

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 155

Introduced by Rogert, 16; Friend, 10; Howard, 9; Lautenbaugh, 18.

Read first time January 09, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and punishments; to amend sections
2 28-101, 28-518, 28-608, and 29-110, Reissue Revised
3 Statutes of Nebraska; to adopt the Public Protection Act
4 and to provide penalties; to change provisions relating
5 to theft offenses and criminal impersonation and to
6 change penalties; to create the offenses of identity
7 theft and identity fraud and to provide penalties; to
8 harmonize provisions; to provide severability; and to
9 repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

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

3 28-101 Sections 28-101 to 28-1350 and sections 2 to 7 and
4 9 to 13 of this act shall be known and may be cited as the Nebraska
5 Criminal Code.

6 Sec. 2. Sections 2 to 7 of this act shall be known and
7 may be cited as the Public Protection Act.

8 Sec. 3. The Legislature finds that (1) organized crime
9 in the State of Nebraska, as well as nationwide, is a highly
10 sophisticated, diversified, and widespread activity that annually
11 consumes a significant amount of money from the state's economy
12 through unlawful conduct and the illegal use of force, fraud,
13 and corruption, (2) organized crime derives a major portion of
14 its power through money obtained from such illegal endeavors
15 as syndicated gambling, loan sharking, the theft and fencing of
16 property, the illegal importation, manufacture, and distribution
17 of drugs, controlled substances, and narcotics, and other forms
18 of social exploitation, (3) money and power from organized crime
19 are increasingly being used to infiltrate and corrupt legitimate
20 business and labor organizations and to subvert and corrupt our
21 democratic processes, (4) organized crime activities in the State
22 of Nebraska weaken the stability of the state's economic system,
23 harm innocent investors and competing organizations, interfere
24 with free competition, threaten the peace and health of the
25 public, seriously burden commerce, threaten domestic security, and

1 undermine the general welfare of the state and its citizens, and
2 (5) organized crime continues to grow and flourish because of
3 defects in the evidence-gathering process of the law which inhibits
4 the development of the legally admissible evidence necessary to
5 bring criminal and other sanctions or remedies to bear on the
6 unlawful activities of those engaged in organized crime and because
7 the sanctions and remedies available to the state are unnecessarily
8 limited in scope and impact. Therefor, it is the purpose of the
9 Public Protection Act to seek the eradication of organized crime
10 in the State of Nebraska by strengthening the legal tools in the
11 evidence-gathering process, establishing new penal prohibitions,
12 and providing enhanced sanctions and new remedies to deal with the
13 unlawful activities of those engaged in organized crime.

14 Sec. 4. (1) The provisions of the Public Protection Act
15 shall be liberally construed to effectuate its remedial purposes.

16 (2) Nothing in the act shall supersede any provision
17 of federal, state, or other law imposing criminal penalties or
18 affording civil remedies in addition to those provided for in the
19 act.

20 Sec. 5. For purposes of the Public Protection Act:

21 (1) Enterprise means any individual, sole proprietorship,
22 partnership, corporation, trust, association, or any legal entity,
23 union, or group of individuals associated in fact although not
24 a legal entity, and shall include illicit as well as licit
25 enterprises as well as other entities;

1 (2) Pattern of racketeering activity means at least
2 two acts of racketeering activity, one of which occurred after
3 the effective date of this act and the last of which occurred
4 within ten years, excluding any period of imprisonment, after the
5 commission of a prior act of racketeering activity;

6 (3) Person means any individual or entity, as defined in
7 section 21-2014, holding or capable of holding a legal, equitable,
8 or beneficial interest in property;

9 (4) Prosecutor includes the Attorney General of the
10 State of Nebraska, the deputy attorney general, assistant attorneys
11 general, a county attorney, a deputy county attorney, or any person
12 so designated by the Attorney General, a county attorney, or a
13 court of the state to carry out the powers conferred by the act;

14 (5) Racketeering activity includes the commission of,
15 criminal attempt to commit, conspiracy to commit, aiding and
16 abetting in the commission of, aiding in the consummation of,
17 acting as an accessory to the commission of, or the solicitation,
18 coercion, or intimidation of another to commit or aid in the
19 commission of any of the following:

20 (a) Offenses against the person which include: Murder in
21 the first degree under section 28-303; murder in the second degree
22 under section 28-304; manslaughter under section 28-305; assault in
23 the first degree under section 28-308; assault in the second degree
24 under section 28-309; assault in the third degree under section
25 28-310; terroristic threats under section 28-311.01; kidnapping

1 under section 28-313; false imprisonment in the first degree under
2 section 28-314; false imprisonment in the second degree under
3 section 28-315; sexual assault in the first degree under section
4 28-319; sexual assault of a child in the first degree under section
5 28-319.01; sexual assault in the second or third degree under
6 section 28-320; sexual assault of a child in the second or third
7 degree under section 28-320.01; robbery under section 28-324; and
8 abuse of a vulnerable adult under section 28-386;

9 (b) Offenses relating to controlled substances which
10 include: To unlawfully manufacture, distribute, deliver, dispense,
11 or possess with intent to manufacture, distribute, deliver, or
12 dispense a controlled substance under subsection (1) of section
13 28-416; possession of marijuana weighing more than one pound
14 under subsection (12) of section 28-416; possession of money
15 used or intended to be used to facilitate a violation of
16 subsection (1) of section 28-416 prohibited under subsection
17 (17) of section 28-416; any violation of section 28-418; to
18 unlawfully manufacture, distribute, deliver, or possess with intent
19 to distribute or deliver an imitation controlled substance under
20 section 28-445; possession of anhydrous ammonia with the intent to
21 manufacture methamphetamine under section 28-451; and possession of
22 ephedrine, pseudoephedrine, or phenylpropanolamine with the intent
23 to manufacture methamphetamine under section 28-452;

