

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 958**

Introduced by Ashford, 20; Avery, 28; Howard, 9; Kruse, 13; McGill, 26; Pedersen, 39.

Read first time January 14, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to firearms; to amend sections 28-1201,  
2 28-1205, 69-2409.01, and 69-2426, Reissue Revised  
3 Statutes of Nebraska, section 69-2404, Revised Statutes  
4 Cumulative Supplement, 2006, and section 28-101, Revised  
5 Statutes Supplement, 2007; to require reporting of lost  
6 or stolen firearms; to provide duties for retail sellers  
7 of firearms; to create the Gun Violence Commission  
8 and provide powers and duties; to require the tracing  
9 of certain firearms by law enforcement agencies as  
10 prescribed; to authorize the Nebraska State Patrol to  
11 conduct certain firearm public awareness activities;  
12 to provide other duties for the patrol; to change  
13 provisions relating to handgun purchase certificates; to  
14 change provisions relating to firearms information; to

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1 change and provide penalties; to harmonize provisions;  
2 to provide a termination date; to repeal the original  
3 sections; and to declare an emergency.  
4 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 28-101, Revised Statutes Supplement,  
2 2007, is amended to read:

3           28-101 Sections 28-101 to 28-1350 and sections 2 and 4 of  
4 this act shall be known and may be cited as the Nebraska Criminal  
5 Code.

6           Sec. 2. (1) Any person who owns or has control of a  
7 firearm that becomes lost or stolen, even if the firearm was not  
8 registered or was improperly registered, as required by law, shall  
9 report the loss or theft of the firearm within forty-eight hours  
10 after the date on which the person discovered that the firearm  
11 had been lost or stolen. The report shall be made to a local  
12 law enforcement agency, and the local law enforcement agency shall  
13 request identifying information regarding the firearm, including,  
14 but not limited to, the manufacturer, the model, the caliber, the  
15 serial number, and any other identifying information pertaining to  
16 the firearm, as well as the firearm owner's name and address, if  
17 known, and the location that the firearm was stolen from or last  
18 seen if the firearm was lost. Such information shall be reported by  
19 the local law enforcement agency to the Nebraska State Patrol, on a  
20 form prescribed by the patrol, which shall maintain a registry of  
21 the information.

22           (2) A person who fails to report the loss or theft of  
23 a firearm pursuant to subsection (1) of this section is guilty  
24 of a Class IV misdemeanor for a first offense and a Class III  
25 misdemeanor for a second or subsequent offense.

1           (3) A person who reports the loss or theft of a firearm  
2 that was not registered or was improperly registered shall not  
3 be punished as a result of not registering or of improperly  
4 registering the firearm.

5           Sec. 3. Section 28-1201, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           28-1201 For purposes of sections 28-1201 to 28-1212 and  
8 section 4 of this act, unless the context otherwise requires:

9           (1) Firearm ~~shall mean~~ means any weapon which is designed  
10 to or may readily be converted to expel any projectile by the  
11 action of an explosive or frame or receiver of any such weapon;

12           (2) Fugitive from justice ~~shall mean~~ means any person who  
13 has fled or is fleeing from any peace officer to avoid prosecution  
14 or incarceration for a felony;

15           (3) Juvenile ~~shall mean~~ means any person under the age of  
16 eighteen years;

17           (4) Knife ~~shall mean~~ means any dagger, dirk, knife, or  
18 stiletto with a blade over three and one-half inches in length  
19 or any other dangerous instrument capable of inflicting cutting,  
20 stabbing, or tearing wounds;

21           (5) Knuckles and brass or iron knuckles ~~shall mean~~ means  
22 any instrument that consists of finger rings or guards made of  
23 a hard substance and that is designed, made, or adapted for the  
24 purpose of inflicting serious bodily injury or death by striking a  
25 person with a fist enclosed in the knuckles;

1           (6) Machine gun ~~shall mean~~ means any firearm, whatever  
2 its size and usual designation, that shoots automatically more than  
3 one shot, without manual reloading, by a single function of the  
4 trigger;

5           (7) Short rifle ~~shall mean~~ means a rifle having a barrel  
6 less than sixteen inches long or an overall length of less than  
7 twenty-six inches; and

8           (8) Short shotgun ~~shall mean~~ means a shotgun having a  
9 barrel or barrels less than eighteen inches long or an overall  
10 length of less than twenty-six inches.

