

Senate Study Bill 242

Conference Committee Text

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1 1 DIVISION I
1 2 IOWA FORFEITURE REFORM ACT
1 3 Section 1. NEW SECTION. 809A.1 DEFINITIONS.
1 4 As used in this chapter:
1 5 1. "Conveyance" includes any vehicle, trailer, vessel,
1 6 aircraft, or other means of transportation.
1 7 2. "Interest holder" means a secured party within the
1 8 meaning of chapter 554, or the beneficiary of a security
1 9 interest or encumbrance pertaining to an interest in property,
1 10 whose interest is perfected against a good faith purchaser for
1 11 value. A person who holds property for the benefit of or as
1 12 an agent or nominee for another person, or who is not in
1 13 substantial compliance with any statute requiring an interest
1 14 in property to be recorded or reflected in public records in
1 15 order to perfect the interest against a good faith purchaser
1 16 for value, is not an interest holder.
1 17 3. "Omission" means the failure to perform an act that is
1 18 required by law.
1 19 4. "Owner" means a person, other than an interest holder,
1 20 who has an interest in property. A person who holds property
1 21 for the benefit of or for an agent or nominee for another
1 22 person, or who is not in substantial compliance with any
1 23 statute requiring an interest in property to be recorded or
1 24 reflected in public records in order to perfect the interest
1 25 against a good faith purchaser for value, is not an owner.
1 26 5. "Proceeds" means property acquired directly or
1 27 indirectly from, produced through, realized through, or caused
1 28 by an act or omission and includes any property of any kind
1 29 without reduction for expenses incurred for acquisition,
1 30 maintenance, production, or any other purpose.
1 31 6. "Property" means anything of value, and includes any
1 32 interest in property, including any benefit, privilege, claim,
1 33 or right with respect to anything of value, whether real or
1 34 personal, tangible, or intangible.
1 35 7. "Prosecuting attorney" means an attorney who is
2 1 authorized by law to appear on the behalf of the state in a
2 2 criminal case, and includes the attorney general, an assistant
2 3 attorney general, the county attorney, an assistant county
2 4 attorney, or a special or substitute prosecutor whose
2 5 appearance is approved by a court having jurisdiction to try a
2 6 defendant for the offense with which the defendant is charged.
2 7 8. "Regulated interest holder" means an interest holder
2 8 that is a business authorized to do business in this state and
2 9 is under the jurisdiction of any state or federal agency
2 10 regulating banking, insurance, real estate, or securities.
2 11 9. "Seizing agency" means a department or agency of this
2 12 state or its political subdivisions that regularly employs law
2 13 enforcement officers, and that employs the law enforcement
2 14 officer who seizes property for forfeiture, or such other
2 15 agency as the department or agency may designate by its chief
2 16 executive officer or the officer's designee.
2 17 10. "Seizure for forfeiture" means seizure of property by
2 18 a law enforcement officer, including a constructive seizure,
2 19 accompanied by an assertion by the seizing agency or by a
2 20 prosecuting attorney that the property is seized for
2 21 forfeiture, in accordance with section 809A.6.

2 22 Sec. 2. NEW SECTION. 809A.2 JURISDICTION AND VENUE.
2 23 1. The district court has jurisdiction under this chapter
2 24 over:
2 25 a. All interests in property within this state at the time
2 26 a forfeiture action is filed.
2 27 b. The interest in the property of an owner or interest
2 28 holder who is subject to personal jurisdiction in this state.
2 29 2. In addition to the venue provided for under chapter 803
2 30 or any other provision of law, a proceeding for forfeiture
2 31 under this chapter may be maintained in the county in which
2 32 any part of the property is found or in the county in which a
2 33 civil or criminal action could be maintained against an owner
2 34 or interest holder for the conduct alleged to give rise to the
2 35 forfeiture.

3 1 Sec. 3. NEW SECTION. 809A.3 CONDUCT GIVING RISE TO
3 2 FORFEITURE.
3 3 The following conduct may give rise to forfeiture:
3 4 1. An act or omission which is a public offense and which
3 5 is a serious or aggravated misdemeanor or felony.
3 6 2. An act or omission occurring outside of this state,
3 7 that would be punishable by confinement of one year or more in
3 8 the place of occurrence and would be a serious or aggravated
3 9 misdemeanor or felony if the act or omission occurred in this
3 10 state.
3 11 3. An act or omission committed in furtherance of any act
3 12 or omission described in subsection 1, which is a serious or
3 13 aggravated misdemeanor or felony including any inchoate or
3 14 preparatory offense.

3 15 Sec. 4. NEW SECTION. 809A.4 PROPERTY SUBJECT TO
3 16 FORFEITURE.
3 17 The following are subject to forfeiture:
3 18 1. All controlled substances, raw materials, controlled
3 19 substance analogs, counterfeit controlled substances,
3 20 imitation controlled substances, or precursor substances, that
3 21 have been manufactured, distributed, dispensed, possessed, or
3 22 acquired in violation of the laws of this state.
3 23 2. a. All property, except as provided in paragraph "b",
3 24 including the whole of any lot or tract of land and any
3 25 appurtenances or improvements to real property, including
3 26 homesteads that are otherwise exempt from judicial sale
3 27 pursuant to section 561.16, that is either:
3 28 (1) Furnished or intended to be furnished by a person in
3 29 an exchange that constitutes conduct giving rise to
3 30 forfeiture.
3 31 (2) Used or intended to be used in any manner or part to
3 32 facilitate conduct giving rise to forfeiture.
3 33 b. If the only conduct giving rise to forfeiture is a
3 34 violation of section 124.401, subsection 3, real property is
3 35 not subject to forfeiture and other property subject to
4 1 forfeiture pursuant to paragraph "a", subparagraph (2), may be
4 2 forfeited only pursuant to section 809A.14.
4 3 3. All proceeds of any conduct giving rise to forfeiture.
4 4 4. All weapons possessed, used, or available for use in
4 5 any manner to facilitate conduct giving rise to forfeiture.
4 6 5. Any interest or security in, claim against, or property
4 7 or contractual right of any kind affording a source of control
4 8 over any enterprise that a person has established, operated,
4 9 controlled, or conducted through, or participated in the
4 10 conduct, giving rise to forfeiture.
4 11 6. a. Any property of a person up to the value of
4 12 property of either of the following:
4 13 (1) Described in subsection 2 that the person owned or
4 14 possessed for the purpose of a use described in subsection 2.
4 15 (2) Described in subsection 3 and is proceeds of conduct
4 16 engaged in by the person or for which the person is criminally
4 17 responsible.
4 18 b. Property described in this subsection may be seized for

4 19 forfeiture pursuant to a constructive seizure or an actual
4 20 seizure pursuant to section 809A.6. Actual seizure may only
4 21 be done pursuant to a seizure warrant issued on a showing, in
4 22 addition to the showing of probable cause for the forfeiture
4 23 of the subject property, that the subject property is not
4 24 available for seizure for reasons described in section
4 25 809A.15, subsection 1, and that the value of the property to
4 26 be seized is not greater than the total value of the subject
4 27 property, or pursuant to a constructive seizure. If property
4 28 of a defendant up to the total value of all interests in the
4 29 subject property is not seized prior to final judgment in an
4 30 action under this section, the remaining balance shall be
4 31 ordered forfeited as a personal judgment against the
4 32 defendant.

4 33 Sec. 5. NEW SECTION. 809A.5 EXEMPTIONS.

4 34 1. All property, including all interests in property,
4 35 described in section 809A.4 is subject to forfeiture, except
5 1 that property is exempt from forfeiture if either of the
5 2 following occurs:

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

5 8 b. The owner or interest holder acquired the property,
5 9 including acquisition of proceeds of conduct giving rise to
5 10 forfeiture, after the conduct giving rise to its forfeiture
5 11 and acquired the property in good faith, for value and did not
5 12 knowingly take part in an illegal transaction.

5 13 2. Notwithstanding subsection 1, property is not exempt
5 14 from forfeiture, even though the owner or interest holder
5 15 lacked knowledge or reason to know that the conduct giving
5 16 rise to its forfeiture had occurred or was likely to occur, if
5 17 any of the following exists:

5 18 a. The person whose conduct gave rise to its forfeiture
5 19 had the authority to convey the property of the person
5 20 claiming the exemption to a good faith purchaser for value at
5 21 the time of the conduct.

5 22 b. The owner or interest holder is criminally responsible
5 23 for the conduct giving rise to its forfeiture, whether or not
5 24 the owner or interest holder is prosecuted or convicted.

5 25 c. The owner or interest holder acquired the property with
5 26 notice of its actual or constructive seizure for forfeiture
5 27 under section 809A.6, or with reason to believe that it was
5 28 subject to forfeiture.

5 29 Sec. 6. NEW SECTION. 809A.6 SEIZURE OF PROPERTY.

5 30 1. A peace officer may seize property for forfeiture upon
5 31 process issued by any district judge, district associate
5 32 judge, or magistrate. The court may issue a seizure warrant
5 33 on an affidavit under oath demonstrating that probable cause
5 34 exists for its forfeiture or that the property has been the
5 35 subject of a previous final judgment of forfeiture in the
6 1 courts of any state or of the United States. The court may
6 2 order that the property be seized on such terms and conditions
6 3 as are reasonable in the discretion of the court. The order
6 4 may be made on or in connection with a search warrant.

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

6 10 3. The seizure of inhabited residential real property for
6 11 forfeiture which is accompanied by removing or excluding its
6 12 residents shall be done pursuant to a pre-seizure adversarial
6 13 judicial determination of probable cause, except that this
6 14 determination may be made ex parte if the prosecuting attorney
6 15 has demonstrated exigent circumstances.

6 16 4. Property may be seized constructively by:
6 17 a. Posting notice of seizure for forfeiture or notice of
6 18 pending forfeiture on the property.
6 19 b. Giving notice pursuant to section 809A.8.
6 20 c. Filing or recording in the public records relating to
6 21 that type of property notice of seizure for forfeiture, notice
6 22 of pending forfeiture, a forfeiture lien, or a notice of lis
6 23 pendens.

6 24 Filings or recordings made pursuant to this subsection are
6 25 not subject to a filing fee or other charge.

6 26 5. The seizing agency, or the prosecuting attorney, shall
6 27 make a reasonable effort to provide notice of the seizure to
6 28 the person from whose possession or control the property was
6 29 seized. If no person is in possession or control of the
6 30 property, the seizing agency may attach the notice to the
6 31 property or to the place of its seizure or may make a
6 32 reasonable effort to deliver it to the owner of the property.
6 33 The notice shall contain a general description of the property
6 34 seized, the date and place of seizure, the name of the seizing
6 35 agency, and the address and telephone number of the seizing
7 1 officer or other person or agency from whom information about
7 2 the seizure may be obtained.

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

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

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

7 14 1. Property seized for forfeiture under this chapter is
7 15 not subject to alienation, conveyance, sequestration,
7 16 attachment, or an application for return of seized property
7 17 under chapter 809.

7 18 2. The seizing agency or the prosecuting attorney may
7 19 authorize the release of the seizure for forfeiture on the
7 20 property if forfeiture or retention of actual custody is
7 21 unnecessary.

7 22 3. The prosecuting attorney may discontinue forfeiture
7 23 proceedings and transfer the action to another state or
7 24 federal agency or prosecuting attorney who has initiated
7 25 forfeiture proceedings.

7 26 4. Property seized for forfeiture under this chapter is
7 27 deemed to be in the custody of the district court subject only
7 28 to the orders and decrees of the court having jurisdiction
7 29 over the forfeiture proceedings and to the acts of the seizing
7 30 agency or the prosecuting attorney pursuant to this chapter.

7 31 5. An owner of property seized for forfeiture under this
7 32 chapter may obtain release of the property by posting with the
7 33 prosecuting attorney a surety bond or cash in an amount equal
7 34 to the full fair market value of the property as determined by
7 35 the prosecuting attorney. The state may refuse to release the
8 1 property if any of the following apply:

8 2 a. The bond tendered is inadequate.
8 3 b. The property is retained as contraband or as evidence.
8 4 c. The property is particularly altered or designed for
8 5 use in conduct giving rise to forfeiture.

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

8 9 6. If property is seized for forfeiture under this
8 10 chapter, the prosecuting attorney, subject to any need to
8 11 retain the property as evidence, may do any of the following:

8 12 a. Remove the property to an appropriate place designated

8 13 by the district court.

8 14 b. Place the property under constructive seizure.

8 15 c. Remove the property to a storage area for safekeeping
8 16 or, if the property is a negotiable instrument or money,
8 17 deposit it in an interest-bearing account.

8 18 d. Provide for another agency or custodian, including an
8 19 owner, secured party, mortgagee, or lienholder, to take
8 20 custody of the property and service, maintain, and operate it
8 21 as reasonably necessary to maintain its value, in any
8 22 appropriate location within the jurisdiction of the court.

8 23 e. Require the seizing agency to take custody of the
8 24 property and remove it to an appropriate location for
8 25 disposition in accordance with law.

8 26 7. As soon as practicable after seizure for forfeiture,
8 27 the seizing agency shall conduct a written inventory and
8 28 estimate the value of the property seized.

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

9 1 a. The interest holder has timely filed a proper claim and
9 2 is a regulated interest holder.

9 3 b. The interest holder has an interest which the
9 4 prosecuting attorney has stipulated is exempt from forfeiture.

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

9 12 a. For the payment of reasonable expenses incurred in
9 13 connection with the sale or disposal.

9 14 b. For the satisfaction of exempt interests in the order
9 15 of their priority.

9 16 c. Any balance of the proceeds shall be preserved in the
9 17 actual or constructive custody of the court, in an interest-
9 18 bearing account, subject to the proceedings under this
9 19 chapter.

