

CHAPTER 391—S.F.No. 2634

An act relating to public safety; making numerous changes to the forfeiture law; expanding the reporting requirements related to forfeiture; requiring model policies on forfeiture; requiring officers to give forfeiture receipts upon seizure of property; implementing timelines for forfeiture notice and hearings; placing a cap on the value of property that may be forfeited administratively; authorizing petitions for remission and mitigation of seized property; requiring certification by prosecutor before property may be forfeited administratively; prohibiting sale of forfeited property to law enforcement officers, employees, and family members; amending Minnesota Statutes 2008, sections 97A.221, by adding a subdivision; 97A.223, by adding a subdivision; 97A.225, by adding a subdivision; 169A.63, by adding a subdivision; 491A.01, subdivision 3; 609.531, subdivisions 4, 5, 5a, by adding subdivisions; 609.5311, subdivision 3; 609.5313; 609.5314, subdivisions 2, 3; 609.5315, subdivisions 1, 2, 6; 609.762, by adding a subdivision; 609.905, by adding a subdivision; Minnesota Statutes 2009 Supplement, section 84.7741, by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2009 Supplement, section 84.7741, is amended by adding a subdivision to read:

Subd. 13. **Reporting.** The appropriate agency and prosecuting authority shall report on forfeitures occurring under this section as described in section 609.5315, subdivision 6.

Sec. 2. Minnesota Statutes 2008, section 97A.221, is amended by adding a subdivision to read:

Subd. 5. **Reporting.** The appropriate agency and prosecuting authority shall report on forfeitures of firearms, bows, and motor vehicles occurring under this section as described in section 609.5315, subdivision 6.

Sec. 3. Minnesota Statutes 2008, section 97A.223, is amended by adding a subdivision to read:

Subd. 6. **Reporting.** The appropriate agency and prosecuting authority shall report on forfeitures of firearms, bows, and motor vehicles occurring under this section as described in section 609.5315, subdivision 6.

Sec. 4. Minnesota Statutes 2008, section 97A.225, is amended by adding a subdivision to read:

Subd. 10. **Reporting.** The appropriate agency and prosecuting authority shall report on forfeitures occurring under this section as described in section 609.5315, subdivision 6.

Sec. 5. Minnesota Statutes 2008, section 169A.63, is amended by adding a subdivision to read:

Subd. 12. **Reporting.** The appropriate agency and prosecuting authority shall report on forfeitures occurring under this section as described in section 609.5315, subdivision 6.

Sec. 6. Minnesota Statutes 2008, section 491A.01, subdivision 3, is amended to read:

Subd. 3. **Jurisdiction; general.** (a) Except as provided in subdivisions 4 and 5, the conciliation court has jurisdiction to hear, conciliate, try, and determine civil claims if the amount of money or property that is the subject matter of the claim does not exceed ~~\$6,000 or, on and after July 1, 1994, :~~ (1) \$7,500, or; (2) \$4,000, if the claim involves a consumer credit transaction; or (3) \$15,000, if the claim involves money or personal property subject to forfeiture under section 609.5311, 609.5312, 609.5314, or 609.5318. "Consumer credit transaction" means a sale of personal property, or a loan arranged to facilitate the purchase of personal property, in which:

(1) credit is granted by a seller or a lender who regularly engages as a seller or lender in credit transactions of the same kind;

(2) the buyer is a natural person;

(3) the claimant is the seller or lender in the transaction; and

(4) the personal property is purchased primarily for a personal, family, or household purpose and not for a commercial, agricultural, or business purpose.

(b) Except as otherwise provided in this subdivision and subdivisions 5 to 10, the territorial jurisdiction of conciliation court is coextensive with the county in which the court is established. The summons in a conciliation court action under subdivisions 6 to 10 may be served anywhere in the state, and the summons in a conciliation court action under subdivision 7, paragraph (b), may be served outside the state in the manner provided by law. The court administrator shall serve the summons in a conciliation court action by first class mail, except that if the amount of money or property that is the subject of the claim exceeds \$2,500, the summons must be served by the plaintiff by certified mail, and service on nonresident defendants must be made in accordance with applicable law or rule. Subpoenas to secure the attendance of nonparty witnesses and the production of documents at trial may be served anywhere within the state in the manner provided by law.

