

AMENDMENTS TO LB137

(Amendments to E & R amendments, ER72)

Introduced by Wayne, 13.

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Sections 1 to 35 of this act shall be known and may be
4 cited as the Controlled Substance Offenses Forfeiture Act.

5 Sec. 2. (1) The Controlled Substance Offenses Forfeiture Act
6 governs the forfeiture of property as relates to controlled substance
7 offenses.

8 (2) The Legislature finds and declares that forfeiture is
9 disfavored. The purpose of the Controlled Substance Offenses Forfeiture
10 Act is to:

- 11 (a) Deter crime by reducing its economic incentives;
12 (b) Confiscate property used in the violation of the law;
13 (c) Disgorge the fruit of illegal conduct; and
14 (d) Protect the due process rights of property owners.

15 Sec. 3. For purposes of the Controlled Substance Offenses
16 Forfeiture Act:

17 (1) Abandoned, with respect to property, means personal property to
18 which a possessor has relinquished all rights of ownership and control;

19 (2) Actual knowledge means direct and clear awareness of
20 information, a fact, or a condition;

21 (3) Contraband means goods that, in themselves, are unlawful to
22 possess, such as controlled substances or a firearm described in section
23 28-1203;

24 (4) Controlled substance offense means:

25 (a) Any violation of subsection (1) of section 28-416; or

26 (b) Attempt, conspiracy, solicitation, being an accessory to, aiding

1 and abetting, aiding the consummation of, or compounding a felony if (i)
2 such offense is punishable as a felony and (ii) the underlying offense is
3 a felony violation of subsection (1) of section 28-416;

4 (5) Conveyance means a device used for transportation. It includes a
5 motor vehicle, trailer, snowmobile, airplane, boat, or any equipment
6 attached to one of these devices;

7 (6)(a) Innocent owner means an owner, co-owner, defendant's heir, or
8 a person who regularly uses property subject to forfeiture who does not
9 have actual knowledge that property was derived from or used or intended
10 to be used to facilitate the controlled substance offense.

11 (b) Innocent owner does not include the defendant or a secured
12 interest holder;

13 (7) Law enforcement agency means a police department, a town
14 marshal, the office of sheriff, or the Nebraska State Patrol;

15 (8) Proceeds means United States currency, currency of another
16 nation, digital and cryptocurrency, securities, negotiable instruments,
17 or other means of exchange obtained from the sale of property or
18 contraband;

19 (9) Prosecuting attorney means a city attorney, county attorney,
20 deputy city or county attorney, the Attorney General, or any other
21 attorney authorized by law to prosecute offenses;

22 (10) Real property includes immovable property, real estate, realty,
23 land, and anything growing on, attached to, or erected thereon, including
24 a building;

25 (11)(a) Secured interest holder means a person who is a secured
26 creditor, lienholder, or other person who has a valid claim, security
27 interest, lien, leasehold, or other interest in the property subject to
28 forfeiture.

29 (b) Secured interest holder does not include the defendant or an
30 innocent owner; and

31 (12) Subject to forfeiture means that personal property was derived

1 from or used or intended to be used to facilitate the controlled
2 substance offense.

3 Sec. 4. (1) Except as provided in section 18 of this act, the
4 Controlled Substance Offenses Forfeiture Act does not authorize any form
5 of civil forfeiture.

6 (2) The court with jurisdiction over a controlled substance offense
7 shall have jurisdiction over any related forfeiture proceeding.

8 (3) Proceedings under the Controlled Substance Offenses Forfeiture
9 Act shall be conducted without a jury.

10 Sec. 5. Property subject to forfeiture under the Controlled
11 Substance Offenses Forfeiture Act may be seized without a warrant or
12 court order if:

13 (1) The property is seized incident to a lawful arrest;

14 (2) The prosecuting attorney has probable cause to believe that any
15 delay caused by the necessity of obtaining process would result in the
16 removal or destruction of the property; or

17 (3) The property is the subject of a prior and valid judgment of
18 forfeiture in favor of the state.

19 Sec. 6. At the request of a prosecuting attorney and upon a showing
20 of probable cause to believe that such property is subject to forfeiture
21 under the Controlled Substance Offenses Forfeiture Act, a court may issue
22 an ex parte order to attach, seize, or secure property for which
23 forfeiture is sought and to provide for its custody.

24 Sec. 7. Real property is exempt from forfeiture under the
25 Controlled Substance Offenses Forfeiture Act.

26 Sec. 8. (1) A person from whom property is seized may relinquish
27 such person's rights, interests, and title in the seized property by
28 knowingly and voluntarily executing a written waiver that is agreed to by
29 the prosecuting attorney.

30 (2) A waiver under this section does not affect the rights,
31 interest, or title to seized property with respect to any other person,

1 including, but not limited to, a secured interest holder, an innocent
2 owner, or a person entitled to notice under section 13 of this act.

3 (3) A law enforcement officer, other than the prosecuting attorney,
4 shall not request, induce, or require a person to relinquish, for purpose
5 of forfeiture, the person's rights, interests, and title in seized
6 property.

7 (4) Any document resulting from efforts by a law enforcement
8 officer, other than a prosecuting attorney, which purports to relinquish
9 a person's rights, interests, and title in seized property is void.

10 Sec. 9. (1) When property is seized pursuant to the Controlled
11 Substance Offenses Forfeiture Act, the law enforcement officer shall give
12 an itemized receipt to the person possessing the property at the time of
13 the seizure.

14 (2) The receipt shall be numbered for future reference and shall
15 constitute notice of seizure.

16 (3) If the person possessing the property is not present, the
17 seizing officer shall leave a receipt in the place where the property was
18 found, if reasonably practicable.

19 Sec. 10. (1) A law enforcement agency making a seizure of property,
20 other than contraband, for which forfeiture may be sought under the
21 Controlled Substance Offenses Forfeiture Act shall, within ten days after
22 the seizure, submit a written report to the appropriate prosecuting
23 attorney.

24 (2) The report may be included in a standard investigation report or
25 a customary affidavit and shall include:

26 (a) The name of the law enforcement agency;

27 (b) The date and circumstances of the seizure;

28 (c) The location where the seizure occurred;

29 (d) The type of property seized, such as a vehicle or currency;

30 (e) A description of the property seized, including, if applicable,
31 the make, model, year, and serial number of the property seized;

1 (f) The location where the property is being stored and its
2 custodian;

3 (g) The name and contact information of the owner or possessor from
4 whom the property was seized;

5 (h) The name and contact information of any potential secured
6 interest holders or innocent owners;

7 (i) The type and quantity of any controlled substance involved; and

8 (j) Any other relevant information requested by the prosecuting
9 attorney.

10 (3) If the property seized was a conveyance, the report shall also
11 include:

12 (a) The make, model, serial number, and year of the conveyance; and

13 (b) The name and contact information of any person in whose name the
14 conveyance is registered.

15 (4) When the seizure of property is accomplished because of
16 coordinated efforts by more than one law enforcement agency, the agency
17 initiating the investigation shall make the report required by this
18 section.

19 Sec. 11. (1) Title to property subject to forfeiture vests with the
20 state when the court issues a forfeiture judgment and relates back to the
21 time when the state seizes or restrains the property.

22 (2) Title to substitute property vests when the court issues an
23 order forfeiting substitute property.

24 Sec. 12. (1) The seizing law enforcement agency is responsible for
25 providing adequate storage, security, and maintenance for all assets in
26 its custody unless another law enforcement agency agrees to accept the
27 responsibility. The commander of a multijurisdictional task force may
28 assign the responsibility to one law enforcement agency.

29 (2) The seizing law enforcement agency shall deposit seized currency
30 in an interest-bearing account pending the exhaustion of appeals or
31 receiving an order from the court to return or disburse the seized

1 currency.

2 (3) Notwithstanding subsection (2) of this section, the seizing law
3 enforcement agency may take reasonable actions, including the use of
4 photography, to preserve currency for later use as evidence.

5 Sec. 13. (1) Upon seizing property subject to forfeiture under the
6 Controlled Substance Offenses Forfeiture Act, the prosecuting attorney
7 shall perform a reasonable search of vehicle registrations, public
8 records, and other records available to the prosecuting attorney to
9 identify any person, other than the defendant, who may have an interest
10 in the property.

11 (2)(a) The prosecuting attorney shall give notice to any person
12 identified to have an interest in the property subject to forfeiture,
13 unless such other person is also charged with a related controlled
14 substance offense. The notice shall be served upon any such person either
15 in person or by registered or certified mail at such person's last-known
16 address.

17 (b) If the owner or other person with an interest is unknown or
18 there is a reasonable probability that there are unknown persons with
19 interests in the property, the prosecuting attorney shall cause the
20 notice to be printed once a week for four consecutive weeks in a
21 newspaper of general circulation in the county where the seizure
22 occurred. At least five days shall elapse between each publication of
23 notice.

24 (3) The notice required by this section shall include:

25 (a) A description of the property seized;

26 (b) The seizure receipt number provided for in section 9 of this
27 act;

28 (c) Conspicuously printed text that is substantially identical to
29 the following: "WARNING: You may lose the right to be heard in court if
30 you do not promptly file a motion with the court to assert your interest
31 in or ownership of this property. You do not have to pay a filing fee to

1 file your motion."; and

2 (d) A description of the alleged controlled substance offense that
3 provides the basis for forfeiture.

4 (4) This section does not apply to contraband.

5 Sec. 14. (1) Following seizure of property alleged to be subject to
6 forfeiture under the Controlled Substance Offenses Forfeiture Act, the
7 defendant or any other person with an interest in the property has a
8 right to a prompt hearing before the district court.

9 (2) The defendant or other person with an interest in the property
10 may file a motion requesting a hearing under this section. The court may
11 conduct the hearing as a separate proceeding or together with any other
12 pretrial hearing.

13 (3) Following the hearing, the court shall order the return of
14 property if it finds that:

15 (a) The seizure was unlawful;

16 (b) The prosecuting attorney has not filed charges for a controlled
17 substance offense as required by the court, the period of an extension
18 has expired, or the court does not grant an extension;

19 (c) The court finds the claimant is a secured creditor or an
20 innocent owner as provided in section 20 or 21 of this act;

21 (d) The prosecuting attorney failed to give notice to a person with
22 an interest in the property as required by section 13 of this act and
23 such person filed the motion under this section. For this subdivision to
24 apply, the court must find that the prosecuting attorney either:

25 (i) Knew of the existence of such person and their interest in the
26 property; or

27 (ii) Would have known such facts if the prosecuting attorney had
28 complied with section 13 of this act.

