

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 916

Introduced by Brewer, 43.

Read first time January 04, 2024

Committee: Judiciary

1 A BILL FOR AN ACT relating to forfeiture; to amend sections 28-439,
2 28-440, 28-445, 28-1439.02, 28-1439.03, 28-1601, 28-1602, 28-1603,
3 29-820, 37-1299, 37-12,102, 60-1901, 60-1903.01, and 81-2004.05,
4 Reissue Revised Statutes of Nebraska, sections 28-441, 28-442, and
5 81-2004.10, Revised Statutes Cumulative Supplement, 2022, and
6 sections 28-101 and 28-416, Revised Statutes Supplement, 2023; to
7 adopt the Controlled Substance Offenses Forfeiture Act; to eliminate
8 and transfer provisions relating to forfeiture and disposition of
9 seized contraband; to eliminate an obsolete provision; to harmonize
10 provisions; to repeal the original sections; and to outright repeal
11 sections 28-431, 28-1439.04, and 28-1439.05, Reissue Revised
12 Statutes of Nebraska.
13 Be it enacted by the people of the State of Nebraska,

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

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

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

9 (a) Deter crime by reducing its economic incentives;

10 (b) Confiscate property used in the violation of the law;

11 (c) Disgorge the fruit of illegal conduct; and

12 (d) Protect the due process rights of property owners.

13 Sec. 3. For purposes of the Controlled Substance Offenses
14 Forfeiture Act:

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

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

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

22 (4) Controlled substance offense means:

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

24 (b) Attempt, conspiracy, solicitation, being an accessory to, aiding
25 and abetting, aiding the consummation of, or compounding a felony if (i)
26 such offense is punishable as a felony and (ii) the underlying offense is
27 a felony violation of subsection (1) of section 28-416;

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

31 (6)(a) Innocent owner means an owner, co-owner, defendant's heir, or

1 a person who regularly uses property subject to forfeiture who does not
2 have actual knowledge that property was derived from or used or intended
3 to be used to facilitate the controlled substance offense.

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

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

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

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

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

18 (11)(a) Secured interest holder means a person who is a secured
19 creditor, lienholder, or other person who has a valid claim, security
20 interest, lien, leasehold, or other interest in the property subject to
21 forfeiture.

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

24 (12) Subject to forfeiture means that personal property was derived
25 from or used or intended to be used to facilitate the controlled
26 substance offense.

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

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

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

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

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

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

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

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

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

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

23 (2) A waiver under this section does not affect the rights,
24 interest, or title to seized property with respect to any other person,
25 including, but not limited to, a secured interest holder, an innocent
26 owner, or a person entitled to notice under section 13 of this act.

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

31 (4) Any document resulting from efforts by a law enforcement

1 officer, other than a prosecuting attorney, which purports to relinquish
2 a person's rights, interests, and title in seized property is void.

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

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

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

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

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

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

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

21 (c) The location where the seizure occurred;

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

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

25 (f) The location where the property is being stored and its
26 custodian;

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

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

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

1 (j) Any other relevant information requested by the prosecuting
2 attorney.

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

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

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

8 (4) When the seizure of property is accomplished because of
9 coordinated efforts by more than one law enforcement agency, the agency
10 initiating the investigation shall make the report required by this
11 section.

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

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

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

22 (2) The seizing law enforcement agency shall deposit seized currency
23 in an interest-bearing account pending the exhaustion of appeals or
24 receiving an order from the court to return or disburse the seized
25 currency.

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

29 Sec. 13. (1) Upon seizing property subject to forfeiture under the
30 Controlled Substance Offenses Forfeiture Act, the prosecuting attorney
31 shall perform a reasonable search of vehicle registrations, public

1 records, and other records available to the prosecuting attorney to
2 identify any person, other than the defendant, who may have an interest
3 in the property.

4 (2)(a) The prosecuting attorney shall give notice to any person
5 identified to have an interest in the property subject to forfeiture,
6 unless such other person is also charged with a related controlled
7 substance offense. The notice shall be served upon any such person either
8 in person or by registered or certified mail at such person's last-known
9 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 where the seizure
15 occurred. At least five days shall elapse between each publication of
16 notice.

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

18 (a) A description of the property seized;

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

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

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

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

29 Sec. 14. (1) Following seizure of property alleged to be subject to
30 forfeiture under the Controlled Substance Offenses Forfeiture Act, the
31 defendant or any other person with an interest in the property has a

1 right to a prompt hearing before the district court.

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

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

8 (a) The seizure was unlawful;

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

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

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

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

20 (ii) would have known such facts if the prosecuting attorney had
21 complied with section 13 of this act.

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

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

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

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

31 Sec. 15. (1) The prosecuting attorney must specifically plead the

1 state's intent to seek forfeiture of any property upon a conviction for a
2 controlled substance offense in the same criminal information charging
3 such offense. Additionally, the information shall specifically:

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

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

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

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

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

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

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

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

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

22 (a) The owner or possessor of the property has been convicted of a
23 controlled substance offense in the instant criminal prosecution before
24 the court;

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

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

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

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

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

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

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

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

25 Sec. 17. (1) As part of the hearing under subsection (2) of section
26 16 of this act, or at a separate hearing following conviction and prior
27 to sentencing, the defendant may file a motion asking the court to
28 determine whether the forfeiture sought is unfairly excessive.

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

31 (3) In determining whether the forfeiture sought is unfairly

1 excessive, the court shall consider all relevant factors, including, but
2 not limited to:

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

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

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

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

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

11 (f) The hardship to the defendant or a member of the defendant's
12 family or household if the forfeiture of certain property, such as a
13 motor vehicle, would deprive the defendant or a member of the defendant's
14 family or household of such person's livelihood; and

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

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

20 (5) In determining the value of property subject to forfeiture, the
21 court may consider any relevant factors related to the fair market value
22 of the property.

