

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 256

Introduced by McGill, 26; Pirsch, 4.

Read first time January 16, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to property; to amend sections 28-439, 28-440,
2 28-441, 28-442, 28-445, 28-1439.02, 28-1439.03, 37-1299,
3 37-12,102, 60-1901, 60-1903.01, and 81-2004.05, Reissue
4 Revised Statutes of Nebraska; to eliminate provisions
5 relating to criminal forfeiture; to provide for civil
6 forfeiture as prescribed; to provide legislative intent;
7 to harmonize provisions; to provide a duty for the
8 Revisor of Statutes; to repeal the original sections; and
9 to outright repeal section 28-431, Reissue Revised
10 Statutes of Nebraska.

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

1 Section 1. Section 28-439, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-439 As used in sections ~~28-101, 28-431, and 28-439~~ to
4 28-444, unless the context otherwise requires, drug paraphernalia
5 shall mean all equipment, products, and materials of any kind which
6 are used, intended for use, or designed for use, in manufacturing,
7 injecting, ingesting, inhaling, or otherwise introducing into the
8 human body a controlled substance in violation of sections ~~28-101,~~
9 ~~28-431, and 28-439~~ to 28-444 or the Uniform Controlled Substances
10 Act. It shall include, but not be limited to, the following:

11 (1) Diluents and adulterants, such as quinine
12 hydrochloride, mannitol, mannite, dextrose, and lactose, used,
13 intended for use, or designed for use in cutting controlled
14 substances;

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

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

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

25 (a) Metal, wooden, acrylic, glass, stone, plastic, or

1 ceramic pipes with or without screens, permanent screens, hashish
2 heads, or punctured metal bowls;

3 (b) Water pipes;

4 (c) Carburetion tubes and devices;

5 (d) Smoking and carburetion masks;

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

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

10 (g) Chamber pipes;

11 (h) Carburetor pipes;

12 (i) Electric pipes;

13 (j) Air-driven pipes;

14 (k) Chillums;

15 (l) Bongs; and

16 (m) Ice pipes or chillers.

17 Sec. 2. Section 28-440, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 28-440 In determining whether an object is drug
20 paraphernalia, a court or other authority shall consider, in addition
21 to all other logically relevant factors, the following:

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

24 (2) Prior convictions, if any, of an owner, or of anyone
25 in control of the object, under any state or federal law relating to

1 any controlled substance;

2 (3) The proximity of the object, in time and space, to a
3 direct violation of this act;

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

6 (5) The existence of any residue of a controlled
7 substance on the object;

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

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

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

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

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

24 (11) Whether the owner, or anyone in control of the
25 object, is a legitimate supplier of like or related items to the

1 community, such as a licensed distributor or dealer of tobacco
2 products;

3 (12) Direct or circumstantial evidence of the ratio of
4 sales of the object or objects to the total sales of the business
5 enterprise;

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

8 (14) Expert testimony concerning its use.

9 Sec. 3. Section 28-441, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 28-441 (1) It shall be unlawful for any person to use, or
12 to possess with intent to use, drug paraphernalia to manufacture,
13 inject, ingest, inhale, or otherwise introduce into the human body a
14 controlled substance in violation of sections ~~28-101, 28-431,~~ and
15 28-439 to 28-444.

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

18 Sec. 4. Section 28-442, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 28-442 (1) It shall be unlawful for any person to
21 deliver, possess with intent to deliver, or manufacture with intent
22 to deliver, drug paraphernalia, knowing, or under circumstances in
23 which one reasonably should know, that it will be used to
24 manufacture, inject, ingest, or inhale or otherwise be used to
25 introduce into the human body a controlled substance in violation of

1 sections ~~28-101, 28-431, and 28-439~~ to 28-444.

2 (2) This section shall not apply to pharmacists who sell
3 hypodermic syringes or needles for the prevention of the spread of
4 infectious diseases.

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

7 Sec. 5. Section 28-445, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 28-445 (1) Any person who knowingly and intentionally
10 manufactures, distributes, delivers, or possesses with intent to
11 distribute or deliver an imitation controlled substance shall:

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

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

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

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

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

25 (c) Whether the dosage unit price substantially exceeds

1 the reasonable price of a similar dosage unit of like chemical
2 composition sold over the counter with packaging and labeling
3 approved by the federal Food and Drug Administration;

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

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

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

14 (3) Any substance possessed, distributed, or delivered in
15 violation of this section shall be subject to seizure and forfeiture
16 as provided in section ~~28-431. 13~~ of this act.