24 (c) Offenses against property which include: Arson in
25 the first degree under section 28-502; arson in the second degree

1 under section 28-503; arson in the third degree under section
2 28-504; burglary under section 28-507; theft by unlawful taking
3 or disposition under section 28-511; theft by shoplifting under
4 section 28-511.01; theft by deception under section 28-512; theft
5 by extortion under section 28-513; theft of services under section
6 28-515; theft by receiving stolen property under section 28-517;
7 criminal mischief under section 28-519; and unlawfully depriving
8 or obtaining property or services using a computer under section
9 28-1344;

10 (d) Offenses involving fraud which include: Burning to
11 defraud an insurer under section 28-505; forgery in the first
12 degree under section 28-602; forgery in the second degree under
13 section 28-603; criminal possession of a forged instrument under
14 section 28-604; criminal possession of forgery devices under
15 section 28-605; criminal impersonation under section 11 of this
16 act; identity theft under section 12 of this act; identity fraud
17 under section 13 of this act; false statement or book entry
18 under section 28-612; tampering with a publicly exhibited contest
19 under section 28-614; issuing a false financial statement for
20 purposes of obtaining a financial transaction device under section
21 28-619; unauthorized use of a financial transaction device under
22 section 28-620; criminal possession of a financial transaction
23 device under section 28-621; unlawful circulation of a financial
24 transaction device in the first degree under section 28-622;
25 unlawful circulation of a financial transaction device in the

1 second degree under section 28-623; criminal possession of a blank
2 financial transaction device under section 28-624; criminal sale
3 of a blank financial transaction device under section 28-625;
4 criminal possession of a forgery device under section 28-626;
5 unlawful manufacture of a financial transaction device under
6 section 28-627; laundering of sales forms under section 28-628;
7 unlawful acquisition of sales form processing services under
8 section 28-629; unlawful factoring of a financial transaction
9 device under section 28-630; and fraudulent insurance acts under
10 section 28-631;

11 (e) Offenses involving governmental operations which
12 include: Abuse of public records under section 28-911; perjury or
13 subornation of perjury under section 28-915; bribery under section
14 28-917; bribery of a witness under section 28-918; tampering with
15 a witness or informant or jury tampering under section 28-919;
16 bribery of a juror under section 28-920; official misconduct
17 under section 28-924; misuse of official information under section
18 28-925; oppression under color of office under section 28-926;
19 assault on an officer in the first degree under section 28-929;
20 assault on an officer in the second degree under section 28-930;
21 assault on an officer in the third degree under section 28-931;
22 and assault on an officer using a motor vehicle under section
23 28-931.01;

24 (f) Offenses involving gambling which include: Promoting
25 gambling in the first degree under section 28-1102; promoting

1 gambling in the second degree under section 28-1103; promoting
2 gambling in the third degree under section 28-1104; possession of
3 gambling records under section 28-1105; gambling debt collection
4 under section 28-1105.01; and possession of a gambling device under
5 section 28-1107;

6 (g) Offenses relating to firearms, weapons, and
7 explosives which include: Carrying a concealed weapon under
8 section 28-1202; transportation or possession of machine guns,
9 short rifles, or short shotguns under section 28-1203; unlawful
10 possession of a revolver under section 28-1204; unlawful transfer
11 of a firearm to a juvenile under section 28-1204.01; using a deadly
12 weapon to commit a felony under section 28-1205; possession of a
13 deadly weapon by a felon or a fugitive from justice under section
14 28-1206; possession of a defaced firearm under section 28-1207;
15 defacing a firearm under section 28-1208; unlawful discharge of a
16 firearm under section 28-1212.02; possession, receipt, retention,
17 or disposition of a stolen firearm under section 28-1212.03;
18 unlawful possession of explosive materials in the first degree
19 under section 28-1215; unlawful possession of explosive materials
20 in the second degree under section 28-1216; unlawful sale of
21 explosives under section 28-1217; use of explosives without a
22 permit under section 28-1218; obtaining an explosives permit
23 through false representations under section 28-1219; possession
24 of a destructive device under section 28-1220; threatening the
25 use of explosives or placing a false bomb under section 28-1221;

1 using explosives to commit a felony under section 28-1222; using
2 explosives to damage or destroy property under section 28-1223;
3 and using explosives to kill or injure any person under section
4 28-1224;

5 (h) Any violation of the Securities Act of Nebraska
6 pursuant to section 8-1117;

7 (i) Any violation of the Nebraska Revenue Act of 1967
8 pursuant to section 77-2713;

9 (j) Offenses relating to public health and morals which
10 include: Prostitution under section 28-801; pandering under section
11 28-802; keeping a place of prostitution under section 28-804;
12 human trafficking or forced labor or services under section
13 28-831; dogfighting, cockfighting, bearbaiting, or pitting an
14 animal against another under section 28-1005; and any act relating
15 to the visual depiction of sexually explicit conduct prohibited in
16 the Child Pornography Prevention Act;

17 (k) A violation of the Computer Crimes Act; and

18 (l) Any conduct defined as racketeering activity under 18
19 U.S.C. subdivisions 1961(1)(A), (1)(B), (1)(C), or (1)(D), as such
20 subdivisions existed on the effective date of this act;

21 (6) State means the State of Nebraska or any political
22 subdivision or any department, agency, or instrumentality thereof;
23 and

24 (7) Unlawful debt means a debt:

25 (a) Incurred or contracted in gambling activity which was

1 in violation of federal law or the law of the state or which is
2 unenforceable under state or federal law in whole or in part as to
3 principal or interest because of the laws relating to usury; and

4 (b) Which was incurred in connection with the business
5 of gambling in violation of federal law or the law of the state
6 or the business of lending money or a thing of value at a rate
7 usurious under state law if the usurious rate is at least twice the
8 enforceable rate.

