

1.1 A bill for an act

1.2 relating to public safety; making numerous changes to the controlled substance
1.3 forfeiture law; requesting the legislative auditor to conduct an evaluation
1.4 on forfeiture; expanding the reporting requirements related to forfeiture;
1.5 requiring model policies on forfeiture; amending Minnesota Statutes 2008,
1.6 sections 97A.221, by adding a subdivision; 97A.223, by adding a subdivision;
1.7 97A.225, by adding a subdivision; 169A.63, by adding a subdivision; 609.531,
1.8 subdivision 6a; 609.5311, subdivision 3; 609.5314; 609.5315, subdivision 6;
1.9 609.5318, subdivision 3; 609.762, by adding a subdivision; 609.905, by adding a
1.10 subdivision; Minnesota Statutes 2009 Supplement, section 84.7741, by adding
1.11 a subdivision; proposing coding for new law in Minnesota Statutes, chapters
1.12 388; 626.

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

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

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

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

1.20 Subd. 5. **Reporting.** The enforcement officer shall report on forfeitures occurring
1.21 under this section as described in section 609.5315, subdivision 6.

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

1.24 Subd. 6. **Reporting.** The enforcement officer shall report on forfeitures occurring
1.25 under this section as described in section 609.5315, subdivision 6.

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

2.3 Subd. 10. **Reporting.** The enforcement officer shall report on forfeitures occurring
2.4 under this section as described in section 609.5315, subdivision 6.

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

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

2.9 Sec. 6. **[388.30] CONTROLLED SUBSTANCE FORFEITURE POLICIES.**

2.10 Subdivision 1. **Statewide model policy required.** The Minnesota County Attorneys
2.11 Association, in consultation with the attorney general's office and the Peace Officer
2.12 Standards and Training Board, shall develop a model policy on controlled substance
2.13 forfeitures designed to encourage the uniform application of these laws across the state.
2.14 At a minimum, the policy shall address the following: the type of training and assistance
2.15 provided to law enforcement by prosecutors; the level of involvement of prosecutors in
2.16 administrative forfeitures, including reviewing administrative forfeiture cases before the
2.17 forfeiture is finalized; situations in which forfeitures should not be pursued; and best
2.18 practices in pursuing forfeitures.

2.19 Subd. 2. **Local policies required.** The county attorney in each county shall adopt
2.20 a written policy on controlled substance forfeitures for attorneys within the office.
2.21 The policy must be identical or substantially similar to the model policy described in
2.22 subdivision 1.

2.23 Subd. 3. **Report to legislature.** By February 1, 2011, the Minnesota County
2.24 Attorneys Association and each county attorney shall adopt the policies required in
2.25 this section and the association shall forward an electronic copy of the model policy
2.26 to the chairs and ranking minority members of the senate and house of representatives
2.27 committees having jurisdiction over criminal justice and civil law policy.

2.28 **EXPIRATION.** Subdivision 3 expires on July 1, 2011.

2.29 Sec. 7. Minnesota Statutes 2008, section 609.531, subdivision 6a, is amended to read:

2.30 Subd. 6a. **Forfeiture a civil procedure; conviction results in presumption.** (a) An
2.31 action for forfeiture is a civil in rem action and is independent of any criminal prosecution,
2.32 except as provided in this subdivision and section 609.5318. The appropriate agency
2.33 handling the forfeiture ~~has the benefit of the evidentiary presumption of section 609.5314,~~

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3.1 ~~subdivision 1, but otherwise~~ bears the burden of proving the act or omission giving rise to
3.2 the forfeiture by clear and convincing evidence, except that in cases arising under section
3.3 609.5312, the designated offense may only be established by a criminal conviction.

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

3.10 Sec. 8. Minnesota Statutes 2008, section 609.5311, subdivision 3, is amended to read:

3.11 Subd. 3. **Limitations on forfeiture of certain property associated with controlled**
3.12 **substances.** (a) A conveyance device is subject to forfeiture under this section only if the
3.13 retail value of the controlled substance is ~~\$25~~ \$100 or more and the conveyance device is
3.14 associated with a felony-level controlled substance crime.

3.15 (b) Real property is subject to forfeiture under this section only if the retail value of
3.16 the controlled substance or contraband is ~~\$1,000~~ \$4,000 or more.

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

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

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

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

3.32 (g) Notwithstanding paragraphs (d), (e), and (f), property is not subject to forfeiture
3.33 based solely on the owner's or secured party's knowledge of the unlawful use or intended
3.34 use of the property if: (1) the owner or secured party took reasonable steps to terminate
3.35 use of the property by the offender; or (2) the property is real property owned by the

4.1 parent of the offender, unless the parent actively participated in, or knowingly acquiesced
4.2 to, a violation of chapter 152, or the real property constitutes proceeds derived from or
4.3 traceable to a use described in subdivision 2.