17 Sec. 6. Section 28-1439.02, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 28-1439.02 (1) The proceeds from any sale ordered
20 pursuant to section ~~28-431, 13~~ of this act, less legal costs,
21 charges, and claims allowed, and any money forfeited pursuant to such
22 section ~~28-431~~ shall be paid to the county treasurer of the county in
23 which the seizure was made. The county treasurer shall dispose of all
24 such proceeds from property forfeited pursuant to subdivision (1)(f)
25 of section ~~28-431-13~~ of this act and fifty percent of the money

1 forfeited pursuant to subdivision (1)(g) of section ~~28-431-13~~ of this
2 act in the manner provided for disposition of fines, penalties, and
3 license money under the Constitution of Nebraska. The county
4 treasurer shall disburse the remaining fifty percent of the money
5 forfeited pursuant to subdivision (1)(g) of section ~~28-431-13~~ of this
6 act to his or her respective County Drug Law Enforcement and
7 Education Fund. Each county shall create a County Drug Law
8 Enforcement and Education Fund.

9 (2) Money remitted to any county pursuant to section
10 77-4310.01 shall be credited by the county treasurer of such county
11 to the County Drug Law Enforcement and Education Fund.

12 Sec. 7. Section 28-1439.03, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 28-1439.03 A County Drug Law Enforcement and Education
15 Fund Board shall be created by each county of this state to
16 administer its respective fund pursuant to section 28-1439.02. The
17 board may authorize use of the fund for drug enforcement and drug
18 education purposes, in its own or any other county, by village, city,
19 county, or state law enforcement agencies.

20 The board shall consist of the county attorney and three
21 representatives of law enforcement agencies who shall be appointed by
22 the county attorney. One representative shall be from the county
23 sheriff's office, one representative shall be from a city or village
24 police department within the county, and one representative shall be
25 from the Nebraska State Patrol. Terms shall be for two years, except

1 that the initial term of the police department representative shall
2 be for one year. The county attorney shall serve as chairperson.

3 If during any fiscal year the fund contains money
4 forfeited pursuant to subdivision (1)(g) of section ~~28-431, 13~~ of
5 this act, the board shall meet at least once during such year and
6 make an accounting of the expenditures of the fund. At the end of any
7 fiscal year in which the fund has contained money, the board shall
8 make a report summarizing the use of the fund during such year to the
9 Auditor of Public Accounts, except that such report shall contain no
10 information which would jeopardize an ongoing investigation. Such
11 report shall indicate the amount of money placed in the fund, the
12 amount of money disbursed, the number of cases opened and closed in
13 which the fund was utilized, and the drug education activities for
14 which money in the fund was utilized. The board may adopt and
15 promulgate all rules and regulations necessary for the expenditures
16 and accountability of such fund.

17 Sec. 8. Section 37-1299, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 37-1299 (1) A motorboat is abandoned:

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

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

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

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

4 (2) For purposes of this section:

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

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

9 (3) No motorboat subject to forfeiture under section
10 ~~28-431-13~~ of this act shall be deemed abandoned under this section.

11 Sec. 9. Section 37-12,102, Reissue Revised Statutes of
12 Nebraska, is amended to read:

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

1 enforcement agency took the motorboat into custody. If a registered
2 owner or the person in possession of the motorboat when it is taken
3 into custody is charged with a felony or misdemeanor but is not
4 convicted, the registered owner shall be entitled to a refund of the
5 storage fees.

6 Sec. 10. Section 60-1901, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 60-1901 (1) A motor vehicle is an abandoned vehicle:

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

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

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

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

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

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

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

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

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

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

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

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

17 (3) For purposes of this section:

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

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

23 (4) No motor vehicle subject to forfeiture under section
24 ~~28-431-13~~ 13 of this act shall be an abandoned vehicle under this
25 section.

