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BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 242)

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Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act establishing economic and other penalties for certain  
2 criminal activity.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 408

DIVISION I

IOWA FORFEITURE REFORM ACT

Section 1. NEW SECTION. 809A.1 DEFINITIONS.

As used in this chapter:

1. "Conveyance" includes any vehicle, trailer, vessel, aircraft, or other means of transportation.

2. "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.

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

4. "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 for 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.

5. "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.

6. "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.

7. "Prosecuting attorney" means an attorney who is

1 authorized by law to appear on the behalf of the state in a  
2 criminal case, and includes the attorney general, an assistant  
3 attorney general, the county attorney, an assistant county  
4 attorney, or a special or substitute prosecutor whose  
5 appearance is approved by a court having jurisdiction to try a  
6 defendant for the offense with which the defendant is charged.

7 8. "Regulated interest holder" means an interest holder  
8 that is a business authorized to do business in this state and  
9 is under the jurisdiction of any state or federal agency  
10 regulating banking, insurance, real estate, or securities.

11 9. "Seizing agency" means a department or agency of this  
12 state or its political subdivisions that regularly employs law  
13 enforcement officers, and that employs the law enforcement  
14 officer who seizes property for forfeiture, or such other  
15 agency as the department or agency may designate by its chief  
16 executive officer or the officer's designee.

17 10. "Seizure for forfeiture" means seizure of property by  
18 a law enforcement officer, including a constructive seizure,  
19 accompanied by an assertion by the seizing agency or by a  
20 prosecuting attorney that the property is seized for  
21 forfeiture, in accordance with section 809A.6.

22 Sec. 2. NEW SECTION. 809A.2 JURISDICTION AND VENUE.

23 1. The district court has jurisdiction under this chapter  
24 over:

25 a. All interests in property within this state at the time  
26 a forfeiture action is filed.

27 b. The interest in the property of an owner or interest  
28 holder who is subject to personal jurisdiction in this state.

29 2. In addition to the venue provided for under chapter 803  
30 or any other provision of law, a proceeding for forfeiture  
31 under this chapter may be maintained in the county in which  
32 any part of the property is found or in the county in which a  
33 civil or criminal action could be maintained against an owner  
34 or interest holder for the conduct alleged to give rise to the  
35 forfeiture.

1 Sec. 3. NEW SECTION. 809A.3 CONDUCT GIVING RISE TO  
2 FORFEITURE.

3 The following conduct may give rise to forfeiture:

4 1. An act or omission which is a public offense and which  
5 is a serious or aggravated misdemeanor or felony.

6 2. An act or omission occurring outside of this state,  
7 that would be punishable by confinement of one year or more in  
8 the place of occurrence and would be a serious or aggravated  
9 misdemeanor or felony if the act or omission occurred in this  
10 state.

11 3. An act or omission committed in furtherance of any act  
12 or omission described in subsection 1, which is a serious or  
13 aggravated misdemeanor or felony including any inchoate or  
14 preparatory offense.

15 Sec. 4. NEW SECTION. 809A.4 PROPERTY SUBJECT TO  
16 FORFEITURE.

17 The following are subject to forfeiture:

18 1. All controlled substances, raw materials, controlled  
19 substance analogs, counterfeit controlled substances,  
20 imitation controlled substances, or precursor substances, that  
21 have been manufactured, distributed, dispensed, possessed, or  
22 acquired in violation of the laws of this state.

23 2. a. All property, except as provided in paragraph "b",  
24 including the whole of any lot or tract of land and any  
25 appurtenances or improvements to real property, including  
26 homesteads that are otherwise exempt from judicial sale  
27 pursuant to section 561.16, that is either:

28 (1) Furnished or intended to be furnished by a person in  
29 an exchange that constitutes conduct giving rise to  
30 forfeiture.

31 (2) Used or intended to be used in any manner or part to  
32 facilitate conduct giving rise to forfeiture.

33 b. If the only conduct giving rise to forfeiture is a  
34 violation of section 124.401, subsection 3, real property is  
35 not subject to forfeiture and other property subject to

1 forfeiture pursuant to paragraph "a", subparagraph (2), may be  
2 forfeited only pursuant to section 809A.14.

3 3. All proceeds of any conduct giving rise to forfeiture.

4 4. All weapons possessed, used, or available for use in  
5 any manner to facilitate conduct giving rise to forfeiture.

6 5. Any interest or security in, claim against, or property  
7 or contractual right of any kind affording a source of control  
8 over any enterprise that a person has established, operated,  
9 controlled, or conducted through, or participated in the  
10 conduct, giving rise to forfeiture.

11 6. a. Any property of a person up to the value of  
12 property of either of the following:

13 (1) Described in subsection 2 that the person owned or  
14 possessed for the purpose of a use described in subsection 2.

15 (2) Described in subsection 3 and is proceeds of conduct  
16 engaged in by the person or for which the person is criminally  
17 responsible.

18 b. Property described in this subsection may be seized for  
19 forfeiture pursuant to a constructive seizure or an actual  
20 seizure pursuant to section 809A.6. Actual seizure may only  
21 be done pursuant to a seizure warrant issued on a showing, in  
22 addition to the showing of probable cause for the forfeiture  
23 of the subject property, that the subject property is not  
24 available for seizure for reasons described in section  
25 809A.15, subsection 1, and that the value of the property to  
26 be seized is not greater than the total value of the subject  
27 property, or pursuant to a constructive seizure. If property  
28 of a defendant up to the total value of all interests in the  
29 subject property is not seized prior to final judgment in an  
30 action under this section, the remaining balance shall be  
31 ordered forfeited as a personal judgment against the  
32 defendant.

33 Sec. 5. NEW SECTION. 809A.5 EXEMPTIONS.

34 1. All property, including all interests in property,  
35 described in section 809A.4 is subject to forfeiture, except

1 that property is exempt from forfeiture if either of the  
2 following occurs:

3 a. The owner or interest holder acquired the property  
4 before or during the conduct giving rise to its forfeiture,  
5 and did not know and could not reasonably have known of the  
6 conduct or that the conduct was likely to occur, or acted  
7 reasonably to prevent the conduct giving rise to forfeiture.

8 b. The owner or interest holder acquired the property,  
9 including acquisition of proceeds of conduct giving rise to  
10 forfeiture, after the conduct giving rise to its forfeiture  
11 and acquired the property in good faith, for value and did not  
12 knowingly take part in an illegal transaction.

13 2. Notwithstanding subsection 1, property is not exempt  
14 from forfeiture, even though the owner or interest holder  
15 lacked knowledge or reason to know that the conduct giving  
16 rise to its forfeiture had occurred or was likely to occur, if  
17 any of the following exists:

18 a. The person whose conduct gave rise to its forfeiture  
19 had the authority to convey the property of the person  
20 claiming the exemption to a good faith purchaser for value at  
21 the time of the conduct.

22 b. The owner or interest holder is criminally responsible  
23 for the conduct giving rise to its forfeiture, whether or not  
24 the owner or interest holder is prosecuted or convicted.

25 c. The owner or interest holder acquired the property with  
26 notice of its actual or constructive seizure for forfeiture  
27 under section 809A.6, or with reason to believe that it was  
28 subject to forfeiture.

29 Sec. 6. NEW SECTION. 809A.6 SEIZURE OF PROPERTY.

30 1. A peace officer may seize property for forfeiture upon  
31 process issued by any district judge, district associate  
32 judge, or magistrate. The court may issue a seizure warrant  
33 on an affidavit under oath demonstrating that probable cause  
34 exists for its forfeiture or that the property has been the  
35 subject of a previous final judgment of forfeiture in the

1 courts of any state or of the United States. The court may  
2 order that the property be seized on such terms and conditions  
3 as are reasonable in the discretion of the court. The order  
4 may be made on or in connection with a search warrant.

5 2. Peace officers may seize property for forfeiture  
6 without process on probable cause to believe that the property  
7 is subject to forfeiture under this chapter and if exigent  
8 circumstances exist or if the property has already been seized  
9 for a purpose other than forfeiture.

10 3. The seizure of inhabited residential real property for  
11 forfeiture which is accompanied by removing or excluding its  
12 residents shall be done pursuant to a preseizure adversarial  
13 judicial determination of probable cause, except that this  
14 determination may be made ex parte if the prosecuting attorney  
15 has demonstrated exigent circumstances.

16 4. Property may be seized constructively by:

17 a. Posting notice of seizure for forfeiture or notice of  
18 pending forfeiture on the property.

19 b. Giving notice pursuant to section 809A.8.

20 c. Filing or recording in the public records relating to  
21 that type of property notice of seizure for forfeiture, notice  
22 of pending forfeiture, a forfeiture lien, or a notice of lis  
23 pendens.

24 Filings or recordings made pursuant to this subsection are  
25 not subject to a filing fee or other charge.

26 5. The seizing agency, or the prosecuting attorney, shall  
27 make a reasonable effort to provide notice of the seizure to  
28 the person from whose possession or control the property was  
29 seized. If no person is in possession or control of the  
30 property, the seizing agency may attach the notice to the  
31 property or to the place of its seizure or may make a  
32 reasonable effort to deliver it to the owner of the property.  
33 The notice shall contain a general description of the property  
34 seized, the date and place of seizure, the name of the seizing  
35 agency, and the address and telephone number of the seizing

1 officer or other person or agency from whom information about  
2 the seizure may be obtained.

3 6. A person who acts in good faith and in a reasonable  
4 manner to comply with an order of the court or a request of a  
5 law enforcement officer is not liable to any person for acts  
6 done in reasonable compliance with the order or request. In  
7 addition, an inference of guilt shall not be drawn from the  
8 fact that a person refuses a law enforcement officer's request  
9 to deliver the property.

10 7. A possessory lien of a person from whose possession  
11 property is seized is not affected by the seizure.

12 Sec. 7. NEW SECTION. 809A.7 PROPERTY MANAGEMENT AND  
13 PRESERVATION.

14 1. Property seized for forfeiture under this chapter is  
15 not subject to alienation, conveyance, sequestration,  
16 attachment, or an application for return of seized property  
17 under chapter 809.

18 2. The seizing agency or the prosecuting attorney may  
19 authorize the release of the seizure for forfeiture on the  
20 property if forfeiture or retention of actual custody is  
21 unnecessary.

22 3. The prosecuting attorney may discontinue forfeiture  
23 proceedings and transfer the action to another state or  
24 federal agency or prosecuting attorney who has initiated  
25 forfeiture proceedings.

26 4. Property seized for forfeiture under this chapter is  
27 deemed to be in the custody of the district court subject only  
28 to the orders and decrees of the court having jurisdiction  
29 over the forfeiture proceedings and to the acts of the seizing  
30 agency or the prosecuting attorney pursuant to this chapter.

31 5. An owner of property seized for forfeiture under this  
32 chapter may obtain release of the property by posting with the  
33 prosecuting attorney a surety bond or cash in an amount equal  
34 to the full fair market value of the property as determined by  
35 the prosecuting attorney. The state may refuse to release the

1 property if any of the following apply:

2 a. The bond tendered is inadequate.

3 b. The property is retained as contraband or as evidence.

4 c. The property is particularly altered or designed for  
5 use in conduct giving rise to forfeiture.

6 If a surety bond or cash is posted and the property is  
7 forfeited, the court shall forfeit the surety bond or cash in  
8 lieu of the property.

9 6. If property is seized for forfeiture under this  
10 chapter, the prosecuting attorney, subject to any need to  
11 retain the property as evidence, may do any of the following:

12 a. Remove the property to an appropriate place designated  
13 by the district court.

14 b. Place the property under constructive seizure.

15 c. Remove the property to a storage area for safekeeping  
16 or, if the property is a negotiable instrument or money,  
17 deposit it in an interest-bearing account.

18 d. Provide for another agency or custodian, including an  
19 owner, secured party, mortgagee, or lienholder, to take  
20 custody of the property and service, maintain, and operate it  
21 as reasonably necessary to maintain its value, in any  
22 appropriate location within the jurisdiction of the court.

23 e. Require the seizing agency to take custody of the  
24 property and remove it to an appropriate location for  
25 disposition in accordance with law.

26 7. As soon as practicable after seizure for forfeiture,  
27 the seizing agency shall conduct a written inventory and  
28 estimate the value of the property seized.

29 8. The court may order property which has been seized for  
30 forfeiture sold, leased, rented, or operated to satisfy a  
31 specified interest of any interest holder, or to preserve the  
32 interests of any party on motion of such party. The court may  
33 enter orders under this subsection after notice to persons  
34 known to have an interest in the property, and an opportunity  
35 for a hearing, if either of the following exist:

1 a. The interest holder has timely filed a proper claim and  
2 is a regulated interest holder.

3 b. The interest holder has an interest which the  
4 prosecuting attorney has stipulated is exempt from forfeiture.

5 9. A sale may be ordered under subsection 8 if the  
6 property is liable to perish, to waste, or to be foreclosed  
7 upon or significantly reduced in value, or if the expenses of  
8 maintaining the property are disproportionate to its value. A  
9 third party designated by the court shall dispose of the  
10 property by commercially reasonable public sale and distribute  
11 the proceeds in the following order of priority:

12 a. For the payment of reasonable expenses incurred in  
13 connection with the sale or disposal.

14 b. For the satisfaction of exempt interests in the order  
15 of their priority.

16 c. Any balance of the proceeds shall be preserved in the  
17 actual or constructive custody of the court, in an interest-  
18 bearing account, subject to the proceedings under this  
19 chapter.

20 Sec. 8. NEW SECTION. 809A.8 COMMENCEMENT OF FORFEITURE  
21 PROCEEDINGS -- PROPERTY RELEASE REQUIREMENTS.

22 1. Forfeiture proceedings shall be commenced as follows:

23 a. Property seized for forfeiture shall be released on the  
24 request of an owner or interest holder to the owner's or  
25 interest holder's custody, as custodian for the court, pending  
26 further proceedings pursuant to this chapter if the  
27 prosecuting attorney fails to do either of the following:

28 (1) File a notice of pending forfeiture against the  
29 property within ninety days after seizure.

30 (2) File a judicial forfeiture proceeding within ninety  
31 days after notice of pending forfeiture of property upon which  
32 a proper claim has been timely filed pursuant to section  
33 809A.11.

34 b. Within thirty days after the effective date of the  
35 notice of pending forfeiture, an owner of or interest holder

1 in the property may elect to file with the prosecuting  
2 attorney either of the following:

3 (1) A claim pursuant to section 809A.11.

4 (2) A petition for recognition of exemption pursuant to  
5 section 809A.11, except that no petition may be filed after  
6 the state commences a court action.

7 c. An extension of time for the filing of a claim shall  
8 not be granted.

9 d. If a petition is timely filed, the prosecuting attorney  
10 may delay filing a judicial forfeiture proceeding for one  
11 hundred eighty days after the notice of pending forfeiture,  
12 and the following procedures shall apply:

13 (1) The prosecuting attorney shall provide the seizing  
14 agency and the petitioning party with a written recognition of  
15 exemption and statement of nonexempt interests relating to any  
16 or all interests in the property in response to each  
17 petitioning party as follows:

18 (a) Within sixty days after the effective date of the  
19 notice of pending forfeiture if the petitioner is a regulated  
20 interest holder. The recognition of exemption shall recognize  
21 the interest of the petitioner to the extent of documented  
22 outstanding principal plus interest at the contract rate until  
23 paid.

24 (b) Within one hundred twenty days after the effective  
25 date of the notice of pending forfeiture for all other  
26 petitioners.

27 (2) An owner or interest holder in any property declared  
28 nonexempt may file a claim pursuant to section 809A.11 within  
29 thirty days after the effective date of the notice of the  
30 recognition of exemption and statement of nonexempt interest.

31 (3) If a petitioning party does not timely file a proper  
32 claim under paragraph "b", the recognition of exemption and  
33 statement of nonexempt interests becomes final, and the  
34 prosecuting attorney shall proceed as provided in sections  
35 809A.16 and 809A.17.

1 (4) The prosecuting attorney may elect to proceed under  
2 this section for judicial forfeiture at any time.

3 (5) If a judicial forfeiture proceeding follows the  
4 application of procedures in this paragraph, the following  
5 apply:

6 (a) A duplicate or repetitive notice is not required. If  
7 a proper claim has been timely filed pursuant to subparagraph  
8 (2), the claim shall be determined in a judicial forfeiture  
9 proceeding after the commencement of such a proceeding under  
10 sections 809A.13, 809A.14, and 809A.15.

11 (b) The proposed recognition of exemption and statement of  
12 nonexempt interest responsive to all petitioning parties who  
13 subsequently filed claims are void and are regarded as  
14 rejected offers to compromise.

15 e. If a proper petition for recognition of exemption or  
16 proper claim is not timely filed, the prosecuting attorney  
17 shall proceed as provided in sections 809A.16 and 809A.17.

18 2. a. Notice of pending forfeiture, service of an in rem  
19 complaint or notice of a recognition of exemption and  
20 statement of nonexempt interests required under the chapter,  
21 shall be given in accordance with one of the following:

22 (1) If the owner's or interest holder's name and current  
23 address are known, by either personal service by any person  
24 qualified to serve process or by any law enforcement officer  
25 or by mailing a copy of the notice by restricted certified  
26 mail to that address.

27 (2) If the owner's or interest holder's name and address  
28 are required by law to be on record with the county recorder,  
29 secretary of state, the motor vehicle division of the state  
30 department of transportation, or another state or federal  
31 agency to perfect an interest in the property, and the owner's  
32 or interest holder's current address is not known, by mailing  
33 a copy of the notice by restricted certified mail to any  
34 address of record with any of the described agencies.

35 (3) If the owner's or interest holder's address is not

1 known and is not on record as provided in subsection 2,  
2 paragraph "a", subparagraph (2), or the owner or interest  
3 holder's interest is not known, by publication in one issue of  
4 a newspaper of general circulation in the county in which the  
5 seizure occurred.

6 b. Notice is effective upon the earlier of personal  
7 service, publication, or the mailing of a written notice,  
8 except that notice of pending forfeiture of real property is  
9 not effective until it is recorded. Notice of pending  
10 forfeiture shall include a description of the property, the  
11 date and place of seizure, the conduct giving rise to  
12 forfeiture or the violation of law alleged, and a summary of  
13 procedures and procedural rights applicable to the forfeiture  
14 action.

15 Sec. 9. NEW SECTION. 809A.9 LIENS.

16 1. The prosecuting attorney may file, without a filing  
17 fee, a lien for the forfeiture of property if any of the  
18 following apply:

19 a. Upon the initiation of any civil or criminal proceeding  
20 relating to conduct giving rise to forfeiture under this  
21 chapter.

22 b. Upon seizure for forfeiture.

23 c. In connection with a proceeding or seizure for  
24 forfeiture in any other state under a state or federal statute  
25 substantially similar to the relevant provisions of this  
26 chapter. The filing constitutes notice to any person claiming  
27 an interest in the seized property or in property owned by the  
28 named person.

29 2. The lienor, as soon as practical after filing a lien,  
30 shall furnish to any person named in the lien a notice of the  
31 filing of the lien. Failure to furnish notice under this  
32 subsection shall not invalidate or otherwise affect the lien.

33 3. The lien notice shall set forth all of the following:

34 a. The name of the person and, in the discretion of the  
35 lienor, any aliases, or the name of any corporation,

1 partnership, trust, or other entity, including nominees, that  
2 are owned entirely or in part, or controlled by the person.

3 b. The description of the seized property or the criminal  
4 or civil proceeding that has been brought relating to conduct  
5 giving rise to forfeiture under the chapter.

6 c. The amount claimed by the lienor.

7 d. The name of the district court where the proceeding or  
8 action has been brought.

9 e. The case number of the proceeding or action if known at  
10 the time of the filing of the lien.

11 4. The notice of forfeiture lien shall be filed in  
12 accordance with the provisions of the laws of this state  
13 relating to the type of property that is subject to the lien.  
14 The validity and priority of the forfeiture lien shall be  
15 determined in accordance with applicable law pertaining to  
16 liens.

17 5. A lien filed pursuant to this section applies to the  
18 described property or to one named person, any aliases,  
19 fictitious names, or other names, including the names of any  
20 corporation, partnership, trust, or other entity, owned  
21 entirely or in part, or controlled by the named person, and  
22 any interest in real property owned or controlled by the named  
23 person. A separate forfeiture lien shall be filed for each  
24 named person.

25 6. The lien notice creates, upon filing, a lien in favor  
26 of the lienor as it relates to the property or the named  
27 person or related entities. The lien secures the amount of  
28 potential liability for civil judgment, and, if applicable,  
29 the fair market value of property relating to all proceedings  
30 under this chapter enforcing the lien.

31 7. The lienor may amend or release, in whole or in part, a  
32 lien filed under this section at any time by filing, without a  
33 filing fee, an amended lien.

34 8. Upon entry of judgment in its favor, the state may  
35 proceed to execute on the lien as provided by law.

1     Sec. 10. NEW SECTION. 809A.10 TRUSTEES.

2     1. Except as provided in subsection 2, a trustee,  
3 constructive or otherwise, who has notice that a notice of  
4 forfeiture lien, or a notice of pending forfeiture, or a civil  
5 forfeiture proceeding has been filed against the property or  
6 against any person or entity for whom the person holds title  
7 or appears as record owner, shall furnish within fifteen days,  
8 to the seizing agency, or the prosecuting attorney all of the  
9 following:

10    a. The name and address of each person or entity for whom  
11 the property is held.

12    b. The description of all other property whose legal title  
13 is held for the benefit of the named person.

14    c. A copy of the applicable trust agreement or other  
15 instrument, if any, under which the trustee or other person  
16 holds legal title or appears as record owner of the property.

17    2. Subsection 1 is inapplicable if any of the following  
18 applies:

19    a. A trustee is acting under a recorded subdivision trust  
20 agreement or a recorded deed of trust.

21    b. All of the information is of record in the public  
22 records giving notice of liens on that type of property.

23    3. A trustee with notice who knowingly fails to comply  
24 with the provisions of this section commits a class "D"  
25 felony, and shall be fined not less than ten thousand dollars  
26 per day for each day of noncompliance.

27    4. A trustee with notice who fails to comply with  
28 subsection 1 is subject to a civil penalty of three hundred  
29 dollars for each day of noncompliance. The court shall enter  
30 judgment ordering payment of three hundred dollars for each  
31 day of noncompliance from the effective date of the notice  
32 until the required information is furnished or the state  
33 executes its judgment lien under this section.

34    5. To the extent permitted by the Constitution of the  
35 United States and the Constitution of the State of Iowa, the

1 duty to comply with subsection 1 shall not be excused by any  
2 privilege or provision of law of this state or any other state  
3 or country which authorizes or directs that testimony or  
4 records required to be furnished pursuant to subsection 1 are  
5 privileged or confidential or otherwise may not be disclosed.

6 6. A trustee who furnishes information pursuant to  
7 subsection 1 is immune from civil liability for the release of  
8 information.

9 7. An employee of the seizing agency or the prosecuting  
10 attorney who releases the information obtained pursuant to  
11 subsection 1, except in the proper discharge of official  
12 duties, commits a serious misdemeanor.

13 8. If any information furnished pursuant to subsection 1  
14 is offered in evidence, the court may seal that portion of the  
15 record or may order that the information be disclosed in a  
16 designated way.

17 9. A judgment or an order of payment entered pursuant to  
18 this section becomes a judgment lien against the property  
19 alleged to be subject to forfeiture.

20 Sec. 11. NEW SECTION. 809A.11 CLAIMS -- PETITIONS FOR  
21 RECOGNITION OF EXEMPTION.

22 1. Only an owner of or interest holder in property seized  
23 for forfeiture may file a claim, and shall do so in the manner  
24 provided in this section. The claim shall be mailed to the  
25 seizing agency and to the prosecuting attorney by restricted  
26 certified mail within thirty days after the effective date of  
27 notice of pending forfeiture. An extension of time for the  
28 filing of a claim shall not be granted.

29 2. The prosecuting attorney may make an opportunity to  
30 file a petition for recognition of exemption available by so  
31 indicating in the notice of pending forfeiture described in  
32 section 809A.8, subsection 2.

33 3. The claim or petition and all supporting documents  
34 shall be in affidavit form, signed by the claimant under oath,  
35 and sworn to by the affiant before one who has authority to

1 administer the oath, under penalty of perjury and shall set  
2 forth all of the following:

3 a. The caption of the proceedings and identifying number,  
4 if any, as set forth on the notice of pending forfeiture or  
5 complaint, the name of the claimant or petitioner, and the  
6 name of the prosecuting attorney who authorized the notice of  
7 pending forfeiture or complaint.

8 b. The address where the claimant or petitioner will  
9 accept mail.

10 c. The nature and extent of the claimant's or petitioner's  
11 interest in the property.

12 d. The date, the identity of the transferor, and the  
13 circumstances of the claimant's or petitioner's acquisition of  
14 the interest in the property.

15 e. The specific provision of this chapter relied on in  
16 asserting that the property is not subject to forfeiture.

17 f. All essential facts supporting each assertion.

18 g. The specific relief sought.

19 Sec. 12. NEW SECTION. 809A.12 JUDICIAL PROCEEDINGS  
20 GENERALLY.

21 1. A judicial forfeiture proceeding under this chapter is  
22 subject to the provisions of this section.

23 2. The court, before or after the filing of a notice of  
24 pending forfeiture or complaint and on application of the  
25 prosecuting attorney, may do any of the following:

26 a. Enter a restraining order or injunction.

27 b. Require the execution of satisfactory performance  
28 bonds.

29 c. Create receiverships.

30 d. Appoint conservators, custodians, appraisers,  
31 accountants, or trustees.

32 e. Take any other action to seize, secure, maintain, or  
33 preserve the availability of property subject to forfeiture  
34 under this chapter, including a writ of attachment or a  
35 warrant for its seizure.

1 3. The court, after five days' notice to the prosecuting  
2 attorney, may issue an order to show cause to the seizing  
3 agency, for a hearing on the sole issue of whether probable  
4 cause for forfeiture of the property then exists if all of the  
5 following exist:

6 a. Property is seized for forfeiture or a forfeiture lien  
7 is filed without a previous judicial determination of probable  
8 cause, order of forfeiture, or a hearing under section  
9 809A.14, subsection 4.

10 b. An owner of or interest holder in the property files an  
11 application for a hearing within ten days after notice of its  
12 seizure for forfeiture or lien, or actual knowledge of its  
13 seizure, whichever is earlier.

14 c. The owner of or interest holder in the property  
15 complies with the requirements for claims or petitions in  
16 section 809A.11.

17 The hearing shall be held within thirty days of the order  
18 to show cause unless continued for good cause on motion of  
19 either party.

20 4. If the court finds in a hearing under subsection 3 that  
21 no probable cause exists for forfeiture of the property, or if  
22 the state elects not to contest the issue, the property shall  
23 be released to the custody of the applicant, as custodian for  
24 the court, or from the lien pending the outcome of a judicial  
25 proceeding pursuant to this chapter. If the court finds that  
26 probable cause for the forfeiture of the property exists, the  
27 court shall not order the property released.

