

House File 2560 - Introduced

HOUSE FILE 2560

BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HSB 634)

A BILL FOR

1 An Act relating to the forfeiture of property for criminal
2 offenses and repealing civil forfeiture.

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

1 Section 1. NEW SECTION. 809B.1 Short title.

2 This chapter shall be known and may be cited as the "Iowa
3 *Criminal Forfeiture Process Act*".

4 Sec. 2. NEW SECTION. 809B.2 Applicability.

5 This chapter applies only to the seizure and forfeiture
6 of property used in and derived directly from a violation of
7 chapter 124, subchapter IV.

8 Sec. 3. NEW SECTION. 809B.3 Definitions.

9 The terms defined in this section have the following
10 meanings in this chapter:

11 1. "Abandoned property" means personal property to which
12 a possessor relinquishes all rights to ownership or control.
13 "Abandoned property" does not include real property.

14 2. "Actual knowledge" means direct and clear awareness of
15 information, a fact, or a condition.

16 3. "Contraband" means goods that, in themselves, are
17 unlawful to possess, including scheduled drugs without a lawful
18 prescription and a firearm that is illegal to possess.

19 4. "Conveyance" means a device used for transportation.
20 "Conveyance" includes a motor vehicle, trailer, snowmobile,
21 airplane, vessel, or any equipment attached to one of these
22 devices. "Conveyance" does not include property that is stolen
23 in violation of the law.

24 5. "Convicted" or "conviction" includes a finding of guilt,
25 a plea of guilty, deferred judgment, deferred or suspended
26 sentence, adjudication of delinquency, or circumstances where
27 a person is not charged with a criminal offense that is a
28 serious or aggravated misdemeanor or felony related to the
29 action for forfeiture based in whole or in part on the person's
30 cooperation in providing information regarding the criminal
31 activity of another person.

32 6. "Innocent owner" means an owner, co-owner, defendant's
33 heir, or a person who regularly uses property subject to
34 forfeiture who does not have actual knowledge of the use of
35 the property in a crime that authorizes the forfeiture of the

1 property. "*Innocent owner*" does not include the defendant or a
2 secured interest holder.

3 7. "*Instrumentality*" means property otherwise lawful to
4 possess that is used in a crime that authorizes the forfeiture
5 of property. "*Instrumentality*" includes land, buildings,
6 containers, conveyances, equipment, materials, products, tools,
7 computers, computer software, telecommunications devices,
8 firearms, ammunition, and ammunition-and-firearm accessories.

9 8. "*Law enforcement agency*" means any nonfederal police
10 force, or other local, county, or state agency that has the
11 authority under state law to engage in seizure and forfeiture.

12 9. "*Proceeds*" means United States currency, currency of
13 another nation, digital currency, cryptocurrency, securities,
14 negotiable instruments, or other means of exchange obtained
15 from the sale of property or contraband.

16 10. "*Prosecuting authority*" means a municipal attorney,
17 solicitor, district attorney, county attorney, attorney
18 general, or other government official legally authorized to
19 prosecute crime.

20 11. "*Public defender*" means any office of the state public
21 defender.

22 12. "*Real property*" means land and anything growing on,
23 attached to, or erected on the land including a building. "*Real*
24 *property*" includes immovable property, real estate, and realty.

25 13. "*Secured interest holder*" means a person who is a
26 secured creditor, mortgagee, lienholder, or other person
27 who has a valid claim, security interest, mortgage, lien,
28 leasehold, or other interest in the property subject to
29 forfeiture. "*Secured interest holder*" does not include the
30 defendant or an innocent owner.

31 Sec. 4. NEW SECTION. 809B.4 Forfeiture disfavored —
32 purpose of chapter.

33 Forfeiture is disfavored in this state. This chapter's
34 purpose is to deter criminal activity by reducing criminal
35 activity economic incentives, confiscate property used in the

1 violation of the law, and protect the due process rights of
2 property owners.

3 Sec. 5. NEW SECTION. 809B.5 Jurisdiction.

4 1. There shall be no civil forfeiture under this chapter.

5 2. The court that has jurisdiction in the related criminal
6 matter shall have jurisdiction over the forfeiture proceeding.

7 3. The forfeiture proceeding shall be part of the trial
8 of the related crime. The proceeding shall follow a finding
9 of the defendant's guilt or be conducted at the court's
10 discretion. The forfeiture proceeding shall be conducted by
11 the court without a jury.

12 4. If an initial court bounds over or transfers the
13 prosecution of the criminal case to another court, the initial
14 court shall transfer the forfeiture action along with the
15 criminal case to the other court.

16 5. At the initial court's discretion, the initial court
17 may postpone hearing and bound over a motion to another court
18 in the interests of justice and efficient use of judicial
19 resources.

20 Sec. 6. NEW SECTION. 809B.6 Seizure of personal property
21 with process.

22 At the request of the state, a court may issue an ex parte
23 order to attach, seize, or secure personal property for which
24 forfeiture is sought and to provide for the custody of the
25 personal property.

26 Sec. 7. NEW SECTION. 809B.7 Seizure of personal property
27 without process.

28 Personal property may be seized, as part of a lawful search,
29 without a court order if the personal property subject to
30 forfeiture is seized incident to a lawful arrest, the state has
31 probable cause to believe the delay caused by the necessity of
32 obtaining process would result in the removal or destruction of
33 the personal property that is forfeitable under this chapter,
34 or the personal property is the subject of a prior and valid
35 judgment of forfeiture in favor of the state.

1 Sec. 8. NEW SECTION. **809B.8 Seizure or restraint of real**
2 **property with process.**

3 1. Real property shall not be seized or restrained without
4 a court order.

5 2. A court shall not issue an order unless the defendant and
6 any other person with a known interest in the property receive
7 proper notice and are given an opportunity for a contested
8 hearing to determine the existence of probable cause for the
9 seizure.

10 3. Notice may be made by publication if personal service has
11 not been realized after reasonable attempts.

12 4. This section does not prohibit the state from seeking
13 a lis pendens or restraining order to hinder the sale or
14 destruction of real property. However, if the state obtains a
15 lis pendens or restraining order, the state shall notify the
16 defendant and any other person with a known interest in the
17 property within thirty days.