When a court administrator is required to summon the defendant by certified mail under this paragraph, the summons may be made by personal service in the manner provided in the Rules of Civil Procedure for personal service of a summons of the district court as an alternative to service by certified mail.

Sec. 7. Minnesota Statutes 2008, section 609.531, subdivision 4, is amended to read:

Subd. 4. **Seizure.** (a) Property subject to forfeiture under sections 609.531 to 609.5318 may be seized by the appropriate agency upon process issued by any court having jurisdiction over the property. Property may be seized without process if:

(1) the seizure is incident to a lawful arrest or a lawful search;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this chapter; or

(3) the appropriate agency has probable cause to believe that the delay occasioned by the necessity to obtain process would result in the removal or destruction of the property and that:

- (i) the property was used or is intended to be used in commission of a felony; or
- (ii) the property is dangerous to health or safety.

If property is seized without process under item (i), the county attorney must institute a forfeiture action under section 609.5313 as soon as is reasonably possible.

(b) When property is seized, the officer must provide a receipt to the person found in possession of the property; or in the absence of any person, the officer must leave a receipt in the place where the property was found, if reasonably possible.

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to seizures conducted on or after that date.

Sec. 8. Minnesota Statutes 2008, section 609.531, subdivision 5, is amended to read:

Subd. 5. **Right to possession vests immediately; custody of seized property.** All right, title, and interest in property subject to forfeiture under sections 609.531 to 609.5318 vests in the appropriate agency upon commission of the act or omission giving rise to the forfeiture. Any property seized under sections 609.531 to 609.5318 is not subject to replevin, but is deemed to be in the custody of the appropriate agency subject to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is so seized, the appropriate agency shall use reasonable diligence to secure the property and prevent waste and may do any of the following:

- (1) place the property under seal;
- (2) remove the property to a place designated by it; and
- (3) in the case of controlled substances, require the state Board of Pharmacy to take custody of the property and remove it to an appropriate location for disposition in accordance with law; ~~and~~
- ~~(4) take other steps reasonable and necessary to secure the property and prevent waste.~~

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to seized property in possession on or after that date.

Sec. 9. Minnesota Statutes 2008, section 609.531, subdivision 5a, is amended to read:

Subd. 5a. **Bond by owner for possession.** (a) If the owner of property that has been seized under sections 609.531 to 609.5318 seeks possession of the property before the forfeiture action is determined, the owner may, ~~subject to the approval of the appropriate agency,~~ give security or post bond payable to the appropriate agency in an amount equal to the retail value of the seized property. On posting the security or bond, the seized property must be returned to the owner and the forfeiture action shall proceed against the security as if it were the seized property. This subdivision does not apply to contraband property or property being held for investigatory purposes.

(b) If the owner of a motor vehicle that has been seized under this section seeks possession of the vehicle before the forfeiture action is determined, the owner may

surrender the vehicle's certificate of title in exchange for the vehicle. The motor vehicle must be returned to the owner within 24 hours if the owner surrenders the motor vehicle's certificate of title to the appropriate agency, pending resolution of the forfeiture action. If the certificate is surrendered, the owner may not be ordered to post security or bond as a condition of release of the vehicle. When a certificate of title is surrendered under this provision, the agency shall notify the Department of Public Safety and any secured party noted on the certificate. The agency shall also notify the department and the secured party when it returns a surrendered title to the motor vehicle owner.

