



**SF 446** – Asset Forfeiture (LSB2284SV.2)

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Fiscal Note Version – As amended and passed by the Senate

**Description**

[Senate File 446](#) relates to asset forfeiture and includes a prohibition on civil asset forfeiture for property valued at less than \$5,000, increases the standard of proof required for asset forfeiture to clear and convincing evidence, requires a proportionality review with regard to property to be forfeited, and requires law enforcement agencies to retain certain records related to asset forfeiture.

**Background**

Asset forfeiture is a process by which contraband and proceeds or instrumentalities related to criminal activity may be seized by the State and sold. Under current law, conduct giving rise to forfeiture is an act or omission which is a public offense that is a serious or aggravated misdemeanor or felony. However, forfeiture proceedings are not precluded if the State fails to convict, indict, or charge the person whose conduct gave rise to forfeiture. Under this Bill, asset forfeiture for property valued at less than \$5,000 would be prohibited unless the conduct giving rise to forfeiture resulted in a conviction, or one of the other exceptions related to the property owner have been met.

The value of cash forfeitures seized by law enforcement varies greatly from case to case. In 2015, the highest amount of cash forfeited in a single case was \$186,480 and the lowest was \$13. The average of the 2015 cash forfeitures was \$4,104, with a large majority of those forfeitures valued below \$5,000. Depending on several factors, some forfeitures are not retained by the State, including if the owner is able to recover the property in a forfeiture proceeding.

In FY 2016, a total of \$2.6 million was received and retained by the State from 822 cash forfeitures under State law. The average value of the cash forfeiture retained by the State was \$3,217. These numbers reflect the amount of cash proceeds received and retained by the participating State agencies during FY 2016. The actual processing and distribution of the proceeds may occur anywhere from a week to a few years after the forfeiture occurred. The following table shows the total and average value of cash forfeitures that were processed and received by the State in calendar years 2012 through 2016.

**CY 2012-2016 Cash Forfeitures Retained by the State (under State law)**

<b>Year</b>	<b>Total Amount Received</b>	<b>Amt of Forfeitures Received</b>	<b>Average Value of Forfeiture</b>
2016	\$2,494,511	728	\$3,427
2015	\$2,664,526	711	\$3,748
2014	\$4,673,752	908	\$5,147
2013	\$4,035,221	1006	\$4,011
2012	\$2,864,915	787	\$3,960

It is important to note that the proceeds from the sale of forfeited real or personal property (e.g., vehicles) are not included in the previous table. The values of real estate forfeited and sold in calendar years 2012 through 2016 were as follows: \$2,000, \$40,000, \$8,100, \$1,250, \$52,000, and \$119,000.

Under Iowa Code section [809A.17](#), the net proceeds of the forfeited property may be divided among the Department of Justice (DOJ) and any State or local law enforcement agencies that participate in the investigation or prosecution resulting in the forfeiture. If the forfeited property is cash or proceeds from the sale of real property, the DOJ may retain up to 10.0%, and the balance is distributed to the seizing agency for use or divided among law enforcement agencies and county attorneys pursuant to any agreement entered into by the seizing agency. Forfeited property which is not used by the DOJ in the enforcement of the law may be requisitioned by the Department of Public Safety (DPS) or any law enforcement agency within the State for use in enforcing the criminal laws of the State.

### **Assumptions**

- The amount of cash seized and proceeds from the sale of real property will remain consistent in future fiscal years.
- The average value of cash forfeitures will remain consistent in future fiscal years.

### **Fiscal Impact**

Senate File 446 will likely have a fiscal impact on all agencies that retain a portion of the proceeds from forfeiture, such as the DOJ, local law enforcement, and county attorneys. Any forfeitures below \$5,000 would require a conviction for the forfeiture to be retained by the State. As a result, there may be fewer cash forfeiture and forfeiture proceeds retained by the DOJ and law enforcement agencies, although an estimate is indeterminable at this time. The increased burden of proof for forfeiture proceedings may also result in fewer cases filed and a reduction in the number of forfeiture orders issued.

### **Sources**

Legislative Services Agency, Fiscal Services Division  
Department of Justice  
Iowa County Attorneys Association

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/s/ Holly M. Lyons

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The fiscal note for this Bill was prepared pursuant to Joint Rule 17 and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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