

## LEGISLATIVE BILL 1055

Approved by the Governor April 15, 1996

Introduced by Schmitt, 41; Chambers, 11; Wesely, 26

AN ACT relating to firearms; to amend sections 81-1401, 81-1414, 83-109, and 83-1068, Reissue Revised Statutes of Nebraska, and sections 69-2402, 69-2405, 69-2408 to 69-2410, 69-2421, 69-2422, 69-2424, and 69-2425, Revised Statutes Supplement, 1994; to provide for information relating to mental health to be furnished to the Nebraska State Patrol for purposes of handgun purchases; to provide for immunity; to provide a penalty; to define and redefine terms; to require law enforcement officers to maintain proficiency in firearm operation; to provide powers and duties for the Nebraska Law Enforcement Training Center and law enforcement agencies; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. (1) For purposes of sections 69-2401 to 69-2425 and this section, the Nebraska State Patrol shall be furnished upon the patrol's request with only such information as may be necessary for the sole purpose of determining whether an individual is disqualified from purchasing or possessing a handgun pursuant to state or federal law. Such information shall be furnished by the Department of Public Institutions. The clerks of the various courts shall furnish to the Department of Public Institutions, within thirty days after the order of commitment or finding and the discharge, all information necessary to set up and maintain the data base required by this section. This information shall include (a) information regarding those persons who are currently receiving mental health treatment pursuant to a commitment order of a mental health board or who have been discharged and (b) information regarding those persons who have been committed to treatment pursuant to section 29-3702. The Department of Public Institutions shall also maintain in the data base a listing of persons committed to treatment pursuant to section 29-3702. Information regarding mental health board commitments and commitments pursuant to section 29-3702 shall not be retained in the data base maintained by the department on persons who have been discharged from those commitments more than five years previously. Any such information maintained or disclosed under this subsection shall remain privileged and confidential and shall not be redisclosed or utilized for any other purpose. The procedures for furnishing such information shall guarantee that no information is released beyond what is necessary for purposes of this section.

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

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

(4) Any person who intentionally causes the Nebraska State Patrol to request information pursuant to this section without reasonable belief that the named individual has submitted a written application under section 69-2404 or has completed a consent form under section 69-2410 shall be guilty of a Class II misdemeanor in addition to other civil or criminal liability under state or federal law.

Sec. 2. Section 69-2402, Revised Statutes Supplement, 1994, is amended to read:

69-2402. For purposes of sections 69-2401 to 69-2425 and section 1 of this act:

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

(2) Handgun shall mean any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand.

Sec. 3. Section 69-2405, Revised Statutes Supplement, 1994, is amended to read:

69-2405. Upon the receipt of an application for a certificate, the chief of police or sheriff shall issue a certificate or deny a certificate and furnish the applicant the specific reasons for the denial in writing. The chief of police or sheriff shall be permitted up to two days in which to conduct an investigation to determine whether the applicant is prohibited by law from purchasing or possessing a handgun. If the certificate or denial is mailed to the applicant, it shall be mailed to the applicant's address by first-class mail within the two-day period. If it is determined that the purchase or possession of a handgun by the applicant would be in violation of applicable federal, state, or local law, the chief of police or sheriff shall deny the certificate. In computing the two-day period, the day of receipt of the application shall not be included and the last day of the two-day period shall be included. The two-day period shall expire at 11:59 p.m. of the second day unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until 11:59 p.m. of the next day which is not a Saturday, Sunday, or legal holiday. No later than the end of the two-day period the chief of police or sheriff shall issue or deny such certificate and, if the certificate is denied, furnish the applicant the specific reasons for denial in writing. No civil liability shall arise to any law enforcement agency if such law enforcement agency complies with sections 69-2401 and 69-2403 to 69-2408 and section 1 of this act.

Sec. 4. Section 69-2408, Revised Statutes Supplement, 1994, is amended to read:

69-2408. Any person who willfully provides false information on an application form for a certificate under section 69-2404 shall, upon conviction, be guilty of a Class IV felony, and any person who intentionally violates any other provision of sections 69-2401 and 69-2403 to 69-2407 and section 1 of this act shall, upon conviction, be guilty of a Class I misdemeanor. As a part of the judgment of conviction, the court may order the confiscation of the handgun.

