



2020 South Dakota Legislature

Senate Bill 172

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3 **Section 1.** That § 23A-49-13 be REPEALED.

4 **23A-49-13. Civil action--Standard of proof.**

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

6 **23A-49-13.1. Property subject to forfeiture--Plea agreements.**

7 Property may only be forfeited if:

8 (1) The criminal prosecution that is the basis for the forfeiture resulted in a conviction;

9 and

10 (2) The state establishes by clear and convincing evidence that the property:

11 (a) Constitutes, or is derived directly from, proceeds of the underlying offense
 12 for which the person was convicted; or

13 (b) Was used in any manner or part, to commit, or to facilitate the commission
 14 of the offense for which the person was convicted.

15 Nothing in this chapter prevents property from being forfeited by plea agreement
 16 approved by the presiding court except that a plea agreement may not prevent the claims
 17 of any person who has a security interest under § 23A-49-12 or who is an owner under
 18 § 23A-49-5.

19 **Section 3.** That § 23A-49-19 be AMENDED:

20 **23A-49-19. Trial--Disposition of property by court.**

21 If a verified answer is filed, the forfeiture proceedings shall be set for a trial on a
 22 day not more than one hundred eighty days from the date of the filing. Any party may
 23 demand a trial by jury for the forfeiture proceedings pursuant to § 15-6-38(b). At the trial,
 24 the state shall establish probable cause for instituting the forfeiture action following which

1 ~~any owner, party in interest, or claimant who has filed a verified answer~~ the state has the
2 burden of proving that the property seized is ~~not~~ subject to forfeiture under this chapter.
3 If the court or a jury finds that the property is not subject to forfeiture under this chapter,
4 the court shall order the property released to the owner, party in interest, or claimant
5 according to the person's right, title, or interest. The court shall order the property
6 forfeited if the court or a jury determines that the property was subject to forfeiture.

7 **Section 4.** That § 23A-49-5 be AMENDED:

8 **23A-49-5. Interest in seized property--Establishment--Evidence of acts or**
9 **omissions.**

10 A person, other than a defendant or a secured-interest holder, asserting an interest
11 in the property seized shall establish by clear and convincing evidence that the person has
12 an interest in the property seized. To the extent of the interest ~~of established by an owner~~
13 under this section, a thing of value is not subject to forfeiture under this chapter ~~by reason~~
14 ~~of any act or omission that is established by the owner of the item to have been unless~~
15 the state proves by clear and convincing evidence that the act or omission was committed
16 or omitted ~~without~~ with the owner's knowledge or consent.

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

18 **23A-49-21. Seized property--Written report--Contents.**

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

- 24 (1) The date of the seizure;
25 (2) The nature of the property seized;
26 (3) A description of the property seized;
27 (4) The address or location where the seizure occurred;
28 (5) The reason or purpose of the seizure;
29 (6) The disposition of the property seized;
30 (7) The estimated value of the property seized; and
31 (8) For any seizure under § 23A-49-8, the cause of the seizure.

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

1 **23A-49-22. Annual report to auditor general--Publication.**

2 Before February first of each year, the attorney general shall provide a report to
3 the auditor general that includes the nature and extent of all seizures under this chapter
4 during the previous calendar year. The auditor general shall publish on the website
5 maintained by the Department of Legislative Audit the report provided under this section.

6 **Section 7.** That § 23A-49-20 be AMENDED:

7 **23A-49-20. Forfeited property--Disposition of property.**

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

- 9 (1) Retain the property for official use;
- 10 (2) Sell any forfeited property ~~which~~that is not required to be destroyed by law and
11 ~~which~~that is not harmful to the public, provided that the proceeds be disposed of
12 for payment of all proper expenses of the proceedings for forfeiture and sale
13 including expenses of seizure, maintenance of custody, advertising, and court costs.
14 All money seized or remaining proceeds from the sale of any forfeited property shall
15 be paid into the following funds:
- 16 (a) ~~If seized pursuant to a violation of chapters 34-20B or 22-42, proceeds shall~~
17 ~~go to the drug control fund;~~
- 18 ~~(b)~~—If seized pursuant to a violation of chapters 22-24A, 22-23, 22-19A, 22-24B,
19 43-43B, or 23A-27, proceeds shall be used to reimburse the actual costs of
20 the criminal investigation and prosecution, and any amount over those costs
21 shall be used to satisfy any civil judgments received by the victims. All
22 remaining proceeds shall be paid to the South Dakota internet crimes against
23 children fund; and
- 24 ~~(c)~~(b) If not otherwise specified by this chapter, proceeds shall go to the general
25 fund; or
- 26 (3) If property is seized pursuant to a violation of chapters 34-20B or 22-42, the
27 attorney general may forward it to the Division of Criminal Investigation for
28 disposition. Such disposition may include delivery for medical or scientific use to
29 any federal or state agency under regulations of the United States attorney general.