

This Document can be made available in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **2989**

February 15, 2010

Authored by Liebling, Zellers, Paymar, Holberg, Smith and others

The bill was read for the first time and referred to the Committee on Public Safety Policy and Oversight

1.1 A bill for an act
1.2 relating to public safety; recodifying and consolidating certain forfeiture
1.3 provisions while making numerous substantive and technical changes; proposing
1.4 coding for new law in Minnesota Statutes, chapter 609; repealing Minnesota
1.5 Statutes 2008, sections 169A.63; 609.531, subdivisions 1, 1a, 4, 5, 5a, 6a;
1.6 609.5311; 609.5312; 609.5313; 609.5314; 609.5315; 609.5316; 609.5317;
1.7 609.5318; 609.762, subdivisions 2, 3, 4, 5; Minnesota Statutes 2009 Supplement,
1.8 section 609.762, subdivision 1.

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

1.10 Section 1. **[609.95] FORFEITURES.**

1.11 Subdivision 1. **Definitions.** For the purposes of this section, the following terms
1.12 have the meanings given them.

1.13 (a) "Appropriate agency" means the Bureau of Criminal Apprehension, the
1.14 Department of Commerce Division of Insurance Fraud Prevention, the Minnesota Division
1.15 of Driver and Vehicle Services, the Minnesota State Patrol, a county sheriff's department,
1.16 the Three Rivers Park District park rangers, the Department of Natural Resources Division
1.17 of Enforcement, the University of Minnesota Police Department, the Department of
1.18 Corrections Fugitive Apprehension Unit, or a city, metropolitan transit, or airport police
1.19 department. For forfeitures under subdivision 7, the term means a law enforcement agency
1.20 that has the authority to make an arrest for a violation of a designated DWI offense.

1.21 (b) "Contraband" means property that is illegal to possess under Minnesota law.

1.22 (c) "Controlled substance" has the meaning given in section 152.01, subdivision 4.

1.23 (d) "Conveyance device" means a device used for transportation and includes,
1.24 but is not limited to, a motor vehicle, trailer, snowmobile, airplane, and vessel and any
1.25 equipment attached to it. The term "conveyance device" does not include property that is,
1.26 in fact, itself stolen or taken in violation of the law.

2.1 (e) "Designated DWI license revocation" includes a license revocation under section
2.2 169A.52 or a license disqualification under section 171.165 resulting from a violation of
2.3 section 169A.52; within ten years of the first of two or more qualified prior impaired
2.4 driving incidents as defined in section 169A.03, subdivision 22.

2.5 (f) "Designated DWI offense" includes:

2.6 (1) a violation of section 169A.20 under the circumstances described in section
2.7 169A.24 or 169A.25; or

2.8 (2) a violation of section 169A.20 or an ordinance in conformity with it:

2.9 (i) by a person whose driver's license or driving privileges have been canceled
2.10 as inimical to public safety under section 171.04, subdivision 1, clause (10), and not
2.11 reinstated; or

2.12 (ii) by a person who is subject to a restriction on the person's driver's license under
2.13 section 171.09, subdivision 1, paragraph (d), clause (1), which provides that the person
2.14 may not use or consume any amount of alcohol or a controlled substance.

2.15 (g) "Designated offense" includes:

2.16 (1) for weapons used: any violation of this chapter, chapter 152, or chapter 624;

2.17 (2) for driver's license or identification card transactions: any violation of section
2.18 171.22; and

2.19 (3) for all other purposes: a felony violation of, or a felony-level attempt or
2.20 conspiracy to violate, section 325E.17; 325E.18; 609.185; 609.19; 609.195; 609.21;
2.21 609.221; 609.222; 609.223; 609.2231; 609.24; 609.245; 609.25; 609.255; 609.282;
2.22 609.283; 609.322; 609.342, subdivision 1, clauses (a) to (f); 609.343, subdivision 1,
2.23 clauses (a) to (f); 609.344, subdivision 1, clauses (a) to (e) and (h) to (j); 609.345,
2.24 subdivision 1, clauses (a) to (e) and (h) to (j); 609.352; 609.42; 609.425; 609.466;
2.25 609.485; 609.52; 609.525; 609.527; 609.528; 609.53; 609.54; 609.551; 609.561; 609.562;
2.26 609.563; 609.582; 609.59; 609.595; 609.611; 609.631; 609.66, subdivision 1e; 609.671,
2.27 subdivisions 3, 4, 5, 8, and 12; 609.687; 609.821; 609.825; 609.86; 609.88; 609.89;
2.28 609.893; 609.895; 617.246; 617.247; or a gross misdemeanor or felony violation of
2.29 section 609.891 or 624.7181; or any violation of section 609.324.

2.30 (h) "Property" means property as defined in section 609.52, subdivision 1, clause (1).

2.31 (i) "Weapon used" means a dangerous weapon as defined under section 609.02,
2.32 subdivision 6, that the actor used or had in possession in furtherance of a crime.

2.33 Subd. 2. **Purpose and construction.** (a) The purpose of this section is to deter
2.34 criminal activity. Property is subject to forfeiture only when courts determine that
2.35 forfeiture is necessary and proportional to fulfilling that purpose.

3.1 (b) Courts shall strictly construe this section and resolve any doubt in its applicability
3.2 in favor of the party challenging the forfeiture.

3.3 Subd. 3. **Controlled substances and property associated with controlled**
3.4 **substances.** (a) The following are subject to forfeiture under this section following a
3.5 conviction for a felony-level controlled substance crime:

3.6 (1) all controlled substances that were manufactured, distributed, dispensed, or
3.7 acquired in violation of chapter 152;

3.8 (2) all real and personal property that was used in or represents the proceeds derived
3.9 proximately from the manufacturing, compounding, processing, delivering, importing,
3.10 cultivating, exporting, transporting, or exchanging of contraband or a controlled substance
3.11 that has not been lawfully manufactured, distributed, dispensed, and acquired; and

3.12 (3) all books, records, and research products and materials, including formulas,
3.13 microfilm, tapes, and data that are used in the manner described in clause (2).

3.14 (b) For purposes of forfeiture under this subdivision, a stipulation of facts that is a
3.15 part of a diversion agreement is considered to be a conviction.

3.16 Subd. 4. **Property associated with designated offenses.** Upon conviction, all real
3.17 and personal property that was used to commit a designated offense or represents the
3.18 proceeds derived proximately from a designated offense is subject to forfeiture.

3.19 Subd. 5. **Designated offenses; computers and related property subject to**
3.20 **forfeiture.** (a) As used in this subdivision, "property" has the meaning given in section
3.21 609.87, subdivision 6.

3.22 (b) When a computer or a component part of a computer is used to commit a
3.23 designated offense, upon conviction, the computer and all software, data, and other
3.24 property contained in the computer are subject to forfeiture unless prohibited by the
3.25 Privacy Protection Act, United States Code, title 42, sections 2000aa to 2000aa-12, or
3.26 other state or federal law.

3.27 (c) Regardless of whether a forfeiture action is initiated following the lawful seizure
3.28 of a computer and related property, if the appropriate agency returns hardware, software,
3.29 data, or other property to the owner, the agency may charge the owner for the cost of
3.30 separating contraband from the computer or other property returned, including salary and
3.31 contract costs. The agency may not charge these costs to an owner of a computer or
3.32 related property who was not privy to the act or omission upon which the seizure was
3.33 based, or who did not have knowledge of or consent to the act or omission, if the owner:

3.34 (1) requests from the agency copies of specified legitimate data files and provides
3.35 sufficient storage media; or

4.1 (2) requests the return of a computer or other property less data storage devices on
4.2 which contraband resides.

4.3 Subd. 6. **Gambling devices, prizes, and proceeds.** The following are subject to
4.4 forfeiture under this section following a conviction for a gambling crime:

4.5 (1) devices used or intended for use, including those defined in section 609.75,
4.6 subdivision 4, as a gambling device, except as authorized in sections 299L.07 and 349.11
4.7 to 349.23;

4.8 (2) all real and personal property that was used in gambling, including money used
4.9 as prizes, or that represents the proceeds derived proximately from gambling;

4.10 (3) books, records, and research products and materials, including formulas,
4.11 microfilm, tapes, and data used or intended for use in gambling; and

4.12 (4) property used or intended to be used to illegally influence the outcome of a
4.13 horse race.

