

SENATE BILL No. 2

January 15, 2019, Introduced by Senator LUCIDO and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 7523 (MCL 333.7523), as amended by 2016 PA 418, and by adding section 7521a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 7521A. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
2 PROPERTY MAY BE SEIZED AS PROVIDED IN SECTION 7522 FOR A VIOLATION
3 OF THIS ARTICLE, BUT IS NOT SUBJECT TO FORFEITURE UNDER SECTION
4 7521 OR DISPOSITION UNDER SECTION 7524 UNLESS 1 OF THE FOLLOWING
5 APPLIES:

6 (A) A CRIMINAL PROCEEDING INVOLVING OR RELATING TO THE
7 PROPERTY HAS BEEN COMPLETED AND THE DEFENDANT IS CONVICTED OF A
8 VIOLATION OF THIS ARTICLE.

1 (B) A CRIMINAL PROCEEDING INVOLVING OR RELATING TO THE
2 PROPERTY HAS BEEN COMPLETED AND THE DEFENDANT ENTERS INTO A PLEA
3 AGREEMENT THAT IS APPROVED BY THE PRESIDING CRIMINAL COURT.

4 (C) NO PERSON CLAIMS ANY INTEREST IN THE PROPERTY AS PROVIDED
5 UNDER SECTION 7523.

6 (D) THE OWNER OF THE PROPERTY EXECUTES A SIGNED FORM STATING
7 THAT HE OR SHE IS RELINQUISHING OWNERSHIP OF THE PROPERTY AND
8 PROVIDES THAT FORM TO THE LAW ENFORCEMENT AGENCY THAT SEIZED THE
9 PROPERTY.

10 (2) IF A PERSON EXECUTES A FORM UNDER SUBSECTION (1) (D), THE
11 PROSECUTING ATTORNEY FOR THE COUNTY IN WHICH THE PROPERTY WAS
12 SEIZED OR, IF THE ATTORNEY GENERAL IS ACTIVELY HANDLING A CASE
13 INVOLVING OR RELATED TO THE PROPERTY, THE ATTORNEY GENERAL, MUST
14 REVIEW THE SEIZURE OF THE PROPERTY AND APPROVE THE FORFEITURE OF
15 THE PROPERTY BEFORE THE PROPERTY MAY BE FORFEITED.

16 (3) THE STATE COURT ADMINISTRATOR'S OFFICE SHALL DEVELOP AND
17 MAKE AVAILABLE TO LAW ENFORCEMENT AGENCIES, THE COURTS, AND THE
18 PUBLIC THE FORM DESCRIBED IN SUBSECTION (1) (D).

19 (4) A FORM EXECUTED UNDER SUBSECTION (1) (D) IS CONFIDENTIAL
20 AND IS NOT SUBJECT TO DISCLOSURE UNDER THE FREEDOM OF INFORMATION
21 ACT, 1976 PA 442, MCL 15.231 TO 15.246.

22 (5) SUBSECTION (1) DOES NOT PROHIBIT THE IMMEDIATE DESTRUCTION
23 OF PROPERTY THAT MAY NOT BE LAWFULLY POSSESSED BY ANY PERSON OR
24 THAT IS DANGEROUS TO THE HEALTH OR SAFETY OF THE PUBLIC REGARDLESS
25 OF WHETHER THE PERSON IS CONVICTED OF A VIOLATION OF THIS ARTICLE.

26 (6) THIS SECTION APPLIES TO FORFEITURE PROCEEDINGS THAT ARE
27 PENDING ON, OR INITIATED ON OR AFTER, JANUARY 1, 2020.

1 (7) THIS SECTION DOES NOT APPLY TO FORFEITURE PROCEEDINGS IN
2 WHICH THE AGGREGATE NET EQUITY VALUE OF THE PROPERTY SEIZED EXCEEDS
3 \$50,000.00, EXCLUDING THE VALUE OF CONTRABAND.

4 Sec. 7523. (1) If property is seized under section 7522,
5 forfeiture proceedings ~~shall~~**MUST** be instituted promptly. If the
6 property is seized without process under section 7522, and the
7 total value of the property seized does not exceed \$50,000.00, the
8 following procedure ~~shall~~**MUST** be used:

9 (a) The local unit of government that seized the property or,
10 if the property was seized by this state, the state shall notify
11 the owner of the property that the property has been seized, and
12 that the local unit of government or, if applicable, the state
13 intends to forfeit and dispose of the property by delivering a
14 written notice to the owner of the property or by sending the
15 notice to the owner by certified mail. If the name and address of
16 the owner are not reasonably ascertainable, or delivery of the
17 notice cannot be reasonably accomplished, the notice ~~shall~~**MUST** be
18 published in a newspaper of general circulation in the county in
19 which the property was seized, for 10 successive publishing days.

20 (b) Unless all criminal proceedings involving or relating to
21 the property have been completed, the seizing agency shall
22 immediately notify the prosecuting attorney for the county in which
23 the property was seized or, if the attorney general is actively
24 handling a case involving or relating to the property, the attorney
25 general of the seizure of the property and the intention to forfeit
26 and dispose of the property.

27 (c) Any person claiming an interest in property that is the

1 subject of a notice under subdivision (a) may, within 20 days after
2 receipt of the notice or of the date of the first publication of
3 the notice, file a written claim signed by the claimant with the
4 local unit of government or the state expressing his or her
5 interest in the property **AND ANY OBJECTION TO FORFEITURE. AN**
6 **OBJECTION UNDER THIS SUBSECTION MUST BE WRITTEN, VERIFIED, AND**
7 **SIGNED BY THE CLAIMANT, AND INCLUDE A DETAILED DESCRIPTION OF THE**
8 **PROPERTY AND THE PROPERTY INTEREST ASSERTED. THE VERIFICATION MUST**
9 **BE NOTARIZED AND INCLUDE A CERTIFICATION STATING THAT THE**
10 **UNDERSIGNED HAS EXAMINED THE CLAIM AND BELIEVES IT TO BE, TO THE**
11 **BEST OF HIS OR HER KNOWLEDGE, TRUE AND COMPLETE. A WRITTEN CLAIM**
12 **UNDER THIS SUBSECTION MUST BE MADE ON THE FORM DEVELOPED BY THE**
13 **STATE COURT ADMINISTRATOR'S OFFICE AS REQUIRED UNDER SUBSECTION**
14 (2). Upon the filing of the claim, the local unit of government or,
15 if applicable, this state shall transmit the claim with a list and
16 description of the property seized to the attorney general, the
17 prosecuting attorney for the county, or the city or township
18 attorney for the local unit of government in which the seizure was
19 made. The attorney general, the prosecuting attorney, or the city
20 or township attorney shall promptly institute forfeiture
21 proceedings after the expiration of the 20-day period. However,
22 unless all criminal proceedings involving or relating to the
23 property have been completed, a city or township attorney shall not
24 institute forfeiture proceedings without the consent of the
25 prosecuting attorney or, if the attorney general is actively
26 handling a case involving or relating to the property, the attorney
27 general.

1 (d) If no claim is filed within the 20-day period as described
2 in subdivision (c), the local unit of government or this state
3 shall declare the property forfeited and shall dispose of the
4 property as provided under section 7524. However, unless all
5 criminal proceedings involving or relating to the property have
6 been completed, the local unit of government or the state shall not
7 dispose of the property under this subdivision without the written
8 consent of the prosecuting attorney or, if the attorney general is
9 actively handling a case involving or relating to the property, the
10 attorney general.

11 (2) **THE STATE COURT ADMINISTRATOR'S OFFICE SHALL DEVELOP AND**
12 **MAKE AVAILABLE TO LAW ENFORCEMENT AGENCIES, COURTS, AND THE PUBLIC**
13 **A FORM FOR ASSERTING AN OWNERSHIP INTEREST IN SEIZED PROPERTY UNDER**
14 **SUBSECTION (1) (C). THE FORM MUST REQUIRE A CLAIMANT TO PROVIDE A**
15 **DETAILED DESCRIPTION OF THE PROPERTY, HIS OR HER OWNERSHIP INTEREST**
16 **IN THE PROPERTY, AND A SIGNED ATTESTATION THAT THE CLAIMANT HAS A**
17 **BONA FIDE OWNERSHIP INTEREST IN THE PROPERTY.**

18 (3) ~~(2)~~—Property taken or detained under this article is not
19 subject to an action to recover personal property, but is deemed to
20 be in the custody of the seizing agency subject only to this
21 section or an order and judgment of the court having jurisdiction
22 over the forfeiture proceedings. When property is seized under this
23 article, the seizing agency may do any of the following:

24 (a) Place the property under seal.

25 (b) Remove the property to a place designated by the court.

26 (c) Require the administrator to take custody of the property
27 and remove it to an appropriate location for disposition in

1 accordance with law.

2 (d) Deposit money seized under this article into an interest-
3 bearing account in a financial institution. As used in this
4 subdivision, "financial institution" means a state or nationally
5 chartered bank or a state or federally chartered savings and loan
6 association, savings bank, or credit union whose deposits are
7 insured by an agency of the United States government and that
8 maintains a principal office or branch office located in this state
9 under the laws of this state or the United States.

10 (4) ~~(3)~~ Title to real property forfeited under this article
11 ~~shall~~ **MUST** be determined by a court of competent jurisdiction. A
12 forfeiture of real property encumbered by a bona fide security
13 interest is subject to the interest of the secured party who
14 neither had knowledge of nor consented to the act or omission.

15 (5) ~~(4)~~ An attorney for a person who is charged with a crime
16 involving or related to the money seized under this article ~~shall~~
17 **MUST** be afforded a period of 60 days within which to examine that
18 money. This 60-day period begins to run after notice is given under
19 subsection (1) (a) but before the money is deposited into a
20 financial institution under subsection ~~(2) (d)~~. **(3) (D)**. If the
21 attorney general, prosecuting attorney, or city or township
22 attorney fails to sustain his or her burden of proof in forfeiture
23 proceedings under this article, the court shall order the return of
24 the money, including any interest earned on money deposited into a
25 financial institution under subsection ~~(2) (d)~~. **(3) (D)**.

26 Enacting section 1. This amendatory act takes effect 90 days
27 after the date it is enacted into law.

ASSET FORFEITURE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to asset forfeiture.

Highlighted Provisions:

This bill:

- ▶ adds a definition;
- ▶ addresses grounds for seizing property;
- ▶ addresses custody and control of property, including removing a retention requirement for interviews of a minor;
- ▶ requires a court to make certain findings before the court can order property be returned to a person claiming property;
- ▶ addresses jurisdiction in state court;
- ▶ addresses voiding a forfeiture;
- ▶ addresses civil forfeiture;
- ▶ provides for release of property held for forfeiture on certain grounds;
- ▶ changes interest requirements;
- ▶ modifies transfer and sharing procedures;
- ▶ modifies grant provisions under the State Asset Forfeiture Grant Program;
- ▶ addresses forfeiture reporting requirements; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **24-1-102**, as last amended by Laws of Utah 2017, Chapters 285 and 362

34 **24-2-102**, as enacted by Laws of Utah 2013, Chapter 394

35 **24-2-103**, as last amended by Laws of Utah 2017, Chapter 362

36 **24-3-104**, as enacted by Laws of Utah 2013, Chapter 394

37 **24-4-103**, as enacted by Laws of Utah 2013, Chapter 394

38 **24-4-104**, as last amended by Laws of Utah 2017, Chapter 362

39 **24-4-108**, as enacted by Laws of Utah 2013, Chapter 394

40 **24-4-109**, as enacted by Laws of Utah 2013, Chapter 394

41 **24-4-114**, as last amended by Laws of Utah 2015, Chapter 134

42 **24-4-117**, as last amended by Laws of Utah 2015, Chapter 134

43 **24-4-118**, as last amended by Laws of Utah 2017, Chapter 303

44

45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **24-1-102** is amended to read:

47 **24-1-102. Definitions.**

48 As used in this title:

49 (1) "Account" means the Criminal Forfeiture Restricted Account created in Section
50 **24-4-116**.

51 (2) (a) "Acquitted" means a finding by a jury or a judge at trial that a claimant is not
52 guilty.

53 (b) "Acquitted" does not include:

54 (i) a verdict of guilty on a lesser or reduced charge;

55 (ii) a plea of guilty to a lesser or reduced charge; or

56 (iii) dismissal of a charge as a result of a negotiated plea agreement.

57 (3) "Agency" means any agency of municipal, county, or state government, including
58 law enforcement agencies, law enforcement personnel, and multijurisdictional task forces.

59 (4) "Claimant" means any:
60 (a) owner of property as defined in this section;
61 (b) interest holder as defined in this section; or
62 (c) person or entity who asserts a claim to any property seized for forfeiture under this
63 title.

64 (5) "Commission" means the Utah Commission on Criminal and Juvenile Justice.

65 (6) "Complaint" means a civil in rem complaint seeking the forfeiture of any real or
66 personal property under this title.

67 (7) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other
68 high-speed data processing device that performs logical, arithmetic, and storage functions, and
69 includes any device that is used for the storage of digital or electronic files, flash memory,
70 software, or other electronic information.

71 (b) "Computer" does not mean a computer server of an Internet or an electronic service
72 provider, or the service provider's employee, if used for the purpose of compliance with
73 obligations pursuant to 18 U.S.C. Sec. 2258A.

74 (8) "Constructive seizure" means a seizure of property where the property is left in the
75 control of the owner and the seizing agency posts the property with a notice of intent to seek
76 forfeiture.

77 (9) (a) "Contraband" means any property, item, or substance that is unlawful to
78 produce or to possess under state or federal law.

79 (b) All controlled substances that are possessed, transferred, distributed, or offered for
80 distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act, are
81 contraband.

82 (c) A computer is contraband if it:

83 (i) contains or houses child pornography, or is used to create, download, transfer,
84 upload to a storage account, or store any electronic or digital files containing child
85 pornography; or

86 (ii) contains the personal identifying information of another person, as defined in
87 Subsection [76-6-1102\(1\)](#), whether that person is alive or deceased, and the personal identifying
88 information has been used to create false or fraudulent identification documents or financial
89 transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud.

90 (10) "Innocent owner" means a claimant who:

91 (a) held an ownership interest in property at the time the conduct subjecting the
92 property to forfeiture occurred, and:

93 (i) did not have actual knowledge of the conduct subjecting the property to forfeiture;

94 or

95 (ii) upon learning of the conduct subjecting the property to forfeiture, took reasonable
96 steps to prohibit the illegal use of the property; or

97 (b) acquired an ownership interest in the property and had no knowledge that the illegal
98 conduct subjecting the property to forfeiture had occurred or that the property had been seized
99 for forfeiture, and:

100 (i) acquired the property in a bona fide transaction for value;

101 (ii) was a person, including a minor child, who acquired an interest in the property
102 through probate or inheritance; or

103 (iii) was a spouse who acquired an interest in property through dissolution of marriage
104 or by operation of law.

105 (11) (a) "Interest holder" means a secured party as defined in Section [70A-9a-102](#), a
106 party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a security interest
107 or encumbrance pertaining to an interest in property, whose interest would be perfected against
108 a good faith purchaser for value.

109 (b) "Interest holder" does not mean a person who holds property for the benefit of or as
110 an agent or nominee for another person, or who is not in substantial compliance with any
111 statute requiring an interest in property to be recorded or reflected in public records in order to
112 perfect the interest against a good faith purchaser for value.

113 (12) "Known address" means any address provided by a claimant to the agency at the
114 time the property was seized, or the claimant's most recent address on record with a
115 governmental entity if no address was provided at the time of the seizure.

116 (13) "Legal costs" means the costs and expenses incurred by a party in a forfeiture
117 action.

118 (14) "Legislative body" means:

119 (a) (i) the Legislature, county commission, county council, city commission, city
120 council, or town council that has fiscal oversight and budgetary approval authority over an

121 agency; or

122 (ii) the agency's governing political subdivision; or

123 (b) the lead governmental entity of a multijurisdictional task force, as designated in a
124 memorandum of understanding executed by the agencies participating in the task force.

125 (15) "Multijurisdictional task force" means a law enforcement task force or other
126 agency comprised of persons who are employed by or acting under the authority of different
127 governmental entities, including federal, state, county or municipal governments, or any
128 combination of these agencies.

129 (16) "Owner" means any person or entity, other than an interest holder, that possesses a
130 bona fide legal or equitable interest in real or personal property.

131 (17) (a) "Proceeds" means:

132 (i) property of any kind that is obtained directly or indirectly as a result of the
133 commission of an offense that gives rise to forfeiture; or

134 (ii) any property acquired directly or indirectly from, produced through, realized
135 through, or caused by an act or omission regarding property under Subsection (17)(a)(i).

136 (b) "Proceeds" includes any property of any kind without reduction for expenses
137 incurred in the acquisition, maintenance, or production of that property, or any other purpose
138 regarding property under Subsection (17)(a)(i).

139 (c) "Proceeds" is not limited to the net gain or profit realized from the offense that
140 gives rise to forfeiture.

141 (18) "Program" means the State Asset Forfeiture Grant Program established in Section
142 [24-4-117](#).

143 (19) "Property" means all property, whether real or personal, tangible or intangible, but
144 does not include contraband.

145 (20) "Property held for forfeiture" means property that is or has been in the control of
146 an agency or prosecuting attorney authorized to bring a forfeiture proceeding under this title
147 under circumstances that suggest that the agency or prosecuting attorney planned to pursue a
148 civil or criminal forfeiture claim, or transfer control of the property to another government for a
149 forfeiture claim, whether or not a notice of intent to seek forfeiture is served.

150 [~~20~~] (21) "Prosecuting attorney" means:

151 (a) the attorney general and any assistant attorney general;

- 152 (b) any district attorney or deputy district attorney;
- 153 (c) any county attorney or assistant county attorney; and
- 154 (d) any other attorney authorized to commence an action on behalf of the state under
- 155 this title.

156 [~~21~~] (22) "Public interest use" means a:

157 (a) use by a government agency as determined by the legislative body of the agency's

158 jurisdiction; or

159 (b) donation of the property to a nonprofit charity registered with the state.

160 [~~22~~] (23) "Real property" means land and includes any building, fixture,

161 improvement, appurtenance, structure, or other development that is affixed permanently to

162 land.

163 Section 2. Section **24-2-102** is amended to read:

164 **24-2-102. Grounds for seizing property.**

165 (1) Property may be seized by a peace officer or any other person authorized by law

166 upon process issued by a court having jurisdiction over the property in accordance with the

167 Utah Rules of Criminal Procedure relating to search warrants or administrative warrants.

168 (2) Property may be seized under this chapter when:

169 [~~(a) the seizure is incident to an arrest;~~]

170 [~~(b)~~] (a) the property seized is the subject of a prior judgment in favor of the state in a

171 criminal injunction or forfeiture proceeding under this title; or

172 [~~(c)~~] (b) the peace officer or other person authorized by law has probable cause to

173 believe that the property:

- 174 (i) is directly or indirectly dangerous to health or safety;
- 175 (ii) is evidence of a crime;
- 176 (iii) has been used or was intended to be used to commit a crime; or
- 177 (iv) is proceeds of a crime.

178 Section 3. Section **24-2-103** is amended to read:

179 **24-2-103. Property seized by a peace officer -- Custody and control of property.**

180 (1) (a) When property is seized by a peace officer, the peace officer or the peace

181 officer's employing agency shall provide a receipt to the person from whom the property was

182 seized.

- 183 (b) The receipt shall describe the:
- 184 (i) property seized;
- 185 (ii) date of seizure; and
- 186 (iii) name and contact information of the peace officer's employing agency.
- 187 (c) In addition to the receipt, the person from whom the property [~~was~~] is seized shall
- 188 be provided with information regarding the forfeiture process, including:
- 189 (i) important time periods in the forfeiture process;
- 190 (ii) what happens to the property upon conviction or acquittal; and
- 191 (iii) how to make a claim for the return of the property.
- 192 (d) A copy of the receipt shall be maintained by the agency.
- 193 (e) If custody of the property is transferred to another agency, a copy of the receipt
- 194 under Subsection (1)(a) shall be provided with the property.
- 195 (2) The agency responsible for maintaining the property shall:
- 196 (a) hold all seized property in safe physical custody until [~~it~~] the seized property can be
- 197 disposed of as provided in this title; and
- 198 (b) maintain a record of the property that includes:
- 199 (i) a detailed inventory of all property seized;
- 200 (ii) the name of the person from whom [~~it was~~] the property is seized; and
- 201 (iii) the agency's case number.
- 202 (3) Property seized under this title is not recoverable by replevin, but is considered in
- 203 the agency's physical custody subject only to the orders of the court or the official having
- 204 jurisdiction.
- 205 (4) [~~All controlled~~] Controlled substances or other contraband that is seized by a peace
- 206 officer may be processed for evidentiary or investigative purposes, including sampling or other
- 207 preservation procedure [~~prior to~~] before disposal or destruction.
- 208 (5) (a) An agency shall deposit property in the form of cash or other readily negotiable
- 209 instruments into a separate, restricted, interest-bearing account maintained by the agency solely
- 210 for the purpose of managing and protecting the property from commingling, loss, or
- 211 devaluation.
- 212 (b) [~~Each~~] An agency shall have written policies for the identification, tracking,
- 213 management, and safekeeping of seized property, which shall include a prohibition against the

214 transfer, sale, or auction of seized property to any employee of the agency.

