

CHAPTER 128—S.F.No. 1240

An act relating to public safety; making changes to the DWI, off-highway vehicle, drive-by shooting, designated offense, and controlled substance forfeiture laws to provide more uniformity; raising the monetary cap on the value of certain property forfeitures that may be adjudicated in conciliation court; prohibiting forfeited property from being sold to prosecuting authorities or persons related to prosecuting authorities; clarifying the general criminal code forfeiture law, necessity of conviction, and burden of proof; amending Minnesota Statutes 2010, sections 84.7741, subdivisions 2, 3, 4, 8, 9, 10, by adding a subdivision; 169A.63, subdivisions 2, 3, 4, 8, 9, 10, by adding a subdivision; 491A.01, subdivision 3; 609.531, subdivisions 1, 6a; 609.5314, subdivision 2; 609.5315, subdivisions 1, 5, 5a, 5b; 609.5318, subdivisions 2, 3; Minnesota Statutes 2011 Supplement, section 609.5314, subdivision 3.

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

Section 1. Minnesota Statutes 2010, section 84.7741, subdivision 2, is amended to read:

Subd. 2. **Seizure.** (a) An off-highway 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 or Department of Natural Resources.

(c) When an off-highway vehicle is seized, the officer must provide a receipt to the person found in possession of the vehicle; or in the absence of any person, the officer must leave a receipt in the place where the vehicle was found, if reasonably possible.

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to seizures conducted on or after that date.

Sec. 2. Minnesota Statutes 2010, section 84.7741, subdivision 3, is amended to read:

Subd. 3. **Right to possession vests immediately; custody.** All right, title, and interest in an off-highway vehicle subject to forfeiture under this section vests in the

appropriate agency upon commission of the conduct resulting in the designated offense giving rise to the forfeiture. Any vehicle seized under this section 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 an off-highway vehicle is seized under this section, the appropriate agency ~~may~~ shall use reasonable diligence to secure the property and prevent waste and may do any of the following:

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

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to seized property in possession on or after that date.

Sec. 3. Minnesota Statutes 2010, section 84.7741, subdivision 4, is amended to read:

Subd. 4. **Bond by owner for possession.** If the owner of an off-highway 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. The forfeiture action must proceed against the security as if it were the seized vehicle. This subdivision does not apply to a vehicle being held for investigatory purposes.

Sec. 4. Minnesota Statutes 2010, section 84.7741, is amended by adding a subdivision to read:

Subd. 5a. **Petition for remission or mitigation.** Prior to the entry of a court order disposing with the forfeiture action, any person who has an interest in forfeited property may file with the prosecuting authority a petition for remission or mitigation of the forfeiture. The prosecuting authority may remit or mitigate the forfeiture upon terms and conditions the prosecuting authority deems reasonable if the prosecuting authority finds that (1) the forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law, or (2) extenuating circumstances justify the remission or mitigation of the forfeiture.

Sec. 5. Minnesota Statutes 2010, section 84.7741, subdivision 8, is amended to read:

Subd. 8. **Administrative forfeiture procedure.** (a) An off-highway vehicle used to commit a designated offense is subject to administrative forfeiture under this subdivision.

(b) Within 60 days from when an off-highway 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 an off-highway 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. Upon motion by the appropriate agency or prosecuting authority, a court may extend the time period for sending notice for a period not to exceed 90 days for good cause shown. 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 off-highway 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 the 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. This requirement does not preclude the appropriate agency from printing the notice in other languages in addition to English.

Substantially, the following language must appear conspicuously in the notice:

~~"IF YOU DO NOT DEMAND JUDICIAL REVIEW EXACTLY AS PRESCRIBED IN MINNESOTA STATUTES, SECTION 84.7741, 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."~~ "WARNING: You will automatically lose the above-described property and the right to be heard in court if you do not file a lawsuit and serve the prosecuting authority within 60 days. You may file your lawsuit in conciliation court if the property is worth \$15,000 or less; otherwise, you must file in district court. You may not have to pay a filing fee for your lawsuit if you are unable to afford the fee. You do not have to pay a conciliation court fee if your property is worth less than \$500."