4.14 Subd. 7. **Additional conveyance device forfeitures.** (a) Upon conviction,
4.15 a conveyance device is subject to forfeiture under this section if it was used in the
4.16 commission of one of the following crimes:

4.17 (1) a designated DWI offense;

4.18 (2) a prostitution offense under section 609.324 or a local ordinance substantially
4.19 similar to section 609.324; or

4.20 (3) fleeing a peace officer under section 609.487 when endangering life or property.

4.21 (b) A conveyance device is subject to forfeiture under this section if it was used in
4.22 conduct resulting in a designated DWI license revocation and the driver fails to seek
4.23 judicial review of the revocation in a timely manner as required by section 169A.53,
4.24 subdivision 2, or the license revocation is judicially reviewed and sustained under section
4.25 169A.53, subdivision 2.

4.26 Subd. 8. **Residential rental property.** (a) When contraband or a controlled
4.27 substance manufactured, distributed, or acquired in violation of chapter 152 is seized on
4.28 residential rental property incident to a lawful search or arrest, following a felony-level
4.29 conviction, the county attorney shall give the notice required by this subdivision to (1) the
4.30 landlord of the property or the fee owner identified in the records of the county assessor,
4.31 and (2) the agent authorized by the owner to accept service pursuant to section 504B.181.
4.32 The notice shall state what has been seized and specify the applicable duties and penalties
4.33 under this subdivision. The notice shall state that the landlord who chooses to assign
4.34 the right to bring an eviction action retains all rights and duties, including removal of a
4.35 tenant's personal property following issuance of the writ of restitution and delivery of the
4.36 writ to the sheriff for execution. The notice shall also state that the landlord may contact

5.1 the county attorney if threatened by the tenant. Notice shall be sent by certified letter,
5.2 return receipt requested, within 30 days of the seizure. If receipt is not returned, notice
5.3 shall be given in the manner provided by law for service of summons in a civil action.

5.4 (b) Within 15 days after notice of the first occurrence, the landlord shall bring, or
5.5 assign to the county attorney of the county in which the real property is located, the right
5.6 to bring an eviction action against the tenant. The assignment must be in writing on a form
5.7 prepared by the county attorney. Should the landlord choose to assign the right to bring
5.8 an eviction action, the assignment shall be limited to those rights and duties up to and
5.9 including delivery of the writ of restitution to the sheriff for execution.

5.10 (c) Upon notice of a second occurrence on any residential rental property owned by
5.11 the same landlord in the same county and involving the same tenant, and within one year
5.12 after notice of the first occurrence, the property is subject to forfeiture under this section,
5.13 unless an eviction action has been commenced as provided in paragraph (b) or the right
5.14 to bring an eviction action was assigned to the county attorney as provided in paragraph
5.15 (b). If the right has been assigned and not previously exercised, or if the county attorney
5.16 requests an assignment and the landlord makes an assignment, the county attorney may
5.17 bring an eviction action rather than an action for forfeiture.

5.18 (d) Nothing in this subdivision prevents the county attorney from proceeding under
5.19 subdivision 3 whenever that subdivision applies.

5.20 (e) It is a defense against a proceeding under paragraph (b) that the tenant had no
5.21 knowledge or reason to know of the presence of the contraband or controlled substance
5.22 or could not prevent its being brought onto the property.

5.23 (f) It is a defense against a proceeding under paragraph (c) that the landlord made
5.24 every reasonable attempt to evict a tenant or to assign the county attorney the right to
5.25 bring an eviction action against the tenant, or that the landlord did not receive notice
5.26 of the seizure.

5.27 Subd. 9. **Seizure.** (a) Property subject to forfeiture under this section may be seized
5.28 by the appropriate agency upon process issued by any court having jurisdiction over the
5.29 property. Property may be seized without process if:

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

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

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

5.36 (i) the property was used or is intended to be used in commission of a felony; or

6.1 (ii) the property is dangerous to health or safety.

6.2 If property is seized without process, the prosecutor shall institute a forfeiture action
6.3 under this section as soon as is reasonably possible.

6.4 (b) When property is seized under this subdivision, the appropriate agency may:

6.5 (1) place the property under seal;

6.6 (2) remove the property to a place designated by it; and

6.7 (3) in the case of controlled substances, require the state Board of Pharmacy to
6.8 take custody of the property and remove it to an appropriate location for disposition
6.9 in accordance with law.

6.10 Except for contraband under clause (3), the agency shall ensure that the property is
6.11 maintained and cared for in a manner likely to secure the property and preserve its value.

6.12 (c) Any property seized under this section is not subject to replevin, but is deemed to
6.13 be in the custody of the appropriate agency subject to the orders and decrees of the court
6.14 having jurisdiction over the forfeiture proceedings.

6.15 (d) Property seized illegally is not subject to forfeiture under this section.

6.16 Subd. 10. **Release of property before final determination.** (a) If the owner of
6.17 property that has been seized under this section seeks possession of the property before
6.18 the forfeiture action is determined, the owner may give security or post bond payable to
6.19 the appropriate agency in an amount equal to the retail value of the seized property. The
6.20 appropriate agency may deny acceptance of the security or bond by obtaining a court order
6.21 within two business days of the attempt to post the security or bond by showing cause for
6.22 the agency to maintain possession of the seized asset. On posting the security or bond,
6.23 the seized property must be returned to the owner and the forfeiture action shall proceed
6.24 against the security as if it were the seized property. This subdivision does not apply
6.25 to contraband property.

6.26 (b) If the owner of a conveyance device that has been seized under this section
6.27 seeks possession of the device before the forfeiture action is determined, the owner may
6.28 surrender the device's certificate of title in exchange for the device. The device must be
6.29 returned to the owner within 24 hours if the owner surrenders the device's certificate of
6.30 title to the appropriate agency, pending resolution of the forfeiture action. If the certificate
6.31 is surrendered, the owner may not be ordered to post security or bond as a condition of
6.32 release of the device. If the device is not returned as required in this subdivision, the
6.33 appropriate agency is liable to the owner for the owner's actual costs incurred due to the
6.34 agency's failure to return it. When a certificate of title is surrendered under this provision,
6.35 the agency shall notify the Department of Public Safety and any secured party noted on

7.1 the certificate. The agency shall also notify the department and the secured party when it
7.2 returns a surrendered title to the device's owner.

7.3 (c) Any person with an interest in property that has been seized for forfeiture under
7.4 this section may file an application to have an order to show cause issued to the prosecuting
7.5 agency to determine if probable cause existed to seize the property for forfeiture.

7.6 When a hearing is held on the show cause order, the court shall determine if probable
7.7 cause to seize the property for forfeiture exists on the date of the hearing. If the court finds
7.8 that probable cause for seizure of the property for forfeiture does not exist, the appropriate
7.9 agency shall release the property.

7.10 Subd. 11. **Forfeiture a civil procedure; conviction or implied consent revocation**
7.11 **as prerequisite; speedy determination.** (a) An action for forfeiture under this section is
7.12 an independent civil in rem action. The appropriate agency handling the forfeiture has the
7.13 burden of proving by clear and convincing evidence that:

7.14 (1) except as provided in subdivision 7, paragraph (b), the owner of the property was
7.15 convicted of a crime that subjects the property to forfeiture;

7.16 (2) the owner's property was used in committing the underlying crime or conduct or
7.17 represents proceeds derived proximately from the underlying crime; and

7.18 (3) the forfeiture of any property used to commit a crime or conduct is proportional
7.19 to the underlying crime or conduct.

7.20 (b) Forfeitures under this section are not subject to the rules of civil procedure.

7.21 (c) Notwithstanding section 357.021, no filing or other court-related fees may be
7.22 assessed against a person contesting a forfeiture.

7.23 (d) Forfeiture actions must be heard by the court at the earliest practicable date, and
7.24 in any event no later than 120 days following the filing of the claimant's answer unless
7.25 this requirement is waived by the claimant.

7.26 (e) The court may order sanctions under section 549.211.

