

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 883

Introduced by Brewer, 43.

Read first time January 03, 2024

Committee: Judiciary

1 A BILL FOR AN ACT relating to public safety; to amend sections 28-636,
2 69-2409.01, 71-904.01, 71-961, and 71-963, Reissue Revised Statutes
3 of Nebraska, and section 83-109, Revised Statutes Supplement, 2023;
4 to eliminate provisions relating to handgun purchase requirements;
5 to change and transfer provisions on criminal history records checks
6 relating to firearms and explosives; to provide a penalty; to
7 harmonize provisions; to repeal the original sections; and to
8 outright repeal sections 69-2401, 69-2402, 69-2403, 69-2404,
9 69-2405, 69-2406, 69-2407, 69-2408, 69-2409, 69-2410, 69-2411,
10 69-2412, 69-2413, 69-2414, 69-2415, 69-2416, 69-2417, 69-2418,
11 69-2419, 69-2420, 69-2421, 69-2422, 69-2423, 69-2424, and 69-2425,
12 Reissue Revised Statutes of Nebraska.
13 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
9 altered in a manner that it purports to have been made on behalf of or
10 issued to another person or by the authority of a person who did not give
11 that authority. Personal identification document does not include a
12 financial 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 69-2409.01, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 ~~69-2409.01~~ (1)(a) ~~(1)~~ For purposes of criminal history record
16 information checks relating to firearms or explosives sections 69-2401 to
17 ~~69-2425~~, the Nebraska State Patrol shall be furnished with only such
18 information as may be necessary for the purposes ~~sole purpose~~ of
19 determining whether an individual is:

20 (i) Qualified to receive a permit to carry a concealed handgun under
21 section 69-2433; or

22 (ii) Disqualified ~~disqualified~~ from purchasing or possessing
23 firearms or explosives a handgun pursuant to state or federal law ~~or is~~
24 ~~subject to the disability provisions of 18 U.S.C. 922(d)(4) and (g)(4).~~

25 (b) Such information shall be furnished by the Department of Health
26 and Human Services. The clerks of the various courts shall furnish to the
27 Department of Health and Human Services and Nebraska State Patrol, as
28 soon as practicable but within thirty days after an order of commitment
29 or discharge is issued or after removal of firearm-related disabilities
30 pursuant to section 71-963, all information necessary to set up and
31 maintain the database required by this section. This information shall

1 include ~~(a)~~ information regarding those persons who:

2 (i) Are disqualified from purchasing or possessing firearms or
3 explosives pursuant to state or federal law, including, but not limited
4 to, 18 U.S.C. 922 (d)(4) and (g)(4);

5 (ii) Are are currently receiving mental health treatment pursuant to
6 a commitment order of a mental health board or who have been
7 discharged; ~~;~~

8 (iii) Have ~~(b)~~ information regarding those persons who have been
9 committed to treatment pursuant to section 29-3702; ~~;~~ and

10 (iv) Meet the definition of adjudicated as a mental defective or
11 committed to a mental institution pursuant to 27 C.F.R. 478.11; and

12 (v) Have ~~(c)~~ information regarding those persons who have had
13 firearm-related disabilities removed pursuant to section 71-963.

14 (c) The mental health board shall notify the Department of Health
15 and Human Services and the Nebraska State Patrol when such disabilities
16 have been removed. The ~~department~~ Department of Health and Human Services
17 shall also maintain in the database a listing of persons committed to
18 treatment pursuant to section 29-3702.

19 (d) To ensure the accuracy of the database, any information
20 maintained or disclosed under this subsection shall be updated,
21 corrected, modified, or removed, as appropriate, and as soon as
22 practicable, from any database that the state or federal government
23 maintains and makes available to the National Instant Criminal Background
24 Check System. The procedures for furnishing the information shall
25 guarantee that no information is released beyond what is necessary for
26 purposes of this section.

27 ~~(2) In order to comply with sections 69-2401 and 69-2403 to 69-2408~~
28 ~~and this section, the Nebraska State Patrol shall provide to the chief of~~
29 ~~police or sheriff of an applicant's place of residence or a licensee in~~
30 ~~the process of a criminal history record check pursuant to section~~
31 ~~69-2411 only the information regarding whether or not the applicant is~~

1 ~~disqualified from purchasing or possessing a handgun.~~

2 ~~(2) (3)~~ Any person, agency, or mental health board participating in
3 good faith in the reporting or disclosure of records and communications
4 under this section is immune from any liability, civil, criminal, or
5 otherwise, that might result by reason of the action.

