proceeding or action is of general public importance. In any proceeding or action brought under this section by an aggrieved person, the state shall be entitled to the same relief as if it had instituted the proceeding or action.

10. a. Any prosecuting attorney may bring a civil action on behalf of a person whose business or property is directly or indirectly injured by conduct constituting a violation of this chapter, and shall recover threefold the damages sustained by such person and the costs and expenses of the investigation and prosecution of the action, including reasonable attorney fees in the trial and appellate courts. The court shall exclude from the amount of monetary relief awarded any amount of monetary relief which is any of the following:

- (1) Which duplicates amounts which have been awarded for the same injury.
- (2) Which is properly allocable to persons who have excluded their claims under paragraph "c".

b. In any action brought under this subsection, the prosecuting attorney, at such times, in such manner, and with such content as the court may direct, shall cause notice of the action to be given by publication. If the court finds

that notice given solely by publication would deny due process to any person, the court may direct further notice to such person according to the circumstances of the case.

c. A person on whose behalf an action is brought under this subsection may elect to exclude from adjudication the portion of the state claim for monetary relief attributable to the person by filing notice of such election within such time as specified in the notice given under this subsection.

d. A final judgment in an action under this subsection shall preclude any claim under this subsection by a person on behalf of whom such action was brought who fails to give notice of exclusion within the times specified in the notice given under paragraph "b".

e. An action under this subsection on behalf of a person other than the state shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

11. The attorney general may bring a civil action as parens patriae on behalf of the general economy, resources, and welfare of this state, and shall recover threefold the proceeds acquired, maintained, produced, or realized by or on behalf of the defendant by reason of a violation of this chapter, plus the costs and expenses of the investigation and prosecution of the action, including reasonable attorney fees in the trial and appellate courts.

a. A person who has knowingly conducted or participated in the conduct of an enterprise in violation of section 706A.2, subsection 1, paragraph "c" is also jointly and severally liable for the greater of threefold the damage sustained directly or indirectly by the state by reason of conduct in furtherance of the violation or threefold the total of all proceeds acquired, maintained, produced, or realized by, or on behalf of any person by reason of participation in the enterprise except for the following:

(1) A person is not liable for conduct occurring prior to the person's first knowing participation in or conduct of the enterprise.

(2) If a person shows that, under circumstances manifesting a voluntary and complete renunciation of culpable intent, the person withdrew from the enterprise by giving a complete and timely warning to law enforcement authorities or by otherwise making a reasonable and substantial effort to prevent the conduct or result which is the criminal objective of the enterprise, the person is not liable for conduct occurring after the person's withdrawal.

b. A person who has facilitated a criminal network in violation of section 706A.2, subsection 2, is also jointly and severally liable for all of the following:

(1) The damages resulting from the conduct in furtherance of the criminal objectives of the criminal network, to the extent that the person's facilitation was of substantial assistance to the conduct.

(2) The proceeds of conduct in furtherance of the criminal objectives of the criminal network, to the extent that the person's facilitation was of substantial assistance to the conduct.

(3) A person who has engaged in money laundering in violation of chapter 706B is also jointly and severally liable for the greater of threefold the damages resulting from the person's conduct or threefold the property that is the subject of the violation.

Sec. 29. NEW SECTION. 706A.4 CRIMINAL SANCTIONS.

A person who violates section 706A.2, subsection 1, 2, or 4, commits a class "B" felony.

Sec. 30. NEW SECTION. 706A.5 UNIFORMITY OF CONSTRUCTION AND APPLICATION.

1. The provisions of this chapter shall be liberally construed to effectuate its remedial purposes. Civil remedies under this chapter shall be supplemental and not mutually exclusive. Civil remedies under this chapter do not preclude and are not precluded by other provisions of law.

2. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the law.

3. The attorney general may enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this chapter.

DIVISION III

IOWA MONEY LAUNDERING ACT

Sec. 31. NEW SECTION. 706B.1 DEFINITIONS.

In this chapter, unless the context otherwise requires:

1. "Proceeds" means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.

2. "Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible.

3. "Specified unlawful activity" means any act, including any preparatory or completed offense, committed for financial gain on a continuing basis, that is punishable by confinement of one year or more under the laws of this state, or, if the act occurred outside this state, would be punishable by confinement of one year or more under the laws of the state in which it occurred and under the laws of this state.

