

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 148

Introduced by Ashford, 20.

Read first time January 11, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections 28-1212
2 and 69-2422, Reissue Revised Statutes of Nebraska, and
3 sections 28-1204.01, 28-1206, and 28-1354, Revised
4 Statutes Cumulative Supplement, 2012; to include
5 ammunition in certain offenses involving firearms; to
6 harmonize provisions; and to repeal the original
7 sections.

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

1 Section 1. Section 28-1204.01, Revised Statutes
2 Cumulative Supplement, 2012, is amended to read:

3 28-1204.01 (1) Any person who knowingly and intentionally
4 does or attempts to sell, provide, loan, deliver, or in any other way
5 transfer the possession of a firearm or ammunition to a juvenile
6 commits the offense of unlawful transfer of a firearm or ammunition
7 to a juvenile. The county attorney shall have a copy of the petition
8 served upon the owner of the firearm or ammunition, if known, in
9 person or by registered or certified mail at his or her last-known
10 address.

11 (2) This section does not apply to the transfer of a
12 firearm or ammunition, other than a handgun or ammunition for a
13 handgun, to a juvenile:

14 (a) From a person related to such juvenile within the
15 second degree of consanguinity or affinity if the transfer of
16 physical possession of such firearm does not occur until such time as
17 express permission has been obtained from the juvenile's parent or
18 guardian;

19 (b) For a legitimate and lawful sporting purpose; or

20 (c) Who is under direct adult supervision in an
21 appropriate educational program.

22 (3) This section applies to the transfer of a handgun
23 except as specifically provided in subsection (2) of section 28-1204.

24 (4) Unlawful transfer of a firearm or ammunition to a
25 juvenile is a Class III felony.

1 Sec. 2. Section 28-1206, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 28-1206 (1)(a) Any person who possesses a firearm,
4 ammunition, a knife, or brass or iron knuckles and who has previously
5 been convicted of a felony, who is a fugitive from justice, or who is
6 the subject of a current and validly issued domestic violence
7 protection order and is knowingly violating such order, or (b) any
8 person who possesses a firearm, ammunition, or brass or iron knuckles
9 and who has been convicted within the past seven years of a
10 misdemeanor crime of domestic violence, commits the offense of
11 possession of a deadly weapon by a prohibited person.

12 (2) The felony conviction may have been had in any court
13 in the United States, the several states, territories, or
14 possessions, or the District of Columbia.

15 (3)(a) Possession of a deadly weapon which is not a
16 firearm or ammunition by a prohibited person is a Class III felony.

17 (b) Possession of a deadly weapon which is a firearm or
18 ammunition by a prohibited person is a Class ID felony for a first
19 offense and a Class IB felony for a second or subsequent offense.

20 (4)(a)(i) For purposes of this section, misdemeanor crime
21 of domestic violence means:

22 (A)(I) A crime that is classified as a misdemeanor under
23 the laws of the United States or the District of Columbia or the laws
24 of any state, territory, possession, or tribe;

25 (II) A crime that has, as an element, the use or

1 attempted use of physical force or the threatened use of a deadly
2 weapon; and

3 (III) A crime that is committed by another against his or
4 her spouse, his or her former spouse, a person with whom he or she
5 has a child in common whether or not they have been married or lived
6 together at any time, or a person with whom he or she is or was
7 involved in a dating relationship as defined in section 28-323; or

8 (B)(I) Assault in the third degree under section 28-310,
9 stalking under subsection (1) of section 28-311.04, false
10 imprisonment in the second degree under section 28-315, or first
11 offense domestic assault in the third degree under subsection (1) of
12 section 28-323 or any attempt or conspiracy to commit one of these
13 offenses; and

14 (II) The crime is committed by another against his or her
15 spouse, his or her former spouse, a person with whom he or she has a
16 child in common whether or not they have been married or lived
17 together at any time, or a person with whom he or she is or was
18 involved in a dating relationship as defined in section 28-323.

19 (ii) A person shall not be considered to have been
20 convicted of a misdemeanor crime of domestic violence unless:

21 (A) The person was represented by counsel in the case or
22 knowingly and intelligently waived the right to counsel in the case;
23 and

24 (B) In the case of a prosecution for a misdemeanor crime
25 of domestic violence for which a person was entitled to a jury trial

1 in the jurisdiction in which the case was tried, either:

2 (I) The case was tried to a jury; or

3 (II) The person knowingly and intelligently waived the
4 right to have the case tried to a jury.

5 (b) For purposes of this section, subject of a current
6 and validly issued domestic violence protection order pertains to a
7 current court order that was validly issued pursuant to section
8 28-311.09 or 42-924 or that meets or exceeds the criteria set forth
9 in section 28-311.10 regarding protection orders issued by a court in
10 any other state or a territory, possession, or tribe.