1 Sec. 11. Section 60-1903.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 60-1903.01 A state or local law enforcement agency which
4 has custody of a motor vehicle for investigatory purposes and has no
5 further need to keep it in custody shall send a certified letter to
6 each of the last-registered owners stating that the vehicle is in the
7 custody of the law enforcement agency, that the vehicle is no longer
8 needed for law enforcement purposes, and that after thirty days the
9 agency will dispose of the vehicle. This section shall not apply to
10 motor vehicles subject to forfeiture under section ~~28-431. 13~~ of this
11 act. No storage fees shall be assessed against the registered owner
12 of a motor vehicle held in custody for investigatory purposes under
13 this section unless the registered owner or the person in possession
14 of the vehicle when it is taken into custody is charged with a felony
15 or misdemeanor related to the offense for which the law enforcement
16 agency took the vehicle into custody. If a registered owner or the
17 person in possession of the vehicle when it is taken into custody is
18 charged with a felony or misdemeanor but is not convicted, the
19 registered owner shall be entitled to a refund of the storage fees.

20 Sec. 12. Section 81-2004.05, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 81-2004.05 There is hereby created the Public Safety Cash
23 Fund. All forfeitures and proceeds received by the Nebraska State
24 Patrol under the federal Equitable Sharing Provisions or any other
25 federal agreement from any agency of the federal government on or

1 after July 10, 1990, shall be deposited in the fund. This section
2 shall not apply to funds otherwise subject to ~~sections 28-431 and~~
3 ~~28-1439.02.~~ section 28-1439.02 and section 13 of this act. The fund
4 shall be used only in accordance with the applicable requirements of
5 the federal government. The fund shall be administered by the
6 Superintendent of Law Enforcement and Public Safety. Any money in the
7 fund available for investment shall be invested by the state
8 investment officer pursuant to the Nebraska Capital Expansion Act and
9 the Nebraska State Funds Investment Act.

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

1 transporting any controlled substance with intent to manufacture,
2 distribute, deliver, dispense, export, or import such controlled
3 substance in violation of the act; and (g) all money used, or
4 intended to be used, to facilitate a violation of the act.

5 (2) Any property described in subdivision (1)(f) of this
6 section which is used, or intended for use, to transport any property
7 described in subdivision (1)(a) or (b) of this section is hereby
8 declared to be a common nuisance, and any peace officer having
9 probable cause to believe that such property is so used, or intended
10 for such use, shall make a search thereof with or, whenever there
11 exists a valid exception to the warrant requirement, without a
12 warrant.

13 (3) All money that a law enforcement agency proves was
14 furnished by such agency shall be returned to the agency. All
15 property seized without a search warrant shall not be subject to a
16 replevin action and: (a) All property described in subdivisions (1)
17 (a) to (1)(e) of this section shall be kept by the property division
18 of the law enforcement agency which employs the officer who seized
19 such property for so long as it is needed as evidence in any trial;
20 and (b) when no longer required as evidence, all property described
21 in subdivision (1)(e) of this section shall be disposed of on order
22 of a court of record in this state in such manner as the court in its
23 sound discretion shall direct, and all property described in
24 subdivisions (1)(a), (b), (c), and (d) of this section, that has been
25 used or is intended to be used in violation of the act, when no

1 longer needed as evidence shall be destroyed by the law enforcement
2 agency holding the property or turned over to the department for
3 custody or destruction, except that a law enforcement agency may keep
4 a small quantity of the property described in subdivisions (1)(a),
5 (b), (c), and (d) of this section for training purposes or use in
6 investigations. Any large quantity of property described in
7 subdivisions (1)(a), (b), (c), and (d) of this section, whether
8 seized under a search warrant or validly seized without a warrant,
9 may be disposed of on order of a court of record of this state in
10 such manner as the court in its sound discretion shall direct. Such
11 an order may be given only after a proper laboratory examination and
12 report of such property has been completed and after a hearing has
13 been held by the court after notice to the defendant of the proposed
14 disposition of the property. The findings in such court order as to
15 the nature, kind, and quantity of the property so disposed of may be
16 accepted as evidence at subsequent court proceedings in lieu of the
17 property ordered destroyed by the court order.

