

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 350

FINAL READING

Introduced by McCollister, 20.

Read first time January 12, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal procedure; to amend section
2 29-2264, Reissue Revised Statutes of Nebraska; to provide a
3 procedure for setting aside convictions for misdemeanors and
4 felonies as prescribed; to harmonize provisions; and to repeal the
5 original section.

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

1 Section 1. Section 29-2264, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-2264 (1) Whenever any person is placed on probation by a court
4 and satisfactorily completes the conditions of his or her probation for
5 the entire period or is discharged from probation prior to the
6 termination of the period of probation, the sentencing court shall issue
7 an order releasing the offender from probation. Such order in all felony
8 cases shall provide notice that the person's voting rights are restored
9 two years after completion of probation. The order shall include
10 information on restoring other civil rights through the pardon process,
11 including application to and hearing by the Board of Pardons.

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

18 (3)(a) Except as provided in subdivision (3)(b) of this section,
19 whenever any person is convicted of a misdemeanor or felony and is
20 sentenced other than as provided in subsection (2) of this section, such
21 person may, after completion of his or her sentence, petition the
22 sentencing court to set aside the conviction.

23 (b) A petition under subdivision (3)(a) of this section shall be
24 denied if filed:

25 (i) By any person with a criminal charge pending in any court in the
26 United States or in any other country;

27 (ii) During any period in which the person is required to register
28 under the Sex Offender Registration Act;

29 (iii) For any misdemeanor or felony motor vehicle offense under
30 section 28-306 or the Nebraska Rules of the Road; or

31 (iv) Within two years after a denial of a petition to set aside a

1 conviction under this section.

2 ~~(4)~~ (3) In determining whether to set aside the conviction, the
3 court shall consider:

4 (a) The behavior of the offender after sentencing;

5 (b) The likelihood that the offender will not engage in further
6 criminal activity; and

7 (c) Any other information the court considers relevant.

8 ~~(5)~~ (4) The court may grant the offender's petition and issue an
9 order setting aside the conviction when in the opinion of the court the
10 order will be in the best interest of the offender and consistent with
11 the public welfare. The order shall:

12 (a) Nullify the conviction; ~~and~~

13 (b) Remove all civil disabilities and disqualifications imposed as a
14 result of the conviction; and -

15 (c) Notify the offender that he or she should consult with an
16 attorney regarding the effect of the order on the offender's ability to
17 possess a firearm under state or federal law.

18 ~~(6)~~ (5) The setting aside of a conviction in accordance with the
19 Nebraska Probation Administration Act shall not:

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

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

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

31 (d) Preclude use of the conviction for the purpose of determining

1 sentence on any subsequent conviction of a criminal offense;

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

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

9 (g) Preclude use of the conviction as evidence of commission of the
10 misdemeanor or felony for purposes of determining whether an application
11 filed or a license issued under sections 71-1901 to 71-1906.01, the Child
12 Care Licensing Act, or the Children's Residential Facilities and Placing
13 Licensure Act or a certificate issued under sections 79-806 to 79-815
14 should be denied, suspended, or revoked;

15 (h) Preclude use of the conviction as evidence of incompetence,
16 neglect of duty, physical, mental, or emotional incapacity, or final
17 conviction of or pleading guilty or nolo contendere to a felony for
18 purposes of determining whether an application filed or a certificate
19 issued under sections 81-1401 to 81-1414.10 should be denied, suspended,
20 or revoked;

21 (i) Preclude proof of the conviction as evidence whenever the fact
22 of the conviction is relevant to a determination of the registration
23 period under section 29-4005; ~~or~~

24 (j) Relieve a person who is convicted of an offense for which
25 registration is required under the Sex Offender Registration Act of the
26 duty to register and to comply with the terms of the act; or -

27 (k) Affect the right of a victim of a crime to prosecute or defend a
28 civil action.

29 (7) ~~(6)~~ Except as otherwise provided for the notice in subsection
30 (1) of this section, changes made to this section by Laws 2005, LB 713,
31 shall be retroactive in application and shall apply to all persons,

1 otherwise eligible in accordance with the provisions of this section,
2 whether convicted prior to, on, or subsequent to September 4, 2005.

3 (8) The changes made to this section by this legislative bill shall
4 be retroactive in application and shall apply to all persons, otherwise
5 eligible in accordance with the provisions of this section, whether
6 convicted prior to, on, or subsequent to the effective date of this act.

7 Sec. 2. Original section 29-2264, Reissue Revised Statutes of
8 Nebraska, is repealed.