Sec. 5. Section 69-2409, Revised Statutes Supplement, 1994, is amended to read:

69-2409. It is the intent of the Legislature that the Nebraska State Patrol implement an expedited program of upgrading Nebraska's automated criminal history files to be utilized for, among other law enforcement purposes, an instant criminal history record check on handgun purchasers when buying a handgun from a licensed importer, manufacturer, or dealer so that such instant criminal history record check may be implemented as soon as possible on or after January 1, 1995.

The patrol's automated arrest and conviction records shall be reviewed annually by the Superintendent of Law Enforcement and Public Safety who shall report the status of such records within thirty days of such review to the Governor and the Clerk of the Legislature. The instant criminal history record check system shall be implemented by the patrol on or after January 1, 1995, when, as determined by the Superintendent of Law Enforcement and Public Safety, eighty-five percent of the Nebraska arrest and conviction records since January 1, 1965, available to the patrol are included in the patrol's automated system. Not less than thirty days prior to implementation and enforcement of the instant check system, the patrol shall send written notice to all licensed importers, manufacturers, and dealers outlining the procedures and toll-free number described in sections 69-2410 to 69-2423.

Upon implementation of the instant criminal history record check system, a person who desires to purchase, lease, rent, or receive transfer of a handgun from a licensed importer, manufacturer, or dealer may elect to obtain such handgun either under sections 69-2401 and 69-2403 to 69-2408 and section 1 of this act or under sections 69-2410 to 69-2423 and section 1 of this act.

Sec. 6. Section 69-2410, Revised Statutes Supplement, 1994, is amended to read:

69-2410. No importer, manufacturer, or dealer licensed pursuant to 18 U.S.C. 923 shall sell or deliver any handgun to another person other than a licensed importer, manufacturer, dealer, or collector until he or she has:

- (1)(a) Inspected a valid certificate issued to such person pursuant to sections 69-2401 and 69-2403 to 69-2408 and section 1 of this act; and
- (b) Inspected a valid identification containing a photograph of such person which appropriately and completely identifies such person; or
- (2)(a) Obtained a completed consent form from the potential buyer or

transferee, which form shall be established by the Nebraska State Patrol and provided by the licensed importer, manufacturer, or dealer. The form shall include only the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee;

(b) Inspected a valid identification containing a photograph of the potential buyer or transferee which appropriately and completely identifies such person;

(c) Requested by toll-free telephone call or other electromagnetic communication that the Nebraska State Patrol conduct a criminal history record check; and

(d) Received a unique approval number for such inquiry from the Nebraska State Patrol indicating the date and number on the consent form.

Sec. 7. Section 69-2421, Revised Statutes Supplement, 1994, is amended to read:

69-2421. Any licensed importer, manufacturer, or dealer who knowingly and intentionally sells or delivers a handgun in violation of sections 69-2401 to 69-2425 and section 1 of this act shall be guilty of a Class IV felony.

Sec. 8. Section 69-2422, Revised Statutes Supplement, 1994, is amended to read:

69-2422. For purposes of sections 69-2401 to 69-2425 and section 1 of this act, any person who knowingly and intentionally obtains a handgun for the purposes of transferring it to a person who is prohibited from receipt or possession of a handgun by state or federal law shall be guilty of a Class IV felony.

Sec. 9. Section 69-2424, Revised Statutes Supplement, 1994, is amended to read:

69-2424. The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out sections 69-2401 to 69-2425 and section 1 of this act.

Sec. 10. Section 69-2425, Revised Statutes Supplement, 1994, is amended to read:

69-2425. Any city or village ordinance existing on September 6, 1991, shall not be preempted by sections 69-2401 to 69-2425 and section 1 of this act.