18 (4) When any property described in subdivision (1)(f) or
19 (g) of this section is seized, the person seizing the property shall
20 cause to be filed, within thirty days thereafter, in the district
21 court of the county in which seizure was made, a petition for
22 disposition of such property. The proceedings shall be brought in the
23 name of the state by the county attorney of the county in which such
24 property was seized or the Attorney General. The petition shall be
25 filed as an in rem action and shall describe the property seized,

1 state the name of the owner or person or persons who were in
2 possession of the property when it was seized, if known, allege the
3 essential facts establishing the violation which is claimed to exist,
4 and conclude with a prayer for disposition. The county attorney or
5 Attorney General shall have a copy of the petition served upon any
6 identifiable owner, any identifiable person or persons who were in
7 possession of the property when it was seized, or any identifiable
8 person or entity having a legally recognizable interest in the
9 property, in person or by registered or certified mail at his or her
10 last-known address. If the identity of the owner or person or persons
11 who were in possession of the property when it was seized is unknown
12 or there is a reasonable probability that there are unknown persons
13 or entities with legally recognizable interests in the property, the
14 county attorney or Attorney General shall provide notice of the
15 seizure and petition for disposition by publication once a week for
16 four consecutive weeks in a newspaper of general circulation in the
17 county of the seizure. At least five days shall elapse between each
18 publication of notice.

19 (5) At any time after seizure and prior to court
20 disposition, the owner of record of such property may petition the
21 district court of the county in which seizure was made to release
22 such property, and the court shall order the release of the property
23 upon a showing by the owner that by a preponderance of the evidence
24 he or she had no actual or constructive knowledge that such property
25 was being used in violation of the Uniform Controlled Substances Act.

1 (6) Any person or persons who were in possession of the
2 property when it was seized having a legally recognizable interest in
3 the property proceeded against or any person against whom civil or
4 criminal liability would exist if such property is in violation of
5 the act may, within sixty days after seizure, appear and file an
6 answer or motion to dismiss to the petition. The answer or motion to
7 dismiss shall allege the claimant's legally recognized property
8 interest in or liability involving such property. Within ninety days
9 after such answer or motion to dismiss has been filed, there shall be
10 a hearing before the court. If the claimant proves by a preponderance
11 of the evidence that he or she (a) has not used or intended to use
12 the property to facilitate an offense in violation of the act, (b)
13 has a legally recognized interest in such property as owner or lien
14 or otherwise, acquired by him or her in good faith, and (c) at no
15 time had any actual or constructive knowledge that such property was
16 being or would be used in, or to facilitate, the violation of the
17 act, the court shall order that such property or the value of the
18 claimant's legally recognized interest in such property be returned
19 to the claimant. If there is no answer or motion to dismiss filed
20 within the time allocated, or there are no legally recognized claims
21 of ownership or property interest established in such answer or
22 motion to dismiss, or if all claims of ownership or property interest
23 are denied by the court because of insufficient proof, or if the
24 value of the property exceeds all claims of ownership or property
25 interest granted and it is shown, by a greater weight of the evidence

1 by the county attorney or Attorney General that such property was
2 used in violation of the act, the court shall order disposition of
3 such property at such time as the property is no longer required as
4 evidence in any criminal proceeding. The court may order that
5 property described in subdivision (1)(f) of this section be sold or
6 put to official use by the confiscating agency for a period of not
7 more than one year and that when such property is no longer necessary
8 for official use or at the end of two years, whichever comes first,
9 such property shall be sold. Proceeds from the sale of the property
10 and any money described in subdivision (1)(g) of this section shall
11 be distributed pursuant to section 28-1439.02. Official use means use
12 directly in connection with enforcement of the act.

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

21 (8) It is the intent of the Legislature to develop a fair
22 and equitable process for all parties involved in the forfeiture of
23 property used to facilitate or derived from violations of the Uniform
24 Controlled Substances Act. At the same time, the Legislature
25 recognizes the dangers inherent in the trafficking of controlled

1 substances and wishes to enact procedures which discourage the use of
2 real or personal property to promote such activities. Furthermore,
3 the Legislature does not believe that those who derive assets through
4 drug trafficking activities should be permitted to retain the bounty
5 obtained from their criminal acts. In promoting these legitimate
6 state interests, it is the Legislature's intent that forfeiture
7 proceedings, undertaken pursuant to this section, should be conducted
8 in all respects under the laws of civil and equitable procedure as
9 provided in Chapter 25 of the Revised Statutes of Nebraska. It is the
10 further intent of the Legislature that the forfeiture of assets
11 pursuant to a violation of the Uniform Controlled Substances Act
12 should not constitute a violation of the state and federal
13 constitutional prohibitions against double jeopardy is not an
14 additional criminal fine, penalty, sanction, or sentence and is the
15 result of a separate and legally distinct legal process that is based
16 upon the civil and equitable laws of the State of Nebraska.