29 (4) Any factual findings required under subsection (3) of this
30 section shall be considered satisfied if the court finds such facts by a
31 preponderance of the evidence.

1 (5) The court may impose reasonable conditions on the return of the
2 property, including the use of photographic evidence, to preserve the
3 property for later use as evidence.

4 (6) At the court's discretion, it may order the return of sufficient
5 funds, not needed as evidence, to the defendant.

6 (7) This section does not apply to contraband.

7 Sec. 15. (1) The prosecuting attorney must specifically plead the
8 state's intent to seek forfeiture of any property upon a conviction for a
9 controlled substance offense in the same criminal information charging
10 such offense. Additionally, the information shall specifically:

11 (a) State the time and date the property was seized;

12 (b) State the place from where the property was seized;

13 (c) Describe the property sought to be forfeited;

14 (d) Include the receipt number provided for in section 9 of this
15 act;

16 (e) Describe how the property was allegedly derived from or used or
17 intended to be used to facilitate the controlled substance offense; and

18 (f) If known, state the name of the owner of the property, the name
19 of the person or persons in possession of the property or in physical
20 proximity to the property when it was seized, and the name of any other
21 person notified under section 13 of this act.

22 (2) At the court's discretion, the prosecuting attorney may amend
23 the portion of the information relating to forfeiture in the interest of
24 justice.

25 (3) The portion of the information relating to forfeiture shall not
26 be read or shown to the jury.

27 Sec. 16. (1) In addition to existing penalties for a controlled
28 substance offense, a court may order forfeiture of property if:

29 (a) The owner or possessor of the property has been convicted of a
30 controlled substance offense in the instant criminal prosecution before
31 the court;

1 (b) The information charging the controlled substance offense
2 specifically requests the forfeiture of the property in accordance with
3 section 15 of this act; and

4 (c) The prosecuting attorney proves at a hearing under subsection
5 (2) of this section, by clear and convincing evidence, that such property
6 was derived from or used or intended to be used to facilitate the
7 controlled substance offense.

8 (2)(a) After conviction, but prior to sentencing for the controlled
9 substance offense for which the prosecuting attorney is seeking
10 forfeiture, the district court shall conduct an evidentiary hearing to
11 determine if such property is subject to forfeiture.

12 (b) At the conclusion of such hearing, the court shall make specific
13 findings of fact stating what amount or portion of the property sought to
14 be forfeited was derived from or used or intended to be used to
15 facilitate the controlled substance offense.

16 (c) The court shall order that any amount or portion of the property
17 not subject to forfeiture, or the fair market value of the legally
18 recognized interest in such property, be returned to its rightful and
19 legal owner or interest holder.

20 (d) The court shall order that any property subject to forfeiture,
21 or substitute property as provided in section 23 of this act, be
22 forfeited and disposed of as provided in section 30 of this act.

23 (3)(a) The district court may also order forfeiture without a
24 hearing under subsection (2) of this section if the defendant agrees to
25 such forfeiture in a plea agreement. Any such provision in a plea
26 agreement is subject to approval by the court.

27 (b) A plea agreement that agrees to forfeit a defendant's interest
28 in property shall not affect the rights, interest, or title to such
29 property with respect to any other person, including, but not limited to,
30 a secured interest holder, an innocent owner, or a person entitled to
31 notice under section 13 of this act.

1 Sec. 17. (1) As part of the hearing under subsection (2) of section
2 16 of this act, or at a separate hearing following conviction and prior
3 to sentencing, the defendant may file a motion asking the court to
4 determine whether the forfeiture sought is unfairly excessive.

5 (2) The defendant has the burden of establishing the forfeiture is
6 unfairly excessive by a preponderance of the evidence.

7 (3) In determining whether the forfeiture sought is unfairly
8 excessive, the court shall consider all relevant factors, including, but
9 not limited to:

10 (a) The seriousness of the offense and its impact on the community,
11 including the duration of the criminal conduct, the use of a firearm or
12 other weapons, and harm caused by the defendant;

13 (b) The extent to which the defendant participated in the offense;

14 (c) The extent to which the property was integral to facilitating
15 the offense or was derived from the offense;

16 (d) Whether the offense was completed or attempted;

17 (e) The sentence or fine to be imposed for committing the offense;

18 (f) The hardship to the defendant or a member of the defendant's
19 family or household if the forfeiture of certain property, such as a
20 motor vehicle, would deprive the defendant or a member of the defendant's
21 family or household of such person's livelihood; and

22 (g) Whether the forfeiture would otherwise result in undue hardship
23 for a member of the defendant's family or household.

24 (4) In determining whether forfeiture would be unfairly excessive
25 under this section, the court shall not consider the benefit or value of
26 the property to the government if forfeited.

27 (5) In determining the value of property subject to forfeiture, the
28 court may consider any relevant factors related to the fair market value
29 of the property.

30 (6) If the court grants the defendant's motion, the court may reduce
31 or modify the property to be forfeited in any manner that will serve the

1 interests of justice. This includes, but is not limited to:

2 (a) Reducing the amount of property forfeited;

3 (b) Ordering forfeiture of substitute property if agreed to by the
4 defendant; and

5 (c) Ordering that no property be forfeited.

6 Sec. 18. (1) If forfeiture cannot be accomplished following a
7 conviction as provided in section 16 of this act for a reason listed in
8 subsection (2) of this section, the prosecuting attorney may instead seek
9 forfeiture by filing an ex parte motion in any court of competent
10 jurisdiction as provided in this section.

11 (2) An ex parte motion may be filed under this section if the owner
12 or possessor of the property believed to have committed the controlled
13 substance offense:

14 (a) Dies or is removed from the United States before a conviction
15 could be obtained but following the filing of charges;

16 (b) Dies or is removed from the United States before charges could
17 be filed, so long as the statute of limitations for the controlled
18 substance offense has not expired;

19 (c) Abandons the property;

20 (d) Is unknown or incapable of being identified for some legitimate
21 reason; or

22 (e) Fails to appear in court as ordered after prosecution has
23 commenced and is not apprehended within three months after an arrest
24 warrant is issued by the court.

25 (3) In addition to pleading the matters required under section 15 of
26 this act, the ex parte motion shall recite facts setting forth the basis
27 for bringing the motion under subsection (2) of this section.

28 (4) An ex parte motion under this section shall be filed within the
29 following deadlines:

30 (a) For a motion filed under subdivision (2)(c) or (d) of this
31 section, no sooner than ninety days after seizure of the property; and

1 (b) For a motion filed under subdivision (2)(a), (b), or (e) of this
2 section, no sooner than ninety days after the occurrence which provides
3 the basis for filing the motion.

4 (5)(a) The prosecuting attorney shall give notice to any person
5 identified to have an interest in the property subject to forfeiture
6 under section 13 of this act, unless such other person is also charged
7 with a related controlled substance offense. The notice shall be served
8 upon any such person either in person or by registered or certified mail
9 at such person's last-known address.

10 (b) If the owner or other person with an interest is unknown or
11 there is a reasonable probability that there are unknown persons with
12 interests in the property, the prosecuting attorney shall cause the
13 notice to be printed once a week for four consecutive weeks in a
14 newspaper of general circulation in the county of the seizure. At least
15 five days shall elapse between each publication of notice.

16 (6) The prosecuting attorney shall have the burden to prove by clear
17 and convincing evidence:

18 (a) The basis for bringing an ex parte motion under subsection (2)
19 of this section; and

20 (b) That the property was derived from or used or intended to be
21 used to facilitate the controlled substance offense.

22 (7)(a) Following any hearing on the motion, the court shall make
23 specific findings of fact stating what amount or portion of the property
24 sought to be forfeited was derived from or used or intended to be used to
25 facilitate the controlled substance offense.

26 (b) The court shall order that any amount or portion of the property
27 not subject to forfeiture, or the fair market value of the legally
28 recognized interest in such property, be returned to its rightful and
29 legal owner or interest holder.

30 (c) The court shall order that any property subject to forfeiture,
31 or substitute property as provided in section 23 of this act, be

1 forfeited and disposed of as provided in section 30 of this act.

2 (8) For an ex parte motion filed pursuant to subdivision (2)(e) of
3 this section, if the owner or possessor of the property is apprehended
4 before final disposition of the ex parte motion, the prosecuting attorney
5 shall withdraw the ex parte motion and seek forfeiture through the
6 criminal proceeding for the controlled substance offense as provided in
7 section 16 of this act.

8 Sec. 19. In determining whether the prosecuting attorney has
9 pleaded or proved sufficient facts to demonstrate that property seized
10 was derived from or used or intended to be used to facilitate the
11 controlled substance offense, it shall not be sufficient to show the mere
12 presence or possession of large amounts of United States currency.

13 Sec. 20. (1) Property encumbered by a valid security interest shall
14 only be forfeited as provided in this section.

15 (2) The prosecuting attorney shall summarily return property to a
16 secured interest holder up to the value of such holder's interest.

17 (3) If the property is not summarily returned, the secured interest
18 holder may file a motion to intervene for the limited purpose of
19 recovering such person's secured interest. The motion shall be filed in
20 the district court with jurisdiction over the forfeiture proceeding. The
21 motion may be filed at any time after such proceeding has commenced and
22 prior to final disposition of such proceeding.

23 (4)(a) The motion shall allege the validity of the security
24 interest, lien, lease, rental agreement, or other agreement. Within
25 thirty days after the filing of such motion, the district court shall
26 conduct an evidentiary hearing on the matter.

27 (b) At such hearing, the intervenor shall have the burden to prove
28 by a preponderance of the evidence the validity of the intervenor's
29 secured interest and the amount of such interest.

30 (c) At such hearing, the prosecuting attorney shall have the burden
31 to prove by clear and convincing evidence that:

- 1 (i) The claimed security interest does not exist or is invalid;
2 (ii) The interest resulted from a fraudulent conveyance;
3 (iii) The interest is held through a straw purchase, trust, or
4 otherwise for the benefit of the defendant or the unknown person believed
5 to have committed the controlled substance offense; or
6 (iv) The intervenor consented to the use of the property in the
7 controlled substance offense.

