

Firearm Laws in Nebraska



A Legislative Research Office Backgrounder



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Prepared by

Kate Gaul
Research Analyst

Designed by

Logan Seacrest
Research Analyst

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Table of Contents

Introduction.....2

The U.S. and Nebraska Constitutions.....3

Understanding the Terminology.....4

Federal Gun Law—Providing the Framework.....5

Purchasing a Handgun in Nebraska.....7

Nebraska Concealed Carry Permits.....9

Justification for the Use of Force.....12

Other Nebraska Firearm Laws.....13

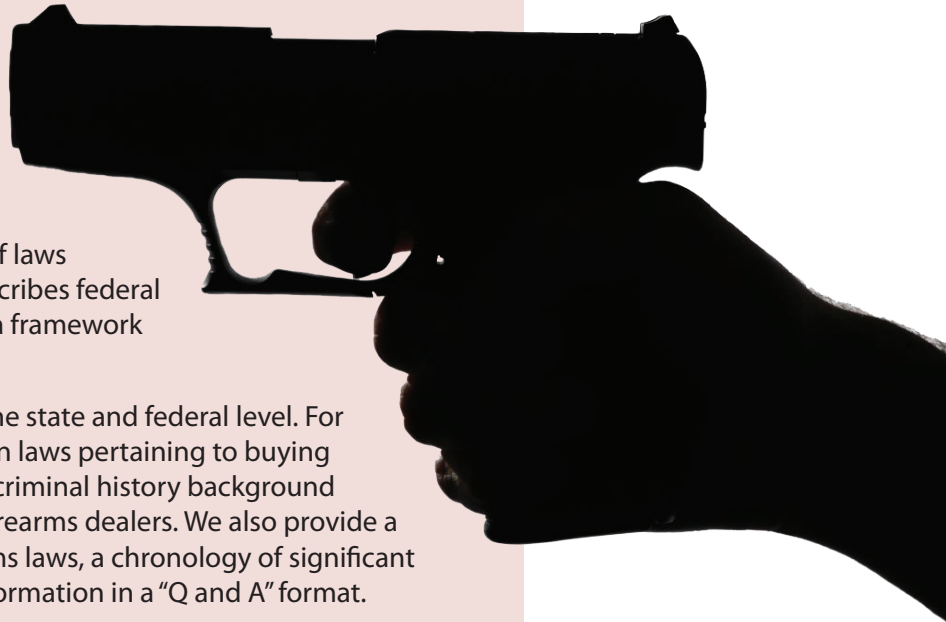
Firearm Law FAQ.....16

Appendix A: History of Federal Firearm Acts.....18

Appendix B: Firearm Legislation
Introduced in the 104th Legislature.....19



Introduction



This Backgrounder provides an overview of laws governing firearms in Nebraska. It also describes federal firearm laws to the extent they constitute a framework for state law.

Firearms are governed by myriad laws at the state and federal level. For purposes of this Backgrounder, we focus on laws pertaining to buying handguns, carrying concealed handguns, criminal history background checks, and the role of federally licensed firearms dealers. We also provide a reference guide to Nebraska's other firearms laws, a chronology of significant federal law, and supplemental firearms information in a "Q and A" format.

This Backgrounder is not intended to take a position on the ownership, possession, sale, or use of firearms—issues many find polarizing—nor to offer legal advice. In writing this report, we have endeavored to be neutral on firearms while providing information during a time when the debate over firearms has intensified.

As evidence, at least 20 proposals pertaining to firearms were pending before the Legislature in 2016. (A list of the proposals can be found in Appendix B.) We hope senators, in debating firearm issues, will find the information contained in this report to be a useful, introductory guide to Nebraska's firearm laws.

The content of this report relies on state and federal laws and supplemental material produced by the FBI and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In addition, several individuals aided our understanding of the nuances of firearm laws. In particular, we would like to thank Nebraska State Patrol Captain Mike Jahnke and Jeff Avey, records analysis supervisor, criminal identification division of the patrol.

If you have further questions about firearms, or any area of legislative interest, please contact the Legislative Research Office, 402-471-2221.



The U.S. and Nebraska Constitutions



Gun law begins with the U.S. Constitution. Among the rights guaranteed to the people by the framers is the Second Amendment:

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

Scholars, pundits, and average Janes and Joes certainly differ on what this means, but the U.S. Supreme Court in 2008 and 2010¹ affirmed that the Second Amendment protects a fundamental individual right to possess a firearm unconnected with service in a militia and to use that firearm for lawful purposes, such as self-defense within the home. However, this right is not absolute.