7.27 Subd. 12. **Complaint; notice.** The prosecutor must file a separate complaint
7.28 against the property subject to forfeiture under this section stating the act, omission, or
7.29 occurrence giving rise to the forfeiture and the date and place of the act or occurrence.
7.30 The prosecutor shall notify by personal service the owner or possessor of the property of
7.31 the action, if known or readily ascertainable. The action must be captioned in the name of
7.32 the prosecuting jurisdiction as plaintiff and the property as defendant.

7.33 The complaint must be accompanied by a written notice describing the property
7.34 seized, the date of seizure, and a description of the forfeiture process, including the steps
7.35 the person has to take to defend the person's interest in the property. This notice must
7.36 be worded in plain language that is likely to be understood by a person with limited

8.1 reading skills. This notice must include a detachable form designed in a manner and with
8.2 sufficient space to be easily used by the person receiving it to object to the forfeiture.
8.3 The objection may be made by immediately returning the form to the person serving it
8.4 or by filing it in the district court having jurisdiction over the property or the person's
8.5 residence. If the objection is made to the person serving the complaint, that person shall
8.6 give the objector written acknowledgment of the objection and forward the objection to
8.7 the prosecutor who shall file it with the court. The written objection shall serve as the
8.8 person's answer to the complaint.

8.9 Subd. 13. **Limitations; liens and innocent owner.** (a) Property encumbered by a
8.10 bona fide security interest is subject to the interest of the secured party. A person claiming
8.11 a security interest bears the burden of establishing that interest by clear and convincing
8.12 evidence.

8.13 (b) If any person who has not been convicted of an underlying crime or the subject of
8.14 a final implied consent determination that triggers a forfeiture demonstrates by substantial
8.15 evidence that the person has an ownership interest in property subject to forfeiture under
8.16 this section, the person's interest is not subject to forfeiture unless the prosecutor proves
8.17 by clear and convincing evidence that the person took the property or interest with the
8.18 intent of defeating the forfeiture or the person consented to the underlying criminal act or
8.19 conduct.

8.20 Subd. 14. **Return of property and damages.** (a) Property shall be returned to the
8.21 property owner no later than three business days after a court finds that:

8.22 (1) the property owner has a bona fide security interest or is an innocent owner
8.23 under subdivision 13;

8.24 (2) charges against the accused property owner are dismissed;

8.25 (3) the accused property owner is found not guilty of the criminal charge that is
8.26 the basis for the forfeiture action;

8.27 (4) the designated DWI license revocation that is the basis for the forfeiture is
8.28 overturned; or

8.29 (5) the property is a computer and the property owner is not privy to the act or
8.30 omission upon which the seizure is made, under subdivision 5.

8.31 (b) A property owner may bring a claim in district court for damages to the seized
8.32 property against the agency that seized the property, under the circumstances described in
8.33 paragraph (a), clauses (1) to (5).

8.34 Subd. 15. **Department of Corrections Fugitive Apprehension Unit.** The
8.35 Department of Corrections Fugitive Apprehension Unit may not seize conveyance devices
8.36 or real property for forfeiture under this section.

9.1 Subd. 16. Unclaimed property; contraband. Notwithstanding any contrary
9.2 provision in this section, a judgment of forfeiture may be entered without an underlying
9.3 conviction or designated DWI license revocation for the following types of property:

9.4 (1) contraband; and

9.5 (2) property for which no person has claimed an interest and, after reasonable
9.6 investigation, no owner has been found.

9.7 Subd. 17. Disposition of forfeited property. (a) If the court finds under this
9.8 section that property is subject to forfeiture, it shall order the appropriate agency to do
9.9 one of the following:

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

9.14 (2) sell property that is not required to be destroyed by law and is not harmful to
9.15 the public and distribute the proceeds under paragraph (b);

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

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

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

9.22 (6) disburse money as provided under paragraph (b).

9.23 Notwithstanding clauses (1) and (3), the Hennepin or Ramsey County sheriff may not
9.24 sell firearms, ammunition, or firearm accessories if the policy is disapproved by the
9.25 applicable county board.

9.26 (b) The money or proceeds from the sale of forfeited property, after payment of
9.27 seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens against
9.28 the property, must be forwarded to the commissioner of management and budget to be
9.29 deposited into the state treasury and credited to the general fund. This money must be
9.30 appropriated by the legislature for public safety purposes.

9.31 (c) Sales of forfeited property under this subdivision must be conducted in a
9.32 commercially reasonable manner.

9.33 (d) Employees of law enforcement agencies and their family members may not
9.34 purchase forfeited items directly from the appropriate agency.

9.35 Subd. 18. Reporting requirement. (a) For each forfeiture occurring in the state
9.36 regardless of the authority for it, the appropriate agency and the prosecutor shall provide a

10.1 written record of the forfeiture incident to the state auditor. The record shall include the
10.2 amount forfeited, the underlying crime or conduct, its date, whether the property had a lien
10.3 against it, and whether the forfeiture was contested. The record shall also list the number
10.4 of firearms forfeited and the make, model, and serial number of each firearm forfeited.
10.5 The record shall indicate how the property was or is to be disposed of.

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

10.9 (c) The state auditor may require information not specified in this subdivision to
10.10 be reported as well.

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

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

10.17 (f) The state auditor shall include in its report required under paragraph (d)
10.18 recommended changes to forfeiture law to better ensure that forfeiture proceedings are
10.19 handled in a manner that is fair to innocent property owners and interest holders.

10.20 (g) The state auditor shall include in its report required under paragraph (d)
10.21 information on law enforcement agencies and prosecutorial offices not in compliance
10.22 with this section.

10.23 Subd. 19. **Penalty for violations.** (a) Any person acting under color of law, official
10.24 title, or position who takes any action intending to conceal, transfer, withhold, retain,
10.25 divert, or otherwise prevent any proceeds, conveyances, real property, or any things
10.26 of value forfeited under the law of this state or the United States from being applied,
10.27 deposited, or used in accordance with this section is subject to a civil penalty in an
10.28 amount of three times the value of the forfeited property concealed, transferred, withheld,
10.29 retained, or diverted.

10.30 (b) Nothing in this subdivision shall be construed to impair judicial immunity
10.31 if otherwise applicable.

10.32 Subd. 20. **Coordination with federal law.** The state and local units of government
10.33 shall take all necessary steps to obtain shared property or proceeds from the United States
10.34 Department of Justice resulting from a forfeiture. Any property or proceeds received from
10.35 the United States Department of Justice by the state or any local unit of government shall
10.36 be disposed of as provided in subdivision 17.

11.1 Neither the state, a local unit of government, nor any forfeiting agency shall
11.2 transfer forfeiture proceedings to the federal government to circumvent state law. For an
11.3 appropriate agency to transfer a forfeiture proceeding to the federal government, a state
11.4 court shall have affirmatively found that:

11.5 (1) the activity giving rise to the forfeiture is interstate in nature and sufficiently
11.6 complex to justify the transfer; or

11.7 (2) the seized property is forfeitable only under federal law.

11.8 **Sec. 2. REVISOR'S INSTRUCTION.**

11.9 In the 2010 and subsequent editions of Minnesota Statutes, the revisor of statutes
11.10 shall make changes to statutory cross-references as necessitated by this bill.

11.11 **Sec. 3. REPEALER.**

(a) Minnesota Statutes 2008, sections 169A.63; 609.531, subdivisions 1, 1a, 4, 5,
5a, and 6a; 609.5311; 609.5312; 609.5313; 609.5314; 609.5315; 609.5316; 609.5317;
609.5318; and 609.762, subdivisions 2, 3, 4, and 5, are repealed.

(b) Minnesota Statutes 2009 Supplement, section 609.762, subdivision 1, is repealed.

169A.63 VEHICLE FORFEITURE.

Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the meanings given them.

(b) "Appropriate agency" means a law enforcement agency that has the authority to make an arrest for a violation of a designated offense or to require a test under section 169A.51 (chemical tests for intoxication).

(c) "Claimant" means an owner of a motor vehicle or a person claiming a leasehold or security interest in a motor vehicle.

(d) "Designated license revocation" includes a license revocation under section 169A.52 (license revocation for test failure or refusal) or a license disqualification under section 171.165 (commercial driver's license disqualification) resulting from a violation of section 169A.52; within ten years of the first of two or more qualified prior impaired driving incidents.

