

## LEGISLATIVE BILL 454

Approved by the Governor April 5, 2006

Introduced by Combs, 32; Aguilar, 35; Baker, 44; Cornett, 45; Cudaback, 36; Cunningham, 40; Erdman, 47; Fischer, 43; Flood, 19; Friend, 10; Hudkins, 21; Janssen, 15; Jensen, 20; Kremer, 34; Langemeier, 23; McDonald, 41; Pahls, 31; Dw. Pedersen, 39; Redfield, 12; Schrock, 38; Smith, 48; Stuhr, 24; Wehrbein, 2; Engel, 17; Connealy, 16

AN ACT relating to handguns; to amend section 28-1202, Reissue Revised Statutes of Nebraska; to adopt the Concealed Handgun Permit Act; to provide penalties; to harmonize provisions; to provide an operative date; to provide severability; and to repeal the original section.

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

Section 1. Sections 1 to 21 of this act shall be known and may be cited as the Concealed Handgun Permit Act.

Sec. 2. An individual may obtain a permit to carry a concealed handgun in accordance with the Concealed Handgun Permit Act.

Sec. 3. For purposes of the Concealed Handgun Permit Act:

(1) Concealed handgun means the handgun is totally hidden from view. If any part of the handgun is capable of being seen, it is not a concealed handgun;

(2) Emergency services personnel means a volunteer or paid firefighter or rescue squad member or a person certified to provide emergency medical services pursuant to the Emergency Medical Services Act;

(3) Handgun means 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;

(4) Peace officer means any town marshal, chief of police or local police officer, sheriff or deputy sheriff, the Superintendent of Law Enforcement and Public Safety, any officer of the Nebraska State Patrol, any member of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder, any Game and Parks Commission conservation officer, and all other persons with similar authority to make arrests;

(5) Permitholder means an individual holding a current and valid permit to carry a concealed handgun issued pursuant to the Concealed Handgun Permit Act; and

(6) Proof of training means an original document or certified copy of a document, supplied by an applicant, that certifies that he or she either:

(a) Within the previous three years, has successfully completed a handgun training and safety course approved by the Nebraska State Patrol pursuant to section 6 of this act; or

(b) Is a member of the active or reserve armed forces of the United States or a member of the National Guard and has had handgun training within the previous three years which meets the minimum safety and training requirements of section 6 of this act.

Sec. 4. (1) Application for a permit to carry a concealed handgun shall be made in person at any Nebraska State Patrol Troop Headquarters or office provided by the patrol for purposes of accepting such an application. The applicant shall present a current Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card and shall submit two legible sets of fingerprints for a criminal history record information check pursuant to section 5 of this act. The application shall be made on a form prescribed by the Superintendent of Law Enforcement and Public Safety. The application shall state the applicant's full name, social security number, motor vehicle operator's license number or state identification card number, address, and date of birth and contain the applicant's signature and shall include space for the applicant to affirm that he or she meets each and every one of the requirements set forth in section 7 of this act. The applicant shall attach to the application proof of training and proof of vision as required in subdivision (3) of section 7 of this act.

(2) A person applying for a permit to carry a concealed handgun who gives false information or offers false evidence of his or her identity is guilty of a Class IV felony.

(3) The permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within five business days after completion of the applicant's criminal history record information check, if the applicant has complied with this section and has met all the requirements of section 7 of

this act.

(4) An applicant denied a permit to carry a concealed handgun may appeal to the district court of the judicial district of the county in which he or she resides or the county in which he or she applied for the permit pursuant to the Administrative Procedure Act.

Sec. 5. In order to insure an applicant's initial compliance with sections 4 and 7 of this act, the applicant for a permit to carry a concealed handgun shall be fingerprinted by the Nebraska State Patrol and a check made of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. The criminal history record information check under the Concealed Handgun Permit Act is for initial compliance only.