Sec. 10. Minnesota Statutes 2008, section 609.531, is amended by adding a subdivision to read:

Subd. 7. **Petition for remission or mitigation.** Prior to the entry of a court order disposing with the forfeiture action, any person who has an interest in forfeited property may file with the county attorney a petition for remission or mitigation of the forfeiture. The county attorney may remit or mitigate the forfeiture upon terms and conditions the county attorney deems reasonable if the county attorney finds that: (1) the forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law; or (2) extenuating circumstances justify the remission or mitigation of the forfeiture.

EFFECTIVE DATE. This section is effective July 1, 2010.

Sec. 11. Minnesota Statutes 2008, section 609.531, is amended by adding a subdivision to read:

Subd. 8. **Forfeiture policies; statewide model policy required.** (a) By December 1, 2010, the Peace Officer Standards and Training Board, after consulting with the Minnesota County Attorneys Association, the Minnesota Sheriffs' Association, the Minnesota Chiefs of Police Association, and the Minnesota Police and Peace Officers Association, shall develop a model policy that articulates best practices for forfeiture and is designed to encourage the uniform application of forfeiture laws statewide. At a minimum, the policy shall address the following:

- (1) best practices in pursuing, seizing, and tracking forfeitures;
- (2) type and frequency of training for law enforcement on forfeiture laws; and
- (3) situations in which forfeitures should not be pursued.

(b) By December 1, 2010, the Minnesota County Attorneys Association, after consulting with the attorney general, the Peace Officer Standards and Training Board, the Minnesota Sheriffs' Association, the Minnesota Chiefs of Police Association, and the Minnesota Police and Peace Officers Association, shall develop a model policy that articulates best practices for forfeiture and is designed to encourage the uniform application of forfeiture laws statewide. At a minimum, the policy shall address the following:

- (1) statutory role of prosecutors in forfeiture procedures;
- (2) best practices for timely and fair resolution of forfeiture cases;
- (3) type and frequency of training for prosecutors on forfeiture laws; and
- (4) situations in which forfeitures should not be pursued.

(c) By December 1, 2010, the Minnesota County Attorneys Association and the Peace Officer Standards and Training Board shall forward an electronic copy of its respective model policy to the chairs and ranking minority members of the senate and house of representatives committees having jurisdiction over criminal justice and civil law policy.

(d) By March 1, 2011, the chief law enforcement officer of every state and local law enforcement agency and every prosecution office in the state shall adopt and implement a written policy on forfeiture that is identical or substantially similar to the model policies developed under paragraphs (a) and (b). The written policy shall be made available to the public upon request.

EFFECTIVE DATE. This section is effective July 1, 2010.

Sec. 12. Minnesota Statutes 2008, section 609.5311, subdivision 3, is amended to read:

Subd. 3. **Limitations on forfeiture of certain property associated with controlled substances.** (a) A conveyance device is subject to forfeiture under this section only if the retail value of the controlled substance is ~~\$25~~ \$75 or more and the conveyance device is associated with a felony-level controlled substance crime.

(b) Real property is subject to forfeiture under this section only if the retail value of the controlled substance or contraband is ~~\$1,000~~ \$2,000 or more.

(c) Property used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section only if the owner of the property is a consenting party to, or is privy to, the use or intended use of the property as described in subdivision 2.

(d) Property is subject to forfeiture under this section only if its owner was privy to the use or intended use described in subdivision 2, or the unlawful use or intended use of the property otherwise occurred with the owner's knowledge or consent.

(e) Forfeiture under this section of a conveyance device or real property encumbered by a bona fide security interest is subject to the interest of the secured party unless the secured party had knowledge of or consented to the act or omission upon which the forfeiture is based. A person claiming a security interest bears the burden of establishing that interest by clear and convincing evidence.

(f) Forfeiture under this section of real property is subject to the interests of a good faith purchaser for value unless the purchaser had knowledge of or consented to the act or omission upon which the forfeiture is based.

(g) Notwithstanding paragraphs (d), (e), and (f), property is not subject to forfeiture based solely on the owner's or secured party's knowledge of the unlawful use or intended use of the property if: (1) the owner or secured party took reasonable steps to terminate use of the property by the offender; or (2) the property is real property owned by the parent of the offender, unless the parent actively participated in, or knowingly acquiesced to, a violation of chapter 152, or the real property constitutes proceeds derived from or traceable to a use described in subdivision 2.

