

**CHAPTER 201**  
**FORFEITURE OF PROPERTY**  
*S.F. 455*

**AN ACT** relating to the seizure and forfeiture of property which is obtained in violation of the law, unlawful to possess, used or possessed with criminal intent, relevant to a criminal prosecution, or which is the proceeds of criminal activity.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 80.39, subsection 1, Code 1985, is amended to read as follows:

1. Personal property, except for property subject to forfeiture, motor vehicles subject to sale pursuant to section 321.89, ~~weapons subject to disposition pursuant to section 691.9,~~ and ~~seized~~ seizable or forfeitable property subject to disposition pursuant to chapter 809, which personal property is found or seized by, turned in to, or otherwise lawfully comes into the possession of the department of public safety and which the department does not own, shall be disposed of pursuant to this section. If by examining the property the owner or lawful custodian of the property is known or can be readily ascertained, the department shall notify the owner or custodian by certified mail directed to the owner's or custodian's last known address, as to the location of the property. If the identity or address of the owner cannot be determined, notice by one publication in a newspaper of general circulation in the area where the property was found is sufficient notice. Publication notice may contain multiple items.

Sec. 2. Section 331.427, subsection 1, unnumbered paragraph 1, Code 1985, is amended to read as follows:

Except as otherwise provided by state law, county revenues from taxes and other sources for general county services shall be credited to the general fund of the county, including revenues received under sections 84.21, 98.35, 98A.6, 101A.3, 101A.7, 110.12, 123.36, 123.143, 176A.8, 247A.10, 321.105, 321.152, 321.192, 321G.7, 331.554, subsection 6, 341A.20, 364.3, 368.21, 422.65, 422.100, 422A.2, 428A.8, 430A.3, 433.15, 434.19, 441.68, 445.52, 445.57, 533.24, 556B.1, 567.10, 583.6, ~~809.6,~~ 906.17, and 911.3, and the following:

Sec. 3. Section 602.8102, subsection 129, Code 1985, is amended to read as follows:

129. Carry out duties relating to the disposition of seized property as provided in ~~sections 809.2 and 809.3~~ chapter 809.

Sec. 4. **NEW SECTION. 809.1 DEFINITIONS.**

As used in this chapter, unless the context otherwise requires:

1. "Seizable property" means all or part of any property subject to seizure in the execution of a search warrant, arrest warrant, or arrest without warrant including, but not limited to, the following:

- a. Property which has been obtained in violation of the law.
- b. Property, the possession of which is unlawful.
- c. Property used or possessed with the intent to be used as a means of committing a public offense or concealed to prevent an offense from being discovered.
- d. Property relevant and material as evidence in a criminal prosecution.

2. "Forfeitable property" means all or part of any property subject to forfeiture to the state including, but not limited to, the following:

a. Seizable property which has been seized and not returned pursuant to sections 809.2 through 809.5.

b. Property which is proceeds of or which may be traced to the proceeds of the commission of a public offense.

c. Money, coin, currency, negotiable instruments, valuable minerals, or other similar items of value used as or in lieu of currency, found in close proximity to seizable property or in close proximity to any record of the importation, manufacture or distribution of seizable property.

d. Property subject to forfeiture under any other statute or provision of law.

Sec. 5. NEW SECTION. 809.2 NOTICE OF SEIZURE OF SEIZABLE PROPERTY.

1. When seizable property is seized pursuant to this chapter, a notice of seizure shall be filed promptly with the clerk of the district court for the county in which the property was located when seized. The notice shall state the time and place where the seizure occurred and set forth the names of any persons from whom the property was seized and the names of any persons believed by the seizing officer to have an interest in the property. To identify persons who may have an interest in the property, the seizing officer or the county attorney shall make a reasonable examination of any appropriate records regarding the property to ascertain whether liens or interests in the property currently exist. The notice shall contain a complete list of all property seized and describe the property with as much particularity as practicable.