9 Sec. 6. (1) It shall be unlawful for any person who
10 has received any proceeds derived, directly or indirectly, from
11 a pattern of racketeering activity or through collection of an
12 unlawful debt to use or invest, whether directly or indirectly, any
13 part of such proceeds, or the proceeds derived from the investment
14 or use thereof, in the acquisition of any right, interest, or
15 equity in real property or in the establishment or operation of
16 any enterprise. A purchase of securities on the open market for
17 purposes of investment, and without the intention of controlling
18 or participating in the control of the issuer or of assisting
19 another to do so, shall not be unlawful under this subsection if
20 the securities of the issuer held by the purchaser, the members of
21 his or her immediate family, and his or her or their accomplices
22 in any pattern of racketeering activity or the collection of an
23 unlawful debt after such purchase do not amount in the aggregate to
24 one percent of the outstanding securities of any one class and do
25 not confer, either in law or in fact, the power to elect one or

1 more directors of the issuer.

2 (2) It shall be unlawful for any person through a pattern
3 of racketeering activity or through collection of an unlawful debt
4 to acquire or maintain, directly or indirectly, any interest in or
5 control of any enterprise or real property.

6 (3) It shall be unlawful for any person employed by
7 or associated with any enterprise to conduct or participate
8 in, directly or indirectly, the conduct of such enterprise's
9 affairs through a pattern of racketeering activity or collection of
10 unlawful debt.

11 (4) It shall be unlawful for any person to conspire or
12 attempt to violate any of the provisions of subsections (1), (2),
13 or (3) of this section.

14 Sec. 7. (1) A person who violates section 6 of this act
15 shall be guilty of a Class III felony; however, such person shall
16 be guilty of a Class IB felony if the violation is based upon
17 racketeering activity which is punishable as a Class I, IA, or IB
18 felony.

19 (2) In lieu of the fine authorized by section 28-105, any
20 person convicted of engaging in conduct in violation of section
21 6 of this act, through which pecuniary value was derived, or
22 by which personal injury or property damage or other loss was
23 caused, may be sentenced to pay a fine that does not exceed
24 three times the gross value gained or three times the gross loss
25 caused, whichever is greater, plus court costs and the costs

1 of investigation and prosecution reasonably incurred. Any fine
2 collected under this subsection shall be remitted to the State
3 Treasurer for distribution in accordance with Article VII, section
4 5, of the Constitution of Nebraska.

5 (3) (a) A person who violates section 6 of this act
6 shall forfeit to the state any and all property, as described in
7 subsection (4) of this section, that was (i) used in the course of,
8 (ii) intended for use in the course of, (iii) derived from, or (iv)
9 realized through a pattern of racketeering activity.

10 (b) If a person is convicted of a violation of section
11 6 of this act, before sentence is imposed, a hearing shall be
12 had before the court, without a jury, to determine whether any
13 property of the defendant was used in the course of, intended for
14 use in the course of, derived from, or realized through a pattern
15 of racketeering activity. The forfeiture action and the criminal
16 action shall be one proceeding.

17 (c) The court shall fix a time for the hearing and
18 notice thereof shall be given by the prosecutor to the defendant
19 at least three days prior to the hearing. Such notice shall set
20 forth and describe the property that the prosecutor seeks through
21 forfeiture. The court's determination may be based upon evidence
22 presented at trial, evidence in the record, any plea agreement,
23 evidence presented by the parties at the time of hearing, or any
24 combination thereof. At the hearing, if the court finds beyond
25 a reasonable doubt that property of such person was used in the

1 course of, intended for use in the course of, derived from, or
2 realized through a pattern of racketeering activity, the court
3 shall order the person to forfeit to the state, irrespective of any
4 other provision of state law, any and all property described in
5 subsection (4) of this section.

6 (d) All right, title, and interest in property described
7 in this section vests in the State of Nebraska. Any such property
8 that is subsequently transferred to a person other than the
9 defendant may be subject to forfeiture and thereafter shall be
10 ordered forfeited to the state, unless the transferee establishes
11 in a hearing pursuant to subsection (8) of this section that the
12 person is a bona fide purchaser for value of such property who at
13 the time of purchase was reasonably without cause to believe that
14 the property was subject to forfeiture under this section.

15 (4) Property subject to criminal forfeiture under this
16 section includes:

17 (a) Real property, including things growing on, affixed
18 to, and found in, on, or under land;

19 (b) Tangible and intangible personal property, including
20 rights, privileges, interests, claims, and securities;

21 (c) Any interest in, security of, claim against, or
22 property or contractual right of any kind affording a source of
23 influence over any enterprise which the person has established,
24 operated, controlled, conducted, or participated in the conduct of
25 in violation of section 6 of this act; and

1 (d) Any property constituting or derived from any
2 proceeds which the person obtained, directly or indirectly, from
3 racketeering activity or unlawful debt collection in violation of
4 section 6 of this act.