18 5. Application, filing, issuance, execution, and return of
19 any order are subject to state law and court rules.

20 Sec. 9. NEW SECTION. **809B.9 Stolen property and contraband.**

21 1. No property right exists in stolen property or
22 contraband. Stolen property and contraband are subject to
23 seizure.

24 2. Stolen property shall be returned to the innocent owner,
25 and contraband shall be disposed of according to state law.

26 3. Notwithstanding subsection 2, the court may impose
27 reasonable conditions on the release of stolen property and
28 the disposal of contraband, including the use of photographic
29 evidence, to preserve the property for later use as evidence in
30 proceedings under this chapter.

31 Sec. 10. NEW SECTION. **809B.10 Storing seized property and**
32 **depositing seized currency.**

33 1. The seizing law enforcement agency is responsible for
34 providing adequate storage, security, and maintenance for all
35 assets in law enforcement agency custody unless another law

1 enforcement agency agrees to accept the responsibility. The
2 commander of a multijurisdictional task force may assign the
3 responsibility to one agency.

4 2. The seizing law enforcement agency shall deposit seized
5 currency in an interest-bearing account pending the exhaustion
6 of appeals or receiving an order from the court to return or
7 disburse the seized currency.

8 3. Notwithstanding subsection 2, the seizing law
9 enforcement agency may take reasonable actions, including the
10 use of photography, to preserve currency for later use as
11 evidence in proceedings under this chapter.

12 Sec. 11. NEW SECTION. **809B.11 Receipt.**

13 1. When property is seized, the law enforcement officer
14 shall give an itemized receipt to the person possessing the
15 property at the time of the seizure.

16 2. The receipt shall be numbered for future reference and
17 constitutes notice of seizure.

18 3. If the person possessing the property is not present, the
19 seizing officer shall leave a receipt in the place where the
20 property was found, if possible.

21 Sec. 12. NEW SECTION. **809B.12 Property exempt from seizure
22 and forfeiture.**

23 1. United States currency totaling two hundred dollars or
24 less is exempt from seizure and forfeiture, excluding marked
25 currency used in the controlled buy of a controlled substance.

26 2. A motor vehicle worth two thousand dollars or less in
27 market value is exempt from seizure and forfeiture.

28 3. The prosecuting authority shall advise the publications
29 that law enforcement agencies may use to establish the value of
30 a motor vehicle in the prosecuting authority's jurisdiction.
31 The valuation publications may include nationally known and
32 relied on pricing guides.

33 4. The prosecuting authority may establish on a
34 case-by-case basis higher values in the interests of justice
35 and efficient use of governmental resources. The higher

1 values shall be based on the prosecuting authority's exclusive
2 determination of:

3 *a.* The type and number of occurrences of offenses that
4 include the seizure of property.

5 *b.* The average value of seized property less the costs to
6 seize and forfeit such property.

7 Sec. 13. NEW SECTION. **809B.13 Waivers permitted and**
8 **prohibited.**

9 1. A person from whom property is seized may relinquish the
10 person's rights, interests, and title in the seized property by
11 knowingly and voluntarily executing a waiver that is agreed to
12 by the prosecuting authority.

13 2. The waiver is subject to a claim by a secured interest
14 holder, innocent owner, or other person entitled to notice
15 under section 809B.17. A claimant may consent to some issues
16 and have the court determine remaining issues.

17 3. A law enforcement officer, other than the prosecuting
18 authority, shall not request, induce, or require a person to
19 relinquish, for purpose of forfeiture, the person's rights,
20 interests, or title in the seized property.

21 4. A document resulting from efforts by a law enforcement
22 officer, other than the prosecuting authority, which purports
23 to relinquish a person's rights, interests, and title in seized
24 property is void and is inadmissible in court.

25 Sec. 14. NEW SECTION. **809B.14 Initial reporting.**

26 1. A law enforcement agency making a seizure shall within
27 ten days submit a report to the appropriate prosecuting agency.

28 2. For purpose of reporting, if the seizure of property is
29 accomplished because of coordinated efforts by more than one
30 law enforcement agency, the law enforcement agency initiating
31 the investigation is considered to be the law enforcement
32 agency making the seizure.

33 3. The report shall provide the following information with
34 respect to the property seized:

35 *a.* Name of the seizing law enforcement agency.

- 1 *b.* Description of the seized property.
- 2 *c.* Location where the seizure occurred.
- 3 *d.* Date and circumstances of the seizure.
- 4 *e.* Location where the property is being stored and present
5 custodian.
- 6 *f.* Name and contact information of owner.
- 7 *g.* Name and contact information of possible innocent owner
8 claimant.
- 9 *h.* Name and contact information of any lienholder.
- 10 *i.* The type and quantity of the controlled substance
11 involved.
- 12 *j.* Other relevant information.
- 13 *k.* If the property is a conveyance, the report shall include
14 all of the following:
 - 15 (1) Make, model, serial number, and year of the conveyance.
 - 16 (2) Name and contact information of person in whose name the
17 conveyance is registered.

18 Sec. 15. NEW SECTION. **809B.15 Title to property.**

- 19 1. Title to the property subject to forfeiture vests with
20 the state when the court issues a forfeiture judgment and
21 relates back to the date when the state seized or restrained
22 the property.
- 23 2. Title to substitute assets vests when the court issues an
24 order forfeiting substitute assets.

25 Sec. 16. NEW SECTION. **809B.16 Counsel.**

- 26 1. If a defendant in a criminal matter is represented by a
27 public defender or appointed counsel if indigent, that attorney
28 shall represent the defendant in the forfeiture proceeding.
- 29 2. If the defendant or an innocent owner claimant engages
30 in pro se representation in the forfeiture proceeding, the
31 court may exercise discretion applying the rules of pleading,
32 practice, evidence, and procedure.

33 Sec. 17. NEW SECTION. **809B.17 Notice to other known owners.**

- 34 1. The prosecuting authority shall perform a reasonable
35 search of relevant records, including vehicle registrations,

1 property records, and other public records, to identify any
2 person, other than the defendant, known to have an interest in
3 the property subject to forfeiture.

4 2. The prosecuting authority shall give notice to any person
5 identified to have an interest in the property subject to
6 forfeiture who is not charged or indicted. The notice shall
7 include the seizure receipt number given pursuant to section
8 809B.11. Notice may be made by publication if personal service
9 has not been realized after reasonable attempts.

