

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 201**

Introduced by Lowe, 37.

Read first time January 10, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal law; to amend sections 28-915,  
2 29-812, 29-813, 29-814.01, 29-814.02, 29-814.04, 29-814.05,  
3 29-814.06, 29-815, 29-817, and 29-821, Reissue Revised Statutes of  
4 Nebraska, and section 21-2,212, Revised Statutes Cumulative  
5 Supplement, 2016; to change provisions relating to perjury; to  
6 change and eliminate provisions relating to the issuance of search  
7 warrants; to harmonize provisions; to repeal the original sections;  
8 and to outright repeal section 29-814.03, Reissue Revised Statutes  
9 of Nebraska.  
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 21-2,212, Revised Statutes Cumulative Supplement,  
2 2016, is amended to read:

3 21-2,212 (MBCA 15.10) (a) The registered agent of a foreign  
4 corporation authorized to transact business in this state is the  
5 corporation's agent for service of process, notice, or demand required or  
6 permitted by law to be served on the foreign corporation. By being  
7 authorized to transact business in this state, the foreign corporation's  
8 agent for service of process also consents to service of process directed  
9 to the foreign corporation's agent in this state for a search warrant  
10 issued pursuant to sections 29-812 to 29-821 and sections 12 and 13 of  
11 this act, or for any other validly issued and properly served court order  
12 or subpoena, including those authorized under sections 86-2,106 and  
13 86-2,112, for records or documents that are in the possession of the  
14 foreign corporation and are located inside or outside of this state. The  
15 consent to service of a court order, subpoena, or search warrant applies  
16 to a foreign corporation that is a party or nonparty to the matter for  
17 which the court order, subpoena, or search warrant is sought.

18 (b) A foreign corporation may be served by registered or certified  
19 mail, return receipt requested, addressed to the secretary of the foreign  
20 corporation or the designated custodian of records at its principal  
21 office shown in its application for a certificate of authority or in its  
22 most recent biennial report if the foreign corporation:

23 (1) Has no registered agent or its registered agent cannot with  
24 reasonable diligence be served;

25 (2) Has withdrawn from transacting business in this state under  
26 section 21-2,213; or

27 (3) Has had its certificate of authority revoked under section  
28 21-2,218.

29 (c) Service is perfected under subsection (b) of this section at the  
30 earliest of:

31 (1) The date the foreign corporation receives the mail;

1           (2) The date shown on the return receipt, if signed on behalf of the  
2 foreign corporation; or

3           (3) Five days after its deposit in the United States mail, as  
4 evidenced by the postmark, if mailed postpaid and correctly addressed.

5           (d) This section does not prescribe the only means, or necessarily  
6 the required means, of serving a foreign corporation.

7           Sec. 2. Section 28-915, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9           28-915 (1) A person is guilty of perjury, a Class III felony, if (a)  
10 in any official proceeding he or she makes a false statement under oath  
11 or equivalent affirmation, or swears or affirms the truth of a statement  
12 previously made, when the statement is material and he or she does not  
13 believe it to be true or (b) in any declaration, certificate,  
14 verification, or statement under penalty of perjury as permitted by law,  
15 he or she subscribes as true any material matter which he or she does not  
16 believe to be true.

17           (2) A person is guilty of subornation of perjury, a Class III  
18 felony, if he or she persuades, procures, or suborns any other person to  
19 commit perjury.

20           (3) A falsification shall be material, regardless of the  
21 admissibility of the statement under rules of evidence, if it could have  
22 affected the course or outcome of the proceeding. It shall not be a  
23 defense that the declarant mistakenly believed the falsification to be  
24 immaterial. Whether a falsification is material in a given factual  
25 situation shall be a question of law.

26           (4) It shall not be a defense to prosecution under this section that  
27 the oath or affirmation was administered or taken in an irregular manner  
28 or that the declarant was not competent to make the statement. A document  
29 purporting to be made upon oath or affirmation at any time when the actor  
30 presents it as being so verified shall be deemed to have been duly sworn  
31 or affirmed.

1 (5) No person shall be guilty of an offense under this section if he  
2 or she retracted the falsification in the course of the proceeding in  
3 which it was made before it became manifest that the falsification was or  
4 would be exposed and before the falsification substantially affected the  
5 proceeding.

6 (6) When the defendant made inconsistent statements under oath or  
7 equivalent affirmation, both having been made within the period of the  
8 statute of limitations, the prosecution may proceed by setting forth the  
9 inconsistent statements in a single count alleging in the alternative  
10 that one or the other was false and not believed by the defendant. In  
11 such case it shall not be necessary for the prosecution to prove which  
12 statement was false but only that one or the other was false and not  
13 believed by the defendant to be true.