17 Sec. 14. (1) The following shall be seized without
18 warrant by any peace officer and shall be subject to forfeiture: (a)
19 All books, records, and research, including, but not limited to,
20 microfilm, tapes, and data, which are used, or intended for use, in
21 violation of section 28-801, 28-801.01, 28-802, 28-804, 28-805,
22 28-808, 28-811, 28-813, 28-813.01, 28-831, 28-833, 28-1102, 28-1103,
23 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05; (b) all conveyances,
24 including, but not limited to, aircraft, vehicles, or vessels which
25 are used, or intended for use, in transporting any human being in

1 violation of any such section; and (c) all money or its equivalent
2 used, or intended to be used, to facilitate a violation of any such
3 section.

4 (2) Any property described in subsection (1)(b) of this
5 section which is used to violate, intended for use to violate, used
6 in connection with a violation of, or used to facilitate a violation
7 of section 28-801, 28-801.01, 28-802, 28-804, 28-805, 28-808, 28-811,
8 28-813, 28-813.01, 28-831, 28-833, 28-1102, 28-1103, 28-1105.01,
9 28-1107, 28-1463.03, or 28-1463.05 is hereby declared to be a common
10 nuisance, and any peace officer having probable cause to believe that
11 such property is used to violate, intended for use to violate, used
12 in connection with a violation of, or used to facilitate a violation
13 of any such section shall make a search thereof with or, whenever
14 there exists a valid exception to the warrant requirement, without a
15 warrant.

16 (3) All money that a law enforcement agency proves was
17 furnished by such agency shall be returned to the agency. All
18 property seized without a search warrant shall not be subject to a
19 replevin action and: (a) All property described in subdivision (1)(b)
20 of this section shall be kept by the property division of the law
21 enforcement agency which employs the officer who seized such property
22 for so long as it is needed as evidence in any trial; and (b) when no
23 longer required as evidence, all property described in subdivision
24 (1)(b) of this section shall be disposed of on order of a court of
25 record of this state in such manner as the court in its sound

1 discretion shall direct.

2 (4) When any property described in subsection (1) of this
3 section is seized, the person seizing the property shall cause to be
4 filed, within thirty days thereafter, in the district court of the
5 county in which seizure was made, a petition for disposition of such
6 property. The proceedings shall be brought in the name of the state
7 by the county attorney of the county in which such property was
8 seized or the Attorney General. The petition shall be filed as an in
9 rem action and shall describe the property seized, state the name of
10 the owner or person or persons who were in possession of the property
11 when it was seized, if known, allege the essential facts establishing
12 the violation which is claimed to exist, and conclude with a prayer
13 for disposition. The county attorney or Attorney General shall have a
14 copy of the petition served upon any identifiable owner, any
15 identifiable person or persons who were in possession of the property
16 when it was seized, or any identifiable person or entity having a
17 legally recognizable interest in the property, in person or by
18 registered or certified mail at his or her last-known address. If the
19 identity of the owner or person or persons who were in possession of
20 the property when it was seized is unknown or there is a reasonable
21 probability that there are unknown persons or entities with legally
22 recognizable interests in the property, the county attorney or
23 Attorney General shall provide notice of the seizure and petition for
24 disposition by publication once a week for four consecutive weeks in
25 a newspaper of general circulation in the county of the seizure. At

1 least five days shall elapse between each publication of notice.

2 (5) At any time after seizure and prior to court
3 disposition, the owner of record of such property may petition the
4 district court of the county in which seizure was made to release
5 such property, and the court shall order the release of the property
6 upon a showing by the owner that by a preponderance of the evidence
7 he or she had no actual or constructive knowledge that such property
8 was being used in violation of section 28-801, 28-801.01, 28-802,
9 28-804, 28-805, 28-808, 28-811, 28-813, 28-813.01, 28-831, 28-833,
10 28-1102, 28-1103, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05.

