

Senate File 446 - Enrolled

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AN ACT

RELATING TO ASSET FORFEITURE BY PROHIBITING CIVIL ASSET FORFEITURE FOR PROPERTY VALUED AT LESS THAN A MINIMUM AMOUNT, RAISING THE STANDARD OF PROOF FOR ASSET FORFEITURE, REQUIRING A PROPORTIONALITY REVIEW FOR PROPERTY TO BE FORFEITED, AND REQUIRING LAW ENFORCEMENT AGENCIES TO RETAIN CERTAIN RECORDS RELATED TO ASSET FORFEITURE AND INCLUDING APPLICABILITY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 809A.1, Code 2017, is amended by adding the following new subsections:

NEW SUBSECTION. 01. *“Convicted”* or *“conviction”* includes a finding of guilt, a plea of guilty, deferred judgment, deferred or suspended sentence, adjudication of delinquency, or circumstances where a person is not charged with a criminal offense that is a serious or aggravated misdemeanor or felony

related to the action for forfeiture based in whole or in part on the person's cooperation in providing information regarding the criminal activity of another person.

NEW SUBSECTION. 001. "*Instrumentality*" means property otherwise lawful to possess that is used in or intended to be used in a public offense.

NEW SUBSECTION. 1A. "*Minimum civil forfeiture amount*" means five thousand dollars.

Sec. 2. Section 809A.5, subsection 2, paragraph b, Code 2017, is amended to read as follows:

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.~~ If the forfeiture is for property valued at less than the minimum civil forfeiture amount, the owner or interest holder must also be convicted of the criminal offense for the conduct giving rise to forfeiture.

Sec. 3. Section 809A.8, subsection 1, paragraph a, subparagraph (2), Code 2017, is amended to read as follows:

(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, or, if the value of the property is less than the minimum civil forfeiture amount, file a judicial forfeiture proceeding within ninety days after the conclusion of the criminal prosecution.

Sec. 4. Section 809A.8, subsection 1, paragraph d, unnumbered paragraph 1, Code 2017, is amended to read as follows:

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, or, if the value of the property is less than the minimum civil forfeiture amount, one hundred eighty days after the conclusion of the criminal prosecution, and the following procedures shall apply:

Sec. 5. Section 809A.12, subsections 6, 7, and 14, Code 2017, are amended to read as follows:

6. A defendant ~~convicted in any~~ whose criminal proceeding

results in a conviction 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~~ must make a prima facie showing of the existence of the exemption. ~~However, once the claimant comes forward with some evidence supporting the existence of the exemption, the state~~ The prosecuting attorney ~~must provide some evidence to negate the assertion of the~~ then prove by clear and convincing evidence that the exemption does not apply. ~~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.

14. An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this chapter if the value of the property to be forfeited is equal to or exceeds the minimum civil forfeiture amount.

Sec. 6. Section 809A.12, Code 2017, is amended by adding the following new subsection:

NEW SUBSECTION. 7A. The prosecuting attorney must prove by clear and convincing evidence that the property is property subject to forfeiture.

Sec. 7. Section 809A.12, subsection 10, paragraph a, Code 2017, is amended to read as follows:

a. The If the property to be forfeited is equal to or exceeds the minimum civil forfeiture amount, that the person has engaged in conduct giving rise to forfeiture. If the property to be forfeited is less than the minimum civil

forfeiture amount, that the person was convicted for the conduct giving rise to forfeiture.

Sec. 8. NEW SECTION. 809A.12A Limitations on civil forfeiture.

1. If the total value of the property seized for forfeiture is less than the minimum civil forfeiture amount, a judicial forfeiture proceeding shall not be brought unless one of the following applies:

a. The conduct giving rise to forfeiture resulted in a conviction.

b. The property owner is deceased.

c. Charges have been filed against the property owner, a warrant was issued for the arrest of the property owner, and either of the following applies:

(1) The property owner is outside the state and is unable to be extradited or brought back to the state for prosecution.

(2) Law enforcement has made reasonable efforts to locate and arrest the property owner, but the property owner has not been located.

d. The property owner has not claimed the property subject to forfeiture or asserted any interest in the property at any time during or after the seizure of the property, and all claims brought under section 809A.11 have been denied.

2. The prosecuting attorney has the burden to prove by clear and convincing evidence that the value of the property is or exceeds the minimum civil forfeiture amount in any civil action.

Sec. 9. NEW SECTION. 809A.12B Proportionality review.

1. Property shall not be forfeited as an instrumentality under this chapter to the extent that the amount or value of the property is grossly disproportionate to the severity of the offense.

2. Contraband and any proceeds obtained from the offense are not subject to proportionality review under this section.

Sec. 10. Section 809A.13, subsections 7 and 8, Code 2017, are amended to read as follows:

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 by clear and convincing evidence that 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~~ may assert that the claimant has an interest in the property which is exempt from forfeiture under [this chapter](#) ~~by a preponderance of the evidence~~. If the claimant asserts and makes a prima facie showing of the existence of the exemption, the prosecuting attorney then has the burden of proving by clear and convincing evidence that the exemption does not apply.

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. 11. Section [809A.14](#), subsection 7, paragraph d, Code 2017, is amended to read as follows:

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~~ properly petitioned for recognition of exemption under section [809A.11](#) and that the prosecuting attorney has not shown, by clear and convincing evidence, that the claimant does not have an interest in the property which is exempt under the provisions of [section 809A.5](#).

Sec. 12. Section [809A.15](#), subsection 1, unnumbered paragraph 1, Code 2017, is amended to read as follows:

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 the prosecuting attorney proves by clear and convincing evidence that any of the following applies to the person's forfeitable property:

Sec. 13. Section [809A.16](#), subsection 2, Code 2017, is amended to read as follows:

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~~ clear and convincing 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](#).

Sec. 14. NEW SECTION. **809A.18A Recordkeeping.**

1. Each law enforcement agency that has custody of any property that is subject to this chapter shall adopt and comply with a written internal control policy that does all of the following:

a. Provides for keeping detailed records as to the amount of property acquired by the agency and the date property was acquired.

b. Provides for keeping detailed records of the disposition of the property, which shall include but not be limited to all of the following:

(1) The manner in which the property was disposed, the date of disposition, and detailed financial records concerning any property sold. The records shall not identify or enable identification of the individual officer who seized any item of property or the name of any person or entity who received any item of property.

(2) An itemized list of the specific expenditures made with amounts that are gained from the sale of the property and that are retained by the agency, including the specific amount expended on each expenditure, except that the policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation.

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

Sec. 15. APPLICABILITY. This Act applies to forfeiture proceedings that begin on or after the effective date of this Act.

JACK WHITVER
President of the Senate

LINDA UPMAYER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 446, Eighty-seventh General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2017

TERRY E. BRANSTAD
Governor