

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1090

Introduced by Hansen, 26.

Read first time January 20, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to firearms; to amend sections 69-2421,
2 69-2422, 69-2424, and 69-2425, Reissue Revised Statutes of Nebraska,
3 and sections 69-2402 and 69-2409.01, Revised Statutes Cumulative
4 Supplement, 2014; to require notification of law enforcement by the
5 Nebraska State Patrol of denials of certificates to purchase, lease,
6 rent, or receive transfer of handguns as prescribed; to require
7 reports; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 69-2402, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 69-2402 For purposes of sections 69-2401 to 69-2425 and section 2 of
4 this act:

5 (1) Antique handgun or pistol means any handgun or pistol, including
6 those with a matchlock, flintlock, percussion cap, or similar type of
7 ignition system, manufactured in or before 1898 and any replica of such a
8 handgun or pistol if such replica (a) is not designed or redesigned for
9 using rimfire or conventional centerfire fixed ammunition or (b) uses
10 rimfire or conventional centerfire fixed ammunition which is no longer
11 manufactured in the United States and which is not readily available in
12 the ordinary channels of commercial trade;

13 (2) Criminal history record check includes a check of the criminal
14 history records of the Nebraska State Patrol and a check of the Federal
15 Bureau of Investigation's National Instant Criminal Background Check
16 System;

17 (3) Firearm-related disability means a person is not permitted to
18 (a) purchase, possess, ship, transport, or receive a firearm under either
19 state or federal law, (b) obtain a certificate to purchase, lease, rent,
20 or receive transfer of a handgun under section 69-2404, or (c) obtain a
21 permit to carry a concealed handgun under the Concealed Handgun Permit
22 Act; ~~and~~

23 (4) Handgun means any firearm with a barrel less than sixteen inches
24 in length or any firearm designed to be held and fired by the use of a
25 single hand; and -

26 (5) Prohibited possessor means a potential purchaser, lessee,
27 renter, or transferee of a handgun who is prohibited from purchasing or
28 possessing a handgun under state or federal law.

29 Sec. 2. (1) Upon informing a licensee that a person is a prohibited
30 possessor, the Nebraska State Patrol shall send a notification of denial
31 of a certificate to purchase, lease, rent, or receive transfer of a

1 handgun to the Attorney General, to the United States Attorney for the
2 District of Nebraska, and to all state law enforcement agencies, local
3 law enforcement agencies, and county attorneys which have jurisdiction
4 over either:

5 (a) The area where the potential purchase, lease, rental, or
6 transfer of a handgun occurred; or

7 (b) The area where the prohibited possessor resides.

8 (2) The notification described in subsection (1) of this section
9 shall include the identity of the prohibited possessor, the identity of
10 the licensee who requested the criminal history record check, the date
11 and time of the denial of a certificate to purchase, lease, rent, or
12 receive transfer of a handgun, the grounds for the denial, and the
13 location where the potential purchase, lease, rental, or receipt of
14 transfer of a handgun occurred.

15 (3) The Nebraska State Patrol shall make the notification described
16 in subsection (1) of this section within twenty-four hours after the
17 potential purchase, lease, rental, or receipt of transfer of a handgun,
18 except that, if the notification would compromise an ongoing
19 investigation, the notification may be delayed for so long as necessary
20 to avoid compromising the ongoing investigation.

21 (4) A state or local law enforcement agency that receives one or
22 more notifications described in subsection (1) of this section shall, on
23 an annual basis, make a written report to the Nebraska State Patrol,
24 including the following information for each notification received in
25 that period:

26 (a) Whether the denial of a certificate to purchase, lease, rent, or
27 receive transfer of a handgun is the subject of an active or completed
28 investigation;

29 (b) The status of any open investigation and the disposition of any
30 completed investigation arising from the denial of a certificate to
31 purchase, lease, rent, or receive transfer of a handgun, including,

1 without limitation, whether the prohibited possessor was arrested,
2 referred for prosecution, or convicted of a crime in connection with the
3 denial;

4 (c) If the denial did not give rise to an investigation, a detailed
5 explanation of why no investigation occurred; and

6 (d) Any other information the agency deems relevant to the denial.

7 (5) A county attorney who receives one or more notifications
8 described in subsection (1) of this section shall, on an annual basis,
9 make a written report to the Nebraska State Patrol, including the
10 following information for each notification of denial of a certificate to
11 purchase, lease, rent, or receive transfer of a handgun received in that
12 period:

13 (a) Whether the denial is the subject of an active or completed
14 investigation;

15 (b) Whether the prohibited possessor has been arrested or charged
16 with violating section 69-2420 or any other provision of state law in
17 connection with the denial and, if so, a description of the charge or
18 charges;

19 (c) The disposition of every charge filed against the prohibited
20 possessor in connection with the denial;

21 (d) If the denial did not give rise to a criminal charge, a detailed
22 explanation of why no charge was filed; and

23 (e) Any other information the county attorney deems relevant to the
24 denial.

25 (6) The Attorney General shall, on an annual basis, make a written
26 report to the Nebraska State Patrol, including the information detailed
27 in subdivisions (5)(a) through (e) of this section for each notification
28 of denial of a certificate to purchase, lease, rent, or receive transfer
29 of a handgun received by the Attorney General pursuant to subsection (1)
30 of this section in that period.

