

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1108

Introduced by Garrett, 3; Cook, 13; Ebke, 32; Lindstrom, 18; Morfeld, 46;
Pansing Brooks, 28.

Read first time January 20, 2016

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to civil forfeiture; to amend section 28-431,
- 2 Reissue Revised Statutes of Nebraska, and section 25-21,302, Revised
- 3 Statutes Supplement, 2015; to require reporting to the Auditor of
- 4 Public Accounts and the Legislature as prescribed; to prescribe
- 5 powers and duties for the Auditor of Public Accounts; and to repeal
- 6 the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-21,302, Revised Statutes Supplement, 2015, is
2 amended to read:

3 25-21,302 (1)(a) In addition to any other civil or criminal
4 penalties provided by law, any property used in the commission of a
5 violation of section 28-831 may be forfeited through a civil proceeding
6 as provided in this section.

7 (b) The following property shall be subject to civil forfeiture if
8 used or intended for use as an instrumentality in or used in furtherance
9 of a violation of section 28-831:

10 (i) Conveyances, including aircraft, vehicles, or vessels;

11 (ii) Books, records, telecommunication equipment, or computers;

12 (iii) Money or weapons;

13 (iv) Everything of value furnished, or intended to be furnished, in
14 exchange for an act in violation and all proceeds traceable to the
15 exchange;

16 (v) Negotiable instruments and securities;

17 (vi) Any property, real or personal, directly or indirectly acquired
18 or received in a violation or as an inducement to violate;

19 (vii) Any property traceable to proceeds from a violation; and

20 (viii) Any real property, including any right, title, and interest
21 in the whole of or any part of any lot or tract of land, used in
22 furtherance of a violation of section 28-831.

23 (c)(i) No property used by any person as a common carrier in the
24 transaction of business as a common carrier is subject to forfeiture
25 under this section unless it appears that the owner or other person in
26 charge of the property is a consenting party or privy to a violation of
27 section 28-831.

28 (ii) No property is subject to forfeiture under this section by
29 reason of any act or omission proved by the owner thereof to have been
30 committed or omitted without his or her knowledge or consent. If the
31 confiscating authority has reason to believe that the property is leased

1 or rented property, then the confiscating authority shall notify the
2 owner of the property within five days after the confiscation or within
3 five days after forming reason to believe that the property is leased or
4 rented property.

5 (iii) Forfeiture of property encumbered by a bona fide security
6 interest is subject to the interest of the secured party if such party
7 neither had knowledge of nor consented to the act or omission.

8 (2) No property shall be forfeited under this section, to the extent
9 of the interest of an owner, by reason of any act or omission established
10 by the owner to have been committed or omitted without his or her
11 knowledge or consent.

12 (3) Seizure without process may be made if the seizure is incident
13 to an arrest or a search under a search warrant.

14 (4)(a) When any property is seized under this section, proceedings
15 shall be instituted within a reasonable period of time from the date of
16 seizure or the subject property shall be immediately returned to the
17 party from whom seized.

18 (b) A petition for forfeiture shall be filed by the Attorney General
19 or a county attorney in the name of the State of Nebraska and may be
20 filed in the county in which the seizure is made, the county in which the
21 criminal prosecution is brought, or the county in which the owner of the
22 seized property is found. Forfeiture proceedings may be brought in the
23 district court or the county court. A copy of the petition shall be
24 served upon the following persons by service of process in the same
25 manner as in civil cases:

26 (i) The owner of the property if the owner's address is known;

27 (ii) Any secured party who has registered a lien or filed a
28 financing statement as provided by law if the identity of the secured
29 party can be ascertained by the entity filing the petition by making a
30 good faith effort to ascertain the identity of the secured party;

31 (iii) Any other bona fide lienholder or secured party or other

1 person holding an interest in the property in the nature of a security
2 interest of whom the seizing law enforcement agency has actual knowledge;
3 and

4 (iv) Any person in possession of property subject to forfeiture at
5 the time that it was seized.