8 (5) If the prosecuting attorney meets the burden of proof required
9 under subdivision (4)(c) of this section, the court shall dismiss the
10 motion. If the prosecuting attorney does not meet such burden of proof
11 and the intervenor meets the burden of proof required under subdivision
12 (4)(b) of this section, the court shall order that any or all of the
13 property be returned to the intervenor. The court may order reasonable
14 actions be taken, including the use of photography, to preserve the
15 property for later use as evidence.

16 (6) This section does not apply to contraband.

17 Sec. 21. (1) Property of an innocent owner shall not be forfeited.

18 (2) The prosecuting attorney shall summarily return property to an
19 innocent owner.

20 (3) If the property is not summarily returned, the innocent owner
21 may file a motion to intervene for the limited purpose of recovering the
22 property or such innocent owner's interest in the property. The motion
23 shall be filed in the district court with jurisdiction over the
24 forfeiture proceeding. The motion may be filed at any time after such
25 proceeding has commenced and prior to final disposition of such
26 proceeding.

27 (4) The motion shall state facts demonstrating that the intervenor
28 has a legal interest in the property.

29 (5)(a) Within thirty days after the filing of such motion, the
30 district court shall conduct an evidentiary hearing on the matter.

31 (b) At such hearing, the intervenor shall have the burden to prove

1 by a preponderance of the evidence that the intervenor has a legal
2 interest in the property.

3 (c) At such hearing, the prosecuting attorney shall have the burden
4 to prove by clear and convincing evidence that:

5 (i) The intervenor does not have an interest in the property or such
6 interest is invalid;

7 (ii) The intervenor did not regularly use the property as the
8 intervenor claimed; or

9 (iii) The intervenor (A) had actual knowledge of the controlled
10 substance offense or was willfully ignorant to it and (B) did not take
11 reasonable steps to prevent the use of the property to facilitate the
12 controlled substance offense. The intervenor is not required to take
13 steps the intervenor reasonably believes would subject the intervenor to
14 physical danger.

15 (6) If the prosecuting attorney meets the burden of proof required
16 under subdivision (5)(c) of this section, the court shall dismiss the
17 motion. If the prosecuting attorney does not meet such burden of proof
18 and the intervenor meets the burden of proof required under subdivision
19 (5)(b) of this section, the court shall order that any or all of the
20 property be returned to the intervenor. The court may order reasonable
21 actions be taken, including the use of photography, to preserve the
22 property for later use as evidence.

23 (7) Evidence offered by an intervenor under this section shall not
24 be admitted in any criminal proceedings related to the controlled
25 substance offense.

26 (8) Nothing in this section prohibits the intervenor from providing
27 information to any party or testifying in any trial as to facts the
28 intervenor knows.

29 (9) This section does not apply to contraband.

30 Sec. 22. (1) Fees to cover costs associated with the filing of a
31 motion under section 20 or 21 of this act shall not be charged.

1 (2) For a motion filed under section 20 or 21 of this act, the
2 court, on its own motion or upon application of the intervenor, may
3 appoint counsel to represent the intervenor if the intervenor is
4 indigent. If the intervenor asserts indigency, the court shall make a
5 reasonable inquiry to determine the intervenor's financial condition and
6 may require the intervenor to execute an affidavit of indigency for
7 filing with the clerk of the court.

8 Sec. 23. Upon the prosecuting attorney's motion, following a
9 finding by the court that property is subject to forfeiture, or upon the
10 court's own motion, the court may order the forfeiture of substitute
11 property owned solely by the defendant up to the value of property that
12 is beyond the court's jurisdiction or cannot be located through due
13 diligence. Such an order shall only be entered if the prosecuting
14 attorney proves by clear and convincing evidence that the defendant
15 intentionally:

16 (1) Dissipated the property;

17 (2) Transferred, sold, or deposited property with a third party to
18 avoid forfeiture;

19 (3) Diminished substantially the value of property; or

20 (4) Commingled property with other property that cannot be divided
21 without difficulty.

22 Sec. 24. If the defendant fails to appear in court as ordered after
23 prosecution for a controlled substance offense has commenced but appears
24 or is apprehended within three months after an arrest warrant was issued
25 by the court, the court may order the defendant, as a part of any
26 sentence imposed for either the failure to appear or the controlled
27 substance offense, to pay a storage fee of one hundred dollars per month
28 for each month the property was held following issuance of the arrest
29 warrant.

30 Sec. 25. A defendant represented by appointed counsel in the
31 related criminal proceeding shall also be entitled to such representation

1 in any related forfeiture proceeding.

2 Sec. 26. A defendant is not jointly and severally liable for
3 forfeiture awards owed by other defendants. When ownership is unclear,
4 the court may order each defendant to forfeit property on a pro rata
5 basis or by any other means the court finds equitable.

6 Sec. 27. A prosecuting attorney shall not seek personal money
7 judgments or other remedies related to the forfeiture of property not
8 provided for in the Controlled Substance Offenses Forfeiture Act.

9 Sec. 28. (1) In any proceeding in which the defendant or other
10 person with an interest in property prevails in disputing the
11 forfeitability of such property, the court shall order the county or, in
12 cases brought by the Attorney General, the state, to pay:

13 (a) Reasonable attorney fees and other litigation costs incurred by
14 the property owner or defendant;

15 (b) Post-judgment interest; and

16 (c) In cases involving currency, other negotiable instruments, or
17 the proceeds of an interlocutory sale, any interest actually paid from
18 the date of seizure.

19 (2) The defendant or other person shall be considered to have
20 prevailed if the defendant or person succeeds in obtaining at least half
21 of the value of the property sought to be returned.

22 Sec. 29. (1) If the court orders the return of property, the law
23 enforcement agency that holds the property shall return the property to
24 the rightful owner within a reasonable period, but not to exceed five
25 days after the date of the order.

26 (2) The rightful owner shall not be subject to any expenses related
27 to towing, storage, transportation, or preservation of the property.

28 (3) The law enforcement agency that holds the property is
29 responsible for any damages, storage fees, and costs related to returning
30 or holding such property.

31 Sec. 30. (1) At the conclusion of a proceeding under the Controlled

1 Substance Offenses Forfeiture Act in which property is forfeited, the
2 court shall order such property to be disposed of in accordance with this
3 section and section 31 of this act at such time as the property is no
4 longer required as evidence.

5 (2) As part of any disposition of property, the court shall order
6 that:

7 (a) Except as otherwise provided in this subsection, any property be
8 liquidated and, after deduction of court costs and the expense of
9 liquidation, the proceeds be distributed as provided in section 31 of
10 this act;

11 (b) Any money be distributed as provided in section 31 of this act;

12 (c) Any conveyances be sold or put to official use by the seizing
13 law enforcement agency for a period of not more than one year and when
14 such property is no longer necessary for official use or at the end of
15 two years, whichever comes first, such property shall be sold. Money from
16 the sale of any conveyance shall be distributed as provided in section 31
17 of this act; and

18 (d) Any other property, including contraband, be disposed of as
19 provided in section 29-820.

20 (3) As used in this section, official use means use directly in
21 connection with enforcement of the Uniform Controlled Substances Act.

22 Sec. 31. Section 28-1439.02, Reissue Revised Statutes of Nebraska,
23 is amended to read:

24 ~~28-1439.02~~ (1) Except as provided in subsection (2) of this section,
25 money resulting ~~The proceeds~~ from any sale ordered pursuant to section 30
26 of this act 28-431, less legal costs, charges, and claims allowed, and
27 any money forfeited pursuant to section 30 of this act 28-431 shall be
28 paid to the county treasurer of the county in which the seizure was made.
29 The county treasurer shall disburse fifty percent of such money for
30 support of the common schools of such county as provided in Article VII,
31 section 5, of the Constitution of Nebraska dispose of all such proceeds

1 ~~from property forfeited pursuant to subdivision (1)(g) of section 28-431~~
2 ~~and fifty percent of the money forfeited pursuant to subdivision (1)(h)~~
3 ~~of section 28-431 in the manner provided for disposition of fines,~~
4 ~~penalties, and license money under the Constitution of Nebraska. The~~
5 county treasurer shall disburse the remaining fifty percent of the money
6 ~~forfeited pursuant to subdivision (1)(h) of section 28-431 to his or her~~
7 respective County Drug Law Enforcement and Education Fund pursuant to
8 Article VII, section 5, of the Constitution of Nebraska. ~~Each county~~
9 ~~shall create a County Drug Law Enforcement and Education Fund.~~

10 (2) One hundred percent of any money resulting from the sale of a
11 conveyance under section 30 of this act shall be disbursed for support of
12 the common schools of the county in which such conveyance was seized as
13 provided in Article VII, section 5, of the Constitution of Nebraska.

14 (3) {2} Money remitted to any county pursuant to section 77-4310.01
15 shall be credited by the county treasurer of such county to the County
16 Drug Law Enforcement and Education Fund.

17 Sec. 32. Section 28-1439.03, Reissue Revised Statutes of Nebraska,
18 is amended to read:

19 ~~28-1439.03~~ (1) For purposes of this section:

20 (a) Drug education purposes means drug education activities
21 conducted by the Nebraska State Patrol or other law enforcement agencies
22 in cooperation with elementary and secondary schools in Nebraska; and

23 (b) Drug enforcement purposes includes, but is not limited to, the
24 following when used or expended by law enforcement agencies or their
25 agents in discharging their responsibilities concerning traffic in
26 controlled substances and in suppressing the abuse of controlled
27 substances:

28 (i) Salaries for informants and any expenses of all agents and
29 informants;

30 (ii) Flash money for drug purchases; and

31 (iii) Money for drug purchases.

1 (2) Each county shall create a County Drug Law Enforcement and
2 Education Fund.

3 (3) Each county shall create a A County Drug Law Enforcement and
4 Education Fund Board shall be created by each county of this state to
5 administer its respective fund pursuant to section 28-1439.02. The board
6 may authorize use of the fund for drug enforcement and drug education
7 purposes, in its own or any other county, by village, city, county, or
8 state law enforcement agencies.