14 (7) No person shall be convicted of an offense under this section  
15 when proof of falsity rests solely upon contradiction by testimony of a  
16 single person other than the defendant.

17 Sec. 3. Section 29-812, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 29-812 A search warrant authorized by sections 29-812 to 29-821 and  
20 sections 12 and 13 of this act may be issued by any judge of the county  
21 court, district court, Court of Appeals, or Supreme Court for execution  
22 anywhere within the State of Nebraska or for service upon any publicly or  
23 privately held corporation, partnership, or other legal entity located  
24 within or outside the State of Nebraska. A similar search warrant  
25 authorized by such sections may be issued, subject to section 24-519, by  
26 any clerk magistrate within the county in which the property sought is  
27 located.

28 Sec. 4. Section 29-813, Reissue Revised Statutes of Nebraska, is  
29 amended to read:

30 29-813 (1) A warrant may be issued under sections 29-812 to 29-821  
31 and sections 12 and 13 of this act to search for and seize any property

1 (a) stolen, embezzled, or obtained under false pretenses in violation of  
2 the laws of the State of Nebraska, (b) designed or intended for use or  
3 which is or has been used as the means of committing a criminal offense,  
4 (c) possessed, controlled, designed, or intended for use or which is or  
5 has been possessed, controlled, designed, or used in violation of any law  
6 of the State of Nebraska making such possession, control, design, or use,  
7 or intent to use, a criminal offense, or (d) which constitutes evidence  
8 that a criminal offense has been committed or that a particular person  
9 has committed a criminal offense.

10 (2) Notwithstanding subsection (1) of this section, no warrant shall  
11 be issued to search any place or seize anything in the possession,  
12 custody, or control of any person engaged in procuring, gathering,  
13 writing, editing, or disseminating news or other information for  
14 distribution to the public through a medium of communication unless  
15 probable cause is shown that such person has committed or is committing a  
16 criminal offense. For purposes of this subsection, the terms person,  
17 information, and medium of communication shall be defined as provided in  
18 section 20-145.

19 Sec. 5. Section 29-814.01, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 29-814.01 A search warrant may be issued under section 29-814.04  
22 pursuant to written affidavit sworn to before a magistrate, a judge, or  
23 any other person authorized to administer oaths under the laws of this  
24 state by the person making it or pursuant to a written, unsworn  
25 declaration under penalty of perjury. Such affidavit or declaration shall  
26 particularly describe the persons or places to be searched and the  
27 persons or property to be seized. Such affidavit or declaration shall set  
28 forth the facts and circumstances tending to show that such person or  
29 property is in the place, or the property is in the possession of the  
30 person, to be searched. Such affidavit or declaration may be submitted to  
31 a the magistrate or judge by any in person or by facsimile or other

1 ~~electronic~~ means and the warrant may be issued to the affiant or  
2 declarant by any in person or by facsimile or other electronic means.

3       Sec. 6. Section 29-814.02, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5       29-814.02 (1) In lieu of, or in addition to, written affidavit or  
6 written, unsworn declaration under penalty of perjury, a search warrant  
7 may be issued under section 29-814.04 or 29-814.05 pursuant to an oral  
8 statement given in person, by telephone, by video conferencing, or by  
9 other similar method and under oath to a magistrate or judge. The oral  
10 statement shall be recorded ~~taken~~ by means of a voice recording device in  
11 the custody of the magistrate, ~~or judge, or person making the statement.~~  
12 If no voice recording device is available, the statement may be taken  
13 stenographically. ~~The magistrate or judge shall direct that the recorded~~  
14 ~~or stenographic statement shall be~~ transcribed and the magistrate or  
15 judge shall certify the accuracy of the transcription.

16       (2) The original recording and transcribed statement shall be filed  
17 ~~magistrate or judge shall file~~ with the clerk of the district court of  
18 the county in which the property was seized ~~the original of the record~~  
19 ~~and the transcribed statement.~~ Such filing shall be made at the same time  
20 the warrant, copy of the return, inventory, and all other papers  
21 connected with the warrant are filed pursuant to section 29-816. For  
22 purposes of sections 29-814.01 to 29-814.06, an oral statement authorized  
23 by this section shall be considered to be an affidavit.