5 (5) (a) Upon application of the state, the court may
6 enter a restraining order or injunction, require the execution
7 of a satisfactory performance bond, or take any other action to
8 preserve the availability of property described in this section for
9 forfeiture under this section:

10 (i) Upon the filing of an indictment or information
11 charging a violation of the Public Protection Act and alleging
12 that the property with respect to which the order is sought would,
13 in the event of conviction, be subject to forfeiture under this
14 section; or

15 (ii) Prior to the filing of such an indictment or
16 information, if, after notice to persons appearing to have an
17 interest in the property and opportunity for a hearing, the court
18 determines that there is a substantial probability that the state
19 will prevail on the issue of forfeiture and that failure to enter
20 the order will result in the property being destroyed, removed
21 from the jurisdiction of the court, or otherwise made unavailable
22 for forfeiture and the need to preserve the availability of the
23 property through the entry of the requested order outweighs the
24 hardship on any party against whom the order is to be entered.

25 (b) An order entered pursuant to subdivision (5) (a) (ii)

1 of this section shall be effective for not more than ninety days,
2 unless extended by the court for good cause shown or unless an
3 indictment or information described in subdivision (5)(a)(i) of
4 this section has been filed.

5 (c) A temporary restraining order under this subsection
6 may be entered upon application of the state without notice or
7 opportunity for a hearing when an information or indictment has
8 not yet been filed with respect to the property, if the state
9 demonstrates that there is probable cause to believe that the
10 property with respect to which the order is sought would, in the
11 event of conviction, be subject to forfeiture under this section
12 and that provision of notice will jeopardize the availability
13 of the property for forfeiture. Such a temporary order shall
14 expire not more than ten days after the date on which it is
15 entered, unless extended for good cause shown or unless the party
16 against whom it is entered consents to an extension for a longer
17 period. A hearing requested concerning an order entered under this
18 subdivision shall be held at the earliest possible time and prior
19 to the expiration of the temporary order.

20 (d) The court may receive and consider, at a hearing held
21 pursuant to this subsection, evidence and information that would be
22 inadmissible under the Nebraska Evidence Rules.

23 (6)(a) When the court enters a judgment of forfeiture
24 of the property to the state, it shall authorize the state
25 to seize all property ordered forfeited upon such terms and

1 conditions as the court shall deem proper. Following the entry
2 of an order declaring the property forfeited, the court may, upon
3 application of the state, enter such appropriate restraining orders
4 or injunctions, require the execution of satisfactory performance
5 bonds, appoint receivers, conservators, appraisers, accountants, or
6 trustees, or take any other action to protect the interests of
7 the state in the property ordered forfeited. Any income accruing
8 to, or derived from, an enterprise or an interest in an enterprise
9 which has been ordered forfeited under this section may be used to
10 offset ordinary and necessary expenses to the enterprise which are
11 required by law, or which are necessary to protect the interests of
12 the state or third parties.

13 (b) With respect to property ordered forfeited under this
14 section, the prosecutor is authorized to:

15 (i) Restore forfeited property to victims of a violation
16 of the act, or take any other action to protect the rights of
17 innocent persons which is in the interests of justice and which is
18 not inconsistent with the provisions of the act;

19 (ii) Compromise claims arising under this section;

20 (iii) Award compensation to persons providing information
21 resulting in a forfeiture under this section;

22 (iv) Direct the disposition by the state of all property
23 ordered forfeited under this section by public sale or any other
24 commercially feasible means, making due provision for the rights of
25 innocent persons; and

1 (v) Take appropriate measures necessary to safeguard and
2 maintain property ordered forfeited under this section pending its
3 disposition.

4 (c) Following the seizure of property ordered forfeited
5 under this section, the prosecutor shall direct the disposition
6 of the property by sale or any other commercially feasible means,
7 making due provision for the rights of any innocent persons. Any
8 property right or interest not exercisable by, or transferable
9 for value to, the state shall expire and shall not revert to
10 the defendant, nor shall the defendant or any person acting in
11 concert with or on behalf of the defendant be eligible to purchase
12 forfeited property at any sale held by the state.

13 (d) The proceeds of any sale or other disposition of
14 property forfeited under this section and any money forfeited shall
15 be used to pay all proper expenses for the forfeiture and the
16 sale, including expenses of seizure, maintenance, and custody of
17 the property pending its disposition, advertising, and court costs.
18 The prosecutor shall deposit with the court any amounts of such
19 proceeds or money remaining after the payment of such expenses.
20 The court shall distribute any proceeds received pursuant to this
21 section consistent with the manner in which it distributes fines
22 which it receives in other criminal matters as set forth in section
23 29-2706.

24 (e) The district court shall have jurisdiction to enter
25 orders as provided in this section without regard to the location

1 of any property which may be subject to forfeiture under this
2 section or which has been ordered forfeited under this section.

3 (f) In order to facilitate the identification or location
4 of property declared forfeited and to facilitate the disposition
5 of petitions for remission or mitigation of forfeiture, after the
6 entry of an order declaring property forfeited to the state the
7 court may, upon application of the state, order that the testimony
8 of any witness relating to the property forfeited be taken by
9 deposition and that any designated book, paper, document, record,
10 recording, or other material not privileged be produced at the same
11 time and place.

12 (g) Upon application of a person other than the defendant
13 or a person acting in concert with or on behalf of the defendant,
14 the court may restrain or stay the sale or disposition of the
15 property pending the conclusion of any appeal of the criminal
16 case giving rise to the forfeiture, if the applicant demonstrates
17 that proceeding with the sale or disposition of the property will
18 result in irreparable injury, harm, or loss to the applicant.
19 No appeal in any case shall operate as a supersedeas unless the
20 appellant, within thirty days after the rendition of such judgment
21 or decree or the making of such final order, executes to the state
22 a bond with one or more sureties, makes a deposit of United States
23 Government bonds with the clerk, or in lieu thereof makes a cash
24 deposit with the clerk for the benefit of the state pursuant to
25 section 25-1916.

