

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 two new sections to chapter 29-31.1 of the North Dakota
2 Century Code, relating to reporting seizures and forfeitures, and prohibiting adoptive seizures;
3 to create and enact sections 29-31.1-04.1, 29-31.1-04.2, 29-31.1-04.3, 29-31.1-04.4,
4 29-31.1-04.5, 29-31.1-04.6, 29-31.1-04.7, 29-31.1-04.8, and 29-31.1-04.9 of the North Dakota
5 Century Code, relating to manner of forfeiture, forfeiture proceeding as civil action, disposition
6 of property, and hearing on contested forfeiture and proportionality; to amend and reenact
7 sections 12.1-06.1-05 and 12.1-06.1-06, subsection 2 of section 12.1-23.1-03, sections
8 19-03.1-36, 20.1-10-01, 20.1-10-03, and 20.1-10-07, subsection 1 of section 27-20-03,
9 subsection 1 of section 28-04-03, sections 29-27-02.1, 29-31.1-01, 29-31.1-03, 29-31.1-04,
10 29-31.1-05, and 29-31.1-06, subsection 1 of section 29-31.1-07, sections 29-31.1-08,
11 29-31.1-09, 39-03-18, and 39-08-01.3, subsection 2 of section 39-30-03, section 39-30-04,
12 subsection 1 of section 39-30-05, sections 40-11-13, 47-21.1-04, 54-12-14, 57-36-14, and
13 62.1-01-02, and subsection 2 of section 62.1-05-01 of the North Dakota Century Code, relating
14 to racketeering, forfeiture of controlled substances, forfeiture of confiscated hunting and fishing
15 equipment, juvenile court jurisdiction, property forfeiture and disposition, highway patrol and
16 attorney general assets forfeiture fund, and forfeiture of dangerous weapons and firearms; to
17 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,
18 19-03.1-36.6, 19-03.1-36.7, 20.1-10-04, and 29-31.1-10, and chapter 32-14 of the North Dakota
19 Century Code, relating to forfeiture proceedings, forfeiture disposition, and actions to recover
20 forfeitures; and to provide an appropriation.

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

22 **SECTION 1. AMENDMENT.** Section 12.1-06.1-05 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **12.1-06.1-05. Racketeering - Civil remedies.**

- 2 1. A person who sustains injury to person, business, or property by a pattern of
3 racketeering activity or by a violation of section 12.1-06.1-02 or 12.1-06.1-03 may file
4 an action in district court for the recovery of treble damages and the costs of the suit,
5 including reasonable attorney fees. The state may file an action in behalf of those
6 persons injured or to prevent, restrain, or remedy a pattern of racketeering activity or a
7 violation of section 12.1-06.1-02 or 12.1-06.1-03.
- 8 2. The district court has jurisdiction to prevent, restrain, and remedy a pattern of
9 racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03 after making
10 provision for the rights of all innocent persons affected by the violation and after
11 hearing or trial, as appropriate, by issuing appropriate orders.
- 12 3. Prior to a determination of liability, orders may include entering restraining orders,
13 receivership orders or prohibitions or other actions, including the acceptance of
14 satisfactory performance bonds, in connection with any property or other interest
15 subject to damages, forfeiture, or other restraints pursuant to this section.
- 16 4. Following a determination of liability, orders may include:
- 17 a. Ordering any person to divest himself of any interests, direct or indirect, in any
18 enterprise.
- 19 b. Imposing reasonable restrictions on the future activities or investments of anya
20 person, including prohibiting any person from engaging in the same type of
21 endeavor as the enterprise engaged in, the activities of which affect the laws of
22 this state, to the extent the constitutions of the United States and this state
23 permit.
- 24 c. Ordering dissolution or reorganization of any enterprise.
- 25 d. Ordering the payment of treble damages and appropriate restitution to those
26 persons injured by a pattern of racketeering activity or a violation of section
27 12.1-06.1-02 or 12.1-06.1-03.
- 28 e. Ordering the payment of all costs and expenses and reasonable attorneys' fees
29 concerned with the prosecution and investigation of any offense included in the
30 definition of racketeering if upon application for the order it is shown to the
31 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 in accordance with chapter ~~32-14~~, to the state school fund
5 of the state or county as appropriate under section 29-27-02.1, to the extent not
6 already ordered to be paid in other damages 29-31.1 of:
- 7 (1) ~~Any property~~ 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. 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
25 under chapter 29-31.1 for forfeiture to the state school fund of the state or county as
26 appropriate under section 29-27-02.1, to the extent not already ordered paid pursuant
27 to this section, of:
- 28 a. Any interest acquired or maintained by a person in violation of section
29 12.1-06.1-02 or 12.1-06.1-03.
- 30 b. Any interest in, security of, claims against, or property or contractual right of any
31 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 c. 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. A defendant convicted in any criminal proceeding ~~shall be~~ precluded from
9 subsequently denying the essential allegations of the criminal offense of which ~~he~~
10 defendant was convicted in any civil proceeding. For purposes of this subsection, a
11 conviction may result from a verdict or plea including a no contest plea.

12 7. 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. 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~~must 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. ~~The~~With the exception of an action for forfeiture under subsections 4 or 5, the
24 standard of proof in actions brought ~~pursuant to~~under this section is the
25 preponderance of the evidence.

26 10. A person other than the attorney general or state's attorney who files an action under
27 this section shall serve notice and one copy of the pleading on the attorney general
28 within thirty days after the action is filed with the district court. The notice shall identify
29 the action, the person, and the person's attorney. Service of the notice does not limit
30 or otherwise affect the right of the state to maintain an action under this section or

1 intervene in a pending action nor does it authorize the person to name the state or the
2 attorney general as a party to the action.

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

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

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

16 **SECTION 2. AMENDMENT.** Section 12.1-06.1-06 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **12.1-06.1-06. Racketeering lien - Content - Filing - Notice - Effect.**

19 1. The state, upon filing a civil action under section 12.1-06.1-05 or upon charging an
20 offense included in the definition of racketeering if the offense is committed as a part
21 of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or
22 12.1-06.1-03, may file a racketeering lien. A filing fee or other charge is not required
23 for filing a racketeering lien.

24 2. A racketeering lien ~~shall~~must be signed by the attorney general or the state's attorney
25 representing the state in the action and set forth the following information:

26 a. The name of the defendant whose property, interests in property, or other
27 interests are to be subject to the lien.

28 b. In the discretion of the attorney general or state's attorney filing the lien, any
29 aliases or fictitious names of the defendant named in the lien.

30 c. If known to the attorney general or state's attorney filing the lien, the present
31 residence or principal place of business of the person named in the lien.

- 1 d. A reference to the proceeding pursuant to which the lien is filed, including the
- 2 name of the court, the title of the action, and the court's file number for the
- 3 proceeding.
- 4 e. The name and address of the attorney representing the state in the proceeding
- 5 pursuant to which the lien is filed.
- 6 f. A statement that the notice is being filed pursuant to this section.
- 7 g. The amount ~~which~~ the state claims in the action or, with respect to property or
- 8 other interests ~~which~~ the state has requested forfeiture to the state or county, a
- 9 description of the property or interests sought to be paid or forfeited.
- 10 h. If known to the attorney general or state's attorney filing the lien, a description of
- 11 property ~~which~~ is subject to forfeiture to the state or property in which the
- 12 defendant has an interest which is available to satisfy a judgment entered in favor
- 13 of the state.
- 14 i. Such other information as the attorney general or state's attorney filing the lien
- 15 deems appropriate.
- 16 3. The attorney general or the state's attorney filing the lien may amend a lien filed under
- 17 this section at any time by filing an amended racketeering lien in accordance with this
- 18 section which identifies the prior lien amended.
- 19 4. The attorney general or the state's attorney filing the lien ~~shall~~, as soon as practical
- 20 after filing a racketeering lien, shall furnish to any person named in the lien a notice of
- 21 the filing of the lien. Failure to furnish notice under this subsection does not invalidate
- 22 or otherwise affect a racketeering lien filed in accordance with this section.
- 23 5. ASubject to chapter 29-31.1, a racketeering lien is perfected against interests in
- 24 personal property by filing the lien with the secretary of state, except that in the case of
- 25 titled motor vehicles it ~~shall~~, which must be filed with the director of the department of
- 26 transportation. A racketeering lien is perfected against interests in real property by
- 27 filing the lien with the county recorder of the county in which the real property is
- 28 located. The state may give additional notice of the lien.
- 29 6. ~~The~~Subject to chapter 29-31.1, the filing of a racketeering lien in accordance with this
- 30 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. ~~Upon~~Subject to chapter 29-31.1, 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, shall give at least thirty days' notice of execution to any person
22 possessing at the time notice is given, an interest recorded after the date the state's
23 lien was perfected.
- 24 9. ~~Upon~~Subject to chapter 29-31.1, upon the entry of a final judgment in favor of the state
25 providing for forfeiture of 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 3. AMENDMENT.** Subsection 2 of section 12.1-23.1-03 of the North Dakota
11 Century Code is amended and reenacted as follows:

