

AMENDMENTS TO LB77

Introduced by Brewer, 43.

1 1. Insert the following new sections:

2 Sec. 13. Section 28-1205, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 28-1205 (1)(a) Any person who uses a firearm, a knife, brass or iron
5 knuckles, or any other deadly weapon to commit any felony which may be
6 prosecuted in a court of this state commits the offense of use of a
7 deadly weapon to commit a felony.

8 (b) Use of a deadly weapon, other than a firearm, to commit a felony
9 is a Class II felony.

10 (c) Use of a deadly weapon, which is a firearm, to commit a felony
11 is a Class IC felony.

12 (2)(a) Any person who possesses a firearm, a knife, brass or iron
13 knuckles, or a destructive device during the commission of any felony
14 which may be prosecuted in a court of this state commits the offense of
15 possession of a deadly weapon during the commission of a felony.

16 (b) Possession of a deadly weapon, other than a firearm, during the
17 commission of a felony is a Class III felony.

18 (c) Possession of a deadly weapon, which is a firearm, during the
19 commission of a felony is a Class II felony.

20 (3)(a) Any person who carries a firearm or a destructive device
21 during the commission of a dangerous misdemeanor commits the offense of
22 carrying a firearm or destructive device during the commission of a
23 dangerous misdemeanor.

24 (b) A violation of this subsection is a:

25 (i) Class I misdemeanor for a first or second offense; and

26 (ii) A Class IV felony for any third or subsequent offense.

27 (4) A violation of this section ~~(3) The crimes defined in this~~

1 ~~section~~ shall be treated as a separate and distinct offense ~~offenses~~ from
2 the underlying crimes ~~felony~~ being committed, and a sentence ~~sentences~~
3 imposed under this section shall be consecutive to any other sentence
4 imposed.

5 ~~(5)~~ (4) Possession of a deadly weapon may be proved through evidence
6 demonstrating either actual or constructive possession of a firearm, a
7 knife, brass or iron knuckles, or a destructive device during,
8 immediately prior to, or immediately after the commission of a felony.

9 ~~(6)~~ (5) For purposes of this section:

10 (a) Dangerous misdemeanor means a misdemeanor violation of any of
11 the following offenses:

12 (i) Stalking under section 28-311.03;

13 (ii) Knowing violation of a harassment protection order under
14 section 28-311.09;

15 (iii) Knowing violation of a sexual assault protection order under
16 section 28-311.11;

17 (iv) Domestic assault under section 28-323;

18 (v) Assault of an unborn child in the third degree under section
19 28-399;

20 (vi) Theft by shoplifting under section 28-511.01;

21 (vii) Unauthorized use of a propelled vehicle under section 28-516;

22 (viii) Criminal mischief under section 28-519 if such violation
23 arises from an incident involving the commission of a misdemeanor crime
24 of domestic violence;

25 (ix) Impersonating a police officer under section 28-610;

26 (x) Resisting arrest under section 28-904;

27 (xi) Operating a motor vehicle or vessel to avoid arrest under
28 section 28-905;

29 (xii) Obstructing a peace officer under section 28-906;

30 (xiii) Knowing violation of a domestic abuse protection order under
31 section 42-924; or

1 (xiv) Any attempt under section 28-201 to commit an offense
2 described in subdivisions (6)(a)(i) through (xiii) of this section;

3 (b) (a) Destructive device has the same meaning as in section
4 28-1213;~~and~~

5 (c) Misdemeanor crime of domestic violence has the same meaning as
6 in section 28-1206; and

7 (d) (b) Use of a deadly weapon includes the discharge, employment,
8 or visible display of any part of a firearm, a knife, brass or iron
9 knuckles, any other deadly weapon, or a destructive device during,
10 immediately prior to, or immediately after the commission of a felony or
11 communication to another indicating the presence of a firearm, a knife,
12 brass or iron knuckles, any other deadly weapon, or a destructive device
13 during, immediately prior to, or immediately after the commission of a
14 felony, regardless of whether such firearm, knife, brass or iron
15 knuckles, deadly weapon, or destructive device was discharged, actively
16 employed, or displayed.

