AN ACT

ENTITLED, An Act to revise and consolidate certain civil forfeiture provisions.

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

Section 1. That the code be amended by adding a NEW SECTION to read:

All real property, including any right, title, and interest in the whole of any platted lot or tract of land which is measured in three hundred twenty acre increments, or all of any smaller amount and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of any crime listed in chapters 34-20B or 22-24A, is subject to forfeiture under this section. Forfeiture under this Act of real property encumbered by a bona fide security interest is subject to the interest of the secured party unless the secured party had actual knowledge of the act upon which the forfeiture is based. Notice of forfeiture proceedings shall be given each owner or secured party whose right, title, or interest is of record, at the time of the seizure, with the secretary of state or the register of deeds in the county where the real property is located. A person claiming a security interest bears the burden of establishing that interest by a preponderance of the evidence. No real property may be forfeited under the provisions of this Act by reason of any act committed by a person other than an owner of the property unless that owner had actual knowledge that the real property was used or intended for use in any of the manners set forth in the chapters listed in section 20 of this Act.

Section 2. That the code be amended by adding a NEW SECTION to read:

Notwithstanding the provisions of subdivision 34-20B-70(4) or 22-24A-15(4), no conveyance used by any person as a common carrier in the transaction of business as a common carrier may be forfeited under the provisions of this Act, unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to a violation of any crime in the chapters listed in section 20 of this Act.

Section 3. That the code be amended by adding a NEW SECTION to read:

Notwithstanding the provisions of subdivision 34-20B-70(4) or 22-24A-15(4), no conveyance may be forfeited under the provisions of this Act, by reason of any act or omission established by the owner of the conveyance to have been committed or omitted by any person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state, or while the conveyance was rented or leased from a motor vehicle dealer or a leasing or rental agency and the dealer or agency had no knowledge that the conveyance was being used or intended for use, to transport or in any manner facilitate the commission of any crime in the chapters listed in section 20 of this Act.

Section 4. That the code be amended by adding a NEW SECTION to read:

Notwithstanding the provisions of subdivision 34-20B-70(4) or 22-24A-15(4), no conveyance may be forfeited under the provisions of this Act, by reason of any act committed or omitted by a person other than an owner of the conveyance unless the owner knew or in the exercise of ordinary care should have known that the conveyance was being used or was intended for use to facilitate the commission of any crime in the chapters listed in section 20 of this Act.

Section 5. That the code be amended by adding a NEW SECTION to read:

To the extent of the interest of an owner, a thing of value is not subject to forfeiture under this Act by reason of any act or omission that is established by the owner of the item to have been committed or omitted without the owner's knowledge or consent.

Section 6. That the code be amended by adding a NEW SECTION to read:

Any victim of a crime as described in the provisions of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, and 43-43B-1 to 43-43B-3, inclusive, is protected against loss of property through forfeiture by victim immunity as described in § 22-48-2.

Section 7. That the code be amended by adding a NEW SECTION to read:

Any property subject to forfeiture under this Act may be seized by any law enforcement officer or designated agent of the Division of Criminal Investigation upon process issued by any court having jurisdiction over the property.

Section 8. That the code be amended by adding a NEW SECTION to read:

The seizure of any property subject to forfeiture under this Act may be made without process issued under section 7 of this Act if:

(1) The seizure is incident to an arrest or a search under a search warrant or to an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this Act;

(3) The law enforcement officer or agent has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The law enforcement officer or agent has probable cause to believe that the property has been used or intended to be used in violation of crimes in the chapters listed in section 20 of this Act.

Section 9. That the code be amended by adding a NEW SECTION to read:

If a seizure pursuant to section 7 or subdivisions (1), (3), or (4) of section 8 of this Act occurs, the attorney general shall institute, within sixty days of the seizure, the proceedings pursuant to sections 14 or 15 of this Act.

Section 10. That the code be amended by adding a NEW SECTION to read:

No property taken or detained pursuant to this Act is replevinable or subject to an action in claim and delivery. However, the property is deemed to be in the custody of the attorney general, subject only to the orders and decrees of the court or the official having jurisdiction over the property.

Section 11. That the code be amended by adding a NEW SECTION to read:

If property is seized under the provisions of this Act, the attorney general may:

(1) Place the property under seal;

(2) Remove the property to a place designated by the attorney general; or

(3) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Section 12. That the code be amended by adding a NEW SECTION to read:

Any property, as described in subdivisions 34-20B-70(4), (6), and (7) or 22-24A-15(4), (6), and (7), or section 1 of this Act, that is subject to a bona fide perfected security interest at the time of seizure of the personal property, at the time the offense was committed, and is forfeited under the provisions of section 7 to section 19 of this Act, inclusive, shall be taken by the attorney general subject to the security interest. The attorney general shall, within sixty days of the forfeiture of the property:

(1) Return the property to the possession of the secured party;

(2) Satisfy fully all indebtedness to the secured party secured by the property; or

(3) Return the property to the possession of the secured party and require the secured party to sell the property within sixty days of receipt of the property from the attorney general at public or private sale and retain all proceeds necessary to satisfy fully all indebtedness of the secured party secured by the property together with all reasonable costs of the sale and remit to the attorney general all excess proceeds within thirty days of the sale.

