

House File 2342

S-5237

1 Amend House File 2342, as amended, passed, and reprinted by  
2 the House, as follows:

3 1. By striking everything after the enacting clause and  
4 inserting:

5 <Section 1. Section 481A.1, Code 2018, is amended by adding  
6 the following new subsection:

7 NEW SUBSECTION. 33A. "*Trophy*" means any fish, bird, or  
8 animal or any part of a fish, bird, or animal that a person  
9 intends to display.

10 Sec. 2. Section 481A.11, Code 2018, is amended to read as  
11 follows:

12 **481A.11 Confiscated or accidentally killed game.**

13 Except as provided in [section 481A.13](#) or [481A.13A](#), any game  
14 or fish seized by the commission under [section 481A.12](#) or any  
15 game accidentally killed by a motor vehicle on a public highway  
16 shall, when salvageable, be disposed of as determined by the  
17 commission or its designee.

18 Sec. 3. Section 481A.12, Code 2018, is amended to read as  
19 follows:

20 **481A.12 Seizure of wildlife taken or handled illegally.**

21 The director or any peace officer shall seize with or  
22 without warrant and take possession of, or direct the disposal  
23 of, any fish, furs, birds, or animals, or mussels, clams, or  
24 frogs, which have been caught, taken, or killed at a time,  
25 in a manner, or for a purpose, or had in possession or under  
26 control, or offered for shipment, or illegally transported in  
27 the state or to a point beyond its borders, contrary to the  
28 Code. All fish, furs, birds, or animals, or mussels, clams,  
29 or frogs seized under [this section](#) ~~may~~ shall be relinquished  
30 to a representative of the commission ~~or disposed of~~. Upon  
31 seizure, the person from whom the property is seized shall  
32 declare whether any fish, bird, or animal or any part of a  
33 fish, bird, or animal is a trophy. The commission may only  
34 rebut such declaration upon a showing beyond a reasonable doubt  
35 that the seized item is not a trophy. The commission shall

1 establish by rule the process by which the commission shall  
2 meet its burden of proof and the criteria that the commission  
3 shall use in determining whether the seized item is a trophy.  
4 If the property seized is not a trophy, the commission shall  
5 dispose of the property as provided in section 481A.11. If  
6 the property seized is a trophy, the commission shall keep the  
7 property in the manner described in section 481A.13.

8 Sec. 4. Section 481A.13, Code 2018, is amended to read as  
9 follows:

10 **481A.13 Search warrants.**

11 Any court having jurisdiction of the offense, upon receiving  
12 proof of probable cause for believing that any fish, mussels,  
13 clams, frogs, birds, furs, or animals caught, taken, killed,  
14 had in possession, under control, or shipped, contrary to the  
15 Code, or hidden or concealed in any place, shall issue a search  
16 warrant and cause a search to be made in any place therefor.  
17 The property so seized under warrant shall be safely kept under  
18 the direction of the court so long as necessary for the purpose  
19 of being used as evidence in any trial, and if a trial results  
20 in a conviction the property seized shall be confiscated by  
21 the director or the director's officers. If the trial does  
22 not result in a conviction, the property shall be returned to  
23 the person pursuant to section 481A.13A unless the property is  
24 illegal to possess.

25 Sec. 5. NEW SECTION. **481A.13A Conviction required for**  
26 **property confiscation — return of property.**

27 1. The state shall not confiscate property seized under  
28 section 481A.12 or 481A.13 unless the person from whom the  
29 property was seized is convicted of the violation for which the  
30 property was seized or the property is illegal to possess.

31 2. If the person from whom the property was seized is not  
32 convicted of the violation for which the property was seized,  
33 the department, law enforcement agency, or other governmental  
34 agency in possession of the seized property shall return  
35 the seized property, except for property that is illegal

1 to possess, to the person within thirty days of any of the  
2 following:

- 3 a. The date the person is found not guilty of the violation.
- 4 b. The date the action involving the violation is dismissed.
- 5 c. The date the statute of limitations expires for the  
6 alleged violation for which the property was seized.

7 3. Any game or fish that is not a trophy and any mussel,  
8 clam, or frog shall be disposed of as determined by the  
9 commission or its designee. The commission shall develop and  
10 maintain a schedule for reimbursement based on reasonable  
11 market value of the meat of any game or fish that is not a  
12 trophy, mussel, clam, or frog. If the person from whom the  
13 property was seized is not convicted of the violation for which  
14 the property was seized, the commission shall reimburse that  
15 person within thirty days of the dates provided in subsection  
16 2.

17 4. For purposes of this section, "*convicted*" includes  
18 a finding of guilt, payment of a scheduled fine, a plea of  
19 guilty, deferred judgment, deferred or suspended sentence,  
20 adjudication of delinquency, or circumstance where a person is  
21 not charged with a criminal offense related to the violation  
22 based in whole or in part on the person's agreement to provide  
23 information regarding the criminal activity of another person.