- 12 2. Any communications paraphernalia prohibited under section 12.1-23.1-01 may be
13 seized and, ~~upon conviction, is forfeited to the jurisdiction where the arrest was made.~~
14 The paraphernalia may be, pursuant to court order, sold or destroyed is subject to
15 forfeiture in accordance with chapter 29-31.1.

16 **SECTION 4. AMENDMENT.** Section 19-03.1-36 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **19-03.1-36. Forfeitures.**

- 19 1. The following are subject to forfeiture:
- 20 a. All controlled substances ~~which have been~~ manufactured, distributed, dispensed,
21 or acquired in violation of this chapter.
- 22 b. All imitation controlled substances as defined by sections 19-03.2-01 and
23 19-03.2-02.
- 24 c. All raw materials, products, and equipment of any kind ~~which are~~ used, or
25 intended for use, in manufacturing, compounding, processing, delivering,
26 importing, or exporting any controlled substance in violation of this chapter.
- 27 d. All property ~~which is~~ used, or intended for use, as a container for property
28 described in subdivision a, b, or c.
- 29 e. All conveyances, including aircraft, vehicles, or vessels, ~~which are~~ used, or
30 intended for use, to transport, or in any manner to facilitate the transportation, for
31 the purpose of sale or receipt of property described in subdivision a, b, or c, but:

- 1 (1) No conveyance used by any person as a common carrier in the transaction
2 of business as a common carrier is subject to forfeiture under this section
3 unless it appears that the owner or other person in charge of the
4 conveyance is a consenting party or privy to a violation of this chapter.
- 5 (2) No conveyance is subject to forfeiture under this section by reason of any
6 act or omission established by the owner thereof to have been committed or
7 omitted without the owner's knowledge or consent.
- 8 (3) A conveyance is not subject to forfeiture for a violation of subsection 8 of
9 section 19-03.1-23 or subsection 3 of section 19-03.2-03.
- 10 (4) A forfeiture of a conveyance encumbered by a bona fide security interest is
11 subject to the interest of the secured party if the secured party neither had
12 knowledge of nor consented to the act or omission.
- 13 f. All books, records, and research products and materials, including formulas,
14 microfilm, tapes, and data, which are used, or intended for use, in violation of this
15 chapter.
- 16 g. All drug paraphernalia as defined in chapter 19-03.4.
- 17 h. All money, coin, currency, and everything of value furnished, or intended to be
18 furnished, in exchange for a controlled substance in violation of this chapter or an
19 imitation controlled substance in violation of chapter 19-03.2, and all real and
20 personal property, assets, profits, income, proceeds, or an interest therein,
21 acquired or derived from the unlawful purchase, attempted purchase, delivery,
22 attempted delivery, manufacturing, or attempted manufacturing of any controlled
23 substance or imitation controlled substance.
- 24 2. ~~Property subject to forfeiture under this chapter, except conveyances described in~~
25 subdivisions a, b, and g of subsection 1 may be seized by the board upon process
26 issued by any district court having jurisdiction over the property. ~~A conveyance subject~~
27 ~~to forfeiture under this chapter may be seized by a state, county, or city law~~
28 ~~enforcement agency upon process issued by any district court having jurisdiction over~~
29 ~~the conveyance~~All other property subject to forfeiture under this chapter must be
30 seized and forfeited in accordance with chapter 29-31.1. Seizure of property described
31 in subdivisions a, b, and g of subsection 1 without process may be made if:

- 1 a. The seizure is incident to an arrest or a search under a search warrant or an
2 inspection under an administrative inspection warrant.
- 3 b. The property subject to seizure has been the subject of a prior judgment in favor
4 of the state in a criminal injunction or forfeiture proceedings based upon this
5 chapter.
- 6 c. The board or a law enforcement agency has probable cause to believe ~~that~~ the
7 property is directly or indirectly dangerous to health or safety.
- 8 d. The board or a law enforcement agency has probable cause to believe ~~that~~ the
9 property was used or is intended to be used in violation of this chapter.
- 10 3. In the event of seizure pursuant to subsection 2, proceedings under subsection 4 must
11 be instituted promptly.
- 12 4. Property described in subdivisions a, b, and g of subsection 1 which is taken or
13 detained under this section is not subject to replevin, but is deemed to be in custody of
14 the board or a law enforcement agency subject only to the orders and decrees of the
15 district court having jurisdiction over the forfeiture proceedings as set out in subsection
16 2. When property described in subdivisions a, b, and g of subsection 1 is seized under
17 this chapter, the board or a law enforcement agency may:
 - 18 a. Place the property under seal.
 - 19 b. Remove the property to a place designated by it.
 - 20 c. Require the attorney general to take custody of the property and remove it to an
21 appropriate location for disposition in accordance with law.
- 22 5. When property described in subdivisions a, b, and g of subsection 1 is forfeited under
23 this chapter, the board or a law enforcement agency may:
 - 24 a. Retain it for official use or transfer the custody or ownership of any forfeited
25 property to any federal, state, or local agency. The board shall ensure the
26 equitable transfer of any forfeited property to the appropriate federal, state, or
27 local law enforcement agency so as to reflect generally the contribution of that
28 agency participating directly in any of the acts that led to the seizure or forfeiture
29 of the property. A decision to transfer the property is not subject to review.
 - 30 b. Sell that which is not required to be destroyed by law and which is not harmful to
31 the public. The proceeds must be used for payment of all proper expenses of the

1 proceedings for forfeiture and sale, including expenses of seizure, maintenance
2 of custody, advertising, and court costs, with any remaining proceeds to be
3 deposited, subject to section 54-12-14, in the appropriate state, county, or city
4 general fund. When two or more law enforcement agencies are involved in
5 seizing a conveyance, the remaining proceeds may be divided proportionately.

6 c. Require the attorney general to take custody of property and remove it for
7 disposition in accordance with law.

8 d. Forward it to the bureau for disposition.

9 e. Use the property, including controlled substances, imitation controlled
10 substances, and plants forfeited under subsections 6 and 7, in enforcement of
11 this chapter. However, in a case involving the delivery of a forfeited controlled
12 substance by a law enforcement officer or a person acting as an agent of a law
13 enforcement officer, no prosecution or conviction for simple possession of a
14 controlled substance under subsection 6 of section 19-03.1-23 may be based
15 upon the forfeited controlled substances supplied by the law enforcement officer
16 or the officer's agent.

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

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

29 8. The failure, upon demand by the board, or its authorized agent, of the person in
30 occupancy or in control of land or premises upon which the species of plants are
31 growing or being stored to produce an appropriate registration, or proof that the

1 person is the holder thereof, constitutes authority for the seizure and forfeiture of the
2 plants.