9 20 Sec. 8. NEW SECTION. 809A.8 COMMENCEMENT OF FORFEITURE
9 21 PROCEEDINGS & PROPERTY RELEASE REQUIREMENTS.

9 22 1. Forfeiture proceedings shall be commenced as follows:

9 23 a. Property seized for forfeiture shall be released on the
9 24 request of an owner or interest holder to the owner's or
9 25 interest holder's custody, as custodian for the court, pending
9 26 further proceedings pursuant to this chapter if the
9 27 prosecuting attorney fails to do either of the following:

9 28 (1) File a notice of pending forfeiture against the
9 29 property within ninety days after seizure.

9 30 (2) File a judicial forfeiture proceeding within ninety
9 31 days after notice of pending forfeiture of property upon which
9 32 a proper claim has been timely filed pursuant to section
9 33 809A.11.

9 34 b. Within thirty days after the effective date of the
9 35 notice of pending forfeiture, an owner of or interest holder
10 1 in the property may elect to file with the prosecuting
10 2 attorney either of the following:

10 3 (1) A claim pursuant to section 809A.11.

10 4 (2) A petition for recognition of exemption pursuant to
10 5 section 809A.11, except that no petition may be filed after
10 6 the state commences a court action.

10 7 c. An extension of time for the filing of a claim shall
10 8 not be granted.

10 9 d. If a petition is timely filed, the prosecuting attorney

10 10 may delay filing a judicial forfeiture proceeding for one
10 11 hundred eighty days after the notice of pending forfeiture,
10 12 and the following procedures shall apply:

10 13 (1) The prosecuting attorney shall provide the seizing
10 14 agency and the petitioning party with a written recognition of
10 15 exemption and statement of nonexempt interests relating to any
10 16 or all interests in the property in response to each
10 17 petitioning party as follows:

10 18 (a) Within sixty days after the effective date of the
10 19 notice of pending forfeiture if the petitioner is a regulated
10 20 interest holder. The recognition of exemption shall recognize
10 21 the interest of the petitioner to the extent of documented
10 22 outstanding principal plus interest at the contract rate until
10 23 paid.

10 24 (b) Within one hundred twenty days after the effective
10 25 date of the notice of pending forfeiture for all other
10 26 petitioners.

10 27 (2) An owner or interest holder in any property declared
10 28 nonexempt may file a claim pursuant to 809A.11 within thirty
10 29 days after the effective date of the notice of the recognition
10 30 of exemption and statement of nonexempt interest.

10 31 (3) If a petitioning party does not timely file a proper
10 32 claim under paragraph "b", the recognition of exemption and
10 33 statement of nonexempt interests becomes final, and the
10 34 prosecuting attorney shall proceed as provided in sections
10 35 809A.16 and 809A.17.

11 1 (4) The prosecuting attorney may elect to proceed under
11 2 this section for judicial forfeiture at any time.

11 3 (5) If a judicial forfeiture proceeding follows the
11 4 application of procedures in this paragraph, the following
11 5 apply:

11 6 (a) A duplicate or repetitive notice is not required. If
11 7 a proper claim has been timely filed pursuant to subparagraph
11 8 (2), the claim shall be determined in a judicial forfeiture
11 9 proceeding after the commencement of such a proceeding under
11 10 sections 809A.13, 809A.14, and 809A.15.

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

11 15 e. If a proper petition for recognition of exemption or
11 16 proper claim is not timely filed, the prosecuting attorney
11 17 shall proceed as provided in sections 809A.16 and 809A.17.

11 18 2. a. Notice of pending forfeiture, service of an in rem
11 19 complaint or notice of a recognition of exemption and
11 20 statement of nonexempt interests required under the chapter,
11 21 shall be given in accordance with one of the following:

11 22 (1) If the owner's or interest holder's name and current
11 23 address are known, by either personal service by any person
11 24 qualified to serve process or by any law enforcement officer
11 25 or by mailing a copy of the notice by restricted certified
11 26 mail to that address.

11 27 (2) If the owner's or interest holder's name and address
11 28 are required by law to be on record with the county recorder,
11 29 secretary of state, the motor vehicle division of the state
11 30 department of transportation, or another state or federal
11 31 agency to perfect an interest in the property, and the owner's
11 32 or interest holder's current address is not known, by mailing
11 33 a copy of the notice by restricted certified mail to any
11 34 address of record with any of the described agencies.

11 35 (3) If the owner's or interest holder's address is not
12 1 known and is not on record as provided in subsection 2,
12 2 paragraph "a", subparagraph (2), or the owner or interest
12 3 holder's interest is not known, by publication in one issue of
12 4 a newspaper of general circulation in the county in which the
12 5 seizure occurred.

12 6 b. Notice is effective upon the earlier of personal

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

12 15 Sec. 9. NEW SECTION. 809A.9 LIENS.

12 16 1. The prosecuting attorney may file, without a filing
12 17 fee, a lien for the forfeiture of property if any of the
12 18 following apply:

12 19 a. Upon the initiation of any civil or criminal proceeding
12 20 relating to conduct giving rise to forfeiture under this
12 21 chapter.

12 22 b. Upon seizure for forfeiture.

12 23 c. In connection with a proceeding or seizure for
12 24 forfeiture in any other state under a state or federal statute
12 25 substantially similar to the relevant provisions of this
12 26 chapter. The filing constitutes notice to any person claiming
12 27 an interest in the seized property or in property owned by the
12 28 named person.

12 29 2. The lienor, as soon as practical after filing a lien,
12 30 shall furnish to any person named in the lien a notice of the
12 31 filing of the lien. Failure to furnish notice under this
12 32 subsection shall not invalidate or otherwise affect the lien.

12 33 3. The lien notice shall set forth all of the following:

12 34 a. The name of the person and, in the discretion of the
12 35 lienor, any aliases, or the name of any corporation,
13 1 partnership, trust, or other entity, including nominees, that
13 2 are owned entirely or in part, or controlled by the person.

13 3 b. The description of the seized property or the criminal
13 4 or civil proceeding that has been brought relating to conduct
13 5 giving rise to forfeiture under the chapter.

13 6 c. The amount claimed by the lienor.

13 7 d. The name of the district court where the proceeding or
13 8 action has been brought.

13 9 e. The case number of the proceeding or action if known at
13 10 the time of the filing of the lien.

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

13 17 5. A lien filed pursuant to this section applies to the
13 18 described property or to one named person, any aliases,
13 19 fictitious names, or other names, including the names of any
13 20 corporation, partnership, trust, or other entity, owned
13 21 entirely or in part, or controlled by the named person, and
13 22 any interest in real property owned or controlled by the named
13 23 person. A separate forfeiture lien shall be filed for each
13 24 named person.

13 25 6. The lien notice creates, upon filing, a lien in favor
13 26 of the lienor as it relates to the property or the named
13 27 person or related entities. The lien secures the amount of
13 28 potential liability for civil judgment, and, if applicable,
13 29 the fair market value of property relating to all proceedings
13 30 under this chapter enforcing the lien.

13 31 7. The lienor may amend or release, in whole or in part, a
13 32 lien filed under this section at any time by filing, without a
13 33 filing fee, an amended lien.

13 34 8. Upon entry of judgment in its favor, the state may
13 35 proceed to execute on the lien as provided by law.

14 1 Sec. 10. NEW SECTION. 809A.10 TRUSTEES.

14 2 1. Except as provided in subsection 2, a trustee,
14 3 constructive or otherwise, who has notice that a notice of

14 4 forfeiture lien, or a notice of pending forfeiture, or a civil
14 5 forfeiture proceeding has been filed against the property or
14 6 against any person or entity for whom the person holds title
14 7 or appears as record owner, shall furnish within fifteen days,
14 8 to the seizing agency, or the prosecuting attorney all of the
14 9 following:

14 10 a. The name and address of each person or entity for whom
14 11 the property is held.

14 12 b. The description of all other property whose legal title
14 13 is held for the benefit of the named person.

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

14 17 2. Subsection 1 is inapplicable if any of the following
14 18 applies:

14 19 a. A trustee is acting under a recorded subdivision trust
14 20 agreement or a recorded deed of trust.

14 21 b. All of the information is of record in the public
14 22 records giving notice of liens on that type of property.

14 23 3. A trustee with notice who knowingly fails to comply
14 24 with the provisions of this section commits a class "D"
14 25 felony, and shall be fined not less than ten thousand dollars
14 26 per day for each day of noncompliance.

14 27 4. A trustee with notice who fails to comply with
14 28 subsection 1 is subject to a civil penalty of three hundred
14 29 dollars for each day of noncompliance. The court shall enter
14 30 judgment ordering payment of three hundred dollars for each
14 31 day of noncompliance from the effective date of the notice
14 32 until the required information is furnished or the state
14 33 executes its judgment lien under this section.

14 34 5. To the extent permitted by the Constitution of the
14 35 United States and the Constitution of the State of Iowa, the
15 1 duty to comply with subsection 1 shall not be excused by any
15 2 privilege or provision of law of this state or any other state
15 3 or country which authorizes or directs that testimony or
15 4 records required to be furnished pursuant to subsection 1 are
15 5 privileged or confidential or otherwise may not be disclosed.

15 6 6. A trustee who furnishes information pursuant to
15 7 subsection 1 is immune from civil liability for the release of
15 8 information.

15 9 7. An employee of the seizing agency or the prosecuting
15 10 attorney who releases the information obtained pursuant to
15 11 subsection 1, except in the proper discharge of official
15 12 duties, commits a serious misdemeanor.

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

15 17 9. A judgment or an order of payment entered pursuant to
15 18 this section becomes a judgment lien against the property
15 19 alleged to be subject to forfeiture.

15 20 Sec. 11. NEW SECTION. 809A.11 CLAIMS – PETITIONS FOR
15 21 RECOGNITION OF EXEMPTION.

15 22 1. Only an owner or interest holder in property seized
15 23 for forfeiture may file a claim, and shall do so in the manner
15 24 provided in this section. The claim shall be mailed to the
15 25 seizing agency and to the prosecuting attorney by restricted
15 26 certified mail within thirty days after the effective date of
15 27 notice of pending forfeiture. An extension of time for the
15 28 filing of a claim shall not be granted.

15 29 2. The prosecuting attorney may make an opportunity to
15 30 file a petition for recognition of exemption available by so
15 31 indicating in the notice of pending forfeiture described in
15 32 section 809A.8, subsection 2.

15 33 3. The claim or petition and all supporting documents
15 34 shall be in affidavit form, signed by the claimant under oath,
15 35 and sworn to by the affiant before one who has authority to

16 1 administer the oath, under penalty of perjury and shall set
16 2 forth all of the following:

- 16 3 a. The caption of the proceedings and identifying number,
16 4 if any, as set forth on the notice of pending forfeiture or
16 5 complaint, the name of the claimant or petitioner, and the
16 6 name of the prosecuting attorney who authorized the notice of
16 7 pending forfeiture or complaint.
- 16 8 b. The address where the claimant or petitioner will
16 9 accept mail.
- 16 10 c. The nature and extent of the claimant's or petitioner's
16 11 interest in the property.
- 16 12 d. The date, the identity of the transferor, and the
16 13 circumstances of the claimant's or petitioner's acquisition of
16 14 the interest in the property.
- 16 15 e. The specific provision of this chapter relied on in
16 16 asserting that the property is not subject to forfeiture.
- 16 17 f. All essential facts supporting each assertion.
- 16 18 g. The specific relief sought.

16 19 Sec. 12. NEW SECTION. 809A.12 JUDICIAL PROCEEDINGS
16 20 GENERALLY.

- 16 21 1. A judicial forfeiture proceeding under this chapter is
16 22 subject to the provisions of this section.
- 16 23 2. The court, before or after the filing of a notice of
16 24 pending forfeiture or complaint and on application of the
16 25 prosecuting attorney, may do any of the following:
 - 16 26 a. Enter a restraining order or injunction.
 - 16 27 b. Require the execution of satisfactory performance
16 28 bonds.
 - 16 29 c. Create receiverships.
 - 16 30 d. Appoint conservators, custodians, appraisers,
16 31 accountants, or trustees.
 - 16 32 e. Take any other action to seize, secure, maintain, or
16 33 preserve the availability of property subject to forfeiture
16 34 under this chapter, including a writ of attachment or a
16 35 warrant for its seizure.
- 17 1 3. The court, after five days' notice to the prosecuting
17 2 attorney, may issue an order to show cause to the seizing
17 3 agency, for a hearing on the sole issue of whether probable
17 4 cause for forfeiture of the property then exists if all of the
17 5 following exist:
 - 17 6 a. Property is seized for forfeiture or a forfeiture lien
17 7 is filed without a previous judicial determination of probable
17 8 cause, order of forfeiture, or a hearing under section
17 9 809A.14, subsection 4.
 - 17 10 b. An owner of or interest holder in the property files an
17 11 application for a hearing within ten days after notice of its
17 12 seizure for forfeiture or lien, or actual knowledge of its
17 13 seizure, whichever is earlier.
 - 17 14 c. The owner of or interest holder in the property
17 15 complies with the requirements for claims or petitions in
17 16 section 809A.11.
17 17 The hearing shall be held within thirty days of the order
17 18 to show cause unless continued for good cause on motion of
17 19 either party.
- 17 20 4. If the court finds in a hearing under subsection 3 that
17 21 no probable cause exists for forfeiture of the property, or if
17 22 the state elects not to contest the issue, the property shall
17 23 be released to the custody of the applicant, as custodian for
17 24 the court, or from the lien pending the outcome of a judicial
17 25 proceeding pursuant to this chapter. If the court finds that
17 26 probable cause for the forfeiture of the property exists, the
17 27 court shall not order the property released.
- 17 28 5. All applications filed within the ten-day period
17 29 prescribed by subsection 3 shall be consolidated for a single
17 30 hearing relating to each applicant's interest in the property
17 31 seized for forfeiture.
- 17 32 6. A defendant convicted in any criminal proceeding is

17 33 precluded from later denying the essential allegations of the
17 34 criminal offense of which the defendant was convicted in any
17 35 proceeding pursuant to this section. For the purposes of this
18 1 section, a conviction results from a verdict or a plea of
18 2 guilty.