23 (6) If the court grants the defendant's motion, the court may reduce
24 or modify the property to be forfeited in any manner that will serve the
25 interests of justice. This includes, but is not limited to:

26 (a) Reducing the amount of property forfeited;

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

29 (c) Ordering that no property be forfeited.

30 Sec. 18. (1) If forfeiture cannot be accomplished following a
31 conviction as provided in section 16 of this act for a reason listed in

1 subsection (2) of this section, the prosecuting attorney may instead seek
2 forfeiture by filing an ex parte motion in any court of competent
3 jurisdiction as provided in this section.

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

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

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

12 (c) Abandons the property;

13 (d) Is unknown or incapable of being identified for some legitimate
14 reason; or

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

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

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

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

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

28 (5)(a) The prosecuting attorney shall give notice to any person
29 identified to have an interest in the property subject to forfeiture
30 under section 13 of this act, unless such other person is also charged
31 with a related controlled substance offense. The notice shall be served

1 upon any such person either in person or by registered or certified mail
2 at such person's last-known address.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (i) The claimed security interest does not exist or is invalid;

26 (ii) The interest resulted from a fraudulent conveyance;

27 (iii) The interest is held through a straw purchase, trust, or
28 otherwise for the benefit of the defendant or the unknown person believed
29 to have committed the controlled substance offense; or

30 (iv) The intervenor consented to the use of the property in the
31 controlled substance offense.

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

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

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

11 (2) The prosecuting attorney shall summarily return property to an
12 innocent owner.

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

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

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

24 (b) At such hearing, the intervenor shall have the burden to prove
25 by a preponderance of the evidence that the intervenor has a legal
26 interest in the property.

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

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

31 (ii) The intervenor did not regularly use the property as the

1 intervenor claimed; or

2 (iii) The intervenor (A) had actual knowledge of the controlled
3 substance offense or was willfully ignorant to it and (B) did not take
4 reasonable steps to prevent the use of the property to facilitate the
5 controlled substance offense. The intervenor is not required to take
6 steps the intervenor reasonably believes would subject the intervenor to
7 physical danger.

8 (6) If the prosecuting attorney meets the burden of proof required
9 under subdivision (5)(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 (5)(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 (7) Evidence offered by an intervenor under this section shall not
17 be admitted in any criminal proceedings related to the controlled
18 substance offense.

19 (8) Nothing in this section prohibits the intervenor from providing
20 information to any party or testifying in any trial as to facts the
21 intervenor knows.

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

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

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

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

9 (1) Dissipated the property;

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

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

13 (4) Commingled property with other property that cannot be divided
14 without difficulty.

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

23 Sec. 25. A defendant represented by appointed counsel in the
24 related criminal proceeding shall also be entitled to such representation
25 in any related forfeiture proceeding.

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

30 Sec. 27. A prosecuting attorney shall not seek personal money
31 judgments or other remedies related to the forfeiture of property not

1 provided for in the Controlled Substance Offenses Forfeiture Act.

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

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

8 (b) Post-judgment interest; and

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

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

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

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

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

24 Sec. 30. (1) At the conclusion of a proceeding under the Controlled
25 Substance Offenses Forfeiture Act in which property is forfeited, the
26 court shall order such property to be disposed of in accordance with this
27 section and section 31 of this act at such time as the property is no
28 longer required as evidence.

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

31 (a) Except as otherwise provided in this subsection, any property be

1 liquidated and, after deduction of court costs and the expense of
2 liquidation, the proceeds be distributed as provided in section 31 of
3 this act;

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

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

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

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

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

17 ~~28-1439.02~~ (1) Except as provided in subsection (2) of this section,
18 money resulting ~~The proceeds~~ from any sale ordered pursuant to section 30
19 of this act 28-431, less legal costs, charges, and claims allowed, and
20 any money forfeited pursuant to section 30 of this act 28-431 shall be
21 paid to the county treasurer of the county in which the seizure was made.
22 The county treasurer shall disburse fifty percent of such money for
23 support of the common schools of such county as provided in Article VII,
24 section 5, of the Constitution of Nebraska ~~dispose of all such proceeds~~
25 ~~from property forfeited pursuant to subdivision (1)(g) of section 28-431~~
26 ~~and fifty percent of the money forfeited pursuant to subdivision (1)(h)~~
27 ~~of section 28-431 in the manner provided for disposition of fines,~~
28 ~~penalties, and license money under the Constitution of Nebraska.~~ The
29 county treasurer shall disburse the remaining fifty percent ~~of the money~~
30 ~~forfeited pursuant to subdivision (1)(h) of section 28-431~~ to his or her
31 respective County Drug Law Enforcement and Education Fund pursuant to

1 Article VII, section 5, of the Constitution of Nebraska.—~~Each county~~
2 ~~shall create a County Drug Law Enforcement and Education Fund.~~

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

7 (3) {2} Money remitted to any county pursuant to section 77-4310.01
8 shall be credited by the county treasurer of such county to the County
9 Drug Law Enforcement and Education Fund.

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

12 ~~28-1439.03~~ (1) For purposes of this section:

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

16 (b) Drug enforcement purposes includes, but is not limited to, the
17 following when used or expended by law enforcement agencies or their
18 agents in discharging their responsibilities concerning traffic in
19 controlled substances and in suppressing the abuse of controlled
20 substances:

21 (i) Salaries for informants and any expenses of all agents and
22 informants;

23 (ii) Flash money for drug purchases; and

24 (iii) Money for drug purchases.