28 5. All applications filed within the ten-day period  
29 prescribed by subsection 3 shall be consolidated for a single  
30 hearing relating to each applicant's interest in the property  
31 seized for forfeiture.

32 6. A defendant convicted in any criminal proceeding is  
33 precluded from later denying the essential allegations of the  
34 criminal offense of which the defendant was convicted in any  
35 proceeding pursuant to this section. For the purposes of this

1 section, a conviction results from a verdict or a plea of  
2 guilty.

3 7. In any proceeding under this chapter, if a claim is  
4 based on an exemption provided for in this chapter, the burden  
5 of proving the existence of the exemption is on the claimant,  
6 and it is not necessary for the state to negate the exemption  
7 in any application or complaint.

8 8. In hearings and determinations pursuant to this  
9 section, the court may receive and consider, in making any  
10 determination of probable cause, all evidence admissible in  
11 determining probable cause at a preliminary hearing or by a  
12 judge pursuant to chapter 808 together with inferences  
13 therefrom.

14 9. The fact that money or a negotiable instrument was  
15 found in close proximity to any contraband or an  
16 instrumentality of conduct giving rise to forfeiture shall  
17 give rise to the presumption that the money or negotiable  
18 instrument was the proceeds of conduct giving rise to  
19 forfeiture or was used or intended to be used to facilitate  
20 the conduct.

21 10. A presumption arises that any property of a person is  
22 subject to forfeiture under this chapter if the state  
23 establishes, by the standard of proof applicable to that  
24 proceeding, any of the following:

25 a. The person has engaged in conduct giving rise to  
26 forfeiture.

27 b. The property was acquired by the person during that  
28 period of the conduct giving rise to forfeiture or within a  
29 reasonable time after that period.

30 c. No likely source for acquisition of the property exists  
31 other than the conduct giving rise to the forfeiture.

32 11. A finding that property is the proceeds of conduct  
33 giving rise to forfeiture does not require proof that the  
34 property is the proceeds of any particular exchange or  
35 transaction.

1 12. A person who acquires property subject to forfeiture  
2 is a constructive trustee of the property, and its fruits, for  
3 the benefit of the state, to the extent that the person's  
4 interest is not exempt from forfeiture. If property subject  
5 to forfeiture has been commingled with other property, the  
6 court shall order the forfeiture of the commingled property,  
7 and of any fruits of the commingled property, to the extent of  
8 the property subject to forfeiture, unless an owner or  
9 interest holder proves that specified property does not  
10 contain property subject to forfeiture, or that the person's  
11 interest in specified property is exempt from forfeiture.

12 13. Title to all property declared forfeited under this  
13 chapter vests in the state on the commission of the conduct  
14 giving rise to forfeiture together with the proceeds of the  
15 property after that time. Any such property or proceeds  
16 subsequently transferred to any person remain subject to  
17 forfeiture and thereafter shall be ordered forfeited unless  
18 the transferee claims and establishes in a hearing under the  
19 provisions of the chapter that the transferee's interest is  
20 exempt under section 809A.5.

21 14. An acquittal or dismissal in a criminal proceeding  
22 shall not preclude civil proceedings under this chapter.

23 15. For good cause shown, on motion by the prosecuting  
24 attorney, the court may stay discovery against the criminal  
25 defendant and against the state in civil forfeiture  
26 proceedings during a criminal trial for a related criminal  
27 indictment or information alleging the same conduct, after  
28 making provision to prevent loss to any party resulting from  
29 the stay. Such a stay shall not be available pending an  
30 appeal.

31 16. Except as otherwise provided by this chapter, all  
32 proceedings hereunder shall be governed by the rules of civil  
33 procedure.

34 17. An action brought pursuant to this chapter shall be  
35 consolidated with any other action or proceeding brought

1 pursuant to this chapter or chapter 626 or 654 relating to the  
2 same property on motion of the prosecuting attorney, and may  
3 be consolidated on motion of an owner or interest holder.

4 Sec. 13. NEW SECTION. 809A.13 IN REM PROCEEDINGS.

5 1. A judicial in rem forfeiture proceeding may be brought  
6 by the prosecuting attorney in addition to, or in lieu of,  
7 civil in personam forfeiture procedures, and is also subject  
8 to the provisions of this section. If a forfeiture is  
9 authorized by this chapter, it shall be ordered by the court  
10 in the in rem action.

11 2. An action in rem may be brought by the prosecuting  
12 attorney pursuant to a notice of pending forfeiture or  
13 verified complaint for forfeiture. The state may serve the  
14 complaint in the manner provided in section 809A.8, subsection  
15 2, or as provided by the rules of civil procedure.

16 3. Only an owner of or an interest holder in the property  
17 who has timely filed a proper claim pursuant to section  
18 809A.11 may file an answer in an action in rem. For the  
19 purposes of this section, an owner of or interest holder in  
20 property who has filed a claim and answer shall be referred to  
21 as a claimant.

22 4. The answer shall be signed by the owner or interest  
23 holder under penalty of perjury and shall be in accordance  
24 with R.C.P. 72 and shall also set forth all of the following:

25 a. The caption of the proceedings and identifying number,  
26 if any, as set forth on the notice of pending forfeiture or  
27 complaint and the name of the claimant.

28 b. The address where the claimant will accept mail.

29 c. The nature and extent of the claimant's interest in the  
30 property.

31 d. The date, the identity of the transferor, and the  
32 circumstances of the claimant's acquisition of the interest in  
33 the property.

34 e. The specific provision of this chapter relied on in  
35 asserting that it is not subject to forfeiture.

1 f. All essential facts supporting each assertion.

2 g. The specific relief sought.

3 5. The answer, accompanied by a bond to the court, shall  
4 be filed within twenty days after service on the claimant of  
5 the civil in rem complaint. The bond amount shall at a  
6 minimum be the greater of two thousand five hundred dollars or  
7 ten percent of the estimated value of the property as alleged  
8 in the complaint, or up to a maximum of two hundred fifty  
9 thousand dollars. In lieu of a cost bond, a claimant may  
10 under penalty of perjury move the court to proceed pursuant to  
11 chapter 610. Any funds received by the court as cost bonds  
12 shall be placed in an interest-bearing account pending final  
13 disposition of the case. The court shall approve sureties  
14 upon condition that the claimant shall pay all costs and  
15 expense of the forfeiture proceedings as provided in section  
16 809A.16 or 809A.17.

17 6. The rules of civil procedure shall apply to discovery  
18 by the state and any claimant who has timely answered the  
19 complaint.

20 7. The forfeiture hearing shall be held without a jury and  
21 within sixty days after service of the complaint unless  
22 continued for good cause. The prosecuting attorney shall have  
23 the initial burden of proving the property is subject to  
24 forfeiture by a preponderance of the evidence. If the state  
25 so proves the property is subject to forfeiture, the claimant  
26 has the burden of proving that the claimant has an interest in  
27 the property which is exempt from forfeiture under this  
28 chapter by a preponderance of the evidence.

29 8. The court shall order the interest in the property  
30 returned or conveyed to the claimant if the prosecuting  
31 attorney fails to meet the state's burden or the claimant  
32 establishes by a preponderance of the evidence that the  
33 claimant has an interest that is exempt from forfeiture. The  
34 court shall order all other property forfeited to the state  
35 and conduct further proceedings pursuant to sections 809A.16

1 and 809A.17.

2 Sec. 14. NEW SECTION. 809A.14 IN PERSONAM PROCEEDINGS.

3 1. A judicial in personam forfeiture proceeding brought by  
4 a prosecuting attorney pursuant to an in personam civil action  
5 alleging conduct giving rise to forfeiture is subject to the  
6 provisions of this section. If a forfeiture is authorized by  
7 this chapter, it shall be ordered by the court in the in  
8 personam action. This action shall be in addition to or in  
9 lieu of in rem forfeiture procedures.

10 2. The court, on application of the prosecuting attorney,  
11 may enter any order authorized by section 809A.12, or any  
12 other appropriate order to protect the state's interest in  
13 property forfeited or subject to forfeiture.

14 3. The court may issue a temporary restraining order on  
15 application of the prosecuting attorney, if the state  
16 demonstrates both of the following:

17 a. Probable cause exists to believe that in the event of a  
18 final judgment, the property involved would be subject to  
19 forfeiture under this chapter.

20 b. Provision of notice would jeopardize the availability  
21 of the property for forfeiture.

22 4. Notice of the issuance of a temporary restraining order  
23 and an opportunity for a hearing shall be given to persons  
24 known to have an interest in the property. A hearing shall be  
25 held at the earliest possible date in accordance with R.C.P.  
26 326, and shall be limited to the following issues:

27 a. Whether a probability exists that the state will  
28 prevail on the issue of forfeiture.

29 b. Whether the failure to enter the order will result in  
30 the property being destroyed, conveyed, encumbered, removed  
31 from the jurisdiction of the court, concealed, or otherwise  
32 made unavailable for forfeiture.

33 c. Whether the need to preserve the availability of  
34 property outweighs the hardship on any owner or interest  
35 holder against whom the order is to be entered.

1 5. On a determination that a person committed conduct  
2 giving rise to forfeiture under this chapter, the court shall  
3 do both of the following:

4 a. Enter a judgment of forfeiture of the property found to  
5 be subject to forfeiture described in the complaint.

6 b. Authorize the prosecuting attorney or designee or any  
7 law enforcement officer to seize all property ordered  
8 forfeited which was not previously seized or is not under  
9 seizure.

10 6. Except as provided in section 809A.12, a person  
11 claiming an interest in property subject to forfeiture under  
12 this chapter shall not intervene in a trial or appeal of a  
13 criminal action or in an in personam civil action involving  
14 the forfeiture of the property.

15 7. Following the entry of an in personam forfeiture order,  
16 the prosecuting attorney may proceed with an in rem action to  
17 resolve the remaining interests in the property. The  
18 following procedures shall apply:

19 a. The prosecuting attorney shall give notice of pending  
20 forfeiture, in the manner provided in section 809A.8, to all  
21 owners and interest holders who have not previously been given  
22 notice.

23 b. An owner of or interest holder in property that has  
24 been ordered forfeited and whose claim is not precluded may  
25 file a claim as described in section 809A.11, within thirty  
26 days after initial notice of pending forfeiture or after  
27 notice under paragraph "a", whichever is earlier.

28 c. If the state does not recognize the claimed exemption,  
29 the prosecuting attorney shall file a complaint and the court  
30 shall hold an in rem forfeiture hearing as provided for in  
31 section 809A.13.

32 d. In accordance with the findings made at the hearing,  
33 the court may amend the order of forfeiture if it determines  
34 that any claimant has established by a preponderance of the  
35 evidence that the claimant has an interest in the property

1 which is exempt under the provisions of section 809A.5.

2 Sec. 15. NEW SECTION. 809A.15 SUBSTITUTED ASSETS --  
3 SUPPLEMENTAL REMEDIES.

4 1. The court shall order the forfeiture of any other  
5 property of a person, including a claimant, up to the value of  
6 that person's property found by the court to be subject to  
7 forfeiture under this chapter, if any of the following applies  
8 to the person's forfeitable property:

9 a. The forfeitable property cannot be located.

10 b. The forfeitable property has been transferred or  
11 conveyed to, sold to, or deposited with a third party.

12 c. The forfeitable property is beyond the jurisdiction of  
13 the court.

14 d. The forfeitable property has been substantially  
15 diminished in value while not in the actual physical custody  
16 of the court, the seizing agency, the prosecuting attorney, or  
17 their designee.

18 e. The forfeitable property has been commingled with other  
19 property that cannot be divided without difficulty.

20 f. The forfeitable property is subject to any interest of  
21 another person which is exempt from forfeiture under this  
22 chapter.

23 2. a. The prosecuting attorney may institute a civil  
24 action in district court against any person with notice or  
25 actual knowledge who destroys, conveys, encumbers, removes  
26 from the jurisdiction of the court, conceals, or otherwise  
27 renders unavailable property alleged to be subject to  
28 forfeiture if either of the following apply:

29 (1) A forfeiture lien or notice of pending forfeiture has  
30 been filed and notice given pursuant to section 809A.8.

31 (2) A complaint pursuant to section 809A.13 alleging  
32 conduct giving rise to forfeiture has been filed and notice  
33 given pursuant to section 809A.8.

34 b. The court shall enter a final judgment in an amount  
35 equal to the value of the lien not to exceed the fair market

1 value of the property, or if a lien does not exist, in an  
2 amount equal to the fair market value of the property,  
3 together with reasonable investigative expenses and attorney's  
4 fees.

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

7 Sec. 16. NEW SECTION. 809A.16 DISPOSITION OF PROPERTY.

8 1. If notice of pending forfeiture is properly served in  
9 an action in rem or in personam in which personal property,  
10 having an estimated value of five thousand dollars or less, is  
11 seized, and no claim opposing forfeiture is filed within  
12 thirty days of service of such notice, the prosecuting  
13 attorney shall prepare a written declaration of forfeiture of  
14 the subject property to the state and allocate the property  
15 according to the provisions of section 809A.17.

16 2. Within one hundred eighty days of the date of a  
17 declaration of forfeiture, an owner or interest holder in  
18 property declared forfeited pursuant to subsection 1, may  
19 petition the court to have the declaration of forfeiture set  
20 aside, after making a prima facie showing that the state  
21 failed to serve proper notice as provided by section 809A.13.  
22 Upon such a showing the court shall allow the state to  
23 demonstrate by a preponderance of the evidence that notice was  
24 properly served. If the state fails to meet its burden of  
25 proof, the court may order the declaration of forfeiture set  
26 aside. The state may proceed with judicial proceedings  
27 pursuant to this chapter.

28 3. Except as provided in subsection 1, if a proper claim  
29 is not timely filed in an action in rem, or if a proper answer  
30 is not timely filed in response to a complaint, the  
31 prosecuting attorney may apply for an order of forfeiture and  
32 an allocation of forfeited property pursuant to section  
33 809A.17. Under such circumstance and upon a determination by  
34 the court that the state's written application established the  
35 court's jurisdiction, the giving of proper notice, and facts

1 sufficient to show probable cause for forfeiture, the court  
2 shall order the property forfeited to the state.

3 4. After final disposition of all claims timely filed in  
4 an action in rem, or after final judgment and disposition of  
5 all claims timely filed in an action in personam, the court  
6 shall enter an order that the state has clear title to the  
7 forfeited property interest. Title to the forfeited property  
8 interest and its proceeds shall be deemed to have vested in  
9 the state on the commission of the conduct giving rise to the  
10 forfeiture under this chapter.

11 5. The court, on application of the prosecuting attorney,  
12 may release or convey forfeited personal property to a  
13 regulated interest holder if any of the following applies:

14 a. The prosecuting attorney, in the attorney's discretion,  
15 has recognized in writing that the regulated interest holder  
16 has an interest in the property and informs the court that the  
17 property interest is exempt from forfeiture.

18 b. The regulated interest holder's interest was acquired  
19 in the regular course of business as a regulated interest  
20 holder.

21 c. The amount of the regulated interest holder's  
22 encumbrance is readily determinable and has been reasonably  
23 established by proof made available by the prosecuting  
24 attorney to the court.

25 d. The encumbrance held by the regulated interest holder  
26 seeking possession is the only interest exempted from  
27 forfeiture and the order forfeiting the property to the state  
28 transferred all of the rights of the owner prior to  
29 forfeiture, including rights to redemption, to the state.

30 6. After the court's release or conveyance under  
31 subsection 5, the regulated interest holder shall dispose of  
32 the property by a commercially reasonable public sale. Within  
33 ten days of disposition the regulated interest holder shall  
34 tender to the state the amount received at disposition less  
35 the amount of the regulated interest holder's encumbrance and

1 reasonable expense incurred by the interest holder in  
2 connection with the sale or disposal. For the purposes of  
3 this section, "commercially reasonable" means a sale or  
4 disposal that would be commercially reasonable under chapter  
5 554, article 7.

6 7. On order of the court or declaration of forfeiture  
7 forfeiting the subject property, the state may transfer good  
8 and sufficient title to any subsequent purchaser or  
9 transferee. The title shall be recognized by all courts and  
10 agencies of this state, and any political subdivision. On  
11 entry of judgment in favor of a person claiming an interest in  
12 the property that is subject to forfeiture proceedings under  
13 this chapter, the court shall enter an order that the property  
14 or interest in property shall be released or delivered  
15 promptly to that person free of liens and encumbrances under  
16 this chapter, and that the person's cost bond shall be  
17 discharged.

18 8. Upon motion by the prosecuting attorney, if it appears  
19 after a hearing that reasonable cause existed for the seizure  
20 for forfeiture or for the filing of the notice of pending  
21 forfeiture or complaint, the court shall find all of the  
22 following:

- 23 a. That reasonable cause existed, or that the action was  
24 taken under a reasonable good faith belief that it was proper.
- 25 b. That the claimant is not entitled to costs or damages.
- 26 c. That the person or seizing agency who made the seizure  
27 and the prosecuting attorney are not liable to suit or  
28 judgment for the seizure, suit, or prosecution.

29 9. The court shall order a claimant who fails to establish  
30 that a substantial portion of the claimant's interest is  
31 exempt from forfeiture under section 809A.5, to pay the  
32 reasonable costs and expenses of all of the following:

- 33 a. Of any claimant who established that the claimant's  
34 entire interest is exempt from forfeiture under section  
35 809A.5.

1 b. Of the state for the investigation and prosecution of  
2 the matter, including reasonable attorney's fees, in  
3 connection with that claimant.

4 Sec. 17. NEW SECTION. 809A.17 DISPOSITION OF FORFEITED  
5 PROPERTY.

6 1. A person having control over forfeited property shall  
7 communicate that fact to the attorney general or the attorney  
8 general's designee.

9 2. Forfeited property not needed as evidence in a criminal  
10 case shall be delivered to the department of justice, or, upon  
11 written authorization of the attorney general or the attorney  
12 general's designee, the property may be destroyed, sold, or  
13 delivered to an appropriate agency for disposal in accordance  
14 with this section.

15 3. Forfeited property may be used by the department of  
16 justice in the enforcement of the criminal law. The  
17 department may give, sell, or trade property to any other  
18 state agency or to any other law enforcement agency within the  
19 state if, in the opinion of the attorney general, it will  
20 enhance law enforcement within the state.

21 4. Forfeited property which is not used by the department  
22 of justice in the enforcement of the law may be requisitioned  
23 by the department of public safety or any law enforcement  
24 agency within the state for use in enforcing the criminal laws  
25 of this state. Forfeited property not requisitioned may be  
26 delivered to the director of the department of general  
27 services to be disposed of in the same manner as property  
28 received pursuant to section 18.15.

29 5. Notwithstanding subsection 1, 2, 3, or 4, the following  
30 apply:

31 a. Forfeited property which is a controlled substance or a  
32 simulated, counterfeit, or imitation-controlled substance  
33 shall be disposed of as provided in section 124.506.

34 b. Forfeited property which is a weapon or ammunition  
35 shall be deposited with the department of public safety to be

1 disposed of in accordance with the rules of the department.  
2 All weapons or ammunition may be held for use in law  
3 enforcement, testing, or comparison by the criminalistics  
4 laboratory, or destroyed. Ammunition and firearms which are  
5 not illegal and are not offensive weapons as defined by  
6 section 724.1 may be sold by the department as provided in  
7 section 809.21.

8 c. Material in violation of chapter 728 shall be  
9 destroyed.

10 d. Property subject to the rules of the natural resource  
11 commission shall be delivered to that commission for disposal  
12 in accordance with its rules.

13 Sec. 18. NEW SECTION. 809A.18 POWERS OF ENFORCEMENT  
14 PERSONNEL.

15 1. A prosecuting attorney may conduct an investigation of  
16 any conduct that gives rise to forfeiture. The prosecuting  
17 attorney is authorized, before the commencement of a  
18 proceeding or action under this chapter, to subpoena  
19 witnesses, and compel their attendance, examine them under  
20 oath, and require the production of documentary evidence for  
21 inspection, reproducing, or copying. Except as otherwise  
22 provided by this section, the prosecuting attorney shall  
23 proceed under this subsection with the same powers and  
24 limitations, and judicial oversight and enforcement, and in  
25 the manner provided by this chapter and by the Iowa rules of  
26 civil procedure. Any person compelled to appear under a  
27 demand for oral testimony under this section may be  
28 accompanied, represented, and advised by counsel.

29 2. The examination of all witnesses under this section  
30 shall be conducted by the prosecuting attorney before an  
31 officer authorized to administer oaths. The testimony shall  
32 be taken by a certified shorthand reporter or by a sound  
33 recording device and shall be transcribed or otherwise  
34 preserved. The prosecuting attorney may exclude from the  
35 examination all persons except the witness, the witness'

1 counsel, the officer before whom the testimony is to be taken,  
2 law enforcement officials, and a certified shorthand reporter.  
3 Prior to oral examination, the person shall be advised of the  
4 person's right to refuse to answer any questions on the basis  
5 of the privilege against self-incrimination. The examination  
6 shall be conducted in a manner consistent with the rules  
7 dealing with the taking of depositions.

8 3. Except as otherwise provided in this section, prior to  
9 the filing of a civil or criminal proceeding or action  
10 relating to such a proceeding, documentary material,  
11 transcripts, or oral testimony, in the possession of the  
12 prosecuting attorney, shall not be available for examination  
13 by any individual other than a law enforcement official or  
14 agent of such official without the consent of the person who  
15 produced the material, transcripts, or oral testimony.

16 4. A person shall not knowingly remove from any place,  
17 conceal, withhold, destroy, mutilate, alter, or by any other  
18 means falsify any documentary material that is the subject of  
19 a subpoena, with intent to avoid, evade, prevent, or obstruct  
20 compliance in whole or in part by any person with any duly  
21 served subpoena of the prosecuting attorney under this  
22 section. A violation of this subsection is a class "D"  
23 felony. The prosecuting attorney shall investigate and  
24 prosecute suspected violations of this subsection.

25 5. Acts or omissions by the prosecuting attorneys in the  
26 course of their duties in the enforcement of any of the  
27 provisions of this chapter, including provision of any legal  
28 services prior to charging, complaint, or seizure, are  
29 prosecutorial and shall not subject the attorneys or their  
30 principals to civil liability.

31 Sec. 19. NEW SECTION. 809A.19 IMMUNITY ORDERS.

32 1. If a person is or may be called to produce evidence at  
33 a deposition, hearing, or trial under this chapter or at an  
34 investigation brought by the prosecuting attorney under  
35 section 809A.18, the district court in which the deposition,

1 hearing, trial, or investigation is or may be held shall, upon  
2 certification in writing of a request of the prosecuting  
3 attorney, issue an order, ex parte or after a hearing,  
4 requiring the person to produce evidence, notwithstanding that  
5 person's refusal to do so on the basis of the privilege  
6 against self-incrimination.

7 2. The prosecuting attorney may certify in writing a  
8 request for an ex parte order under subsection 1 if in the  
9 prosecuting attorney's judgment both of the following apply:

10 a. The production of the evidence may be necessary to the  
11 public interest.

12 b. The person has refused or is likely to refuse to  
13 produce evidence on the basis of the privilege against self-  
14 incrimination.

15 3. A person shall not refuse to comply with an order  
16 issued under subsection 1 on the basis of a self-incrimination  
17 privilege. If the person refuses to comply with the order  
18 after being informed of its existence by the presiding  
19 officer, the person may be compelled or punished by the  
20 district court issuing an order for civil or criminal  
21 contempt.

22 4. The production of evidence compelled by order issued  
23 under subsection 1, and any information directly or indirectly  
24 derived from the production of evidence, shall not be used  
25 against the person in a subsequent criminal case, except in a  
26 prosecution for perjury, false swearing, or an offense  
27 otherwise involving a failure to comply with the order.

28 Sec. 20. NEW SECTION. 809A.20 STATUTE OF LIMITATIONS.

29 A civil action under this chapter shall be commenced within  
30 seven years after the last conduct giving rise to forfeiture  
31 or the cause of action becomes known or should have become  
32 known, excluding any time during which either the property or  
33 defendant is out of the state or in confinement, or during  
34 which criminal proceedings relating to the same conduct are  
35 pending.

1 Sec. 21. NEW SECTION. 809A.21 SUMMARY FORFEITURE OF  
2 CONTROLLED SUBSTANCES.

3 Controlled substances included in chapter 124 which are  
4 contraband and any controlled substance whose owners are  
5 unknown are summarily forfeited to the state. The court may  
6 include in any judgment under this chapter an order forfeiting  
7 any controlled substance involved in the conduct giving rise  
8 to forfeiture to the extent of the defendant's interest.

9 Sec. 22. NEW SECTION. 809A.22 BAR TO COLLATERAL ACTION.

10 A person claiming an interest in property subject to  
11 forfeiture shall not commence or maintain any action against  
12 the state concerning the validity of the alleged interest  
13 other than as provided in this chapter.

14 Sec. 23. NEW SECTION. 809A.23 STATUTORY CONSTRUCTION.

15 The provisions of this chapter shall be liberally construed  
16 to effectuate its remedial purposes. Civil remedies under  
17 this chapter shall be supplemental and not mutually exclusive.  
18 The civil remedies do not preclude and are not precluded by  
19 any other provision of law.

20 Sec. 24. NEW SECTION. 809A.24 UNIFORMITY OF APPLICATION.

21 1. The provisions of this chapter shall be applied and  
22 construed to effectuate its general purpose to make uniform  
23 the law with respect to the subject of this chapter among  
24 states enacting this law.

25 2. The attorney general may enter into reciprocal  
26 agreements with the attorney general or chief prosecuting  
27 attorney of any state to effectuate the purposes of this  
28 chapter.

29 DIVISION II

30 IOWA ONGOING CRIMINAL CONDUCT ACT

31 Sec. 25. NEW SECTION. 706A.1 DEFINITIONS.

32 In this chapter, unless the context otherwise requires:

33 1. "Criminal network" means any combination of persons  
34 engaging, for financial gain on a continuing basis, in conduct  
35 which is an indictable offense under the laws of this state

1 regardless of whether such conduct is charged or indicted. As  
2 used in this subsection, persons combine if they collaborate  
3 or act in concert in carrying on or furthering the activities  
4 or purposes of a network even though such persons may not know  
5 each other's identity, membership in the network changes from  
6 time to time, or one or more members of the network stand in a  
7 wholesaler-retailer, service provider, or other arm's length  
8 relationship with others as to conduct in the furtherance of  
9 the financial goals of the network.

10 2. "Enterprise" includes any sole proprietorship,  
11 partnership, corporation, trust, or other legal entity, or any  
12 unchartered union, association, or group of persons associated  
13 in fact although not a legal entity, and includes unlawful as  
14 well as lawful enterprises.

