

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1286
(Representatives Becker, Blum, Johnston, Paur, Pyle, Satrom, Simons, Strinden)
(Senators Hogue, Kannianen, Luick, Unruh)

AN ACT to create and enact section 19-03.1-36.8 of the North Dakota Century Code, relating to law enforcement agencies reporting seizures and forfeitures; and to amend and reenact sections 19-03.1-36.2, 19-03.1-36.6, and 19-03.1-36.7 of the North Dakota Century Code, relating to forfeiture proceedings, contested forfeiture hearings, and legal interests in forfeited property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. Forfeiture proceedings are civil actions against the property to be forfeited and the standard of proof is a preponderance of the evidence ~~clear and convincing evidence~~.
2. Forfeiture proceedings are separate and distinct from any related criminal action, and may not be initiated until the owner of the property has been convicted of or pled guilty to a criminal offense, or the individual has died, fled the jurisdiction, been deported by the United States government, been granted immunity or a reduced sentence in exchange for testifying or assisting a law enforcement investigation or prosecution, has abandoned the property, or it can be established beyond a reasonable doubt the property was used in the commission of a crime or constituted the proceeds of criminal activity. As used in this subsection, "abandoned the property" or "fled the jurisdiction" means for a period of more than one year, the owner has not responded to any of the reasonable efforts made by the seizing agency to contact the owner or has not contacted the seizing agency.
3. Two or more law enforcement agencies and courts from different jurisdictions may coordinate, cooperate, and engage in interjurisdictional prosecution under this section.

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

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

1. If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish probable cause ~~a valid seizure of the property to be forfeited, and for instituting the forfeiture action following which the property meets the requirements of subsection 2 of section 19-03.1-36.2.~~ Following the state's case, any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.
2. A court ordering property forfeited under subsection 1 may order only the forfeited property or proceeds from the sale of forfeited property to be deposited with a political subdivision if the political subdivision has created a civil asset forfeiture fund. If the political subdivision does not

have a civil asset forfeiture fund, any forfeited property and proceeds from the sale of forfeited property must be deposited in the attorney general's asset forfeiture fund.

3. A political subdivision that has a civil asset forfeiture fund shall establish an application process, including eligibility criteria, to accept and process applications from law enforcement agencies within the political subdivision's jurisdiction for an appropriation 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. Real property constituting a homestead may not be forfeited.
 - c. In determining whether a forfeiture is excessive, the court shall consider 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 possible penalty that could be imposed for the alleged or committed offense subject to forfeiture.
 - 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. 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.
 4. By November first of each year, the attorney general shall submit to the legislative management and the governor a written report summarizing activity in the state for the preceding fiscal year, the type, approximate value, and disposition of any civilly forfeited property, and the amount of proceeds received.
 - a. Summary data and civilly forfeited property must be disaggregated by agency.
 - b. The attorney general shall make the report available on the attorney general's website.
 5. The attorney general may recover any costs under this section by withdrawing money from the asset forfeiture fund.
 6. A law enforcement agency may use forfeiture proceeds to pay the costs of compiling and reporting data under this section.
 7. The data and reports compiled under this section are public information and not exempt from disclosure.
 8. The attorney general may require the reporting of additional information not specified in this section. The attorney general shall develop standard forms, processes, and deadlines for annual submission of forfeiture data by law enforcement agencies.
 9. 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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1286.

House Vote: Yeas 55 Nays 37 Absent 2

Senate Vote: Yeas 43 Nays 4 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State