Sec. 6. (1) The Nebraska State Patrol shall prepare and publish minimum training and safety requirements for and adopt and promulgate rules and regulations governing handgun training and safety courses and handgun training and safety course instructors. Minimum safety and training requirements for a handgun training and safety course shall include, but not be limited to:

- (a) Knowledge and safe handling of a handgun;
- (b) Knowledge and safe handling of handgun ammunition;
- (c) Safe handgun shooting fundamentals;
- (d) A demonstration of competency with a handgun with respect to the minimum safety and training requirements;
- (e) Knowledge of federal, state, and local laws pertaining to the purchase, ownership, transportation, and possession of handguns;
- (f) Knowledge of federal, state, and local laws pertaining to the use of a handgun, including, but not limited to, use of a handgun for self-defense and laws relating to justifiable homicide and the various degrees of assault;
- (g) Knowledge of ways to avoid a criminal attack and to defuse or control a violent confrontation; and
- (h) Knowledge of proper storage practices for handguns and ammunition, including storage practices which would reduce the possibility of accidental injury to a child.

(2) A person or entity conducting a handgun training and safety course and the course instructors shall be approved by the patrol before operation. The patrol shall issue a certificate evidencing its approval.

(3) A certificate of completion of a handgun training and safety course shall be issued by the person or entity conducting a handgun training and safety course to persons successfully completing the course. The certificate of completion shall also include certification from the instructor that the person completing the course does not suffer from a readily discernible physical infirmity that prevents the person from safely handling a handgun.

(4) Any fee for participation in a handgun training and safety course is the responsibility of the applicant.

Sec. 7. An applicant shall:

- (1) Be at least twenty-one years of age;
- (2) Not be prohibited from purchasing or possessing a handgun by 18 U.S.C. 922, as such section existed on January 1, 2005;
- (3) Possess the same powers of eyesight as required under section 60-4,118 for a Class O operator's license. If an applicant does not possess a current Nebraska motor vehicle operator's license, the applicant may present a current optometrist's or ophthalmologist's statement certifying the vision reading obtained when testing the applicant. If such certified vision reading meets the vision requirements prescribed by section 60-4,118 for a Class O operator's license, the vision requirements of this subdivision shall have been met;
- (4) Not have pled guilty to, not have pled nolo contendere to, or not have been convicted of a felony or a crime of violence under the laws of this state or under the laws of any other jurisdiction;
- (5) Not have been found in the previous ten years to be a mentally ill and dangerous person under the Nebraska Mental Health Commitment Act or a similar law of another jurisdiction or not be currently adjudged mentally incompetent;
- (6) Have been a resident of this state for at least one hundred eighty days. For purposes of this section, resident does not include an applicant who maintains a residence in another state and claims that residence for voting or tax purposes;
- (7) Have had no violations of any law of this state relating to firearms, unlawful use of a weapon, or controlled substances or of any similar laws of another jurisdiction in the ten years preceding the date of

application;

(8) Not be on parole, probation, house arrest, or work release;

(9) Be a citizen of the United States; and

(10) Provide proof of training.

Sec. 8. The design and form of the permit to carry a concealed handgun shall be prescribed by the Nebraska State Patrol. The permit shall list the permitholder's name, the permitholder's address, and the expiration date of the permit and contain a photograph of the permitholder.

Sec. 9. A permitholder shall continue to meet the requirements of section 7 of this act during the time he or she holds the permit. If, during such time, a permitholder does not continue to meet one or more of the requirements, the permitholder shall return his or her permit to the Nebraska State Patrol for revocation. If a permitholder does not return his or her permit, the permitholder is subject to having his or her permit revoked under section 13 of this act.

Sec. 10. (1) A permit to carry a concealed handgun is valid throughout the state for a period of five years after the date of issuance. The fee for issuing a permit is one hundred dollars.

(2) The Nebraska State Patrol shall renew a person's permit to carry a concealed handgun for a renewal period of five years, subject to continuing compliance with the requirements of section 7 of this act. The renewal fee is fifty dollars, and renewal may be applied for up to four months before expiration of a permit to carry a concealed handgun.

(3) The applicant shall submit the fee with the application to the Nebraska State Patrol. The fee shall be remitted to the State Treasurer for credit to the Public Safety Cash Fund.

Sec. 11. A permit to carry a concealed handgun shall be issued to a specific individual only and shall not be transferred from one person to another.

Sec. 12. The Nebraska State Patrol or any agent, employee, or member thereof is not civilly liable to any injured person or his or her estate for any injury suffered, including any action for wrongful death or property damage suffered, relating to the issuance or revocation of a permit to carry a concealed handgun issued pursuant to the Concealed Handgun Permit Act.

