

Sec. 8. Section 447.10, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

447.10 SERVICE BY PUBLICATION.

If notice in accordance with section 447.9 cannot be served upon a person entitled to notice in the manner prescribed in that section, then the holder of the certificate of purchase shall cause the required notice to be published once in an official newspaper in the county. If service is made by publication, the affidavit required by section 447.12 shall state the reason why service in accordance with section 447.9 could not be made. Service of notice by publication shall be deemed complete on the day of the publication.

Sec. 9. Section 447.13, Code 1985, is amended to read as follows:

447.13 COST — FEE — REPORT.

The cost of a record search and the cost of serving the notice and affidavit of publication, including the cost of mailing certified mail notices and the cost of publication under section 447.10 if publication is required, shall be added to the amount necessary to redeem. The fee for serving personal service of the notice shall be the same as for service of an original notice, including copy fee and mileage. The treasurer shall file the proof of service and statement of costs and enter it on the sale book against the proper tract of real estate. The holder of the certificate of sale or the holder's agent may shall report in writing to the county treasurer the amount of authorized costs incurred in giving the notice, and the treasurer shall enter it in the sale book. A redemption is not complete until the costs are paid. If the property is held by a city or county, a city or county agency, or the Iowa housing finance authority, for use in an Iowa homesteading project, whether or not the property is the subject of a conditional conveyance granted under the project, the costs incurred for repairs and rehabilitation work required and undertaken in order to make the property meet applicable building or housing code standards shall be added to the amount necessary to redeem, and a redemption is not complete until the costs are paid.

Sec. 10. **NEW SECTION. 589.24A DEFECT IN TAX SALE PROCEEDING.**

An action shall not be commenced after July 1, 1987, which asserts a claim against any real estate sold at a tax sale, based upon any defect in the tax sale proceeding, including the inadequacy of the notice of tax sale or the inadequacy of the notice of the expiration of the redemption period, where the tax sale was made prior to July 1, 1986.

Approved April 28, 1986

CHAPTER 1140

SEIZABLE AND FORFEITABLE PROPERTY

H.F. 2460

AN ACT relating to the disposition of seizable and forfeitable property, and providing penalties.

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

Section 1. Section 80.39, subsection 1, Code Supplement 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, and seizable or forfeitable property subject to disposition pursuant to chapter ~~809A~~ 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 A published notice may contain multiple items.

Sec. 2. Section 602.8102, subsection 129, Code Supplement 1985, is amended to read as follows:

129. Carry out duties relating to the disposition of seized property as provided in chapter 809A 809.

Sec. 3. NEW SECTION. 809.1 DEFINITIONS.

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

1. "Seizable property" means any of the following:

- a. Property which is relevant in a criminal prosecution or investigation.
- b. Property defined by law to be forfeitable property.
- c. Property which if not seized by the state poses an imminent danger to a person's health, safety, or welfare.

2. "Forfeitable property" means any of the following:

- a. Property which is illegally possessed.
- b. Property which has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense.

c. Property which is acquired as or from the proceeds of a criminal offense.

d. Property offered or given to another as an inducement for the commission of a criminal offense.

3. "Seized property" means property taken or held by any law enforcement agency without the consent of the person, if any, who had possession or a right to possession of the property at the time it was taken into custody. Seized property does not include property taken into custody solely for safekeeping purposes or property taken into custody with the consent of the owner or the person who had possession at the time of the taking. If consent to the taking of property was given by the person in possession of the property and later withdrawn or found to be insufficient, the property shall then be returned or the property shall be deemed seized as of the time of the demand and refusal.

4. The definitions contained in subsections 1 through 3 shall not apply to violations of chapter 321 or 321B.

Sec. 4. NEW SECTION. 809.2 NOTICE OF SEIZURE.

The officer taking possession of seized property shall make a written inventory of the property and deliver a copy of the inventory to the person from whom it was seized. The inventory shall include the name of the person taking custody of the seized property, the date and time of the seizure, and the law enforcement agency seizing the property.

Sec. 5. NEW SECTION. 809.3 APPLICATION FOR RETURN OF SEIZED PROPERTY.

1. Any person claiming a right to immediate possession of seized property may make application for its return in the office of the clerk of court for the county in which the property was seized.

2. The application for the return of seized 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 immediately returned. Mere ownership is insufficient as grounds for immediate return. The written application shall be specific and the claimant shall be limited at the judicial hearing to proof of the grounds set out in the application for immediate return. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return. If no specific grounds are set out in the application for

return, or the grounds set out are insufficient as a matter of law, the court may enter judgment on the pleadings without further hearing.

3. The claimant shall cause a copy of the application to be delivered to the county attorney.

Sec. 6. NEW SECTION. 809.4 HEARING — APPEAL.

An application for the return of property shall be set for hearing not less than five nor more than thirty days after the filing of the application and shall be tried to the court. All claims to the same property shall be heard in one proceeding unless it is shown that the proceeding would result in prejudice to one or more of the parties. If the total value of the property sought to be returned is less than five thousand dollars, the proceeding may be conducted by a magistrate or a district associate judge with appeal to be as in the 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. 7. NEW SECTION. 809.5 DISPOSITION OF SEIZED PROPERTY.