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

4.7 (i) Property is not subject to forfeiture under this section if the forfeiture would
4.8 create an undue hardship for members of the owner's immediate family.

4.9 Sec. 9. Minnesota Statutes 2008, section 609.5314, is amended to read:

4.10 **609.5314 ADMINISTRATIVE FORFEITURE OF CERTAIN PROPERTY**
4.11 **SEIZED IN CONNECTION WITH A CONTROLLED SUBSTANCES SEIZURE.**

4.12 Subdivision 1. **Property subject to administrative forfeiture; ~~presumption.~~**

4.13 (a) Subject to paragraph (b), the following are ~~presumed to be~~ subject to administrative
4.14 forfeiture under this section:

4.15 (1) all money, precious metals, and precious stones found in proximity to: controlled
4.16 substances with a retail value of \$100 or more if possession or sale of the controlled
4.17 substance would be a felony under chapter 152;

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

4.19 ~~(i) controlled substances;~~

4.20 ~~(ii) (i) forfeitable drug manufacturing or distributing equipment or devices; or~~

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

4.22 ~~(2) (3) all conveyance devices containing controlled substances with a retail value of~~
4.23 ~~\$100~~ \$400 or more if possession or sale of the controlled substance would be a felony
4.24 under chapter 152; and

4.25 ~~(3) (4) all firearms, ammunition, and firearm accessories found:~~

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

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

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

4.33 (b) The value of property forfeited under this section may not exceed \$7,500.

4.34 Forfeitures of property with values exceeding \$7,500 are governed by section 609.5311.

5.1 (c) The Department of Corrections Fugitive Apprehension Unit shall not seize items
5.2 listed in paragraph (a), clauses ~~(2)~~ (3) and ~~(3)~~ (4), for the purposes of forfeiture.

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

5.4 Subd. 2. **Administrative forfeiture procedure.** (a) Forfeiture of property described
5.5 in subdivision 1 is governed by this subdivision. When seizure occurs, or within a
5.6 ~~reasonable time~~ ten business days after that, all persons known to have an ownership,
5.7 possessory, or security interest in seized property must be notified of the seizure and the
5.8 intent to forfeit the property. In the case of a motor vehicle required to be registered under
5.9 chapter 168, notice mailed by certified mail to the address shown in Department of Public
5.10 Safety records is deemed sufficient notice to the registered owner. The notification to a
5.11 person known to have a security interest in seized property required under this paragraph
5.12 applies only to motor vehicles required to be registered under chapter 168 and only if the
5.13 security interest is listed on the vehicle's title.

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

5.16 (1) a description of the property seized;

5.17 (2) the date of seizure;

5.18 (3) notice of the right to obtain judicial review of the forfeiture and of the procedure
5.19 for obtaining that judicial review, printed in English, Hmong, Somali, and Spanish.

5.20 ~~Substantially the following language must appear conspicuously: "IF YOU DO NOT~~
5.21 ~~DEMAND JUDICIAL REVIEW EXACTLY AS PRESCRIBED IN MINNESOTA~~
5.22 ~~STATUTES, SECTION 609.5314, SUBDIVISION 3, YOU LOSE THE RIGHT TO~~
5.23 ~~A JUDICIAL DETERMINATION OF THIS FORFEITURE AND YOU LOSE ANY~~
5.24 ~~RIGHT YOU MAY HAVE TO THE ABOVE DESCRIBED PROPERTY. YOU MAY~~
5.25 ~~NOT HAVE TO PAY THE FILING FEE FOR THE DEMAND IF DETERMINED YOU~~
5.26 ~~ARE UNABLE TO AFFORD THE FEE. IF THE PROPERTY IS WORTH \$7,500 OR~~
5.27 ~~LESS, YOU MAY FILE YOUR CLAIM IN CONCILIATION COURT. YOU DO NOT~~
5.28 ~~HAVE TO PAY THE CONCILIATION COURT FILING FEE IF THE PROPERTY IS~~
5.29 ~~WORTH LESS THAN \$500."~~ The notice must be worded in plain language that is likely
5.30 to be understandable to persons with limited reading skills; and

5.31 (4) a separate detachable form designed in a manner and with sufficient space to be
5.32 easily used by the person to object to the forfeiture.

5.33 Subd. 3. **Judicial determination** Objection to forfeiture. (a) Within 60 days
5.34 following service of a notice of seizure and forfeiture under this section, a claimant may
5.35 file ~~a demand for a judicial determination of~~ an objection to the forfeiture. The objection
5.36 must identify the claimant, describe the property, and state the grounds for the objection.

