

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1170

Introduced by

Representatives Rick C. Becker, Dockter, B. Koppelman, Simons, Toman

Senators O. Larsen, Luick, Vedaa

A BILL for an Act to create and enact chapter 29-31.2 of the North Dakota Century Code, relating to criminal forfeitures; to amend and reenact subsection 4 of section 4-24-12, subsection 4 of section 5-01-16, sections 12.1-06.1-05 and 12.1-06.1-06, subsection 7 of section 12.1-23-16, subsection 4 of section 12.1-28-02, sections 19-03.1-36, 20.1-10-03, 20.1-10-04, and 20.1-10-07, subsection 1 of section 27-20-03, sections 29-27-02.1, 39-03-18, 39-08-01.3, 39-30-04, 40-11-13, 54-12-14, and 57-36-14, subsection 2 of section 57-36-33, section 62.1-01-02, and subsection 2 of section 62.1-05-01 of the North Dakota Century Code, relating to forfeiture remedies, forfeiture of property, forfeiture funds, and forfeiture procedures; and to 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, 19-03.1-36.6, 19-03.1-36.7, and 28-01-20, and chapters 29-31.1 and 32-14 of the North Dakota Century Code, relating to forfeiture proceedings, forfeiture disposition, seizure and transfer of forfeitable property, and actions to recover forfeitures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 4-24-12 of the North Dakota Century Code is amended and reenacted as follows:

4. Any vehicle used to transport a purple coneflower removed or possessed in violation of this section is forfeitable property under chapter ~~29-31.1~~29-31.2.

SECTION 2. AMENDMENT. Subsection 4 of section 5-01-16 of the North Dakota Century Code is amended and reenacted as follows:

4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter ~~29-31.1~~29-31.2.

SECTION 3. AMENDMENT. Section 12.1-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-06.1-05. Racketeering - Civil remedies.

1. A person who sustains injury to person, business, or property by a pattern of racketeering activity or by a violation of section 12.1-06.1-02 or 12.1-06.1-03 may file an action in district court for the recovery of treble damages and the costs of the suit, including reasonable attorney fees. The state may file an action in behalf of those persons injured or to prevent, restrain, or remedy a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.
2. The district court has jurisdiction to prevent, restrain, and remedy a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.
3. Prior to a determination of liability, orders may include entering restraining orders, receivership orders or prohibitions or other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, ~~forfeiture~~, or other restraints pursuant to this section.
4. Following a determination of liability, orders may include:
 - a. Ordering any person to divest himself of any interests, direct or indirect, in any enterprise.
 - b. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.
 - c. Ordering dissolution or reorganization of any enterprise.
 - d. Ordering the payment of treble damages and appropriate restitution to those persons injured by a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - e. Ordering the payment of all costs and expenses and reasonable attorneys' fees concerned with the prosecution and investigation of any offense included in the definition of racketeering if upon application for the order it is shown to the 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 chapter 32-14, to the state school fund of the state or~~
5 ~~county as appropriate under section 29-27-02.1, to the extent not already ordered~~
6 ~~to be paid in other damages:~~

7 (1) ~~Any 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.f. 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 for~~
25 ~~forfeiture to the state school fund of the state or county as appropriate under section~~
26 ~~29-27-02.1, to the extent not already ordered paid pursuant to this section, of:~~

27 a. ~~Any interest acquired or maintained by a person in violation of section~~
28 ~~12.1-06.1-02 or 12.1-06.1-03.~~

29 b. ~~Any interest in, security of, claims against, or property or contractual right of any~~
30 ~~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 ~~e. 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 6.5. A defendant convicted in any criminal proceeding shall be precluded from
9 subsequently denying the essential allegations of the criminal offense of which he was
10 convicted in any civil proceeding. For purposes of this subsection, a conviction may
11 result from a verdict or plea including a no contest plea.

12 7.6. 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 8.7. 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 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 9.8. The standard of proof in actions brought pursuant to this section is the preponderance
24 of the evidence.

25 10.9. A person other than the attorney general or state's attorney who files an action under
26 this section shall serve notice and one copy of the pleading on the attorney general
27 within thirty days after the action is filed with the district court. The notice shall identify
28 the action, the person, and the person's attorney. Service of the notice does not limit
29 or otherwise affect the right of the state to maintain an action under this section or
30 intervene in a pending action nor does it authorize the person to name the state or the
31 attorney general as a party to the action.

1 ~~41.10.~~ Except in cases filed by a state's attorney, the attorney general may, upon timely
2 application, intervene in any civil action or proceeding brought pursuant to this section
3 if the attorney general certifies that in his opinion the action is of special public
4 importance. Upon intervention, the attorney general may assert any available claim
5 and is entitled to the same relief as if the attorney general had instituted a separate
6 action.

7 ~~42.11.~~ In addition to the state's right to intervene as a party in any action under this section,
8 the attorney general may appear as amicus curiae in any proceeding in which a claim
9 under this section has been asserted or in which a court is interpreting any provisions
10 of this chapter.

11 ~~43.12.~~ A civil action under this section is remedial and does not limit any other civil or criminal
12 action. Civil remedies provided under this section are supplemental and not mutually
13 exclusive.

14 **SECTION 4. AMENDMENT.** Section 12.1-06.1-06 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **12.1-06.1-06. Racketeering lien - Content - Filing - Notice - Effect.**

- 17 1. The state, upon filing a civil action under section 12.1-06.1-05 or upon charging an
18 offense included in the definition of racketeering if the offense is committed as a part
19 of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or
20 12.1-06.1-03, may file a racketeering lien. A filing fee or other charge is not required
21 for filing a racketeering lien.
- 22 2. A racketeering lien shall be signed by the attorney general or the state's attorney
23 representing the state in the action and set forth the following information:
- 24 a. The name of the defendant whose property, interests in property, or other
25 interests are to be subject to the lien.
- 26 b. In the discretion of the attorney general or state's attorney filing the lien, any
27 aliases or fictitious names of the defendant named in the lien.
- 28 c. If known to the attorney general or state's attorney filing the lien, the present
29 residence or principal place of business of the person named in the lien.

- d. A reference to the proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number for the proceeding.
- e. The name and address of the attorney representing the state in the proceeding pursuant to which the lien is filed.
- f. A statement that the notice is being filed pursuant to this section.
- g. The amount which the state claims in the action or, with respect to property or other interests which the state has requested forfeiture to the state or county, a description of the property or interests sought to be paid or forfeited.
- h. If known to the attorney general or state's attorney filing the lien, a description of property which is subject to forfeiture to the state or property in which the defendant has an interest which is available to satisfy a judgment entered in favor of the state.
- i. Such other information as the attorney general or state's attorney filing the lien deems appropriate.

3. The attorney general or the state's attorney filing the lien may amend a lien filed under this section at any time by filing an amended racketeering lien in accordance with this section which identifies the prior lien amended.

4. The attorney general or the state's attorney filing the lien shall, as soon as practical after filing a racketeering lien, furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection does not invalidate or otherwise affect a racketeering lien filed in accordance with this section.

5. ASubject to chapter 29-31.2, a racketeering lien is perfected against interests in personal property by filing the lien with the secretary of state, except that in the case of titled motor vehicles it shall be filed with the director of the department of transportation. A racketeering lien is perfected against interests in real property by filing the lien with the county recorder of the county in which the real property is located. The state may give additional notice of the lien.