1 (7) Except as provided in subsection (8) of this section,
2 no party claiming an interest in property subject to forfeiture
3 under this section may intervene in a trial or appeal of a criminal
4 case involving the forfeiture of such property under this section
5 or commence an action at law or equity against the state concerning
6 the validity of an alleged interest in the property subsequent
7 to the filing of an indictment or information alleging that the
8 property is subject to forfeiture under this section.

9 (8)(a) Following the entry of an order of forfeiture
10 under this section, the state shall publish notice of the order and
11 of its intent to dispose of the property once a week for three
12 successive weeks in a legal newspaper of general circulation in
13 the county in which the criminal proceeding was originally filed.
14 The state may also, to the extent practicable, provide direct
15 written notice to any person known to have alleged an interest in
16 the property that is the subject of the order of forfeiture as a
17 substitute for published notice as to those persons so notified.

18 (b) Any person, other than the defendant, asserting a
19 legal interest in property which has been ordered forfeited to the
20 state pursuant to this section may, within thirty days after the
21 final publication of notice or his or her receipt of notice under
22 subdivision (a) of this subsection, whichever is earlier, petition
23 the court for a hearing to adjudicate the validity of his or her
24 alleged interest in the property. The hearing shall be held before
25 the court, without a jury.

1 (c) The petition shall be signed by the petitioner under
2 penalty of perjury and shall set forth the nature and extent of the
3 petitioner's right, title, or interest in the property, the time
4 and circumstances of the petitioner's acquisition of the right,
5 title, or interest in the property, any additional facts supporting
6 the petitioner's claim, and the relief sought.

7 (d) The hearing on the petition shall, to the extent
8 practicable and consistent with the interest of justice, be held
9 within thirty days after the filing of the petition. The court may
10 consolidate the hearing on the petition with a hearing on any other
11 petition filed by a person other than the defendant under this
12 subsection.

13 (e) At the hearing, the petitioner may testify and
14 present evidence and witnesses on his or her own behalf and
15 cross-examine witnesses who appear at the hearing. The state may
16 present evidence and witnesses in rebuttal and in defense of its
17 claim to the property and cross-examine witnesses who appear at
18 the hearing. In addition to testimony and evidence presented at
19 the hearing, the court shall consider the relevant portions of
20 the record of the criminal case which resulted in the order of
21 forfeiture.

22 (f) The court shall amend the order of forfeiture in
23 accordance with its determination if, after the hearing, the court
24 determines that:

25 (i) The petitioner has established by a preponderance

1 of the evidence that the petitioner has a legal right, title,
2 or interest in the property, and such right, title, or interest
3 renders the order of forfeiture invalid in whole or in part because
4 the right, title, or interest was vested in the petitioner rather
5 than the defendant or was superior to any right, title, or interest
6 of the defendant at the time of the commission of the acts which
7 gave rise to the forfeiture of the property under this section; or

8 (ii) The petitioner is a bona fide purchaser for value of
9 the right, title, or interest in the property and was at the time
10 of purchase reasonably without cause to believe that the property
11 was subject to forfeiture under this section.

12 (g) Following the court's disposition of all petitions
13 filed under this subsection, or if no such petitions are filed
14 following the expiration of the period provided in subdivision (b)
15 of this subsection for the filing of such petitions, the state
16 shall have clear title to property that is the subject of the
17 order of forfeiture and may warrant good title to any subsequent
18 purchaser or transferee.

19 (9) If any of the property described in subsection (4) of
20 this section, as a result of any act or omission of the defendant
21 (a) cannot be located upon the exercise of due diligence, (b) has
22 been transferred or sold to, or deposited with, a third party,
23 (c) has been placed beyond the jurisdiction of the court, (d) has
24 been substantially diminished in value, or (e) has been commingled
25 with other property which cannot be divided without difficulty,

1 then the court shall order the forfeiture of any other property of
2 the defendant up to the value of any property described in this
3 subsection.

4 Sec. 8. Section 28-518, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 28-518 (1) Theft constitutes a Class III felony when the
7 value of the thing involved is over one thousand five hundred
8 dollars.

9 (2) Theft constitutes a Class IV felony when the value of
10 the thing involved is five hundred dollars or more, but not over
11 one thousand five hundred dollars.

12 (3) Theft constitutes a Class I misdemeanor when the
13 value of the thing involved is more than two hundred dollars, but
14 less than five hundred dollars.

15 (4) Theft constitutes a Class II misdemeanor when the
16 value of the thing involved is two hundred dollars or less.

17 (5) For any second or subsequent conviction under
18 subsection (3) of this section, any person so offending shall be
19 guilty of a Class IV felony.

20 (6) For any second conviction under subsection (4) of
21 this section, any person so offending shall be guilty of a Class
22 I misdemeanor, and for any third or subsequent conviction under
23 subsection (4) of this section, the person so offending shall be
24 guilty of a Class IV felony.

25 (7) Amounts taken pursuant to one scheme or course of

1 conduct from one ~~person~~ or more persons may be aggregated in the
2 indictment or information in determining the classification of the
3 offense, except that amounts may not be aggregated into more than
4 one offense.

5 (8) In any prosecution for theft under sections 28-509
6 to 28-518, value shall be an essential element of the offense that
7 must be proved beyond a reasonable doubt.

