

LEGISLATURE OF NEBRASKA  
NINETY-EIGHTH LEGISLATURE  
FIRST SESSION

LEGISLATIVE BILL 265

Introduced by Tyson, 19; Aguilar, 35; Baker, 44; Byars, 30;  
Combs, 32; Cudaback, 36; Cunningham, 40; Engel, 17;  
Erdman, 47; Hudkins, 21; Janssen, 15; Jensen, 20;  
Jones, 43; McDonald, 41; Mossey, 3; Dw. Pedersen, 39;  
D. Pederson, 42; Quandahl, 31; Redfield, 12;  
Schrock, 38; Smith, 48; Stuhr, 24; Synowiecki, 7;  
Vrtiska, 1; Wehrbein, 2

Read first time January 13, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to concealed weapons; to amend section 28-1202,  
2 Reissue Revised Statutes of Nebraska, and section  
3 60-4,119, Revised Statutes Supplement, 2002; to adopt the  
4 Concealed Handgun Permit Act; to provide penalties; to  
5 change and harmonize provisions relating to concealed  
6 weapons; to provide for distinct operator's licenses; to  
7 repeal the original sections; and to declare an  
8 emergency.

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

1           Section 1.   Sections 1 to 10 of this act shall be known  
2 and may be cited as the Concealed Handgun Permit Act.

3           Sec. 2.   For purposes of the Concealed Handgun Permit  
4 Act:

5           (1) Concealed handgun means a handgun that is totally  
6 hidden from view. If any part of the handgun is capable of being  
7 seen, it is not a concealed handgun; and

8           (2) Handgun means any firearm with a barrel less than  
9 sixteen inches in length or any firearm designed to be held and  
10 fired by the use of a single hand.

11           Sec. 3.   (1) Application for a permit to carry a  
12 concealed handgun shall be made in person at the office of the  
13 sheriff of the county in which the applicant resides. The  
14 application shall be made on a form prescribed by the  
15 Superintendent of Law Enforcement and Public Safety. The  
16 application shall state the applicant's full name, social security  
17 number, address, date of birth, a statement that the applicant  
18 meets the requirements of section 4 of this act, a statement that  
19 the information on the application is true and correct, and the  
20 applicant's signature. The applicant shall also present a current  
21 Nebraska motor vehicle operator's license, state identification  
22 card, or military identification card and two sets of his or her  
23 fingerprints. An applicant shall be twenty-one years of age or  
24 older and not prohibited from purchasing or possessing a handgun by  
25 18 U.S.C. 922. An applicant shall possess the same powers of  
26 eyesight as required under section 60-4,118 for a Class O  
27 operator's license.

28           (2) No person applying for a permit to carry a concealed

1 handgun shall give false information or offer false evidence of his  
2 or her identity. A violation of this subsection is a Class IV  
3 felony.

4 Sec. 4. (1) A permit to carry a concealed handgun shall  
5 be issued to the applicant by the sheriff of the county in which  
6 the applicant resides.

7 (2) The permit shall be issued within five business days  
8 after the date of application if the applicant:

9 (a) Has applied pursuant to section 3 of this act;

10 (b) Has never pled guilty to, pled nolo contendere to, or  
11 been convicted of a felony or a crime of violence;

12 (c) Is not habitually in an intoxicated or drugged  
13 condition;

14 (d) Has no history of violence;

15 (e) Has not been found in the previous ten years to be a  
16 mentally ill dangerous person under the Nebraska Mental Health  
17 Commitment Act or a similar law of another jurisdiction or is not  
18 currently adjudged mentally incompetent;

19 (f) Has been a resident of the county where the  
20 application is being made for at least one hundred eighty days.  
21 For purposes of this section, resident does not include an  
22 applicant who maintains a residence in another state and claims  
23 that residence for voting or tax purposes;

24 (g) Has had no violations of any law of this state  
25 relating to firearms, unlawful use of a weapon, or controlled  
26 substances or of any similar laws of another jurisdiction in the  
27 two years preceding the date of application;

28 (h) Is not on parole, probation, house arrest, or work

1 release; and

2 (i) Is a citizen of the United States.

3 (3) The Nebraska State Patrol shall conduct a criminal  
4 history record information check in order to insure an applicant's  
5 initial compliance with subdivisions (2)(a) through (i) of this  
6 section.