215 ~~[(6) If a peace officer or the officer's employing agency records an interview of a minor~~
216 ~~child during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or~~
217 ~~76-5-404.1, the agency shall retain a copy of the recording for 18 years following the date of~~
218 ~~the last recording unless the prosecuting attorney requests in writing that the recording be~~
219 ~~retained for an additional period of time.]~~

220 [(7)] (6) Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction
221 Information Act, governs the disposition of property held by a pawn or secondhand business in
222 the course of [its] the pawn or secondhand's business.

223 Section 4. Section **24-3-104** is amended to read:

224 **24-3-104. Petition to return property held as evidence.**

225 (1) (a) A person claiming ownership of property held as evidence may file a petition
226 with the court for the return of the property.

227 (b) The petition may be filed in:

228 (i) the court in which criminal proceedings have commenced regarding the conduct for
229 which the property is held as evidence; or

230 (ii) the district court of the jurisdiction where the property was seized, if there ~~[are]~~ is
231 no pending criminal ~~[proceedings]~~ proceeding.

232 (c) A copy of the petition shall be served on the prosecuting attorney and the agency
233 ~~[which]~~ that has possession of the property.

234 (2) The court shall provide an opportunity for an expedited hearing. After the
235 opportunity for an expedited hearing, the court may order that the property be:

236 (a) returned to the rightful owner as determined by the court;

237 (b) applied directly or by proceeds of the sale of the property toward restitution, fines,
238 or fees owed by the rightful owner in an amount set by the court;

239 (c) converted to a public interest use;

240 (d) held for further legal action;

241 (e) sold at public auction and the proceeds of the sale applied to a public interest use;

242 or

243 (f) destroyed.

244 (3) Before the court can order property be returned to a person claiming ownership of

245 property, the ~~[person shall establish]~~ court shall enter findings establishing by clear and
 246 convincing evidence that the person:

247 (a) is the rightful owner; and

248 (b) may lawfully possess the property.

249 (4) If the court orders the property to be returned, the agency that possesses the
 250 property shall return the property to the claimant as expeditiously as possible.

251 Section 5. Section **24-4-103** is amended to read:

252 **24-4-103. Initiating forfeiture proceedings -- Notice of intent to seek forfeiture.**

253 (1) (a) Property held for forfeiture is immediately subject to the legal custody and sole
 254 in rem jurisdiction of the state court of competent jurisdiction.

255 (b) The state court of competent jurisdiction is the state district court:

256 (i) where a forfeiture proceeding is initiated; or

257 (ii) in the jurisdiction where the property is seized, if no criminal or forfeiture
 258 proceeding is commenced or initiated.

259 ~~[(+)]~~ (2) (a) Within 30 days from the date that property is seized, an agency seeking to
 260 forfeit property shall serve a notice of intent to seek forfeiture upon any ~~[claimants]~~ claimant
 261 known to the agency.

262 (b) The notice of intent to seek forfeiture shall describe the:

263 (i) date of the seizure;

264 (ii) property seized;

265 (iii) claimant's rights and obligations under this chapter, including the availability of
 266 hardship relief in appropriate circumstances; and

267 (iv) statutory basis for the forfeiture, including the judicial proceedings by which
 268 property may be forfeited under this chapter.

269 (c) The notice of intent to seek forfeiture shall be served by:

270 (i) certified mail, return receipt requested, to the claimant's known address; or

271 (ii) personal service.

272 (d) The court ~~[may void any]~~ shall void a forfeiture made without notice under

273 Subsection ~~[(+)]~~ (2)(a), unless the agency demonstrates:

274 (i) good cause for the failure to give notice to the claimant; or

275 (ii) that the claimant had actual notice of the seizure.

276 ~~[(2)]~~ (3) (a) Once the agency has served each claimant with a notice of intent to seek
277 forfeiture, but no later than 60 days from the date that property is seized, the agency shall
278 present a written request for forfeiture to the prosecuting attorney.

279 (b) The written request shall:

280 (i) describe the property to be forfeited; and

281 (ii) include a copy of ~~all~~ the reports, supporting documents, and other evidence
282 necessary for the prosecuting attorney to determine the legal sufficiency for filing a forfeiture
283 action.

284 Section 6. Section **24-4-104** is amended to read:

285 **24-4-104. Civil forfeiture procedure.**

286 (1) (a) The law enforcement agency shall promptly return seized property, and the
287 prosecuting attorney may take no further action to effect the forfeiture of the property, unless
288 within 75 days after the property is seized the prosecuting attorney:

289 (i) files a criminal indictment or information under Subsection [24-4-105\(2\)](#);

290 (ii) obtains a restraining order under Subsection [24-4-105\(3\)](#);

291 (iii) files a petition under Subsection [24-4-114\(1\)](#); or

292 (iv) files a civil forfeiture complaint.

293 (b) A complaint for civil forfeiture shall describe with reasonable particularity the:

294 (i) property that is the subject of the forfeiture proceeding;

295 (ii) date and place of seizure; and

296 (iii) factual allegations that constitute a basis for forfeiture.

297 (2) (a) After a complaint is filed, the prosecuting attorney shall serve a copy of the
298 complaint and summons upon each claimant known to the prosecuting attorney within 30 days.

299 (b) The prosecuting attorney is not required to serve a copy of the complaint or the
300 summons upon any claimant who has disclaimed, in writing, an ownership interest in the
301 seized property.

302 (c) Service of the complaint and summons shall be by:

303 (i) personal service;

304 (ii) certified mail, return receipt requested, to the claimant's known address; or

305 (iii) service by publication, if the prosecuting attorney demonstrates to the court that
306 service cannot reasonably be made by personal service or certified mail.

307 (d) Service by publication shall be by publication of two notices, in two successive
308 weeks, of the forfeiture proceeding:

309 (i) in a newspaper of general circulation in the county in which the seizure occurred;
310 and

311 (ii) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).

312 (e) Service is effective upon the earlier of:

313 (i) personal service;

314 (ii) mailing of a written notice; or

315 (iii) publication.

316 (f) Upon motion of the prosecuting attorney and a showing of good cause, the court
317 may extend the period to complete service under this section for an additional 60 days.

318 (3) (a) In any case where the prosecuting attorney files a complaint for forfeiture, a
319 claimant may file an answer to the complaint.

320 (b) The answer shall be filed within 30 days after the complaint is served upon the
321 claimant as provided in Subsection (2)(b).

322 (c) When the property subject to forfeiture is valued at less than \$10,000, the agency
323 that has custody of the property shall return the property to the claimant if:

324 (i) (A) the prosecuting attorney has filed a forfeiture complaint, and the claimant has
325 filed an answer through an attorney or pro se, in accordance with Subsections (3)(a) and (b);
326 and

327 (B) the prosecuting attorney has not filed an information or indictment for criminal
328 conduct giving rise to the forfeiture within 60 days after the date that service of the forfeiture
329 complaint on the claimant was completed, or has not timely moved a court of competent
330 jurisdiction and demonstrated reasonable cause for an extension of time to file such an
331 information or indictment; or

332 (ii) the information or indictment for criminal conduct giving rise to the forfeiture was
333 dismissed and the prosecuting attorney has not refiled the information or indictment within
334 seven days of the dismissal.

335 (d) The return of property to the claimant under Subsection (3)(c) does not include any
336 expenses, costs, or attorney fees.

337 (e) The time limitations in Subsection (3)(c)(i) may be extended for up to 15 days if a

338 claimant timely seeks to recover possession of seized property pursuant to Subsection
339 24-4-107(8), but shall resume immediately upon the seizing agency's or prosecuting attorney's
340 timely denial of the claim on the merits.

341 (4) Except as otherwise provided in this chapter, forfeiture proceedings are governed
342 by the Utah Rules of Civil Procedure.

343 (5) The court shall take all reasonable steps to expedite civil forfeiture proceedings and
344 shall give these proceedings the same priority as is given to criminal cases.

345 (6) In [~~all suits or actions~~] a suit or action brought under this section for the civil
346 forfeiture of any property, the burden of proof is on the prosecuting attorney to establish by
347 clear and convincing evidence that [~~the claimant engaged in conduct giving rise to the~~]
348 property is subject to forfeiture.

349 (7) A claimant may file an answer to a complaint for civil forfeiture without posting
350 bond with respect to the property subject to forfeiture.

351 (8) Property is subject to forfeiture under this chapter if the prosecuting attorney
352 establishes that:

353 (a) (i) the claimant has engaged in conduct giving rise to forfeiture;

354 [~~(b)~~] (ii) the property [~~was~~] is acquired by the claimant during that portion of the
355 conduct that gives rise to forfeiture, or within a reasonable time after that conduct is
356 committed; and

357 [~~(c)~~] (iii) there is no likely source for the purchase or acquisition of the property other
358 than the conduct that gives rise to forfeiture[~~;~~]; or

359 (b) (i) there is no known claimant;

360 (ii) there is cause to believe that the property has been used to commit a crime or is
361 proceeds of a crime; and

362 (iii) the prosecuting attorney has complied with the notice requirements of Subsection
363 (2)(d).

364 (9) A finding by the court that property is the proceeds of conduct giving rise to
365 forfeiture does not require proof that the property was the proceeds of any particular exchange
366 or transaction.

367 (10) If the prosecutor establishes that the property is subject to forfeiture, but the
368 claimant is subsequently criminally charged with the conduct giving rise to the forfeiture and is

369 acquitted of that charge on the merits:

370 (a) the property subject to the forfeiture or the open market value of the property, if the
371 property has been disposed of under Subsection [24-4-108\(13\)](#), shall be returned to the
372 claimant; and

373 (b) any payments required under this chapter regarding the costs of holding the
374 property shall be paid to the claimant.

375 Section 7. Section **24-4-108** is amended to read:

376 **24-4-108. Release of property held for forfeiture on certain grounds.**

377 (1) After ~~[the]~~ a seizing agency gives notice ~~[that the property is to be held for~~
378 ~~forfeiture]~~ pursuant to Subsection [24-4-103\(2\)](#), a person ~~[or entity]~~ may not alienate, convey,
379 sequester, or attach that property until the court issues a final order of dismissal or an order of
380 forfeiture regarding the property.

381 (2) The seizing agency or the prosecuting attorney may authorize the release of
382 property held for forfeiture to a claimant if retention of actual custody is unnecessary.

383 (3) ~~[With]~~ Subject to Subsection [24-4-114\(1\)\(c\)](#), with the consent of a court of
384 competent jurisdiction, the prosecuting attorney may discontinue forfeiture proceedings and
385 transfer the action to another state or federal agency that has initiated forfeiture proceedings
386 involving the same property.

387 (4) Property held for forfeiture is ~~[considered to be in the custody of the district court~~
388 ~~and]~~ subject only to:

389 (a) the orders and decrees of the state court ~~[having jurisdiction over the property or the~~
390 ~~forfeiture proceedings]~~ identified in Subsection [24-4-103\(1\)](#); and

391 (b) the acts of the agency that possesses the property or the prosecuting attorney
392 pursuant to this chapter.

393 (5) (a) A claimant may obtain release of property held for forfeiture by posting with the
394 district court a surety bond or cash in an amount equal to the current fair market value of the
395 property as determined by the court or by the parties' stipulation.

396 (b) The district court may refuse to order the release of the property if:

397 (i) the bond tendered is inadequate;

398 (ii) the property is contraband or is retained as evidence; or

399 (iii) the property is particularly altered or designed for use in conduct giving cause for

400 forfeiture.

401 (c) If a surety bond or cash is posted and the court later determines that the property is
402 subject to forfeiture, the court shall order the forfeiture of the surety bond or cash in lieu of the
403 property.

404 (6) A claimant is entitled to the immediate release of property held for forfeiture
405 pending the final determination of forfeiture if:

406 (a) the claimant had a possessory interest in the property at the time of seizure;
407 (b) continued possession by the agency or the state pending the final disposition of the

408 forfeiture proceedings will cause substantial hardship to the claimant, such as:

- 409 (i) preventing the functioning of a legitimate business;
- 410 (ii) preventing any individual from working;
- 411 (iii) preventing any child from attending elementary or secondary school;
- 412 (iv) preventing or hindering any person from receiving necessary medical care;
- 413 (v) hindering the care of an elderly or disabled dependent child or adult;
- 414 (vi) leaving any individual homeless; or
- 415 (vii) any other condition that the court determines causes a substantial hardship;

416 (c) the hardship from the continued possession of the property by the agency outweighs
417 the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is
418 returned to the claimant during the pendency of the proceeding; and

419 (d) determination of substantial hardship under this Subsection (6) is based upon the
420 property's use [~~prior to~~] before the seizure.

421 (7) After the seizing agency gives notice that the property is to be held for forfeiture, a
422 claimant may file a motion for hardship release:

- 423 (a) in the court in which forfeiture proceedings have commenced; or
- 424 (b) in any district court having jurisdiction over the property, if forfeiture proceedings
425 have not yet commenced.

426 (8) The motion for hardship release shall also be served upon the prosecuting attorney
427 or the seizing agency within 10 days after filing the motion.

428 (9) The court shall render a decision on a motion for hardship filed under this section
429 not later than 20 days after the date of filing, or 10 days after service upon the prosecuting
430 attorney or seizing agency, whichever is earlier, unless this period is extended by the agreement

431 of both parties or by the court for good cause shown.

432 (10) (a) If the claimant demonstrates substantial hardship pursuant to this section, the
433 court shall order the property immediately released to the claimant pending completion of
434 proceedings by the government to obtain forfeiture of the property.

435 (b) The court may place conditions on release of the property as it finds necessary and
436 appropriate to preserve the availability of the property or its equivalent for forfeiture.

437 (11) The hardship release under this section does not apply to:

438 (a) contraband;

439 (b) currency or other monetary instrument or electronic funds; or

440 (c) property that is likely to be used to commit additional illegal acts if returned to the
441 claimant.

442 (12) (a) The court may order property that is held for forfeiture to be sold, as allowed
443 by Subsection (13), leased, rented, or operated to satisfy a specified interest of any claimant, or
444 to preserve the interests of any party on motion of that party.

445 (b) The court may enter orders under Subsection (12)(a) after written notice to persons
446 known to have an interest in the property, and after an opportunity for a hearing.

447 (13) (a) A sale may be ordered under Subsection (12) when the property is liable to
448 perish, waste, or be significantly reduced in value, or when the expenses of maintaining the
449 property are disproportionate to its value.

450 (b) A third party designated by the court shall dispose of the property by commercially
451 reasonable public sale and distribute the proceeds in the following order of priority:

452 (i) first, for the payment of reasonable expenses incurred in connection with the sale;

453 (ii) second, for the satisfaction of any interests, including those of interest holders, in
454 the order of their priority as determined by Title 70A, Uniform Commercial Code; and

455 (iii) third, any balance of the proceeds shall be preserved in the actual or constructive
456 custody of the court, in an interest-bearing account, subject to further proceedings under this
457 chapter.

458 Section 8. Section **24-4-109** is amended to read:

459 **24-4-109. Postseizure interest.**

460 In ~~[any]~~ a proceeding to forfeit currency or other negotiable instruments under this
461 chapter, the court shall award a prevailing party ~~[postjudgment]~~ postseizure interest on the

462 currency or negotiable instruments at the interest rate established under Section 15-1-4.

463 Section 9. Section 24-4-114 is amended to read:

464 **24-4-114. Transfer and sharing procedures.**

465 (1) (a) ~~[Seizing agencies or prosecuting attorneys]~~ A seizing agency or prosecuting
466 attorney who is authorized to bring forfeiture proceedings under this chapter may not directly
467 or indirectly transfer property held for forfeiture and not already named in a criminal
468 indictment to any federal agency or any governmental entity not created under and subject to
469 state law unless the court enters an order, upon petition of the prosecuting attorney, authorizing
470 the property to be transferred.

471 (b) An agency that is found to have intentionally violated the transfer provisions of this
472 chapter is ineligible to participate in the program during the following fiscal year.

473 ~~[(b) The]~~ (c) A court may not enter an order authorizing a transfer under Subsection
474 (1)(a) unless:

475 (i) the conduct giving rise to the investigation or seizure is interstate in nature and
476 sufficiently complex to justify the transfer;

477 (ii) the property may only be forfeited under federal law; or

478 (iii) pursuing forfeiture under state law would unreasonably burden a prosecuting
479 ~~[attorneys]~~ attorney or state law enforcement ~~[agencies]~~ agency.

480 ~~[(c)]~~ (d) A petition to transfer property to a federal agency under this section shall
481 include:

482 (i) a detailed description of the property seized;

483 (ii) the location where the property was seized;

484 (iii) the date the property was seized;

485 (iv) the case number assigned by the seizing law enforcement agency; and

486 (v) a declaration that:

487 (A) states the basis for relinquishing jurisdiction to a federal agency;

488 (B) contains the ~~[names and addresses of any claimants]~~ name and address of any
489 claimant then known; and

490 (C) is signed by the prosecutor.

491 ~~[(d)]~~ (e) The court may not authorize the transfer of property to the federal government
492 if the transfer would circumvent the protections of the Utah Constitution or of this chapter that

493 would otherwise be available to the property owner.

494 ~~[(e)(i) Prior to]~~ (f) (i) Before granting ~~[any]~~ an order to transfer pursuant to this
 495 section, the court shall give any claimant the right to be heard with regard to the transfer by the
 496 mailing of a notice to each address contained in the declaration.

497 (ii) If no claimant objects to the petition to transfer property within 10 days of the
 498 mailing of the notice, the court shall issue its order under this section.

499 (iii) If the declaration does not include an address for a claimant, the court shall delay
 500 its order under this section for 20 days to allow time for the claimant to appear and make an
 501 objection.

502 ~~[(f)]~~ (g) (i) If a claimant contests a petition to transfer property to a federal agency, the
 503 court shall promptly set the matter for hearing.

504 (ii) (A) The court shall determine whether the state may relinquish jurisdiction by a
 505 standard of preponderance of the evidence.

506 (B) In making the determination, the court shall consider evidence regarding hardship,
 507 complexity, judicial and law enforcement resources, and any other matter the court determines
 508 to be relevant.

509 (2) ~~[AH]~~ The property, money, or other things of value received by an agency pursuant
 510 to federal law, which authorizes the sharing or transfer of all or a portion of forfeited property
 511 or the proceeds of the sale of forfeited property to an agency~~[:]~~ shall be transferred to the
 512 account.

513 ~~[(a) shall be used in compliance with federal laws and regulations relating to equitable~~
 514 ~~sharing;]~~

515 ~~[(b) may be used for those law enforcement purposes specified in Subsection~~
 516 ~~24-4-117(9); and]~~

517 ~~[(c) may not be used for those law enforcement purposes prohibited in Subsection~~
 518 ~~24-4-117(10).]~~

519 ~~[(3) A state or local law enforcement agency awarded any equitable share of property~~
 520 ~~forfeited by the federal government may only use the award money after approval of the use by~~
 521 ~~the agency's legislative body.]~~

522 Section 10. Section ~~24-4-117~~ is amended to read:

523 **24-4-117. State Asset Forfeiture Grant Program.**

- 524 (1) There is created the State Asset Forfeiture Grant Program.
- 525 (2) The program shall fund crime prevention, crime victim reparations, and law
526 enforcement activities that have the purpose of:
- 527 (a) deterring crime by depriving [~~criminals~~] a criminal of the profits and proceeds of
528 [~~their~~] the criminal's illegal activities;
- 529 (b) weakening criminal enterprises by removing the instrumentalities of crime;
- 530 (c) reducing crimes involving substance abuse by supporting the creation,
531 administration, or operation of drug court programs throughout the state;
- 532 (d) encouraging cooperation between local, state, and multijurisdictional law
533 enforcement agencies;
- 534 (e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited
535 proceeds of crime;
- 536 (f) increasing the equitability and accountability of the use of forfeited property used to
537 assist law enforcement in reducing and preventing crime; and
- 538 (g) providing aid to victims of criminally injurious conduct, as defined in Section
539 [63M-7-502](#), who may be eligible for assistance under Title 63M, Chapter 7, Part 5, Utah Office
540 for Victims of Crime.
- 541 (3) (a) When property is forfeited under this chapter and transferred to the account,
542 upon appropriation the commission shall allocate and administer grants to state agencies, local
543 law enforcement agencies, multijurisdictional law enforcement agencies, or political
544 subdivisions of the state in compliance with this section and to further the program purposes
545 under Subsection (2).
- 546 (b) The commission may retain up to 3% of the annual appropriation from the account
547 to pay for administrative costs incurred by the commission, including salary and benefits,
548 equipment, supplies, or travel costs that are directly related to the administration of the
549 program.
- 550 (4) [~~Agencies or political subdivisions~~] An agency or political subdivision shall apply
551 for an award from the program by completing and submitting forms specified by the
552 commission.
- 553 (5) In granting [~~the awards~~] an award, the commission shall ensure that the amount of
554 each award takes into consideration the:

555 (a) demonstrated needs of the agency;
556 (b) demonstrated ability of the agency to appropriately use the award; and
557 ~~[(c) degree to which the agency's need is offset through the agency's participation in~~
558 ~~federal equitable sharing or through other federal and state grant programs; and]~~

559 ~~[(d)]~~ (c) agency's cooperation with other state and local agencies and task forces.