18 3 7. In any proceeding under this chapter, if a claim is
18 4 based on an exemption provided for in this chapter, the burden
18 5 of proving the existence of the exemption is on the claimant,
18 6 and it is not necessary for the state to negate the exemption
18 7 in any application or complaint.

18 8 8. In hearings and determinations pursuant to this
18 9 section, the court may receive and consider, in making any
18 10 determination of probable cause, all evidence admissible in
18 11 determining probable cause at a preliminary hearing or by a
18 12 judge pursuant to chapter 808 together with inferences
18 13 therefrom.

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

18 21 10. A presumption arises that any property of a person is
18 22 subject to forfeiture under this chapter if the state
18 23 establishes, by the standard of proof applicable to that
18 24 proceeding, any of the following:

18 25 a. The person has engaged in conduct giving rise to
18 26 forfeiture.

18 27 b. The property was acquired by the person during that
18 28 period of the conduct giving rise to forfeiture or within a
18 29 reasonable time after that period.

18 30 c. No likely source for acquisition of the property exists
18 31 other than the conduct giving rise to the forfeiture.

18 32 11. A finding that property is the proceeds of conduct
18 33 giving rise to forfeiture does not require proof that the
18 34 property is the proceeds of any particular exchange or
18 35 transaction.

19 1 12. A person who acquires property subject to forfeiture
19 2 is a constructive trustee of the property, and its fruits, for
19 3 the benefit of the state, to the extent that the person's
19 4 interest is not exempt from forfeiture. If property subject
19 5 to forfeiture has been commingled with other property, the
19 6 court shall order the forfeiture of the commingled property,
19 7 and of any fruits of the commingled property, to the extent of
19 8 the property subject to forfeiture, unless an owner or
19 9 interest holder proves that specified property does not
19 10 contain property subject to forfeiture, or that the person's
19 11 interest in specified property is exempt from forfeiture.

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

19 21 14. An acquittal or dismissal in a criminal proceeding
19 22 shall not preclude civil proceedings under this chapter.

19 23 15. For good cause shown, on motion by the prosecuting
19 24 attorney, the court may stay discovery against the criminal
19 25 defendant and against the state in civil forfeiture
19 26 proceedings during a criminal trial for a related criminal
19 27 indictment or information alleging the same conduct, after
19 28 making provision to prevent loss to any party resulting from
19 29 the stay. Such a stay shall not be available pending an

19 30 appeal.

19 31 16. Except as otherwise provided by this chapter, all
19 32 proceedings hereunder shall be governed by the rules of civil
19 33 procedure.

19 34 17. An action brought pursuant to this chapter shall be
19 35 consolidated with any other action or proceeding brought
20 1 pursuant to this chapter or chapter 626 or 654 relating to the
20 2 same property on motion of the prosecuting attorney, and may
20 3 be consolidated on motion of an owner or interest holder.

20 4 Sec. 13. NEW SECTION. 809A.13 IN REM PROCEEDINGS.

20 5 1. A judicial in rem forfeiture proceeding may be brought
20 6 by the prosecuting attorney in addition to, or in lieu of,
20 7 civil in personam forfeiture procedures, and is also subject
20 8 to the provisions of this section. If a forfeiture is
20 9 authorized by this chapter, it shall be ordered by the court
20 10 in the in rem action.

20 11 2. An action in rem may be brought by the prosecuting
20 12 attorney pursuant to a notice of pending forfeiture or
20 13 verified complaint for forfeiture. The state may serve the
20 14 complaint in the manner provided in section 809A.8, subsection
20 15 2, or as provided by the rules of civil procedure.

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

20 22 4. The answer shall be signed by the owner or interest
20 23 holder under penalty of perjury and shall be in accordance
20 24 with R.C.P. 72 and shall also set forth all of the following:

20 25 a. The caption of the proceedings and identifying number,
20 26 if any, as set forth on the notice of pending forfeiture or
20 27 complaint and the name of the claimant.

20 28 b. The address where the claimant will accept mail.

20 29 c. The nature and extent of the claimant's interest in
20 30 property.

20 31 d. The date, the identity of the transferor, and the
20 32 circumstances of the claimant's acquisition of the interest in
20 33 the property.

20 34 e. The specific provision of this chapter relied on in
20 35 asserting that it is not subject to forfeiture.

21 1 f. All essential facts supporting each assertion.

21 2 g. The specific relief sought.

21 3 5. The answer, accompanied by a bond to the court, shall
21 4 be filed within twenty days after service on the claimant of
21 5 the civil in rem complaint. The bond amount shall at a
21 6 minimum be the greater of two thousand five hundred dollars or
21 7 ten percent of the estimated value of the property as alleged
21 8 in the complaint, or up to a maximum of two hundred fifty
21 9 thousand dollars. In lieu of a cost bond, a claimant may
21 10 under penalty of perjury move the court to proceed pursuant to
21 11 chapter 610. Any funds received by the court as cost bonds
21 12 shall be placed in an interest-bearing account pending final
21 13 disposition of the case. The court shall approve sureties
21 14 upon condition that the claimant shall pay all costs and
21 15 expense of the forfeiture proceedings as provided in section
21 16 809A.16 or 809A.17.

21 17 6. The rules of civil procedure shall apply to discovery
21 18 by the state and any claimant who has timely answered the
21 19 complaint.

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

21 27 the property which is exempt from forfeiture under this
21 28 chapter by a preponderance of the evidence.

21 29 8. The court shall order the interest in the property
21 30 returned or conveyed to the claimant if the prosecuting
21 31 attorney fails to meet the state's burden or the claimant
21 32 establishes by a preponderance of the evidence that the
21 33 claimant has an interest that is exempt from forfeiture. The
21 34 court shall order all other property forfeited to the state
21 35 and conduct further proceedings pursuant to sections 809A.16
22 1 and 809A.17.

22 2 Sec. 14. NEW SECTION. 809A.14 IN PERSONAM PROCEEDINGS.

22 3 1. A judicial in personam forfeiture proceeding brought by
22 4 a prosecuting attorney pursuant to an in personam civil action
22 5 alleging conduct giving rise to forfeiture is subject to the
22 6 provisions of this section. If a forfeiture is authorized by
22 7 this chapter, it shall be ordered by the court in the in
22 8 personam action. This action shall be in addition to or in
22 9 lieu of in rem forfeiture procedures.

22 10 2. The court, on application of the prosecuting attorney,
22 11 may enter any order authorized by section 809A.12, or any
22 12 other appropriate order to protect the state's interest in
22 13 property forfeited or subject to forfeiture.

22 14 3. The court may issue a temporary restraining order on
22 15 application of the prosecuting attorney, if the state
22 16 demonstrates both of the following:

22 17 a. Probable cause exists to believe that in the event of a
22 18 final judgment, the property involved would be subject to
22 19 forfeiture under this chapter.

22 20 b. Provision of notice would jeopardize the availability
22 21 of the property for forfeiture.

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

22 27 a. Whether a probability exists that the state will
22 28 prevail on the issue of forfeiture.

22 29 b. Whether the failure to enter the order will result in
22 30 the property being destroyed, conveyed, encumbered, removed
22 31 from the jurisdiction of the court, concealed, or otherwise
22 32 made unavailable for forfeiture.

22 33 c. Whether the need to preserve the availability of
22 34 property outweighs the hardship on any owner or interest
22 35 holder against whom the order is to be entered.

23 1 5. On a determination that a person committed conduct
23 2 giving rise to forfeiture under this chapter, the court shall
23 3 do both of the following:

23 4 a. Enter a judgment of forfeiture of the property found to
23 5 be subject to forfeiture described in the complaint.

23 6 b. Authorize the prosecuting attorney or designee or any
23 7 law enforcement officer to seize all property ordered
23 8 forfeited which was not previously seized or is not under
23 9 seizure.

23 10 6. Except as provided in section 809A.12, a person
23 11 claiming an interest in property subject to forfeiture under
23 12 this chapter shall not intervene in a trial or appeal of a
23 13 criminal action or in an in personam civil action involving
23 14 the forfeiture of the property.

23 15 7. Following the entry of an in personam forfeiture order,
23 16 the prosecuting attorney may proceed with an in rem action to
23 17 resolve the remaining interests in the property. The
23 18 following procedures shall apply:

23 19 a. The prosecuting attorney shall give notice of pending
23 20 forfeiture, in the manner provided in section 809A.8, to all
23 21 owners and interest holders who have not previously been given
23 22 notice.

23 23 b. An owner of or interest holder in property that has

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

23 28 c. If the state does not recognize the claimed exemption,
23 29 the prosecuting attorney shall file a complaint and the court
23 30 shall hold an in rem forfeiture hearing as provided for in
23 31 section 809A.13.

23 32 d. In accordance with the findings made at the hearing,
23 33 the court may amend the order of forfeiture if it determines
23 34 that any claimant has established by a preponderance of the
23 35 evidence that the claimant has an interest in the property
24 1 which is exempt under the provision of section 809A.5.

24 2 Sec. 15. NEW SECTION. 809A.15 SUBSTITUTED ASSETS &endash;
24 3 SUPPLEMENTAL REMEDIES.

24 4 1. The court shall order the forfeiture of any other
24 5 property of a person, including a claimant, up to the value of
24 6 that person's property found by the court to be subject to
24 7 forfeiture under this chapter, if any of the following applies
24 8 to the person's forfeitable property:

24 9 a. The forfeitable property cannot be located.

24 10 b. The forfeitable property has been transferred or
24 11 conveyed to, sold to, or deposited with a third party.

24 12 c. The forfeitable property is beyond the jurisdiction of
24 13 the court.

24 14 d. The forfeitable property has been substantially
24 15 diminished in value while not in the actual physical custody
24 16 of the court, the seizing agency, the prosecuting attorney, or
24 17 their designee.

24 18 e. The forfeitable property has been commingled with other
24 19 property that cannot be divided without difficulty.

24 20 f. The forfeitable property is subject to any interest of
24 21 another person which is exempt from forfeiture under this
24 22 chapter.

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

24 29 (1) A forfeiture lien or notice of pending forfeiture has
24 30 been filed and notice given pursuant to section 809A.8.

24 31 (2) A complaint pursuant to section 809A.13 alleging
24 32 conduct giving rise to forfeiture has been filed and notice
24 33 given pursuant to such section 809A.8.

24 34 b. The court shall enter a final judgment in an amount
24 35 equal to the value of the lien not to exceed the fair market
25 1 value of the property, or if a lien, does not exist in an
25 2 amount equal to the fair market value of the property,
25 3 together with reasonable investigative expenses and attorney's
25 4 fees.

25 5 c. If a civil proceeding under this chapter is pending in
25 6 court, the action shall be heard by that court.

25 7 Sec. 16. NEW SECTION. 809A.16 DISPOSITION OF PROPERTY.

25 8 1. If notice of pending forfeiture is properly served in
25 9 an action in rem or in personam in which personal property,
25 10 having an estimated value of five thousand dollars or less, is
25 11 seized, and no claim opposing forfeiture is filed within
25 12 thirty days of service of such notice, the prosecuting
25 13 attorney shall prepare a written declaration of forfeiture of
25 14 the subject property to the state and allocate the property
25 15 according to the provisions of section 809A.17.

25 16 2. Within one hundred eighty days of the date of a
25 17 declaration of forfeiture, an owner or interest holder in
25 18 property declared forfeited pursuant to subsection 1, may
25 19 petition the court to have the declaration of forfeiture set
25 20 aside, after making a prima facie showing that the state

25 21 failed to serve proper notice as provided by section 809A.13.
25 22 Upon such a showing the court shall allow the state to
25 23 demonstrate by a preponderance of the evidence that notice was
25 24 properly served. If the state fails to meet its burden of
25 25 proof, the court may order the declaration of forfeiture set
25 26 aside. The state may proceed with judicial proceedings
25 27 pursuant to this chapter.

25 28 3. Except as provided in subsection 1, if a proper claim
25 29 is not timely filed in an action in rem, or if a proper answer
25 30 is not timely filed in response to a complaint, the
25 31 prosecuting attorney may apply for an order of forfeiture and
25 32 an allocation of forfeited property pursuant to section
25 33 809A.17. Under such circumstance and upon a determination by
25 34 the court that the state's written application established the
25 35 court's jurisdiction, the giving of proper notice, and facts
26 1 sufficient to show probable cause for forfeiture, the court
26 2 shall order the property forfeited to the state.

26 3 4. After final disposition of all claims timely filed in
26 4 an action in rem, or after final judgment and disposition of
26 5 all claims timely filed in an action in personam, the court
26 6 shall enter an order that the state has clear title to the
26 7 forfeited property interest. Title to the forfeited property
26 8 interest and its proceeds shall be deemed to have vested in
26 9 the state on the commission of the conduct giving rise to the
26 10 forfeiture under this chapter.

26 11 5. The court, on application of the prosecuting attorney,
26 12 may release or convey forfeited personal property to a
26 13 regulated interest holder if any of the following applies:

26 14 a. The prosecuting attorney, in the attorney's discretion,
26 15 has recognized in writing that the regulated interest holder
26 16 has an interest in the property and informs the court that the
26 17 property interest is exempt from forfeiture.

26 18 b. The regulated interest holder's interest was acquired
26 19 in the regular course of business as a regulated interest
26 20 holder.

26 21 c. The amount of the regulated interest holder's
26 22 encumbrance is readily determinable and has been reasonably
26 23 established by proof made available by the prosecuting
26 24 attorney to the court.