7 (4) The form of the permit to carry a concealed handgun  
8 shall be prescribed by the Superintendent of Law Enforcement and  
9 Public Safety. The permit shall list the permitholder's name,  
10 address, and the expiration date of the permit and contain a  
11 photograph of the permitholder.

12 (5) A person denied a permit may appeal to the district  
13 court pursuant to the Administrative Procedure Act.

14 (6) A permitholder shall continue to meet the  
15 requirements of this section during the time he or she holds the  
16 permit. If, during such time, a permitholder does not continue to  
17 meet one or more of the requirements, the permitholder shall return  
18 his or her permit to any county sheriff for revocation. If a  
19 permitholder does not return his or her permit, the permitholder is  
20 subject to having his or her permit revoked under section 9 of this  
21 act.

22 Sec. 5. A permit to carry a concealed handgun is valid  
23 throughout the state for a period of four years after the date of  
24 issuance. The fee for issuing a permit is sixty dollars. The  
25 county sheriff issuing a permit shall collect the fee. Fifteen  
26 dollars of the fee shall be remitted to the State Treasurer for  
27 credit to the General Fund and forty-five dollars shall be  
28 deposited in the general fund of the county issuing the permit.

1           Sec. 6.     A permitholder may carry a concealed handgun  
2 anywhere in Nebraska except (1) in any establishment licensed under  
3 the Nebraska Liquor Control Act that derives over one-half of its  
4 total income from the sale of malt or alcoholic beverages or (2) in  
5 or on any other place or premises where weapons are prohibited by  
6 law, by rule or regulation, or by order of the owner of the place  
7 or premises. Nothing in this section prevents a person from  
8 carrying a concealed weapon as permitted under section 28-1202.

9           Sec. 7.     A permit to carry a concealed handgun shall be  
10 issued to a specific person only and may not be transferred from  
11 one person to another.

12           Sec. 8.     A sheriff who issues a permit under the  
13 Concealed Handgun Permit Act is not civilly liable to any injured  
14 person or his or her estate for any injury suffered, including any  
15 action for wrongful death or property damage suffered, because of  
16 the issuance of the permit.

17           Sec. 9.     (1) Any peace officer as defined in section  
18 49-801 or any Game and Parks Commission conservation officer, upon  
19 probable cause or reasonable suspicion that a permitholder is no  
20 longer in compliance with one or more requirements of section 4 of  
21 this act, shall bring an application for revocation of the permit  
22 to be prosecuted as provided in subsection (2) of this section.

23                     (2) It is the duty of the county attorney or his or her  
24 deputy of the county in which such permitholder resides to  
25 prosecute a case for the revocation of a permit to carry a  
26 concealed handgun. In case the county attorney refuses or is  
27 unable to prosecute the case, the duty to prosecute shall be upon  
28 the Attorney General or his or her assistant.

1           (3) The case shall be prosecuted as a civil case, and the  
 2 permit shall be revoked upon a showing by a preponderance of the  
 3 evidence that the permitholder does not meet one or more of the  
 4 requirements of section 4 of this act.

5           (4) A person who has his or her permit revoked under this  
 6 section may be fined up to one thousand dollars and shall be  
 7 charged with the cost of the prosecution. The money collected  
 8 under this subsection as an administrative fine shall be remitted  
 9 to the State Treasurer for credit to the permanent school fund.

10           Sec. 10. A county sheriff issuing an applicant a permit  
 11 to carry a concealed handgun shall notify the Department of Motor  
 12 Vehicles of such issuance, and shall also provide the department  
 13 with a copy of the applicant's approved application.

14           Sec. 11. Section 28-1202, Reissue Revised Statutes of  
 15 Nebraska, is amended to read:

16           28-1202.   (1) (a) Except as otherwise provided in  
 17 subsection ~~(2)~~ of this section, any person who carries a weapon or  
 18 weapons concealed on or about his or her person such as a revolver,  
 19 pistol, bowie knife, dirk or knife with a dirk blade attachment,  
 20 brass or iron knuckles, or any other deadly weapon commits the  
 21 offense of carrying a concealed weapon.

22           ~~(2)~~ (b) It shall be is an affirmative defense that the  
 23 defendant was engaged in any lawful business, calling, or  
 24 employment at the time he or she was carrying any weapon or weapons  
 25 and the circumstances in which such person was placed at the time  
 26 were such as to justify a prudent person in carrying the weapon or  
 27 weapons for the defense of his or her person, property, or family.

