

**House File 357 - Introduced**

HOUSE FILE 357

BY HIGHFILL

**A BILL FOR**

1 An Act relating to asset forfeiture due to public offense  
2 convictions.

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

1 Section 1. Section 809A.1, subsection 4, Code 2017, is  
2 amended to read as follows:

3 4. "Proceeds" means property acquired directly or indirectly  
4 from, produced through, realized through, or caused by an act  
5 or omission constituting a public offense and includes any  
6 property of any kind without reduction for expenses incurred  
7 for acquisition, maintenance, production, or any other purpose.

8 Sec. 2. Section 809A.2, subsection 2, Code 2017, is amended  
9 to read as follows:

10 2. In addition to the venue provided for under **chapter 803**  
11 or any other provision of law, a proceeding for forfeiture  
12 under **this chapter** may be maintained in the county in which  
13 any part of the property is found or in the county in which a  
14 ~~civil or the criminal action could be maintained~~ was brought or  
15 a civil action could be brought against an owner or interest  
16 holder for the conduct ~~alleged to give~~ which gave rise to the  
17 forfeiture.

18 Sec. 3. Section 809A.3, Code 2017, is amended to read as  
19 follows:

20 **809A.3 Conduct giving rise to forfeiture.**

21 1. The following conduct may give rise to forfeiture:

22 a. ~~An act or omission which is~~ A conviction of a public  
23 offense and, including an inchoate or preparatory offense,  
24 which is a serious or aggravated misdemeanor or felony.

25 b. ~~An act or omission occurring~~ A conviction outside of  
26 this state, that ~~would be~~ is punishable by confinement of one  
27 year or more in the place of occurrence and would be a serious  
28 or aggravated misdemeanor or felony if the act or omission  
29 occurred in this state.

30 c. ~~An act or omission committed in furtherance of any act~~  
31 ~~or omission described in paragraph "a", which is a serious or~~  
32 ~~aggravated misdemeanor or felony, including any inchoate or~~  
33 ~~preparatory offense.~~

34 2. Notwithstanding **subsection 1**, ~~violations of~~ convictions  
35 under **chapter 321** or **321J** shall not be considered conduct

1 giving rise to forfeiture, except for ~~violations~~ convictions  
2 of the following:

3 a. Section 321.232.

4 b. A second or subsequent violation of section 321J.4B,  
5 subsection 2, paragraph "a", subparagraph (2).

6 c. Section 321J.4B, subsection 9.

7 3. For purposes of this section, "conviction" includes  
8 a finding of guilt, a plea of guilty, deferred judgment,  
9 deferred or suspended sentence, adjudication of delinquency,  
10 or circumstance where a person is not charged with a criminal  
11 offense that is a serious or aggravated misdemeanor or felony  
12 related to the action for forfeiture based in whole or in part  
13 on the person's agreement to provide information regarding the  
14 criminal activity of another person.

15 Sec. 4. Section 809A.5, subsection 2, paragraph b, Code  
16 2017, is amended to read as follows:

17 b. The owner or interest holder is ~~criminally responsible~~  
18 convicted of a public offense, including an inchoate or  
19 preparatory offense, that is a serious or aggravated  
20 misdemeanor or felony, or is convicted outside of this state  
21 for a crime that is punishable by confinement of one year or  
22 more in the place of occurrence and would be a serious or  
23 aggravated misdemeanor or felony in this state for the conduct  
24 giving rise to its the forfeiture, whether or not the owner or  
25 interest holder is prosecuted or convicted.

26 Sec. 5. Section 809A.8, subsection 1, paragraph a,  
27 subparagraph (2), Code 2017, is amended to read as follows:

28 (2) ~~File a judicial forfeiture proceeding within ninety~~  
29 ~~days after notice of pending forfeiture of property upon which~~  
30 ~~a proper claim has been timely filed pursuant to section~~  
31 ~~809A.11~~ the conclusion of the criminal prosecution.

32 Sec. 6. Section 809A.8, subsection 1, paragraph d,  
33 unnumbered paragraph 1, Code 2017, is amended to read as  
34 follows:

35 If a petition is timely filed, the prosecuting attorney may

1 delay filing a judicial forfeiture proceeding for one hundred  
2 eighty days after the ~~notice of pending forfeiture conclusion~~  
3 of the criminal prosecution, and the following procedures shall  
4 apply:

5 Sec. 7. Section 809A.12, Code 2017, is amended by adding the  
6 following new subsections:

7 NEW SUBSECTION. 1A. A judicial forfeiture proceeding  
8 is independent of any criminal prosecution and shall not  
9 be brought unless the criminal prosecution resulted in a  
10 conviction, as defined under section 809A.3.

11 NEW SUBSECTION. 7A. The state must prove by clear and  
12 convincing evidence that the property is an instrument or  
13 represents the proceeds of the underlying offense.

14 Sec. 8. Section 809A.12, subsection 6, Code 2017, is amended  
15 to read as follows:

16 ~~6. A defendant convicted in any criminal proceeding is~~  
17 ~~precluded from later denying the essential allegations of the~~  
18 ~~criminal offense of which the defendant was convicted in any~~  
19 ~~proceeding pursuant to this section. For the purposes of this~~  
20 ~~section, a conviction results from a verdict or a plea of~~  
21 ~~guilty. A defendant whose conviction is overturned on appeal~~  
22 ~~may file a motion to correct, vacate, or modify a judgment of~~  
23 ~~forfeiture under this subsection.~~

24 Sec. 9. Section 809A.12, subsection 10, paragraph a, Code  
25 2017, is amended by striking the paragraph.

26 Sec. 10. Section 809A.12, subsections 14 and 15, Code 2017,  
27 are amended by striking the subsections.

28 EXPLANATION

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

31 This bill relates to asset forfeiture proceedings due to  
32 public offense convictions.

33 Asset forfeiture is a process by which contraband and  
34 proceeds or instrumentalities related to criminal activity may  
35 be seized by the state and sold.

1 Under current law, conduct giving rise to forfeiture is an  
2 act or omission which is a crime. However, an acquittal or  
3 dismissal in a criminal proceeding does not preclude forfeiture  
4 proceedings.

5 The bill requires a criminal conviction before a person's  
6 property is subject to forfeiture. "Conviction" includes  
7 a finding of guilt, a plea of guilty, deferred judgment,  
8 deferred or suspended sentence, adjudication of delinquency,  
9 or circumstance where a person is not charged with a criminal  
10 offense that is a serious or aggravated misdemeanor or felony  
11 related to the action for forfeiture, based in whole or in part  
12 on the person's agreement to provide information regarding the  
13 criminal activity of another person.

14 The bill provides that forfeiture proceedings may only be  
15 brought after a criminal conviction and that a court may only  
16 order forfeiture of property if the state proves by clear and  
17 convincing evidence that the property was an instrument or  
18 represents the proceeds of the underlying criminal offense.