The court specifically noted longstanding prohibitions on the possession of firearms by felons and the mentally ill, restrictions on carrying firearms in sensitive places such as schools and government buildings, and laws imposing conditions and qualifications on the commercial sale of

firearms as remaining constitutionally permissible.

Article I, sec. 1, of the Nebraska Constitution guarantees the right to keep and bear arms “for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes.” The language was adopted by voters in 1988.

Under this constitutional umbrella, both federal and state law govern how we buy, sell, and transport firearms. Generally, federal law governs the licensing of firearms dealers, importers, and manufacturers; interstate transport of firearms; and the taxation and registration of certain firearms. Federal law also circumscribes certain categories of persons who cannot possess firearms and prohibits outright the transfer and possession of certain firearms.

Nebraska law imposes specific requirements on buying, selling, and carrying handguns, including issuing permits to buy handguns and permits to carry concealed handguns. The remainder of state law primarily relates to firearms used in various criminal activity or for lawful hunting, but also includes a host of unrelated laws, including measures that protect urban shooting ranges and require law enforcement officers to prove handgun proficiency. (A brief description of those laws begins on page 13.)

1. *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. the City of Chicago*, 561 U.S. 3025 (2010).



Understanding the Terminology

An understanding of firearm laws begins with the terminology. Firearms can be divided into two broad categories, handguns and long guns. The distinction is important in Nebraska because the state regulates handguns to a much greater degree than long guns. For purposes of this report, we use the term “gun” and “firearm” interchangeably. When a distinction between handguns and long guns is necessary, those precise terms are used. The following terms are defined in Nebraska law.



A firearm is “any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon.”²

Handguns are “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.”³



Antique handguns or pistols are specifically exempted from the state’s handgun laws. To qualify as antique, handguns or pistols must have been made before 1898 or be a replica of an antique handgun or pistol made before 1898. If a replica, the guns must be designed so as to be unable to fire modern ammunition.⁴



Machine guns are defined as “any firearm, regardless of size and designation, which by a single pull of the trigger, shoots automatically more than one shot without manual reloading.”⁵ Federal law makes it illegal for civilians to own machine guns manufactured after 1986.



A short rifle is a rifle whose barrel is less than 16 inches long or whose overall length is less than 26 inches; a **short shotgun** is a shotgun whose barrel or barrels measure less than 18 inches long or whose overall length is less than 26 inches.⁶



Long guns include **rifles** and shotguns, firearms historically associated with hunting and sport shooting. Long guns are not specifically defined in Nebraska statutes.

2. Neb. Rev. Stat. sec. 28-1201(1).

3. Neb. Rev. Stat. secs. 28-1201(3) and 69-2402(4).

4. Neb. Rev. Stat. sec. 69-2402.

5. Neb. Rev. Stat. sec. 28-1201(7)

6. Neb. Rev. Stat. sec. 28-1201(9) and (10).



Federal Gun Law—Providing the Framework

Federal law provides a framework for state law, particularly as it pertains to buying and selling firearms. The primary federal gun laws are the Gun Control Act (18 U.S.C. 44) and the National Firearms Act (26 U.S.C. 55). Following is a brief, general discussion of current federal law.⁷

Licensing Firearms Dealers

A firearms dealer is a “person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.”⁸

Federal law requires all persons who deal in firearms to be licensed. They are statutorily termed “federal firearms licensees.” Individuals who make occasional sales or purchases of firearms as a hobby or who sell all or part of a personal collection of firearms are not dealers under federal law and are not, therefore, licensed. The law does not impose a numerical requirement by which a seller moves from hobbyist to firearms dealer, but instead relies on such factors as frequency of sales over time and how the seller represents himself or herself to buyers. Federally licensed firearms dealers must:

- Initiate criminal history background checks on purchasers;
- Maintain records on firearms purchases;
- Report multiple sales of handguns (two or more handguns to the same person within five consecutive business days);
- Report theft or loss of any firearm under their control to the U.S. Attorney General and local officials; and
- Provide secure gun storage or safety device with every gun purchase.

Dealers must verify buyers are not prohibited by federal, state, or local law from purchasing guns. Doing this requires that dealers (1) check buyers’ government-issued photo identification, (2) have buyers complete and sign a firearms transaction record, and (3) contact the National Instant Criminal Background Check System (NICS) through either the FBI or a state point of contact.