(h) The Department of Corrections Fugitive Apprehension Unit shall not seize a conveyance device or real property, for the purposes of forfeiture under paragraphs (a) to (g).

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to offenses committed on or after that date.

Sec. 13. Minnesota Statutes 2008, section 609.5313, is amended to read:

609.5313 FORFEITURE BY JUDICIAL ACTION; PROCEDURE.

(a) The forfeiture of property under sections 609.5311 and 609.5312 is governed by this section. A separate complaint must be filed against the property stating the act, omission, or occurrence giving rise to the forfeiture and the date and place of the act or occurrence. Within 60 days from when the seizure occurs, the county attorney shall notify the owner or possessor of the property of the action, if known or readily ascertainable. The action must be captioned in the name of the county attorney or the county attorney's designee as plaintiff and the property as defendant. Upon motion by the county attorney, a court may extend the time period for sending notice for a period not to exceed 90 days for good cause shown.

(b) If notice is not sent in accordance with paragraph (a), and no time extension is granted or the extension period has expired, the appropriate agency shall return the property to the person from whom the property was seized, if known. An agency's return of property due to lack of proper notice does not restrict the right of the agency to commence a forfeiture proceeding at a later time. The agency shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to offenses committed on or after that date.

Sec. 14. Minnesota Statutes 2008, section 609.5314, subdivision 2, is amended to read:

Subd. 2. **Administrative forfeiture procedure.** (a) Forfeiture of property described in subdivision 1 that does not exceed \$50,000 in value is governed by this subdivision. Within 60 days from when seizure occurs, or within a reasonable time after that, all persons known to have an ownership, possessory, or security interest in seized property must be notified of the seizure and the intent to forfeit the property. In the case of a motor vehicle required to be registered under chapter 168, notice mailed by certified mail to the address shown in Department of Public Safety records is deemed sufficient notice to the registered owner. The notification to a person known to have a security interest in seized property required under this paragraph applies only to motor vehicles required to be registered under chapter 168 and only if the security interest is listed on the vehicle's title. Upon motion by the appropriate agency or county attorney, a court may extend the time period for sending notice for a period not to exceed 90 days for good cause shown.

(b) Notice may otherwise be given in the manner provided by law for service of a summons in a civil action. The notice must be in writing and contain:

(1) a description of the property seized;

(2) the date of seizure;

(3) notice of the right to obtain judicial review of the forfeiture and of the procedure for obtaining that judicial review, printed in English, Hmong, Somali, and Spanish. Substantially the following language must appear conspicuously: ~~"IF YOU DO NOT DEMAND JUDICIAL REVIEW EXACTLY AS PRESCRIBED IN MINNESOTA~~

~~STATUTES, SECTION 609.5314, SUBDIVISION 3, YOU LOSE THE RIGHT TO A JUDICIAL DETERMINATION OF THIS FORFEITURE AND YOU LOSE ANY RIGHT YOU MAY HAVE TO THE ABOVE DESCRIBED PROPERTY. YOU MAY NOT HAVE TO PAY THE FILING FEE FOR THE DEMAND IF DETERMINED YOU ARE UNABLE TO AFFORD THE FEE. IF THE PROPERTY IS WORTH \$7,500 OR LESS, YOU MAY FILE YOUR CLAIM IN CONCILIATION COURT. YOU DO NOT HAVE TO PAY THE CONCILIATION COURT FILING FEE IF THE PROPERTY IS WORTH LESS THAN \$500."~~ "If you do not demand judicial review exactly as prescribed in Minnesota Statutes, section 609.5314, subdivision 3, you lose the right to a judicial determination of this forfeiture and you lose any right you may have to the above described property. You may not have to pay the filing fee for the demand if determined you are unable to afford the fee. If the property is worth \$15,000 or less, you may file your claim in conciliation court. You do not have to pay the conciliation court filing fee if the property is worth less than \$500."

