

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 874

(SENATE AUTHORS: THOMPSON, Latz, Hall, Torres Ray and Limmer)

DATE	D-PG	OFFICIAL STATUS
02/28/2013	448	Introduction and first reading Referred to Judiciary
03/04/2013	486	Author added Hall
03/07/2013	691	Author added Torres Ray
03/11/2013	781	Author added Limmer
03/18/2013		Comm report: To pass as amended and re-refer to Finance

A bill for an act

1.1 relating to forfeiture; requiring a conviction for judicial forfeiture of property
 1.2 associated with controlled substance offenses and vehicles used in drive-by
 1.3 shootings; eliminating presumption for administrative forfeiture; amending
 1.4 Minnesota Statutes 2012, sections 609.531, subdivision 6a; 609.5313; 609.5314,
 1.5 subdivisions 2, 3; 609.5316, subdivision 3; 609.5318, subdivision 1; repealing
 1.6 Minnesota Statutes 2012, section 609.5314, subdivision 1.
 1.7

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

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

1.10 Subd. 6a. **Forfeiture a civil procedure; conviction results in presumption**

1.11 **required.** (a) An action for forfeiture is a civil in rem action and is independent of any
 1.12 criminal prosecution, except as provided in this subdivision ~~and section 609.5318.~~

1.13 (b) An asset is subject to a ~~designated offense~~ forfeiture by judicial determination
 1.14 ~~under section 609.5312~~ sections 609.5311 to 609.5318 only if the underlying ~~designated~~
 1.15 offense is established by proof of a criminal conviction. The appropriate agency handling
 1.16 the judicial forfeiture may introduce into evidence in the judicial forfeiture case in civil
 1.17 court the sole fact of a conviction in criminal court.

1.18 (c) ~~The appropriate agency handling the forfeiture has the benefit of the evidentiary~~
 1.19 ~~presumption of section 609.5314, subdivision 1, for forfeitures related to controlled~~
 1.20 ~~substances.~~

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

2.1 ~~(e) A court may not issue an order of forfeiture under section 609.5311 while the~~
 2.2 ~~alleged owner of the property is in custody and related criminal proceedings are pending~~
 2.3 ~~against the alleged owner. As used in this paragraph, the alleged owner is:~~

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

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

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

2.9 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to crimes
 2.10 committed on or after that date.

2.11 Sec. 2. Minnesota Statutes 2012, section 609.5313, is amended to read:

2.12 **609.5313 FORFEITURE BY JUDICIAL ACTION; PROCEDURE.**

2.13 (a) Except as provided in section 609.5314, the forfeiture of property under sections
 2.14 609.5311 and 609.5312 is governed by this section. A separate complaint must be filed
 2.15 against the property stating the act, omission, or occurrence giving rise to the forfeiture
 2.16 and the date and place of the act or occurrence. Within 60 days from when the seizure
 2.17 occurs, the prosecuting authority shall notify the owner or possessor of the property of
 2.18 the action, if known or readily ascertainable. The action must be captioned in the name
 2.19 of the prosecuting authority or the prosecuting authority's designee as plaintiff and the
 2.20 property as defendant. Upon motion by the prosecuting authority, a court may extend the
 2.21 time period for sending notice for a period not to exceed 90 days for good cause shown.

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

2.29 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to crimes
 2.30 committed on or after that date.

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

2.32 Subd. 2. **Administrative forfeiture procedure.** (a) Forfeiture of property described
 2.33 in ~~subdivision 1~~ section 609.5311 that does not exceed \$50,000 in value ~~is governed by~~ may

3.1 be administratively forfeited under this subdivision. Within 60 days from when seizure
3.2 occurs, all persons known to have an ownership, possessory, or security interest in seized
3.3 property must be notified of the seizure and the intent to forfeit the property. In the case of
3.4 a motor vehicle required to be registered under chapter 168, notice mailed by certified mail
3.5 to the address shown in Department of Public Safety records is deemed sufficient notice
3.6 to the registered owner. The notification to a person known to have a security interest in
3.7 seized property required under this paragraph applies only to motor vehicles required to be
3.8 registered under chapter 168 and only if the security interest is listed on the vehicle's title.
3.9 Upon motion by the appropriate agency or the prosecuting authority, a court may extend
3.10 the time period for sending notice for a period not to exceed 90 days for good cause shown.

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

3.13 (1) a description of the property seized;

3.14 (2) the date of seizure; and

3.15 (3) notice of the right to obtain judicial review of the forfeiture and of the procedure
3.16 for obtaining that judicial review, printed in English. This requirement does not preclude
3.17 the appropriate agency from printing the notice in other languages in addition to English.