3 **SECTION 5. AMENDMENT.** Section 20.1-10-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **20.1-10-01. Property unlawfully taken, transported, or used to be confiscated by**
6 **certain game and fish officials - Procedure.**

7 The director, deputy director, or any bonded game warden shall seize all wild birds, wild
8 animals, or fish, or any part thereof, taken, killed, or possessed, or transported contrary to law,
9 and shall seize all dogs, guns, seines, nets, boats, lights, automobiles, vehicles,
10 instrumentalities, appliances, and devices unlawfully used, or held with intent to be unlawfully
11 used, in pursuing, taking, or attempting to take, concealing, or disposing of wild birds, wild
12 animals, or fish, or any part thereof. Property used or held with the intent to be used unlawfully
13 in pursuing, taking, attempting to take, concealing, or disposing of wild birds, wild animals, or
14 fish may not be confiscated when the violation is a noncriminal offense. All property seized must
15 be held subject to the order of a court of competent jurisdiction. ~~When property is confiscated,~~
16 ~~the confiscating officer shall bring the alleged offender before a court of competent jurisdiction~~
17 ~~for the purpose of determining disposition. However, if and is subject to forfeiture in accordance~~
18 with chapter 29-31.1. If the court having nominal jurisdiction over the alleged wrongdoer
19 determines that the value of the confiscated property exceeds the court's jurisdictional
20 limitations, the matter may, upon the motion of either party, be removed to district court for
21 determination. If the alleged offender desires an attorney, a reasonable time must be given to
22 secure counsel. If it is not feasible to bring the alleged offender immediately before the court,
23 the property may not be seized or confiscated if the alleged offender gives a receipt to the
24 officer assuring delivery before the court when the matter comes up. The receipt must contain
25 the provisions of this section to advise the alleged offender of the law.

26 **SECTION 6. AMENDMENT.** Section 20.1-10-03 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **20.1-10-03. Confiscated property - Courts having jurisdiction - Requisites for**
29 **disposition.**

30 A court having jurisdiction of an alleged offense against this title may order the disposition of
31 ~~all birds, animals, or fish, or any part thereof, or other~~ confiscated property that has been

1 ~~confiscated. This~~The disposition of all confiscated property must be in accordance with chapter
2 29-31.1. The order may be entered only after a hearing duly had upon proper notice to the
3 owner and after due and proper finding by the court that the property:

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

9 **SECTION 7. AMENDMENT.** Section 20.1-10-07 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **20.1-10-07. Property seized under warrant - Officer's return to describe -**
12 **Safekeeping - Disposal.**

13 Any officer executing a warrant issued pursuant to section 20.1-10-06 ~~shall~~, in the officer's
14 return, shall describe the property seized with as much particularity as possible. The seized
15 property must be safely kept upon direction of the judge as long as necessary to use as
16 evidence. If a conviction is obtained, either by trial or by plea of guilty, the seized property ~~must~~
17 ~~be disposed of under an order of the court before whom the prosecution was brought~~is subject
18 to forfeiture in accordance with chapter 29-31.1.

19 **SECTION 8. AMENDMENT.** Subsection 1 of section 27-20-03 of the North Dakota Century
20 Code is amended and reenacted as follows:

- 21 1. The juvenile court has exclusive original jurisdiction of the following proceedings,
22 which are governed by this chapter:
 - 23 a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;
 - 24 b. Proceedings for the termination of parental rights except when a part of an
25 adoption proceeding;
 - 26 c. Proceedings arising under section 27-20-30.1; and
 - 27 d. Civil forfeiture proceedings arising under ~~chapter 19-03.1 or section~~
28 ~~29-31.1-04~~29-31.1 for which a child is alleged to have possessed forfeitable
29 property. The juvenile court shall conduct the proceedings in accordance with the
30 procedures provided for under ~~sections 19-03.1-36 through 19-03.1-37~~chapter
31 29-31.1.

1 **SECTION 9. AMENDMENT.** Subsection 1 of section 28-04-03 of the North Dakota Century
2 Code is amended and reenacted as follows:

- 3 1. For the recovery of a penalty ~~or forfeiture~~ imposed by statute, except that when it is
4 imposed for an offense committed on a lake or river or other stream of water situated
5 in two or more counties, the action may be brought in any county bordering on such
6 lake, river, or stream, and opposite the place where the offense was committed; and

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

9 **29-27-02.1. Disposition of statutory fees, fines, forfeitures, pecuniary penalties, and**
10 **bond forfeitures.**

11 Except as otherwise provided by law, all statutory fees, fines, forfeitures, funds obtained
12 through civil asset forfeiture under chapter 29-31.1, and pecuniary penalties prescribed for a
13 violation of state laws, when collected, must be paid into the treasury of the proper county to be
14 added to the state school fund. When any bail bond or other property or money deposited as
15 bail is forfeited to the state, the proceeds collected therefrom must be paid over to the proper
16 state official and credited to the state general fund.

17 **SECTION 11. AMENDMENT.** Section 29-31.1-01 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **29-31.1-01. Definitions.**

20 In this chapter, unless the context or subject matter otherwise requires:

- 21 1. "Forfeitable property" means any of the following:
- 22 a. Property that is illegally possessed or is contraband.
 - 23 b. Property ~~that has been~~ used or is intended to be used to facilitate the
24 commission of a criminal offense or to avoid detection or apprehension of a
25 person committing a criminal offense. For purposes of this subdivision, property
26 does not include a residence or other real estate where a co-owner, whether by
27 joint tenancy, tenancy in common, or tenancy by the entireties, of the residence
28 or other real estate, has not been convicted of the criminal offense that was
29 facilitated by the use or intended use of the property.
 - 30 c. Property ~~that is~~ acquired as or from the proceeds of a criminal offense.

- 1 d. Property offered or given to another as an inducement for the commission of a
2 criminal offense.
- 3 e. A vehicle or other means of transportation used in the commission of a felony, the
4 escape from the scene of the commission of a felony, or in the transportation of
5 property that is the subject matter of a felony.
- 6 f. Personal property used in the theft of livestock or the transportation of stolen
7 livestock.
- 8 2. "Law enforcement agency" or "law enforcement agent" means a nonfederal public
9 agency or servant authorized by law or by a government agency or branch to enforce
10 the law and to conduct or engage in investigations or prosecutions for violations of law,
11 including the authority to conduct or engage in seizure and forfeiture.
- 12 3. "Proportional" means corresponding in degree and not unconstitutionally excessive.
- 13 4. "Seized property" means property taken or held by any law enforcement agency in the
14 course of that agency's official duties with or without the consent of the person, if any,
15 who had possession or a right to possession of the property at the time it was taken
16 into custody.
- 17 ~~3-5.~~ "Seizing agency" is the law enforcement agency that has taken possession of or
18 seized property in the course of that agency's official duties.

19 **SECTION 12. AMENDMENT.** Section 29-31.1-03 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **29-31.1-03. Seizure of forfeitable property.**

- 22 1. Forfeitable property may be seized whenever and wherever the property is found
23 within this state. Forfeitable property may be seized by taking custody of the property
24 or by serving upon the person in possession of the property a notice of forfeiture and
25 seizure.
- 26 2. ~~If the court finds that the forfeiture is warranted, an order transferring ownership to the~~
27 ~~seizing agency must be entered and the property must be delivered to the seizing~~
28 ~~agency for disposition as directed by the court.~~
- 29 a. ~~Property that has been seized for forfeiture, and is not already secured as~~
30 ~~evidence in a criminal case, must be safely secured or stored by the agency that~~
31 ~~caused its seizure.~~

1 b. If the property to be seized for forfeiture is livestock, the court may order the
2 seizing agency to provide care for the livestock and maintain the livestock at the
3 livestock's current physical location. If the court orders the seizing agency to
4 provide care for the livestock and maintain the livestock at the livestock's current
5 physical location, the court shall order the owner to pay or reimburse the seizing
6 agency from the proceeds of the sale for the costs and expenses associated with
7 the care and custody of the livestock.

8 c. As used in this subsection, "care" includes food and water, as appropriate for the
9 species, the breed, and the livestock's age and physical condition, and necessary
10 medical attention.

