

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED 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 section 19-03.1-36.8 of the North Dakota Century Code,
2 relating to law enforcement agencies reporting seizures and forfeitures; and to amend and
3 reenact sections 19-03.1-36.2, 19-03.1-36.6, and 19-03.1-36.7, ~~29-27-02.1, and subsection 1 of~~
4 ~~section 54-12-14~~ of the North Dakota Century Code, relating to forfeiture proceedings,
5 contested forfeiture hearings, legal interests in forfeited property, ~~disposition of statutory fees,~~
6 ~~finer, forfeitures, and the attorney general assets forfeiture fund.~~

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

8 **SECTION 1. AMENDMENT.** Section 19-03.1-36.2 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.**

- 11 1. Forfeiture proceedings are civil actions against the property to be forfeited and the
12 standard of proof is a preponderance of the evidence clear and convincing evidence.
- 13 2. Forfeiture proceedings are separate and distinct from any related criminal action, and
14 may not be initiated until the owner of the property has been convicted of or pled guilty
15 to a criminal offense, or the individual has died, fled the jurisdiction, been deported by
16 the United States government, been granted immunity or a reduced sentence in
17 exchange for testifying or assisting a law enforcement investigation or prosecution, ~~or~~
18 has abandoned the property, or it can be established beyond a reasonable doubt the
19 property was used in the commission of a crime or constituted the proceeds of criminal
20 activity. As used in this subsection, "abandoned the property" or "fled the jurisdiction"
21 means for a period of more than one year, the owner has not responded to any of the
22 reasonable efforts made by the seizing agency to contact the owner or has not
23 contacted the seizing agency.

- 1 3. Two or more law enforcement agencies and courts from different jurisdictions may
2 coordinate, cooperate, and engage in interjurisdictional prosecution under this section.

3 **SECTION 2. AMENDMENT.** Section 19-03.1-36.6 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.**

- 6 1. If an answer is filed within the time limits in this chapter, the forfeiture proceedings
7 must be set for hearing before the court. At the hearing, the state shall establish
8 ~~probable cause~~ a valid seizure of the property to be forfeited, and ~~clear and convincing~~
9 ~~evidence for instituting the forfeiture action following which~~ the property meets the
10 requirements of subsection 2 of section 19-03.1-36.2. Following the state's case, any
11 owner or person with a legal interest in the property to be forfeited who has filed an
12 answer to the complaint has the burden of proving that the property to be forfeited is
13 not subject to forfeiture under this chapter. If the court finds that the property is not
14 subject to forfeiture under this chapter, the court shall order the property released to
15 the owner or other person with a legal interest in the property as that person's right,
16 title, or interest appears. The court shall order the property forfeited if it determines
17 that such property or an interest therein is subject to forfeiture.
- 18 2. A court ordering property forfeited under subsection 1 may ~~order the proper costs and~~
19 ~~expenses of the proceedings for forfeiture and sale, including reasonable expenses of~~
20 ~~seizure, maintenance of custody, advertising, sales, and court costs with any~~
21 ~~remaining proceeds to be deposited as provided in subsection 2 of section~~
22 ~~29-27-02.1~~ order only the forfeited property or proceeds from the sale of forfeited
23 property to be deposited with a political subdivision if the political subdivision has
24 created a civil asset forfeiture fund. If the political subdivision does not have a civil
25 asset forfeiture fund, any forfeited property and proceeds from the sale of forfeited
26 property must be deposited in the attorney general's asset forfeiture fund.
- 27 3. A political subdivision that has a civil asset forfeiture fund shall establish an application
28 process, including eligibility criteria, to accept and process applications from law
29 enforcement agencies within the political subdivision's jurisdiction for an appropriation
30 from the civil asset forfeiture fund.

4. This section does not prohibit the state and a political subdivision from entering an agreement to divide forfeited property and the proceeds from the sale of forfeited property.

SECTION 3. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.

2. Upon a determination by the court that property is subject to forfeiture, the owner of the property to be forfeited or any other person with a legal interest in the property may petition the court to determine whether the forfeiture is unconstitutionally excessive.

a. A vehicle valued at less than two thousand dollars may not be forfeited unless the court finds the vehicle has been modified to conceal contraband or currency.

b. ~~Currency with the value of seven hundred and fifty United States dollars or less may not be forfeited.~~

~~c.~~ Real property constituting a homestead may not be forfeited.

~~d.c.~~ In determining whether a forfeiture is excessive, the court shall determineconsider all factors, including the fair market value of the property, the extent to which the owner or person participated in the offense, the extent to which the property was used or received in committing the offense, and the sentence imposed for committing the offense subject to forfeiturepossible penalty that could be imposed for the alleged or committed offense subject to forfeiture.

~~e.d.~~ The court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

SECTION 4. Section 19-03.1-36.8 of the North Dakota Century Code is created and enacted as follows:

19-03.1-36.8. Reporting.