11 Sec. 3. Section 28-1212, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 28-1212 The presence in a motor vehicle other than a
14 public vehicle of any firearm, ammunition, or instrument referred to
15 in section 28-1203, 28-1206, 28-1207, or 28-1212.03 shall be prima
16 facie evidence that it is in the possession of and is carried by all
17 persons occupying such motor vehicle at the time such firearm,
18 ammunition, or instrument is found, except that this section shall
19 not be applicable if such firearm, ammunition, or instrument is found
20 upon the person of one of the occupants therein.

21 Sec. 4. Section 28-1354, Revised Statutes Cumulative
22 Supplement, 2012, is amended to read:

23 28-1354 For purposes of the Public Protection Act:

24 (1) Enterprise means any individual, sole proprietorship,
25 partnership, corporation, trust, association, or any legal entity,

1 union, or group of individuals associated in fact although not a
2 legal entity, and shall include illicit as well as licit enterprises
3 as well as other entities;

4 (2) Pattern of racketeering activity means a cumulative
5 loss for one or more victims or gains for the enterprise of not less
6 than one thousand five hundred dollars resulting from at least two
7 acts of racketeering activity, one of which occurred after August 30,
8 2009, and the last of which occurred within ten years, excluding any
9 period of imprisonment, after the commission of a prior act of
10 racketeering activity;

11 (3) Person means any individual or entity, as defined in
12 section 21-2014, holding or capable of holding a legal, equitable, or
13 beneficial interest in property;

14 (4) Prosecutor includes the Attorney General of the State
15 of Nebraska, the deputy attorney general, assistant attorneys
16 general, a county attorney, a deputy county attorney, or any person
17 so designated by the Attorney General, a county attorney, or a court
18 of the state to carry out the powers conferred by the act;

19 (5) Racketeering activity includes the commission of,
20 criminal attempt to commit, conspiracy to commit, aiding and abetting
21 in the commission of, aiding in the consummation of, acting as an
22 accessory to the commission of, or the solicitation, coercion, or
23 intimidation of another to commit or aid in the commission of any of
24 the following:

25 (a) Offenses against the person which include: Murder in

1 the first degree under section 28-303; murder in the second degree
2 under section 28-304; manslaughter under section 28-305; assault in
3 the first degree under section 28-308; assault in the second degree
4 under section 28-309; assault in the third degree under section
5 28-310; terroristic threats under section 28-311.01; kidnapping under
6 section 28-313; false imprisonment in the first degree under section
7 28-314; false imprisonment in the second degree under section 28-315;
8 sexual assault in the first degree under section 28-319; and robbery
9 under section 28-324;

10 (b) Offenses relating to controlled substances which
11 include: To unlawfully manufacture, distribute, deliver, dispense, or
12 possess with intent to manufacture, distribute, deliver, or dispense
13 a controlled substance under subsection (1) of section 28-416;
14 possession of marijuana weighing more than one pound under subsection
15 (12) of section 28-416; possession of money used or intended to be
16 used to facilitate a violation of subsection (1) of section 28-416
17 prohibited under subsection (17) of section 28-416; any violation of
18 section 28-418; to unlawfully manufacture, distribute, deliver, or
19 possess with intent to distribute or deliver an imitation controlled
20 substance under section 28-445; possession of anhydrous ammonia with
21 the intent to manufacture methamphetamine under section 28-451; and
22 possession of ephedrine, pseudoephedrine, or phenylpropanolamine with
23 the intent to manufacture methamphetamine under section 28-452;

24 (c) Offenses against property which include: Arson in the
25 first degree under section 28-502; arson in the second degree under

1 section 28-503; arson in the third degree under section 28-504;
2 burglary under section 28-507; theft by unlawful taking or
3 disposition under section 28-511; theft by shoplifting under section
4 28-511.01; theft by deception under section 28-512; theft by
5 extortion under section 28-513; theft of services under section
6 28-515; theft by receiving stolen property under section 28-517;
7 criminal mischief under section 28-519; and unlawfully depriving or
8 obtaining property or services using a computer under section
9 28-1344;

10 (d) Offenses involving fraud which include: Burning to
11 defraud an insurer under section 28-505; forgery in the first degree
12 under section 28-602; forgery in the second degree under section
13 28-603; criminal possession of a forged instrument under section
14 28-604; criminal possession of forgery devices under section 28-605;
15 criminal impersonation under section 28-638; identity theft under
16 section 28-639; identity fraud under section 28-640; false statement
17 or book entry under section 28-612; tampering with a publicly
18 exhibited contest under section 28-614; issuing a false financial
19 statement for purposes of obtaining a financial transaction device
20 under section 28-619; unauthorized use of a financial transaction
21 device under section 28-620; criminal possession of a financial
22 transaction device under section 28-621; unlawful circulation of a
23 financial transaction device in the first degree under section
24 28-622; unlawful circulation of a financial transaction device in the
25 second degree under section 28-623; criminal possession of a blank