9 (4) The board shall consist of the county attorney and three
10 representatives of law enforcement agencies who shall be appointed by the
11 county attorney. One representative shall be from the county sheriff's
12 office, one representative shall be from a city or village police
13 department within the county, and one representative shall be from the
14 Nebraska State Patrol. Terms shall be for two years, except that the
15 initial term of the police department representative shall be for one
16 year. The county attorney shall serve as chairperson.

17 (5) If during any fiscal year the fund contains money—~~forfeited~~
18 pursuant to subdivision (1)(h) of section 28-431, the board shall meet at
19 least once during such year and make an accounting of the expenditures of
20 the fund. At the end of any fiscal year in which the fund has contained
21 money, the board shall make a report summarizing the use of the fund
22 during such year to the Auditor of Public Accounts, except that such
23 report shall contain no information which would jeopardize an ongoing
24 investigation. Such report shall indicate the amount of money placed in
25 the fund, the amount of money disbursed, the number of cases opened and
26 closed in which the fund was utilized, and the drug education activities
27 for which money in the fund was utilized.

28 (6) The board may adopt and promulgate all rules and regulations
29 necessary for the expenditures and accountability of such fund.

30 (7) It is the intent of the Legislature to foster cooperation among
31 the County Drug Law Enforcement and Education Fund Boards in the state by

1 encouraging boards which have no use for the funds to disburse the funds
2 to boards in other counties.

3 Sec. 33. A law enforcement agency shall not sell forfeited property
4 directly or indirectly to any employee of the law enforcement agency, to
5 any person related to such employee within the third degree of
6 consanguinity or affinity, or to another law enforcement agency.

7 Sec. 34. (1) On or before August 1, 2025, and on or before each
8 August 1 thereafter, each prosecuting attorney shall provide a written
9 report to the Auditor of Public Accounts. The report shall cover all
10 property, other than contraband, seized for forfeiture under the
11 Controlled Substance Offenses Forfeiture Act by law enforcement agencies
12 within the prosecuting attorney's jurisdiction since the preceding August
13 1.

14 (2) The report shall include:

15 (a) The information required to be reported under section 10 of this
16 act;

17 (b) Any crimes the suspect was charged with;

18 (c) The disposition of the property seized through the forfeiture
19 process, such as whether the property was returned to the suspect,
20 returned to a third-party owner, sold, destroyed, or retained by law
21 enforcement;

22 (d) The basis for disposition of the seized property, such as a
23 finding of not guilty, an agreement for disposition, a criminal
24 forfeiture, or a civil forfeiture;

25 (e) The value of the property forfeited;

26 (f) If the seizure resulted from a motor vehicle stop, (i) whether a
27 warning or citation was issued, an arrest was made, or a search was
28 conducted and (ii) the characteristics of the race or ethnicity of the
29 suspect. The identification of such characteristics shall be based on the
30 observation and perception of the law enforcement officer responsible for
31 reporting the motor vehicle stop. The information shall not be required

1 to be provided by the suspect; and

2 (g) Any additional information the prosecuting attorney deems
3 relevant.

4 (3) On or before October 1, 2025, and on or before each October 1
5 thereafter, the Auditor of Public Accounts shall electronically submit a
6 report to the Legislature on the nature and extent of seizures and
7 forfeitures occurring in the most recent reporting period under
8 subsection (1) of this section.

9 Sec. 35. The Controlled Substance Offenses Forfeiture Act preempts
10 any local law on the same subject and no political subdivision shall
11 enact or enforce any ordinance or other local law or regulation
12 conflicting with any provision of the act or with any policy of this
13 state expressed by the act, whether the policy is expressed by inclusion
14 of a provision in the act or by exclusion of that subject from the act.

15 Sec. 36. Section 28-101, Revised Statutes Supplement, 2023, is
16 amended to read:

17 28-101 Sections 28-101 to 28-1357, 28-1601 and 28-1602 ~~to 28-1603,~~
18 and 28-1701 and section 45 of this act and the Controlled Substance
19 Offenses Forfeiture Act shall be known and may be cited as the Nebraska
20 Criminal Code.

21 Sec. 37. Section 28-416, Revised Statutes Supplement, 2023, is
22 amended to read:

23 28-416 (1) Except as authorized by the Uniform Controlled Substances
24 Act, it shall be unlawful for any person knowingly or intentionally: (a)
25 To manufacture, distribute, deliver, dispense, or possess with intent to
26 manufacture, distribute, deliver, or dispense a controlled substance; or
27 (b) to create, distribute, or possess with intent to distribute a
28 counterfeit controlled substance.

29 (2) Except as provided in subsections (4), (5), (7), (8), (9), ~~and~~
30 (10), and (16) of this section, any person who violates subsection (1) of
31 this section with respect to: (a) A controlled substance classified in

1 Schedule I, II, or III of section 28-405 which is an exceptionally
2 hazardous drug shall be guilty of a Class II felony; (b) any other
3 controlled substance classified in Schedule I, II, or III of section
4 28-405 shall be guilty of a Class IIA felony; or (c) a controlled
5 substance classified in Schedule IV or V of section 28-405 shall be
6 guilty of a Class IIIA felony.

7 (3) A person knowingly or intentionally possessing a controlled
8 substance, except marijuana or any substance containing a quantifiable
9 amount of the substances, chemicals, or compounds described, defined, or
10 delineated in subdivision (c)(27) of Schedule I of section 28-405, unless
11 such substance was obtained directly or pursuant to a medical order
12 issued by a practitioner authorized to prescribe while acting in the
13 course of his or her professional practice, or except as otherwise
14 authorized by the act, shall be guilty of a Class IV felony. A person
15 shall not be in violation of this subsection if section 28-472 or 28-1701
16 applies.

17 (4)(a) Except as authorized by the Uniform Controlled Substances
18 Act, any person eighteen years of age or older who knowingly or
19 intentionally manufactures, distributes, delivers, dispenses, or
20 possesses with intent to manufacture, distribute, deliver, or dispense a
21 controlled substance or a counterfeit controlled substance (i) to a
22 person under the age of eighteen years, (ii) in, on, or within one
23 thousand feet of the real property comprising a public or private
24 elementary, vocational, or secondary school, a community college, a
25 public or private college, junior college, or university, or a
26 playground, or (iii) within one hundred feet of a public or private youth
27 center, public swimming pool, or video arcade facility shall be punished
28 by the next higher penalty classification than the penalty prescribed in
29 subsection (2), (7), (8), (9), or (10) of this section, depending upon
30 the controlled substance involved, for the first violation and for a
31 second or subsequent violation shall be punished by the next higher

1 penalty classification than that prescribed for a first violation of this
2 subsection, but in no event shall such person be punished by a penalty
3 greater than a Class IB felony.

4 (b) For purposes of this subsection:

5 (i) Playground means any outdoor facility, including any parking lot
6 appurtenant to the facility, intended for recreation, open to the public,
7 and with any portion containing three or more apparatus intended for the
8 recreation of children, including sliding boards, swingsets, and
9 teeterboards;

10 (ii) Video arcade facility means any facility legally accessible to
11 persons under eighteen years of age, intended primarily for the use of
12 pinball and video machines for amusement, and containing a minimum of ten
13 pinball or video machines; and

14 (iii) Youth center means any recreational facility or gymnasium,
15 including any parking lot appurtenant to the facility or gymnasium,
16 intended primarily for use by persons under eighteen years of age which
17 regularly provides athletic, civic, or cultural activities.

18 (5)(a) Except as authorized by the Uniform Controlled Substances
19 Act, it shall be unlawful for any person eighteen years of age or older
20 to knowingly and intentionally employ, hire, use, cause, persuade, coax,
21 induce, entice, seduce, or coerce any person under the age of eighteen
22 years to manufacture, transport, distribute, carry, deliver, dispense,
23 prepare for delivery, offer for delivery, or possess with intent to do
24 the same a controlled substance or a counterfeit controlled substance.

25 (b) Except as authorized by the Uniform Controlled Substances Act,
26 it shall be unlawful for any person eighteen years of age or older to
27 knowingly and intentionally employ, hire, use, cause, persuade, coax,
28 induce, entice, seduce, or coerce any person under the age of eighteen
29 years to aid and abet any person in the manufacture, transportation,
30 distribution, carrying, delivery, dispensing, preparation for delivery,
31 offering for delivery, or possession with intent to do the same of a

1 controlled substance or a counterfeit controlled substance.

2 (c) Any person who violates subdivision (a) or (b) of this
3 subsection shall be punished by the next higher penalty classification
4 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of
5 this section, depending upon the controlled substance involved, for the
6 first violation and for a second or subsequent violation shall be
7 punished by the next higher penalty classification than that prescribed
8 for a first violation of this subsection, but in no event shall such
9 person be punished by a penalty greater than a Class IB felony.

10 (6) It shall not be a defense to prosecution for violation of
11 subsection (4) or (5) of this section that the defendant did not know the
12 age of the person through whom the defendant violated such subsection.

13 (7) Any person who violates subsection (1) of this section with
14 respect to cocaine or any mixture or substance containing a detectable
15 amount of cocaine in a quantity of:

16 (a) One hundred forty grams or more shall be guilty of a Class IB
17 felony;

18 (b) At least twenty-eight grams but less than one hundred forty
19 grams shall be guilty of a Class IC felony; or

20 (c) At least ten grams but less than twenty-eight grams shall be
21 guilty of a Class ID felony.

22 (8) Any person who violates subsection (1) of this section with
23 respect to base cocaine (crack) or any mixture or substance containing a
24 detectable amount of base cocaine in a quantity of:

25 (a) One hundred forty grams or more shall be guilty of a Class IB
26 felony;

27 (b) At least twenty-eight grams but less than one hundred forty
28 grams shall be guilty of a Class IC felony; or

29 (c) At least ten grams but less than twenty-eight grams shall be
30 guilty of a Class ID felony.

31 (9) Any person who violates subsection (1) of this section with

1 respect to heroin or any mixture or substance containing a detectable
2 amount of heroin in a quantity of:

3 (a) One hundred forty grams or more shall be guilty of a Class IB
4 felony;

5 (b) At least twenty-eight grams but less than one hundred forty
6 grams shall be guilty of a Class IC felony; or

7 (c) At least ten grams but less than twenty-eight grams shall be
8 guilty of a Class ID felony.

