

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 748

Introduced by Friesen, 34.

Read first time January 05, 2022

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to forfeiture of property; to amend section
- 2 28-431, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to issuance of title; and to repeal the original section.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-431, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-431 (1) The following shall be seized with or without a warrant
4 by an officer of the Division of Drug Control or by any peace officer and
5 the same shall be subject to forfeiture: (a) All controlled substances
6 which have been manufactured, distributed, dispensed, acquired, or
7 possessed in violation of the Uniform Controlled Substances Act; (b) all
8 raw materials, products, and equipment of any kind which are used, or
9 intended for use, in manufacturing, compounding, processing,
10 administering, delivering, importing, or exporting any controlled
11 substance in violation of the act; (c) all lookalike substances; (d) all
12 property which is used, or is intended for use, as a container for
13 property described in subdivisions (a) and (b) of this subsection; (e)
14 all drug paraphernalia defined in section 28-439; (f) all books, records,
15 and research, including, but not limited to, formulas, microfilm, tapes,
16 and data, which are used, or intended for use, in violation of the act;
17 (g) all conveyances including, but not limited to, aircraft, vehicles, or
18 vessels which are used, or intended for use, in transporting any
19 controlled substance with intent to manufacture, distribute, deliver,
20 dispense, export, or import such controlled substance in violation of the
21 act; and (h) all money used, or intended to be used, to facilitate a
22 violation of the act.

23 (2) Any property described in subdivision (1)(g) of this section
24 which is used, or intended for use, to transport any property described
25 in subdivision (1)(a) or (b) of this section is hereby declared to be a
26 common nuisance, and any peace officer having probable cause to believe
27 that such property is so used, or intended for such use, shall make a
28 search thereof with or without a warrant.

29 (3) All money that a law enforcement agency proves was furnished by
30 such agency shall be returned to the agency. All property seized without
31 a search warrant shall not be subject to a replevin action and: (a) All

1 property described in subdivisions (1)(a) through (1)(f) of this section
2 shall be kept by the property division of the law enforcement agency
3 which employs the officer who seized such property for so long as it is
4 needed as evidence in any trial; and (b) when no longer required as
5 evidence, all property described in subdivision (1)(f) of this section
6 shall be disposed of on order of a court of record of this state in such
7 manner as the court in its sound discretion shall direct, and all
8 property described in subdivisions (1)(a), (b), (c), (d), and (e) of this
9 section, that has been used or is intended to be used in violation of the
10 act, when no longer needed as evidence shall be destroyed by the law
11 enforcement agency holding the same or turned over to the department for
12 custody or destruction, except that a law enforcement agency may keep a
13 small quantity of the property described in subdivisions (1)(a), (b),
14 (c), (d), and (e) of this section for training purposes or use in
15 investigations. Any large quantity of property described in subdivisions
16 (1)(a), (b), (c), (d), and (e) of this section, whether seized under a
17 search warrant or validly seized without a warrant, may be disposed of on
18 order of a court of record of this state in such manner as the court in
19 its sound discretion shall direct. Such an order may be given only after
20 a proper laboratory examination and report of such property has been
21 completed and after a hearing has been held by the court after notice to
22 the defendant of the proposed disposition of the property. The findings
23 in such court order as to the nature, kind, and quantity of the property
24 so disposed of may be accepted as evidence at subsequent court
25 proceedings in lieu of the property ordered destroyed by the court order.

26 (4) When any property described in subdivision (1)(g) or (h) of this
27 section is seized, the person seizing the same shall cause to be filed,
28 within ten days thereafter, in the district court of the county in which
29 seizure was made, petition for disposition of such property. The
30 proceedings shall be brought in the name of the state by the county
31 attorney of the county in which such property was seized. The petition

1 shall describe the property, state the name of the owner if known, allege
2 the essential elements of the violation which is claimed to exist, and
3 conclude with a prayer for disposition. The county attorney shall have a
4 copy of the petition served upon the owner of or any person having an
5 interest in the property, if known, in person or by registered or
6 certified mail at his or her last-known address. If the owner is unknown
7 or there is a reasonable probability that there are unknown persons with
8 interests in the property, the county attorney shall provide notice of
9 the seizure and petition for disposition by publication once a week for
10 four consecutive weeks in a newspaper of general circulation in the
11 county of the seizure. At least five days shall elapse between each
12 publication of notice.

13 (5) At any time after seizure and prior to court disposition, the
14 owner of record of such property may petition the district court of the
15 county in which seizure was made to release such property, and the court
16 shall order the release of the property upon a showing by the owner that
17 he or she had no actual knowledge that such property was being used in
18 violation of the Uniform Controlled Substances Act.

