

up to nine months. However, in cities with a population over one hundred seventy-five thousand, appointments to the position of fire fighter shall be conditional upon a probation period of not to exceed twenty-four months. During the probation period, the appointee may be removed or discharged from such position by the appointing person or body without the right of appeal to the commission. A person removed or discharged during a probationary period shall, at the time of discharge, be given a notice in writing stating the reason or reasons for the dismissal. A copy of such notice shall be promptly filed with the commission. Continuance in the position after the expiration of such probationary period shall constitute a permanent appointment.

Approved April 20, 1998

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## CHAPTER 1125

### DISPOSITION OF SEIZED PUBLIC NUISANCES

S.F. 347

**AN ACT** relating to the disposal of public nuisances seized by the department of natural resources.

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

Section 1. Section 483A.32, Code 1997, is amended to read as follows:  
483A.32 PUBLIC NUISANCE.

Any device, contrivance, or material used to violate a rule adopted by the commission, or any other provision of this chapter or chapters 481A, 481B, 482, 484A, or 484B, is a public nuisance, ~~and the~~ and may be condemned by the state. The director, ~~and~~ the director's officers, or any peace officer, shall seize ~~such~~ the devices, contrivances, or materials ~~so~~ used as a public nuisance, without warrant or process, and deliver them to a magistrate having jurisdiction. An automobile shall not be construed to be a public nuisance under this section.

Sec. 2. Section 483A.33, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

483A.33 DISPOSITION OF PROPERTY SEIZED AS PUBLIC NUISANCE.

The disposition of property seized pursuant to section 483A.32 shall be conducted as follows:

1. The officer taking possession of property seized as a public nuisance shall make a written inventory of the property and deliver a copy of the inventory to the person from whom the property was seized. The inventory shall include the name of the person taking custody of the seized property, the date and time of seizure, location of the seizure, and the name of the seizing public agency. Property which has been seized shall be safely secured and stored by the public agency which caused its seizure unless directed otherwise by the county attorney of the county where the property was seized or by the attorney general.

2. a. The county attorney or attorney general may file with the clerk of the district court for the county in which the property was seized a notice of condemnation which shall include a description of the property claimed to be condemned by the state, the grounds upon which the state claims that the property has been condemned, the date and place of seizure, and the name of the person from whom the property was seized.

b. The notice shall be filed not later than six months after the property was seized. Failure to file within the time limit terminates the state's right to claim a condemnation of the property.

c. The state shall give notice of condemnation to the person from whom the property was seized and any person identified as an owner or lien holder, by certified mail, personal service, or publication.

3. a. The person from whom the property was seized may make application for its return in the office of the clerk of the district 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 condemnation. Failure to file the application within this time period terminates the interest of the person and the ownership of the property shall be transferred to the state.

b. The application for return of condemnable property shall be written and 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 condemnation. The ownership of property is not sufficient grounds for its return. The written application shall be specific and the claimant shall be limited at the judicial hearing to proof of the grounds set forth in\* the application for return. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return. If specific grounds for return are not provided in the application for return, or the grounds are insufficient as a matter of law, the court may enter judgment on the pleadings without further hearing.

4. If an application for return of condemnable property is timely and of sufficient grounds, the claim shall be set for hearing. The hearing shall be held not less than ten nor more than thirty days after the filing of the claim. The proceeding shall be conducted by a magistrate or a district associate judge. 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.

5. a. Upon a finding by the court that the property is condemnable, the court shall enter an order transferring title of the property to the state, and placed at the disposal of the director, who may use or sell the property, depositing the proceeds of the sale in the state fish and game protection fund.

b. Upon a finding by the court that the property should not be condemned, the property shall be returned to the person from whom it was seized. If the property is necessary for use as evidence in a criminal proceeding, the property shall not be returned until its use as evidence is no longer required.

Sec. 3. Section 483A.34, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

483A.34 RIGHT TO APPEAL.

An appeal from a denial of an application for return of condemnable property, or from an order for return of condemnable property, shall be made within ten days after the entry of a judgment order and shall be conducted in the same manner as an appeal in a small claims action. 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.

Approved April 20, 1998

\* The word "in" probably intended