

ONE HUNDRED FOURTH LEGISLATURE - SECOND SESSION - 2016
COMMITTEE STATEMENT
LB1106

Hearing Date: Wednesday February 10, 2016
Committee On: Judiciary
Introducer: Garrett
One Liner: Change civil forfeiture provisions as prescribed

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Chambers, Coash, Krist, Ebke, Pansing Brooks, Morfeld,
Seiler, Williams

Nay:

Absent:

Present Not Voting:

Verbal Testimony:

Proponents:

SEN. TOMMY GARRETT
TRICIA FREEMAN
COREY O'BRIEN
JESSE HATHAWAY
LEE MCGRATH
AMY MILLER

Representing:

INTRODUCER
COUNTY ATTORNEYS ASSOCIATION
NEBRASKA ATTORNEY GENERAL'S OFFICE
THE HEARTLAND INSTITUTE
INSTITUTE FOR JUSTICE
ACLU OF NE

Opponents:

JUSTIN KALEMKIARIAN

Representing:

NCDA

Neutral:

Representing:

Summary of purpose and/or changes:

LB1106 would change asset forfeiture provisions.

Section 2 would amend 28-109 to define the term conveyance.

Section 3 would amend 28-416, by adding a new subsection (18) to allow the court to order forfeiture of certain goods as part of a sentence following a conviction under subsection (1). The court would be required to hold a hearing using the process in section 8 of this act and would have to find by clear and convincing evidence that the goods were used to facilitate a violation of 28-416(1).

Section 4 would amend 28-813.01, which provides penalties for possession of a visual depiction of sexually explicit conduct involving a child. The bill would add a new subsection (4) to allow the court to order forfeiture of certain goods as part of a sentence following a conviction under this section. The court would have to hold a hearing using the process in section 8 of this act and would have to find by clear and convincing evidence that the goods were used to facilitate a violation of this section.

Section 5 would amend 28-1111 to allow the court to order forfeiture of certain goods as part of a sentence following a conviction under 28-1102 to 28-1107. The court would have to hold a hearing using the process in section 8 of this act and would have to find by clear and convincing evidence that the goods were used to facilitate a violation of this section.

Section 7 would create a new section to allow a court to order forfeiture of certain goods as part of a sentence following a conviction under sections 28-1463.04 and 28-1463.05. The court would have to hold a hearing using the process in section 8 of this act and would have to find by clear and convincing evidence that the goods were used to facilitate a violation of this section.

Section 8 would create a new section to set forth the process for a court to order forfeiture of certain goods as part of a sentence following a conviction of certain offenses. Subsection (2) provides that a defendant may request a hearing to determine if goods were used to facilitate a violation of one of the statutes listed in subsection (1), and provides that the request must be filed within 30 days after the charges were filed. Subsection (3) provides that a person with a legal interest in the goods subject to forfeiture, who did not know that the goods were used to facilitate a violation of the statutes listed in subsection (1), may file a petition to intervene. This subsection would require the court to conduct a hearing within 30 days after the motion to intervene was filed. The court may appoint counsel or allow the applicant to proceed in forma pauperis. Subsection (4) would require the court to conduct a hearing, and would require the prosecutor to prove, by clear and convincing evidence, what amount of the goods subject to forfeiture were actually used in furtherance of a violation of the relevant statutes. Subsection (5) provides for the disposition of forfeited goods, and money from the sale of forfeited goods. The court may order that the goods or money be distributed as provided in Article VII, Section 5 of the Nebraska Constitution, or may be used, then sold, or destroyed. Subsection (6) would allow forfeiture as the result of a plea agreement. Subsection (7) provides that subsection (1)(a) would not apply if the owner of the goods dies or is deported. Subsection (8) provides that subsection (1)(b) would not apply if the owner of the goods dies or is deported, if the statute of limitations has not expired. Subsection (9) provides that subsection (1)(a) would not apply if the owner of the goods is unknown. Subsection (10) provides that (1)(b) would be satisfied if the owner of the goods dies, is deported, or is unknown, if the prosecutor uses the procedure set forth in section 10 of this bill. Subsection (11) would allow the court to order the owner of the goods to pay a storage fee of \$100 per month if the owner fails to appear in court.

Section 9 would create a new section to explicitly require a prosecutor to plead the intent to seek forfeiture of property in the same criminal information charging certain underlying offenses. Subsection (2) would require the information to state specific information relevant to the forfeiture proceeding.

Section 10 would create a new section to set forth the circumstances in which a prosecutor may commence an in rem civil action for the forfeiture of goods without first obtaining a criminal conviction. Subsection (1) provides that a prosecutor may use the process in section 11 of this bill for an in rem civil action if the owner of the goods to be forfeited dies, is deported, or fails to appear in court. Subsection (3) explicitly states that the mere presence or possession of money is not enough to show a nexus between the property seized and a violation of the law.

Section 11 would create a new section to set forth the process for a court to order forfeiture of certain goods as part of an in rem action.

Explanation of amendments:

AM2389 incorporates provisions originally contained in LB1108 and makes additional changes to LB1106.

Section 2 would require law enforcement agencies to provide a written report of forfeitures to the Auditor of Public Accounts.

Section 5 would prohibit law enforcement agencies from entering into agreements with a federal agency to conduct forfeiture litigation. This section would require forfeiture litigation to be conducted by local or state prosecuting authorities.

Section 6 would require a prosecuting attorney to provide a written report of seized property to the Auditor of Public Accounts.

The process for in rem forfeiture is removed from the original bill.

Les Seiler, Chairperson