

## 2020 South Dakota Legislature

**Senate Bill 172****AMENDMENT 172C FOR THE SENATE JUDICIARY BILL**

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:

1           **23A-51-3. Certain provisions proceeded against under this chapter.**

2           Property forfeitable under § 22-24A-15 or 34-20B-70 shall be proceeded against  
3 under this chapter. ~~No property rights exist in contraband. Contraband is subject to seizure~~  
4 and shall be disposed of according to state law.

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

6           **23A-51-4. Victim's rights not affected.**

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

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

11           **23A-51-5. Property taken deemed in custody of attorney general.**

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

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

16           **23A-51-6. Person with interest in property--Proof of ownership--Proof of**  
17 **owner knowledge or consent.**

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

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

28           **23A-51-7. Notice of forfeiture proceeding.**

29           If the state determines to proceed with forfeiture of property, the state shall  
30 provide notice to the defendant ~~and~~, defendant's counsel, and any person with a perfected

- 1 security interest in the property before the trial for the underlying criminal proceeding.
- 2 The notice shall provide that the state is seeking forfeiture of the property as an additional
- 3 sanction related to the criminal violation and shall include:
- 4 (1) A description of the property seized;
- 5 (2) The date and place of the seizure;
- 6 (3) A description of the property's use in the commission of a crime or derivation from
- 7 the commission of a crime; and
- 8 (4) The name and address of the agency responsible for the seizure.
- 9

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

11 **23A-51-8. Forfeiture following conviction--Reasonable expenses of law**

12 **enforcement and state--Waiver of conviction requirement.**

13 If the state has provided notice under § 23A-51-7 and the underlying prosecution

14 resulted in a conviction, following the trial for the underlying criminal prosecution, the

15 property may be forfeited in a court proceeding if the state establishes by clear and

16 convincing evidence that the property is subject to forfeiture based on evidence received

17 at the criminal trial or additional evidence offered after conviction.

18 In addition, the court shall determine the extent of reasonable expenses incurred

19 by law enforcement and the state in investigating and prosecuting the underlying criminal

20 case.

21 The court may waive the conviction requirement and grant permanent title to the

22 state if the prosecuting authority files a motion no fewer than one hundred eighty days

23 after seizure and shows by clear and convincing evidence that, before conviction, the

24 defendant:

- 25 (1) Died;
- 26 (2) Was deported by the United States government;
- 27 (3) Is granted immunity or reduced punishment in exchange for testifying or assisting
- 28 a law enforcement investigation or prosecution;
- 29 (4) Fled the jurisdiction; or
- 30 (5) Abandoned the property.

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

1           **23A-51-9. Sale and distribution of forfeited property.**

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

5           ~~(1) The payment of fines or costs ordered to be paid by the defendant;~~

6           ~~(2) The payment of restitution to any victims of the underlying crime;~~

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

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

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

13           ~~(1) Retain the property for official use;~~

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

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

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

28           ~~(c) If not otherwise specified by this chapter, proceeds shall go to the general~~  
29 ~~fund; or~~

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

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

1           **23A-51-10. Written report of property seized.**

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

7           (1) The date of the seizure;

8           (2) The nature of the property seized;

9           (3) A description of the property seized;

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

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

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

15          (7) The disposition of the property seized;

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

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

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

19           **23A-51-11. Report to auditor general--Report published.**

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

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

25           **23A-51-12. Conveyance used in common carrier business not subject to**  
26 **forfeiture--Exception.**

27           Notwithstanding the provisions of subdivision 34-20B-70(4) or 22-24A-15(4), no  
28 conveyance used by any person as a common carrier in the transaction of business as a  
29 common carrier may be forfeited under the provisions of this chapter, unless it appears  
30 that the owner or other person in charge of the conveyance was a consenting party or  
31 privity to a violation of any crime in the chapters listed in § 23A-51-9.

32   **Section 13.** That a NEW SECTION be added:

1           **23A-51-13. Stolen and leased conveyances not subject to forfeiture--**

2           **Exception.**

3           Notwithstanding the provisions of subdivision 34-20B-70(4) or 22-24A-15(4), no  
4           conveyance may be forfeited under the provisions of this chapter, by reason of any act or  
5           omission established by the owner of the conveyance to have been committed or omitted  
6           by any person other than the owner while the conveyance was unlawfully in the possession  
7           of a person other than the owner in violation of the criminal laws of the United States, or  
8           of any state, or while the conveyance was rented or leased from a motor vehicle dealer or  
9           a leasing or rental agency and the dealer or agency had no knowledge that the conveyance  
10          was being used or intended for use, to transport or in any manner facilitate the commission  
11          of any crime in the chapters listed in § 23A-51-9.

12          **Section 14.** That a NEW SECTION be added:

13           **23A-51-14. Conveyance not subject to forfeiture for acts or omissions of**  
14           **nonowner--Exception.**

15           Notwithstanding the provisions of subdivision 34-20B-70(4) or 22-24A-15(4), no  
16           conveyance may be forfeited under the provisions of this chapter, by reason of any act  
17           committed or omitted by a person other than an owner of the conveyance unless the  
18           owner knew or in the exercise of ordinary care should have known that the conveyance  
19           was being used or was intended for use to facilitate the commission of any crime in the  
20           chapters listed in § 23A-51-9.