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

26 30 6. After the court's release or conveyance under
26 31 subsection 5, the regulated interest holder shall dispose of
26 32 the property by a commercially reasonable public sale. Within
26 33 ten days of disposition the regulated interest holder shall
26 34 tender to the state the amount received at disposition less
26 35 the amount of the regulated interest holder's encumbrance and
27 1 reasonable expense incurred by the interest holder in
27 2 connection with the sale or disposal. For the purposes of
27 3 this section, "commercially reasonable" means a sale or
27 4 disposal that would be commercially reasonable under chapter
27 5 554, article 7.

27 6 7. On order of the court or declaration of forfeiture
27 7 forfeiting the subject property, the state may transfer good
27 8 and sufficient title to any subsequent purchaser or
27 9 transferee. The title shall be recognized by all courts and
27 10 agencies of this state, and any political subdivision. On
27 11 entry of judgment in favor of a person claiming an interest in
27 12 the property that is subject to forfeiture proceedings under
27 13 this chapter, the court shall enter an order that the property
27 14 or interest in property shall be released or delivered
27 15 promptly to that person free of liens and encumbrances under
27 16 this chapter, and that the person's cost bond shall be
27 17 discharged.

27 18 8. Upon motion by the prosecuting attorney, if it appears
27 19 after a hearing that reasonable cause existed for the seizure
27 20 for forfeiture or for the filing of the notice of pending
27 21 forfeiture or complaint, the court shall find all of the
27 22 following:

27 23 a. That reasonable cause existed, or that the action was
27 24 taken under a reasonable good faith belief that it was proper.

27 25 b. That the claimant is not entitled to costs or damages.

27 26 c. That the person or seizing agency who made the seizure
27 27 and the prosecuting attorney are not liable to suit or
27 28 judgment for the seizure, suit, or prosecution.

27 29 9. The court shall order a claimant who fails to establish
27 30 that a substantial portion of the claimant's interest is
27 31 exempt from forfeiture under section 809A.5, to pay the
27 32 reasonable costs and expenses of all of the following:

27 33 a. Of any claimant who established that the claimant's
27 34 entire interest is exempt from forfeiture under section
27 35 809A.5.

28 1 b. Of the state for the investigation and prosecution of
28 2 the matter, including reasonable attorney's fees, in
28 3 connection with that claimant.

28 4 Sec. 17. NEW SECTION. 809A.17 DISPOSITION OF FORFEITED
28 5 PROPERTY.

28 6 1. A person having control over forfeited property shall
28 7 communicate that fact to the attorney general or the attorney
28 8 general's designee.

28 9 2. Forfeited property not needed as evidence in a criminal
28 10 case shall be delivered to the department of justice, or, upon
28 11 written authorization of the attorney general or the attorney
28 12 general's designee, the property may be destroyed, sold, or
28 13 delivered to an appropriate agency for disposal in accordance
28 14 with this section.

28 15 3. Forfeited property may be used by the department of
28 16 justice in the enforcement of the criminal law. The
28 17 department may give, sell, or trade property to any other
28 18 state agency or to any other law enforcement agency within the
28 19 state if, in the opinion of the attorney general, it will
28 20 enhance law enforcement within the state.

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

28 29 5. Notwithstanding subsection 1, 2, 3, or 4, the following
28 30 apply:

28 31 a. Forfeited property which is a controlled substance or a
28 32 simulated, counterfeit, or imitation-controlled substance
28 33 shall be disposed of as provided in section 124.506.

28 34 b. Forfeited property which is a weapon or ammunition
28 35 shall be deposited with the department of public safety to be
29 1 disposed of in accordance with the rules of the department.
29 2 All weapons or ammunition may be held for use in law
29 3 enforcement, testing, or comparison by the criminalistics
29 4 laboratory, or destroyed. Ammunition and firearms which are
29 5 not illegal and are not offensive weapons as defined by
29 6 section 724.1 may be sold by the department as provided in
29 7 section 809.21.

29 8 c. Material in violation of chapter 728 shall be
29 9 destroyed.

29 10 d. Property subject to the rules of the natural resource
29 11 commission shall be delivered to that commission for disposal
29 12 in accordance with its rules.

29 13 Sec. 18. NEW SECTION. 809A.18 POWERS OF ENFORCEMENT
29 14 PERSONNEL.

29 15 1. A prosecuting attorney may conduct an investigation of
29 16 any conduct that gives rise to forfeiture. The prosecuting
29 17 attorney is authorized, before the commencement of a
29 18 proceeding or action under this chapter, to subpoena
29 19 witnesses, and compel their attendance, examine them under
29 20 oath, and require the production of documentary evidence for
29 21 inspection, reproducing, or copying. Except as otherwise
29 22 provided by this section, the prosecuting attorney shall
29 23 proceed under this subsection with the same powers and
29 24 limitations, and judicial oversight and enforcement, and in
29 25 the manner provided by this chapter and by the Iowa rules of
29 26 civil procedure. Any person compelled to appear under a
29 27 demand for oral testimony under this section may be
29 28 accompanied, represented, and advised by counsel.

29 29 2. The examination of all witnesses under this section
29 30 shall be conducted by the prosecuting attorney before an
29 31 officer authorized to administer oaths. The testimony shall
29 32 be taken by a certified shorthand reporter or by a sound
29 33 recording device and shall be transcribed or otherwise
29 34 preserved. The prosecuting attorney may exclude from the
29 35 examination all persons except the witness, the witness'
30 1 counsel, the officer before whom the testimony is to be taken,
30 2 law enforcement officials, and a certified shorthand reporter.
30 3 Prior to oral examination, the person shall be advised of the
30 4 person's right to refuse to answer any questions on the basis
30 5 of the privilege against self-incrimination. The examination
30 6 shall be conducted in a manner consistent with the rules
30 7 dealing with the taking of depositions.

30 8 3. Except as otherwise provided in this section, prior to
30 9 the filing of a civil or criminal proceeding or action
30 10 relating to such a proceeding, documentary material,
30 11 transcripts, or oral testimony, in the possession of the
30 12 prosecuting attorney, shall not be available for examination
30 13 by any individual other than a law enforcement official or
30 14 agent of such official without the consent of the person who
30 15 produced the material, transcripts, or oral testimony.

30 16 4. A person shall not knowingly remove from any place,
30 17 conceal, withhold, destroy, mutilate, alter, or by any other
30 18 means falsify any documentary material that is the subject of
30 19 a subpoena, with intent to avoid, evade, prevent, or obstruct
30 20 compliance in whole or in part by any person with any duly
30 21 served subpoena of the prosecuting attorney under this
30 22 section. A violation of this subsection is a class "D"
30 23 felony. The prosecuting attorney shall investigate and
30 24 prosecute suspected violations of this subsection.

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

30 31 Sec. 19. NEW SECTION. 809A.19 IMMUNITY ORDERS.

30 32 1. If a person is or may be called to produce evidence at
30 33 a deposition, hearing, or trial under this chapter or at an
30 34 investigation brought by the prosecuting attorney under
30 35 section 809A.18, the district court in which the deposition,
31 1 hearing, trial, or investigation is or may be held shall, upon
31 2 certification in writing of a request of the prosecuting
31 3 attorney, issue an order, ex parte or after a hearing,
31 4 requiring the person to produce evidence, notwithstanding that
31 5 person's refusal to do so on the basis of the privilege
31 6 against self-incrimination.

31 7 2. The prosecuting attorney may certify in writing a
31 8 request for an ex parte order under subsection 1 if in the
31 9 prosecuting attorney's judgment both of the following apply:

31 10 a. The production of the evidence may be necessary to the
31 11 public interest.

31 12 b. The person has refused or is likely to refuse to
31 13 produce evidence on the basis of the privilege against self-
31 14 incrimination.

31 15 3. A person shall not refuse to comply with an order
31 16 issued under subsection 1 on the basis of a self-incrimination
31 17 privilege. If the person refuses to comply with the order
31 18 after being informed of its existence by the presiding
31 19 officer, the person may be compelled or punished by the
31 20 district court issuing an order for civil or criminal
31 21 contempt.

31 22 4. The production of evidence compelled by order issued
31 23 under subsection 1, and any information directly or indirectly
31 24 derived from the production of evidence, shall not be used
31 25 against the person in a subsequent criminal case, except in a
31 26 prosecution for perjury, false swearing, or an offense
31 27 otherwise involving a failure to comply with the order.

31 28 Sec. 20. NEW SECTION. 809A.20 STATUTE OF LIMITATIONS.

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

32 1 Sec. 21. NEW SECTION. 809A.21 SUMMARY FORFEITURE OF
32 2 CONTROLLED SUBSTANCES.

32 3 Controlled substances included in chapter 124 which are
32 4 contraband and any controlled substance whose owners are
32 5 unknown are summarily forfeited to the state. The court may
32 6 include in any judgment under this chapter an order forfeiting
32 7 any controlled substance involved in the conduct giving rise
32 8 to forfeiture to the extent of the defendant's interest.

32 9 Sec. 22. NEW SECTION. 809A.22 BAR TO COLLATERAL ACTION.

32 10 A person claiming an interest in property subject to
32 11 forfeiture shall not commence or maintain any action against
32 12 the state concerning the validity of the alleged interest
32 13 other than as provided in this chapter.

32 14 Sec. 23. NEW SECTION. 809A.23 STATUTORY CONSTRUCTION.

32 15 The provisions of this chapter shall be liberally construed
32 16 to effectuate its remedial purposes. Civil remedies under
32 17 this chapter shall be supplemental and not mutually exclusive.
32 18 The civil remedies do not preclude and are not precluded by
32 19 any other provision of law.

32 20 Sec. 24. NEW SECTION. 809A.24 UNIFORMITY OF APPLICATION.

32 21 1. The provisions of this chapter shall be applied and
32 22 construed to effectuate its general purpose to make uniform
32 23 the law with respect to the subject of this chapter among
32 24 states enacting this law.

32 25 2. The attorney general may enter into reciprocal
32 26 agreements with the attorney general or chief prosecuting
32 27 attorney of any state to effectuate the purposes of this
32 28 chapter.

32 29 DIVISION II

32 30 IOWA ONGOING CRIMINAL CONDUCT ACT

32 31 Sec. 25. NEW SECTION. 706A.1 DEFINITIONS.

32 32 In this chapter, unless the context otherwise requires:

32 33 1. "Criminal network" means any combination of persons
32 34 engaging, for financial gain on a continuing basis, in conduct
32 35 which is an indictable offense under the laws of this state
33 1 regardless of whether such conduct is charged or indicted. As
33 2 used in this subsection, persons combine if they collaborate
33 3 or act in concert in carrying on or furthering the activities
33 4 or purposes of a network even though such persons may not know
33 5 each other's identity, membership in the network changes from
33 6 time to time, or one or more members of the network stand in a
33 7 wholesaler-retailer, service provider, or other arm's length
33 8 relationship with others as to conduct in the furtherance of

33 9 the financial goals of the network.

33 10 2. "Enterprise" includes any sole proprietorship,
33 11 partnership, corporation, trust, or other legal entity, or any
33 12 unchartered union, association, or group of persons associated
33 13 in fact although not a legal entity, and includes unlawful as
33 14 well as lawful enterprises.

33 15 3. "Proceeds" means property acquired or derived directly
33 16 or indirectly from, produced through, realized through, or
33 17 caused by an act or omission and includes any property of any
33 18 kind.

33 19 4. "Property" means anything of value, and includes any
33 20 interest in property, including any benefit, privilege, claim,
33 21 or right with respect to anything of value, whether real or
33 22 personal, tangible, or intangible, without reduction for
33 23 expenses incurred for acquisition, maintenance, production, or
33 24 any other purpose.

33 25 5. "Specified unlawful activity" means any act, including
33 26 any preparatory or completed offense, committed for financial
33 27 gain on a continuing basis, that is punishable as an
33 28 indictable offense under the laws of the state in which it
33 29 occurred and under the laws of this state.

33 30 Sec. 26. NEW SECTION. 706A.2 VIOLATIONS.

33 31 1. SPECIFIED UNLAWFUL ACTIVITY INFLUENCED ENTERPRISES.

33 32 a. It is unlawful for any person who has knowingly
33 33 received any proceeds of specified unlawful activity to use or
33 34 invest, directly or indirectly, any part of such proceeds in
33 35 the acquisition of any interest in any enterprise or any real
34 1 property, or in the establishment or operation of any
34 2 enterprise.

34 3 b. It is unlawful for any person to knowingly acquire or
34 4 maintain, directly or indirectly, any interest in or control
34 5 of any enterprise or real property through specified unlawful
34 6 activity.

34 7 c. It is unlawful for any person to knowingly conduct the
34 8 affairs of any enterprise through specified unlawful activity
34 9 or to knowingly participate, directly, or indirectly, in any
34 10 enterprise that the person knows is being conducted through
34 11 specified unlawful activity.

34 12 d. It is unlawful for any person to conspire or attempt to
34 13 violate or to solicit or facilitate the violations of the
34 14 provisions of paragraphs "a", "b", or "c".

34 15 2. FACILITATION OF A CRIMINAL NETWORK. It is unlawful for
34 16 a person acting with knowledge of the financial goals and
34 17 criminal objectives of a criminal network to knowingly
34 18 facilitate criminal objectives of the network by doing any of
34 19 the following:

34 20 a. Engaging in violence or intimidation or inciting or
34 21 inducing another to engage in violence or intimidation.

34 22 b. Inducing or attempting to induce a person believed to
34 23 have been called or who may be called as a witness to
34 24 unlawfully withhold any testimony, testify falsely, or absent
34 25 themselves from any official proceeding to which the potential
34 26 witness has been legally summoned.