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

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

1 state law enforcement agencies.

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

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

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

23 (7) It is the intent of the Legislature to foster cooperation among
24 the County Drug Law Enforcement and Education Fund Boards in the state by
25 encouraging boards which have no use for the funds to disburse the funds
26 to boards in other counties.

27 Sec. 33. A law enforcement agency shall not sell forfeited property
28 directly or indirectly to any employee of the law enforcement agency, to
29 any person related to such employee within the third degree of
30 consanguinity or affinity, or to another law enforcement agency.

31 Sec. 34. (1) On or before August 1, 2025, and on or before each

1 August 1 thereafter, each prosecuting attorney shall provide a written
2 report to the Auditor of Public Accounts. The report shall cover all
3 property, other than contraband, seized for forfeiture under the
4 Controlled Substance Offenses Forfeiture Act by law enforcement agencies
5 within the prosecuting attorney's jurisdiction since the preceding August
6 1.

7 (2) The report shall include:

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

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

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

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

18 (e) The value of the property forfeited;

19 (f) If the seizure resulted from a motor vehicle stop, (i) whether a
20 warning or citation was issued, an arrest was made, or a search was
21 conducted and (ii) the characteristics of the race or ethnicity of the
22 suspect. The identification of such characteristics shall be based on the
23 observation and perception of the law enforcement officer responsible for
24 reporting the motor vehicle stop. The information shall not be required
25 to be provided by the suspect; and

26 (g) Any additional information the prosecuting attorney deems
27 relevant.

28 (3) On or before October 1, 2025, and on or before each October 1
29 thereafter, the Auditor of Public Accounts shall electronically submit a
30 report to the Legislature on the nature and extent of seizures and
31 forfeitures occurring in the most recent reporting period under

1 subsection (1) of this section.

2 Sec. 35. The Controlled Substance Offenses Forfeiture Act preempts
3 any local law on the same subject and no political subdivision shall
4 enact or enforce any ordinance or other local law or regulation
5 conflicting with any provision of the act or with any policy of this
6 state expressed by the act, whether the policy is expressed by inclusion
7 of a provision in the act or by exclusion of that subject from the act.

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

10 28-101 Sections 28-101 to 28-1357, 28-1601 and 28-1602 ~~to 28-1603,~~
11 and 28-1701 and section 45 of this act and the Controlled Substance
12 Offenses Forfeiture Act shall be known and may be cited as the Nebraska
13 Criminal Code.

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

16 28-416 (1) Except as authorized by the Uniform Controlled Substances
17 Act, it shall be unlawful for any person knowingly or intentionally: (a)
18 To manufacture, distribute, deliver, dispense, or possess with intent to
19 manufacture, distribute, deliver, or dispense a controlled substance; or
20 (b) to create, distribute, or possess with intent to distribute a
21 counterfeit controlled substance.

22 (2) Except as provided in subsections (4), (5), (7), (8), (9), and
23 (10) of this section, any person who violates subsection (1) of this
24 section with respect to: (a) A controlled substance classified in
25 Schedule I, II, or III of section 28-405 which is an exceptionally
26 hazardous drug shall be guilty of a Class II felony; (b) any other
27 controlled substance classified in Schedule I, II, or III of section
28 28-405 shall be guilty of a Class IIA felony; or (c) a controlled
29 substance classified in Schedule IV or V of section 28-405 shall be
30 guilty of a Class IIIA felony.

31 (3) A person knowingly or intentionally possessing a controlled

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

10 (4)(a) Except as authorized by the Uniform Controlled Substances
11 Act, any person eighteen years of age or older who knowingly or
12 intentionally manufactures, distributes, delivers, dispenses, or
13 possesses with intent to manufacture, distribute, deliver, or dispense a
14 controlled substance or a counterfeit controlled substance (i) to a
15 person under the age of eighteen years, (ii) in, on, or within one
16 thousand feet of the real property comprising a public or private
17 elementary, vocational, or secondary school, a community college, a
18 public or private college, junior college, or university, or a
19 playground, or (iii) within one hundred feet of a public or private youth
20 center, public swimming pool, or video arcade facility shall be punished
21 by the next higher penalty classification than the penalty prescribed in
22 subsection (2), (7), (8), (9), or (10) of this section, depending upon
23 the controlled substance involved, for the first violation and for a
24 second or subsequent violation shall be punished by the next higher
25 penalty classification than that prescribed for a first violation of this
26 subsection, but in no event shall such person be punished by a penalty
27 greater than a Class IB felony.

28 (b) For purposes of this subsection:

29 (i) Playground means any outdoor facility, including any parking lot
30 appurtenant to the facility, intended for recreation, open to the public,
31 and with any portion containing three or more apparatus intended for the

1 recreation of children, including sliding boards, swingsets, and
2 teeterboards;

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

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

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

18 (b) Except as authorized by the Uniform Controlled Substances Act,
19 it shall be unlawful for any person eighteen years of age or older to
20 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 aid and abet any person in the manufacture, transportation,
23 distribution, carrying, delivery, dispensing, preparation for delivery,
24 offering for delivery, or possession with intent to do the same of a
25 controlled substance or a counterfeit controlled substance.

