

## FORFEITURE REFORM ACT

### Footnotes

Seized property; see also chapter 809

#### **809A.1 Definitions.**

As used in this chapter:

1. "*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.

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

3. "*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 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 owner.

4. "*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.

5. "*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.

6. "*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.

7. "*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.

8. "*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.

9. "*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.

96 Acts, ch 1133, §1; 98 Acts, ch 1074, § 37, 38

#### **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.

96 Acts, ch 1133, §2

### **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. Notwithstanding subsections 1 through 3, violations of chapter 321 or 321J shall not be considered conduct giving rise to forfeiture, except for violations of the following:

*a.* A second or subsequent violation of section 321J.4B, subsection 2, paragraph "b".

*b.* Section 321J.4B, subsection 9.

96 Acts, ch 1133, §3; 97 Acts, ch 177, § 29

### **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 5, 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, conducted, or participated in the conduct or through conduct giving rise to forfeiture.

6. a. Any property of a person up to the value of property which is 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.

96 Acts, ch 1133, §4; 98 Acts, ch 1074, § 39, 40; 98 Acts, ch 1100, § 87

### **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.

96 Acts, ch 1133, §5

### **809A.6 Seizure of property for forfeiture.**

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.

**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 exists:

- 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.

96 Acts, ch 1133, §7

### **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 this 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 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.

**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.

96 Acts, ch 1133, §9

**809A.10 Trustees penalties.**

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.

96 Acts, ch 1133, §10

**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.

96 Acts, ch 1133, §11

#### **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 attorney 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 this 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.

96 Acts, ch 1133, §12

### **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 rule of civil procedure 1.405 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.

96 Acts, ch 1133, §13

#### **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 rule of civil procedure 1.1507, 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.

96 Acts, ch 1133, §14; 2003 Acts, ch 108, §119

#### **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 applies:

(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 fees.

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

96 Acts, ch 1133, §15

### **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.

96 Acts, ch 1133, §16

#### **809A.17 Allocation 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 administrative services to be disposed of in the same manner as property received pursuant to section 8A.325.

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.

96 Acts, ch 1133, §17; 2003 Acts, ch 145, §277, 286

### **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 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's 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.

96 Acts, ch 1133, §18; 98 Acts, ch 1074, § 41

#### **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.

96 Acts, ch 1133, §19

#### **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.

96 Acts, ch 1133, §20

#### **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.

96 Acts, ch 1133, §21

**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.

96 Acts, ch 1133, §22

**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.

96 Acts, ch 1133, §23

**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.

96 Acts, ch 1133, §24

**809A.25 Rulemaking.**

The attorney general shall adopt, amend, or repeal rules pursuant to chapter 17A to carry out the provisions of this chapter.

96 Acts, ch 1133, §25