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

3.19 "WARNING: You will automatically lose the above-described property and the right
3.20 to be heard in court if you do not file a lawsuit and serve the prosecuting authority within
3.21 60 days. You may file your lawsuit in conciliation court if the property is worth \$15,000
3.22 or less; otherwise, you must file in district court. You may not have to pay a filing fee
3.23 for your lawsuit if you are unable to afford the fee. You do not have to pay a conciliation
3.24 court fee if your property is worth less than \$500."

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

3.31 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to crimes
3.32 committed on or after that date.

3.33 Sec. 4. Minnesota Statutes 2012, section 609.5314, subdivision 3, is amended to read:

3.34 Subd. 3. **Judicial determination.** (a) Within 60 days following service of a notice
3.35 of seizure and forfeiture under this section, a claimant may file a demand for a judicial

4.1 determination of the forfeiture. The demand must be in the form of a civil complaint and
4.2 must be filed with the court administrator in the county in which the seizure occurred,
4.3 together with proof of service of a copy of the complaint on the prosecuting authority for
4.4 that county, and the standard filing fee for civil actions unless the petitioner has the right to
4.5 sue in forma pauperis under section 563.01. The claimant may serve the complaint on the
4.6 prosecuting authority by any means permitted by court rules. If the value of the seized
4.7 property is \$15,000 or less, the claimant may file an action in conciliation court for recovery
4.8 of the seized property. If the value of the seized property is less than \$500, the claimant
4.9 does not have to pay the conciliation court filing fee. No responsive pleading is required of
4.10 the prosecuting authority and no court fees may be charged for the prosecuting authority's
4.11 appearance in the matter. ~~The hearing must be held at the earliest practicable date, and in~~
4.12 ~~any event no later than 180 days following the filing of the demand by the claimant. If a~~
4.13 ~~related criminal proceeding is pending, the hearing shall not be held until the conclusion~~
4.14 ~~of the criminal proceedings.~~ The district court administrator shall schedule the hearing as
4.15 soon as practicable after, and in any event no later than 90 days following, the conclusion
4.16 of the criminal prosecution. The proceedings are governed by the Rules of Civil Procedure.

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

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

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

4.35 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to crimes
4.36 committed on or after that date.

5.1 Sec. 5. Minnesota Statutes 2012, section 609.5316, subdivision 3, is amended to read:

5.2 Subd. 3. **Weapons, telephone cloning paraphernalia, and bullet-resistant vests.**

5.3 Weapons used are contraband and must be summarily forfeited to the appropriate agency
 5.4 upon conviction of the weapon's owner or possessor for a controlled substance crime; for
 5.5 any offense of this chapter or chapter 624, or for a violation of an order for protection under
 5.6 section 518B.01, subdivision 14. Bullet-resistant vests, as defined in section 609.486, worn
 5.7 or possessed during the commission or attempted commission of a crime are contraband
 5.8 and must be summarily forfeited to the appropriate agency upon conviction of the owner
 5.9 or possessor for a controlled substance crime or for any offense of this chapter. Telephone
 5.10 cloning paraphernalia used in a violation of section 609.894 are contraband and must be
 5.11 summarily forfeited to the appropriate agency upon a conviction. ~~Notwithstanding this~~
 5.12 ~~subdivision, weapons used, bullet-resistant vests worn or possessed, and telephone cloning~~
 5.13 ~~paraphernalia may be forfeited without a conviction under sections 609.531 to 609.5315.~~

5.14 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to crimes
 5.15 committed on or after that date.

5.16 Sec. 6. Minnesota Statutes 2012, section 609.5318, subdivision 1, is amended to read:

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

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

5.26 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to crimes
 5.27 committed on or after that date.

5.28 Sec. 7. **REPEALER.**

5.29 Minnesota Statutes 2012, section 609.5314, subdivision 1, is repealed.

5.30 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to crimes
 5.31 committed on or after that date.

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

Subdivision 1. **Property subject to administrative forfeiture; presumption.** (a) The following are presumed to be subject to administrative forfeiture under this section:

- (1) all money, precious metals, and precious stones found in proximity to:
 - (i) controlled substances;
 - (ii) forfeitable drug manufacturing or distributing equipment or devices; or
 - (iii) forfeitable records of manufacture or distribution of controlled substances;
 - (2) all conveyance devices containing controlled substances with a retail value of \$100 or more if possession or sale of the controlled substance would be a felony under chapter 152; and
 - (3) all firearms, ammunition, and firearm accessories found:
 - (i) in a conveyance device used or intended for use to commit or facilitate the commission of a felony offense involving a controlled substance;
 - (ii) on or in proximity to a person from whom a felony amount of controlled substance is seized; or
 - (iii) on the premises where a controlled substance is seized and in proximity to the controlled substance, if possession or sale of the controlled substance would be a felony under chapter 152.
- (b) The Department of Corrections Fugitive Apprehension Unit shall not seize items listed in paragraph (a), clauses (2) and (3), for the purposes of forfeiture.
- (c) A claimant of the property bears the burden to rebut this presumption.