11 **SECTION 13. AMENDMENT.** Section 29-31.1-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **29-31.1-04. Forfeiture proceedings.**

- 14 1. Forfeiture is a civil proceeding not dependent upon a prosecution for, or and conviction
15 of; a criminal offense and forfeiture. Forfeiture proceedings are separate and distinct
16 from any related criminal action-, and may not be initiated until the owner of the
17 property has been convicted of or pled guilty to a criminal offense.
- 18 2. Forfeiture proceedings brought under this chapter must be conducted in accordance
19 with the procedures established for the forfeiture of property in sections 19-03.1-36.1-
20 through 19-03.1-36.7 under this chapter.
- 21 3. Forfeitures under this chapter must be proportional. A forfeiture with a value not
22 exceeding the maximum financial penalty for its companion criminal charge is
23 presumptively proportional.
- 24 4. This chapter does not prohibit disposition of property subject to forfeiture by
25 agreement of the parties.

26 **SECTION 14.** Section 29-31.1-04.1 of the North Dakota Century Code is created and
27 enacted as follows:

28 **29-31.1-04.1. Manner of forfeiture.**

29 Property subject to forfeiture, other than property that may be forfeited summarily, may be
30 forfeited by order of the court after:

1 1. A written consent to forfeiture executed by the owner of the property and all persons
2 with a legal interest in the property to be forfeited has been filed with the court; or

3 2. Commencement of forfeiture proceedings.

4 **SECTION 15.** Section 29-31.1-04.2 of the North Dakota Century Code is created and
5 enacted as follows:

6 **29-31.1-04.2. Forfeiture proceeding as civil action - Standard of proof.**

7 Forfeiture proceedings are civil actions against the property to be forfeited and the standard
8 of proof is clear and convincing evidence.

9 **SECTION 16.** Section 29-31.1-04.3 of the North Dakota Century Code is created and
10 enacted as follows:

11 **29-31.1-04.3. Summons and complaint for forfeiture of property - Contents of**
12 **complaint - Notice.**

13 1. When property is to be forfeited, in the absence of a written consent to forfeiture,
14 forfeiture proceedings must be commenced by the filing of a summons and complaint
15 for forfeiture of the property in the district court of the county where the property was
16 seized, is being held, or is located.

17 2. If the property to be forfeited is real property, the summons and complaint must be
18 filed in the county where the real property, or some part of the real property, is located.

19 3. A proceeding under this chapter must be brought in the name of the state.

20 4. The complaint must include:

21 a. A description of the property;

22 b. The property's location;

23 c. The name of property's present custodian;

24 d. The name of each known owner;

25 e. The name of each known party with a legal interest in the property;

26 f. The elements of the violation claimed to exist; and

27 g. A request to enforce the forfeiture.

28 5. Notice of the forfeiture proceeding must be given to each known owner and known
29 person with a legal interest in the property subject to forfeiture by serving a copy of the
30 summons and complaint in accordance with the North Dakota Rules of Civil
31 Procedure.

1 6. The procedure governing the proceedings, except as otherwise provided in this
2 chapter, is the same as prescribed for civil proceedings.

3 **SECTION 17.** Section 29-31.1-04.4 of the North Dakota Century Code is created and
4 enacted as follows:

5 **29-31.1-04.4. Answer by claimant of property - Time for filing.**

6 Within thirty days after service of the summons and complaint for forfeiture, the owner of the
7 property to be forfeited and any other person with a legal interest in the property may file an
8 answer claiming an interest in the property and claiming the person's interest is not subject to
9 forfeiture under this chapter.

10 **SECTION 18.** Section 29-31.1-04.5 of the North Dakota Century Code is created and
11 enacted as follows:

12 **29-31.1-04.5. Disposition of property if no answer filed.**

13 If an answer has not been filed with the court against the complaint for forfeiture within thirty
14 days after the summons and complaint have been served, the court shall order the forfeiture
15 and disposition of the property.

16 **SECTION 19.** Section 29-31.1-04.6 of the North Dakota Century Code is created and
17 enacted as follows:

18 **29-31.1-04.6. Hearing on contested forfeiture - Order releasing or forfeiting property.**

- 19 1. If an answer is filed within the time limits provided in this chapter, the court shall set a
20 date for hearing on the forfeiture proceeding.
- 21 2. If the reasonable value of the property subject to forfeiture exceeds ten thousand
22 dollars, the proceeding must be tried by a jury as provided by law, unless all parties
23 waive the right to a jury trial.
- 24 3. If the reasonable value of the property subject to forfeiture does not exceed ten
25 thousand dollars, the proceeding must be by bench trial.
- 26 4. At the hearing, the state shall establish by clear and convincing evidence the property
27 to be forfeited is subject to forfeiture under this chapter.
- 28 5. If the property is not subject to forfeiture under this chapter, the court shall order the
29 property released to the owner or other person with a legal interest in the property as
30 that person's right, title, or interest appears.

1 6. The court shall order the property forfeited upon clear and convincing evidence that
2 property or an interest therein is subject to forfeiture.

3 **SECTION 20.** Section 29-31.1-04.7 of the North Dakota Century Code is created and
4 enacted as follows:

5 **29-31.1-04.7. Hearing on proportionality of forfeiture.**

6 1. Upon a determination by the court or a jury that property is subject to forfeiture, the
7 owner of the property to be forfeited or any other person with a legal interest in the
8 property may petition the court for a proportionality determination.

9 2. The owner or person must establish, by a preponderance of the evidence, the
10 forfeiture is disproportional to the seriousness of the offense. Upon a determination the
11 forfeiture is disproportional, the court shall enter any order the court deems just to
12 render the forfeiture proportional.

13 3. In determining proportionality the court shall consider the following factors:

14 a. The seriousness of the offense;

15 b. The impact of the offense on the community;

16 c. The extent to which the owner or person participated in the offense;

17 d. The sentence imposed for committing the offense subject to forfeiture;

18 e. The reasonable value of the property;

19 f. The value of the property to the owner or person and any resulting hardship to
20 the owner or person and to the family of the owner or person;

21 g. If the property subject to forfeiture is a vehicle, whether the vehicle is the owner's
22 only vehicle; and

23 h. Any other factor the court deems relevant.

24 **SECTION 21.** Section 29-31.1-04.8 of the North Dakota Century Code is created and
25 enacted as follows:

26 **29-31.1-04.8. Legal interest in property.**

27 1. A person alleging a bona fide legal interest in property to be forfeited shall establish,
28 by a preponderance of the evidence, the legal interest existed at the time of seizure or
29 taking of custody of the property.

30 2. In the case of a claimed bona fide security interest in the property, the person claiming
31 the interest shall establish, by a preponderance of the evidence, the security interest in

1 the property to be forfeited existed or was of public record at the time of seizure or
2 taking of custody of the property.

3 **SECTION 22.** Section 29-31.1-04.9 of the North Dakota Century Code is created and
4 enacted as follows:

5 **29-31.1-04.9. Burden of proof - Liabilities.**

6 1. The burden of proof of any exemption or exception is upon the person claiming it.

7 2. In the absence of proof that a person is the duly authorized holder of an appropriate
8 registration or order form issued under chapter 19-03.1, the person is presumed not to
9 be the holder of the registration or form. The burden of proof is upon the person to
10 rebut the presumption.

11 3. No liability is imposed by this chapter upon any authorized state, county, or municipal
12 officer engaged in the lawful performance of the officer's duties.

13 **SECTION 23. AMENDMENT.** Section 29-31.1-05 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **29-31.1-05. Transfer of forfeitable property.**

16 ~~Title~~Provisional title to, and responsibility for, forfeitable property vests with the seizing
17 agency at the time of the seizure. Once forfeitable property is seized, no right to the property
18 may be transferred ~~by anyone other than the seizing agency~~ unless the seizure and forfeiture is
19 declared by the court to be a nullity or as otherwise ordered by the court.