2. Within seventy-two hours of receiving a notice of seizure, the clerk shall mail a copy of the notice to the attorney general and cause to be served upon all lienholders of record and each person listed in the notice a copy of the notice and a statement that a person affected by the seizure has a right to file a claim for the return of the property.

Sec. 6. NEW SECTION. 809.3 CLAIM FOR RETURN OF SEIZABLE PROPERTY.

1. A person claiming a right to possession of seizable property seized pursuant to this chapter may make application for its return in the office of the clerk of court for the county in which the property was seized. The application shall be filed within thirty days after receipt of the notice of seizure, and failure to file the application within this time period shall terminate the interest of the person.

2. The application for the return of seizable property shall state the specific item or items sought, the nature of the claimant's interest in the property, and the grounds upon which the claimant seeks to have the property returned. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return.

3. The claimant shall cause a copy of the application to be served upon all persons listed in the notice of seizure, the county attorney, and the attorney general.

4. If an application for the return of seizable property is not timely made pursuant to this section, upon application of the county attorney or the attorney general the clerk shall enter an order forfeiting the property to the state.

5. Notwithstanding the provisions of this section to the contrary, seized property which was stolen or otherwise obtained in violation of the law may be returned to the owner, if the owner was not the person from whom the property was seized, without hearing if all of the following are true:

a. The identity of the owner is not in question.

b. The owner's right to possess the property is not in question.

c. The possession of the property is not prohibited by law.

d. One of the following is also true:

(1) Criminal charges have not been filed and are not being contemplated regarding the theft of the property.

(2) Evidence regarding the property is not to be introduced in any proceeding.

(3) If evidence regarding the property is to be introduced, all of the following are true:

(a) The property has been photographed in such a manner as to fairly show the nature and condition of the property.

(b) The photographs are available for use in any subsequent proceeding.

(c) If the value of the property is in excess of one hundred dollars, the county attorney has notified the attorney for any person against whom the evidence regarding the property may be used of the intention to return the property following its being photographed and the person's attorney either exercised or waived an opportunity to examine the property within fourteen days.

(4) If the property may be introduced as evidence, it is of such a nature that it is not easily alterable without detection and arrangements satisfactory to both the county attorney and the attorneys for any persons against whom evidence regarding the property may be used have been made for its return for use as evidence.

Sec. 7. NEW SECTION. 809.4 HEARING — APPEAL.

An application for the return of seizable property shall be set for hearing not less than five or more than thirty days after the filing of the application and shall be tried to the court. If the total value of the property sought to be returned meets the appropriate jurisdictional limit, the proceeding may be conducted by a magistrate or a district associate judge with appeal to be as in a case of small claims. In all other cases, the hearing shall be conducted by a district judge, with appeal as provided in section 809.12.

Sec. 8. NEW SECTION. 809.5 RETURN OF SEIZABLE PROPERTY.

1. Seizable property which is not required for evidence or use in an investigation may be returned by the officer to the person from whom it was seized without the requirement of a hearing, provided that the person's possession of the property is not prohibited by law.

2. If, upon a hearing pursuant to section 809.4, it is determined that the right of possession is in favor of the claimant, the court shall order the return of the property, subject to both of the following:

a. The claimant's possession of the property is not prohibited by law.

b. The property is not needed as evidence in a judicial proceeding, or if needed, satisfactory arrangements have been made for its return for use as evidence. If the proceedings have not been completed, the court shall make satisfactory arrangements for the return of the property upon the completion of the proceedings.

Sec. 9. NEW SECTION. 809.6 NONRETURNED SEIZED PROPERTY.

Property which is seized but not returned pursuant to sections 809.2 to 809.5 is presumed to be forfeit and shall be proceeded against as provided in sections 809.13 and 809.14.

Sec. 10. NEW SECTION. 809.7 SEIZURE OF FORFEITABLE PROPERTY.

Forfeitable property shall be seized whenever and wherever the property is found within this state. Forfeitable property may be seized by a peace officer or county attorney or by the attorney general. Forfeitable property may be seized by serving upon the person in possession of the property a notice of forfeiture. If the court finds that forfeiture to the state is warranted, an order transferring ownership to the state shall be entered and the property shall be delivered to the attorney general as the attorney general directs.