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

(e) Within ~~30~~ 60 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 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 ~~\$7,500~~ \$15,000 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 within ~~30~~ 60 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. Pleadings, filings, and methods of service are governed by the Rules of Civil Procedure.

~~(f)~~ (f) 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 an off-highway 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)~~ (g) If the claimant makes a timely demand for a judicial determination under this subdivision, the forfeiture proceedings must be conducted according to subdivision 9.

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to forfeitures initiated on or after that date.

Sec. 6. Minnesota Statutes 2010, section 84.7741, subdivision 9, is amended to read:

Subd. 9. **Judicial forfeiture procedure.** (a) This subdivision governs judicial determinations of the forfeiture of an off-highway vehicle used to commit a designated offense. 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.

(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, 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~~ 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 the conclusion of 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 an off-highway 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. 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 subdivision 12.

(g) If the lawful ownership of the vehicle used in the commission of a designated offense 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 subdivision 12.

(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. 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).

Sec. 7. Minnesota Statutes 2010, section 84.7741, subdivision 10, is amended to read:

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 off-highway vehicle for official use, the agency shall make reasonable efforts to ensure that the off-highway vehicle is available for use by the agency's officers who participate in off-highway vehicle enforcement or education programs.

(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 purchasing equipment for off-highway vehicle 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.

(c) If a vehicle is sold under paragraph (a), the appropriate agency shall not sell the vehicle to: (1) an officer or employee of the agency that seized the property or to a person related to the officer or employee by blood or marriage; or (2) the prosecuting authority or any individual working in the same office or a person related to the authority or individual by blood or marriage.

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

(e) If a vehicle is forfeited administratively under this section and no demand for judicial determination is made, the appropriate agency shall provide the prosecuting authority with a copy of the forfeiture or evidence receipt, the notice of seizure and intent to forfeit, a statement of probable cause for forfeiture of the property, and a description of the property and its estimated value. Upon review and certification by the prosecuting authority that (1) the appropriate agency provided a receipt in accordance with subdivision 2, paragraph (c), (2) the appropriate agency served notice in accordance with subdivision 8, and (3) probable cause for forfeiture exists based on the officer's statement, the appropriate agency may dispose of the property in any of the ways listed in this subdivision.

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to forfeitures initiated on or after that date.

Sec. 8. Minnesota Statutes 2010, section 169A.63, subdivision 2, is amended to read:

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.

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

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to seizures conducted on or after that date.

Sec. 9. Minnesota Statutes 2010, section 169A.63, subdivision 3, is amended to read:

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 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~~ shall use reasonable diligence to secure the property and prevent waste and may do any of the following:

(1) place the vehicle under seal;

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

(3) place a disabling device on the vehicle, ~~and~~

~~(4) take other steps reasonable and necessary to secure the vehicle and prevent waste.~~

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to seized property in possession on or after that date.

Sec. 10. Minnesota Statutes 2010, section 169A.63, subdivision 4, is amended to read:

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. This subdivision does not apply to a vehicle being held for investigatory purposes.

Sec. 11. Minnesota Statutes 2010, section 169A.63, is amended by adding a subdivision to read:

Subd. 5a. **Petition for remission or mitigation.** Prior to the entry of a court order disposing with the forfeiture action, any person who has an interest in forfeited property may file with the prosecuting authority a petition for remission or mitigation of the forfeiture. The prosecuting authority may remit or mitigate the forfeiture upon terms and conditions the prosecuting authority deems reasonable if the prosecuting authority finds that (1) the forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law, or (2) extenuating circumstances justify the remission or mitigation of the forfeiture.

Sec. 12. Minnesota Statutes 2010, section 169A.63, subdivision 8, is amended to read:

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) Within 60 days from 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. Upon motion by the appropriate agency or prosecuting authority, a court may extend the time period for sending notice for a period not to exceed 90 days for good cause shown. 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. This requirement does not preclude the appropriate agency from printing the notice in other languages in addition to English.