20 **SECTION 24. AMENDMENT.** Section 29-31.1-06 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **29-31.1-06. Disposition of forfeited property.**

23 When property is forfeited under this chapter, the seizing agency ~~may~~shall:

24 1. ~~Retain the property for official use or transfer the custody or ownership of any forfeited~~
25 ~~property to any federal, state, or local agency~~Dispose of the property in accordance
26 with the order of the court.

27 2. Sell the forfeited property that is not required to be destroyed by law and which is not
28 harmful to the public. The proceeds from the sale, ~~together with any monetary funds~~
29 ~~ordered to be forfeited, must be used first for the payment of all~~ must be added to the
30 state school fund as provided under section 29-27-02.1. The court may order the
31 proper costs and expenses of the proceedings for forfeiture and sale, including

1 expenses of seizure, maintenance of custody, advertising, and ~~courtsales~~ costs with
2 any remaining proceeds to be deposited, ~~subject to section 54-12-14, in the~~
3 appropriate state, county, or city general fund as provided herein.

4 3. ~~Dispose of the property in accordance with the order of the court if the property cannot~~
5 ~~be retained, used, or sold by the seizing agency~~Allow the owner or lienholder to
6 purchase the property as provided by section 29-31.1-07.

7 **SECTION 25. AMENDMENT.** Subsection 1 of section 29-31.1-07 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 1. Property may not be forfeited under this chapter to the extent of an interest of an
10 owner who had no part in the commission of the crime and who had no knowledge of
11 the criminal use or intended use of the property. However, property may be forfeited if
12 it is established that, by clear and convincing evidence, the owner permitted the use of
13 the property under circumstances in which a reasonable person should have inquired
14 into the intended use of the property and that the owner failed to do so, ~~there is a~~
15 ~~rebuttable presumption that the owner knew that the property was intended to be used~~
16 ~~in the commission of a crime.~~

17 **SECTION 26. AMENDMENT.** Section 29-31.1-08 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **29-31.1-08. Retention of forfeited property.**

20 If property forfeitable under this chapter is needed as evidence in a criminal proceeding,
21 ~~it~~except as otherwise ordered by the court, the property must be retained under the control of
22 the prosecuting attorney, or the prosecuting attorney's designee, until such time as its use as
23 evidence is no longer required.

24 **SECTION 27. AMENDMENT.** Section 29-31.1-09 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **29-31.1-09. Disposition of forfeitable property held as evidence in criminal**
27 **proceeding.**

28 Notwithstanding other provisions of this chapter, in the case of forfeitable property seized
29 and held as evidence of the commission of a criminal offense, the court in which a criminal
30 prosecution was commenced may issue its order, upon motion and after hearing unless waived,
31 for disposition of the property in accordance with this chapter. Notice of the motion must be

1 served in accordance with the North Dakota Rules of Civil Procedure upon the owner and all
2 persons known to be claiming an interest in the property to be forfeited. The notice must be
3 served at least twenty days before a hearing on the motion unless the time period is waived by
4 all parties claiming an interest in the property. The motion must contain the information required
5 in a complaint as set forth in section 19-03.1-36.3. ~~Although no separate forfeiture proceeding is~~
6 ~~required to be instituted under this section, all other provisions of this chapter apply to~~
7 ~~proceedings commenced pursuant to this section~~29-31.1-04.3.

8 **SECTION 28.** A new section to chapter 29-31.1 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Reporting.**

- 11 1. Annually, each law enforcement agency shall compile the following information
12 regarding seizures and forfeitures completed by the agency under state and federal
13 forfeiture law:
- 14 a. The total number of seizures of currency;
 - 15 b. The total number of seizures and the number of items in each class of property
16 seized, including vehicles, houses, and other types of property seized;
 - 17 c. The market value of each class of property seized, including currency, vehicles,
18 houses, and other types of property seized; and
 - 19 d. The total number of occurrences of each class of crime underlying the forfeitures,
20 including controlled substances, driving while intoxicated, and other crimes.
- 21 2. The attorney general may require the reporting of additional information not specified
22 in this section. The attorney general shall develop standard forms, processes, and
23 deadlines for electronic data entry for annual submission of forfeiture data by law
24 enforcement agencies.
- 25 3. Each law enforcement agency shall file with the attorney general a report of the
26 information compiled under subsection 1 for the law enforcement agency and the
27 corresponding prosecutor. The law enforcement agency shall file separate reports for
28 forfeitures completed under state forfeiture law and federal forfeiture law. A law
29 enforcement agency that did not engage in seizures or forfeitures during the reporting
30 period shall file a null report. The attorney general shall compile the submissions and
31 issue an aggregate report of all forfeitures in the state.

- 1 4. If a law enforcement agency fails to file a report within thirty days after the report is
2 due, the attorney general may compel compliance by any means until the report is
3 filed.
- 4 5. By April first of each year, the attorney general shall make available on the attorney
5 general's website the reports submitted by law enforcement agencies and the attorney
6 general's aggregate report.

7 **SECTION 29.** A new section to chapter 29-31.1 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Prohibition on adoptive seizures and equitable sharing.**

- 10 1. A law enforcement agency may not refer or initiate a transfer of property seized under
11 state law to a federal agency by way of adoption or equitable sharing of seized
12 property for the purpose of the property's forfeiture under federal law.
- 13 2. All proceeds received by a law enforcement agency from equitable sharing, adoption,
14 or other transfer of seized property to a federal agency for the purpose of the
15 property's forfeiture must be added to the state school fund as provided under section
16 29-27- 02.1.
- 17 3. This section does not prohibit any agency of the federal government from seeking
18 federal forfeiture.
- 19 4. This section does not prohibit a law enforcement agency from collaborating with a
20 federal agency to seize property subject to forfeiture under this chapter.

21 **SECTION 30. AMENDMENT.** Section 39-03-18 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **39-03-18. Highway patrol - Assets forfeiture fund - Purpose - Continuing**
24 **appropriation.**

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

1 are appropriated as a continuing appropriation to the highway patrol for the following
2 purposes:

3 1. ~~For paying expenses necessary to inventory, safeguard, maintain, advertise, or sell~~
4 ~~property seized, detained, or forfeited, pursuant to section 19-03.1-36, or of any other~~
5 ~~necessary expenses incident to the seizure, detention, or forfeiture of the property.~~

6 2. a. For paying overtime compensation incurred as a result of investigations or
7 violations of any state criminal law or law relating to the control of drug abuse.

8 3. b. For purchasing equipment related to criminal interdiction.

9 4. c. For paying matching funds required as a condition for receipt of funds from a
10 federal government program awarding monetary grants or assistance for the
11 investigation or apprehension of persons violating the provisions of chapter
12 19-03.1.

13 2. The superintendent of the highway patrol, with the concurrence of the director of the
14 office of management and budget, shall establish the necessary accounting
15 procedures for the use of the fund and shall personally approve, in writing, all requests
16 for the use of the fund.

17 **SECTION 31. AMENDMENT.** Section 39-08-01.3 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **39-08-01.3. Alcohol-related traffic offenses - Seizure, forfeiture, and sale of motor**
20 **vehicles.**

21 A motor vehicle owned and operated by an individual upon a highway or upon public or
22 private areas to which the public has a right of access for vehicular use may be seized,
23 ~~forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of~~
24 ~~sentencing and is subject to forfeiture in accordance with chapter 29-31.1~~ if the individual is in
25 violation of section 39-08-01, 39-08-01.2, or 39-08-01.4, or an equivalent ordinance and has
26 been convicted of violating section 39-08-01 or an equivalent ordinance at least one other time
27 within the seven years preceding the violation.

