

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 618

Introduced by Harr, 8; Bloomfield, 17; Council, 11; Gloor, 35;
Smith, 14.

Read first time January 19, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend section
2 28-1204.04, Revised Statutes Cumulative Supplement, 2010;
3 to authorize possession of firearms as prescribed for
4 school or school event security; and to repeal the
5 original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1204.04, Revised Statutes
2 Cumulative Supplement, 2010, is amended to read:

3 28-1204.04 (1) Any person who possesses a firearm in a
4 school, on school grounds, in a school-owned vehicle, or at a school-
5 sponsored activity or athletic event is guilty of the offense of
6 unlawful possession of a firearm at a school. Unlawful possession of
7 a firearm at a school is a Class IV felony. This subsection shall not
8 apply to (a) the issuance of firearms to or possession by members of
9 the armed forces of the United States, active or reserve, National
10 Guard of this state, or Reserve Officers Training Corps or peace
11 officers or other duly authorized law enforcement officers when on
12 duty or training, (b) the possession of firearms by peace officers or
13 other duly authorized law enforcement officers when contracted to, or
14 otherwise requested by, a school district to provide school security
15 or school event control services, (c) firearms which may lawfully be
16 possessed by the person receiving instruction, for instruction under
17 the immediate supervision of an adult instructor, ~~(e)~~-(d) firearms
18 which may lawfully be possessed by a member of a college or
19 university rifle team, within the scope of such person's duties as a
20 member of the team, ~~(d)~~-(e) firearms which may lawfully be possessed
21 by a person employed by a college or university in this state as part
22 of an agriculture or a natural resources program of such college or
23 university, within the scope of such person's employment, ~~(e)~~ (f)
24 firearms contained within a private vehicle operated by a nonstudent
25 adult which are not loaded and (i) are encased or (ii) are in a

1 locked firearm rack that is on a motor vehicle, or ~~(f)~~(g) a handgun
2 carried as a concealed handgun by a valid holder of a permit issued
3 under the Concealed Handgun Permit Act in a vehicle or on his or her
4 person while riding in or on a vehicle into or onto any parking area,
5 which is open to the public and used by a school if, prior to exiting
6 the vehicle, the handgun is locked inside the glove box, trunk, or
7 other compartment of the vehicle, a storage box securely attached to
8 the vehicle, or, if the vehicle is a motorcycle, a hardened
9 compartment securely attached to the motorcycle while the vehicle is
10 in or on such parking area, except as prohibited by federal law. For
11 purposes of this subsection, encased means enclosed in a case that is
12 expressly made for the purpose of containing a firearm and that is
13 completely zipped, snapped, buckled, tied, or otherwise fastened with
14 no part of the firearm exposed.

15 (2) Any firearm possessed in violation of subsection (1)
16 of this section shall be confiscated without warrant by a peace
17 officer or may be confiscated without warrant by school
18 administrative or teaching personnel. Any firearm confiscated by
19 school administrative or teaching personnel shall be delivered to a
20 peace officer as soon as practicable.

21 (3) Any firearm confiscated by or given to a peace
22 officer pursuant to subsection (2) of this section shall be declared
23 a common nuisance and shall be held by the peace officer prior to his
24 or her delivery of the firearm to the property division of the law
25 enforcement agency which employs the peace officer. The property

1 division of such law enforcement agency shall hold such firearm for
2 as long as the firearm is needed as evidence. After the firearm is no
3 longer needed as evidence, it shall be destroyed in such manner as
4 the court may direct.

5 (4) Whenever a firearm is confiscated and held pursuant
6 to this section or section 28-1204.02, the peace officer who received
7 such firearm shall cause to be filed within ten days after the
8 confiscation a petition for destruction of such firearm. The petition
9 shall be filed in the district court of the county in which the
10 confiscation is made. The petition shall describe the firearm held,
11 state the name of the owner, if known, allege the essential elements
12 of the violation which caused the confiscation, and conclude with a
13 prayer for disposition and destruction in such manner as the court
14 may direct. At any time after the confiscation of the firearm and
15 prior to court disposition, the owner of the firearm seized may
16 petition the district court of the county in which the confiscation
17 was made for possession of the firearm. The court shall release the
18 firearm to such owner only if the claim of ownership can reasonably
19 be shown to be true and either (a) the owner of the firearm can show
20 that the firearm was taken from his or her property or place of
21 business unlawfully or without the knowledge and consent of the owner
22 and that such property or place of business is different from that of
23 the person from whom the firearm was confiscated or (b) the owner of
24 the firearm is acquitted of the charge of unlawful possession of a
25 handgun in violation of section 28-1204, unlawful transfer of a

1 firearm to a juvenile, or unlawful possession of a firearm at a
2 school. No firearm having significant antique value or historical
3 significance as determined by the Nebraska State Historical Society
4 shall be destroyed. If a firearm has significant antique value or
5 historical significance, it shall be sold at auction and the proceeds
6 shall be remitted to the State Treasurer for distribution in
7 accordance with Article VII, section 5, of the Constitution of
8 Nebraska.

9 Sec. 2. Original section 28-1204.04, Revised Statutes
10 Cumulative Supplement, 2010, is repealed.