

AMENDMENTS TO LB289  
(Amendments to E&R amendments, ER39)

Introduced by Morfeld, 46.

1           1. Strike original sections 10 and 14 and insert the following new  
2 sections:

3           Sec. 10. Section 28-1206, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           28-1206 (1) A person commits the offense of possession of a deadly  
6 weapon by a prohibited person if he or she:

7           (a) Possesses ~~Any person who possesses~~ a firearm, a knife, or brass  
8 or iron knuckles and he or she:

9           (i) Has ~~who has~~ previously been convicted of a felony;

10          (ii) Is ~~, who is~~ a fugitive from justice;

11          (iii) Is ~~, or who is~~ the subject of a current and validly issued  
12 domestic violence protection order,

13 harassment protection order, or sexual assault protection order and is  
14 knowingly violating such order; or

15          (b) Possesses ~~, or (b) any person who possesses~~ a firearm or brass  
16 or iron knuckles and he or she ~~who~~ has been convicted within the past  
17 seven years of a misdemeanor crime of domestic violence, ~~commits the~~  
18 ~~offense of possession of a deadly weapon by a prohibited person.~~

19          (2) The felony conviction may have been had in any court in the  
20 United States, the several states, territories, or possessions, or the  
21 District of Columbia.

22          (3)(a) Possession of a deadly weapon which is not a firearm by a  
23 prohibited person is a Class III felony.

24          (b) Possession of a deadly weapon which is a firearm by a prohibited  
25 person is a Class ID felony for a first offense and a Class IB felony for  
26 a second or subsequent offense.

1           ~~(4)(a) (4)(a)(i)~~ For purposes of this section, misdemeanor crime of  
2 domestic violence means a crime that:

3           ~~(i) Is (A)(I) A crime that is~~ classified as a misdemeanor under the  
4 laws of the United States or the District of Columbia or the laws of any  
5 state, territory, possession, or tribe;

6           ~~(ii) Has (II) A crime that has,~~ as an element, the use or attempted  
7 use of physical force or the threatened use of a deadly weapon; and

8           ~~(iii) Is (III) A crime that is~~ committed by another against his or  
9 her spouse, his or her former spouse, a person with whom he or she has a  
10 child in common whether or not they have been married or lived together  
11 at any time, or a person with whom he or she is or was involved in a  
12 dating relationship as defined in section 28-323. ~~;~~ ~~or~~

13           ~~(b) For purposes of this section, misdemeanor crime of domestic~~  
14 violence also includes the following offenses, if committed by a person  
15 against his or her spouse, his or her former spouse, a person with whom  
16 he or she is or was involved in a dating relationship as defined in  
17 section 28-323, or a person with whom he or she has a child in common  
18 whether or not they have been married or lived together at any time:

19           ~~(i) (B)(I) Assault in the third degree under section 28-310;~~ ~~τ~~

20           ~~(ii) Stalking~~ ~~stalking~~ under subsection (1) of section 28-311.04; ~~τ~~

21           ~~(iii) False~~ ~~false~~ imprisonment in the second degree under section  
22 28-315; ~~τ~~

23           ~~(iv) First~~ ~~or first~~ offense domestic assault in the third degree  
24 under subsection (1) of section 28-323; ~~or~~

25           ~~(v) Any~~ ~~any~~ attempt or conspiracy to commit ~~any~~ ~~one~~ of ~~such~~ these  
26 offenses. ~~;~~ ~~and~~

27           ~~(II) The crime is committed by another against his or her spouse,~~  
28 ~~his or her former spouse, a person with whom he or she has a child in~~  
29 ~~common whether or not they have been married or lived together at any~~  
30 ~~time, or a person with whom he or she is or was involved in a dating~~  
31 ~~relationship as defined in section 28-323.~~

1           (c) ~~(ii)~~ A person shall not be considered to have been convicted of  
2 a misdemeanor crime of domestic violence unless:

3           (i) ~~(A)~~ The person was represented by counsel in the case or  
4 knowingly and intelligently waived the right to counsel in the case; and

5           (ii) ~~(B)~~ In the case of a prosecution for a misdemeanor crime of  
6 domestic violence for which a person was entitled to a jury trial in the  
7 jurisdiction in which the case was tried, either:

8           (A) ~~(I)~~ The case was tried to a jury; or

9           (B) ~~(II)~~ The person knowingly and intelligently waived the right to  
10 have the case tried to a jury.

