

AMENDMENTS TO LB39

Introduced by Judiciary.

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

3           Section 1. Section 28-101, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           28-101 Sections 28-101 to 28-1357, 28-1418.01, 28-1429.03, and  
6 28-1601 to 28-1603 and section 2 of this act shall be known and may be  
7 cited as the Nebraska Criminal Code.

8           Sec. 2. (1) For purposes of this section, ivory means the tusk of  
9 any species of elephant or mammoth or any piece thereof, and the horn of  
10 any species of rhinoceros, or any piece thereof. The term ivory includes  
11 both raw ivory and worked ivory and includes any item containing or  
12 advertised as containing ivory.

13           (2) Except as provided in subsection (3) of this section, it is  
14 unlawful to purchase, sell, possess with intent to sell, offer for sale,  
15 trade, or barter ivory. Any person who violates this section shall be  
16 guilty of a Class II misdemeanor. Ivory used in violation of this section  
17 is contraband, shall be subject to seizure, and shall be disposed of  
18 pursuant to section 29-820.

19           (3) The prohibitions set forth in subsection (2) of this section  
20 shall not apply to:

21           (a) Any activity authorized by an exemption or permit under federal  
22 law or that is otherwise expressly authorized under federal law;

23           (b) Musical instruments containing ivory if:

24           (i) The ivory in such instrument is less than twenty percent of the  
25 volume of such instrument;

26           (ii) The ivory is a fixed or integral component or components of the  
27 instrument as a whole and the ivory does not, in its current form,

1 account for more than twenty percent of the value of the instrument;

2 (iii) The instrument was manufactured or created before 1975; and

3 (iv) The owner or seller provides historical documentation  
4 demonstrating provenance and showing the instrument was manufactured or  
5 created before 1975;

6 (c) A bona fide antique containing ivory if:

7 (i) The antique is at least one hundred years old at the time of the  
8 transaction;

9 (ii) The owner or seller provides historical documentation  
10 demonstrating provenance and showing the item was manufactured or created  
11 at least one hundred years prior to such time;

12 (iii) The ivory component or components do not account for more than  
13 twenty percent of the volume of the antique; and

14 (iv) The ivory is a fixed or integral component or components of the  
15 antique as a whole and the ivory does not, in its current form, account  
16 for more than twenty percent of the value of the antique;

17 (d) Acquisition or distribution for educational or scientific  
18 purposes by a bona fide educational or scientific institution, including  
19 a museum;

20 (e) An employee or agent of federal, state, or local government  
21 undertaking a law enforcement activity pursuant to federal or state law  
22 or a mandatory duty required by law; and

23 (f) Firearms, knives, or their component parts containing ivory.

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

26 29-820 (1) Unless other disposition is specifically provided by law,  
27 when property seized or held is no longer required as evidence, it shall  
28 be disposed of by the law enforcement agency on such showing as the law  
29 enforcement agency may deem adequate, as follows:

30 (a) Property stolen, embezzled, obtained by false pretenses, or  
31 otherwise obtained unlawfully from the rightful owner thereof shall be

1 restored to the owner;

2 (b) Money shall be restored to the owner unless it was used in  
3 unlawful gambling or lotteries or it was used or intended to be used to  
4 facilitate a violation of Chapter 28, article 4, in which case the money  
5 shall be forfeited and disposed of as required by Article VII, section 7,  
6 of the Constitution of Nebraska;

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

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

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

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

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

25 Goods which are declared to be contraband but may reasonably be  
26 returned to a condition or state in which such goods may be lawfully  
27 used, possessed, or distributed by the public.

28 (3) Ivory used in violation of section 2 of this act which is seized  
29 or held and is no longer required as evidence may, by order of the court,  
30 be donated to a bona fide educational or scientific institution,  
31 including a museum, for educational or research purposes or to raise

1 awareness of the trafficking and threatened nature of endangered animals,  
2 unless otherwise prohibited under state and federal law. The recipient of  
3 such donation shall pay any costs associated with receiving such  
4 donation. If such donation is not feasible, such ivory shall be destroyed  
5 or placed in storage as the court may direct.

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

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

21       Sec. 4.    Original sections 28-101 and 29-820, Reissue Revised  
22 Statutes of Nebraska, are repealed.