560 (6) The commission may not disqualify an agency from being awarded a grant based
561 on the agency's participation in state or federal forfeiture.

562 ~~[(6) Applying agencies or political subdivisions]~~

563 (7) (a) An applying agency or political subdivision shall demonstrate compliance with
564 ~~[aH]~~ the reporting and policy requirements applicable under this chapter and under Title 63M,
565 Chapter 7, Criminal Justice and Substance Abuse, ~~[in order]~~ to qualify as a potential award
566 recipient.

567 (b) A law enforcement agency that fails to provide a report of its forfeiture activities
568 may not be awarded a grant during the following calendar year.

569 ~~[(7)]~~ (8) (a) [Recipient] A recipient law enforcement ~~[agencies]~~ agency may only use
570 award money after approval by the agency's legislative body.

571 (b) The award money is nonlapsing.

572 ~~[(8)]~~ (9) A recipient state agency, local law enforcement agency, multijurisdictional
573 law enforcement agency, or political subdivision shall use awards only for law enforcement
574 purposes as described in this section or for victim reparations as described in Subsection (2)(g),
575 and only as these purposes are specified by the agency or political subdivision in its application
576 for the award.

577 ~~[(9)]~~ (10) Permissible law enforcement purposes for which award money may be used
578 include:

579 (a) controlled substance interdiction and enforcement activities;

580 (b) drug court programs;

581 (c) activities calculated to enhance future law enforcement investigations;

582 (d) law enforcement training that includes:

583 (i) implementation of the Fourth Amendment to the United States Constitution and
584 Utah Constitution, Article I, Section 7, and that addresses the protection of the individual's
585 right of due process;

- 586 (ii) protection of the rights of innocent property holders; and
 587 (iii) the Tenth Amendment to the United States Constitution regarding states'
 588 sovereignty and the states' reserved rights;
- 589 (e) law enforcement or detention facilities;
 590 (f) law enforcement operations or equipment that are not routine costs or operational
 591 expenses;
- 592 (g) drug, gang, or crime prevention education programs that are sponsored in whole or
 593 in part by the law enforcement agency or its legislative body;
- 594 (h) matching funds for other state or federal law enforcement grants; and
 595 (i) the payment of legal costs, attorney fees, and postjudgment interest in forfeiture
 596 actions.

597 ~~[(10)]~~ (11) Law enforcement purposes for which award money may not be granted or
 598 used include:

- 599 (a) payment of salaries, retirement benefits, or bonuses to any person;
 600 (b) payment of expenses not related to law enforcement;
 601 (c) uses not specified in the agency's award application;
 602 (d) uses not approved by the agency's legislative body;
 603 (e) payments, transfers, or pass-through funding to ~~[entities]~~ an entity other than a law
 604 enforcement ~~[agencies]~~ agency; or
 605 (f) uses, payments, or expenses that are not within the scope of the agency's functions.

606 Section 11. Section **24-4-118** is amended to read:

607 **24-4-118. Forfeiture reporting requirements.**

608 (1) ~~[On and after January 1, 2016, every]~~ A state, county, municipal, or other law
 609 enforcement agency shall provide ~~[all]~~ the reasonably available data described in Subsection
 610 (5), along with the transfer of any applicable forfeited property:

611 (a) when ~~[transferring the forfeited property resulting from]~~ the final disposition ~~[of~~
 612 ~~any]~~ has been made for a civil or criminal forfeiture matter ~~[to the Commission on Criminal~~
 613 ~~and Juvenile Justice as required under Subsection 24-4-115(5)]~~; or

614 (b) when the agency has been awarded any equitable share of property forfeited by the
 615 federal government.

616 (2) The ~~[Commission on Criminal and Juvenile Justice]~~ commission shall develop a

617 standardized report format that each agency shall use in reporting the data required under this
618 section.

619 (3) The [~~Commission on Criminal and Juvenile Justice~~] commission shall annually, on
620 or before April 30, prepare a summary report of the case data submitted by each agency under
621 Subsection (1) during the prior calendar year.

622 (4) (a) If an agency does not comply with the reporting requirements under this section,
623 the [~~Commission on Criminal and Juvenile Justice~~] commission shall contact the agency and
624 request that the agency comply with the required reporting provisions.

625 (b) If an agency fails to comply with the reporting requirements under this section
626 within 30 days after receiving the request to comply, the [~~Commission on Criminal and~~
627 ~~Juvenile Justice~~] commission shall report the noncompliance to the Utah attorney general, the
628 speaker of the House of Representatives, and the president of the Senate.

629 (5) The data for any civil or criminal forfeiture matter for which final disposition has
630 been made under Subsection (1) shall include:

631 (a) the agency that conducted the seizure;

632 (b) the case number or other identification;

633 (c) the date or dates on which the seizure was conducted;

634 (d) the number of individuals having a known property interest in each seizure of
635 property;

636 (e) the type of property seized;

637 (f) the alleged offense that was the cause for seizure of the property;

638 (g) whether any criminal charges were filed regarding the alleged offense, and if so, the
639 final disposition of each charge, including the conviction, acquittal, or dismissal, or whether
640 action on a charge is pending;

641 (h) the type of enforcement action that resulted in the seizure, including an
642 enforcement stop, a search warrant, or an arrest warrant;

643 (i) whether the forfeiture procedure was civil or criminal;

644 (j) the value of the property seized, including currency and the estimated market value
645 of any tangible property;

646 (k) the final disposition of the matter, including whether final disposition was entered
647 by stipulation of the parties, including the amount of property returned to any claimant, by

648 default, by summary judgment, by jury award, or by guilty plea or verdict in a criminal
649 forfeiture;

650 (l) if the property was forfeited by the federal government, the amount of forfeited
651 money awarded to the agency;

652 (m) the agency's direct costs, expense of reporting under this section, and expenses for
653 obtaining and maintaining the seized property, as described in Subsection 24-4-115(3)(a);

654 (n) the legal costs and attorney fees paid to the prosecuting attorney, as described in
655 Subsection 24-4-115(3)(b); and

656 (o) if the property was transferred to a federal agency or any governmental entity not
657 created under and subject to state law:

658 (i) the date of the transfer;

659 (ii) the name of the federal agency or entity to which the property was transferred;

660 (iii) a reference to which reason under Subsection 24-4-114(1)(a) justified the transfer;

661 (iv) the court or agency where the forfeiture case was heard;

662 (v) the date of the order of transfer of the property; and

663 (vi) the value of the property transferred to the federal agency, including currency and
664 the estimated market value of any tangible property.

665 (6) On and after January 1, 2016, [~~every~~] a state, county, municipal, or other law
666 enforcement agency shall annually on or before April 30 submit a report for the prior calendar
667 year to the [~~Commission on Criminal and Juvenile Justice which~~] commission that states:

668 (a) whether the agency received an award from the [~~State Asset Forfeiture Grant~~
669 ~~Program~~] program under Section 24-4-117 and, if so, the following information for each
670 award:

671 (i) the amount of the award;

672 (ii) the date of the award;

673 (iii) how the award was used or is planned to be used; and

674 (iv) a statement signed by both the agency's executive officer or designee and by the
675 agency's legal counsel, that:

676 (A) the agency has complied with [~~all~~] the inventory, policy, and reporting
677 requirements under Section 24-4-117; and

678 (B) [~~all~~] the awards were used for crime reduction or law enforcement purposes as

679 specified in the application and that the awards were used only upon approval by the agency's
680 legislative body; and

681 (b) whether the agency received any property, money, or other things of value pursuant
682 to federal law as described in Subsection 24-4-114(2) and, if so, the following information for
683 each piece of property, money, or other thing of value:

684 (i) the case number or other case identification;

685 (ii) the value of the award and the property, money, or other things of value received by
686 the agency;

687 (iii) the date of the award;

688 (iv) the identity of any federal agency involved in the forfeiture;

689 (v) how the awarded property has been used or is planned to be used; and

690 (vi) a statement signed by both the agency's executive officer or designee and by the
691 agency's legal counsel, that the agency has only used the award for crime reduction or law
692 enforcement purposes authorized under Section 24-4-117, and that the award was used only
693 upon approval by the agency's legislative body.

694 (7) (a) On or before July 1 of each year, the [~~Commission on Criminal and Juvenile~~
695 ~~Justice~~] commission shall submit notice of the annual reports in Subsection (3) and Subsection
696 (6), in electronic format, to:

697 (i) the Utah attorney general;

698 (ii) the speaker of the House of Representatives, for referral to any House standing or
699 interim committees with oversight over law enforcement and criminal justice;

700 (iii) the president of the Senate, for referral to any Senate standing or interim
701 committees with oversight over law enforcement and criminal justice; and

702 (iv) each law enforcement agency.

703 (b) The reports described in Subsection (3) and Subsection (6), as well as the
704 individual case data described in Subsection (1) for the previous calendar year, shall be
705 published on the Utah Open Government website at open.utah.gov on or before July 15 of each
706 year.

HOUSE BILL NO. 1286

Introduced by

Representatives Becker, Blum, Johnston, Paur, Pyle, Satrom, Simons, Strinden

Senators Hogue, Kannianen, Luick, Unruh

1 A BILL for an Act to create and enact two new sections to chapter 29-31.1 of the North Dakota
2 Century Code, relating to reporting seizures and forfeitures, and prohibiting adoptive seizures;
3 to create and enact sections 29-31.1-04.1, 29-31.1-04.2, 29-31.1-04.3, 29-31.1-04.4,
4 29-31.1-04.5, 29-31.1-04.6, 29-31.1-04.7, 29-31.1-04.8, and 29-31.1-04.9 of the North Dakota
5 Century Code, relating to manner of forfeiture, forfeiture proceeding as civil action, disposition
6 of property, and hearing on contested forfeiture and proportionality; to amend and reenact
7 sections 12.1-06.1-05 and 12.1-06.1-06, subsection 2 of section 12.1-23.1-03, sections
8 19-03.1-36, 20.1-10-01, 20.1-10-03, and 20.1-10-07, subsection 1 of section 27-20-03,
9 subsection 1 of section 28-04-03, sections 29-27-02.1, 29-31.1-01, 29-31.1-03, 29-31.1-04,
10 29-31.1-05, and 29-31.1-06, subsection 1 of section 29-31.1-07, sections 29-31.1-08,
11 29-31.1-09, 39-03-18, and 39-08-01.3, subsection 2 of section 39-30-03, section 39-30-04,
12 subsection 1 of section 39-30-05, sections 40-11-13, 47-21.1-04, 54-12-14, 57-36-14, and
13 62.1-01-02, and subsection 2 of section 62.1-05-01 of the North Dakota Century Code, relating
14 to racketeering, forfeiture of controlled substances, forfeiture of confiscated hunting and fishing
15 equipment, juvenile court jurisdiction, property forfeiture and disposition, highway patrol and
16 attorney general assets forfeiture fund, and forfeiture of dangerous weapons and firearms; to
17 repeal sections 19-03.1-36.1, 19-03.1-36.2, 19-03.1-36.3, 19-03.1-36.4, 19-03.1-36.5,
18 19-03.1-36.6, 19-03.1-36.7, 20.1-10-04, and 29-31.1-10, and chapter 32-14 of the North Dakota
19 Century Code, relating to forfeiture proceedings, forfeiture disposition, and actions to recover
20 forfeitures; and to provide an appropriation.

21 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

22 **SECTION 1. AMENDMENT.** Section 12.1-06.1-05 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **12.1-06.1-05. Racketeering - Civil remedies.**

- 2 1. A person who sustains injury to person, business, or property by a pattern of
3 racketeering activity or by a violation of section 12.1-06.1-02 or 12.1-06.1-03 may file
4 an action in district court for the recovery of treble damages and the costs of the suit,
5 including reasonable attorney fees. The state may file an action in behalf of those
6 persons injured or to prevent, restrain, or remedy a pattern of racketeering activity or a
7 violation of section 12.1-06.1-02 or 12.1-06.1-03.
- 8 2. The district court has jurisdiction to prevent, restrain, and remedy a pattern of
9 racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03 after making
10 provision for the rights of all innocent persons affected by the violation and after
11 hearing or trial, as appropriate, by issuing appropriate orders.
- 12 3. Prior to a determination of liability, orders may include entering restraining orders,
13 receivership orders or prohibitions or other actions, including the acceptance of
14 satisfactory performance bonds, in connection with any property or other interest
15 subject to damages, forfeiture, or other restraints pursuant to this section.
- 16 4. Following a determination of liability, orders may include:
- 17 a. Ordering any person to divest himself of any interests, direct or indirect, in any
18 enterprise.
- 19 b. Imposing reasonable restrictions on the future activities or investments of anya
20 person, including prohibiting any person from engaging in the same type of
21 endeavor as the enterprise engaged in, the activities of which affect the laws of
22 this state, to the extent the constitutions of the United States and this state
23 permit.
- 24 c. Ordering dissolution or reorganization of any enterprise.
- 25 d. Ordering the payment of treble damages and appropriate restitution to those
26 persons injured by a pattern of racketeering activity or a violation of section
27 12.1-06.1-02 or 12.1-06.1-03.
- 28 e. Ordering the payment of all costs and expenses and reasonable attorneys' fees
29 concerned with the prosecution and investigation of any offense included in the
30 definition of racketeering if upon application for the order it is shown to the
31 satisfaction of the court that the racketeering offense has occurred as a part of a

- 1 pattern of racketeering activity or a violation of section 12.1-06.1-02 or
2 12.1-06.1-03, civil and criminal, incurred by the state or county as appropriate to
3 be paid to the general fund of the state or county that brings the action.
- 4 f. Forfeiture, pursuant to in accordance with chapter ~~32-14~~, to the state school fund
5 of the state or county as appropriate under section 29-27-02.1, to the extent not
6 already ordered to be paid in other damages 29-31.1 of:
- 7 (1) ~~Any property~~ Property or other interest acquired or maintained by a person in
8 violation of section 12.1-06.1-02 or 12.1-06.1-03.
- 9 (2) Any interest in, security of, claims against, or property or contractual right of
10 any kind affording a source of influence over any enterprise that a person
11 has established, operated, controlled, conducted, or participated in the
12 conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.
- 13 (3) All proceeds traceable to an offense included in the definition of
14 racketeering and all moneys, negotiable instruments, securities, and other
15 things of value used or intended to be used to facilitate commission of the
16 offense if upon application for the order it is shown to the satisfaction of the
17 court that the racketeering offense has occurred as a part of a pattern of
18 racketeering activity.
- 19 g. Payment to the state school fund of the state or county as appropriate under
20 section 29-27-02.1 of an amount equal to the gain a person has acquired or
21 maintained through an offense included in the definition of racketeering if upon
22 application for the order it is shown to the satisfaction of the court that the
23 racketeering offense has occurred as a part of a pattern of racketeering activity.
- 24 5. In addition to or in lieu of an action under this section the state may file an action
25 under chapter 29-31.1 for forfeiture to the state school fund of the state or county as
26 appropriate under section 29-27-02.1, to the extent not already ordered paid pursuant
27 to this section, of:
- 28 a. Any interest acquired or maintained by a person in violation of section
29 12.1-06.1-02 or 12.1-06.1-03.
- 30 b. Any interest in, security of, claims against, or property or contractual right of any
31 kind affording a source of influence over any enterprise that a person has

1 established, operated, controlled, conducted, or participated in the conduct of in
2 violation of section 12.1-06.1-02 or 12.1-06.1-03.

3 c. All proceeds traceable to an offense included in the definition of racketeering and
4 all moneys, negotiable instruments, securities, and other things of value used or
5 intended to be used to facilitate the commission of the offense if upon application
6 for the order it is shown to the satisfaction of the court that such racketeering
7 offense has occurred as a part of a pattern of racketeering activity.

8 6. A defendant convicted in any criminal proceeding ~~shall be~~ precluded from
9 subsequently denying the essential allegations of the criminal offense of which ~~he~~
10 defendant was convicted in any civil proceeding. For purposes of this subsection, a
11 conviction may result from a verdict or plea including a no contest plea.

12 7. Notwithstanding any law to the contrary, the initiation of civil proceedings related to
13 violations of any offense included in the definition of racketeering or a violation of
14 section 12.1-06.1-02 or 12.1-06.1-03 must be commenced within seven years of
15 actual discovery of the violation.

16 8. This state may, in a civil action brought pursuant to this section, file with the clerk of
17 the district court a certificate stating that the case is of special public importance. A
18 copy of that certificate ~~shall~~must be furnished immediately by the clerk to the presiding
19 judge of the district court in which the action is pending and, upon receipt of the copy,
20 the judge shall immediately designate a judge to hear and determine the action. The
21 judge designated shall promptly assign the action for hearing, participate in the
22 hearings and determination, and cause the action to be expedited.

23 9. ~~The~~With the exception of an action for forfeiture under subsections 4 or 5, the
24 standard of proof in actions brought pursuant to~~under~~ this section is the
25 preponderance of the evidence.

26 10. A person other than the attorney general or state's attorney who files an action under
27 this section shall serve notice and one copy of the pleading on the attorney general
28 within thirty days after the action is filed with the district court. The notice shall identify
29 the action, the person, and the person's attorney. Service of the notice does not limit
30 or otherwise affect the right of the state to maintain an action under this section or

1 intervene in a pending action nor does it authorize the person to name the state or the
2 attorney general as a party to the action.

3 11. Except in cases filed by a state's attorney, the attorney general may, upon timely
4 application, intervene in any civil action or proceeding brought pursuant to this section
5 if the attorney general certifies that in ~~his~~the attorney general's opinion the action is of
6 special public importance. Upon intervention, the attorney general may assert any
7 available claim and is entitled to the same relief as if the attorney general had
8 instituted a separate action.

9 12. In addition to the state's right to intervene as a party in any action under this section,
10 the attorney general may appear as amicus curiae in any proceeding in which a claim
11 under this section has been asserted or in which a court is interpreting any provisions
12 of this chapter.

13 13. A civil action under this section is remedial and does not limit any other civil or criminal
14 action. Civil remedies provided under this section are supplemental and not mutually
15 exclusive.

16 **SECTION 2. AMENDMENT.** Section 12.1-06.1-06 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **12.1-06.1-06. Racketeering lien - Content - Filing - Notice - Effect.**

19 1. The state, upon filing a civil action under section 12.1-06.1-05 or upon charging an
20 offense included in the definition of racketeering if the offense is committed as a part
21 of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or
22 12.1-06.1-03, may file a racketeering lien. A filing fee or other charge is not required
23 for filing a racketeering lien.

24 2. A racketeering lien ~~shall~~must be signed by the attorney general or the state's attorney
25 representing the state in the action and set forth the following information:

26 a. The name of the defendant whose property, interests in property, or other
27 interests are to be subject to the lien.

28 b. In the discretion of the attorney general or state's attorney filing the lien, any
29 aliases or fictitious names of the defendant named in the lien.

30 c. If known to the attorney general or state's attorney filing the lien, the present
31 residence or principal place of business of the person named in the lien.