15 3. "Proceeds" means property acquired or derived directly  
16 or indirectly from, produced through, realized through, or  
17 caused by an act or omission and includes any property of any  
18 kind.

19 4. "Property" means anything of value, and includes any  
20 interest in property, including any benefit, privilege, claim,  
21 or right with respect to anything of value, whether real or  
22 personal, tangible, or intangible, without reduction for  
23 expenses incurred for acquisition, maintenance, production, or  
24 any other purpose.

25 5. "Specified unlawful activity" means any act, including  
26 any preparatory or completed offense, committed for financial  
27 gain on a continuing basis, that is punishable as an  
28 indictable offense under the laws of the state in which it  
29 occurred and under the laws of this state.

30 Sec. 26. NEW SECTION. 706A.2 VIOLATIONS.

31 1. SPECIFIED UNLAWFUL ACTIVITY INFLUENCED ENTERPRISES.

32 a. It is unlawful for any person who has knowingly  
33 received any proceeds of specified unlawful activity to use or  
34 invest, directly or indirectly, any part of such proceeds in  
35 the acquisition of any interest in any enterprise or any real

1 property, or in the establishment or operation of any  
2 enterprise.

3 b. It is unlawful for any person to knowingly acquire or  
4 maintain, directly or indirectly, any interest in or control  
5 of any enterprise or real property through specified unlawful  
6 activity.

7 c. It is unlawful for any person to knowingly conduct the  
8 affairs of any enterprise through specified unlawful activity  
9 or to knowingly participate, directly, or indirectly, in any  
10 enterprise that the person knows is being conducted through  
11 specified unlawful activity.

12 d. It is unlawful for any person to conspire or attempt to  
13 violate or to solicit or facilitate the violations of the  
14 provisions of paragraphs "a", "b", or "c".

15 2. FACILITATION OF A CRIMINAL NETWORK. It is unlawful for  
16 a person acting with knowledge of the financial goals and  
17 criminal objectives of a criminal network to knowingly  
18 facilitate criminal objectives of the network by doing any of  
19 the following:

20 a. Engaging in violence or intimidation or inciting or  
21 inducing another to engage in violence or intimidation.

22 b. Inducing or attempting to induce a person believed to  
23 have been called or who may be called as a witness to  
24 unlawfully withhold any testimony, testify falsely, or absent  
25 themselves from any official proceeding to which the potential  
26 witness has been legally summoned.

27 c. Attempting by means of bribery, misrepresentation,  
28 intimidation, or force to obstruct, delay, or prevent the  
29 communication of information or testimony relating to a  
30 violation of any criminal statute to a peace officer,  
31 magistrate, prosecutor, grand jury, or petit jury.

32 d. Injuring or damaging another person's body or property  
33 because that person or any other person gave information or  
34 testimony to a peace officer, magistrate, prosecutor, or grand  
35 jury.

1 e. Attempting to suppress by an act of concealment,  
2 alteration, or destruction any physical evidence that might  
3 aid in the discovery, apprehension, prosecution, or conviction  
4 of any person.

5 f. Making any property available to a member of the  
6 criminal network.

7 g. Making any service other than legal services available  
8 to a member of the criminal network.

9 h. Inducing or committing any act or omission by a public  
10 servant in violation of the public servant's official duty.

11 i. Obtaining any benefit for a member of a criminal  
12 network by means of false or fraudulent pretenses,  
13 representation, promises or material omissions.

14 j. Making a false sworn statement regarding a material  
15 issue, believing it to be false, or making any statement,  
16 believing it to be false, regarding a material issue to a  
17 public servant in connection with an application for any  
18 benefit, privilege, or license, or in connection with any  
19 official investigation or proceeding.

20 3. MONEY LAUNDERING. It is unlawful for a person to  
21 commit money laundering as defined in chapter 706B.

22 4. ACTS OF SPECIFIED UNLAWFUL ACTIVITY. It is unlawful  
23 for a person to commit specified unlawful activity as defined  
24 in section 706A.1.

25 5. NEGLIGENT EMPOWERMENT OF SPECIFIED UNLAWFUL ACTIVITY.

26 a. It is unlawful for a person to negligently allow  
27 property owned or controlled by the person or services  
28 provided by the person, other than legal services, to be used  
29 to facilitate specified unlawful activity, whether by  
30 entrustment, loan, rent, lease, bailment, or otherwise.

31 b. Damages for negligent empowerment of specified unlawful  
32 activity shall include all reasonably foreseeable damages  
33 proximately caused by the specified unlawful activity,  
34 including, in a case brought or intervened in by the state,  
35 the costs of investigation and criminal and civil litigation

1 of the specified unlawful activity incurred by the government  
2 for the prosecution and defense of any person involved in the  
3 specified unlawful activity, and the imprisonment, probation,  
4 parole, or other expense reasonably necessary to detain,  
5 punish, and rehabilitate any person found guilty of the  
6 specified unlawful activity, except for the following:

7 (1) If the person empowering the specified unlawful  
8 activity acted only negligently and was without knowledge of  
9 the nature of the activity and could not reasonably have known  
10 of the unlawful nature of the activity or that it was likely  
11 to occur, damages shall be limited to the greater of the  
12 following:

13 (a) The cost of the investigation and litigation of the  
14 person's own conduct plus the value of the property or service  
15 involved as of the time of its use to facilitate the specified  
16 unlawful activity.

17 (b) All reasonably foreseeable damages to any person,  
18 except any person responsible for the specified unlawful  
19 activity, and to the general economy and welfare of the state  
20 proximately caused by the person's own conduct.

21 (2) If the property facilitating the specified unlawful  
22 activity was taken from the possession or control of the  
23 person without that person's knowledge and against that  
24 person's will in violation of the criminal law, damages shall  
25 be limited to reasonably foreseeable damages to any person,  
26 except persons responsible for the taking or the specified  
27 unlawful activity, and to the general economy and welfare of  
28 the state proximately caused by the person's negligence, if  
29 any, in failing to prevent its taking.

30 (3) If the person was aware of the possibility that the  
31 property or service would be used to facilitate some form of  
32 specified unlawful activity and acted to prevent the unlawful  
33 use, damages shall be limited to reasonably foreseeable  
34 damages to any person, except any person responsible for the  
35 specified unlawful activity, and to the general economy and

1 welfare of the state proximately caused by the person's  
2 failure, if any, to act reasonably to prevent the unlawful  
3 use.

4 (4) The plaintiff shall carry the burden of proof by a  
5 preponderance of the evidence that the specified unlawful  
6 activity occurred and was facilitated by the property or  
7 services. The defendant shall have the burden of proof by a  
8 preponderance of the evidence as to circumstances constituting  
9 lack of negligence and on the limitations on damages in this  
10 subsection.

11 Sec. 27. NEW SECTION. 706A.3 CIVIL REMEDIES -- ACTIONS.

12 1. The prosecuting attorney or an aggrieved person may  
13 institute civil proceedings against any person in district  
14 court seeking relief from conduct constituting a violation of  
15 this chapter or to prevent, restrain, or remedy such  
16 violation.

17 2. The district court has jurisdiction to prevent,  
18 restrain, or remedy such violations by issuing appropriate  
19 orders. Prior to a determination of liability such orders may  
20 include, but are not limited to, entering restraining orders  
21 or injunctions, requiring the execution of satisfactory  
22 performance bonds, creating receiverships, and enforcing  
23 constructive trusts in connection with any property or  
24 interest subject to damages, forfeiture, or other remedies or  
25 restraints pursuant to this chapter.

26 3. If the plaintiff in such a proceeding proves the  
27 alleged violation by a preponderance of the evidence, the  
28 district court, after making due provision for the rights of  
29 innocent persons, shall grant relief by entering any  
30 appropriate order or judgment, including any of the following:

31 a. Ordering any defendant to divest the defendant of any  
32 interest in any enterprise, or in any real property.

33 b. Imposing reasonable restrictions upon the future  
34 activities or investments of any defendant, including, but not  
35 limited to, prohibiting any defendant from engaging in the

1 same type of endeavor as any enterprise in which the defendant  
2 was engaged in a violation of this chapter.

3 c. Ordering the dissolution or reorganization of any  
4 enterprise.

5 d. Ordering the payment of all reasonable costs and  
6 expenses of the investigation and prosecution of any  
7 violation, civil or criminal, including reasonable attorney  
8 fees in the trial and appellate courts. Such payments  
9 received by the state, by judgment, settlement, or otherwise,  
10 shall be considered forfeited property and disposed of  
11 pursuant to section 809A.17.

12 e. Ordering the forfeiture of any property subject to  
13 forfeiture under chapter 809A, pursuant to the provisions and  
14 procedures of that chapter.

15 f. Ordering the suspension or revocation of any license,  
16 permit, or prior approval granted to any person by any agency  
17 of the state.

18 g. Ordering the surrender of the certificate of existence  
19 of any corporation organized under the laws of this state or  
20 the revocation of any certificate authorizing a foreign  
21 corporation to conduct business within this state, upon  
22 finding that for the prevention of future violations, the  
23 public interest requires the certificate of the corporation to  
24 be surrendered and the corporation dissolved or the  
25 certificate revoked.

26 4. Relief under subsection 3, paragraphs "e", "f", and "g"  
27 shall not be granted in civil proceedings instituted by an  
28 aggrieved person unless the prosecuting attorney has  
29 instituted the proceedings or intervened. In any action under  
30 this section brought by the state or in which the state has  
31 intervened, the state may employ any of the powers of seizure  
32 and restraint of property as are provided for forfeiture actions  
33 under chapter 809A, or as are provided for the collection of  
34 taxes payable and past due, and whose collection has been  
35 determined to be in jeopardy.

1 5. In a proceeding initiated under this section,  
2 injunctive relief shall be granted in conformity with the  
3 principles that govern the granting of relief from injury or  
4 threatened injury in other civil cases, but no showing of  
5 special or irreparable injury is required. Pending final  
6 determination of a proceeding initiated under this section, a  
7 temporary restraining order or a preliminary injunction may be  
8 issued upon a showing of immediate danger of significant  
9 injury, including the possibility that a judgment for money  
10 damages might be difficult to execute, and, in a proceeding  
11 initiated by a nongovernmental aggrieved person, upon the  
12 execution of proper bond against injury for an injunction  
13 improvidently granted.

14 6. Any person who is in possession or control of proceeds  
15 of any violation of this chapter, is an involuntary trustee  
16 and holds the property in constructive trust for the benefit  
17 of the person entitled to remedies under this chapter, unless  
18 the holder acquired the property as a bona fide purchaser for  
19 value who was not knowingly taking part in an illegal  
20 transaction.

21 7. Any person whose business or property is directly or  
22 indirectly injured by conduct constituting a violation of this  
23 chapter, by any person, may bring a civil action, subject to  
24 the in pari delicto defense and shall recover threefold the  
25 actual damages sustained and the costs and expenses of the  
26 investigation and prosecution of the action including  
27 reasonable attorney fees in the trial and appellate courts.  
28 Damages shall not include pain and suffering. Any person  
29 injured shall have a claim to any property against which any  
30 fine, or against which treble damages under subsection 10 or  
31 11 may be imposed, superior to any right or claim of the state  
32 to the property, up to the value of actual damages and costs  
33 awarded in an action under this subsection. The state shall  
34 have a right of subrogation to the extent that an award made  
35 to a person so injured is satisfied out of property against

1 which any fine or civil remedy in favor of the state may be  
2 imposed.

3 8. a. If liability of a legal entity is based on the  
4 conduct of another, through respondent superior or otherwise,  
5 the legal entity shall not be liable for more than actual  
6 damages and costs, including a reasonable attorney's fee, if  
7 the legal entity affirmatively shows by a preponderance of the  
8 evidence that both of the following apply:

9 (1) The conduct was not engaged in, authorized, solicited,  
10 commanded, or recklessly tolerated by the legal entity, by the  
11 directors of the legal entity or by a high managerial agent of  
12 the legal entity acting within the scope of employment.

13 (2) The conduct was not engaged in by an agent of the  
14 legal entity acting within the scope of employment and in  
15 behalf of the legal entity.

16 b. For the purposes of this subsection:

17 (1) "Agent" means any officer, director, or employee of  
18 the legal entity, or any other person who is authorized to act  
19 in behalf of the legal entity.

20 (2) "High managerial agent" means any officer of the legal  
21 entity or, in the case of a partnership, a partner, or any  
22 other agent in a position of comparable authority with respect  
23 to the formulation of policy of the legal entity.

24 (3) Notwithstanding any other provision of law, any  
25 pleading, motion, or other paper filed by a nongovernmental  
26 aggrieved party in connection with a proceeding or action  
27 under subsection 7 shall be verified. If such aggrieved  
28 person is represented by an attorney, such pleading, motion,  
29 or other paper shall be signed by at least one attorney of  
30 record in the attorney's individual name, whose address shall  
31 be stated.

32 If such pleading, motion, or other paper includes an  
33 averment of fraud, coercion, accomplice, respondent superior,  
34 conspiratorial, enterprise, or other vicarious accountability,  
35 it shall state, insofar as practicable, the circumstances with

1 particularity. The verification and the signature by an  
2 attorney required by this subsection shall constitute a  
3 certification by the signor that the attorney has carefully  
4 read the pleading, motion, or other paper and, based on a  
5 reasonable inquiry, believes that all of the following exist:

6 (a) It is well grounded in fact.

7 (b) It is warranted by existing law, or a good faith  
8 argument for the extension, modification, or reversal of  
9 existing law.

10 (c) It is not made for an improper purpose, including to  
11 harass, to cause unnecessary delay, or to impose a needless  
12 increase in the cost of litigation.

13 The court may, after a hearing and appropriate findings of  
14 fact, impose upon any person who verified the complaint,  
15 cross-claim or counterclaim, or any attorney who signed it in  
16 violation of this subsection, or both, a fit and proper  
17 sanction, which may include an order to pay to the other party  
18 or parties the amount of the reasonable expenses incurred  
19 because of the complaint or claim, including reasonable  
20 attorney fees. If the court determines that the filing of a  
21 complaint or claim under subsection 7 by a nongovernmental  
22 party was frivolous in whole or in part, the court shall award  
23 double the actual expenses, including attorney fees, incurred  
24 because of the frivolous portion of the complaint or claim.

25 9. Upon the filing of a complaint, cross-claim, or  
26 counterclaim under this section, an aggrieved person, as a  
27 jurisdictional prerequisite, shall immediately notify the  
28 attorney general of its filing and serve one copy of the  
29 pleading on the attorney general. Service of the notice on  
30 the attorney general does not limit or otherwise affect the  
31 right of the state to maintain an action under this section or  
32 intervene in a pending action and does not authorize the  
33 aggrieved person to name the state or the attorney general as  
34 a party to the action. The attorney general, upon timely  
35 application, may intervene or appear as amicus curiae in any

1 civil proceeding or action brought under this section if the  
2 attorney general certifies that, in the opinion of the  
3 attorney general, the proceeding or action is of general  
4 public importance. In any proceeding or action brought under  
5 this section by an aggrieved person, the state shall be  
6 entitled to the same relief as if it had instituted the  
7 proceeding or action.

8 10. a. Any prosecuting attorney may bring a civil action  
9 on behalf of a person whose business or property is directly  
10 or indirectly injured by conduct constituting a violation of  
11 this chapter, and shall recover threefold the damages  
12 sustained by such person and the costs and expenses of the  
13 investigation and prosecution of the action, including  
14 reasonable attorney fees in the trial and appellate courts.  
15 The court shall exclude from the amount of monetary relief  
16 awarded any amount of monetary relief which is any of the  
17 following:

18 (1) Which duplicates amounts which have been awarded for  
19 the same injury.

20 (2) Which is properly allocable to persons who have  
21 excluded their claims under paragraph "c".

22 b. In any action brought under this subsection, the  
23 prosecuting attorney, at such times, in such manner, and with  
24 such content as the court may direct, shall cause notice of  
25 the action to be given by publication. If the court finds  
26 that notice given solely by publication would deny due process  
27 to any person, the court may direct further notice to such  
28 person according to the circumstances of the case.

29 c. A person on whose behalf an action is brought under  
30 this subsection may elect to exclude from adjudication the  
31 portion of the state claim for monetary relief attributable to  
32 the person by filing notice of such election within such time  
33 as specified in the notice given under this subsection.

34 d. A final judgment in an action under this subsection  
35 shall preclude any claim under this subsection by a person on

1 behalf of whom such action was brought who fails to give  
2 notice of exclusion within the times specified in the notice  
3 given under paragraph "b".

4 e. An action under this subsection on behalf of a person  
5 other than the state shall not be dismissed or compromised  
6 without the approval of the court, and notice of any proposed  
7 dismissal or compromise shall be given in such manner as the  
8 court directs.

9 11. The attorney general may bring a civil action as  
10 parens patriae on behalf of the general economy, resources,  
11 and welfare of this state, and shall recover threefold the  
12 proceeds acquired, maintained, produced, or realized by or on  
13 behalf of the defendant by reason of a violation of this  
14 chapter, plus the costs and expenses of the investigation and  
15 prosecution of the action, including reasonable attorney fees  
16 in the trial and appellate courts.

17 a. A person who has knowingly conducted or participated in  
18 the conduct of an enterprise in violation of section 706A.2,  
19 subsection 1, paragraph "c" is also jointly and severally  
20 liable for the greater of threefold the damage sustained  
21 directly or indirectly by the state by reason of conduct in  
22 furtherance of the violation or threefold the total of all  
23 proceeds acquired, maintained, produced, or realized by, or on  
24 behalf of any person by reason of participation in the  
25 enterprise except for the following:

26 (1) A person is not liable for conduct occurring prior to  
27 the person's first knowing participation in or conduct of the  
28 enterprise.

29 (2) If a person shows that, under circumstances  
30 manifesting a voluntary and complete renunciation of culpable  
31 intent, the person withdrew from the enterprise by giving a  
32 complete and timely warning to law enforcement authorities or  
33 by otherwise making a reasonable and substantial effort to  
34 prevent the conduct or result which is the criminal objective  
35 of the enterprise, the person is not liable for conduct

1 occurring after the person's withdrawal.

2 b. A person who has facilitated a criminal network in  
3 violation of section 706A.2, subsection 2, is also jointly and  
4 severally liable for all of the following:

5 (1) The damages resulting from the conduct in furtherance  
6 of the criminal objectives of the criminal network, to the  
7 extent that the person's facilitation was of substantial  
8 assistance to the conduct.

9 (2) The proceeds of conduct in furtherance of the criminal  
10 objectives of the criminal network, to the extent that the  
11 person's facilitation was of substantial assistance to the  
12 conduct.

13 (3) A person who has engaged in money laundering in  
14 violation of chapter 706B is also jointly and severally liable  
15 for the greater of threefold the damages resulting from the  
16 person's conduct or threefold the property that is the subject  
17 of the violation.

18 Sec. 28. NEW SECTION. 706A.4 CRIMINAL SANCTIONS.

19 A person who violates section 706A.2, subsection 1, 2, or  
20 4, commits a class "B" felony.

21 Sec. 29. NEW SECTION. 706A.5 UNIFORMITY OF CONSTRUCTION  
22 AND APPLICATION.

23 1. The provisions of this chapter shall be liberally  
24 construed to effectuate its remedial purposes. Civil remedies  
25 under this chapter shall be supplemental and not mutually  
26 exclusive. Civil remedies under this chapter do not preclude  
27 and are not precluded by other provisions of law.

28 2. The provisions of this chapter shall be applied and  
29 construed to effectuate its general purpose to make uniform  
30 the law with respect to the subject of this chapter among  
31 states enacting the law.

32 3. The attorney general may enter into reciprocal  
33 agreements with the attorney general or chief prosecuting  
34 attorney of any state to effectuate the purposes of this  
35 chapter.

DIVISION III

IOWA MONEY LAUNDERING ACT

Sec. 30. NEW SECTION. 706B.1 DEFINITIONS.

In this chapter, unless the context otherwise requires:

1. "Proceeds" means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.

2. "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.

3. "Specified unlawful activity" means any act, including any preparatory or completed offense, committed for financial gain on a continuing basis, that is punishable by confinement of one year or more under the laws of this state, or, if the act occurred outside this state, would be punishable by confinement of one year or more under the laws of the state in which it occurred and under the laws of this state.

4. "Transaction" includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase, or sale of any monetary instrument, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

5. "Unlawful activity" means any act which is chargeable or indictable as a public offense of any degree under the laws of the state in which the act occurred or under federal law and, if the act occurred in a state other than this state, would be chargeable or indictable as a public offense of any degree under the laws of this state or under federal law.

Sec. 31. NEW SECTION. 706B.2 MONEY LAUNDERING PENALTY -- CIVIL REMEDIES.

1. It is unlawful for a person to do any of the following:

1 a. To knowingly transport, receive, or acquire property or  
2 to conduct a transaction involving property, knowing that the  
3 property involved is the proceeds of some form of unlawful  
4 activity, when, in fact, the property is the proceeds of  
5 specified unlawful activity.

6 b. To make property available to another, by transaction,  
7 transportation, or otherwise, knowing that it is intended to  
8 be used for the purpose of committing or furthering the  
9 commission of specified unlawful activity.

10 c. To conduct a transaction knowing that the property  
11 involved in the transaction is the proceeds of some form of  
12 unlawful activity with the intent to conceal or disguise the  
13 nature, location, source, ownership, or control of the  
14 property or the intent to avoid a transaction-reporting  
15 requirement under chapter 529, the Iowa financial transaction  
16 reporting Act, or federal law.

17 d. To knowingly engage in the business of conducting,  
18 directing, planning, organizing, initiating, financing,  
19 managing, supervising, or facilitating transactions involving  
20 property, knowing that the property involved in the  
21 transaction is the proceeds of some form of unlawful activity,  
22 that, in fact, is the proceeds of specified unlawful activity.

23 2. A person who violates:

24 a. Subsection 1, paragraphs "a", "b", or "c", commits a  
25 class "C" felony, and may be fined not more than ten thousand  
26 dollars or twice the value of the property involved, whichever  
27 is greater, or by imprisonment for not more than 10 years, or  
28 both.

29 b. Subsection 1, paragraph "d", commits a class "D"  
30 felony, and may be fined not more than five thousand dollars  
31 or twice the value of the property involved, whichever is  
32 greater, or by imprisonment for not more than five years, or  
33 both.

34 3. A person who violates subsection 1, paragraph "a", "b",  
35 "c", or "d", is subject to a civil penalty of three times the

1 value of the property involved in the transaction, in addition  
2 to any criminal sanction imposed.

3 4. A person who is found guilty of a violation under this  
4 section also may be charged with violations of chapter 706A,  
5 and property involved in a violation under this chapter is  
6 subject to forfeiture under chapter 809A.

7 Sec. 32. NEW SECTION. 706B.3 UNIFORMITY OF CONSTRUCTION  
8 AND APPLICATION.

9 1. The provisions of this chapter shall be liberally  
10 construed to effectuate its remedial purposes. Civil remedies  
11 under this chapter shall be supplemental and not mutually  
12 exclusive. The civil remedies do not preclude and are not  
13 precluded by other provision of law.

14 2. The provisions of this chapter shall be applied and  
15 construed to effectuate its general purpose to make uniform  
16 the law with respect to the subject of this chapter among  
17 states enacting the law.

18 3. The attorney general may enter into reciprocal  
19 agreements with the attorney general or chief prosecuting  
20 attorney of any state to effectuate the purposes of this  
21 chapter.

22 DIVISION IV

23 IOWA FINANCIAL TRANSACTION REPORTING ACT

24 Sec. 33. NEW SECTION. 529.1 DEFINITIONS.

25 In this chapter, unless the context otherwise requires:

26 1. "Authorized delegate" means a person designated by the  
27 licensee.

28 2. "Check cashing" means exchanging for compensation a  
29 check, draft, money order, traveler's check, or a payment  
30 instrument of a licensee for money delivered to the presenter  
31 at the time and place of the presentation.

32 3. "Compensation" means any fee, commission, or other  
33 benefit.

34 4. "Conduct the business" means engaging in activities of  
35 a licensee or money transmitter more than ten times in any

1 calendar year for compensation.

2 5. "Foreign money exchange" means exchanging for  
3 compensation money of the United States government or a  
4 foreign government to or from money of another government at a  
5 conspicuously posted exchange rate at the time and place of  
6 the presentation of the money to be exchanged.

7 6. "Licensee" means a person licensed under this chapter.

8 7. "Location" means a place of business at which activity  
9 conducted by a licensee or money transmitter occurs.

10 8. "Money" means a medium of exchange authorized or  
11 adopted by a domestic or foreign government as a part of its  
12 currency and that is customarily used and accepted as a medium  
13 of exchange in the country of issuance.

14 9. "Money transmitter" means a person who is located or  
15 doing business in this state, including a check cashier and a  
16 foreign money exchanger, and who does any of the following:

17 a. Sells or issues payment instruments.

18 b. Conducts the business of receiving money for the  
19 transmission of or transmitting money.

20 c. Conducts the business of exchanging payment instruments  
21 or money into any form of money or payment instrument.

22 d. Conducts the business of receiving money for obligors  
23 for the purpose of paying obligors' bills, invoices, or  
24 accounts.

25 e. Meets the definition of a bank, financial agency, or  
26 financial institution as prescribed by 31 U.S.C. § 5312 or 31  
27 C.F.R. § 103.11 and any successor provisions.

28 10. "Payment instrument" means a check, draft, money  
29 order, traveler's check, or other instrument or order for the  
30 transmission or payment of money, sold to one or more persons,  
31 whether or not that instrument or order is negotiable.

32 "Payment instrument" does not include an instrument that is  
33 redeemable by the issuer in merchandise or service, a credit  
34 card voucher, or a letter of credit.

35 11. "Proceeds" means anything of value, and includes any

1 interest in property, including any benefit, privilege, claim,  
2 or right with respect to anything of value, whether real or  
3 personal, tangible or intangible, without reduction for  
4 expenses incurred for acquisition, maintenance, production, or  
5 any other purpose.

6 12. "Superintendent" means the superintendent of banking  
7 or the superintendent of credit unions.

8 13. "Transaction" includes a purchase, sale, trade, loan,  
9 pledge, investment, gift, transfer, transmission, delivery,  
10 deposit, withdrawal, payment, transfer between accounts,  
11 exchange of currency, extension of credit, purchase, or sale  
12 of any monetary instrument, use of a safe deposit box, or any  
13 other acquisition or disposition of property by whatever means  
14 effected.

15 14. "Transmitting money" includes the transmission of  
16 money by any means including transmission within this country  
17 or to or from locations abroad by payment instrument, wire,  
18 facsimile, or electronic transfer, courier, or otherwise.

19 15. "Traveler's check" means an instrument identified as a  
20 traveler's check on its face or commonly recognized as a  
21 traveler's check and issued in a money multiple of United  
22 States or foreign currency with a provision for a specimen  
23 signature of the purchaser to be completed at the time of  
24 purchase and a countersignature of the purchaser to be  
25 completed at the time of negotiation.

