

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 769

Introduced by Garrett, 3; Craighead, 6; Groene, 42; Watermeier, 1.

Read first time January 06, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to firearms; to amend sections 28-1204.02,
2 69-2441, and 79-283, Reissue Revised Statutes of Nebraska, and
3 section 29-820, Revised Statutes Cumulative Supplement, 2014; to
4 change provisions relating to forfeited or abandoned firearms; to
5 eliminate certain state-wide restrictions and penalties on the
6 carrying of firearms; to repeal the original sections; and to
7 outright repeal section 79-263, Reissue Revised Statutes of
8 Nebraska, and sections 28-1204.03 and 28-1204.04, Revised Statutes
9 Cumulative Supplement, 2014.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1204.02, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 28-1204.02 (1) Any firearm in the possession of a person in
4 violation of section 28-1204 or 28-1204.01 shall be confiscated by a
5 peace officer or other authorized law enforcement officer. Such firearm
6 shall be held by the agency employing such officer until it no longer is
7 required as evidence.

8 (2)(a) Any firearm that is forfeited or abandoned to the state or
9 any political subdivision and is no longer needed as evidence or for any
10 law enforcement reason shall be disposed of as provided in this section.

11 (b) Prior to the disposal of any firearm that has been forfeited or
12 abandoned, the state or political subdivision with custody of the firearm
13 shall use its best efforts to determine if the firearm has been lost by,
14 stolen from, or otherwise unlawfully obtained from an innocent owner and,
15 if so, shall return the firearm to its innocent owner, if ascertainable,
16 unless that person is ineligible to receive or possess a firearm under
17 state or federal law.

18 (c) Except as provided in subdivision (2)(b) or (d) of this section,
19 the state or any political subdivision shall dispose of any firearm that
20 was forfeited or abandoned to it by sale at public auction to persons
21 licensed as firearms collectors, dealers, importers, or manufacturers
22 under 18 U.S.C. 921, et seq., as such sections existed on the effective
23 date of this act, and authorized to receive such firearms under the terms
24 of such license. The auctions required by this subsection may occur
25 online on a rolling basis or at live events but in no case shall occur
26 less frequently than once every six months during any time the state or
27 political subdivision has an inventory of saleable firearms. Employees of
28 the state or any political subdivision shall not be eligible to bid on
29 any firearm at an auction conducted pursuant to this subsection. The
30 state or any political subdivision or its employees shall not retain any
31 firearm required to be sold under this section.

1 (d) The requirements of subdivision (2)(c) of this section shall not
2 apply to a firearm if no bids from eligible recipients are received
3 within six months from when bidding opened on the item or when the chief
4 of police, agency director, or his or her designee certifies is unsafe
5 for use because of wear, damage, age, or modification. Any such firearm
6 shall, at the discretion of a chief of police or agency director or his
7 or her designee, be transferred to the Nebraska State Patrol Crime
8 Laboratory for training or experimental purposes, be transferred to a
9 museum or historical society that displays such items to the public and
10 is lawfully eligible to receive the item, or be destroyed.

11 (e) The state and any political subdivision subject to this section
12 shall keep records of any firearm acquired and disposed of as provided in
13 this section, as well as the proceeds from the sales of the firearm and
14 the disbursement of such proceeds. Such records shall be maintained for
15 not less than ten years from the date on which a firearm was disposed of
16 or on which a disbursement of funds was made, as the case may be.

17 (f) Neither the state nor any political subdivision of the state,
18 nor any officers, agents, and employees of the state or political
19 subdivision, shall be liable to any person, including the purchaser of a
20 firearm, for personal injuries or damage to property arising from the
21 sale of a firearm under subdivision (2)(c) of this section, unless the
22 state or political subdivision acted with gross negligence or
23 recklessness.

24 (g) At any time after confiscation of the firearm and prior to
25 disposition, the owner of the firearm seized may petition the district
26 court of the county in which the confiscation was made for possession of
27 the firearm. The court shall release the firearm to such owner only if
28 the claim of ownership can reasonably be shown to be true.

29 (h) Proceeds generated from any firearm sold pursuant to this
30 section shall be remitted to the State Treasurer for distribution in
31 accordance with Article VII, section 5, of the Constitution of Nebraska.