6. ~~The~~Subject to chapter 29-31.2, the filing of a racketeering lien in accordance with this 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. ~~The~~Subject to chapter 29-31.2, 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, give at least thirty days' notice of execution to any person possessing
22 at the time notice is given, an interest recorded after the date the state's lien was
23 perfected.
- 24 9. Upon the entry of a final judgment in favor of the state providing for forfeiture of
25 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 5. AMENDMENT.** Subsection 7 of section 12.1-23-16 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 7. An automated sales suppression device, zapper, or phantom-ware, and the cash
13 register or other device containing the device or the software, is contraband and
14 subject to forfeiture in accordance with chapter ~~29-31.1~~29-31.2.

15 **SECTION 6. AMENDMENT.** Subsection 4 of section 12.1-28-02 of the North Dakota
16 Century Code is amended and reenacted as follows:

17 4. a. As used in subsection 3 but with the exceptions provided by subdivision b of this
18 subsection, the term "coin-operated gaming device" means any machine that is:
19 (1) A so-called "slot" machine that operates by means of the insertion of a coin,
20 token, or similar object and which, by application of the element of chance,
21 may deliver, or entitle the person playing or operating the machine to
22 receive cash, premiums, merchandise, or tokens; or
23 (2) A machine that is similar to machines described in paragraph 1 and is
24 operated without the insertion of a coin, token, or similar object.
25 b. The term "coin-operated gaming device" does not include a bona fide vending or
26 amusement machine in which gambling features are not incorporated as defined
27 in section 53-04-01, or an antique "slot" machine twenty-five years old or older
28 that is collected and possessed by a person as a hobby and is not maintained for
29 the business of gambling.
30 c. A law enforcement officer may seize any device described in subdivision a upon
31 probable cause to believe that the device was used or is intended to be used in

violation of this chapter or chapter 53-06.1. The court shall order the device forfeited in the same manner and according to the same procedure as provided under chapter ~~29-31.1~~29-31.2.

SECTION 7. AMENDMENT. Section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36. Forfeitures.

1. The following are subject to forfeiture:

- a. All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter.
- b. All imitation controlled substances as defined by sections 19-03.2-01 and 19-03.2-02.
- c. All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.
- d. All property which is used, or intended for use, as a container for property described in subdivision a, b, or c.
- e. All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision a, b, or c, but:
 - (1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter.
 - (2) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent.
 - (3) A conveyance is not subject to forfeiture for a violation of subsection 7 of section 19-03.1-23 or subsection 3 of section 19-03.2-03.
 - (4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.

- 1 f. All books, records, and research products and materials, including formulas,
2 microfilm, tapes, and data which are used, or intended for use, in violation of this
3 chapter.
- 4 g. All drug paraphernalia as defined in chapter 19-03.4.
- 5 h. All money, coin, currency, and everything of value furnished, or intended to be
6 furnished, in exchange for a controlled substance in violation of this chapter or an
7 imitation controlled substance in violation of chapter 19-03.2, and all real and
8 personal property, assets, profits, income, proceeds, or an interest therein,
9 acquired or derived from the unlawful purchase, attempted purchase, delivery,
10 attempted delivery, manufacturing, or attempted manufacturing of any controlled
11 substance or imitation controlled substance.
- 12 2. ~~Property subject to forfeiture under this chapter, except conveyances described in~~
13 subdivisions a, b, and g of subsection 1 may be seized by the board upon process
14 issued by any district court having jurisdiction over the property. ~~A conveyance subject~~
15 ~~to forfeiture under this chapter may be seized by a state, county, or city law~~
16 ~~enforcement agency upon process issued by any district court having jurisdiction over~~
17 ~~the conveyance. All other property subject to forfeiture under this chapter must be~~
18 seized and forfeited pursuant to chapter 29-31.2. Seizure of property described in
19 subdivisions a, b, and g of subsection 1 without process may be made if:
- 20 a. The seizure is incident to an arrest or a search under a search warrant or an
21 inspection under an administrative inspection warrant.
- 22 b. The property subject to seizure has been the subject of a prior judgment in favor
23 of the state in a criminal injunction or forfeiture proceedings based upon this
24 chapter.
- 25 c. The board or a law enforcement agency has probable cause to believe that the
26 property is directly or indirectly dangerous to health or safety.
- 27 d. The board or a law enforcement agency has probable cause to believe that the
28 property was used or is intended to be used in violation of this chapter.
- 29 3. In the event of seizure pursuant to subsection 2, proceedings under subsection 4 must
30 be instituted promptly.

- 1 4. Property described in subdivisions a, b, and g of subsection 1 which is taken or
2 detained under this section is not subject to replevin, but is deemed to be in custody of
3 the board or a law enforcement agency subject only to the orders and decrees of the
4 district court having jurisdiction over the forfeiture proceedings as set out in
5 subsection 2. When property described in subdivisions a, b, and g of subsection 1 is
6 seized under this chapter, the board or a law enforcement agency may:
- 7 a. Place the property under seal.
- 8 b. Remove the property to a place designated by it.
- 9 c. Require the attorney general to take custody of the property and remove it to an
10 appropriate location for disposition in accordance with law.
- 11 5. When property described in subdivisions a, b, and g of subsection 1 is forfeited under
12 this chapter, the board or a law enforcement agency may:
- 13 a. Retain it for official use or transfer the custody or ownership of any forfeited
14 property to any federal, state, or local agency. The board shall ensure the
15 equitable transfer of any forfeited property to the appropriate federal, state, or
16 local law enforcement agency so as to reflect generally the contribution of that
17 agency participating directly in any of the acts that led to the seizure or forfeiture
18 of the property. A decision to transfer the property is not subject to review.
- 19 b. Sell that which is not required to be destroyed by law and which is not harmful to
20 the public. The proceeds must be used for payment of all proper expenses of the
21 proceedings for forfeiture and sale, including expenses of seizure, maintenance
22 of custody, advertising, and court costs, with any remaining proceeds to be
23 deposited, subject to section 54-12-14, in the appropriate state, county, or city
24 general fund. When two or more law enforcement agencies are involved in
25 seizing a conveyance, the remaining proceeds may be divided proportionately.
- 26 c. Require the attorney general to take custody of property and remove it for
27 disposition in accordance with law.
- 28 d. Forward it to the bureau for disposition.
- 29 e. Use the property, ~~including controlled substances, imitation controlled~~
30 ~~substances, and plants~~ forfeited under subsections 6 and 7, in enforcement of
31 this chapter. However, in a case involving the delivery of a forfeited controlled

substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection 6 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

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

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

8. The failure, upon demand by the board, or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration, or proof that the person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

SECTION 8. AMENDMENT. Section 20.1-10-03 of the North Dakota Century Code is amended and reenacted as follows:

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

A court having jurisdiction of an alleged offense against this title may order the disposition of all birds, animals, or fish, or any part thereof, ~~or other property that has been confiscated~~ The disposition of all other confiscated property must be in accordance with chapter 29-31.2. ~~This~~ The order may be entered only after a hearing duly had upon proper notice to the owner and after due and proper finding by the court that the property:

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

6 **SECTION 9. AMENDMENT.** Section 20.1-10-04 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **20.1-10-04. Who to sell confiscated propertyanimals, birds, or fish - Bills of sale -**
9 **Disposition of proceeds of sale.**

10 All confiscated propertyanimals, birds, or fish that a court has ordered to be disposed of by
11 the director must be turned over to the North Dakota wildlife federation to be sold for the highest
12 price obtainable. On any sale of animals, birds, or fish, or parts thereof, the seller shall issue to
13 each purchaser a bill of sale on forms prepared and furnished by the director. The sale
14 proceeds, after the expenses of the seizure and the sale are deducted, must be remitted to the
15 North Dakota wildlife federation report all poachers fund. The remittance must be accompanied
16 by a complete and certified report of the sale supported by proper vouchers covering all
17 deductions made for expenses. This report must be filed for record with the director.