26 Sec. 34. NEW SECTION. 529.2 REPORTS.

27 1. Each licensee and authorized delegate of a licensee and  
28 each money transmitter shall file with the department of  
29 public safety, in a form prescribed by the department, a  
30 report of any activity or business conducted by a customer  
31 that the licensee, authorized delegate, or money transmitter  
32 believes may constitute a possible money laundering as  
33 prohibited by section 706B.2 or specified unlawful activity as  
34 defined in chapter 706B. That report shall be filed within  
35 fifteen days of the activity.

1 2. A licensee, authorized delegate, or money transmitter  
2 required to file a report regarding business conducted in this  
3 state pursuant to the federal Currency and Foreign  
4 Transactions Reporting Act, 31 U.S.C. § 5311 through 5326 and  
5 31 C.F.R. pt. 103, or 12 C.F.R. § 21.11, shall file a  
6 duplicate of that report with the department of public safety.

7 3. All persons engaged in a trade or business who receive  
8 more than ten thousand dollars in money in one transaction, or  
9 who receive more than ten thousand dollars in money through  
10 two or more related transactions, must complete and file with  
11 the department of public safety the information required by 26  
12 U.S.C. § 6050i and 26 C.F.R. § 1.6050I, and any successor  
13 provisions, concerning returns relating to cash received in  
14 trade or business.

15 4. A licensee, authorized delegate, or money transmitter  
16 that is regulated under the federal Currency and Foreign  
17 Transaction Reporting Act, 31 U.S.C. § 5325 and 31 C.F.R. pt.  
18 103, and that is required to make available prescribed records  
19 to the secretary of the United States department of treasury  
20 upon request at any time, shall follow the same prescribed  
21 procedures and create and maintain the same prescribed records  
22 relating to a transaction and shall make these records  
23 available to the department of public safety on request at any  
24 time.

25 5. a. If the superintendent finds that reasonable grounds  
26 exist for requiring additional recordkeeping and reporting in  
27 order to carry out the purposes of this chapter and prevent  
28 evasion of this chapter, the superintendent may issue an order  
29 requiring any group of licensees, authorized delegates or  
30 money transmitters in a geographic area to do any of the  
31 following:

32 (1) Obtain information described by the superintendent in  
33 the order regarding any of the following:

34 (a) Transactions in which the licensee, authorized  
35 delegate, or money transmitter is involved for the payment,

1 receipt, or transfer of United States coin or currency or  
2 other monetary instruments described by the superintendent in  
3 the order, involving amounts or denominations of five hundred  
4 dollars or more, as the superintendent may prescribe.

5 (b) Other persons participating in those transactions.

6 (2) Maintain records of that information for five years or  
7 less, as the superintendent may prescribe and make those  
8 records available to the department of public safety and the  
9 superintendent.

10 (3) File a report with the department of public safety and  
11 the superintendent regarding any transaction described in the  
12 order in the manner prescribed in the order.

13 b. An order issued under paragraph "a" is not effective  
14 for more than sixty days unless renewed by the superintendent  
15 after finding that reasonable grounds exist for continuation  
16 of the order.

17 6. a. The timely filing of a report required by this  
18 section with the appropriate federal agency shall be deemed  
19 compliance with the reporting requirements of this section,  
20 unless the attorney general or the department of public safety  
21 has notified the superintendent that reports of that type are  
22 not being regularly and comprehensively transmitted by that  
23 federal agency to the department of public safety.

24 b. This chapter does not preclude a licensee, authorized  
25 delegate, money transmitter, financial institution, or a  
26 person engaged in a trade or business, in its discretion, from  
27 instituting contact with, and thereafter communicating with  
28 and disclosing customer financial records to appropriate state  
29 or local law enforcement agencies if the licensee, authorized  
30 delegate, money transmitter, financial institution, or person  
31 has information that may be relevant to a possible violation  
32 of any criminal statute or to the evasion or attempted evasion  
33 of any reporting requirement of this chapter.

34 c. A licensee, authorized delegate, money transmitter,  
35 financial institution, person engaged in a trade or business,

1 or any officer, employee, agent, or authorized delegate of any  
2 of them, or any public official or governmental employee who  
3 keeps or files a record pursuant to this section or who  
4 communicates or discloses information or records under  
5 paragraph "b", is not liable to its customer, to a state or  
6 local agency, or to any person for any loss or damage caused  
7 in whole or in part by the making, filing, or governmental use  
8 of the report, or any information contained in that report.

9 7. The attorney general or the department of public safety  
10 may report any possible violations indicated by analysis of  
11 the reports required by this chapter to any appropriate law  
12 enforcement agency for use in the proper discharge of its  
13 official duties. The attorney general or the department of  
14 public safety shall provide copies of the reports required by  
15 this chapter to any appropriate prosecutorial or law  
16 enforcement agency upon being provided with a written request  
17 for records relating to a specific individual or entity and  
18 stating that the agency has an articulable suspicion that such  
19 individual or entity has committed a felony offense or a  
20 violation of this chapter to which the reports are relevant.  
21 A person who releases information received pursuant to this  
22 subsection except in the proper discharge of the person's  
23 official duties is guilty of a serious misdemeanor.

24 8. It shall be unlawful for any person to do any of the  
25 following:

26 a. To knowingly violate any provision of this chapter.

27 b. With intent to disguise the fact that money or a  
28 payment instrument is the proceeds of criminal conduct, or  
29 with intent to promote, manage, establish, carry on, or  
30 facilitate the promotion, management, establishment, or  
31 carrying on of any criminal conduct, to knowingly furnish or  
32 provide to a licensee, authorized delegate, money transmitter,  
33 financial institution, person engaged in a trade or business,  
34 or any officer, employee, agent or authorized delegate of any  
35 of them, or to the attorney general or department of public

1 safety, any false, inaccurate, or incomplete information; or  
2 to knowingly conceal a material fact in connection with a  
3 transaction for which a report is required to be filed  
4 pursuant to this section.

5 c. With the intent to disguise the fact that money or a  
6 payment instrument is the proceeds of criminal conduct, or  
7 with intent to promote, manage, establish, carry on, or  
8 facilitate the promotion, management, establishment, or  
9 carrying on of any criminal conduct, or with intent to evade  
10 the making or filing of a report required under this chapter,  
11 or with intent to cause the making or filing of a report that  
12 contains a material omission or misstatement of fact, or with  
13 intent to conduct or structure a transaction or series of  
14 transactions by or through one or more licensees, authorized  
15 delegates, money transmitters, financial institutions, or  
16 persons engaged in a trade or business.

17 9. A person who violates subsection 8 is guilty of a class  
18 "C" felony and is also subject to a civil penalty of three  
19 times the value of the property involved in the transaction,  
20 or, if no transaction is involved, five thousand dollars.

21 10. Notwithstanding any other provision of law, each  
22 violation of this section constitutes a separate, punishable  
23 offense.

24 11. Any report, record, information, analysis, or request  
25 obtained by the attorney general or department of public  
26 safety pursuant to this chapter is not a public record as  
27 defined in chapter 22 and is not subject to disclosure.

28 Sec. 35. NEW SECTION. 529.3 INVESTIGATIONS.

29 1. The attorney general or county attorney may conduct  
30 investigations within or outside this state to determine if  
31 any licensee, authorized delegate, money transmitter, or  
32 person engaged in a trade or business has failed to file a  
33 report required by this chapter or has engaged or is engaging  
34 in any act, practice, or transaction that constitutes a  
35 violation of this chapter.

1 2. On request of the attorney general or county attorney,  
2 all licensees, authorized delegates, money transmitters, and  
3 financial institutions shall make their books and records  
4 available to the attorney general or county attorney or peace  
5 officer during normal business hours for inspection and  
6 examination in connection with an investigation pursuant to  
7 this section.

8 Sec. 36. NEW SECTION. 529.4 UNIFORMITY OF CONSTRUCTION  
9 AND APPLICATION.

10 1. The provisions of this chapter shall be liberally  
11 construed to effectuate its remedial purposes. Civil remedies  
12 under this chapter shall be supplemental and not mutually  
13 exclusive. The civil remedies do not preclude and are not  
14 precluded by other provisions of law.

15 2. The provisions of this chapter shall be applied and  
16 construed to effectuate its general purpose to make uniform  
17 the law with respect to the subject of this chapter among  
18 states enacting the law.

19 3. The attorney general is authorized to enter into  
20 reciprocal agreements with the attorney general or chief  
21 prosecuting attorney of any state to effectuate the purposes  
22 of this chapter.

23 DIVISION V

24 CONFORMING AMENDMENTS

25 Sec. 37. Section 80.39, subsection 1, Code 1995, is  
26 amended to read as follows:

27 1. Personal property, except for motor vehicles subject to  
28 sale pursuant to section 321.89, and seizable ~~or-forfeitable~~  
29 property subject to disposition pursuant to chapter 809, which  
30 personal property is found or seized by, turned in to, or  
31 otherwise lawfully comes into the possession of the department  
32 of public safety and which the department does not own, shall  
33 be disposed of pursuant to this section. If by examining the  
34 property the owner or lawful custodian of the property is  
35 known or can be readily ascertained, the department shall

1 notify the owner or custodian by certified mail directed to  
2 the owner's or custodian's last known address, as to the  
3 location of the property. If the identity or address of the  
4 owner cannot be determined, notice by one publication in a  
5 newspaper of general circulation in the area where the  
6 property was found is sufficient notice. A published notice  
7 may contain multiple items.

8 Sec. 38. Section 123.20, subsection 7, Code 1995, is  
9 amended to read as follows:

10 7. To accept intoxicating liquors ordered delivered to the  
11 alcoholic beverages division pursuant to chapter 809 809A, and  
12 offer for sale and deliver the intoxicating liquors to class  
13 "E" liquor control licensees, unless the administrator  
14 determines that the intoxicating liquors may be adulterated or  
15 contaminated. If the administrator determines that the  
16 intoxicating liquors may be adulterated or contaminated, the  
17 administrator shall order their destruction.

18 Sec. 39. Section 321.232, subsection 3, Code 1995, is  
19 amended to read as follows:

20 3. A radar jamming device may be seized by a peace officer  
21 subject to forfeiture as provided by chapter 809 or 809A.

22 Sec. 40. Section 321J.10, subsection 7, Code 1995, is  
23 amended to read as follows:

24 7. Specimens obtained pursuant to warrants issued under  
25 this section are not subject to disposition under section  
26 808.9 or chapter 809 or 809A.

27 Sec. 41. Section 455B.103, subsection 4, paragraph d,  
28 subparagraph (2), Code 1995, is amended to read as follows:

29 (2) In a reasonable manner, and any property seized shall  
30 be treated in accordance with the provisions of chapters 808,  
31 and 809, and 809A.

32 Sec. 42. Section 602.6405, subsection 1, Code 1995, is  
33 amended to read as follows:

34 1. Magistrates have jurisdiction of simple misdemeanors,  
35 including traffic and ordinance violations, and preliminary

1 hearings, search warrant proceedings, county and municipal  
2 infractions, and small claims. Magistrates have jurisdiction  
3 to determine the disposition of livestock or another animal,  
4 as provided in sections 717.5 and 717B.4, if the magistrate  
5 determines the value of the livestock or animal is less than  
6 ten thousand dollars. Magistrates have jurisdiction to  
7 exercise the powers specified in sections 556F.2 and 556F.12,  
8 and to hear complaints or preliminary informations, issue  
9 warrants, order arrests, make commitments, and take bail.  
10 Magistrates have jurisdiction over violations of section  
11 123.49, subsection 2, paragraph "h". Magistrates who are  
12 admitted to the practice of law in this state have  
13 jurisdiction over all proceedings for the involuntary  
14 commitment, treatment, or hospitalization of individuals under  
15 chapters 125 and 229, except as otherwise provided under  
16 section 229.6A; nonlawyer magistrates have jurisdiction over  
17 emergency detention and hospitalization proceedings under  
18 sections 125.91 and 229.22. Magistrates have jurisdiction to  
19 conduct hearings authorized under section 809.4 ~~and section~~  
20 ~~809.107-subsection-2.~~

21 Sec. 43. Section 809.1, subsection 2, Code 1995, is  
22 amended by striking the subsection.

23 Sec. 44. Section 809.17, Code 1995, is amended to read as  
24 follows:

25 809.17 PROCEEDS APPLIED TO VARIOUS PROGRAMS.

26 Except as provided in section 809.21, proceeds from the  
27 disposal of seized ~~or forfeited~~ property pursuant to this  
28 chapter may be transferred in whole or in part to the victim  
29 compensation fund created in section 912.14 at the discretion  
30 of the recipient agency, political subdivision, or department.

31 Sec. 45. Sections 809.6 through 809.14, Code 1995, are  
32 repealed.

33

EXPLANATION

34 New Chapter 809A, the Iowa Forfeiture Reform Act, does the  
35 following:

1 Provides civil procedures so the state can obtain a  
2 personal forfeiture judgment against an offender which can be  
3 satisfied from in-state or out-of-state assets.

4 Defines conduct triggering forfeiture to include out-of-  
5 state conduct which would be a triggering offense in the state  
6 initiating the action and conduct committed in furtherance of  
7 a triggering offense.

8 Defines forfeitable property to include: (1) real or  
9 personal property furnished or intended to be furnished in  
10 exchange for the unlawful conduct, or used, or intended to be  
11 used, to facilitate the illegal activity (the Act excludes  
12 real property from forfeiture in simple drug possession cases  
13 and requires personal property used to facilitate simple  
14 possession cases to be forfeited in a civil in personam  
15 action); (2) proceeds derived from illegal activity; (3)  
16 enterprise interests which are interests affording a source of  
17 influence over an enterprise established, controlled, or  
18 participated in through illegal activity (e.g., corporate  
19 stocks); and (4) substitute assets if the original forfeitable  
20 property is subject to an exempt interest or otherwise  
21 unavailable. The substitute asset is forfeitable up to the  
22 value of the property that was owned or possessed for the  
23 purpose of facilitating illegal activity or that is proceeds  
24 of illegal activity or for which the wrongdoer is criminally  
25 responsible. In addition, a seizure warrant is required to  
26 seize a substitute asset.

27 Requires the state as well as the claimant in contested  
28 forfeiture cases to meet a preponderance of the evidence  
29 standard.

30 Creates presumptions that property is forfeitable if it was  
31 acquired during a person's conduct giving rise to forfeiture  
32 or within a reasonable time thereafter and there is no other  
33 likely source for the property or money or a negotiable  
34 instrument found in close proximity to contraband or an  
35 instrumentality is proceeds of, or was used or intended to be

1 used to further, conduct giving rise to forfeiture.

2 Exempts an interest if:

3 1. The owner or interest holder:

4 a. Obtained the interest prior to or during the illegal  
5 activity without knowledge or reason to know of the illegal  
6 activity or its likelihood of occurrence; or

7 b. Obtained the interest prior to or during the illegal  
8 activity with knowledge, or reason to know of the offense or  
9 its likelihood of occurrence, but took reasonable steps to  
10 prevent the offense (e.g., notification of authorities or  
11 cancellation of a lease); or

12 c. Purchased the interest in good faith and without  
13 knowledge of the unlawful conduct; and

14 2. The owner or interest holder:

15 a. Is not criminally responsible for the wrongdoer's  
16 conduct (e.g., not a co-conspirator); and

17 b. Was not in a relationship with the wrongdoer that  
18 permitted the wrongdoer to convey the property to a good faith  
19 purchaser for value; and

20 c. Had no notice of the seizure or reason to believe the  
21 property was forfeitable.

22 The bill also does the following:

23 Allows release of seized property if the state deems  
24 retention unnecessary because a case is weak or forfeiture  
25 would not serve justice.

26 Allows an owner or interest holder to file a petition with  
27 the state requesting recognition of an exempt interest. If  
28 the state denies the request, the petitioner has recourse to  
29 the courts.

30 Permits interlocutory sale, lease, or operation by interest  
31 holders with uncontroverted or presumptively legitimate  
32 interest when property will be foreclosed or significantly  
33 reduced in value before final judgment. If the property is  
34 sold, the proceeds are used to pay sale costs and satisfy  
35 exempt interests. Any remaining balance is deposited into an

1 interest-bearing account and becomes the subject of the  
2 litigation.

3 Permits the filing of a lien or constructive seizure  
4 (posting notice) to establish the state's interest and avoid  
5 unnecessarily displacing residents.

6 Requires an adversarial judicial finding of probable cause  
7 to evict residents, except in emergencies.

8 Releases property to an owner or interest holder pending  
9 final judgment if the state fails to file judicial proceedings  
10 within specified time limits, the owner posts a bond or cash  
11 equal to the fair market value of the property (the bond or  
12 cash is forfeited in lieu of the property), the court finds no  
13 probable cause for the forfeiture of the property in an  
14 expedited hearing on that issue (the hearing is available upon  
15 application by an owner or interest holder).

16 Authorizes states to enter into a custodian agreement with  
17 an owner or interest holder to maintain the property pending  
18 final judgment.

19 Authorizes the court to create a receivership or appoint a  
20 conservator, custodian, or trustee to preserve the property's  
21 value.

22 Permits the deposit of seized moneys or negotiable  
23 instruments into an interest-bearing account.

24 Allows an interlocutory sale by interest holders with  
25 uncontroverted or presumptively legitimate interests to avoid  
26 spoilage or waste of perishable assets.

27 Provides the state's title to forfeited property is vested  
28 from the time of the commission of the conduct giving rise to  
29 the forfeiture. Explicitly excludes exempted property from  
30 application of the relation back doctrine.

31 Designates anyone receiving nonexempt property which is  
32 subject to forfeiture as a constructive trustee for the  
33 benefit of the state.

34 Requires a trustee with notice of the forfeiture action to  
35 provide the state with specified information about the person

1 for whose benefit the forfeitable property is held.

2 Authorizes the state, in uncontested cases, to declare the  
3 forfeiture of personal property of a value up to \$5,000.

4 Provides probable cause is the state's burden of proof in  
5 unopposed cases requiring a judicial order so the state can  
6 summarize its evidence.

7 Provides an option that creates independent funding bases  
8 for law enforcement, within the state.

9 New Chapter 706A, the Ongoing Criminal Conduct Act, does  
10 the following:

11 Creates the following five violations, each a type of  
12 economic crime or facilitation of economic crime:

13 1. The infiltration of legitimate commerce through  
14 investment of illegal proceeds, the control of an enterprise  
15 through crime itself (as by an extortionate takeover), and  
16 conducting an enterprise through specified unlawful activity.

17 2. The knowing facilitation of a criminal network by  
18 engaging in subsidiary crimes, such as obstruction of justice,  
19 extortion, facilitation of the network by providing property  
20 or services (other than legal services) and fraud.

21 3. Money laundering, by reference to the Iowa Money  
22 Laundering Act.

23 4. The commission of specified unlawful activity under  
24 circumstances in which the acts are for financial gain.

25 5. The negligent empowerment of specified unlawful  
26 activity. The bill provides only civil remedies for this  
27 violation. It fixes limited financial responsibility in the  
28 nature of a tort remedy for negligently providing property or  
29 services that facilitate specified unlawful activity.

30 Creates special civil remedies for violations, including  
31 private treble damages actions, actions by the state to obtain  
32 damage on behalf of the citizens of the state, and injunctive  
33 relief.

34 Defines the scope of civil liability to assure protection  
35 of legal entities and to clarify the measure of damages and

1 statutory liability for the acts of joint ventures and other  
2 persons acting in concert.

3 New Chapter 706B, the Iowa Money Laundering Act, does the  
4 following:

5 Guides the application of financial remedies and allows  
6 reciprocal agreements encouraging interstate cooperation and  
7 uniformity through special purpose and uniformity sections.

8 Creates the following four violations:

9 1. Knowingly dealing in the proceeds of unlawful activity.

10 2. Making property available to another for the purpose of  
11 furthering specified unlawful activity.

12 3. Knowingly conducting transactions that conceal or  
13 disguise illegal proceeds or avoid transaction reporting  
14 requirements.

15 4. Engaging in money laundering as a business (this  
16 violation carries with it an enhanced penalty).

17 Imposes a civil treble damages sanction in addition to  
18 criminal penalties to deter individuals who provide services  
19 to the drug industry for profit.

20 Provides that money laundering is conduct giving rise to  
21 forfeiture, and integrates the chapter with new chapter 809A.

22 New Chapter 529, the Iowa Financial Transaction Reporting  
23 Act, does the following:

24 Parallels current federal transaction reporting  
25 requirements for who must make reports, the contents of the  
26 reports, and the circumstances that trigger the obligation to  
27 report.

28 Designs the reports to provide data from which law  
29 enforcement may make general resource decisions; improve  
30 geographic and business sector targeting; focus on specific  
31 individuals and businesses; and assist in the proof of cases  
32 under investigation. The reports under chapter 529 are:

33 1. Suspicious Transaction Reports. This obligation to  
34 report applies to all money transmitters including all  
35 financial institutions as defined by federal law and several

1 additional categories of businesses. The form of the report  
2 is within the discretion of the department of public safety.

3 2. Currency and Foreign Transactions Reporting Act  
4 Reports. These requirements apply only to money transmitters  
5 and only impose a duty to report if the transmitter is  
6 required to file under 31 U.S.C. § 5311-26 and the relevant  
7 federal regulations.

8 3. Reports of Receipt of More Than \$10,000 in a Trade or  
9 Business. All persons (not just money transmitters) engaged  
10 in a trade or business who receive more than \$10,000 in cash  
11 or a cash equivalent in one transaction (or in two or more  
12 related transactions) must file a report of the transaction.  
13 The report is to contain the information contained in the  
14 federal IRS form 8300 and required by federal regulations.

15 4. \$3,000 Logs. All money transmitters who are required  
16 by federal law to keep so-called "\$3,000 logs" must also keep  
17 them for the state department of public safety as well. The  
18 logs must be available for inspection at any time.

19 5. Targeting Projects. The superintendent of banking or  
20 the superintendent of credit unions may require additional  
21 recordkeeping in a specified geographic area for a 60-day  
22 period. Modeled on 31 U.S.C. § 5326, this provision is  
23 intended to allow gathering of financial reporting data on a  
24 more comprehensive basis than allowed by the other financial  
25 reporting requirements, and to address specific localized  
26 money laundering problems.

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**SENATE FILE 408**  
**FISCAL NOTE**

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The estimate for **Senate File 408** is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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Senate File 408 adds Chapter 809A, the Iowa Forfeiture Reform Act, to the Code of Iowa. The Bill provides civil procedures so the State can obtain a personal forfeiture judgement against an offender which can be satisfied from in-state or out-of-state assets, defines conduct triggering forfeiture to include out-of-state conduct, defines forfeitable property, requires the State as well as the claimant in contested forfeiture cases to meet the preponderance of the evidence, creates presumptions relating to property forfeiture, creates five violations, and specifies other conditions relating to forfeiture proceedings.

**Assumptions:**

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
3. Four class "B" convictions may occur each year as a result of unlawful activities relating to enterprises and criminal networks.
4. Four class "C" convictions may occur each year as a result knowingly transporting, making property available, and conducting certain transactions on properties for money laundering activities. Each conviction may include a fine of not more than \$10,000 or twice the value of the property involved.
5. Four class "D" convictions may occur each year as a result of engaging in the business of conducting, directing, or facilitating transactions on properties for money laundering activities. Each conviction may include a fine of not more than \$5,000 or twice the value of the property involved.
6. Four class "C" convictions may occur each year as a result of certain criminal conduct activities as specified under Section 34.8 of the Bill. Each conviction may include a civil penalty three times the value of property involved.

**Fiscal Effect:**

A total of 16 convictions may occur each year for unlawful activities relating to enterprises, criminal networks, money laundering activities, and certain criminal conduct activities due to the adoption of SF 408, resulting in the following correctional impact on prisons and Community-Based Corrections populations:

Increase in Admissions to Prison

-2-

<u>Prison</u>	FY 1996	FY 1997	FY 2000
Admissions	5	7	7
Population Increase	5	10	22

Increase in Admissions: Community-Based Corrections

Probation/Parole

Admissions	3	5	5
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Fiscal Effect on the General Fund:

Department of Corrections - The estimated cost increase to the Department includes:

	FY 1996	FY 1997	FY 2000
Prison	\$ 20,000	\$ 28,000	\$ 28,000
Community-Based Corrections			
Probation/Parole	1,900	3,200	3,200
	-----	-----	-----
Total	\$ 21,900	\$ 31,200	\$ 31,200
	=====	=====	=====

NOTE: The average marginal cost per year for a prison inmate is estimated to be \$4,000. The FY 1994 average daily costs for an inmate to be on probation/parole in Community-Based Corrections is \$1.76.

Judicial Department - The cost to the General Fund for each case tried at the District Court level is estimated to be \$3,899 and \$44,440 at the Appellate Court level.

Revenues from Fines/Civil Penalties: There is not sufficient information available to determine the amount of revenues from fines and civil penalties which may be generated as a result of the adoption of SF 408.

Sources: Criminal Juvenile Justice Planning  
 Department of Corrections  
 Judicial Department

(LSB 1168sv, LAM)

FILED APRIL 4, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

## SENATE FILE 408

S-3338

- 1 Amend Senate File 408 as follows:  
2 1. Page 3, by inserting after line 14 the  
3 following:  
4 "\_\_\_\_\_. A violation of section 321J.4B, subsection  
5 12, if enacted by Senate File 446.  
6 \_\_\_\_\_. Notwithstanding subsections 1 through 4,  
7 violations of chapter 321 or 321J, except section  
8 321J.4B, subsection 12, if enacted by Senate File 446,  
9 shall not be considered conduct giving rise to  
10 forfeiture."  
11 2. Page 4, by inserting after line 32 the  
12 following:  
13 "\_\_\_\_\_. As used in this section, "facilitate" means  
14 to have a substantial connection between the property  
15 and the conduct giving rise to forfeiture."  
16 3. Page 6, line 29, by inserting after the word  
17 "seized" the following: "and to any person who has a  
18 security interest in the property".  
19 4. Page 15, line 29, by striking the word "may"  
20 and inserting the following: "shall".  
21 5. Page 16, line 15, by striking the words "this  
22 chapter" and inserting the following: "law".  
23 6. Page 18, line 2, by inserting after the word  
24 "guilty." the following: "A defendant whose  
25 conviction is overturned on appeal may file a motion  
26 to correct, vacate, or modify a judgment of forfeiture  
27 under this subsection."  
28 7. Page 19, by striking lines 23 through 25 and  
29 inserting the following:  
30 "15. For good cause shown, on motion by either  
31 party, the court may stay discovery in civil  
32 forfeiture".  
33 8. Page 25, line 10, by inserting after the word  
34 "less," the following: "as established by affidavit  
35 provided by the prosecuting attorney,".  
36 9. By striking page 27, line 29, through page 28,  
37 line 3.  
38 10. Page 31, line 30, by striking the word  
39 "seven" and inserting the following: "five".  
40 11. Page 49, by striking lines 27 through 35.  
41 12. Page 50, by striking lines 7 through 11 and  
42 inserting the following:  
43 "3. All persons engaged in a trade or business who  
44 are required to file a report pursuant to 26".  
45 13. Page 50, line 14, by inserting after the word  
46 "business" the following: ", shall file a copy of the  
47 report with the department of public safety".  
48 14. Page 50, lines 23 and 24, by striking the  
49 words "on request at any time" and inserting the  
50 following: "pursuant to a prosecuting attorney

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-1-

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Page 2

1 subpoena".  
2 15. By striking page 50, line 25, through page  
3 51, line 16.  
4 16. Page 52, by striking line 26.  
5 17. Page 54, by striking line 1 and inserting the  
6 following:  
7 "2. Upon presentation of a subpoena from a  
8 prosecuting attorney,".  
9 18. Page 54, line 18, by inserting after the word  
10 "law" the following: "and to make the reporting  
11 requirements regarding financial transactions under  
12 Iowa law uniform with the reporting requirements  
13 regarding financial transactions under federal law".  
14 19. By renumbering, relettering, redesignating,  
15 and correcting internal references as necessary.