19 (6) Any person having an interest in the property proceeded against
20 or any person against whom civil or criminal liability would exist if
21 such property is in violation of the act may, within thirty days after
22 seizure, appear and file an answer or demurrer to the petition. The
23 answer or demurrer shall allege the claimant's interest in or liability
24 involving such property. At least thirty but not more than ninety days
25 after seizure, there shall be a hearing before the court. If the claimant
26 proves by a preponderance of the evidence that he or she (a) has not used
27 or intended to use the property to facilitate an offense in violation of
28 the act, (b) has an interest in such property as owner or lienor or
29 otherwise, acquired by him or her in good faith, and (c) at no time had
30 any actual knowledge that such property was being or would be used in, or
31 to facilitate, the violation of the act, the court shall order that such

1 property or the value of the claimant's interest in such property be
2 returned to the claimant. If there are no claims, if all claims are
3 denied, or if the value of the property exceeds all claims granted and it
4 is shown by clear and convincing evidence that such property was used in
5 violation of the act, the court shall order disposition of such property
6 at such time as the property is no longer required as evidence in any
7 criminal proceeding. The court may order that property described in
8 subdivision (1)(g) of this section be sold or put to official use by the
9 confiscating agency for a period of not more than one year and that when
10 such property is no longer necessary for official use or at the end of
11 two years, whichever comes first, such property shall be sold. Proceeds
12 from the sale of the property and any money described in subdivision (1)
13 (h) of this section shall be distributed pursuant to section 28-1439.02.
14 Official use shall mean use directly in connection with enforcement of
15 the act.

16 (7) Any court costs and fees and storage and other proper expenses
17 shall be charged against any person intervening as claimant or owner of
18 the property unless such person shall establish his or her claim. If a
19 sale is ordered, the officer holding the sale shall make a return to the
20 court showing to whom the property was sold and for what price. This
21 return together with the court order shall authorize the county treasurer
22 ~~clerk~~ to issue a title to the purchaser of the property if such title is
23 required under the laws of this state.

24 (8)(a) For all money, securities, negotiable instruments, firearms,
25 conveyances, or real estate seized pursuant to this section, the Division
26 of Drug Control, any peace officer, or, as provided in subdivision (d) of
27 this subsection, the prosecuting attorney shall provide a written report
28 of the seizure to the Auditor of Public Accounts. The report shall
29 include:

- 30 (i) The date of the seizure;
- 31 (ii) The type of property seized, such as a vehicle or currency;

1 (iii) A description of the property seized, including, if
2 applicable, the make, model, year, and serial number of the property
3 seized;

4 (iv) The street name and traffic direction where the seizure
5 occurred, such as eastbound, westbound, southbound, or northbound;

6 (v) The crime for which the suspect was charged;

7 (vi) The disposition of the property seized through the forfeiture
8 process, such as the property was returned to the suspect, returned to a
9 third-party owner, sold, destroyed, or retained by law enforcement;

10 (vii) The basis for disposition of the seized property, such as the
11 suspect was found not guilty, agreement for disposition, criminal
12 forfeiture, or civil forfeiture;

13 (viii) The value of the property forfeited;

14 (ix) If the seizure resulted from a motor vehicle stop, (A) whether
15 a warning or citation was issued, an arrest was made, or a search was
16 conducted and (B) the characteristics of the race or ethnicity of the
17 suspect. The identification of such characteristics shall be based on the
18 observation and perception of the law enforcement officer responsible for
19 reporting the motor vehicle stop. The information shall not be required
20 to be provided by the suspect; and

21 (x) Any additional information the Division of Drug Control or peace
22 officer deems appropriate.

23 (b) Reports shall be made on an annual basis in a manner prescribed
24 by the Auditor of Public Accounts. The Auditor of Public Accounts shall
25 submit a report to the Legislature on the nature and extent of such
26 seizures on an annual basis. Such report shall be submitted
27 electronically.

28 (c) For seizures resulting from the activities of
29 multijurisdictional law enforcement entities, a law enforcement entity
30 other than a Nebraska law enforcement entity shall, on its own
31 initiative, report the information required by this subsection.

1 (d) The prosecuting attorney is not required to report information
2 required by this subsection unless he or she has been notified by the
3 Auditor of Public Accounts that the Division of Drug Control or any peace
4 officer has not reported the information required by this subsection.

5 Sec. 2. Original section 28-431, Reissue Revised Statutes of
6 Nebraska, is repealed.