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

20 **20.1-10-07. Property seized under warrant - Officer's return to describe - Safekeeping**
21 **- Disposal.**

22 Any officer executing a warrant issued pursuant to section 20.1-10-06 shall, in the officer's
23 return, describe the property seized with as much particularity as possible. The seized property
24 must be safely kept upon direction of the judge as long as necessary to use as evidence. If a
25 conviction is obtained, either by trial or by plea of guilty, the seized property must be disposed of
26 ~~under an order of the court before whom the prosecution was brought~~forfeited pursuant to
27 chapter 29-31.2.

28 **SECTION 11. AMENDMENT.** Subsection 1 of section 27-20-03 of the North Dakota Century
29 Code is amended and reenacted as follows:

- 30 1. The juvenile court has exclusive original jurisdiction of the following proceedings,
- 31 which are governed by this chapter:

- 1 a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;
- 2 b. Proceedings for the termination of parental rights except when a part of an
- 3 adoption proceeding; and
- 4 c. Proceedings arising under section 27-20-30.1; ~~and~~
- 5 ~~d. Civil forfeiture proceedings arising under chapter 19-03.1 or section 29-31.1-04~~
- 6 ~~for which a child is alleged to have possessed forfeitable property. The juvenile~~
- 7 ~~court shall conduct the proceedings in accordance with the procedures provided~~
- 8 ~~for under sections 19-03.1-36 through 19-03.1-37.~~

9 **SECTION 12. AMENDMENT.** Section 29-27-02.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **29-27-02.1. Disposition of statutory fees, fines, forfeitures, pecuniary penalties, and**
12 **bond forfeitures.**

13 Except as otherwise provided by law, all statutory fees, fines, ~~forfeitures~~, and pecuniary
14 penalties prescribed for a violation of state laws, when collected, must be paid into the treasury
15 of the proper county to be added to the state school fund. When any bail bond or other property
16 or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be
17 paid over to the proper state official and credited to the state general fund.

18 **SECTION 13.** Chapter 29-31.2 of the North Dakota Century Code is created and enacted
19 as follows:

20 **29-31.2-01. Definitions.**

21 As used in this chapter:

- 22 1. "Abandoned property" means personal property left by an owner who intentionally
23 relinquishes all rights to the property control. The term does not include real property.
- 24 2. "Actual knowledge" means direct and clear awareness of information, a fact, or a
25 condition.
- 26 3. "Contraband" means goods that are unlawful to import, export, or possess, including
27 scheduled drugs without a valid prescription.
- 28 4. "Constructive knowledge" means knowledge that is imputed to family or household
29 members of the defendant if, three or more times for the same or similar offense, as
30 specified in statute, in the ten years before the alleged offense, the defendant admitted
31 guilt or was adjudicated guilty.

1 5. "Conveyance" means a device used for transportation and includes a motor vehicle,
2 trailer, snowmobile, airplane, vessel, and any equipment attached to the device. The
3 term does not include property that is stolen or taken in violation of the law.

4 6. "Instrumentality" means property otherwise lawful to possess which is used in the
5 furtherance or commission of an offense of a law subject to forfeiture. The term
6 includes land, buildings, a container, a conveyance, equipment, materials, products, a
7 tool, a computer, computer software, a telecommunications device, a firearm, or
8 ammunition.

9 7. "Law enforcement agency" means a non-federal police force or other local, county, or
10 state agency that has the authority under state law to engage in seizure and forfeiture.

11 8. "Law subject to forfeiture" means a state law that explicitly includes forfeiture as a
12 punishment or sanction for the offense.

13 9. "Proceeds" means money, securities, negotiable instruments, or other means of
14 exchange obtained by the sale of property.

15 **29-31.2-02. Criminal forfeiture - Property subject to forfeiture.**

16 When a person is convicted of violating a law subject to forfeiture, the court, consistent with
17 this chapter, may order the person to forfeit:

- 18 1. Proceeds the person derived from the commission of the crime;
19 2. Property directly traceable to proceeds derived from the commission of the crime; and
20 3. Instrumentalities the person used in the commission of the crime.

21 **29-31.2-03. Exemption.**

22 Homesteaded real property, a motor vehicle of less than ten thousand dollars in market
23 value, and United States currency totaling two hundred dollars or less are exempt from
24 forfeiture.

25 **29-31.2-04. Contraband.**

26 No property right exists in contraband. Contraband is subject to seizure and must be
27 disposed of according to state law. Contraband is not subject to forfeiture under this chapter.

28 **29-31.2-05. Conviction required - Standard of proof.**

- 29 1. Property may be forfeited if:
30 a. The offense is of a state law subject to forfeiture;
31 b. The offense is established by proof of a criminal conviction; and

c. The state establishes the property is forfeitable under this chapter by clear and convincing evidence.

2. This chapter does not prevent property from being forfeited by plea agreement approved by the court.

3. The court may waive the conviction requirement if the prosecutor shows by clear and convincing evidence that the defendant:

a. Died;

b. Was deported by the United States government;

c. Is granted immunity in exchange for testifying or otherwise assisting a law enforcement investigation or prosecution; or

d. Fled the jurisdiction after being arrested, charged with a crime that includes the forfeiture of property, and released on bail.

4. Notwithstanding the prosecutor's motion for a waiver, the property remains subject to claims by innocent owners, creditors, and other third parties pursuant to this chapter.

29-31.2-06. Substitution of assets.

Upon the state's motion following conviction, the court may order the forfeiture of substitute property owned by the defendant up to the value of unreachable property that is beyond the court's jurisdiction or cannot be located through due diligence only if the state proves by a preponderance of the evidence the defendant intentionally transferred, sold, or deposited property with a third party to avoid the court's jurisdiction.

29-31.2-07. No additional remedies.

The state may not seek personal money judgments or other remedies not provided for in this chapter.

29-31.2-08. No joint and several liability.

A defendant is not jointly and severally liable for forfeiture awards owed by other defendants. When ownership is unclear, a court may order each defendant to forfeit property on a pro rata basis or by another means the court finds equitable.

29-31.2-09. Seizure of personal property with process.

At the request of the state at any time, a court may issue an ex parte preliminary order to attach, seize, or secure personal property for which forfeiture is sought and to provide for its custody. Application, issuance, execution, and return are subject to state statute or court rules.