(e) "Designated offense" includes:

(1) a violation of section 169A.20 (driving while impaired) under the circumstances described in section 169A.24 (first-degree driving while impaired), or 169A.25 (second-degree driving while impaired); or

(2) a violation of section 169A.20 or an ordinance in conformity with it:

(i) by a person whose driver's license or driving privileges have been canceled as inimical to public safety under section 171.04, subdivision 1, clause (10), and not reinstated; or

(ii) by a person who is subject to a restriction on the person's driver's license under section 171.09 (commissioner's license restrictions), which provides that the person may not use or consume any amount of alcohol or a controlled substance.

(f) "Family or household member" means:

(1) a parent, stepparent, or guardian;

(2) any of the following persons related by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or

(3) persons residing together or persons who regularly associate and communicate with one another outside of a workplace setting.

(g) "Motor vehicle" and "vehicle" do not include a vehicle which is stolen or taken in violation of the law.

(h) "Owner" means a person legally entitled to possession, use, and control of a motor vehicle, including a lessee of a motor vehicle if the lease agreement has a term of 180 days or more. There is a rebuttable presumption that a person registered as the owner of a motor vehicle according to the records of the Department of Public Safety is the legal owner. For purposes of this section, if a motor vehicle is owned jointly by two or more people, each owner's interest extends to the whole of the vehicle and is not subject to apportionment.

(i) "Prosecuting authority" means the attorney in the jurisdiction in which the designated offense occurred who is responsible for prosecuting violations of a designated offense or a designee. If a state agency initiated the forfeiture, and the attorney responsible for prosecuting the designated offense declines to pursue forfeiture, the Attorney General's Office or its designee may initiate forfeiture under this section.

(j) "Security interest" means a bona fide security interest perfected according to section 168A.17, subdivision 2, based on a loan or other financing that, if a vehicle is required to be registered under chapter 168, is listed on the vehicle's title.

Subd. 2. **Seizure.** (a) A motor vehicle subject to forfeiture under this section may be seized by the appropriate agency upon process issued by any court having jurisdiction over the vehicle.

(b) Property may be seized without process if:

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

(2) the vehicle 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 section; 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 vehicle. If property is seized without process under this clause, the prosecuting authority must institute a forfeiture action under this section as soon as is reasonably possible by serving a notice of seizure and intent to forfeit at the address of the owner as listed in the records of the Department of Public Safety.

Subd. 3. **Right to possession vests immediately; custody.** All right, title, and interest in a vehicle subject to forfeiture under this section vests in the appropriate agency upon commission of the conduct resulting in the designated offense or designated license revocation giving rise to the forfeiture. Any vehicle seized under this section is not subject to replevin, but is deemed

APPENDIX

Repealed Minnesota Statutes: 10-5230

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 a vehicle is seized under this section, the appropriate agency may:

- (1) place the vehicle under seal;
- (2) remove the vehicle to a place designated by it;
- (3) place a disabling device on the vehicle; and
- (4) take other steps reasonable and necessary to secure the vehicle and prevent waste.

Subd. 4. **Bond by owner for possession.** If the owner of a vehicle that has been seized under this section seeks possession of the vehicle 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 vehicle. On posting the security or bond, the seized vehicle may be returned to the owner only if a disabling device is attached to the vehicle. The forfeiture action must proceed against the security as if it were the seized vehicle.

Subd. 5. **Evidence.** Certified copies of court records and motor vehicle and driver's license records concerning qualified prior impaired driving incidents are admissible as substantive evidence where necessary to prove the commission of a designated offense or the occurrence of a designated license revocation.

Subd. 6. **Vehicle subject to forfeiture.** (a) A motor vehicle is subject to forfeiture under this section if it was used in the commission of a designated offense or was used in conduct resulting in a designated license revocation.

(b) Motorboats subject to seizure and forfeiture under this section also include their trailers.

Subd. 7. **Limitations on vehicle forfeiture.** (a) A vehicle is presumed subject to forfeiture under this section if:

(1) the driver is convicted of the designated offense upon which the forfeiture is based;

(2) the driver fails to appear for a scheduled court appearance with respect to the designated offense charged and fails to voluntarily surrender within 48 hours after the time required for appearance; or

(3) the driver's conduct results in a designated license revocation and the driver fails to seek judicial review of the revocation in a timely manner as required by section 169A.53, subdivision 2, (petition for judicial review), or the license revocation is judicially reviewed and sustained under section 169A.53, subdivision 2.

(b) A vehicle encumbered by a security interest perfected according to section 168A.17, subdivision 2, or subject to a lease that has a term of 180 days or more, is subject to the interest of the secured party or lessor unless the party or lessor had knowledge of or consented to the act upon which the forfeiture is based. However, when the proceeds of the sale of a seized vehicle do not equal or exceed the outstanding loan balance, the appropriate agency shall remit all proceeds of the sale to the secured party after deducting the agency's costs for the seizure, tow, storage, forfeiture, and sale of the vehicle. If the sale of the vehicle is conducted in a commercially reasonable manner consistent with the provisions of section 336.9-610, the agency is not liable to the secured party for any amount owed on the loan in excess of the sale proceeds. The validity and amount of a nonperfected security interest must be established by its holder by clear and convincing evidence.

(c) Notwithstanding paragraph (b), the secured party's or lessor's interest in a vehicle is not subject to forfeiture based solely on the secured party's or lessor's knowledge of the act or omission upon which the forfeiture is based if the secured party or lessor demonstrates by clear and convincing evidence that the party or lessor took reasonable steps to terminate use of the vehicle by the offender.

(d) A motor vehicle is not subject to forfeiture under this section if its owner can demonstrate by clear and convincing evidence that the owner did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law or that the owner took reasonable steps to prevent use of the vehicle by the offender. If the offender is a family or household member of the owner and has three or more prior impaired driving convictions, the owner is presumed to know of any vehicle use by the offender that is contrary to law. "Vehicle use contrary to law" includes, but is not limited to, violations of the following statutes:

- (1) section 171.24 (violations; driving without valid license);
- (2) section 169.791 (criminal penalty for failure to produce proof of insurance);
- (3) section 171.09 (driving restrictions; authority, violations);
- (4) section 169A.20 (driving while impaired);
- (5) section 169A.33 (underage drinking and driving); and
- (6) section 169A.35 (open bottle law).

APPENDIX

Repealed Minnesota Statutes: 10-5230

Subd. 8. Administrative forfeiture procedure. (a) A motor vehicle used to commit a designated offense or used in conduct resulting in a designated license revocation is subject to administrative forfeiture under this subdivision.

(b) When a motor vehicle is seized under subdivision 2, or within a reasonable time after seizure, the appropriate agency shall serve the driver or operator of the vehicle with a notice of the seizure and intent to forfeit the vehicle. Additionally, when a motor vehicle is seized under subdivision 2, or within a reasonable time after that, all persons known to have an ownership, possessory, or security interest in the vehicle must be notified of the seizure and the intent to forfeit the vehicle. For those vehicles required to be registered under chapter 168, the notification to a person known to have a security interest in the vehicle is required only if the vehicle is registered under chapter 168 and the interest is listed on the vehicle's title. Notice mailed by certified mail to the address shown in Department of Public Safety records is sufficient notice to the registered owner of the vehicle. For motor vehicles not required to be registered under chapter 168, notice mailed by certified mail to the address shown in the applicable filing or registration for the vehicle is sufficient notice to a person known to have an ownership, possessory, or security interest in the vehicle. Otherwise, notice may be given in the manner provided by law for service of a summons in a civil action.

(c) The notice must be in writing and contain:

(1) a description of the vehicle seized;

(2) the date of seizure; and

(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, and Spanish. Substantially the following language must appear conspicuously: "IF YOU DO NOT DEMAND JUDICIAL REVIEW EXACTLY AS PRESCRIBED IN MINNESOTA STATUTES, SECTION 169A.63, SUBDIVISION 8, 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."