6 (5) If the property is a motor vehicle subject to titling under the
7 Motor Vehicle Certificate of Title Act or a vessel subject to titling
8 under the State Boat Act, and if there is any reasonable cause to believe
9 that the motor vehicle or vessel has been titled, inquiry of the
10 Department of Motor Vehicles shall be made as to what the records of the
11 department show as to who is the record owner of the motor vehicle or
12 vessel and who, if anyone, holds any lien or security interest that
13 affects the motor vehicle or vessel.

14 (6) If the property is a motor vehicle or vessel and is not titled
15 in the State of Nebraska, then an attempt shall be made to ascertain the
16 name and address of the person in whose name the motor vehicle or vessel
17 is licensed, and if the motor vehicle or vessel is licensed in a state
18 which has in effect a certificate of title law, inquiry of the
19 appropriate agency of that state shall be made as to what the records of
20 the agency show as to who is the record owner of the motor vehicle or
21 vessel and who, if anyone, holds any lien, security interest, or other
22 instrument in the nature of a security device that affects the motor
23 vehicle or vessel.

24 (7) If the property is of a nature that a financing statement is
25 required by the laws of this state to be filed to perfect a security
26 interest affecting the property and if there is any reasonable cause to
27 believe that a financing statement covering the security interest has
28 been filed under the laws of this state, inquiry shall be made as to what
29 the records show as to who is the record owner of the property and who,
30 if anyone, has filed a financing statement affecting the property.

31 (8) If the property is an aircraft or part thereof and if there is

1 any reasonable cause to believe that an instrument in the nature of a
2 security device affects the property, inquiry shall be made as to what
3 the records of the Federal Aviation Administration show as to who is the
4 record owner of the property and who, if anyone, holds an instrument in
5 the nature of a security device which affects the property.

6 (9) If the answer to an inquiry states that the record owner of the
7 property is any person other than the person who was in possession of it
8 when it was seized or states that any person holds any lien, encumbrance,
9 security interest, other interest in the nature of a security interest,
10 mortgage, or deed of trust that affects the property, the record owner
11 and also any lienholder, secured party, other person who holds an
12 interest in the property in the nature of a security interest, or holder
13 of an encumbrance, mortgage, or deed of trust that affects the property
14 is to be named in the petition of forfeiture and is to be served with
15 process in the same manner as in civil cases.

16 (10) If the owner of the property cannot be found and served with a
17 copy of the petition of forfeiture or if no person was in possession of
18 the property subject to forfeiture at the time that it was seized and the
19 owner of the property is unknown, there shall be filed with the clerk of
20 the court in which the proceeding is pending an affidavit to such effect,
21 whereupon the clerk of the court shall publish notice of the hearing
22 addressed to "the Unknown Owner of, " filling in the blank
23 space with a reasonably detailed description of the property subject to
24 forfeiture. Service by publication shall be completed in the same manner
25 as is provided in the code of civil procedure for the service of process
26 in civil actions in the district courts of this state.

27 (11) No proceedings instituted pursuant to this section shall
28 proceed to hearing unless the judge conducting the hearing is satisfied
29 that this section has been complied with. Any answer received from an
30 inquiry required by this section shall be introduced into evidence at the
31 hearing.

1 (12)(a) An owner of property that has been seized shall file an
2 answer within thirty days after the completion of service of process. If
3 an answer is not filed, the court shall hear evidence that the property
4 is subject to forfeiture and forfeit the property to the seizing law
5 enforcement agency. If an answer is filed, a time for hearing on
6 forfeiture shall be set within thirty days after filing the answer or at
7 the succeeding term of court if court would not be in session within
8 thirty days after filing the answer. The court may postpone the
9 forfeiture hearing to a date past the time any criminal action is pending
10 against the owner upon request of any party.

11 (b) If the owner of the property has filed an answer denying that
12 the property is subject to forfeiture, then the burden is on the
13 petitioner to prove that the property is subject to forfeiture. However,
14 if an answer has not been filed by the owner of the property, the
15 petition for forfeiture may be introduced into evidence and is prima
16 facie evidence that the property is subject to forfeiture. The burden of
17 proof placed upon the petitioner in regard to property forfeited under
18 this section shall be by a preponderance of the evidence.