**Sec. 11. NEW SECTION. 809.8 NOTICE OF SEIZURE OF FORFEITABLE PROPERTY.**

1. When property is seized pursuant to section 809.7, a notice of seizure shall be filed promptly with the clerk of the district court for the county in which the property was located when seized. The notice shall state the time and place where the seizure occurred and shall set forth the names of any persons from whom the property was seized and the names of any persons believed by the seizing officer to have an interest in the property. To identify persons who may have an interest in the property, the seizing officer or the county attorney shall make a reasonable examination of any appropriate records including, but not limited to, the records of the secretary of state, county treasurer, county recorder and the clerk of court regarding the property to ascertain whether liens or interests in the property currently exist. The notice of seizure shall contain a complete list of all property seized and describe the property with as much particularity as practicable.

2. Within seventy-two hours of receiving a notice of seizure of forfeitable property, the clerk shall mail a copy of the notice to the attorney general and cause to be served upon all lienholders of record and each person listed in the notice a copy of the notice and a statement that a person affected by the seizure has a right to file a claim for the return of the property.

**Sec. 12. NEW SECTION. 809.9 CLAIM FOR RETURN OF FORFEITABLE PROPERTY.**

1. A person claiming a right to possession of forfeitable property seized pursuant to sections 809.7 and 809.8 may make application for its return in the office of the clerk of court for the county in which the property was seized. The application shall be filed within thirty days after receipt of the notice of seizure, and failure to file the application within this time period shall terminate the interest of the person.

2. The application for the return of forfeitable property shall state the specific item or items sought, the nature of the claimant's interest in the property, and the grounds upon which the claimant seeks to have the property returned. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return.

3. The claimant shall cause a copy of the application to be served upon all persons listed in the notice of seizure, the county attorney, and the attorney general.

**Sec. 13. NEW SECTION. 809.10 FORFEITURE.**

1. If an application for the return of forfeitable property is not timely made pursuant to section 809.9, upon application of the county attorney or the attorney general the clerk shall enter an order forfeiting the property to the state.

2. If an application for the return of forfeitable property is timely made pursuant to section 809.9, the claim shall be set for hearing and the hearing shall be held not less than five or more than thirty days after the filing of the claim and shall be tried to the court. If the total value of the property sought to be returned meets the appropriate jurisdictional limit, the proceeding may be conducted by a magistrate or a district associate judge with appeal to be as in a case of small claims. In all other cases, the hearing shall be conducted by a district judge, with appeal as provided in section 809.12.

**Sec. 14. NEW SECTION. 809.11 PROCEDURES AT HEARING.**

1. At the hearing, the burden is upon the state to prove by clear and convincing evidence that the property is forfeitable. However, forfeiture is not dependent upon a prosecution for, or conviction of, a criminal offense and forfeiture proceedings are separate and distinct from any related criminal action.

2. Court appointed counsel, at the state's expense, is not available in forfeiture proceedings. The attorney general shall represent the state in all forfeiture proceedings but may, at the attorney general's discretion, direct that the county attorney of the county in which the seizure of the property occurred shall serve in place of the attorney general.

3. The costs for a forfeiture action shall be as in the case of criminal actions filed by the county attorney, however, no costs for filing or service shall be assessed in a proceeding where no claim for return has been made.

4. The court may assess costs against a losing party or apportion costs against the parties.

5. Property which has been seized for forfeiture, and is not already secured as evidence in a criminal case, shall be safely secured or stored by the agency which caused its seizure unless directed otherwise by the attorney general.

Sec. 15. NEW SECTION. 809.12 APPEALS.

1. An appeal from a judgment of seizure or forfeiture by a district judge shall be made within thirty days after the entry of a judgment order. The appellant, other than the state, shall post a bond of a reasonable amount as the court may fix and approve, conditioned to pay all costs of the proceedings if the appellant is unsuccessful on appeal. The appellant, other than the state, may be required to post a supersedeas bond or other security the court finds to be reasonable in order to stay the operation of a forfeiture order.