10 3. The following language substantially and conspicuously
11 shall appear in the notice:

12 WARNING: You may lose the right to be heard in court if
13 you do not file promptly a simple statement of interest or
14 ownership. You do not have to pay a filing fee to file your
15 notice.

16 4. If the prosecuting authority does not serve notice by
17 personal service or publication on any persons appearing to
18 have an interest in the property and the extension period has
19 expired, the prosecuting authority or court shall order the
20 return of the property to a person with a valid interest in
21 the property who makes a request. Contraband shall not be
22 returned.

23 Sec. 18. NEW SECTION. 809B.18 Prompt post-seizure hearing.

24 1. Following seizure, a defendant or any other person
25 with an interest in the property has a right to a prompt
26 post-seizure hearing.

27 2. A person with an interest in the property may motion the
28 court for a hearing.

29 3. Upon motion, the court may hold a prompt post-seizure
30 hearing at any of the following:

31 a. As a separate hearing.

32 b. At the same time as a probable cause determination, an
33 arraignment hearing, a suppression hearing, an omnibus hearing,
34 or other pretrial hearing.

35 c. At any other time at the court's discretion.

1 4. A party, by agreement or for good cause, may move for one
2 extension of the hearing date. The motion may be supported by
3 affidavits or other submissions.

4 5. The court shall order the return of property if the court
5 finds by a preponderance of the evidence any of the following:

6 a. The seizure was invalid.

7 b. A criminal charge has not been filed and no extension of
8 the filing period is available.

9 c. The final judgment will likely be in favor of the
10 defendant or any other person with an interest in the property.

11 6. At the court's discretion, the court may order the return
12 of sufficient funds to the defendant, not needed as evidence,
13 for the defendant to obtain counsel of choice but less than the
14 total amount seized.

15 7. Notwithstanding subsections 5 and 6, the court may impose
16 reasonable conditions on the return of the property, including
17 the use of photographic evidence, to preserve the property for
18 later use as evidence in proceedings under this chapter.

19 8. This section does not apply to contraband.

20 Sec. 19. NEW SECTION. 809B.19 Notice of proposed
21 forfeiture.

22 1. In a case in which the state seeks forfeiture of
23 property, the prosecuting authority shall file with the court
24 a notice of proposed forfeiture. The notice of proposed
25 forfeiture shall be a separate document. The notice of
26 proposed forfeiture must include the following information:

27 a. A description of the property seized.

28 b. The time, date, and place of the seizure.

29 c. The seizure receipt number given pursuant to section
30 809B.11.

31 d. A description of how the property was used in or derived
32 from the alleged crime.

33 2. The prosecuting authority may allege, in the notice of
34 proposed forfeiture, the forfeiture of property as a process
35 after the conviction of the crime for which the defendant is

1 charged or as part of sentencing consideration.

2 3. The notice shall not be read to the jury.

3 4. The prosecuting authority shall serve the notice at one
4 of the following times:

5 a. With the initial charging instrument.

6 b. Separately but not later than ninety days after the
7 presentment of the charging instrument for a misdemeanor.

8 c. The earlier of ninety days after presentment to a grand
9 jury or one hundred days after an arrest for a felony.

10 d. Another time in the court's discretion.

11 5. At the court's discretion, the court may allow the
12 prosecuting authority to amend the notice as required in the
13 interest of justice.

14 6. The court shall order the return of the property to the
15 owner if the prosecuting authority does not file a charging
16 instrument, the period of an extension expires, or the court
17 does not grant an extension.

18 Sec. 20. NEW SECTION. 809B.20 **Discovery.**

19 Discovery related to the forfeiture proceeding is subject to
20 the rules of criminal procedure.

21 Sec. 21. NEW SECTION. 809B.21 **Trial — conviction required**
22 **and standard of proof.**

23 1. Property may be forfeited if all of the following are
24 true:

25 a. The defendant has been convicted of a violation of
26 section 124.401.

27 b. The state establishes by a preponderance of the evidence
28 the property is an instrumentality of or proceeds derived
29 directly from a violation of a crime listed in section 809B.2.

30 2. After the defendant's conviction, the court has the
31 discretion to hold the forfeiture proceeding as soon as
32 practicable, including concurrent with sentencing.

33 3. Except as required by section 809B.12, this chapter does
34 not prevent property from being forfeited by consent order
35 approved by the court, provided that secured interest holders,

1 innocent owners, or others entitled to notice under section
2 809B.17, consent to the forfeiture. A claimant may consent to
3 some issues and have the court determine remaining issues.

4 4. The consent order may reflect any of the following:

5 a. A plea agreement.

6 b. A diversion agreement.

7 c. A grant of immunity or reduced punishment, with or
8 without the filing of a criminal charge, in exchange for
9 testifying or assisting a law enforcement investigation or
10 prosecution.

11 5. The court may use the consent agreement to transfer
12 title to the property to the state and dispose of the property
13 according to section 809B.33.

14 Sec. 22. NEW SECTION. **809B.22 Exceptions to the conviction**
15 **requirement.**

16 1. The court may waive the conviction requirement in section
17 809B.21 and grant title to the property to the state if the
18 prosecuting authority files a motion no fewer than ninety days
19 after seizure and shows by a preponderance of the evidence that
20 the defendant, before conviction, did any of the following:

21 a. Abandoned the property.

22 b. Fled the jurisdiction.

23 c. Was deported by the United States.

24 d. Died.

25 2. The defendant's death does not preclude the defendant's
26 heir or legatee from filing a claim for the seized property as
27 an innocent owner under section 809B.25.

28 Sec. 23. NEW SECTION. **809B.23 Proportionality.**

29 1. The defendant may motion the court to determine whether
30 the forfeiture is unconstitutionally excessive under the
31 Constitution of the State of Iowa or the Constitution of the
32 United States.

33 2. At the court's discretion, the court may hold a
34 proportionality hearing at any of the following times:

35 a. As a separate hearing.

1 *b.* At the same time as a probable cause determination, an
2 arraignment hearing, a suppression hearing, an omnibus hearing,
3 or other pretrial hearing.

4 *c.* At trial.

5 *d.* Upon conviction.