(d) Within 30 days following service of a notice of seizure and forfeiture under this subdivision, 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 prosecuting authority having jurisdiction over the forfeiture and the appropriate agency that initiated the forfeiture, including 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 vehicle. A copy of the conciliation court statement of claim must be served personally or by mail on the prosecuting authority having jurisdiction over the forfeiture, as well as on the appropriate agency that initiated the forfeiture, within 30 days following service of the notice of seizure and forfeiture under this subdivision. 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 prosecuting authority and no court fees may be charged for the prosecuting authority's appearance in the matter. The prosecuting authority may appear for the appropriate agency. Pleadings, filings, and methods of service are governed by the Rules of Civil Procedure.

(e) The complaint must be captioned in the name of the claimant as plaintiff and the seized vehicle as defendant, and must state with specificity the grounds on which the claimant alleges the vehicle was improperly seized, the claimant's interest in the vehicle seized, and any affirmative defenses the claimant may have. Notwithstanding any law to the contrary, an action for the return of a vehicle 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.

(f) If the claimant makes a timely demand for a judicial determination under this subdivision, the forfeiture proceedings must be conducted as provided under subdivision 9.

Subd. 9. Judicial forfeiture procedure. (a) This subdivision governs judicial determinations of the forfeiture of a motor vehicle used to commit a designated offense or used in conduct resulting in a designated license revocation. An action for forfeiture is a civil in rem action and is independent of any criminal prosecution. All proceedings are governed by the Rules of Civil Procedure.

APPENDIX

Repealed Minnesota Statutes: 10-5230

(b) If no demand for judicial determination of the forfeiture is pending, the prosecuting authority may, in the name of the jurisdiction pursuing the forfeiture, file a separate complaint against the vehicle, describing it, specifying that it was used in the commission of a designated offense or was used in conduct resulting in a designated license revocation, and specifying the time and place of its unlawful use.

(c) The prosecuting authority may file an answer to a properly served demand for judicial determination, including an affirmative counterclaim for forfeiture. The prosecuting authority is not required to file an answer.

(d) A judicial determination under this subdivision must not precede adjudication in the criminal prosecution of the designated offense without the consent of the prosecuting authority. The district court administrator shall schedule the hearing as soon as practicable after adjudication in the criminal prosecution. The district court administrator shall establish procedures to ensure efficient compliance with this subdivision. The hearing is to the court without a jury.

(e) There is a presumption that a vehicle seized under this section is subject to forfeiture if the prosecuting authority establishes that the vehicle was used in the commission of a designated offense or designated license revocation. A claimant bears the burden of proving any affirmative defense raised.

(f) If the forfeiture is based on the commission of a designated offense and the person charged with the designated offense appears in court as required and is not convicted of the offense, the court shall order the property returned to the person legally entitled to it upon that person's compliance with the redemption requirements of section 169A.42. If the forfeiture is based on a designated license revocation, and the license revocation is rescinded under section 169A.53, subdivision 3 (judicial review hearing, issues, order, appeal), the court shall order the property returned to the person legally entitled to it upon that person's compliance with the redemption requirements of section 169A.42.

(g) If the lawful ownership of the vehicle used in the commission of a designated offense or used in conduct resulting in a designated license revocation can be determined and the owner makes the demonstration required under subdivision 7, paragraph (d), the vehicle must be returned immediately upon the owner's compliance with the redemption requirements of section 169A.42.

(h) If the court orders the return of a seized vehicle under this subdivision it must order that filing fees be reimbursed to the person who filed the demand for judicial determination. In addition, the court may order sanctions under section 549.211 (sanctions in civil actions). Any reimbursement fees or sanctions must be paid from other forfeiture proceeds of the law enforcement agency and prosecuting authority involved and in the same proportion as distributed under subdivision 10, paragraph (b).

Subd. 10. Disposition of forfeited vehicle. (a) If the vehicle is administratively forfeited under subdivision 8, or if the court finds under subdivision 9 that the vehicle is subject to forfeiture under subdivisions 6 and 7, the appropriate agency shall:

(1) sell the vehicle and distribute the proceeds under paragraph (b); or

(2) keep the vehicle for official use. If the agency keeps a forfeited motor vehicle for official use, it shall make reasonable efforts to ensure that the motor vehicle is available for use by the agency's officers who participate in the drug abuse resistance education program.

(b) The proceeds from the sale of forfeited vehicles, after payment of seizure, towing, storage, forfeiture, and sale expenses, and satisfaction of valid liens against the property, must be distributed as follows:

(1) 70 percent of the proceeds must be forwarded to the appropriate agency for deposit as a supplement to the state or local agency's operating fund or similar fund for use in DWI-related enforcement, training, and education; and

(2) 30 percent of the money or proceeds must be forwarded to the prosecuting authority that handled the forfeiture for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes.

Subd. 11. Sale of forfeited vehicle by secured party. (a) A financial institution with a valid security interest in or a valid lease covering a forfeited vehicle may choose to dispose of the vehicle under this subdivision, in lieu of the appropriate agency disposing of the vehicle under subdivision 9. A financial institution wishing to dispose of a vehicle under this subdivision shall notify the appropriate agency of its intent, in writing, within 30 days after receiving notice of the seizure and forfeiture. The appropriate agency shall release the vehicle to the financial institution or its agent after the financial institution presents proof of its valid security agreement or of its lease agreement and the financial institution agrees not to sell the vehicle to a member of the violator's household, unless the violator is not convicted of the offense on which the forfeiture is based. The financial institution shall dispose of the vehicle in a commercially reasonable manner as defined in section 336.9-610.

APPENDIX

Repealed Minnesota Statutes: 10-5230

(b) After disposing of the forfeited vehicle, the financial institution shall reimburse the appropriate agency for its seizure, storage, and forfeiture costs. The financial institution may then apply the proceeds of the sale to its storage costs, to its sale expenses, and to satisfy the lien or the lease on the vehicle. If any proceeds remain, the financial institution shall forward the proceeds to the state treasury, which shall credit the appropriate fund as specified in subdivision 9.

609.531 FORFEITURES.

Subdivision 1. **Definitions.** For the purpose of sections 609.531 to 609.5318, the following terms have the meanings given them.

(a) "Conveyance device" means a device used for transportation and includes, but is not limited to, a motor vehicle, trailer, snowmobile, airplane, and vessel and any equipment attached to it. The term "conveyance device" does not include property which is, in fact, itself stolen or taken in violation of the law.

(b) "Weapon used" means a dangerous weapon as defined under section 609.02, subdivision 6, that the actor used or had in possession in furtherance of a crime.

(c) "Property" means property as defined in section 609.52, subdivision 1, clause (1).

(d) "Contraband" means property which is illegal to possess under Minnesota law.

(e) "Appropriate agency" means the Bureau of Criminal Apprehension, the Department of Commerce Division of Insurance Fraud Prevention, the Minnesota Division of Driver and Vehicle Services, the Minnesota State Patrol, a county sheriff's department, the Three Rivers Park District park rangers, the Department of Natural Resources Division of Enforcement, the University of Minnesota Police Department, the Department of Corrections Fugitive Apprehension Unit, or a city, metropolitan transit, or airport police department.

(f) "Designated offense" includes:

(1) for weapons used: any violation of this chapter, chapter 152, or chapter 624;

(2) for driver's license or identification card transactions: any violation of section 171.22;

and

(3) for all other purposes: a felony violation of, or a felony-level attempt or conspiracy to violate, section 325E.17; 325E.18; 609.185; 609.19; 609.195; 609.21; 609.221; 609.222; 609.223; 609.2231; 609.24; 609.245; 609.25; 609.255; 609.282; 609.283; 609.322; 609.342, subdivision 1, clauses (a) to (f); 609.343, subdivision 1, clauses (a) to (f); 609.344, subdivision 1, clauses (a) to (e), and (h) to (j); 609.345, subdivision 1, clauses (a) to (e), and (h) to (j); 609.352; 609.42; 609.425; 609.466; 609.485; 609.487; 609.52; 609.525; 609.527; 609.528; 609.53; 609.54; 609.551; 609.561; 609.562; 609.563; 609.582; 609.59; 609.595; 609.611; 609.631; 609.66, subdivision 1e; 609.671, subdivisions 3, 4, 5, 8, and 12; 609.687; 609.821; 609.825; 609.86; 609.88; 609.89; 609.893; 609.895; 617.246; 617.247; or a gross misdemeanor or felony violation of section 609.891 or 624.7181; or any violation of section 609.324.

(g) "Controlled substance" has the meaning given in section 152.01, subdivision 4.

