

1999 SENATE JUDICIARY

SB 2371

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2371

Senate Judiciary Committee

Conference Committee

Hearing Date February 1, 1999

Tape Number	Side A	Side B	Meter #
1	x		1890 - 5150
2-2-99 2		x	1120 - 1719
2-8-99 1	X		3175 - end
Committee Clerk Signature <i>Jackie Follmon</i>			

Minutes:

SB2371 relates to a presumption in drug forfeiture cases.

SENATOR STENEHJEM opened the hearing on SB2371 at 9:25 a.m.

All were present.

SENATOR WATNE testified in support of SB2371. Testimony attached.

BOB BENNETT, Attorney General's Office, testified in support of SB2371. This bill was for money launderers and people in the drug trade. This bill is to establish some disputable function that the money found with an individual is closely connected to the drug trade. This has to involve an excess of \$10,000. The reason the \$10,000 figure is in there because of the currency reporting requirements. Amendments may be needed.

SENATOR STENEHJEM asked what is the difference between disputable presumption and rebuttable presumption.

BOB BENNETT stated that he believed they are the same.

SENATOR STENEHJEM asked how much cash do we get in a biennium.

BOB BENNETT stated that he thought there were about 50 cases. He will get those figures to the Committee.

DOUG MATTSON, Ward County States Attorney, testified in support of SB2371. This bill is to provide rebuttable presumptions in certain instances.

SENATOR STENEHJEM asked why the presumption should apply on a highway and not public streets? Why not include a place that is not a port of entry?

DOUG MATTSON stated that these are very good points. We first have to have probable cause.

The state's burden of proof in a forfeiture case is preponderance of evidence. The substantial connection is only to show the reasonable basis between the property and the activities listed.

What this legislation is geared towards is that for rebuttable presumption should a person have a legitimate interest for carrying cash in excess of \$10,000.

SENATOR STENEHJEM asked why not to have public streets.

DOUG MATTSON stated that we can do that.

BOB BENNETT stated that one reason that highway was used is because of the Interstate Commerce Pact. This was really keyed to the port of entry or basically on the highways.

SENATOR STENEHJEM CLOSED the hearing on SB2371.

Need to get information from Bob Bennett. Will get that by the end of the week.

FEBRUARY 2, 1999 TAPE 2, SIDE B

SENATOR STENEHJEM suggested some amendments.

SENATOR NELSON made a motion on Amendments, SENATOR WATNE seconded. Motion carried.

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR LYSON seconded. Motion carried.

SENATOR WATNE will carry this bill.

6 - 0 - 0

February 8, 1999 Tape 3, Side A

Discussion on amendments.

SENATOR STENEHJEM stated that we do not need rebuttable or disputable, just presumption.

SENATOR LYSON made a Motion to Reconsider, SENATOR NELSON seconded. Motion carried. 6 - 0 - 0

SENATOR TRAYNOR made a motion for Further Amendments, SENATOR LYSON seconded. Motion carried. 6 - 0 - 0

SENATOR NELSON made a motion for DO PASS AS AMENDED, SENATOR BERCIER seconded. Motion carried. 6 - 0 - 0

SENATOR WATNE will carry the bill.

Date: 2-2-99
 Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2371

Senate Judiciary Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments

Motion Made By Nelson Seconded By Watne

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

Date: 2-2-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2371

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Watne Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
SenatorCarolyn Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Watne

Date: 2-8-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2371

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Further Amendment

Motion Made By Traynor Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Carolynn Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

Date: 2-8-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2371

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Nelson Seconded By Bercier

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Carolynn Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Watne

REPORT OF STANDING COMMITTEE (410)
February 9, 1999 2:35 p.m.

Module No: SR-26-2368
Carrier: Watne
Insert LC: 90785.0102 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2371: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2371 was placed on the Sixth order on the calendar.

Page 1, line 7, remove "disputable"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2371: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2371 was placed on the Sixth order on the calendar.

Page 1, line 7, remove "disputable"

Page 1, line 21, replace the period with a semicolon

Page 2, line 2, replace the period with a semicolon

Page 2, line 12, replace the period with "; or"

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2371

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2371

House Judiciary

Conference Committee

Hearing Date 3/15/99

Tape Number	Side A	Side B	Meter #
1	x		17.5-21.1
Committee Clerk Signature			

Minutes: DISCUSSION

REP. KLEMIN and REP. DEKREY are talking about the amendments. REP. KOPPELMAN states to the committee that he would like to work on the amendments. Talking about staffing and investigations.

Discussion was then closed on the issue.

