

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1145

Introduced by McGill, 26; Christensen, 44; Mello, 5.

Read first time January 19, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal law; to amend sections 28-802 and
2 28-830, Reissue Revised Statutes of Nebraska, and section
3 28-101, Revised Statutes Supplement, 2011; to provide for
4 the forfeiture of assets involved in human trafficking;
5 to change the penalty for pandering; to require the
6 posting of signs, the establishment of a commission, and
7 the training of certain officials regarding human
8 trafficking; to provide for the vacating of certain
9 convictions of victims of human trafficking; to harmonize
10 provisions; and to repeal the original sections.

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

1 Section 1. Section 28-101, Revised Statutes Supplement,
2 2011, is amended to read:

3 28-101 Sections 28-101 to 28-1356 and section 4 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. Section 28-802, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 28-802 (1) A person commits pandering if such person:

8 (a) Entices another person to become a prostitute; or

9 (b) Procures or harbors therein an inmate for a house of
10 prostitution or for any place where prostitution is practiced or
11 allowed; or

12 (c) Inveigles, entices, persuades, encourages, or
13 procures any person to come into or leave this state for the purpose
14 of prostitution or debauchery; or

15 (d) Receives or gives or agrees to receive or give any
16 money or other thing of value for procuring or attempting to procure
17 any person to become a prostitute or commit an act of prostitution or
18 come into this state or leave this state for the purpose of
19 prostitution or debauchery.

20 (2) Pandering is a Class IV felony for a first offense,
21 unless the person being enticed, procured, harbored, or otherwise
22 persuaded to become a prostitute in violation of this section is
23 under the age of eighteen years, in which case pandering is a Class
24 III felony for a first offense. Pandering is a Class III felony for a
25 second or subsequent offense.

1 Sec. 3. Section 28-830, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-830 For purposes of sections 28-830 to 28-832 and
4 section 4 of this act, the following definitions apply:

5 (1) Actor means a person who solicits, procures, or
6 supervises the services or labor of another person;

7 (2) Commercial sexual activity means any sex act on
8 account of which anything of value is given, promised to, or received
9 by any person;

10 (3) Financial harm means theft by extortion as described
11 by section 28-513;

12 (4) Forced labor or services means labor or services that
13 are performed or provided by another person and are obtained or
14 maintained through:

15 (a) Inflicting or threatening to inflict serious personal
16 injury as defined by section 28-318;

17 (b) Physically restraining or threatening to physically
18 restrain another person;

19 (c) Knowingly destroying, concealing, removing,
20 confiscating, or possessing any actual or purported passport or other
21 immigration document or any other actual or purported government
22 identification document of another person; or

23 (d) Causing or threatening to cause financial harm to
24 another person;

25 (5) Labor means work of economic or financial value;

1 (6) Maintain means, in relation to labor or services, to
2 secure continued performance thereof, regardless of any initial
3 agreement by the victim to perform such type of service;

4 (7) Minor means a person younger than eighteen years of
5 age;

6 (8) Obtain means, in relation to labor or services, to
7 secure performance thereof;

8 (9) Services means an ongoing relationship between a
9 person and the actor in which the person performs activities under
10 the supervision of or for the benefit of the actor. Commercial sexual
11 activity and sexually-explicit performances are forms of services
12 under this section. Nothing in this subdivision shall be construed to
13 legalize prostitution;

14 (10) Sexually-explicit performance means a live or public
15 play, dance, show, or other exhibition intended to arouse or gratify
16 sexual desire or to appeal to prurient interests; and

17 (11) Trafficking victim means a person subjected to any
18 act or acts prohibited by section 28-831.

19 Sec. 4. (1) The following shall be seized without warrant
20 by any peace officer and shall be subject to forfeiture as provided
21 in this subsection:

22 (a) Conveyances, including aircraft, motor vehicles, and
23 other vessels when used or intended to be used in connection with a
24 violation of section 28-831;

25 (b) Books, records, telecommunication equipment, or

1 computers when used or intended to be used in connection with a
2 violation of section 28-831;

3 (c) Money or weapons when used or intended to be used in
4 connection with a violation of section 28-831;

5 (d) Real property when used or intended to be used in
6 connection with a violation of section 28-831;

7 (e) Everything of value furnished, or intended to be
8 furnished, in exchange for an act in violation of section 28-831, all
9 proceeds traceable to the exchange, and all negotiable instruments
10 and securities used, or intended to be used, to facilitate a
11 violation of section 28-831;

12 (f) Any property, real or personal, directly or
13 indirectly acquired by or received in violation of section 28-831 or
14 as an inducement to violate such section, or any property traceable
15 to the proceeds from a violation of such section; and

16 (g) Any real property, including any right, title and
17 interest in the whole of or any part of any lot or tract of land and
18 any property used as an instrumentality in or used in furtherance of
19 a violation of section 28-831.