28 **SECTION 32. AMENDMENT.** Subsection 2 of section 39-30-03 of the North Dakota
29 Century Code is amended and reenacted as follows:

30 2. Seizure of property described in subsection 1 may be made by a member of a state or
31 local law enforcement agency without process:

- 1 a. If in accordance with any applicable law or regulation;
- 2 b. If the seizure is incident to inspection under an administrative inspection warrant;
- 3 c. If the seizure is incident to search made under a search warrant;
- 4 d. If the seizure is incident to a lawful arrest;
- 5 e. If the seizure is made pursuant to a valid consent to search;
- 6 f. If the property seized has been the subject of a prior judgment in favor of the
- 7 state in a criminal proceeding or in an injunction or forfeiture proceeding under
- 8 ~~section 39-30-05~~chapter 29-31.1; or
- 9 g. If there are reasonable grounds to believe that the property is directly or indirectly
- 10 dangerous to health or safety.

11 **SECTION 33. AMENDMENT.** Section 39-30-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **39-30-04. Forfeiture of property.**

- 14 1. The following are subject to forfeiture ~~unless obtained by theft, fraud, or conspiracy to~~
15 ~~defraud and the rightful owner is known or can be identified and located~~in accordance
16 with chapter 29-31.1:
 - 17 a. Any tool;
 - 18 b. Any implement; or
 - 19 c. Any instrumentality, including any motor vehicle or motor vehicle part, ~~whether~~
20 ~~owned or unowned by the person from whose possession or control it was~~
21 ~~seized, which is used or possessed either in violation of section 39-30-02 or to~~
22 promote or facilitate a violation of section 39-30-02.
- 23 2. Any motor vehicle, other conveyance, or motor vehicle part used by any person as a
24 common carrier is subject to forfeiture under this section if the owner or other person
25 in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting
26 party to a violation of section 39-30-02.
- 27 3. Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or
28 instrumentality is not subject to forfeiture under this section by reason of any act or
29 omission that the owner proves to have been committed or omitted without the
30 owner's knowledge or consent.

- 1 other department of the state, or any other state or territory of the United States,
2 or of the federal government if the property is required to be registered in any
3 such department.
- 4 e. Notice of the proceeding must be given to any other person as may appear, from
5 the facts and circumstances, to have any right, title, or interest in or to the
6 property.
- 7 d. The owner of the property, or any person having or claiming right, title, or interest
8 in the property may within sixty days after the mailing of such notice file a verified
9 answer to the complaint and may appear at the hearing on the action for
10 forfeiture.
- 11 e. The state's attorney must show at a forfeiture hearing, by a preponderance of the
12 evidence, that the property was used in the commission of a violation of section
13 39-30-02 or was used or possessed to facilitate such violation.
- 14 f. The owner of property may show by a preponderance of the evidence that the
15 owner did not know, and did not have reason to know, that the property was to be
16 used or possessed in the commission of any violation or that any of the
17 exceptions to forfeiture are applicable.
- 18 g. Unless the state's attorney makes the required showing, the court shall order the
19 property released to the owner. If the state's attorney has made such a showing,
20 the court may order:
- 21 (1) The property be destroyed by the agency that seized it or some other
22 agency designated by the court;
- 23 (2) The property be delivered and retained for use by the agency that seized it
24 or some other agency designated by the court; or
- 25 (3) The property be sold at public sale.
- 26 8. A copy of a forfeiture order must be filed with the sheriff of the county in which the
27 forfeiture occurs and with each federal or state department with which the property is
28 required to be registered. The order, when filed, constitutes authority for the issuance
29 to the agency to which the property is delivered and retained for use or to any
30 purchaser of the property of a title certificate, registration certificate, or other special
31 certificate as may be required by law considering the condition of the property.

- 1 9. Proceeds from the sale at public auction, after payment of all reasonable charges and
2 expenses incurred by the agency designated by the court to conduct the sale in
3 storing and selling the property, must be paid to the general fund of the county of
4 seizure.
- 5 10. No motor vehicle, either seized under section 39-30-03 or forfeited under this section,
6 may be released by the seizing agency or used or sold by an agency designated by
7 the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified,
8 forged, obliterated, or removed vehicle identification number is corrected by the
9 issuance and affixing of either assigned or replacement vehicle identification number
10 plates as may be appropriate under laws of this state.
- 11 11. No motor vehicle part having any altered, counterfeited, defaced, destroyed,
12 disguised, falsified, forged, obliterated, or removed vehicle identification number may
13 be disposed of upon forfeiture except by destruction. This subsection does not apply
14 to any motor vehicle part that is assembled with and constitutes part of a motor
15 vehicle.
- 16 12. No motor vehicle or motor vehicle part may be forfeited under this section solely on
17 the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or
18 motor vehicle part that is unidentifiable must be the subject of a written report sent by
19 the seizing agency to the department of transportation. The report must include a
20 description of the motor vehicle or motor vehicle part, its color, if any, the date, time,
21 and place of its seizure, the name of the person from whose possession or control it
22 was seized, the grounds for its seizure, and the location where it is held or stored.
- 23 13. When a seized unidentifiable motor vehicle or motor vehicle part has been held for
24 sixty days or more after the notice to the department of transportation specified in
25 subsection 12 has been given, the seizing agency, or its agent, shall cause the motor
26 vehicle or motor vehicle part to be sold at public sale to the highest bidder. Notice of
27 the time and place of sale must be posted in a conspicuous place for at least thirty
28 days prior to the sale on the premises where the motor vehicle or motor vehicle part
29 has been stored.
- 30 14. If a seized unidentifiable motor vehicle or motor vehicle part has an apparent value of
31 one thousand dollars or less, the seizing agency shall authorize the disposal of the

1 motor vehicle or motor vehicle part, provided that no such disposition may be made
2 less than sixty days after the date of seizure.

3 15. ~~The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part~~
4 ~~must be deposited in the general fund of the state or other governmental unit after~~
5 ~~deduction of any reasonable and necessary towing and storage charges.~~

6 16.4. Seizing agencies shall utilize their best efforts to arrange for the towing and storing of
7 motor vehicles and motor vehicle parts in the most economical manner possible. The
8 owner of a motor vehicle or a motor vehicle part may not be required to pay more than
9 the minimum reasonable costs of towing and storage.

10 17. ~~A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable~~
11 ~~must be held subject to the order of the court in which the criminal action is pending or,~~
12 ~~if a request for its release from such custody is made, until the state's attorney has~~
13 ~~notified the defendant or the defendant's attorney of such request and both the~~
14 ~~prosecution and defense have been afforded a reasonable opportunity for an~~
15 ~~examination of the property to determine its true value and to produce or reproduce,~~
16 ~~by photographs or other identifying techniques, legally sufficient evidence for~~
17 ~~introduction at trial or other criminal proceedings. Upon expiration of a reasonable time~~
18 ~~for the completion of the examination, which may not exceed fourteen days from the~~
19 ~~date of service upon the defense of the notice of request for return of property, the~~
20 ~~property must be released to the person making such request after satisfactory proof~~
21 ~~of the person's entitlement to possession. Notwithstanding the foregoing, upon~~
22 ~~application by either party with notice to the other, the court may order retention of the~~
23 ~~property if it determines that retention is necessary in the furtherance of justice.~~

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

27 19. ~~When an applicant for a certificate of title or salvage certificate presents to the~~
28 ~~department of transportation proof that the applicant purchased or acquired a motor~~
29 ~~vehicle at a public sale conducted pursuant to this section and such fact is attested to~~
30 ~~by the seizing agency, the department of transportation shall issue a certificate of title,~~
31 ~~salvage certificate for the motor vehicle upon receipt of the statutory fee, properly~~

1 ~~executed application for a certificate of title, or other certificate of ownership, and the~~
2 ~~affidavit of the seizing agency that a state-assigned number was applied for and~~
3 ~~affixed to the motor vehicle prior to the time that the motor vehicle was released by the~~
4 ~~seizing agency to the purchaser.~~