8 Sec. 9. For purposes of sections 9 to 13 of this act:

9 (1) Personal identification document means a birth
10 certificate, motor vehicle operator's license, state identification
11 card, public, government, or private employment identification
12 card, social security card, visa work permit, firearm owner's
13 identification card, certificate issued under section 69-2404, or
14 passport or any document made or altered in a manner that it
15 purports to have been made on behalf of or issued to another person
16 or by the authority of a person who did not give that authority.
17 Personal identification document does not include a financial
18 transaction device as defined in section 28-618;

19 (2) Personal identifying information means any name or
20 number that may be used, alone or in conjunction with any other
21 information, to identify a specific person including a person's:
22 (a) Name; (b) date of birth; (c) address; (d) motor vehicle
23 operator's license number or state identification card number
24 as assigned by the State of Nebraska or another state; (e)
25 social security number or visa work permit number; (f) public,

1 private, or government employer, place of employment, or employment
2 identification number; (g) maiden name of a person's mother; (h)
3 number assigned to a person's credit card, charge card, or debit
4 card, whether issued by a financial institution, corporation,
5 or other business entity; (i) number assigned to a person's
6 depository account, savings account, or brokerage account; (j)
7 personal identification number as defined in section 8-157.01;
8 (k) electronic identification number, address, or routing code
9 used to access financial information; (l) digital signature; (m)
10 telecommunications identifying information or access device; (n)
11 unique biometric data, such as fingerprint, voice print, retina
12 or iris image, or other unique physical representation; and (o)
13 other number or information which can be used to access a person's
14 financial resources; and

15 (3) Telecommunications identifying information or access
16 device means a card, plate, code, account number, mobile
17 identification number, or other telecommunications service,
18 equipment, or instrument identifier or means of account access that
19 alone or in conjunction with other telecommunications identifying
20 information or another telecommunications access device may be
21 used to: (a) Obtain money, goods, services, or any other thing of
22 value; or (b) initiate a transfer of funds other than a transfer
23 originated solely by a paper instrument.

24 Sec. 10. For purposes of sections 9 to 13 of this act:

25 (1) Notwithstanding any other provision of law, venue for

1 the prosecution and trial of violations of sections 9 to 13 of
2 this act may be commenced and maintained in any county in which
3 an element of the offense occurred, including the county where a
4 victim resides; and

5 (2) If a person or entity reasonably believes that he,
6 she, or it has been the victim of a violation of sections 9 to
7 13 of this act, the victim may contact a local law enforcement
8 agency which has jurisdiction over the victim's residence, place of
9 business, or registered address. Notwithstanding that jurisdiction
10 may lie elsewhere for investigation and prosecution of a crime
11 of identity theft, the local law enforcement agency shall take
12 the complaint and provide the complainant with a copy of the
13 complaint and refer the complaint to a law enforcement agency in
14 the appropriate jurisdiction.

15 Sec. 11. Section 28-608, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 ~~28-608~~ (1) A person commits the crime of criminal
18 impersonation if he or she:

19 ~~(a) Assumes a false identity and does an act in his or~~
20 ~~her assumed character with intent to gain a pecuniary benefit for~~
21 ~~himself, herself, or another or to deceive or harm another;~~

22 ~~(b)~~ (a) Pretends to be a representative of some person
23 or organization and does an act in his or her pretended fictitious
24 capacity with the intent to gain a pecuniary benefit for himself,
25 herself, or another and to deceive or harm another;

1 ~~(e) (b) Carries on any profession, business, or any other~~
2 ~~occupation without a license, certificate, or other authorization~~
3 ~~required by law; or~~

4 ~~(d) Without the authorization or permission of another~~
5 ~~and with the intent to deceive or harm another;~~

6 ~~(i) Obtains or records personal identification documents~~
7 ~~or personal identifying information; and~~

8 ~~(ii) Accesses or attempts to access the financial~~
9 ~~resources of another through the use of a personal identification~~
10 ~~document or personal identifying information for the purpose of~~
11 ~~obtaining credit, money, goods, services, or any other thing of~~
12 ~~value.~~

13 (c) Knowingly provides false personal identifying
14 information or a false personal identification document to a court
15 or a law enforcement officer; or

16 (d) Knowingly provides false personal identifying
17 information or a false personal identification document to an
18 employer for the purpose of obtaining employment.

19 (2) (a) Criminal impersonation, as described in
20 subdivisions (1) (a) and (1) (b) of this section, is a Class III
21 felony if the credit, money, goods, services, or other thing of
22 value that was gained or was attempted to be gained was one
23 thousand five hundred dollars or more. Any second or subsequent
24 conviction under this subdivision is a Class II felony.

25 (b) Criminal impersonation, as described in subdivisions

1 (1) (a) and (1) (b) of this section, is a Class IV felony if the
2 credit, money, goods, services, or other thing of value that was
3 gained or was attempted to be gained was five hundred dollars or
4 more but less than one thousand five hundred dollars. Any second or
5 subsequent conviction under this subdivision is a Class III felony.

6 (c) Criminal impersonation, as described in subdivisions
7 (1) (a) and (1) (b) of this section, is a Class I misdemeanor if the
8 credit, money, goods, services, or other thing of value that was
9 gained or was attempted to be gained was two hundred dollars or
10 more but less than five hundred dollars. Any second or subsequent
11 conviction under this subdivision is a Class IV felony.

12 (d) Criminal impersonation, as described in subdivisions
13 (1) (a) and (1) (b) of this section, is a Class II misdemeanor if
14 no credit, money, goods, services, or other thing of value was
15 gained or was attempted to be gained, or if the credit, money,
16 goods, services, or other thing of value that was gained or was
17 attempted to be gained was less than two hundred dollars. Any
18 second conviction under this subdivision is a Class I misdemeanor,
19 and any third or subsequent conviction under this subdivision is a
20 Class IV felony.

21 (e) Criminal impersonation, as described in subdivision
22 (1) (c) of this section, is a Class IV felony. Any second conviction
23 under this subdivision is a Class III felony, and any third or
24 subsequent conviction under this subdivision is a Class II felony.