1 Sec. 2. Section 29-820, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 29-820 (1) Unless other disposition is specifically provided by law,
4 when property seized or held is no longer required as evidence, it shall
5 be disposed of by the law enforcement agency on such showing as the law
6 enforcement agency may deem adequate, as follows:

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

10 (b) Money shall be restored to the owner unless it was used in
11 unlawful gambling or lotteries or it was used or intended to be used to
12 facilitate a violation of Chapter 28, article 4, in which case the money
13 shall be forfeited and disposed of as required by Article VII, section 7,
14 of the Constitution of Nebraska;

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

20 (d) Except as provided in subsection (2) of this section, articles
21 of contraband shall be destroyed; and

22 (e) ~~Explosives~~ Firearms, ~~ammunition~~, ~~explosives~~, bombs, and like
23 devices which have been used in the commission of crime shall be
24 destroyed. ; ~~and~~

25 ~~(f) Firearms which have come into the law enforcement agency's~~
26 ~~possession through a seizure or otherwise and (i) have not been used in~~
27 ~~the commission of crime, (ii) have not been defaced or altered in any~~
28 ~~manner that violates any state or federal law, (iii) may have a lawful~~
29 ~~use and be lawfully possessed, and (iv) are not subject to section 29-440~~
30 ~~shall be restored to the owner.~~

31 (2) When the following property is seized or held and is no longer

1 required as evidence, such property shall be disposed of on order of the
2 court as the court may deem adequate:

3 Goods which are declared to be contraband but may reasonably be
4 returned to a condition or state in which such goods may be lawfully
5 used, possessed, or distributed by the public.

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

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

20 Sec. 3. Section 69-2441, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 69-2441 (1){a} A permitholder may carry a concealed handgun anywhere
23 in Nebraska, except any: Police, sheriff, or Nebraska State Patrol
24 station or office; detention facility, prison, or jail; courtroom—
25 ~~building which contains a courtroom; polling place during a bona fide~~
26 ~~election; meeting of the governing body of a county, public school~~
27 ~~district, municipality, or other political subdivision; meeting of the~~
28 ~~Legislature or a committee of the Legislature; financial institution;~~
29 ~~professional or semiprofessional athletic event; building, grounds,~~
30 ~~vehicle, or sponsored activity or athletic event of any public, private,~~
31 ~~denominational, or parochial elementary, vocational, or secondary school,~~

1 ~~a private postsecondary career school as defined in section 85-1603, a~~
2 ~~community college, or a public or private college, junior college, or~~
3 ~~university; place of worship; hospital, emergency room, or trauma center;~~
4 ~~political rally or fundraiser; establishment having a license issued~~
5 ~~under the Nebraska Liquor Control Act that derives over one-half of its~~
6 ~~total income from the sale of alcoholic liquor; place where the~~
7 ~~possession or carrying of a firearm is prohibited by state or federal~~
8 ~~law; a place or premises where the person, persons, entity, or entities~~
9 ~~in control of the property or employer in control of the property has~~
10 ~~prohibited permitholders from carrying concealed handguns into or onto~~
11 ~~the place or premises; or into or onto any other place or premises where~~
12 ~~handguns are prohibited by state law.~~

13 ~~(b) A financial institution may authorize its security personnel to~~
14 ~~carry concealed handguns in the financial institution while on duty so~~
15 ~~long as each member of the security personnel, as authorized, is in~~
16 ~~compliance with the Concealed Handgun Permit Act and possesses a permit~~
17 ~~to carry a concealed handgun issued pursuant to the act.~~

18 ~~(c) A place of worship may authorize its security personnel to carry~~
19 ~~concealed handguns on its property so long as each member of the security~~
20 ~~personnel, as authorized, is in compliance with the Concealed Handgun~~
21 ~~Permit Act and possesses a permit to carry a concealed handgun issued~~
22 ~~pursuant to the act and written notice is given to the congregation and,~~
23 ~~if the property is leased, the carrying of concealed handguns on the~~
24 ~~property does not violate the terms of any real property lease agreement~~
25 ~~between the place of worship and the lessor.~~

26 (2) If a person, persons, entity, or entities in control of the
27 property or an employer in control of the property prohibits a
28 permitholder from carrying a concealed handgun into or onto the place or
29 premises and such place or premises are open to the public, a
30 permitholder does not violate this section unless the person, persons,
31 entity, or entities in control of the property or employer in control of

1 the property has posted conspicuous notice that carrying a concealed
2 handgun is prohibited in or on the place or premises or has made a
3 request, directly or through an authorized representative or management
4 personnel, that the permitholder remove the concealed handgun from the
5 place or premises.