34 27 c. Attempting by means of bribery, misrepresentation,
34 28 intimidation, or force to obstruct, delay, or prevent the
34 29 communication of information or testimony relating to a
34 30 violation of any criminal statute to a peace officer,
34 31 magistrate, prosecutor, grand jury, or petit jury.

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

35 1 e. Attempting to suppress by an act of concealment,
35 2 alteration, or destruction any physical evidence that might
35 3 aid in the discovery, apprehension, prosecution, or conviction
35 4 of any person.

35 5 f. Making any property available to a member of the

35 6 criminal network.

35 7 g. Making any service other than legal services available
35 8 to a member of the criminal network.

35 9 h. Inducing or committing any act or omission by a public
35 10 servant in violation of the public servant's official duty.

35 11 i. Obtaining any benefit for a member of a criminal
35 12 network by means of false or fraudulent pretenses,
35 13 representation, promises or material omissions.

35 14 j. Making a false sworn statement regarding a material
35 15 issue, believing it to be false, or making any statement,
35 16 believing it to be false, regarding a material issue to a
35 17 public servant in connection with an application for any
35 18 benefit, privilege, or license, or in connection with any
35 19 official investigation or proceeding.

35 20 3. MONEY LAUNDERING. It is unlawful for a person to
35 21 commit money laundering as defined in chapter 706B.

35 22 4. ACTS OF SPECIFIED UNLAWFUL ACTIVITY. It is unlawful
35 23 for a person to commit specified unlawful activity as defined
35 24 in section 706A.1.

35 25 5. NEGLIGENT EMPOWERMENT OF SPECIFIED UNLAWFUL ACTIVITY.

35 26 a. It is unlawful for a person to negligently allow
35 27 property owned or controlled by the person or services
35 28 provided by the person, other than legal services, to be used
35 29 to facilitate specified unlawful activity, whether by
35 30 entrustment, loan, rent, lease, bailment, or otherwise.

35 31 b. Damages for negligent empowerment of specified unlawful
35 32 activity shall include all reasonably foreseeable damages
35 33 proximately caused by the specified unlawful activity,
35 34 including, in a case brought or intervened in by the state,
35 35 the costs of investigation and criminal and civil litigation
36 1 of the specified unlawful activity incurred by the government
36 2 for the prosecution and defense of any person involved in the
36 3 specified unlawful activity, and the imprisonment, probation,
36 4 parole, or other expense reasonably necessary to detain,
36 5 punish, and rehabilitate any person found guilty of the
36 6 specified unlawful activity, except for the following:

36 7 (1) If the person empowering the specified unlawful
36 8 activity acted only negligently and was without knowledge of
36 9 the nature of the activity and could not reasonably have known
36 10 of the unlawful nature of the activity or that it was likely
36 11 to occur, damages shall be limited to the greater of the
36 12 following:

36 13 (a) The cost of the investigation and litigation of the
36 14 person's own conduct plus the value of the property or service
36 15 involved as of the time of its use to facilitate the specified
36 16 unlawful activity.

36 17 (b) All reasonably foreseeable damages to any person,
36 18 except any person responsible for the specified unlawful
36 19 activity, and to the general economy and welfare of the state
36 20 proximately caused by the person's own conduct.

36 21 (2) If the property facilitating the specified unlawful
36 22 activity was taken from the possession or control of the
36 23 person without that person's knowledge and against that
36 24 person's will in violation of the criminal law, damages shall
36 25 be limited to reasonably foreseeable damages to any person,
36 26 except persons responsible for the taking or the specified
36 27 unlawful activity, and to the general economy and welfare of
36 28 the state proximately caused by the person's negligence, if
36 29 any, in failing to prevent its taking.

36 30 (3) If the person was aware of the possibility that the
36 31 property or service would be used to facilitate some form of
36 32 specified unlawful activity and acted to prevent the unlawful
36 33 use, damages shall be limited to reasonably foreseeable
36 34 damages to any person, except any person responsible for the
36 35 specified unlawful activity, and to the general economy and
37 1 welfare of the state proximately caused by the person's
37 2 failure, if any, to act reasonably to prevent the unlawful

37 3 use.

37 4 (4) The plaintiff shall carry the burden of proof by a
37 5 preponderance of the evidence that the specified unlawful
37 6 activity occurred and was facilitated by the property or
37 7 services. The defendant shall have the burden of proof by a
37 8 preponderance of the evidence as to circumstances constituting
37 9 lack of negligence and on the limitations on damages in this
37 10 subsection.

37 11 Sec. 27. NEW SECTION. 706A.3 CIVIL REMEDIES & ACTIONS.

37 12 1. The prosecuting attorney or an aggrieved person may
37 13 institute civil proceedings against any person in district
37 14 court seeking relief from conduct constituting a violation of
37 15 this chapter or to prevent, restrain, or remedy such
37 16 violation.

37 17 2. The district court has jurisdiction to prevent,
37 18 restrain, or remedy such violations by issuing appropriate
37 19 orders. Prior to a determination of liability such orders may
37 20 include, but are not limited to, entering restraining orders
37 21 or injunctions, requiring the execution of satisfactory
37 22 performance bonds, creating receiverships, and enforcing
37 23 constructive trusts in connection with any property or
37 24 interest subject to damages, forfeiture, or other remedies or
37 25 restraints pursuant to this chapter.

37 26 3. If the plaintiff in such a proceeding proves the
37 27 alleged violation by a preponderance of the evidence, the
37 28 district court, after making due provision for the rights of
37 29 innocent persons, shall grant relief by entering any
37 30 appropriate order or judgment, including any of the following:

37 31 a. Ordering any defendant to divest the defendant of any
37 32 interest in any enterprise, or in any real property.

37 33 b. Imposing reasonable restrictions upon the future
37 34 activities or investments of any defendant, including, but not
37 35 limited to, prohibiting any defendant from engaging in the
38 1 same type of endeavor as any enterprise in which the defendant
38 2 was engaged in a violation of this chapter.

38 3 c. Ordering the dissolution or reorganization of any
38 4 enterprise.

38 5 d. Ordering the payment of all reasonable costs and
38 6 expenses of the investigation and prosecution of any
38 7 violation, civil or criminal, including reasonable attorney
38 8 fees in the trial and appellate courts. Such payments
38 9 received by the state, by judgment, settlement, or otherwise,
38 10 shall be considered forfeited property and disposed of
38 11 pursuant to section 809A.17.

38 12 e. Ordering the forfeiture of any property subject to
38 13 forfeiture under chapter 809A, pursuant to the provisions and
38 14 procedures of that chapter.

38 15 f. Ordering the suspension or revocation of any license,
38 16 permit, or prior approval granted to any person by any agency
38 17 of the state.

38 18 g. Ordering the surrender of the certificate of existence
38 19 of any corporation organized under the laws of this state or
38 20 the revocation of any certificate authorizing a foreign
38 21 corporation to conduct business within this state, upon
38 22 finding that for the prevention of future violations, the
38 23 public interest requires the certificate of the corporation to
38 24 be surrendered and the corporation dissolved or the
38 25 certificate revoked.

38 26 4. Relief under subsection 3, paragraphs "e", "f", and "g"
38 27 shall not be granted in civil proceedings instituted by an
38 28 aggrieved person unless the prosecuting attorney has
38 29 instituted the proceedings or intervened. In any action under
38 30 this section brought by the state or in which the state has
38 31 intervened, the state may employ any of the powers of seizure
38 32 and restraint of property as are provided for forfeiture actions
38 33 under chapter 809A, or as are provided for the collection of
38 34 taxes payable and past due, and whose collection has been

38 35 determined to be in jeopardy.

39 1 5. In a proceeding initiated under this section,
39 2 injunctive relief shall be granted in conformity with the
39 3 principles that govern the granting of relief from injury or
39 4 threatened injury in other civil cases, but no showing of
39 5 special or irreparable injury is required. Pending final
39 6 determination of a proceeding initiated under this section, a
39 7 temporary restraining order or a preliminary injunction may be
39 8 issued upon a showing of immediate danger of significant
39 9 injury, including the possibility that a judgment for money
39 10 damages might be difficult to execute, and, in a proceeding
39 11 initiated by a nongovernmental aggrieved person, upon the
39 12 execution of proper bond against injury for an injunction
39 13 improvidently granted.

39 14 6. Any person who is in possession or control of proceeds
39 15 of any violation of this chapter, is an involuntary trustee
39 16 and holds the property in constructive trust for the benefit
39 17 of the person entitled to remedies under this chapter, unless
39 18 the holder acquired the property as a bona fide purchaser for
39 19 value who was not knowingly taking part in an illegal
39 20 transaction.

39 21 7. Any person whose business or property is directly or
39 22 indirectly injured by conduct constituting a violation of this
39 23 chapter, by any person, may bring a civil action, subject to
39 24 the in pari delicto defense and shall recover threefold the
39 25 actual damages sustained and the costs and expenses of the
39 26 investigation and prosecution of the action including
39 27 reasonable attorney fees in the trial and appellate courts.
39 28 Damages shall not include pain and suffering. Any person
39 29 injured shall have a claim to any property against which any
39 30 fine, or against which treble damages under subsection 10 or
39 31 11 may be imposed, superior to any right or claim of the state
39 32 to the property, up to the value of actual damages and costs
39 33 awarded in an action under this subsection. The state shall
39 34 have a right of subrogation to the extent that an award made
39 35 to a person so injured is satisfied out of property against
40 1 which any fine or civil remedy in favor of the state may be
40 2 imposed.

40 3 8. a. If liability of a legal entity is based on the
40 4 conduct of another, through respondent superior or otherwise,
40 5 the legal entity shall not be liable for more than actual
40 6 damages and costs, including a reasonable attorney's fee, if
40 7 the legal entity affirmatively shows by a preponderance of the
40 8 evidence that both of the following apply:

40 9 (1) The conduct was not engaged in, authorized, solicited,
40 10 commanded, or recklessly tolerated by the legal entity, by the
40 11 directors of the legal entity or by a high managerial agent of
40 12 the legal entity acting within the scope of employment.

40 13 (2) The conduct was not engaged in by an agent of the
40 14 legal entity acting within the scope of employment and in
40 15 behalf of the legal entity.

40 16 b. For the purposes of this subsection:

40 17 (1) "Agent" means any officer, director, or employee of
40 18 the legal entity, or any other person who is authorized to act
40 19 in behalf of the legal entity.

40 20 (2) "High managerial agent" means any officer of the legal
40 21 entity or, in the case of a partnership, a partner, or any
40 22 other agent in a position of comparable authority with respect
40 23 to the formulation of policy of the legal entity.

40 24 (3) Notwithstanding any other provision of law, any
40 25 pleading, motion, or other paper filed by a nongovernmental
40 26 aggrieved party in connection with a proceeding or action
40 27 under subsection 7 shall be verified. If such aggrieved
40 28 person is represented by an attorney, such pleading, motion,
40 29 or other paper shall be signed by at least one attorney of
40 30 record in the attorney's individual name, whose address shall
40 31 be stated.

40 32 If such pleading, motion, or other paper includes an
40 33 averment of fraud, coercion, accomplice, respondent superior,
40 34 conspiratorial, enterprise, or other vicarious accountability,
40 35 it shall state, insofar as practicable, the circumstances with
41 1 particularity. The verification and the signature by an
41 2 attorney required by this subsection shall constitute a
41 3 certification by the signor that the attorney has carefully
41 4 read the pleading, motion, or other paper and, based on a
41 5 reasonable inquiry, believes that all of the following exist:

41 6 (a) It is well grounded in fact.

41 7 (b) It is warranted by existing law, or a good faith
41 8 argument for the extension, modification, or reversal of
41 9 existing law.

41 10 (c) It is not made for an improper purpose, including to
41 11 harass, to cause unnecessary delay, or to impose a needless
41 12 increase in the cost of litigation.

41 13 The court may, after a hearing and appropriate findings of
41 14 fact, impose upon any person who verified the complaint,
41 15 cross-claim or counterclaim, or any attorney who signed it in
41 16 violation of this subsection, or both, a fit and proper
41 17 sanction, which may include an order to pay to the other party
41 18 or parties the amount of the reasonable expenses incurred
41 19 because of the complaint or claim, including reasonable
41 20 attorney fees. If the court determines that the filing of a
41 21 complaint or claim under subsection 7 by a nongovernmental
41 22 party was frivolous in whole or in part, the court shall award
41 23 double the actual expenses, including attorney fees, incurred
41 24 because of the frivolous portion of the complaint or claim.

41 25 9. Upon the filing of a complaint, cross-claim, or
41 26 counterclaim under this section, an aggrieved person, as a
41 27 jurisdictional prerequisite, shall immediately notify the
41 28 attorney general of its filing and serve one copy of the
41 29 pleading on the attorney general. Service of the notice on
41 30 the attorney general does not limit or otherwise affect the
41 31 right of the state to maintain an action under this section or
41 32 intervene in a pending action and does not authorize the
41 33 aggrieved person to name the state or the attorney general as
41 34 a party to the action. The attorney general, upon timely
41 35 application, may intervene or appear as amicus curiae in any
42 1 civil proceeding or action brought under this section if the
42 2 attorney general certifies that, in the opinion of the
42 3 attorney general, the proceeding or action is of general
42 4 public importance. In any proceeding or action brought under
42 5 this section by an aggrieved person, the state shall be
42 6 entitled to the same relief as if it had instituted the
42 7 proceeding or action.

42 8 10. a. Any prosecuting attorney may bring a civil action
42 9 on behalf of a person whose business or property is directly
42 10 or indirectly injured by conduct constituting a violation of
42 11 this chapter, and shall recover threefold the damages
42 12 sustained by such person and the costs and expenses of the
42 13 investigation and prosecution of the action, including
42 14 reasonable attorney fees in the trial and appellate courts.
42 15 The court shall exclude from the amount of monetary relief
42 16 awarded any amount of monetary relief which is any of the
42 17 following:

42 18 (1) Which duplicates amounts which have been awarded for
42 19 the same injury.

