



HOUSE REPUBLICAN STAFF ANALYSIS

Bill:	Senate File 446	House Committee:	PASSED on March 30 (21-0)
Committee:	Judiciary	House Floor:	
Floor Manager:	Rep. Heartsill	Senate Floor:	PASSED on March 28 (49-0)
Date:	April 10, 2017	Governor:	
Staff:	Amanda Wille (1-5230)		

Civil Asset Forfeiture

- SF 446 prohibits civil asset forfeiture for property valued less than \$5,000, if there is no conviction.
- The standard of proof in cases of civil asset forfeiture is increased from preponderance of evidence, to clear and convincing evidence.
- SF 446 requires property to be reviewed proportionally to the crime
- Requires law enforcement agencies to retain records related to asset forfeiture
- **Fiscal Note** – In FY16, \$2.6 million was retained by the State from 822 cash forfeitures under State Law. The average value of the cash was \$3,217. While LSA cannot determine the actual impact, they do think there will be a fiscal impact on the Attorney General’s Office, local law enforcement and the County Attorney’s.

Section by Section Analysis

Section 1 – Forfeiture Reform Act- Definitions (809A.1)

Defines conviction for the purpose of civil asset forfeiture. Convicted or conviction includes a finding of guilt, plea of guilty, deferred judgement, suspended sentence, adjudication of delinquency or circumstances where a person is not charged with a serious or aggravated misdemeanor or a felony related to the forfeiture based on their cooperation in providing information on the criminal activity of another.

Instrumentality- property otherwise lawful to possess that is used or intended to be used in a public offense.

Minimum civil forfeiture amount is \$5,000

Section 2 – Forfeiture Reform Act-Exemptions (809A.5)

If the forfeiture is for property valued at less than \$5,000 the owner must also be convicted of the criminal offense related to the forfeiture.

Section 3- Forfeiture Reform Act-Commencement of Forfeiture Proceedings-Property Release Requirements (809A.8)

In a case of forfeiture, if a prosecuting attorney fails to file a jurisdictional forfeitures proceeding within 90 days after the conclusion of the criminal prosecution and the value of the property is less than \$5,000, the property shall be released upon request by the owner.

Section 4- Forfeiture Reform Act-Commencement of Forfeiture Proceedings-Property Release Requirements (809A.8)

This section is amended to include the procedure a prosecuting attorney shall follow if they delay filing a judicial forfeiture proceeding in a case where the value of the property is less than \$5,000.

Section 5- Forfeiture Reform Act- Judicial Proceedings Generally (809A.12)

A defendant whose criminal proceedings result in a conviction may not deny the essential allegations of the criminal offense in proceedings pursuant to this section. However, if the conviction is overturned on appeal, the defendant may file a motion to correct, vacate, or modify a judgement of forfeiture.

If a claim is based on an exemption provided in this chapter, the claimant must make a prima facie showing of the existence of the exemption. The prosecutor must prove by clear and convincing evidence the exemption does not apply. Reasonable attorney fees and costs shall be paid for a claimant who prevails on a claim for exemption.

An acquittal or dismissal in a criminal proceeding shall not preclude civil asset forfeiture if the value of the property is equal to or greater than \$5,000.

Section 6- Forfeiture Reform Act- Judicial Proceedings Generally (809A.12)

New subsection- The prosecuting attorney must prove by clear and convincing evidence that the property is subject to forfeiture.

Section 7- Forfeiture Reform Act- Judicial Proceedings Generally (809A.12)

Clarifies that a person must be convicted for the conduct giving rise to the forfeiture if the property is under \$5,000.

Section 8- Forfeiture Reform Act-Limitations on Civil Forfeiture (New Section 809A.12A)

If the total value of property seized for forfeiture is less than \$5,000 a forfeiture proceeding shall not be brought unless one of the following apply:

- The conduct giving rise to the forfeiture results in a conviction
- The property owner is deceased
- Charges have been filed against the owner, a warrant is issued for the arrest of the owner, and either of the following apply:
 - The owner is outside the state an unable to be extradited for prosecution.
 - Law enforcement makes reasonable efforts to locate and arrest the owner but the owner has not been located.
- The property owner has not claimed the property or asserted any interest at any time during or after the seizure and all claims brought up have been denied.

The prosecuting attorney has the burden to prove by clear and convincing evidence that the value of the property is or exceeds the minimum civil forfeiture amount any civil action

Section 9- Forfeiture Reform Act-Proportionality Review (New Section 809A.12B)

The property shall not be forfeited if the value of the property is grossly disproportionate to the severity of the offense.

Contraband and proceeds obtained from the offense are not subject to proportionality review.

Section 10-Forfeiture Reform Act- In Rem Proceedings (809A.13)

Requires the prosecuting attorney to show by clear and convincing evidence that property is subject to forfeiture. If the claimant asserts and makes a prima facie showing of an exemption, the prosecutor has the burden of proving by clear and convincing evidence the exemption does not apply.

Section 11- Forfeiture Reform Act-In Personam Proceedings (809A.14)

Conforming changes requiring clear and convincing evidence.

Section 12- Forfeiture Reform Act- Substituted Assets-Supplemental Remedies (809A.15)

Conforming changes requiring clear and convincing evidence.

Section 13- Forfeiture Reform Act- Disposition of Property (809A.16)

Conforming changes requiring clear and convincing evidence.

Section 14- Forfeiture Reform Act- Recordkeeping (New Section 809A.18A)

Requires law enforcement that has custody of property to follow a written internal policy that does all the following:

- Detailed records of property and date acquired
- Detailed records of the disposition of property including manner disposed, date, itemized list of specific expenditures made with amounts gained from sale of property.

Records kept under internal control shall be open to public inspection during regular business hours.

Section 15- Applicability

This act applies to forfeiture proceedings that begin on or after the effective date of this act.

Amendment Analysis