

MARCH 10, 2007

## NEBRASKA

### I. Automatic Restoration of Rights:

Vote: Neb. Rev. Stat. § 29-112 provides that civil rights are lost upon conviction of a felony. The right to vote is restored automatically two years after completion of sentence, including any period of parole. *Id.* Out-of-state offenders lose the right to vote and other civil rights in Nebraska only if they have been imprisoned for an offense that would be punishable by imprisonment under Nebraska law. § 29-113. Right to vote restored to out-of-state offenders on same terms as Nebraska offenders. *Id.* See also § 29-2264 (vote restored to probationers two years after discharge).\*

Other civil rights are restored only by a “warrant of discharge” issued by the Board of Pardons. Neb. Rev. Stat. § 29-112. Section 29-112.01 provides that such warrant “shall be issued by such board upon receiving from the sentencing court a certificate showing satisfaction of the judgment and sentence entered against such person.” See also § 83-1,118(5) (“Upon completion of the lawful requirements of the sentence, the department shall provide the parolee or committed offender with a written notice regarding his or her civil rights. The notice shall inform the parolee or committed offender that voting rights are restored two years after completion of the sentence. The notice shall also include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.”).

Firearms rights (long guns and hand guns) lost upon conviction of felony. Neb. Rev. Stat. §§ 28-1206(1), (2). Firearms rights may be regained only if Board of Pardons empowers the governor to expressly authorize a pardoned individual to receive, possess, or transport guns in commerce. § 83-1,130(2).

### II. Discretionary Restoration Mechanisms:

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\* Prior to March 11, 2005, all felony offenders were required to obtain a pardon before voting. See Neb. Rev. Stat. § 29-211 (2004). See also *Ways v. Shively*, 646 N.W.2d 621 (Neb. 2002). In the *Shively* decision, the Supreme Court of Nebraska construed § 29-112 together with § 83-1118(5) (2002) (a committed prisoner is issued a certificate of discharge upon release from confinement by the Director of Correctional Services, which, according to the *Shively* Court, “shall restore the civil rights of the offender”), and concluded that the legislative delegation in § 83-1118(5) conflicted with the constitutional pardon power of the Board of Pardons. Following the *Shively* decision, § 29-211 was amended to make clear that pardon is the exclusive means of restoring civil rights. It was amended again in 2005 to restore the right to vote automatically to all offenders two years following completion of sentence. See Legislative Bill 53 (March 5, 2005), [http://srvwww.unicam.state.ne.us/current/final/FINAL\\_LB53\\_1.pdf](http://srvwww.unicam.state.ne.us/current/final/FINAL_LB53_1.pdf).

A. Executive pardon:

- *Authority:* The authority to grant pardons is vested in the Board of Pardons, which is composed of the Governor, Secretary of State and Attorney General. Neb. Const. art. IV, § 13; Neb. Rev. Stat. § 83-1,126 et seq. Governor acts as chair. The scope of the pardon power is set forth in § 83-170(10). The Board of Pardons is not subject to the Nebraska Administrative Procedures Act, and its constitutional powers cannot be limited or modified by any act of the legislature or of the Nebraska courts. The Board has the power to (1) remit fines and forfeitures, (2) grant respites, (3) grant reprieves, (4) grant pardons, and (5) grant commutations, in all cases of conviction for offenses against the laws of the State of Nebraska, except for treason and cases of impeachment. Board of Parole may advise the Board of Pardon, but its advice is not binding. § 83-194; *see also* 270 Neb. Admin. Code ch. 3, § 009.
- *Eligibility:* 10 years from final discharge, including payment of fine, for felonies, three years for misdemeanors. *See* Instructions for Filing Out Application for Pardon, <http://www.pardons.state.ne.us/content/instructions1> (“The usual practice in the granting of pardons is to hear only those felony cases where approximately ten (10) years has elapsed and those misdemeanor cases where approximately three (3) years has elapsed with no further contact with the law. Only unusual circumstances will cause the Board to deviate from this practice.”). Misdemeanants also eligible. Persons convicted under federal law or the laws of another state are ineligible for a gubernatorial pardon or a discharge, and thus may not regain their civil rights unless pardoned in the jurisdiction of conviction. Neb. Rev. Stat. § 29-113.
- *Effect:* A pardon restores civil rights lost due to a felony conviction, including the right to be a juror, the right to hold public office, the right to bear arms, and the right to hold certain licenses (Liquor and Public Health and Welfare Licenses). *See* <http://www.pardons.state.ne.us/faq.html>. A felony offender may regain firearm privileges only if the Board of Pardons empowers the Governor to expressly authorize the individual to receive, possess, or transport in commerce a firearm. Neb. Rev. Stat. § 83-1,130(2). It is not clear whether a person convicted in another state regains state firearms privileges in Nebraska if he receives a pardon from the state of conviction.
- *Process:* Hearing on the record, majority vote. *See* Neb. Rev. Stat. § 83-1,128 for powers of Board. Board holds open hearings quarterly. Neb. Bd. Pardons Guidelines § 003.01, *available at* [http://www.pardons.state.ne.us/content/app\\_guidelines.html](http://www.pardons.state.ne.us/content/app_guidelines.html). General policy that Board will not grant pardon without a hearing, held pursuant to Nebraska Public Meetings Act. *Id.* § 004.02. Two-step process: Board first meets publicly to decide whether to grant a full hearing; second stage is full public hearing. *See* <http://www.pardons.state.ne.us/agenda.html>. Board has subpoena power, and perjury before the Board subject to criminal penalties. Neb. Rev. Stat. § 83-1,128. Hearing must be informal, but complete record