4. "Transaction" includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase, or sale of any monetary instrument, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

5. "Unlawful activity" means any act which is chargeable or indictable as a public offense of any degree under the laws

of the state in which the act occurred or under federal law and, if the act occurred in a state other than this state, would be chargeable or indictable as a public offense of any degree under the laws of this state or under federal law.

Sec. 32. NEW SECTION. 706B.2 MONEY LAUNDERING PENALTY -- CIVIL REMEDIES.

1. It is unlawful for a person to do any of the following:

a. To knowingly transport, receive, or acquire property or to conduct a transaction involving property, knowing that the property involved is the proceeds of some form of unlawful activity, when, in fact, the property is the proceeds of specified unlawful activity.

b. To make property available to another, by transaction, transportation, or otherwise, knowing that it is intended to be used for the purpose of committing or furthering the commission of specified unlawful activity.

c. To conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the intent to conceal or disguise the nature, location, source, ownership, or control of the property or the intent to avoid a transaction-reporting requirement under chapter 529, the Iowa financial transaction reporting Act, or federal law.

d. To knowingly engage in the business of conducting, directing, planning, organizing, initiating, financing, managing, supervising, or facilitating transactions involving property, knowing that the property involved in the transaction is the proceeds of some form of unlawful activity, that, in fact, is the proceeds of specified unlawful activity.

2. A person who violates:

a. Subsection 1, paragraphs "a", "b", or "c", commits a class "C" felony, and may be fined not more than ten thousand dollars or twice the value of the property involved, whichever is greater, or by imprisonment for not more than 10 years, or both.

b. Subsection 1, paragraph "d", commits a class "D" felony, and may be fined not more than seven thousand five hundred dollars or twice the value of the property involved, whichever is greater, or by imprisonment for not more than five years, or both.

3. A person who violates subsection 1, paragraph "a", "b", "c", or "d", is subject to a civil penalty of three times the value of the property involved in the transaction, in addition to any criminal sanction imposed.

4. A person who is found guilty of a violation under this section also may be charged with violations of chapter 706A, and property involved in a violation under this chapter is subject to forfeiture under chapter 809A.

Sec. 33. NEW SECTION. 706B.3 UNIFORMITY OF CONSTRUCTION AND APPLICATION.

1. The provisions of this chapter shall be liberally construed to effectuate its remedial purposes. Civil remedies under this chapter shall be supplemental and not mutually exclusive. The civil remedies do not preclude and are not precluded by other provision of law.

2. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the law.

3. The attorney general may enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this chapter.

DIVISION IV

IOWA FINANCIAL TRANSACTION REPORTING ACT

Sec. 34. NEW SECTION. 529.1 DEFINITIONS.

In this chapter, unless the context otherwise requires:

1. "Authorized delegate" means a person designated by the licensee.
2. "Check cashing" means exchanging for compensation a check, draft, money order, traveler's check, or a payment

instrument of a licensee for money delivered to the presenter at the time and place of the presentation.

3. "Compensation" means any fee, commission, or other benefit.

4. "Conduct the business" means engaging in activities of a licensee or money transmitter more than ten times in any calendar year for compensation.

5. "Foreign money exchange" means exchanging for compensation money of the United States government or a foreign government to or from money of another government at a conspicuously posted exchange rate at the time and place of the presentation of the money to be exchanged.

6. "Licensee" means a person licensed under this chapter.

7. "Location" means a place of business at which activity conducted by a licensee or money transmitter occurs.

8. "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance.

9. "Money transmitter" means a person who is located or doing business in this state, including a check cashier and a foreign money exchanger, and who does any of the following:

- a. Sells or issues payment instruments.
- b. Conducts the business of receiving money for the transmission of or transmitting money.
- c. Conducts the business of exchanging payment instruments or money into any form of money or payment instrument.
- d. Conducts the business of receiving money for obligors for the purpose of paying obligors' bills, invoices, or accounts.
- e. Meets the definition of a bank, financial agency, or financial institution as prescribed by 31 U.S.C. § 5312 or 31 C.F.R. § 103.11 and any successor provisions.

10. "Payment instrument" means a check, draft, money order, traveler's check, or other instrument or order for the transmission or payment of money, sold to one or more persons,

whether or not that instrument or order is negotiable.