17 Sec. 15. Section 28-1354, Revised Statutes Cumulative Supplement,
18 2022, is amended to read:

19 28-1354 For purposes of the Public Protection Act:

20 (1) Enterprise means any individual, sole proprietorship,
21 partnership, corporation, trust, association, or any legal entity, union,
22 or group of individuals associated in fact although not a legal entity,
23 and shall include illicit as well as licit enterprises as well as other
24 entities;

25 (2) Pattern of racketeering activity means a cumulative loss for one
26 or more victims or gains for the enterprise of not less than one thousand
27 five hundred dollars resulting from at least two acts of racketeering
28 activity, one of which occurred after August 30, 2009, and the last of
29 which occurred within ten years, excluding any period of imprisonment,
30 after the commission of a prior act of racketeering activity;

31 (3) Until January 1, 2017, person means any individual or entity, as

1 defined in section 21-2014, holding or capable of holding a legal,
2 equitable, or beneficial interest in property. Beginning January 1, 2017,
3 person means any individual or entity, as defined in section 21-214,
4 holding or capable of holding a legal, equitable, or beneficial interest
5 in property;

6 (4) Prosecutor includes the Attorney General of the State of
7 Nebraska, the deputy attorney general, assistant attorneys general, a
8 county attorney, a deputy county attorney, or any person so designated by
9 the Attorney General, a county attorney, or a court of the state to carry
10 out the powers conferred by the act;

11 (5) Racketeering activity includes the commission of, criminal
12 attempt to commit, conspiracy to commit, aiding and abetting in the
13 commission of, aiding in the consummation of, acting as an accessory to
14 the commission of, or the solicitation, coercion, or intimidation of
15 another to commit or aid in the commission of any of the following:

16 (a) Offenses against the person which include: Murder in the first
17 degree under section 28-303; murder in the second degree under section
18 28-304; manslaughter under section 28-305; assault in the first degree
19 under section 28-308; assault in the second degree under section 28-309;
20 assault in the third degree under section 28-310; terroristic threats
21 under section 28-311.01; kidnapping under section 28-313; false
22 imprisonment in the first degree under section 28-314; false imprisonment
23 in the second degree under section 28-315; sexual assault in the first
24 degree under section 28-319; and robbery under section 28-324;

25 (b) Offenses relating to controlled substances which include: To
26 unlawfully manufacture, distribute, deliver, dispense, or possess with
27 intent to manufacture, distribute, deliver, or dispense a controlled
28 substance under subsection (1) of section 28-416; possession of marijuana
29 weighing more than one pound under subsection (12) of section 28-416;
30 possession of money used or intended to be used to facilitate a violation
31 of subsection (1) of section 28-416 prohibited under subsection (17) of

1 section 28-416; any violation of section 28-418; to unlawfully
2 manufacture, distribute, deliver, or possess with intent to distribute or
3 deliver an imitation controlled substance under section 28-445;
4 possession of anhydrous ammonia with the intent to manufacture
5 methamphetamine under section 28-451; and possession of ephedrine,
6 pseudoephedrine, or phenylpropanolamine with the intent to manufacture
7 methamphetamine under section 28-452;

8 (c) Offenses against property which include: Arson in the first
9 degree under section 28-502; arson in the second degree under section
10 28-503; arson in the third degree under section 28-504; burglary under
11 section 28-507; theft by unlawful taking or disposition under section
12 28-511; theft by shoplifting under section 28-511.01; theft by deception
13 under section 28-512; theft by extortion under section 28-513; theft of
14 services under section 28-515; theft by receiving stolen property under
15 section 28-517; criminal mischief under section 28-519; and unlawfully
16 depriving or obtaining property or services using a computer under
17 section 28-1344;

18 (d) Offenses involving fraud which include: Burning to defraud an
19 insurer under section 28-505; forgery in the first degree under section
20 28-602; forgery in the second degree under section 28-603; criminal
21 possession of a forged instrument under section 28-604; criminal
22 possession of written instrument forgery devices under section 28-605;
23 criminal impersonation under section 28-638; identity theft under section
24 28-639; identity fraud under section 28-640; false statement or book
25 entry under section 28-612; tampering with a publicly exhibited contest
26 under section 28-614; issuing a false financial statement for purposes of
27 obtaining a financial transaction device under section 28-619;
28 unauthorized use of a financial transaction device under section 28-620;
29 criminal possession of a financial transaction device under section
30 28-621; unlawful circulation of a financial transaction device in the
31 first degree under section 28-622; unlawful circulation of a financial

1 transaction device in the second degree under section 28-623; criminal
2 possession of a blank financial transaction device under section 28-624;
3 criminal sale of a blank financial transaction device under section
4 28-625; criminal possession of a financial transaction forgery device
5 under section 28-626; unlawful manufacture of a financial transaction
6 device under section 28-627; laundering of sales forms under section
7 28-628; unlawful acquisition of sales form processing services under
8 section 28-629; unlawful factoring of a financial transaction device
9 under section 28-630; and fraudulent insurance acts under section 28-631;