1 **29-31.2-10. Seizure of personal property without process.**

2 Personal property subject to forfeiture may be seized at any time without a court order if:

3 1. The seizure of personal property is incident to a lawful arrest or a search lawfully
4 conducted;

5 2. The personal property subject to seizure has been the subject of a prior judgment in
6 favor of the state;

7 3. The state has probable cause to believe the delay occasioned by the necessity to
8 obtain process would result in the removal or destruction of the personal property and
9 the personal property is forfeitable under this chapter; or

10 4. Mere presence or possession of United States currency, without other indicia, is
11 insufficient probable cause for seizure.

12 **29-31.2-11. Seizure of real property with process.**

13 1. Seizure of real property requires a court order. A court may issue an order to seize or
14 secure real property for which forfeiture is sought only after proper notice to property
15 owners and an opportunity for a hearing to determine the sufficiency of probable
16 cause for the seizure.

17 2. This section does not prohibit a prosecutor from seeking a lis pendens or restraining
18 order to hinder the sale or destruction of the real property.

19 3. Application, issuance, execution, and return of any order are subject to state law.

20 **29-31.2-12. Receipt.**

21 When property is seized, the law enforcement officer shall give an itemized receipt to the
22 person possessing the property; or in the absence of any person, leave a receipt in the place
23 where the property was found, if reasonably possible.

24 **29-31.2-13. Title.**

25 1. At the time of seizure or entry of a restraining order, the state acquires provisional title
26 to the seized property. Provisional title authorizes the state to hold and protect the
27 property.

28 2. Title to the property vests with the state when the trier of fact renders a final forfeiture
29 verdict and relates back to the time when the state acquired provisional title. However,
30 this title is subject to claims by third parties adjudicated under this chapter.

1 **29-31.2-14. Pretrial replevin hearing.**

- 2 1. Following the seizure of property, a defendant or a third party claimant has a right to a
3 pretrial hearing to determine the validity of the seizure.
- 4 2. The claimant may claim at any time prior to sixty days before trial of the related
5 criminal offense the right to possession of property by motion to the court to issue a
6 writ of replevin.
- 7 3. The claimant shall file a motion establishing the validity of the alleged interest in the
8 property.
- 9 4. The court shall hear the motion no more than thirty days after the motion is filed.
- 10 5. The state shall file an answer showing probable cause for the seizure, or cross
11 motions at least ten days before the hearing.
- 12 6. Either party, by agreement or for good cause, may move the court for an extension of
13 no more than ten days. The motion may be supported by affidavits or other
14 submissions.
- 15 7. The court shall issue a writ of replevin if the court finds:
- 16 a. It is likely the final judgment will require the state to return the property to the
17 claimant;
- 18 b. The property is not reasonably required to be held for evidence or investigatory
19 reasons; or
- 20 c. The property is the only reasonable means for a defendant to pay for legal
21 representation in the forfeiture or criminal proceeding. Under subdivision b, the
22 court may order the return of funds or property sufficient to obtain legal counsel
23 but less than the total amount seized, and require an accounting.
- 24 8. In lieu of ordering the issuance of the writ, the court may order the state to give
25 security or written assurance for satisfaction of any judgment, including damages,
26 which may be rendered in the action, or order other relief as may be just.

27 **29-31.2-15. Discovery.**

28 Discovery is subject to the North Dakota Rules of Criminal Procedure.

29 **29-31.2-16. Trial proceedings.**

- 30 1. The litigation related to the forfeiture of property must be held in a single proceeding
31 following the trial of the related alleged offense. The litigation of whether property of

1 less than ten thousand dollars in value is to be forfeited must be conducted by the
2 court without a jury.

3 2. Within seven days of the seizure of property or simultaneously upon filing a related
4 criminal indictment, information, or complaint, the state shall file a forfeiture charge
5 that must include:

6 a. A description of the property seized;

7 b. The date and place of seizure of the property;

8 c. The name and address of the law enforcement agency making the seizure;

9 d. The specific statutory and factual grounds for the seizure;

10 e. Whether the property was seized pursuant to an order of seizure, and if the
11 property was seized without an order of seizure, an affidavit from a law
12 enforcement officer stating the legal and factual grounds why an order of seizure
13 was not required; and

14 f. The names of persons known to the state who may claim an interest in the
15 property and the basis for each person's alleged interest.

16 3. The forfeiture charge must be served upon the person from whom the property was
17 seized, the person's attorney of record, and all persons known or reasonably believed
18 to claim an interest in the property.

19 **29-31.2-17. Proportionality hearing.**

20 1. At any time following determination of forfeiture by the trier of fact, the defendant may
21 petition the court to determine whether the forfeiture is unconstitutionally excessive
22 under the state or federal constitution.

23 2. The defendant has the burden of establishing the forfeiture is grossly disproportional
24 to the seriousness of the offense by a preponderance of the evidence at a hearing
25 conducted by the court without a jury.

26 3. In determining whether the forfeiture of an instrumentality is unconstitutionally
27 excessive, the court may consider all relevant factors, including:

28 a. The seriousness of the offense and its impact on the community, including the
29 duration of the activity and the harm caused by the defendant;

30 b. The extent to which the defendant participated in the offense;

31 c. The extent to which the property was used in committing the offense;

- 1 d. The sentence imposed for committing the crime subject to forfeiture; and
- 2 e. Whether the offense was completed or attempted.
- 3 4. In determining the value of the instrumentality subject to forfeiture, the court may
- 4 consider all relevant factors, including:
- 5 a. The fair market value of the property;
- 6 b. The value of the property to the defendant including hardship to the defendant if
- 7 the forfeiture is realized; and
- 8 c. The hardship from the loss of a primary residence, motor vehicle, or other
- 9 property to the defendant's family members or others if the property is forfeited.
- 10 5. The court may not consider the value of the instrumentality to the state in determining
- 11 whether the forfeiture of an instrumentality is constitutionally excessive.

12 **29-31.2-18. Secured interest.**

- 13 1. Property encumbered by a bona fide security interest is not subject to forfeiture. A
- 14 person claiming a security interest must establish by a preponderance of the evidence
- 15 the validity of the interest perfected under chapter 41-09, or a lease or rental
- 16 agreement.
- 17 2. The prosecutor shall summarily return property to the person with a bona fide security
- 18 interest.
- 19 3. If the person alleges a valid security interest but the state seeks to proceed with the
- 20 forfeiture against the property, the state shall prove by a preponderance of the
- 21 evidence the person had actual knowledge of the underlying crime giving rise to the
- 22 forfeiture.

23 **29-31.2-19. Innocent owner.**

- 24 1. The property of an innocent owner may not be forfeited.
- 25 2. A person who has an ownership interest in property subject to forfeiture existing at the
- 26 time the illegal conduct giving rise to forfeiture occurred and who claims to be an
- 27 innocent owner bears the burden of proving by clear and convincing evidence that the
- 28 person has a legal right, title, or interest in the property seized under this chapter.
- 29 3. If subsection 2 is satisfied and the state seeks to proceed with the forfeiture against
- 30 the property, the burden is on the state to prove by clear and convincing evidence the

1 person had actual or constructive knowledge of the underlying crime giving rise to the
2 forfeiture.