42 20 (2) Which is properly allocable to persons who have
42 21 excluded their claims under paragraph "c".

42 22 b. In any action brought under this subsection, the
42 23 prosecuting attorney, at such times, in such manner, and with
42 24 such content as the court may direct, shall cause notice of
42 25 the action to be given by publication. If the court finds
42 26 that notice given solely by publication would deny due process
42 27 to any person, the court may direct further notice to such
42 28 person according to the circumstances of the case.

42 29 c. A person on whose behalf an action is brought under
42 30 this subsection may elect to exclude from adjudication the
42 31 portion of the state claim for monetary relief attributable to
42 32 the person by filing notice of such election within such time
42 33 as specified in the notice given under this subsection.

42 34 d. A final judgement in an action under this subsection
42 35 shall preclude any claim under this subsection by a person on
43 1 behalf of whom such action was brought who fails to give
43 2 notice of exclusion within the times specified in the notice
43 3 given under paragraph "b".

43 4 e. An action under this subsection on behalf of a person
43 5 other than the state shall not be dismissed or compromised
43 6 without the approval of the court, and notice of any proposed
43 7 dismissal or compromise shall be given in such manner as the
43 8 court directs.

43 9 11. The attorney general may bring a civil action as
43 10 parens patriae on behalf of the general economy, resources,
43 11 and welfare of this state, and shall recover threefold the
43 12 proceeds acquired, maintained, produced, or realized by or on
43 13 behalf of the defendant by reason of a violation of this
43 14 chapter, plus the costs and expenses of the investigation and
43 15 prosecution of the action, including reasonable attorney fees
43 16 in the trial and appellate courts.

43 17 a. A person who has knowingly conducted or participated in
43 18 the conduct of an enterprise in violation of section 706A.2,
43 19 subsection 1, paragraph "c" is also jointly and severally
43 20 liable for the greater of threefold the damage sustained
43 21 directly or indirectly by the state by reason of conduct in
43 22 furtherance of the violation or threefold the total of all
43 23 proceeds acquired, maintained, produced, or realized by, or on
43 24 behalf of any person by reason of participation in the
43 25 enterprise except for the following:

43 26 (1) A person is not liable for conduct occurring prior to
43 27 the person's first knowing participation in or conduct of the
43 28 enterprise.

43 29 (2) If a person shows that, under circumstances
43 30 manifesting a voluntary and complete renunciation of culpable
43 31 intent, the person withdrew from the enterprise by giving a
43 32 complete and timely warning to law enforcement authorities or
43 33 by otherwise making a reasonable and substantial effort to
43 34 prevent the conduct or result which is the criminal objective
43 35 of the enterprise, the person is not liable for conduct
44 1 occurring after the person's withdrawal.

44 2 b. A person who has facilitated a criminal network in
44 3 violation of section 706A.2, subsection 2, is also jointly and
44 4 severally liable for all of the following:

44 5 (1) The damages resulting from the conduct in furtherance
44 6 of the criminal objectives of the criminal network, to the
44 7 extent that the person's facilitation was of substantial
44 8 assistance to the conduct.

44 9 (2) The proceeds of conduct in furtherance of the criminal
44 10 objectives of the criminal network, to the extent that the
44 11 person's facilitation was of substantial assistance to the
44 12 conduct.

44 13 (3) A person who has engaged in money laundering in
44 14 violation of chapter 706B is also jointly and severally liable
44 15 for the greater of threefold the damages resulting from the
44 16 person's conduct or threefold the property that is the subject
44 17 of the violation.

44 18 Sec. 28. NEW SECTION. 706A.4 CRIMINAL SANCTIONS.

44 19 A person who violates section 706A.2, subsection 1, 2, or
44 20 4, commits a class "B" felony.

44 21 Sec. 29. NEW SECTION. 706A.5 UNIFORMITY OF CONSTRUCTION
44 22 AND APPLICATION.

44 23 1. The provisions of this chapter shall be liberally
44 24 construed to effectuate its remedial purposes. Civil remedies
44 25 under this chapter shall be supplemental and not mutually

44 26 exclusive. Civil remedies under this chapter do not preclude
44 27 and are not precluded by other provisions of law.

44 28 2. The provisions of this chapter shall be applied and
44 29 construed to effectuate its general purpose to make uniform
44 30 the law with respect to the subject of this chapter among
44 31 states enacting the law.

44 32 3. The attorney general may enter into reciprocal
44 33 agreements with the attorney general or chief prosecuting
44 34 attorney of any state to effectuate the purposes of this
44 35 chapter.

45 1 DIVISION III

45 2 IOWA MONEY LAUNDERING ACT

45 3 Sec. 30. NEW SECTION. 706B.1 DEFINITIONS.

45 4 In this chapter, unless the context otherwise requires:

45 5 1. "Proceeds" means property acquired or derived directly
45 6 or indirectly from, produced through, realized through, or
45 7 caused by an act or omission and includes any property of any
45 8 kind.

45 9 2. "Property" means anything of value, and includes any
45 10 interest in property, including any benefit, privilege, claim,
45 11 or right with respect to anything of value, whether real or
45 12 personal, tangible or intangible.

45 13 3. "Specified unlawful activity" means any act, including
45 14 any preparatory or completed offense, committed for financial
45 15 gain on a continuing basis, that is punishable by confinement
45 16 of one year or more under the laws of this state, or, if the
45 17 act occurred outside this state, would be punishable by
45 18 confinement of one year or more under the laws of the state in
45 19 which it occurred and under the laws of this state.

45 20 4. "Transaction" includes a purchase, sale, trade, loan,
45 21 pledge, investment, gift, transfer, transmission, delivery,
45 22 deposit, withdrawal, payment, transfer between accounts,
45 23 exchange of currency, extension of credit, purchase, or sale
45 24 of any monetary instrument, use of a safe deposit box, or any
45 25 other acquisition or disposition of property by whatever means
45 26 effected.

45 27 5. "Unlawful activity" means any act which is chargeable
45 28 or indictable as a public offense of any degree under the laws
45 29 of the state in which the act occurred or under federal law
45 30 and, if the act occurred in a state other than this state,
45 31 would be chargeable or indictable as a public offense of any
45 32 degree under the laws of this state or under federal law.

45 33 Sec. 31. NEW SECTION. 706B.2 MONEY LAUNDERING PENALTY –
45 34 CIVIL REMEDIES.

45 35 1. It is unlawful for a person to do any of the following:

46 1 a. To knowingly transport, receive, or acquire property or
46 2 to conduct a transaction involving property, knowing that the
46 3 property involved is the proceeds of some form of unlawful
46 4 activity, when, in fact, the property is the proceeds of
46 5 specified unlawful activity.

46 6 b. To make property available to another, by transaction,
46 7 transportation, or otherwise, knowing that it is intended to
46 8 be used for the purpose of committing or furthering the
46 9 commission of specified unlawful activity.

46 10 c. To conduct a transaction knowing that the property
46 11 involved in the transaction is the proceeds of some form of
46 12 unlawful activity with the intent to conceal or disguise the
46 13 nature, location, source, ownership, or control of the
46 14 property or the intent to avoid a transaction-reporting
46 15 requirement under chapter 529, the Iowa financial transaction
46 16 reporting Act, or federal law.

46 17 d. To knowingly engage in the business of conducting,
46 18 directing, planning, organizing, initiating, financing,
46 19 managing, supervising, or facilitating transactions involving
46 20 property, knowing that the property involved in the
46 21 transaction is the proceeds of some form of unlawful activity,
46 22 that, in fact, is the proceeds of specified unlawful activity.

46 23 2. A person who violates:
46 24 a. Subsection 1, paragraphs "a", "b", or "c", commits a
46 25 class "C" felony, and may be fined not more than ten thousand
46 26 dollars or twice the value of the property involved, whichever
46 27 is greater, or by imprisonment for not more than 10 years, or
46 28 both.
46 29 b. Subsection 1, paragraph "d", commits a class "D"
46 30 felony, and may be fined not more than five thousand dollars
46 31 or twice the value of the property involved, whichever is
46 32 greater, or by imprisonment for not more than five years, or
46 33 both.
46 34 3. A person who violates subsection 1, paragraph "a", "b",
46 35 "c", or "d", is subject to a civil penalty of three times the
47 1 value of the property involved in the transaction, in addition
47 2 to any criminal sanction imposed.
47 3 4. A person who is found guilty of a violation under this
47 4 section also may be charged with violations of chapter 706A,
47 5 and property involved in a violation under this chapter is
47 6 subject to forfeiture under chapter 809A.

47 7 Sec. 32. NEW SECTION. 706B.3 UNIFORMITY OF CONSTRUCTION
47 8 AND APPLICATION.

47 9 1. The provisions of this chapter shall be liberally
47 10 construed to effectuate its remedial purposes. Civil remedies
47 11 under this chapter shall be supplemental and not mutually
47 12 exclusive. The civil remedies do not preclude and are not
47 13 precluded by other provision of law.

47 14 2. The provisions of this chapter shall be applied and
47 15 construed to effectuate its general purpose to make uniform
47 16 the law with respect to the subject of this chapter among
47 17 states enacting the law.

47 18 3. The attorney general may enter into reciprocal
47 19 agreements with the attorney general or chief prosecuting
47 20 attorney of any state to effectuate the purposes of this
47 21 chapter.

47 22 DIVISION IV

47 23 IOWA FINANCIAL TRANSACTION REPORTING ACT

47 24 Sec. 33. NEW SECTION. 529.1 DEFINITIONS.

47 25 In this chapter, unless the context otherwise requires:

47 26 1. "Authorized delegate" means a person designated by the
47 27 licensee.

47 28 2. "Check cashing" means exchanging for compensation a
47 29 check, draft, money order, traveler's check, or a payment
47 30 instrument of a licensee for money delivered to the presenter
47 31 at the time and place of the presentation.

47 32 3. "Compensation" means any fee, commission, or other
47 33 benefit.

47 34 4. "Conduct the business" means engaging in activities of
47 35 a licensee or money transmitter more than ten times in any
48 1 calendar year for compensation.

48 2 5. "Foreign money exchange" means exchanging for
48 3 compensation money of the United States government or a
48 4 foreign government to or from money of another government at a
48 5 conspicuously posted exchange rate at the time and place of
48 6 the presentation of the money to be exchanged.

48 7 6. "Licensee" means a person licensed under this chapter.

48 8 7. "Location" means a place of business at which activity
48 9 conducted by a licensee or money transmitter occurs.

48 10 8. "Money" means a medium of exchange authorized or
48 11 adopted by a domestic or foreign government as a part of its
48 12 currency and that is customarily used and accepted as a medium
48 13 of exchange in the country of issuance.

48 14 9. "Money transmitter" means a person who is located or
48 15 doing business in this state, including a check cashier and a
48 16 foreign money exchanger, and who does any of the following:

48 17 a. Sells or issues payment instruments.

48 18 b. Conducts the business of receiving money for the
48 19 transmission of or transmitting money.

48 20 c. Conducts the business of exchanging payment instruments
48 21 or money into any form of money or payment instrument.

48 22 d. Conducts the business of receiving money for obligors
48 23 for the purpose of paying obligors' bills, invoices, or
48 24 accounts.

48 25 e. Meets the definition of a bank, financial agency, or
48 26 financial institution as prescribed by 31 U.S.C. } 5312 or 31
48 27 C.F.R. } 103.11 and any successor provisions.

48 28 10. "Payment instrument" means a check, draft, money
48 29 order, traveler's check, or other instrument or order for the
48 30 transmission or payment of money, sold to one or more persons,
48 31 whether or not that instrument or order is negotiable.

48 32 "Payment instrument" does not include an instrument that is
48 33 redeemable by the issuer in merchandise or service, a credit
48 34 card voucher, or a letter of credit.

48 35 11. "Proceeds" means anything of value, and includes any
49 1 interest in property, including any benefit, privilege, claim,
49 2 or right with respect to anything of value, whether real or
49 3 personal, tangible or intangible, without reduction for
49 4 expenses incurred for acquisition, maintenance, production, or
49 5 any other purpose.

49 6 12. "Superintendent" means the superintendent of banking
49 7 or the superintendent of credit unions.

49 8 13. "Transaction" includes a purchase, sale, trade, loan,
49 9 pledge, investment, gift, transfer, transmission, delivery,
49 10 deposit, withdrawal, payment, transfer between accounts,
49 11 exchange of currency, extension of credit, purchase, or sale
49 12 of any monetary instrument, use of a safe deposit box, or any
49 13 other acquisition or disposition of property by whatever means
49 14 effected.

49 15 14. "Transmitting money" includes the transmission of
49 16 money by any means including transmission within this country
49 17 or to or from locations abroad by payment instrument, wire,
49 18 facsimile, or electronic transfer, courier, or otherwise.

49 19 15. "Traveler's check" means an instrument identified as a
49 20 traveler's check on its face or commonly recognized as a
49 21 traveler's check and issued in a money multiple of United
49 22 States or foreign currency with a provision for a specimen
49 23 signature of the purchaser to be completed at the time of
49 24 purchase and a countersignature of the purchaser to be
49 25 completed at the time of negotiation.

49 26 Sec. 34. NEW SECTION. 529.2 REPORTS.

49 27 1. Each licensee and authorized delegate of a licensee and
49 28 each money transmitter shall file with the department of
49 29 public safety, in a form prescribed by the department, a
49 30 report of any activity or business conducted by a customer
49 31 that the licensee, authorized delegate, or money transmitter
49 32 believes may constitute a possible money laundering as
49 33 prohibited by section 706B.2 or specified unlawful activity as
49 34 defined in chapter 706B. That report shall be filed within
49 35 fifteen days of the activity.

