



## 2020 South Dakota Legislature

# Senate Bill 172

SENATE JUDICIARY ENGROSSED

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: **Senator Rusch**

1 **An Act to revise provisions regarding civil forfeiture.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **23A-51-1. Civil forfeiture prohibited.**

5 Notwithstanding any other law, there may be no civil forfeiture under South Dakota  
 6 law. Any forfeiture proceeding shall be held following the trial of the related criminal  
 7 offense.

8 **Section 2.** That a NEW SECTION be added:

9 **23A-51-2. Forfeiture of property--State must establish by clear and**  
 10 **convincing evidence.**

11 Property may be forfeited if the state establishes by clear and convincing evidence  
 12 that the property:

13 (1) Constitutes, or is derived from, proceeds of the underlying offense for which the  
 14 person was convicted; or

15 (2) Was used in any manner or part, to commit, or facilitate the commission of the  
 16 offense for which the person was convicted.

17 Nothing in this chapter prevents property from being forfeited by a plea agreement  
 18 approved by the presiding court, except that a plea agreement may not prevent the claims  
 19 of a person who has a security interest or is an owner under § 23A-51-6.

20 **Section 3.** That a NEW SECTION be added:

21 **23A-51-3. Certain provisions proceeded against under this chapter.**

22 Property forfeitable under § 22-24A-15 or 34-20B-70 shall be proceeded against  
 23 under this chapter.

1 **Section 4.** That a NEW SECTION be added:

2 **23A-51-4. Victim's rights not affected.**

3 Nothing in this chapter may be construed to deprive a victim under S.D. Const.,  
4 Art. VI, § 29 of the victim's right, upon request, to the prompt return of the victim's  
5 property when the property is no longer needed as evidence in the case.

6 **Section 5.** That a NEW SECTION be added:

7 **23A-51-5. Property taken deemed in custody of attorney general.**

8 Property taken or detained pursuant to this chapter is deemed to be in the custody  
9 of the attorney general, subject only to the orders and decrees of a court or official having  
10 jurisdiction over the property.

11 **Section 6.** That a NEW SECTION be added:

12 **23A-51-6. Person with interest in property--Proof of ownership--Proof of**  
13 **owner knowledge or consent.**

14 Any person, other than a defendant, asserting an interest in the property seized  
15 pursuant to this chapter, may petition the court at any time for the return of the person's  
16 property. To the extent that the person can establish by clear and convincing evidence  
17 that the person has an interest in the property seized, a thing of value is not subject to  
18 forfeiture under this chapter by reason of any act or omission, unless the state proves by  
19 clear and convincing evidence that the act was committed or the omission occurred with  
20 the owner's knowledge or consent. For property not subject to forfeiture, a court shall  
21 order the return of the property if the property is not reasonably required to be held for  
22 evidentiary reasons.

23 **Section 7.** That a NEW SECTION be added:

24 **23A-51-7. Notice of forfeiture proceeding.**

25 If the state determines to proceed with forfeiture of property, the state shall  
26 provide notice to the defendant and defendant's counsel before the trial for the underlying  
27 criminal proceeding. The notice shall provide that the state is seeking forfeiture of the  
28 property as an additional sanction related to the criminal violation and shall include:

29 (1) A description of the property seized;

30 (2) The date and place of the seizure;

- 1       (3) A description of the property's use in the commission of a crime or derivation from  
2           the commission of a crime; and  
3       (4) The name and address of the agency responsible for the seizure.

4       **Section 8.** That a NEW SECTION be added:

5           **23A-51-8. Forfeiture following conviction--Reasonable expenses of law**  
6           **enforcement and state--Waiver of conviction requirement.**

7           If the state has provided notice under § 23A-51-7 and the underlying prosecution  
8           resulted in a conviction, following the trial for the underlying criminal prosecution, the  
9           property may be forfeited in a court proceeding if the state establishes by clear and  
10          convincing evidence that the property is subject to forfeiture based on evidence received  
11          at the criminal trial or additional evidence offered after conviction.

12          In addition, the court shall determine the extent of reasonable expenses incurred  
13          by law enforcement and the state in investigating and prosecuting the underlying criminal  
14          case.