3 4. A person who acquired an ownership interest in property subject to forfeiture after the
4 commission of a crime giving rise to the forfeiture and who claims to be an innocent
5 owner bears the burden of proving by clear and convincing evidence that the person
6 has legal right, title, or interest in the property seized under this chapter.

7 5. If subsection 4 is satisfied and the state seeks to proceed with the forfeiture against
8 the property, the state bears the burden of proving by clear and convincing evidence
9 that at the time the person acquired the property the person:

10 a. Had actual or constructive knowledge that the property was subject to forfeiture;
11 or

12 b. Was not a bona fide purchaser without notice of any defect in title and for
13 valuable consideration.

14 6. If the state fails to meet its burden in subsection 3 or 5, the court shall find that the
15 person is an innocent owner and shall order the state to relinquish all claims of title to
16 the property.

17 7. The defendant or convicted offender may invoke the right against self-incrimination or
18 the marital privilege during the forfeiture-related stage of the prosecution.

19 **29-31.2-20. Appeal.**

20 A party to forfeiture litigation may appeal the district court's decision regarding the seizure,
21 forfeiture, and distribution of property under this chapter.

22 **29-31.2-21. Disposition of property and proceeds.**

23 1. At any time unclaimed property or contraband held for evidentiary purposes is no
24 longer needed for that purpose, the court may order it be delivered to the state
25 treasurer within thirty days, or, in the case of contraband, be destroyed within thirty
26 days.

27 2. If the forfeiture is granted, the court may order the property be delivered to the state
28 treasurer within thirty days.

29 3. Upon motion, the court may order a portion of the currency seized or proceeds from
30 public auction be used to pay reasonable nonpersonnel expenses of the seizure,
31 storage, and maintenance of custody of any forfeited items.

1 4. All abandoned property must be delivered to the state treasurer within thirty days.

2 5. The state treasurer shall dispose of all noncurrency forfeited and abandoned property
3 at public auction. The auction proceeds and forfeited currency first must be used to
4 pay all outstanding recorded liens on the forfeited property, then to comply with an
5 order of the court to pay reasonable nonpersonnel expenses, with all remaining funds
6 to be deposited into the state's general fund.

7 **29-31.2-22. Disposition of property and proceeds from another jurisdiction.**

8 1. Forfeited property received from another jurisdiction, including the federal government,
9 must be transferred to the state treasurer, sold by the state treasurer or designee, and
10 deposited in the state's general fund.

11 2. Proceeds from the sale of forfeited property received from another jurisdiction,
12 including the federal government, must be transferred to the state treasurer and
13 deposited in the state's general fund.

14 3. If federal law prohibits compliance with subsections 1 and 2, state and local law
15 enforcement agencies are prohibited from seeking or accepting forfeited property or
16 proceeds from the federal government.

17 **29-31.2-23. Prohibition on retaining property - Sale restrictions.**

18 A law enforcement agency may not retain forfeited or abandoned property for its own use or
19 sell it directly or indirectly to any employee of the agency, to a person related to an employee by
20 blood or marriage, or to another law enforcement agency.

21 **29-31.2-24. Reporting.**

22 1. On an annual basis, each law enforcement agency shall compile the following
23 information about seizures and forfeitures completed by the agency under state
24 forfeiture law and federal forfeiture law:

25 a. The total number of seizures of currency;

26 b. The total number of seizures and the number of items in each class of property
27 seized including vehicles, houses, and other types of property seized;

28 c. The market value of each class of property seized including currency, vehicles,
29 houses, and other types of property seized; and

30 d. The total number of occurrences of each class of crime underlying the forfeitures
31 including controlled substances, driving while intoxicated, and other crimes.

2. The attorney general may require additional information be reported which is not specified in this section. The attorney general shall develop standard forms, processes, and deadlines for electronic data entry for annual submission of forfeiture data by law enforcement agencies.
3. Each law enforcement agency shall file with the attorney general a report of the information compiled under subsection 1 for the law enforcement agency and the corresponding prosecutor. The law enforcement agency shall file separate reports for forfeitures completed under state forfeiture law and federal forfeiture law. A law enforcement agency that did not engage in seizures or forfeitures during the reporting period shall file a null report. The attorney general shall compile the submissions and issue an aggregate report of all forfeitures in the state.
4. If a law enforcement agency fails to file a report within thirty days after the report is due, the attorney general may compel compliance by any means until the report is filed.
5. By April first of each year, the attorney general shall make available on the attorney general's website the reports submitted by law enforcement agencies and the attorney general's aggregate report.

29-31.2-25. Return of property - Damages and costs.

1. The law enforcement agency that holds the property shall return property to the owner within a reasonable period of time not to exceed five days after:
 - a. The court finds the owner had a bona fide security interest;
 - b. The court finds the owner was an innocent owner;
 - c. The acquittal of or dismissal of the owner of the criminal charge that is the basis of the forfeiture proceedings; or
 - d. The dismissal of the criminal charge that is the basis of the forfeiture proceedings by nolle prosequi.
2. The law enforcement agency that holds the property is responsible for any damages, storage fees, and related costs applicable to property returned under subsection 1.

29-31.2-26. Transfer of forfeitable property to federal government.

1. A state, county, or municipal law enforcement agency or prosecutor may not enter an agreement to transfer or refer seized property to a federal agency directly, indirectly,

by adoption, through an intergovernmental joint task force, or by other means for the purposes of forfeiture litigation unless the seized property includes United States currency in excess of one hundred thousand dollars.

2. All state, county, or municipal law enforcement agencies shall refer seized property to the appropriate state, county, or municipal prosecutor for forfeiture litigation under this chapter unless the seized property includes United States currency in excess of one hundred thousand dollars. If seized property includes United States currency in excess of one hundred thousand dollars, the state, county, or municipal law enforcement agency may refer or transfer the seized property to a federal agency for forfeiture litigation under federal law.

3. Subsections 1 and 2 may not be construed to restrict state, county, or municipal law enforcement agencies from collaborating with a federal agency to seize contraband or property that the law enforcement agency has probable cause to believe is the proceeds or instruments of a crime through an intergovernmental joint task force.

29-31.2-27. Preemption.

This chapter preempts laws by any political subdivision in the state which regulate civil and criminal forfeiture.

SECTION 14. AMENDMENT. Section 39-03-18 of the North Dakota Century Code is amended and reenacted as follows:

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

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

- 1 1. ~~For paying expenses necessary to inventory, safeguard, maintain, advertise, or sell~~
2 ~~property seized, detained, or forfeited, pursuant to section 19-03.1-36, or of any other~~
3 ~~necessary expenses incident to the seizure, detention, or forfeiture of the property.~~
- 4 2. a. For paying overtime compensation incurred as a result of investigations or
5 violations of any state criminal law or law relating to the control of drug abuse.
- 6 3. b. For purchasing equipment related to criminal interdiction.
- 7 4. c. For paying matching funds required as a condition for receipt of funds from a
8 federal government program awarding monetary grants or assistance for the
9 investigation or apprehension of persons violating the provisions of chapter
10 19-03.1.
- 11 2. The superintendent of the highway patrol, with the concurrence of the director of the
12 office of management and budget, shall establish the necessary accounting
13 procedures for the use of the fund and shall personally approve, in writing, all requests
14 for the use of the fund.

