

AMENDMENTS TO LB661

Introduced by McKinney, 11.

1 1. Insert the following new sections:

2 Sec. 11. Section 29-2101, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 29-2101 A new trial, after a verdict of conviction, may be granted,
5 on the application of the defendant, for any of the following grounds
6 affecting materially his or her substantial rights:

7 (1) Irregularity in the proceedings of the court, of the prosecuting
8 attorney, or of the witnesses for the state or in any order of the court
9 or abuse of discretion by which the defendant was prevented from having a
10 fair trial;

11 (2) ~~Misconduct~~ ~~misconduct~~ of the jury, of the prosecuting attorney,
12 or of the witnesses for the state;

13 (3) ~~Accident~~ ~~accident~~ or surprise which ordinary prudence could not
14 have guarded against;

15 (4) ~~The~~ ~~the~~ verdict is not sustained by sufficient evidence or is
16 contrary to law;

17 (5) ~~Newly~~ ~~newly~~ discovered evidence material for the defendant which
18 he or she could not with reasonable diligence have discovered or ~~and~~
19 produced at the trial. For purposes of this subdivision, testimony or
20 evidence from a codefendant witness shall be considered newly discovered
21 evidence if:

22 (a) Such codefendant previously had a testimonial or constitutional
23 privilege and, because of such privilege, refused to testify or produce
24 evidence in a prior proceeding; and

25 (b) Such codefendant was charged or tried in a separate trial which
26 was severed pursuant to section 29-2002 at the request of the
27 prosecution;

1 (6) ~~Newly~~ newly discovered exculpatory DNA or similar forensic
2 testing evidence obtained under the DNA Testing Act; or

3 (7) ~~Error~~ error of law occurring at the trial.

4 The changes made to this section by this legislative bill shall
5 apply to all persons, otherwise eligible in accordance with the
6 provisions of this section, whether convicted prior to, on, or subsequent
7 to the effective date of this section.

8 Sec. 12. Section 29-2103, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 29-2103 (1) A motion for new trial shall be made by written
11 application and may be filed either during or after the term of the court
12 at which the verdict was rendered.

13 (2) A motion for a new trial shall state the grounds under section
14 29-2101 which are the basis for the motion and shall be supported by
15 evidence as provided in section 29-2102.

16 (3) A motion for new trial based on the grounds set forth in
17 subdivision (1), (2), (3), (4), or (7) of section 29-2101 shall be filed
18 within ten days after the verdict was rendered unless such filing is
19 unavoidably prevented, and the grounds for such motion may be stated by
20 directly incorporating the appropriate language of section 29-2101
21 without further particularity.

22 (4)(a) Except as provided in subdivision (4)(b) of this section, a
23 ~~(4)~~ A motion for new trial based on the grounds set forth in subdivision
24 (5) of section 29-2101 shall be filed within a reasonable time after the
25 discovery of the new evidence and cannot be filed more than five years
26 after the date of the verdict, unless the motion and supporting documents
27 show the new evidence could not with reasonable diligence have been
28 discovered or ~~and~~ produced at trial and such evidence is so substantial
29 that a different result may have occurred.

30 (b) The time limitation in this subsection does not apply if the
31 motion for a new trial involves a conviction for a Class I, IA, or IB

1 felony.

2 (5) A motion for new trial based on the grounds set forth in
3 subdivision (6) of section 29-2101 shall be filed within ninety days
4 after a final order is issued under section 29-4123 or within ninety days
5 after the hearing if no final order is entered, whichever occurs first.

6 (6) The changes made to this section by this legislative bill shall
7 apply to all persons, otherwise eligible in accordance with the
8 provisions of this section, whether convicted prior to, on, or subsequent
9 to the effective date of this section.

10 2. Renumber the remaining sections and correct the repealer
11 accordingly.