6 3. The defendant has the burden of establishing that the
7 forfeiture is unconstitutionally excessive by a preponderance
8 of the evidence at a hearing conducted by the court without a
9 jury.

10 4. At a hearing prior to conviction, the court first
11 shall determine, by a preponderance of the evidence, if the
12 prosecuting attorney will secure a conviction. The court
13 then shall determine if the forfeiture is unconstitutionally
14 excessive.

15 5. At any hearing, the court may consider all relevant
16 factors to determine if the forfeiture is unconstitutionally
17 excessive including all of the following:

18 *a.* The seriousness of the crime and its impact on the
19 community, including the duration of the activity, use of a
20 firearm, and harm caused by the defendant.

21 *b.* The extent to which the defendant participated in the
22 crime.

23 *c.* The extent to which the property was integral to
24 facilitating the crime.

25 *d.* Whether the crime was completed or attempted.

26 *e.* The sentence or fine to be imposed for committing the
27 crime.

28 *f.* The hardship to the defendant if the forfeiture of a
29 motor vehicle would deprive the defendant of the defendant's
30 livelihood.

31 *g.* An unjust hardship to the defendant's family if the
32 property is forfeited.

33 6. In determining the value of the instrumentality subject
34 to forfeiture, the court may consider all relevant factors
35 related to the fair market value of the property, including

1 information in any publication advised by the prosecuting
2 authority pursuant to section 809B.12, subsection 3.

3 7. The court shall not consider the benefit or value of the
4 property to the state in determining whether the forfeiture is
5 unconstitutionally excessive.

6 Sec. 24. NEW SECTION. **809B.24 Secured interest holder.**

7 1. Property encumbered by a security interest shall not be
8 forfeited.

9 2. The prosecuting authority summarily shall return
10 property to a secured interest holder up to the value of the
11 interest. Contraband shall not be returned.

12 3. If the property is not summarily returned, the secured
13 interest holder may motion the court at any time before the
14 court enters judgment in the criminal prosecution or grants the
15 motion in section 809B.22. The motion may include the seizure
16 receipt number given pursuant to section 809B.11, if available.

17 4. The court shall hear the motion within thirty days after
18 filing or at the court's discretion. The hearing shall be held
19 without a jury. The court may consolidate the hearing on the
20 motion with any other hearing before the court in the case.

21 5. The secured interest holder shall allege the validity of
22 the security interest, mortgage, lien, leasehold, lease, rental
23 agreement, or other agreement.

24 6. If the prosecuting authority seeks to proceed, the
25 prosecuting authority shall prove by a preponderance of the
26 evidence any of the following:

27 a. That the interest is invalid.

28 b. That the interest resulted from a fraudulent conveyance.

29 c. That the interest was created by a purchase made on
30 behalf of the defendant, held through a trust, or otherwise
31 acquired for the benefit of the defendant.

32 d. That the secured interest holder consented to the use of
33 the property in the crime for which the defendant is charged.

34 7. If the state fails to meet its burden in subsection
35 6, the court shall order the state to relinquish claims to

1 the property, up to the value of the interest, and return the
2 interest to the secured interest holder.

3 8. Notwithstanding subsection 7, the court may impose
4 reasonable conditions on the return of the property, including
5 the use of photographic evidence to preserve the property for
6 later use as evidence in proceedings under this chapter.

7 Sec. 25. NEW SECTION. 809B.25 **Innocent owner.**

8 1. Property of an innocent owner shall not be forfeited.

9 2. The prosecuting authority summarily shall return
10 property to an innocent owner. Contraband shall not be
11 returned.

12 3. If the property is not summarily returned, an innocent
13 owner claimant may motion the court at any time before the
14 court enters judgment in the criminal prosecution or grants the
15 motion in section 809B.22.

16 4. The court shall hear the innocent owner claimant's motion
17 within thirty days after filing or at the court's discretion.
18 The hearing shall be held without a jury. The court may
19 consolidate the hearing on the claimant's motion with any other
20 hearing before the court in the case.

21 5. The innocent owner claimant may motion the court
22 by filing a statement that provides all of the following
23 information:

24 a. The claimant's interest in or regular use of the
25 property.

26 b. Facts or evidence supporting the claim.

27 c. An affirmation of the validity of interest or regular use
28 of the property.

29 d. The relief sought by the claimant.

30 e. The seizure receipt number given pursuant to section
31 809B.11, if available.

32 6. The filing fee for the claimant's motion under this
33 section is waived.

34 7. If the prosecuting authority seeks to proceed, the
35 prosecuting authority shall prove by a preponderance of the

1 evidence that the claimant is not an innocent owner because of
2 any of the following:

3 *a.* The claimant's interest in the property is invalid.

4 *b.* The claimant was not a bona fide purchaser without notice
5 of any defect in title and for valuable consideration.

6 *c.* The claimant was willfully blind to the crime for which
7 the defendant is charged.

8 *d.* The claimant did not regularly use the property as the
9 claimant claimed.

10 *e.* The claimant had actual knowledge and the claimant did
11 not take reasonable steps to prevent the use of the property
12 in the crime for which the defendant is charged. The claimant
13 is not required to take steps the claimant reasonably believes
14 would subject the claimant to physical danger.

15 8. If the prosecuting authority fails to meet the burden in
16 subsection 7, the court shall order the state to relinquish all
17 claims and return the property to the innocent owner.

18 9. Notwithstanding subsection 8, the court may impose
19 reasonable conditions on the return of the property, including
20 the use of photographic evidence, to preserve the property for
21 later use as evidence in proceedings under this chapter.

22 10. Information in the claimant's statement in subsection 5
23 shall not be used as evidence in the underlying criminal case.

24 11. This section shall not prohibit the claimant from
25 providing information to any party or testifying in any trial
26 as to facts the claimant knows.

27 12. The defendant or convicted offender may invoke the right
28 against self-incrimination or the marital privilege during the
29 forfeiture proceeding. The trier of fact may draw an adverse
30 inference from the invocation of the right or privilege.

31 Sec. 26. NEW SECTION. **809B.26 Judgment.**

32 1. If the prosecuting authority fails to meet the burden in
33 the criminal or forfeiture proceeding, the court shall enter
34 judgment dismissing the forfeiture proceeding and ordering
35 the return of property to the rightful owner. If the owner's

1 possession of the property is illegal, the court shall dispose
2 of the property pursuant to section 809B.33.