25 (f) Criminal impersonation, as described in subdivision

1 (1) (d) of this section, is a Class II misdemeanor. Any second
2 or subsequent conviction under this subdivision is a Class I
3 misdemeanor.

4 ~~(e) (g)~~ A person found guilty of violating this section
5 may, in addition to the penalties under this subsection, be ordered
6 to make restitution pursuant to sections 29-2280 to 29-2289.

7 ~~(3) Criminal impersonation does not mean:~~

8 ~~(a) The lawful obtaining of credit information in the~~
9 ~~course of a bona fide consumer or commercial transaction;~~

10 ~~(b) The lawful, good faith exercise of a security~~
11 ~~interest or a right of setoff by a creditor or a financial~~
12 ~~institution; or~~

13 ~~(c) The lawful, good faith compliance by any person~~
14 ~~when required by any warrant, levy, garnishment, attachment, court~~
15 ~~order, or other judicial or administrative order, decree, or~~
16 ~~directive.~~

17 ~~(4) For purposes of this section:~~

18 ~~(a) Personal identification document means a birth~~
19 ~~certificate, motor vehicle operator's license, state identification~~
20 ~~card, public, government, or private employment identification~~
21 ~~card, social security card, visa work permit, firearm owner's~~
22 ~~identification card, certificate issued under section 69-2404, or~~
23 ~~passport or any document made or altered in a manner that it~~
24 ~~purports to have been made on behalf of or issued to another person~~
25 ~~or by the authority of a person who did not give that authority.~~

1 Personal identification document does not include a financial
2 transaction device as defined in section 28-618;

3 (b) Personal identifying information means any name or
4 number that may be used, alone or in conjunction with any other
5 information, to identify a specific person including a person's:
6 (i) Name; (ii) date of birth; (iii) address; (iv) motor vehicle
7 operator's license number or state identification card number
8 as assigned by the State of Nebraska or another state; (v)
9 social security number or visa work permit number; (vi) public,
10 private, or government employer, place of employment, or employment
11 identification number; (vii) maiden name of a person's mother;
12 (viii) number assigned to a person's credit card, charge card, or
13 debit card, whether issued by a financial institution, corporation,
14 or other business entity; (ix) number assigned to a person's
15 depository account, savings account, or brokerage account; (x)
16 personal identification number as defined in section 8-157.01; (xi)
17 electronic identification number, address, or routing code used
18 to access financial information; (xii) digital signature; (xiii)
19 telecommunications identifying information or access device; (xiv)
20 unique biometric data, such as fingerprint, voice print, retina
21 or iris image, or other unique physical representation; and (xv)
22 other number or information which can be used to access a person's
23 financial resources; and

24 (c) Telecommunications identifying information or access
25 device means a card, plate, code, account number, mobile

1 identification number, or other telecommunications service,
2 equipment, or instrument identifier or means of account access that
3 alone or in conjunction with other telecommunications identifying
4 information or another telecommunications access device may be
5 used to: (i) Obtain money, goods, services, or any other thing of
6 value; or (ii) initiate a transfer of funds other than a transfer
7 originated solely by a paper instrument.

8 Sec. 12. (1) A person commits the crime of identity
9 theft if he or she knowingly takes, purchases, manufactures,
10 records, possesses, or uses any personal identifying information or
11 entity identifying information of another person or entity without
12 the consent of that other person or entity or creates personal
13 identifying information for a fictional person or entity, with the
14 intent to obtain or use the other person's or entity's identity
15 for any unlawful purpose or to cause loss to a person or entity
16 whether or not the person or entity actually suffers any economic
17 loss as a result of the offense, or with the intent to obtain or
18 continue employment or with the intent to gain a pecuniary benefit
19 for himself, herself, or another.

20 (2) Identity theft is not:

21 (a) The lawful obtaining of credit information in the
22 course of a bona fide consumer or commercial transaction;

23 (b) The lawful, good faith exercise of a security
24 interest or a right of setoff by a creditor or a financial
25 institution;

1 (c) The lawful, good faith compliance by any person
2 when required by any warrant, levy, garnishment, attachment, court
3 order, or other judicial or administrative order, decree, or
4 directive; or

5 (d) The investigative activities of law enforcement.

6 (3)(a) Identity theft is a Class III felony if the
7 credit, money, goods, services, or other thing of value that was
8 gained or was attempted to be gained was one thousand five hundred
9 dollars or more. Any second or subsequent conviction under this
10 subdivision is a Class II felony.

11 (b) Identity theft is a Class IV felony if the credit,
12 money, goods, services, or other thing of value that was gained
13 or was attempted to be gained was five hundred dollars or more
14 but less than one thousand five hundred dollars. Any second or
15 subsequent conviction under this subdivision is a Class III felony.

16 (c) Identity theft is a Class I misdemeanor if the
17 credit, money, goods, services, or other thing of value that was
18 gained or was attempted to be gained was two hundred dollars or
19 more but less than five hundred dollars. Any second or subsequent
20 conviction under this subdivision is a Class IV felony.

21 (d) Identity theft is a Class II misdemeanor if no
22 credit, money, goods, services, or other thing of value was
23 gained or was attempted to be gained, or if the credit, money,
24 goods, services, or other thing of value that was gained or was
25 attempted to be gained was less than two hundred dollars. Any

1 second conviction under this subdivision is a Class I misdemeanor,
2 and any third or subsequent conviction under this subdivision is a
3 Class IV felony.

4 (e) A person found guilty of violating this section may,
5 in addition to the penalties under this subsection, be ordered to
6 make restitution pursuant to sections 29-2280 to 29-2289.