(c) If notice is not sent in accordance with paragraph (a), and no time extension is granted or the extension period has expired, the appropriate agency shall return the property to the person from whom the property was seized, if known. An agency's return of property due to lack of proper notice does not restrict the right of the agency to commence a forfeiture proceeding at a later time. The agency shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to offenses committed on or after that date.

Sec. 15. Minnesota Statutes 2008, section 609.5314, subdivision 3, is amended to read:

Subd. 3. **Judicial determination.** (a) Within 60 days following service of a notice of seizure and forfeiture under this section, a claimant may file a demand for a judicial determination of the forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the county attorney for that county, and the standard filing fee for civil actions unless the petitioner has the right to sue in forma pauperis under section 563.01. If the value of the seized property is \$7,500 or less, the claimant may file an action in conciliation court for recovery of the seized property. If the value of the seized property is less than \$500, the claimant does not have to pay the conciliation court filing fee. No responsive pleading is required of the county attorney and no court fees may be charged for the county attorney's appearance in the matter. The hearing must be held at the earliest practicable date, and in any event no later than 180 days following the filing of the demand by the claimant. If a related criminal proceeding is pending, the hearing shall not be held until the conclusion of the criminal proceedings. The district court administrator shall schedule the hearing as soon as practicable after adjudication in the criminal prosecution. The proceedings are governed by the Rules of Civil Procedure.

(b) The complaint must be captioned in the name of the claimant as plaintiff and the seized property as defendant, and must state with specificity the grounds on which the claimant alleges the property was improperly seized and the plaintiff's interest in the property seized. Notwithstanding any law to the contrary, an action for the return of property seized under this section may not be maintained by or on behalf of any person

who has been served with a notice of seizure and forfeiture unless the person has complied with this subdivision.

(c) If the claimant makes a timely demand for judicial determination under this subdivision, the appropriate agency must conduct the forfeiture under section 609.531, subdivision 6a. The limitations and defenses set forth in section 609.5311, subdivision 3, apply to the judicial determination.

(d) If a demand for judicial determination of an administrative forfeiture is filed under this subdivision and the court orders the return of the seized property, the court shall order that filing fees be reimbursed to the person who filed the demand. In addition, the court may order sanctions under section 549.211. If the court orders payment of these costs, they must be paid from forfeited money or proceeds from the sale of forfeited property from the appropriate law enforcement and prosecuting agencies in the same proportion as they would be distributed under section 609.5315, subdivision 5.

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to offenses committed on or after that date.

Sec. 16. Minnesota Statutes 2008, section 609.5315, subdivision 1, is amended to read:

Subdivision 1. **Disposition.** (a) Subject to paragraph (b), if the court finds under section 609.5313, 609.5314, or 609.5318 that the property is subject to forfeiture, it shall order the appropriate agency to do one of the following:

(1) unless a different disposition is provided under clause (3) or (4), either destroy firearms, ammunition, and firearm accessories that the agency decides not to use for law enforcement purposes under clause (8), or sell them to federally licensed firearms dealers, as defined in section 624.7161, subdivision 1, and distribute the proceeds under subdivision 5 or 5b;

(2) sell property that is not required to be destroyed by law and is not harmful to the public and distribute the proceeds under subdivision 5 or 5b;

(3) sell antique firearms, as defined in section 624.712, subdivision 3, to the public and distribute the proceeds under subdivision 5 or 5b;

(4) destroy or use for law enforcement purposes semiautomatic military-style assault weapons, as defined in section 624.712, subdivision 7;

(5) take custody of the property and remove it for disposition in accordance with law;

(6) forward the property to the federal drug enforcement administration;

(7) disburse money as provided under subdivision 5 or 5b; or

(8) keep property other than money for official use by the agency and the prosecuting agency.