1. As used in this section, "law enforcement agency" means a nonfederal public agency authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law, including the authority to conduct or engage in seizure and forfeiture of property or to collaborate with a federal agency under federal law to conduct or engage in seizure and forfeiture of property. The term includes a multijurisdictional task force.
- ~~2. Annually, each law enforcement agency shall compile the following information regarding seizures and forfeitures pending or completed by the agency under this chapter:~~
 - ~~a. The types of property and dollar amount of the forfeited property;~~
 - ~~b. The jurisdiction that received the property;~~
 - ~~c. The total number of seizures of currency; and~~
 - ~~d. The amount the court has ordered to be paid toward the costs and expenses of the proceedings for forfeiture and sale under section 19-03.1-36.6.~~Every civil forfeiture judgment issued by a district court must be made publicly available and include the following information in the findings of fact:
 - a. Case number of the forfeiture proceeding and the district court where the case was filed.
 - b. Who filed a claim or counterclaim for the seized property, if any.
 - c. Date the forfeiture order was issued.
 - d. Whether a forfeiture settlement agreement was reached.
 - e. The date and the final disposition of the property.
 - f. Estimated value of the forfeited property.
 - g. Estimate of the total costs accrued by the law enforcement agency for storage and disposal of the civilly forfeited property.
 - h. Amount of any attorney fees awarded to owners of seized and forfeited property.
3. Annually, a prosecutor who litigates the criminal case and forfeiture proceeding shall provide to the attorney general a copy of the judgment that includes the information required under subsection 2 and the total value of the forfeited property held by the agency at the end of the reporting period.

1 4. By November first of each year, the attorney general shall submit to the legislative
2 management and the governor a written report summarizing activity in the state for the
3 preceding fiscal year, the type, approximate value, and disposition of any civilly
4 forfeited property, and the amount of proceeds received.

5 a. Summary data and civilly forfeited property must be disaggregated by agency.

6 b. The attorney general shall make the report available on the attorney general's
7 website.

8 5. The attorney general may recover any costs under this section by withdrawing money
9 from the asset forfeiture fund.

10 6. A law enforcement agency may use forfeiture proceeds to pay the costs of compiling
11 and reporting data under this section.

12 7. The data and reports compiled under this section are public information and not
13 exempt from disclosure.

14 8. The attorney general may require the reporting of additional information not specified
15 in this section. The attorney general shall develop standard forms, processes, and
16 deadlines for ~~electronic data entry for~~ annual submission of forfeiture data by law
17 enforcement agencies.

18 ~~4. Each law enforcement agency shall file with the attorney general a report of the~~
19 ~~information compiled under subsection 2 for the law enforcement agency and the~~
20 ~~corresponding prosecutor. A law enforcement agency that did not engage in seizures~~
21 ~~or forfeitures during the reporting period shall file a null report. The attorney general~~
22 ~~shall compile the submissions and issue an aggregate report of all forfeitures in the~~
23 ~~state.~~

24 ~~5.9.~~ If a law enforcement agency fails to file a report within thirty days after the report is
25 due, the attorney general may compel compliance by any means until the report is
26 filed.

27 ~~6. The attorney general shall make available on the attorney general's website the~~
28 ~~reports submitted by law enforcement agencies and the attorney general's aggregate~~
29 ~~report. The reports must be updated annually.~~

30 ~~**SECTION 5. AMENDMENT.** Section 29-27-02.1 of the North Dakota Century Code is~~
31 ~~amended and reenacted as follows:~~

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

~~1. Except as otherwise provided by law, all statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, must be paid into the treasury of the proper county to be added to the state school fund. When any bail bond or other property or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be paid over to the proper state official and credited to the state general fund.~~

~~2. Funds obtained through civil asset forfeiture under section 19-03.1-36 must be paid into the attorney general assets forfeiture fund.~~

~~SECTION 6. AMENDMENT. Subsection 1 of section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows: _____~~

~~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 twofive 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.~~

- 1 ~~———— c. — For paying, at the discretion of the attorney general, any expenses necessary to~~
2 ~~seize, detain, inventory, safeguard, maintain, advertise, or sell property seized,~~
3 ~~detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary~~
4 ~~expenses incident to the seizure, detention, or forfeiture of such property.~~
- 5 ~~———— d. — For equipping, for law enforcement functions, forfeited vessels, vehicles, and~~
6 ~~aircraft retained as provided by law for official use by the state board of pharmacy~~
7 ~~or a law enforcement agency.~~
- 8 ~~———— e. — For paying, at the discretion of the attorney general, overtime compensation to~~
9 ~~agents of the bureau of criminal investigation incurred as a result of~~
10 ~~investigations of violations of any state criminal law or law relating to the control~~
11 ~~of drug abuse.~~
- 12 ~~———— f. — For paying matching funds required to be paid as a condition for receipt of funds~~
13 ~~from a federal government program awarding monetary grants or assistance for~~
14 ~~the investigation, apprehension, or prosecution of persons violating the~~
15 ~~provisions of chapter 19-03.1.~~