19 (c) At the hearing any claimant of any right, title, or interest in
20 the property may prove his or her lien, encumbrance, security interest,
21 other interest in the nature of a security interest, mortgage, or deed of
22 trust to be bona fide and created without knowledge or consent that the
23 property was to be used so as to cause the property to be subject to
24 forfeiture.

25 (d) If it is found that the property is subject to forfeiture, then
26 the judge shall forfeit the property. However, if proof at the hearing
27 discloses that the interest of any bona fide lienholder, any secured
28 party, any other person holding an interest in the property in the nature
29 of a security interest, or any holder of a bona fide encumbrance,
30 mortgage, or deed of trust is greater than or equal to the present value
31 of the property, the court shall order the property released to him or

1 her. If the interest is less than the present value of the property and
2 if the proof shows that the property is subject to forfeiture, the court
3 shall order the property forfeited.

4 (13) Unless otherwise provided in this section, all personal
5 property which is forfeited under this section shall be liquidated and,
6 after deduction of court costs and the expense of liquidation, the
7 proceeds shall be remitted to the county treasurer of the county in which
8 the seizure was made. The county treasurer shall remit all such proceeds
9 from property forfeited pursuant to this section to the State Treasurer
10 for distribution in accordance with Article VII, section 5, of the
11 Constitution of Nebraska.

12 (14) All money forfeited under this section shall be remitted in the
13 same manner as provided in subsection (13) of this section.

14 (15) All real estate forfeited under this section shall be sold to
15 the highest bidder at a public auction for cash, the auction to be
16 conducted by the county sheriff or his or her designee at such place, on
17 such notice, and in accordance with the same procedure, as far as
18 practicable, as is required in the case of sales of land under execution
19 at law. The proceeds of the sale shall first be applied to the cost and
20 expense in administering and conducting the sale, then to the
21 satisfaction of all mortgages, deeds of trust, liens, and encumbrances of
22 record on the property. The remaining proceeds shall be remitted in the
23 same manner as provided in subsection (13) of this section.

24 (16) The civil forfeiture procedure set forth in this section is the
25 sole remedy of any claimant, and no court shall have jurisdiction to
26 interfere therewith by replevin, by injunction, by supersedeas, or by any
27 other manner.

28 (17)(a) For each proceeding pursuant to this section, the
29 appropriate law enforcement agency or, as provided in subdivision (e) of
30 this subsection, the prosecuting attorney, shall provide a written report
31 of the civil forfeiture to the Auditor of Public Accounts. The report

1 shall include:

2 (i) The value of the property forfeited;

3 (ii) That the property was forfeited pursuant to this section;

4 (iii) The date of the forfeiture;

5 (iv) If the forfeiture resulted from a motor vehicle stop: (A) The
6 characteristics of the race or ethnicity of the person stopped. The
7 identification of such characteristics shall be based on the observation
8 and perception of the law enforcement officer responsible for reporting
9 the motor vehicle stop and the information shall not be required to be
10 provided by the person stopped; and (B) whether a warning or citation was
11 issued, an arrest made, or a search conducted. Search does not include a
12 search incident to arrest or an inventory search;

13 (v) If the forfeiture resulted from a motor vehicle stop for a law
14 violation, the nature of the alleged law violation that resulted in the
15 motor vehicle stop;

16 (vi) The number of firearms forfeited, if any, and the make, model,
17 and serial number of each firearm. The report shall indicate how the
18 firearms were or are to be disposed; and

19 (vii) Any additional information that the Nebraska State Patrol, the
20 county sheriffs, any city and village police departments, or any other
21 law enforcement agency in this state, as the case may be, deems
22 appropriate.

23 (b) The appropriate law enforcement agency or prosecuting attorney
24 shall report to the Auditor of Public Accounts all instances in which
25 property seized for civil forfeiture was returned to its owner either
26 because the forfeiture was not pursued or for any other reason.

27 (c) Reports shall be made on a monthly basis in a manner prescribed
28 by the Auditor of Public Accounts. The Auditor of Public Accounts shall
29 report on an annual basis electronically to the Legislature on the nature
30 and extent of civil forfeitures.