Firearms Transaction Record

The firearms transaction record, commonly known as Form 4473, asks a prospective purchaser to provide name, residence, ethnicity, age, and gender, and answer a series of questions designed to elicit whether his or her firearms purchase is prohibited under federal or state law. Form 4473 was developed by the ATF and must be filled out for every firearms transaction that involves a federal firearms licensee. Dealers must maintain copies of the completed forms for at least 20 years.

Completed forms are not considered public records. Government agencies have access to the forms under limited circumstances, such as part of a criminal investigation, because federal law prohibits the U.S. government from maintaining a registry of gun owners.

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

OMB No. 1140-0020

Firearms Transaction Record Part 1 - Over-the-Counter

WARNING: You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. §§ 921 et. seq., are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine.

Transferor's Transaction Serial Number (If any)

Prepare in original only. All entries must be handwritten in ink. Read the Notices, Instructions, and Definitions on this form. "PLEASE PRINT."

Section A - Must Be Completed Personally By Transferee (Buyer)

1. Transferee's Full Name
Last Name First Name Middle Name (If no middle name, state "NMN")

2. Current Residence Address (U.S. Postal abbreviations are acceptable. Cannot be a post office box.)
Number and Street Address City County State ZIP Code

3. Place of Birth
U.S. City and State -OR- Foreign Country

4. Height
Ft. In.

5. Weight
(Lbs.)

6. Gender
 Male Female

7. Birth Date
Month Day Year

8. Social Security Number (Optional, but will help prevent misidentification)

9. Unique Personal Identification Number (UPIN) if applicable (See Instructions for Question 9.)

10.a. Ethnicity
 Hispanic or Latino Not Hispanic or Latino

10.b. Race (Check one or more boxes.)
 American Indian or Alaska Native Black or African American White
 Asian Native Hawaiian or Other Pacific Islander

11. Answer questions 11.a. (see exceptions through 11.i and 12 (if applicable) by checking or marking "yes" or "no" in the boxes to the right of the questions.

a. Are you the actual transferee/buyer of the firearm(s) listed on this form? **Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you.** (See Instructions for Question 11.a.) Exception: If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.

b. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year? (See Instructions for Question 11.b.)

c. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? (See Instructions for Question 11.c.)

d. Are you a fugitive from justice?

e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?

f. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution? (See Instructions for Question 11.f.)

g. Have you been discharged from the Armed Forces under dishonorable conditions?

h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? (See Instructions for Question 11.h.)

i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? (See Instructions for Question 11.i.)

j. Have you ever renounced your United States citizenship?

k. Are you an alien illegally in the United States?

l. Are you an alien admitted to the United States under a nonimmigrant visa? (See Instructions for Question 11.l.) If you answered "no" to this question, do NOT respond to question 12 and proceed to question 13.

12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? (If "yes," the licensee must complete question 20c.) (See Instructions for Question 12.) If question 11.l is answered with a "no" response, then do NOT respond to question 12 and proceed to question 13.

13. What is your State of residence (if any)? (See Instructions for Question 13.)

14. What is your country of citizenship? (List/Check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.) United States of America Other (Specify)

15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?

Note: Previous Editions Are Obsolete
Page 1 of 6

Transferee (Buyer) Continue to Next Page
STAPLE IF PAGES BECOME SEPARATED

ATF Form 4473 (5100-9) Part 1
Revised April 2012

A copy of Form 4473.

7. For a chronology of major federal law, see Appendix A.

8. 18 U.S.C. sec. 921(a)(21)(C).



Federal Criminal Background Check

Enactment of the federal Brady Act in 1993 set into place the National Instant Criminal Background Check System (NICS). The act also provided states the option of developing an alternative background check using a state point of contact. The alternate system must be approved by the ATF and, once approved, can be used by dealers in those states in lieu of performing a NICS background check.

Nebraska has a split system for authorizing firearms transactions, having developed an alternative permit system for the sale of handguns.

When a dealer or the state point of contact initiates a NICS background check, a name and descriptor search is conducted to identify any matching records in three national databases managed by the FBI Criminal Justice Information Services Division. Federal law prohibits the transfer of firearms to the following classes of individuals who cannot ship, transport, receive, or possess firearms:

- Persons convicted of a crime punishable by imprisonment for a term exceeding one year, even if the person received a shorter sentence;
- Fugitives from justice;
- Unlawful users of controlled substances and persons addicted to controlled substances;
- Persons who are adjudicated mentally defective or involuntarily committed to a mental institution;
- Persons unlawfully in the United States;
- Persons dishonorably discharged from the U.S. Armed Forces;
- Persons who have renounced their U.S. citizenship;

- Persons who are the subject of domestic protection orders;
- Persons convicted of a misdemeanor crime of domestic violence; and
- Persons under indictment for a crime punishable by imprisonment for a term exceeding one year.