9 (10) Any person who violates subsection (1) of this section with
10 respect to amphetamine, its salts, optical isomers, and salts of its
11 isomers, or with respect to methamphetamine, its salts, optical isomers,
12 and salts of its isomers, in a quantity of:

13 (a) One hundred forty grams or more shall be guilty of a Class IB
14 felony;

15 (b) At least twenty-eight grams but less than one hundred forty
16 grams shall be guilty of a Class IC felony; or

17 (c) At least ten grams but less than twenty-eight grams shall be
18 guilty of a Class ID felony.

19 (11) Any person knowingly or intentionally possessing marijuana
20 weighing more than one ounce but not more than one pound shall be guilty
21 of a Class III misdemeanor.

22 (12) Any person knowingly or intentionally possessing marijuana
23 weighing more than one pound shall be guilty of a Class IV felony.

24 (13) Except as provided in section 28-1701, any person knowingly or
25 intentionally possessing marijuana weighing one ounce or less or any
26 substance containing a quantifiable amount of the substances, chemicals,
27 or compounds described, defined, or delineated in subdivision (c)(27) of
28 Schedule I of section 28-405 shall:

29 (a) For the first offense, be guilty of an infraction, receive a
30 citation, be fined three hundred dollars, and be assigned to attend a
31 course as prescribed in section 29-433 if the judge determines that

1 attending such course is in the best interest of the individual
2 defendant;

3 (b) For the second offense, be guilty of a Class IV misdemeanor,
4 receive a citation, and be fined four hundred dollars and may be
5 imprisoned not to exceed five days; and

6 (c) For the third and all subsequent offenses, be guilty of a Class
7 IIIA misdemeanor, receive a citation, be fined five hundred dollars, and
8 be imprisoned not to exceed seven days.

9 (14) Any person convicted of violating this section, if placed on
10 probation, shall, as a condition of probation, satisfactorily attend and
11 complete appropriate treatment and counseling on drug abuse provided by a
12 program authorized under the Nebraska Behavioral Health Services Act or
13 other licensed drug treatment facility.

14 (15) Any person convicted of violating this section, if sentenced to
15 the Department of Correctional Services, shall attend appropriate
16 treatment and counseling on drug abuse.

17 (16)(a) Any person convicted of a violation of subsection (1) of
18 this section shall be punished by the next higher penalty classification
19 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of
20 this section if:

21 (i) The (16) Any person knowingly or intentionally possessed
22 possessing a firearm while in violation of subsection (1) of this
23 section; or

24 (ii) Such violation resulted in the use of the controlled substance
25 and directly and proximately caused the death of, or serious bodily
26 injury to, another person.

27 (b) A penalty enhanced under this subsection shall in no event
28 result in shall be punished by the next higher penalty classification
29 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of
30 this section, but in no event shall such person be punished by a penalty
31 greater than a Class IC IB felony.

1 (17) A person knowingly or intentionally in possession of money used
2 or intended to be used to facilitate a violation of subsection (1) of
3 this section shall be guilty of a Class IV felony.

4 (18) In addition to the existing penalties available for a violation
5 of subsection (1) of this section, including any criminal attempt or
6 conspiracy to violate subsection (1) of this section or for a controlled
7 substance offense as defined in section 3 of this act, the court may
8 order forfeiture of any personal property derived from or used or
9 intended to be used to facilitate such crime pursuant to the Controlled
10 Substance Offenses Forfeiture Act , ~~a sentencing court may order that any~~
11 ~~money, securities, negotiable instruments, firearms, conveyances, or~~
12 ~~electronic communication devices as defined in section 28-833 or any~~
13 ~~equipment, components, peripherals, software, hardware, or accessories~~
14 ~~related to electronic communication devices be forfeited as a part of the~~
15 ~~sentence imposed if it finds by clear and convincing evidence adduced at~~
16 ~~a separate hearing in the same prosecution, following conviction for a~~
17 ~~violation of subsection (1) of this section, and conducted pursuant to~~
18 ~~section 28-1601, that any or all such property was derived from, used, or~~
19 ~~intended to be used to facilitate a violation of subsection (1) of this~~
20 ~~section.~~

21 (19) In addition to the penalties provided in this section:

22 (a) If the person convicted or adjudicated of violating this section
23 is eighteen years of age or younger and has one or more licenses or
24 permits issued under the Motor Vehicle Operator's License Act:

25 (i) For the first offense, the court may, as a part of the judgment
26 of conviction or adjudication, (A) impound any such licenses or permits
27 for thirty days and (B) require such person to attend a drug education
28 class;

29 (ii) For a second offense, the court may, as a part of the judgment
30 of conviction or adjudication, (A) impound any such licenses or permits
31 for ninety days and (B) require such person to complete no fewer than

1 twenty and no more than forty hours of community service and to attend a
2 drug education class; and

3 (iii) For a third or subsequent offense, the court may, as a part of
4 the judgment of conviction or adjudication, (A) impound any such licenses
5 or permits for twelve months and (B) require such person to complete no
6 fewer than sixty hours of community service, to attend a drug education
7 class, and to submit to a drug assessment by a licensed alcohol and drug
8 counselor; and

9 (b) If the person convicted or adjudicated of violating this section
10 is eighteen years of age or younger and does not have a permit or license
11 issued under the Motor Vehicle Operator's License Act:

12 (i) For the first offense, the court may, as part of the judgment of
13 conviction or adjudication, (A) prohibit such person from obtaining any
14 permit or any license pursuant to the act for which such person would
15 otherwise be eligible until thirty days after the date of such order and
16 (B) require such person to attend a drug education class;

17 (ii) For a second offense, the court may, as part of the judgment of
18 conviction or adjudication, (A) prohibit such person from obtaining any
19 permit or any license pursuant to the act for which such person would
20 otherwise be eligible until ninety days after the date of such order and
21 (B) require such person to complete no fewer than twenty hours and no
22 more than forty hours of community service and to attend a drug education
23 class; and

24 (iii) For a third or subsequent offense, the court may, as part of
25 the judgment of conviction or adjudication, (A) prohibit such person from
26 obtaining any permit or any license pursuant to the act for which such
27 person would otherwise be eligible until twelve months after the date of
28 such order and (B) require such person to complete no fewer than sixty
29 hours of community service, to attend a drug education class, and to
30 submit to a drug assessment by a licensed alcohol and drug counselor.

31 A copy of an abstract of the court's conviction or adjudication

1 shall be transmitted to the Director of Motor Vehicles pursuant to
2 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a
3 juvenile is prohibited from obtaining a license or permit under this
4 subsection.

5 Sec. 38. Section 28-439, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 28-439 As used in sections ~~28-101, 28-431,~~ and 28-439 to 28-444,
8 unless the context otherwise requires, drug paraphernalia shall mean all
9 equipment, products, and materials of any kind which are used, intended
10 for use, or designed for use, in manufacturing, injecting, ingesting,
11 inhaling, or otherwise introducing into the human body a controlled
12 substance in violation of sections ~~28-101, 28-431,~~ and 28-439 to 28-444
13 or the Uniform Controlled Substances Act. It shall include, but not be
14 limited to, the following:

15 (1) Diluents and adulterants, such as quinine hydrochloride,
16 mannitol, mannite, dextrose, and lactose, used, intended for use, or
17 designed for use in cutting controlled substances;

18 (2) Separation gins and sifters used, intended for use, or designed
19 for use in removing twigs and seeds from, or in otherwise cleaning or
20 refining, marijuana;

21 (3) Hypodermic syringes, needles, and other objects used, intended
22 for use, and designed for use in parenterally injecting controlled
23 substances into the human body; and

24 (4) Objects used, intended for use, or designed for use in
25 ingesting, inhaling, or otherwise introducing marijuana, cocaine,
26 hashish, or hashish oil into the human body, which shall include but not
27 be limited to the following:

28 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes
29 with or without screens, permanent screens, hashish heads, or punctured
30 metal bowls;

31 (b) Water pipes;

- 1 (c) Carburetion tubes and devices;
- 2 (d) Smoking and carburetion masks;
- 3 (e) Roach clips, meaning objects used to hold burning material, such
- 4 as a marijuana cigarette, which has become too small or too short to be
- 5 held in the hand;
- 6 (f) Miniature cocaine spoons, and cocaine vials;
- 7 (g) Chamber pipes;
- 8 (h) Carburetor pipes;
- 9 (i) Electric pipes;
- 10 (j) Air-driven pipes;
- 11 (k) Chillums;
- 12 (l) Bongs; and
- 13 (m) Ice pipes or chillers.

14 Sec. 39. Section 28-440, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 28-440 In determining whether an object is drug paraphernalia, a
17 court or other authority shall consider, in addition to all other
18 logically relevant factors, the following:

19 (1) Statements by an owner or by anyone in control of the object
20 concerning its use;

21 (2) Prior convictions, if any, of an owner, or of anyone in control
22 of the object, under any state or federal law relating to any controlled
23 substance;

24 (3) The proximity of the object, in time and space, to a direct
25 violation of the Uniform Controlled Substances Act ~~this act~~;

26 (4) The proximity of the object to any controlled substance;

27 (5) The existence of any residue of a controlled substance on the
28 object;

29 (6) Direct or circumstantial evidence of the intent of an owner, or
30 of anyone in control of the object, to deliver it to any person whom he
31 or she knows, or should reasonably know, intends to use the object to

1 facilitate a violation of sections ~~28-101, 28-431,~~ and 28-439 to 28-444.
2 The innocence of an owner, or of anyone in control of the object, as to a
3 direct violation of sections ~~28-101, 28-431,~~ and 28-439 to 28-444 shall
4 not prevent a finding that the object is intended for use, or designed
5 for use as drug paraphernalia;

6 (7) Instructions, oral or written, provided with the object
7 concerning its use;

8 (8) Descriptive materials accompanying the object which explain or
9 depict its use;

10 (9) National and local advertising concerning its use;

11 (10) The manner in which the object is displayed for sale;

12 (11) Whether the owner, or anyone in control of the object, is a
13 legitimate supplier of like or related items to the community, such as a
14 licensed distributor or dealer of tobacco products;

15 (12) Direct or circumstantial evidence of the ratio of sales of the
16 object or objects to the total sales of the business enterprise;

17 (13) The existence and scope of any legitimate use for the object in
18 the community; and

19 (14) Expert testimony concerning its use.

