

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 512**

Introduced by Christensen, 44.

Read first time January 18, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to handguns; to amend sections 69-2409.01 and  
2 71-935, Reissue Revised Statutes of Nebraska; to change  
3 provisions relating to mental health determinations  
4 regarding the possessing and purchasing of handguns; to  
5 provide procedures for the removal of adverse  
6 determinations; and to repeal the original sections.

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

1           Section 1. Section 69-2409.01, Reissue Revised Statutes  
2 of Nebraska, is amended to read:

3           69-2409.01 (1) For purposes of sections 69-2401 to  
4 69-2425, the Nebraska State Patrol shall be furnished ~~upon the~~  
5 ~~patrol's request~~ with only such information as may be necessary for  
6 the sole purpose of determining whether an individual is either  
7 qualified or disqualified from purchasing or possessing a handgun  
8 pursuant to state ~~or federal~~ law or 18 U.S.C. 922(g)(4). Such  
9 information shall be furnished by the Department of Health and Human  
10 Services. The clerks of the various courts shall furnish to the  
11 Department of Health and Human Services, within thirty days after ~~the~~  
12 an order of commitment or finding and the discharge is issued or an  
13 order of removal of the determination that the person is disqualified  
14 from purchasing or possessing a handgun under this section for  
15 reasons of mental health is issued, all information necessary to set  
16 up and maintain the data base required by this section. This  
17 information shall include (a) information regarding those persons who  
18 are currently receiving mental health treatment pursuant to a  
19 commitment order of a mental health board or who have been  
20 discharged, ~~and~~ (b) information regarding those persons who have been  
21 committed to treatment pursuant to section 29-3702, and (c)  
22 information regarding those persons who have had the determination  
23 that the person is disqualified from purchasing or possessing a  
24 handgun under this section for reasons of mental health removed. The  
25 Department of Health and Human Services shall also maintain in the

1 data base a listing of persons committed to treatment pursuant to  
2 section 29-3702. ~~Information regarding mental health board~~  
3 ~~commitments and commitments pursuant to section 29-3702 shall not be~~  
4 ~~retained in the data base maintained by the department on persons who~~  
5 ~~have been discharged from those commitments more than five years~~  
6 ~~previously. Any such~~ To ensure the accuracy of the data base, any  
7 information maintained or disclosed under this subsection shall  
8 remain privileged and confidential and shall not be redisclosed or  
9 utilized for any other purpose. be updated, corrected, modified, or  
10 removed, as appropriate, and as soon as practicable, from any data  
11 base that the state or federal government maintains and makes  
12 available to the National Instant Criminal Background Check System.  
13 The procedures for furnishing ~~such the~~ information shall guarantee  
14 that no information is released beyond what is necessary for purposes  
15 of this section.

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

23 (3) Any person, agency, or mental health board  
24 participating in good faith in the reporting or disclosure of records  
25 and communications under this section is immune from any liability,

1 civil, criminal, or otherwise, that might result by reason of the  
2 action.

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

10 Sec. 2. Section 71-935, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 71-935 (1) Upon the filing of a periodic report under  
13 section 71-932, the subject, the subject's counsel, or the subject's  
14 legal guardian or conservator, if any, may request and shall be  
15 entitled to a review hearing by the mental health board and to seek  
16 from the board an order of discharge from commitment or a change in  
17 treatment ordered by the board. The mental health board shall  
18 schedule the review hearing no later than fourteen calendar days  
19 after receipt of such request. The mental health board may schedule a  
20 review hearing (a) at any time pursuant to section 71-937 or 71-938,  
21 (b) upon the request of the subject, the subject's counsel, the  
22 subject's legal guardian or conservator, if any, the county attorney,  
23 the official, agency, or other person or entity designated by the  
24 mental health board under section 71-931 to prepare and oversee the  
25 subject's individualized treatment plan, or the mental health

1 professional directly involved in implementing such plan, or (c) upon  
2 the board's own motion.

3 (2) The board shall immediately discharge the subject or  
4 enter a new treatment order with respect to the subject whenever it  
5 is shown by any person or it appears upon the record of the periodic  
6 reports filed under section 71-932 to the satisfaction of the board  
7 that (a) cause no longer exists for the care or treatment of the  
8 subject or (b) a less restrictive treatment alternative exists for  
9 the subject. When discharge or a change in disposition is in issue,  
10 due process protections afforded under the Nebraska Mental Health  
11 Commitment Act shall attach to the subject.

12 (3)(a) The subject, the subject's counsel, or the  
13 subject's legal guardian or conservator, if any, may file a petition  
14 for the removal of a determination that the subject is disqualified  
15 from purchasing or possessing a handgun under section 69-2409.01 for  
16 reasons of mental health.

17 (b) Upon the filing of the petition, the subject may  
18 request and, if the request is made, shall be entitled to, a review  
19 hearing by the mental health board. The purpose of the review hearing  
20 shall be to determine whether or not:

21 (i) The subject is likely to act in a manner dangerous to  
22 public safety; and

23 (ii) Removal of a determination that the subject is  
24 disqualified from purchasing or possessing a handgun under section  
25 69-2409.01 for reasons of mental health will be contrary to the

1 public interest.

2 In determining whether to remove the determination that  
3 the subject is disqualified from purchasing or possessing a handgun  
4 under section 69-2409.01 for reasons of mental health, the mental  
5 health board shall receive and consider the following evidence:

6 (A) The circumstances surrounding the subject's mental  
7 health commitment;

8 (B) The subject's record, which shall include, at a  
9 minimum, the subject's mental health and criminal history records;  
10 and

11 (C) The subject's reputation, developed, at a minimum,  
12 through character witness statements, testimony, or other character  
13 evidence.

14 (c) If a decision is made by the mental health board to  
15 remove the determination that the subject is disqualified from  
16 purchasing or possessing a handgun under section 69-2409.01 for  
17 reasons of mental health, the mental health board shall immediately  
18 send an order to the Nebraska State Patrol and the Department of  
19 Health and Human Services, in a form and in a manner prescribed by  
20 the Department of Health and Human Services and the Nebraska State  
21 Patrol, stating its findings, which shall include a statement that  
22 (i) the subject is no longer likely to act in a manner that is  
23 dangerous to public safety and (ii) removing the determination that  
24 the subject is disqualified from purchasing or possessing a handgun  
25 under section 69-2409.01 for reasons of mental health will not be

1 contrary to the public interest.

2                   Sec. 3. Original sections 69-2409.01 and 71-935, Reissue

3 Revised Statutes of Nebraska, are repealed.