11           Sec. 4. (1) Beginning July 1, 2008, all retail sellers of  
12 firearms shall include with each firearm sold a gun lock or trigger  
13 lock.

14           (2) Beginning July 1, 2008, all retail sellers of  
15 firearms shall post a sign on the premises where firearms are  
16 sold and also provide a written notice to purchasers of firearms  
17 with the following warning:

18           FOR THE SAFETY OF YOURSELF AND OTHERS,  
19           YOU SHOULD STORE ALL FIREARMS, WHEN NOT IN USE,  
20           IN A SECURELY LOCKED BOX OR CONTAINER  
21           OR LOCK THE FIREARMS WITH A  
22           GUN LOCK OR TRIGGER LOCK.

23           (2) A retail seller or employee violating this subsection  
24 is guilty of a Class IV misdemeanor.

25           Sec. 5. Section 28-1205, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           28-1205 (1) Any person who uses a firearm, a knife, brass  
3 or iron knuckles, or any other deadly weapon to commit any felony  
4 which may be prosecuted in a court of this state or who unlawfully  
5 possesses a firearm, a knife, brass or iron knuckles, or any other  
6 deadly weapon during the commission of any felony which may be  
7 prosecuted in a court of this state commits the offense of using a  
8 deadly weapon to commit a felony.

9           (2) (a) Use of a deadly weapon other than a firearm to  
10 commit a felony is a Class III felony.

11           (b) Use of a deadly weapon which is a firearm to commit a  
12 felony is a Class II felony.

13           (3) The crimes defined in this section shall be treated  
14 as separate and distinct offenses from the felony being committed,  
15 and sentences imposed under this section shall be consecutive to  
16 any other sentence imposed.

17           (4) Notwithstanding section 28-105, the minimum sentence  
18 of any person convicted of a Class II felony under this section  
19 shall be five years imprisonment.

20           Sec. 6. (1) The Gun Violence Commission is created.

21           (2) The commission shall consist of the following  
22 members:

23           (a) The Superintendent of Law Enforcement and Public  
24 Safety or his or her designee, who shall be the chairperson of the  
25 commission;

- 1           (b) The Attorney General or his or her designee;
- 2           (c) The chairperson of the Judiciary Committee of the  
3 Legislature or his or her designee;
- 4           (d) The mayor of a city of the metropolitan class or his  
5 or her designee;
- 6           (e) The chief of police of a city of the metropolitan  
7 class or his or her designee;
- 8           (f) A chief of police of a city other than a city of  
9 the metropolitan class or his or her designee, appointed by the  
10 Governor;
- 11           (g) The county attorney of a county containing a city of  
12 the metropolitan class or his or her designee;
- 13           (h) A county attorney of a county other than the county  
14 described in subdivision (2)(g) of this section or his or her  
15 designee, appointed by the Governor;
- 16           (i) The city attorney of a city of the metropolitan class  
17 or his or her designee;
- 18           (j) A city attorney of a city other than a city of  
19 the metropolitan class or his or her designee, appointed by the  
20 Governor;
- 21           (k) A judge of a county or district court, appointed by  
22 the Chief Justice of the Supreme Court; and
- 23           (l) A judge of a juvenile court, appointed by the Chief  
24 Justice of the Supreme Court.
- 25           (3) Members of the commission shall serve without

1 compensation but shall be reimbursed for their actual and necessary  
2 expenses as provided in sections 81-1174 to 81-1177.