10 (e) Offenses involving governmental operations which include: Abuse
11 of public records under section 28-911; perjury or subornation of perjury
12 under section 28-915; bribery under section 28-917; bribery of a witness
13 under section 28-918; tampering with a witness or informant or jury
14 tampering under section 28-919; bribery of a juror under section 28-920;
15 assault on an officer, an emergency responder, a state correctional
16 employee, a Department of Health and Human Services employee, or a health
17 care professional in the first degree under section 28-929; assault on an
18 officer, an emergency responder, a state correctional employee, a
19 Department of Health and Human Services employee, or a health care
20 professional in the second degree under section 28-930; assault on an
21 officer, an emergency responder, a state correctional employee, a
22 Department of Health and Human Services employee, or a health care
23 professional in the third degree under section 28-931; and assault on an
24 officer, an emergency responder, a state correctional employee, a
25 Department of Health and Human Services employee, or a health care
26 professional using a motor vehicle under section 28-931.01;

27 (f) Offenses involving gambling which include: Promoting gambling in
28 the first degree under section 28-1102; possession of gambling records
29 under section 28-1105; gambling debt collection under section 28-1105.01;
30 and possession of a gambling device under section 28-1107;

31 (g) Offenses relating to firearms, weapons, and explosives which

1 include: Carrying a concealed weapon under section 28-1202;
2 transportation or possession of machine guns, short rifles, or short
3 shotguns under section 28-1203; unlawful possession of a handgun under
4 section 28-1204; unlawful transfer of a firearm to a juvenile under
5 section 28-1204.01; possession of a firearm by a prohibited juvenile
6 offender under section 28-1204.05; using a deadly weapon to commit a
7 felony, ~~or~~ possession of a deadly weapon during the commission of a
8 felony, or carrying a firearm or destructive device during the commission
9 of a dangerous misdemeanor under section 28-1205; possession of a deadly
10 weapon by a prohibited person under section 28-1206; possession of a
11 defaced firearm under section 28-1207; defacing a firearm under section
12 28-1208; unlawful discharge of a firearm under section 28-1212.02;
13 possession, receipt, retention, or disposition of a stolen firearm under
14 section 28-1212.03; unlawful possession of explosive materials in the
15 first degree under section 28-1215; unlawful possession of explosive
16 materials in the second degree under section 28-1216; unlawful sale of
17 explosives under section 28-1217; use of explosives without a permit
18 under section 28-1218; obtaining an explosives permit through false
19 representations under section 28-1219; possession of a destructive device
20 under section 28-1220; threatening the use of explosives or placing a
21 false bomb under section 28-1221; using explosives to commit a felony
22 under section 28-1222; using explosives to damage or destroy property
23 under section 28-1223; and using explosives to kill or injure any person
24 under section 28-1224;

25 (h) Any violation of the Securities Act of Nebraska pursuant to
26 section 8-1117;

27 (i) Any violation of the Nebraska Revenue Act of 1967 pursuant to
28 section 77-2713;

29 (j) Offenses relating to public health and morals which include:
30 Prostitution under section 28-801; pandering under section 28-802;
31 keeping a place of prostitution under section 28-804; labor trafficking,

1 sex trafficking, labor trafficking of a minor, or sex trafficking of a
2 minor under section 28-831; a violation of section 28-1005; and any act
3 relating to the visual depiction of sexually explicit conduct prohibited
4 in the Child Pornography Prevention Act; and

5 (k) A violation of the Computer Crimes Act;

6 (6) State means the State of Nebraska or any political subdivision
7 or any department, agency, or instrumentality thereof; and

8 (7) Unlawful debt means a debt of at least one thousand five hundred
9 dollars:

10 (a) Incurred or contracted in gambling activity which was in
11 violation of federal law or the law of the state or which is
12 unenforceable under state or federal law in whole or in part as to
13 principal or interest because of the laws relating to usury; or

14 (b) Which was incurred in connection with the business of gambling
15 in violation of federal law or the law of the state or the business of
16 lending money or a thing of value at a rate usurious under state law if
17 the usurious rate is at least twice the enforceable rate.

18 2. On page 15, strike lines 3 through 7 and insert the following new
19 subdivisions:

20 "(11)(a) Prohibited person means:

21 (i) A person prohibited from possessing a firearm or ammunition by
22 state law, including, but not limited to, section 28-1206; or

23 (ii) A person prohibited from possessing a firearm or ammunition by
24 18 U.S.C. 922(d) or (g), as such section existed on January 1, 2023.

25 (b) This definition does not apply to the use of the term prohibited
26 person in section 28-1206;".

27 3. On page 24, line 9, strike beginning with "and" through "second"
28 and insert ", a Class I misdemeanor for a second offense, and a Class IV
29 felony for a third".

30 4. Renumber the remaining sections and correct the repealer
31 accordingly.