By RANDAL J. GIANNETTO

S-3338 FILED APRIL 4, 1995

*G. Schmitt*  
*Vilsack*  
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SSB-242  
Judiciary

Succeeded By

SENATE/HOUSE FILE 4408

BY (PROPOSED ATTORNEY GENERAL'S  
AND DEPARTMENT OF PUBLIC  
SAFETY BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act establishing economic and other penalties for certain  
2 criminal activity.

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

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DIVISION I

IOWA FORFEITURE REFORM ACT

Section 1. NEW SECTION. 809A.1 DEFINITIONS.

As used in this chapter:

1. "Conveyance" includes any vehicle, trailer, vessel, aircraft, or other means of transportation.

2. "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.

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

4. "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 for 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.

5. "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.

6. "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.

7. "Prosecuting attorney" means an attorney who is

1 authorized by law to appear on the behalf of the state in a  
2 criminal case, and includes the attorney general, an assistant  
3 attorney general, the county attorney, an assistant county  
4 attorney, or a special or substitute prosecutor whose  
5 appearance is approved by a court having jurisdiction to try a  
6 defendant for the offense with which the defendant is charged.

7 8. "Regulated interest holder" means an interest holder  
8 that is a business authorized to do business in this state and  
9 is under the jurisdiction of any state or federal agency  
10 regulating banking, insurance, real estate, or securities.

11 9. "Seizing agency" means a department or agency of this  
12 state or its political subdivisions that regularly employs law  
13 enforcement officers, and that employs the law enforcement  
14 officer who seizes property for forfeiture, or such other  
15 agency as the department or agency may designate by its chief  
16 executive officer or the officer's designee.

17 10. "Seizure for forfeiture" means seizure of property by  
18 a law enforcement officer, including a constructive seizure,  
19 accompanied by an assertion by the seizing agency or by a  
20 prosecuting attorney that the property is seized for  
21 forfeiture, in accordance with section 809A.6.

22 Sec. 2. NEW SECTION. 809A.2 JURISDICTION AND VENUE.

23 1. The district court has jurisdiction under this chapter  
24 over:

25 a. All interests in property within this state at the time  
26 a forfeiture action is filed.

27 b. The interest in the property of an owner or interest  
28 holder who is subject to personal jurisdiction in this state.

29 2. In addition to the venue provided for under chapter 803  
30 or any other provision of law, a proceeding for forfeiture  
31 under this chapter may be maintained in the county in which  
32 any part of the property is found or in the county in which a  
33 civil or criminal action could be maintained against an owner  
34 or interest holder for the conduct alleged to give rise to the  
35 forfeiture.

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1 Sec. 3. NEW SECTION. 809A.3 CONDUCT GIVING RISE TO  
2 FORFEITURE.

3 The following conduct may give rise to forfeiture:

4 1. An act or omission which is a public offense and which  
5 is a serious or aggravated misdemeanor or felony.

6 2. An act or omission occurring outside of this state,  
7 that would be punishable by confinement of one year or more in  
8 the place of occurrence and would be a serious or aggravated  
9 misdemeanor or felony if the act or omission occurred in this  
10 state.

11 3. An act or omission committed in furtherance of any act  
12 or omission described in subsection 1, which is a serious or  
13 aggravated misdemeanor or felony including any inchoate or  
14 preparatory offense.

15 Sec. 4. NEW SECTION. 809A.4 PROPERTY SUBJECT TO  
16 FORFEITURE.

17 The following are subject to forfeiture:

18 1. All controlled substances, raw materials, controlled  
19 substance analogs, counterfeit controlled substances,  
20 imitation controlled substances, or precursor substances, that  
21 have been manufactured, distributed, dispensed, possessed, or  
22 acquired in violation of the laws of this state.

23 2. a. All property, except as provided in paragraph "b",  
24 including the whole of any lot or tract of land and any  
25 appurtenances or improvements to real property, including  
26 homesteads that are otherwise exempt from judicial sale  
27 pursuant to section 561.16, that is either:

28 (1) Furnished or intended to be furnished by a person in  
29 an exchange that constitutes conduct giving rise to  
30 forfeiture.

31 (2) Used or intended to be used in any manner or part to  
32 facilitate conduct giving rise to forfeiture.

33 b. If the only conduct giving rise to forfeiture is a  
34 violation of section 124.401, subsection 3, real property is  
35 not subject to forfeiture and other property subject to

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1 forfeiture pursuant to paragraph "a", subparagraph (2), may be  
2 forfeited only pursuant to section 809A.14.

3 3. All proceeds of any conduct giving rise to forfeiture.

4 4. All weapons possessed, used, or available for use in  
5 any manner to facilitate conduct giving rise to forfeiture.

6 5. Any interest or security in, claim against, or property  
7 or contractual right of any kind affording a source of control  
8 over any enterprise that a person has established, operated,  
9 controlled, or conducted through, or participated in the  
10 conduct, giving rise to forfeiture.

11 6. a. Any property of a person up to the value of  
12 property of either of the following:

13 (1) Described in subsection 2 that the person owned or  
14 possessed for the purpose of a use described in subsection 2.

15 (2) Described in subsection 3 and is proceeds of conduct  
16 engaged in by the person or for which the person is criminally  
17 responsible.

18 b. Property described in this subsection may be seized for  
19 forfeiture pursuant to a constructive seizure or an actual  
20 seizure pursuant to section 809A.6. Actual seizure may only  
21 be done pursuant to a seizure warrant issued on a showing, in  
22 addition to the showing of probable cause for the forfeiture  
23 of the subject property, that the subject property is not  
24 available for seizure for reasons described in section  
25 809A.15, subsection 1, and that the value of the property to  
26 be seized is not greater than the total value of the subject  
27 property, or pursuant to a constructive seizure. If property  
28 of a defendant up to the total value of all interests in the  
29 subject property is not seized prior to final judgment in an  
30 action under this section, the remaining balance shall be  
31 ordered forfeited as a personal judgment against the  
32 defendant.

33 Sec. 5. NEW SECTION. 809A.5 EXEMPTIONS.

34 1. All property, including all interests in property,  
35 described in section 809A.4 is subject to forfeiture, except

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1 that property is exempt from forfeiture if either of the  
2 following occurs:

3 a. The owner or interest holder acquired the property  
4 before or during the conduct giving rise to its forfeiture,  
5 and did not know and could not reasonably have known of the  
6 conduct or that the conduct was likely to occur, or acted  
7 reasonably to prevent the conduct giving rise to forfeiture.

8 b. The owner or interest holder acquired the property,  
9 including acquisition of proceeds of conduct giving rise to  
10 forfeiture, after the conduct giving rise to its forfeiture  
11 and acquired the property in good faith, for value and did not  
12 knowingly take part in an illegal transaction.

13 2. Notwithstanding subsection 1, property is not exempt  
14 from forfeiture, even though the owner or interest holder  
15 lacked knowledge or reason to know that the conduct giving  
16 rise to its forfeiture had occurred or was likely to occur, if  
17 any of the following exists:

18 a. The person whose conduct gave rise to its forfeiture  
19 had the authority to convey the property of the person  
20 claiming the exemption to a good faith purchaser for value at  
21 the time of the conduct.

22 b. The owner or interest holder is criminally responsible  
23 for the conduct giving rise to its forfeiture, whether or not  
24 the owner or interest holder is prosecuted or convicted.

25 c. The owner or interest holder acquired the property with  
26 notice of its actual or constructive seizure for forfeiture  
27 under section 809A.6, or with reason to believe that it was  
28 subject to forfeiture.

29 Sec. 6. NEW SECTION. 809A.6 SEIZURE OF PROPERTY.

30 1. A peace officer may seize property for forfeiture upon  
31 process issued by any district judge, district associate  
32 judge, or magistrate. The court may issue a seizure warrant  
33 on an affidavit under oath demonstrating that probable cause  
34 exists for its forfeiture or that the property has been the  
35 subject of a previous final judgment of forfeiture in the

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1 courts of any state or of the United States. The court may  
2 order that the property be seized on such terms and conditions  
3 as are reasonable in the discretion of the court. The order  
4 may be made on or in connection with a search warrant.

5 2. Peace officers may seize property for forfeiture  
6 without process on probable cause to believe that the property  
7 is subject to forfeiture under this chapter and if exigent  
8 circumstances exist or if the property has already been seized  
9 for a purpose other than forfeiture.

10 3. The seizure of inhabited residential real property for  
11 forfeiture which is accompanied by removing or excluding its  
12 residents shall be done pursuant to a preseizure adversarial  
13 judicial determination of probable cause, except that this  
14 determination may be made ex parte if the prosecuting attorney  
15 has demonstrated exigent circumstances.

16 4. Property may be seized constructively by:

17 a. Posting notice of seizure for forfeiture or notice of  
18 pending forfeiture on the property.

19 b. Giving notice pursuant to section 809A.8.

20 c. Filing or recording in the public records relating to  
21 that type of property notice of seizure for forfeiture, notice  
22 of pending forfeiture, a forfeiture lien, or a notice of lis  
23 pendens.

24 Filings or recordings made pursuant to this subsection are  
25 not subject to a filing fee or other charge.

26 5. The seizing agency, or the prosecuting attorney, shall  
27 make a reasonable effort to provide notice of the seizure to  
28 the person from whose possession or control the property was  
29 seized. If no person is in possession or control of the  
30 property, the seizing agency may attach the notice to the  
31 property or to the place of its seizure or may make a  
32 reasonable effort to deliver it to the owner of the property.  
33 The notice shall contain a general description of the property  
34 seized, the date and place of seizure, the name of the seizing  
35 agency, and the address and telephone number of the seizing

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1 officer or other person or agency from whom information about  
2 the seizure may be obtained.

3 6. A person who acts in good faith and in a reasonable  
4 manner to comply with an order of the court or a request of a  
5 law enforcement officer is not liable to any person for acts  
6 done in reasonable compliance with the order or request. In  
7 addition, an inference of guilt shall not be drawn from the  
8 fact that a person refuses a law enforcement officer's request  
9 to deliver the property.

10 7. A possessory lien of a person from whose possession  
11 property is seized is not affected by the seizure.

12 Sec. 7. NEW SECTION. 809A.7 PROPERTY MANAGEMENT AND  
13 PRESERVATION.

14 1. Property seized for forfeiture under this chapter is  
15 not subject to alienation, conveyance, sequestration,  
16 attachment, or an application for return of seized property  
17 under chapter 809.

18 2. The seizing agency or the prosecuting attorney may  
19 authorize the release of the seizure for forfeiture on the  
20 property if forfeiture or retention of actual custody is  
21 unnecessary.

22 3. The prosecuting attorney may discontinue forfeiture  
23 proceedings and transfer the action to another state or  
24 federal agency or prosecuting attorney who has initiated  
25 forfeiture proceedings.

26 4. Property seized for forfeiture under this chapter is  
27 deemed to be in the custody of the district court subject only  
28 to the orders and decrees of the court having jurisdiction  
29 over the forfeiture proceedings and to the acts of the seizing  
30 agency or the prosecuting attorney pursuant to this chapter.

31 5. An owner of property seized for forfeiture under this  
32 chapter may obtain release of the property by posting with the  
33 prosecuting attorney a surety bond or cash in an amount equal  
34 to the full fair market value of the property as determined by  
35 the prosecuting attorney. The state may refuse to release the

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1 property if any of the following apply:

- 2 a. The bond tendered is inadequate.
- 3 b. The property is retained as contraband or as evidence.
- 4 c. The property is particularly altered or designed for
- 5 use in conduct giving rise to forfeiture.

6 If a surety bond or cash is posted and the property is  
7 forfeited, the court shall forfeit the surety bond or cash in  
8 lieu of the property.

9 6. If property is seized for forfeiture under this  
10 chapter, the prosecuting attorney, subject to any need to  
11 retain the property as evidence, may do any of the following:

- 12 a. Remove the property to an appropriate place designated
- 13 by the district court.
- 14 b. Place the property under constructive seizure.
- 15 c. Remove the property to a storage area for safekeeping
- 16 or, if the property is a negotiable instrument or money,
- 17 deposit it in an interest-bearing account.
- 18 d. Provide for another agency or custodian, including an
- 19 owner, secured party, mortgagee, or lienholder, to take
- 20 custody of the property and service, maintain, and operate it
- 21 as reasonably necessary to maintain its value, in any
- 22 appropriate location within the jurisdiction of the court.
- 23 e. Require the seizing agency to take custody of the
- 24 property and remove it to an appropriate location for
- 25 disposition in accordance with law.

26 7. As soon as practicable after seizure for forfeiture,  
27 the seizing agency shall conduct a written inventory and  
28 estimate the value of the property seized.

29 8. The court may order property which has been seized for  
30 forfeiture sold, leased, rented, or operated to satisfy a  
31 specified interest of any interest holder, or to preserve the  
32 interests of any party on motion of such party. The court may  
33 enter orders under this subsection after notice to persons  
34 known to have an interest in the property, and an opportunity  
35 for a hearing, if either of the following exist:

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1 a. The interest holder has timely filed a proper claim and  
2 is a regulated interest holder.

3 b. The interest holder has an interest which the  
4 prosecuting attorney has stipulated is exempt from forfeiture.

5 9. A sale may be ordered under subsection 8 if the  
6 property is liable to perish, to waste, or to be foreclosed  
7 upon or significantly reduced in value, or if the expenses of  
8 maintaining the property are disproportionate to its value. A  
9 third party designated by the court shall dispose of the  
10 property by commercially reasonable public sale and distribute  
11 the proceeds in the following order of priority:

12 a. For the payment of reasonable expenses incurred in  
13 connection with the sale or disposal.

14 b. For the satisfaction of exempt interests in the order  
15 of their priority.

16 c. Any balance of the proceeds shall be preserved in the  
17 actual or constructive custody of the court, in an interest-  
18 bearing account, subject to the proceedings under this  
19 chapter.

20 Sec. 8. NEW SECTION. 809A.8 COMMENCEMENT OF FORFEITURE  
21 PROCEEDINGS -- PROPERTY RELEASE REQUIREMENTS.

22 1. Forfeiture proceedings shall be commenced as follows:

23 a. Property seized for forfeiture shall be released on the  
24 request of an owner or interest holder to the owner's or  
25 interest holder's custody, as custodian for the court, pending  
26 further proceedings pursuant to this chapter if the  
27 prosecuting attorney fails to do either of the following:

28 (1) File a notice of pending forfeiture against the  
29 property within ninety days after seizure.

30 (2) File a judicial forfeiture proceeding within ninety  
31 days after notice of pending forfeiture of property upon which  
32 a proper claim has been timely filed pursuant to section  
33 809A.11.

34 b. Within thirty days after the effective date of the  
35 notice of pending forfeiture, an owner of or interest holder

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1 in the property may elect to file with the prosecuting  
2 attorney either of the following:

- 3 (1) A claim pursuant to section 809A.11.
- 4 (2) A petition for recognition of exemption pursuant to  
5 section 809A.11, except that no petition may be filed after  
6 the state commences a court action.

7 c. An extension of time for the filing of a claim shall  
8 not be granted.

9 d. If a petition is timely filed, the prosecuting attorney  
10 may delay filing a judicial forfeiture proceeding for one  
11 hundred eighty days after the notice of pending forfeiture,  
12 and the following procedures shall apply:

13 (1) The prosecuting attorney shall provide the seizing  
14 agency and the petitioning party with a written recognition of  
15 exemption and statement of nonexempt interests relating to any  
16 or all interests in the property in response to each  
17 petitioning party as follows:

18 (a) Within sixty days after the effective date of the  
19 notice of pending forfeiture if the petitioner is a regulated  
20 interest holder. The recognition of exemption shall recognize  
21 the interest of the petitioner to the extent of documented  
22 outstanding principal plus interest at the contract rate until  
23 paid.

24 (b) Within one hundred twenty days after the effective  
25 date of the notice of pending forfeiture for all other  
26 petitioners.

27 (2) An owner or interest holder in any property declared  
28 nonexempt may file a claim pursuant to 809A.11 within thirty  
29 days after the effective date of the notice of the recognition  
30 of exemption and statement of nonexempt interest.

31 (3) If a petitioning party does not timely file a proper  
32 claim under paragraph "b", the recognition of exemption and  
33 statement of nonexempt interests becomes final, and the  
34 prosecuting attorney shall proceed as provided in sections  
35 809A.16 and 809A.17.

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1 (4) The prosecuting attorney may elect to proceed under  
2 this section for judicial forfeiture at any time.

3 (5) If a judicial forfeiture proceeding follows the  
4 application of procedures in this paragraph, the following  
5 apply:

6 (a) A duplicate or repetitive notice is not required. If  
7 a proper claim has been timely filed pursuant to subparagraph  
8 (2), the claim shall be determined in a judicial forfeiture  
9 proceeding after the commencement of such a proceeding under  
10 sections 809A.13, 809A.14, and 809A.15.

11 (b) The proposed recognition of exemption and statement of  
12 nonexempt interest responsive to all petitioning parties who  
13 subsequently filed claims are void and are regarded as  
14 rejected offers to compromise.

15 e. If a proper petition for recognition of exemption or  
16 proper claim is not timely filed, the prosecuting attorney  
17 shall proceed as provided in sections 809A.16 and 809A.17.

18 2. a. Notice of pending forfeiture, service of an in rem  
19 complaint or notice of a recognition of exemption and  
20 statement of nonexempt interests required under the chapter,  
21 shall be given in accordance with one of the following:

22 (1) If the owner's or interest holder's name and current  
23 address are known, by either personal service by any person  
24 qualified to serve process or by any law enforcement officer  
25 or by mailing a copy of the notice by restricted certified  
26 mail to that address.

27 (2) If the owner's or interest holder's name and address  
28 are required by law to be on record with the county recorder,  
29 secretary of state, the motor vehicle division of the state  
30 department of transportation, or another state or federal  
31 agency to perfect an interest in the property, and the owner's  
32 or interest holder's current address is not known, by mailing  
33 a copy of the notice by restricted certified mail to any  
34 address of record with any of the described agencies.

35 (3) If the owner's or interest holder's address is not

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1 known and is not on record as provided in subsection 2,  
2 paragraph "a", subparagraph (2), or the owner or interest  
3 holder's interest is not known, by publication in one issue of  
4 a newspaper of general circulation in the county in which the  
5 seizure occurred.

6 b. Notice is effective upon the earlier of personal  
7 service, publication, or the mailing of a written notice,  
8 except that notice of pending forfeiture of real property is  
9 not effective until it is recorded. Notice of pending  
10 forfeiture shall include a description of the property, the  
11 date and place of seizure, the conduct giving rise to  
12 forfeiture or the violation of law alleged, and a summary of  
13 procedures and procedural rights applicable to the forfeiture  
14 action.

15 Sec. 9. NEW SECTION. 809A.9 LIENS.

16 1. The prosecuting attorney may file, without a filing  
17 fee, a lien for the forfeiture of property if any of the  
18 following apply:

19 a. Upon the initiation of any civil or criminal proceeding  
20 relating to conduct giving rise to forfeiture under this  
21 chapter.

22 b. Upon seizure for forfeiture.

23 c. In connection with a proceeding or seizure for  
24 forfeiture in any other state under a state or federal statute  
25 substantially similar to the relevant provisions of this  
26 chapter. The filing constitutes notice to any person claiming  
27 an interest in the seized property or in property owned by the  
28 named person.

29 2. The lienor, as soon as practical after filing a lien,  
30 shall furnish to any person named in the lien a notice of the  
31 filing of the lien. Failure to furnish notice under this  
32 subsection shall not invalidate or otherwise affect the lien.

33 3. The lien notice shall set forth all of the following:

34 a. The name of the person and, in the discretion of the  
35 lienor, any aliases, or the name of any corporation,

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1 partnership, trust, or other entity, including nominees, that  
2 are owned entirely or in part, or controlled by the person.

3 b. The description of the seized property or the criminal  
4 or civil proceeding that has been brought relating to conduct  
5 giving rise to forfeiture under the chapter.

6 c. The amount claimed by the lienor.

7 d. The name of the district court where the proceeding or  
8 action has been brought.

9 e. The case number of the proceeding or action if known at  
10 the time of the filing of the lien.

11 4. The notice of forfeiture lien shall be filed in  
12 accordance with the provisions of the laws of this state  
13 relating to the type of property that is subject to the lien.  
14 The validity and priority of the forfeiture lien shall be  
15 determined in accordance with applicable law pertaining to  
16 liens.

17 5. A lien filed pursuant to this section applies to the  
18 described property or to one named person, any aliases,  
19 fictitious names, or other names, including the names of any  
20 corporation, partnership, trust, or other entity, owned  
21 entirely or in part, or controlled by the named person, and  
22 any interest in real property owned or controlled by the named  
23 person. A separate forfeiture lien shall be filed for each  
24 named person.

25 6. The lien notice creates, upon filing, a lien in favor  
26 of the lienor as it relates to the property or the named  
27 person or related entities. The lien secures the amount of  
28 potential liability for civil judgment, and, if applicable,  
29 the fair market value of property relating to all proceedings  
30 under this chapter enforcing the lien.

31 7. The lienor may amend or release, in whole or in part, a  
32 lien filed under this section at any time by filing, without a  
33 filing fee, an amended lien.

34 8. Upon entry of judgment in its favor, the state may  
35 proceed to execute on the lien as provided by law.

1     Sec. 10. NEW SECTION. 809A.10 TRUSTEES.

2     1. Except as provided in subsection 2, a trustee,  
3 constructive or otherwise, who has notice that a notice of  
4 forfeiture lien, or a notice of pending forfeiture, or a civil  
5 forfeiture proceeding has been filed against the property or  
6 against any person or entity for whom the person holds title  
7 or appears as record owner, shall furnish within fifteen days,  
8 to the seizing agency, or the prosecuting attorney all of the  
9 following:

10    a. The name and address of each person or entity for whom  
11 the property is held.

12    b. The description of all other property whose legal title  
13 is held for the benefit of the named person.

14    c. A copy of the applicable trust agreement or other  
15 instrument, if any, under which the trustee or other person  
16 holds legal title or appears as record owner of the property.

17    2. Subsection 1 is inapplicable if any of the following  
18 applies:

19    a. A trustee is acting under a recorded subdivision trust  
20 agreement or a recorded deed of trust.

21    b. All of the information is of record in the public  
22 records giving notice of liens on that type of property.

23    3. A trustee with notice who knowingly fails to comply  
24 with the provisions of this section commits a class "D"  
25 felony, and shall be fined not less than ten thousand dollars  
26 per day for each day of noncompliance.

27    4. A trustee with notice who fails to comply with  
28 subsection 1 is subject to a civil penalty of three hundred  
29 dollars for each day of noncompliance. The court shall enter  
30 judgment ordering payment of three hundred dollars for each  
31 day of noncompliance from the effective date of the notice  
32 until the required information is furnished or the state  
33 executes its judgment lien under this section.

34    5. To the extent permitted by the Constitution of the  
35 United States and the Constitution of the State of Iowa, the

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1 duty to comply with subsection 1 shall not be excused by any  
2 privilege or provision of law of this state or any other state  
3 or country which authorizes or directs that testimony or  
4 records required to be furnished pursuant to subsection 1 are  
5 privileged or confidential or otherwise may not be disclosed.

6 6. A trustee who furnishes information pursuant to  
7 subsection 1 is immune from civil liability for the release of  
8 information.

9 7. An employee of the seizing agency or the prosecuting  
10 attorney who releases the information obtained pursuant to  
11 subsection 1, except in the proper discharge of official  
12 duties, commits a serious misdemeanor.

13 8. If any information furnished pursuant to subsection 1  
14 is offered in evidence, the court may seal that portion of the  
15 record or may order that the information be disclosed in a  
16 designated way.

17 9. A judgment or an order of payment entered pursuant to  
18 this section becomes a judgment lien against the property  
19 alleged to be subject to forfeiture.

20 Sec. 11. NEW SECTION. 809A.11 CLAIMS -- PETITIONS FOR  
21 RECOGNITION OF EXEMPTION.

22 1. Only an owner of or interest holder in property seized  
23 for forfeiture may file a claim, and shall do so in the manner  
24 provided in this section. The claim shall be mailed to the  
25 seizing agency and to the prosecuting attorney by restricted  
26 certified mail within thirty days after the effective date of  
27 notice of pending forfeiture. An extension of time for the  
28 filing of a claim shall not be granted.

29 2. The prosecuting attorney may make an opportunity to  
30 file a petition for recognition of exemption available by so  
31 indicating in the notice of pending forfeiture described in  
32 section 809A.8, subsection 2.

33 3. The claim or petition and all supporting documents  
34 shall be in affidavit form, signed by the claimant under oath,  
35 and sworn to by the affiant before one who has authority to

1 administer the oath, under penalty of perjury and shall set  
2 forth all of the following:

3 a. The caption of the proceedings and identifying number,  
4 if any, as set forth on the notice of pending forfeiture or  
5 complaint, the name of the claimant or petitioner, and the  
6 name of the prosecuting attorney who authorized the notice of  
7 pending forfeiture or complaint.

8 b. The address where the claimant or petitioner will  
9 accept mail.

10 c. The nature and extent of the claimant's or petitioner's  
11 interest in the property.

12 d. The date, the identity of the transferor, and the  
13 circumstances of the claimant's or petitioner's acquisition of  
14 the interest in the property.

15 e. The specific provision of this chapter relied on in  
16 asserting that the property is not subject to forfeiture.

17 f. All essential facts supporting each assertion.

18 g. The specific relief sought.

19 Sec. 12. NEW SECTION. 809A.12 JUDICIAL PROCEEDINGS  
20 GENERALLY.

21 1. A judicial forfeiture proceeding under this chapter is  
22 subject to the provisions of this section.