Sec. 13. (1) Any peace officer having probable cause to believe that a permitholder is no longer in compliance with one or more requirements of section 7 of this act shall bring an application for revocation of the permit to be prosecuted as provided in subsection (2) of this section.

(2) It is the duty of the county attorney or his or her deputy of the county in which such permitholder resides to prosecute a case for the revocation of a permit to carry a concealed handgun brought pursuant to subsection (1) of this section. In case the county attorney refuses or is unable to prosecute the case, the duty to prosecute shall be upon the Attorney General or his or her assistant.

(3) The case shall be prosecuted as a civil case, and the permit shall be revoked upon a showing by a preponderance of the evidence that the permitholder does not meet one or more of the requirements of section 7 of this act.

(4) A person who has his or her permit revoked under this section may be fined up to one thousand dollars and shall be charged with the costs of the prosecution. The money collected under this subsection as an administrative fine shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 14. (1) A permitholder shall carry his or her permit to carry a concealed handgun and his or her Nebraska driver's license, Nebraska-issued state identification card, or military identification card any time he or she carries a concealed handgun. The permitholder shall display both the permit to carry a concealed handgun and his or her Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card when asked to do so by a peace officer or by emergency services personnel.

(2) Whenever a permitholder who is carrying a concealed handgun is contacted by a peace officer or by emergency services personnel, the permitholder shall immediately inform the peace officer or emergency services personnel that the permitholder is carrying a concealed handgun.

(3)(a) During contact with a permitholder, a peace officer or emergency services personnel may secure the handgun or direct that it be secured during the duration of the contact if the peace officer or emergency services personnel determines that it is necessary for the safety of any person present, including the peace officer or emergency services personnel. The permitholder shall submit to the order to secure the handgun.

(b)(i) When the peace officer has determined that the permitholder

is not a threat to the safety of any person present, including the peace officer, and the permitholder has not committed any other violation that would result in his or her arrest or the suspension or revocation of his or her permit, the peace officer shall return the handgun to the permitholder before releasing the permitholder from the scene and breaking contact.

(ii) When emergency services personnel have determined that the permitholder is not a threat to the safety of any person present, including emergency services personnel, and if the permitholder is physically and mentally capable of possessing the handgun, the emergency services personnel shall return the handgun to the permitholder before releasing the permitholder from the scene and breaking contact. If the permitholder is transported for treatment to another location, the handgun shall be turned over to any peace officer. The peace officer shall provide a receipt which includes the make, model, caliber, and serial number of the handgun.

(4) For purposes of this section, contact with a peace officer means any time a peace officer personally stops, detains, questions, or addresses a permitholder for an official purpose or in the course of his or her official duties, and contact with emergency services personnel means any time emergency services personnel provide treatment to a permitholder in the course of their official duties.

Sec. 15. (1)(a) A permitholder may carry a concealed handgun anywhere in Nebraska, except any: Police, sheriff, or Nebraska State Patrol station or office; detention facility, prison, or jail; courtroom or building which contains a courtroom; polling place during a bona fide election; meeting of the governing body of a county, public school district, municipality, or other political subdivision; meeting of the Legislature or a committee of the Legislature; financial institution; professional, semiprofessional, or collegiate athletic event; school, school grounds, school-owned vehicle, or school-sponsored activity or athletic event; place of worship; emergency room or trauma center; political rally or fundraiser; establishment having a license issued under the Nebraska Liquor Control Act that derives over one-half of its total income from the sale of alcoholic liquor; place where the possession or carrying of a firearm is prohibited by state or federal law; a place or premises where the person, persons, entity, or entities in control of the property or employer in control of the property has prohibited permitholders from carrying concealed handguns into or onto the place or premises; or into or onto any other place or premises where handguns are prohibited by law or rule or regulation.

(b) A financial institution may authorize its security personnel to carry concealed handguns in the financial institution while on duty so long as each member of the security personnel, as authorized, is in compliance with the Concealed Handgun Permit Act and possesses a permit to carry a concealed handgun issued pursuant to the act.