kept. § 83-1,129(3). Victim must be notified. Neb. Bd. Pardons Guidelines § 004.04. The Board's decision will be by majority vote. The Board may, after a pardon has been granted for a felony offense, empower the Governor to expressly authorize such person to receive, possess or transport in commerce, a firearm. Neb. Rev. Stat. § 83-1,130(2). No provision for giving reasons. Application form at: <http://www.pardons.state.ne.us/pardons.html>.

- *Frequency of Grants*: Applications have risen dramatically since 9/11- In 2004, 145 cases heard, 69 granted; in 2003, 120 cases heard, 69 granted. Pattern of granting about half applications has held for past few years (in 2001, 38 of 64; in 2002, 56 of 84). Since 1993, 815 persons have applied for a pardon, of which 42% (343) have been granted one. About 1/3 of applications are from misdemeanants. Presumably these numbers will go down now that the legislation has been passed restoring the right to vote automatically. Source: Nebraska Pardon Board.
- *Contact*: <http://www.pardons.state.ne.us/>. Sonya Fauver, Nebraska Pardon Board – 402-479-5726. [SFauver@dcs.state.ne.us](mailto:SFauver@dcs.state.ne.us)

#### B. Judicial sealing or expungement of adult felony convictions:

- *Set-aside for probationers*: Neb. Rev. Stat. §§ 29-2264(4)(a) and (b) permit an offender sentenced to probation, or to pay a fine only, to petition the sentencing court to set aside the conviction, which has the effect of “nullifying” the conviction and removing “all civil disabilities and disqualifications imposed as a result of the conviction.” *See also* § 29-2264(1) (order on completion of probation “shall include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons”). This procedure was upheld against constitutional challenge by the Nebraska Supreme Court in *State v. Spady*, 645 N.W.2d 539 (Neb. 2002). Apparently, a set-aside under § 2264(4) does not result in sealing or expungement of the record. Nor does it result in restoration of civil rights, which is exclusive purview of Pardon Board. *See id.*; *see also* <http://www.pardons.state.ne.us/faq.html>.
- *Nonconviction records*: Criminal history information that has not resulted in a prosecution after a period of one year may not be disseminated except to law enforcement agencies; arrest records resulting from law enforcement “error” may be “expunged” by a court “upon proof by clear and convincing evidence.” Neb. Rev. Stat. § 29-3523.

### III. **Nondiscrimination in Licensing and Employment: N/A**

Nebraska has no general law regulating consideration of conviction in employment or licensure. It does apply a direct relationship test in connection with franchise licenses. *See* Neb. Rev. Stat. § 87-404 (franchise termination protections inapplicable when “the

alleged grounds are (a) the conviction . . . of an indictable offense directly related to the business”).