Substantially the following language must appear conspicuously in the notice:

~~"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."~~ "WARNING: You will automatically lose the above-described property and the right to be heard in court if you do not file a lawsuit and serve the prosecuting authority within 60 days. You may file your lawsuit in conciliation court if the property is worth \$15,000 or less; otherwise, you must file in district court. You may not have to pay a filing fee for your lawsuit if you are unable to afford the fee. You do not have to pay a conciliation court fee if your property is worth less than \$500."

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

(e) Within ~~30~~ 60 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. The claimant may serve the complaint by any means permitted by court rules. If the value of the seized property is ~~\$7,500~~ \$15,000 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~~ 60 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)~~ (f) 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)~~ (g) 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.

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to forfeitures initiated on or after that date.

Sec. 13. Minnesota Statutes 2010, section 169A.63, subdivision 9, is amended to read:

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.

(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 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 the conclusion of 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).

Sec. 14. Minnesota Statutes 2010, section 169A.63, subdivision 10, is amended to read:

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.

(c) If a vehicle is sold under paragraph (a), the appropriate agency shall not sell the vehicle to: (1) an officer or employee of the agency that seized the property or to a person related to the officer or employee by blood or marriage; or (2) the prosecuting authority or any individual working in the same office or a person related to the authority or individual by blood or marriage.

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

(e) If a vehicle is forfeited administratively under this section and no demand for judicial determination is made, the appropriate agency shall provide the prosecuting authority with a copy of the forfeiture or evidence receipt, the notice of seizure and intent to forfeit, a statement of probable cause for forfeiture of the property, and a description of the property and its estimated value. Upon review and certification by the prosecuting authority that (1) the appropriate agency provided a receipt in accordance with subdivision 2, paragraph (c), (2) the appropriate agency served notice in accordance with subdivision 8, and (3) probable cause for forfeiture exists based on the officer's statement, the appropriate agency may dispose of the property in any of the ways listed in this subdivision.

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to forfeitures initiated on or after that date.

Sec. 15. Minnesota Statutes 2010, section 491A.01, subdivision 3, is amended to read:

Subd. 3. **Jurisdiction; general.** (a) Except as provided in subdivisions 4 and 5, the conciliation court has jurisdiction to hear, conciliate, try, and determine civil claims if the amount of money or property that is the subject matter of the claim does not exceed: (1) \$7,500; (2) \$4,000, if the claim involves a consumer credit transaction; or (3) \$15,000, if the claim involves money or personal property subject to forfeiture under section 84.7741, 169A.63, 609.5311, 609.5312, 609.5314, or 609.5318. "Consumer credit transaction" means a sale of personal property, or a loan arranged to facilitate the purchase of personal property, in which:

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

(2) the buyer is a natural person;

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

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

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

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

Sec. 16. Minnesota Statutes 2010, section 609.531, subdivision 1, is amended to read:

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, a city, metropolitan transit, or airport police department; or a multijurisdictional entity established under section 299A.642 or 299A.681.

(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.

(h) "Prosecuting authority" means the attorney who is responsible for prosecuting an offense that is the basis for a forfeiture under sections 609.531 to 609.5318.

Sec. 17. Minnesota Statutes 2010, section 609.531, subdivision 6a, is amended to read:

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.

(b) An asset is subject to a designated offense forfeiture under section 609.5312 only if the underlying designated offense is established by proof of a criminal conviction.

(c) 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~~ for forfeitures related to controlled substances.

(d) For all other forfeitures, the appropriate agency handling the forfeiture bears the burden of proving the act or omission by clear and convincing evidence.

~~(b)~~ (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 alleged owner~~ is the registered owner according to records of the Department of Public Safety;

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

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

EFFECTIVE DATE. This section is effective July 1, 2012, and applies to forfeitures initiated on or after that date.