1 financial transaction device under section 28-624; criminal sale of a
2 blank financial transaction device under section 28-625; criminal
3 possession of a forgery device under section 28-626; unlawful
4 manufacture of a financial transaction device under section 28-627;
5 laundering of sales forms under section 28-628; unlawful acquisition
6 of sales form processing services under section 28-629; unlawful
7 factoring of a financial transaction device under section 28-630; and
8 fraudulent insurance acts under section 28-631;

9 (e) Offenses involving governmental operations which
10 include: Abuse of public records under section 28-911; perjury or
11 subornation of perjury under section 28-915; bribery under section
12 28-917; bribery of a witness under section 28-918; tampering with a
13 witness or informant or jury tampering under section 28-919; bribery
14 of a juror under section 28-920; assault on an officer in the first
15 degree under section 28-929; assault on an officer in the second
16 degree under section 28-930; assault on an officer in the third
17 degree under section 28-931; and assault on an officer using a motor
18 vehicle under section 28-931.01;

19 (f) Offenses involving gambling which include: Promoting
20 gambling in the first degree under section 28-1102; possession of
21 gambling records under section 28-1105; gambling debt collection
22 under section 28-1105.01; and possession of a gambling device under
23 section 28-1107;

24 (g) Offenses relating to firearms, ammunition, weapons,
25 and explosives which include: Carrying a concealed weapon under

1 section 28-1202; transportation or possession of machine guns, short
2 rifles, or short shotguns under section 28-1203; unlawful possession
3 of a handgun under section 28-1204; unlawful transfer of a firearm or
4 ammunition to a juvenile under section 28-1204.01; using a deadly
5 weapon to commit a felony or possession of a deadly weapon during the
6 commission of a felony under section 28-1205; possession of a deadly
7 weapon or ammunition by a prohibited person under section 28-1206;
8 possession of a defaced firearm under section 28-1207; defacing a
9 firearm under section 28-1208; unlawful discharge of a firearm under
10 section 28-1212.02; possession, receipt, retention, or disposition of
11 a stolen firearm under section 28-1212.03; unlawful possession of
12 explosive materials in the first degree under section 28-1215;
13 unlawful possession of explosive materials in the second degree under
14 section 28-1216; unlawful sale of explosives under section 28-1217;
15 use of explosives without a permit under section 28-1218; obtaining
16 an explosives permit through false representations under section
17 28-1219; possession of a destructive device under section 28-1220;
18 threatening the use of explosives or placing a false bomb under
19 section 28-1221; using explosives to commit a felony under section
20 28-1222; using explosives to damage or destroy property under section
21 28-1223; and using explosives to kill or injure any person under
22 section 28-1224;

23 (h) Any violation of the Securities Act of Nebraska
24 pursuant to section 8-1117;

25 (i) Any violation of the Nebraska Revenue Act of 1967

1 pursuant to section 77-2713;

2 (j) Offenses relating to public health and morals which
3 include: Prostitution under section 28-801; pandering under section
4 28-802; keeping a place of prostitution under section 28-804; human
5 trafficking or forced labor or services under section 28-831; a
6 violation of section 28-1005; and any act relating to the visual
7 depiction of sexually explicit conduct prohibited in the Child
8 Pornography Prevention Act; and

9 (k) A violation of the Computer Crimes Act;

10 (6) State means the State of Nebraska or any political
11 subdivision or any department, agency, or instrumentality thereof;
12 and

13 (7) Unlawful debt means a debt of at least one thousand
14 five hundred dollars:

15 (a) Incurred or contracted in gambling activity which was
16 in violation of federal law or the law of the state or which is
17 unenforceable under state or federal law in whole or in part as to
18 principal or interest because of the laws relating to usury; or

19 (b) Which was incurred in connection with the business of
20 gambling in violation of federal law or the law of the state or the
21 business of lending money or a thing of value at a rate usurious
22 under state law if the usurious rate is at least twice the
23 enforceable rate.

24 Sec. 5. Section 69-2422, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 69-2422 For purposes of sections 69-2401 to 69-2425, any
2 person who knowingly and intentionally obtains a handgun or
3 ammunition for the purposes of transferring ~~it~~ either one or both to
4 a person who is prohibited from receipt or possession of a handgun or
5 ammunition by state or federal law shall be guilty of a Class IV
6 felony.

7 Sec. 6. Original sections 28-1212 and 69-2422, Reissue
8 Revised Statutes of Nebraska, and sections 28-1204.01, 28-1206, and
9 28-1354, Revised Statutes Cumulative Supplement, 2012, are repealed.