20 (2) Any property described in subsection (1) of this
21 section which is used to violate, intended for use to violate, used
22 in connection with a violation of, or used to facilitate a violation
23 of section 28-831 is hereby declared to be a common nuisance, and any
24 peace officer having probable cause to believe that such property is
25 used to violate, intended for use to violate, used in connection with

1 a violation of, or used to facilitate a violation of section 28-831
2 shall make a search thereof with or without a warrant.

3 (3) All money that a law enforcement agency proves was
4 furnished by such agency shall be returned to the agency. All
5 property seized without a search warrant shall not be subject to a
6 replevin action and: (a) All property described in subdivision (1)(b)
7 of this section shall be kept by the property division of the law
8 enforcement agency which employs the officer who seized such property
9 for so long as it is needed as evidence in any trial; and (b) when no
10 longer required as evidence, all property described in subdivision
11 (1)(b) of this section shall be disposed of on order of a court of
12 record of this state in such manner as the court in its sound
13 discretion shall direct.

14 (4) When any property described in subdivisions (1)(a)
15 and (c) through (g) of this section is seized, the person seizing the
16 property shall cause to be filed, within ten days thereafter, in the
17 district court of the county in which seizure was made, a petition
18 for disposition of such property. The proceedings shall be brought in
19 the name of the state by the county attorney of the county in which
20 such property was seized. The petition shall describe the property,
21 state the name of the owner if known, allege the essential elements
22 of the violation which is claimed to exist, and conclude with a
23 prayer for disposition. The county attorney shall have a copy of the
24 petition served upon the owner of or any person having an interest in
25 the property, if known, in person or by registered or certified mail

1 at his or her last-known address. If the owner is unknown or there is
2 a reasonable probability that there are unknown persons with
3 interests in the property, the county attorney shall provide notice
4 of the seizure and petition for disposition by publication once a
5 week for four consecutive weeks in a newspaper of general circulation
6 in the county of the seizure. At least five days shall elapse between
7 each publication of notice.

8 (5) At any time after seizure and prior to court
9 disposition, the owner of record of such property may petition the
10 district court of the county in which seizure was made to release
11 such property, and the court shall order the release of the property
12 upon a showing by the owner that he or she had no knowledge that such
13 property was being used in violation of section 28-831.

14 (6) Any person having an interest in the property
15 proceeded against or any person against whom civil or criminal
16 liability would exist if such property is in violation of section
17 28-831 may, within thirty days after seizure, appear and file an
18 answer or demurrer to the petition. The answer or demurrer shall
19 allege the claimant's interest in or liability involving such
20 property. At least thirty but not more than ninety days after
21 seizure, there shall be a hearing before the court. If the claimant
22 proves by a preponderance of the evidence that he or she (a) has not
23 used to violate, intended for use to violate, used in connection with
24 a violation of, or used to facilitate a violation of section 28-831,
25 (b) has an interest in such property as owner or lienor or otherwise,

1 acquired by him or her in good faith, and (c) at no time had any
2 knowledge that such property was being or would be used in or to
3 facilitate the violation of section 28-831, the court shall order
4 that such property or the value of the claimant's interest in such
5 property be returned to the claimant. If there are no claims, if all
6 claims are denied, or if the value of the property exceeds all claims
7 granted and it is shown beyond a reasonable doubt that such property
8 was used in violation of section 28-831, the court shall order
9 disposition of such property at such time as the property is no
10 longer required as evidence in any criminal proceeding. The court may
11 order that property described in subdivisions (1)(a) and (c) through
12 (g) of this section, except money, negotiable instruments, or
13 securities, be sold or put to official use by the confiscating agency
14 for a period of not more than one year and that when such property is
15 no longer necessary for official use or at the end of two years,
16 whichever comes first, such property shall be sold. Proceeds from the
17 sale of the property and any money, negotiable instruments, or
18 securities described in subdivisions (1)(a) and (c) through (g) of
19 this section shall be distributed pursuant to subsection (8) of this
20 section. Official use means use directly in connection with
21 enforcement of section 28-831.

22 (7) Any court costs and fees and storage and other proper
23 expenses shall be charged against any person intervening as claimant
24 or owner of the property unless such person shall establish his or
25 her claim. If a sale is ordered, the officer holding the sale shall

1 make a return to the court showing to whom the property was sold and
2 for what price. This return together with the court order shall
3 authorize the county clerk to issue a title to the purchaser of the
4 property if such title is required under the laws of this state.