Subd. 1a. **Construction.** Sections 609.531 to 609.5318 must be liberally construed to carry out the following remedial purposes:

(1) to enforce the law;

(2) to deter crime;

(3) to reduce the economic incentive to engage in criminal enterprise;

(4) to increase the pecuniary loss resulting from the detection of criminal activity; and

(5) to forfeit property unlawfully used or acquired and divert the property to law

enforcement purposes.

Subd. 4. **Seizure.** 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.

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

APPENDIX

Repealed Minnesota Statutes: 10-5230

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 may:

- (1) place the property under seal;
- (2) remove the property to a place designated by it;
- (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.

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.

(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.

Subd. 6a. **Forfeiture a civil procedure; conviction results in presumption.** (a) An action for forfeiture is a civil in rem action and is independent of any criminal prosecution, except as provided in this subdivision and section 609.5318. The appropriate agency handling the forfeiture has the benefit of the evidentiary presumption of section 609.5314, subdivision 1, but otherwise bears the burden of proving the act or omission giving rise to the forfeiture by clear and convincing evidence, except that in cases arising under section 609.5312, the designated offense may only be established by a criminal conviction.

(b) A court may not issue an order of forfeiture under section 609.5311 while the alleged owner of the property is in custody and related criminal proceedings are pending against the alleged owner. For forfeiture of a motor vehicle, the alleged owner is the registered owner according to records of the Department of Public Safety. For real property, the alleged owner is the owner of record. For other property, the alleged owner is the person notified by the prosecuting authority in filing the forfeiture action.

609.5311 FORFEITURE OF PROPERTY ASSOCIATED WITH CONTROLLED SUBSTANCES.

Subdivision 1. **Controlled substances.** All controlled substances that were manufactured, distributed, dispensed, or acquired in violation of chapter 152 are subject to forfeiture under this section, except as provided in subdivision 3 and section 609.5316.

Subd. 2. **Associated property.** (a) All property, real and personal, that has been used, or is intended for use, or has in any way facilitated, in whole or in part, the manufacturing, compounding, processing, delivering, importing, cultivating, exporting, transporting, or exchanging of contraband or a controlled substance that has not been lawfully manufactured, distributed, dispensed, and acquired is subject to forfeiture under this section, except as provided in subdivision 3.

(b) The Department of Corrections Fugitive Apprehension Unit shall not seize real property for the purposes of forfeiture under paragraph (a).

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 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 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

APPENDIX

Repealed Minnesota Statutes: 10-5230

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).

Subd. 4. **Records; proceeds.** (a) All books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use in the manner described in subdivision 2 are subject to forfeiture.

(b) All property, real and personal, that represents proceeds derived from or traceable to a use described in subdivision 2 is subject to forfeiture.

609.5312 FORFEITURE OF PROPERTY ASSOCIATED WITH DESIGNATED OFFENSES.

Subdivision 1. **Property subject to forfeiture.** (a) All personal property is subject to forfeiture if it was used or intended for use to commit or facilitate the commission of a designated offense. All money and other property, real and personal, that represent proceeds of a designated offense, and all contraband property, are subject to forfeiture, except as provided in this section.

(b) The Department of Corrections Fugitive Apprehension Unit shall not seize real property for the purposes of forfeiture under paragraph (a).

Subd. 1a. **Computers and related property subject to forfeiture.** (a) As used in this subdivision, "property" has the meaning given in section 609.87, subdivision 6.

(b) When a computer or a component part of a computer is used or intended for use to commit or facilitate the commission of a designated offense, the computer and all software, data, and other property contained in the computer are subject to forfeiture unless prohibited by the Privacy Protection Act, United States Code, title 42, sections 2000aa to 2000aa-12, or other state or federal law.

(c) Regardless of whether a forfeiture action is initiated following the lawful seizure of a computer and related property, if the appropriate agency returns hardware, software, data, or other property to the owner, the agency may charge the owner for the cost of separating contraband from the computer or other property returned, including salary and contract costs. The agency may not charge these costs to an owner of a computer or related property who was not privy to the act or omission upon which the seizure was based, or who did not have knowledge of or consent to the act or omission, if the owner:

(1) requests from the agency copies of specified legitimate data files and provides sufficient storage media; or

(2) requests the return of a computer or other property less data storage devices on which contraband resides.

Subd. 2. **Limitations on forfeiture of property associated with designated offenses.**

(a) Property used by a 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 commission of a designated offense.

(b) Property is subject to forfeiture under this section only if the owner was privy to the act or omission upon which the forfeiture is based, or the act or omission occurred with the owner's knowledge or consent.

APPENDIX

Repealed Minnesota Statutes: 10-5230

(c) Property encumbered by a bona fide security interest is subject to the interest of the secured party unless the 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.

(d) Notwithstanding paragraphs (b) and (c), property is not subject to forfeiture based solely on the owner's or secured party's knowledge of the act or omission upon which the forfeiture is based if the owner or secured party took reasonable steps to terminate use of the property by the offender.

Subd. 3. **Vehicle forfeiture for prostitution offenses.** (a) A motor vehicle is subject to forfeiture under this subdivision if it was used to commit or facilitate, or used during the commission of, a violation of section 609.324 or a violation of a local ordinance substantially similar to section 609.324. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense. Except as otherwise provided in this subdivision, a forfeiture under this subdivision is governed by sections 609.531, 609.5312, and 609.5313.

(b) When a motor vehicle subject to forfeiture under this subdivision is seized in advance of a judicial forfeiture order, a hearing before a judge or referee must be held within 96 hours of the seizure. Notice of the hearing must be given to the registered owner within 48 hours of the seizure. The prosecuting authority shall certify to the court, at or in advance of the hearing, that it has filed or intends to file charges against the alleged violator for violating section 609.324 or a local ordinance substantially similar to section 609.324. After conducting the hearing, the court shall order that the motor vehicle be returned to the owner if:

- (1) the prosecutor has failed to make the certification required by paragraph (b);
- (2) the owner of the motor vehicle has demonstrated to the court's satisfaction that the owner has a defense to the forfeiture, including but not limited to the defenses contained in subdivision 2; or
- (3) the court determines that seizure of the vehicle creates or would create an undue hardship for members of the owner's family.

(c) If the defendant is acquitted or prostitution charges against the defendant are dismissed, neither the owner nor the defendant is responsible for paying any costs associated with the seizure or storage of the vehicle.

(d) A vehicle leased or rented under section 168.27, subdivision 4, for a period of 180 days or less is not subject to forfeiture under this subdivision.

(e) For purposes of this subdivision, seizure occurs either:

- (1) at the date at which personal service of process upon the registered owner is made; or
- (2) at the date when the registered owner has been notified by certified mail at the address listed in the Minnesota Department of Public Safety computerized motor vehicle registration records.

(f) The Department of Corrections Fugitive Apprehension Unit shall not participate in paragraphs (a) to (e).

Subd. 4. **Vehicle forfeiture for fleeing peace officer.** (a) A motor vehicle is subject to forfeiture under this subdivision if it was used to commit a violation of section 609.487 and endanger life or property. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense. Except as otherwise provided in this subdivision, a forfeiture under this subdivision is governed by sections 609.531, 609.5312, 609.5313, and 609.5315, subdivision 6.

(b) When a motor vehicle subject to forfeiture under this subdivision is seized in advance of a judicial forfeiture order, a hearing before a judge or referee must be held within 96 hours of the seizure. Notice of the hearing must be given to the registered owner within 48 hours of the seizure. The prosecuting authority shall certify to the court, at or in advance of the hearing, that it has filed or intends to file charges against the alleged violator for violating section 609.487. After conducting the hearing, the court shall order that the motor vehicle be returned to the owner if:

- (1) the prosecutor has failed to make the certification required by this paragraph;
- (2) the owner of the motor vehicle has demonstrated to the court's satisfaction that the owner has a defense to the forfeiture, including but not limited to the defenses contained in subdivision 2; or
- (3) the court determines that seizure of the vehicle creates or would create an undue hardship for members of the owner's family.

(c) If the defendant is acquitted or the charges against the defendant are dismissed, neither the owner nor the defendant is responsible for paying any costs associated with the seizure or storage of the vehicle.

