

LEGISLATIVE BILL 53  
Passed over the Governor's veto  
March 10, 2005.

Introduced by Schimek, 27; Chambers, 11; Kruse, 13; Dw. Pedersen, 39

AN ACT relating to voting rights; to amend sections 32-312, 32-313, and 32-1530, Reissue Revised Statutes of Nebraska, and sections 29-112, 29-113, 29-2264, and 83-1,118, Revised Statutes Supplement, 2004; to provide for the restoration of voting rights upon completion of a felony sentence or probation for a felony; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 29-112, Revised Statutes Supplement, 2004, is amended to read:

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

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

Sec. 2. Section 29-113, Revised Statutes Supplement, 2004, is amended to read:

29-113. Any person who has been ~~actually imprisoned in the penitentiary convicted of a felony under the laws of any other state or territory of the United States under sentence for the commission of any crime which, by the laws of this state, is punishable by imprisonment in a Department of Correctional Services adult correctional facility~~ shall be deemed incompetent to be ~~an elector or a~~ juror or to hold any office of honor, trust, or profit within this state, unless such ~~convict has received a general pardon from the Board of Pardons of the state in which he or she was imprisoned agreeable to the laws thereof~~ person has been restored to civil rights under the laws of the state in which the felony was committed.

Any person who has been convicted of a felony under the laws of any other state is not qualified to vote until two years after such person has completed his or her sentence, including any parole term.

Sec. 3. Section 29-2264, Revised Statutes Supplement, 2004, is amended to read:

29-2264. (1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation. Such order in all felony cases shall provide notice that the person's voting rights are ~~not~~ restored ~~upon~~ two years after completion of probation. The order shall include information on restoring ~~such other~~ civil rights through the pardon process, including application to and hearing by the Board of Pardons.

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

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

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

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

- (a) Nullify the conviction; and

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

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

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

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

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

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

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

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

(g) Preclude use of the conviction as evidence of commission of the misdemeanor or felony for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1905 or the Child Care Licensing Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked.

(6) Except as otherwise provided for the notice in subsection (1) of this section, this section shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to June 11, 1993.

Sec. 4. Section 32-312, Reissue Revised Statutes of Nebraska, is amended to read:

32-312. The office personnel of the election commissioner or county clerk or the deputy registrar shall examine all persons who may personally apply to register to vote as to his or her qualifications, and in the presence of the applicant, the information listed in this section shall be entered in the register.

CITIZENSHIP--"Are you a citizen of the United States of America?" and boxes to check to indicate whether the applicant is or is not a citizen of the United States.

AGE--"Are you at least eighteen years of age or will you be eighteen years of age on or before the first Tuesday following the first Monday of November of this year?" and boxes to check to indicate whether or not the applicant will be eighteen years of age or older on election day.

WARNING--"If you checked 'no' in response to either of these questions, do not complete this form."

NAME--the name of the applicant giving the first and last name in full, the middle name in full or the middle initial, and the maiden name of the applicant, if applicable.

RESIDENCE--the name and number of the street, avenue, or other location of the dwelling where the applicant resides if there is a number. If the registrant resides in a hotel, apartment, tenement house, or institution, such additional information shall be included as will give the exact location of such registrant's place of residence. If the registrant lives in an incorporated or unincorporated area not identified by the use of roads, road names, or house numbers, the registrant shall state the section, township, and range of his or her residence and the corporate name of the school district as described in section 79-405 in which he or she is located.

POSTAL ADDRESS--the address at which the applicant receives mail if different from the residence address.

ADDRESS OF LAST REGISTRATION--the name and number of the street, avenue, or other location of the dwelling from which the applicant last registered.

TELEPHONE NUMBERS (optional)--the telephone number of the applicant at work and at home. At the request of the applicant, a designation shall be made that the telephone number is an unlisted number, and such designation shall preclude the listing of the applicant's telephone number on any list of voter registrations.

