

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 622

Introduced by Lautenbaugh, 18.

Read first time January 19, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to seized firearms; to amend section 29-820,
2 Reissue Revised Statutes of Nebraska, and section
3 28-1204.04, Revised Statutes Cumulative Supplement, 2010;
4 to change provisions relating to the confiscation and
5 destruction of firearms as prescribed; and to repeal the
6 original sections.

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

1 Section 1. Section 28-1204.04, Revised Statutes
2 Cumulative Supplement, 2010, is amended to read:

3 28-1204.04 (1) Any person who possesses a firearm in a
4 school, on school grounds, in a school-owned vehicle, or at a school-
5 sponsored activity or athletic event is guilty of the offense of
6 unlawful possession of a firearm at a school. Unlawful possession of
7 a firearm at a school is a Class IV felony. This subsection shall not
8 apply to (a) the issuance of firearms to or possession by members of
9 the armed forces of the United States, active or reserve, National
10 Guard of this state, or Reserve Officers Training Corps or peace
11 officers or other duly authorized law enforcement officers when on
12 duty or training, (b) firearms which may lawfully be possessed by the
13 person receiving instruction, for instruction under the immediate
14 supervision of an adult instructor, (c) firearms which may lawfully
15 be possessed by a member of a college or university rifle team,
16 within the scope of such person's duties as a member of the team, (d)
17 firearms which may lawfully be possessed by a person employed by a
18 college or university in this state as part of an agriculture or a
19 natural resources program of such college or university, within the
20 scope of such person's employment, (e) firearms contained within a
21 private vehicle operated by a nonstudent adult which are not loaded
22 and (i) are encased or (ii) are in a locked firearm rack that is on a
23 motor vehicle, or (f) a handgun carried as a concealed handgun by a
24 valid holder of a permit issued under the Concealed Handgun Permit
25 Act in a vehicle or on his or her person while riding in or on a

1 vehicle into or onto any parking area, which is open to the public
2 and used by a school if, prior to exiting the vehicle, the handgun is
3 locked inside the glove box, trunk, or other compartment of the
4 vehicle, a storage box securely attached to the vehicle, or, if the
5 vehicle is a motorcycle, a hardened compartment securely attached to
6 the motorcycle while the vehicle is in or on such parking area,
7 except as prohibited by federal law. For purposes of this subsection,
8 encased means enclosed in a case that is expressly made for the
9 purpose of containing a firearm and that is completely zipped,
10 snapped, buckled, tied, or otherwise fastened with no part of the
11 firearm exposed.

12 (2) Any firearm possessed in violation of subsection (1)
13 of this section shall be confiscated without warrant by a peace
14 officer or may be confiscated without warrant by school
15 administrative or teaching personnel. Any firearm confiscated by
16 school administrative or teaching personnel shall be delivered to a
17 peace officer as soon as practicable.

18 (3) Any firearm confiscated by or given to a peace
19 officer pursuant to subsection (2) of this section shall be declared
20 a common nuisance and shall be held by the peace officer prior to his
21 or her delivery of the firearm to the property division of the law
22 enforcement agency which employs the peace officer. The property
23 division of such law enforcement agency shall hold such firearm for
24 as long as the firearm is needed as evidence. After the firearm is no
25 longer needed as evidence, it shall be ~~destroyed~~stored or returned

1 in such manner as the court may direct under law.