Additionally, the NICS background check scrutinizes state and local records to prevent sales that violate laws in the purchaser's state of residence or laws in the state where the sale occurs, if different from the purchaser's home state. Finally, federal law imposes a minimum age of 18 for the purchase of long guns and long-gun ammunition and a minimum age of 21 for handguns and handgun ammunition.

Private transactions are exempt from the background check and record-keeping requirements. This is sometimes referred to as the "gun show loophole" because transactions at these events can involve private sellers who are not required to be federally licensed. However, licensed gun dealers can and do sell at gun shows and must comply with the background check provisions in the same manner as transactions taking place at their licensed places of business.

CRIMINAL BACKGROUND CHECK

Name



Purchasing a Handgun in Nebraska



Within this framework of federal law, how does a person purchase a handgun in Nebraska?⁹

As noted on page 6, Nebraska has developed an alternative background check system for the purchase of handguns. The Nebraska system requires a prospective purchaser to first apply for and receive a handgun purchase certificate from the local chief of police or sheriff. Applicants must pay a five-dollar application fee. The local law enforcement agency then conducts a background check on the applicant.¹⁰

With some exceptions, individuals cannot purchase, lease, rent, or receive transfer of a handgun in Nebraska without this certificate.¹¹ The exceptions are:

- Federally licensed firearms dealers;
- Individuals acquiring antique handguns;
- Persons authorized to acquire handguns on behalf of a law enforcement agency;
- Temporary transfers when the transferee remains in the line of sight of the transferor or within the premises of an established shooting facility;
- Transfers between a person and his or her spouse, sibling, parent, child, aunt, uncle, niece, nephew, or grandparent;
- Holders of a valid permit under the Concealed Handgun Permit Act; and
- Peace officers.

9. The statutes governing handguns are found at Neb. Rev. Stat. secs 69-2401 to 69-2426.

10. Purchase certificates also can be used to buy long guns, but are not required. Under Nebraska's split system, gun dealers can initiate a NICS check for long gun sales at the point of sale.

11. Neb. Rev. Stat. sec. 69-2409 authorizes a second method of approving handgun sales that is intended to provide an expedited background check by the State Patrol at the point of sale. Under this system, licensed dealers (1) have potential gun buyers complete a consent form established by the State Patrol and (2) contact the State Patrol for a background check while the buyer waits. However, implementation of this system requires the State Patrol to develop a database containing at least 85 percent of Nebraska arrest and conviction records dating to January 1, 1965. According to a patrol spokesperson, this has not been completed.



The issuing law enforcement agency has three days to determine whether the applicant is prohibited under federal, state, or local law from purchasing or possessing a handgun.

Nebraska is a “shall issue” state, which means if the applicant meets the statutory criteria, the applicant is issued a certificate to purchase. The law enforcement agency taking the application cannot refuse to issue a certificate based on any subjective criteria. If the certificate is denied, persons must be provided the reasons in writing and can appeal the decision to the county court.

Handgun certificates are good for three years from the date of issuance and allow the holder to purchase any number of handguns during this period, provided the holder continues to meet the legal requirements to purchase and possess handguns.

There are numerous instances for purchasers and firearms dealers to run afoul of state law when buying handguns. These include:

(1) Providing false information on the application for a handgun purchase certificate is a Class IV felony and violating any provisions of the handgun certificate process are Class I misdemeanors. Convictions of either offense can result in having your handgun confiscated.¹²

(2) Intentionally causing the State Patrol to conduct a background check specifically pertaining to mental health issues on persons not actually applying for a certificate to purchase a handgun or a consent form is a Class II misdemeanor.¹³

(3) Knowingly requesting a background check for any purpose other than for purchase of a handgun is a Class I misdemeanor.¹⁴

(4) Making a materially false oral or written statement or furnishing false identification by any person in connection with a handgun purchase or attempted purchase is a Class IV felony.¹⁵

FIREARM PURCHASE CERTIFICATE

Applicant's Name _____

Address _____

City/State/Zip Lincoln NE _____

DOB _____ Certificate Number _____

Signature _____

Law Enforcement Signature/Agency Termy J. Shymer

STATE OF NEBRASKA

This is to certify that _____ has complied with the terms and conditions of Neb. Rev. Stat. §§ 69-2401 thru 69-2425. This certificate only authorizes the holder to purchase a firearm within the State of Nebraska.