- 1 d. A reference to the proceeding pursuant to which the lien is filed, including the
- 2 name of the court, the title of the action, and the court's file number for the
- 3 proceeding.
- 4 e. The name and address of the attorney representing the state in the proceeding
- 5 pursuant to which the lien is filed.
- 6 f. A statement that the notice is being filed pursuant to this section.
- 7 g. The amount ~~which~~ the state claims in the action or, with respect to property or
- 8 other interests ~~which~~ the state has requested forfeiture to the state or county, a
- 9 description of the property or interests sought to be paid or forfeited.
- 10 h. If known to the attorney general or state's attorney filing the lien, a description of
- 11 property ~~which~~ is subject to forfeiture to the state or property in which the
- 12 defendant has an interest which is available to satisfy a judgment entered in favor
- 13 of the state.
- 14 i. Such other information as the attorney general or state's attorney filing the lien
- 15 deems appropriate.
- 16 3. The attorney general or the state's attorney filing the lien may amend a lien filed under
- 17 this section at any time by filing an amended racketeering lien in accordance with this
- 18 section which identifies the prior lien amended.
- 19 4. The attorney general or the state's attorney filing the lien ~~shall~~, as soon as practical
- 20 after filing a racketeering lien, shall furnish to any person named in the lien a notice of
- 21 the filing of the lien. Failure to furnish notice under this subsection does not invalidate
- 22 or otherwise affect a racketeering lien filed in accordance with this section.
- 23 5. Subject to chapter 29-31.1, a racketeering lien is perfected against interests in
- 24 personal property by filing the lien with the secretary of state, except that in the case of
- 25 titled motor vehicles it ~~shall~~, which must be filed with the director of the department of
- 26 transportation. A racketeering lien is perfected against interests in real property by
- 27 filing the lien with the county recorder of the county in which the real property is
- 28 located. The state may give additional notice of the lien.
- 29 6. ~~The~~Subject to chapter 29-31.1, the filing of a racketeering lien in accordance with this
- 30 section creates a lien in favor of the state in:

- 1 a. Any interest of the defendant in real property situated in the county in which the
2 lien is filed, then maintained or later acquired in the name of the defendant
3 identified in the lien.
- 4 b. Any interest of the defendant in personal property situated in this state, then
5 maintained or later acquired in the name of the defendant identified in the lien.
- 6 c. Any property identified in the lien to the extent of the defendant's interest in the
7 property.
- 8 7. ~~Upon~~Subject to chapter 29-31.1, the filing of a racketeering lien under this section is
9 notice to all persons dealing with the person or property identified in the lien of the
10 state's claim. The lien created in favor of the state in accordance with this section is
11 superior and prior to the claims or interests of any other person, except a person
12 possessing:
 - 13 a. A valid lien perfected prior to the filing of the racketeering lien.
 - 14 b. In the case of real property, an interest acquired and recorded prior to the filing of
15 the racketeering lien.
 - 16 c. In the case of personal property, an interest acquired prior to the filing of the
17 racketeering lien.
- 18 8. Upon entry of judgment in favor of the state, the state may proceed to execute the
19 judgment as in the case of any other judgment, except that in order to preserve the
20 state's lien priority as provided in this section the state ~~shall~~, in addition to notice as
21 required by law, shall give at least thirty days' notice of execution to any person
22 possessing at the time notice is given, an interest recorded after the date the state's
23 lien was perfected.
- 24 9. ~~Upon~~Subject to chapter 29-31.1, upon the entry of a final judgment in favor of the state
25 providing for forfeiture of property to the state, the title of the state to the property:
 - 26 a. In the case of real property, or a beneficial interest in real property, relates back
27 to the date of filing the racketeering lien with the county recorder of the county
28 where the real property is located, or if no racketeering lien is filed, then to the
29 date of recording of the final judgment with the county recorder of the county
30 where the real property is located.

- 1 b. In the case of personal property or a beneficial interest in personal property,
2 relates back to the date the personal property was seized by the state, or the
3 date of filing of a racketeering lien in accordance with this section, whichever is
4 earlier, but if the property was not seized and no racketeering lien was filed then
5 to the date the final judgment was filed with the secretary of state, or in the case
6 of a titled motor vehicle, with the director of the department of transportation.
- 7 10. This section does not limit the right of the state to obtain any order or injunction,
8 receivership, writ, attachment, garnishment, or other remedy authorized under section
9 12.1-06.1-05 or available under other applicable law.

10 **SECTION 3. AMENDMENT.** Subsection 2 of section 12.1-23.1-03 of the North Dakota
11 Century Code is amended and reenacted as follows:

- 12 2. Any communications paraphernalia prohibited under section 12.1-23.1-01 may be
13 seized and, ~~upon conviction, is forfeited to the jurisdiction where the arrest was made.~~
14 The paraphernalia may be, pursuant to court order, sold or destroyed is subject to
15 forfeiture in accordance with chapter 29-31.1.

16 **SECTION 4. AMENDMENT.** Section 19-03.1-36 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **19-03.1-36. Forfeitures.**

- 19 1. The following are subject to forfeiture:
- 20 a. All controlled substances ~~which have been~~ manufactured, distributed, dispensed,
21 or acquired in violation of this chapter.
- 22 b. All imitation controlled substances as defined by sections 19-03.2-01 and
23 19-03.2-02.
- 24 c. All raw materials, products, and equipment of any kind ~~which are~~ used, or
25 intended for use, in manufacturing, compounding, processing, delivering,
26 importing, or exporting any controlled substance in violation of this chapter.
- 27 d. All property ~~which is~~ used, or intended for use, as a container for property
28 described in subdivision a, b, or c.
- 29 e. All conveyances, including aircraft, vehicles, or vessels, ~~which are~~ used, or
30 intended for use, to transport, or in any manner to facilitate the transportation, for
31 the purpose of sale or receipt of property described in subdivision a, b, or c, but:

- 1 (1) No conveyance used by any person as a common carrier in the transaction
2 of business as a common carrier is subject to forfeiture under this section
3 unless it appears that the owner or other person in charge of the
4 conveyance is a consenting party or privy to a violation of this chapter.
- 5 (2) No conveyance is subject to forfeiture under this section by reason of any
6 act or omission established by the owner thereof to have been committed or
7 omitted without the owner's knowledge or consent.
- 8 (3) A conveyance is not subject to forfeiture for a violation of subsection 8 of
9 section 19-03.1-23 or subsection 3 of section 19-03.2-03.
- 10 (4) A forfeiture of a conveyance encumbered by a bona fide security interest is
11 subject to the interest of the secured party if the secured party neither had
12 knowledge of nor consented to the act or omission.
- 13 f. All books, records, and research products and materials, including formulas,
14 microfilm, tapes, and data, which are used, or intended for use, in violation of this
15 chapter.
- 16 g. All drug paraphernalia as defined in chapter 19-03.4.
- 17 h. All money, coin, currency, and everything of value furnished, or intended to be
18 furnished, in exchange for a controlled substance in violation of this chapter or an
19 imitation controlled substance in violation of chapter 19-03.2, and all real and
20 personal property, assets, profits, income, proceeds, or an interest therein,
21 acquired or derived from the unlawful purchase, attempted purchase, delivery,
22 attempted delivery, manufacturing, or attempted manufacturing of any controlled
23 substance or imitation controlled substance.
- 24 2. ~~Property subject to forfeiture under this chapter, except conveyances described in~~
25 subdivisions a, b, and g of subsection 1 may be seized by the board upon process
26 issued by any district court having jurisdiction over the property. ~~A conveyance subject~~
27 ~~to forfeiture under this chapter may be seized by a state, county, or city law~~
28 ~~enforcement agency upon process issued by any district court having jurisdiction over~~
29 ~~the conveyance~~All other property subject to forfeiture under this chapter must be
30 seized and forfeited in accordance with chapter 29-31.1. Seizure of property described
31 in subdivisions a, b, and g of subsection 1 without process may be made if:

- 1 a. The seizure is incident to an arrest or a search under a search warrant or an
2 inspection under an administrative inspection warrant.
- 3 b. The property subject to seizure has been the subject of a prior judgment in favor
4 of the state in a criminal injunction or forfeiture proceedings based upon this
5 chapter.
- 6 c. The board or a law enforcement agency has probable cause to believe ~~that~~ the
7 property is directly or indirectly dangerous to health or safety.
- 8 d. The board or a law enforcement agency has probable cause to believe ~~that~~ the
9 property was used or is intended to be used in violation of this chapter.
- 10 3. In the event of seizure pursuant to subsection 2, proceedings under subsection 4 must
11 be instituted promptly.
- 12 4. Property described in subdivisions a, b, and g of subsection 1 which is taken or
13 detained under this section is not subject to replevin, but is deemed to be in custody of
14 the board or a law enforcement agency subject only to the orders and decrees of the
15 district court having jurisdiction over the forfeiture proceedings as set out in subsection
16 2. When property described in subdivisions a, b, and g of subsection 1 is seized under
17 this chapter, the board or a law enforcement agency may:
- 18 a. Place the property under seal.
- 19 b. Remove the property to a place designated by it.
- 20 c. Require the attorney general to take custody of the property and remove it to an
21 appropriate location for disposition in accordance with law.
- 22 5. When property described in subdivisions a, b, and g of subsection 1 is forfeited under
23 this chapter, the board or a law enforcement agency may:
- 24 a. Retain it for official use or transfer the custody or ownership of any forfeited
25 property to any federal, state, or local agency. The board shall ensure the
26 equitable transfer of any forfeited property to the appropriate federal, state, or
27 local law enforcement agency so as to reflect generally the contribution of that
28 agency participating directly in any of the acts that led to the seizure or forfeiture
29 of the property. A decision to transfer the property is not subject to review.
- 30 b. Sell that which is not required to be destroyed by law and which is not harmful to
31 the public. The proceeds must be used for payment of all proper expenses of the

1 proceedings for forfeiture and sale, including expenses of seizure, maintenance
2 of custody, advertising, and court costs, with any remaining proceeds to be
3 deposited, subject to section 54-12-14, in the appropriate state, county, or city
4 general fund. When two or more law enforcement agencies are involved in
5 seizing a conveyance, the remaining proceeds may be divided proportionately.

6 c. Require the attorney general to take custody of property and remove it for
7 disposition in accordance with law.

8 d. Forward it to the bureau for disposition.

9 e. Use the property, including controlled substances, imitation controlled
10 substances, and plants forfeited under subsections 6 and 7, in enforcement of
11 this chapter. However, in a case involving the delivery of a forfeited controlled
12 substance by a law enforcement officer or a person acting as an agent of a law
13 enforcement officer, no prosecution or conviction for simple possession of a
14 controlled substance under subsection 6 of section 19-03.1-23 may be based
15 upon the forfeited controlled substances supplied by the law enforcement officer
16 or the officer's agent.

17 6. Controlled substances as defined in this chapter and imitation controlled substances
18 as defined in chapter 19-03.2 ~~that~~which are possessed, transferred, sold, or offered for
19 sale in violation of this chapter and drug paraphernalia as defined in chapter 19-03.4
20 are contraband and must be seized and summarily forfeited to the state. Controlled
21 substances as defined in this chapter and imitation controlled substances as defined in
22 chapter 19-03.2, which are seized or come into the possession of the state and drug
23 paraphernalia as defined in chapter 19-03.4, the owners of which are unknown, are
24 contraband and must be summarily forfeited to the state.

25 7. Species of plants from which controlled substances in schedules I and II may be
26 derived which have been planted or cultivated in violation of this chapter, or of which
27 the owners or cultivators are unknown, or which are wild growths, may be seized and
28 summarily forfeited to the state.

29 8. The failure, upon demand by the board, or its authorized agent, of the person in
30 occupancy or in control of land or premises upon which the species of plants are
31 growing or being stored to produce an appropriate registration, or proof that the

1 person is the holder thereof, constitutes authority for the seizure and forfeiture of the
2 plants.

3 **SECTION 5. AMENDMENT.** Section 20.1-10-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **20.1-10-01. Property unlawfully taken, transported, or used to be confiscated by**
6 **certain game and fish officials - Procedure.**

7 The director, deputy director, or any bonded game warden shall seize all wild birds, wild
8 animals, or fish, or any part thereof, taken, killed, or possessed, or transported contrary to law,
9 and shall seize all dogs, guns, seines, nets, boats, lights, automobiles, vehicles,
10 instrumentalities, appliances, and devices unlawfully used, or held with intent to be unlawfully
11 used, in pursuing, taking, or attempting to take, concealing, or disposing of wild birds, wild
12 animals, or fish, or any part thereof. Property used or held with the intent to be used unlawfully
13 in pursuing, taking, attempting to take, concealing, or disposing of wild birds, wild animals, or
14 fish may not be confiscated when the violation is a noncriminal offense. All property seized must
15 be held subject to the order of a court of competent jurisdiction. ~~When property is confiscated,~~
16 ~~the confiscating officer shall bring the alleged offender before a court of competent jurisdiction~~
17 ~~for the purpose of determining disposition. However, if and is subject to forfeiture in accordance~~
18 with chapter 29-31.1. If the court having nominal jurisdiction over the alleged wrongdoer
19 determines that the value of the confiscated property exceeds the court's jurisdictional
20 limitations, the matter may, upon the motion of either party, be removed to district court for
21 determination. If the alleged offender desires an attorney, a reasonable time must be given to
22 secure counsel. If it is not feasible to bring the alleged offender immediately before the court,
23 the property may not be seized or confiscated if the alleged offender gives a receipt to the
24 officer assuring delivery before the court when the matter comes up. The receipt must contain
25 the provisions of this section to advise the alleged offender of the law.

26 **SECTION 6. AMENDMENT.** Section 20.1-10-03 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **20.1-10-03. Confiscated property - Courts having jurisdiction - Requisites for**
29 **disposition.**

30 A court having jurisdiction of an alleged offense against this title may order the disposition of
31 ~~all birds, animals, or fish, or any part thereof, or other~~ confiscated property that has been

1 ~~confiscated. This~~The disposition of all confiscated property must be in accordance with chapter
2 29-31.1. The order may be entered only after a hearing duly had upon proper notice to the
3 owner and after due and proper finding by the court that the property:

- 4 1. Was taken, killed, possessed, or being transported contrary to law by the person from
5 whom it was seized.
- 6 2. Was being used in violation of this title at the time it was seized.
- 7 3. Had been used in violation of this title within six months previous to the time it was
8 seized.

9 **SECTION 7. AMENDMENT.** Section 20.1-10-07 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **20.1-10-07. Property seized under warrant - Officer's return to describe -**
12 **Safekeeping - Disposal.**

13 Any officer executing a warrant issued pursuant to section 20.1-10-06 ~~shall~~, in the officer's
14 return, shall describe the property seized with as much particularity as possible. The seized
15 property must be safely kept upon direction of the judge as long as necessary to use as
16 evidence. If a conviction is obtained, either by trial or by plea of guilty, the seized property ~~must~~
17 ~~be disposed of under an order of the court before whom the prosecution was brought~~is subject
18 to forfeiture in accordance with chapter 29-31.1.

19 **SECTION 8. AMENDMENT.** Subsection 1 of section 27-20-03 of the North Dakota Century
20 Code is amended and reenacted as follows:

- 21 1. The juvenile court has exclusive original jurisdiction of the following proceedings,
22 which are governed by this chapter:
 - 23 a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;
 - 24 b. Proceedings for the termination of parental rights except when a part of an
25 adoption proceeding;
 - 26 c. Proceedings arising under section 27-20-30.1; and
 - 27 d. Civil forfeiture proceedings arising under ~~chapter 19-03.1 or section~~
28 ~~29-31.1-04~~29-31.1 for which a child is alleged to have possessed forfeitable
29 property. The juvenile court shall conduct the proceedings in accordance with the
30 procedures provided for under ~~sections 19-03.1-36 through 19-03.1-37~~chapter
31 29-31.1.

1 **SECTION 9. AMENDMENT.** Subsection 1 of section 28-04-03 of the North Dakota Century
2 Code is amended and reenacted as follows:

- 3 1. For the recovery of a penalty ~~or forfeiture~~ imposed by statute, except that when it is
4 imposed for an offense committed on a lake or river or other stream of water situated
5 in two or more counties, the action may be brought in any county bordering on such
6 lake, river, or stream, and opposite the place where the offense was committed; and

7 **SECTION 10. AMENDMENT.** Section 29-27-02.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **29-27-02.1. Disposition of statutory fees, fines, forfeitures, pecuniary penalties, and**
10 **bond forfeitures.**

11 Except as otherwise provided by law, all statutory fees, fines, forfeitures, funds obtained
12 through civil asset forfeiture under chapter 29-31.1, and pecuniary penalties prescribed for a
13 violation of state laws, when collected, must be paid into the treasury of the proper county to be
14 added to the state school fund. When any bail bond or other property or money deposited as
15 bail is forfeited to the state, the proceeds collected therefrom must be paid over to the proper
16 state official and credited to the state general fund.

17 **SECTION 11. AMENDMENT.** Section 29-31.1-01 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **29-31.1-01. Definitions.**

20 In this chapter, unless the context or subject matter otherwise requires:

- 21 1. "Forfeitable property" means any of the following:
- 22 a. Property that is illegally possessed or is contraband.
 - 23 b. Property ~~that has been used~~ or is intended to be used to facilitate the
24 commission of a criminal offense or to avoid detection or apprehension of a
25 person committing a criminal offense. For purposes of this subdivision, property
26 does not include a residence or other real estate where a co-owner, whether by
27 joint tenancy, tenancy in common, or tenancy by the entireties, of the residence
28 or other real estate, has not been convicted of the criminal offense that was
29 facilitated by the use or intended use of the property.
 - 30 c. Property ~~that is~~ acquired as or from the proceeds of a criminal offense.

- 1 d. Property offered or given to another as an inducement for the commission of a
2 criminal offense.
- 3 e. A vehicle or other means of transportation used in the commission of a felony, the
4 escape from the scene of the commission of a felony, or in the transportation of
5 property that is the subject matter of a felony.
- 6 f. Personal property used in the theft of livestock or the transportation of stolen
7 livestock.
- 8 2. "Law enforcement agency" or "law enforcement agent" means a nonfederal public
9 agency or servant authorized by law or by a government agency or branch to enforce
10 the law and to conduct or engage in investigations or prosecutions for violations of law,
11 including the authority to conduct or engage in seizure and forfeiture.
- 12 3. "Proportional" means corresponding in degree and not unconstitutionally excessive.
- 13 4. "Seized property" means property taken or held by any law enforcement agency in the
14 course of that agency's official duties with or without the consent of the person, if any,
15 who had possession or a right to possession of the property at the time it was taken
16 into custody.
- 17 ~~3-5.~~ "Seizing agency" is the law enforcement agency that has taken possession of or
18 seized property in the course of that agency's official duties.

19 **SECTION 12. AMENDMENT.** Section 29-31.1-03 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **29-31.1-03. Seizure of forfeitable property.**

- 22 1. Forfeitable property may be seized whenever and wherever the property is found
23 within this state. Forfeitable property may be seized by taking custody of the property
24 or by serving upon the person in possession of the property a notice of forfeiture and
25 seizure.
- 26 2. If the court finds that the forfeiture is warranted, ~~an order transferring ownership to the~~
27 ~~seizing agency must be entered and the property must be delivered to the seizing~~
28 agency for disposition as directed by the court.
- 29 a. Property ~~that has been~~ seized for forfeiture, and is not already secured as
30 evidence in a criminal case, must be safely secured or stored by the agency that
31 caused its seizure.

1 b. If the property to be seized for forfeiture is livestock, the court may order the
2 seizing agency to provide care for the livestock and maintain the livestock at the
3 livestock's current physical location. If the court orders the seizing agency to
4 provide care for the livestock and maintain the livestock at the livestock's current
5 physical location, the court shall order the owner to pay or reimburse the seizing
6 agency from the proceeds of the sale for the costs and expenses associated with
7 the care and custody of the livestock.

8 c. As used in this subsection, "care" includes food and water, as appropriate for the
9 species, the breed, and the livestock's age and physical condition, and necessary
10 medical attention.

11 **SECTION 13. AMENDMENT.** Section 29-31.1-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **29-31.1-04. Forfeiture proceedings.**

- 14 1. Forfeiture is a civil proceeding not dependent upon a prosecution for, or and conviction
15 of; a criminal offense and forfeiture. Forfeiture proceedings are separate and distinct
16 from any related criminal action-, and may not be initiated until the owner of the
17 property has been convicted of or pled guilty to a criminal offense.
- 18 2. Forfeiture proceedings brought under this chapter must be conducted in accordance
19 with the procedures established for the forfeiture of property in sections 19-03.1-36.1-
20 through 19-03.1-36.7 under this chapter.
- 21 3. Forfeitures under this chapter must be proportional. A forfeiture with a value not
22 exceeding the maximum financial penalty for its companion criminal charge is
23 presumptively proportional.
- 24 4. This chapter does not prohibit disposition of property subject to forfeiture by
25 agreement of the parties.

