

CHAPTER 1150

SEIZURE AND DISPOSITION OF PROPERTY BY THE DEPARTMENT OF NATURAL RESOURCES

H.F. 2342

AN ACT relating to the seizure and disposition of property by the department of natural resources and requiring a report.

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

Section 1. [Section 481A.11](#), Code 2018, is amended to read as follows:

481A.11 Confiscated or accidentally killed game.

Except as provided in [section 481A.13](#) or [481A.13A](#), any game or fish seized by the commission under [section 481A.12](#) or any game accidentally killed by a motor vehicle on a public highway shall, when salvageable, be disposed of as determined by the commission or its designee.

Sec. 2. [Section 481A.12](#), Code 2018, is amended to read as follows:

481A.12 Seizure of wildlife taken or handled illegally.

The director or any peace officer shall seize with or without warrant and take possession of, or direct the disposal of, any fish, furs, birds, or animals, or mussels, clams, or frogs, which have been caught, taken, or killed at a time, in a manner, or for a purpose, or had in possession or under control, or offered for shipment, or illegally transported in the state or to a point beyond its borders, contrary to the Code. All fish, furs, birds, or animals, or mussels, clams, or frogs seized under [this section](#) ~~may shall~~ be relinquished to a representative of the commission, ~~or disposed of, or kept as provided in~~ [section 481A.13](#).

Sec. 3. [Section 481A.13](#), Code 2018, is amended to read as follows:

481A.13 Search warrants.

Any court having jurisdiction of the offense, upon receiving proof of probable cause for believing that any fish, mussels, clams, frogs, birds, furs, or animals caught, taken, killed, had in possession, under control, or shipped, contrary to the Code, or hidden or concealed in any place, shall issue a search warrant and cause a search to be made in any place therefor. The property so seized under warrant shall be safely kept under the direction of the court so long as necessary for the purpose of being used as evidence in any trial, and if a trial results in a conviction the property seized shall be confiscated by the director or the director's officers. If the trial does not result in a conviction, the property shall be returned to the person pursuant to [section 481A.13A](#) unless the property is fish or wildlife that is illegal to possess, including fish or wildlife that was taken, possessed, or transported unlawfully.

Sec. 4. NEW SECTION. **481A.13A Conviction required for property confiscation — return of property.**

1. The state shall not confiscate property seized under [section 481A.12](#) or [481A.13](#) unless the person from whom the property was seized is convicted of the violation for which the property was seized. However, the state shall not return any fish or wildlife that is illegal to possess, including fish or wildlife that was taken, possessed, or transported unlawfully.

2. If the person from whom the property was seized is not convicted of the violation for which the property was seized, the department, law enforcement agency, or other governmental agency in possession of the seized property shall return the seized property to the person within thirty days of any of the following:

a. The date the person is found not guilty of the violation.

b. The date the action involving the violation is dismissed.

c. The date the statute of limitations expires for the alleged violation for which the property was seized.

3. For purposes of [this section](#), “convicted” includes a finding of guilt, payment of a scheduled fine, a plea of guilty, deferred judgment, deferred or suspended sentence, adjudication of delinquency, or circumstance where a person is not charged with a criminal

offense related to the violation based in whole or in part on the person's agreement to provide information regarding the criminal activity of another person.

Sec. 5. [Section 483A.32](#), Code 2018, is amended to read as follows:

483A.32 Public nuisance.

1. Any Subject to [subsection 2](#), any device, contrivance, or material used to violate a rule adopted by the commission, or any other provision of [this chapter](#) or [chapter 481A, 481B, 482, 484A, or 484B](#), is a public nuisance and may be condemned by the state. The director, the director's officers, or any peace officer, shall seize the devices, contrivances, or materials 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](#).

2. The state may only condemn property seized as a public nuisance if the person from whom the property was seized is convicted of the violation for which the property was seized as a public nuisance.

3. If the person from whom the property was seized is not convicted of the violation for which the property was seized, the department, law enforcement agency, or other governmental agency in possession of the seized property shall return the seized property to the person within thirty days of any of the following:

a. The date the person is found not guilty of the violation.

b. The date the action involving the violation is dismissed.

c. The date the statute of limitations expires for the alleged violation for which the property was seized.

4. For purposes of [this section](#), "convicted" means the same as in [section 481A.13A, subsection 3](#).

Sec. 6. [Section 483A.33, subsection 3](#), paragraph a, Code 2018, is amended to read as follows:

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 or the person is convicted of the violation for which the property was seized, whichever occurs later. 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, except that a person who is not convicted of the violation for which the property was seized is not required to file an application and is entitled to the return of the property in accordance with [section 483A.32](#).

Sec. 7. [Section 483A.33, subsection 4](#), Code 2018, is amended to read as follows:

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~~ claim is filed or the person is convicted for the violation for which the property was seized as a public nuisance, whichever occurs later. 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.

Sec. 8. [Section 483A.33, subsection 5](#), Code 2018, is amended by adding the following new paragraphs:

NEW PARAGRAPH. c. On or before December 31, 2018, and on or before December 1 each year thereafter, the department shall report to the general assembly's standing committees on government oversight regarding the amount of the proceeds deposited to the state fish and game protection fund pursuant to [this subsection](#). The report shall also contain all information recorded pursuant to paragraph "d".

NEW PARAGRAPH. d. A seizing public agency that has custody of any property that is seized pursuant to a provision of [this subchapter](#) shall adopt and comply with a written internal control policy that does all of the following:

(1) Provides for keeping detailed records as to the amount of property acquired by the agency and the date property was acquired.

(2) Provides for keeping detailed records of the disposition of the property, which shall include the manner in which the property was disposed, the date of disposition, and detailed financial records concerning any property sold. The records shall not identify or enable identification of the individual officer who seized any item of property or the name of any person or entity who received any item of property.

NEW PARAGRAPH. *e.* The records kept under the internal control policy shall be open to public inspection during the agency's regular business hours. The policy adopted under [this section](#) is a public record open for inspection under [chapter 22](#).

Sec. 9. [Section 483A.33](#), Code 2018, is amended by adding the following new subsections:

NEW SUBSECTION. 6. *a.* An employee of the seizing public agency or a member of the immediate family of the employee shall not purchase a fish, fur, bird, animal, mussel, clam, or frog seized pursuant to [section 481A.12](#), a device, contrivance, or material condemned pursuant to [section 483A.32](#), or a weapon seized pursuant to [section 483A.32](#) and disposed of pursuant to [this section](#) or [section 809.21](#). For purposes of [this subsection](#), "*member of the immediate family*" means a spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent of an employee of the seizing public agency who resides in the same household in the same principal residence of the employee of the seizing public agency.

b. The department shall provide a form on which a person purchasing property seized pursuant to [section 481A.12](#) or [483A.32](#) shall declare that the person is not an employee of the seizing public agency or a member of the immediate family of an employee of the seizing public agency.

NEW SUBSECTION. 7. For purposes of [this section](#), "*convicted*" means the same as in [section 481A.13A, subsection 3](#).

Approved May 16, 2018