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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH  
SESSION

HOUSE FILE No. **2610**

February 4, 2010

Authored by Mullery

The bill was read for the first time and referred to the Committee on Civil Justice

March 11, 2010

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Public Safety Policy and Oversight

March 17, 2010

Committee Recommendation and Adoption of Report:

To Pass

Read Second Time

1.1 A bill for an act  
1.2 relating to forfeiture; requiring officers to give forfeiture receipts upon seizure  
1.3 of property; implementing timelines for forfeiture notice and hearings;  
1.4 placing a cap on the value of property that may be forfeited administratively;  
1.5 authorizing petitions for remission and mitigation of seized property; requiring  
1.6 certification by prosecutor before property may be forfeited administratively;  
1.7 requiring forfeiture proceeds to be deposited in special trust accounts; directing  
1.8 Department of Public Safety to establish model policy related to forfeiture  
1.9 proceedings; requiring law enforcement to secure seized property; prohibiting  
1.10 sale of forfeited property to law enforcement officers, employees, and family  
1.11 members; amending Minnesota Statutes 2008, sections 609.531, subdivisions  
1.12 4, 5, by adding subdivisions; 609.5311, subdivision 3; 609.5313; 609.5314,  
1.13 subdivisions 2, 3; 609.5315, subdivisions 1, 2.

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

1.15 Section 1. Minnesota Statutes 2008, section 609.531, subdivision 4, is amended to read:

1.16 Subd. 4. **Seizure.** (a) Property subject to forfeiture under sections 609.531 to  
1.17 609.5318 may be seized by the appropriate agency upon process issued by any court  
1.18 having jurisdiction over the property. Property may be seized without process if:

- 1.19 (1) the seizure is incident to a lawful arrest or a lawful search;
- 1.20 (2) the property subject to seizure has been the subject of a prior judgment in favor
- 1.21 of the state in a criminal injunction or forfeiture proceeding under this chapter; or
- 1.22 (3) the appropriate agency has probable cause to believe that the delay occasioned
- 1.23 by the necessity to obtain process would result in the removal or destruction of the
- 1.24 property and that:

- 1.25 (i) the property was used or is intended to be used in commission of a felony; or
- 1.26 (ii) the property is dangerous to health or safety.

1.27 If property is seized without process under item (i), the county attorney must institute  
1.28 a forfeiture action under section 609.5313 as soon as is reasonably possible.

2.1 (b) When property is seized, the officer must provide a receipt to the person found in  
2.2 possession of the property; or in the absence of any person, the officer must leave a receipt  
2.3 in the place where the property was found, if reasonably possible.

2.4 **EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to  
2.5 seizures conducted on or after that date.

2.6 Sec. 2. Minnesota Statutes 2008, section 609.531, subdivision 5, is amended to read:

2.7 Subd. 5. **Right to possession vests immediately; custody of seized property.**

2.8 All right, title, and interest in property subject to forfeiture under sections 609.531 to  
2.9 609.5318 vests in the appropriate agency upon commission of the act or omission giving  
2.10 rise to the forfeiture. Any property seized under sections 609.531 to 609.5318 is not  
2.11 subject to replevin, but is deemed to be in the custody of the appropriate agency subject to  
2.12 the orders and decrees of the court having jurisdiction over the forfeiture proceedings.

2.13 When property is so seized, the appropriate agency shall use reasonable diligence to  
2.14 secure the property and prevent waste and may do any of the following:

2.15 (1) place the property under seal;

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

2.17 (3) in the case of controlled substances, require the state Board of Pharmacy to  
2.18 take custody of the property and remove it to an appropriate location for disposition in  
2.19 accordance with law; ~~and,~~

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

2.22 **EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to  
2.23 seizures conducted on or after that date.

2.24 Sec. 3. Minnesota Statutes 2008, section 609.531, is amended by adding a subdivision  
2.25 to read:

2.26 Subd. 7. **Petition for remission or mitigation.** Prior to the entry of a court order  
2.27 disposing with the forfeiture action, any person who has an interest in forfeited property  
2.28 may file with the county attorney a petition for remission or mitigation of the forfeiture.  
2.29 The county attorney may remit or mitigate the forfeiture upon terms and conditions the  
2.30 county attorney deems reasonable if the county attorney finds that: (1) the forfeiture was  
2.31 incurred without willful negligence or without any intention on the part of the petitioner to  
2.32 violate the law; or (2) extenuating circumstances justify the remission or mitigation of  
2.33 the forfeiture.

3.1 **EFFECTIVE DATE.** This section is effective July 1, 2010.