26 **SECTION 14.** Section 29-31.1-04.1 of the North Dakota Century Code is created and
27 enacted as follows:

28 **29-31.1-04.1. Manner of forfeiture.**

29 Property subject to forfeiture, other than property that may be forfeited summarily, may be
30 forfeited by order of the court after:

1 1. A written consent to forfeiture executed by the owner of the property and all persons
2 with a legal interest in the property to be forfeited has been filed with the court; or

3 2. Commencement of forfeiture proceedings.

4 **SECTION 15.** Section 29-31.1-04.2 of the North Dakota Century Code is created and
5 enacted as follows:

6 **29-31.1-04.2. Forfeiture proceeding as civil action - Standard of proof.**

7 Forfeiture proceedings are civil actions against the property to be forfeited and the standard
8 of proof is clear and convincing evidence.

9 **SECTION 16.** Section 29-31.1-04.3 of the North Dakota Century Code is created and
10 enacted as follows:

11 **29-31.1-04.3. Summons and complaint for forfeiture of property - Contents of**
12 **complaint - Notice.**

13 1. When property is to be forfeited, in the absence of a written consent to forfeiture,
14 forfeiture proceedings must be commenced by the filing of a summons and complaint
15 for forfeiture of the property in the district court of the county where the property was
16 seized, is being held, or is located.

17 2. If the property to be forfeited is real property, the summons and complaint must be
18 filed in the county where the real property, or some part of the real property, is located.

19 3. A proceeding under this chapter must be brought in the name of the state.

20 4. The complaint must include:

21 a. A description of the property;

22 b. The property's location;

23 c. The name of property's present custodian;

24 d. The name of each known owner;

25 e. The name of each known party with a legal interest in the property;

26 f. The elements of the violation claimed to exist; and

27 g. A request to enforce the forfeiture.

28 5. Notice of the forfeiture proceeding must be given to each known owner and known
29 person with a legal interest in the property subject to forfeiture by serving a copy of the
30 summons and complaint in accordance with the North Dakota Rules of Civil
31 Procedure.

1 6. The procedure governing the proceedings, except as otherwise provided in this
2 chapter, is the same as prescribed for civil proceedings.

3 **SECTION 17.** Section 29-31.1-04.4 of the North Dakota Century Code is created and
4 enacted as follows:

5 **29-31.1-04.4. Answer by claimant of property - Time for filing.**

6 Within thirty days after service of the summons and complaint for forfeiture, the owner of the
7 property to be forfeited and any other person with a legal interest in the property may file an
8 answer claiming an interest in the property and claiming the person's interest is not subject to
9 forfeiture under this chapter.

10 **SECTION 18.** Section 29-31.1-04.5 of the North Dakota Century Code is created and
11 enacted as follows:

12 **29-31.1-04.5. Disposition of property if no answer filed.**

13 If an answer has not been filed with the court against the complaint for forfeiture within thirty
14 days after the summons and complaint have been served, the court shall order the forfeiture
15 and disposition of the property.

16 **SECTION 19.** Section 29-31.1-04.6 of the North Dakota Century Code is created and
17 enacted as follows:

18 **29-31.1-04.6. Hearing on contested forfeiture - Order releasing or forfeiting property.**

- 19 1. If an answer is filed within the time limits provided in this chapter, the court shall set a
20 date for hearing on the forfeiture proceeding.
- 21 2. If the reasonable value of the property subject to forfeiture exceeds ten thousand
22 dollars, the proceeding must be tried by a jury as provided by law, unless all parties
23 waive the right to a jury trial.
- 24 3. If the reasonable value of the property subject to forfeiture does not exceed ten
25 thousand dollars, the proceeding must be by bench trial.
- 26 4. At the hearing, the state shall establish by clear and convincing evidence the property
27 to be forfeited is subject to forfeiture under this chapter.
- 28 5. If the property is not subject to forfeiture under this chapter, the court shall order the
29 property released to the owner or other person with a legal interest in the property as
30 that person's right, title, or interest appears.

1 6. The court shall order the property forfeited upon clear and convincing evidence that
2 property or an interest therein is subject to forfeiture.

3 **SECTION 20.** Section 29-31.1-04.7 of the North Dakota Century Code is created and
4 enacted as follows:

5 **29-31.1-04.7. Hearing on proportionality of forfeiture.**

6 1. Upon a determination by the court or a jury that property is subject to forfeiture, the
7 owner of the property to be forfeited or any other person with a legal interest in the
8 property may petition the court for a proportionality determination.

9 2. The owner or person must establish, by a preponderance of the evidence, the
10 forfeiture is disproportional to the seriousness of the offense. Upon a determination the
11 forfeiture is disproportional, the court shall enter any order the court deems just to
12 render the forfeiture proportional.

13 3. In determining proportionality the court shall consider the following factors:

14 a. The seriousness of the offense;

15 b. The impact of the offense on the community;

16 c. The extent to which the owner or person participated in the offense;

17 d. The sentence imposed for committing the offense subject to forfeiture;

18 e. The reasonable value of the property;

19 f. The value of the property to the owner or person and any resulting hardship to
20 the owner or person and to the family of the owner or person;

21 g. If the property subject to forfeiture is a vehicle, whether the vehicle is the owner's
22 only vehicle; and

23 h. Any other factor the court deems relevant.

24 **SECTION 21.** Section 29-31.1-04.8 of the North Dakota Century Code is created and
25 enacted as follows:

26 **29-31.1-04.8. Legal interest in property.**

27 1. A person alleging a bona fide legal interest in property to be forfeited shall establish,
28 by a preponderance of the evidence, the legal interest existed at the time of seizure or
29 taking of custody of the property.

30 2. In the case of a claimed bona fide security interest in the property, the person claiming
31 the interest shall establish, by a preponderance of the evidence, the security interest in

1 the property to be forfeited existed or was of public record at the time of seizure or
2 taking of custody of the property.

3 **SECTION 22.** Section 29-31.1-04.9 of the North Dakota Century Code is created and
4 enacted as follows:

5 **29-31.1-04.9. Burden of proof - Liabilities.**

6 1. The burden of proof of any exemption or exception is upon the person claiming it.

7 2. In the absence of proof that a person is the duly authorized holder of an appropriate
8 registration or order form issued under chapter 19-03.1, the person is presumed not to
9 be the holder of the registration or form. The burden of proof is upon the person to
10 rebut the presumption.

11 3. No liability is imposed by this chapter upon any authorized state, county, or municipal
12 officer engaged in the lawful performance of the officer's duties.

13 **SECTION 23. AMENDMENT.** Section 29-31.1-05 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **29-31.1-05. Transfer of forfeitable property.**

16 ~~Title~~Provisional title to, and responsibility for, forfeitable property vests with the seizing
17 agency at the time of the seizure. Once forfeitable property is seized, no right to the property
18 may be transferred ~~by anyone other than the seizing agency~~ unless the seizure and forfeiture is
19 declared by the court to be a nullity or as otherwise ordered by the court.

20 **SECTION 24. AMENDMENT.** Section 29-31.1-06 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **29-31.1-06. Disposition of forfeited property.**

23 When property is forfeited under this chapter, the seizing agency ~~may~~shall:

24 1. ~~Retain the property for official use or transfer the custody or ownership of any forfeited~~
25 ~~property to any federal, state, or local agency~~Dispose of the property in accordance
26 with the order of the court.

27 2. Sell the forfeited property that is not required to be destroyed by law and which is not
28 harmful to the public. The proceeds from the sale, ~~together with any monetary funds~~
29 ~~ordered to be forfeited, must be used first for the payment of all~~ must be added to the
30 state school fund as provided under section 29-27-02.1. The court may order the
31 proper costs and expenses of the proceedings for forfeiture and sale, including

1 expenses of seizure, maintenance of custody, advertising, and ~~courtsales~~ costs with
2 any remaining proceeds to be deposited, ~~subject to section 54-12-14, in the~~
3 appropriate state, county, or city general fund as provided herein.

4 3. ~~Dispose of the property in accordance with the order of the court if the property cannot~~
5 ~~be retained, used, or sold by the seizing agency~~Allow the owner or lienholder to
6 purchase the property as provided by section 29-31.1-07.

7 **SECTION 25. AMENDMENT.** Subsection 1 of section 29-31.1-07 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 1. Property may not be forfeited under this chapter to the extent of an interest of an
10 owner who had no part in the commission of the crime and who had no knowledge of
11 the criminal use or intended use of the property. However, property may be forfeited if
12 it is established that, by clear and convincing evidence, the owner permitted the use of
13 the property under circumstances in which a reasonable person should have inquired
14 into the intended use of the property and ~~that the owner failed to do so, there is a~~
15 ~~rebuttable presumption that the owner knew that the property was intended to be used~~
16 ~~in the commission of a crime.~~

17 **SECTION 26. AMENDMENT.** Section 29-31.1-08 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **29-31.1-08. Retention of forfeited property.**

20 If property forfeitable under this chapter is needed as evidence in a criminal proceeding,
21 ~~it~~except as otherwise ordered by the court, the property must be retained under the control of
22 the prosecuting attorney, or the prosecuting attorney's designee, until such time as its use as
23 evidence is no longer required.

24 **SECTION 27. AMENDMENT.** Section 29-31.1-09 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **29-31.1-09. Disposition of forfeitable property held as evidence in criminal**
27 **proceeding.**

28 Notwithstanding other provisions of this chapter, in the case of forfeitable property seized
29 and held as evidence of the commission of a criminal offense, the court in which a criminal
30 prosecution was commenced may issue its order, upon motion and after hearing unless waived,
31 for disposition of the property in accordance with this chapter. Notice of the motion must be

1 served in accordance with the North Dakota Rules of Civil Procedure upon the owner and all
2 persons known to be claiming an interest in the property to be forfeited. The notice must be
3 served at least twenty days before a hearing on the motion unless the time period is waived by
4 all parties claiming an interest in the property. The motion must contain the information required
5 in a complaint as set forth in section 19-03.1-36.3. ~~Although no separate forfeiture proceeding is~~
6 ~~required to be instituted under this section, all other provisions of this chapter apply to~~
7 ~~proceedings commenced pursuant to this section~~29-31.1-04.3.

8 **SECTION 28.** A new section to chapter 29-31.1 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Reporting.**

- 11 1. Annually, each law enforcement agency shall compile the following information
12 regarding seizures and forfeitures completed by the agency under state and federal
13 forfeiture law:
- 14 a. The total number of seizures of currency;
 - 15 b. The total number of seizures and the number of items in each class of property
16 seized, including vehicles, houses, and other types of property seized;
 - 17 c. The market value of each class of property seized, including currency, vehicles,
18 houses, and other types of property seized; and
 - 19 d. The total number of occurrences of each class of crime underlying the forfeitures,
20 including controlled substances, driving while intoxicated, and other crimes.
- 21 2. The attorney general may require the reporting of additional information not specified
22 in this section. The attorney general shall develop standard forms, processes, and
23 deadlines for electronic data entry for annual submission of forfeiture data by law
24 enforcement agencies.
- 25 3. Each law enforcement agency shall file with the attorney general a report of the
26 information compiled under subsection 1 for the law enforcement agency and the
27 corresponding prosecutor. The law enforcement agency shall file separate reports for
28 forfeitures completed under state forfeiture law and federal forfeiture law. A law
29 enforcement agency that did not engage in seizures or forfeitures during the reporting
30 period shall file a null report. The attorney general shall compile the submissions and
31 issue an aggregate report of all forfeitures in the state.

- 1 4. If a law enforcement agency fails to file a report within thirty days after the report is
2 due, the attorney general may compel compliance by any means until the report is
3 filed.
- 4 5. By April first of each year, the attorney general shall make available on the attorney
5 general's website the reports submitted by law enforcement agencies and the attorney
6 general's aggregate report.

7 **SECTION 29.** A new section to chapter 29-31.1 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Prohibition on adoptive seizures and equitable sharing.**

- 10 1. A law enforcement agency may not refer or initiate a transfer of property seized under
11 state law to a federal agency by way of adoption or equitable sharing of seized
12 property for the purpose of the property's forfeiture under federal law.
- 13 2. All proceeds received by a law enforcement agency from equitable sharing, adoption,
14 or other transfer of seized property to a federal agency for the purpose of the
15 property's forfeiture must be added to the state school fund as provided under section
16 29-27- 02.1.
- 17 3. This section does not prohibit any agency of the federal government from seeking
18 federal forfeiture.
- 19 4. This section does not prohibit a law enforcement agency from collaborating with a
20 federal agency to seize property subject to forfeiture under this chapter.

21 **SECTION 30. AMENDMENT.** Section 39-03-18 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **39-03-18. Highway patrol - Assets forfeiture fund - Purpose - Continuing**
24 **appropriation.**

- 25 1. There is created a fund to be known as the highway patrol assets forfeiture fund. The
26 fund consists of funds ~~obtained from moneys, assets, and proceeds seized and~~
27 ~~forfeited pursuant to section 19-03.1-36,~~ amounts received through court proceedings
28 as restitution, ~~and amounts remaining from the forfeiture of property after the payment~~
29 ~~of expenses for forfeiture and sale authorized by law.~~ The total amount of deposits into
30 the fund may not exceed three hundred thousand dollars within a biennium and any
31 moneys in excess of that amount must be deposited in the general fund. The funds

1 are appropriated as a continuing appropriation to the highway patrol for the following
2 purposes:

3 1. ~~For paying expenses necessary to inventory, safeguard, maintain, advertise, or sell~~
4 ~~property seized, detained, or forfeited, pursuant to section 19-03.1-36, or of any other~~
5 ~~necessary expenses incident to the seizure, detention, or forfeiture of the property.~~

6 2. a. For paying overtime compensation incurred as a result of investigations or
7 violations of any state criminal law or law relating to the control of drug abuse.

8 3. b. For purchasing equipment related to criminal interdiction.

9 4. c. For paying matching funds required as a condition for receipt of funds from a
10 federal government program awarding monetary grants or assistance for the
11 investigation or apprehension of persons violating the provisions of chapter
12 19-03.1.

13 2. The superintendent of the highway patrol, with the concurrence of the director of the
14 office of management and budget, shall establish the necessary accounting
15 procedures for the use of the fund and shall personally approve, in writing, all requests
16 for the use of the fund.

17 **SECTION 31. AMENDMENT.** Section 39-08-01.3 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **39-08-01.3. Alcohol-related traffic offenses - Seizure, forfeiture, and sale of motor**
20 **vehicles.**

21 A motor vehicle owned and operated by an individual upon a highway or upon public or
22 private areas to which the public has a right of access for vehicular use may be seized,
23 ~~forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of~~
24 ~~sentencing and is subject to forfeiture in accordance with chapter 29-31.1~~ if the individual is in
25 violation of section 39-08-01, 39-08-01.2, or 39-08-01.4, or an equivalent ordinance and has
26 been convicted of violating section 39-08-01 or an equivalent ordinance at least one other time
27 within the seven years preceding the violation.

28 **SECTION 32. AMENDMENT.** Subsection 2 of section 39-30-03 of the North Dakota
29 Century Code is amended and reenacted as follows:

30 2. Seizure of property described in subsection 1 may be made by a member of a state or
31 local law enforcement agency without process:

- 1 a. If in accordance with any applicable law or regulation;
- 2 b. If the seizure is incident to inspection under an administrative inspection warrant;
- 3 c. If the seizure is incident to search made under a search warrant;
- 4 d. If the seizure is incident to a lawful arrest;
- 5 e. If the seizure is made pursuant to a valid consent to search;
- 6 f. If the property seized has been the subject of a prior judgment in favor of the
- 7 state in a criminal proceeding or in an injunction or forfeiture proceeding under
- 8 ~~section 39-30-05~~chapter 29-31.1; or
- 9 g. If there are reasonable grounds to believe that the property is directly or indirectly
- 10 dangerous to health or safety.

11 **SECTION 33. AMENDMENT.** Section 39-30-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **39-30-04. Forfeiture of property.**

- 14 1. The following are subject to forfeiture ~~unless obtained by theft, fraud, or conspiracy to~~
15 ~~defraud and the rightful owner is known or can be identified and located~~in accordance
16 with chapter 29-31.1:
 - 17 a. Any tool;
 - 18 b. Any implement; or
 - 19 c. Any instrumentality, including any motor vehicle or motor vehicle part, ~~whether~~
20 ~~owned or unowned by the person from whose possession or control it was~~
21 ~~seized, which is used or possessed either in violation of section 39-30-02 or to~~
22 promote or facilitate a violation of section 39-30-02.
- 23 2. Any motor vehicle, other conveyance, or motor vehicle part used by any person as a
24 common carrier is subject to forfeiture under this section if the owner or other person
25 in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting
26 party to a violation of section 39-30-02.
- 27 3. Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or
28 instrumentality is not subject to forfeiture under this section by reason of any act or
29 omission that the owner proves to have been committed or omitted without the
30 owner's knowledge or consent.

- 1 other department of the state, or any other state or territory of the United States,
2 or of the federal government if the property is required to be registered in any
3 such department.
- 4 e. Notice of the proceeding must be given to any other person as may appear, from
5 the facts and circumstances, to have any right, title, or interest in or to the
6 property.
- 7 d. The owner of the property, or any person having or claiming right, title, or interest
8 in the property may within sixty days after the mailing of such notice file a verified
9 answer to the complaint and may appear at the hearing on the action for
10 forfeiture.
- 11 e. The state's attorney must show at a forfeiture hearing, by a preponderance of the
12 evidence, that the property was used in the commission of a violation of section
13 39-30-02 or was used or possessed to facilitate such violation.
- 14 f. The owner of property may show by a preponderance of the evidence that the
15 owner did not know, and did not have reason to know, that the property was to be
16 used or possessed in the commission of any violation or that any of the
17 exceptions to forfeiture are applicable.
- 18 g. Unless the state's attorney makes the required showing, the court shall order the
19 property released to the owner. If the state's attorney has made such a showing,
20 the court may order:
- 21 (1) The property be destroyed by the agency that seized it or some other
22 agency designated by the court;
- 23 (2) The property be delivered and retained for use by the agency that seized it
24 or some other agency designated by the court; or
- 25 (3) The property be sold at public sale.
- 26 8. A copy of a forfeiture order must be filed with the sheriff of the county in which the
27 forfeiture occurs and with each federal or state department with which the property is
28 required to be registered. The order, when filed, constitutes authority for the issuance
29 to the agency to which the property is delivered and retained for use or to any
30 purchaser of the property of a title certificate, registration certificate, or other special
31 certificate as may be required by law considering the condition of the property.

