

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 370

Introduced by Lowe, 37.

Read first time January 13, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to firearms; to amend sections 28-636 and
2 71-961, Reissue Revised Statutes of Nebraska, and sections
3 71-904.01, 71-963, and 83-109, Revised Statutes Cumulative
4 Supplement, 2016; to eliminate the requirement to obtain a
5 certificate or complete a background check to purchase, lease, rent,
6 or receive transfer of a handgun and to eliminate related
7 provisions; to harmonize provisions; to repeal the original
8 sections; and to outright repeal sections 69-2401, 69-2404, 69-2405,
9 69-2406, 69-2407, 69-2408, 69-2410, 69-2411, 69-2412, 69-2413,
10 69-2414, 69-2415, 69-2416, 69-2417, 69-2418, 69-2419, 69-2420,
11 69-2421, 69-2422, 69-2424, and 69-2425, Reissue Revised Statutes of
12 Nebraska, and sections 69-2402, 69-2403, 69-2409, 69-2409.01, and
13 69-2423, Revised Statutes Cumulative Supplement, 2016.
14 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-636, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-636 For purposes of sections 28-636 to 28-640:

4 (1) Personal identification document means a birth certificate,
5 motor vehicle operator's license, state identification card, public,
6 government, or private employment identification card, social security
7 card, visa work permit, firearm owner's identification card, ~~certificate~~
8 ~~issued under section 69-2404,~~ or passport or any document made or altered
9 in a manner that it purports to have been made on behalf of or issued to
10 another person or by the authority of a person who did not give that
11 authority. Personal identification document does not include a financial
12 transaction device as defined in section 28-618;

13 (2) Personal identification number means a combination of numerals
14 or letters selected for a customer of a financial institution, a
15 merchant, or any other third party which is used in conjunction with an
16 access device to initiate an electronic funds transfer transaction;

17 (3) Personal identifying information means any name or number that
18 may be used, alone or in conjunction with any other information, to
19 identify a specific person including a person's: (a) Name; (b) date of
20 birth; (c) address; (d) motor vehicle operator's license number or state
21 identification card number as assigned by the State of Nebraska or
22 another state; (e) social security number or visa work permit number; (f)
23 public, private, or government employer, place of employment, or
24 employment identification number; (g) maiden name of a person's mother;
25 (h) number assigned to a person's credit card, charge card, or debit
26 card, whether issued by a financial institution, corporation, or other
27 business entity; (i) number assigned to a person's depository account,
28 savings account, or brokerage account; (j) personal identification
29 number; (k) electronic identification number, address, or routing code
30 used to access financial information; (l) digital signature; (m)
31 telecommunications identifying information or access device; (n) unique

1 biometric data, such as fingerprint, voice print, retina or iris image,
2 or other unique physical representation; and (o) other number or
3 information which can be used to access a person's financial resources;
4 and

5 (4) Telecommunications identifying information or access device
6 means a card, plate, code, account number, mobile identification number,
7 or other telecommunications service, equipment, or instrument identifier
8 or means of account access that alone or in conjunction with other
9 telecommunications identifying information or another telecommunications
10 access device may be used to: (a) Obtain money, goods, services, or any
11 other thing of value; or (b) initiate a transfer of funds other than a
12 transfer originated solely by a paper instrument.

13 Sec. 2. Section 71-904.01, Revised Statutes Cumulative Supplement,
14 2016, is amended to read:

15 71-904.01 Firearm-related disability means a person is not permitted
16 to (1) purchase, possess, ship, transport, or receive a firearm under
17 either state or federal law, ~~(2) obtain a certificate to purchase, lease,~~
18 ~~rent, or receive transfer of a handgun under section 69-2404, or (2) (3)~~
19 obtain a permit to carry a concealed handgun under the Concealed Handgun
20 Permit Act.

