

LEGISLATIVE BILL 247

Approved by the Governor June 7, 1985

Introduced by Firsch, 10; Chizek, 31; Hoagland, 6

AN ACT relating to crimes and punishments; to amend section 28-431, Revised Statutes Supplement, 1984; to change provisions relating to seizure and forfeiture of certain property; to create funds; to create boards; to provide powers and duties; to define a term; to state intent; to authorize the receipt of certain property; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-431, Revised Statutes Supplement, 1984, be amended to read as follows:

28-431. (1) The following shall be seized without warrant by an officer of the Division of Drug Control or by any peace officer, and the same shall be subject to forfeiture: (a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of the provisions of this article; (b) all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, administering, delivering, importing, or exporting any controlled substance in violation of the provisions of this article; (c) all property which is used, or is intended for use, as a container for property described in subdivisions (a) and (b) of this subsection; (d) all drug paraphernalia defined in section 28-439; (e) all books, records, and research, including, but not limited to, formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of this article; (f) ~~(d)~~ all conveyances including, but not limited to, aircraft, vehicles, or vessels which are used, or intended for use, in transporting any controlled substance with intent to manufacture, distribute, deliver, dispense, export, or import such controlled substance in violation of this article; PROVIDED, any conveyance seized including aircraft, vehicles, or vessels shall be released by the proper court upon a showing by the owner of record of such conveyance that the owner had no knowledge that such conveyance was being used in violation of any provision of this article; (e) books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use in violation of the provisions of this article; and (f) all drug paraphernalia defined in section 28-439, and (g) all money used, or intended to be used, to facilitate a violation of this article.

(2) Any property described in subdivision (1)(f) of this section conveyance, including aircraft, vehicles, or vessels, which is used, or intended for use, to transport any property described in subdivisions subdivision (1)(a) and or (b) of subsection (1) of this section is hereby declared to be a common nuisance, and any peace officer having probable cause to believe that such property conveyance is so used, or intended for such use, shall make a search thereof with or without a warrant.

(3) All money that a law enforcement agency proves was furnished by such agency shall be returned to the agency. All property seized without a search warrant shall not be subject to a replevin action and: (a) All property described in subdivisions (1)(a) to (1)(e) of this section shall be kept by the property division of the law enforcement agency which employs the officer who seized such property for so long as it is needed as evidence in any trial; and (b) when no longer required as evidence, all property described in subdivision (1)(e) of this section shall be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct, and all property described in subdivisions (1)(a), (b), (c), and (d) of subsection (1) of this section, that has been used or is intended to be used in violation of the provisions of this article, when no longer needed as evidence shall be destroyed by the law enforcement agency holding the same or the Bureau of Examining Boards or turned over to the custody of the department, except ~~PROVIDED~~, that a law enforcement agency may keep a small quantity of the property described in subdivisions (1)(a), (b), (c), and (d) of subsection (1) of this section for training purposes or use in investigations. ~~AND PROVIDED FURTHER, that any Any large quantity of property described in subdivisions (1)(a), (b), (c), and (d) of subsection (1) of this section, whether seized under a search warrant or validly seized without a warrant, may be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct. Such an order may be given only after a proper laboratory examination and report of such property has been completed and after a hearing has been held by the court after notice to the defendant of the proposed disposition of the property. The findings in such court order as to the nature, kind, and quantity of the property so disposed of may be accepted as evidence at subsequent court proceedings in lieu of the property ordered destroyed by the court order.~~

(4) When any property described in subdivision (1)(f) or (g) conveyance, including aircraft, vehicles, or vessels, is seized under subdivision (1)(d) of this section is seized, the person seizing the same shall cause to be filed, within ten five days thereafter, cause to be filed in the district court of the county in which seizure

was made, a petition complaint for disposition condemnation of the conveyance seized such property. The proceedings shall be brought in the name of the state by the county attorney of the county in which the conveyance such property was seized. The petition complaint shall describe the conveyance property, state the name of the owner if known, allege the essential elements of the violation which is claimed to exist, and shall conclude with a prayer of due process to enforce the forfeiture for disposition. Upon the filing of such a complaint, the court shall promptly cause process to issue to the sheriff, commanding him or her to take possession of the conveyance described in the complaint and to hold the same for further order of the court. The sheriff county attorney shall at the time of taking possession serve have a copy of the petition served process upon the owner of or any person having an interest in the conveyance property, if known, in person or by registered or certified mail at his or her last-known address. If the owner is unknown or there is a reasonable probability that there are unknown persons with interests in the property, the county attorney shall provide notice of the seizure and petition for disposition by publication once a week for four consecutive weeks in a newspaper of general circulation in the county of the seizure. At least five days shall elapse between each publication of notice. PROVIDED, any conveyance seized including aircraft, vehicles, or vessels shall be released by the proper court upon a showing by

At any time after seizure and prior to court disposition, the owner of record of such conveyance property may petition the district court of the county in which seizure was made to release such property, and the court shall order the release of the property upon a showing by the owner that he or she that such owner had no knowledge that such property conveyance was being used in violation of any provision of this article. At the expiration of twenty days after such seizure by the sheriff, if no claimant has appeared to defend such complaint, the court shall order the sheriff to dispose of the seized conveyance.