- 1 9. Proceeds from the sale at public auction, after payment of all reasonable charges and
2 expenses incurred by the agency designated by the court to conduct the sale in
3 storing and selling the property, must be paid to the general fund of the county of
4 seizure.
- 5 10. No motor vehicle, either seized under section 39-30-03 or forfeited under this section,
6 may be released by the seizing agency or used or sold by an agency designated by
7 the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified,
8 forged, obliterated, or removed vehicle identification number is corrected by the
9 issuance and affixing of either assigned or replacement vehicle identification number
10 plates as may be appropriate under laws of this state.
- 11 11. No motor vehicle part having any altered, counterfeited, defaced, destroyed,
12 disguised, falsified, forged, obliterated, or removed vehicle identification number may
13 be disposed of upon forfeiture except by destruction. This subsection does not apply
14 to any motor vehicle part that is assembled with and constitutes part of a motor
15 vehicle.
- 16 12. No motor vehicle or motor vehicle part may be forfeited under this section solely on
17 the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or
18 motor vehicle part that is unidentifiable must be the subject of a written report sent by
19 the seizing agency to the department of transportation. The report must include a
20 description of the motor vehicle or motor vehicle part, its color, if any, the date, time,
21 and place of its seizure, the name of the person from whose possession or control it
22 was seized, the grounds for its seizure, and the location where it is held or stored.
- 23 13. When a seized unidentifiable motor vehicle or motor vehicle part has been held for
24 sixty days or more after the notice to the department of transportation specified in
25 subsection 12 has been given, the seizing agency, or its agent, shall cause the motor
26 vehicle or motor vehicle part to be sold at public sale to the highest bidder. Notice of
27 the time and place of sale must be posted in a conspicuous place for at least thirty
28 days prior to the sale on the premises where the motor vehicle or motor vehicle part
29 has been stored.
- 30 14. If a seized unidentifiable motor vehicle or motor vehicle part has an apparent value of
31 one thousand dollars or less, the seizing agency shall authorize the disposal of the

1 ~~motor vehicle or motor vehicle part, provided that no such disposition may be made~~
2 ~~less than sixty days after the date of seizure.~~

3 15. ~~The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part~~
4 ~~must be deposited in the general fund of the state or other governmental unit after~~
5 ~~deduction of any reasonable and necessary towing and storage charges.~~

6 16.4. ~~Seizing agencies shall utilize their best efforts to arrange for the towing and storing of~~
7 ~~motor vehicles and motor vehicle parts in the most economical manner possible. The~~
8 ~~owner of a motor vehicle or a motor vehicle part may not be required to pay more than~~
9 ~~the minimum reasonable costs of towing and storage.~~

10 17. ~~A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable~~
11 ~~must be held subject to the order of the court in which the criminal action is pending or,~~
12 ~~if a request for its release from such custody is made, until the state's attorney has~~
13 ~~notified the defendant or the defendant's attorney of such request and both the~~
14 ~~prosecution and defense have been afforded a reasonable opportunity for an~~
15 ~~examination of the property to determine its true value and to produce or reproduce,~~
16 ~~by photographs or other identifying techniques, legally sufficient evidence for~~
17 ~~introduction at trial or other criminal proceedings. Upon expiration of a reasonable time~~
18 ~~for the completion of the examination, which may not exceed fourteen days from the~~
19 ~~date of service upon the defense of the notice of request for return of property, the~~
20 ~~property must be released to the person making such request after satisfactory proof~~
21 ~~of the person's entitlement to possession. Notwithstanding the foregoing, upon~~
22 ~~application by either party with notice to the other, the court may order retention of the~~
23 ~~property if it determines that retention is necessary in the furtherance of justice.~~

24 18. ~~When a seized vehicle is forfeited, restored to its owner, or disposed of as~~
25 ~~unidentifiable, the seizing agency shall retain a report of the transaction for a period of~~
26 ~~at least one year from the date of the transaction.~~

27 19. ~~When an applicant for a certificate of title or salvage certificate presents to the~~
28 ~~department of transportation proof that the applicant purchased or acquired a motor~~
29 ~~vehicle at a public sale conducted pursuant to this section and such fact is attested to~~
30 ~~by the seizing agency, the department of transportation shall issue a certificate of title,~~
31 ~~salvage certificate for the motor vehicle upon receipt of the statutory fee, properly~~

1 ~~executed application for a certificate of title, or other certificate of ownership, and the~~
2 ~~affidavit of the seizing agency that a state-assigned number was applied for and~~
3 ~~affixed to the motor vehicle prior to the time that the motor vehicle was released by the~~
4 ~~seizing agency to the purchaser.~~

5 **SECTION 34. AMENDMENT.** Subsection 1 of section 39-30-05 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 1. The attorney general, any state's attorney, or any aggrieved person may institute
8 civil proceedings against any person in any court of competent jurisdiction seeking
9 relief from conduct constituting a violation of any provision of this chapter. If the
10 plaintiff in such a proceeding proves the alleged violation, or its threat, by a
11 preponderance of the evidence, any court of competent jurisdiction after due provision
12 for the rights of innocent persons, shall grant relief by entering any appropriate order
13 or judgment, including:
- 14 a. Ordering any defendant to be divested of any interest in any property in
15 accordance with chapter 29-31.1;
 - 16 b. Imposing reasonable restrictions upon the future activities or investments of any
17 defendant, including prohibiting any defendant from engaging in the same type of
18 endeavor as the defendant was engaged in previously;
 - 19 c. Ordering the suspension or revocation of a license, permit, or prior approval
20 granted by any public agency or any other public authority;
 - 21 d. Ordering the surrender of the charter of a corporation organized under the laws
22 of the state or the revocation of a certificate authorizing a foreign corporation to
23 conduct business within the state upon finding that the board of directors or a
24 managerial agent acting on behalf of the corporation, in conducting the affairs of
25 the corporation, has authorized or engaged in conduct made unlawful by this
26 chapter and that, for the prevention of future criminal conduct, the public interest
27 requires the charter of the corporation be surrendered and the corporation
28 dissolved or the certificate revoked; or
 - 29 e. Ordering the surrender of the certificate of organization of a limited liability
30 company organized under the laws of the state or the revocation of a certificate
31 authorizing a foreign limited liability company to conduct business within the state

1 upon finding that the board of governors or a managerial agent acting on behalf
2 of the limited liability company, in conducting the affairs of the limited liability
3 company, has authorized or engaged in conduct made unlawful by this chapter
4 and that, for the prevention of future criminal conduct, the public interest requires
5 that the certificate of organization of the limited liability company be surrendered
6 and the limited liability company dissolved or the certificate revoked.

7 **SECTION 35. AMENDMENT.** Section 40-11-13 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **40-11-13. Fines and forfeitures for violation of ordinances paid into treasury.**

10 All fines, ~~and penalties, and forfeitures~~ collected for offenses against the ordinances of a
11 city, including those fines, ~~and penalties, and forfeitures~~ collected as a result of a judgment of a
12 district court rendered pursuant to section 40-18-19, must be paid into the city's treasury at
13 ~~such~~the time and in ~~such~~the manner as may be prescribed by ordinance.

14 **SECTION 36. AMENDMENT.** Section 47-21.1-04 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **47-21.1-04. Forfeiture and destruction of illegal recordings.**

17 Any recording produced in violation of this chapter, and any equipment used in the
18 production thereof, ~~shall be subject to forfeiture and destruction upon seizure by any state or~~
19 ~~local law enforcement agency or officer thereof~~is subject to forfeiture in accordance with chapter
20 29-31.1.

21 **SECTION 37. AMENDMENT.** Section 54-12-14 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **54-12-14. Assets forfeiture fund - Created - Purpose - Continuing appropriation.**

24 1. The attorney general assets ~~forfeiture~~ fund consists of funds appropriated by the
25 legislative assembly and ~~additional funds obtained from moneys, assets, and~~
26 ~~proceeds seized and forfeited pursuant to section 19-03.1-36~~, amounts received
27 through court proceedings as restitution, ~~amounts remaining from the forfeiture of~~
28 ~~property after the payment of expenses for forfeiture and sale authorized by law~~, and
29 amounts received from a multijurisdictional drug task force as defined in section
30 54-12-26. The amount of deposits into the fund which do not come from legislative
31 appropriation or from a multijurisdictional drug task force and are not payable to

1 another governmental entity may not exceed two hundred thousand dollars within a
2 biennium and any moneys in excess of that amount must be deposited in the general
3 fund. The funds are appropriated, as a standing and continuing appropriation, to the
4 attorney general for the following purposes:

5 a. For obtaining evidence for enforcement of any state criminal law or law relating to
6 the control of drug abuse.

7 b. For repayment of rewards to qualified local programs approved under section
8 12.1-32-02.2, if the information that was reported to the qualified local program
9 substantially contributed to forfeiture of the asset, and for paying, at the discretion
10 of the attorney general, rewards for other information or assistance leading to a
11 forfeiture under ~~section 19-03.1-36~~chapter 29-31.1.

12 c. ~~For paying, at the discretion of the attorney general, any expenses necessary to~~
13 ~~seize, detain, inventory, safeguard, maintain, advertise, or sell property seized,~~
14 ~~detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary~~
15 ~~expenses incident to the seizure, detention, or forfeiture of such property.~~

16 ~~d.~~ For equipping, for law enforcement functions, forfeited vessels, vehicles, and
17 aircraft retained as provided by law for official use by the state board of pharmacy
18 or a law enforcement agency.

19 ~~e.d.~~ For paying, at the discretion of the attorney general, overtime compensation to
20 agents of the bureau of criminal investigation incurred as a result of
21 investigations of violations of any state criminal law or law relating to the control
22 of drug abuse.

23 ~~f.e.~~ For paying matching funds required to be paid as a condition for receipt of funds
24 from a federal government program awarding monetary grants or assistance for
25 the investigation, apprehension, or prosecution of persons violating the
26 provisions of chapter 19-03.1.

27 2. The attorney general shall, with the concurrence of the director of the office of
28 management and budget, establish the necessary accounting procedures for the use
29 of the fund, and shall personally approve, in writing, all requests from the director of
30 the bureau of criminal investigation or the director of the drug enforcement unit for the
31 use of the fund.

- 1 3. Notwithstanding subsection 1, the amount of deposits into the fund related to human
2 trafficking are appropriated, as a standing and continuing appropriation, to the attorney
3 general for awarding grants to organizations providing prevention and treatment
4 services for human trafficking victims.

5 **SECTION 38. AMENDMENT.** Section 57-36-14 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-36-14. Procedure in case of seizure - Determination - Judgment.**

8 The procedure in case of seizure of cigarettes, equipment, or any other product taxed
9 pursuant to this chapter must be as follows:

- 10 1. Upon the seizure of any cigarettes and within two days thereafter, the officer making
11 ~~such~~the seizure shall deliver an inventory of the property seized to the person from
12 whom ~~such~~the seizure was made, if known, and shall file a copy thereof with the tax
13 commissioner.
- 14 2. Within ten days after the date of the service of ~~such~~that inventory, the person from
15 whom the seizure was made, or any other person claiming an interest in the
16 ~~property~~cigarettes, equipment, or any other product taxed under this chapter seized,
17 may file a demand for a judicial determination of the question as to whether ~~such~~that
18 seized property was, or lawfully is, subject to seizure and forfeiture. Thereupon the tax
19 commissioner, within thirty days, shall institute an action in the district court of the
20 county where ~~such~~the seizure was made to determine the issue of forfeiture. ~~Such~~The
21 action must be brought in the name of the state of North Dakota and must be
22 prosecuted by the state's attorney, the tax commissioner, or the attorney general. The
23 district court shall hear ~~such~~the action as a court case and shall try and determine the
24 issues of law and fact involved.
- 25 3. ~~In case a judgment of forfeiture is entered, the tax commissioner, unless the judgment~~
26 ~~is stayed pending an appeal to the supreme court, as soon as convenient, shall~~
27 ~~destroy the forfeited property.~~
- 28 4. In case a demand for a judicial determination is made and no action is commenced as
29 provided in this section, such property must be released by the tax commissioner and
30 redelivered to the person entitled thereto.

1 5. In the event that no demand for judicial determination is made, the seized property
2 must be deemed forfeited to the state by operation of law, and the tax commissioner
3 shall destroy the same.

4 ~~6.4.~~ In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or
5 other means of transportation pursuant to the provisions of this chapter, ~~the officer~~
6 ~~making the seizure shall file an inventory, and upon a demand for a judicial~~
7 ~~determination as provided in this section, the tax commissioner, within thirty days~~
8 ~~thereafter, shall commence an action in the district court of the county where such~~
9 ~~seizure was made to declare a forfeiture of such vehicle or other means of~~
10 ~~transportation, and such action~~forfeiture proceedings must be heard and determined
11 ~~as other forfeiture actions instituted under this chapter in accordance with chapter~~
12 29-31.1.

13 ~~7.5.~~ Whenever the tax commissioner is satisfied that any person from whom
14 ~~property~~cigarettes, equipment, or any other product taxed under this chapter is seized
15 was acting in good faith and without intent to evade the revenue provisions of this
16 chapter, the tax commissioner shall release the property seized without further legal
17 proceedings.

18 **SECTION 39. AMENDMENT.** Section 62.1-01-02 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **62.1-01-02. Forfeiture of dangerous weapon or firearm by person arrested and**
21 **convicted of crime.**

22 1. ~~Any~~A firearm or dangerous weapon used or possessed while in the commission of a
23 felony or a misdemeanor involving violence or intimidation must be seized and, upon
24 conviction and by motion, ~~forfeited to the jurisdiction in which the arrest was made or~~
25 ~~the jurisdiction in which the charge arose. Except as provided in chapter 29-01 for~~
26 ~~stolen property, the forfeited dangerous weapon may be, pursuant to court order, sold~~
27 ~~at public auction, sold or traded to other law enforcement agencies or dealers,~~
28 ~~retained for use, or destroyed~~is subject to forfeiture in accordance with chapter
29 29-31.1.

30 2. ~~Notwithstanding any other provision of law; and subject to the duty to return firearms~~
31 ~~to innocent owners under this section, section 29-31.1-02, and as provided in chapter~~

1 29-01 for stolen property; all firearms, as defined in section 62.1-01-01, which are
2 forfeited, recovered as stolen and unclaimed, or abandoned to any law enforcement
3 agency of this state or a political subdivision of this state, including the game and fish
4 department, or that are otherwise acquired by the state or a political subdivision of the
5 state and are no longer needed, shall be disposed of as provided in this section.
6 Except as provided in chapter 29-01 for stolen property, this section does not apply to
7 firearms that are seized or confiscated and disposed of under chapter 20.1-10.

- 8 3. a. Before the disposal of any firearm under this section, the agency with custody of
9 the firearm shall use its best efforts to determine if the firearm has been lost by,
10 or stolen or otherwise unlawfully obtained from, an innocent owner and, if so,
11 shall provide notification to the innocent owner of its custody of the firearm. An
12 innocent owner may also notify the agency to claim a firearm.
- 13 b. After notification, the agency shall return the firearm to its innocent owner
14 provided the owner submits sufficient proof of ownership, as determined by the
15 agency, and pays the costs, if any, of returning the firearm to the innocent owner.
16 Costs are limited to the actual costs of shipping to the innocent owner and
17 associated costs from any transfer and background check fees charged when
18 delivering the firearm to the innocent owner.
- 19 c. If six months elapse after notification to the innocent owner of the custody of the
20 firearm by an agency and the innocent owner fails to bear the costs of return of
21 his or her firearm or fails to respond to the agency notification, or if six months
22 elapse after notice of a claim by an innocent owner and the innocent owner fails
23 to bear the costs of return of the innocent owner's firearm or take away the
24 innocent owner's firearm, then the agency shall dispose of the firearm as
25 provided in this section.
- 26 4. a. Except as provided in subdivision b of subsection 3 or subsection 5, the agency
27 shall dispose of the firearms that it receives under subsection 2 by sale at public
28 auction to persons that may lawfully possess a firearm and persons licensed as
29 firearms collectors, dealers, importers, or manufacturers under the provisions of
30 18 U.S.C. section 921 et seq., and authorized to receive such firearms under the
31 terms of the licenses.

- 1 b. ~~The auction required by this subsection may occur online on a rolling basis or at~~
2 ~~live events, but in no event may the auction occur less frequently than once every~~
3 ~~year during any time the agency has an inventory of saleable firearms. The~~
4 ~~agency shall establish a procedure to notify persons of its auctions.~~
- 5 e. ~~The agency may not retain proceeds above that which are necessary to cover~~
6 ~~the costs of administering this subsection, with any surplus to be transferred to~~
7 ~~the general fund of the jurisdiction in which the agency is located, provided that~~
8 ~~an agency may be reimbursed for any firearms formerly in use by the agency that~~
9 ~~are sold under this section.~~
- 10 d. ~~Employees of the agency are not eligible to bid on the firearms at an auction~~
11 ~~conducted under this subsection, and except for the amounts authorized under~~
12 ~~subdivision c of this subsection, neither the agency nor its employees may retain~~
13 ~~any proceeds from any sale required by this subsection, nor may the agency or~~
14 ~~its employees retain any firearm required to be sold under this subsection.~~
- 15 5. a. ~~The requirements of subsection 4 do not apply to a firearm if there are not any~~
16 ~~bids from eligible persons received within six months from when bidding opened~~
17 ~~on the firearm, or if the agency director, sheriff, chief of police, or a designee of~~
18 ~~the official certifies that the firearm is unsafe for use because of wear, damage,~~
19 ~~age, or modification or because any federal or state law prohibits the sale or~~
20 ~~distribution of the firearm. The agency director, sheriff, chief of police, or a~~
21 ~~designee of the official, may transfer any of these firearms to the attorney~~
22 ~~general's crime laboratory for training or experimental purposes, or to a museum~~
23 ~~or historical society that displays these items to the public and is lawfully eligible~~
24 ~~to receive the firearm, or the firearm may be destroyed. The requirements of~~
25 ~~subsection 4 do not apply to a firearm and an agency director, sheriff, chief of~~
26 ~~police, or a designee of the official may destroy the firearm, if:~~
- 27 (1) ~~The firearm was used in a violent crime, in an accidental shooting, or a~~
28 ~~self-inflicted shooting resulting in the death of an individual;~~
- 29 (2) ~~There is not a claim for the firearm by an innocent owner; and~~
- 30 (3) ~~A family member of the deceased individual makes a written request for the~~
31 ~~destruction of the firearm.~~

- 1 b. ~~Agencies subject to the provisions of this subsection may establish a procedure~~
2 ~~to destroy firearms and may expend necessary funds for that purpose.~~
- 3 6. ~~All agencies subject to the provisions of this section shall keep records of the firearms~~
4 ~~acquired and disposed of~~forfeited ~~as provided in this section, as well as the proceeds~~
5 ~~of the sales and the disbursement of the proceeds, and shall maintain these records~~
6 ~~for not less than ten years from the date on which a firearm is disposed of or on which~~
7 ~~a disbursement of funds is made, as the case may be~~forfeited.
- 8 7. ~~Neither the state nor any political subdivision of the state, nor any of their officers,~~
9 ~~agents, and employees, is liable to any person, including the purchaser of a firearm,~~
10 ~~for personal injuries or damage to property arising from the sale or disposal of a~~
11 ~~firearm under subsection 4 or 5 of this section, unless an officer, agent, or employee of~~
12 ~~the state or political subdivision acted with gross negligence or recklessness.~~
- 13 8. ~~As used in this section, the term "innocent owner" means a person who:~~
- 14 a. ~~Did not beforehand know or in the exercise of ordinary care would not have~~
15 ~~known of the conduct which caused that person's firearm to be forfeited, seized,~~
16 ~~or abandoned to any law enforcement agency of the state or any political~~
17 ~~subdivision of the state, including the game and fish department;~~
- 18 b. ~~Did not participate in the commission of a crime or delinquent act involving that~~
19 ~~person's firearm;~~
- 20 c. ~~Legally owned and presently owns the firearm forfeited, seized, or abandoned;~~
21 ~~and~~
- 22 d. ~~Is authorized by state and federal law to receive and possess his or her firearm.~~

23 **SECTION 40. AMENDMENT.** Subsection 2 of section 62.1-05-01 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 25 2. A person who violates this section is guilty of a class C felony. Upon arrest of that
26 person, the firearm or dangerous weapon must be seized. Upon conviction of the
27 person and motion to the court in which the conviction occurred, the firearm or
28 dangerous weapon ~~must be forfeited to the jurisdiction in which the arrest was made.~~
29 ~~The firearm or dangerous weapon may be sold at public auction, retained for use, or~~
30 ~~destroyed pursuant to the court's order. If a qualified local program as defined under~~
31 ~~section 12.1-32-02.2 has paid a reward for information that resulted in forfeiture of the~~

1 item and the item has been sold, the jurisdiction shall, after payment of expenses for
2 forfeiture and sale, repay the qualified local program for the reward that it has paid is
3 subject to forfeiture in accordance with chapter 29-31.1.

4 **SECTION 41. REPEAL.** Sections 19-03.1-36.1, 19-03.1-36.2, 19-03.1-36.3, 19-03.1-36.4,
5 19-03.1-36.5, 19-03.1-36.6, 19-03.1-36.7, 20.1-10-04, and 29-31.1-10 and chapter 32-14 of the
6 North Dakota Century Code are repealed.

7 **SECTION 42. APPROPRIATION.** There is appropriated out of any moneys in the general
8 fund in the state treasury, not otherwise appropriated, the sum of \$40,000, or so much of the
9 sum as may be necessary, to the game and fish department for the purpose of providing a grant
10 for the administration of the report all poachers program, for the biennium beginning July 1,
11 2019, and ending June 30, 2021.

A BILL FOR AN ACT

RELATING TO PROPERTY FORFEITURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that civil asset
2 forfeiture laws are controversial and have been evolving
3 throughout the country over twenty years since Hawaii passed the
4 Omnibus Criminal Forfeiture Act, codified as chapter 712A,
5 Hawaii Revised Statutes, which includes civil asset forfeiture.
6 Hawaii's process allows law enforcement agencies to seize and
7 keep property based on suspicion that the property is connected
8 to criminal activity. Property, such as vehicles, houses, cash,
9 and jewelry, can be taken without the property owner having been
10 convicted of a crime or even being formally accused of one.