Sec. 18. Minnesota Statutes 2010, section 609.5314, subdivision 2, is amended to read:

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

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

(1) a description of the property seized;

(2) the date of seizure; 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, Somali, and Spanish~~. This requirement does not preclude the appropriate agency from printing the notice in other languages in addition to English.

Substantially the following language must appear conspicuously in the notice:

~~"If you do not demand judicial review exactly as prescribed in Minnesota Statutes, section 609.5314, subdivision 3, you lose the right to a judicial determination of this forfeiture and you lose any right you may have to the above described property. You may~~

~~not have to pay the filing fee for the demand if determined you are unable to afford the fee. If the property is worth \$15,000 or less, you may file your claim in conciliation court. You do not have to pay the conciliation court filing fee if the property is worth less than \$500."~~ "WARNING: You will automatically lose the above-described property and the right to be heard in court if you do not file a lawsuit and serve the prosecuting authority within 60 days. You may file your lawsuit in conciliation court if the property is worth \$15,000 or less; otherwise, you must file in district court. You may not have to pay a filing fee for your lawsuit if you are unable to afford the fee. You do not have to pay a conciliation court fee if your property is worth less than \$500."

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

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to forfeitures initiated on or after that date.

Sec. 19. Minnesota Statutes 2011 Supplement, section 609.5314, subdivision 3, is amended to read:

Subd. 3. **Judicial determination.** (a) Within 60 days following service of a notice of seizure and forfeiture under this section, a claimant may file a demand for a judicial determination of the forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the ~~county attorney~~ 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 ~~county attorney~~ prosecuting authority and no court fees may be charged for the ~~county attorney's~~ 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 ~~adjudication in~~ 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.

Sec. 20. Minnesota Statutes 2010, section 609.5315, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

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

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

(c) If property is sold under paragraph (a), the appropriate agency shall not sell property to: (1) an officer or employee of the agency that seized the property or to a person related to the officer or employee by blood or marriage; or (2) the prosecuting authority or any individual working in the same office or a person related to the authority or individual by blood or marriage.

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

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to forfeitures initiated on or after that date.

Sec. 21. Minnesota Statutes 2010, section 609.5315, subdivision 5, is amended to read:

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 authority 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.

Sec. 22. Minnesota Statutes 2010, section 609.5315, subdivision 5a, is amended to read:

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 authority 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.

Sec. 23. Minnesota Statutes 2010, section 609.5315, subdivision 5b, is amended to read:

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~~ authority 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.

Sec. 24. Minnesota Statutes 2010, section 609.5318, subdivision 2, is amended to read:

Subd. 2. **Notice.** (a) 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.~~

(b) The notice must be in writing and:

- (1) contain a description of the property seized;
- (2) contain the date of seizure; and
- (3) be printed in English. This requirement does not preclude the appropriate agency from printing the notice in other languages in addition to English.

(c) Substantially, the following language must appear conspicuously in the notice:

"WARNING: You will automatically lose the above-described property and the right to be heard in court if you do not file a lawsuit and serve the prosecuting authority within 60 days. You may file your lawsuit in conciliation court if the property is worth \$15,000 or less; otherwise, you must file in district court. You may not have to pay a filing fee for your lawsuit if you are unable to afford the fee. You do not have to pay a conciliation court fee if your property is worth less than \$500."

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to forfeitures initiated on or after that date.

Sec. 25. Minnesota Statutes 2010, section 609.5318, subdivision 3, is amended to read:

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.

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

Sec. 26. **REVISOR'S INSTRUCTION.**

(a) The revisor of statutes shall change the terms "county attorney" and "prosecutor" to "prosecuting authority" wherever they appear in Minnesota Statutes, sections 609.531 to 609.5318. The revisor shall also make grammatical changes related to the changes in terms.

(b) Paragraph (a) does not apply to references to "Minnesota County Attorneys Association" in Minnesota Statutes, section 609.531, subdivision 8.

Presented to the governor March 5, 2012

Signed by the governor March 8, 2012, 9:39 a.m.