2 (4) ~~Whenever a firearm is confiscated and held pursuant~~
3 ~~to this section or section 28-1204.02, the peace officer who received~~
4 ~~such firearm shall cause to be filed within ten days after the~~
5 ~~confiscation a petition for destruction of such firearm. The petition~~
6 ~~shall be filed in the district court of the county in which the~~
7 ~~confiscation is made. The petition shall describe the firearm held,~~
8 ~~state the name of the owner, if known, allege the essential elements~~
9 ~~of the violation which caused the confiscation, and conclude with a~~
10 ~~prayer for disposition and destruction in such manner as the court~~
11 ~~may direct.~~ At any time after the confiscation of the firearm and
12 prior to court disposition, the owner of the firearm seized may
13 petition the district court of the county in which the confiscation
14 was made for possession of the firearm. The court shall release the
15 firearm to such owner only if the claim of ownership can reasonably
16 be shown to be true and either (a) the owner of the firearm can show
17 that the firearm was taken from his or her property or place of
18 business unlawfully or without the knowledge and consent of the owner
19 and that such property or place of business is different from that of
20 the person from whom the firearm was confiscated or (b) the owner of
21 the firearm is acquitted of the charge of unlawful possession of a
22 handgun in violation of section 28-1204, unlawful transfer of a
23 firearm to a juvenile in violation of section 28-1204.01, or unlawful
24 possession of a firearm at a school in violation of subsection (1) of
25 this section.

1 (5) An owner shall be entitled to collect court costs,
2 damages of at least one thousand dollars, and reasonable attorney's
3 fees in any legal action required to recover from a law enforcement
4 agency or law enforcement officer a firearm confiscated under this
5 section if the owner prevails.

6 ~~(6) No firearm having significant antique value or~~
7 ~~historical significance as determined by the Nebraska State~~
8 ~~Historical Society shall be destroyed.~~ If a firearm has significant
9 antique value or historical significance and is not returned to the
10 owner, it shall be sold at auction and the proceeds shall be remitted
11 to the State Treasurer for distribution in accordance with Article
12 VII, section 5, of the Constitution of Nebraska.

13 Sec. 2. Section 29-820, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 29-820 (1) Unless other disposition is specifically
16 provided by law, when property seized or held is no longer required
17 as evidence, it shall be disposed of by the law enforcement agency on
18 such showing as the law enforcement agency may deem adequate, as
19 follows:

20 (a) Property stolen, embezzled, obtained by false
21 pretenses, or otherwise obtained unlawfully from the rightful owner
22 thereof shall be restored to the owner;

23 (b) Money shall be restored to the owner unless it was
24 used in unlawful gambling or lotteries or it was used or intended to
25 be used to facilitate a violation of Chapter 28, article 4, in which

1 case the money shall be forfeited and disposed of as required by
2 Article VII, section 7, of the Constitution of Nebraska;

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

8 (d) Except as provided in subdivision (2)(b) of this
9 section, articles of contraband shall be destroyed; and

10 (e) Except as provided in subdivision (2)(a) of this
11 section, ~~firearms,~~ammunition, explosives, bombs, and like devices
12 which have been used in the commission of crime shall be destroyed.

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

16 (a) ~~Firearms, which may have a lawful use~~ Firearms which
17 may have a lawful use shall be returned to the true owner if known,
18 and if no criminal information is filed against the owner in the
19 matter, if an information is filed against the owner in the matter
20 and dismissed, or if the owner is acquitted of the charges in the
21 matter, unless the owner is legally not allowed to own or possess a
22 firearm. Firearms which are not returned because the owner is legally
23 not allowed to own or possess a firearm or because the firearms have
24 no lawful use shall be stored; and

25 (b) Goods which are declared to be contraband but may

1 reasonably be returned to a condition or state in which such goods
2 may be lawfully used, possessed, or distributed by the public.

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

15 (4) Unless otherwise provided by law, all other property
16 shall be disposed of in such manner as the court in its sound
17 discretion shall direct.

18 (5) An owner shall be entitled to court costs, damages of
19 at least one thousand dollars, and reasonable attorney's fees in any
20 legal action required to recover a seized firearm from a law
21 enforcement agency or law enforcement officer if the owner prevails.

22 (6) If a firearm has significant antique value or
23 historical significance and is not returned to the owner, it shall be
24 sold at auction and the proceeds shall be remitted to the State
25 Treasurer for distribution in accordance with Article VII, section 5,

1 of the Constitution of Nebraska.

2 Sec. 3. Original section 29-820, Reissue Revised Statutes
3 of Nebraska, and section 28-1204.04, Revised Statutes Cumulative
4 Supplement, 2010, are repealed.