15 **SECTION 15. AMENDMENT.** Section 39-08-01.3 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **39-08-01.3. Alcohol-related traffic offenses - Seizure, forfeiture, and sale of motor**
18 **vehicles.**

19 A motor vehicle owned and operated by an individual upon a highway or upon public or
20 private areas to which the public has a right of access for vehicular use may be seized,
21 ~~forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of~~
22 ~~sentencing and forfeited pursuant to chapter 29-31.2~~ if the individual is in violation of section
23 39-08-01, 39-08-01.2, or 39-08-01.4, or an equivalent ordinance and has been convicted of
24 violating section 39-08-01 or an equivalent ordinance at least one other time within the seven
25 years preceding the violation.

26 **SECTION 16. AMENDMENT.** Section 39-30-04 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **39-30-04. Forfeiture of property.**

- 29 1. The following are subject to forfeiture ~~unless obtained by theft, fraud, or conspiracy to~~
30 ~~defraud and the rightful owner is known or can be identified and located~~ pursuant to
31 chapter 29-31.2:

- 1 a. Any tool;
- 2 b. Any implement; or
- 3 c. Any instrumentality, including any motor vehicle or motor vehicle part, ~~whether~~
4 ~~owned or unowned by the person from whose possession or control it was~~
5 ~~seized, which~~ that is used or possessed either in violation of section 39-30-02 or
6 to promote or facilitate a violation of section 39-30-02.
- 7 2. ~~Any motor vehicle, other conveyance, or motor vehicle part used by any person as a~~
8 ~~common carrier is subject to forfeiture under this section if the owner or other person~~
9 ~~in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting~~
10 ~~party to a violation of section 39-30-02.~~
- 11 3. ~~Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or~~
12 ~~instrumentality is not subject to forfeiture under this section by reason of any act or~~
13 ~~omission that the owner proves to have been committed or omitted without the~~
14 ~~owner's knowledge or consent.~~
- 15 4.2. a. Seizing agencies shall utilize their best efforts to identify any seized motor vehicle
16 or motor vehicle part to determine ownership or the identity of any other person
17 having a right or interest in it. In its reasonable identification and owner location
18 attempts, the seizing agency shall cause the stolen motor vehicle files of all law
19 enforcement agencies to be searched for stolen or wanted information on motor
20 vehicles similar to the seized motor vehicle or consistent with the seized motor
21 vehicle part.
- 22 b. If a motor vehicle or motor vehicle part has an apparent value in excess of one
23 thousand dollars:
 - 24 (1) The seizing agency shall consult with an expert of the type specified in
25 subsection 4 of section 39-30-01; and
 - 26 (2) The seizing party shall request searches of the online and offline files of the
27 national crime information center and the national automobile theft bureau
28 when files have been searched with negative results.
- 29 5. ~~A forfeiture of a motor vehicle, motor vehicle part, or other conveyance encumbered by~~
30 ~~a bona fide security interest is subject to the interest of the secured party if the~~

1 secured party neither had knowledge of nor consented to the act or omission forming
2 the ground for the forfeiture.

3 6. Property, described in subsection 1, seized and held for forfeiture, is not subject to
4 replevin and is subject only to the order and judgments of a court of competent
5 jurisdiction hearing the forfeiture proceedings.

6 7. a. A state's attorney in the county where the seizure occurs shall bring an action for
7 forfeiture in a court of competent jurisdiction. The forfeiture action must be
8 brought within sixty days from the date of seizure except when the state's
9 attorney in the sound exercise of discretion determines that no forfeiture action
10 should be brought because of the rights of property owners, lienholders, or
11 secured creditors, or because of exculpatory, exonerating, or mitigating facts and
12 circumstances.

13 b. The state's attorney shall give notice of the forfeiture proceeding by mailing a
14 copy of the complaint in the forfeiture proceeding to each person whose right,
15 title, or interest is of record maintained in the department of transportation, or any
16 other department of the state, or any other state or territory of the United States,
17 or of the federal government if the property is required to be registered in any
18 such department.

19 c. Notice of the proceeding must be given to any other person as may appear, from
20 the facts and circumstances, to have any right, title, or interest in or to the
21 property.

22 d. The owner of the property, or any person having or claiming right, title, or interest
23 in the property may within sixty days after the mailing of such notice file a verified
24 answer to the complaint and may appear at the hearing on the action for
25 forfeiture.

26 e. The state's attorney must show at a forfeiture hearing, by a preponderance of the
27 evidence, that the property was used in the commission of a violation of section
28 39-30-02 or was used or possessed to facilitate such violation.

29 f. The owner of property may show by a preponderance of the evidence that the
30 owner did not know, and did not have reason to know, that the property was to be

1 used or possessed in the commission of any violation or that any of the
2 exceptions to forfeiture are applicable.

3 g. Unless the state's attorney makes the required showing, the court shall order the
4 property released to the owner. If the state's attorney has made such a showing,
5 the court may order:

6 (1) The property be destroyed by the agency that seized it or some other
7 agency designated by the court;

8 (2) The property be delivered and retained for use by the agency that seized it
9 or some other agency designated by the court; or

10 (3) The property be sold at public sale.

11 8. A copy of a forfeiture order must be filed with the sheriff of the county in which the
12 forfeiture occurs and with each federal or state department with which the property is
13 required to be registered. The order, when filed, constitutes authority for the issuance
14 to the agency to which the property is delivered and retained for use or to any
15 purchaser of the property of a title certificate, registration certificate, or other special
16 certificate as may be required by law considering the condition of the property.

17 9. Proceeds from the sale at public auction, after payment of all reasonable charges and
18 expenses incurred by the agency designated by the court to conduct the sale in
19 storing and selling the property, must be paid to the general fund of the county of
20 seizure.

21 10. No motor vehicle, either seized under section 39-30-03 or forfeited under this section,
22 may be released by the seizing agency or used or sold by an agency designated by
23 the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified,
24 forged, obliterated, or removed vehicle identification number is corrected by the
25 issuance and affixing of either assigned or replacement vehicle identification number
26 plates as may be appropriate under laws of this state.

27 11. No motor vehicle part having any altered, counterfeited, defaced, destroyed,
28 disguised, falsified, forged, obliterated, or removed vehicle identification number may
29 be disposed of upon forfeiture except by destruction. This subsection does not apply
30 to any motor vehicle part that is assembled with and constitutes part of a motor
31 vehicle.