23 2. The court, before or after the filing of a notice of  
24 pending forfeiture or complaint and on application of the  
25 prosecuting attorney, may do any of the following:

26 a. Enter a restraining order or injunction.

27 b. Require the execution of satisfactory performance  
28 bonds.

29 c. Create receiverships.

30 d. Appoint conservators, custodians, appraisers,  
31 accountants, or trustees.

32 e. Take any other action to seize, secure, maintain, or  
33 preserve the availability of property subject to forfeiture  
34 under this chapter, including a writ of attachment or a  
35 warrant for its seizure.

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1 3. The court, after five days' notice to the prosecuting  
2 attorney, may issue an order to show cause to the seizing  
3 agency, for a hearing on the sole issue of whether probable  
4 cause for forfeiture of the property then exists if all of the  
5 following exist:

6 a. Property is seized for forfeiture or a forfeiture lien  
7 is filed without a previous judicial determination of probable  
8 cause, order of forfeiture, or a hearing under section  
9 809A.14, subsection 4.

10 b. An owner of or interest holder in the property files an  
11 application for a hearing within ten days after notice of its  
12 seizure for forfeiture or lien, or actual knowledge of its  
13 seizure, whichever is earlier.

14 c. The owner of or interest holder in the property  
15 complies with the requirements for claims or petitions in  
16 section 809A.11.

17 The hearing shall be held within thirty days of the order  
18 to show cause unless continued for good cause on motion of  
19 either party.

20 4. If the court finds in a hearing under subsection 3 that  
21 no probable cause exists for forfeiture of the property, or if  
22 the state elects not to contest the issue, the property shall  
23 be released to the custody of the applicant, as custodian for  
24 the court, or from the lien pending the outcome of a judicial  
25 proceeding pursuant to this chapter. If the court finds that  
26 probable cause for the forfeiture of the property exists, the  
27 court shall not order the property released.

28 5. All applications filed within the ten-day period  
29 prescribed by subsection 3 shall be consolidated for a single  
30 hearing relating to each applicant's interest in the property  
31 seized for forfeiture.

32 6. A defendant convicted in any criminal proceeding is  
33 precluded from later denying the essential allegations of the  
34 criminal offense of which the defendant was convicted in any  
35 proceeding pursuant to this section. For the purposes of this

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1 section, a conviction results from a verdict or a plea of  
2 guilty.

3 7. In any proceeding under this chapter, if a claim is  
4 based on an exemption provided for in this chapter, the burden  
5 of proving the existence of the exemption is on the claimant,  
6 and it is not necessary for the state to negate the exemption  
7 in any application or complaint.

8 8. In hearings and determinations pursuant to this  
9 section, the court may receive and consider, in making any  
10 determination of probable cause, all evidence admissible in  
11 determining probable cause at a preliminary hearing or by a  
12 judge pursuant to chapter 808 together with inferences  
13 therefrom.

14 9. The fact that money or a negotiable instrument was  
15 found in close proximity to any contraband or an  
16 instrumentality of conduct giving rise to forfeiture shall  
17 give rise to the presumption that the money or negotiable  
18 instrument was the proceeds of conduct giving rise to  
19 forfeiture or was used or intended to be used to facilitate  
20 the conduct.

21 10. A presumption arises that any property of a person is  
22 subject to forfeiture under this chapter if the state  
23 establishes, by the standard of proof applicable to that  
24 proceeding, any of the following:

25 a. The person has engaged in conduct giving rise to  
26 forfeiture.

27 b. The property was acquired by the person during that  
28 period of the conduct giving rise to forfeiture or within a  
29 reasonable time after that period.

30 c. No likely source for acquisition of the property exists  
31 other than the conduct giving rise to the forfeiture.

32 11. A finding that property is the proceeds of conduct  
33 giving rise to forfeiture does not require proof that the  
34 property is the proceeds of any particular exchange or  
35 transaction.

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1 12. A person who acquires property subject to forfeiture  
2 is a constructive trustee of the property, and its fruits, for  
3 the benefit of the state, to the extent that the person's  
4 interest is not exempt from forfeiture. If property subject  
5 to forfeiture has been commingled with other property, the  
6 court shall order the forfeiture of the commingled property,  
7 and of any fruits of the commingled property, to the extent of  
8 the property subject to forfeiture, unless an owner or  
9 interest holder proves that specified property does not  
10 contain property subject to forfeiture, or that the person's  
11 interest in specified property is exempt from forfeiture.

12 13. Title to all property declared forfeited under this  
13 chapter vests in the state on the commission of the conduct  
14 giving rise to forfeiture together with the proceeds of the  
15 property after that time. Any such property or proceeds  
16 subsequently transferred to any person remain subject to  
17 forfeiture and thereafter shall be ordered forfeited unless  
18 the transferee claims and establishes in a hearing under the  
19 provisions of the chapter that the transferee's interest is  
20 exempt under section 809A.5.

21 14. An acquittal or dismissal in a criminal proceeding  
22 shall not preclude civil proceedings under this chapter.

23 15. For good cause shown, on motion by the prosecuting  
24 attorney, the court may stay discovery against the criminal  
25 defendant and against the state in civil forfeiture  
26 proceedings during a criminal trial for a related criminal  
27 indictment or information alleging the same conduct, after  
28 making provision to prevent loss to any party resulting from  
29 the stay. Such a stay shall not be available pending an  
30 appeal.

31 16. Except as otherwise provided by this chapter, all  
32 proceedings hereunder shall be governed by the rules of civil  
33 procedure.

34 17. An action brought pursuant to this chapter shall be  
35 consolidated with any other action or proceeding brought

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1 pursuant to this chapter or chapter 626 or 654 relating to the  
2 same property on motion of the prosecuting attorney, and may  
3 be consolidated on motion of an owner or interest holder.

4 Sec. 13. NEW SECTION. 809A.13 IN REM PROCEEDINGS.

5 1. A judicial in rem forfeiture proceeding may be brought  
6 by the prosecuting attorney in addition to, or in lieu of,  
7 civil in personam forfeiture procedures, and is also subject  
8 to the provisions of this section. If a forfeiture is  
9 authorized by this chapter, it shall be ordered by the court  
10 in the in rem action.

11 2. An action in rem may be brought by the prosecuting  
12 attorney pursuant to a notice of pending forfeiture or  
13 verified complaint for forfeiture. The state may serve the  
14 complaint in the manner provided in section 809A.8, subsection  
15 2, or as provided by the rules of civil procedure.

16 3. Only an owner of or an interest holder in the property  
17 who has timely filed a proper claim pursuant to section  
18 809A.11 may file an answer in an action in rem. For the  
19 purposes of this section, an owner of or interest holder in  
20 property who has filed a claim and answer shall be referred to  
21 as a claimant.

22 4. The answer shall be signed by the owner or interest  
23 holder under penalty of perjury and shall be in accordance  
24 with R.C.P. 72 and shall also set forth all of the following:

25 a. The caption of the proceedings and identifying number,  
26 if any, as set forth on the notice of pending forfeiture or  
27 complaint and the name of the claimant.

28 b. The address where the claimant will accept mail.

29 c. The nature and extent of the claimant's interest in  
30 property.

31 d. The date, the identity of the transferor, and the  
32 circumstances of the claimant's acquisition of the interest in  
33 the property.

34 e. The specific provision of this chapter relied on in  
35 asserting that it is not subject to forfeiture.

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- 1 f. All essential facts supporting each assertion.
- 2 g. The specific relief sought.
- 3 5. The answer, accompanied by a bond to the court, shall
- 4 be filed within twenty days after service on the claimant of
- 5 the civil in rem complaint. The bond amount shall at a
- 6 minimum be the greater of two thousand five hundred dollars or
- 7 ten percent of the estimated value of the property as alleged
- 8 in the complaint, or up to a maximum of two hundred fifty
- 9 thousand dollars. In lieu of a cost bond, a claimant may
- 10 under penalty of perjury move the court to proceed pursuant to
- 11 chapter 610. Any funds received by the court as cost bonds
- 12 shall be placed in an interest-bearing account pending final
- 13 disposition of the case. The court shall approve sureties
- 14 upon condition that the claimant shall pay all costs and
- 15 expense of the forfeiture proceedings as provided in section
- 16 809A.16 or 809A.17.
- 17 6. The rules of civil procedure shall apply to discovery
- 18 by the state and any claimant who has timely answered the
- 19 complaint.
- 20 7. The forfeiture hearing shall be held without a jury and
- 21 within sixty days after service of the complaint unless
- 22 continued for good cause. The prosecuting attorney shall have
- 23 the initial burden of proving the property is subject to
- 24 forfeiture by a preponderance of the evidence. If the state
- 25 so proves the property is subject to forfeiture, the claimant
- 26 has the burden of proving that the claimant has an interest in
- 27 the property which is exempt from forfeiture under this
- 28 chapter by a preponderance of the evidence.
- 29 8. The court shall order the interest in the property
- 30 returned or conveyed to the claimant if the prosecuting
- 31 attorney fails to meet the state's burden or the claimant
- 32 establishes by a preponderance of the evidence that the
- 33 claimant has an interest that is exempt from forfeiture. The
- 34 court shall order all other property forfeited to the state
- 35 and conduct further proceedings pursuant to sections 809A.16

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1 and 809A.17.

2 Sec. 14. NEW SECTION. 809A.14 IN PERSONAM PROCEEDINGS.

3 1. A judicial in personam forfeiture proceeding brought by  
4 a prosecuting attorney pursuant to an in personam civil action  
5 alleging conduct giving rise to forfeiture is subject to the  
6 provisions of this section. If a forfeiture is authorized by  
7 this chapter, it shall be ordered by the court in the in  
8 personam action. This action shall be in addition to or in  
9 lieu of in rem forfeiture procedures.

10 2. The court, on application of the prosecuting attorney,  
11 may enter any order authorized by section 809A.12, or any  
12 other appropriate order to protect the state's interest in  
13 property forfeited or subject to forfeiture.

14 3. The court may issue a temporary restraining order on  
15 application of the prosecuting attorney, if the state  
16 demonstrates both of the following:

17 a. Probable cause exists to believe that in the event of a  
18 final judgment, the property involved would be subject to  
19 forfeiture under this chapter.

20 b. Provision of notice would jeopardize the availability  
21 of the property for forfeiture.

22 4. Notice of the issuance of a temporary restraining order  
23 and an opportunity for a hearing shall be given to persons  
24 known to have an interest in the property. A hearing shall be  
25 held at the earliest possible date in accordance with R.C.P.  
26 326, and shall be limited to the following issues:

27 a. Whether a probability exists that the state will  
28 prevail on the issue of forfeiture.

29 b. Whether the failure to enter the order will result in  
30 the property being destroyed, conveyed, encumbered, removed  
31 from the jurisdiction of the court, concealed, or otherwise  
32 made unavailable for forfeiture.

33 c. Whether the need to preserve the availability of  
34 property outweighs the hardship on any owner or interest  
35 holder against whom the order is to be entered.

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1 5. On a determination that a person committed conduct  
2 giving rise to forfeiture under this chapter, the court shall  
3 do both of the following:

4 a. Enter a judgment of forfeiture of the property found to  
5 be subject to forfeiture described in the complaint.

6 b. Authorize the prosecuting attorney or designee or any  
7 law enforcement officer to seize all property ordered  
8 forfeited which was not previously seized or is not under  
9 seizure.

10 6. Except as provided in section 809A.12, a person  
11 claiming an interest in property subject to forfeiture under  
12 this chapter shall not intervene in a trial or appeal of a  
13 criminal action or in an in personam civil action involving  
14 the forfeiture of the property.

15 7. Following the entry of an in personam forfeiture order,  
16 the prosecuting attorney may proceed with an in rem action to  
17 resolve the remaining interests in the property. The  
18 following procedures shall apply:

19 a. The prosecuting attorney shall give notice of pending  
20 forfeiture, in the manner provided in section 809A.8, to all  
21 owners and interest holders who have not previously been given  
22 notice.

23 b. An owner of or interest holder in property that has  
24 been ordered forfeited and whose claim is not precluded may  
25 file a claim as described in section 809A.11, within thirty  
26 days after initial notice of pending forfeiture or after  
27 notice under paragraph "a", whichever is earlier.

28 c. If the state does not recognize the claimed exemption,  
29 the prosecuting attorney shall file a complaint and the court  
30 shall hold an in rem forfeiture hearing as provided for in  
31 section 809A.13.

32 d. In accordance with the findings made at the hearing,  
33 the court may amend the order of forfeiture if it determines  
34 that any claimant has established by a preponderance of the  
35 evidence that the claimant has an interest in the property

1 which is exempt under the provision of section 809A.5.

2 Sec. 15. NEW SECTION. 809A.15 SUBSTITUTED ASSETS --  
3 SUPPLEMENTAL REMEDIES.

4 1. The court shall order the forfeiture of any other  
5 property of a person, including a claimant, up to the value of  
6 that person's property found by the court to be subject to  
7 forfeiture under this chapter, if any of the following applies  
8 to the person's forfeitable property:

9 a. The forfeitable property cannot be located.

10 b. The forfeitable property has been transferred or  
11 conveyed to, sold to, or deposited with a third party.

12 c. The forfeitable property is beyond the jurisdiction of  
13 the court.

14 d. The forfeitable property has been substantially  
15 diminished in value while not in the actual physical custody  
16 of the court, the seizing agency, the prosecuting attorney, or  
17 their designee.

18 e. The forfeitable property has been commingled with other  
19 property that cannot be divided without difficulty.

20 f. The forfeitable property is subject to any interest of  
21 another person which is exempt from forfeiture under this  
22 chapter.

23 2. a. The prosecuting attorney may institute a civil  
24 action in district court against any person with notice or  
25 actual knowledge who destroys, conveys, encumbers, removes  
26 from the jurisdiction of the court, conceals, or otherwise  
27 renders unavailable property alleged to be subject to  
28 forfeiture if either of the following apply:

29 (1) A forfeiture lien or notice of pending forfeiture has  
30 been filed and notice given pursuant to section 809A.8.

31 (2) A complaint pursuant to section 809A.13 alleging  
32 conduct giving rise to forfeiture has been filed and notice  
33 given pursuant to such section 809A.8.

34 b. The court shall enter a final judgment in an amount  
35 equal to the value of the lien not to exceed the fair market

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1 value of the property, or if a lien, does not exist in an  
2 amount equal to the fair market value of the property,  
3 together with reasonable investigative expenses and attorney's  
4 fees.

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

7 Sec. 16. NEW SECTION. 809A.16 DISPOSITION OF PROPERTY.

8 1. If notice of pending forfeiture is properly served in  
9 an action in rem or in personam in which personal property,  
10 having an estimated value of five thousand dollars or less, is  
11 seized, and no claim opposing forfeiture is filed within  
12 thirty days of service of such notice, the prosecuting  
13 attorney shall prepare a written declaration of forfeiture of  
14 the subject property to the state and allocate the property  
15 according to the provisions of section 809A.17.

16 2. Within one hundred eighty days of the date of a  
17 declaration of forfeiture, an owner or interest holder in  
18 property declared forfeited pursuant to subsection 1, may  
19 petition the court to have the declaration of forfeiture set  
20 aside, after making a prima facie showing that the state  
21 failed to serve proper notice as provided by section 809A.13.  
22 Upon such a showing the court shall allow the state to  
23 demonstrate by a preponderance of the evidence that notice was  
24 properly served. If the state fails to meet its burden of  
25 proof, the court may order the declaration of forfeiture set  
26 aside. The state may proceed with judicial proceedings  
27 pursuant to this chapter.

28 3. Except as provided in subsection 1, if a proper claim  
29 is not timely filed in an action in rem, or if a proper answer  
30 is not timely filed in response to a complaint, the  
31 prosecuting attorney may apply for an order of forfeiture and  
32 an allocation of forfeited property pursuant to section  
33 809A.17. Under such circumstance and upon a determination by  
34 the court that the state's written application established the  
35 court's jurisdiction, the giving of proper notice, and facts

1 sufficient to show probable cause for forfeiture, the court  
2 shall order the property forfeited to the state.

3 4. After final disposition of all claims timely filed in  
4 an action in rem, or after final judgment and disposition of  
5 all claims timely filed in an action in personam, the court  
6 shall enter an order that the state has clear title to the  
7 forfeited property interest. Title to the forfeited property  
8 interest and its proceeds shall be deemed to have vested in  
9 the state on the commission of the conduct giving rise to the  
10 forfeiture under this chapter.

11 5. The court, on application of the prosecuting attorney,  
12 may release or convey forfeited personal property to a  
13 regulated interest holder if any of the following applies:

14 a. The prosecuting attorney, in the attorney's discretion,  
15 has recognized in writing that the regulated interest holder  
16 has an interest in the property and informs the court that the  
17 property interest is exempt from forfeiture.

18 b. The regulated interest holder's interest was acquired  
19 in the regular course of business as a regulated interest  
20 holder.

21 c. The amount of the regulated interest holder's  
22 encumbrance is readily determinable and has been reasonably  
23 established by proof made available by the prosecuting  
24 attorney to the court.

25 d. The encumbrance held by the regulated interest holder  
26 seeking possession is the only interest exempted from  
27 forfeiture and the order forfeiting the property to the state  
28 transferred all of the rights of the owner prior to  
29 forfeiture, including rights to redemption, to the state.

30 6. After the court's release or conveyance under  
31 subsection 5, the regulated interest holder shall dispose of  
32 the property by a commercially reasonable public sale. Within  
33 ten days of disposition the regulated interest holder shall  
34 tender to the state the amount received at disposition less  
35 the amount of the regulated interest holder's encumbrance and

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1 reasonable expense incurred by the interest holder in  
2 connection with the sale or disposal. For the purposes of  
3 this section, "commercially reasonable" means a sale or  
4 disposal that would be commercially reasonable under chapter  
5 554, article 7.

6 7. On order of the court or declaration of forfeiture  
7 forfeiting the subject property, the state may transfer good  
8 and sufficient title to any subsequent purchaser or  
9 transferee. The title shall be recognized by all courts and  
10 agencies of this state, and any political subdivision. On  
11 entry of judgment in favor of a person claiming an interest in  
12 the property that is subject to forfeiture proceedings under  
13 this chapter, the court shall enter an order that the property  
14 or interest in property shall be released or delivered  
15 promptly to that person free of liens and encumbrances under  
16 this chapter, and that the person's cost bond shall be  
17 discharged.

18 8. Upon motion by the prosecuting attorney, if it appears  
19 after a hearing that reasonable cause existed for the seizure  
20 for forfeiture or for the filing of the notice of pending  
21 forfeiture or complaint, the court shall find all of the  
22 following:

- 23 a. That reasonable cause existed, or that the action was
- 24 taken under a reasonable good faith belief that it was proper.
- 25 b. That the claimant is not entitled to costs or damages.
- 26 c. That the person or seizing agency who made the seizure
- 27 and the prosecuting attorney are not liable to suit or
- 28 judgment for the seizure, suit, or prosecution.

29 9. The court shall order a claimant who fails to establish  
30 that a substantial portion of the claimant's interest is  
31 exempt from forfeiture under section 809A.5, to pay the  
32 reasonable costs and expenses of all of the following:

- 33 a. Of any claimant who established that the claimant's
- 34 entire interest is exempt from forfeiture under section
- 35 809A.5.

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1 b. Of the state for the investigation and prosecution of  
2 the matter, including reasonable attorney's fees, in  
3 connection with that claimant.

4 Sec. 17. NEW SECTION. 809A.17 DISPOSITION OF FORFEITED  
5 PROPERTY.

6 1. A person having control over forfeited property shall  
7 communicate that fact to the attorney general or the attorney  
8 general's designee.

9 2. Forfeited property not needed as evidence in a criminal  
10 case shall be delivered to the department of justice, or, upon  
11 written authorization of the attorney general or the attorney  
12 general's designee, the property may be destroyed, sold, or  
13 delivered to an appropriate agency for disposal in accordance  
14 with this section.

15 3. Forfeited property may be used by the department of  
16 justice in the enforcement of the criminal law. The  
17 department may give, sell, or trade property to any other  
18 state agency or to any other law enforcement agency within the  
19 state if, in the opinion of the attorney general, it will  
20 enhance law enforcement within the state.

21 4. Forfeited property which is not used by the department  
22 of justice in the enforcement of the law may be requisitioned  
23 by the department of public safety or any law enforcement  
24 agency within the state for use in enforcing the criminal laws  
25 of this state. Forfeited property not requisitioned may be  
26 delivered to the director of the department of general  
27 services to be disposed of in the same manner as property  
28 received pursuant to section 18.15.

29 5. Notwithstanding subsection 1, 2, 3, or 4, the following  
30 apply:

31 a. Forfeited property which is a controlled substance or a  
32 simulated, counterfeit, or imitation-controlled substance  
33 shall be disposed of as provided in section 124.506.

34 b. Forfeited property which is a weapon or ammunition  
35 shall be deposited with the department of public safety to be

1 counsel, the officer before whom the testimony is to be taken,  
2 law enforcement officials, and a certified shorthand reporter.  
3 Prior to oral examination, the person shall be advised of the  
4 person's right to refuse to answer any questions on the basis  
5 of the privilege against self-incrimination. The examination  
6 shall be conducted in a manner consistent with the rules  
7 dealing with the taking of depositions.

8 3. Except as otherwise provided in this section, prior to  
9 the filing of a civil or criminal proceeding or action  
10 relating to such a proceeding, documentary material,  
11 transcripts, or oral testimony, in the possession of the  
12 prosecuting attorney, shall not be available for examination  
13 by any individual other than a law enforcement official or  
14 agent of such official without the consent of the person who  
15 produced the material, transcripts, or oral testimony.

16 4. A person shall not knowingly remove from any place,  
17 conceal, withhold, destroy, mutilate, alter, or by any other  
18 means falsify any documentary material that is the subject of  
19 a subpoena, with intent to avoid, evade, prevent, or obstruct  
20 compliance in whole or in part by any person with any duly  
21 served subpoena of the prosecuting attorney under this  
22 section. A violation of this subsection is a class "D"  
23 felony. The prosecuting attorney shall investigate and  
24 prosecute suspected violations of this subsection.

25 5. Acts or omissions by the prosecuting attorneys in the  
26 course of their duties in the enforcement of any of the  
27 provisions of this chapter, including provision of any legal  
28 services prior to charging, complaint, or seizure, are  
29 prosecutorial and shall not subject the attorneys or their  
30 principals to civil liability.

31 Sec. 19. NEW SECTION. 809A.19 IMMUNITY ORDERS.

32 1. If a person is or may be called to produce evidence at  
33 a deposition, hearing, or trial under this chapter or at an  
34 investigation brought by the prosecuting attorney under  
35 section 809A.18, the district court in which the deposition,

1 hearing, trial, or investigation is or may be held shall, upon  
2 certification in writing of a request of the prosecuting  
3 attorney, issue an order, ex parte or after a hearing,  
4 requiring the person to produce evidence, notwithstanding that  
5 person's refusal to do so on the basis of the privilege  
6 against self-incrimination.

7 2. The prosecuting attorney may certify in writing a  
8 request for an ex parte order under subsection 1 if in the  
9 prosecuting attorney's judgment both of the following apply:

10 a. The production of the evidence may be necessary to the  
11 public interest.

12 b. The person has refused or is likely to refuse to  
13 produce evidence on the basis of the privilege against self-  
14 incrimination.

15 3. A person shall not refuse to comply with an order  
16 issued under subsection 1 on the basis of a self-incrimination  
17 privilege. If the person refuses to comply with the order  
18 after being informed of its existence by the presiding  
19 officer, the person may be compelled or punished by the  
20 district court issuing an order for civil or criminal  
21 contempt.

22 4. The production of evidence compelled by order issued  
23 under subsection 1, and any information directly or indirectly  
24 derived from the production of evidence, shall not be used  
25 against the person in a subsequent criminal case, except in a  
26 prosecution for perjury, false swearing, or an offense  
27 otherwise involving a failure to comply with the order.

28 Sec. 20. NEW SECTION. 809A.20 STATUTE OF LIMITATIONS.

29 A civil action under this chapter shall be commenced within  
30 seven years after the last conduct giving rise to forfeiture  
31 or the cause of action becomes known or should have become  
32 known, excluding any time during which either the property or  
33 defendant is out of the state or in confinement, or during  
34 which criminal proceedings relating to the same conduct are  
35 pending.

1     Sec. 21. NEW SECTION. 809A.21 SUMMARY FORFEITURE OF  
2 CONTROLLED SUBSTANCES.

3     Controlled substances included in chapter 124 which are  
4 contraband and any controlled substance whose owners are  
5 unknown are summarily forfeited to the state. The court may  
6 include in any judgment under this chapter an order forfeiting  
7 any controlled substance involved in the conduct giving rise  
8 to forfeiture to the extent of the defendant's interest.

9     Sec. 22. NEW SECTION. 809A.22 BAR TO COLLATERAL ACTION.

10    A person claiming an interest in property subject to  
11 forfeiture shall not commence or maintain any action against  
12 the state concerning the validity of the alleged interest  
13 other than as provided in this chapter.

14    Sec. 23. NEW SECTION. 809A.23 STATUTORY CONSTRUCTION.

15    The provisions of this chapter shall be liberally construed  
16 to effectuate its remedial purposes. Civil remedies under  
17 this chapter shall be supplemental and not mutually exclusive.  
18 The civil remedies do not preclude and are not precluded by  
19 any other provision of law.

20    Sec. 24. NEW SECTION. 809A.24 UNIFORMITY OF APPLICATION.

21    1. The provisions of this chapter shall be applied and  
22 construed to effectuate its general purpose to make uniform  
23 the law with respect to the subject of this chapter among  
24 states enacting this law.

25    2. The attorney general may enter into reciprocal  
26 agreements with the attorney general or chief prosecuting  
27 attorney of any state to effectuate the purposes of this  
28 chapter.

29                                   DIVISION II

30                                   IOWA ONGOING CRIMINAL CONDUCT ACT

31    Sec. 25. NEW SECTION. 706A.1 DEFINITIONS.

32    In this chapter, unless the context otherwise requires:

33    1. "Criminal network" means any combination of persons  
34 engaging, for financial gain on a continuing basis, in conduct  
35 which is an indictable offense under the laws of this state

1 regardless of whether such conduct is charged or indicted. As  
2 used in this subsection, persons combine if they collaborate  
3 or act in concert in carrying on or furthering the activities  
4 or purposes of a network even though such persons may not know  
5 each other's identity, membership in the network changes from  
6 time to time, or one or more members of the network stand in a  
7 wholesaler-retailer, service provider, or other arm's length  
8 relationship with others as to conduct in the furtherance of  
9 the financial goals of the network.

10 2. "Enterprise" includes any sole proprietorship,  
11 partnership, corporation, trust, or other legal entity, or any  
12 unchartered union, association, or group of persons associated  
13 in fact although not a legal entity, and includes unlawful as  
14 well as lawful enterprises.