20 Sec. 40. Section 28-441, Revised Statutes Cumulative Supplement,
21 2022, is amended to read:

22 28-441 (1) It shall be unlawful for any person to use, or to possess
23 with intent to use, drug paraphernalia to manufacture, inject, ingest,
24 inhale, or otherwise introduce into the human body a controlled substance
25 in violation of sections ~~28-101, 28-431,~~ and 28-439 to 28-444.

26 (2) Any person who violates this section shall be guilty of an
27 infraction.

28 (3) A person shall not be in violation of this section if section
29 28-472 or 28-1701 applies.

30 Sec. 41. Section 28-442, Revised Statutes Cumulative Supplement,
31 2022, is amended to read:

1 28-442 (1) It shall be unlawful for any person to deliver, possess
2 with intent to deliver, or manufacture with intent to deliver, drug
3 paraphernalia, knowing, or under circumstances in which one reasonably
4 should know, that it will be used to manufacture, inject, ingest, or
5 inhale or otherwise be used to introduce into the human body a controlled
6 substance in violation of sections ~~28-101, 28-431, and~~ 28-439 to 28-444.

7 (2) This section shall not apply to pharmacists, pharmacist interns,
8 pharmacy technicians, and pharmacy clerks who sell hypodermic syringes or
9 needles for the prevention of the spread of infectious diseases.

10 (3) Any person who violates this section shall be guilty of a Class
11 II misdemeanor.

12 Sec. 42. Section 28-445, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 28-445 (1) Any person who knowingly and intentionally manufactures,
15 distributes, delivers, or possesses with intent to distribute or deliver
16 an imitation controlled substance shall:

17 (a) For the first offense, be guilty of a Class III misdemeanor; and

18 (b) For the second and all subsequent offenses, be guilty of a Class
19 II misdemeanor.

20 (2) In determining whether a substance is an imitation controlled
21 substance the court or other authority concerned shall consider all
22 relevant factors, including, but not limited to, the following:

23 (a) Whether the substance is represented as having an effect similar
24 to or the same as an illicit controlled substance;

25 (b) Whether the substance is represented by way of terminology which
26 is deceptively similar to or the same as that describing a particular
27 controlled substance;

28 (c) Whether the dosage unit price substantially exceeds the
29 reasonable price of a similar dosage unit of like chemical composition
30 sold over the counter;

31 (d) Whether the substance was approved by the federal Food and Drug

1 Administration for over-the-counter sales and contained the packaging and
2 labeling information approved by the federal Food and Drug
3 Administration;

4 (e) Whether the substance is packaged in a manner and quantity
5 similar to or the same as that commonly used for illicit controlled
6 substances;

7 (f) Whether the dosage unit appearance of the substance is
8 deceptively similar to that of a particular controlled substance;

9 (g) Whether the substance is distributed to persons who represent it
10 as a controlled substance or controlled substance analogue, under
11 circumstances which indicate the distributor knows, intends, or should
12 know that his or her distributee is making or will make such
13 representations; and

14 (h) Whether the person in possession or control of the substance
15 utilized deception, fraud, or evasive tactics or actions to prevent the
16 seizure, discovery, or detection of the substance by law enforcement.

17 (3) Any substance possessed, distributed, or delivered in violation
18 of this section shall be subject to seizure and forfeiture as provided in
19 section ~~29-820~~ 28-431.

20 Sec. 43. Section 28-1601, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 28-1601 (1) For purposes of sections 28-1601 and 28-1602:

23 (a) Covered offense means a violation of the Child Pornography
24 Prevention Act or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
25 28-1105.01, or 28-1107;

26 (b) Electronic communication device has the same meaning as in
27 section 28-833; and

28 (c) Gambling device has the same meaning as in section 28-1101.

29 (2) ~~(1)~~ In addition to existing penalties for a covered offense
30 violation of the Child Pornography Prevention Act, subsection (1) of
31 section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,

1 ~~28-1105.01, or 28-1107~~, a court may order forfeiture of any money,
2 securities, negotiable instruments, firearms, conveyances, or electronic
3 communication devices; ~~as defined in section 28-833~~, any equipment,
4 components, peripherals, software, hardware, or accessories related to
5 electronic communication devices; ~~or any gambling devices as defined in~~
6 ~~section 28-1101~~ if:

7 (a) The owner or possessor of the property has been convicted of a
8 covered offense violation of the Child Pornography Prevention Act,
9 ~~subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103,~~
10 ~~28-1104, 28-1105, 28-1105.01, or 28-1107;~~

11 (b) The information charging such violation specifically requests
12 the forfeiture of property upon conviction and is prepared pursuant to
13 section 28-1602; and

14 (c) It ~~The property~~ is found by clear and convincing evidence that
15 such property was to have been derived from or ~~used~~, or intended to be
16 used to facilitate a covered offense violation of the Child Pornography
17 Prevention Act, ~~subsection (1) of section 28-416, or section 28-813.01,~~
18 ~~28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.~~

19 (3) ~~(2)~~ Following the filing of an information charging a covered
20 offense violation of the Child Pornography Prevention Act, ~~subsection (1)~~
21 ~~of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,~~
22 ~~28-1105, 28-1105.01, or 28-1107~~ that specifically seeks forfeiture of any
23 property listed in subsection ~~(2)~~ (1) of this section, the defendant may
24 request a pretrial hearing to determine the existence of probable cause
25 to believe that the property specifically sought to be forfeited was
26 derived from or ~~used~~, or intended to be used to facilitate a covered
27 offense violation of the Child Pornography Prevention Act, ~~subsection (1)~~
28 ~~of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,~~
29 ~~28-1105, 28-1105.01, or 28-1107.~~ The request for a hearing pursuant to
30 this section must be filed with the district court in which the criminal
31 proceeding is pending within thirty days after the filing of the

1 information.

2 ~~(4)(a) (3)~~ At any time after the filing of the information in
3 district court and prior to final disposition of the criminal case, any
4 person ~~or entity~~, other than the defendant, with a claimed legal interest
5 in the property may petition to intervene in the district court with
6 jurisdiction over the criminal case for the specific and limited purpose
7 of demonstrating such person's ~~his, her, or its~~ legal interest in the
8 property and such person's ~~his, her, or its~~ lack of actual knowledge that
9 such property was derived from or ~~or~~ used, ~~or~~ intended to be used to
10 facilitate a covered offense in violation of the Child Pornography
11 Prevention Act, subsection (1) of section 28-416, or section 28-813.01,
12 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.

13 ~~(b)~~ In the petition ~~to intervene~~, the intervenor ~~intervening person~~
14 ~~or entity~~ shall, at a minimum, state facts demonstrating the intervenor's
15 ~~his, her, or its~~ legal interest in the property and the intervenor's ~~his,~~
16 ~~her, or its~~ lack of actual knowledge regarding the use or intended use of
17 the property.

18 ~~(5)~~ Within thirty days after filing a motion to intervene under
19 subsection (4) of this section, the district court shall conduct an
20 evidentiary hearing on the matter. At the conclusion of such hearing, the
21 court may order that any or all of the property be returned to the
22 intervenor ~~intervening claimant~~ after it is no longer needed as evidence
23 in the criminal case upon a showing by the intervenor ~~claimant~~ by a
24 preponderance of the evidence:

25 (a) That the intervenor ~~that he, she, or it~~ has a legally recognized
26 interest in the property; and

27 (b) Either ~~either~~ (i) that such property was acquired by the
28 intervenor ~~claimant~~ in good faith and the intervenor ~~he, she, or it~~ did
29 not have actual knowledge that such property was derived from or ~~or~~ used,
30 or intended to be used to facilitate a covered offense violation of the
31 Child Pornography Prevention Act, subsection (1) of section 28-416, or

1 ~~section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or~~
2 ~~28-1107~~ or (ii) that the property seized was not derived from or ~~τ~~ used,
3 or intended to be used to facilitate a covered offense violation ~~of the~~
4 ~~Child Pornography Prevention Act, subsection (1) of section 28-416, or~~
5 ~~section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or~~
6 ~~28-1107.~~

7 (6) The court, on its own motion or upon application of the
8 intervenor ~~intervening claimant~~, may permit the intervenor ~~such person~~ to
9 proceed in forma pauperis under sections 25-2301 to 25-2310. The court,
10 on its own motion or upon application of the intervenor ~~intervening~~
11 ~~claimant~~, may appoint counsel to represent such person if such person is
12 indigent. If the intervenor ~~he or she~~ asserts indigency, the court shall
13 make a reasonable inquiry to determine such person's financial condition
14 and may require the intervenor ~~him or her~~ to execute an affidavit of
15 indigency for filing with the clerk of the court.

16 (7) (4) After conviction but prior to sentencing for a covered
17 offense, ~~violation of the Child Pornography Prevention Act, subsection~~
18 ~~(1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,~~
19 ~~28-1105, 28-1105.01, or 28-1107~~ in cases in which the prosecuting
20 authority has specifically requested forfeiture of property, the district
21 court shall conduct an evidentiary hearing at which the prosecuting
22 authority must prove by clear and convincing evidence what specific
23 amount or portion of the property specifically enumerated in the criminal
24 information was derived from or ~~τ~~ used~~τ~~ or intended to be used to
25 facilitate a covered offense ~~for use in furtherance of a violation of the~~
26 ~~Child Pornography Prevention Act, subsection (1) of section 28-416, or~~
27 ~~section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or~~
28 ~~28-1107.~~ At the conclusion of such hearing, the court shall make specific
29 findings of fact indicating what amount or portion of the property sought
30 to be forfeited by the state was derived from or ~~τ~~ used~~τ~~ or intended to
31 be used to facilitate a covered offense ~~violation of the Child~~

1 ~~Pornography Prevention Act, subsection (1) of section 28-416, or section~~
2 ~~28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.~~
3 The court shall order any amount or portion of the property not proven by
4 the state to be derived from or ~~,~~ used, or intended to be used to
5 facilitate a covered offense violation ~~of the Child Pornography~~
6 ~~Prevention Act, subsection (1) of section 28-416, or section 28-813.01,~~
7 ~~28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107~~ or the fair
8 market value of the legally recognized interest in such property be
9 returned to its rightful and legal owner or interest holder.