5 (8) The proceeds from any sale ordered pursuant to this
6 section, less legal costs, charges, and claims allowed, and any
7 money, negotiable instruments, and securities forfeited pursuant to
8 this section shall be paid to the county treasurer of the county in
9 which the seizure was made. The county treasurer shall dispose of all
10 such proceeds from property forfeited pursuant to this section in the
11 manner provided for disposition of fines, penalties, and license
12 money under the Constitution of Nebraska.

13 Sec. 5. (1) Every massage parlor, spa, or any similar
14 establishment that does or does not require a license; any
15 establishment that receives a liquor license; every strip club and
16 other sexually-oriented business; airport; train station; bus
17 station; highway truck stop; highway rest stop; hospital, health
18 maintenance organization, and urgent care center; high school; and
19 job recruitment center shall post in a conspicuous place near the
20 entrance of the premises or where such posters and notices are
21 customarily posted, a poster or sign no smaller than eight and one-
22 half inches by eleven inches in size that states the following: If
23 you or someone you know is being forced to engage in any activity and
24 cannot leave - whether it is commercial sex, housework, farm work, or
25 any other activity - call the National Human Trafficking Resource

1 Center Hotline at 1-888-373-7888 to access help and services. Victims
2 of human trafficking are protected under United States and state law.
3 The hotline is available 24 hours a day, 7 days a week; toll-free;
4 operated by a nonprofit, nongovernmental organization; anonymous and
5 confidential; accessible in 170 languages; able to provide help,
6 referral to services, training, and general information.

7 (2) The poster or sign referred to in subsection (1) of
8 this section shall be printed in English and Spanish as well as any
9 additional languages mandated under the Voting Rights Act of 1965, 42
10 U.S.C. 1971 et al., as the act existed on January 1, 2012, in the
11 county where the poster or sign will be posted.

12 (3) The appropriate licensing and regulating authority,
13 as applicable, of each establishment listed in subsection (1) of this
14 section shall provide each such establishment with notice of this
15 section and with the required poster or sign described in such
16 subsection upon the licensing of such establishment and shall place
17 an image of the poster or sign on its public web site for any such
18 establishment to print as needed.

19 Sec. 6. (1) A commission is hereby established for the
20 purposes of investigating and studying human trafficking, the methods
21 for advertising human trafficking services, and the victimization of
22 individuals coerced to participate in human trafficking services. The
23 commission shall examine the extent to which human trafficking is
24 prevalent in this state, the scope of efforts being taken to prevent
25 human trafficking from occurring, and the services available to

1 victims of human trafficking in this state. The commission shall
2 investigate the limitations upon victims who wish to come forward and
3 seek medical attention; the potential to stop human trafficking; and
4 the potential to promote recovery, to protect families and children
5 who may be profoundly impacted by such abuse, and to save lives.

6 (2) The commission shall consist of the following
7 members:

8 (a) The Attorney General or his or her designee;

9 (b) The executive director of the Nebraska Commission on
10 Law Enforcement and Criminal Justice;

11 (c) The Superintendent of Law Enforcement and Public
12 Safety or his or her designee;

13 (d) The Director of Correctional Services or his or her
14 designee;

15 (e) The chief of police or director of public safety of a
16 city of two hundred thousand inhabitants or more;

17 (f) The chief of police or director of public safety of a
18 city of less than two hundred thousand inhabitants;

19 (g) A county sheriff;

20 (h) A county attorney;

21 (i) A county commissioner;

22 (j) A mayor or city manager;

23 (k) A person involved with the control or prevention of
24 juvenile delinquency;

25 (l) The Commissioner of Education or his or her designee;

1 and

2 (m) Six members, at least three of whom shall be women,
3 from the public at large.

4 (3) Except for the Attorney General or his or her
5 designee, the executive director of the Nebraska Commission on Law
6 Enforcement and Criminal Justice, the Superintendent of Law
7 Enforcement and Public Safety, the Director of Correctional Services
8 or his or her designee, and the Commissioner of Education or his or
9 her designee, the members of the commission shall be appointed by the
10 Governor. The membership of the commission shall represent varying
11 geographic areas and large and small political subdivisions.

12 (4) The members of the commission appointed by the
13 Governor shall serve six-year terms, except that of the members first
14 appointed, four shall serve an initial two-year term, four shall
15 serve an initial four-year term, and five shall serve an initial six-
16 year term from January 1 next succeeding their appointments.
17 Thereafter, all members shall serve six-year terms. A member may be
18 reappointed at the expiration of his or her term. Any vacancy
19 occurring otherwise than by expiration of a term shall be filled for
20 the balance of the unexpired term in the same manner as the original
21 appointment.