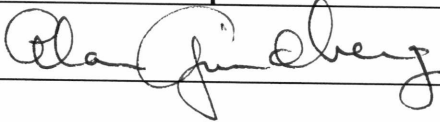
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2371

House Judiciary Committee

Conference Committee

Hearing Date March 9, 1999

Tape Number	Side A	Side B	Meter #
1		X	14.4
Committee Clerk Signature 			

Minutes:

SEN WATNE Presented written testimony, a copy of which is attached. Added that this bill was requested by Doug Mattson, Ward Co. States Attorney.

BOB BENNETT (Asst AG) This is a State's Attorneys bill. Its purpose is to make it somewhat easier to prove the drug connection in a forfeiture case. A judge can order a forfeiture based on these presumptions only. If the defendant does try to refute evidence, it will be easier to overcome. There was a federal law that did this, but it got lost at the end of the session.

COMMITTEE ACTION: March 23, 1999

REP. KOPPELMAN presented a proposed amendment and moved its adoption. After considerable discussion, it was decided to postpone further action at this time.

March 24, 1999

Page 2

House Judiciary Committee

Bill/Resolution Number 2371

Hearing Date :March 24, 1999

REP KOPPELMAN presented a proposed amendment and moved its adoption. Rep. Delmore seconded and the motion was passed on a voice vote.

REP. KOPPELMAN moved that the committee recommend that the bill DO PASS AS AMENDED. Rep. Delmore seconded and the motion was passed on a roll call vote with 13 ayes, 0 nays and 2 absent. Rep. Koppelman was assigned to carry the bill.

WR
3/24/99
1082

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2371 2/24/99 Jud

Page 1, line 2, after "cases" insert "; and to amend and reenact section 54-12-14 of the North Dakota Century Code, relating to the asset forfeiture fund"

Page 1, underscore lines 6 through 24

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2371 3/24/99 Jud

Page 2, underscore lines 1 through 18

Page 2, after line 18, insert:

"SECTION 2. AMENDMENT. Section 54-12-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-12-14. Assets forfeiture fund - Created - Purpose - Continuing appropriation. ~~There is hereby created a fund to be known as the~~ The attorney general assets forfeiture fund. ~~The 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, and amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law. ~~The total aggregate amount of deposits into the fund which do not come from legislative appropriation and are not payable to another governmental entity may not exceed five two hundred thousand dollars within a biennium and at the end of each fiscal year 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:

1. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
2. 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.
3. 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.
4. 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.
5. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation and drug enforcement unit incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.

2002

6. 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.

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 chief of the bureau of criminal investigation or the director of the drug enforcement unit for the use of the fund."

Renumber accordingly

Date: 3/29
Roll Call Vote #: _____

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1371

House JUDICIARY Committee _____

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By Koppelman Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS		
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN		
REP. HAWKEN	✓				

Total Yes 13 No 0

Absent 2

Floor Assignment Koppelman.

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2371, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2371 was placed on the Sixth order on the calendar.

Page 1, line 2, after "cases" insert "; and to amend and reenact section 54-12-14 of the North Dakota Century Code, relating to the asset forfeiture fund"

Page 1, underscore lines 6 through 24

Page 2, underscore lines 1 through 18

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"SECTION 2. AMENDMENT. Section 54-12-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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1. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
2. 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.
3. 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.
4. 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.
5. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation and drug enforcement unit incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.

6. 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.

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 chief of the bureau of criminal investigation or the director of the drug enforcement unit for the use of the fund."

Renumber accordingly

1999 TESTIMONY

SB 2371

Chairman Stenehjem and Members of the Senate Judiciary:

Senate Bill 2371 relates to a presumption in cases where drugs and money are found side-by-side by law enforcement.

We have some law enforcement officials here today who will tell you the problem and tell you why this bill is needed.

From what I've been told by these dedicated individuals, this is a much needed bill and I urge your support.

Respectfully,

A handwritten signature in cursive script that reads "Darlene".

Darlene Watne
Senator Fifth District

Memorandum

To: Senate Judiciary Committee

From: Michael J. Mullen

[member of the North Dakota Bar; in his personal capacity only]

Re: **SENATE BILL NO. 2371**

February 8, 1999

It is suggested that the word “disputable” be removed from section 1 of the bill (p. 1, line 7). The term “disputable presumption” is found in section 31-11-03, which was first enacted as part of the session laws of 1897 -- more than 100 years ago. It's exact legal meaning the shrouded in history and has been largely superseded by Rule 301 of the North Dakota Rules of Evidence.

Rule 301 provides in substance that: “if facts giving rise to a presumption are established ... the existence of the fact presumed [is established unless the opposing party establishes (proves)] that the presumed fact does not exist, in which event the presumption is *rebutted*....” [Emphasis added.] Thus, a -- *rebuttal presumption*.