21 Sec. 3. Section 71-961, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 71-961 (1) All records kept on any subject shall remain confidential
24 except as otherwise provided by law. Such records shall be accessible to
25 (a) the subject, except as otherwise provided in subsection (2) of this
26 section, (b) the subject's legal counsel, (c) the subject's guardian or
27 conservator, if any, (d) the mental health board having jurisdiction over
28 the subject, (e) persons authorized by an order of a judge or court, (f)
29 persons authorized by written permission of the subject, (g) agents or
30 employees of the Department of Health and Human Services upon delivery of
31 a subpoena from the department in connection with a licensing or

1 licensure investigation by the department, (h) individuals authorized to
2 receive notice of the release of a sex offender pursuant to section
3 83-174, ~~(i) the Nebraska State Patrol or the department pursuant to~~
4 ~~section 69-2409.01~~, or (i) ~~(j)~~ the Office of Parole Administration if the
5 subject meets the requirements for lifetime community supervision
6 pursuant to section 83-174.03.

7 (2) Upon application by the county attorney or by the administrator
8 of the treatment facility where the subject is in custody and upon a
9 showing of good cause therefor, a judge of the district court of the
10 county where the mental health board proceedings were held or of the
11 county where the treatment facility is located may order that the records
12 not be made available to the subject if, in the judgment of the court,
13 the availability of such records to the subject will adversely affect his
14 or her mental illness or personality disorder and the treatment thereof.

15 (3) When a subject is absent without authorization from a treatment
16 facility or program described in section 71-939 or 71-1223 and is
17 considered to be dangerous to others, the subject's name and description
18 and a statement that the subject is believed to be considered dangerous
19 to others may be disclosed in order to aid in the subject's apprehension
20 and to warn the public of such danger.

21 Sec. 4. Section 71-963, Revised Statutes Cumulative Supplement,
22 2016, is amended to read:

23 71-963 (1) Upon release from commitment or treatment, a person who,
24 because of a mental health-related commitment or adjudication occurring
25 under the laws of this state, is subject to the disability provisions of
26 18 U.S.C. 922(d)(4) and (g)(4) or is disqualified from obtaining a
27 ~~certificate to purchase, lease, rent, or receive transfer of a handgun~~
28 ~~under section 69-2404~~ or a permit to carry a concealed handgun under the
29 Concealed Handgun Permit Act may petition the mental health board to
30 remove such disabilities.

31 (2)(a) Upon the filing of the petition, the subject may request and,

1 if the request is made, shall be entitled to, a review hearing by the
2 mental health board. The mental health board shall grant a petition filed
3 under subsection (1) of this section if the mental health board
4 determines that:

5 (i) The subject will not be likely to act in a manner dangerous to
6 public safety; and

7 (ii) The granting of the relief would not be contrary to the public
8 interest.

9 (b) In determining whether to remove the subject's firearm-related
10 disabilities, the mental health board shall receive and consider evidence
11 upon the following:

12 (i) The circumstances surrounding the subject's mental health
13 commitment or adjudication;

14 (ii) The subject's record, which shall include, at a minimum, the
15 subject's mental health and criminal history records;

16 (iii) The subject's reputation, developed, at a minimum, through
17 character witness statements, testimony, or other character evidence; and

18 (iv) Changes in the subject's condition, treatment, treatment
19 history, or circumstances relevant to the relief sought.

20 (3) If a decision is made by the mental health board to remove the
21 subject's firearm-related disabilities, the clerks of the various courts
22 shall immediately send as soon as practicable but within thirty days an
23 order to the Nebraska State Patrol and the Department of Health and Human
24 Services, in a form and in a manner prescribed by the Department of
25 Health and Human Services and the Nebraska State Patrol, stating its
26 findings, which shall include a statement that, in the opinion of the
27 mental health board, (a) the subject is not likely to act in a manner
28 that is dangerous to public safety and (b) removing the subject's
29 firearm-related disabilities will not be contrary to the public interest.

