

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 146

FINAL READING

Introduced by Hansen, 26.

Read first time January 09, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Probation Administration Act;
- 2 to amend section 29-2264, Reissue Revised Statutes of Nebraska; to
- 3 provide for set-asides of infractions as prescribed; to harmonize
- 4 provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2264, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-2264 (1) Whenever any person is placed on probation by a court
4 and satisfactorily completes the conditions of his or her probation for
5 the entire period or is discharged from probation prior to the
6 termination of the period of probation, the sentencing court shall issue
7 an order releasing the offender from probation. Such order in all felony
8 cases shall provide notice that the person's voting rights are restored
9 two years after completion of probation. The order shall include
10 information on restoring other civil rights through the pardon process,
11 including application to and hearing by the Board of Pardons.

12 (2) Whenever any person is convicted of an infraction, a
13 misdemeanor, or a felony and is placed on probation by the court or is
14 sentenced to a fine only, he or she may, after satisfactory fulfillment
15 of the conditions of probation for the entire period or after discharge
16 from probation prior to the termination of the period of probation and
17 after payment of any fine, petition the sentencing court to set aside the
18 conviction.

19 (3) In determining whether to set aside the conviction, the court
20 shall consider:

- 21 (a) The behavior of the offender after sentencing;
- 22 (b) The likelihood that the offender will not engage in further
23 criminal activity; and
- 24 (c) Any other information the court considers relevant.

25 (4) The court may grant the offender's petition and issue an order
26 setting aside the conviction when in the opinion of the court the order
27 will be in the best interest of the offender and consistent with the
28 public welfare. The order shall:

- 29 (a) Nullify the conviction; and
- 30 (b) Remove all civil disabilities and disqualifications imposed as a
31 result of the conviction.

1 (5) The setting aside of a conviction in accordance with the
2 Nebraska Probation Administration Act shall not:

3 (a) Require the reinstatement of any office, employment, or position
4 which was previously held and lost or forfeited as a result of the
5 conviction;

6 (b) Preclude proof of a plea of guilty whenever such plea is
7 relevant to the determination of an issue involving the rights or
8 liabilities of someone other than the offender;

9 (c) Preclude proof of the conviction as evidence of the commission
10 of the infraction, misdemeanor, or felony whenever the fact of its
11 commission is relevant for the purpose of impeaching the offender as a
12 witness, except that the order setting aside the conviction may be
13 introduced in evidence;

14 (d) Preclude use of the conviction for the purpose of determining
15 sentence on any subsequent conviction of a criminal offense;

16 (e) Preclude the proof of the conviction as evidence of the
17 commission of the infraction, misdemeanor, or felony in the event an
18 offender is charged with a subsequent offense and the penalty provided by
19 law is increased if the prior conviction is proved;

20 (f) Preclude the proof of the conviction to determine whether an
21 offender is eligible to have a subsequent conviction set aside in
22 accordance with the Nebraska Probation Administration Act;

23 (g) Preclude use of the conviction as evidence of commission of the
24 infraction, misdemeanor, or felony for purposes of determining whether an
25 application filed or a license issued under sections 71-1901 to
26 71-1906.01, the Child Care Licensing Act, or the Children's Residential
27 Facilities and Placing Licensure Act or a certificate issued under
28 sections 79-806 to 79-815 should be denied, suspended, or revoked;

29 (h) Preclude use of the conviction as evidence of incompetence,
30 neglect of duty, physical, mental, or emotional incapacity, or final
31 conviction of or pleading guilty or nolo contendere to a felony for

1 purposes of determining whether an application filed or a certificate
2 issued under sections 81-1401 to 81-1414.10 should be denied, suspended,
3 or revoked;

4 (i) Preclude proof of the conviction as evidence whenever the fact
5 of the conviction is relevant to a determination of the registration
6 period under section 29-4005; or

7 (j) Relieve a person who is convicted of an offense for which
8 registration is required under the Sex Offender Registration Act of the
9 duty to register and to comply with the terms of the act.

10 (6) Except as otherwise provided for the notice in subsection (1) of
11 this section, changes made to this section by Laws 2005, LB 713, shall be
12 retroactive in application and shall apply to all persons, otherwise
13 eligible in accordance with the provisions of this section, whether
14 convicted prior to, on, or subsequent to September 4, 2005.

15 (7) The changes made to this section by this legislative bill shall
16 be retroactive in application and shall apply to all persons, otherwise
17 eligible in accordance with the provisions of this section, whether
18 convicted prior to, on, or subsequent to the effective date of this act.

19 Sec. 2. Original section 29-2264, Reissue Revised Statutes of
20 Nebraska, is repealed.