Sec. 11. Section 81-1401, Reissue Revised Statutes of Nebraska, is amended to read:

81-1401. As used in For purposes of sections 81-1401 to 81-1414 and sections 13 to 15 of this act, unless the context otherwise requires:

(1) Commission ~~shall mean~~ means the Nebraska Commission on Law Enforcement and Criminal Justice;

(2) Council ~~shall mean~~ means the Nebraska Police Standards Advisory Council;

(3) Law enforcement agency means the police department or the town marshal in incorporated municipalities, the office of sheriff in unincorporated areas, and the Nebraska State Patrol.

(4)(a) ~~(3)(a)~~ Law enforcement officer ~~shall mean~~ means any person who is responsible for the prevention or detection of crime or the enforcement of the penal, traffic, or highway laws of the state or any political subdivision of the state for more than one hundred hours per year and is authorized by law to make arrests; and includes, but is not limited to:

(i) A ~~full-~~ full-time or part-time member of the Nebraska State Patrol;

(ii) A county sheriff;

(iii) A ~~full-~~ full-time or part-time employee of a county sheriff's office;

(iv) A ~~full-~~ full-time or part-time employee of a municipal or village police agency; or

(v) A full-time employee of an organized and paid fire department of any city of the metropolitan class who is an authorized arson investigator and whose duties consist of determining the cause, origin, and circumstances of fires or explosions while on duty in the course of an investigation; but

(b) Law enforcement officer ~~shall does~~ not include employees of the Department of Correctional Services, probation officers under the Nebraska Probation System or appointed under section 43-2,123, parole officers appointed by the Parole Administrator, or employees of the Department of Revenue under section 77-366;

(5) ~~(4)~~ Director ~~shall mean~~ means the director of the Nebraska Law Enforcement Training Center; and

~~(5)~~ (6) Training center ~~shall mean~~ means the Nebraska Law Enforcement Training Center.

Sec. 12. Section 81-1414, Reissue Revised Statutes of Nebraska, is

amended to read:

81-1414. (1) On and after January 1, 1972, law enforcement officers already serving under permanent appointment shall not be required to meet any requirement of subsection (2) of this section as a condition of tenure or continued employment.

(2) On and after January 1, 1972, no person shall receive appointment as a law enforcement officer unless he or she has been awarded a certificate by the commission attesting to satisfactory completion of the minimum curriculum of the training center as established by the council or has been awarded a certificate attesting to satisfactory completion of a training program which the council finds equivalent thereto. Any person who has not been awarded such a certificate may receive an appointment conditioned on satisfactory completion of such training if he or she immediately applies for admission to the training center and enrolls in the next available basic training class. If such training is not completed within one year of the appointment, the person's employment shall not be renewed by appointment or otherwise and such person shall no longer be recognized as a law enforcement officer as defined in subdivision (3) of section 81-1401.

(3) On and after January 1, 1972, no law enforcement officer shall be promoted in rank unless he or she has been awarded a certificate by the director attesting to satisfactory completion of such advanced training as the council may require for the rank to which he or she is to be promoted.

(4) At the direction of the council, the director shall issue a certificate attesting to a compliance with the requirements of subsection (2) or (3) of this section to any applicant who presents evidence of satisfactory completion of a training program, other than that of the training center, found by the director to be equivalent to that of the training center.

Sec. 13. (1) In order to maintain proficiency in firearm operation, a law enforcement officer shall qualify at least once every calendar year on a firearm shooting course approved by the director.

(2) Qualification on a firearm shooting course shall be conducted by a qualified firearm instructor pursuant to rules and regulations adopted and promulgated by the training center. Law enforcement agencies that do not have a qualified firearm instructor may share qualification with other law enforcement agencies that have a qualified firearm instructor or may utilize the Nebraska Association of Law Enforcement Firearm Instructors which may, at no cost, assist such law enforcement agencies by supplying a qualified firearm instructor for a firearm shooting course. The director shall adopt and promulgate rules and regulations for requalification for the case in which a law enforcement officer fails to qualify. The peace officer status of a law enforcement officer who fails to qualify shall be determined by the director.

(3) Each law enforcement agency shall maintain its own records as to the firearm qualifications of its law enforcement officers.