30 (4) The subject may appeal a denial of the requested relief to the
31 district court, and review on appeal shall be de novo.

1 (5) If a petition is granted under this section, the commitment or
2 adjudication for which relief is granted shall be deemed not to have
3 occurred for purposes of ~~section 69-2404~~ and the Concealed Handgun Permit
4 Act and, pursuant to section 105(b) of Public Law 110-180, for purposes
5 of 18 U.S.C. 922(d)(4) and (g)(4).

6 Sec. 5. Section 83-109, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 83-109 The Department of Health and Human Services shall have
9 general control over the admission of patients and residents to all
10 institutions over which it has jurisdiction. Each individual shall be
11 assigned to the institution best adapted to care for him or her. A record
12 of every patient or resident of every institution shall be kept complete
13 from the date of his or her entrance to the date of his or her discharge
14 or death, such records to be accessible only (1) to the department, a
15 legislative committee, the Governor, any federal agency requiring medical
16 records to adjudicate claims for federal benefits, and any public or
17 private agency under contract to provide facilities, programs, and
18 patient services, (2) upon order of a judge or court, (3) in accordance
19 with sections 20-161 to 20-166, (4) ~~to the Nebraska State Patrol pursuant~~
20 ~~to section 69-2409.01,~~ (5) to those portions of the record required to be
21 released to a victim as defined in section 29-119 in order to comply with
22 the victim notification requirements pursuant to subsections (4) and (5)
23 of section 81-1850, (5) ~~(6)~~ to law enforcement and county attorneys when
24 a crime occurs on the premises of an institution, (6) ~~(7)~~ upon request
25 when a patient or resident has been deceased for fifty years or more, or
26 (7) ~~(8)~~ to current treatment providers. In addition, a patient or
27 resident or his or her legally authorized representative may authorize
28 the specific release of his or her records, or portions thereof, by
29 filing with the department a signed written consent. Transfers of
30 patients or residents from one institution to another shall be within the
31 exclusive jurisdiction of the department and shall be recorded in the

1 office of the department, with the reasons for such transfers. When the
2 department is unable to assign a patient to a regional center or commit
3 him or her to any other institution at the time of application, a record
4 thereof shall be kept and the patient accepted at the earliest
5 practicable date. The superintendents of the regional centers and
6 Beatrice State Developmental Center shall notify the department
7 immediately whenever there is any question regarding the propriety of the
8 commitment, detention, transfer, or placement of any person admitted to a
9 state institution. The department shall then investigate the matter and
10 take such action as shall be proper. Any interested party who is not
11 satisfied with such action may appeal such action, and the appeal shall
12 be in accordance with the Administrative Procedure Act. The department
13 shall have full authority on its own suggestion or upon the application
14 of any interested person to investigate the physical and mental status of
15 any patient or resident of any regional center or the Beatrice State
16 Developmental Center. If upon such investigation the department considers
17 such patient or resident fit to be released from the regional center or
18 Beatrice State Developmental Center, it shall cause such patient or
19 resident to be discharged or released on convalescent leave.

20 Sec. 6. Original sections 28-636 and 71-961, Reissue Revised
21 Statutes of Nebraska, and sections 71-904.01, 71-963, and 83-109, Revised
22 Statutes Cumulative Supplement, 2016, are repealed.

23 Sec. 7. The following sections are outright repealed: Sections
24 69-2401, 69-2404, 69-2405, 69-2406, 69-2407, 69-2408, 69-2410, 69-2411,
25 69-2412, 69-2413, 69-2414, 69-2415, 69-2416, 69-2417, 69-2418, 69-2419,
26 69-2420, 69-2421, 69-2422, 69-2424, and 69-2425, Reissue Revised Statutes
27 of Nebraska, and sections 69-2402, 69-2403, 69-2409, 69-2409.01, and
28 69-2423, Revised Statutes Cumulative Supplement, 2016.