

## HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **1082**

03/04/2013 Authored by Allen, Holberg, Hortman, Rosenthal, Beard and others  
The bill was read for the first time and referred to the Committee on Public Safety Finance and Policy  
By motion, recalled and re-referred to the Committee on Civil Law  
03/20/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Judiciary Finance and Policy  
03/26/2014 Adoption of Report: Amended and re-referred to the Committee on Public Safety Finance and Policy  
03/28/2014 Adoption of Report: Placed on the General Register  
Read Second Time

1.1 A bill for an act  
1.2 relating to forfeiture; requiring a conviction for judicial forfeiture of property  
1.3 associated with controlled substance offenses and vehicles used in drive-by  
1.4 shootings; amending Minnesota Statutes 2012, sections 609.531, subdivision 6a;  
1.5 609.5314, subdivision 3; 609.5316, subdivision 3; 609.5318, subdivision 1.

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

1.7 Section 1. Minnesota Statutes 2012, section 609.531, subdivision 6a, is amended to read:

1.8 Subd. 6a. **Forfeiture a civil procedure; conviction results in presumption**  
1.9 **required.** (a) An action for forfeiture is a civil in rem action and is independent of any  
1.10 criminal prosecution, except as provided in this subdivision ~~and section 609.5318.~~

1.11 (b) An asset is subject to a ~~designated offense~~ forfeiture by judicial determination  
1.12 ~~under section 609.5312~~ sections 609.5311 to 609.5318 only if ~~the underlying designated~~  
1.13 ~~offense is established by proof of a criminal conviction.:~~

1.14 (1) a person is convicted of the criminal offense related to the action for forfeiture; or

1.15 (2) a person is not charged with a criminal offense under chapter 152 related to  
1.16 the action for forfeiture based in whole or in part on the person's agreement to provide  
1.17 information regarding the criminal activity of another person.

1.18 For purposes of clause (1), an admission of guilt to an offense chargeable under  
1.19 chapter 152, a sentence under section 152.152, a stay of adjudication under section  
1.20 152.18, or a referral to a diversion program for an offense chargeable under chapter 152 is  
1.21 considered a conviction.

1.22 (c) The appropriate agency handling the judicial forfeiture ~~has the benefit of the~~  
1.23 ~~evidentiary presumption of section 609.5314, subdivision 1, for forfeitures related to~~  
1.24 ~~controlled substances may introduce into evidence in the judicial forfeiture case in civil~~  
1.25 court the agreement in paragraph (b), clause (2).

(d) ~~For all other forfeitures,~~ The appropriate agency handling the judicial forfeiture bears the burden of proving the ~~act or omission~~ by clear and convincing evidence that the property is an instrument or represents the proceeds of the underlying offense.

~~(e) 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. As used in this paragraph, the alleged owner is:~~

~~(1) for forfeiture of a motor vehicle, the registered owner according to records of the Department of Public Safety;~~

~~(2) for real property, the owner of record; and~~

~~(3) for other property, the person notified by the prosecuting authority in filing the forfeiture action.~~

**EFFECTIVE DATE.** This section is effective August 1, 2014, and applies to crimes committed on or after that date.

Sec. 2. Minnesota Statutes 2012, section 609.5314, subdivision 3, is amended to read:

Subd. 3. **Judicial determination.** (a) Within 60 days following service of a notice of seizure and forfeiture under this section, a claimant may file a demand for a judicial determination of the forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the prosecuting authority 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. The claimant may serve the complaint on the prosecuting authority by any means permitted by court rules. If the value of the seized property is \$15,000 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 prosecuting authority and no court fees may be charged for the prosecuting authority's appearance in the matter. ~~The hearing must be held at the earliest practicable date, and in any event no later than 180 days following the filing of the demand by the claimant. If a related criminal proceeding is pending, the hearing shall not be held until the conclusion of the criminal proceedings.~~ The district court administrator shall schedule the hearing as soon as practicable after, and in any event no later than 90 days following, the conclusion of the criminal prosecution. The proceedings are governed by the Rules of Civil Procedure.

(b) The complaint must be captioned in the name of the claimant as plaintiff and the seized property as defendant, and must state with specificity the grounds on which the claimant alleges the property was improperly seized and the plaintiff's interest in the

property seized. Notwithstanding any law to the contrary, an action for the return of property seized under this section may not be maintained by or on behalf of any person who has been served with a notice of seizure and forfeiture unless the person has complied with this subdivision.

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

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

**EFFECTIVE DATE.** This section is effective August 1, 2014, and applies to crimes committed on or after that date.

Sec. 3. Minnesota Statutes 2012, section 609.5316, subdivision 3, is amended to read:

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.~~

**EFFECTIVE DATE.** This section is effective August 1, 2014, and applies to crimes committed on or after that date.

Sec. 4. Minnesota Statutes 2012, section 609.5318, subdivision 1, is amended to read:

4.1 Subdivision 1. **Motor vehicles subject to forfeiture.** (a) ~~A motor vehicle is subject~~  
4.2 ~~to forfeiture under this section~~ If the prosecuting authority establishes by clear and  
4.3 convincing evidence that ~~the~~ a motor vehicle was used in a violation of section 609.66,  
4.4 subdivision 1e. ~~The prosecuting authority need not establish that any individual was~~  
4.5 ~~convicted of the violation, but a conviction of the owner for a violation of section 609.66,~~  
4.6 ~~subdivision 1e, creates a presumption that the vehicle was used in the violation,~~ the vehicle  
4.7 is subject to forfeiture under this section upon a conviction for the same offense.

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

4.10 **EFFECTIVE DATE.** This section is effective August 1, 2014, and applies to crimes  
4.11 committed on or after that date.