10 (8)(a) ~~(5)(a)~~ The court shall order that any amount or portion of
11 property proven by the state by clear and convincing evidence to be
12 derived from or ~~,~~ used, or intended to be used to facilitate a covered
13 offense violation ~~of the Child Pornography Prevention Act, subsection (1)~~
14 ~~of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,~~
15 ~~28-1105, 28-1105.01, or 28-1107~~ be forfeited to the state and disposition
16 of such property be conducted in accordance with this subsection and
17 section 31 of this act ~~28-1439.02~~ at such time as the property is no
18 longer required as evidence in any criminal proceeding.

19 (b) As part of any disposition of property, the court may order
20 that: (i) Any money, securities, or negotiable instruments be distributed
21 as provided in Article VII, section 5, of the Constitution of Nebraska;
22 (ii) any conveyances be sold or put to official use by the seizing agency
23 for a period of not more than one year and when such property is no
24 longer necessary for official use or at the end of two years, whichever
25 comes first, such property shall be sold. Proceeds from the sale of any
26 conveyance shall be distributed as provided in Article VII, section 5, of
27 the Constitution of Nebraska; (iii) any electronic communication devices
28 ~~as defined in section 28-833,~~ any equipment, components, peripherals,
29 software, hardware, or accessories related to electronic communication
30 devices, or any gambling devices ~~as defined in section 28-1101~~ be
31 destroyed by a law enforcement agency; and (iv) the disposition of

1 firearms shall be effectuated pursuant to section 29-820.

2 (c) As used in this subsection, official use means use directly in
3 connection with enforcement of the Child Pornography Prevention Act, ~~the~~
4 ~~Uniform Controlled Substances Act~~, or section 28-813.01, 28-1102,
5 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.

6 (9) ~~(6)~~ Any money, securities, negotiable instruments, firearms,
7 conveyances, or electronic communication devices; ~~as defined in section~~
8 ~~28-833~~, any equipment, components, peripherals, software, hardware, or
9 accessories related to electronic communication devices; ~~or any~~
10 ~~gambling devices as defined in section 28-1101~~ may be forfeited pursuant
11 to a plea agreement between the state and the defendant subject to notice
12 to or approval of the court.

13 (10) ~~(7)~~ Subdivision (2)(a) ~~(1)(a)~~ of this section does not apply if
14 the owner or possessor of the property dies or is removed from the United
15 States before charges are filed or a conviction obtained.

16 (11) ~~(8)~~ Subdivision (2)(b) ~~(1)(b)~~ of this section does not apply if
17 the owner or possessor of the property dies or is removed from the United
18 States before charges are filed so long as the statute of limitations for
19 a covered offense violation of the Child Pornography Prevention Act,
20 ~~subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103,~~
21 ~~28-1104, 28-1105, 28-1105.01, or 28-1107~~ has not expired.

22 (12) ~~(9)~~ Subdivision (2)(a) ~~(1)(a)~~ of this section does not apply if
23 the owner or possessor of the property is unknown or incapable of being
24 determined for some legitimate reason or fails to appear in court as
25 ordered after prosecution for a covered offense violation of the Child
26 Pornography Prevention Act, ~~subsection (1) of section 28-416, or section~~
27 ~~28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107~~ is
28 commenced and is not apprehended within twelve months after the failure
29 to appear order was issued by the court.

30 (13) ~~(10)~~ If the owner or possessor of the property fails to appear
31 in court as ordered after prosecution for a covered offense violation of

1 ~~the Child Pornography Prevention Act, subsection (1) of section 28-416,~~
2 ~~or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or~~
3 ~~28-1107~~ is commenced but appears or is apprehended within twelve months
4 after the failure to appear order was issued by the court, the court may
5 order the owner or possessor of the property, as a part of any sentence
6 imposed for either the failure to appear or the conviction for a covered
7 offense ~~of the Child Pornography Prevention Act, subsection (1) of~~
8 ~~section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,~~
9 ~~28-1105.01, or 28-1107,~~ to pay a storage fee of one hundred dollars per
10 month for each month the property was held following the issuance of the
11 failure to appear order.

12 Sec. 44. Section 28-1602, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 28-1602 (1) The prosecuting authority must specifically plead its
15 intent to seek forfeiture of any property upon a conviction for a covered
16 offense ~~violation of the Child Pornography Prevention Act, subsection (1)~~
17 ~~of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,~~
18 ~~28-1105, 28-1105.01, or 28-1107~~ in the same criminal information charging
19 the covered offense ~~underlying violation of the Child Pornography~~
20 ~~Prevention Act, subsection (1) of section 28-416, or section 28-813.01,~~
21 ~~28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.~~

22 (2) In pleading its intent to seek forfeiture, the information shall
23 specifically (a) state the date the property was seized, (b) state the
24 place the property was seized from, (c) describe the property sought to
25 be forfeited, and (d) if known, state the name of the owner of the
26 property, the name of the person or persons in possession of the property
27 or in physical proximity to the property when it was seized, and the name
28 of any other person or entity that may have a claim or interest in the
29 property.

30 Sec. 45. Section 28-1603, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 ~~28-1603~~ (1) No law enforcement agency or prosecuting authority of
2 this state or its political subdivisions shall transfer or refer for
3 adoption any money or property to a federal law enforcement authority or
4 other federal agency by any means unless:

5 (a) ~~(1)~~ The money or property seized includes more than exceeds
6 twenty-five thousand dollars of United States in currency or an
7 equivalent amount of other currency; or value;

8 ~~(2) The money or property is physically seized by a federal agent~~
9 ~~who is employed by the federal government; or~~

10 (b) ~~(3)~~ The person from whom the money or property was seized is the
11 subject of a federal prosecution and ~~or~~ the facts and circumstances
12 surrounding the money or property seized are the subject of a federal
13 forfeiture prosecution.

14 (2)(a) Except as allowed for in subdivision (2)(b) of this section,
15 a joint task force of a Nebraska law enforcement agency and a federal
16 agency shall transfer seized property to the Nebraska prosecuting
17 authority for forfeiture under Nebraska law.

18 (b) The joint task force may transfer seized property to the United
19 States Department of Justice for forfeiture under federal law if the
20 seized property includes more than twenty-five thousand dollars of United
21 States currency or an equivalent amount of other currency.

22 (3) A law enforcement agency or prosecuting authority shall not
23 accept payment of any kind or distribution of forfeiture proceeds from
24 the federal government if the agency or authority violated subsection (1)
25 or (2) of this section in relation to such payment or distribution. Any
26 such payment or distribution shall be remitted to the State Treasurer for
27 credit to the General Fund.

28 (4) The Attorney General, after consulting with the United States
29 Attorney, shall establish guidelines for joint task forces and
30 multijurisdictional collaboration in forfeiture matters. The guidelines
31 shall ensure that activities are conducted in compliance with state and

1 federal law and excluded unreasonable actions that are intended to
2 circumvent state law.

3 Sec. 46. Section 29-820, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 29-820 (1) Unless other disposition is specifically provided by law,
6 when property seized or held is no longer required as evidence, it shall
7 be disposed of by the law enforcement agency on such showing as the law
8 enforcement agency may deem adequate, as follows:

9 (a) Property stolen, embezzled, obtained by false pretenses, or
10 otherwise obtained unlawfully from the rightful owner thereof shall be
11 restored to the owner;

12 (b) Money shall be restored to the owner unless forfeited pursuant
13 to the Controlled Substance Offenses Forfeiture Act or sections
14 25-21,302, 28-1601 and 28-1602, or section 45 of this act it was used in
15 unlawful gambling or lotteries or it was used or intended to be used to
16 facilitate a violation of Chapter 28, article 4, in which case the money
17 shall be forfeited and disposed of as required by Article VII, section 7,
18 of the Constitution of Nebraska;

19 (c) Property which is unclaimed or the ownership of which is unknown
20 shall be sold at a public auction held by the officer having custody
21 thereof and the net proceeds disposed of as provided in subdivision (b)
22 of this subsection, as shall any money which is unclaimed or the
23 ownership of which is unknown;

24 (d) Except as provided in subsections subsection (2) and (3) of this
25 section, articles of contraband shall be destroyed;

26 (e) Firearms, ammunition, explosives, bombs, and like devices which
27 have been used in the commission of crime shall be destroyed; and

28 (f) Firearms which have come into the law enforcement agency's
29 possession through a seizure or otherwise and (i) have not been used in
30 the commission of crime, (ii) have not been defaced or altered in any
31 manner that violates any state or federal law, (iii) may have a lawful

1 use and be lawfully possessed, and (iv) are not subject to section 29-440
2 shall be restored to the owner.

3 ~~(2) When the following property is seized or held and is no longer~~
4 ~~required as evidence, such property shall be disposed of on order of the~~
5 ~~court as the court may deem adequate:~~

6 (2) Goods which are declared to be contraband but which may
7 reasonably be returned to a condition or state in which such goods may be
8 lawfully used, possessed, or distributed by the public shall be disposed
9 of on order of the court as the court deems appropriate.

10 (3)(a) This subsection applies to the following items:

11 (i) All controlled substances which have been manufactured,
12 distributed, dispensed, acquired, or possessed in violation of the
13 Uniform Controlled Substances Act;

14 (ii) All raw materials, products, and equipment of any kind which
15 are used, or intended for use, in manufacturing, compounding, processing,
16 administering, delivering, importing, or exporting any controlled
17 substance in violation of the Uniform Controlled Substances Act;

18 (iii) All lookalike substances as defined in section 28-401; and

19 (iv) All drug paraphernalia defined in section 28-439.