"Payment instrument" does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

11. "Proceeds" means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible, without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

12. "Superintendent" means the superintendent of banking or the superintendent of credit unions.

13. "Transaction" includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase, or sale of any monetary instrument, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

14. "Transmitting money" includes the transmission of money by any means including transmission within this country or to or from locations abroad by payment instrument, wire, facsimile, or electronic transfer, courier, or otherwise.

15. "Traveler's check" means an instrument identified as a traveler's check on its face or commonly recognized as a traveler's check and issued in a money multiple of United States or foreign currency with a provision for a specimen signature of the purchaser to be completed at the time of purchase and a countersignature of the purchaser to be completed at the time of negotiation.

Sec. 35. NEW SECTION. 529.2 REPORTS.

1. A licensee, authorized delegate, or money transmitter required to file a report regarding business conducted in this state pursuant to the federal Currency and Foreign Transactions Reporting Act, 31 U.S.C. § 5311 through 5326 and 31 C.F.R. pt. 103, or 12 C.F.R. § 21.11, shall file a duplicate of that report with the department of public safety.

2. All persons engaged in a trade or business who are required to file a report pursuant to 26 U.S.C. § 6050i and 26 C.F.R. § 1.6050I, and any successor provisions, concerning returns relating to cash received in trade or business, shall file a copy of the report with the department of public safety.

3. A licensee, authorized delegate, or money transmitter that is regulated under the federal Currency and Foreign Transaction Reporting Act, 31 U.S.C. § 5325 and 31 C.F.R. pt. 103, and that is required to make available prescribed records to the secretary of the United States department of treasury upon request at any time, shall follow the same prescribed procedures and create and maintain the same prescribed records relating to a transaction and shall make these records available to the department of public safety pursuant to a prosecuting attorney subpoena.

4. a. The timely filing of a report required by this section with the appropriate federal agency shall be deemed compliance with the reporting requirements of this section, unless the attorney general or the department of public safety has notified the superintendent that reports of that type are not being regularly and comprehensively transmitted by that federal agency to the department of public safety.

b. This chapter does not preclude a licensee, authorized delegate, money transmitter, financial institution, or a person engaged in a trade or business, in its discretion, from instituting contact with, and thereafter communicating with and disclosing customer financial records to appropriate state or local law enforcement agencies if the licensee, authorized delegate, money transmitter, financial institution, or person has information that may be relevant to a possible violation of any criminal statute or to the evasion or attempted evasion of any reporting requirement of this chapter.

c. A licensee, authorized delegate, money transmitter, financial institution, person engaged in a trade or business, or any officer, employee, agent, or authorized delegate of any

of them, or any public official or governmental employee who keeps or files a record pursuant to this section or who communicates or discloses information or records under paragraph "b", is not liable to its customer, to a state or local agency, or to any person for any loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained in that report.

5. The attorney general or the department of public safety may report any possible violations indicated by analysis of the reports required by this chapter to any appropriate law enforcement agency for use in the proper discharge of its official duties. The attorney general or the department of public safety shall provide copies of the reports required by this chapter to any appropriate prosecutorial or law enforcement agency upon being provided with a written request for records relating to a specific individual or entity and stating that the agency has an articulable suspicion that such individual or entity has committed a felony offense or a violation of this chapter to which the reports are relevant. A person who releases information received pursuant to this subsection except in the proper discharge of the person's official duties is guilty of a serious misdemeanor.

6. It shall be unlawful for any person to do any of the following:

a. With intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, to knowingly furnish or provide to a licensee, authorized delegate, money transmitter, financial institution, person engaged in a trade or business, or any officer, employee, agent or authorized delegate of any of them, or to the attorney general or department of public safety, any false, inaccurate, or incomplete information; or to knowingly conceal a material fact in connection with a transaction for which a report is required to be filed pursuant to this section.

b. With the intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, or with intent to evade the making or filing of a report required under this chapter, or with intent to cause the making or filing of a report that contains a material omission or misstatement of fact, or with intent to conduct or structure a transaction or series of transactions by or through one or more licensees, authorized delegates, money transmitters, financial institutions, or persons engaged in a trade or business.

7. A person who violates subsection 7 is guilty of a class "C" felony and is also subject to a civil penalty of three times the value of the property involved in the transaction, or, if no transaction is involved, five thousand dollars.