31 (7) The Nebraska State Patrol shall publish a written report, on an

1 annual basis, detailing the following information:

2 (a) The number of denied certificates to purchase, lease, rent, or
3 receive transfer of a handgun;

4 (b) The number of notifications of denial made to the Attorney
5 General, to state and local law enforcement agencies, to United States
6 attorneys, and to county attorneys pursuant to subsection (1) of this
7 section;

8 (c) If notification was not made for any denial, a detailed
9 explanation of why such notification was not made;

10 (d) The number of investigations opened, the number of
11 investigations concluded, and the number of referrals for prosecution;

12 (e) The number of investigations opened, by grounds for denial;

13 (f) The number of referrals for prosecution, by grounds for denial;

14 (g) The number of charges arising from denials, by type of charge
15 and grounds for denial; and

16 (h) The disposition of all such charges arising from denials, by
17 type of charge and grounds for denial.

18 Sec. 3. Section 69-2409.01, Revised Statutes Cumulative Supplement,
19 2014, is amended to read:

20 69-2409.01 (1) For purposes of sections 69-2401 to 69-2425 and
21 section 2 of this act, the Nebraska State Patrol shall be furnished with
22 only such information as may be necessary for the sole purpose of
23 determining whether an individual is disqualified from purchasing or
24 possessing a handgun pursuant to state law or is subject to the
25 disability provisions of 18 U.S.C. 922(d)(4) and (g)(4). Such information
26 shall be furnished by the Department of Health and Human Services. The
27 clerks of the various courts shall furnish to the Department of Health
28 and Human Services and Nebraska State Patrol, as soon as practicable but
29 within thirty days after an order of commitment or discharge is issued or
30 after removal of firearm-related disabilities pursuant to section 71-963,
31 all information necessary to set up and maintain the data base required

1 by this section. This information shall include (a) information regarding
2 those persons who are currently receiving mental health treatment
3 pursuant to a commitment order of a mental health board or who have been
4 discharged, (b) information regarding those persons who have been
5 committed to treatment pursuant to section 29-3702, and (c) information
6 regarding those persons who have had firearm-related disabilities removed
7 pursuant to section 71-963. The mental health board shall notify the
8 Department of Health and Human Services and the Nebraska State Patrol
9 when such disabilities have been removed. The Department of Health and
10 Human Services shall also maintain in the data base a listing of persons
11 committed to treatment pursuant to section 29-3702. To ensure the
12 accuracy of the data base, any information maintained or disclosed under
13 this subsection shall be updated, corrected, modified, or removed, as
14 appropriate, and as soon as practicable, from any data base that the
15 state or federal government maintains and makes available to the National
16 Instant Criminal Background Check System. The procedures for furnishing
17 the information shall guarantee that no information is released beyond
18 what is necessary for purposes of this section.

19 (2) In order to comply with sections 69-2401 and 69-2403 to 69-2408
20 and this section, the Nebraska State Patrol shall provide to the chief of
21 police or sheriff of an applicant's place of residence or a licensee in
22 the process of a criminal history record check pursuant to section
23 69-2411 only the information regarding whether or not the applicant is
24 disqualified from purchasing or possessing a handgun.

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

29 (4) Any person who intentionally causes the Nebraska State Patrol to
30 request information pursuant to this section without reasonable belief
31 that the named individual has submitted a written application under

1 section 69-2404 or has completed a consent form under section 69-2410
2 shall be guilty of a Class II misdemeanor in addition to other civil or
3 criminal liability under state or federal law.

4 (5) The Nebraska State Patrol and the Department of Health and Human
5 Services shall report electronically to the Clerk of the Legislature on a
6 biannual basis the following information about the data base: (a) The
7 number of total records of persons unable to purchase or possess firearms
8 because of disqualification or disability shared with the National
9 Instant Criminal Background Check System; (b) the number of shared
10 records by category of such persons; (c) the change in number of total
11 shared records and change in number of records by category from the
12 previous six months; (d) the number of records existing but not able to
13 be shared with the National Instant Criminal Background Check System
14 because the record was incomplete and unable to be accepted by the
15 National Instant Criminal Background Check System; and (e) the number of
16 hours or days, if any, during which the data base was unable to share
17 records with the National Instant Criminal Background Check System and
18 the reason for such inability. The report shall also be published on the
19 web sites of the Nebraska State Patrol and the Department of Health and
20 Human Services.

21 Sec. 4. Section 69-2421, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 69-2421 Any licensed importer, manufacturer, or dealer who knowingly
24 and intentionally sells or delivers a handgun in violation of sections
25 69-2401 to 69-2425 and section 2 of this act shall be guilty of a Class
26 IV felony.

27 Sec. 5. Section 69-2422, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 69-2422 For purposes of sections 69-2401 to 69-2425 and section 2 of
30 this act, any person who knowingly and intentionally obtains a handgun
31 for the purposes of transferring it to a person who is prohibited from

1 receipt or possession of a handgun by state or federal law shall be
2 guilty of a Class IV felony.

3 Sec. 6. Section 69-2424, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 69-2424 The Nebraska State Patrol shall adopt and promulgate rules
6 and regulations to carry out sections 69-2401 to 69-2425 and section 2 of
7 this act.

8 Sec. 7. Section 69-2425, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 69-2425 Any city or village ordinance existing on September 6, 1991,
11 shall not be preempted by sections 69-2401 to 69-2425 and section 2 of
12 this act.

13 Sec. 8. Original sections 69-2421, 69-2422, 69-2424, and 69-2425,
14 Reissue Revised Statutes of Nebraska, and sections 69-2402 and
15 69-2409.01, Revised Statutes Cumulative Supplement, 2014, are repealed.