

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 321

FINAL READING

Introduced by Lowe, 37.

Read first time January 12, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
- 2 28-1204.04, Reissue Revised Statutes of Nebraska; to change
- 3 provisions relating to unlawful possession of a firearm at a school;
- 4 and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1204.04, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 28-1204.04 (1) Any person who possesses a firearm in a school, on
4 school grounds, in a school-owned vehicle, or at a school-sponsored
5 activity or athletic event is guilty of the offense of unlawful
6 possession of a firearm at a school. Unlawful possession of a firearm at
7 a school is a Class IV felony. This subsection shall not apply to (a) the
8 issuance of firearms to or possession by members of the armed forces of
9 the United States, active or reserve, National Guard of this state, or
10 Reserve Officers Training Corps or peace officers or other duly
11 authorized law enforcement officers when on duty or training, (b) the
12 possession of firearms by peace officers or other duly authorized law
13 enforcement officers when contracted by a school to provide school
14 security or school event control services, (c) firearms which may
15 lawfully be possessed by the person receiving instruction, for
16 instruction under the immediate supervision of an adult instructor, (d)
17 firearms which may lawfully be possessed by a member of a college or
18 university firearm rifle team, to include rifle, pistol, and shotgun
19 disciplines, within the scope of such person's duties as a member of the
20 team, (e) firearms which may lawfully be possessed by a person employed
21 by a college or university in this state as part of an agriculture or a
22 natural resources program of such college or university, within the scope
23 of such person's employment, (f) firearms contained within a private
24 vehicle operated by a nonstudent adult which are not loaded and (i) are
25 encased or (ii) are in a locked firearm rack that is on a motor vehicle,
26 (g) firearms which may lawfully be possessed by a person for the purpose
27 of using them, with the approval of the school, in a historical
28 reenactment, in a hunter education program, or as part of an honor guard,
29 or (h) a handgun carried as a concealed handgun by a valid holder of a
30 permit issued under the Concealed Handgun Permit Act in a vehicle or on
31 his or her person while riding in or on a vehicle into or onto any

1 parking area, which is open to the public and used by a school if, prior
2 to exiting the vehicle, the handgun is locked inside the glove box,
3 trunk, or other compartment of the vehicle, a storage box securely
4 attached to the vehicle, or, if the vehicle is a motorcycle, a hardened
5 compartment securely attached to the motorcycle while the vehicle is in
6 or on such parking area, except as prohibited by federal law. For
7 purposes of this subsection, encased means enclosed in a case that is
8 expressly made for the purpose of containing a firearm and that is
9 completely zipped, snapped, buckled, tied, or otherwise fastened with no
10 part of the firearm exposed.

11 (2) Any firearm possessed in violation of subsection (1) of this
12 section shall be confiscated without warrant by a peace officer or may be
13 confiscated without warrant by school administrative or teaching
14 personnel. Any firearm confiscated by school administrative or teaching
15 personnel shall be delivered to a peace officer as soon as practicable.

16 (3) Any firearm confiscated by or given to a peace officer pursuant
17 to subsection (2) of this section shall be declared a common nuisance and
18 shall be held by the peace officer prior to his or her delivery of the
19 firearm to the property division of the law enforcement agency which
20 employs the peace officer. The property division of such law enforcement
21 agency shall hold such firearm for as long as the firearm is needed as
22 evidence. After the firearm is no longer needed as evidence, it shall be
23 destroyed in such manner as the court may direct.

24 (4) Whenever a firearm is confiscated and held pursuant to this
25 section or section 28-1204.02, the peace officer who received such
26 firearm shall cause to be filed within ten days after the confiscation a
27 petition for destruction of such firearm. The petition shall be filed in
28 the district court of the county in which the confiscation is made. The
29 petition shall describe the firearm held, state the name of the owner, if
30 known, allege the essential elements of the violation which caused the
31 confiscation, and conclude with a prayer for disposition and destruction

1 in such manner as the court may direct. At any time after the
2 confiscation of the firearm and prior to court disposition, the owner of
3 the firearm seized may petition the district court of the county in which
4 the confiscation was made for possession of the firearm. The court shall
5 release the firearm to such owner only if the claim of ownership can
6 reasonably be shown to be true and either (a) the owner of the firearm
7 can show that the firearm was taken from his or her property or place of
8 business unlawfully or without the knowledge and consent of the owner and
9 that such property or place of business is different from that of the
10 person from whom the firearm was confiscated or (b) the owner of the
11 firearm is acquitted of the charge of unlawful possession of a handgun in
12 violation of section 28-1204, unlawful transfer of a firearm to a
13 juvenile, or unlawful possession of a firearm at a school. No firearm
14 having significant antique value or historical significance as determined
15 by the Nebraska State Historical Society shall be destroyed. If a firearm
16 has significant antique value or historical significance, it shall be
17 sold at auction and the proceeds shall be remitted to the State Treasurer
18 for distribution in accordance with Article VII, section 5, of the
19 Constitution of Nebraska.

20 Sec. 2. Original section 28-1204.04, Reissue Revised Statutes of
21 Nebraska, is repealed.