24 Sec. 6. Section 483A.32, Code 2018, is amended to read as  
25 follows:

26 **483A.32 Public nuisance.**

27 1. Any Subject to subsection 2, any device, contrivance,  
28 or material used to violate a rule adopted by the commission,  
29 or any other provision of [this chapter](#) or [chapter 481A](#), [481B](#),  
30 [482](#), [484A](#), or [484B](#), is a public nuisance and may be condemned  
31 by the state. The director, the director's officers, or  
32 any peace officer, shall seize the devices, contrivances,  
33 or materials used as a public nuisance, without warrant or  
34 process, and deliver them to a magistrate having jurisdiction.  
35 An automobile shall not be construed to be a public nuisance

1 under this section.

2 2. The state may only condemn property seized as a public  
3 nuisance if the person from whom the property was seized is  
4 convicted of the violation for which the property was seized as  
5 a public nuisance.

6 3. If the person from whom the property was seized is not  
7 convicted of the violation for which the property was seized,  
8 the department, law enforcement agency, or other governmental  
9 agency in possession of the seized property shall return  
10 the seized property, except for property that is illegal  
11 to possess, to the person within thirty days of any of the  
12 following:

13 a. The date the person is found not guilty of the violation.

14 b. The date the action involving the violation is dismissed.

15 c. The date the statute of limitations expires for the  
16 alleged violation for which the property was seized.

17 4. For purposes of this section, "convicted" means the same  
18 as in section 481A.13A, subsection 3.

19 Sec. 7. Section 483A.33, subsection 3, paragraph a, Code  
20 2018, is amended to read as follows:

21 a. The person from whom the property was seized may make  
22 application for its return in the office of the clerk of the  
23 district court for the county in which the property was seized.  
24 The application shall be filed within thirty days after  
25 the receipt of the notice of condemnation or the person is  
26 convicted of the violation for which the property was seized,  
27 whichever occurs later. Failure to file the application within  
28 this time period terminates the interest of the person and the  
29 ownership of the property shall be transferred to the state,  
30 except that a person who is not convicted of the violation  
31 for which the property was seized is not required to file an  
32 application and is entitled to the return of the property in  
33 accordance with section 483A.32 unless the property is illegal  
34 to possess.

35 Sec. 8. Section 483A.33, subsection 4, Code 2018, is amended

1 to read as follows:

2 4. If an application for return of condemnable property  
3 is timely and of sufficient grounds, the claim shall be set  
4 for hearing. The hearing shall be held not less than ten nor  
5 more than thirty days after the ~~filing of the claim~~ claim is  
6 filed or the person is convicted for the violation for which  
7 the property was seized as a public nuisance, whichever occurs  
8 later. The proceeding shall be conducted by a magistrate or  
9 a district associate judge. All claims to the same property  
10 shall be heard in one proceeding, unless it is shown that the  
11 proceeding would result in prejudice to one or more of the  
12 parties.

13 Sec. 9. Section 483A.33, subsection 5, Code 2018, is amended  
14 by adding the following new paragraphs:

15 NEW PARAGRAPH. c. On or before December 31, 2018, and  
16 on or before December 1 each year thereafter, the department  
17 shall report to the general assembly's standing committees  
18 on government oversight regarding the amount of the proceeds  
19 deposited to the state fish and game protection fund pursuant  
20 to this subsection. The report shall also contain all  
21 information recorded pursuant to paragraph "d".

22 NEW PARAGRAPH. d. A seizing public agency that has custody  
23 of any property that is seized pursuant to a provision of this  
24 subchapter shall adopt and comply with a written internal  
25 control policy that does all of the following:

26 (1) Provides for keeping detailed records as to the amount  
27 of property acquired by the agency and the date property was  
28 acquired.

29 (2) Provides for keeping detailed records of the  
30 disposition of the property, which shall include the manner  
31 in which the property was disposed, the date of disposition,  
32 and detailed financial records concerning any property sold.  
33 The records shall not identify or enable identification of the  
34 individual officer who seized any item of property or the name  
35 of any person or entity who received any item of property.

1     NEW PARAGRAPH.  *e.*  The records kept under the internal  
2 control policy shall be open to public inspection during the  
3 agency's regular business hours.  The policy adopted under this  
4 section is a public record open for inspection under chapter  
5 22.

6     Sec. 10.  Section 483A.33, Code 2018, is amended by adding  
7 the following new subsections:

8     NEW SUBSECTION.  6.  *a.*  An employee of the seizing public  
9 agency or a member of the immediate family of the employee  
10 shall not purchase a fish, fur, bird, animal, mussel, clam, or  
11 frog seized pursuant to section 481A.12, a device, contrivance,  
12 or material condemned pursuant to section 483A.32, or a weapon  
13 seized pursuant to section 483A.32 and disposed of pursuant  
14 to this section or section 809.21.  For purposes of this  
15 subsection, "*member of the immediate family*" means a spouse,  
16 child, stepchild, brother, brother-in-law, stepbrother, sister,  
17 sister-in-law, stepsister, parent, parent-in-law, or stepparent  
18 of an employee of the seizing public agency who resides in the  
19 same household in the same principal residence of the employee  
20 of the seizing public agency.

21     *b.*  The department shall provide a form on which a person  
22 purchasing property seized pursuant to section 481A.12 or  
23 483A.32 shall declare that the person is not an employee of the  
24 seizing public agency or a member of the immediate family of an  
25 employee of the seizing public agency.

26     NEW SUBSECTION.  7.  For purposes of this section,  
27 "*convicted*" means the same as in section 481A.13A, subsection  
28 3.>

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