24       Sec. 7. Section 29-814.04, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26       29-814.04 (1) If the magistrate or judge is satisfied that probable  
27 cause exists for the issuance of a search warrant, as a result of written  
28 affidavit, written, unsworn declaration under penalty of perjury, or oral  
29 statement authorized pursuant to sections 29-814.01 and 29-814.02, the  
30 magistrate or judge shall issue the warrant which shall identify the  
31 person or place to be searched and the person or property to be seized.

1 The warrant shall be directed to a law enforcement officer of the State  
2 of Nebraska or one of its governmental subdivisions, which officer shall  
3 be specifically named or described by the title of his or her office in  
4 the warrant. The warrant shall state whether the grounds or proper cause  
5 of its issuance is a written affidavit, written, unsworn declaration  
6 under penalty of perjury, or an oral statement, or a combination thereof  
7 ~~of both~~. The warrant shall indicate the name or names of the person or  
8 persons whose affidavit, declaration, or statement has been taken in  
9 support thereof. The warrant shall command the officer named in the  
10 warrant to search the person or place named for the purpose specified.  
11 The warrant shall direct that it be served in the daytime unless the  
12 magistrate or judge is satisfied that the public interest requires that  
13 it should not be so restricted, in which case the warrant may direct that  
14 it may be served at any time. The warrant shall designate the magistrate  
15 or judge to whom it shall be returned. For purposes of this section,  
16 daytime shall mean the hours from 7 a.m. to 8 p.m. according to local  
17 time.

18 (2) Any law enforcement officer to whom a warrant is directed may  
19 request the assistance of any other law enforcement officer in executing  
20 the warrant if the person or place to be searched is not within the named  
21 officer's jurisdiction.

22 Sec. 8. Section 29-814.05, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 29-814.05 (1) If the magistrate or judge is satisfied that probable  
25 cause exists for the issuance of a search warrant, as the result of an  
26 oral a telephonic statement given by telephone, video conferencing, or  
27 other similar method taken under section 29-814.02 ~~29-814.03~~, and if the  
28 magistrate or judge is further satisfied that sufficient reason exists to  
29 issue such warrant by telephone, video conferencing, or other similar  
30 method, the magistrate or judge shall authorize the officer requesting  
31 the warrant to complete a duplicate original warrant which shall contain

1 a description of the person or place to be searched, a description of the  
2 person or property to be seized, a command to the officer to conduct the  
3 search for the purposes specified, the date and time of issuance, a  
4 statement that the grounds or proper cause for its issuance is by oral  
5 ~~telephonic statement given by telephone, video conferencing, or other~~  
6 similar method, the name or names of the person or persons whose  
7 statement has been taken in support of the warrant, and the name of the  
8 judge to whom it is to be returned. The magistrate or judge shall  
9 authorize the officer to sign his or her name to the duplicate original  
10 warrant and to also sign the name of the officer thereto. A duplicate  
11 original warrant shall be deemed to be a search warrant for purposes of  
12 Chapter 29, article 8.

13 (2) At the time the magistrate or judge authorizes the officer to  
14 complete the duplicate original warrant under subsection (1) of this  
15 section, the magistrate or judge shall immediately complete and sign the  
16 original warrant which shall contain the information which is required  
17 for a duplicate original warrant under subsection (1) of this section.  
18 The magistrate or judge shall also enter on the face of the original  
19 warrant the exact time when the warrant was ordered to be issued.

20 (3) The duplicate original warrant shall be returned according to  
21 section 29-815. Upon the duplicate original warrant being returned, the  
22 magistrate or judge shall sign it and shall file it, together with the  
23 original warrant, in the same manner as that required under section  
24 29-816.

25 (4) A search warrant issued pursuant to this section ~~a telephonic~~  
26 ~~statement~~ shall be invalid unless the duplicate original warrant is  
27 signed by the issuing magistrate or judge pursuant to subsection (3) of  
28 this section.

29 (5) A search warrant issued under this section may be executed  
30 immediately upon issuance.

31 (6) Any law enforcement officer to whom a warrant is directed may

1 request the assistance of any other law enforcement officer in executing  
2 the warrant if the person or place to be searched is not within the named  
3 officer's jurisdiction.

4       Sec. 9. Section 29-814.06, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6       29-814.06 If the original recording of the oral ~~or telephonic~~  
7 ~~statement,~~ taken pursuant to section 29-814.02 ~~or 29-814.03,~~ is shall be  
8 lost, destroyed, or a critical portion thereof is unintelligible, a  
9 search warrant issued pursuant to such oral ~~or telephonic~~ statement shall  
10 be subject to review by the court in which the matter is pending to  
11 determine what information was provided to the magistrate or judge  
12 issuing such warrant and whether such information was sufficient to  
13 establish probable cause for the issuance of the search warrant ~~deemed to~~  
14 be invalid.