11 The legislature further finds that a 2018 state auditor's
12 report found a lack of accountability by the department of the
13 attorney general over the storage, preservation, and disposal of
14 forfeited property. The report also documented the ongoing lack
15 of administrative rules that would provide guidance internally,
16 to the county law enforcement agencies, and to the public.
17 Additionally, the legislature finds that there is great



1 incentive for state and county law enforcement agencies to seize
2 property for forfeiture, as these agencies are permitted to
3 retain proceeds from the sale of the property. Under Hawaii
4 law, one hundred per cent of the proceeds are divided among the
5 state and county law enforcement agencies that were involved in
6 the seizure and forfeiture.

7 The legislature takes note of the Institute for Justice's
8 D- rating of Hawaii's civil forfeiture laws and the
9 characterization that our laws "are among the nation's worst".
10 The Institute for Justice, a nonprofit civil liberties law firm,
11 recommends abolishing civil forfeiture entirely as at least
12 three states, Nebraska, North Carolina, and New Mexico, have
13 done. Fifteen states now require a criminal conviction for most
14 or all forfeiture cases.

15 Additionally, the Institute for Justice recommends other
16 reforms to make the forfeiture process more fair, beginning with
17 eliminating financial incentives for law enforcement to seize
18 and keep forfeited property and instead directing any proceeds
19 to the general revenue fund or another neutral fund. Eight
20 jurisdictions now prohibit law enforcement from keeping the
21 proceeds from forfeited property. A second reform is to adopt a



1 high standard of proof, such as "beyond a reasonable doubt," in
2 order to forfeit property in civil proceedings. Eighteen
3 jurisdictions have a standard higher than Hawaii's
4 "preponderance of the evidence" standard, and for ten of those
5 jurisdictions it is equivalent to "beyond a reasonable doubt".
6 Third, law enforcement should be required to prove that owners
7 consented to or possessed knowledge of the crime that led to the
8 seizure of their property, restoring the presumption of
9 innocence used in criminal proceedings. Here, again, a number
10 of jurisdictions have already made this reform. The legislature
11 finds that none of these recommendations have been implemented
12 in Hawaii.

13 Accordingly, the purpose of this Act is to make Hawaii's
14 civil asset forfeiture process more just by:

- 15 (1) Restricting asset forfeiture to cases involving the
16 commission of a covered criminal misdemeanor or felony
17 offense;
- 18 (2) Requiring seized property to be forfeited only when
19 the property owner has been convicted of an underlying
20 covered criminal misdemeanor or felony offense;



- 1 (3) Changing the standard of proof that the State must
- 2 meet in order for property to be forfeited from
- 3 "preponderance of the evidence" to "beyond a
- 4 reasonable doubt";
- 5 (4) Requiring the State to prove that owners consented to
- 6 or possessed knowledge of the crime that led to the
- 7 seizure of their property;
- 8 (5) Requiring that the agency seizing the property pay for
- 9 safe and secure storage of the seized property until
- 10 the completion of the forfeiture proceeding or final
- 11 disposition of the property;
- 12 (6) Directing any proceeds from a civil forfeiture to the
- 13 general revenue fund for public education purposes;
- 14 and
- 15 (7) Repealing administrative forfeiture proceedings, so
- 16 that any forfeiture proceedings must be brought in
- 17 court.

18 SECTION 2. Section 712A-4, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§712A-4 Covered offenses.** Offenses for which property is
21 subject to forfeiture under this chapter are:



- 1 (a) All felony and misdemeanor offenses that specifically
2 authorize forfeiture;
- 3 (b) Murder, kidnapping, labor trafficking, gambling,
4 criminal property damage, robbery, bribery, extortion,
5 theft, unauthorized entry into motor vehicle,
6 burglary, money laundering, trademark counterfeiting,
7 insurance fraud, promoting a dangerous, harmful, or
8 detrimental drug, commercial promotion of marijuana,
9 methamphetamine trafficking, manufacturing of a
10 controlled substance with a child present, promoting
11 child abuse, promoting prostitution, sex trafficking,
12 solicitation of a minor for prostitution, habitual
13 solicitation of prostitution, or electronic enticement
14 of a child [~~that is~~] when chargeable as a felony
15 offense under state law;
- 16 (c) The manufacture, sale, or distribution of a controlled
17 substance in violation of chapter 329, promoting
18 detrimental drugs or intoxicating compounds, promoting
19 pornography, promoting pornography for minors, or
20 solicitation of prostitution near schools or public
21 parks, [~~which is~~] when chargeable as a felony or



1 misdemeanor offense, but not as a petty misdemeanor,
2 under state law; and

3 (d) The attempt, conspiracy, solicitation, coercion, or
4 intimidation of another to commit any felony or
5 misdemeanor offense for which property is subject to
6 forfeiture[-] under this section."

7 SECTION 3. Section 712A-5, Hawaii Revised Statutes, is
8 amended by amending subsection (2) to read as follows:

9 "(2) Except that:

10 (a) Real property, or an interest therein, may be
11 forfeited under the provisions of this chapter only in
12 cases in which the covered offense is chargeable as a
13 felony offense under state law;

14 (b) No property shall be forfeited under this chapter to
15 the extent of an interest of an owner[~~7~~-by]:

16 (i) By reason of the commission of any covered
17 offense unless:

18 (A) The covered offense is chargeable as a
19 felony or misdemeanor offense under state
20 law; and



1 (B) The owner has been convicted of the covered
2 offense by a verdict or plea, including a no
3 contest plea or a deferred acceptance of
4 guilty or no contest plea; or

5 (ii) By reason of any act or omission [~~established by~~
6 that] of the owner [~~to have been~~ unless the
7 State has proven beyond a reasonable doubt that
8 the act or omission was committed or omitted
9 [without] with the owner's knowledge and consent
10 [of that owner];

11 (c) No conveyance used by any person as a common carrier
12 in the transaction of a business as a common carrier
13 is subject to forfeiture under this section unless [~~it~~
14 ~~appears~~] the State has proven beyond a reasonable
15 doubt that the owner or other person in charge of the
16 conveyance is a consenting party or privy to a
17 violation of this chapter;

18 (d) No conveyance is subject to forfeiture under this
19 section by reason of any act or omission [~~established~~
20 ~~by~~] of the owner [~~thereof to have been~~ unless the
21 State has proven beyond a reasonable doubt that the



- 1 act or omission was committed or omitted [~~without~~
2 with the owner's knowledge or consent; [~~and~~
3 (e) A forfeiture of a conveyance encumbered by a bona fide
4 security interest is subject to the interest of the
5 secured party [~~if~~] unless the State has proven beyond
6 a reasonable doubt that the secured party [~~neither~~
7 had knowledge of [~~nor~~] or consented to the act or
8 omission[~~-~~]; and
9 (f) This chapter shall not apply to the forfeiture of an
10 animal prior to disposition of criminal charges
11 pursuant to section 711-1109.2."

12 SECTION 4. Section 712A-6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§712A-6 Seizure of property.** (1) Personal property
15 subject to forfeiture under this chapter may be seized for
16 forfeiture by a law enforcement officer:

- 17 (a) On process issued pursuant to the rules of civil
18 procedure or the provisions of this chapter including
19 a seizure warrant;
20 (b) By making a seizure for forfeiture on property seized
21 on process issued pursuant to law; or



- 1 (c) By making a seizure for forfeiture without court
2 process as follows:
- 3 (i) The seizure for forfeiture is of property seized
4 incident to an arrest or search;
- 5 (ii) The property subject to seizure for forfeiture
6 has been the subject of a prior judgment in favor
7 of the State or any other state or the federal
8 government in forfeiture proceeding;
- 9 (iii) The law enforcement officer has probable cause to
10 believe that the property seized for forfeiture
11 is directly or indirectly dangerous to health or
12 safety;
- 13 (iv) The law enforcement officer has probable cause to
14 believe that the property is subject to
15 forfeiture; or
- 16 (v) The seizure for forfeiture is of perishable
17 natural resources seized and sold, pursuant to
18 section 199-7, prior to forfeiture proceeding.
- 19 (2) Real property subject to forfeiture under this chapter
20 may be seized for forfeiture by a law enforcement officer
21 pursuant to court order following a pre-seizure hearing in the



1 circuit court in the circuit in which the property is located
2 with notice of the pre-seizure hearing to be made to the owners
3 and interest-holders pursuant to section 712A-8. The court
4 shall order the real property in question to be seized for
5 forfeiture if it finds probable cause that the real property is
6 subject to forfeiture under any provision of the Hawaii Revised
7 Statutes.

8 (3) In determining probable cause for seizure, the fact
9 that a firearm, money, or any negotiable instrument was found in
10 proximity to contraband or to instrumentalities of an offense
11 gives rise to an inference that the money[7] or instrument was
12 the proceeds of contraband or that the firearm, money, or
13 instrument was used or intended to be used to facilitate
14 commission of the offense.

15 (4) When a law enforcement officer seizes property that is
16 subject to forfeiture under this chapter, the officer shall
17 provide an itemized receipt to the person possessing the
18 property or, in the absence of a person to whom the receipt
19 could be given, shall leave the receipt in the place where the
20 property was found, if possible."



1 SECTION 5. Section 712A-7, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (2) to read:

4 "(2) If property is seized for forfeiture under section
5 712A-6 pending forfeiture and final disposition, the seizing
6 agency, at the agency's expense, shall ensure the safe and
7 secure storage of the property until the completion of
8 forfeiture proceedings or other disposition of the property as
9 provided in this chapter. Consistent with these requirements,
10 the seizing agency may do any of the following:

11 (a) Place the property under constructive seizure by
12 posting notice of seizure for forfeiture on the
13 property or by filing notice of seizure for forfeiture
14 or notice of pending forfeiture in any appropriate
15 public record relating to the property;

16 (b) Remove the property to a storage area for safekeeping
17 or, if the property is a negotiable instrument or
18 money, deposit it in an interest bearing account;

19 (c) Remove the property to a place designated by the
20 court; or



1 (d) Provide for another agency to take custody of the
2 property and remove it to an appropriate location
3 within the jurisdiction of the court."

4 2. By amending subsection (4) to read:

5 "(4) In the event of a seizure for forfeiture under
6 section 712A-6, the seizing agency shall send to a prosecuting
7 attorney a written [~~request for forfeiture~~] notice of the
8 seizure within thirty days, which shall include a statement of
9 facts and circumstances of the seizure, the appraised or
10 estimated value of the property, and a summary of the facts
11 relied on for forfeiture."

12 SECTION 6. Section 712A-9, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

14 "(1) The prosecuting attorney shall determine whether it
15 is probable that the property is subject to forfeiture and, if
16 so, shall initiate [~~administrative or~~] judicial proceedings
17 against the property within forty-five days [~~of receipt of a~~
18 ~~written request for forfeiture from a seizing agency.~~] after the
19 owner of property has been convicted of a covered offense as set
20 forth in sections 712A-4 and 712A-5. If [~~7-09~~]:



1 (a) On inquiry and examination, the prosecuting attorney
2 determines, with sole discretion, that the proceedings
3 probably cannot be sustained or that justice does not
4 require the institution of proceedings [7]; or

5 (b) Upon entering of nolle prosequi or a verdict of not
6 guilty for all covered offenses relating to the
7 seizure,

8 the prosecuting attorney shall notify the seizing agency, and as
9 soon as practicable authorize the release of the seizure for
10 forfeiture on the property or on any specified interest in it.
11 A determination by the prosecuting attorney to forego initiation
12 of proceedings shall not be a bar to initiation of proceedings
13 against the same property based on the same circumstances at a
14 later time."

15 SECTION 7. Section 712A-11, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§712A-11 Judicial forfeiture proceedings; general.** (1)
18 [~~In any judicial or administrative proceeding~~] All forfeiture
19 proceedings pursuant to this chapter[, the] shall be conducted
20 in the circuit court, and no property shall be forfeited except
21 after conviction of a covered offense as provided under sections



1 712A-4 and 712A-5. The court, on application of the State, may
2 enter any restraining order or injunction, require the execution
3 of satisfactory performance bonds, create receiverships, appoint
4 conservators, appraisers, accountants or trustees, or take any
5 other action to seize, secure, maintain, or preserve the
6 availability of property subject to forfeiture under this
7 chapter, including a warrant for its seizure, whether before or
8 after the filing of a petition for forfeiture, complaint, or
9 indictment.

10 (2) If property is seized for forfeiture without a seizure
11 warrant, a prior judicial order of forfeiture, or a hearing
12 pursuant to section 712A-13, a court, on an application filed by
13 an owner or interest-holder within fifteen days after notice of
14 its seizure for forfeiture or actual knowledge of it, whichever
15 is earlier, and complying with the requirements for claims in
16 section 712A-12, may issue an order to show cause to the seizing
17 agency, with thirty days' notice to the prosecuting attorney,
18 for a hearing on the issue of whether probable cause for
19 forfeiture of the applicant's interest then exists [7] to
20 validate the continued seizure of the property pending the
21 outcome of a judicial forfeiture proceeding; provided that [7]



1 the order to show cause shall be set aside upon the filing of a
2 petition for ~~[either administrative or]~~ judicial forfeiture
3 prior to the hearing, in which event forfeiture proceedings
4 shall be in accordance with this chapter.

5 (3) ~~[There shall be a rebuttable presumption that any]~~ Any
6 property of a person is subject to forfeiture under this chapter
7 if the State establishes ~~[, by the standard of proof applicable~~
8 ~~to that proceeding, all of the following:~~

9 ~~(a) That]~~ that the person has ~~[engaged in]~~ been convicted
10 of criminal conduct for which property is subject to
11 forfeiture[+], and the State establishes beyond a
12 reasonable doubt:

13 ~~[-(b)]~~ (a) That the property was acquired by the person
14 during the period of the criminal conduct or within a
15 reasonable time after that period; and

16 ~~[-(e)]~~ (b) That there was no likely source for the property
17 other than the criminal conduct giving rise to
18 forfeiture.

19 (4) A finding that property is the proceeds of criminal
20 conduct giving rise to forfeiture does not require proof that



1 the property is the proceeds [+]of[+] any particular exchange or
2 transaction.

3 (5) A defendant convicted in any criminal proceeding shall
4 be precluded from subsequently denying the essential allegations
5 of the criminal offense of which the defendant was convicted in
6 any proceeding pursuant to this chapter. For the purposes of
7 this chapter, a conviction may result from a verdict or plea,
8 including a no contest plea, [~~or~~] deferred acceptance of guilty
9 plea, or deferred acceptance of no contest plea.

10 [~~(6) An acquittal or dismissal in a criminal proceeding~~
11 ~~shall not preclude civil proceedings under this chapter.~~

12 ~~(7)]~~ (6) In any judicial forfeiture proceeding pursuant to
13 this chapter, if a defense is based on an exemption provided for
14 in this chapter, the burden of proving the existence of the
15 exemption is on the claimant or party raising the defense, and
16 it is not necessary to negate the exemption in any petition,
17 application, complaint, or indictment.

18 [~~(8)]~~ (7) For good cause shown, on motion by the
19 prosecuting attorney, the court may stay discovery against the
20 State in civil forfeiture proceedings prior to trial on a
21 criminal complaint or indictment arising from the same conduct



1 and against a claimant who is a defendant in the criminal
2 proceeding after making provision to prevent loss to any party
3 resulting from the delay. The stay provided by this subsection
4 shall not be available pending appeal of any order or judgment
5 in the criminal proceeding.

6 ~~[(9)]~~ (8) The court shall receive and consider, at any
7 hearing held pursuant to this chapter, except the hearing on
8 claims pursuant to sections 712A-12(4) through (8) and
9 712A-13(7), evidence and information which would be admissible
10 under the rules of penal procedure relating to preliminary
11 hearings.

12 ~~[(10)]~~ (9) All property, including all interest in such
13 property, declared forfeited under this chapter vests in this
14 State on the commission of the act or omission giving rise to
15 forfeiture under this chapter together with the proceeds of the
16 property after the act or omission. Any property or proceeds
17 transferred to any person after the act or omission are subject
18 to forfeiture and thereafter shall be ordered forfeited [~~unless~~
19 ~~the transferee claims and establishes in a hearing pursuant to~~
20 ~~this chapter~~] if the State has proven beyond a reasonable doubt
21 the showings set out in section 712A-5(2)."



1 SECTION 8. Section 712A-12, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsections (1) and (2) to read:

4 "(1) In rem forfeiture proceedings are not permitted
5 except when the owner of the property has died without
6 successors in interest, cannot be located, or has abandoned
7 claims of ownership, and when the owner was deemed convicted of
8 a covered offense, as provided in section 712A-5 or when the
9 State claims that the owner would have been deemed convicted if
10 the owner had not died or disappeared. If a forfeiture is
11 authorized by law, it shall be ordered by a court on an action
12 in rem brought by the prosecuting attorney on a verified
13 petition for forfeiture filed in the criminal or civil division
14 of the circuit court.

15 (2) A civil in rem action may be brought in addition to or
16 in lieu of the civil and criminal in personam forfeiture
17 procedures set forth in sections 712A-13 and 712A-14 [~~or the~~
18 ~~administrative forfeiture as set forth in section 712A-10~~].
19 Judicial in rem forfeiture proceedings are in the nature of an
20 action in rem and are governed by the rules of civil procedure



1 whether brought in the criminal or civil division of the circuit
2 court, unless a different procedure is provided by law."

3 2. By amending subsections (8) and (9) to read:

4 "(8) The State has the [initial] burden of [~~showing by a~~
5 ~~preponderance of the evidence~~] proving beyond a reasonable doubt
6 that the claimant's interest in the property is subject to
7 forfeiture. On such a showing by the State, the claimant has
8 the burden [~~of showing by a preponderance of the evidence that~~
9 ~~the claimant's interest in the property is not subject to~~
10 ~~forfeiture.~~] to show that the claimant holds a legal right,
11 title, or interest in the property seized and that the claimant
12 held an ownership interest in the seized property at the time
13 the illegal conduct that gave rise to the seizure of the
14 property occurred.

15 (9) In accordance with its findings at the hearing, the
16 court shall order an interest in property immediately returned
17 or conveyed to the claimant, if any, [~~who has established by a~~
18 ~~preponderance of the evidence that the~~] where the State has
19 failed to prove beyond a reasonable doubt that:

20 (a) The claimant had actual knowledge of the underlying
21 crime giving rise to the forfeiture; or



1 (b) The claimant's interest is [~~not~~] subject to
2 forfeiture[~~-~~] pursuant to section 712A-5.

3 The court shall order all other property, including all
4 interests in the property, forfeited to the State and proceed
5 pursuant to sections 712A-15 and 712A-16."

6 SECTION 9. Section 712A-13, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By amending subsection (1) to read:

9 "(1) If a forfeiture is authorized by law, it shall be
10 ordered by a court on a petition for forfeiture filed by the
11 prosecuting attorney in an in personam civil or criminal action.
12 In any civil in personam action brought under this section, the
13 owner or interest-holder may testify, present evidence and
14 witnesses on the owner or interest-holder's behalf, and cross-
15 examine witnesses who appear at the hearing. The State may
16 present evidence and witnesses in rebuttal and in defense of its
17 claim to the property and cross-examine witnesses who appear at
18 the hearing. The State has the [~~initial~~] burden of [~~showing by~~
19 ~~a preponderance of the evidence~~] proving beyond a reasonable
20 doubt that the owner or interest-holder's interest in the
21 property is subject to forfeiture[~~-~~] pursuant to section 712A-5.



1 ~~[On such a showing by the State, the owner or interest holder~~
2 ~~has the burden of showing by a preponderance of the evidence~~
3 ~~that the owner or interest holder's interest in the property is~~
4 ~~not subject to forfeiture.] "~~

5 2. By amending subsection (7) to read:

6 "(7) Procedures subsequent to the verdict or finding of
7 liability and order of forfeiture shall be as follows:

8 (a) Following the entry of an order of forfeiture, the
9 clerk of the court shall give notice of pending
10 forfeiture to owners and interest-holders who have not
11 previously been given notice, if any, in the manner
12 provided in section 712A-8;

13 (b) Any owner or interest-holder, other than a party or a
14 defendant in the underlying in personam action,
15 asserting an interest in property that has been
16 ordered forfeited pursuant to such action, within
17 thirty days after initial notice of pending forfeiture
18 or after notice under paragraph (a) of this
19 subsection, whichever is earlier, may file a claim as
20 described in section 712A-12(5), in the court for a



1 hearing to adjudicate the validity of the person's
2 claimed interest in the property;

3 (c) The hearing on the claim, to the extent practicable
4 and consistent with the interest of justice, shall be
5 held within sixty days after the order of forfeiture.