3 2. If the prosecuting authority meets the burden in the
4 criminal and forfeiture proceeding, the court shall enter
5 judgment forfeiting the property.

6 3. A court may enter judgment following a hearing,
7 pursuant to a stipulation or plea agreement, or at the court's
8 discretion.

9 Sec. 27. NEW SECTION. 809B.27 **Substitution of assets.**

10 Upon the prosecuting authority's motion following conviction
11 or at the court's discretion, the court may order the
12 forfeiture of substitute property owned solely by the defendant
13 up to the value of property that is beyond the court's
14 jurisdiction or cannot be located through due diligence, only
15 if the state proves by a preponderance of the evidence that any
16 of the following occurred:

17 1. The defendant intentionally dissipated the property.

18 2. The defendant transferred, sold, or deposited property
19 with a third party to avoid forfeiture.

20 3. The defendant substantially diminished the value of
21 property.

22 4. The defendant commingled property with other property
23 that cannot be divided without difficulty.

24 Sec. 28. NEW SECTION. 809B.28 **No additional remedies.**

25 The state shall not seek personal money judgments or other
26 remedies related to the forfeiture of property not provided for
27 in this chapter.

28 Sec. 29. NEW SECTION. 809B.29 **No joint and several
29 liability.**

30 A defendant is not jointly and severally liable for
31 forfeiture awards owed by other defendants. When ownership is
32 unclear, a court may order each defendant to forfeit property
33 on a pro rata basis or by another means the court finds
34 equitable.

35 Sec. 30. NEW SECTION. 809B.30 **Appeals.**

1 1. A party to forfeiture proceeding, other than the
2 defendant, may appeal the court's order concerning the
3 disposition of the property upon the issuance of the order.

4 2. The defendant may appeal the court's decision regarding
5 the seizure or forfeiture of property following final judgment
6 in the forfeiture proceeding.

7 Sec. 31. NEW SECTION. **809B.31 Attorney fees.**

8 In any proceeding in which a property owner's claim prevails
9 by recovering at least half, by value, of the property or
10 currency claimed, the court shall order the seizing law
11 enforcement agency or prosecuting authority at fault to pay all
12 of the following:

13 1. Reasonable attorney fees and other litigation costs
14 incurred by the claimant.

15 2. Post-judgment interest.

16 3. In cases involving currency, other negotiable
17 instruments, or the proceeds of an interlocutory sale, any
18 interest actually paid from the date of seizure.

19 Sec. 32. NEW SECTION. **809B.32 Return of property, damages,
20 and costs.**

21 1. If the court orders the return of property, the law
22 enforcement agency that holds the property shall return the
23 property to the rightful owner within a reasonable period not
24 to exceed five days after the date of the order.

25 2. The rightful owner shall not be subject to any expenses
26 related to towing, storage, or preservation of the property.

27 3. The law enforcement agency that holds the property is
28 responsible for any damages, storage fees, and related costs
29 applicable to property returned under this section.

30 Sec. 33. NEW SECTION. **809B.33 Disposition of property and
31 proceeds.**

32 1. At any time when contraband is no longer needed as
33 evidence, the court may order the contraband be sold or
34 destroyed according to state law.

35 2. Except as required by sections 809B.24 and 809B.25, the

1 court may order property be sold at any time when:

2 *a.* The property is no longer needed as evidence.

3 *b.* Abandoned property or property seized from a defendant
4 who died, was deported, or fled the jurisdiction is no longer
5 needed as evidence.

6 3. If the forfeiture is granted, the court shall order the
7 sale of forfeited property other than seized currency.

8 4. When all forfeited property is reduced to proceeds,
9 the court may order, upon exhaustion of all appeals or at its
10 discretion, the distribution of forfeited proceeds to do any
11 of the following:

12 *a.* Pay restitution to the victim of the crime.

13 *b.* Satisfy recorded liens, mortgages, or filed security
14 interests in the forfeited property.

15 *c.* Pay reasonable costs for the towing, storage,
16 maintenance, repairs, advertising, sale, and other operating
17 costs related to the forfeited property.

18 *d.* Reimburse the seizing law enforcement agency for
19 nonpersonnel operating costs, including controlled-drug buy
20 money, related to the investigation of the crime.

21 *e.* Reimburse the prosecuting authority, public defender,
22 or court-appointed attorney for nonpersonnel court costs,
23 including filing fees, subpoenas, court reporters, and
24 transcripts.

25 5. After disbursements under subsection 4, the court may
26 reimburse actual costs of up to one hundred thousand dollars by
27 ordering the disbursements of:

28 *a.* Up to fifty percent of remaining funds to reimburse the
29 seizing law enforcement agency for the salaries, benefits, and
30 overtime pay of uniformed personnel expended in the seizure of
31 the property and investigation of the crime.

32 *b.* Up to twenty-five percent of the remaining funds to
33 reimburse the prosecuting authority for the salaries, benefits,
34 and overtime pay expended in the prosecution of the crime and
35 forfeiture proceeding.

1 *c.* Up to twenty-five percent of the remaining funds to
2 reimburse the public defense or the fund to pay court-appointed
3 counsel for the salaries, benefits, and overtime pay expended
4 in the defense of the criminal defendant and forfeiture
5 proceeding.

6 6. After disbursements under subsections 4 and 5, the
7 court may order the remaining funds be disbursed to any of the
8 following:

9 *a.* The general fund of the state.

10 *b.* The department of public safety to supplement existing
11 statewide grants to law enforcement agencies for the purchases
12 of equipment.

13 *c.* The prosecuting agency for uses other than reimbursement
14 of salaries, benefits, and overtime pay of personnel associated
15 with the criminal prosecution of the case.

16 *d.* To the public defender for uses other than reimbursement
17 of salaries, benefits, and overtime pay of personnel associated
18 with the criminal defense of the case.

19 Sec. 34. NEW SECTION. 809B.34 **Sale restrictions.**

20 A law enforcement agency shall not sell forfeited property
21 directly or indirectly to any employee of the law enforcement
22 agency, to a person related to an employee of the law
23 enforcement agency within the third degree of consanguinity or
24 affinity, or to another law enforcement agency.