11           (5) ~~(b)~~ For purposes of this section:

12           (a) Domestic ~~, subject of a current and validly issued domestic~~  
13 violence protection order means a protection order ~~pertains to a current~~  
14 court order that was validly issued pursuant to section 28-311.09 or  
15 42-924;

16           (b) Harassment protection order means a protection order issued  
17 pursuant to section 28-311.09 or that meets or exceeds the criteria set  
18 forth in section 28-311.10 regarding protection orders issued by a court  
19 in any other state or a territory, possession, or tribe; and -

20           (c) Sexual assault protection order means a protection order issued  
21 pursuant to section 4 of this act or that meets or exceeds the criteria  
22 set forth in section 5 of this act regarding protection orders issued by  
23 a court in any other state or a territory, possession, or tribe.

24           Sec. 14. Section 42-924, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26           42-924 (1) Any victim of domestic abuse may file a petition and  
27 affidavit for a protection order as provided in subsections ~~subsection~~

28 (2) and (3) of this section. Upon the filing of such a petition and  
29 affidavit in support thereof, the court may issue a protection order  
30 without bond granting the following relief:

31           (a) Enjoining the respondent from imposing any restraint upon the

1 petitioner or upon the liberty of the petitioner;

2 (b) Enjoining the respondent from threatening, assaulting,  
3 molesting, attacking, or otherwise disturbing the peace of the  
4 petitioner;

5 (c) Enjoining the respondent from telephoning, contacting, or  
6 otherwise communicating with the petitioner;

7 (d) Removing and excluding the respondent from the residence of the  
8 petitioner, regardless of the ownership of the residence;

9 (e) Ordering the respondent to stay away from any place specified by  
10 the court;

11 (f) Awarding the petitioner temporary custody of any minor children  
12 not to exceed ninety days;

13 (g) Enjoining the respondent from possessing or purchasing a firearm  
14 as defined in section 28-1201; or

15 (h) Ordering such other relief deemed necessary to provide for the  
16 safety and welfare of the petitioner and any designated family or  
17 household member.

18 (2) Petitions for protection orders shall be filed with the clerk of  
19 the district court, and the proceeding may be heard by the county court  
20 or the district court as provided in section 25-2740. A petition for a  
21 protection order may not be withdrawn except upon order of the court.

22 ~~(3)(a) A protection~~ ~~(3) A petition filed pursuant to subsection (1)~~  
23 ~~of this section may not be withdrawn except upon order of the court. An~~  
24 ~~order issued pursuant to subsection (1) of this section shall specify~~  
25 that it is effective for a period of one year and, if the order grants  
26 temporary custody, the number of days of custody granted to the  
27 petitioner unless otherwise modified by the court.

28 (b) Any victim of domestic abuse may file a petition and affidavit  
29 to renew a protection order. Such petition and affidavit for renewal  
30 shall be filed on or after thirty days before the expiration of the  
31 previous protection order. Such renewed order shall specify that it is

1 effective for a period of one year to commence on the first day following  
2 the expiration of the previous order and, if the court grants temporary  
3 custody, the number of days of custody granted to the petitioner unless  
4 otherwise modified by the court.

5 (4) Any person who knowingly violates a protection order issued  
6 pursuant to ~~subsection (1)~~ of this section or section 42-931 after  
7 service or notice as described in subsection (2) of section 42-926 shall  
8 be guilty of a Class I misdemeanor, except that any person convicted of  
9 violating such order who has a prior conviction for violating a  
10 protection order shall be guilty of a Class IV felony.

11 (5) If there is any conflict between sections 42-924 to 42-926 and  
12 any other provision of law, sections 42-924 to 42-926 shall govern.