5 **SECTION 34. AMENDMENT.** Subsection 1 of section 39-30-05 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 1. The attorney general, any state's attorney, or any aggrieved person may institute
8 civil proceedings against any person in any court of competent jurisdiction seeking
9 relief from conduct constituting a violation of any provision of this chapter. If the
10 plaintiff in such a proceeding proves the alleged violation, or its threat, by a
11 preponderance of the evidence, any court of competent jurisdiction after due provision
12 for the rights of innocent persons, shall grant relief by entering any appropriate order
13 or judgment, including:
- 14 a. Ordering any defendant to be divested of any interest in any property in
15 accordance with chapter 29-31.1;
 - 16 b. Imposing reasonable restrictions upon the future activities or investments of any
17 defendant, including prohibiting any defendant from engaging in the same type of
18 endeavor as the defendant was engaged in previously;
 - 19 c. Ordering the suspension or revocation of a license, permit, or prior approval
20 granted by any public agency or any other public authority;
 - 21 d. Ordering the surrender of the charter of a corporation organized under the laws
22 of the state or the revocation of a certificate authorizing a foreign corporation to
23 conduct business within the state upon finding that the board of directors or a
24 managerial agent acting on behalf of the corporation, in conducting the affairs of
25 the corporation, has authorized or engaged in conduct made unlawful by this
26 chapter and that, for the prevention of future criminal conduct, the public interest
27 requires the charter of the corporation be surrendered and the corporation
28 dissolved or the certificate revoked; or
 - 29 e. Ordering the surrender of the certificate of organization of a limited liability
30 company organized under the laws of the state or the revocation of a certificate
31 authorizing a foreign limited liability company to conduct business within the state

1 upon finding that the board of governors or a managerial agent acting on behalf
2 of the limited liability company, in conducting the affairs of the limited liability
3 company, has authorized or engaged in conduct made unlawful by this chapter
4 and that, for the prevention of future criminal conduct, the public interest requires
5 that the certificate of organization of the limited liability company be surrendered
6 and the limited liability company dissolved or the certificate revoked.

7 **SECTION 35. AMENDMENT.** Section 40-11-13 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **40-11-13. Fines and forfeitures for violation of ordinances paid into treasury.**

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

14 **SECTION 36. AMENDMENT.** Section 47-21.1-04 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **47-21.1-04. Forfeiture and destruction of illegal recordings.**

17 Any recording produced in violation of this chapter, and any equipment used in the
18 production thereof, ~~shall be subject to forfeiture and destruction upon seizure by any state or~~
19 ~~local law enforcement agency or officer thereof~~is subject to forfeiture in accordance with chapter
20 29-31.1.

21 **SECTION 37. AMENDMENT.** Section 54-12-14 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **54-12-14. Assets forfeiture fund - Created - Purpose - Continuing appropriation.**

24 1. The attorney general assets ~~forfeiture~~ fund consists of funds appropriated by the
25 legislative assembly and ~~additional funds obtained from moneys, assets, and~~
26 ~~proceeds seized and forfeited pursuant to section 19-03.1-36~~, amounts received
27 through court proceedings as restitution, ~~amounts remaining from the forfeiture of~~
28 ~~property after the payment of expenses for forfeiture and sale authorized by law~~, and
29 amounts received from a multijurisdictional drug task force as defined in section
30 54-12-26. The amount of deposits into the fund which do not come from legislative
31 appropriation or from a multijurisdictional drug task force and are not payable to

1 another governmental entity may not exceed two hundred thousand dollars within a
2 biennium and any moneys in excess of that amount must be deposited in the general
3 fund. The funds are appropriated, as a standing and continuing appropriation, to the
4 attorney general for the following purposes:

5 a. For obtaining evidence for enforcement of any state criminal law or law relating to
6 the control of drug abuse.

7 b. For repayment of rewards to qualified local programs approved under section
8 12.1-32-02.2, if the information that was reported to the qualified local program
9 substantially contributed to forfeiture of the asset, and for paying, at the discretion
10 of the attorney general, rewards for other information or assistance leading to a
11 forfeiture under ~~section 19-03.1-36~~chapter 29-31.1.

12 c. ~~For paying, at the discretion of the attorney general, any expenses necessary to~~
13 ~~seize, detain, inventory, safeguard, maintain, advertise, or sell property seized,~~
14 ~~detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary~~
15 ~~expenses incident to the seizure, detention, or forfeiture of such property.~~

16 ~~d.~~ For equipping, for law enforcement functions, forfeited vessels, vehicles, and
17 aircraft retained as provided by law for official use by the state board of pharmacy
18 or a law enforcement agency.

19 ~~e.d.~~ For paying, at the discretion of the attorney general, overtime compensation to
20 agents of the bureau of criminal investigation incurred as a result of
21 investigations of violations of any state criminal law or law relating to the control
22 of drug abuse.

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

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

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

5 **SECTION 38. AMENDMENT.** Section 57-36-14 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-36-14. Procedure in case of seizure - Determination - Judgment.**

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

- 10 1. Upon the seizure of any cigarettes and within two days thereafter, the officer making
11 ~~such~~the seizure shall deliver an inventory of the property seized to the person from
12 whom ~~such~~the seizure was made, if known, and shall file a copy thereof with the tax
13 commissioner.
- 14 2. Within ten days after the date of the service of ~~such~~that inventory, the person from
15 whom the seizure was made, or any other person claiming an interest in the
16 ~~property~~cigarettes, equipment, or any other product taxed under this chapter seized,
17 may file a demand for a judicial determination of the question as to whether ~~such~~that
18 seized property was, or lawfully is, subject to seizure and forfeiture. Thereupon the tax
19 commissioner, within thirty days, shall institute an action in the district court of the
20 county where ~~such~~the seizure was made to determine the issue of forfeiture. ~~Such~~The
21 action must be brought in the name of the state of North Dakota and must be
22 prosecuted by the state's attorney, the tax commissioner, or the attorney general. The
23 district court shall hear ~~such~~the action as a court case and shall try and determine the
24 issues of law and fact involved.
- 25 3. ~~In case a judgment of forfeiture is entered, the tax commissioner, unless the judgment~~
26 ~~is stayed pending an appeal to the supreme court, as soon as convenient, shall~~
27 ~~destroy the forfeited property.~~
- 28 4. In case a demand for a judicial determination is made and no action is commenced as
29 provided in this section, such property must be released by the tax commissioner and
30 redelivered to the person entitled thereto.

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

4 ~~6.4.~~ In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or
5 other means of transportation pursuant to the provisions of this chapter, ~~the officer~~
6 ~~making the seizure shall file an inventory, and upon a demand for a judicial~~
7 ~~determination as provided in this section, the tax commissioner, within thirty days~~
8 ~~thereafter, shall commence an action in the district court of the county where such~~
9 ~~seizure was made to declare a forfeiture of such vehicle or other means of~~
10 ~~transportation, and such action~~forfeiture proceedings must be heard and determined
11 ~~as other forfeiture actions instituted under this chapter in accordance with chapter~~
12 29-31.1.

13 ~~7.5.~~ Whenever the tax commissioner is satisfied that any person from whom
14 ~~property~~cigarettes, equipment, or any other product taxed under this chapter is seized
15 was acting in good faith and without intent to evade the revenue provisions of this
16 chapter, the tax commissioner shall release the property seized without further legal
17 proceedings.

18 **SECTION 39. AMENDMENT.** Section 62.1-01-02 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **62.1-01-02. Forfeiture of dangerous weapon or firearm by person arrested and**
21 **convicted of crime.**

22 1. ~~Any~~A firearm or dangerous weapon used or possessed while in the commission of a
23 felony or a misdemeanor involving violence or intimidation must be seized and, upon
24 conviction and by motion, ~~forfeited to the jurisdiction in which the arrest was made or~~
25 ~~the jurisdiction in which the charge arose. Except as provided in chapter 29-01 for~~
26 ~~stolen property, the forfeited dangerous weapon may be, pursuant to court order, sold~~
27 ~~at public auction, sold or traded to other law enforcement agencies or dealers,~~
28 ~~retained for use, or destroyed~~is subject to forfeiture in accordance with chapter
29 29-31.1.