31 (d) For civil forfeitures resulting from the activities of

1 multijurisdictional law enforcement entities, a law enforcement entity
2 other than a Nebraska law enforcement entity shall, on its own
3 initiative, report the information required by this section.

4 (e) The prosecuting attorney is not required to report information
5 required by this subsection unless he or she has been notified by the
6 Auditor of Public Accounts that the appropriate law enforcement agency
7 has not reported the information required by this section.

8 (f) The failure of any official employed by the appropriate law
9 enforcement agency or prosecuting attorney to comply with the reporting
10 requirements contained in this subsection may be considered a violation
11 of section 28-924.

12 Sec. 2. Section 28-431, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 28-431 (1) The following shall be seized without warrant by an
15 officer of the Division of Drug Control or by any peace officer and the
16 same shall be subject to forfeiture: (a) All controlled substances which
17 have been manufactured, distributed, dispensed, acquired, or possessed in
18 violation of the Uniform Controlled Substances Act; (b) all raw
19 materials, products, and equipment of any kind which are used, or
20 intended for use, in manufacturing, compounding, processing,
21 administering, delivering, importing, or exporting any controlled
22 substance in violation of the act; (c) all property which is used, or is
23 intended for use, as a container for property described in subdivisions
24 (a) and (b) of this subsection; (d) all drug paraphernalia defined in
25 section 28-439; (e) all books, records, and research, including, but not
26 limited to, formulas, microfilm, tapes, and data, which are used, or
27 intended for use, in violation of the act; (f) all conveyances including,
28 but not limited to, aircraft, vehicles, or vessels which are used, or
29 intended for use, in transporting any controlled substance with intent to
30 manufacture, distribute, deliver, dispense, export, or import such
31 controlled substance in violation of the act; and (g) all money used, or

1 intended to be used, to facilitate a violation of the act.

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

8 (3) All money that a law enforcement agency proves was furnished by
9 such agency shall be returned to the agency. All property seized without
10 a search warrant shall not be subject to a replevin action and: (a) All
11 property described in subdivisions (1)(a) to (1)(e) of this section shall
12 be kept by the property division of the law enforcement agency which
13 employs the officer who seized such property for so long as it is needed
14 as evidence in any trial; and (b) when no longer required as evidence,
15 all property described in subdivision (1)(e) of this section shall be
16 disposed of on order of a court of record of this state in such manner as
17 the court in its sound discretion shall direct, and all property
18 described in subdivisions (1)(a), (b), (c), and (d) of this section, that
19 has been used or is intended to be used in violation of the act, when no
20 longer needed as evidence shall be destroyed by the law enforcement
21 agency holding the same or turned over to the department for custody or
22 destruction, except that a law enforcement agency may keep a small
23 quantity of the property described in subdivisions (1)(a), (b), (c), and
24 (d) of this section for training purposes or use in investigations. Any
25 large quantity of property described in subdivisions (1)(a), (b), (c),
26 and (d) of this section, whether seized under a search warrant or validly
27 seized without a warrant, may be disposed of on order of a court of
28 record of this state in such manner as the court in its sound discretion
29 shall direct. Such an order may be given only after a proper laboratory
30 examination and report of such property has been completed and after a
31 hearing has been held by the court after notice to the defendant of the

1 proposed disposition of the property. The findings in such court order as
2 to the nature, kind, and quantity of the property so disposed of may be
3 accepted as evidence at subsequent court proceedings in lieu of the
4 property ordered destroyed by the court order.

5 (4) When any property described in subdivision (1)(f) or (g) of this
6 section is seized, the person seizing the same shall cause to be filed,
7 within ten days thereafter, in the district court of the county in which
8 seizure was made, petition for disposition of such property. The
9 proceedings shall be brought in the name of the state by the county
10 attorney of the county in which such property was seized. The petition
11 shall describe the property, state the name of the owner if known, allege
12 the essential elements of the violation which is claimed to exist, and
13 conclude with a prayer for disposition. The county attorney shall have a
14 copy of the petition served upon the owner of or any person having an
15 interest in the property, if known, in person or by registered or
16 certified mail at his or her last-known address. If the owner is unknown
17 or there is a reasonable probability that there are unknown persons with
18 interests in the property, the county attorney shall provide notice of
19 the seizure and petition for disposition by publication once a week for
20 four consecutive weeks in a newspaper of general circulation in the
21 county of the seizure. At least five days shall elapse between each
22 publication of notice.