1. Seized property which is no longer required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, provided that the person's possession of the property is not prohibited by law and there is no forfeiture claim filed on behalf of the state. The seizing agency or prosecuting attorney shall send notice by regular mail, if the value of the property is less than fifty dollars, or certified mail, if the value of the property is equal to or greater than fifty dollars, to the last known address of any person having an ownership or possessory right in the property stating that the property is released and must be claimed within thirty days. Such notice shall state that if no written claim for the property is made upon the seizing agency within thirty days after the mailing of notice, the property shall be deemed abandoned and disposed of accordingly. In the event that there is more than one party who may assert a right to possession or ownership of the property, the seizing agency shall not release the property to any party until the expiration of the date for filing claims unless all other claimants execute a written waiver. In the event that there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency or prosecuting attorney shall file a copy of all such claims with the clerk of court and the clerk shall proceed as if such claims were filed by the parties under section 809.3. In the event that no owner can be located or no claim is filed under this section, the property shall be deemed abandoned and the seizing agency shall become the owner of such property and may dispose of it in any reasonable manner.

2. Upon the filing of a claim and following hearing by the court, property which has been seized shall be returned to the person who demonstrates a right to possession, unless one or more of the following is true:

- a. The possession of the property by the claimant is prohibited by law.
- b. There is a forfeiture notice on file and not disposed of in favor of the claimant prior to or in the same hearing.
- c. The state has demonstrated that the evidence is needed in a criminal investigation or prosecution.

3. The court shall, subject to any unresolved forfeiture hearing, make orders appropriate to the final disposition of the property including, but not limited to, the destruction of contraband once it is no longer needed in an investigation or prosecution.

Sec. 8. NEW SECTION. 809.6 FORFEITURE OF PROPERTY.

Title to and responsibility for forfeitable property vests in the state at the time of seizure. Once forfeitable property is seized, no right to the property may be transferred by anyone other than the state unless the seizure and forfeiture is declared by the court to be a nullity. Property which may not legally be possessed is forfeited to the state by its seizure without further filing of a notice of forfeiture.

Sec. 9. NEW SECTION. 809.7 SEIZURE OF FORFEITABLE PROPERTY.

Forfeitable property may 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 taking custody of the property or 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.

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. 10. NEW SECTION. 809.8 NOTICE OF FORFEITURE.

1. The county attorney or attorney general shall file with the clerk of the district court for the county in which the property was seized a notice of forfeiture setting forth a description of the property claimed to be forfeited to the state, the grounds upon which the state claims that the property has been forfeited, the date and place of seizure, and the name of the person from whom the property was seized.

2. The claim shall be filed not later than one year after the date upon which the state learned that the property was forfeitable or not later than six months after the property was seized, whichever is later. Failure to file within that time terminates the state's right to claim a forfeiture of the property.

3. The state shall cause a copy of the notice of forfeiture to be delivered to all known persons affected by the forfeiture. Notice shall be by certified mail or by such method of service set out in division III of the rules of civil procedure.

Sec. 11. NEW SECTION. 809.9 CLAIM FOR RETURN OF FORFEITABLE PROPERTY.

1. A person claiming an ownership right in property claimed to be forfeited to the state 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 the receipt of the notice of forfeiture, and failure to file the application within this time period terminates the interest of the person.

2. An application for the return of forfeitable property shall state the specific item or items sought, the nature and the source of the claimant's interest in the property, and the grounds upon which the claimant seeks to avoid forfeiture. The written application shall be specific and amendments to the application shall be liberally permitted, including an amendment to conform to proof at the close of all evidence. 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 delivered to the attorney for the state.

Sec. 12. NEW SECTION. 809.10 HEARING — CLERK'S ORDER.

1. If no application for the return of forfeitable property is timely made pursuant to section 809.9, upon application of the attorney for the state, the clerk shall enter an order transferring title 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. All claims to the same property shall be heard in one proceeding unless it is shown that the proceeding would result in prejudice to one or more of the parties. If the total value of the property sought to be returned is less than five thousand dollars, the proceeding may be conducted by a magistrate or a district associate judge with appeal to be as in the 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.

3. Upon a finding by the court that the property is forfeitable, the court shall enter an order transferring title to the property to the state.

Sec. 13. NEW SECTION. 809.11 PROCEDURES AT HEARING.

1. Forfeiture is a civil proceeding. At the hearing the burden is on the state to prove by a preponderance of the 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 or county attorney may represent the state in all forfeiture proceedings.

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 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.

Sec. 14. 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, as 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 attorney, or the prosecuting attorney's designee, until such time as its use as evidence is no longer required.

Sec. 15. NEW SECTION. 809.13 DISPOSITION OF FORFEITED PROPERTY.

1. Any person having control over forfeited property shall communicate that fact to the attorney general or the attorney general's designee.

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

3. Forfeited property may be used by the department of justice in the enforcement of the criminal law. The department may give, sell, or trade property to any other state agency 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.

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

5. Notwithstanding subsection 1, 2, 3, or 4, 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.

d. Property subject to the rules of the conservation commission shall be delivered to that commission for disposal in accordance with its rules.

Sec. 16. 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 is 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 property becomes forfeitable.

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

Sec. 17. NEW SECTION. 809.15 COMBINING PROCEEDINGS.

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

Sec. 18. 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. 19. Chapters 127 and 809A, Code 1985 and Code Supplement 1985, and sections 204.505 and 204A.6, Code 1985, are repealed.

Approved April 28, 1986

CHAPTER 1141
COMMERCIAL FISHING
H.F. 2463

AN ACT relating to commercial fishing and providing penalties.

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

Section 1. NEW SECTION. 109B.1 AUTHORITY OF THE COMMISSION.

The state conservation commission shall observe, administer, and enforce this chapter. The state conservation commission may adopt and enforce rules under chapter 17A as necessary to carry out this chapter.

The state conservation commission may:

1. Remove or cause to be removed from the waters of the state any aquatic species that in the judgment of the commission is an underused renewable resource or has a detrimental