2. If property forfeitable under this chapter is needed as evidence in a criminal proceeding, it shall be retained under the control of the prosecuting county attorney, or the county attorney's designee, until such time as its use as evidence is no longer required.

Sec. 16. NEW SECTION. 809.13 DISPOSITION OF FORFEITED PROPERTY.

1. Upon a final determination by a court that property is forfeited, the court shall enter an order that the ownership of the property be transferred to the state. The court shall also order that the person having control over the property deliver the property to the department of justice, or if no person has control over the property, the court shall authorize the department of justice to take measures necessary to provide for the delivery of the property to the department.

2. Forfeited property delivered to the department of justice may be used in the enforcement of the law. The department may give, sell, or trade property which is not subject to subsection 4 to other state agencies or to any other law enforcement agency within the state if, in the opinion of the attorney general, it will enhance law enforcement within the state.

3. Forfeited property which is not used by the department of justice in the enforcement of the law and which is not property subject to subsection 4, may be requisitioned by the department of public safety for use by a state or local law enforcement agency or by the director of the department of general services to be disposed of in the same manner as property received pursuant to section 18.15.

4. Notwithstanding subsection 1, 2, or 3, forfeited property which is:

a. A controlled substance or a simulated, counterfeit, or imitation controlled substance shall be disposed of as provided in section 204.506.

b. A weapon or ammunition shall be deposited with the department of public safety to be disposed of in accordance with the rules of the department. All weapons or ammunition may be held for use in law enforcement, testing, or comparison by the criminalistics laboratory, or destroyed.

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

**Sec. 17. NEW SECTION. 809.14 NONFORFEITABLE INTERESTS – PURCHASE OF FORFEITED INTERESTS.**

1. Property shall not be forfeited under this chapter to the extent of the interest of an owner, other than a joint tenant, who had no part in the commission of the crime and who had no knowledge of the criminal use or intended use of the property. However, if it is established that the owner permitted the use of the property under circumstances in which a reasonable person should have inquired into the intended use of the property and that the owner failed to do so, there is a rebuttable presumption that the owner knew that the property was intended to be used in the commission of a crime.

2. Upon receipt of forfeited property the attorney general shall permit any owner or lienholder of record having a nonforfeitable property interest in the property the opportunity to purchase the property interest forfeited. If the owner or lienholder does not exercise the option under this subsection within thirty days the option shall be terminated, unless the time for exercising the option is extended by the attorney general.

3. A person having a valid, recorded lien or property interest in forfeited property, which has not been repurchased pursuant to subsection 2, shall either be reimbursed to the extent of the nonforfeitable interest or to the extent that the sale of the item produces sufficient revenue to do so, whichever amount is less. The sale of forfeited property should be conducted in a manner which is commercially reasonable and calculated to provide a sufficient return to cover the costs of the sale and reimburse any nonforfeitable interest. The validity of a lien or property interest is determined as of the date upon which the property becomes forfeitable.

4. This section does not preclude a civil suit by an owner of an interest in forfeited property against that party who, by criminal use, caused the property to become forfeited to the state.

**Sec. 18. NEW SECTION. 809.15 COMBINING PROCEEDINGS.**

In cases involving seizable property and forfeitable property, the court may order that the proceedings be combined for purposes of this chapter.

**Sec. 19. NEW SECTION. 809.16 RULEMAKING.**

The attorney general may adopt, amend, or repeal rules pursuant to chapter 17A to carry out the provisions of this chapter.

**Sec. 20. NEW SECTION. CUMULATIVE EFFECT.**

The provisions of this chapter are intended to be cumulative and in addition to other actions or proceedings against seizable or forfeitable property otherwise provided by statute.

**Sec. 21. Sections 691.9 and 728.13 are repealed.**

**Sec. 22. Chapter 809, Code 1985, is repealed and sections 4 through 20 of this Act are enacted as a new chapter 809.**

Approved May 28, 1985