- 1 12. No motor vehicle or motor vehicle part may be forfeited under this section solely on-
2 the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or
3 motor vehicle part that is unidentifiable must be the subject of a written report sent by
4 the seizing agency to the department of transportation. The report must include a
5 description of the motor vehicle or motor vehicle part, its color, if any, the date, time,
6 and place of its seizure, the name of the person from whose possession or control it
7 was seized, the grounds for its seizure, and the location where it is held or stored.
- 8 13. When a seized unidentifiable motor vehicle or motor vehicle part has been held for
9 sixty days or more after the notice to the department of transportation specified in
10 subsection 12 has been given, the seizing agency, or its agent, shall cause the motor
11 vehicle or motor vehicle part to be sold at public sale to the highest bidder. Notice of
12 the time and place of sale must be posted in a conspicuous place for at least thirty
13 days prior to the sale on the premises where the motor vehicle or motor vehicle part
14 has been stored.
- 15 14. If a seized unidentifiable motor vehicle or motor vehicle part has an apparent value of
16 one thousand dollars or less, the seizing agency shall authorize the disposal of the
17 motor vehicle or motor vehicle part, provided that no such disposition may be made
18 less than sixty days after the date of seizure.
- 19 15. The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part
20 must be deposited in the general fund of the state or other governmental unit after
21 deduction of any reasonable and necessary towing and storage charges.
- 22 16.3. Seizing agencies shall utilize their best efforts to arrange for the towing and storing of
23 motor vehicles and motor vehicle parts in the most economical manner possible. The
24 owner of a motor vehicle or a motor vehicle part may not be required to pay more than
25 the minimum reasonable costs of towing and storage.
- 26 17. A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable
27 must be held subject to the order of the court in which the criminal action is pending or,
28 if a request for its release from such custody is made, until the state's attorney has
29 notified the defendant or the defendant's attorney of such request and both the
30 prosecution and defense have been afforded a reasonable opportunity for an
31 examination of the property to determine its true value and to produce or reproduce,

1 by photographs or other identifying techniques, legally sufficient evidence for
2 introduction at trial or other criminal proceedings. Upon expiration of a reasonable time
3 for the completion of the examination, which may not exceed fourteen days from the
4 date of service upon the defense of the notice of request for return of property, the
5 property must be released to the person making such request after satisfactory proof
6 of the person's entitlement to possession. Notwithstanding the foregoing, upon
7 application by either party with notice to the other, the court may order retention of the
8 property if it determines that retention is necessary in the furtherance of justice.

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

12 19. When an applicant for a certificate of title or salvage certificate presents to the
13 department of transportation proof that the applicant purchased or acquired a motor
14 vehicle at a public sale conducted pursuant to this section and such fact is attested to
15 by the seizing agency, the department of transportation shall issue a certificate of title,
16 salvage certificate for the motor vehicle upon receipt of the statutory fee, properly
17 executed application for a certificate of title, or other certificate of ownership, and the
18 affidavit of the seizing agency that a state assigned number was applied for and
19 affixed to the motor vehicle prior to the time that the motor vehicle was released by the
20 seizing agency to the purchaser.

21 **SECTION 17. AMENDMENT.** Section 40-11-13 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **40-11-13. Fines and forfeitures for violation of ordinances paid into treasury.**

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

28 **SECTION 18. AMENDMENT.** Section 54-12-14 of the North Dakota Century Code is
29 amended and reenacted as follows:

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

1. The attorney general assets forfeiture fund consists of funds appropriated by the legislative assembly and ~~additional funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36,~~ amounts received through court proceedings as restitution, ~~amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law,~~ and amounts received from a multijurisdictional drug task force as defined in section 54-12-26. The amount of deposits into the fund which do not come from legislative appropriation or from a multijurisdictional drug task force and are not payable to another governmental entity may not exceed two hundred thousand dollars within a biennium and any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated, as a standing and continuing appropriation, to the attorney general for the following purposes:
 - a. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
 - b. For repayment of rewards to qualified local programs approved under section 12.1-32-02.2, if the information that was reported to the qualified local program substantially contributed to forfeiture of the asset, and for paying, at the discretion of the attorney general, rewards for other information or assistance leading to a forfeiture under ~~section 19-03.1-36~~chapter 29-31.2.
 - c. ~~For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.~~
 - d. For equipping, for law enforcement functions, forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state board of pharmacy or a law enforcement agency.
 - e.d. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.

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

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

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

SECTION 19. AMENDMENT. Section 57-36-14 of the North Dakota Century Code is amended and reenacted as follows:

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

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

1. Upon the seizure of any cigarettes and within two days thereafter, the officer making ~~such~~the seizure shall deliver an inventory of the property seized to the person from whom ~~such~~the seizure was made, if known, and shall file a copy thereof with the tax commissioner.

2. Within ten days after the date of the service of ~~such~~that inventory, the person from whom the seizure was made, or any other person claiming an interest in the ~~property~~cigarettes, equipment, or any other product taxed pursuant to this chapter seized, may file a demand for a judicial determination of the question as to whether ~~such~~that seized property was, or lawfully is, subject to seizure and forfeiture.

Thereupon the tax commissioner, within thirty days, shall institute an action in the district court of the county where ~~such~~the seizure was made to determine the issue of forfeiture. ~~Such~~The action must be brought in the name of the state of North Dakota and must be prosecuted by the state's attorney, the tax commissioner, or the attorney

1 general. The district court shall hear ~~such~~the action as a court case and shall try and
2 determine the issues of law and fact involved.

3 3. In case a judgment of forfeiture is entered, the tax commissioner, unless the judgment
4 is stayed pending an appeal to the supreme court, as soon as convenient, shall
5 destroy the forfeited property.

6 4. In case a demand for a judicial determination is made and no action is commenced as
7 provided in this section, such property must be released by the tax commissioner and
8 redelivered to the person entitled thereto.

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

12 6. In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or
13 other means of transportation pursuant to the provisions of this chapter, ~~the officer~~
14 ~~making the seizure shall file an inventory, and upon a demand for a judicial~~
15 ~~determination as provided in this section, the tax commissioner, within thirty days~~
16 ~~thereafter, shall commence an action in the district court of the county where such~~
17 ~~seizure was made to declare a forfeiture of such vehicle or other means of~~
18 ~~transportation, and such action~~forfeiture proceedings must be heard and determined
19 ~~as other forfeiture actions instituted under this chapter~~pursuant to chapter 29-31.2.

20 7. Whenever the tax commissioner is satisfied that any person from whom
21 ~~property~~cigarettes, equipment, or any other product taxed pursuant to this chapter is
22 seized was acting in good faith and without intent to evade the revenue provisions of
23 this chapter, the tax commissioner shall release the property seized without further
24 legal proceedings.

25 **SECTION 20. AMENDMENT.** Subsection 2 of section 57-36-33 of the North Dakota
26 Century Code is amended and reenacted as follows:

27 2. All cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products in the
28 possession of the person who violates any provision of this chapter, or in the place of
29 business of the person, may be confiscated by the tax commissioner as provided
30 under section 57-36-14 and forfeited to the state. Any cigarette-making machine that is
31 maintained or operated in violation of sections 57-36-05.3, 57-36-05.4, or 57-36-06.1

1 must be confiscated by the tax commissioner and forfeited to the state in accordance
2 with chapter ~~29-31.1~~29-31.2.