6 The court may consolidate the hearing on the claim
7 with a hearing on any other claim filed by a person
8 other than a party or defendant in the underlying
9 action and concerning the same property;

10 (d) The hearing shall be conducted in the manner provided
11 for in rem judicial forfeiture actions including the
12 provisions of section 712A-12(7) and (8). In addition
13 to testimony and evidence presented at the hearing,
14 the court shall consider the relevant portions of the
15 record of the underlying civil or criminal action that
16 resulted in the order of forfeiture; and

17 (e) In accordance with its findings at the hearing, the
18 court may amend the order of forfeiture if it
19 determines that any claimant has ~~[established by a~~
20 ~~preponderance of the evidence that]~~ met the burden of
21 showing that the claimant has a legal interest in the



1 property, and the State has failed to prove beyond a
2 reasonable doubt that the claimant's interest is
3 ~~[property designated as net]~~ subject to forfeiture by
4 section 712A-5."

5 SECTION 10. Section 712A-15, Hawaii Revised Statutes, is
6 amended by amending subsections (4) and (5) to read as follows:

7 "(4) Upon entry of judgment for a claimant or claimants in
8 any proceeding to forfeit property under this chapter ~~[such]~~,
9 the property or interest in property shall be immediately
10 returned or conveyed to the claimant or claimants designated by
11 the court. If it appears that there was reasonable cause for
12 the seizure for forfeiture or the filing of the complaint, the
13 court ~~[shall]~~ may cause a finding to be entered, and the
14 claimant is not, in such case, entitled to costs or damages.
15 Nor, in such case, is the person or seizing agency, or its
16 agents, who made the seizure, or the prosecuting attorney or the
17 attorney general liable to suit or judgment on account of ~~[such]~~
18 the seizure, suit, or prosecution.

19 (5) The court ~~[shall]~~ may order any claimant who fails to
20 establish that the claimant's entire interest is exempt from
21 forfeiture under section 712A-5 to pay the costs of any claimant



1 who establishes that the entire interest is exempt from
2 forfeiture under section 712A-5, and the State's costs and
3 expenses of the investigation and prosecution of the matter,
4 including reasonable attorney fees."

5 SECTION 11. Section 712A-16, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§712A-16 Disposition of property forfeited.** (1) All
8 property forfeited to the State under this chapter shall be
9 transferred to the attorney general, who:

10 ~~[(a) May transfer property, other than currency, which~~
11 ~~shall be distributed in accordance with subsection (2)~~
12 ~~to any local or state government entity, municipality,~~
13 ~~or law enforcement agency within the State;~~

14 ~~(b)]~~ (a) May sell forfeited property to the public by
15 public sale; provided that for leasehold real
16 property:

17 (i) The attorney general shall first offer the holder
18 of the immediate reversionary interest the right
19 to acquire the leasehold interest and any
20 improvements built or paid for by the lessee for
21 the then fair market value of the leasehold



1 interest and improvements. The holder of the
2 immediate reversionary interest shall have thirty
3 days after receiving written notice within which
4 to accept or reject the offer in writing;
5 provided that the offer shall be deemed to be
6 rejected if the holder of the immediate
7 reversionary interest has not communicated
8 acceptance to the attorney general within the
9 thirty-day period. The holder of the immediate
10 reversionary interest shall have thirty days
11 after acceptance to tender to the attorney
12 general the purchase price for the leasehold
13 interest and any improvements, upon which tender
14 the leasehold interest and improvements shall be
15 conveyed to the holder of the immediate
16 reversionary interest[-];

17 (ii) If the holder of the immediate reversionary
18 interest fails to exercise the right of first
19 refusal provided in subparagraph (i), the
20 attorney general may proceed to sell the



1 leasehold interest and any improvements by public
2 sale[-]; and

3 (iii) Any dispute between the attorney general and the
4 holder of the immediate reversionary interest as
5 to the fair market value of the leasehold
6 interest and improvements shall be settled by
7 arbitration pursuant to chapter 658A;

8 ~~[-e-]~~ (b) May sell or destroy all raw materials, products,
9 and equipment of any kind used or intended for use in
10 manufacturing, compounding, or processing a controlled
11 substance or any untaxed cigarettes in violation of
12 chapter 245;

13 ~~[-d-]~~ (c) May compromise and pay valid claims against
14 property forfeited pursuant to this chapter; or

15 ~~[-e-]~~ (d) May make any other disposition of forfeited
16 property authorized by law.

17 (2) All forfeited property and the sale proceeds thereof ~~[-~~
18 ~~up to a maximum of three million dollars per year, not~~
19 ~~previously transferred pursuant to [subsection] (1) (a) of this~~
20 ~~section, shall]~~, after payment of expenses of administration and
21 sale, shall be ~~[distributed as follows:~~



1 ~~(a) One quarter shall be distributed to the unit or units~~
2 ~~of state or local government [whose] officers or~~
3 ~~employees conducted the investigation and caused the~~
4 ~~arrest of the person whose property was forfeited or~~
5 ~~seizure of the property for forfeiture;~~

6 ~~(b) One quarter shall be distributed to the prosecuting~~
7 ~~attorney who instituted the action producing the~~
8 ~~forfeiture; and~~

9 ~~(c) One half shall be deposited into the criminal~~
10 ~~forfeiture fund established by this chapter.~~

11 ~~(3) Property and money distributed to units of state and~~
12 ~~local government shall be used for law enforcement purposes,]~~
13 transferred to the general fund for public education purposes
14 consistent with article X, section 1, of the state constitution,
15 and shall complement but not supplant the funds regularly
16 appropriated for ~~[such]~~ these purposes.

17 ~~[(4)]~~ (3) There is established in the department of the
18 attorney general a revolving fund to be known as the criminal
19 forfeiture fund, hereinafter referred to as the "fund" in which
20 shall be deposited ~~[one half of the proceeds of a forfeiture and~~
21 ~~any penalties paid pursuant to section 712A 10(6).]~~ a portion of



1 the proceeds of each sale made pursuant to this section that is
2 sufficient to cover expenses of administration and sale. All
3 moneys in the fund shall be expended by the attorney general and
4 are appropriated for [~~the following purposes:~~

5 (a) ~~The~~ the payment of any expenses necessary to seize,
6 detain, appraise, inventory, safeguard, maintain,
7 advertise, or sell property seized, detained, or
8 forfeited pursuant to this chapter or of any other
9 necessary expenses incident to the seizure, detention,
10 or forfeiture of [~~such~~] the property and [~~such~~] the
11 contract services and payments to reimburse any
12 federal, state, or county agency for any expenditures
13 made to perform the foregoing functions[~~;~~

14 ~~(b) The payment of awards for information or assistance~~
15 ~~leading to a civil or criminal proceeding;~~

16 ~~(c) The payment of supplemental sums to state and county~~
17 ~~agencies for law enforcement purposes;~~

18 ~~(d) The payment of expenses arising in connection with~~
19 ~~programs for training and education of law enforcement~~
20 ~~officers;~~



1 ~~(e) The payment of expenses arising in connection with~~
2 ~~enforcement pursuant to the drug nuisance abatement~~
3 ~~unit in the department of the attorney general; and~~
4 ~~(f) The payment of expenses arising in connection with the~~
5 ~~law enforcement officer independent review board in~~
6 ~~the department of the attorney general].~~

7 (5) The attorney general ~~[may, without regard to the~~
8 ~~requirements of chapter 91, promulgate]~~ shall adopt rules ~~[and~~
9 ~~regulations]~~ necessary to carry out the purposes of this
10 chapter, including rules concerning the disposition of property,
11 the use of the fund, and compromising and paying valid claims
12 against property forfeited ~~[pursuant to this chapter].~~

13 (6) Not less than twenty days prior to the convening of
14 each regular session, the attorney general shall provide to the
15 legislature a report on the use of the Hawaii omnibus criminal
16 forfeiture act during the fiscal year preceding the legislative
17 session. The report shall include:

18 (a) The total amount and type of property seized by law
19 enforcement agencies;



- 1 (b) The total number of [~~administrative and judicial~~
2 forfeiture actions filed by prosecuting attorneys and
3 the disposition thereof;
- 4 [~~(e)~~] ~~The total number of claims or petitions for remission~~
5 ~~or mitigation filed in administrative actions and the~~
6 ~~dispositions thereof;~~
- 7 ~~(d)~~] (c) The total amount and type of property forfeited
8 and the sale proceeds thereof;
- 9 [~~(e)~~] (d) The total amount and type of property distributed
10 to units of state and local government;
- 11 [~~(f)~~] (e) The amount of money deposited into the criminal
12 forfeiture fund; and
- 13 [~~(g)~~] (f) The amount of money expended by the attorney
14 general from the criminal forfeiture fund under
15 subsection (5) and the reason for the expenditures."

16 SECTION 12. Section 712A-10, Hawaii Revised Statutes, is
17 repealed.

18 [~~"§712A-10 Administrative forfeiture. The prosecuting~~
19 ~~attorney may initiate administrative forfeiture of property~~
20 ~~other than real property, the estimated value of which is less~~
21 ~~than \$100,000, or of any vehicle or conveyance, regardless of~~



1 value. ~~Administrative forfeiture shall be processed in the~~
2 ~~following manner:~~

3 ~~(1) The prosecuting attorney shall file a petition with~~
4 ~~the attorney general, pursuant to rules adopted by the~~
5 ~~attorney general.~~

6 ~~(2) The prosecuting attorney shall give notice of pending~~
7 ~~forfeiture by making reasonable efforts to serve a~~
8 ~~copy of the petition in a manner provided in section~~
9 ~~712A-8(a) or 712A-8(b) on all persons known to have an~~
10 ~~interest in the property, together with instructions~~
11 ~~for filing a claim and cost or in pauperis bond, or a~~
12 ~~petition for remission or mitigation.~~

13 ~~(3) The attorney general shall give notice of intention to~~
14 ~~forfeit the property administratively by publication~~
15 ~~in the manner provided in section 712A-8(c). Notice~~
16 ~~by publication shall include:~~

17 ~~(a) A description of the property;~~

18 ~~(b) The estimated value of the property;~~

19 ~~(c) The date and place of the seizure;~~

20 ~~(d) The offense for which the property is subject to~~
21 ~~forfeiture;~~



1 ~~(e) Instructions for filing a claim and cost or in~~
2 ~~pauperis bond, or a petition for remission or~~
3 ~~mitigation, and~~

4 ~~(f) Notice that the property will be forfeited to the~~
5 ~~State if a claim and cost or in pauperis bond or~~
6 ~~petition for remission or mitigation is not filed~~
7 ~~in substantial compliance with this section.~~

8 ~~(4) Persons claiming an interest in the property may file~~
9 ~~either a petition for remission or mitigation of~~
10 ~~forfeiture, or a claim and cost or in pauperis bond,~~
11 ~~but not both, with the attorney general, within thirty~~
12 ~~days of notice by publication or receipt of written~~
13 ~~notice, whichever is earlier. Notwithstanding section~~
14 ~~1-29, the thirty day time period prescribed herein is~~
15 ~~computed by excluding the first day and including the~~
16 ~~last day, unless the last day is a Saturday, Sunday,~~
17 ~~or holiday and then it is also excluded, and the~~
18 ~~thirty day time period runs until the end of the next~~
19 ~~day which is not a Saturday, Sunday, or a holiday.~~
20 ~~"Holiday" includes any day designated as a holiday~~
21 ~~pursuant to section 8-1.~~



1 ~~(5) Any person claiming seized property may seek remission~~
2 ~~or mitigation of the forfeiture by timely filing a~~
3 ~~petition with the attorney general. A petition for~~
4 ~~remission or mitigation shall not be used to challenge~~
5 ~~the sufficiency of the evidence to support the~~
6 ~~forfeiture or the actions of any government official~~
7 ~~but shall presume a valid forfeiture and ask the~~
8 ~~attorney general to invoke the executive power to~~
9 ~~pardon the property, in whole or in part. The~~
10 ~~petition shall be signed by the petitioner and sworn~~
11 ~~on oath before a notary public and shall contain the~~
12 ~~following:~~

13 ~~(a) A reasonably complete description of the~~
14 ~~property;~~

15 ~~(b) A statement of the interest of the petitioner in~~
16 ~~the property, as owner or interest holder which~~
17 ~~may be supported by bills of sale, contracts, or~~
18 ~~mortgages, or other documentary evidence; and~~

19 ~~(c) Facts and circumstances sufficient to show~~
20 ~~whether the petitioner:~~



- 1 ~~(i) Owns or holds an interest in the seized~~
2 ~~property as defined by section 712A-1;~~
- 3 ~~(ii) Had any knowledge that the property was or~~
4 ~~would be involved in any violation of the~~
5 ~~law;~~
- 6 ~~(iii) Had any knowledge of the particular~~
7 ~~violation which subjected the property to~~
8 ~~seizure and forfeiture;~~
- 9 ~~(iv) Had any knowledge that the user of the~~
10 ~~property had any record, including arrests,~~
11 ~~except when the person was acquitted or the~~
12 ~~charges dismissed due to lack of evidence,~~
13 ~~for the violation which subjected the~~
14 ~~property to seizure and forfeiture or for~~
15 ~~any crime which is similar in nature.~~

16 ~~Any subsequent pleadings or written communications~~
17 ~~alleging matters pertaining to [subparagraph] (b) or~~
18 ~~(c) of this [paragraph] must also be signed by the~~
19 ~~petitioner and sworn on oath before a notary public.~~

- 20 ~~(6) If the attorney general, with sole discretion,~~
21 ~~determines that remission is not warranted, the~~



1 ~~attorney general may discretionarily mitigate the~~
2 ~~forfeiture where the petitioner has not met the~~
3 ~~minimum requirements for remission but where there are~~
4 ~~present other extenuating circumstances indicating~~
5 ~~that some relief should be granted to avoid extreme~~
6 ~~hardship. Mitigation may also be granted where the~~
7 ~~minimum requirements for remission have been met but~~
8 ~~the overall circumstances are such that the attorney~~
9 ~~general determines that complete relief is not~~
10 ~~warranted. Mitigation shall take the form of a money~~
11 ~~penalty imposed upon the petitioner which shall be~~
12 ~~deposited into the criminal forfeiture fund~~
13 ~~established under section 712A 16. Extenuating~~
14 ~~circumstances include:~~

- 15 ~~(a) Language or culture barrier;~~
16 ~~(b) Humanitarian factors such as youth or extreme~~
17 ~~age;~~
18 ~~(c) Presence of physical or mental disease, disorder,~~
19 ~~or defect;~~
20 ~~(d) Limited or peripheral criminal culpability;~~



1 ~~(e) Cooperation with the seizing agency or the~~
2 ~~prosecuting attorney; and~~

3 ~~(f) Any contributory error on the part of government~~
4 ~~officials.~~

5 ~~(7) It shall be the duty of the attorney general to~~
6 ~~inquire into the facts and circumstances alleged in a~~
7 ~~petition for remission or mitigation of forfeiture.~~
8 ~~However, no petitioner is entitled to a hearing on the~~
9 ~~petition for remission or mitigation. Hearings, if~~
10 ~~any, shall be held at the discretion of the attorney~~
11 ~~general.~~

12 ~~(8) The attorney general shall provide the seizing agency~~
13 ~~and the petitioner a written decision on each petition~~
14 ~~for remission or mitigation within sixty days of~~
15 ~~receipt of the petition unless the circumstances of~~
16 ~~the case require additional time, in which case the~~
17 ~~attorney general shall notify the petitioner in~~
18 ~~writing and with specificity within the sixty day~~
19 ~~period that the circumstances of the case require~~
20 ~~additional time and further notify the petitioner of~~
21 ~~the expected decision date.~~



1 ~~(9) Any person claiming seized property may seek judicial~~
2 ~~review of the seizure and proposed forfeiture by~~
3 ~~timely filing with the attorney general a claim and~~
4 ~~bond to the State in the amount of ten per cent of the~~
5 ~~estimated value of the property or in the sum of~~
6 ~~\$2,500, whichever is greater, with sureties to be~~
7 ~~approved by the attorney general, upon condition that~~
8 ~~if the claimant fails to prove that claimant's~~
9 ~~interest is exempt from forfeiture under section 712A-~~
10 ~~5, the claimant shall pay the State's costs and~~
11 ~~expenses, including reasonable attorneys fees incurred~~
12 ~~in connection with a judicial proceeding. In lieu of~~
13 ~~a cost bond, a claimant may file an in pauperis bond~~
14 ~~sworn on oath before a notary public. An in pauperis~~
15 ~~bond shall be in the form set out in the appendix to~~
16 ~~the rules of penal procedure. The claim shall be~~
17 ~~signed by the claimant and sworn on oath before a~~
18 ~~notary public and shall comply with the requirements~~
19 ~~of section 712A 12(5). Upon receipt of the claim and~~
20 ~~bond, the attorney general shall notify the~~
21 ~~prosecuting attorney who may discretionarily continue~~



1 ~~to seek forfeiture by petitioning the circuit court~~
2 ~~for forfeiture of the property within forty five days~~
3 ~~of receipt of notice that a proper claim and bond has~~
4 ~~been filed. The prosecuting attorney may also elect~~
5 ~~to honor the claim in which case the prosecuting~~
6 ~~attorney shall notify the seizing agency and authorize~~
7 ~~the release of the seizure for forfeiture on the~~
8 ~~property or on any specified interest in it.~~

9 ~~(10) If a judicial forfeiture proceeding is instituted~~
10 ~~subsequent to notice of administrative forfeiture~~
11 ~~pursuant to paragraph (9), no duplicate or repetitive~~
12 ~~notice shall be required. The judicial proceeding, if~~
13 ~~any, shall adjudicate all timely filed claims. At the~~
14 ~~judicial proceeding, the claimant may testify, present~~
15 ~~evidence and witnesses on the claimant's behalf, and~~
16 ~~cross examine witnesses who appear at the hearing.~~
17 ~~The State may present evidence and witnesses in~~
18 ~~rebuttal and in defense of its claim to the property~~
19 ~~and cross examine witnesses who appear at the hearing.~~
20 ~~The State has the initial burden of showing by a~~
21 ~~preponderance of the evidence that the claimant's~~



1 ~~interest in the property is subject to forfeiture. On~~
2 ~~such a showing by the State, the claimant has the~~
3 ~~burden of showing by a preponderance of the evidence~~
4 ~~that the claimant's interest in the property is not~~
5 ~~subject to forfeiture.~~

6 ~~(11) In the event a claim and bond has not been filed in~~
7 ~~substantial compliance with this section, or if the~~
8 ~~attorney general, with sole discretion, determines~~
9 ~~that remission or mitigation is not warranted, the~~
10 ~~attorney general shall order forfeited all property~~
11 ~~seized for forfeiture. In the event the attorney~~
12 ~~general, with sole discretion, determines that~~
13 ~~remission or mitigation is warranted, the attorney~~
14 ~~general shall notify the seizing agency and the~~
15 ~~prosecuting attorney and order the release of the~~
16 ~~seizure for forfeiture on the property or on any~~
17 ~~specified interest in it. There shall be no appeal~~
18 ~~from the attorney general's decision or order of~~
19 ~~forfeiture or remission or mitigation.~~

20 ~~(12) Administrative proceedings and the adoption of rules~~
21 ~~under this section are exempt from the requirements of~~



1 ~~chapter 91, the Hawaii administrative procedure act,~~
2 ~~and are adjudicatory functions for the purposes of~~
3 ~~applicable sections of the Hawaii Revised Statutes."]~~

4 SECTION 13. The rules required by section 712A-16(5),
5 Hawaii Revised Statutes, as amended by section 11 of this Act,
6 shall be adopted within one year from the effective date of this
7 Act.

8 SECTION 14. This Act does not affect rights and duties
9 that matured, penalties that were incurred, and proceedings that
10 were begun before its effective date.

11 SECTION 15. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 16. This Act shall take effect upon its approval;
14 provided that the amendments made to section 712A-16, Hawaii
15 Revised Statutes, by section 11 of this Act shall not be
16 repealed when that section is reenacted on June 30, 2022,
17 pursuant to section 7(3) of Act 161, Session Laws of Hawaii
18 2016.

19



Report Title:

Civil Asset Forfeiture

Description:

Restricts asset forfeiture to cases involving the commission of a covered criminal misdemeanor or felony offense. Requires seized property to be forfeited only when the property owner has been convicted of an underlying covered criminal misdemeanor or felony offense. Changes the standard of proof that the State must meet in order for property to be forfeited from "preponderance of the evidence" to "beyond a reasonable doubt". Requires the State to prove that owners consented to or possessed knowledge of the crime that led to the seizure of their property. Requires that the agency seizing the property pay for safe and secure storage of the seized property until the completion of the forfeiture proceeding or final disposition of the property. Directs any proceeds from a civil forfeiture to the general revenue fund for public education purposes. Repeals administrative forfeiture proceedings. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