50 1 2. A licensee, authorized delegate, or money transmitter
50 2 required to file a report regarding business conducted in this
50 3 state pursuant to the federal Currency and Foreign
50 4 Transactions Reporting Act, 31 U.S.C. } 5311 through 5326 and
50 5 31 C.F.R. pt. 103, or 12 C.F.R. } 21.11, shall file a
50 6 duplicate of that report with the department of public safety.

50 7 3. All persons engaged in a trade or business who receive
50 8 more than ten thousand dollars in money in one transaction, or
50 9 who receive more than ten thousand dollars in money through
50 10 two or more related transactions, must complete and file with
50 11 the department of public safety the information required by 26
50 12 U.S.C. } 6050i and 26 C.F.R. } 1.6050I, and any successor
50 13 provisions, concerning returns relating to cash received in
50 14 trade or business.

50 15 4. A licensee, authorized delegate, or money transmitter
50 16 that is regulated under the federal Currency and Foreign

50 17 Transaction Reporting Act, 31 U.S.C. } 5325 and 31 C.F.R. pt.
50 18 103, and that is required to make available prescribed records
50 19 to the secretary of the United States department of treasury
50 20 upon request at any time, shall follow the same prescribed
50 21 procedures and create and maintain the same prescribed records
50 22 relating to a transaction and shall make these records
50 23 available to the department of public safety on request at any
50 24 time.

50 25 5. a. If the superintendent finds that reasonable grounds
50 26 exist for requiring additional recordkeeping and reporting in
50 27 order to carry out the purposes of this chapter and prevent
50 28 evasion of this chapter, the superintendent may issue an order
50 29 requiring any group of licensees, authorized delegates or
50 30 money transmitters in a geographic area to do any of the
50 31 following:

50 32 (1) Obtain information described by the superintendent in
50 33 the order regarding any of the following:

50 34 (a) Transactions in which the licensee, authorized
50 35 delegate, or money transmitter is involved for the payment,
51 1 receipt, or transfer of United States coin or currency or
51 2 other monetary instruments described by the superintendent in
51 3 the order, involving amounts or denominations of five hundred
51 4 dollars or more, as the superintendent may prescribe.

51 5 (b) Other persons participating in those transactions.

51 6 (2) Maintain records of that information for five years or
51 7 less, as the superintendent may prescribe and make those
51 8 records available to the department of public safety and the
51 9 superintendent.

51 10 (3) File a report with the department of public safety and
51 11 the superintendent regarding any transaction described in the
51 12 order in the manner prescribed in the order.

51 13 b. An order issued under paragraph "a" is not effective
51 14 for more than sixty days unless renewed by the superintendent
51 15 after finding that reasonable grounds exist for continuation
51 16 of the order.

51 17 6. a. The timely filing of a report required by this
51 18 section with the appropriate federal agency shall be deemed
51 19 compliance with the reporting requirements of this section,
51 20 unless the attorney general or the department of public safety
51 21 has notified the superintendent that reports of that type are
51 22 not being regularly and comprehensively transmitted by that
51 23 federal agency to the department of public safety.

51 24 b. This chapter does not preclude a licensee, authorized
51 25 delegate, money transmitter, financial institution, or a
51 26 person engaged in a trade or business, in its discretion, from
51 27 instituting contact with, and thereafter communicating with
51 28 and disclosing customer financial records to appropriate state
51 29 or local law enforcement agencies if the licensee, authorized
51 30 delegate, money transmitter, financial institution, or person
51 31 has information that may be relevant to a possible violation
51 32 of any criminal statute or to the evasion or attempted evasion
51 33 of any reporting requirement of this chapter.

51 34 c. A licensee, authorized delegate, money transmitter,
51 35 financial institution, person engaged in a trade or business,
52 1 or any officer, employee, agent, or authorized delegate of any
52 2 of them, or any public official or governmental employee who
52 3 keeps or files a record pursuant to this section or who
52 4 communicates or discloses information or records under
52 5 paragraph "b", is not liable to its customer, to a state or
52 6 local agency, or to any person for any loss or damage caused
52 7 in whole or in part by the making, filing, or governmental use
52 8 of the report, or any information contained in that report.

52 9 7. The attorney general or the department of public safety
52 10 may report any possible violations indicated by analysis of
52 11 the reports required by this chapter to any appropriate law
52 12 enforcement agency for use in the proper discharge of its
52 13 official duties. The attorney general or the department of

52 14 public safety shall provide copies of the reports required by
52 15 this chapter to any appropriate prosecutorial or law
52 16 enforcement agency upon being provided with a written request
52 17 for records relating to a specific individual or entity and
52 18 stating that the agency has an articulable suspicion that such
52 19 individual or entity has committed a felony offense or a
52 20 violation of this chapter to which the reports are relevant.
52 21 A person who releases information received pursuant to this
52 22 subsection except in the proper discharge of the person's
52 23 official duties is guilty of a serious misdemeanor.

52 24 8. It shall be unlawful for any person to do any of the
52 25 following:

52 26 a. To knowingly violate any provision of this chapter.

52 27 b. With intent to disguise the fact that money or a
52 28 payment instrument is the proceeds of criminal conduct, or
52 29 with intent to promote, manage, establish, carry on, or
52 30 facilitate the promotion, management, establishment, or
52 31 carrying on of any criminal conduct, to knowingly furnish or
52 32 provide to a licensee, authorized delegate, money transmitter,
52 33 financial institution, person engaged in a trade or business,
52 34 or any officer, employee, agent or authorized delegate of any
52 35 of them, or to the attorney general or department of public
53 1 safety, any false, inaccurate, or incomplete information; or
53 2 to knowingly conceal a material fact in connection with a
53 3 transaction for which a report is required to be filed
53 4 pursuant to this section.

53 5 c. With the intent to disguise the fact that money or a
53 6 payment instrument is the proceeds of criminal conduct, or
53 7 with intent to promote, manage, establish, carry on, or
53 8 facilitate the promotion, management, establishment, or
53 9 carrying on of any criminal conduct, or with intent to evade
53 10 the making or filing of a report required under this chapter,
53 11 or with intent to cause the making or filing of a report that
53 12 contains a material omission or misstatement of fact, or with
53 13 intent to conduct or structure a transaction or series of
53 14 transactions by or through one or more licensees, authorized
53 15 delegates, money transmitters, financial institutions, or
53 16 persons engaged in a trade or business.

53 17 9. A person who violates subsection 8 is guilty of a class
53 18 "C" felony and is also subject to a civil penalty of three
53 19 times the value of the property involved in the transaction,
53 20 or, if no transaction is involved, five thousand dollars.

53 21 10. Notwithstanding any other provision of law, each
53 22 violation of this section constitutes a separate, punishable
53 23 offense.

53 24 11. Any report, record, information, analysis, or request
53 25 obtained by the attorney general or department of public
53 26 safety pursuant to this chapter is not a public record as
53 27 defined in chapter 22 and is not subject to disclosure.

53 28 Sec. 35. NEW SECTION. 529.3 INVESTIGATIONS.

53 29 1. The attorney general or county attorney may conduct
53 30 investigations within or outside this state to determine if
53 31 any licensee, authorized delegate, money transmitter, or
53 32 person engaged in a trade or business has failed to file a
53 33 report required by this chapter or has engaged or is engaging
53 34 in any act, practice, or transaction that constitutes a
53 35 violation of this chapter.

54 1 2. On request of the attorney general or county attorney,
54 2 all licensees, authorized delegates, money transmitters, and
54 3 financial institutions shall make their books and records
54 4 available to the attorney general or county attorney or peace
54 5 officer during normal business hours for inspection and
54 6 examination in connection with an investigation pursuant to
54 7 this section.

54 8 Sec. 36. NEW SECTION. 529.4 UNIFORMITY OF CONSTRUCTION
54 9 AND APPLICATION.

54 10 1. The provisions of this chapter shall be liberally

54 11 construed to effectuate its remedial purposes. Civil remedies
54 12 under this chapter shall be supplemental and not mutually
54 13 exclusive. The civil remedies do not preclude and are not
54 14 precluded by other provisions of law.

54 15 2. The provisions of this chapter shall be applied and
54 16 construed to effectuate its general purpose to make uniform
54 17 the law with respect to the subject of this chapter among
54 18 states enacting the law.

54 19 3. The attorney general is authorized to enter into
54 20 reciprocal agreements with the attorney general or chief
54 21 prosecuting attorney of any state to effectuate the purposes
54 22 of this chapter.

54 23 DIVISION V
54 24 CONFORMING AMENDMENTS

54 25 Sec. 37. Section [80.39](#), subsection 1, Code 1995, is
54 26 amended to read as follows:

54 27 1. Personal property, except for motor vehicles subject to
54 28 sale pursuant to section 321.89, and seizable

~~or forfeitable~~

54 29 property subject to disposition pursuant to chapter 809, which
54 30 personal property is found or seized by, turned in to, or
54 31 otherwise lawfully comes into the possession of the department
54 32 of public safety and which the department does not own, shall
54 33 be disposed of pursuant to this section. If by examining the
54 34 property the owner or lawful custodian of the property is
54 35 known or can be readily ascertained, the department shall
55 1 notify the owner or custodian by certified mail directed to
55 2 the owner's or custodian's last known address, as to the
55 3 location of the property. If the identity or address of the
55 4 owner cannot be determined, notice by one publication in a
55 5 newspaper of general circulation in the area where the
55 6 property was found is sufficient notice. A published notice
55 7 may contain multiple items.

55 8 Sec. 38. Section [123.20](#), subsection 7, Code 1995, is
55 9 amended to read as follows:

55 10 7. To accept intoxicating liquors ordered delivered to the
55 11 alcoholic beverages division pursuant to chapter

~~809~~

~~809A~~, and

55 12 offer for sale and deliver the intoxicating liquors to class
55 13 "E" liquor control licensees, unless the administrator
55 14 determines that the intoxicating liquors may be adulterated or
55 15 contaminated. If the administrator determines that the
55 16 intoxicating liquors may be adulterated or contaminated, the
55 17 administrator shall order their destruction.

55 18 Sec. 39. Section [321.232](#), subsection 3, Code 1995, is
55 19 amended to read as follows:

55 20 3. A radar jamming device may be seized by a peace officer
55 21 subject to forfeiture as provided by chapter 809 ~~or 809A~~.

55 22 Sec. 40. Section [321J.10](#), subsection 7, Code 1995, is
55 23 amended to read as follows:

55 24 7. Specimens obtained pursuant to warrants issued under
55 25 this section are not subject to disposition under section
55 26 808.9 or chapter 809 ~~or 809A~~.

55 27 Sec. 41. Section 455B.103, subsection 4, paragraph d,
55 28 subparagraph (2), Code 1995, is amended to read as follows:

55 29 (2) In a reasonable manner, and any property seized shall
55 30 be treated in accordance with the provisions of chapters 808,
55 31

~~and~~

~~809, and 809A~~.

55 32 Sec. 42. Section [602.6405](#), subsection 1, Code 1995, is
55 33 amended to read as follows:

55 34 1. Magistrates have jurisdiction of simple misdemeanors,
55 35 including traffic and ordinance violations, and preliminary
56 1 hearings, search warrant proceedings, county and municipal
56 2 infractions, and small claims. Magistrates have jurisdiction
56 3 to determine the disposition of livestock or another animal,
56 4 as provided in sections 717.5 and 717B.4, if the magistrate
56 5 determines the value of the livestock or animal is less than
56 6 ten thousand dollars. Magistrates have jurisdiction to
56 7 exercise the powers specified in sections 556F.2 and 556F.12,
56 8 and to hear complaints or preliminary informations, issue
56 9 warrants, order arrests, make commitments, and take bail.
56 10 Magistrates have jurisdiction over violations of section
56 11 123.49, subsection 2, paragraph "h". Magistrates who are
56 12 admitted to the practice of law in this state have
56 13 jurisdiction over all proceedings for the involuntary
56 14 commitment, treatment, or hospitalization of individuals under
56 15 chapters 125 and 229, except as otherwise provided under
56 16 section 229.6A; nonlawyer magistrates have jurisdiction over
56 17 emergency detention and hospitalization proceedings under
56 18 sections 125.91 and 229.22. Magistrates have jurisdiction to
56 19 conduct hearings authorized under section 809.4

~~and section~~

56 20

~~809.10, subsection 2~~

56 21 Sec. 43. Section [809.1](#), subsection 2, Code 1995, is
56 22 amended by striking the subsection.

56 23 Sec. 44. Section [809.17](#), Code 1995, is amended to read as
56 24 follows:

56 25 809.17 PROCEEDS APPLIED TO VARIOUS PROGRAMS.

56 26 Except as provided in section 809.21, proceeds from the
56 27 disposal of seized

~~or forfeited~~

~~property pursuant to this~~

56 28 chapter may be transferred in whole or in part to the victim
56 29 compensation fund created in section 912.14 at the discretion
56 30 of the recipient agency, political subdivision, or department.

56 31 Sec. 45. Sections 809.6 through 809.14, Code 1995, are
56 32 repealed.

56 33 EXPLANATION

56 34 New Chapter 809A, the Iowa Forfeiture Reform Act, does the
56 35 following:

57 1 Provides civil procedures so the state can obtain a
57 2 personal forfeiture judgment against an offender which can be
57 3 satisfied from in-state or out-of-state assets.

57 4 Defines conduct triggering forfeiture to include out-of-
57 5 state conduct which would be a triggering offense in the state
57 6 initiating the action and conduct committed in furtherance of
57 7 a triggering offense.

