

AMENDMENTS TO LB77
(Amendments to AM56)

Introduced by Brewer, 43.

1 1. Strike amendments 1, 2, and 3 and insert the following new
2 amendments:

3 1. Insert the following new sections:

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

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

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

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

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

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

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

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

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

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

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

3 (4) A violation of this section ~~(3) The crimes defined in this~~
4 ~~section~~ shall be treated as a separate and distinct offense ~~offenses~~ from
5 the underlying crimes ~~felony~~ being committed, and a sentence ~~sentences~~
6 imposed under this section shall be consecutive to any other sentence
7 imposed.

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

12 (6) (5) For purposes of this section:

13 (a) Dangerous misdemeanor means a misdemeanor violation of any of
14 the following offenses:

15 (i) Stalking under section 28-311.03;

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

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

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

21 (v) Assault of an unborn child in the third degree under section
22 28-399;

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

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

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

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

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

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

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

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

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

6 (b) (a) Destructive device has the same meaning as in section
7 28-1213; and

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

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

20 Sec. 15. Section 28-1354, Revised Statutes Cumulative Supplement,
21 2022, is amended to read:

22 28-1354 For purposes of the Public Protection Act:

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

28 (2) Pattern of racketeering activity means a cumulative loss for one
29 or more victims or gains for the enterprise of not less than one thousand
30 five hundred dollars resulting from at least two acts of racketeering
31 activity, one of which occurred after August 30, 2009, and the last of

1 which occurred within ten years, excluding any period of imprisonment,
2 after the commission of a prior act of racketeering activity;

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

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

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

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

28 (b) Offenses relating to controlled substances which include: To
29 unlawfully manufacture, distribute, deliver, dispense, or possess with
30 intent to manufacture, distribute, deliver, or dispense a controlled
31 substance under subsection (1) of section 28-416; possession of marijuana

1 weighing more than one pound under subsection (12) of section 28-416;
2 possession of money used or intended to be used to facilitate a violation
3 of subsection (1) of section 28-416 prohibited under subsection (17) of
4 section 28-416; any violation of section 28-418; to unlawfully
5 manufacture, distribute, deliver, or possess with intent to distribute or
6 deliver an imitation controlled substance under section 28-445;
7 possession of anhydrous ammonia with the intent to manufacture
8 methamphetamine under section 28-451; and possession of ephedrine,
9 pseudoephedrine, or phenylpropanolamine with the intent to manufacture
10 methamphetamine under section 28-452;

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

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

1 criminal possession of a financial transaction device under section
2 28-621; unlawful circulation of a financial transaction device in the
3 first degree under section 28-622; unlawful circulation of a financial
4 transaction device in the second degree under section 28-623; criminal
5 possession of a blank financial transaction device under section 28-624;
6 criminal sale of a blank financial transaction device under section
7 28-625; criminal possession of a financial transaction forgery device
8 under section 28-626; unlawful manufacture of a financial transaction
9 device under section 28-627; laundering of sales forms under section
10 28-628; unlawful acquisition of sales form processing services under
11 section 28-629; unlawful factoring of a financial transaction device
12 under section 28-630; and fraudulent insurance acts under section 28-631;

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

30 (f) Offenses involving gambling which include: Promoting gambling in
31 the first degree under section 28-1102; possession of gambling records

1 under section 28-1105; gambling debt collection under section 28-1105.01;
2 and possession of a gambling device under section 28-1107;

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

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

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

1 (j) Offenses relating to public health and morals which include:
2 Prostitution under section 28-801; pandering under section 28-802;
3 keeping a place of prostitution under section 28-804; labor trafficking,
4 sex trafficking, labor trafficking of a minor, or sex trafficking of a
5 minor under section 28-831; a violation of section 28-1005; and any act
6 relating to the visual depiction of sexually explicit conduct prohibited
7 in the Child Pornography Prevention Act; and

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

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

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

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

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

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

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

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

26 (ii) A person prohibited from possessing a firearm or ammunition by
27 18 U.S.C. 922(d) or (g), as such section existed on January 1, 2023.

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

30 3. On page 24, line 9, strike beginning with "and" through "second"
31 and insert ", a Class I misdemeanor for a second offense, and a Class IV

1 felony for a third".

2 4. Renumber the remaining sections and correct the repealer
3 accordingly.