22 (5) No member shall serve beyond the time when he or she
23 holds the office, employment, or status by reason of which he or she
24 was initially eligible for appointment. Any member of the commission
25 appointed by the Governor may be removed from the commission for

1 cause upon notice and an opportunity to be heard at a public hearing.
2 One of the causes for removal shall be absence from three regularly
3 scheduled meetings of the commission during any six-month period when
4 the member has failed to advise the commission in advance of such
5 meeting that he or she will be absent and stating a reason therefor.

6 (6) The chairperson of the commission shall be designated
7 by the Governor to serve at the pleasure of the Governor. The
8 chairperson shall be the chief executive officer of the commission
9 but may delegate such of his or her duties to other members of the
10 commission as may be authorized by the commission.

11 (7) Notwithstanding any provision of law, ordinance, or
12 charter provision to the contrary, membership on the commission shall
13 not disqualify any member from holding any other public office or
14 employment or cause the forfeiture thereof.

15 (8) The members of the commission shall serve without
16 compensation, but they shall be entitled to receive reimbursement for
17 any actual expenses incurred as necessary incident to such service as
18 provided in sections 81-1174 to 81-1177.

19 (9) Ten members of the commission shall constitute a
20 quorum for the transaction of any business or the exercise of any
21 power of the commission. The commission shall have the power to act
22 by a majority of the members present at any meeting at which a quorum
23 is in attendance.

24 (10) All appointments shall be made not later than thirty
25 days after the effective date of this act. The chairperson shall meet

1 with the commission not later than sixty days after the effective
2 date of this act.

3 (11) Not later than one year after the effective date of
4 this act, and every July 1 and December 1 thereafter, the commission
5 shall report to the Clerk of the Legislature the result of its
6 investigation and study and its recommendations, if any, together
7 with drafts of legislation necessary to carry its recommendations
8 into effect by filing the report with the clerk.

9 Sec. 7. (1) A motion under this section to vacate a
10 conviction may be filed at any time following the entry of a verdict
11 or finding of guilty when the conviction was under section 28-801 and
12 the defendant's participation in the offense was a result of having
13 been a victim of trafficking under section 28-831 or a victim of a
14 severe form of trafficking under the federal Trafficking Victims
15 Protection Act of 2000, 22 U.S.C. 7101 et seq., as such act existed
16 on the effective date of this act, if:

17 (a) A motion under this section states why the facts
18 giving rise to this motion were not presented to the trial court and
19 the motion is made with due diligence after the defendant has ceased
20 to be a victim of such trafficking or has sought services for victims
21 of such trafficking, subject to reasonable concerns for the safety of
22 the defendant, family members of the defendant, or other victims of
23 such trafficking that may be jeopardized by the bringing of such
24 motion or for other reasons consistent with the purposes of this
25 section; and

1 (b) Reasonable notice of the motion was served upon the
2 prosecution.

3 (2) A defendant presenting evidence in furtherance of
4 vacating a conviction under this section may introduce evidence of
5 his or her status as a victim of trafficking, which may include, but
6 is not limited to:

7 (a) Certified court records;

8 (b) Certified court records from immigration proceedings
9 that seek relief for victims of trafficking;

10 (c) Sworn statements from certain professionals who have
11 provided assistance to the petitioner related to the trafficking; or

12 (d) Such other evidence the court deems of sufficient
13 credibility and probative value in determining whether the defendant
14 is a victim of trafficking.

15 (3) If the court grants a motion to vacate under this
16 section, the court shall vacate the conviction and may take such
17 additional action as is appropriate under the circumstances.

18 Sec. 8. (1) This state shall provide mandatory training
19 for law enforcement agencies, prosecutors, public defenders, judges,
20 juvenile detention center staff, and others involved in the juvenile
21 justice system and the criminal justice system and other relevant
22 officials in addressing human trafficking. Such training shall focus
23 on:

24 (a) State and federal law on human trafficking;

25 (b) Methods used in identifying United States citizen and

1 foreign national victims of human trafficking, including preliminary
2 interview techniques and appropriate questioning methods;

3 (c) Methods for prosecuting human traffickers;

4 (d) Methods of increasing effective collaboration with
5 nongovernmental organizations and other relevant social service
6 organizations in the course of investigating and prosecuting a human
7 trafficking case;

8 (e) Methods for protecting the rights of victims of human
9 trafficking, taking into account the need to consider human rights
10 and the special needs of women and minor victims;

11 (f) The necessity of treating victims of human
12 trafficking as crime victims rather than as criminals; and

13 (g) Methods for promoting the safety of all victims of
14 human trafficking.

15 (2) This state shall seek the input and participation of
16 appropriate nongovernmental organizations and other relevant
17 organizations in the preparation and presentation of the training
18 called for in this section.

19 Sec. 9. Original sections 28-802 and 28-830, Reissue
20 Revised Statutes of Nebraska, and section 28-101, Revised Statutes
21 Supplement, 2011, are repealed.