CHAPTER 809

DISPOSITION OF SEIZED PROPERTY

Forfeiture; see chapter 809A

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809.1 Definitions.

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

1. *"Seizable property"* means any of the following:

a. Property which is relevant in a criminal prosecution or investigation.

b. Property defined by law to be forfeitable property.

c. Property which if not seized by the state poses an imminent danger to a person's health, safety, or welfare.

2. *"Seized property"* means property taken or held by any law enforcement agency without the consent of the person, if any, who had possession or a right to possession of the property at the time it was taken into custody. Seized property does not include property taken into custody solely for safekeeping purposes or property taken into custody with the consent of the owner or the person who had possession at the time of the taking. If consent to the taking of property was given by the person in possession of the property and later withdrawn or found to be insufficient, the property shall then be returned or the property shall be deemed seized as of the time of the demand and refusal.

3. The definitions contained in subsections 1 and 2 shall not apply to violations of chapter 321.

86 Acts, ch 1140, §3; 95 Acts, ch 48, §23; 96 Acts, ch 1133, §47

809.2 Notice of seizure.

The officer taking possession of seized property shall make a written inventory of the property and deliver a copy of the inventory to the person from whom it was seized. The inventory shall include the name of the person taking custody of the seized property, the date and time of the seizure, and the law enforcement agency seizing the property.

86 Acts, ch 1140, §4

809.3 Application for immediate return of seized property.

1. Any person claiming a right to immediate possession of seized property may make application for its return in the office of the clerk of court for the county in which the property was seized.

2. The application for the return of seized property shall state the specific item or items sought, the nature of the claimant's interest in the property, and the grounds upon which the claimant seeks to have the property immediately returned. Mere ownership is insufficient as grounds for immediate return. The written application shall be specific and the claimant shall be limited at the judicial hearing to proof of the grounds set out in the application for immediate return. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return. If no specific grounds are set out in the application for return, or the grounds set out are insufficient as a matter of law, the court may enter judgment on the pleadings without further hearing.

3. The application shall be signed by the claimant under penalty of perjury.

4. The claimant shall cause a copy of the application to be delivered to the county attorney.

86 Acts, ch 1140, §5; 2013 Acts, ch 7, §1

Referred to in **§809.5**

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 809.12A.

86 Acts, ch 1140, §6; 96 Acts, ch 1133, §48

Referred to in **§602.6405**

809.5 Disposition of seized property.

1. Seized property shall be returned to the owner if the property is no longer required as evidence or the property has been photographed and the photograph will be used as evidence in lieu of the property, if the property is no longer required for use in an investigation, if the owner's possession is not prohibited by law, and if a forfeiture claim has not been filed on behalf of the state.

a. If the aggregate fair market value of the property is greater than five hundred dollars, the seizing agency shall serve notice by personal service or by sending the notice by restricted certified mail, return receipt requested, to the last known address of any person having an ownership or possessory right in the property. Refusal of restricted certified mail, return receipt requested, shall be construed as receipt of the notice.

b. If the aggregate fair market value of the property is equal to or less than five hundred dollars, the seizing agency shall serve notice by personal service or by sending the notice by regular mail to the last known address of any person having an ownership or possessory right in the property.

c. A person having an ownership or possessory right in the property must file a written claim for the property with the seizing agency within thirty days from the date of receipt of the notice and must take possession of the property within thirty days of the expiration of the period of time for filing a written claim. If no written claim is filed within thirty days from the date of receipt of the notice or if a written claim is filed but the claimant does not take possession of the property within thirty days of the expiration of the period of time for filing the written claim, the property shall be deemed abandoned and shall be disposed of accordingly.

d. The notice served or sent pursuant to this subsection shall inform the recipient of the filing and possession requirements of paragraph "c".

e. The seizing agency shall not release the property to any party until the expiration of the date for filing claims. In the event that there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency shall file a copy of all such claims with the clerk of court and the clerk shall proceed as if such claims were filed by the parties under section 809.3.

f. In the event that the owner is unable to be located or the property is deemed abandoned the following shall apply:

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

(2) If the aggregate fair market value of the property is equal to or less than five hundred dollars, the seizing agency shall become the owner of the property and may dispose of it in any reasonable manner.

(3) Notwithstanding subparagraph (2), firearms or ammunition with an aggregate fair market value equal to or less than five hundred dollars shall be deposited with the department of public safety. The firearms or ammunition may be held by the department of public safety and be used for law enforcement, testing, or comparisons by the criminalistics laboratory,

or may be destroyed or disposed of by the department of public safety in accordance with section 809.21.

2. Upon the filing of a claim and following hearing by the court, property which has been seized shall be returned to the person who demonstrates a right to possession, unless one or more of the following is true:

a. The possession of the property by the claimant is prohibited by law.

b. There is a forfeiture notice on file and not disposed of in favor of the claimant prior to or in the same hearing.

c. The state has demonstrated that the evidence is needed in a criminal investigation or prosecution.

3. The court shall, subject to any unresolved forfeiture hearing, make orders appropriate to the final disposition of the property including, but not limited to, the destruction of contraband once it is no longer needed in an investigation or prosecution.

86 Acts, ch 1140, §7; 2007 Acts, ch 107, §1; 2008 Acts, ch 1153, §1, 2

809.6 through 809.12 Repealed by 96 Acts, ch 1133, §53. See §809.12A and chapter 809A.

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.

96 Acts, ch 1133, §49

Referred to in **§809.4**

809.13 and 809.14 Repealed by 96 Acts, ch 1133, §53. See chapter 809A.

809.15 Combining proceedings.

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

86 Acts, ch 1140, §17; 96 Acts, ch 1133, §50

809.16 Rulemaking.

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

86 Acts, ch 1140, §18; 96 Acts, ch 1133, §51

809.17 Proceeds applied to various programs.

Except as provided in section 809.21, proceeds from the disposal of seized property pursuant to this chapter may be transferred in whole or in part to the victim compensation fund created in section 915.94 at the discretion of the recipient agency, political subdivision, or department.

90 Acts, ch 1251, §60; 91 Acts, ch 181, §16; 91 Acts, ch 258, §66; 96 Acts, ch 1133, §52; 98 Acts, ch 1090, §75, 84

809.18 to 809.20 Reserved.

809.21 Sale of certain ammunition and firearms.

Ammunition and firearms which are not illegal and which are not offensive weapons as defined by section 724.1 may be sold by the department of public safety at public auction. The department of public safety may sell at public auction forfeited legal weapons received from the director of the department of natural resources, except that rifles and shotguns shall be

retained by the department of natural resources for disposal according to its rules. The sale of ammunition or firearms pursuant to this section shall be made only to federally licensed firearms dealers or to persons who have a permit to purchase the firearms. Persons who have not obtained a permit may bid on firearms at the public auction. However, persons who bid without a permit must post a fifty percent of purchase price deposit with the commissioner of public safety on any winning bid. No transfer of firearms may be made to a person bidding without a permit until such time as the person has obtained a permit. If the person is unable to produce a permit within two weeks from the date of the auction, the person shall forfeit the fifty percent deposit to the department of public safety. All proceeds of a public auction pursuant to this section, less department expenses reasonably incurred, shall be deposited in the general fund of the state. The department of public safety shall be reimbursed from the proceeds for the reasonable expenses incurred in selling the property at the auction.

86 Acts, ch 1238, §33; 87 Acts, ch 13, §7, 8; 90 Acts, ch 1042, §1

Referred to in **§809.5**, **§809.17**, **§809A.17**