Any person having an interest in the conveyance property proceeded against, or any person against whom a civil or criminal liability would exist if such conveyance property is in violation of the provisions of this article may, within twenty thirty days following the sheriff's taking of possession after seizure, appear and file an answer or demurrer to the complaint petition. The answer or demurrer shall allege the claimant's interest in or liability involving such property. of the party filing it. In all other respects the issue shall be made up as in other civil actions. if, after a trial, or upon At least thirty but not more than ninety days after seizure, there shall be a hearing before the court, without a trial when no

claimant has appeared to defend the complaint, If the claimant proves by a preponderance of the evidence that he or she (a) has not used or intended to use the property to facilitate an offense in violation of this article, (b) has an interest in such property as owner or lienor or otherwise, acquired by him or her in good faith, and (c) at no time had any knowledge that such property was being or would be used in, or to facilitate, the violation of this article, the court shall order that such property or the value of the claimant's interest in such property be returned to the claimant. If there are no claims, if all claims are denied, or if the value of the property exceeds all claims granted and it shall appear is shown beyond a reasonable doubt that such conveyance property was used in violation of this article, the court shall order disposition of such property at such time as the property is no longer required as evidence in any criminal proceeding. The court may order that property described in subdivision (1)(f) of this section be sold or put to official use by the confiscating agency for a period of not more than one year and that when such property is no longer necessary for official use or at the end of two years, whichever comes first, such property shall be sold. Proceeds from the sale of the property and any money described in subdivision (1)(g) of this section shall be distributed pursuant to section 2 of this act. Official use shall mean use directly in connection with enforcement of the provisions of this article. was used or intended for use in transporting a controlled substance with intent to manufacture, distribute, deliver, dispense, export, or import such controlled substance, such conveyance shall be ordered sold.

When any conveyance is ordered sold by the court, the proceeds from the sale less the legal costs and charges shall be paid to the county treasurer for disposition in the manner provided for disposition of license money under the Constitution of this state. Whenever the condemnation of the conveyance is decreed, the court shall allow the claim of any claimant to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court (1) that he or she has not committed or caused to be committed an offense in violation of the provisions of this article and has no interest in any controlled substance referred to in this article, (2) that he or she has an interest in such conveyance as owner or lienor or otherwise, acquired by him or her in good faith, and (3) that he or she at no time had any knowledge or reason to believe that such conveyance was being or would be used in, or to facilitate, the violation of the provisions of this article.

When a decree of condemnation is entered against any conveyance,

Any court costs and fees and storage and other proper expenses shall be charged against any the person; if any; intervening as claimant or owner of the conveyance property unless such person shall establish his or her claim. If When a sale conveyance is sold under court order ordered, the officer holding the sale shall make a return to the court showing to whom the property conveyance was sold and for what price. This return together with the court order shall authorize the county clerk to issue a title to the purchaser of the conveyance property if such conveyance requires such title is required under the laws of this state.

Sec. 2. The proceeds from any sale ordered pursuant to section 28-431, less legal costs, charges, and claims allowed, and any money forfeited pursuant to section 28-431 shall be paid to the county treasurer of the county in which the seizure was made. The county treasurer shall dispose of all such proceeds from property forfeited pursuant to subdivision (1)(f) of section 28-431 and fifty per cent of the money forfeited pursuant to subdivision (1)(g) of section 28-431 in the manner provided for disposition of fines, penalties, and license money under the Constitution of this state. The county treasurer shall disburse the remaining fifty per cent of the money forfeited pursuant to subdivision (1)(g) of section 28-431 to his or her respective County Drug Law Enforcement Fund. Each county shall create a County Drug Law Enforcement Fund.

Sec. 3. A County Drug Law Enforcement Fund Board shall be created by each county of this state to administer, for drug enforcement purposes, its respective fund authorized by section 2 of this act. The board may authorize use of the fund for drug enforcement purposes, in its own or any other county, by village, city, county, or state law enforcement agencies.

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

If during any fiscal year the fund contains money forfeited pursuant to subdivision (1)(g) of section 28-431, the board shall meet at least once during such year and make an accounting of the expenditures of the fund. At the end of any fiscal year in which the fund has contained money, the board shall make a report summarizing the use of the fund during such year to the Auditor of Public Accounts, except that such report shall contain no

information which would jeopardize an ongoing investigation. Such report shall indicate the amount of money placed in the fund, the amount of money disbursed, and the number of cases opened and closed in which the fund was utilized. The board may adopt and promulgate all rules and regulations necessary for the expenditures and accountability of such fund.

Sec. 4. For purposes of section 3 of this act, drug enforcement purposes shall include, but not be limited to, the following when used or expended by law enforcement agencies or their agents in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances:

(1) Salaries for informants and any expenses of all agents and informants;

(2) Flash money for drug purchases; and

(3) Money for drug purchases.

Sec. 5. The Legislature hereby finds and declares that it is the intent of section 3 of this act to foster cooperation among the boards in the state by encouraging those boards which have no use for the funds to disburse the funds to boards in other counties.

Sec. 6. Notwithstanding any other provision of the laws of the State of Nebraska, any state or local law enforcement agency which participated directly with federal law enforcement agencies in any of the acts which led to the seizure or forfeiture of property being held by federal law enforcement agencies shall be authorized to receive such property directly from the federal government.

Sec. 7. That original section 28-431, Revised Statutes Supplement, 1984, is repealed.