

House File 2143 - Introduced

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BY HEARTSILL, R. TAYLOR,
WATTS, SIECK, HOLT, WILLS,
SHEETS, GASSMAN, BAUDLER,
BRANHAGEN, FISHER, SALMON,
and KLEIN

A BILL FOR

1 An Act relating to the seizure of property by the department of
2 natural resources.

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

1 Section 1. Section 481A.11, Code 2016, is amended to read
2 as follows:

3 **481A.11 Confiscated or accidentally killed game.**

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

9 Sec. 2. Section 481A.12, Code 2016, is amended to read as
10 follows:

11 **481A.12 Seizure of wildlife taken or handled illegally.**

12 The director or any peace officer shall seize with or
13 without warrant and take possession of, ~~or direct the disposal~~
14 ~~of,~~ any fish, furs, birds, or animals, or mussels, clams, or
15 frogs, which have been caught, taken, or killed at a time,
16 in a manner, or for a purpose, or had in possession or under
17 control, or offered for shipment, or illegally transported in
18 the state or to a point beyond its borders, contrary to the
19 Code. All fish, furs, birds, or animals, or mussels, clams,
20 or frogs seized under [this section](#) ~~may~~ shall be relinquished
21 to a representative of the commission ~~or disposed of and kept~~
22 as provided in section 481A.13.

23 Sec. 3. Section 481A.13, Code 2016, is amended to read as
24 follows:

25 **481A.13 Search warrants.**

26 Any court having jurisdiction of the offense, upon receiving
27 proof of probable cause for believing that any fish, mussels,
28 clams, frogs, birds, furs, or animals caught, taken, killed,
29 had in possession, under control, or shipped, contrary to the
30 Code, or hidden or concealed in any place, shall issue a search
31 warrant and cause a search to be made in any place therefor.
32 The property so seized under warrant shall be safely kept under
33 the direction of the court so long as necessary for the purpose
34 of being used as evidence in any trial, and if a trial results
35 in a conviction the property seized shall be confiscated by the

1 director or the director's officers. If the trial does not
2 result in a conviction, the property shall be returned to the
3 person pursuant to section 481A.13A.

4 Sec. 4. NEW SECTION. **481A.13A Conviction required for**
5 **property confiscation — return of property.**

6 1. The state shall not confiscate property seized under
7 section 481A.12 or 481A.13 unless the person from whom the
8 property was seized is convicted of the violation for which the
9 property was seized.

10 2. If the person from whom the property was seized is not
11 convicted of the violation for which the property was seized,
12 the department, law enforcement agency, or other governmental
13 agency in possession of the seized property shall return the
14 seized property to the person within thirty days of any of the
15 following:

- 16 a. The date the person is found not guilty of the violation.
17 b. The date the action involving the violation is dismissed.
18 c. The date the statute of limitations expires for the
19 alleged violation for which the property was seized.

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

27 Sec. 5. Section 483A.32, Code 2016, is amended to read as
28 follows:

29 **483A.32 Public nuisance.**

30 1. Any Subject to subsection 2, any device, contrivance,
31 or material used to violate a rule adopted by the commission,
32 or any other provision of this chapter or chapter 481A, 481B,
33 482, 484A, or 484B, is a public nuisance and may be condemned
34 by the state. The director, the director's officers, or
35 any peace officer, shall seize the devices, contrivances,

1 or materials used as a public nuisance, without warrant or
2 process, and deliver them to a magistrate having jurisdiction.
3 An automobile shall not be construed to be a public nuisance
4 under this section.

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

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

15 a. The date the person is found not guilty of the violation.
16 b. The date the action involving the violation is dismissed.
17 c. The date the statute of limitations expires for the
18 alleged violation for which the property was seized.

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

21 Sec. 6. Section 483A.33, subsection 3, paragraph a, Code
22 2016, is amended to read as follows:

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

1 Sec. 7. Section 483A.33, subsection 4, Code 2016, is amended
2 to read as follows:

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

14 Sec. 8. Section 483A.33, Code 2016, is amended by adding the
15 following new subsection:

16 NEW SUBSECTION. 6. For purposes of this section,
17 "*convicted*" means the same as in section 481A.13A, subsection 3.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill relates to seizure of property by the department
22 of natural resources, provides that seized property may only
23 be forfeited to the state upon conviction of the violation
24 which led to the seizure, and requires the department to return
25 the seized property if the person is not convicted of the
26 violation.

27 The bill defines "convicted" as a finding of guilt, payment
28 of a scheduled fine, a plea of guilty, deferred judgment,
29 deferred or suspended sentence, adjudication of delinquency,
30 or circumstance where a person is not charged with a criminal
31 offense related to the violation based in whole or in part on
32 the person's agreement to provide information regarding the
33 criminal activity of another person.

34 Under current law, a peace officer may seize any fish,
35 furs, birds, or animals, or mussels, clams, or frogs, which

1 have been caught, taken, or killed at a time, in a manner,
2 or for a purpose, or had in possession or under control, or
3 offered for shipment, or illegally transported in the state
4 or to a point beyond its borders, contrary to the Code. Such
5 seized wildlife may be relinquished to a representative of the
6 natural resource commission or disposed of. The bill provides
7 that such seized wildlife must be kept for trial, and if the
8 person from whom the wildlife was seized is not convicted, the
9 department of natural resources, law enforcement agency, or
10 other governmental agency in possession of the seized property
11 shall return the wildlife within 30 days of the person being
12 found not guilty, the action being dismissed, or the expiration
13 of the statute of limitations for the alleged violation for
14 which the property was seized.

15 Under current law, any device, contrivance, or material
16 used to violate a rule adopted by the commission, or any other
17 provision of Code chapter 481A (wildlife conservation), 481B
18 (endangered plants and wildlife), 482 (commercial fishing),
19 483A (fishing and hunting licenses, contraband, and guns),
20 484A (migratory game birds), or 484B (hunting preserves), is
21 a public nuisance and may be condemned by the state. The bill
22 provides that such seized property may only be condemned by
23 the state if the person from whom the property was seized is
24 convicted of the violation for which the property was seized
25 as a public nuisance. If the person from whom the property was
26 seized is not convicted, the department of natural resources,
27 law enforcement agency, or other governmental agency in
28 possession of the property is required to return the property
29 to the person within 30 days of the person being found not
30 guilty, the action being dismissed, or the expiration of the
31 statute of limitations for the alleged violation for which the
32 property was seized.

33 Under current law, after the state files an application for
34 condemnation of property seized as a public nuisance, a person
35 must file an application for return within 30 days. Failure to

1 timely file the application terminates the person's interest in
2 the property. A hearing for the condemnation of the property
3 then must be held not less than 10 nor more than 30 days after
4 the application for return is filed.

5 The bill provides that a person must file an application
6 for return within 30 days of the state's application for
7 condemnation or the conviction of the person, whichever
8 occurs later, except that a person who is not convicted of
9 the violation is not required to file an application and is
10 entitled to the return of the property. The bill also provides
11 that a hearing for the condemnation of the property, if any,
12 must be held not less than 10 nor more than 30 days after
13 the application for return is filed or the conviction of the
14 person, whichever occurs later.