25 Sec. 35. NEW SECTION. 809B.35 **Preemption.**

26 This chapter preempts laws by township, municipal, county
27 and other governments in the state which regulate civil and
28 criminal forfeiture.

29 Sec. 36. NEW SECTION. 809B.36 **Limitation on federal**
30 **adoption.**

31 1. A law enforcement agency shall not transfer or offer for
32 adoption property, seized under state law, to a federal agency
33 for the purpose of forfeiture under 18 U.S.C. ch. 46, or other
34 federal law.

35 2. Subsection 1 shall only apply to a seizure by law

1 enforcement agency pursuant to a law enforcement agency
2 authority under state law and without involvement of the
3 federal government. Subsection 1 shall not be construed to
4 limit a law enforcement agency from participating in joint task
5 forces with the federal government.

6 3. A law enforcement agency shall not accept payment of any
7 kind or distribution of forfeiture proceeds from the federal
8 government. All such forfeiture proceeds shall be directed to
9 the general fund of the state.

10 Sec. 37. NEW SECTION. 809B.37 **Limitation on state and**
11 **federal joint task forces.**

12 1. Except as allowed for in subsection 2, a joint task force
13 of a law enforcement agency and a federal agency shall transfer
14 seized property to the prosecuting authority for forfeiture
15 under this chapter.

16 2. The joint task force may transfer seized property to
17 the United States department of justice for forfeiture under
18 federal law if the seized property includes United States
19 currency that exceeds twenty-five thousand dollars.

20 3. A law enforcement agency shall not accept payment
21 or distribution of any kind from the federal government if
22 the federal government requires seized property less than
23 twenty-five thousand dollars to be transferred to the federal
24 government for forfeiture under federal law.

25 4. Subsections 1 and 2 shall not be construed to prohibit
26 the federal government, acting alone, from seizing property and
27 seeking forfeiture under federal law.

28 Sec. 38. NEW SECTION. 809B.38 **Guidance.**

29 1. A prosecuting authority, after consulting with the
30 responsible United States attorney, shall establish guidelines
31 for joint task forces and multijurisdictional collaboration in
32 the prosecuting authority's jurisdiction. The guidelines shall
33 be consistent with federal safeguards to ensure that activities
34 are conducted in compliance with the United States department
35 of justice policies.

1 2. The department of public safety may offer training on
2 seizure and forfeiture under this chapter.

3 Sec. 39. Section 80.39, subsection 1, Code 2024, is amended
4 to read as follows:

5 1. Personal property, except for motor vehicles subject to
6 sale pursuant to [section 321.89](#), and seizable property subject
7 to disposition pursuant to [chapter 809](#) ~~or 809A~~, which personal
8 property is found or seized by, turned in to, or otherwise
9 lawfully comes into the possession of the department or a local
10 law enforcement agency and which the department or agency does
11 not own, shall be disposed of pursuant to [this section](#). If by
12 examining the property the owner or lawful custodian of the
13 property is known or can be readily ascertained, the department
14 or agency shall notify the owner or custodian by certified mail
15 directed to the owner's or custodian's last known address, as
16 to the location of the property. If the identity or address of
17 the owner cannot be determined, notice by one publication in a
18 newspaper of general circulation in the area where the property
19 was found is sufficient notice. A published notice may contain
20 multiple items.

21 Sec. 40. Section 123.9, subsection 7, Code 2024, is amended
22 by striking the subsection.

23 Sec. 41. Section 321.232, subsection 3, Code 2024, is
24 amended to read as follows:

25 3. A speed detection jamming device sold, operated, or
26 possessed in violation of [subsection 1](#) may be seized by a peace
27 officer and is subject to forfeiture as provided by [chapter 809](#)
28 ~~or 809A~~.

29 Sec. 42. Section 321J.4B, subsections 6, 9, and 10, Code
30 2024, are amended to read as follows:

31 6. Upon conviction of the defendant for a second
32 or subsequent violation of [subsection 2](#), paragraph "a",
33 subparagraph (2), the court shall order, if the convicted
34 person is the owner of the motor vehicle used in the commission
35 of the offense, that that motor vehicle be seized and forfeited

1 to the state pursuant to [chapters 809](#) and [809A 809B](#).

2 9. Operating a motor vehicle on a street or highway in this
3 state in violation of an order of impoundment or immobilization
4 is a serious misdemeanor. A motor vehicle which is subject to
5 an order of impoundment or immobilization that is operated on a
6 street or highway in this state in violation of the order shall
7 be seized and forfeited to the state under [chapters 809](#) and
8 [809A 809B](#).

9 10. Once the period of impoundment or immobilization has
10 expired, the owner of the motor vehicle shall have thirty
11 days to claim the motor vehicle and pay all fees and charges
12 imposed under [this section](#). If the owner or the owner's
13 designee has not claimed the vehicle and paid all fees and
14 charges imposed under [this section](#) within seven days from the
15 date of expiration of the period, the clerk shall send written
16 notification to the motor vehicle owner, at the owner's last
17 known address, notifying the owner of the date of expiration of
18 the period of impoundment or immobilization and of the period
19 in which the motor vehicle must be claimed. If the motor
20 vehicle owner fails to claim the motor vehicle and pay all fees
21 and charges imposed within the thirty-day period, the motor
22 vehicle shall be forfeited to the state under [chapters 809](#) and
23 [809A 809B](#).

24 Sec. 43. Section 321J.4B, subsection 12, paragraph a,
25 subparagraph (2), Code 2024, is amended to read as follows:

26 (2) The holder of a security interest in a vehicle which
27 is impounded or immobilized pursuant to [this section](#) or
28 forfeited in the manner provided in chapters 809 and ~~809A~~
29 [809B](#) shall be notified of the impoundment, immobilization,
30 or forfeiture within seventy-two hours of the seizure of the
31 vehicle and shall have the right to claim the motor vehicle
32 without payment of any fees or surcharges unless the value of
33 the vehicle exceeds the value of the security interest held by
34 the creditor.

35 Sec. 44. Section 321J.10, subsection 7, Code 2024, is

1 amended to read as follows:

2 7. Specimens obtained pursuant to warrants issued under
3 this section are not subject to disposition under [section 808.9](#)
4 or [chapter 809](#) or ~~809A~~.