3 (4) The commission shall investigate the recent surge in  
4 gun violence and gun-related deaths in Nebraska. The commission  
5 shall also examine issues surrounding gun trafficking, illegal gun  
6 sales, and any other factors that contribute to gun violence.  
7 Based upon its investigation, the commission shall prepare a  
8 written report recommending specific administrative, statutory, and  
9 regulatory changes designed to reduce gun violence and gun-related  
10 deaths. The report shall also include a recommendation as to  
11 whether the commission's solutions require additional funding as  
12 well as how to target funding in such a way as to accelerate the  
13 interdiction of illegal gun activity.

14 (5) The commission may contact members of the general  
15 public whom any member of the commission believes can contribute  
16 needed or worthwhile information in order for the commission to  
17 carry out its purpose.

18 (6) The commission shall deliver its report to the  
19 Legislature on or before December 30, 2008.

20 (7) The commission and this section terminate on December  
21 31, 2008.

22 Sec. 7. (1) Upon recovering a firearm from the possession  
23 of a person under eighteen years of age who is not permitted by  
24 state or federal law to possess such a firearm, a law enforcement  
25 agency shall use the best available information, including a

1 firearms trace, if necessary, to determine how and from where the  
2 person gained possession of the firearm. If such a firearm recovery  
3 is made by a local law enforcement agency, such information shall  
4 be reported by the local law enforcement agency to the Nebraska  
5 State Patrol on a form prescribed by the patrol. The patrol shall  
6 maintain a registry of all such information.

7 (2) Upon recovering a firearm discovered during a  
8 criminal investigation, a law enforcement agency shall perform a  
9 firearms trace. If such a firearm recovery is made by a local  
10 law enforcement agency, such information shall be reported to the  
11 Nebraska State Patrol on a form prescribed by the patrol. The  
12 patrol shall maintain a registry of all such information.

13 (3) A law enforcement agency shall use the National  
14 Tracing Center of the United States Department of Justice, Bureau  
15 of Alcohol, Tobacco, Firearms and Explosives, when performing a  
16 firearms trace pursuant to this section.

17 Sec. 8. (1) The Nebraska State Patrol shall conduct  
18 public awareness activities designed to decrease the illegal  
19 possession of firearms by juveniles. The public awareness  
20 activities shall include implementation of a telephone hotline  
21 that an individual can call when he or she suspects a juvenile  
22 is in illegal possession of such firearm. The hotline shall allow  
23 for an individual to place his or her call anonymously. The  
24 patrol may also utilize other public awareness activities that  
25 would be effective as determined by the Superintendent of Law

1 Enforcement and Public Safety in decreasing the possession of such  
2 firearms by juveniles, such as, but not limited to, public service  
3 announcements, information kits, and brochures.

4 (2) The Nebraska State Patrol shall conduct public  
5 awareness activities designed to inform the public about the  
6 dangers of leaving loaded firearms within the reach of children  
7 and of improperly storing firearms and ammunition when not in use.  
8 The patrol may utilize public service announcements and brochures  
9 as well as presentations in order to inform the public about such  
10 dangers.

11 Sec. 9. Section 69-2404, Revised Statutes Cumulative  
12 Supplement, 2006, is amended to read:

13 69-2404 Any person desiring to purchase, lease, rent,  
14 or receive transfer of a handgun shall apply with the chief of  
15 police or sheriff of the applicant's place of residence for a  
16 certificate. The application may be made in person or by mail.  
17 The application form and certificate shall be made on forms  
18 approved by the Superintendent of Law Enforcement and Public  
19 Safety. The application shall include the applicant's full name,  
20 social security number, address, date of birth, and country of  
21 citizenship. If the applicant is not a United States citizen,  
22 the application shall include the applicant's place of birth and  
23 his or her alien or admission number. If the application is made  
24 in person, the applicant shall also present a current Nebraska  
25 motor vehicle operator's license, state identification card, or

1 military identification card, or if the application is made by  
2 mail, the application form shall describe the license or card used  
3 for identification and be notarized by a notary public who has  
4 verified the identification of the applicant through such a license  
5 or card. An applicant shall receive a certificate if he or she  
6 is twenty-one years of age or older and is not prohibited from  
7 purchasing or possessing a handgun by 18 U.S.C. 922. An applicant  
8 shall not receive a certificate if he or she was found in the  
9 previous ten years to be a mentally ill and dangerous person under  
10 the Nebraska Mental Health Commitment Act or a similar law of  
11 another jurisdiction or is currently adjudged mentally incompetent.

