

**FIRST ENGROSSMENT
with Senate Amendments
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 of the North Dakota Century
4 Code, relating to forfeiture proceedings, contested forfeiture hearings, legal interests in forfeited
5 property, and forfeitures.

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

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

9 **19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.**

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

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

1 **19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.**

2 1. If an answer is filed within the time limits in this chapter, the forfeiture proceedings
3 must be set for hearing before the court. At the hearing, the state shall establish
4 ~~probable cause~~ a valid seizure of the property to be forfeited, and ~~for instituting the~~
5 ~~forfeiture action following which~~ the forfeited property meets the requirements of
6 subsection 2 of section 19-03.1-36.2. Following the state's case, any owner or person
7 with a legal interest in the property to be forfeited who has filed an answer to the
8 complaint has the burden of proving that the property to be forfeited is not subject to
9 forfeiture under this chapter. If the court finds that the property is not subject to
10 forfeiture under this chapter, the court shall order the property released to the owner or
11 other person with a legal interest in the property as that person's right, title, or interest
12 appears. The court shall order the property forfeited if it determines that such property
13 or an interest therein is subject to forfeiture.

14 2. A court ordering property forfeited under subsection 1 may order only the forfeited
15 property or proceeds from the sale of forfeited property to be deposited with a political
16 subdivision if the political subdivision has created a civil asset forfeiture fund. If the
17 political subdivision does not have a civil asset forfeiture fund, any forfeited property
18 and proceeds from the sale of forfeited property must be deposited in the attorney
19 general's asset forfeiture fund.

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

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

25 **19-03.1-36.7. Legal interest in property.**

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

- 1 2. Upon a determination by the court that property is subject to forfeiture, the owner of
2 the property to be forfeited or any other person with a legal interest in the property
3 may petition the court to determine whether the forfeiture is unconstitutionally
4 excessive.
- 5 a. A vehicle valued at less than two thousand dollars may not be forfeited unless the
6 court finds the vehicle has been modified to conceal contraband or currency.
- 7 b. Real property constituting a homestead may not be forfeited.
- 8 c. In determining whether a forfeiture is excessive, the court shall determine the fair
9 market value of the property, the extent to which the owner or person participated
10 in the offense, the extent to which the property was used or received in
11 committing the offense, and the possible penalty that could be imposed for the
12 alleged or committed offense subject to forfeiture.
- 13 d. The court may not consider the value of the property to the state in determining
14 whether the forfeiture is unconstitutionally excessive.

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

17 **19-03.1-36.8. Reporting.**

- 18 1. As used in this section, "law enforcement agency" means a nonfederal public agency
19 authorized by law or by a government agency or branch to enforce the law and to
20 conduct or engage in investigations or prosecutions for violations of law, including the
21 authority to conduct or engage in seizure and forfeiture.
- 22 2. Annually, each law enforcement agency shall compile the following information
23 regarding seizures and forfeitures pending or completed by the agency under this
24 chapter:
- 25 a. The types of property and dollar amount of the forfeited property;
26 b. The jurisdiction that received the property; and
27 c. The total number of seizures of currency.
- 28 3. The attorney general may require the reporting of additional information not specified
29 in this section. The attorney general shall develop standard forms, processes, and
30 deadlines for annual submission of forfeiture data by law enforcement agencies.

- 1 4. Each law enforcement agency shall file with the attorney general a report of the
2 information compiled under subsection 2 for the law enforcement agency and the
3 corresponding prosecutor. A law enforcement agency that did not engage in seizures
4 or forfeitures during the reporting period shall file a null report. The attorney general
5 shall compile the submissions and issue a report of all forfeitures in the state.
6 5. If a law enforcement agency fails to file a report within thirty days after the report is
7 due, the attorney general may compel compliance by any means until the report is
8 filed.
9 6. The attorney general shall make available on the attorney general's website the
10 reports submitted by law enforcement agencies and the attorney general's report. The
11 reports must be updated annually.