15 3. "Proceeds" means property acquired or derived directly  
16 or indirectly from, produced through, realized through, or  
17 caused by an act or omission and includes any property of any  
18 kind.

19 4. "Property" means anything of value, and includes any  
20 interest in property, including any benefit, privilege, claim,  
21 or right with respect to anything of value, whether real or  
22 personal, tangible, or intangible, without reduction for  
23 expenses incurred for acquisition, maintenance, production, or  
24 any other purpose.

25 5. "Specified unlawful activity" means any act, including  
26 any preparatory or completed offense, committed for financial  
27 gain on a continuing basis, that is punishable as an  
28 indictable offense under the laws of the state in which it  
29 occurred and under the laws of this state.

30 Sec. 26. NEW SECTION. 706A.2 VIOLATIONS.

31 1. SPECIFIED UNLAWFUL ACTIVITY INFLUENCED ENTERPRISES.

32 a. It is unlawful for any person who has knowingly  
33 received any proceeds of specified unlawful activity to use or  
34 invest, directly or indirectly, any part of such proceeds in  
35 the acquisition of any interest in any enterprise or any real

1 property, or in the establishment or operation of any  
2 enterprise.

3 b. It is unlawful for any person to knowingly acquire or  
4 maintain, directly or indirectly, any interest in or control  
5 of any enterprise or real property through specified unlawful  
6 activity.

7 c. It is unlawful for any person to knowingly conduct the  
8 affairs of any enterprise through specified unlawful activity  
9 or to knowingly participate, directly, or indirectly, in any  
10 enterprise that the person knows is being conducted through  
11 specified unlawful activity.

12 d. It is unlawful for any person to conspire or attempt to  
13 violate or to solicit or facilitate the violations of the  
14 provisions of paragraphs "a", "b", or "c".

15 2. FACILITATION OF A CRIMINAL NETWORK. It is unlawful for  
16 a person acting with knowledge of the financial goals and  
17 criminal objectives of a criminal network to knowingly  
18 facilitate criminal objectives of the network by doing any of  
19 the following:

20 a. Engaging in violence or intimidation or inciting or  
21 inducing another to engage in violence or intimidation.

22 b. Inducing or attempting to induce a person believed to  
23 have been called or who may be called as a witness to  
24 unlawfully withhold any testimony, testify falsely, or absent  
25 themselves from any official proceeding to which the potential  
26 witness has been legally summoned.

27 c. Attempting by means of bribery, misrepresentation,  
28 intimidation, or force to obstruct, delay, or prevent the  
29 communication of information or testimony relating to a  
30 violation of any criminal statute to a peace officer,  
31 magistrate, prosecutor, grand jury, or petit jury.

32 d. Injuring or damaging another person's body or property  
33 because that person or any other person gave information or  
34 testimony to a peace officer, magistrate, prosecutor, or grand  
35 jury.

1 e. Attempting to suppress by an act of concealment,  
2 alteration, or destruction any physical evidence that might  
3 aid in the discovery, apprehension, prosecution, or conviction  
4 of any person.

5 f. Making any property available to a member of the  
6 criminal network.

7 g. Making any service other than legal services available  
8 to a member of the criminal network.

9 h. Inducing or committing any act or omission by a public  
10 servant in violation of the public servant's official duty.

11 i. Obtaining any benefit for a member of a criminal  
12 network by means of false or fraudulent pretenses,  
13 representation, promises or material omissions.

14 j. Making a false sworn statement regarding a material  
15 issue, believing it to be false, or making any statement,  
16 believing it to be false, regarding a material issue to a  
17 public servant in connection with an application for any  
18 benefit, privilege, or license, or in connection with any  
19 official investigation or proceeding.

20 3. MONEY LAUNDERING. It is unlawful for a person to  
21 commit money laundering as defined in chapter 706B.

22 4. ACTS OF SPECIFIED UNLAWFUL ACTIVITY. It is unlawful  
23 for a person to commit specified unlawful activity as defined  
24 in section 706A.1.

25 5. NEGLIGENT EMPOWERMENT OF SPECIFIED UNLAWFUL ACTIVITY.

26 a. It is unlawful for a person to negligently allow  
27 property owned or controlled by the person or services  
28 provided by the person, other than legal services, to be used  
29 to facilitate specified unlawful activity, whether by  
30 entrustment, loan, rent, lease, bailment, or otherwise.

31 b. Damages for negligent empowerment of specified unlawful  
32 activity shall include all reasonably foreseeable damages  
33 proximately caused by the specified unlawful activity,  
34 including, in a case brought or intervened in by the state,  
35 the costs of investigation and criminal and civil litigation

1 of the specified unlawful activity incurred by the government  
2 for the prosecution and defense of any person involved in the  
3 specified unlawful activity, and the imprisonment, probation,  
4 parole, or other expense reasonably necessary to detain,  
5 punish, and rehabilitate any person found guilty of the  
6 specified unlawful activity, except for the following:

7 (1) If the person empowering the specified unlawful  
8 activity acted only negligently and was without knowledge of  
9 the nature of the activity and could not reasonably have known  
10 of the unlawful nature of the activity or that it was likely  
11 to occur, damages shall be limited to the greater of the  
12 following:

13 (a) The cost of the investigation and litigation of the  
14 person's own conduct plus the value of the property or service  
15 involved as of the time of its use to facilitate the specified  
16 unlawful activity.

17 (b) All reasonably foreseeable damages to any person,  
18 except any person responsible for the specified unlawful  
19 activity, and to the general economy and welfare of the state  
20 proximately caused by the person's own conduct.

21 (2) If the property facilitating the specified unlawful  
22 activity was taken from the possession or control of the  
23 person without that person's knowledge and against that  
24 person's will in violation of the criminal law, damages shall  
25 be limited to reasonably foreseeable damages to any person,  
26 except persons responsible for the taking or the specified  
27 unlawful activity, and to the general economy and welfare of  
28 the state proximately caused by the person's negligence, if  
29 any, in failing to prevent its taking.

30 (3) If the person was aware of the possibility that the  
31 property or service would be used to facilitate some form of  
32 specified unlawful activity and acted to prevent the unlawful  
33 use, damages shall be limited to reasonably foreseeable  
34 damages to any person, except any person responsible for the  
35 specified unlawful activity, and to the general economy and

1 welfare of the state proximately caused by the person's  
2 failure, if any, to act reasonably to prevent the unlawful  
3 use.

4 (4) The plaintiff shall carry the burden of proof by a  
5 preponderance of the evidence that the specified unlawful  
6 activity occurred and was facilitated by the property or  
7 services. The defendant shall have the burden of proof by a  
8 preponderance of the evidence as to circumstances constituting  
9 lack of negligence and on the limitations on damages in this  
10 subsection.

11 Sec. 27. NEW SECTION. 706A.3 CIVIL REMEDIES -- ACTIONS.

12 1. The prosecuting attorney or an aggrieved person may  
13 institute civil proceedings against any person in district  
14 court seeking relief from conduct constituting a violation of  
15 this chapter or to prevent, restrain, or remedy such  
16 violation.

17 2. The district court has jurisdiction to prevent,  
18 restrain, or remedy such violations by issuing appropriate  
19 orders. Prior to a determination of liability such orders may  
20 include, but are not limited to, entering restraining orders  
21 or injunctions, requiring the execution of satisfactory  
22 performance bonds, creating receiverships, and enforcing  
23 constructive trusts in connection with any property or  
24 interest subject to damages, forfeiture, or other remedies or  
25 restraints pursuant to this chapter.

26 3. If the plaintiff in such a proceeding proves the  
27 alleged violation by a preponderance of the evidence, the  
28 district court, after making due provision for the rights of  
29 innocent persons, shall grant relief by entering any  
30 appropriate order or judgment, including any of the following:

31 a. Ordering any defendant to divest the defendant of any  
32 interest in any enterprise, or in any real property.

33 b. Imposing reasonable restrictions upon the future  
34 activities or investments of any defendant, including, but not  
35 limited to, prohibiting any defendant from engaging in the

1 same type of endeavor as any enterprise in which the defendant  
2 was engaged in a violation of this chapter.

3 c. Ordering the dissolution or reorganization of any  
4 enterprise.

5 d. Ordering the payment of all reasonable costs and  
6 expenses of the investigation and prosecution of any  
7 violation, civil or criminal, including reasonable attorney  
8 fees in the trial and appellate courts. Such payments  
9 received by the state, by judgment, settlement, or otherwise,  
10 shall be considered forfeited property and disposed of  
11 pursuant to section 809A.17.

12 e. Ordering the forfeiture of any property subject to  
13 forfeiture under chapter 809A, pursuant to the provisions and  
14 procedures of that chapter.

15 f. Ordering the suspension or revocation of any license,  
16 permit, or prior approval granted to any person by any agency  
17 of the state.

18 g. Ordering the surrender of the certificate of existence  
19 of any corporation organized under the laws of this state or  
20 the revocation of any certificate authorizing a foreign  
21 corporation to conduct business within this state, upon  
22 finding that for the prevention of future violations, the  
23 public interest requires the certificate of the corporation to  
24 be surrendered and the corporation dissolved or the  
25 certificate revoked.

26 4. Relief under subsection 3, paragraphs "e", "f", and "g"  
27 shall not be granted in civil proceedings instituted by an  
28 aggrieved person unless the prosecuting attorney has  
29 instituted the proceedings or intervened. In any action under  
30 this section brought by the state or in which the state has  
31 intervened, the state may employ any of the powers of seizure  
32 and restraint of property as are proved for forfeiture actions  
33 under chapter 809A, or as are provided for the collection of  
34 taxes payable and past due, and whose collection has been  
35 determined to be in jeopardy.

1 5. In a proceeding initiated under this section,  
2 injunctive relief shall be granted in conformity with the  
3 principles that govern the granting of relief from injury or  
4 threatened injury in other civil cases, but no showing of  
5 special or irreparable injury is required. Pending final  
6 determination of a proceeding initiated under this section, a  
7 temporary restraining order or a preliminary injunction may be  
8 issued upon a showing of immediate danger of significant  
9 injury, including the possibility that a judgment for money  
10 damages might be difficult to execute, and, in a proceeding  
11 initiated by a nongovernmental aggrieved person, upon the  
12 execution of proper bond against injury for an injunction  
13 improvidently granted.

14 6. Any person who is in possession or control of proceeds  
15 of any violation of this chapter, is an involuntary trustee  
16 and holds the property in constructive trust for the benefit  
17 of the person entitled to remedies under this chapter, unless  
18 the holder acquired the property as a bona fide purchaser for  
19 value who was not knowingly taking part in an illegal  
20 transaction.

21 7. Any person whose business or property is directly or  
22 indirectly injured by conduct constituting a violation of this  
23 chapter, by any person, may bring a civil action, subject to  
24 the in pari delicto defense and shall recover threefold the  
25 actual damages sustained and the costs and expenses of the  
26 investigation and prosecution of the action including  
27 reasonable attorney fees in the trial and appellate courts.  
28 Damages shall not include pain and suffering. Any person  
29 injured shall have a claim to any property against which any  
30 fine, or against which treble damages under subsection 10 or  
31 11 may be imposed, superior to any right or claim of the state  
32 to the property, up to the value of actual damages and costs  
33 awarded in an action under this subsection. The state shall  
34 have a right of subrogation to the extent that an award made  
35 to a person so injured is satisfied out of property against

1 which any fine or civil remedy in favor of the state may be  
2 imposed.

3 8. a. If liability of a legal entity is based on the  
4 conduct of another, through respondent superior or otherwise,  
5 the legal entity shall not be liable for more than actual  
6 damages and costs, including a reasonable attorney's fee, if  
7 the legal entity affirmatively shows by a preponderance of the  
8 evidence that both of the following apply:

9 (1) The conduct was not engaged in, authorized, solicited,  
10 commanded, or recklessly tolerated by the legal entity, by the  
11 directors of the legal entity or by a high managerial agent of  
12 the legal entity acting within the scope of employment.

13 (2) The conduct was not engaged in by an agent of the  
14 legal entity acting within the scope of employment and in  
15 behalf of the legal entity.

16 b. For the purposes of this subsection:

17 (1) "Agent" means any officer, director, or employee of  
18 the legal entity, or any other person who is authorized to act  
19 in behalf of the legal entity.

20 (2) "High managerial agent" means any officer of the legal  
21 entity or, in the case of a partnership, a partner, or any  
22 other agent in a position of comparable authority with respect  
23 to the formulation of policy of the legal entity.

24 (3) Notwithstanding any other provision of law, any  
25 pleading, motion, or other paper filed by a nongovernmental  
26 aggrieved party in connection with a proceeding or action  
27 under subsection 7 shall be verified. If such aggrieved  
28 person is represented by an attorney, such pleading, motion,  
29 or other paper shall be signed by at least one attorney of  
30 record in the attorney's individual name, whose address shall  
31 be stated.

32 If such pleading, motion, or other paper includes an  
33 averment of fraud, coercion, accomplice, respondent superior,  
34 conspiratorial, enterprise, or other vicarious accountability,  
35 it shall state, insofar as practicable, the circumstances with

1 particularity. The verification and the signature by an  
2 attorney required by this subsection shall constitute a  
3 certification by the signor that the attorney has carefully  
4 read the pleading, motion, or other paper and, based on a  
5 reasonable inquiry, believes that all of the following exist:

6 (a) It is well grounded in fact.

7 (b) It is warranted by existing law, or a good faith  
8 argument for the extension, modification, or reversal of  
9 existing law.

10 (c) It is not made for an improper purpose, including to  
11 harass, to cause unnecessary delay, or to impose a needless  
12 increase in the cost of litigation.

13 The court may, after a hearing and appropriate findings of  
14 fact, impose upon any person who verified the complaint,  
15 cross-claim or counterclaim, or any attorney who signed it in  
16 violation of this subsection, or both, a fit and proper  
17 sanction, which may include an order to pay to the other party  
18 or parties the amount of the reasonable expenses incurred  
19 because of the complaint or claim, including reasonable  
20 attorney fees. If the court determines that the filing of a  
21 complaint or claim under subsection 7 by a nongovernmental  
22 party was frivolous in whole or in part, the court shall award  
23 double the actual expenses, including attorney fees, incurred  
24 because of the frivolous portion of the complaint or claim.

25 9. Upon the filing of a complaint, cross-claim, or  
26 counterclaim under this section, an aggrieved person, as a  
27 jurisdictional prerequisite, shall immediately notify the  
28 attorney general of its filing and serve one copy of the  
29 pleading on the attorney general. Service of the notice on  
30 the attorney general does not limit or otherwise affect the  
31 right of the state to maintain an action under this section or  
32 intervene in a pending action and does not authorize the  
33 aggrieved person to name the state or the attorney general as  
34 a party to the action. The attorney general, upon timely  
35 application, may intervene or appear as amicus curiae in any

1 civil proceeding or action brought under this section if the  
2 attorney general certifies that, in the opinion of the  
3 attorney general, the proceeding or action is of general  
4 public importance. In any proceeding or action brought under  
5 this section by an aggrieved person, the state shall be  
6 entitled to the same relief as if it had instituted the  
7 proceeding or action.

8 10. a. Any prosecuting attorney may bring a civil action  
9 on behalf of a person whose business or property is directly  
10 or indirectly injured by conduct constituting a violation of  
11 this chapter, and shall recover threefold the damages  
12 sustained by such person and the costs and expenses of the  
13 investigation and prosecution of the action, including  
14 reasonable attorney fees in the trial and appellate courts.  
15 The court shall exclude from the amount of monetary relief  
16 awarded any amount of monetary relief which is any of the  
17 following:

18 (1) Which duplicates amounts which have been awarded for  
19 the same injury.

20 (2) Which is properly allocable to persons who have  
21 excluded their claims under paragraph "c".

22 b. In any action brought under this subsection, the  
23 prosecuting attorney, at such times, in such manner, and with  
24 such content as the court may direct, shall cause notice of  
25 the action to be given by publication. If the court finds  
26 that notice given solely by publication would deny due process  
27 to any person, the court may direct further notice to such  
28 person according to the circumstances of the case.

29 c. A person on whose behalf an action is brought under  
30 this subsection may elect to exclude from adjudication the  
31 portion of the state claim for monetary relief attributable to  
32 the person by filing notice of such election within such time  
33 as specified in the notice given under this subsection.

34 d. A final judgement in an action under this subsection  
35 shall preclude any claim under this subsection by a person on

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1 behalf of whom such action was brought who fails to give  
2 notice of exclusion within the times specified in the notice  
3 given under paragraph "b".

4 e. An action under this subsection on behalf of a person  
5 other than the state shall not be dismissed or compromised  
6 without the approval of the court, and notice of any proposed  
7 dismissal or compromise shall be given in such manner as the  
8 court directs.

9 11. The attorney general may bring a civil action as  
10 parens patriae on behalf of the general economy, resources,  
11 and welfare of this state, and shall recover threefold the  
12 proceeds acquired, maintained, produced, or realized by or on  
13 behalf of the defendant by reason of a violation of this  
14 chapter, plus the costs and expenses of the investigation and  
15 prosecution of the action, including reasonable attorney fees  
16 in the trial and appellate courts.

17 a. A person who has knowingly conducted or participated in  
18 the conduct of an enterprise in violation of section 706A.2,  
19 subsection 1, paragraph "c" is also jointly and severally  
20 liable for the greater of threefold the damage sustained  
21 directly or indirectly by the state by reason of conduct in  
22 furtherance of the violation or threefold the total of all  
23 proceeds acquired, maintained, produced, or realized by, or on  
24 behalf of any person by reason of participation in the  
25 enterprise except for the following:

26 (1) A person is not liable for conduct occurring prior to  
27 the person's first knowing participation in or conduct of the  
28 enterprise.

29 (2) If a person shows that, under circumstances  
30 manifesting a voluntary and complete renunciation of culpable  
31 intent, the person withdrew from the enterprise by giving a  
32 complete and timely warning to law enforcement authorities or  
33 by otherwise making a reasonable and substantial effort to  
34 prevent the conduct or result which is the criminal objective  
35 of the enterprise, the person is not liable for conduct

1 occurring after the person's withdrawal.

2 b. A person who has facilitated a criminal network in  
3 violation of section 706A.2, subsection 2, is also jointly and  
4 severally liable for all of the following:

5 (1) The damages resulting from the conduct in furtherance  
6 of the criminal objectives of the criminal network, to the  
7 extent that the person's facilitation was of substantial  
8 assistance to the conduct.

9 (2) The proceeds of conduct in furtherance of the criminal  
10 objectives of the criminal network, to the extent that the  
11 person's facilitation was of substantial assistance to the  
12 conduct.

13 (3) A person who has engaged in money laundering in  
14 violation of chapter 706B is also jointly and severally liable  
15 for the greater of threefold the damages resulting from the  
16 person's conduct or threefold the property that is the subject  
17 of the violation.

18 Sec. 28. NEW SECTION. 706A.4 CRIMINAL SANCTIONS.

19 A person who violates section 706A.2, subsection 1, 2, or  
20 4, commits a class "B" felony.

21 Sec. 29. NEW SECTION. 706A.5 UNIFORMITY OF CONSTRUCTION  
22 AND APPLICATION.

23 1. The provisions of this chapter shall be liberally  
24 construed to effectuate its remedial purposes. Civil remedies  
25 under this chapter shall be supplemental and not mutually  
26 exclusive. Civil remedies under this chapter do not preclude  
27 and are not precluded by other provisions of law.

28 2. The provisions of this chapter shall be applied and  
29 construed to effectuate its general purpose to make uniform  
30 the law with respect to the subject of this chapter among  
31 states enacting the law.

32 3. The attorney general may enter into reciprocal  
33 agreements with the attorney general or chief prosecuting  
34 attorney of any state to effectuate the purposes of this  
35 chapter.

1 DIVISION III

2 IOWA MONEY LAUNDERING ACT

3 Sec. 30. NEW SECTION. 706B.1 DEFINITIONS.

4 In this chapter, unless the context otherwise requires:

5 1. "Proceeds" means property acquired or derived directly  
6 or indirectly from, produced through, realized through, or  
7 caused by an act or omission and includes any property of any  
8 kind.

9 2. "Property" means anything of value, and includes any  
10 interest in property, including any benefit, privilege, claim,  
11 or right with respect to anything of value, whether real or  
12 personal, tangible or intangible.

13 3. "Specified unlawful activity" means any act, including  
14 any preparatory or completed offense, committed for financial  
15 gain on a continuing basis, that is punishable by confinement  
16 of one year or more under the laws of this state, or, if the  
17 act occurred outside this state, would be punishable by  
18 confinement of one year or more under the laws of the state in  
19 which it occurred and under the laws of this state.

20 4. "Transaction" includes a purchase, sale, trade, loan,  
21 pledge, investment, gift, transfer, transmission, delivery,  
22 deposit, withdrawal, payment, transfer between accounts,  
23 exchange of currency, extension of credit, purchase, or sale  
24 of any monetary instrument, use of a safe deposit box, or any  
25 other acquisition or disposition of property by whatever means  
26 effected.

27 5. "Unlawful activity" means any act which is chargeable  
28 or indictable as a public offense of any degree under the laws  
29 of the state in which the act occurred or under federal law  
30 and, if the act occurred in a state other than this state,  
31 would be chargeable or indictable as a public offense of any  
32 degree under the laws of this state or under federal law.

33 Sec. 31. NEW SECTION. 706B.2 MONEY LAUNDERING PENALTY --  
34 CIVIL REMEDIES.

35 1. It is unlawful for a person to do any of the following:

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1 a. To knowingly transport, receive, or acquire property or  
2 to conduct a transaction involving property, knowing that the  
3 property involved is the proceeds of some form of unlawful  
4 activity, when, in fact, the property is the proceeds of  
5 specified unlawful activity.

6 b. To make property available to another, by transaction,  
7 transportation, or otherwise, knowing that it is intended to  
8 be used for the purpose of committing or furthering the  
9 commission of specified unlawful activity.

10 c. To conduct a transaction knowing that the property  
11 involved in the transaction is the proceeds of some form of  
12 unlawful activity with the intent to conceal or disguise the  
13 nature, location, source, ownership, or control of the  
14 property or the intent to avoid a transaction-reporting  
15 requirement under chapter 529, the Iowa financial transaction  
16 reporting Act, or federal law.

17 d. To knowingly engage in the business of conducting,  
18 directing, planning, organizing, initiating, financing,  
19 managing, supervising, or facilitating transactions involving  
20 property, knowing that the property involved in the  
21 transaction is the proceeds of some form of unlawful activity,  
22 that, in fact, is the proceeds of specified unlawful activity.

23 2. A person who violates:

24 a. Subsection 1, paragraphs "a", "b", or "c", commits a  
25 class "C" felony, and may be fined not more than ten thousand  
26 dollars or twice the value of the property involved, whichever  
27 is greater, or by imprisonment for not more than 10 years, or  
28 both.

29 b. Subsection 1, paragraph "d", commits a class "D"  
30 felony, and may be fined not more than five thousand dollars  
31 or twice the value of the property involved, whichever is  
32 greater, or by imprisonment for not more than five years, or  
33 both.

34 3. A person who violates subsection 1, paragraph "a", "b",  
35 "c", or "d", is subject to a civil penalty of three times the

1 value of the property involved in the transaction, in addition  
2 to any criminal sanction imposed.

3 4. A person who is found guilty of a violation under this  
4 section also may be charged with violations of chapter 706A,  
5 and property involved in a violation under this chapter is  
6 subject to forfeiture under chapter 809A.

7 Sec. 32. NEW SECTION. 706B.3 UNIFORMITY OF CONSTRUCTION  
8 AND APPLICATION.

9 1. The provisions of this chapter shall be liberally  
10 construed to effectuate its remedial purposes. Civil remedies  
11 under this chapter shall be supplemental and not mutually  
12 exclusive. The civil remedies do not preclude and are not  
13 precluded by other provision of law.

14 2. The provisions of this chapter shall be applied and  
15 construed to effectuate its general purpose to make uniform  
16 the law with respect to the subject of this chapter among  
17 states enacting the law.

18 3. The attorney general may enter into reciprocal  
19 agreements with the attorney general or chief prosecuting  
20 attorney of any state to effectuate the purposes of this  
21 chapter.

22 DIVISION IV

23 IOWA FINANCIAL TRANSACTION REPORTING ACT

24 Sec. 33. NEW SECTION. 529.1 DEFINITIONS.

25 In this chapter, unless the context otherwise requires:

26 1. "Authorized delegate" means a person designated by the  
27 licensee.

28 2. "Check cashing" means exchanging for compensation a  
29 check, draft, money order, traveler's check, or a payment  
30 instrument of a licensee for money delivered to the presenter  
31 at the time and place of the presentation.

32 3. "Compensation" means any fee, commission, or other  
33 benefit.

34 4. "Conduct the business" means engaging in activities of  
35 a licensee or money transmitter more than ten times in any

1 calendar year for compensation.

2 5. "Foreign money exchange" means exchanging for  
3 compensation money of the United States government or a  
4 foreign government to or from money of another government at a  
5 conspicuously posted exchange rate at the time and place of  
6 the presentation of the money to be exchanged.

7 6. "Licensee" means a person licensed under this chapter.

8 7. "Location" means a place of business at which activity  
9 conducted by a licensee or money transmitter occurs.

10 8. "Money" means a medium of exchange authorized or  
11 adopted by a domestic or foreign government as a part of its  
12 currency and that is customarily used and accepted as a medium  
13 of exchange in the country of issuance.

14 9. "Money transmitter" means a person who is located or  
15 doing business in this state, including a check cashier and a  
16 foreign money exchanger, and who does any of the following:

17 a. Sells or issues payment instruments.

18 b. Conducts the business of receiving money for the  
19 transmission of or transmitting money.

20 c. Conducts the business of exchanging payment instruments  
21 or money into any form of money or payment instrument.

22 d. Conducts the business of receiving money for obligors  
23 for the purpose of paying obligors' bills, invoices, or  
24 accounts.

25 e. Meets the definition of a bank, financial agency, or  
26 financial institution as prescribed by 31 U.S.C. § 5312 or 31  
27 C.F.R. § 103.11 and any successor provisions.

28 10. "Payment instrument" means a check, draft, money  
29 order, traveler's check, or other instrument or order for the  
30 transmission or payment of money, sold to one or more persons,  
31 whether or not that instrument or order is negotiable.

32 "Payment instrument" does not include an instrument that is  
33 redeemable by the issuer in merchandise or service, a credit  
34 card voucher, or a letter of credit.

35 11. "Proceeds" means anything of value, and includes any

1 interest in property, including any benefit, privilege, claim,  
2 or right with respect to anything of value, whether real or  
3 personal, tangible or intangible, without reduction for  
4 expenses incurred for acquisition, maintenance, production, or  
5 any other purpose.

6 12. "Superintendent" means the superintendent of banking  
7 or the superintendent of credit unions.