11 (6) Any person or persons who were in possession of the
12 property when it was seized having a legally recognizable interest in
13 the property proceeded against or any person against whom civil or
14 criminal liability would exist if such property is in violation of
15 section 28-801, 28-801.01, 28-802, 28-804, 28-805, 28-808, 28-811,
16 28-813, 28-813.01, 28-831, 28-833, 28-1102, 28-1103, 28-1105.01,
17 28-1107, 28-1463.03, or 28-1463.05 may, within sixty days after
18 seizure, appear and file an answer or motion to dismiss to the
19 petition. The answer or motion to dismiss shall allege the claimant's
20 legally recognizable property interest in or liability involving such
21 property. Within ninety days after such answer or motion to dismiss,
22 there shall be a hearing before the court. If the claimant proves by
23 a preponderance of the evidence that he or she (a) has not used to
24 violate, intended for use to violate, used in connection with a
25 violation of, or used to facilitate a violation of any such section,

1 (b) has a legally recognized interest in such property as owner or
2 lienor or otherwise, acquired by him or her in good faith, and (c) at
3 no time had any actual or constructive knowledge that such property
4 was being or would be used in, or to facilitate, the violation of any
5 such section, the court shall order that such property or the value
6 of the claimant's legally recognized interest in such property be
7 returned to the claimant. If there is no answer or motion to dismiss
8 filed within the time allocated, or there are no legally recognized
9 claims of ownership or property interest established in such answer
10 or motion to dismiss, or if all claims of ownership or property
11 interest are denied by the court because of insufficient proof, or if
12 the value of the property exceeds all claims of ownership or property
13 interest granted and it is shown, by a greater weight of the evidence
14 by the county attorney or Attorney General that such property was
15 used in violation of any such section, the court shall order
16 disposition of such property at such time as the property is no
17 longer required as evidence in any criminal proceeding.

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

1 (8) The proceeds from any sale ordered pursuant to this
2 section, less legal costs, charges, and claims allowed, and any
3 money, negotiable instruments, and securities forfeited pursuant to
4 this section shall be paid to the county treasurer of the county in
5 which the seizure was made. The county treasurer shall remit all such
6 proceeds from property forfeited pursuant to this section to the
7 State Treasurer for distribution in accordance with Article VII,
8 section 5, of the Constitution of Nebraska.

9 (9) It is the intent of the Legislature to develop a fair
10 and equitable process for all parties involved in the forfeiture of
11 property used to facilitate or derived from violations of sections
12 28-801, 28-801.01, 28-802, 28-804, 28-805, 28-808, 28-811, 28-813,
13 28-813.01, 28-831, 28-833, 28-1102, 28-1103, 28-1105.01, 28-1107,
14 28-1463.03, and 28-1463.05. At the same time, the Legislature
15 recognizes the danger inherent in the behavior prohibited by such
16 sections and wishes to enact procedures which discourage the use of
17 real or personal property to promote such activities. Furthermore,
18 the Legislature does not believe that those who derive assets through
19 such behavior should be permitted to retain the bounty obtained from
20 their criminal acts. In promoting these legitimate state interests,
21 it is the Legislature's intent that forfeiture proceedings,
22 undertaken pursuant to this section, should be conducted in all
23 respects, under the laws of civil and equitable procedure as provided
24 in Chapter 25 of the Revised Statutes of Nebraska. It is the further
25 intent of the Legislature that the forfeiture of assets pursuant to a

1 violation of sections 28-801, 28-801.01, 28-802, 28-804, 28-805,
2 28-808, 28-811, 28-813, 28-813.01, 28-831, 28-833, 28-1102, 28-1103,
3 28-1105.01, 28-1107, 28-1463.03, and 28-1463.05 should not constitute
4 a violation of the state and federal constitutional prohibitions
5 against double jeopardy is not an additional criminal fine, penalty,
6 sanction, or sentence and is the result of a separate and legally
7 distinct legal process that is based upon the civil and equitable
8 laws of the State of Nebraska.

9 Sec. 15. The Revisor of Statutes shall assign sections 13
10 and 14 of this act to a new article in Chapter 25.

11 Sec. 16. Original sections 28-439, 28-440, 28-441,
12 28-442, 28-445, 28-1439.02, 28-1439.03, 37-1299, 37-12,102, 60-1901,
13 60-1903.01, and 81-2004.05, Reissue Revised Statutes of Nebraska, are
14 repealed.

15 Sec. 17. The following section is outright repealed:
16 Section 28-431, Reissue Revised Statutes of Nebraska.