8. Notwithstanding any other provision of law, each violation of this section constitutes a separate, punishable offense.

9. Any report, record, information, analysis, or request obtained by the attorney general or department of public safety pursuant to this chapter is not a public record as defined in chapter 22 and is not subject to disclosure.

Sec. 36. NEW SECTION. 529.3 INVESTIGATIONS.

1. The attorney general or county attorney may conduct investigations within or outside this state to determine if any licensee, authorized delegate, money transmitter, or person engaged in a trade or business has failed to file a report required by this chapter or has engaged or is engaging in any act, practice, or transaction that constitutes a violation of this chapter.

2. Upon presentation of a subpoena from a prosecuting attorney, all licensees, authorized delegates, money transmitters, and financial institutions shall make their books and records available to the attorney general or county attorney or peace officer during normal business hours for

inspection and examination in connection with an investigation pursuant to this section.

Sec. 37. NEW SECTION. 529.4 UNIFORMITY OF CONSTRUCTION AND APPLICATION.

1. The provisions of this chapter shall be liberally construed to effectuate its remedial purposes. Civil remedies under this chapter shall be supplemental and not mutually exclusive. The civil remedies do not preclude and are not precluded by other provisions of law.

2. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the law and to make the reporting requirements regarding financial transactions under Iowa law uniform with the reporting requirements regarding financial transactions under federal law.

3. The attorney general is authorized to enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this chapter.

DIVISION V

CONFORMING AMENDMENTS

Sec. 38. Section 22.7, Code Supplement 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 33. A record required under the Iowa financial transaction reporting Act listed in section 529.2, subsection 10.

Sec. 39. Section 80.39, subsection 1, Code 1995, is amended to read as follows:

1. Personal property, except for motor vehicles subject to sale pursuant to section 321.89, and seizable ~~or forfeitable~~ property subject to disposition pursuant to chapter 809, which personal property is found or seized by, turned in to, or otherwise lawfully comes into the possession of the department of public safety and which the department does not own, shall be disposed of pursuant to this section. If by examining the

property the owner or lawful custodian of the property is known or can be readily ascertained, the department shall notify the owner or custodian by certified mail directed to the owner's or custodian's last known address, as to the location of the property. If the identity or address of the owner cannot be determined, notice by one publication in a newspaper of general circulation in the area where the property was found is sufficient notice. A published notice may contain multiple items.

Sec. 40. Section 123.20, subsection 7, Code 1995, is amended to read as follows:

7. To accept intoxicating liquors ordered delivered to the alcoholic beverages division pursuant to chapter 809 809A, and offer for sale and deliver the intoxicating liquors to class "E" liquor control licensees, unless the administrator determines that the intoxicating liquors may be adulterated or contaminated. If the administrator determines that the intoxicating liquors may be adulterated or contaminated, the administrator shall order their destruction.

Sec. 41. Section 321.232, subsection 3, Code 1995, is amended to read as follows:

3. A radar jamming device may be seized by a peace officer subject to forfeiture as provided by chapter 809 or 809A.

Sec. 42. Section 321J.4B, subsection 12, Code Supplement 1995, is amended to read as follows:

12. Operating a motor vehicle on a street or highway in this state in violation of an order of impoundment or immobilization is a serious misdemeanor. A motor vehicle which is subject to an order of impoundment or immobilization that is operated on a street or highway in this state in violation of the order shall be seized and forfeited to the state under chapter chapters 809 and 809A.

Sec. 43. Section 321J.4B, subsections 13 and 16, Code Supplement 1995, are amended to read as follows:

13. Once the period of impoundment or immobilization has expired, the owner of the motor vehicle shall have thirty days

to claim the motor vehicle and pay the fees and charges imposed under this section. If the owner or the owner's designee has not claimed the vehicle and paid the fees and charges imposed under this section within seven days from the date of expiration of the period, the clerk shall send written notification to the motor vehicle owner, at the owner's last known address, notifying the owner of the date of expiration of the period of impoundment or immobilization and of the period in which the motor vehicle must be claimed. If the motor vehicle owner fails to claim the motor vehicle and pay the fees and charges imposed within the thirty-day period, the motor vehicle shall be forfeited to the state under chapter chapters 809 and 809A.