DRIVER'S LICENSE NUMBER OR LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER--if the applicant has a Nebraska driver's license, the license number, if the applicant does not have a Nebraska driver's license, the last four

digits of the applicant's social security number, and if the applicant does not have a Nebraska driver's license or a social security number, a unique identifying number assigned under this section.

DATE OF APPLICATION FOR REGISTRATION--the month, day, and year when applicant presented himself or herself for registration.

PLACE OF BIRTH (optional)--show the state, country, kingdom, empire, or dominion where the applicant was born.

DATE OF BIRTH--show the date of the applicant's birth. The applicant shall be at least eighteen years of age or attain eighteen years of age on or before the first Tuesday after the first Monday in November to have the right to register and vote in any election in the present calendar year.

REGISTRATION TAKEN BY--show the signature of the deputy registrar taking the application, if applicable.

PARTY AFFILIATION--show the party affiliation of the applicant as Democrat, Republican, Nonpartisan, or Other ..... . (Note: If you wish to vote in both partisan and nonpartisan primary elections for state and local offices, you must indicate a political party affiliation on the registration form. If you register without a political party affiliation (independent), you will receive only the nonpartisan ballots for state and local offices at primary elections. If you register without a political party affiliation, you may vote in partisan primary elections for congressional offices.)

Immediately following the spaces for inserting information as provided in this section, the following statement shall be printed:

To the best of my knowledge and belief, I declare under penalty of election falsification that:

- (1) I live in the State of Nebraska at the address provided above;
- (2) I have not been convicted of a felony or, if convicted, ~~my civil rights have been restored~~ it has been at least two years since I completed my sentence for the felony, including any parole term; and
- (3) I have not been officially found to be non compos mentis (mentally incompetent).

Any registrant who signs this form knowing that any of the information in the form is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to five years imprisonment, a fine of up to ten thousand dollars, or both.

APPLICANT'S SIGNATURE--require the applicant to affix his or her signature to the form.

If an applicant for voter registration does not have a Nebraska driver's license or a social security number, the Secretary of State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. When the computerized voter registration list is in effect and the list assigns unique identifying numbers to registrants, the number assigned under this section shall be the unique identifying number assigned under the list.

Sec. 5. Section 32-313, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

Sec. 6. Section 32-1530, Reissue Revised Statutes of Nebraska, is amended to read:

32-1530. Any person who votes (1) who is not a resident of this

state or registered in the county or who at the time of election is not of the constitutionally prescribed age of a registered voter, (2) who is not a citizen of the United States, or (3) ~~who, after~~ after being disqualified by law by reason of his or her conviction of a felony, ~~has not been pardoned and restored to all the rights of a citizen~~ and prior to the end of the two-year period after completing the sentence, including any parole term, shall be guilty of a Class IV felony.

Sec. 7. Section 83-1,118, Revised Statutes Supplement, 2004, is amended to read:

83-1,118. (1) If, in the opinion of the board, a parolee does not require guidance or supervision, the board may dispense with and terminate such supervision.

(2) The board may discharge a parolee from parole at any time if such discharge is compatible with the protection of the public and is in the best interest of the parolee.

(3) The board shall discharge a parolee from parole when the time served in the custody of the department and the time served on parole equal the maximum term less good time.

(4) The department shall discharge a committed offender from the custody of the department when the time served in the facility equals the maximum term less good time.

(5) Upon completion of the lawful requirements of the sentence, the department shall provide the parolee or committed offender with a written notice regarding his or her civil rights. The notice shall inform the parolee or committed offender that voting rights are ~~not~~ restored upon two years after completion of the sentence. The notice shall also include information on restoring ~~such~~ other civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(6) The Board of Parole may discharge a parolee from parole when such parolee is under the supervision of another state's correctional institution and such offender has reached the expiration date of his or her Nebraska parole term.

Sec. 8. Original sections 32-312, 32-313, and 32-1530, Reissue Revised Statutes of Nebraska, and sections 29-112, 29-113, 29-2264, and 83-1,118, Revised Statutes Supplement, 2004, are repealed.