6 (3) A permitholder carrying a concealed handgun in a vehicle or on
7 his or her person while riding in or on a vehicle into or onto any
8 parking area, which is open to the public, used by any location listed in
9 subdivision (1)(a) of this section, does not violate this section if,
10 prior to exiting the vehicle, the handgun is locked inside the glove box,
11 trunk, or other compartment of the vehicle, a storage box securely
12 attached to the vehicle, or, if the vehicle is a motorcycle, a hardened
13 compartment securely attached to the motorcycle. This subsection does not
14 apply to any parking area used by such location when the carrying of a
15 concealed handgun into or onto such parking area is prohibited by federal
16 law.

17 (4) An employer may prohibit employees or other persons who are
18 permitholders from carrying concealed handguns in vehicles owned by the
19 employer.

20 (5) A permitholder shall not carry a concealed handgun while he or
21 she is consuming alcohol or while the permitholder has remaining in his
22 or her blood, urine, or breath any previously consumed alcohol or any
23 controlled substance as defined in section 28-401. A permitholder does
24 not violate this subsection if the controlled substance in his or her
25 blood, urine, or breath was lawfully obtained and was taken in
26 therapeutically prescribed amounts.

27 Sec. 4. Section 79-283, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 79-283 (1) Written notice of the findings and recommendations of the
30 hearing examiner and the determination of the superintendent under
31 section 79-282 shall be made by certified or registered mail or by

1 personal delivery to the student or the student's parent or guardian.
2 Upon receipt of such written notice by the student, parent, or guardian,
3 the determination of the superintendent shall take immediate effect.

4 (2) Except as provided in subsections (3) and (4) of this section,
5 the expulsion of a student shall be for a period not to exceed the
6 remainder of the semester in which it took effect unless the misconduct
7 occurred (a) within ten school days prior to the end of the first
8 semester, in which case the expulsion shall remain in effect through the
9 second semester, or (b) within ten school days prior to the end of the
10 second semester, in which case the expulsion shall remain in effect for
11 summer school and the first semester of the following school year subject
12 to the provisions of subsection (5) of this section. Such action may be
13 modified or terminated by the school district at any time during the
14 expulsion period.

15 (3) The expulsion of a student for (a) the knowing and intentional
16 use of force in causing or attempting to cause personal injury to a
17 school employee, school volunteer, or student except as provided in
18 subdivision (3) of section 79-267 or (b) the knowing and intentional
19 possession, use, or transmission of an illegal a dangerous weapon or
20 explosive ~~, other than a firearm,~~ shall be for a period not to exceed the
21 remainder of the school year in which it took effect if the misconduct
22 occurs during the first semester. If the expulsion takes place during the
23 second semester, the expulsion shall remain in effect for summer school
24 and may remain in effect for the first semester of the following school
25 year. Such action may be modified or terminated by the school district at
26 any time during the expulsion period.

27 (4) The expulsion of a student for the knowing and intentional
28 possession, use, or transmission of a firearm, which for purposes of this
29 section means a firearm as defined in 18 U.S.C. 921 as of January 1,
30 1995, shall be for a period as provided by the school district policy
31 adopted pursuant to section 79-263. This subsection shall not apply to

1 (a) the issuance of firearms to or possession of firearms by members of
2 the Reserve Officers Training Corps when training or (b) firearms which
3 may lawfully be possessed by the person receiving instruction under the
4 immediate supervision of an adult instructor who may lawfully possess
5 firearms.

6 (5) Any expulsion that will remain in effect during the first
7 semester of the following school year shall be automatically scheduled
8 for review before the beginning of the school year. The review shall be
9 conducted by the hearing examiner after the hearing examiner has given
10 notice of the review to the student and the student's parent or guardian.
11 This review shall be limited to newly discovered evidence or evidence of
12 changes in the student's circumstances occurring since the original
13 hearing. This review may lead to a recommendation by the hearing examiner
14 that the student be readmitted for the upcoming school year. If the
15 school board or board of education or a committee of such board took the
16 final action to expel the student, the student may be readmitted only by
17 action of the board. Otherwise the student may be readmitted by action of
18 the superintendent.

19 Sec. 5. Original sections 28-1204.02, 69-2441, and 79-283, Reissue
20 Revised Statutes of Nebraska, and section 29-820, Revised Statutes
21 Cumulative Supplement, 2014, are repealed.

22 Sec. 6. The following sections are outright repealed: Section
23 79-263, Reissue Revised Statutes of Nebraska, and sections 28-1204.03 and
24 28-1204.04, Revised Statutes Cumulative Supplement, 2014.