5 Sec. 45. Section 455B.103, subsection 4, paragraph d,
6 subparagraph (2), Code 2024, is amended to read as follows:

7 (2) In a reasonable manner, and any property seized shall be
8 treated in accordance with the provisions of [chapters 808](#), and
9 [809](#), ~~and 809A~~.

10 Sec. 46. Section 462A.14D, subsection 7, Code 2024, is
11 amended to read as follows:

12 7. Specimens obtained pursuant to warrants issued under
13 this section are not subject to disposition under [section 808.9](#)
14 or [chapter 809](#) or ~~809A~~ 809B.

15 Sec. 47. Section 706A.3, subsection 3, paragraphs d and e,
16 Code 2024, are amended to read as follows:

17 *d.* Ordering the payment of all reasonable costs and expenses
18 of the investigation and prosecution of any violation, civil
19 or criminal, including reasonable attorney fees in the trial
20 and appellate courts. Such payments received by the state,
21 by judgment, settlement, or otherwise, shall be considered
22 forfeited property and disposed of pursuant to ~~section 809A~~.
23 chapter 809B.

24 *e.* Ordering the forfeiture of any property subject to
25 forfeiture under ~~chapter 809A~~ 809B, pursuant to the provisions
26 and procedures of that chapter.

27 Sec. 48. Section 706A.3, subsection 4, Code 2024, is amended
28 to read as follows:

29 4. Relief under [subsection 3](#), paragraphs "e", "f", and
30 "g", shall not be granted in civil proceedings instituted
31 by an aggrieved person unless the prosecuting attorney has
32 instituted the proceedings or intervened. In any action under
33 this section brought by the state or in which the state has
34 intervened, the state may employ any of the powers of seizure
35 and restraint of property as are provided for forfeiture

1 actions under [chapter 809A 809B](#), or as are provided for the
2 collection of taxes payable and past due, and whose collection
3 has been determined to be in jeopardy.

4 Sec. 49. Section 706B.2, subsection 4, Code 2024, is amended
5 to read as follows:

6 4. A person who is found guilty of a violation under this
7 section also may be charged with violations of [chapter 706A](#),
8 ~~and property involved in a violation under this chapter is~~
9 ~~subject to forfeiture under [chapter 809A](#).~~

10 Sec. 50. Section 715A.8, subsection 6, Code 2024, is amended
11 by striking the subsection.

12 Sec. 51. Section 724.26, subsection 4, Code 2024, is amended
13 to read as follows:

14 4. Except as provided in ~~[section 809A.17, subsection 5,](#)~~
15 ~~paragraph "b"~~ [chapter 809B](#), a court that issues an order or
16 that enters a judgment of conviction described in subsection
17 2 and that finds the subject of the order or conviction to be
18 in possession of any firearm, offensive weapon, or ammunition
19 shall order that such firearm, offensive weapon, or ammunition
20 be sold or transferred by a date certain to the custody of a
21 qualified person in this state, as determined by the court.
22 The qualified person must be able to lawfully possess such
23 firearm, offensive weapon, or ammunition in this state. If
24 the court is unable to identify a qualified person to receive
25 such firearm, offensive weapon, or ammunition, the court
26 shall order that the firearm, offensive weapon, or ammunition
27 be transferred by a date certain to the county sheriff or
28 a local law enforcement agency designated by the court for
29 safekeeping until a qualified person is identified to receive
30 the firearm, offensive weapon, or ammunition, until such order
31 is no longer in effect, until such conviction is vacated, or
32 until the person's rights have been restored in accordance
33 with [section 724.27](#). If the firearm, offensive weapon, or
34 ammunition is to be transferred to the sheriff's office or a
35 local law enforcement agency, the court shall assess the person

1 the reasonable cost of storing the firearm, offensive weapon,
2 or ammunition, payable to the county sheriff or the local law
3 enforcement agency.

4 Sec. 52. Section 809.5, subsection 1, paragraph f,
5 subparagraph (1), Code 2024, is amended to read as follows:

6 (1) If the aggregate fair market value of the property is
7 greater than five hundred dollars, forfeiture proceedings shall
8 be initiated pursuant to the provisions of [chapter 809A 809B](#).
9 If the court does not order the property forfeited to the state
10 in the forfeiture proceedings pursuant to [chapter 809A 809B](#),
11 the seizing agency shall become the owner of the property and
12 may dispose of it in any reasonable manner.

13 Sec. 53. Section 809.12A, Code 2024, is amended to read as
14 follows:

15 **809.12A Appeals.**

16 An appeal from a denial of an application for the return
17 of seized property or from an order for the return of seized
18 property shall be made within thirty days after the entry of
19 a judgment order. The appellant, other than the state, shall
20 post a bond of a reasonable amount as the court may fix and
21 approve, conditioned to pay all costs of the proceedings if the
22 appellant is unsuccessful on appeal. The appellant, other than
23 the state, may be required to post a supersedeas bond or other
24 security, as the court finds to be reasonable, in order to stay
25 the operation of a forfeiture order under ~~section 809A.16~~
26 [chapter 809B](#).

27 Sec. 54. Section 809.15, Code 2024, is amended to read as
28 follows:

29 **809.15 Combining proceedings.**

30 In cases involving seized property and property subject to
31 forfeiture pursuant to ~~section 809A.4~~ [chapter 809B](#), the court
32 may order that the proceedings be combined for purposes of this
33 chapter.

34 Sec. 55. REPEAL. Section 716A.7, Code 2024, is repealed.

35 Sec. 56. REPEAL. Chapter 809A, Code 2024, is repealed.

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EXPLANATION

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

This bill relates to criminal asset forfeiture.

Asset forfeiture is a process by which contraband and proceeds or instrumentalities related to criminal activity may be seized by the state and sold. Under current law, asset forfeiture is governed by Code chapter 809A. The bill repeals Code chapter 809A and replaces it with new Code chapter 809B. Currently under Code chapter 809A, a conviction for a criminal offense is not required for an asset to be subject to forfeiture for property valued at \$5,000 and less, and forfeiture need not be expressly authorized as a penalty in the criminal statute.

Under current law, forfeiture is provided as a remedy for certain driving while intoxicated offenses and for violations of Code chapters 706B (money laundering), 715A (forgery and related fraudulent criminal acts), and 716A (electronic mail).