APPENDIX

Repealed Minnesota Statutes: 10-5230

(d) A vehicle leased or rented under section 168.27, subdivision 4, for a period of 180 days or less is not subject to forfeiture under this subdivision.

(e) A motor vehicle that is an off-road recreational vehicle as defined in section 169A.03, subdivision 16, or a motorboat as defined in section 169A.03, subdivision 13, is not subject to paragraph (b).

(f) For purposes of this subdivision, seizure occurs either:

(1) at the date at which personal service of process upon the registered owner is made; or

(2) at the date when the registered owner has been notified by certified mail at the address listed in the Minnesota Department of Public Safety computerized motor vehicle registration records.

(g) The Department of Corrections Fugitive Apprehension Unit shall not seize a motor vehicle for the purposes of forfeiture under paragraphs (a) to (f).

609.5313 FORFEITURE BY JUDICIAL ACTION; PROCEDURE.

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. 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.

609.5314 ADMINISTRATIVE FORFEITURE OF CERTAIN PROPERTY SEIZED IN CONNECTION WITH A CONTROLLED SUBSTANCES SEIZURE.

Subdivision 1. **Property subject to administrative forfeiture; presumption.** (a) The following are presumed to be subject to administrative forfeiture under this section:

(1) all money, precious metals, and precious stones found in proximity to:

(i) controlled substances;

(ii) forfeitable drug manufacturing or distributing equipment or devices; or

(iii) forfeitable records of manufacture or distribution of controlled substances;

(2) all conveyance devices containing controlled substances with a retail value of \$100 or more if possession or sale of the controlled substance would be a felony under chapter 152; and

(3) all firearms, ammunition, and firearm accessories found:

(i) in a conveyance device used or intended for use to commit or facilitate the commission of a felony offense involving a controlled substance;

(ii) on or in proximity to a person from whom a felony amount of controlled substance is seized; or

(iii) on the premises where a controlled substance is seized and in proximity to the controlled substance, if possession or sale of the controlled substance would be a felony under chapter 152.

(b) The Department of Corrections Fugitive Apprehension Unit shall not seize items listed in paragraph (a), clauses (2) and (3), for the purposes of forfeiture.

(c) A claimant of the property bears the burden to rebut this presumption.

Subd. 2. **Administrative forfeiture procedure.** (a) Forfeiture of property described in subdivision 1 is governed by this subdivision. 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.

(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, 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

APPENDIX

Repealed Minnesota Statutes: 10-5230

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."

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 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.

609.5315 DISPOSITION OF FORFEITED PROPERTY.

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.

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 may dispose of the property in any of the ways listed in subdivision 1.

APPENDIX

Repealed Minnesota Statutes: 10-5230

Subd. 3. **Use by law enforcement.** (a) Property kept under this section may be used only in the performance of official duties of the appropriate agency or prosecuting agency and may not be used for any other purpose. If an appropriate agency keeps a forfeited motor vehicle for official use, it shall make reasonable efforts to ensure that the motor vehicle is available for use and adaptation by the agency's officers who participate in the drug abuse resistance education program.

(b) Proceeds from the sale of property kept under this subdivision must be disbursed as provided in subdivision 5.

Subd. 4. **Distribution of proceeds of the offense.** Property that consists of proceeds derived from or traced to the commission of a designated offense or a violation of section 609.66, subdivision 1e, must be applied first to payment of seizure, storage, forfeiture, and sale expenses, and to satisfy valid liens against the property; and second, to any court-ordered restitution before being disbursed as provided under subdivision 5.

Subd. 5. **Distribution of money.** The money or proceeds from the sale of forfeited property, after payment of seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens against the property, must be distributed as follows:

(1) 70 percent of the money or proceeds must be forwarded to the appropriate agency for deposit as a supplement to the agency's operating fund or similar fund for use in law enforcement;

(2) 20 percent of the money or proceeds must be forwarded to the county attorney or other prosecuting agency that handled the forfeiture for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes; and

(3) the remaining ten percent of the money or proceeds must be forwarded within 60 days after resolution of the forfeiture to the state treasury and credited to the general fund. Any local police relief association organized under chapter 423 which received or was entitled to receive the proceeds of any sale made under this section before the effective date of Laws 1988, chapter 665, sections 1 to 17, shall continue to receive and retain the proceeds of these sales.

Subd. 5a. **Disposition of certain forfeited proceeds; prostitution.** The proceeds from the sale of motor vehicles forfeited under section 609.5312, subdivision 3, after payment of seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens against the vehicle, shall be distributed as follows:

(1) 40 percent of the proceeds must be forwarded to the appropriate agency for deposit as a supplement to the agency's operating fund or similar fund for use in law enforcement;

(2) 20 percent of the proceeds must be forwarded to the city attorney or other prosecuting agency that handled the forfeiture for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes; and

(3) the remaining 40 percent of the proceeds must be forwarded to the city treasury for distribution to neighborhood crime prevention programs.

Subd. 5b. **Disposition of certain forfeited proceeds; trafficking of persons; report required.** (a) For forfeitures resulting from violations of section 609.282, 609.283, or 609.322, the money or proceeds from the sale of forfeited property, after payment of seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens against the property, must be distributed as follows:

(1) 40 percent of the proceeds must be forwarded to the appropriate agency for deposit as a supplement to the agency's operating fund or similar fund for use in law enforcement;

(2) 20 percent of the proceeds must be forwarded to the county attorney or other prosecuting agency that handled the forfeiture for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes; and

(3) the remaining 40 percent of the proceeds must be forwarded to the commissioner of public safety and are appropriated to the commissioner for distribution to crime victims services organizations that provide services to victims of trafficking offenses.

(b) By February 15 of each year, the commissioner of public safety shall report to the chairs and ranking minority members of the senate and house of representatives committees or divisions having jurisdiction over criminal justice funding on the money collected under paragraph (a), clause (3). The report must indicate the following relating to the preceding calendar year:

(1) the amount of money appropriated to the commissioner;

(2) how the money was distributed by the commissioner; and

(3) what the organizations that received the money did with it.

Subd. 6. **Reporting requirement.** The appropriate agency shall provide a written record of each forfeiture incident to the state auditor. The record shall include the amount forfeited, date, and a brief description of the circumstances involved. The record shall also list the number of firearms forfeited and the make, model, and serial number of each firearm forfeited. 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.

APPENDIX

Repealed Minnesota Statutes: 10-5230

Subd. 7. **Firearms.** The agency shall make best efforts for a period of 90 days after the seizure of an abandoned or stolen firearm to protect the firearm from harm and return it to the lawful owner.

609.5316 SUMMARY FORFEITURES.

Subdivision 1. **Contraband.** Except as otherwise provided in this subdivision, if the property is contraband, the property must be summarily forfeited and either destroyed or used by the appropriate agency for law enforcement purposes. Upon summary forfeiture, weapons used must be destroyed by the appropriate agency unless the agency decides to use the weapons for law enforcement purposes.

Subd. 2. **Controlled substances.** (a) Controlled substances listed in schedule I that are possessed, transferred, sold, or offered for sale in violation of chapter 152, are contraband and must be seized and summarily forfeited. Controlled substances listed in schedule I that are seized or come into the possession of peace officers, the owners of which are unknown, are contraband and must be summarily forfeited.

(b) Species of plants from which controlled substances in schedules I and II may be derived that have been planted or cultivated in violation of chapter 152 or of which the owners or cultivators are unknown, or that are wild growths, may be seized and summarily forfeited to the state. The appropriate agency or its authorized agent may seize the plants if the person in occupancy or in control of land or premises where the plants are growing or being stored fails to produce an appropriate registration or proof that the person is the holder of appropriate registration.

Subd. 3. **Weapons, telephone cloning paraphernalia, and bullet-resistant vests.** Weapons used are contraband and must be summarily forfeited to the appropriate agency upon conviction of the weapon's owner or possessor for a controlled substance crime; for any offense of this chapter or chapter 624, or for a violation of an order for protection under section 518B.01, subdivision 14. Bullet-resistant vests, as defined in section 609.486, worn or possessed during the commission or attempted commission of a crime are contraband and must be summarily forfeited to the appropriate agency upon conviction of the owner or possessor for a controlled substance crime or for any offense of this chapter. Telephone cloning paraphernalia used in a violation of section 609.894 are contraband and must be summarily forfeited to the appropriate agency upon a conviction. Notwithstanding this subdivision, weapons used, bullet-resistant vests worn or possessed, and telephone cloning paraphernalia may be forfeited without a conviction under sections 609.531 to 609.5315.