6 ~~(3) (4)~~ Any person who intentionally causes the Nebraska State
7 Patrol to request information pursuant to this section without reasonable
8 belief that the named individual has submitted a written application
9 under section 69-2430 or is otherwise subject to a criminal history
10 record information check pursuant to law 69-2404 or has completed a
11 consent form under section 69-2410 shall be guilty of a Class II
12 misdemeanor in addition to other civil or criminal liability under state
13 or federal law.

14 ~~(5) The Nebraska State Patrol and the Department of Health and Human~~
15 ~~Services shall report electronically to the Clerk of the Legislature on a~~
16 ~~biannual basis the following information about the database: (a) The~~
17 ~~number of total records of persons unable to purchase or possess firearms~~
18 ~~because of disqualification or disability shared with the National~~
19 ~~Instant Criminal Background Check System; (b) the number of shared~~
20 ~~records by category of such persons; (c) the change in number of total~~
21 ~~shared records and change in number of records by category from the~~
22 ~~previous six months; (d) the number of records existing but not able to~~
23 ~~be shared with the National Instant Criminal Background Check System~~
24 ~~because the record was incomplete and unable to be accepted by the~~
25 ~~National Instant Criminal Background Check System; and (e) the number of~~
26 ~~hours or days, if any, during which the database was unable to share~~
27 ~~records with the National Instant Criminal Background Check System and~~
28 ~~the reason for such inability. The report shall also be published on the~~
29 ~~websites of the Nebraska State Patrol and the Department of Health and~~
30 ~~Human Services.~~

31 Sec. 3. Section 71-904.01, Reissue Revised Statutes of Nebraska, is

1 amended to read:

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

8 Sec. 4. Section 71-961, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 71-961 (1) All records kept on any subject shall remain confidential
11 except as otherwise provided by law. Such records shall be accessible to
12 (a) the subject, except as otherwise provided in subsection (2) of this
13 section, (b) the subject's legal counsel, (c) the subject's guardian or
14 conservator, if any, (d) the mental health board having jurisdiction over
15 the subject, (e) persons authorized by an order of a judge or court, (f)
16 persons authorized by written permission of the subject, (g) agents or
17 employees of the Department of Health and Human Services upon delivery of
18 a subpoena from the department in connection with a licensing or
19 licensure investigation by the department, (h) individuals authorized to
20 receive notice of the release of a sex offender pursuant to section
21 83-174, (i) the Nebraska State Patrol or the department pursuant to
22 section 2 of this act ~~69-2409.01~~, or (j) the Division of Parole
23 Supervision if the subject meets the requirements for lifetime community
24 supervision pursuant to section 83-174.03.

25 (2) Upon application by the county attorney or by the administrator
26 of the treatment facility where the subject is in custody and upon a
27 showing of good cause therefor, a judge of the district court of the
28 county where the mental health board proceedings were held or of the
29 county where the treatment facility is located may order that the records
30 not be made available to the subject if, in the judgment of the court,
31 the availability of such records to the subject will adversely affect his

1 or her mental illness or personality disorder and the treatment thereof.

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

8 Sec. 5. Section 71-963, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 71-963 (1) Upon release from commitment or treatment, a person who,
11 because of a mental health-related commitment or adjudication occurring
12 under the laws of this state, is subject to the disability provisions of
13 18 U.S.C. 922(d)(4) and (g)(4) or is disqualified from ~~obtaining a~~
14 ~~certificate to purchase, lease, rent, or receive transfer of a handgun~~
15 ~~under section 69-2404~~ or obtaining a permit to carry a concealed handgun
16 under the Concealed Handgun Permit Act may petition the mental health
17 board to remove such firearm-related disabilities.

18 (2)(a)(i) Upon the filing of the petition, the petitioner may
19 request and, if the request is made, shall be entitled to, a review
20 hearing by the mental health board. The petitioner shall prove by clear
21 and convincing evidence that:

22 (A) The petitioner will not be likely to act in a manner dangerous
23 to public safety; and

24 (B) The granting of the relief would not be contrary to the public
25 interest.

26 (ii) In determining whether to remove the petitioner's firearm-
27 related disabilities, the mental health board shall receive and consider
28 evidence upon the following:

29 (A) The circumstances surrounding the petitioner's mental health
30 commitment or adjudication;

31 (B) The petitioner's record, which shall include, at a minimum, the

1 petitioner's mental health and criminal history records;

2 (C) The petitioner's reputation, developed, at a minimum, through
3 character witness statements, testimony, or other character evidence; and

4 (D) Changes in the petitioner's condition, treatment, treatment
5 history, or circumstances relevant to the relief sought.