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

29 (6) Any person having an interest in the property proceeded against
30 or any person against whom civil or criminal liability would exist if
31 such property is in violation of the act may, within thirty days after

1 seizure, appear and file an answer or demurrer to the petition. The
2 answer or demurrer shall allege the claimant's interest in or liability
3 involving such property. At least thirty but not more than ninety days
4 after seizure, there shall be a hearing before the court. If the claimant
5 proves by a preponderance of the evidence that he or she (a) has not used
6 or intended to use the property to facilitate an offense in violation of
7 the act, (b) has an interest in such property as owner or lienor or
8 otherwise, acquired by him or her in good faith, and (c) at no time had
9 any knowledge that such property was being or would be used in, or to
10 facilitate, the violation of the act, the court shall order that such
11 property or the value of the claimant's interest in such property be
12 returned to the claimant. If there are no claims, if all claims are
13 denied, or if the value of the property exceeds all claims granted and it
14 is shown beyond a reasonable doubt that such property was used in
15 violation of the act, the court shall order disposition of such property
16 at such time as the property is no longer required as evidence in any
17 criminal proceeding. The court may order that property described in
18 subdivision (1)(f) of this section be sold or put to official use by the
19 confiscating agency for a period of not more than one year and that when
20 such property is no longer necessary for official use or at the end of
21 two years, whichever comes first, such property shall be sold. Proceeds
22 from the sale of the property and any money described in subdivision (1)
23 (g) of this section shall be distributed pursuant to section 28-1439.02.
24 Official use shall mean use directly in connection with enforcement of
25 the act.

26 (7) Any court costs and fees and storage and other proper expenses
27 shall be charged against any person intervening as claimant or owner of
28 the property unless such person shall establish his or her claim. If a
29 sale is ordered, the officer holding the sale shall make a return to the
30 court showing to whom the property was sold and for what price. This
31 return together with the court order shall authorize the county clerk to

1 issue a title to the purchaser of the property if such title is required
2 under the laws of this state.

3 (8)(a) For all money and property seized pursuant to this section,
4 the Division of Drug Control, any peace officer, or, as provided in
5 subdivision (e) of this subsection, the prosecuting attorney shall
6 provide a written report of the seizure to the Auditor of Public
7 Accounts. The report shall include the value of the money and property
8 seized, that the money and property was seized pursuant to this section,
9 and the date of the seizure. The report shall also list the number of
10 firearms seized and the make, model, and serial number of each firearm,
11 if any. The report shall indicate how the money and property was or is to
12 be disposed.

13 (b) The Division of Drug Control, any peace officer, or the county
14 attorney shall report to the Auditor of Public Accounts all instances in
15 which money and property seized was returned to its owner either because
16 the seizure was not pursued or for any other reason.

17 (c) Reports shall be made on a quarterly basis in a manner
18 prescribed by the Auditor of Public Accounts. The Auditor of Public
19 Accounts shall submit a report to the Legislature on the nature and
20 extent of such seizures on an annual basis. Such report shall be
21 submitted electronically.

22 (d) For seizures resulting from the activities of
23 multijurisdictional law enforcement entities, a law enforcement entity
24 other than a Nebraska law enforcement entity shall, on its own
25 initiative, report the information required by this section.

26 (e) The prosecuting attorney is not required to report information
27 required by this subsection unless he or she has been notified by the
28 Auditor of Public Accounts that the Division of Drug Control or any peace
29 officer has not reported the information required by this section.

30 Sec. 3. Original section 28-431, Reissue Revised Statutes of
31 Nebraska, and section 25-21,302, Revised Statutes Supplement, 2015, are

1 repealed.