8 13. "Transaction" includes a purchase, sale, trade, loan,  
9 pledge, investment, gift, transfer, transmission, delivery,  
10 deposit, withdrawal, payment, transfer between accounts,  
11 exchange of currency, extension of credit, purchase, or sale  
12 of any monetary instrument, use of a safe deposit box, or any  
13 other acquisition or disposition of property by whatever means  
14 effected.

15 14. "Transmitting money" includes the transmission of  
16 money by any means including transmission within this country  
17 or to or from locations abroad by payment instrument, wire,  
18 facsimile, or electronic transfer, courier, or otherwise.

19 15. "Traveler's check" means an instrument identified as a  
20 traveler's check on its face or commonly recognized as a  
21 traveler's check and issued in a money multiple of United  
22 States or foreign currency with a provision for a specimen  
23 signature of the purchaser to be completed at the time of  
24 purchase and a countersignature of the purchaser to be  
25 completed at the time of negotiation.

26 Sec. 34. NEW SECTION. 529.2 REPORTS.

27 1. Each licensee and authorized delegate of a licensee and  
28 each money transmitter shall file with the department of  
29 public safety, in a form prescribed by the department, a  
30 report of any activity or business conducted by a customer  
31 that the licensee, authorized delegate, or money transmitter  
32 believes may constitute a possible money laundering as  
33 prohibited by section 706B.2 or specified unlawful activity as  
34 defined in chapter 706B. That report shall be filed within  
35 fifteen days of the activity.

1 2. A licensee, authorized delegate, or money transmitter  
2 required to file a report regarding business conducted in this  
3 state pursuant to the federal Currency and Foreign  
4 Transactions Reporting Act, 31 U.S.C. § 5311 through 5326 and  
5 31 C.F.R. pt. 103, or 12 C.F.R. § 21.11, shall file a  
6 duplicate of that report with the department of public safety.

7 3. All persons engaged in a trade or business who receive  
8 more than ten thousand dollars in money in one transaction, or  
9 who receive more than ten thousand dollars in money through  
10 two or more related transactions, must complete and file with  
11 the department of public safety the information required by 26  
12 U.S.C. § 6050i and 26 C.F.R. § 1.6050I, and any successor  
13 provisions, concerning returns relating to cash received in  
14 trade or business.

15 4. A licensee, authorized delegate, or money transmitter  
16 that is regulated under the federal Currency and Foreign  
17 Transaction Reporting Act, 31 U.S.C. § 5325 and 31 C.F.R. pt.  
18 103, and that is required to make available prescribed records  
19 to the secretary of the United States department of treasury  
20 upon request at any time, shall follow the same prescribed  
21 procedures and create and maintain the same prescribed records  
22 relating to a transaction and shall make these records  
23 available to the department of public safety on request at any  
24 time.

25 5. a. If the superintendent finds that reasonable grounds  
26 exist for requiring additional recordkeeping and reporting in  
27 order to carry out the purposes of this chapter and prevent  
28 evasion of this chapter, the superintendent may issue an order  
29 requiring any group of licensees, authorized delegates or  
30 money transmitters in a geographic area to do any of the  
31 following:

32 (1) Obtain information described by the superintendent in  
33 the order regarding any of the following:

34 (a) Transactions in which the licensee, authorized  
35 delegate, or money transmitter is involved for the payment,

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1 receipt, or transfer of United States coin or currency or  
2 other monetary instruments described by the superintendent in  
3 the order, involving amounts or denominations of five hundred  
4 dollars or more, as the superintendent may prescribe.

5 (b) Other persons participating in those transactions.

6 (2) Maintain records of that information for five years or  
7 less, as the superintendent may prescribe and make those  
8 records available to the department of public safety and the  
9 superintendent.

10 (3) File a report with the department of public safety and  
11 the superintendent regarding any transaction described in the  
12 order in the manner prescribed in the order.

13 b. An order issued under paragraph "a" is not effective  
14 for more than sixty days unless renewed by the superintendent  
15 after finding that reasonable grounds exist for continuation  
16 of the order.

17 6. a. The timely filing of a report required by this  
18 section with the appropriate federal agency shall be deemed  
19 compliance with the reporting requirements of this section,  
20 unless the attorney general or the department of public safety  
21 has notified the superintendent that reports of that type are  
22 not being regularly and comprehensively transmitted by that  
23 federal agency to the department of public safety.

24 b. This chapter does not preclude a licensee, authorized  
25 delegate, money transmitter, financial institution, or a  
26 person engaged in a trade or business, in its discretion, from  
27 instituting contact with, and thereafter communicating with  
28 and disclosing customer financial records to appropriate state  
29 or local law enforcement agencies if the licensee, authorized  
30 delegate, money transmitter, financial institution, or person  
31 has information that may be relevant to a possible violation  
32 of any criminal statute or to the evasion or attempted evasion  
33 of any reporting requirement of this chapter.

34 c. A licensee, authorized delegate, money transmitter,  
35 financial institution, person engaged in a trade or business,

1 or any officer, employee, agent, or authorized delegate of any  
 2 of them, or any public official or governmental employee who  
 3 keeps or files a record pursuant to this section or who  
 4 communicates or discloses information or records under  
 5 paragraph "b", is not liable to its customer, to a state or  
 6 local agency, or to any person for any loss or damage caused  
 7 in whole or in part by the making, filing, or governmental use  
 8 of the report, or any information contained in that report.

9 7. The attorney general or the department of public safety  
 10 may report any possible violations indicated by analysis of  
 11 the reports required by this chapter to any appropriate law  
 12 enforcement agency for use in the proper discharge of its  
 13 official duties. The attorney general or the department of  
 14 public safety shall provide copies of the reports required by  
 15 this chapter to any appropriate prosecutorial or law  
 16 enforcement agency upon being provided with a written request  
 17 for records relating to a specific individual or entity and  
 18 stating that the agency has an articulable suspicion that such  
 19 individual or entity has committed a felony offense or a  
 20 violation of this chapter to which the reports are relevant.  
 21 A person who releases information received pursuant to this  
 22 subsection except in the proper discharge of the person's  
 23 official duties is guilty of a serious misdemeanor.

24 8. It shall be unlawful for any person to do any of the  
 25 following:

- 26 a. To knowingly violate any provision of this chapter.
- 27 b. With intent to disguise the fact that money or a  
 28 payment instrument is the proceeds of criminal conduct, or  
 29 with intent to promote, manage, establish, carry on, or  
 30 facilitate the promotion, management, establishment, or  
 31 carrying on of any criminal conduct, to knowingly furnish or  
 32 provide to a licensee, authorized delegate, money transmitter,  
 33 financial institution, person engaged in a trade or business,  
 34 or any officer, employee, agent or authorized delegate of any  
 35 of them, or to the attorney general or department of public

1 safety, any false, inaccurate, or incomplete information; or  
2 to knowingly conceal a material fact in connection with a  
3 transaction for which a report is required to be filed  
4 pursuant to this section.

5 c. With the intent to disguise the fact that money or a  
6 payment instrument is the proceeds of criminal conduct, or  
7 with intent to promote, manage, establish, carry on, or  
8 facilitate the promotion, management, establishment, or  
9 carrying on of any criminal conduct, or with intent to evade  
10 the making or filing of a report required under this chapter,  
11 or with intent to cause the making or filing of a report that  
12 contains a material omission or misstatement of fact, or with  
13 intent to conduct or structure a transaction or series of  
14 transactions by or through one or more licensees, authorized  
15 delegates, money transmitters, financial institutions, or  
16 persons engaged in a trade or business.

17 9. A person who violates subsection 8 is guilty of a class  
18 "C" felony and is also subject to a civil penalty of three  
19 times the value of the property involved in the transaction,  
20 or, if no transaction is involved, five thousand dollars.

21 10. Notwithstanding any other provision of law, each  
22 violation of this section constitutes a separate, punishable  
23 offense.

24 11. Any report, record, information, analysis, or request  
25 obtained by the attorney general or department of public  
26 safety pursuant to this chapter is not a public record as  
27 defined in chapter 22 and is not subject to disclosure.

28 Sec. 35. NEW SECTION. 529.3 INVESTIGATIONS.

29 1. The attorney general or county attorney may conduct  
30 investigations within or outside this state to determine if  
31 any licensee, authorized delegate, money transmitter, or  
32 person engaged in a trade or business has failed to file a  
33 report required by this chapter or has engaged or is engaging  
34 in any act, practice, or transaction that constitutes a  
35 violation of this chapter.

1 2. On request of the attorney general or county attorney,  
2 all licensees, authorized delegates, money transmitters, and  
3 financial institutions shall make their books and records  
4 available to the attorney general or county attorney or peace  
5 officer during normal business hours for inspection and  
6 examination in connection with an investigation pursuant to  
7 this section.

8 Sec. 36. NEW SECTION. 529.4 UNIFORMITY OF CONSTRUCTION  
9 AND APPLICATION.

10 1. The provisions of this chapter shall be liberally  
11 construed to effectuate its remedial purposes. Civil remedies  
12 under this chapter shall be supplemental and not mutually  
13 exclusive. The civil remedies do not preclude and are not  
14 precluded by other provisions of law.

15 2. The provisions of this chapter shall be applied and  
16 construed to effectuate its general purpose to make uniform  
17 the law with respect to the subject of this chapter among  
18 states enacting the law.

19 3. The attorney general is authorized to enter into  
20 reciprocal agreements with the attorney general or chief  
21 prosecuting attorney of any state to effectuate the purposes  
22 of this chapter.

23 DIVISION V

24 CONFORMING AMENDMENTS

25 Sec. 37. Section 80.39, subsection 1, Code 1995, is  
26 amended to read as follows:

27 1. Personal property, except for motor vehicles subject to  
28 sale pursuant to section 321.89, and seizable or-forfeitable  
29 property subject to disposition pursuant to chapter 809, which  
30 personal property is found or seized by, turned in to, or  
31 otherwise lawfully comes into the possession of the department  
32 of public safety and which the department does not own, shall  
33 be disposed of pursuant to this section. If by examining the  
34 property the owner or lawful custodian of the property is  
35 known or can be readily ascertained, the department shall

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1 notify the owner or custodian by certified mail directed to  
2 the owner's or custodian's last known address, as to the  
3 location of the property. If the identity or address of the  
4 owner cannot be determined, notice by one publication in a  
5 newspaper of general circulation in the area where the  
6 property was found is sufficient notice. A published notice  
7 may contain multiple items.

8 Sec. 38. Section 123.20, subsection 7, Code 1995, is  
9 amended to read as follows:

10 7. To accept intoxicating liquors ordered delivered to the  
11 alcoholic beverages division pursuant to chapter 809 809A, and  
12 offer for sale and deliver the intoxicating liquors to class  
13 "E" liquor control licensees, unless the administrator  
14 determines that the intoxicating liquors may be adulterated or  
15 contaminated. If the administrator determines that the  
16 intoxicating liquors may be adulterated or contaminated, the  
17 administrator shall order their destruction.

18 Sec. 39. Section 321.232, subsection 3, Code 1995, is  
19 amended to read as follows:

20 3. A radar jamming device may be seized by a peace officer  
21 subject to forfeiture as provided by chapter 809 or 809A.

22 Sec. 40. Section 321J.10, subsection 7, Code 1995, is  
23 amended to read as follows:

24 7. Specimens obtained pursuant to warrants issued under  
25 this section are not subject to disposition under section  
26 808.9 or chapter 809 or 809A.

27 Sec. 41. Section 455B.103, subsection 4, paragraph d,  
28 subparagraph (2), Code 1995, is amended to read as follows:

29 (2) In a reasonable manner, and any property seized shall  
30 be treated in accordance with the provisions of chapters 808,  
31 and 809, and 809A.

32 Sec. 42. Section 602.6405, subsection 1, Code 1995, is  
33 amended to read as follows:

34 1. Magistrates have jurisdiction of simple misdemeanors,  
35 including traffic and ordinance violations, and preliminary

1 hearings, search warrant proceedings, county and municipal  
2 infractions, and small claims. Magistrates have jurisdiction  
3 to determine the disposition of livestock or another animal,  
4 as provided in sections 717.5 and 717B.4, if the magistrate  
5 determines the value of the livestock or animal is less than  
6 ten thousand dollars. Magistrates have jurisdiction to  
7 exercise the powers specified in sections 556F.2 and 556F.12,  
8 and to hear complaints or preliminary informations, issue  
9 warrants, order arrests, make commitments, and take bail.  
10 Magistrates have jurisdiction over violations of section  
11 123.49, subsection 2, paragraph "h". Magistrates who are  
12 admitted to the practice of law in this state have  
13 jurisdiction over all proceedings for the involuntary  
14 commitment, treatment, or hospitalization of individuals under  
15 chapters 125 and 229, except as otherwise provided under  
16 section 229.6A; nonlawyer magistrates have jurisdiction over  
17 emergency detention and hospitalization proceedings under  
18 sections 125.91 and 229.22. Magistrates have jurisdiction to  
19 conduct hearings authorized under section 809.4 and-section  
20 809.107-subsection-2.

21 Sec. 43. Section 809.1, subsection 2, Code 1995, is  
22 amended by striking the subsection.

23 Sec. 44. Section 809.17, Code 1995, is amended to read as  
24 follows:

25 809.17 PROCEEDS APPLIED TO VARIOUS PROGRAMS.

26 Except as provided in section 809.21, proceeds from the  
27 disposal of seized or-forfeited property pursuant to this  
28 chapter may be transferred in whole or in part to the victim  
29 compensation fund created in section 912.14 at the discretion  
30 of the recipient agency, political subdivision, or department.

31 Sec. 45. Sections 809.6 through 809.14, Code 1995, are  
32 repealed.

33

#### EXPLANATION

34 New Chapter 809A, the Iowa Forfeiture Reform Act, does the  
35 following:

1 Provides civil procedures so the state can obtain a  
2 personal forfeiture judgment against an offender which can be  
3 satisfied from in-state or out-of-state assets.

4 Defines conduct triggering forfeiture to include out-of-  
5 state conduct which would be a triggering offense in the state  
6 initiating the action and conduct committed in furtherance of  
7 a triggering offense.

8 Defines forfeitable property to include: (1) real or  
9 personal property furnished or intended to be furnished in  
10 exchange for the unlawful conduct, or used, or intended to be  
11 used, to facilitate the illegal activity (the Act excludes  
12 real property from forfeiture in simple drug possession cases  
13 and requires personal property used to facilitate simple  
14 possession cases to be forfeited in a civil in personam  
15 action); (2) proceeds derived from illegal activity; (3)  
16 enterprise interests which are interests affording a source of  
17 influence over an enterprise established, controlled, or  
18 participated in through illegal activity (e.g., corporate  
19 stocks); and (4) substitute assets if the original forfeitable  
20 property is subject to an exempt interest or otherwise  
21 unavailable. The substitute asset is forfeitable up to the  
22 value of the property that was owned or possessed for the  
23 purpose of facilitating illegal activity or that is proceeds  
24 of illegal activity or for which the wrongdoer is criminally  
25 responsible. In addition, a seizure warrant is required to  
26 seize a substitute asset.

27 Requires the state as well as the claimant in contested  
28 forfeiture cases to meet a preponderance of the evidence  
29 standard.

30 Creates presumptions that property is forfeitable if it was  
31 acquired during a person's conduct giving rise to forfeiture  
32 or within a reasonable time thereafter and there is no other  
33 likely source for the property or money or a negotiable  
34 instrument found in close proximity to contraband or an  
35 instrumentality is proceeds of, or was used or intended to be

1 used to further, conduct giving rise to forfeiture.

2 Exempts an interest if:

3 1. The owner or interest holder:

4 a. Obtained the interest prior to or during the illegal  
5 activity without knowledge or reason to know of the illegal  
6 activity or its likelihood of occurrence; or

7 b. Obtained the interest prior to or during the illegal  
8 activity with knowledge, or reason to know of the offense or  
9 its likelihood of occurrence, but took reasonable steps to  
10 prevent the offense (e.g., notification of authorities or  
11 cancellation of a lease); or

12 c. Purchased the interest in good faith and without  
13 knowledge of the unlawful conduct; and

14 2. The owner or interest holder:

15 a. Is not criminally responsible for the wrongdoer's  
16 conduct (e.g., not a co-conspirator); and

17 b. Was not in a relationship with the wrongdoer that  
18 permitted the wrongdoer to convey the property to a good faith  
19 purchaser for value; and

20 c. Had no notice of the seizure or reason to believe the  
21 property was forfeitable.

22 The bill also does the following:

23 Allows release of seized property if the state deems  
24 retention unnecessary because a case is weak or forfeiture  
25 would not serve justice.

26 Allows an owner or interest holder to file a petition with  
27 the state requesting recognition of an exempt interest. If  
28 the state denies the request, the petitioner has recourse to  
29 the courts.

30 Permits interlocutory sale, lease, or operation by interest  
31 holders with uncontroverted or presumptively legitimate  
32 interest when property will be foreclosed or significantly  
33 reduced in value before final judgment. If the property is  
34 sold, the proceeds are used to pay sale costs and satisfy  
35 exempt interests. Any remaining balance is deposited into an

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1 interest-bearing account and becomes the subject of the  
2 litigation.

3 Permits the filing of a lien or constructive seizure  
4 (posting notice) to establish the state's interest and avoid  
5 unnecessarily displacing residents.

6 Requires an adversarial judicial finding of probable cause  
7 to evict residents, except in emergencies.

8 Releases property to an owner or interest holder pending  
9 final judgment if the state fails to file judicial proceedings  
10 within specified time limits, the owner posts a bond or cash  
11 equal to the fair market value of the property (the bond or  
12 cash is forfeited in lieu of the property), the court finds no  
13 probable cause for the forfeiture of the property in an  
14 expedited hearing on that issue (the hearing is available upon  
15 application by an owner or interest holder).

16 Authorizes states to enter into a custodian agreement with  
17 an owner or interest holder to maintain the property pending  
18 final judgment.

19 Authorizes the court to create a receivership or appoint a  
20 conservator, custodian, or trustee to preserve the property's  
21 value.

22 Permits the deposit of seized moneys or negotiable  
23 instruments into an interest-bearing account.

24 Allows an interlocutory sale by interest holders with  
25 uncontroverted or presumptively legitimate interests to avoid  
26 spoilage or waste of perishable assets.

27 Provides the state's title to forfeited property is vested  
28 from the time of the commission of the conduct giving rise to  
29 the forfeiture. Explicitly excludes exempted property from  
30 application of the relation back doctrine.

31 Designates anyone receiving nonexempt property which is  
32 subject to forfeiture as a constructive trustee for the  
33 benefit of the state.

34 Requires a trustee with notice of the forfeiture action to  
35 provide the state with specified information about the person

1 for whose benefit the forfeitable property is held.

2 Authorizes the state, in uncontested cases, to declare the  
3 forfeiture of personal property of a value up to \$5,000.

4 Provides probable cause is the state's burden of proof in  
5 unopposed cases requiring a judicial order so the state can  
6 summarize its evidence.

7 Provides an option that creates independent funding bases  
8 for law enforcement, within the state.

9 New Chapter 706A, the Ongoing Criminal Conduct Act, does  
10 the following:

11 Creates the following five violations, each a type of  
12 economic crime or facilitation of economic crime:

13 1. The infiltration of legitimate commerce through  
14 investment of illegal proceeds, the control of an enterprise  
15 through crime itself (as by an extortionate takeover), and  
16 conducting an enterprise through specified unlawful activity.

17 2. The knowing facilitation of a criminal network by  
18 engaging in subsidiary crimes, such as obstruction of justice,  
19 extortion, facilitation of the network by providing property  
20 or services (other than legal services) and fraud.

21 3. Money laundering, by reference to the Iowa Money  
22 Laundering Act.

23 4. The commission of specified unlawful activity under  
24 circumstances in which the acts are for financial gain.

25 5. The negligent empowerment of specified unlawful  
26 activity. The bill provides only civil remedies for this  
27 violation. It fixes limited financial responsibility in the  
28 nature of a tort remedy for negligently providing property or  
29 services that facilitate specified unlawful activity.

30 Creates special civil remedies for violations, including  
31 private treble damages actions, actions by the state to obtain  
32 damage on behalf of the citizens of the state, and injunctive  
33 relief.

34 Defines the scope of civil liability to assure protection  
35 of legal entities and to clarify the measure of damages and

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1 statutory liability for the acts of joint ventures and other  
2 persons acting in concert.

3 New Chapter 706B, the Iowa Money Laundering Act, does the  
4 following:

5 Guides the application of financial remedies and allows  
6 reciprocal agreements encouraging interstate cooperation and  
7 uniformity through special purpose and uniformity sections.

8 Creates the following four violations:

9 1. Knowingly dealing in the proceeds of unlawful activity.  
10 2. Making property available to another for the purpose of  
11 furthering specified unlawful activity.

12 3. Knowingly conducting transactions that conceal or  
13 disguise illegal proceeds or avoid transaction reporting  
14 requirements.

15 4. Engaging in money laundering as a business (this  
16 violation carries with it an enhanced penalty).

17 Imposes a civil treble damages sanction in addition to  
18 criminal penalties to deter individuals who provide services  
19 to the drug industry for profit.

20 Provides that money laundering is conduct giving rise to  
21 forfeiture, and integrates the chapter with new chapter 809A.

22 New Chapter 529, the Iowa Financial Transaction Reporting  
23 Act, does the following:

24 Parallels current federal transaction reporting  
25 requirements for who must make reports, the contents of the  
26 reports, and the circumstances that trigger the obligation to  
27 report.

28 Designs the reports to provide data from which law  
29 enforcement may make general resource decisions; improve  
30 geographic and business sector targeting; focus on specific  
31 individuals and businesses; and assist in the proof of cases  
32 under investigation. The reports under chapter 529 are:

33 1. Suspicious Transaction Reports. This obligation to  
34 report applies to all money transmitters including all  
35 financial institutions as defined by federal law and several

1 additional categories of businesses. The form of the report  
2 is within the discretion of the department of public safety.

3 2. Currency and Foreign Transactions Reporting Act  
4 Reports. These requirements apply only to money transmitters  
5 and only impose a duty to report if the transmitter is  
6 required to file under 31 U.S.C. § 5311-26 and the relevant  
7 federal regulations.

8 3. Reports of Receipt of More Than \$10,000 in a Trade or  
9 Business. All persons (not just money transmitters) engaged  
10 in a trade or business who receive more than \$10,000 in cash  
11 or a cash equivalent in one transaction (or in two or more  
12 related transactions) must file a report of the transaction.  
13 The report is to contain the information contained in the  
14 federal IRS form 8300 and required by federal regulations.

15 4. \$3,000 Logs. All money transmitters who are required  
16 by federal law to keep so-called "\$3,000 logs" must also keep  
17 them for the state department of public safety as well. The  
18 logs must be available for inspection at any time.

19 5. Targeting Projects. The superintendent of banking or  
20 the superintendent of credit unions may require additional  
21 recordkeeping in a specified geographic area for a 60-day  
22 period. Modeled on 31 U.S.C. § 5326, this provision is  
23 intended to allow gathering of financial report data on a more  
24 comprehensive basis than allowed by the other financial  
25 reporting requirements, and to address specific localized  
26 money laundering problems.

27 BACKGROUND STATEMENT

28 SUBMITTED BY THE AGENCY

29 This is a joint proposal from the attorney general's office  
30 and the department of public safety.

31 The components of the package, which are all based on model  
32 legislation by the President's commission on Model State Drug  
33 Laws (1993), include the following: forfeiture reform,  
34 ongoing criminal conduct, money laundering and financial  
35 transaction reporting.

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1 The purpose of this package of proposals is to give Iowa  
2 law enforcement more tools to combat criminal networks that  
3 are engaged in conspiracy activities. The proposal recognizes  
4 a shift in law enforcement approaches from a "buy-bust"  
5 approach to a "conspiracy approach". The "conspiracy  
6 approach" can be applied to a large variety of situations,  
7 including pedophile rings, burglary rings, drugs, gangs,  
8 illegal gambling, and money laundering.

9 The key motivator for criminals to engage in these types of  
10 illegal activity is profits. Criminal sanctions alone have  
11 proven to be unable to stop or slow these illegal activities.  
12 Law enforcement officials should have the tools to target the  
13 fruits of the illegal activity meaning the profits.

14 In addition, these types of illegal activities negatively  
15 impact legitimate businesses.

#### 16 FORFEITURE REFORM

17 Criminals should not be allowed to profit from the fruits  
18 of their illegal activity. This proposal will strengthen the  
19 current forfeiture law while providing more protection to  
20 innocent parties. The highlights include: forfeiture no  
21 longer applies in simple misdemeanor crimes; the homestead  
22 exemption no longer applies -- thus "crack houses" will be  
23 eligible for forfeiture; out-of-state assets from criminal  
24 activity will be forfeitable; procedures are established for  
25 maintenance of the forfeited assets; more notice provisions  
26 are set forth; and the successful practice of allowing the  
27 proceeds of forfeiture to be used for law enforcement purposes  
28 is continued.

#### 29 ONGOING CRIMINAL CONDUCT

30 When criminals join together to commit crimes, they gain  
31 power and economic advantage. This proposal creates five  
32 violations which are: infiltration of legitimate commerce  
33 through investment of illegal proceeds, knowing facilitation  
34 of a criminal network, money laundering, committing unlawful  
35 activity for financial gain, and negligent empowerment of

1 unlawful activity. The penalties are criminal and civil: a  
2 Class "B" felony, treble damages, and injunctive relief.

3 MONEY LAUNDERING

4 Criminals who profit from their illegal activities must  
5 find a way to launder their money. Often criminals disguise  
6 the source of the money by investing it in seemingly  
7 legitimate businesses, by buying luxury items or by laundering  
8 it through legal gambling activities. The highlights of this  
9 proposal, which makes money laundering a crime, include:  
10 creating criminal violations when a person knowingly deals in  
11 proceeds of unlawful activities or conducts transactions to  
12 disguise illegal activity, imposing treble civil penalty in  
13 these cases, and allowing for forfeiture of assets used in  
14 connection with money laundering.

15 FINANCIAL TRANSACTION REPORTING

16 Currently financial institutions are required to report  
17 many transactions to the federal government. But the federal  
18 government does not have the resources or the desire to  
19 investigate all possible cases of illegal activity. The state  
20 should have access to the information in order to pursue cases  
21 as the state chooses.

22 This proposal requires financial institutions and casinos  
23 to provide reports to the department of public safety. For  
24 example, a report on every \$10,000 single cash transaction  
25 will go to the federal government and the state department of  
26 public safety. Casinos will be required to report similar  
27 large cash transactions to the state in addition to the  
28 federal government.

29 SUMMARY

30 Iowa currently lags behind many other states that have  
31 adopted some type of statutes to address the following crimes:

- 32 32 states have criminal network laws.
- 33 22 states have money laundering laws.
- 34 31 states gave ongoing criminal conduct laws.
- 35 Iowa should adopt these proposals in order to increase law

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1 enforcement's tools to address these crimes and in order to  
2 not become a safe haven for these types of activities.

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