

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 76

Introduced by Wayne, 13; McDonnell, 5; Morfeld, 46.

Read first time January 05, 2017

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to elections; to amend sections 29-112,
2 29-2264, 32-313, and 83-1,102, Reissue Revised Statutes of Nebraska,
3 and section 83-187, Revised Statutes Cumulative Supplement, 2016; to
4 require filing of certain orders and abstracts with the Secretary of
5 State regarding felons; to provide and change powers and duties; to
6 harmonize provisions; and to repeal the original sections.

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

1 Section 1. Section 29-112, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-112 (1) Any person sentenced to be punished for any felony, when
4 the sentence is not reversed or annulled, is incompetent to be a juror or
5 to hold any office of honor, trust, or profit within this state, unless
6 such person receives from the Board of Pardons of this state a warrant of
7 discharge, in which case such person shall be restored to such civil
8 rights and privileges as enumerated or limited by the Board of Pardons.
9 The warrant of discharge shall not release such person from the costs of
10 conviction unless otherwise ordered by the Board of Pardons.

11 (2) Any person sentenced to be punished for any felony, when the
12 sentence is not reversed or annulled, is not qualified to vote until two
13 years after he or she has completed the sentence, including any parole
14 term. The disqualification is automatically removed at such time.

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

17 29-2264 (1) Whenever any person is placed on probation by a court
18 and satisfactorily completes the conditions of his or her probation for
19 the entire period or is discharged from probation prior to the
20 termination of the period of probation, the sentencing court shall issue
21 an order releasing the offender from probation. Such order in all felony
22 cases shall provide notice that the person's voting rights are restored
23 two years after completion of probation. The order shall include
24 information on restoring other civil rights through the pardon process,
25 including application to and hearing by the Board of Pardons. A copy of
26 the order shall be provided to the Secretary of State no later than the
27 tenth day of the month following the month in which the order is issued.

28 (2) Whenever any person is convicted of a misdemeanor or felony and
29 is placed on probation by the court or is sentenced to a fine only, he or
30 she may, after satisfactory fulfillment of the conditions of probation
31 for the entire period or after discharge from probation prior to the

1 termination of the period of probation and after payment of any fine,
2 petition the sentencing court to set aside the conviction.

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

5 (a) The behavior of the offender after sentencing;

6 (b) The likelihood that the offender will not engage in further
7 criminal activity; and

8 (c) Any other information the court considers relevant.

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

13 (a) Nullify the conviction; and

14 (b) Remove all civil disabilities and disqualifications imposed as a
15 result of the conviction.

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

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

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

24 (c) Preclude proof of the conviction as evidence of the commission
25 of the misdemeanor or felony whenever the fact of its commission is
26 relevant for the purpose of impeaching the offender as a witness, except
27 that the order setting aside the conviction may be introduced in
28 evidence;

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

31 (e) Preclude the proof of the conviction as evidence of the

1 commission of the misdemeanor or felony in the event an offender is
2 charged with a subsequent offense and the penalty provided by law is
3 increased if the prior conviction is proved;

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

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

13 (h) Preclude use of the conviction as evidence of incompetence,
14 neglect of duty, physical, mental, or emotional incapacity, or final
15 conviction of or pleading guilty or nolo contendere to a felony for
16 purposes of determining whether an application filed or a certificate
17 issued under sections 81-1401 to 81-1414.10 should be denied, suspended,
18 or revoked;

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

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

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

30 Sec. 3. Section 32-313, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 32-313 (1) No person is qualified to vote or to register to vote who
2 is non compos mentis or who has been convicted of treason under the laws
3 of the state or of the United States unless restored to civil rights. No
4 person who has been convicted of a felony under the laws of this state or
5 any other state is qualified to vote or to register to vote until two
6 years after the sentence is completed, including any parole term. The
7 disqualification is automatically removed at such time.

8 (2) The clerk of any court in which a person is convicted of a
9 felony shall prepare an abstract each month of each final judgment served
10 by the clerk convicting an elector of a felony. The clerk shall file the
11 abstract with the election commissioner or county clerk of the elector's
12 county of residence not later than the tenth day of the month following
13 the month in which the abstract is prepared. The clerk of the court shall
14 notify the election commissioner or county clerk in writing if any such
15 conviction is overturned.

16 (3) Upon receiving notification from the United States Attorney of a
17 felony conviction of a Nebraska resident in federal court or of the
18 overturning of any such conviction, the Secretary of State shall forward
19 the notice to the election commissioner or county clerk of the county of
20 such person's residence. The election commissioner or county clerk shall
21 remove the name of such person from the voter registration register upon
22 receipt of notice of conviction.

23 (4) The Secretary of State shall make note of the completion of a
24 felony sentence of any elector who was previously removed from the voter
25 registration register under subsection (2) or (3) of this section upon
26 receipt of an order from a sentencing court pursuant to section 29-2264,
27 upon receipt of an abstract from the Department of Correctional Services
28 pursuant to section 83-187, or upon receipt of an abstract from the
29 Parole Administrator pursuant to section 83-1,102.