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6.1 The ~~demand~~ objection must be in ~~the form of a civil complaint~~ writing and must be ~~filed~~
6.2 ~~with~~ made to the court administrator county attorney in the county in which the seizure
6.3 occurred, ~~together with proof of service of a copy of the complaint on the county attorney~~
6.4 ~~for that county, and the standard filing fee for civil actions unless the petitioner has the~~
6.5 ~~right to sue in forma pauperis under section 563.01. If the value of the seized property is~~
6.6 ~~\$7,500 or less, the claimant may file an action in conciliation court for recovery of the~~
6.7 ~~seized property. If the value of the seized property is less than \$500, the claimant does not~~
6.8 ~~have to pay the conciliation court filing fee. No responsive pleading is required of the~~
6.9 ~~county attorney and no court fees may be charged for the county attorney's appearance in~~
6.10 ~~the matter. The proceedings are governed by the Rules of Civil Procedure. The clamant~~
6.11 ~~may, but is not required to, use the detachable form described in subdivision 2, paragraph~~
6.12 ~~(b), clause (4).~~

6.13 (b) ~~The complaint must be captioned in the name of the claimant as plaintiff and~~
6.14 ~~the seized property as defendant, and must state with specificity the grounds on which~~
6.15 ~~the claimant alleges the property was improperly seized and the plaintiff's interest in the~~
6.16 ~~property seized. Notwithstanding any law to the contrary, an action for the return of~~
6.17 ~~property seized under this section may not be maintained by or on behalf of any person~~
6.18 ~~who has been served with a notice of seizure and forfeiture unless the person has complied~~
6.19 ~~with this subdivision.~~

6.20 (c) If the claimant makes a timely ~~demand for judicial determination~~ objection to
6.21 forfeiture under this subdivision, the ~~appropriate agency must conduct the forfeiture under~~
6.22 ~~section 609.531, subdivision 6a~~ county attorney, after reviewing the case, may pursue a
6.23 judicial forfeiture under section 609.5311. The limitations and defenses set forth in section
6.24 609.5311, subdivision 3, apply to the judicial determination. If the county attorney does
6.25 not initiate a forfeiture under section 609.5311 within 60 days of receiving the claimant's
6.26 written objection to the forfeiture, the appropriate agency shall return the seized property.

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

6.35 Sec. 10. Minnesota Statutes 2008, section 609.5315, subdivision 6, is amended to read:

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

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

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

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

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

7.22 Sec. 11. Minnesota Statutes 2008, section 609.5318, subdivision 3, is amended to read:

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

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

7.31 Sec. 12. Minnesota Statutes 2008, section 609.762, is amended by adding a subdivision
7.32 to read:

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

8.1 Sec. 13. Minnesota Statutes 2008, section 609.905, is amended by adding a subdivision
8.2 to read:

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

8.5 Sec. 14. [626.8475] **CONTROLLED SUBSTANCE FORFEITURE POLICIES.**

8.6 Subdivision 1. **Statewide model policy required.** The Peace Officer Standards
8.7 and Training Board, after consulting with the Minnesota County Attorneys Association,
8.8 the Minnesota Sheriffs Association, the Minnesota Chiefs of Police Association, and
8.9 the Minnesota Police and Peace Officers Association, shall develop a model policy
8.10 on controlled substance forfeitures designed to encourage the uniform application of
8.11 these laws across the state. At a minimum, the policy shall address the following: the
8.12 level of cooperation with and involvement of prosecutors in forfeiture cases, including
8.13 reviewing administrative forfeiture cases before the forfeiture is finalized; situations in
8.14 which forfeitures should not be pursued; disposition of forfeited items; and best practices
8.15 in pursuing forfeitures.

8.16 Subd. 2. **Local policies required.** The chief law enforcement officer of every
8.17 state and local law enforcement agency shall adopt and implement a written policy on
8.18 controlled substance forfeitures that is identical or substantially similar to the model
8.19 policy described in subdivision 1.

8.20 Subd. 3. **Report to legislature.** By February 1, 2011, the Peace Officer Standards
8.21 and Training Board and each chief law enforcement officer shall adopt the policies
8.22 required in this section and the board shall forward an electronic copy of the model policy
8.23 to the chairs and ranking minority members of the senate and house of representatives
8.24 committees having jurisdiction over criminal justice and civil law policy. This subdivision
8.25 expires on July 1, 2011.

8.26 Sec. 15. **LEGISLATIVE AUDITOR REPORT ON FORFEITURE.**

8.27 The Legislative Audit Commission is requested to direct the legislative auditor to
8.28 conduct a program evaluation on forfeitures in Minnesota. If feasible, the evaluation
8.29 must address all types of forfeitures and include information on the number of forfeitures
8.30 occurring; how often forfeitures are successfully challenged; the types of property
8.31 forfeited; the disposition of forfeited property; how well forfeitures achieve their
8.32 legislative purpose; and how effective the use of forfeiture is. If possible, the evaluation
8.33 must also compare Minnesota's forfeiture laws and practice with those of other states.