If the secured party knew or should have known, that the property was being used or intended for use to facilitate in the commission of a crime, the provisions of this section do not apply to the property.

Section 13. That the code be amended by adding a NEW SECTION to read:

Any forfeiture proceeding is a civil action against the property seized and the standard of proof

shall be preponderance of the evidence.

Section 14. That the code be amended by adding a NEW SECTION to read:

If property described in subdivisions 34-20B-70(2), (3), (5), (6), and (7) or 22-24A-15(2), (3), (5), (6), and (7) is seized, the attorney general shall file a summons and complaint for forfeiture of the property in circuit court for the county in which the property was seized or is being held. The proceedings shall be brought in the name of the state. The complaint shall describe the property, and state the property's location, the property's present custodian, the name of each owner if known, the name of each party in interest if known or of legal record, and allege the essential elements of the violation that is claimed to exist. The complaint shall conclude with a prayer to enforce the forfeiture. Notice of a forfeiture proceeding shall be given to each known owner and known party in interest by serving a copy of the summons and complaint in accordance with section 15 of this Act. The procedure governing the proceedings, except as provided in this section, shall be the same as that prescribed for civil proceedings by chapter 15-6.

Section 15. That the code be amended by adding a NEW SECTION to read:

If property described in section 1 of this Act or subdivision 34-20B-70(4) or 22-24A-15(4) is seized, the attorney general shall file a summons and complaint for forfeiture of the property in circuit court of the county in which the property was seized or is being held. The proceedings shall be brought in the name of the state. The complaint shall describe the property, and state the property's location, the property's present custodian, the name of each owner if known, the name of each party in interest if known or of legal record, and allege the essential elements of the violation that is claimed to exist. The complaint shall conclude with a prayer to enforce the forfeiture. The procedure governing the proceedings, except as provided by this section, shall be the same as that prescribed for civil proceedings by chapter 15-6. Notice of forfeiture proceedings shall be given to each owner and party in interest whose right, title, or interest is of record as provided in section 1

of this Act or to the Department of Revenue or the Division of Aeronautics or a similar department of another state if the records are maintained in that state by serving a copy of the summons and complaint upon each known owner and known party in interest in accordance with title 15.

Section 16. That the code be amended by adding a NEW SECTION to read:

If a person as described in sections 14 and 15 of this Act is released on bail as provided by chapter 23A-43, a summons and complaint for forfeiture of the property may be served by mailing the summons and complaint by certified mail, no return receipt required, to the address left by the person upon release from confinement.

Section 17. That the code be amended by adding a NEW SECTION to read:

Within thirty days after the service of the notice pursuant to section 14 or section 15 of this Act, the owner of the seized property and any other party in interest or claimant may file a verified answer to the claims described in the complaint instituting the forfeiture proceedings.

Section 18. That the code be amended by adding a NEW SECTION to read:

If at the end of thirty days after the notice has been served there is no verified answer on file and no claimant has appeared to defend the complaint, the court shall order the disposition of the seized property as requested in the complaint.

Section 19. That the code be amended by adding a NEW SECTION to read:

If a verified answer is filed, the forfeiture proceedings shall be set for a trial on a day not more than one hundred eighty days from the date of the filing. Any party may demand a trial by jury for the forfeiture proceedings pursuant to subsection 15-6-38(b). At the trial, the state shall establish probable cause for instituting the forfeiture action following which any owner, party in interest, or claimant who has filed a verified answer has the burden of proving that the property seized is not subject to forfeiture under this Act. If the court or a jury finds that the property is not subject to forfeiture under this Act, the court shall order the property released to the owner, party in interest,

or claimant according to the person's right, title, or interest. The court shall order the property forfeited if the court or a jury determines that the property was subject to forfeiture.

Section 20. That the code be amended by adding a NEW SECTION to read:

If property is forfeited under this Act, the attorney general may:

(1) Retain the property for official use;

(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, provided that the proceeds be disposed of for payment of all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. All money seized or remaining proceeds from the sale of any forfeited property shall be paid into the following funds:

(a) If seized pursuant to a violation of chapters 34-20B or 22-42, proceeds shall go to the drug control fund;

(b) If seized pursuant to a violation of chapters 22-24A, 22-23, 22-19A, 22-24B, 43-43B, or 23A-27, proceeds shall be used to reimburse the actual costs of the criminal investigation and prosecution, and any amount over those costs shall be used to satisfy any civil judgments received by the victims. All remaining proceeds shall be paid to the South Dakota internet crimes against children fund; and

(c) If not otherwise specified by this Act, proceeds shall go to the general fund; or

(3) If property is seized pursuant to a violation of chapters 34-20B or 22-42, the attorney general may forward it to the Division of Criminal Investigation for disposition. Such disposition may include delivery for medical or scientific use to any federal or state agency under regulations of the United States attorney general.