26 (c) Any person who violates subdivision (a) or (b) of this
27 subsection shall be punished by the next higher penalty classification
28 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of
29 this section, depending upon the controlled substance involved, for the
30 first violation and for a second or subsequent violation shall be
31 punished by the next higher penalty classification than that prescribed

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

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

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

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

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

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

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

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

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

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

24 (9) Any person who violates subsection (1) of this section with
25 respect to heroin or any mixture or substance containing a detectable
26 amount of heroin in a quantity of:

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

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

31 (c) At least ten grams but less than twenty-eight grams shall be

1 guilty of a Class ID felony.

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

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

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

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

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

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

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

22 (a) For the first offense, be guilty of an infraction, receive a
23 citation, be fined three hundred dollars, and be assigned to attend a
24 course as prescribed in section 29-433 if the judge determines that
25 attending such course is in the best interest of the individual
26 defendant;

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

30 (c) For the third and all subsequent offenses, be guilty of a Class
31 IIIA misdemeanor, receive a citation, be fined five hundred dollars, and

1 be imprisoned not to exceed seven days.

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

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

10 (16) Any person knowingly or intentionally possessing a firearm
11 while in violation of subsection (1) of this section shall be punished by
12 the next higher penalty classification than the penalty prescribed in
13 subsection (2), (7), (8), (9), or (10) of this section, but in no event
14 shall such person be punished by a penalty greater than a Class IB
15 felony.

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

19 (18) In addition to the existing penalties available for a violation
20 of subsection (1) of this section or for a controlled substance offense
21 as defined in section 3 of this act, the court may order forfeiture of
22 any personal property derived from or used or intended to be used to
23 facilitate such crime pursuant to the Controlled Substance Offenses
24 Forfeiture Act. , including any criminal attempt or conspiracy to violate
25 subsection (1) of this section, a sentencing court may order that any
26 money, securities, negotiable instruments, firearms, conveyances, or
27 electronic communication devices as defined in section 28-833 or any
28 equipment, components, peripherals, software, hardware, or accessories
29 related to electronic communication devices be forfeited as a part of the
30 sentence imposed if it finds by clear and convincing evidence adduced at
31 a separate hearing in the same prosecution, following conviction for a

1 ~~violation of subsection (1) of this section, and conducted pursuant to~~
2 ~~section 28-1601, that any or all such property was derived from, used, or~~
3 ~~intended to be used to facilitate a violation of subsection (1) of this~~
4 ~~section.~~

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

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

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

13 (ii) For a second offense, the court may, as a part of the judgment
14 of conviction or adjudication, (A) impound any such licenses or permits
15 for ninety days and (B) require such person to complete no fewer than
16 twenty and no more than forty hours of community service and to attend a
17 drug education class; and

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

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

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

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

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

15 A copy of an abstract of the court's conviction or adjudication
16 shall be transmitted to the Director of Motor Vehicles pursuant to
17 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a
18 juvenile is prohibited from obtaining a license or permit under this
19 subsection.

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

22 28-439 As used in sections ~~28-101, 28-431,~~ and 28-439 to 28-444,
23 unless the context otherwise requires, drug paraphernalia shall mean all
24 equipment, products, and materials of any kind which are used, intended
25 for use, or designed for use, in manufacturing, injecting, ingesting,
26 inhaling, or otherwise introducing into the human body a controlled
27 substance in violation of sections ~~28-101, 28-431,~~ and 28-439 to 28-444
28 or the Uniform Controlled Substances Act. It shall include, but not be
29 limited to, the following:

30 (1) Diluents and adulterants, such as quinine hydrochloride,
31 mannitol, mannite, dextrose, and lactose, used, intended for use, or

1 designed for use in cutting controlled substances;

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

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

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

12 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes
13 with or without screens, permanent screens, hashish heads, or punctured
14 metal bowls;

15 (b) Water pipes;

16 (c) Carburetion tubes and devices;

17 (d) Smoking and carburetion masks;

18 (e) Roach clips, meaning objects used to hold burning material, such
19 as a marijuana cigarette, which has become too small or too short to be
20 held in the hand;

21 (f) Miniature cocaine spoons, and cocaine vials;

22 (g) Chamber pipes;

23 (h) Carburetor pipes;

24 (i) Electric pipes;

25 (j) Air-driven pipes;

26 (k) Chillums;

27 (l) Bongs; and

28 (m) Ice pipes or chillers.

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

31 28-440 In determining whether an object is drug paraphernalia, a

1 court or other authority shall consider, in addition to all other
2 logically relevant factors, the following:

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

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

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

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

11 (5) The existence of any residue of a controlled substance on the
12 object;

13 (6) Direct or circumstantial evidence of the intent of an owner, or
14 of anyone in control of the object, to deliver it to any person whom he
15 or she knows, or should reasonably know, intends to use the object to
16 facilitate a violation of sections ~~28-101, 28-431, and~~ 28-439 to 28-444.
17 The innocence of an owner, or of anyone in control of the object, as to a
18 direct violation of sections ~~28-101, 28-431, and~~ 28-439 to 28-444 shall
19 not prevent a finding that the object is intended for use, or designed
20 for use as drug paraphernalia;

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

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

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

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

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

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

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

3 (14) Expert testimony concerning its use.

4 Sec. 40. Section 28-441, Revised Statutes Cumulative Supplement,
5 2022, is amended to read:

6 28-441 (1) It shall be unlawful for any person to use, or to possess
7 with intent to use, drug paraphernalia to manufacture, inject, ingest,
8 inhale, or otherwise introduce into the human body a controlled substance
9 in violation of sections ~~28-101, 28-431, and~~ 28-439 to 28-444.

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

12 (3) A person shall not be in violation of this section if section
13 28-472 or 28-1701 applies.