20 (b) All property described in subdivision (3)(a) of this section
21 shall be kept by the property division of the law enforcement agency
22 which employs the officer who seized such property for so long as it is
23 needed as evidence in any trial. When no longer required as evidence,
24 such property shall be destroyed by the law enforcement agency holding
25 such property or turned over to the Department of Health and Human
26 Services for custody or destruction, except that a law enforcement agency
27 may keep a small quantity of such property for training purposes or use
28 in investigations. Any large quantity of such property may be disposed of
29 on order of a court of record of this state in such manner as the court
30 in its sound discretion shall direct. Such an order shall be given only
31 after a proper laboratory examination and report of such property has

1 been completed and after a hearing has been held by the court after
2 notice to the defendant of the proposed disposition of the property. The
3 findings in such court order as to the nature, kind, and quantity of the
4 property so disposed of may be accepted as evidence at subsequent court
5 proceedings in lieu of the property ordered destroyed by the court order.

6 (4) ~~(3)~~ When any animal as defined by section 28-1008 is seized or
7 held and is no longer required as evidence, such animal may be disposed
8 of in such manner as the court may direct. The court may consider
9 adoption alternatives through humane societies or comparable institutions
10 and the protection of such animal's welfare. For a humane society or
11 comparable institution to be considered as an adoption alternative under
12 this subsection, it must first be licensed by the Department of
13 Agriculture as having passed the inspection requirements in the
14 Commercial Dog and Cat Operator Inspection Act and paid the fee for
15 inspection under the act. The court may prohibit an adopting or
16 purchasing party from selling such animal for a period not to exceed one
17 year.

18 (5) ~~(4)~~ Unless otherwise provided by law, all other property shall
19 be disposed of in such manner as the court in its sound discretion shall
20 direct.

21 Sec. 47. Section 37-1299, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 37-1299 (1) A motorboat is abandoned:

24 (a) If left unattended for more than seven days on any public
25 property;

26 (b) If left unattended for more than seven days on private property
27 if left initially without permission of the owner;

28 (c) If left for more than seven days on private property after
29 permission of the owner is terminated; or

30 (d) If left for more than thirty days in the custody of a law
31 enforcement agency after the agency has sent a letter to the last-

1 registered owner under section 37-12,102.

2 (2) For purposes of this section:

3 (a) Public property means any public park, waterfront, or other
4 state, county, or municipally owned property; and

5 (b) Private property means any privately owned property which is not
6 included within the definition of public property.

7 (3) No motorboat subject to forfeiture under the Controlled
8 Substance Offenses Forfeiture Act ~~section 28-431~~ shall be deemed
9 abandoned under this section.

10 Sec. 48. Section 37-12,102, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 37-12,102 A state or local law enforcement agency which has custody
13 of a motorboat for investigatory purposes and has no further need to keep
14 it in custody shall send a certified letter to each of the last-
15 registered owners stating that the motorboat is in the custody of the law
16 enforcement agency, that the motorboat is no longer needed for law
17 enforcement purposes, and that after thirty days the agency will dispose
18 of the motorboat. This section shall not apply to a motorboat subject to
19 forfeiture under the Controlled Substance Offenses Forfeiture Act ~~section~~
20 ~~28-431~~. No storage fees shall be assessed against the registered owner of
21 a motorboat held in custody for investigatory purposes under this section
22 unless the registered owner or the person in possession of the motorboat
23 when it is taken into custody is charged with a felony or misdemeanor
24 related to the offense for which the law enforcement agency took the
25 motorboat into custody. If a registered owner or the person in possession
26 of the motorboat when it is taken into custody is charged with a felony
27 or misdemeanor but is not convicted, the registered owner shall be
28 entitled to a refund of the storage fees.

29 Sec. 49. Section 60-1901, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 60-1901 (1) A motor vehicle is an abandoned vehicle:

1 (a) If left unattended, with no license plates or valid In Transit
2 stickers issued pursuant to the Motor Vehicle Registration Act affixed
3 thereto, for more than six hours on any public property;

4 (b) If left unattended for more than twenty-four hours on any public
5 property, except a portion thereof on which parking is legally permitted;

6 (c) If left unattended for more than forty-eight hours, after the
7 parking of such vehicle has become illegal, if left on a portion of any
8 public property on which parking is legally permitted;

9 (d) If left unattended for more than seven days on private property
10 if left initially without permission of the owner, or after permission of
11 the owner is terminated;

12 (e) If left for more than thirty days in the custody of a law
13 enforcement agency after the agency has sent a letter to the last-
14 registered owner and lienholder under section 60-1903.01; or

15 (f) If removed from private property by a municipality pursuant to a
16 municipal ordinance.

17 (2) An all-terrain vehicle, a utility-type vehicle, or a minibike is
18 an abandoned vehicle:

19 (a) If left unattended for more than twenty-four hours on any public
20 property, except a portion thereof on which parking is legally permitted;

21 (b) If left unattended for more than forty-eight hours, after the
22 parking of such vehicle has become illegal, if left on a portion of any
23 public property on which parking is legally permitted;

24 (c) If left unattended for more than seven days on private property
25 if left initially without permission of the owner, or after permission of
26 the owner is terminated;

27 (d) If left for more than thirty days in the custody of a law
28 enforcement agency after the agency has sent a letter to the last-
29 registered owner and lienholder under section 60-1903.01; or

30 (e) If removed from private property by a municipality pursuant to a
31 municipal ordinance.

1 (3) A mobile home is an abandoned vehicle if left in place on
2 private property for more than thirty days after a local governmental
3 unit, pursuant to an ordinance or resolution, has sent a certified letter
4 to each of the last-registered owners and posted a notice on the mobile
5 home, stating that the mobile home is subject to sale or auction or
6 vesting of title as set forth in section 60-1903.

7 (4) For purposes of this section:

8 (a) Mobile home means a movable or portable dwelling constructed to
9 be towed on its own chassis, connected to utilities, and designed with or
10 without a permanent foundation for year-round living. It may consist of
11 one or more units that can be telescoped when towed and expanded later
12 for additional capacity, or of two or more units, separately towable but
13 designed to be joined into one integral unit, and shall include a
14 manufactured home as defined in section 71-4603. Mobile home does not
15 include a mobile home or manufactured home for which an affidavit of
16 affixture has been recorded pursuant to section 60-169;

17 (b) Public property means any public right-of-way, street, highway,
18 alley, or park or other state, county, or municipally owned property; and

19 (c) Private property means any privately owned property which is not
20 included within the definition of public property.

21 (5) No motor vehicle subject to forfeiture under the Controlled
22 Substance Offenses Forfeiture Act ~~section 28-431~~ shall be an abandoned
23 vehicle under this section.

24 Sec. 50. Section 60-1903.01, Reissue Revised Statutes of Nebraska,
25 is amended to read:

26 60-1903.01 A state or local law enforcement agency which has custody
27 of a motor vehicle for investigatory purposes and has no further need to
28 keep it in custody shall send a certified letter to each of the last-
29 registered owners, if any, and lienholders, if any, within fifteen
30 calendar days stating that the vehicle is in the custody of the law
31 enforcement agency, that the vehicle is no longer needed for law

1 enforcement purposes, and that after thirty days the agency will dispose
2 of the vehicle. This section shall not apply to motor vehicles subject to
3 forfeiture under the Controlled Substance Offenses Forfeiture Act ~~section~~
4 ~~28-431~~. No storage fees shall be assessed against the registered owner of
5 a motor vehicle held in custody for investigatory purposes under this
6 section unless the registered owner or the person in possession of the
7 vehicle when it is taken into custody is charged with a felony or
8 misdemeanor related to the offense for which the law enforcement agency
9 took the vehicle into custody. If a registered owner or the person in
10 possession of the vehicle when it is taken into custody is charged with a
11 felony or misdemeanor but is not convicted, the registered owner shall be
12 entitled to a refund of the storage fees.

13 Sec. 51. Section 81-2004.05, Reissue Revised Statutes of Nebraska,
14 is amended to read:

15 81-2004.05 There is hereby created the Public Safety Cash Fund. All
16 forfeitures and proceeds received by the Nebraska State Patrol under the
17 federal Equitable Sharing Provisions or any other federal agreement from
18 any agency of the federal government on or after July 10, 1990, shall be
19 deposited in the fund. This section shall not apply to funds otherwise
20 subject to the Controlled Substance Offenses Forfeiture Act and section
21 31 of this act ~~sections 28-431 and 28-1439.02~~. The fund shall be used
22 only in accordance with the applicable requirements of the federal
23 government. The fund shall be administered by the Superintendent of Law
24 Enforcement and Public Safety. ~~For fiscal year 2013-14, transfers may be~~
25 ~~made from the fund to the Nebraska Capital Construction Fund at the~~
26 ~~direction of the Legislature to support capital projects related to~~
27 ~~Nebraska State Patrol law enforcement efforts~~. Any money in the Public
28 Safety Cash Fund available for investment shall be invested by the state
29 investment officer pursuant to the Nebraska Capital Expansion Act and the
30 Nebraska State Funds Investment Act.

31 Sec. 52. Section 81-2004.10, Revised Statutes Cumulative Supplement,

1 2022, is amended to read:

2 81-2004.10 There is hereby created the Treasury Agency Forfeitures
3 Cash Fund. All forfeitures and proceeds received by the Nebraska State
4 Patrol under the federal equitable sharing provisions distributed by
5 federal Treasury agencies as of July 1, 2017, shall be deposited in the
6 fund. This section shall not apply to funds otherwise subject to the
7 Controlled Substance Offenses Forfeiture Act and section 31 of this act
8 ~~sections 28-431 and 28-1439.02~~. The fund shall be used only in accordance
9 with the applicable requirements of the federal government. The fund
10 shall be administered by the Superintendent of Law Enforcement and Public
11 Safety. Any money in the fund available for investment shall be invested
12 by the state investment officer pursuant to the Nebraska Capital
13 Expansion Act and the Nebraska State Funds Investment Act.

14 Sec. 53. Original sections 28-439, 28-440, 28-445, 28-1439.02,
15 28-1439.03, 28-1601, 28-1602, 28-1603, 29-820, 37-1299, 37-12,102,
16 60-1901, 60-1903.01, and 81-2004.05, Reissue Revised Statutes of
17 Nebraska, sections 28-441, 28-442, and 81-2004.10, Revised Statutes
18 Cumulative Supplement, 2022, and sections 28-101 and 28-416, Revised
19 Statutes Supplement, 2023, are repealed.

20 Sec. 54. The following sections are outright repealed: Sections
21 28-431, 28-1439.04, and 28-1439.05, Reissue Revised Statutes of Nebraska.