A Web search of North Dakota Supreme Court opinions issued since 1993 will select only four [4] cases under the terms “disputable AND presumption.” In contrast, the term “presumption” yields 139 hits, and thus is a far larger body of case law.

Because it is generally desirable to use the more recent and broadly applicable terminology, it is suggested that using the simple term “presumption” would be appropriate in Senate Bill No. 2371.

Note: My interest in this matter arises from the fact that I played a role in the congressional review of the Federal Rules of Evidence and submitted a memorandum to the North Dakota Supreme Court in 1974 in support of the adoption of the North Dakota Rules of Evidence, and specifically Rule 301.

Cc: Murray G. Sagsveen

Sandra L. Tabor

**Asset Forfeiture Report
1996-1998**

	1996	1997	1998	Total
Bureau of Criminal Investigation	3,906	13,843	17,353	35,102
Grand Forks/Pembina/Walsh County Local Law Enforcement	-	-	49,000	49,000
Burleigh/Morton County Local Law Enforcement	4,631	7,710	25,853	38,194
Stutsman/Barnes/Eddy/LaMoure/Foster County Local Law Enforcement	515	-	1,685	2,200
Williams/Divide/McKenzie County Local Law Enforcement	-	-	-	-
Mercer/Stark/Dunn/McLean/Sheridan/Oliver County Local Law Enforcement	240	200	-	440
Richland County Local Law Enforcement	-	-	5,750	5,750
Ward/Burke County Local Law Enforcement	17,760	5,000	15,179	37,939
Total	27,052	26,753	114,820	168,625

Post-It Fax Note	7671	Date	2/5	# of pages	1
To	Bob Bennett	From	Tammy		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			

FEB. 5. 1998 10:00L 17.171

Ward County State's Attorney Memo

February 2, 1999

TO: Bob Bennet, ND Attorney General's Office

Fr: Doug Mattson

RE: SB 2371 - Forfeiture Summary

The following summary indicates this office's recent forfeiture activity and the total cash amounts forfeited:

C. Benjamin	12/16/97	\$ 2,700.
B. Backman	01/28/98	3,500.
A. Denton	02/03/98	100.
B. Campbell	03/10/98	180.
P.Campbell/L.Ronholdt	08/20/98	750.
R.Beeter/T. Clark	09/03/98	4,040.
E. DeCent	12/31/98	<u>8,489.06</u>
Total Amount forfeited:		\$19,714.06

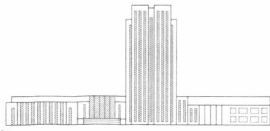
This office received payments in the last 8 months on the following cases:

C. Benjamin	\$ 270.
B.Backman/A.Denton/B.Campbell	383.
E. DeCent	<u>848.35</u>
Total Amount Received:	\$1,501.35

Other assets forfeited include:

P.Campbell/L.Ronholdt -	pager
C. Taylor	5/11/98
	pistol

Forfeiture pending on another pistol



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
Judiciary,
Vice Chairman
Political Subdivisions

Senator Darlene Watne
District 5
520 28th Avenue SW
Minot, ND 58701-7065

Chairman DeKrey and members of the House Judiciary Committee:

I am Darlene Watne, Senator for the 5th District, Minot.

Senate Bill 2371 is keyed to federal legislation which was aimed at money laundering resulting from drug transactions. It establishes that in certain instances, with certain facts, when large sums of money are found near drugs at the time of an arrest, that money can be assumed to be connected to the transaction and forfeited.

Some of the reasons that are outlined are:

a. If the property is money in excess of \$10,000 and being transported through an airport, on a highway, a port of entry, was concealed in an unusual manner, the person transporting the money provided false information to the investigator, was found near the drugs, or was alerted by a trained dog.

b. If the money is acquired in a reasonable period of time and there is no other likely source for the property.

c. If the money came from a major drug transit country, and

1. It occurred from a place where there were bank secrecy laws and
2. It came from a corporation not engaged in legitimate activity.

OR

d. The person involved in the forfeiture action was convicted before for a similar offense or money laundering or is a fugitive from prosecution for any of these offenses.

And other presumptions or probable causes can be found, too.

This is a good bill that gives our law enforcement another tool in apprehending drug dealers. It was also explained to the Senate Judiciary that in some instances it could help protect the informants used in some of these transactions.

We have some law enforcement officials here today who will tell you the problems and tell you why this bill is needed.

Thank you for your time and I urge your support of SB 2371.

Respectfully,

Darlene Watne