57 8 Defines forfeitable property to include: (1) real or
57 9 personal property furnished or intended to be furnished in
57 10 exchange for the unlawful conduct, or used, or intended to be
57 11 used, to facilitate the illegal activity (the Act excludes
57 12 real property from forfeiture in simple drug possession cases
57 13 and requires personal property used to facilitate simple
57 14 possession cases to be forfeited in a civil in personam
57 15 action); (2) proceeds derived from illegal activity; (3)
57 16 enterprise interests which are interests affording a source of
57 17 influence over an enterprise established, controlled, or
57 18 participated in through illegal activity (e.g., corporate
57 19 stocks); and (4) substitute assets if the original forfeitable
57 20 property is subject to an exempt interest or otherwise
57 21 unavailable. The substitute asset is forfeitable up to the

57 22 value of the property that was owned or possessed for the
57 23 purpose of facilitating illegal activity or that is proceeds
57 24 of illegal activity or for which the wrongdoer is criminally
57 25 responsible. In addition, a seizure warrant is required to
57 26 seize a substitute asset.

57 27 Requires the state as well as the claimant in contested
57 28 forfeiture cases to meet a preponderance of the evidence
57 29 standard.

57 30 Creates presumptions that property is forfeitable if it was
57 31 acquired during a person's conduct giving rise to forfeiture
57 32 or within a reasonable time thereafter and there is no other
57 33 likely source for the property or money or a negotiable
57 34 instrument found in close proximity to contraband or an
57 35 instrumentality is proceeds of, or was used or intended to be
58 1 used to further, conduct giving rise to forfeiture.

58 2 Exempts an interest if:

58 3 1. The owner or interest holder:

58 4 a. Obtained the interest prior to or during the illegal
58 5 activity without knowledge or reason to know of the illegal
58 6 activity or its likelihood of occurrence; or

58 7 b. Obtained the interest prior to or during the illegal
58 8 activity with knowledge, or reason to know of the offense or
58 9 its likelihood of occurrence, but took reasonable steps to
58 10 prevent the offense (e.g., notification of authorities or
58 11 cancellation of a lease); or

58 12 c. Purchased the interest in good faith and without
58 13 knowledge of the unlawful conduct; and

58 14 2. The owner or interest holder:

58 15 a. Is not criminally responsible for the wrongdoer's
58 16 conduct (e.g., not a co-conspirator); and

58 17 b. Was not in a relationship with the wrongdoer that
58 18 permitted the wrongdoer to convey the property to a good faith
58 19 purchaser for value; and

58 20 c. Had no notice of the seizure or reason to believe the
58 21 property was forfeitable.

58 22 The bill also does the following:

58 23 Allows release of seized property if the state deems
58 24 retention unnecessary because a case is weak or forfeiture
58 25 would not serve justice.

58 26 Allows an owner or interest holder to file a petition with
58 27 the state requesting recognition of an exempt interest. If
58 28 the state denies the request, the petitioner has recourse to
58 29 the courts.

58 30 Permits interlocutory sale, lease, or operation by interest
58 31 holders with uncontroverted or presumptively legitimate
58 32 interest when property will be foreclosed or significantly
58 33 reduced in value before final judgment. If the property is
58 34 sold, the proceeds are used to pay sale costs and satisfy
58 35 exempt interests. Any remaining balance is deposited into an
59 1 interest-bearing account and becomes the subject of the
59 2 litigation.

59 3 Permits the filing of a lien or constructive seizure
59 4 (posting notice) to establish the state's interest and avoid
59 5 unnecessarily displacing residents.

59 6 Requires an adversarial judicial finding of probable cause
59 7 to evict residents, except in emergencies.

59 8 Releases property to an owner or interest holder pending
59 9 final judgment if the state fails to file judicial proceedings
59 10 within specified time limits, the owner posts a bond or cash
59 11 equal to the fair market value of the property (the bond or
59 12 cash is forfeited in lieu of the property), the court finds no
59 13 probable cause for the forfeiture of the property in an
59 14 expedited hearing on that issue (the hearing is available upon
59 15 application by an owner or interest holder).

59 16 Authorizes states to enter into a custodian agreement with
59 17 an owner or interest holder to maintain the property pending
59 18 final judgment.

59 19 Authorizes the court to create a receivership or appoint a
59 20 conservator, custodian, or trustee to preserve the property's
59 21 value.

59 22 Permits the deposit of seized moneys or negotiable
59 23 instruments into an interest-bearing account.

59 24 Allows an interlocutory sale by interest holders with
59 25 uncontroverted or presumptively legitimate interests to avoid
59 26 spoilage or waste of perishable assets.

59 27 Provides the state's title to forfeited property is vested
59 28 from the time of the commission of the conduct giving rise to
59 29 the forfeiture. Explicitly excludes exempted property from
59 30 application of the relation back doctrine.

59 31 Designates anyone receiving nonexempt property which is
59 32 subject to forfeiture as a constructive trustee for the
59 33 benefit of the state.

59 34 Requires a trustee with notice of the forfeiture action to
59 35 provide the state with specified information about the person
60 1 for whose benefit the forfeitable property is held.

60 2 Authorizes the state, in uncontested cases, to declare the
60 3 forfeiture of personal property of a value up to \$5,000.

60 4 Provides probable cause is the state's burden of proof in
60 5 unopposed cases requiring a judicial order so the state can
60 6 summarize its evidence.

60 7 Provides an option that creates independent funding bases
60 8 for law enforcement, within the state.

60 9 New Chapter 706A, the Ongoing Criminal Conduct Act, does
60 10 the following:

60 11 Creates the following five violations, each a type of
60 12 economic crime or facilitation of economic crime:

60 13 1. The infiltration of legitimate commerce through
60 14 investment of illegal proceeds, the control of an enterprise
60 15 through crime itself (as by an extortionate takeover), and
60 16 conducting an enterprise through specified unlawful activity.

60 17 2. The knowing facilitation of a criminal network by
60 18 engaging in subsidiary crimes, such as obstruction of justice,
60 19 extortion, facilitation of the network by providing property
60 20 or services (other than legal services) and fraud.

60 21 3. Money laundering, by reference to the Iowa Money
60 22 Laundering Act.

60 23 4. The commission of specified unlawful activity under
60 24 circumstances in which the acts are for financial gain.

60 25 5. The negligent empowerment of specified unlawful
60 26 activity. The bill provides only civil remedies for this
60 27 violation. It fixes limited financial responsibility in the
60 28 nature of a tort remedy for negligently providing property or
60 29 services that facilitate specified unlawful activity.

60 30 Creates special civil remedies for violations, including
60 31 private treble damages actions, actions by the state to obtain
60 32 damage on behalf of the citizens of the state, and injunctive
60 33 relief.

60 34 Defines the scope of civil liability to assure protection
60 35 of legal entities and to clarify the measure of damages and
61 1 statutory liability for the acts of joint ventures and other
61 2 persons acting in concert.

61 3 New Chapter 706B, the Iowa Money Laundering Act, does the
61 4 following:

61 5 Guides the application of financial remedies and allows
61 6 reciprocal agreements encouraging interstate cooperation and
61 7 uniformity through special purpose and uniformity sections.

61 8 Creates the following four violations:

61 9 1. Knowingly dealing in the proceeds of unlawful activity.

61 10 2. Making property available to another for the purpose of
61 11 furthering specified unlawful activity.

61 12 3. Knowingly conducting transactions that conceal or
61 13 disguise illegal proceeds or avoid transaction reporting
61 14 requirements.

61 15 4. Engaging in money laundering as a business (this

61 16 violation carries with it an enhanced penalty).

61 17 Imposes a civil treble damages sanction in addition to
61 18 criminal penalties to deter individuals who provide services
61 19 to the drug industry for profit.

61 20 Provides that money laundering is conduct giving rise to
61 21 forfeiture, and integrates the chapter with new chapter 809A.

61 22 New Chapter 529, the Iowa Financial Transaction Reporting
61 23 Act, does the following:

61 24 Parallels current federal transaction reporting
61 25 requirements for who must make reports, the contents of the
61 26 reports, and the circumstances that trigger the obligation to
61 27 report.

61 28 Designs the reports to provide data from which law
61 29 enforcement may make general resource decisions; improve
61 30 geographic and business sector targeting; focus on specific
61 31 individuals and businesses; and assist in the proof of cases
61 32 under investigation. The reports under chapter 529 are:

61 33 1. Suspicious Transaction Reports. This obligation to
61 34 report applies to all money transmitters including all
61 35 financial institutions as defined by federal law and several
62 1 additional categories of businesses. The form of the report
62 2 is within the discretion of the department of public safety.

62 3 2. Currency and Foreign Transactions Reporting Act
62 4 Reports. These requirements apply only to money transmitters
62 5 and only impose a duty to report if the transmitter is
62 6 required to file under 31 U.S.C. } 5311-26 and the relevant
62 7 federal regulations.

62 8 3. Reports of Receipt of More Than \$10,000 in a Trade or
62 9 Business. All persons (not just money transmitters) engaged
62 10 in a trade or business who receive more than \$10,000 in cash
62 11 or a cash equivalent in one transaction (or in two or more
62 12 related transactions) must file a report of the transaction.
62 13 The report is to contain the information contained in the
62 14 federal IRS form 8300 and required by federal regulations.

62 15 4. \$3,000 Logs. All money transmitters who are required
62 16 by federal law to keep so-called "\$3,000 logs" must also keep
62 17 them for the state department of public safety as well. The
62 18 logs must be available for inspection at any time.

62 19 5. Targeting Projects. The superintendent of banking or
62 20 the superintendent of credit unions may require additional
62 21 recordkeeping in a specified geographic area for a 60-day
62 22 period. Modeled on 31 U.S.C. } 5326, this provision is
62 23 intended to allow gathering of financial report data on a more
62 24 comprehensive basis than allowed by the other financial
62 25 reporting requirements, and to address specific localized
62 26 money laundering problems.

62 27 BACKGROUND STATEMENT

62 28 SUBMITTED BY THE AGENCY

62 29 This is a joint proposal from the attorney general's office
62 30 and the department of public safety.

62 31 The components of the package, which are all based on model
62 32 legislation by the President's commission on Model State Drug
62 33 Laws (1993), include the following: forfeiture reform,
62 34 ongoing criminal conduct, money laundering and financial
62 35 transaction reporting.

63 1 The purpose of this package of proposals is to give Iowa
63 2 law enforcement more tools to combat criminal networks that
63 3 are engaged in conspiracy activities. The proposal recognizes
63 4 a shift in law enforcement approaches from a "buy-bust"
63 5 approach to a "conspiracy approach". The "conspiracy
63 6 approach" can be applied to a large variety of situations,
63 7 including pedophile rings, burglary rings, drugs, gangs,
63 8 illegal gambling, and money laundering.

63 9 The key motivator for criminals to engage in these types of
63 10 illegal activity is profits. Criminal sanctions alone have
63 11 proven to be unable to stop or slow these illegal activities.
63 12 Law enforcement officials should have the tools to target the

63 13 fruits of the illegal activity meaning the profits.

63 14 In addition, these types of illegal activities negatively
63 15 impact legitimate businesses.

63 16 FORFEITURE REFORM

63 17 Criminals should not be allowed to profit from the fruits
63 18 of their illegal activity. This proposal will strengthen the
63 19 current forfeiture law while providing more protection to
63 20 innocent parties. The highlights include: forfeiture no
63 21 longer applies in simple misdemeanor crimes; the homestead
63 22 exemption no longer applies – thus "crack houses" will be
63 23 eligible for forfeiture; out-of-state assets from criminal
63 24 activity will be forfeitable; procedures are established for
63 25 maintenance of the forfeited assets; more notice provisions
63 26 are set forth; and the successful practice of allowing the
63 27 proceeds of forfeiture to be used for law enforcement purposes
63 28 is continued.

63 29 ONGOING CRIMINAL CONDUCT

63 30 When criminals join together to commit crimes, they gain
63 31 power and economic advantage. This proposal creates five
63 32 violations which are: infiltration of legitimate commerce
63 33 through investment of illegal proceeds, knowing facilitation
63 34 of a criminal network, money laundering, committing unlawful
63 35 activity for financial gain, and negligent empowerment of
64 1 unlawful activity. The penalties are criminal and civil: a
64 2 Class "B" felony, treble damages, and injunctive relief.

64 3 MONEY LAUNDERING

64 4 Criminals who profit from their illegal activities must
64 5 find a way to launder their money. Often criminals disguise
64 6 the source of the money by investing it in seemingly
64 7 legitimate businesses, by buying luxury items or by laundering
64 8 it through legal gambling activities. The highlights of this
64 9 proposal, which makes money laundering a crime, include:
64 10 creating criminal violations when a person knowingly deals in
64 11 proceeds of unlawful activities or conducts transactions to
64 12 disguise illegal activity, imposing treble civil penalty in
64 13 these cases, and allowing for forfeiture of assets used in
64 14 connection with money laundering.

64 15 FINANCIAL TRANSACTION REPORTING

64 16 Currently financial institutions are required to report
64 17 many transactions to the federal government. But the federal
64 18 government does not have the resources or the desire to
64 19 investigate all possible cases of illegal activity. The state
64 20 should have access to the information in order to pursue cases
64 21 as the state chooses.

64 22 This proposal requires financial institutions and casinos
64 23 to provide reports to the department of public safety. For
64 24 example, a report on every \$10,000 single cash transaction
64 25 will go to the federal government and the state department of
64 26 public safety. Casinos will be required to report similar
64 27 large cash transactions to the state in addition to the
64 28 federal government.

64 29 SUMMARY

64 30 Iowa currently lags behind many other states that have
64 31 adopted some type of statutes to address the following crimes:

64 32 32 states have criminal network laws.

64 33 22 states have money laundering laws.

64 34 31 states gave ongoing criminal conduct laws.

64 35 Iowa should adopt these proposals in order to increase law
65 1 enforcement's tools to address these crimes and in order to
65 2 not become a safe haven for these types of activities.

65 3 LSB 1168DP 76

65 4 mk/cf/24