609.5317 REAL PROPERTY; SEIZURES.

Subdivision 1. **Rental property.** (a) When contraband or a controlled substance manufactured, distributed, or acquired in violation of chapter 152 is seized on residential rental property incident to a lawful search or arrest, the county attorney shall give the notice required by this subdivision to (1) the landlord of the property or the fee owner identified in the records of the county assessor, and (2) the agent authorized by the owner to accept service pursuant to section 504B.181. The notice is not required during an ongoing investigation. The notice shall state what has been seized and specify the applicable duties and penalties under this subdivision. The notice shall state that the landlord who chooses to assign the right to bring an eviction action retains all rights and duties, including removal of a tenant's personal property following issuance of the writ of restitution and delivery of the writ to the sheriff for execution. The notice shall also state that the landlord may contact the county attorney if threatened by the tenant. Notice shall be sent by certified letter, return receipt requested, within 30 days of the seizure. If receipt is not returned, notice shall be given in the manner provided by law for service of summons in a civil action.

(b) Within 15 days after notice of the first occurrence, the landlord shall bring, or assign to the county attorney of the county in which the real property is located, the right to bring an eviction action against the tenant. The assignment must be in writing on a form prepared by the county attorney. Should the landlord choose to assign the right to bring an eviction action, the assignment shall be limited to those rights and duties up to and including delivery of the writ of restitution to the sheriff for execution.

(c) Upon notice of a second occurrence on any residential rental property owned by the same landlord in the same county and involving the same tenant, and within one year after notice of the first occurrence, the property is subject to forfeiture under sections 609.531, 609.5311, 609.5313, and 609.5315, unless an eviction action has been commenced as provided in paragraph (b) or the right to bring an eviction action was assigned to the county attorney as provided in paragraph (b). If the right has been assigned and not previously exercised, or if the county

APPENDIX

Repealed Minnesota Statutes: 10-5230

attorney requests an assignment and the landlord makes an assignment, the county attorney may bring an eviction action rather than an action for forfeiture.

(d) The Department of Corrections Fugitive Apprehension Unit shall not seize real property for the purposes of forfeiture as described in paragraphs (a) to (c).

Subd. 2. **Additional remedies.** Nothing in subdivision 1 prevents the county attorney from proceeding under section 609.5311 whenever that section applies.

Subd. 3. **Defenses.** It is a defense against a proceeding under subdivision 1, paragraph (b), that the tenant had no knowledge or reason to know of the presence of the contraband or controlled substance or could not prevent its being brought onto the property.

It is a defense against a proceeding under subdivision 1, paragraph (c), that the landlord made every reasonable attempt to evict a tenant or to assign the county attorney the right to bring an eviction action against the tenant, or that the landlord did not receive notice of the seizure.

Subd. 4. **Limitations.** This section shall not apply if the retail value of the controlled substance is less than \$100, but this section does not subject real property to forfeiture under section 609.5311 unless the retail value of the controlled substance is: (1) \$1,000 or more; or (2) there have been two previous controlled substance seizures involving the same tenant.

609.5318 FORFEITURE OF VEHICLES USED IN DRIVE-BY SHOOTINGS.

Subdivision 1. **Motor vehicles subject to forfeiture.** (a) A motor vehicle is subject to forfeiture under this section if the prosecutor establishes by clear and convincing evidence that the vehicle was used in a violation of section 609.66, subdivision 1e. The prosecutor need not establish that any individual was convicted of the violation, but a conviction of the owner for a violation of section 609.66, subdivision 1e, creates a presumption that the vehicle was used in the violation.

(b) The Department of Corrections Fugitive Apprehension Unit shall not seize a motor vehicle for the purposes of forfeiture under paragraph (a).

Subd. 2. **Notice.** The registered owner of the vehicle must be notified of the seizure and intent to forfeit the vehicle within seven days after the seizure. Notice by certified mail to the address shown in Department of Public Safety records is deemed to be sufficient notice to the registered owner. Notice must be given in the manner required by section 609.5314, subdivision 2, paragraph (b), and must specify that a request for a judicial determination of the forfeiture must be made within 60 days following the service of the notice. If related criminal proceedings are pending, the notice must also state that a request for a judicial determination of the forfeiture must be made within 60 days following the conclusion of those proceedings.

Subd. 3. **Hearing.** (a) Within 60 days following service of a notice of seizure and forfeiture, a claimant may demand a judicial determination of the forfeiture. If a related criminal proceeding is pending, the 60-day period begins to run at the conclusion of those proceedings. The demand must be in the form of a civil complaint as provided in section 609.5314, subdivision 3, except as otherwise provided in this section.

(b) If the claimant makes a timely demand for judicial determination under this subdivision, the appropriate agency must conduct the forfeiture under subdivision 4.

Subd. 4. **Procedure.** (a) If a judicial determination of the forfeiture is requested, a separate complaint must be filed against the vehicle, stating the specific act giving rise to the forfeiture and the date, time, and place of the act. 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.

(b) If a demand for judicial determination of an administrative forfeiture is filed 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 the payment of reasonable costs, expenses, attorney fees, and towing and storage fees. 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.

Subd. 5. **Limitations.** (a) A vehicle used by a 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 is a consenting party to, or is privy to, the commission of the act giving rise to the forfeiture.

(b) A vehicle is subject to forfeiture under this section only if the registered owner was privy to the act upon which the forfeiture is based, the act occurred with the owner's knowledge or consent, or the act occurred due to the owner's gross negligence in allowing another to use the vehicle.

(c) A vehicle encumbered by a bona fide security interest is subject to the interest of the secured party unless the party had knowledge of or consented to the act upon which the forfeiture

APPENDIX

Repealed Minnesota Statutes: 10-5230

is based. A person claiming a security interest bears the burden of establishing that interest by clear and convincing evidence.

609.762 FORFEITURE OF GAMBLING DEVICES, PRIZES AND PROCEEDS.

Subdivision 1. **Forfeiture.** The following are subject to forfeiture:

- (1) devices used or intended for use, including those defined in section 349.30, subdivision 2, as a gambling device, except as authorized in sections 299L.07 and 349.11 to 349.23;
- (2) all moneys, materials, and other property used or intended for use as payment to participate in gambling or a prize or receipt for gambling;
- (3) books, records, and research products and materials, including formulas, microfilm, tapes, and data used or intended for use in gambling; and
- (4) property used or intended to be used to illegally influence the outcome of a horse race.

Subd. 2. **Seizure.** Property subject to forfeiture under subdivision 1 may be seized by any law enforcement agency upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:

- (1) the seizure is incident to an arrest or a search under a search warrant;
- (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; or
- (3) the law enforcement agency has probable cause to believe that the property was used or is intended to be used in a gambling violation and the delay occasioned by the necessity to obtain process would result in the removal, loss, or destruction of the property.

Subd. 3. **Not subject to replevin.** Property taken or detained under subdivision 2 is not subject to a replevin action, but is considered to be in the custody of the law enforcement agency subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings.

Subd. 4. **Procedures.** Property must be forfeited after a conviction for a gambling violation according to the following procedure:

- (1) a separate complaint must be filed against the property describing it, charging its use in the specified violation, and specifying the time and place of its unlawful use;
- (2) if the person charged with a gambling offense is acquitted, the court shall dismiss the complaint and order the property returned to the persons legally entitled to it; and
- (3) if after conviction the court finds the property, or any part of it, was used in violation as specified in the complaint, it shall order that the property be sold or retained by the law enforcement agency for official use. Proceeds from the sale of forfeited property may be retained for official use and shared equally between the law enforcement agency investigating the offense involved in the forfeiture and the prosecuting agency that prosecuted the offense involved in the forfeiture and handled the forfeiture proceedings.

Subd. 5. **Exception.** Property may not be seized or forfeited under this section if the owner shows to the satisfaction of the court that the owner had no notice or knowledge or reason to believe that the property was used or intended to be used in violation of this section.