The bill prohibits civil forfeiture and provides that criminal forfeiture is only available to the seizure and forfeiture of property used in and derived from the violation of Code chapter 124, subchapter IV (controlled substances — offenses and penalties).

Under the bill, forfeiture is disfavored. The bill's stated purposes are to deter criminal activity by reducing criminal activity economic incentives, confiscate property used in the violation of the law, and protect due process rights of property owners.

The bill provides that the court that has jurisdiction in the related criminal matter shall have jurisdiction over the forfeiture proceeding and the forfeiture shall be part of the trial of the related crime.

The bill states that at the request of the state, a court may issue an ex parte order for the property for which forfeiture is sought and to provide for the custody of the personal

1 property.

2 The bill provides for the seizure of personal property
3 without process if the property was seized during a lawful
4 arrest. The bill further provides that the seizure of real
5 property requires process and proper notice.

6 The bill provides that people do not have property rights in
7 stolen property or contraband. Stolen property may be returned
8 to the rightful owner and contraband shall be disposed of. The
9 agency that seized the property is responsible for providing
10 adequate storage, security, and maintenance for all assets in
11 the agency's custody.

12 The bill requires that the law enforcement officer that
13 seizes the property shall provide an itemized numbered receipt
14 of all assets being taken.

15 The bill exempts United States currency totaling \$200 or
16 less and a motor vehicle valued at \$2,000 or less from seizure
17 and forfeiture.

18 The bill provides that a person may execute a waiver to
19 relinquish the person's rights, interests, and title in the
20 seized property and that waiver is subject to a claim by a
21 secured interest holder, innocent owner, or other person
22 entitled to notice. The bill further provides that a law
23 enforcement officer, other than the prosecuting authority, may
24 not request, induce, or require a person to waive the person's
25 rights in seized property.

26 The bill requires a law enforcement agency making a seizure
27 to submit a report to the appropriate prosecuting agency within
28 10 days of the seizure. The report shall include the following
29 information: (1) name of the seizing law enforcement agency,
30 (2) description of the seized property, (3) location where the
31 seizure occurred, (4) date and circumstances of seizure, (5)
32 where the property is being stored and its custodian, (6) name
33 and contact information of owner, possible innocent owner
34 claimant, and any lienholder, (7) the type and quantity of
35 the controlled substance involved, (8) if the property is a

1 conveyance, the report shall include the make, model, serial
2 number, and year of the conveyance and the name and contact
3 information of the person in whose name the conveyance is
4 registered, and (9) any other relevant information.

5 The bill provides that the title to the seized property vests
6 with the state when the court issues a forfeiture judgment and
7 relates back to the date when the state took control of the
8 property.

9 The bill provides for appointed counsel for a defendant in
10 a forfeiture proceeding if the person has a public defender,
11 or court-appointed counsel, to the person in the connected
12 criminal matter. In a pro se proceeding, the court may
13 exercise discretion applying the rules of pleading, practice,
14 evidence, and procedure.

15 The bill requires the prosecuting authority to perform
16 a reasonable search to identify any person, other than the
17 defendant, known to have an interest in the property subject
18 to forfeiture and give notice to the interested person. The
19 bill allows notice to be through publication if personal
20 service is not available. The bill provides language that
21 shall be included in the notice to other known owners. If the
22 prosecuting authority does not serve notice on any persons
23 appearing to have an interest in the property and the extension
24 period has expired, the prosecuting authority or court shall
25 order the return of the property to a person with a valid
26 interest in the property who makes a request.

27 The bill provides that following seizure, a defendant or any
28 other person with an interest in the property has a right to a
29 prompt post-seizure hearing and may file a motion to request a
30 hearing. The bill further provides that seized property shall
31 be returned if the court by a preponderance of the evidence
32 determines that: (1) the seizure was invalid, (2) a criminal
33 charge has not been filed and no filing extension is available,
34 (3) the final judgment will be in favor of the defendant or any
35 other person with an interest in the property, or (4) the court

1 has ordered the return of sufficient funds to the defendant,
2 not needed as evidence, for the defendant to obtain counsel of
3 choice but less than the total amount seized. The bill allows
4 the court to impose reasonable conditions on the return of the
5 property.

6 The bill requires the prosecuting authority to provide a
7 notice of proposed forfeiture with the court and the person
8 whose property will be seized. The notice shall include (1)
9 a description of the property seized, (2) the time, date, and
10 place of the seizure, (3) the seizure receipt number, and (4) a
11 description of how the property was used in or derived from the
12 alleged crime.

13 The bill provides that forfeiture proceedings are subject to
14 the rules of criminal procedure.

15 The bill allows property to be forfeited if the defendant
16 has been convicted of a violation of Code section 124.401 and
17 the state has established by a preponderance of the evidence
18 that the property is an instrumentality of or proceeds derived
19 directly from the violation. Upon conviction, the court has
20 the discretion to hold the forfeiture proceeding as soon as
21 practicable. A forfeiture proceeding shall be held without a
22 jury. The bill also provides that property may be forfeited
23 by consent order approved by the court provided that secured
24 interest holders, innocent owners, or others entitled to notice
25 to consent to the forfeiture.

26 The bill provides that the court may waive the requirement
27 that a defendant be convicted of a violation of Code section
28 124.401 and grant title of the property to the state if the
29 prosecuting authority files a motion no fewer than 90 days
30 after seizure and proves that the defendant abandoned the
31 property, fled the jurisdiction, was deported, or died.

32 The bill provides for a proportionality hearing, where
33 the defendant may petition the court that the forfeiture was
34 unconstitutionally excessive.

35 The bill provides remedies for secured interest holders and

1 innocent owners whose property has been seized by the state.
2 The bill allows the secured interest holder and an innocent
3 owner whose seized property is not returned to petition the
4 court for a hearing for the property to be returned.

5 The bill provides that a defendant is not jointly and
6 severally liable for forfeiture awards owed by other
7 defendants.

8 The bill provides that in a forfeiture proceeding in which a
9 claimant substantially prevails, the state shall be liable for
10 attorney fees and other litigation costs incurred. The bill
11 provides the procedure to return the property and any damages
12 sustained to the property during its seizure.