(2) If a person, persons, entity, or entities in control of the property or an employer in control of the property prohibits a permitholder from carrying a concealed handgun into or onto the place or premises and such place or premises are open to the public, a permitholder does not violate this section unless the person, persons, entity, or entities in control of the property or employer in control of the property has posted conspicuous notice that carrying a concealed handgun is prohibited in or on the place or premises or has made a request, directly or through an authorized representative or management personnel, that the permitholder remove the concealed handgun from the place or premises. A permitholder carrying a concealed handgun in a vehicle into or onto any place or premises does not violate this section so long as the handgun is not removed from the vehicle while the vehicle is in or on the place or premises. An employer may prohibit employees or other persons who are permitholders from carrying concealed handguns in vehicles owned by the employer.

(3) A permitholder shall not carry a concealed handgun while he or she is consuming alcohol or while the permitholder has remaining in his or her blood, urine, or breath any previously consumed alcohol or any controlled substance as defined in section 28-401. A permitholder does not violate this subsection if the controlled substance in his or her blood, urine, or breath was lawfully obtained and was taken in therapeutically prescribed amounts.

Sec. 16. Any time the discharge of a handgun carried by a permitholder pursuant to the Concealed Handgun Permit Act results in injury to a person or damage to property, the permitholder shall make a report of such incident to the Nebraska State Patrol on a form designed and distributed by the Nebraska State Patrol. The information from the report shall be maintained as provided in section 18 of this act.

Sec. 17. (1) A permitholder who violates subsection (1) or (2) of section 14 of this act or section 15 or 16 of this act is guilty of a Class

III misdemeanor for the first violation and a Class I misdemeanor for any second or subsequent violation.

(2) A permit holder who violates subsection (3) of section 14 of this act is guilty of a Class I misdemeanor.

(3) A permit holder who violates this section shall also be subject to revocation of his or her permit under section 13 of this act.

Sec. 18. The Nebraska State Patrol shall maintain a listing of all applicants and permit holders and any pertinent information regarding such applicants and permit holders. The information shall be available upon request to all federal, state, and local law enforcement agencies. Information relating to an applicant or to a permit holder received or maintained pursuant to the Concealed Handgun Permit Act by the Nebraska State Patrol or any other law enforcement agency is confidential and shall not be considered a public record within the meaning of sections 84-712 to 84-712.09.

Sec. 19. Nothing in the Concealed Handgun Permit Act prevents a person from carrying a concealed weapon as permitted under section 28-1202.

Sec. 20. The Nebraska State Patrol may adopt and promulgate rules and regulations to carry out the Concealed Handgun Permit Act.

Sec. 21. (1) The Department of Motor Vehicles shall modify the existing system of the department to allow the status of a permit to carry a concealed handgun and the dates of issuance and expiration of such permit to be recorded on the permit holder's record provided for in section 60-483. The Nebraska State Patrol shall use the system to record the issuance or renewal of a permit to carry a concealed handgun. The transmission of notice of the issuance or renewal of such permit shall include the applicant's name, the applicant's motor vehicle operator's license number or state identification card number, and the dates of issuance and expiration of the permit to carry a concealed handgun.

(2) An abstract of a court record of every case in which a person's permit to carry a concealed handgun is revoked shall be transmitted to the Department of Motor Vehicles using the abstracting system provided for in section 60-497.01. Such abstract shall contain the name of the revoked permit holder, his or her motor vehicle operator's license number or state identification card number, and the date of revocation of the permit to carry a concealed handgun.

Sec. 22. Section 28-1202, Reissue Revised Statutes of Nebraska, is amended to read:

28-1202 (1)(a) Except as otherwise provided in subsection (2) of this section, any person who carries a weapon or weapons concealed on or about his or her person such as a revolver, pistol, bowie knife, dirk or knife with a dirk blade attachment, brass or iron knuckles, or any other deadly weapon commits the offense of carrying a concealed weapon.

~~(2) (b) It shall be is an affirmative defense that the defendant was engaged in any lawful business, calling, or employment at the time he or she was carrying any weapon or weapons and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons for the defense of his or her person, property, or family.~~

(2) This section does not apply to a person who is the holder of a valid permit issued under the Concealed Handgun Permit Act if the concealed weapon the defendant is carrying is a handgun as defined in section 3 of this act.

(3) Carrying a concealed weapon is a Class I misdemeanor.

(4) In the case of a second or subsequent conviction under this section, carrying a concealed weapon is a Class IV felony.

Sec. 23. This act becomes operative on January 1, 2007.

Sec. 24. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 25. Original section 28-1202, Reissue Revised Statutes of Nebraska, is repealed.