

Subject Civil asset forfeiture

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Overview

Forfeiture under Minnesota law follows one of two tracks: judicial forfeiture or administrative forfeiture. Under judicial forfeiture, the prosecuting authority must institute a civil proceeding to forfeit property. Under administrative forfeiture, the law enforcement agency seizing property provides the owner with a notice that the property was seized and the owner has the burden of challenging the forfeiture. Administrative forfeiture applies to specific crimes including DWI offenses and controlled substance violations.

This bill limits the types of offenses that can result in a DWI forfeiture, limits the types of property subject to forfeiture under the controlled substances provisions, establishes a process for an individual to present an innocent owner claim, reduces the burden on individuals claiming to be innocent owners, requires law enforcement agencies and prosecuting authorities to report on each forfeiture, requires those entities to report on the use of money obtained through forfeiture, and directs the state auditor to conduct a study on the efficacy of both forfeiture and the ignition interlock program on reducing recidivism in DWI offenders.

Summary

Section	Description
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1	Definitions.
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Defines “asserting person” as a person, other than the driver, asserting an ownership interest in a vehicle that has been seized or restrained under the law governing forfeiture of certain vehicles following a DWI violation. Amends the definition of “designated offense” to include only a first-degree DWI or a third or subsequent DWI offense within ten years.

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2	Limitations on vehicle forfeiture. Strikes the paragraph making a vehicle subject to forfeiture if the driver fails to appear for a scheduled court appearance with respect to a designated offense and fails to voluntarily surrender within 48 hours of that required appearance. Strikes the existing provisions related to innocent owners which are replaced by section 3 of the bill.
3	Innocent owner. (a) Permits a person, other than the driver of a vehicle that has been seized, to assert a claim to being an innocent owner by notifying the prosecuting authority in writing within 60 days of receiving the notice of seizure. (b) Permits a prosecuting authority to release a vehicle to the asserting person. Requires a prosecutor to file a complaint within 30 days if the prosecutor chooses to proceed with the forfeiture. The complaint must be filed with the district court. (c) Requires the prosecutor to serve the complaint on the asserting person and any other registered owner. Allows service to be made by registered mail. (d) Directs the court to hold a hearing on the innocent owner claim within 30 days, to the extent possible, and permits multiple claims to be combined into one hearing. (e) Establishes burdens on the prosecuting authority to prove by a preponderance of the evidence that the seizure was incident to a lawful arrest or search and to certify that the prosecuting authority has filed, or intends to file, charges against the driver. (f) Establishes burdens on the asserting person to prove by a preponderance of the evidence that the person has an actual ownership interest in the vehicle and either did not know that the vehicle would be operated in a manner contrary to law or took steps to prevent the illegal use. (g) Directs the court to order that the vehicle remains subject to forfeiture if the state meets both its burdens and the asserting person fails to meet either burden. (h) Directs the court to order that a vehicle is not subject to forfeiture if the state failed to meet either of its burdens, the asserting person met both burdens, or both of those situations apply. (i) Requires an innocent owner to pay the reasonable costs of the towing, seizure, and storage of the vehicle incurred before the innocent owner provided

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- notice to the prosecuting authority and any reasonable costs of storage incurred if more than two weeks pass after the court orders that the vehicle is not subject to forfeiture.
- 4 **Administrative forfeiture procedure.**
Requires forfeiture notices to contain a warning to person, other than the driver, who may have an ownership interest in a vehicle that has been seized describing the manner in which the person may assert an innocent owner claim. Makes a conforming change consistent with DWI forfeitures being limited to vehicles. Eliminates the court filing fee for a driver who contests a forfeiture.
- 5 **Judicial forfeiture procedure.**
Makes conforming changes to reference the new innocent owner subdivision and remove language related to returning filing fees which were removed in another section of the bill.
- 6 **Disposition of forfeited vehicle.**
Identifies the specific ways in which a law enforcement agency or prosecuting authority can use money obtained through forfeiture.
- 7 **Exception.**
Provides that a forfeiture proceeding in relation to a DWI offense is stayed if the driver becomes a program participant in the ignition interlock program provided the driver either (1) committed a designated offense other than a first-degree DWI, or (2) is accepted into a treatment court dedicated to changing the behavior of alcohol- and other drug-dependent offenders arrested for a DWI offense. Clarifies that a person's vehicle may be subject to forfeiture if the person operates any vehicle without an interlock device when the person's driver's license requires such a device. Current law does not include a reference to the driver's license requirement.
Provides that a person's vehicle is subject to forfeiture if forfeiture was stayed after the person entered treatment court and the driver ceases to be a participant in treatment court for any reason. Replaces the option of posting a bond in lieu of a vehicle being forfeit with the option of surrendering a title. Practitioners have indicated that bonds were difficult or impossible to obtain.
- 8 **Subsequent unlawful use of seized vehicle; immunity.**
Provides that appropriate agencies (a defined term including law enforcement agencies), prosecuting authorities, and their employees are immune from liability for any harm caused by a driver to whom a vehicle is returned if they return a vehicle in good faith and within the course and scope of employment.