Section 21. That § 34-20B-70 be amended to read:

34-20B-70. The following are subject to forfeiture pursuant to this Act and no property right

exists in them:

(1) All controlled drugs and substances and marijuana which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this chapter or chapter 22-42;

(2) All raw materials, products, and equipment of any kind which are used or intended for use, in manufacturing, compounding, processing, importing, or exporting any controlled drug or substance or marijuana in violation of the provisions of this chapter or chapter 22-42;

(3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);

(4) All conveyances including aircraft, vehicles, or vessels, which transport, possess, or conceal, or which are used, or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession, or concealment of marijuana in excess of one-half pound or any quantity of any other property described in subdivision (1) or (2), except as provided in §§ 34-20B-71 to 34-20B-73, inclusive. This subdivision includes those instances in which a conveyance transports, possesses or conceals marijuana or a controlled substance as described herein without the necessity of showing that the conveyance is specifically being used to transport, possess, or conceal or facilitate the transportation, possession, or concealment of marijuana or a controlled substance in aid of any other offense;

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

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

substance or marijuana;

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

Property described in subdivision (1) shall be deemed contraband and shall be summarily forfeited to the state, property described in subdivisions (2), (3), (5), (6), and (7) is subject to forfeiture under the terms of section 14 of this Act, and property described in subdivision (4) is subject to forfeiture under the terms of section 15 of this Act.

Section 22. That § 22-24A-15 be amended to read:

22-24A-15. Any person who is convicted of an offense under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive, and 22-23-2, 22-23-8, and 22-23-9 shall forfeit to the state, pursuant to this Act, the person's interest in the following and no property right exists in them:

(1) Any photograph, film, videotape, book, digital media or visual depiction that has been manufactured, distributed, purchased, possessed, acquired, or received in violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;

(2) Any material, product, and equipment of any kind that is used or intended for use in manufacturing, processing, publishing, selling, possessing, or distributing any visual depiction proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;

(3) Any property that is used, or intended for use, as a container for property described in subdivisions (1) and (2) of this section, including any computers and digital media;

(4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or

conceal, or that is used, or intended for use, to transport, or in any manner facilitate any activity proscribed under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;

(5) Any book, record, and research, including microfilm, tape, and data that is used, or intended for use, in violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;

(6) Any funds or other things of value used for the purposes of unlawfully carrying out any activity proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive, and 22-23-2, 22-23-8, and 22-23-9; and

(7) Any asset, interest, profit, income, and proceed acquired or derived from the unlawful activity proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive, and 22-23-2, 22-23-8, and 22-23-9.

Any property described in subdivision (1) of this section shall be deemed contraband and shall be summarily forfeited to the state. Property described in subdivisions (2), (3), (5), (6), and (7) is subject to forfeiture under the terms of section 14 of this Act, and property described in subdivision (4) is subject to forfeiture under the terms of section15 of this Act.

Section 23. That § 34-20B-70.1 be repealed.

Section 24. That § 34-20B-71 be repealed.

Section 25. That § 34-20B-72 be repealed.

Section 26. That § 34-20B-73 be repealed.

Section 27. That § 34-20B-74 be repealed.

Section 28. That § 34-20B-75 be repealed.

Section 29. That § 34-20B-76 be repealed.

Section 30. That § 34-20B-77 be repealed.

Section 31. That § 34-20B-78 be repealed.

Section 32. That § 34-20B-79 be repealed.

Section 33. That § 34-20B-80 be repealed.

Section 34. That § 34-20B-84 be repealed.

Section 35. That § 34-20B-85 be repealed.

Section 36. That § 34-20B-86 be repealed.

Section 37. That § 34-20B-87 be repealed.

Section 38. That § 34-20B-88 be repealed.

Section 39. That § 34-20B-89 be repealed.

Section 40. That § 22-24A-15.1 be repealed.

Section 41. That § 22-24A-15.2 be repealed.

Section 42. That § 22-24A-15.3 be repealed.

Section 43. That § 22-24A-15.4 be repealed.

Section 44. That § 22-24A-15.5 be repealed.

Section 45. That § 22-24A-21 be repealed.

Section 46. That § 22-24A-22 be repealed.

Section 47. That § 22-24A-23 be repealed.

Section 48. That § 22-24A-24 be repealed.

Section 49. That § 22-24A-25 be repealed.

Section 50. That § 22-24A-26 be repealed.

Section 51. That § 22-24A-27 be repealed.

Section 52. That § 22-24A-28 be repealed.

Section 53. That § 22-24A-29 be repealed.

Section 54. That § 22-24A-30 be repealed.

Section 55. That § 22-24A-31 be repealed.

Section 56. That § 22-24A-32 be repealed.

Section 57. That § 22-24A-33 be repealed.

Section 58. That § 22-24A-34 be repealed.

An Act to revise and consolidate certain civil forfeiture provisions.

I certify that the attached Act originated in the

HOUSE as Bill No. 1088

_____
Chief Clerk

_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1088
File No. ____
Chapter No. _____

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State