14 Sec. 41. Section 28-442, Revised Statutes Cumulative Supplement,
15 2022, is amended to read:

16 28-442 (1) It shall be unlawful for any person to deliver, possess
17 with intent to deliver, or manufacture with intent to deliver, drug
18 paraphernalia, knowing, or under circumstances in which one reasonably
19 should know, that it will be used to manufacture, inject, ingest, or
20 inhale or otherwise be used to introduce into the human body a controlled
21 substance in violation of sections ~~28-101, 28-431, and~~ 28-439 to 28-444.

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

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

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

29 28-445 (1) Any person who knowingly and intentionally manufactures,
30 distributes, delivers, or possesses with intent to distribute or deliver
31 an imitation controlled substance shall:

- 1 (a) For the first offense, be guilty of a Class III misdemeanor; and
2 (b) For the second and all subsequent offenses, be guilty of a Class
3 II misdemeanor.

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

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

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

12 (c) Whether the dosage unit price substantially exceeds the
13 reasonable price of a similar dosage unit of like chemical composition
14 sold over the counter;

15 (d) Whether the substance was approved by the federal Food and Drug
16 Administration for over-the-counter sales and contained the packaging and
17 labeling information approved by the federal Food and Drug
18 Administration;

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

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

24 (g) Whether the substance is distributed to persons who represent it
25 as a controlled substance or controlled substance analogue, under
26 circumstances which indicate the distributor knows, intends, or should
27 know that his or her distributee is making or will make such
28 representations; and

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

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

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

6 28-1601 (1) For purposes of sections 28-1601 and 28-1602:

7 (a) Covered offense means a violation of the Child Pornography
8 Prevention Act or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
9 28-1105.01, or 28-1107;

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

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

13 (2) ~~(1)~~ In addition to existing penalties for a covered offense
14 violation of the Child Pornography Prevention Act, subsection (1) of
15 section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
16 28-1105.01, or 28-1107, a court may order forfeiture of any money,
17 securities, negotiable instruments, firearms, conveyances, or electronic
18 communication devices; as defined in section 28-833, any equipment,
19 components, peripherals, software, hardware, or accessories related to
20 electronic communication devices; ~~or~~ or any gambling devices as defined in
21 section 28-1101 if:

22 (a) The owner or possessor of the property has been convicted of a
23 covered offense violation of the Child Pornography Prevention Act,
24 subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103,
25 28-1104, 28-1105, 28-1105.01, or 28-1107;

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

29 (c) ~~It~~ The property is found by clear and convincing evidence that
30 such property was to have been derived from ~~or~~ ~~or~~ used, or intended to be
31 used to facilitate a covered offense violation of the Child Pornography

1 ~~Prevention Act, subsection (1) of section 28-416, or section 28-813.01,~~
2 ~~28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.~~

3 (3) ~~(2)~~ Following the filing of an information charging a covered
4 offense violation of the Child Pornography Prevention Act, subsection (1)
5 of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,
6 28-1105, 28-1105.01, or 28-1107 that specifically seeks forfeiture of any
7 property listed in subsection ~~(2)~~ (1) of this section, the defendant may
8 request a pretrial hearing to determine the existence of probable cause
9 to believe that the property specifically sought to be forfeited was
10 derived from or ~~, used, or intended to be used to facilitate a covered~~
11 offense violation of the Child Pornography Prevention Act, subsection (1)
12 of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,
13 28-1105, 28-1105.01, or 28-1107. The request for a hearing pursuant to
14 this section must be filed with the district court in which the criminal
15 proceeding is pending within thirty days after the filing of the
16 information.

17 (4)(a) ~~(3)~~ At any time after the filing of the information in
18 district court and prior to final disposition of the criminal case, any
19 person ~~or entity,~~ other than the defendant, with a claimed legal interest
20 in the property may petition to intervene in the district court with
21 jurisdiction over the criminal case for the specific and limited purpose
22 of demonstrating such person's ~~his, her, or its~~ legal interest in the
23 property and such person's ~~his, her, or its~~ lack of actual knowledge that
24 such property was derived from or ~~, used, or intended to be used to~~
25 facilitate a covered offense in violation of the Child Pornography
26 Prevention Act, subsection (1) of section 28-416, or section 28-813.01,
27 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.

28 (b) In the petition ~~to intervene,~~ the intervenor ~~intervening person~~
29 ~~or entity~~ shall, at a minimum, state facts demonstrating the intervenor's
30 ~~his, her, or its~~ legal interest in the property and the intervenor's ~~his,~~
31 ~~her, or its~~ lack of actual knowledge regarding the use or intended use of

1 the property.

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

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

11 (b) Either ~~either~~ (i) that such property was acquired by the
12 intervenor ~~claimant~~ in good faith and the intervenor ~~he, she, or it~~ did
13 not have actual knowledge that such property was derived from or ~~,~~ used,
14 or intended to be used to facilitate a covered offense ~~violation of the~~
15 ~~Child Pornography Prevention Act, subsection (1) of section 28-416, or~~
16 ~~section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or~~
17 ~~28-1107~~ or (ii) that the property seized was not derived from or ~~,~~ used,
18 or intended to be used to facilitate a covered offense ~~violation of the~~
19 ~~Child Pornography Prevention Act, subsection (1) of section 28-416, or~~
20 ~~section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or~~
21 ~~28-1107.~~

22 (6) The court, on its own motion or upon application of the
23 intervenor ~~intervening claimant~~, may permit the intervenor ~~such person~~ to
24 proceed in forma pauperis under sections 25-2301 to 25-2310. The court,
25 on its own motion or upon application of the intervenor ~~intervening~~
26 ~~claimant~~, may appoint counsel to represent such person if such person is
27 indigent. If the intervenor ~~he or she~~ asserts indigency, the court shall
28 make a reasonable inquiry to determine such person's financial condition
29 and may require the intervenor ~~him or her~~ to execute an affidavit of
30 indigency for filing with the clerk of the court.