16. Notwithstanding the requirements of this section, the holder of a security interest in a vehicle which is impounded or immobilized pursuant to this section or forfeited in the manner provided in chapter chapters 809 and 809A shall be notified of the impoundment, immobilization, or forfeiture within seventy-two hours of the seizure of the vehicle and shall have the right to claim the motor vehicle without payment of any fees or surcharges unless the value of the vehicle exceeds the value of the security interest held by the creditor.

Sec. 44. Section 321J.10, subsection 7, Code 1995, is amended to read as follows:

7. Specimens obtained pursuant to warrants issued under this section are not subject to disposition under section 808.9 or chapter 809 or 809A.

Sec. 45. Section 455B.103, subsection 4, paragraph d, subparagraph (2), Code 1995, is amended to read as follows:

(2) In a reasonable manner, and any property seized shall be treated in accordance with the provisions of chapters 808, and 809, and 809A.

Sec. 46. Section 602.6405, subsection 1, Code 1995, is amended to read as follows:

1. Magistrates have jurisdiction of simple misdemeanors, including traffic and ordinance violations, and preliminary hearings, search warrant proceedings, county and municipal infractions, and small claims. Magistrates have jurisdiction to determine the disposition of livestock or another animal, as provided in sections 717.5 and 717B.4, if the magistrate determines the value of the livestock or animal is less than ten thousand dollars. Magistrates have jurisdiction to exercise the powers specified in sections 556F.2 and 556F.12, and to hear complaints or preliminary informations, issue warrants, order arrests, make commitments, and take bail. Magistrates have jurisdiction over violations of section 123.49, subsection 2, paragraph "h". Magistrates who are admitted to the practice of law in this state have jurisdiction over all proceedings for the involuntary commitment, treatment, or hospitalization of individuals under chapters 125 and 229, except as otherwise provided under section 229.6A; nonlawyer magistrates have jurisdiction over emergency detention and hospitalization proceedings under sections 125.91 and 229.22. Magistrates have jurisdiction to conduct hearings authorized under section 809.4 and ~~section 809.10, subsection 2.~~

Sec. 47. Section 809.1, subsection 2, Code Supplement 1995, is amended by striking the subsection.

Sec. 48. Section 809.4, Code 1995, is amended to read as follows:

809.4 HEARING -- APPEAL.

An application for the return of seized property shall be set for hearing not less than five nor more than thirty days after the filing of the application and shall be tried to the court. All claims to the same property shall be heard in one proceeding unless it is shown that the proceeding would result in prejudice to one or more of the parties. If the total value of the property sought to be returned is less than five thousand dollars, the proceeding may be conducted by a magistrate or a district associate judge with appeal to be as

in the case of small claims. In all other cases, the hearing shall be conducted by a district judge, with appeal as provided in section ~~809.12~~ 809.12A.

Sec. 49. NEW SECTION. 809.12A APPEALS.

An appeal from a denial of an application for the return of seized property or from an order for the return of seized property shall be made within thirty days after the entry of a judgment order. The appellant, other than the state, shall post a bond of a reasonable amount as the court may fix and approve, conditioned to pay all costs of the proceedings if the appellant is unsuccessful on appeal. The appellant, other than the state, may be required to post a supersedeas bond or other security, as the court finds to be reasonable, in order to stay the operation of a forfeiture order under section 809A.16.

Sec. 50. Section 809.15, Code 1995, is amended to read as follows:

809.15 COMBINING PROCEEDINGS.

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

Sec. 51. Section 809.16, Code 1995, is amended to read as follows:

809.16 RULEMAKING.

The attorney general may shall adopt, amend, or repeal rules pursuant to chapter 17A to carry out the provisions of this chapter.

Sec. 52. Section 809.17, Code 1995, is amended to read as follows:

809.17 PROCEEDS APPLIED TO VARIOUS PROGRAMS.

Except as provided in section 809.21, proceeds from the disposal of seized ~~or forfeited~~ property pursuant to this chapter may be transferred in whole or in part to the victim compensation fund created in section 912.14 at the discretion of the recipient agency, political subdivision, or department.

Sec. 53. Sections 809.6 through 809.14, Code 1995, are repealed.

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 482, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved 4-17, 1996

TERRY E. BRANSTAD
Governor

SF 482