(b) Notwithstanding paragraph (a), the Hennepin or Ramsey County sheriff may not sell firearms, ammunition, or firearm accessories if the policy is disapproved by the applicable county board.

(c) If property is sold under paragraph (a), the appropriate agency shall not sell property to an officer or employee of the agency that seized the property or to a person related to the officer or employee by blood or marriage.

(d) Sales of forfeited property under this section must be conducted in a commercially reasonable manner.

EFFECTIVE DATE. This section is effective July 1, 2010.

Sec. 17. Minnesota Statutes 2008, section 609.5315, subdivision 2, is amended to read:

Subd. 2. **Disposition of administratively forfeited property.** If property is forfeited administratively under section 609.5314 or 609.5318 and no demand for judicial determination is made, the appropriate agency shall provide the county attorney with a copy of the forfeiture or evidence receipt, the notice of seizure and intent to forfeit, a statement of probable cause for forfeiture of the property, and a description of the property and its estimated value. Upon review and certification by the county attorney that (1) the appropriate agency provided a receipt in accordance with section 609.531, subdivision 4, or 626.16; (2) the appropriate agency served notice in accordance with section 609.5314, subdivision 2, or 609.5318, subdivision 2; and (3) probable cause for forfeiture exists based on the officer's statement, the appropriate agency may dispose of the property in any of the ways listed in subdivision 1.

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to offenses committed on or after that date.

Sec. 18. Minnesota Statutes 2008, section 609.5315, subdivision 6, is amended to read:

Subd. 6. **Reporting requirement.** (a) For each forfeiture occurring in the state regardless of the authority for it, the appropriate agency and the prosecutor shall provide a written record of each the forfeiture incident to the state auditor. The record shall include the amount forfeited, the statutory authority for the forfeiture, its date, and a brief description of the circumstances involved, and whether the forfeiture was contested. For controlled substance and driving while impaired forfeitures, the record shall indicate whether the forfeiture was initiated as an administrative or a judicial forfeiture. The record shall also list the number of firearms forfeited and the make, model, and serial number of each firearm forfeited. The record shall indicate how the property was or is to be disposed of.

(b) An appropriate agency or the prosecutor shall report to the state auditor all instances in which property seized for forfeiture is returned to its owner either because forfeiture is not pursued or for any other reason.

(c) Reports shall be made on a monthly basis in a manner prescribed by the state auditor. The state auditor shall report annually to the legislature on the nature and extent of forfeitures.

(d) For forfeitures resulting from the activities of multijurisdictional law enforcement entities, the entity on its own behalf shall report the information required in this subdivision.

(e) The prosecutor is not required to report information required by this subdivision unless the prosecutor has been notified by the state auditor that the appropriate agency has not reported it.

Sec. 19. Minnesota Statutes 2008, section 609.762, is amended by adding a subdivision to read:

Subd. 6. **Reporting.** The law enforcement and prosecuting agencies shall report on forfeitures occurring under this section as described in section 609.5315, subdivision 6.

Sec. 20. Minnesota Statutes 2008, section 609.905, is amended by adding a subdivision to read:

Subd. 3. **Reporting.** The prosecuting authority shall report on forfeitures occurring under this section as described in section 609.5315, subdivision 6.

Sec. 21. **DEVELOPMENT OF ADMINISTRATIVE FORFEITURE NOTICE LANGUAGE.**

The commissioner of public safety, in consultation with the executive director of the Peace Officer Standards and Training Board and the Minnesota County Attorneys Association, shall recommend modifications to the notice language described in Minnesota Statutes, sections 84.7741, subdivision 8, paragraph (c), clause (3); 169A.63, subdivision 8, paragraph (c), clause (3); and 609.5314, subdivision 2, paragraph (b), clause (3). By January 15, 2011, the commissioner shall submit the recommended language to the chairs and ranking minority members of the senate and house of representatives committees having jurisdiction over criminal justice and civil law policy.

Presented to the governor May 18, 2010

Signed by the governor May 27, 2010, 10:56 a.m.