31 (7) ~~(4)~~ After conviction but prior to sentencing for a covered

1 ~~offense, violation of the Child Pornography Prevention Act, subsection~~
2 ~~(1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,~~
3 ~~28-1105, 28-1105.01, or 28-1107~~ in cases in which the prosecuting
4 authority has specifically requested forfeiture of property, the district
5 court shall conduct an evidentiary hearing at which the prosecuting
6 authority must prove by clear and convincing evidence what specific
7 amount or portion of the property specifically enumerated in the criminal
8 information was derived from or ~~used~~, or intended to be used to
9 facilitate a covered offense ~~for use in furtherance of a violation of the~~
10 ~~Child Pornography Prevention Act, subsection (1) of section 28-416, or~~
11 ~~section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or~~
12 ~~28-1107.~~ At the conclusion of such hearing, the court shall make specific
13 findings of fact indicating what amount or portion of the property sought
14 to be forfeited by the state was derived from or ~~used~~, or intended to
15 be used to facilitate a covered offense ~~violation of the Child~~
16 ~~Pornography Prevention Act, subsection (1) of section 28-416, or section~~
17 ~~28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.~~
18 The court shall order any amount or portion of the property not proven by
19 the state to be derived from or ~~used~~, or intended to be used to
20 facilitate a covered offense ~~violation of the Child Pornography~~
21 ~~Prevention Act, subsection (1) of section 28-416, or section 28-813.01,~~
22 ~~28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107~~ or the fair
23 market value of the legally recognized interest in such property be
24 returned to its rightful and legal owner or interest holder.

25 (8)(a) ~~(5)(a)~~ The court shall order that any amount or portion of
26 property proven by the state by clear and convincing evidence to be
27 derived from or ~~used~~, or intended to be used to facilitate a covered
28 offense ~~violation of the Child Pornography Prevention Act, subsection (1)~~
29 ~~of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,~~
30 ~~28-1105, 28-1105.01, or 28-1107~~ be forfeited to the state and disposition
31 of such property be conducted in accordance with this subsection and

1 section 31 of this act ~~28-1439.02~~ at such time as the property is no
2 longer required as evidence in any criminal proceeding.

3 (b) As part of any disposition of property, the court may order
4 that: (i) Any money, securities, or negotiable instruments be distributed
5 as provided in Article VII, section 5, of the Constitution of Nebraska;
6 (ii) any conveyances be sold or put to official use by the seizing agency
7 for a period of not more than one year and when such property is no
8 longer necessary for official use or at the end of two years, whichever
9 comes first, such property shall be sold. Proceeds from the sale of any
10 conveyance shall be distributed as provided in Article VII, section 5, of
11 the Constitution of Nebraska; (iii) any electronic communication devices
12 ~~as defined in section 28-833~~, any equipment, components, peripherals,
13 software, hardware, or accessories related to electronic communication
14 devices, or any gambling devices ~~as defined in section 28-1101~~ be
15 destroyed by a law enforcement agency; and (iv) the disposition of
16 firearms shall be effectuated pursuant to section 29-820.

17 (c) As used in this subsection, official use means use directly in
18 connection with enforcement of the Child Pornography Prevention Act, ~~the~~
19 ~~Uniform Controlled Substances Act~~, or section 28-813.01, 28-1102,
20 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.

21 (9) ~~(6)~~ Any money, securities, negotiable instruments, firearms,
22 conveyances, or electronic communication devices; ~~as defined in section~~
23 ~~28-833~~, any equipment, components, peripherals, software, hardware, or
24 accessories related to electronic communication devices; ~~or~~ or any
25 gambling devices ~~as defined in section 28-1101~~ may be forfeited pursuant
26 to a plea agreement between the state and the defendant subject to notice
27 to or approval of the court.

28 (10) ~~(7)~~ Subdivision (2)(a) ~~(1)(a)~~ of this section does not apply if
29 the owner or possessor of the property dies or is removed from the United
30 States before charges are filed or a conviction obtained.

31 (11) ~~(8)~~ Subdivision (2)(b) ~~(1)(b)~~ of this section does not apply if

1 the owner or possessor of the property dies or is removed from the United
2 States before charges are filed so long as the statute of limitations for
3 a covered offense violation of the ~~Child Pornography Prevention Act,~~
4 ~~subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103,~~
5 ~~28-1104, 28-1105, 28-1105.01, or 28-1107~~ has not expired.

6 ~~(12)~~ ~~(9)~~ Subdivision ~~(2)(a)~~ ~~(1)(a)~~ of this section does not apply if
7 the owner or possessor of the property is unknown or incapable of being
8 determined for some legitimate reason or fails to appear in court as
9 ordered after prosecution for a covered offense violation of the ~~Child~~
10 ~~Pornography Prevention Act, subsection (1) of section 28-416, or section~~
11 ~~28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107~~ is
12 commenced and is not apprehended within twelve months after the failure
13 to appear order was issued by the court.

14 ~~(13)~~ ~~(10)~~ If the owner or possessor of the property fails to appear
15 in court as ordered after prosecution for a covered offense violation of
16 the ~~Child Pornography Prevention Act, subsection (1) of section 28-416,~~
17 ~~or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or~~
18 ~~28-1107~~ is commenced but appears or is apprehended within twelve months
19 after the failure to appear order was issued by the court, the court may
20 order the owner or possessor of the property, as a part of any sentence
21 imposed for either the failure to appear or the conviction for a covered
22 offense of the ~~Child Pornography Prevention Act, subsection (1) of~~
23 ~~section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,~~
24 ~~28-1105.01, or 28-1107,~~ to pay a storage fee of one hundred dollars per
25 month for each month the property was held following the issuance of the
26 failure to appear order.