30 2. ~~Notwithstanding any other provision of law; and subject to the duty to return firearms~~
31 ~~to innocent owners under this section, section 29-31.1-02, and as provided in chapter~~

1 29-01 for stolen property; all firearms, as defined in section 62.1-01-01, which are
2 forfeited, recovered as stolen and unclaimed, or abandoned to any law enforcement
3 agency of this state or a political subdivision of this state, including the game and fish
4 department, or that are otherwise acquired by the state or a political subdivision of the
5 state and are no longer needed, shall be disposed of as provided in this section.
6 Except as provided in chapter 29-01 for stolen property, this section does not apply to
7 firearms that are seized or confiscated and disposed of under chapter 20.1-10.

- 8 3. a. Before the disposal of any firearm under this section, the agency with custody of
9 the firearm shall use its best efforts to determine if the firearm has been lost by,
10 or stolen or otherwise unlawfully obtained from, an innocent owner and, if so,
11 shall provide notification to the innocent owner of its custody of the firearm. An
12 innocent owner may also notify the agency to claim a firearm.
- 13 b. After notification, the agency shall return the firearm to its innocent owner
14 provided the owner submits sufficient proof of ownership, as determined by the
15 agency, and pays the costs, if any, of returning the firearm to the innocent owner.
16 Costs are limited to the actual costs of shipping to the innocent owner and
17 associated costs from any transfer and background check fees charged when
18 delivering the firearm to the innocent owner.
- 19 c. If six months elapse after notification to the innocent owner of the custody of the
20 firearm by an agency and the innocent owner fails to bear the costs of return of
21 his or her firearm or fails to respond to the agency notification, or if six months
22 elapse after notice of a claim by an innocent owner and the innocent owner fails
23 to bear the costs of return of the innocent owner's firearm or take away the
24 innocent owner's firearm, then the agency shall dispose of the firearm as
25 provided in this section.
- 26 4. a. Except as provided in subdivision b of subsection 3 or subsection 5, the agency
27 shall dispose of the firearms that it receives under subsection 2 by sale at public
28 auction to persons that may lawfully possess a firearm and persons licensed as
29 firearms collectors, dealers, importers, or manufacturers under the provisions of
30 18 U.S.C. section 921 et seq., and authorized to receive such firearms under the
31 terms of the licenses.

- 1 b. ~~The auction required by this subsection may occur online on a rolling basis or at~~
2 ~~live events, but in no event may the auction occur less frequently than once every~~
3 ~~year during any time the agency has an inventory of saleable firearms. The~~
4 ~~agency shall establish a procedure to notify persons of its auctions.~~
- 5 e. ~~The agency may not retain proceeds above that which are necessary to cover~~
6 ~~the costs of administering this subsection, with any surplus to be transferred to~~
7 ~~the general fund of the jurisdiction in which the agency is located, provided that~~
8 ~~an agency may be reimbursed for any firearms formerly in use by the agency that~~
9 ~~are sold under this section.~~
- 10 d. ~~Employees of the agency are not eligible to bid on the firearms at an auction~~
11 ~~conducted under this subsection, and except for the amounts authorized under~~
12 ~~subdivision c of this subsection, neither the agency nor its employees may retain~~
13 ~~any proceeds from any sale required by this subsection, nor may the agency or~~
14 ~~its employees retain any firearm required to be sold under this subsection.~~
- 15 5. a. ~~The requirements of subsection 4 do not apply to a firearm if there are not any~~
16 ~~bids from eligible persons received within six months from when bidding opened~~
17 ~~on the firearm, or if the agency director, sheriff, chief of police, or a designee of~~
18 ~~the official certifies that the firearm is unsafe for use because of wear, damage,~~
19 ~~age, or modification or because any federal or state law prohibits the sale or~~
20 ~~distribution of the firearm. The agency director, sheriff, chief of police, or a~~
21 ~~designee of the official, may transfer any of these firearms to the attorney~~
22 ~~general's crime laboratory for training or experimental purposes, or to a museum~~
23 ~~or historical society that displays these items to the public and is lawfully eligible~~
24 ~~to receive the firearm, or the firearm may be destroyed. The requirements of~~
25 ~~subsection 4 do not apply to a firearm and an agency director, sheriff, chief of~~
26 ~~police, or a designee of the official may destroy the firearm, if:~~
- 27 (1) ~~The firearm was used in a violent crime, in an accidental shooting, or a~~
28 ~~self-inflicted shooting resulting in the death of an individual;~~
- 29 (2) ~~There is not a claim for the firearm by an innocent owner; and~~
- 30 (3) ~~A family member of the deceased individual makes a written request for the~~
31 ~~destruction of the firearm.~~

- 1 b. ~~Agencies subject to the provisions of this subsection may establish a procedure~~
2 ~~to destroy firearms and may expend necessary funds for that purpose.~~
- 3 6. ~~All agencies subject to the provisions of this section shall keep records of the firearms~~
4 ~~acquired and disposed of~~forfeited ~~as provided in this section, as well as the proceeds~~
5 ~~of the sales and the disbursement of the proceeds, and shall maintain these records~~
6 ~~for not less than ten years from the date on which a firearm is disposed of or on which~~
7 ~~a disbursement of funds is made, as the case may be~~forfeited.
- 8 7. ~~Neither the state nor any political subdivision of the state, nor any of their officers,~~
9 ~~agents, and employees, is liable to any person, including the purchaser of a firearm,~~
10 ~~for personal injuries or damage to property arising from the sale or disposal of a~~
11 ~~firearm under subsection 4 or 5 of this section, unless an officer, agent, or employee of~~
12 ~~the state or political subdivision acted with gross negligence or recklessness.~~
- 13 8. ~~As used in this section, the term "innocent owner" means a person who:~~
- 14 a. ~~Did not beforehand know or in the exercise of ordinary care would not have~~
15 ~~known of the conduct which caused that person's firearm to be forfeited, seized,~~
16 ~~or abandoned to any law enforcement agency of the state or any political~~
17 ~~subdivision of the state, including the game and fish department;~~
- 18 b. ~~Did not participate in the commission of a crime or delinquent act involving that~~
19 ~~person's firearm;~~
- 20 c. ~~Legally owned and presently owns the firearm forfeited, seized, or abandoned;~~
21 ~~and~~
- 22 d. ~~Is authorized by state and federal law to receive and possess his or her firearm.~~

23 **SECTION 40. AMENDMENT.** Subsection 2 of section 62.1-05-01 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 25 2. A person who violates this section is guilty of a class C felony. Upon arrest of that
26 person, the firearm or dangerous weapon must be seized. Upon conviction of the
27 person and motion to the court in which the conviction occurred, the firearm or
28 dangerous weapon ~~must be forfeited to the jurisdiction in which the arrest was made.~~
29 ~~The firearm or dangerous weapon may be sold at public auction, retained for use, or~~
30 ~~destroyed pursuant to the court's order. If a qualified local program as defined under~~
31 ~~section 12.1-32-02.2 has paid a reward for information that resulted in forfeiture of the~~

1 item and the item has been sold, the jurisdiction shall, after payment of expenses for
2 forfeiture and sale, repay the qualified local program for the reward that it has paid is
3 subject to forfeiture in accordance with chapter 29-31.1.

4 **SECTION 41. REPEAL.** Sections 19-03.1-36.1, 19-03.1-36.2, 19-03.1-36.3, 19-03.1-36.4,
5 19-03.1-36.5, 19-03.1-36.6, 19-03.1-36.7, 20.1-10-04, and 29-31.1-10 and chapter 32-14 of the
6 North Dakota Century Code are repealed.

7 **SECTION 42. APPROPRIATION.** There is appropriated out of any moneys in the general
8 fund in the state treasury, not otherwise appropriated, the sum of \$40,000, or so much of the
9 sum as may be necessary, to the game and fish department for the purpose of providing a grant
10 for the administration of the report all poachers program, for the biennium beginning July 1,
11 2019, and ending June 30, 2021.