30 (5) The clerk of any court in which a person was convicted of a
31 felony shall prepare an abstract each month reflecting each such person

1 who completed his or her sentence and who is not included in an order or
2 abstract filed under subsection (4) of this section. The abstract shall
3 include the name of each person and the date of completion of the
4 sentence and shall be filed with the Secretary of State no later than the
5 tenth day of the following month.

6 Sec. 4. Section 83-187, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 83-187 (1) When a person committed to the department is released
9 from a facility on parole, on post-release supervision, or upon final
10 discharge, the person shall be returned any personal possessions taken
11 upon confinement, and the chief executive officer of the facility shall
12 furnish the person with a written notice as required in section 83-1,118,
13 clothing appropriate for the season of the year, a transportation ticket
14 to the place where he or she will reside, if within the continental
15 limits of the United States or if not, the state may purchase
16 transportation to the nearest United States border en route to such
17 residence, and such sum of money as may be prescribed by the regulations
18 of the department to enable the person to meet his or her immediate
19 needs. If at the time of release the person is too ill or feeble or
20 otherwise unable to use public means of transportation, the chief
21 executive officer may make special arrangements for transportation to the
22 place where the person will reside.

23 (2) At the time of release, the person shall also be paid his or her
24 earnings and any accrued interest thereon set aside in the wage fund.
25 Such earnings and interest shall be paid either in a lump sum or
26 otherwise as determined by the chief executive officer to be in the best
27 interest of the person. No less than one-third of such fund shall be paid
28 upon release, and the entire fund shall be paid within six months of the
29 person's release.

30 (3) The department shall send a copy of the release or discharge to
31 the court which committed the person and also to the sheriff of the

1 county in which the court is located and, when such county contains a
2 city of the metropolitan class, to the police department of such city.

3 (4) The department shall prepare an abstract each month reflecting
4 each person released as described in subsection (1) of this section
5 showing the date of release in that month. The department shall file the
6 abstract with the Secretary of State no later than the tenth day of the
7 month following the month of release for purposes of providing notice of
8 the date for automatic restoration of the person's voting rights under
9 section 32-313.

10 Sec. 5. Section 83-1,102, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 83-1,102 The Parole Administrator shall:

13 (1) Supervise and administer the Office of Parole Administration;

14 (2) Establish and maintain policies, standards, and procedures for
15 the field parole service and the community supervision of sex offenders
16 pursuant to section 83-174.03;

17 (3) Divide the state into parole districts and appoint district
18 parole officers, deputy parole officers, if required, and such other
19 employees as may be required to carry out adequate parole supervision of
20 all parolees, prescribe their powers and duties, and obtain office
21 quarters for staff in each district as may be necessary;

22 (4) Cooperate with the Board of Parole, the courts, the Community
23 Corrections Division of the Nebraska Commission on Law Enforcement and
24 Criminal Justice, and all other agencies, public and private, which are
25 concerned with the treatment or welfare of persons on parole;

26 (5) Provide the Board of Parole and district judges with any record
27 of a parolee which they ~~it~~ may require;

28 (6) Make recommendations to the Board of Parole or district judge in
29 cases of violation of the conditions of parole, issue warrants for the
30 arrest of parole violators when so instructed by the board or district
31 judge, notify the Director of Correctional Services of determinations

1 made by the board, and upon instruction of the board, issue certificates
2 of parole and of parole revocation to the facilities and certificates of
3 discharge from parole to parolees;

4 (7) Organize and conduct training programs for the district parole
5 officers and other employees;

6 (8) Use the funds provided under section 83-1,107.02 to augment
7 operational or personnel costs associated with the development,
8 implementation, and evaluation of enhanced parole-based programs and
9 purchase services to provide such programs aimed at enhancing adult
10 parolee supervision in the community and treatment needs of parolees.
11 Such enhanced parole-based programs include, but are not limited to,
12 specialized units of supervision, related equipment purchases and
13 training, and programs that address a parolee's vocational, educational,
14 mental health, behavioral health, or substance abuse treatment needs;

15 (9) Ensure that any risk or needs assessment instrument utilized by
16 the system be periodically validated;

17 (10) Report annually to the Governor and ~~electronically~~ to the Clerk
18 of the Legislature beginning January 1, 2015, the number of parole
19 revocations and the number of technical violations of parole. The report
20 to the Legislature shall be submitted electronically; ~~and~~

21 (11) Prepare an abstract each month reflecting each person with a
22 felony conviction who has completed his or her parole term, showing the
23 date of completion within that month, and file the abstract with the
24 Secretary of State no later than the tenth day of the following month for
25 purposes of providing notice of the date for automatic restoration of the
26 person's voting rights under section 32-313; and

27 (12) ~~(11)~~ Exercise all powers and perform all duties necessary and
28 proper in carrying out his or her responsibilities.

29 Sec. 6. Original sections 29-112, 29-2264, 32-313, and 83-1,102,
30 Reissue Revised Statutes of Nebraska, and section 83-187, Revised
31 Statutes Cumulative Supplement, 2016, are repealed.