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

29 28-1602 (1) The prosecuting authority must specifically plead its
30 intent to seek forfeiture of any property upon a conviction for a covered
31 offense violation of the ~~Child Pornography Prevention Act, subsection (1)~~

1 ~~of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,~~
2 ~~28-1105, 28-1105.01, or 28-1107~~ in the same criminal information charging
3 the covered offense ~~underlying violation of the Child Pornography~~
4 ~~Prevention Act, subsection (1) of section 28-416, or section 28-813.01,~~
5 ~~28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.~~

6 (2) In pleading its intent to seek forfeiture, the information shall
7 specifically (a) state the date the property was seized, (b) state the
8 place the property was seized from, (c) describe the property sought to
9 be forfeited, and (d) if known, state the name of the owner of the
10 property, the name of the person or persons in possession of the property
11 or in physical proximity to the property when it was seized, and the name
12 of any other person or entity that may have a claim or interest in the
13 property.

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

16 ~~28-1603~~ (1) No law enforcement agency or prosecuting authority of
17 this state or its political subdivisions shall transfer or refer for
18 adoption any money or property to a federal law enforcement authority or
19 other federal agency by any means unless:

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

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

25 (b) ~~(3)~~ The person from whom the money or property was seized is the
26 subject of a federal prosecution and ~~or~~ the facts and circumstances
27 surrounding the money or property seized are the subject of a federal
28 forfeiture prosecution.

29 (2)(a) Except as allowed for in subdivision (2)(b) of this section,
30 a joint task force of a Nebraska law enforcement agency and a federal
31 agency shall transfer seized property to the Nebraska prosecuting

1 authority for forfeiture under Nebraska law.

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

6 (3) A law enforcement agency or prosecuting authority shall not
7 accept payment of any kind or distribution of forfeiture proceeds from
8 the federal government if the agency or authority violated subsection (1)
9 or (2) of this section in relation to such payment or distribution. Any
10 such payment or distribution shall be remitted to the State Treasurer for
11 credit to the General Fund.

12 (4) The Attorney General, after consulting with the United States
13 Attorney, shall establish guidelines for joint task forces and
14 multijurisdictional collaboration in forfeiture matters. The guidelines
15 shall ensure that activities are conducted in compliance with state and
16 federal law and excluded unreasonable actions that are intended to
17 circumvent state law.

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

20 29-820 (1) Unless other disposition is specifically provided by law,
21 when property seized or held is no longer required as evidence, it shall
22 be disposed of by the law enforcement agency on such showing as the law
23 enforcement agency may deem adequate, as follows:

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

27 (b) Money shall be restored to the owner unless forfeited pursuant
28 to the Controlled Substance Offenses Forfeiture Act or sections
29 25-21,302, 28-1601 and 28-1602, or section 45 of this act it was used in
30 unlawful gambling or lotteries or it was used or intended to be used to
31 facilitate a violation of Chapter 28, article 4, in which case the money

1 ~~shall be forfeited and disposed of as required by Article VII, section 7,~~
2 ~~of the Constitution of Nebraska;~~

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

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

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

12 (f) Firearms which have come into the law enforcement agency's
13 possession through a seizure or otherwise and (i) have not been used in
14 the commission of crime, (ii) have not been defaced or altered in any
15 manner that violates any state or federal law, (iii) may have a lawful
16 use and be lawfully possessed, and (iv) are not subject to section 29-440
17 shall be restored to the owner.

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

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

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

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

29 (ii) All raw materials, products, and equipment of any kind which
30 are used, or intended for use, in manufacturing, compounding, processing,
31 administering, delivering, importing, or exporting any controlled

1 substance in violation of the Uniform Controlled Substances Act;
2 (iii) All lookalike substances as defined in section 28-401; and
3 (iv) All drug paraphernalia defined in section 28-439.

4 (b) All property described in subdivision (3)(a) of this section
5 shall be kept by the property division of the law enforcement agency
6 which employs the officer who seized such property for so long as it is
7 needed as evidence in any trial. When no longer required as evidence,
8 such property shall be destroyed by the law enforcement agency holding
9 such property or turned over to the Department of Health and Human
10 Services for custody or destruction, except that a law enforcement agency
11 may keep a small quantity of such property for training purposes or use
12 in investigations. Any large quantity of such property may be disposed of
13 on order of a court of record of this state in such manner as the court
14 in its sound discretion shall direct. Such an order shall be given only
15 after a proper laboratory examination and report of such property has
16 been completed and after a hearing has been held by the court after
17 notice to the defendant of the proposed disposition of the property. The
18 findings in such court order as to the nature, kind, and quantity of the
19 property so disposed of may be accepted as evidence at subsequent court
20 proceedings in lieu of the property ordered destroyed by the court order.

21 (4) ~~(3)~~ When any animal as defined by section 28-1008 is seized or
22 held and is no longer required as evidence, such animal may be disposed
23 of in such manner as the court may direct. The court may consider
24 adoption alternatives through humane societies or comparable institutions
25 and the protection of such animal's welfare. For a humane society or
26 comparable institution to be considered as an adoption alternative under
27 this subsection, it must first be licensed by the Department of
28 Agriculture as having passed the inspection requirements in the
29 Commercial Dog and Cat Operator Inspection Act and paid the fee for
30 inspection under the act. The court may prohibit an adopting or
31 purchasing party from selling such animal for a period not to exceed one

1 year.