28           (2) This section does not apply to a person who is the

1 holder of a valid permit issued under the Concealed Handgun Permit  
2 Act, if the concealed weapon the defendant is carrying is a handgun  
3 as defined in section 2 of the act.

4 (3) This section does not apply to a person who is on his  
5 or her own land or premises, whether such land or premises are  
6 leased or owned, at the time he or she is carrying any concealed  
7 weapon or weapons.

8 (4) This section does not apply to a person who carries a  
9 weapon or weapons for the purpose of, or in connection with, any  
10 lawful use, and the weapon or weapons are carried: (a) In the  
11 trunk or in another closed compartment of a vehicle; or (b) in a  
12 closed container which is too large to be effectively concealed on  
13 or about such person. The container may be carried in a vehicle or  
14 in any other manner.

15 If the weapon or weapons are firearms, the firearms shall  
16 be unloaded.

17 (5) This section does not apply to any peace officer as  
18 defined in section 49-801 or any Game and Parks Commission  
19 conservation officer carrying a concealed weapon according to their  
20 employers' orders, rules or regulations, or protocol.

21 ~~(3)~~ (6) Carrying a concealed weapon is a Class I  
22 misdemeanor.

23 ~~(4)~~ (7) In the case of a second or subsequent conviction  
24 under this section, carrying a concealed weapon is a Class IV  
25 felony.

26 Sec. 12. Section 60-4,119, Revised Statutes Supplement,  
27 2002, is amended to read:

28 60-4,119. (1) All state identification cards and

1 operators' licenses, except farm permits and except as otherwise  
2 provided in subsection (2) of this section and section 60-4,120,  
3 shall include a color photograph or a digital image of the  
4 cardholder or licensee as provided in section 60-484.02. State  
5 identification cards and operators' licenses shall be issued by the  
6 county treasurer or the Department of Motor Vehicles. The director  
7 shall negotiate and enter into a contract to provide the necessary  
8 equipment, supplies, and forms for the issuance of the licenses and  
9 cards. All costs incurred by the Department of Motor Vehicles  
10 under this section shall be paid by the state out of appropriations  
11 made to the department. All costs of taking the photographs or  
12 digital images shall be paid by the issuer from the fees provided  
13 to the issuer pursuant to section 60-4,115.

14 (2) A person who is out of the state at the time of  
15 renewal of his or her operator's license may apply for a license  
16 without a photograph upon payment of a fee as provided in section  
17 60-4,115. The license may be issued at any time within one year  
18 after the expiration of the original license. Such application  
19 shall be made to the county treasurer of the county in which the  
20 applicant resides until such time as the department establishes the  
21 appropriate procedures for statewide licensing at which time the  
22 application shall be made to the department and the department  
23 shall issue the license. The department shall establish such  
24 procedures not later than January 1, 2003.

25 (3) Any operator's license and any state identification  
26 card issued to a minor as defined in section 53-103, as such  
27 definition may be amended from time to time by the Legislature,  
28 shall be of a distinct designation, of a type prescribed by the

1 director, from the operator's license or state identification card  
2 of a person who is not a minor. Until March 31, 2003, if a person  
3 is no longer a minor, he or she may apply for a replacement license  
4 or card with the distinct designation used for persons who are not  
5 minors. The fee for such replacement license or card is  
6 established in section 60-4,115.

7 (4) Any operator's license and any state identification  
8 card issued to a person who has a permit to carry a concealed  
9 handgun under the Concealed Handgun Permit Act shall be of a  
10 distinct designation, of a type prescribed by the director, from  
11 the operator's license or state identification card of a person who  
12 does not have such a permit. When a person no longer has such a  
13 permit, he or she may apply for a replacement license or card  
14 without the distinct designation. The fee for such replacement  
15 license or card shall be the same as the fee for a replacement  
16 license issued for a change of address pursuant to subsection (2)  
17 of section 60-4,120.

18 Sec. 13. Original section 28-1202, Reissue Revised  
19 Statutes of Nebraska, and section 60-4,119, Revised Statutes  
20 Supplement, 2002, are repealed.

21 Sec. 14. Since an emergency exists, this act takes  
22 effect when passed and approved according to law.