7 Sec. 13. (1) A person commits the crime of identity fraud
8 if he or she without lawful authority:

9 (a) Makes, counterfeits, alters, or mutilates any
10 personal identification document with the intent to deceive
11 another; or

12 (b) Willfully and knowingly obtains, possesses, uses,
13 sells or furnishes or attempts to obtain, possess, or furnish
14 to another person for any purpose of deception a personal
15 identification document.

16 (2)(a) Identity fraud is a Class I misdemeanor. Any
17 second or subsequent conviction under this subdivision is a Class
18 IV felony.

19 (b) A person found guilty of violating this section may,
20 in addition to the penalties under this subsection, be ordered to
21 make restitution pursuant to sections 29-2280 to 29-2289.

22 Sec. 14. Section 29-110, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 29-110 (1) Except as otherwise provided by law, no person
25 shall be prosecuted for any felony unless the indictment is found

1 by a grand jury within three years next after the offense has
2 been done or committed or unless a complaint for the same is filed
3 before the magistrate within three years next after the offense
4 has been done or committed and a warrant for the arrest of the
5 defendant has been issued.

6 (2) Except as otherwise provided by law, no person shall
7 be prosecuted, tried, or punished for any misdemeanor or other
8 indictable offense below the grade of felony or for any fine or
9 forfeiture under any penal statute unless the suit, information,
10 or indictment for such offense is instituted or found within one
11 year and six months from the time of committing the offense or
12 incurring the fine or forfeiture or within one year for any offense
13 the punishment of which is restricted by a fine not exceeding one
14 hundred dollars and to imprisonment not exceeding three months.

15 (3) Except as otherwise provided by law, no person
16 shall be prosecuted for kidnapping under section 28-313, false
17 imprisonment under section 28-314 or 28-315, child abuse under
18 section 28-707, pandering under section 28-802, debauching a
19 minor under section 28-805, or an offense under section 28-813,
20 28-813.01, or 28-1463.03 when the victim is under sixteen years of
21 age at the time of the offense (a) unless the indictment for such
22 offense is found by a grand jury within seven years next after the
23 offense has been committed or within seven years next after the
24 victim's sixteenth birthday, whichever is later, or (b) unless a
25 complaint for such offense is filed before the magistrate within

1 seven years next after the offense has been committed or within
2 seven years next after the victim's sixteenth birthday, whichever
3 is later, and a warrant for the arrest of the defendant has been
4 issued.

5 (4) No person shall be prosecuted for a violation of
6 the Securities Act of Nebraska under section 8-1117 unless the
7 indictment for such offense is found by a grand jury within five
8 years next after the offense has been done or committed or unless
9 a complaint for such offense is filed before the magistrate within
10 five years next after the offense has been done or committed and a
11 warrant for the arrest of the defendant has been issued.

12 (5) No person shall be prosecuted for criminal
13 impersonation under section 11 of this act, identity theft under
14 section 12 of this act, or identity fraud under section 13 of this
15 act unless the indictment for such offense is found by a grand
16 jury within five years next after the offense has been done or
17 committed or unless a complaint for such offense is filed before
18 the magistrate within five years next after the offense has been
19 done or committed and a warrant for the arrest of the defendant
20 has been issued.

21 ~~(5)~~ (6) There shall not be any time limitations for
22 prosecution or punishment for treason, murder, arson, forgery,
23 sexual assault in the first or second degree under section 28-319
24 or 28-320, sexual assault of a child in the second or third degree
25 under section 28-320.01, or sexual assault of a child in the

1 first degree under section 28-319.01; nor shall there be any time
2 limitations for prosecution or punishment for sexual assault in the
3 third degree under section 28-320 when the victim is under sixteen
4 years of age at the time of the offense.

5 ~~(6)~~ (7) The time limitations prescribed in this section
6 shall include all inchoate offenses pursuant to the Nebraska
7 Criminal Code and compounding a felony pursuant to section 28-301.

8 ~~(7)~~ (8) The time limitations prescribed in this section
9 shall not extend to any person fleeing from justice.

10 ~~(8)~~ (9) When any suit, information, or indictment for any
11 crime or misdemeanor is limited by any statute to be brought or
12 exhibited within any other time than is limited by this section,
13 then the suit, information, or indictment shall be brought or
14 exhibited within the time limited by such statute.

15 ~~(9)~~ (10) If any suit, information, or indictment is
16 quashed or the proceedings set aside or reversed on writ of
17 error, the time during the pendency of such suit, information, or
18 indictment so quashed, set aside, or reversed shall not be reckoned
19 within this statute so as to bar any new suit, information, or
20 indictment for the same offense.

21 ~~(10)~~ (11) The changes made to this section by Laws 2004,
22 LB 943, shall apply to offenses committed prior to April 16, 2004,
23 for which the statute of limitations has not expired as of such
24 date and to offenses committed on or after such date.

25 ~~(11)~~ (12) The changes made to this section by Laws 2005,

1 LB 713, shall apply to offenses committed prior to September 4,
2 2005, for which the statute of limitations has not expired as of
3 such date and to offenses committed on or after such date.

4 (13) The changes made to this section by this legislative
5 bill shall apply to offenses committed prior to the effective date
6 of this act for which the statute of limitations has not expired as
7 of such date and to offenses committed on or after such date.

8 Sec. 15. If any section in this act or any part of any
9 section is declared invalid or unconstitutional, the declaration
10 shall not affect the validity or constitutionality of the remaining
11 portions.

12 Sec. 16. Original sections 28-101, 28-518, 28-608, and
13 29-110, Reissue Revised Statutes of Nebraska, are repealed.