3 **SECTION 21. AMENDMENT.** Section 62.1-01-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **62.1-01-02. Forfeiture of dangerous weapon or firearm by person arrested and**
6 **convicted of crime.**

- 7 1. Any firearm or dangerous weapon used or possessed while in the commission of a
8 felony or a misdemeanor involving violence or intimidation must be seized and, upon
9 conviction ~~and by motion, forfeited to the jurisdiction in which the arrest was made or~~
10 ~~the jurisdiction in which the charge arose. Except as provided in chapter 29-01 for~~
11 ~~stolen property, the forfeited dangerous weapon may be, pursuant to court order, sold~~
12 ~~at public auction, sold or traded to other law enforcement agencies or dealers,~~
13 ~~retained for use, or destroyed~~forfeited pursuant to chapter 29-31.2.
- 14 2. ~~Notwithstanding any other provision of law; and subject to the duty to return firearms-~~
15 ~~to innocent owners under this section, section 29-31.1-02, and as provided in chapter~~
16 ~~29-01 for stolen property; all firearms, as defined in section 62.1-01-01, which are~~
17 ~~forfeited, recovered as stolen and unclaimed, or abandoned to any law enforcement~~
18 ~~agency of this state or a political subdivision of this state, including the game and fish~~
19 ~~department, or that are otherwise acquired by the state or a political subdivision of the~~
20 ~~state and are no longer needed, shall be disposed of as provided in this section.~~
21 ~~Except as provided in chapter 29-01 for stolen property, this section does not apply to~~
22 ~~firearms that are seized or confiscated and disposed of under chapter 20.1-10.~~
- 23 3. a. Before the disposal of any firearm under this section, the agency with custody of
24 the firearm shall use its best efforts to determine if the firearm has been lost by,
25 or stolen or otherwise unlawfully obtained from, an innocent owner and, if so,
26 shall provide notification to the innocent owner of its custody of the firearm. An
27 innocent owner may also notify the agency to claim a firearm.
- 28 b. After notification, the agency shall return the firearm to its innocent owner
29 provided the owner submits sufficient proof of ownership, as determined by the
30 agency, and pays the costs, if any, of returning the firearm to the innocent owner.
31 Costs are limited to the actual costs of shipping to the innocent owner and

- 1 associated costs from any transfer and background check fees charged when
2 delivering the firearm to the innocent owner.
- 3 e. ~~If six months elapse after notification to the innocent owner of the custody of the~~
4 ~~firearm by an agency and the innocent owner fails to bear the costs of return of~~
5 ~~his or her firearm or fails to respond to the agency notification, or if six months~~
6 ~~elapse after notice of a claim by an innocent owner and the innocent owner fails~~
7 ~~to bear the costs of return of the innocent owner's firearm or take away the~~
8 ~~innocent owner's firearm, then the agency shall dispose of the firearm as~~
9 ~~provided in this section.~~
- 10 4. a. ~~Except as provided in subdivision b of subsection 3 or subsection 5, the agency~~
11 ~~shall dispose of the firearms that it receives under subsection 2 by sale at public~~
12 ~~auction to persons that may lawfully possess a firearm and persons licensed as~~
13 ~~firearms collectors, dealers, importers, or manufacturers under the provisions of~~
14 ~~18 U.S.C. section 921 et seq., and authorized to receive such firearms under the~~
15 ~~terms of the licenses.~~
- 16 b. ~~The auction required by this subsection may occur online on a rolling basis or at~~
17 ~~live events, but in no event may the auction occur less frequently than once every~~
18 ~~year during any time the agency has an inventory of saleable firearms. The~~
19 ~~agency shall establish a procedure to notify persons of its auctions.~~
- 20 c. ~~The agency may not retain proceeds above that which are necessary to cover~~
21 ~~the costs of administering this subsection, with any surplus to be transferred to~~
22 ~~the general fund of the jurisdiction in which the agency is located, provided that~~
23 ~~an agency may be reimbursed for any firearms formerly in use by the agency that~~
24 ~~are sold under this section.~~
- 25 d. ~~Employees of the agency are not eligible to bid on the firearms at an auction~~
26 ~~conducted under this subsection, and except for the amounts authorized under~~
27 ~~subdivision c of this subsection, neither the agency nor its employees may retain~~
28 ~~any proceeds from any sale required by this subsection, nor may the agency or~~
29 ~~its employees retain any firearm required to be sold under this subsection.~~
- 30 5. a. ~~The requirements of subsection 4 do not apply to a firearm if there are not any~~
31 ~~bids from eligible persons received within six months from when bidding opened~~

on the firearm, or if the agency director, sheriff, chief of police, or a designee of the official certifies that the firearm is unsafe for use because of wear, damage, age, or modification or because any federal or state law prohibits the sale or distribution of the firearm. The agency director, sheriff, chief of police, or a designee of the official, may transfer any of these firearms to the attorney general's crime laboratory for training or experimental purposes, or to a museum or historical society that displays these items to the public and is lawfully eligible to receive the firearm, or the firearm may be destroyed. The requirements of subsection 4 do not apply to a firearm and an agency director, sheriff, chief of police, or a designee of the official may destroy the firearm, if:

- (1) The firearm was used in a violent crime, in an accidental shooting, or a self-inflicted shooting resulting in the death of an individual;
- (2) There is not a claim for the firearm by an innocent owner; and
- (3) A family member of the deceased individual makes a written request for the destruction of the firearm.

b. Agencies subject to the provisions of this subsection may establish a procedure to destroy firearms and may expend necessary funds for that purpose.

~~6-2.~~ All agencies subject to the provisions of this section shall keep records of the firearms acquired and disposed of or forfeited as provided in this section, as well as the proceeds of the sales and the disbursement of the proceeds, and shall maintain these records for not less than ten years from the date on which a firearm is disposed of or on which a disbursement of funds is made, as the case may be or forfeited.

~~7.~~ Neither the state nor any political subdivision of the state, nor any of their officers, agents, and employees, is liable to any person, including the purchaser of a firearm, for personal injuries or damage to property arising from the sale or disposal of a firearm under subsection 4 or 5 of this section, unless an officer, agent, or employee of the state or political subdivision acted with gross negligence or recklessness.

~~8.~~ As used in this section, the term "innocent owner" means a person who:

- a. Did not beforehand know or in the exercise of ordinary care would not have known of the conduct which caused that person's firearm to be forfeited, seized,

- 1 or abandoned to any law enforcement agency of the state or any political
2 subdivision of the state, including the game and fish department;
3 b. Did not participate in the commission of a crime or delinquent act involving that
4 person's firearm;
5 e. Legally owned and presently owns the firearm forfeited, seized, or abandoned;
6 and
7 d. Is authorized by state and federal law to receive and possess his or her firearm.

8 **SECTION 22. AMENDMENT.** Subsection 2 of section 62.1-05-01 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 2. A person who violates this section is guilty of a class C felony. Upon arrest of that
11 person, the firearm or dangerous weapon must be seized. Upon conviction of the
12 person and motion to the court in which the conviction occurred, the firearm or
13 dangerous weapon must be forfeited to the jurisdiction in which the arrest was made.
14 The firearm or dangerous weapon may be sold at public auction, retained for use, or
15 destroyed pursuant to the court's order. If a qualified local program as defined under
16 section 12.1-32-02.2 has paid a reward for information that resulted in forfeiture of the
17 item and the item has been sold, the jurisdiction shall, after payment of expenses for
18 forfeiture and sale, repay the qualified local program for the reward that it has paid
19 pursuant to chapter 29-31.2.

20 **SECTION 23. REPEAL.** Sections 19-03.1-36.1, 19-03.1-36.2, 19-03.1-36.3, 19-03.1-36.4,
21 19-03.1-36.5, 19-03.1-36.6, 19-03.1-36.7, and 28-01-20 and chapters 29-31.1 and 32-14 of the
22 North Dakota Century Code are repealed.