12 A fee of five dollars shall be charged for each application for a  
13 certificate to cover the cost of a criminal history record check.

14 Sec. 10. Section 69-2409.01, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 69-2409.01 (1) For purposes of sections 69-2401 to  
17 69-2425, the Nebraska State Patrol shall be furnished upon the  
18 patrol's request with only such information as may be necessary  
19 for the sole purpose of determining whether an individual is  
20 disqualified from purchasing or possessing a handgun pursuant to  
21 state or federal law. Such information shall be furnished by  
22 the Department of Health and Human Services. The clerks of the  
23 various courts shall furnish to the Department of Health and  
24 Human Services, within thirty days after the order of commitment  
25 or finding and the discharge, all information necessary to set

1 up and maintain the data base required by this section. This  
2 information shall include (a) information regarding those persons  
3 who are currently receiving mental health treatment pursuant to  
4 a commitment order of a mental health board or who have been  
5 discharged and (b) information regarding those persons who have  
6 been committed to treatment pursuant to section 29-3702. The  
7 Department of Health and Human Services shall also maintain in  
8 the data base a listing of persons committed to treatment pursuant  
9 to section 29-3702. Information regarding mental health board  
10 commitments and commitments pursuant to section 29-3702 shall  
11 not be retained in the data base maintained by the department  
12 on persons who have been discharged from those commitments more  
13 than ~~five~~ ten years previously. Any such information maintained  
14 or disclosed under this subsection shall remain privileged and  
15 confidential and shall not be redisclosed or utilized for any  
16 other purpose. The procedures for furnishing such information shall  
17 guarantee that no information is released beyond what is necessary  
18 for purposes of this section.

19 (2) In order to comply with sections 69-2401 and 69-2403  
20 to 69-2408 and this section, the Nebraska State Patrol shall  
21 provide to the chief of police or sheriff of an applicant's place  
22 of residence or a licensee in the process of a criminal history  
23 record check pursuant to section 69-2411 only the information  
24 regarding whether or not the applicant is disqualified from  
25 purchasing or possessing a handgun.

1           (3) Any person, agency, or mental health board  
2 participating in good faith in the reporting or disclosure of  
3 records and communications under this section is immune from any  
4 liability, civil, criminal, or otherwise, that might result by  
5 reason of the action.

6           (4) Any person who intentionally causes the Nebraska  
7 State Patrol to request information pursuant to this section  
8 without reasonable belief that the named individual has submitted  
9 a written application under section 69-2404 or has completed a  
10 consent form under section 69-2410 shall be guilty of a Class II  
11 misdemeanor in addition to other civil or criminal liability under  
12 state or federal law.

13           Sec. 11. Section 69-2426, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           69-2426 (1) Dealers of firearms shall distribute to all  
16 purchasers information developed by the Department of Health and  
17 Human Services regarding the dangers of and criminal penalties for  
18 leaving loaded firearms unattended around ~~children.~~ minors.

19           (2) There is hereby created the Firearm Information Fund.  
20 Private contributions shall be credited by the State Treasurer to  
21 such fund for the implementation of the provisions of this section.

22           Sec. 12. Original sections 28-1201, 28-1205, 69-2409.01,  
23 and 69-2426, Reissue Revised Statutes of Nebraska, section 69-2404,  
24 Revised Statutes Cumulative Supplement, 2006, and section 28-101,  
25 Revised Statutes Supplement, 2007, are repealed.

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1                   Sec. 13. Since an emergency exists, this act takes effect  
2 when passed and approved according to law.