15          The court may waive the conviction requirement and grant permanent title to the  
16          state if the prosecuting authority files a motion no fewer than one hundred eighty days  
17          after seizure and shows by clear and convincing evidence that, before conviction, the  
18          defendant:

- 19          (1) Died;  
20          (2) Was deported by the United States government;  
21          (3) Is granted immunity or reduced punishment in exchange for testifying or assisting  
22          a law enforcement investigation or prosecution;  
23          (4) Fled the jurisdiction; or  
24          (5) Abandoned the property.

25       **Section 9.** That a NEW SECTION be added:

26           **23A-51-9. Sale and distribution of forfeited property.**

27           If property is forfeited under this chapter, the attorney general shall sell any  
28           forfeited property that is not required to be destroyed by law and that is not harmful to  
29           the public, and distribute the proceeds in the following order:

- 30           (1) The payment of fines or costs ordered to be paid by the defendant;  
31           (2) The payment of restitution to any victims of the underlying crime;

1       (3) The payment of reasonable expenses incurred by law enforcement and the state  
2       in investigating and prosecuting the underlying criminal case as determined by the  
3       court; and

4       (4) Any remaining balance shall be treated in the same manner as fines and distributed  
5       to the schools in the manner prescribed in S.D. Const., Art. VIII, § 3.

6       **Section 10.** That a NEW SECTION be added:

7               **23A-51-10. Written report of property seized.**

8               For any property seized under this chapter, the law enforcement officer or agent  
9               of the Division of Criminal Investigation making the seizure, or for any seizure by an officer  
10              or agent who is not an officer or agent of the state, the officer or agent shall provide a  
11              written report of the seizure to the attorney general on a form prescribed by the attorney  
12              general. The report under this section shall include:

13              (1) The date of the seizure;

14              (2) The nature of the property seized;

15              (3) A description of the property seized;

16              (4) The address or location where the seizure occurred and, if seized during a traffic  
17              stop on an interstate or state highway, the direction of the traffic flow: eastbound,  
18              westbound, southbound, or northbound;

19              (5) The reason or purpose of the seizure;

20              (6) The criminal offense alleged that led to the seizure;

21              (7) The disposition of the property seized;

22              (8) The estimated value of the property seized; and

23              (9) For property seized without court process, the cause of the seizure.

24       **Section 11.** That a NEW SECTION be added:

25               **23A-51-11. Report to auditor general--Report published.**

26               Before February first of each year, the attorney general shall provide a report to  
27               the auditor general that includes the nature and extent of all seizures under this chapter  
28               during the previous calendar year. The attorney general shall publish the report provided  
29               under this section on the attorney general's website.

30       **Section 12.** That a NEW SECTION be added:

1           **23A-51-12. Relinquishing property seized to federal agency prohibited.**

2           A local or state law enforcement agency may not refer, transfer, or otherwise  
3 relinquish possession of property seized under state law to a federal agency by way of  
4 adoption of the seized property or other means by the federal agency for the purpose of  
5 the property's forfeiture under the federal Controlled Substances Act, Public Law 91-513,  
6 or other federal law.

7           **Section 13.** That §§ 23A-49-1 through 23A-49-20 be REPEALED.

8           **Section 14.** That § 22-24A-15 be AMENDED:

9           **22-24A-15. Property subject to forfeiture.**

10           Any person who is convicted of an offense under §§ 22-19A-1, 22-24A-1 to 22-  
11 24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to  
12 43-43B-3, inclusive, and 22-23-2, 22-23-8, and 22-23-9, or under 18 U.S.C. §§ 1466A,  
13 1470, 1591, 2251, 2251A, 2252, 2252A, 2252B, 2252C, 2260, 2421, 2422, and 2423, as  
14 of January 1, 2016, shall forfeit to the state, pursuant to chapter ~~23A-49~~ 23A-51, the  
15 person's interest in the following and no property right exists in them:

- 16           (1) Any photograph, film, videotape, book, digital media or visual depiction that has  
17 been manufactured, distributed, purchased, possessed, acquired, or received in  
18 violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-  
19 14.1, and 43-43B-1 to 43-43B-3, inclusive;
- 20           (2) Any material, product, and equipment of any kind that is used or intended for use  
21 in manufacturing, processing, publishing, selling, possessing, or distributing any  
22 visual depiction proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-  
23 24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
- 24           (3) Any property that is used, or intended for use, as a container for property described  
25 in subdivisions (1) and (2) of this section, including any computers and digital  
26 media;
- 27           (4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or  
28 conceal, or that is used, or intended for use, to transport, or in any manner facilitate  
29 any activity proscribed under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-  
30 24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3,  
31 inclusive;
- 32           (5) Any book, record, and research, including microfilm, tape, and data that is used, or  
33 intended for use, in violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive,

- 1 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3,  
 2 inclusive;
- 3 (6) Any funds or other things of value used for the purposes of unlawfully carrying out  
 4 any activity proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-  
 5 1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive,  
 6 and 22-23-2, 22-23-8, and 22-23-9; and
- 7 (7) Any asset, interest, profit, income, and proceed acquired or derived from the  
 8 unlawful activity proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-  
 9 24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3,  
 10 inclusive, and 22-23-2, 22-23-8, and 22-23-9.

11 Any property described in subdivision (1) of this section shall be deemed contraband  
 12 and shall be summarily forfeited to the state. Property described in subdivisions (2), (3),  
 13 ~~(4)~~, (5), (6), and (7) is subject to forfeiture under the terms of ~~§ 23A-49-14~~, and property  
 14 ~~described in subdivision (4) is subject to forfeiture under the terms of § 23A-49-15~~ chapter  
 15 23A-51.

16 **Section 15.** That § 34-20B-70 be AMENDED:

17 **34-20B-70. Property subject to forfeiture.**

18 The following are subject to forfeiture pursuant to chapter ~~23A-49~~ 23A-51 and no  
 19 property right exists in them:

- 20 (1) All controlled drugs and substances and marijuana which have been manufactured,  
 21 distributed, dispensed, or acquired in violation of the provisions of this chapter or  
 22 chapter 22-42;
- 23 (2) All raw materials, products, and equipment of any kind which are used or intended  
 24 for use, in manufacturing, compounding, processing, importing, or exporting any  
 25 controlled drug or substance or marijuana in violation of the provisions of this  
 26 chapter or chapter 22-42;
- 27 (3) All property which is used, or intended for use, as a container for property described  
 28 in subdivisions (1) and (2);
- 29 (4) All conveyances including aircraft, vehicles, or vessels, which transport, possess, or  
 30 conceal, or which are used, or intended for use, to transport, or in any manner  
 31 facilitate the transportation, sale, receipt, possession, or concealment of marijuana  
 32 in excess of one-half pound or any quantity of any other property described in  
 33 subdivision (1) or (2), except as provided in §§ 34-20B-71 to 34-20B-73, inclusive.  
 34 This subdivision includes those instances in which a conveyance transports,

1 possesses or conceals marijuana or a controlled substance as described herein  
2 without the necessity of showing that the conveyance is specifically being used to  
3 transport, possess, or conceal or facilitate the transportation, possession, or  
4 concealment of marijuana or a controlled substance in aid of any other offense;

5 (5) All books, records, and research, including formulas, microfilm, tapes, and data  
6 which are used, or intended for use, in violation of this chapter;

7 (6) Any funds or other things of value used for the purposes of unlawfully purchasing,  
8 attempting to purchase, distributing, or attempting to distribute any controlled drug  
9 or substance or marijuana;

10 (7) Any assets, interest, profits, income, and proceeds acquired or derived from the  
11 unlawful purchase, attempted purchase, distribution, or attempted distribution of  
12 any controlled drug or substance or marijuana.

13 Property described in subdivision (1) shall be deemed contraband and shall be  
14 summarily forfeited to the state, property described in subdivisions (2), (3), ~~(4)~~, (5), (6),  
15 and (7) is subject to forfeiture under the terms of ~~§ 23A-49-14~~, and property described in  
16 subdivision ~~(4)~~ is subject to forfeiture under the terms of ~~§ 23A-49-15~~ chapter 23A-51.