2 ~~(5)~~ (4) Unless otherwise provided by law, all other property shall
3 be disposed of in such manner as the court in its sound discretion shall
4 direct.

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

7 37-1299 (1) A motorboat is abandoned:

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

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

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

14 (d) If left for more than thirty days in the custody of a law
15 enforcement agency after the agency has sent a letter to the last-
16 registered owner under section 37-12,102.

17 (2) For purposes of this section:

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

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

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

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

27 37-12,102 A state or local law enforcement agency which has custody
28 of a motorboat for investigatory purposes and has no further need to keep
29 it in custody shall send a certified letter to each of the last-
30 registered owners stating that the motorboat is in the custody of the law
31 enforcement agency, that the motorboat is no longer needed for law

1 enforcement purposes, and that after thirty days the agency will dispose
2 of the motorboat. This section shall not apply to a motorboat 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 motorboat held in custody for investigatory purposes under this section
6 unless the registered owner or the person in possession of the motorboat
7 when it is taken into custody is charged with a felony or misdemeanor
8 related to the offense for which the law enforcement agency took the
9 motorboat into custody. If a registered owner or the person in possession
10 of the motorboat when it is taken into custody is charged with a felony
11 or misdemeanor but is not convicted, the registered owner shall be
12 entitled to a refund of the storage fees.

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

15 60-1901 (1) A motor vehicle is an abandoned vehicle:

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

19 (b) 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 (c) 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 (d) 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 (e) 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 (f) If removed from private property by a municipality pursuant to a
31 municipal ordinance.

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

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

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

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

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

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

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

22 (4) For purposes of this section:

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

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

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

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

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

10 60-1903.01 A state or local law enforcement agency which has custody
11 of a motor vehicle for investigatory purposes and has no further need to
12 keep it in custody shall send a certified letter to each of the last-
13 registered owners, if any, and lienholders, if any, within fifteen
14 calendar days stating that the vehicle is in the custody of the law
15 enforcement agency, that the vehicle is no longer needed for law
16 enforcement purposes, and that after thirty days the agency will dispose
17 of the vehicle. This section shall not apply to motor vehicles subject to
18 forfeiture under the Controlled Substance Offenses Forfeiture Act ~~section~~
19 ~~28-431~~. No storage fees shall be assessed against the registered owner of
20 a motor vehicle held in custody for investigatory purposes under this
21 section unless the registered owner or the person in possession of the
22 vehicle when it is taken into custody is charged with a felony or
23 misdemeanor related to the offense for which the law enforcement agency
24 took the vehicle into custody. If a registered owner or the person in
25 possession of the vehicle when it is taken into custody is charged with a
26 felony or misdemeanor but is not convicted, the registered owner shall be
27 entitled to a refund of the storage fees.

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

30 81-2004.05 There is hereby created the Public Safety Cash Fund. All
31 forfeitures and proceeds received by the Nebraska State Patrol under the

1 federal Equitable Sharing Provisions or any other federal agreement from
2 any agency of the federal government on or after July 10, 1990, shall be
3 deposited in the fund. This section shall not apply to funds otherwise
4 subject to the Controlled Substance Offenses Forfeiture Act and section
5 31 of this act sections 28-431 and 28-1439.02. The fund shall be used
6 only in accordance with the applicable requirements of the federal
7 government. The fund shall be administered by the Superintendent of Law
8 Enforcement and Public Safety. ~~For fiscal year 2013-14, transfers may be~~
9 ~~made from the fund to the Nebraska Capital Construction Fund at the~~
10 ~~direction of the Legislature to support capital projects related to~~
11 ~~Nebraska State Patrol law enforcement efforts.~~ Any money in the Public
12 Safety Cash Fund available for investment shall be invested by the state
13 investment officer pursuant to the Nebraska Capital Expansion Act and the
14 Nebraska State Funds Investment Act.

15 Sec. 52. Section 81-2004.10, Revised Statutes Cumulative Supplement,
16 2022, is amended to read:

17 81-2004.10 There is hereby created the Treasury Agency Forfeitures
18 Cash Fund. All forfeitures and proceeds received by the Nebraska State
19 Patrol under the federal equitable sharing provisions distributed by
20 federal Treasury agencies as of July 1, 2017, shall be deposited in the
21 fund. This section shall not apply to funds otherwise subject to the
22 Controlled Substance Offenses Forfeiture Act and section 31 of this act
23 ~~sections 28-431 and 28-1439.02~~. The fund shall be used only in accordance
24 with the applicable requirements of the federal government. The fund
25 shall be administered by the Superintendent of Law Enforcement and Public
26 Safety. Any money in the fund available for investment shall be invested
27 by the state investment officer pursuant to the Nebraska Capital
28 Expansion Act and the Nebraska State Funds Investment Act.

29 Sec. 53. Original sections 28-439, 28-440, 28-445, 28-1439.02,
30 28-1439.03, 28-1601, 28-1602, 28-1603, 29-820, 37-1299, 37-12,102,
31 60-1901, 60-1903.01, and 81-2004.05, Reissue Revised Statutes of

1 Nebraska, sections 28-441, 28-442, and 81-2004.10, Revised Statutes
2 Cumulative Supplement, 2022, and sections 28-101 and 28-416, Revised
3 Statutes Supplement, 2023, are repealed.

4 Sec. 54. The following sections are outright repealed: Sections
5 28-431, 28-1439.04, and 28-1439.05, Reissue Revised Statutes of Nebraska.