3.2 Sec. 4. Minnesota Statutes 2008, section 609.531, is amended by adding a subdivision  
3.3 to read:

3.4 Subd. 8. **Forfeiture policies; statewide model policy required.** (a) By December  
3.5 1, 2010, the Peace Officer Standards and Training Board, after consulting with the  
3.6 Minnesota County Attorneys Association, the Minnesota Sheriffs' Association, the  
3.7 Minnesota Chiefs of Police Association, and the Minnesota Police and Peace Officers  
3.8 Association, shall develop a model policy that articulates best practices for forfeiture  
3.9 and is designed to encourage the uniform application of forfeiture laws statewide. At a  
3.10 minimum, the policy shall address the following:

3.11 (1) best practices in pursuing, seizing, and tracking forfeitures;

3.12 (2) type and frequency of training for law enforcement on forfeiture laws; and

3.13 (3) situations in which forfeitures should not be pursued.

3.14 (b) By December 1, 2010, the Minnesota County Attorneys Association, after  
3.15 consulting with the Peace Officer Standards and Training Board, the Minnesota Sheriffs'  
3.16 Association, the Minnesota Chiefs of Police Association, and the Minnesota Police and  
3.17 Peace Officers Association, shall develop a model policy that articulates best practices  
3.18 for forfeiture and is designed to encourage the uniform application of forfeiture laws  
3.19 statewide. At a minimum, the policy shall address the following:

3.20 (1) statutory role of prosecutors in forfeiture procedures;

3.21 (2) best practices for timely and fair resolution of forfeiture cases;

3.22 (3) type and frequency of training for prosecutors on forfeiture laws; and

3.23 (4) situations in which forfeitures should not be pursued.

3.24 (c) By March 1, 2011, the chief law enforcement officer of every state and local law  
3.25 enforcement agency and every prosecution office in the state shall adopt and implement a  
3.26 written policy on forfeiture that is identical or substantially similar to the model policies  
3.27 developed under paragraphs (a) and (b). The written policy shall be made available to  
3.28 the public upon request.

3.29 **EFFECTIVE DATE.** This section is effective July 1, 2010.

3.30 Sec. 5. Minnesota Statutes 2008, section 609.5311, subdivision 3, is amended to read:

3.31 **Subd. 3. Limitations on forfeiture of certain property associated with controlled**  
3.32 **substances.** (a) A conveyance device is subject to forfeiture under this section only if the  
3.33 retail value of the controlled substance is ~~\$25~~ \$50 or more and the conveyance device is  
3.34 associated with a felony-level controlled substance crime.

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

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

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

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

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

4.18 (g) Notwithstanding paragraphs (d), (e), and (f), property is not subject to forfeiture  
4.19 based solely on the owner's or secured party's knowledge of the unlawful use or intended  
4.20 use of the property if: (1) the owner or secured party took reasonable steps to terminate  
4.21 use of the property by the offender; or (2) the property is real property owned by the  
4.22 parent of the offender, unless the parent actively participated in, or knowingly acquiesced  
4.23 to, a violation of chapter 152, or the real property constitutes proceeds derived from or  
4.24 traceable to a use described in subdivision 2.

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

4.28 **EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to  
4.29 offenses committed on or after that date.

4.30 Sec. 6. Minnesota Statutes 2008, section 609.5313, is amended to read:

4.31 **609.5313 FORFEITURE BY JUDICIAL ACTION; PROCEDURE.**

4.32 (a) The forfeiture of property under sections 609.5311 and 609.5312 is governed  
4.33 by this section. A separate complaint must be filed against the property stating the act,  
4.34 omission, or occurrence giving rise to the forfeiture and the date and place of the act or

5.1 occurrence. Within 90 days from when the seizure occurs, the county attorney shall notify  
5.2 the owner or possessor of the property of the action, if known or readily ascertainable.  
5.3 The action must be captioned in the name of the county attorney or the county attorney's  
5.4 designee as plaintiff and the property as defendant. Upon motion by the county attorney, a  
5.5 court may extend the time period for sending notice for a period not to exceed 90 days for  
5.6 good cause shown.

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

5.14 **EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to  
5.15 offenses committed on or after that date.

5.16 Sec. 7. Minnesota Statutes 2008, section 609.5314, subdivision 2, is amended to read:

5.17 Subd. 2. **Administrative forfeiture procedure.** (a) Forfeiture of property described  
5.18 in subdivision 1 that does not exceed \$75,000 in value is governed by this subdivision.  
5.19 Within 90 days from when seizure occurs, ~~or within a reasonable time after that~~, all  
5.20 persons known to have an ownership, possessory, or security interest in seized property  
5.21 must be notified of the seizure and the intent to forfeit the property. In the case of a motor  
5.22 vehicle required to be registered under chapter 168, notice mailed by certified mail to the  
5.23 address shown in Department of Public Safety records is deemed sufficient notice to the  
5.24 registered owner. The notification to a person known to have a security interest in seized  
5.25 property required under this paragraph applies only to motor vehicles required to be  
5.26 registered under chapter 168 and only if the security interest is listed on the vehicle's title.  
5.27 Upon motion by the appropriate agency or county attorney, a court may extend the time  
5.28 period for sending notice for a period not to exceed 90 days for good cause shown.