Sec. 14. The minimum firearm qualification test shall consist of a firearm shooting course requiring the firing of fifty rounds of ammunition for completion of the course and the firearm shooting course prescribed target shall be the Federal Bureau of Investigation's "0" target. The target shall be fired upon at a distance or at distances prescribed by the training center. The method of scoring on the firearm shooting course shall be "pass/fail". "Pass" means a score of seventy percent or higher. A law enforcement officer participating in the minimum firearm qualification test shall use the firearm or firearms he or she will be authorized to use while on duty.

Sec. 15. The person in charge of the law enforcement agency which employs the law enforcement officer shall submit to the training center a register of the law enforcement officers who have passed firearm qualification. The register shall include the name of the qualified law enforcement officer, the name of the instructor who administered the course, the date of firearm qualification, and the type of firearm used in firearm qualification.

Sec. 16. Section 83-109, Reissue Revised Statutes of Nebraska, is amended to read:

83-109. The Department of Public Institutions shall have general control over the admission of patients and residents to all institutions over which it has jurisdiction. Each individual shall be assigned to the institution best adapted to care for him or her. A record of every patient or resident of every institution shall be kept complete from the date of his or her entrance to the date of his or her discharge or death, such records to be accessible only (1) to the department, a legislative committee, the Governor, any federal agency requiring medical records to adjudicate claims for federal benefits, and any public or private agency under contract to provide facilities, programs, and patient services, (2) upon order of a judge or court, or (3) in accordance with sections 20-161 to 20-166, or (4) to the

Nebraska State Patrol pursuant to section 1 of this act. In addition, a patient or resident or his or her legally authorized representative may authorize the specific release of his or her records, or portions thereof, by filing with the department a signed written consent. Transfers of patients or residents from one institution to another shall be within the exclusive jurisdiction of the department and shall be recorded in the office of the department, with the reasons for such transfers. When the department is unable to assign a patient to a regional center or commit him or her to any other institution at the time of application, a record thereof shall be kept and the patient accepted at the earliest practicable date. The superintendents of the regional centers and Beatrice State Developmental Center shall notify the department immediately whenever there is any question regarding the propriety of the commitment, detention, transfer, or placement of any person admitted to a state institution. The department shall then investigate the matter and take such action as shall be proper. Any interested party who is not satisfied with such action may appeal such action, and the appeal shall be in accordance with the Administrative Procedure Act. The department shall have full authority on its own suggestion or upon the application of any interested person to investigate the physical and mental status of any patient or resident of any regional center or the Beatrice State Developmental Center. If upon such investigation the department considers such patient or resident fit to be released from the regional center or Beatrice State Developmental Center, it shall cause such patient or resident to be discharged or released on convalescent leave.

Sec. 17. Section 83-1068, Reissue Revised Statutes of Nebraska, is amended to read:

83-1068. All records kept on any subject of a petition shall remain confidential, except as may be provided otherwise by law. Such records shall be accessible to (1) the subject, (2) the subject's counsel, (3) the subject's parents or guardian if the subject is a minor or legally incompetent, (4) the mental health board having jurisdiction over the subject, (5) persons authorized by an order of a judge or court, or (6) persons authorized by written permission of the subject, or (7) the Nebraska State Patrol or the Department of Public Institutions pursuant to section 1 of this act. Upon application by the county attorney or by the director of the facility where the subject is in custody and upon a showing of good cause therefor, a judge of the district court of the county where the mental health board proceedings were held or of the county where the facility is located may order that the records shall not be made available to the subject if, in the judgment of the court, the availability of such records to the subject will adversely affect his or her mental state and the treatment thereof.

Sec. 18. This act becomes operative on January 1, 1997.

Sec. 19. Original sections 81-1401, 81-1414, 83-109, and 83-1068, Reissue Revised Statutes of Nebraska, and sections 69-2402, 69-2405, 69-2408 to 69-2410, 69-2421, 69-2422, 69-2424, and 69-2425, Revised Statutes Supplement, 1994, are repealed.