

HOUSE RESEARCH

Bill Summary

FILE NUMBER: H.F. 456
Version: As introduced

DATE: February 20, 2015

Authors: Scott and others

Subject: Forfeiture; innocent owners

Analyst: Rebecca Pirius, 651-296-5044

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd/.

Overview

This bill shifts the burden of proof from the claimant to the prosecutor in innocent owner cases involving the following forfeiture actions: off-highway vehicles, DWI, designated offenses, controlled substance offenses, and fleeing, drive-by shooting, and prostitution offenses. It also provides for the return of property to an owner who is not the offender, if property is needed for employment or dependent care purposes.

The bill establishes procedures to divide joint property, conduct commercially reasonable sales, and pay off security interests. It outlines responsibility for towing, storage, and court fees if property is returned. Finally, it codifies the homestead exemption found in case law.

Section

- 1-3, 9-13 Presumptions; limitations on forfeiture.** Strikes language regarding innocent owner and security interest provisions found in the following forfeiture statutes: off-highway vehicles, DWI, designated offenses, controlled substance offenses, and fleeing, drive-by shooting, and prostitution offenses. Cross-references new provisions that are consolidated in sections 5 and 6.
- 4 Definitions.** Defines “actual knowledge” and “constructive knowledge,” the latter meaning knowledge imputed to family or household members of an owner who has been adjudicated guilty three or more times for a same or similar violation in the past 10 years.

Section

5 Limitations and defenses to forfeiture; ownership *at the time* of the crime.

Filing a Claim

- (a) Establishes a process by which an innocent owner may file a claim for return of property seized for forfeiture. Cross-references offenses listed in sections 1-3, 9-13.
- (b) Allows prosecutor to request a five-day postponement of a hearing to complete an investigation.
- (c) Preserves defendant's right against self-incrimination in the civil forfeiture trial.

Burden of Production and Proof

- (d) Places the burden of production on the innocent owner claimant to show: (1) full or joint ownership or security interest in the property; and (2) claimant is not the offender.
- (e) Places the burden of proof on the prosecutor to then show that the property is subject to forfeiture because the claimant: (1) had actual or constructive knowledge of the crime; or (2) consented to the act or omission of the underlying offense.
- (f) – (h) Allow claimant to make a showing that the property is not subject to forfeiture because the claimant did all that could reasonably be expected to terminate unlawful use of the property by the offender, including: (1) giving timely notice to law enforcement; and (2) attempting to revoke permission to use property or taking reasonable actions with law enforcement.

The burden of proof required is the preponderance of the evidence.

Return of Property; Jointly Owned Property

- (i) Requires law enforcement to return property within a reasonable time if innocent owner claim prevails. Relinquishes the state's rights in the property.
- (j) – (k) Establish a process by which jointly owned property may be divided and allocated to an innocent owner, including sale of the property, buy-out of the offender's portion, or other equitable means.

Hardship Exception

- (l) Provides an exception to paragraphs (e) to (k) - division of the property and innocent ownership requirements. Allows the court to return the property if the claimant shows that failing to return the property deprives the claimant of reasonable means to employment or to provide dependent care.

Fees; Security Interests

- (m) Places responsibility for towing and storage fees on the claimant if the vehicle is returned within 60 days of seizure. If the innocent owner claims are valid, the law enforcement agency must pay for fees accruing after the 60-day period.
- (n) – (o) Require any proceeds of a seized off-highway or motor vehicle to be applied to a perfected security interest after deducting the agency costs. Exempts agency from liability to secured party for any amount still owing on loan if sale is conducted in a commercially reasonable manner.

Section

- 6** **Limitations and defenses to forfeiture; ownership *acquired after the crime*.** Creates new standards similar to those in section 5 for property acquired after the crime for a bona fide purchaser who paid valuable consideration and did not have notice of a title defect.
- 7** **Return of filing fees.** Requires the law enforcement and prosecuting agencies to reimburse a prevailing claimant for any court filing fees.
- 8, 9** **Exemption; homestead property.** Codifies the *Torgelson* case exemption for homestead property in designated offense forfeitures.