15       Sec. 10. Section 29-815, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17       29-815 (1) The warrant must be executed and returned within ten days  
18 after its date unless a longer period is authorized by the magistrate or  
19 judge issuing the warrant. The officer taking property under the warrant  
20 shall give to the person from whom or from whose premises the property  
21 was taken a copy of the warrant and a receipt for the property or shall  
22 leave the copy and the receipt at the place from which the property was  
23 taken. The return shall be made promptly and shall be accompanied by a  
24 written inventory of any property taken. The inventory shall be made in  
25 the presence of the applicant for the warrant and the person from whose  
26 possession or premises the property was taken if they are present, or in  
27 the presence of at least one credible witness other than the applicant  
28 for the warrant or the person from whose possession or premises the  
29 property was taken, and shall be verified by the officer. The judge or  
30 magistrate shall deliver a copy of the inventory upon request to the  
31 person from whom or from whose premises the property was taken and to the

1 applicant for the warrant.

2 (2) The return and inventory required by subsection (1) of this  
3 section may be submitted to the magistrate or judge in person or by  
4 facsimile or other electronic means.

5 Sec. 11. Section 29-817, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 29-817 Sections 29-812 to 29-821 and sections 12 and 13 of this act  
8 do not modify any act inconsistent with such sections ~~it~~ relating to  
9 search warrants, their issuance, and the execution of search warrants and  
10 acts relating to disposition of seized property in circumstances for  
11 which special provision is made. The term property is used in sections  
12 29-812 to 29-821 and sections 12 and 13 of this act to include documents,  
13 books, papers, and any other tangible objects. Nothing in sections 29-812  
14 to 29-821 and sections 12 and 13 of this act shall be construed as  
15 restricting or in any way affecting the constitutional right of any  
16 officer to make reasonable searches and seizures as an incident to a  
17 lawful arrest nor to restrict or in any way affect reasonable searches  
18 and seizures authorized or consented to by the person being searched or  
19 in charge of the premises being searched, or in any other manner or way  
20 authorized or permitted to be made under the Constitution of the United  
21 States and the Constitution of the State of Nebraska.

22 All search warrants shall be issued with all practicable secrecy and  
23 the complaint, affidavit, declaration, or testimony upon which it is  
24 based shall not be filed with the clerk of the court or made public in  
25 any way until the warrant is executed. Whoever discloses, prior to its  
26 execution, that a warrant has been applied for or issued, except so far  
27 as may be necessary to its execution, shall be guilty of a Class III  
28 misdemeanor, or he or she may be punished as for a criminal contempt of  
29 court.

30 Sec. 12. (1) For purposes of sections 29-812 to 29-821, unsworn  
31 declaration under penalty of perjury means a declaration, certificate,

1 verification, or statement of the person making it, which is subscribed  
2 and dated by such person as true to the best of his or her knowledge  
3 under penalty of perjury.

4 (2) An unsworn declaration under penalty of perjury shall be  
5 subscribed in substantially the following form:

6 I (declare, certify, verify, or state) under penalty of perjury that  
7 the foregoing is true and correct to the best of my knowledge. Executed  
8 on (date) in (county), Nebraska.

9 (Signature).

10 Sec. 13. (1) In any affidavit, unsworn declaration under penalty of  
11 perjury, warrant, return, inventory, or any other document authorized or  
12 required pursuant to sections 29-812 to 29-821 in which a signature is  
13 required or used, an electronic signature may be used in lieu of a manual  
14 signature.

15 (2) Electronic signature means an electronic identifier, symbol, or  
16 process attached to or logically associated with a document and executed  
17 or adopted by a person with the intent to sign the document.

18 Sec. 14. Section 29-821, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 29-821 The provisions of sections 29-812 to 29-821 and sections 12  
21 and 13 of this act relating to the disposition of seized property shall  
22 not be exclusive, but shall be supplemental to other laws on the subject.

23 Sec. 15. Original sections 28-915, 29-812, 29-813, 29-814.01,  
24 29-814.02, 29-814.04, 29-814.05, 29-814.06, 29-815, 29-817, and 29-821,  
25 Reissue Revised Statutes of Nebraska, and section 21-2,212, Revised  
26 Statutes Cumulative Supplement, 2016, are repealed.

27 Sec. 16. The following section is outright repealed: Section  
28 29-814.03, Reissue Revised Statutes of Nebraska.