6 (b) The mental health board shall grant a petition filed under this
7 section if the mental health board determines that the petitioner has
8 proven by clear and convincing evidence that the firearm-related
9 disabilities set forth in subsection (1) of this section should be
10 removed.

11 (3) If a decision is made by the mental health board to remove the
12 petitioner's firearm-related disabilities, the clerks of the various
13 courts shall, as soon as practicable, but within thirty days, send an
14 order to the Nebraska State Patrol and the Department of Health and Human
15 Services, in a form and in a manner prescribed by the Department of
16 Health and Human Services and the Nebraska State Patrol, stating the
17 mental health board's findings, which shall include a statement that, in
18 the opinion of the mental health board, (a) the petitioner is not likely
19 to act in a manner that is dangerous to public safety and (b) removing
20 the petitioner's firearm-related disabilities will not be contrary to the
21 public interest.

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

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

29 Sec. 6. Section 83-109, Revised Statutes Supplement, 2023, is
30 amended to read:

31 83-109 (1) The Department of Health and Human Services shall have

1 general control over the admission of patients and residents to all
2 institutions over which it has jurisdiction. Each individual shall be
3 assigned to the institution best adapted to care for him or her.

4 (2) A record of every patient or resident of every institution shall
5 be kept complete from the date of his or her entrance to the date of his
6 or her discharge or death. Such records shall be accessible only (a) to
7 the department, a legislative committee, the Governor, any federal agency
8 requiring medical records to adjudicate claims for federal benefits, and
9 any public or private agency under contract to provide facilities,
10 programs, and patient services, (b) upon order of a judge, court, or
11 mental health board, (c) in accordance with sections 20-161 to 20-166,
12 (d) to the Nebraska State Patrol pursuant to section 2 of this act
13 ~~69-2409.01~~, (e) to those portions of the record required to be released
14 to a victim as defined in section 29-119 in order to comply with the
15 victim notification requirements pursuant to subsections (5) and (6) of
16 section 81-1850, (f) to law enforcement and county attorneys when a crime
17 occurs on the premises of an institution, (g) upon request when a patient
18 or resident has been deceased for fifty years or more, (h) to current
19 treatment providers, or (i) to treatment providers for coordination of
20 care related to transfer or discharge. In addition, a patient or resident
21 or his or her legally authorized representative may authorize the
22 specific release of his or her records, or portions thereof, by filing
23 with the department a signed written consent.

24 (3) Transfers of patients or residents from one institution to
25 another shall be within the exclusive jurisdiction of the department and
26 shall be recorded in the office of the department, with the reasons for
27 such transfers.

28 (4) When the department is unable to assign a patient to a regional
29 center or commit him or her to any other institution at the time of
30 application, a record thereof shall be kept and the patient accepted at
31 the earliest practicable date.

1 (5) The superintendents of the regional centers and Beatrice State
2 Developmental Center shall notify the department immediately whenever
3 there is any question regarding the propriety of the commitment,
4 detention, transfer, or placement of any person admitted to a state
5 institution. The department shall then investigate the matter and take
6 such action as shall be proper. Any interested party who is not satisfied
7 with such action may appeal such action, and the appeal shall be in
8 accordance with the Administrative Procedure Act.

9 (6) The department shall have full authority on its own suggestion
10 or upon the application of any interested person to investigate the
11 physical and mental status of any patient or resident of any regional
12 center or the Beatrice State Developmental Center. If upon such
13 investigation the department considers such patient or resident fit to be
14 released from the regional center or Beatrice State Developmental Center,
15 it shall cause such patient or resident to be discharged or released on
16 convalescent leave.

17 Sec. 7. Original sections 28-636, 69-2409.01, 71-904.01, 71-961,
18 and 71-963, Reissue Revised Statutes of Nebraska, and section 83-109,
19 Revised Statutes Supplement, 2023, are repealed.

20 Sec. 8. The following sections are outright repealed: Sections
21 69-2401, 69-2402, 69-2403, 69-2404, 69-2405, 69-2406, 69-2407, 69-2408,
22 69-2409, 69-2410, 69-2411, 69-2412, 69-2413, 69-2414, 69-2415, 69-2416,
23 69-2417, 69-2418, 69-2419, 69-2420, 69-2421, 69-2422, 69-2423, 69-2424,
24 and 69-2425, Reissue Revised Statutes of Nebraska.