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9	Definitions. Defines “asserting person” for purposes of the forfeiture statutes in chapter 609 to mean a person, other than the driver alleged to have used a vehicle in the transportation or exchange of a controlled substance, who claims an ownership interest in a vehicle that has been seized. Makes a technical change to recognize the correct name of the Three Rivers Park District Department of Public Safety.
10	Transfer of forfeitable property to federal government. Prohibits the transfer of property subject to forfeiture under Minnesota’s forfeiture laws to a federal agency if such a transfer would circumvent state law.
11	Associated property. Provides that personal property and real property, other than homestead property exempt from seizure, is subject to forfeiture if it is an instrument or represents the proceeds of a controlled substance offense. The current statute permits forfeiture of homestead property, but the Minnesota Supreme Court found such forfeiture unconstitutional in <i>Torgelson v. Real Property</i> , 749 N.W.2d 24 (Minn. 2008). Provides that money is the property of an appropriate agency and may be recovered if that money was provided by the agency and marked or recorded as “buy money.”
12	Limitations on forfeiture of certain property associated with controlled substances. Provides that a vehicle is subject to forfeiture if it was used in the transportation or exchange of controlled substances intended for distribution or sale and the controlled substances had a value of at least \$100. Also states that money is subject to forfeiture only if it has a value of at least \$1,500 or there is probable cause to believe that it was exchanged for the purchase of a controlled substance. States that nothing in the limitation prevents the seizure of property for use as evidence in a trial or for any other lawful purpose.
13	Records; proceeds. Makes a conforming change consistent with section 10 of the bill, striking the paragraph providing that certain property, real and personal, is subject to forfeiture.
14	Property subject to administrative forfeiture. Establishes that money totaling \$1,500 and any precious metals or stones are subject to forfeiture if there is probable cause to believe that they represent the proceeds of a controlled substance offense. Further establishes that all money found in proximity to controlled substances is subject to forfeiture when there is probable cause to believe that the money was exchanged for the purchase of a controlled substance, and that any vehicle containing controlled substances with a value of \$100 or more is subject to forfeiture if there is probable cause to believe that the vehicle was used in the transportation or exchange of a controlled substance intended for distribution or

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	sale. Establishes that money is the property of an appropriate agency and may be recovered if it is properly documented or marked and used as "buy money."
15	Innocent owner. Establishes an innocent owner proceeding that is essentially identical to the proceeding described in section 3 of the bill. Instead of requiring that the prosecutor has filed, or intends to file, appropriate DWI charges, this section requires that the prosecutor establish, by a preponderance of evidence, that the vehicle was used in the transportation or exchange of a controlled substance intended for distribution or sale.
16	Administrative forfeiture procedure. Requires forfeiture notices to contain a warning to a person, other than the person arrested when the property was seized, who may have an ownership interest in the property describing the manner in which the person may assert an innocent owner claim.
17	Judicial determination. Removes the requirement that a person challenging forfeiture pay a court filing fee and makes a conforming change to remove language related to the return of filing fees.
18	Distribution of money. Identifies the specific ways in which a law enforcement agency or prosecuting authority can use money obtained through forfeiture.
19	Disposition of certain forfeited proceeds; trafficking of persons; report required. Strikes the report on forfeiture required under current law. The bill establishes a new mandatory report.
20	Reporting requirement. Requires appropriate agencies and prosecuting authorities to provide the state auditor with information in 15 categories about each forfeiture occurring under the authority of the agency or prosecutor. Requires appropriate agencies and prosecuting authorities to provide the state auditor with a written record of the total amount of money or proceeds from the sale of forfeited property the agency or prosecutor obtained and the manner in which the money and proceeds were used. Requires the reports of specific forfeitures to be made quarterly and reports of the use of money or proceeds to be made annually. Directs the state auditor to report summary data, disaggregated by appropriate agency and prosecuting authority, to the legislature and to make the report available on its website. Permits the state

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- auditor to perform an audit of an appropriate agency or prosecuting authority and requires any final audit to be provided to the legislature.
- 21 **Recidivism study.**
Directs the legislative auditor to conduct an audit on the efficacy of forfeiture and ignition interlock in DWI cases. The report should identify the financial impact of the programs, the efficacy in reducing recidivism, and any impact on public safety. The auditor must provide the final report to the legislature by January 15, 2025.
- 22 **Appropriation; state auditor.**
Appropriates an unspecified amount in fiscal year 2022 from the general fund to the state auditor for the audit, data collection, and reporting requirements in section 18. Provides for an unspecified, ongoing appropriation to the state auditor.
- 23 **Repealer.**
Repeals section 609.5317 which governs the seizure of residential rental property.



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