21          **~~Section 12. That a NEW SECTION be added:~~**

22          ~~Relinquishing property seized to federal agency prohibited.~~

23          ~~A local or state law enforcement agency may not refer, transfer, or otherwise relinquish~~  
24          ~~possession of property seized under state law to a federal agency by way of adoption of the~~  
25          ~~seized property or other means by the federal agency for the purpose of the property's~~  
26          ~~forfeiture under the federal Controlled Substances Act, Public Law 91-513, or other federal~~  
27          ~~law.~~

28          **Section 15.** That §§ 23A-49-1 through 23A-49-20 be REPEALED.

29          **Section 16.** That § 22-24A-15 be AMENDED:

1           **22-24A-15. Property subject to forfeiture.**

2           Any person who is convicted of an offense under §§ 22-19A-1, 22-24A-1 to 22-  
3 24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to  
4 43-43B-3, inclusive, and 22-23-2, 22-23-8, and 22-23-9, or under 18 U.S.C. §§ 1466A,  
5 1470, 1591, 2251, 2251A, 2252, 2252A, 2252B, 2252C, 2260, 2421, 2422, and 2423, as  
6 of January 1, 2016, shall forfeit to the state, pursuant to chapter ~~23A-49~~ 23A-51, the  
7 person's interest in the following and no property right exists in them:

- 8           (1) Any photograph, film, videotape, book, digital media or visual depiction that has  
9 been manufactured, distributed, purchased, possessed, acquired, or received in  
10 violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-  
11 14.1, and 43-43B-1 to 43-43B-3, inclusive;
- 12           (2) Any material, product, and equipment of any kind that is used or intended for use  
13 in manufacturing, processing, publishing, selling, possessing, or distributing any  
14 visual depiction proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-  
15 24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
- 16           (3) Any property that is used, or intended for use, as a container for property described  
17 in subdivisions (1) and (2) of this section, including any computers and digital  
18 media;
- 19           (4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or  
20 conceal, or that is used, or intended for use, to transport, or in any manner facilitate  
21 any activity proscribed under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-  
22 24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3,  
23 inclusive;
- 24           (5) Any book, record, and research, including microfilm, tape, and data that is used, or  
25 intended for use, in violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive,  
26 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3,  
27 inclusive;
- 28           (6) Any funds or other things of value used for the purposes of unlawfully carrying out  
29 any activity proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-  
30 1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive,  
31 and 22-23-2, 22-23-8, and 22-23-9; and
- 32           (7) Any asset, interest, profit, income, and proceed acquired or derived from the  
33 unlawful activity proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-  
34 24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3,  
35 inclusive, and 22-23-2, 22-23-8, and 22-23-9.

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

6 **Section 17.** That § 34-20B-70 be AMENDED:

7 **34-20B-70. Property subject to forfeiture.**

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

- 10 (1) All controlled drugs and substances and marijuana which have been manufactured,  
11 distributed, dispensed, or acquired in violation of the provisions of this chapter or  
12 chapter 22-42;
- 13 (2) All raw materials, products, and equipment of any kind which are used or intended  
14 for use, in manufacturing, compounding, processing, importing, or exporting any  
15 controlled drug or substance or marijuana in violation of the provisions of this  
16 chapter or chapter 22-42;
- 17 (3) All property which is used, or intended for use, as a container for property described  
18 in subdivisions (1) and (2);
- 19 (4) All conveyances including aircraft, vehicles, or vessels, which transport, possess, or  
20 conceal, or which are used, or intended for use, to transport, or in any manner  
21 facilitate the transportation, sale, receipt, possession, or concealment of marijuana  
22 in excess of one-half pound or any quantity of any other property described in  
23 subdivision (1) or (2), except as provided in §§ 34-20B-71 to 34-20B-73, inclusive.  
24 This subdivision includes those instances in which a conveyance transports,  
25 possesses or conceals marijuana or a controlled substance as described herein  
26 without the necessity of showing that the conveyance is specifically being used to  
27 transport, possess, or conceal or facilitate the transportation, possession, or  
28 concealment of marijuana or a controlled substance in aid of any other offense;
- 29 (5) All books, records, and research, including formulas, microfilm, tapes, and data  
30 which are used, or intended for use, in violation of this chapter;
- 31 (6) Any funds or other things of value used for the purposes of unlawfully purchasing,  
32 attempting to purchase, distributing, or attempting to distribute any controlled drug  
33 or substance or marijuana;



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

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

8 **Section 18.** That § 34-20B-64 be AMENDED:

9 **34-20B-64. Drug control fund created--Administration by attorney general--**  
10 **Expenditures--Excess funds.**

11 There is hereby created in the state treasury a special revolving fund to be known  
12 as the "drug control fund," which shall be administered by the attorney general. The  
13 attorney general may authorize expenditure of moneys in the fund for purchase of  
14 controlled drugs and substances, as defined in this chapter, by authorized agents of the  
15 attorney general from unregistered dispensers and distributors. All disbursements from  
16 the fund shall be made on warrants drawn by the state auditor on vouchers approved by  
17 the attorney general. Any moneys in the fund expenditures by the attorney general in  
18 excess of two hundred fifty thousand dollars per year shall be available for distribution by  
19 the attorney general. Upon application by any local law enforcement agency, any drug law  
20 enforcement task force or the division of highway patrol, the attorney general may  
21 authorize release of any such available moneys in the fund for the purpose of assisting  
22 local law enforcement agencies in drug control and drug offender apprehension efforts.  
23 approved by the Joint Committee of Appropriations or the special interim committee  
24 created by § 4-8A-2.