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

5.31 (1) a description of the property seized;

5.32 (2) the date of seizure;

5.33 (3) notice of the right to obtain judicial review of the forfeiture and of the procedure  
5.34 for obtaining that judicial review, printed in English, Hmong, and Spanish. Substantially  
5.35 the following language must appear conspicuously: "IF YOU DO NOT DEMAND

6.1 JUDICIAL REVIEW EXACTLY AS PRESCRIBED IN MINNESOTA STATUTES,  
6.2 SECTION 609.5314, SUBDIVISION 3, YOU LOSE THE RIGHT TO A JUDICIAL  
6.3 DETERMINATION OF THIS FORFEITURE AND YOU LOSE ANY RIGHT YOU  
6.4 MAY HAVE TO THE ABOVE DESCRIBED PROPERTY. YOU MAY NOT HAVE TO  
6.5 PAY THE FILING FEE FOR THE DEMAND IF DETERMINED YOU ARE UNABLE  
6.6 TO AFFORD THE FEE. IF THE PROPERTY IS WORTH \$7,500 OR LESS, YOU MAY  
6.7 FILE YOUR CLAIM IN CONCILIATION COURT. YOU DO NOT HAVE TO PAY  
6.8 THE CONCILIATION COURT FILING FEE IF THE PROPERTY IS WORTH LESS  
6.9 THAN \$500."

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

6.17 **EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to  
6.18 offenses committed on or after that date.

6.19 Sec. 8. Minnesota Statutes 2008, section 609.5314, subdivision 3, is amended to read:

6.20 Subd. 3. **Judicial determination.** (a) Within 60 days following service of a notice  
6.21 of seizure and forfeiture under this section, a claimant may file a demand for a judicial  
6.22 determination of the forfeiture. The demand must be in the form of a civil complaint and  
6.23 must be filed with the court administrator in the county in which the seizure occurred,  
6.24 together with proof of service of a copy of the complaint on the county attorney for that  
6.25 county, and the standard filing fee for civil actions unless the petitioner has the right to  
6.26 sue in forma pauperis under section 563.01. If the value of the seized property is \$7,500  
6.27 or less, the claimant may file an action in conciliation court for recovery of the seized  
6.28 property. If the value of the seized property is less than \$500, the claimant does not  
6.29 have to pay the conciliation court filing fee. No responsive pleading is required of the  
6.30 county attorney and no court fees may be charged for the county attorney's appearance  
6.31 in the matter. The hearing must be held at the earliest practicable date, and in any event  
6.32 no later than 180 days following the filing of the demand by the claimant. If a related  
6.33 criminal proceeding is pending, the hearing shall not be held until the conclusion of the  
6.34 criminal proceedings. The district court administrator shall schedule the hearing as

7.1 soon as practicable after adjudication in the criminal prosecution. The proceedings are  
7.2 governed by the Rules of Civil Procedure.

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

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

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

7.21 **EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to  
7.22 offenses committed on or after that date.

7.23 Sec. 9. Minnesota Statutes 2008, section 609.5315, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

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

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

8.11 (c) If property is sold under paragraph (a), the appropriate agency shall not sell  
8.12 property to an officer or employee of the agency that seized the property or to a person  
8.13 related to the officer or employee by blood or marriage.

8.14 **EFFECTIVE DATE.** This section is effective July 1, 2010.

8.15 Sec. 10. Minnesota Statutes 2008, section 609.5315, subdivision 2, is amended to read:

8.16 Subd. 2. **Disposition of administratively forfeited property.** If property is  
8.17 forfeited administratively under section 609.5314 or 609.5318 and no demand for judicial  
8.18 determination is made, the appropriate agency shall provide the county attorney with a  
8.19 copy of the forfeiture or evidence receipt, the notice of seizure and intent to forfeit, a  
8.20 statement of probable cause for forfeiture of the property, and a description of the property  
8.21 and its estimated value. Upon review and certification by the county attorney that (1) the  
8.22 appropriate agency provided a receipt in accordance with section 609.531, subdivision 4,  
8.23 or 626.16; (2) the appropriate agency served notice in accordance with section 609.5314,  
8.24 subdivision 2, or 609.5318, subdivision 2; and (3) probable cause for forfeiture exists  
8.25 based on the officer's statement, the appropriate agency may dispose of the property  
8.26 in any of the ways listed in subdivision 1.

8.27 **EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to  
8.28 offenses committed on or after that date.