Date _____ NTN (National Tracking Number) _____

Valid for 3 years from above date

(5) Selling a handgun in violation of state law by a licensed importer, manufacturer, or dealer is a Class IV felony.¹⁶

(6) Buying a handgun for a person known to be prohibited by law from buying or possessing a handgun is a Class IV felony.¹⁷

Finally, state law does not prohibit municipalities from enacting stricter handgun provisions. Omaha and Lincoln are among municipalities that impose additional handgun regulations within their jurisdictions. Among its provisions, Lincoln requires licensed dealers to report handgun sales occurring in the city to the police department. Omaha requires handgun sales in the city to be approved by the police and requires residents and visitors alike to register handguns possessed within the city limits.

12. Neb. Rev. Stat. sec. 69-2408.
 13. Neb. Rev. Stat. sec. 69-2409.01(4).
 14. Neb. Rev. Stat. sec. 69-2419.
 15. Neb. Rev. Stat. sec. 69-2420.
 16. Neb. Rev. Stat. sec. 69-2421.
 17. Neb. Rev. Stat. sec. 69-2422.



Nebraska Concealed Carry Permits



Notably, Nebraska law does not prohibit openly carrying a firearm.¹⁸

Until 2006, concealed carry was illegal under most circumstances. That year, the Legislature passed LB 454, the Concealed Handgun Permit Act¹⁹, which provides the framework for legally carrying concealed handguns. The act was 10 years in the making. A measure to allow concealed carry was first introduced in 1996 and reintroduced continually in the Legislature until it passed.

Under the act, concealed 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.”²⁰

Applicants for a concealed carry permit must²¹:

- Be at least 21 years of age;
- Not be prohibited from purchasing or possessing a handgun by 18 U.S.C. 922, as that section existed on January 1, 2005;
- Have eyesight sufficient to possess a Class O operator’s license;
- Not have been convicted of a felony under Nebraska or any other jurisdiction;
- Not have been convicted of a misdemeanor crime of violence in the past 10 years;
- Not have been found in the previous 10 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;

- Have been a Nebraska resident for at least 180 days, a member of the U.S. Armed Forces stationed at a military base in the state pursuant to permanent duty station orders or a spouse of such military member, or a new Nebraska resident with a concealed carry permit issued from the applicant’s former state of residence if that state’s standards for a concealed carry permit are the same or more stringent than Nebraska’s;
- Not have had a conviction of any law of Nebraska or other jurisdiction relating to firearms, unlawful use of a weapon, or controlled substances within 10 years preceding the date of application;
- Not be on parole, probation, or work release; and
- Provide proof of training.

Applications for a concealed carry permit are made to the State Patrol. Applicants must have a valid state identification card, pay a \$100 fee, be fingerprinted, and undergo a rigorous background check, including using the National Instant Criminal Background Check System (NICS), the Nebraska sex offender registry, and mental health records maintained by the Department of Health and Human Services.

Applicants who meet the statutory requirements must be issued the permit within 45 days of application. Applicants can appeal denials. The permits are valid for five years and

18. Omaha, which imposes additional handgun regulations, is an exception. It requires a permit before open carry is authorized.

19. Neb. Rev. Stat. secs. 69-2427 to 69-2449.

20. Neb. Rev. Stat. sec. 69-2429(1)

21. The information reflects changes made by the adoption of LB 190, which added military spouses as qualifying for residency and eliminated a requirement that applicants be U.S. citizens.



can be renewed, at which time another NICS check is done by the patrol. The renewal fee is \$50.

Notably, the concealed carry permit can be used to purchase handguns in Nebraska instead of the handgun purchase certificate, because the concealed carry permit meets the standards of the federal Brady Act as approved by the ATF.

Permitholders must observe certain restrictions when carrying a concealed handgun. They cannot drink alcohol nor have it or controlled substances not authorized by prescription in their blood when carrying a concealed handgun. Restrictions include specific and statutorily enumerated places and any business that simply chooses to post a notice of prohibition. Per statute,²² prohibited places are:

- 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 or semiprofessional athletic event;
- Building, grounds, vehicle, or sponsored activity or athletic event of any public, private, denominational or parochial elementary, vocational, or secondary school, a private postsecondary school, community college, or a public or private college, junior college, or university;
- Place of worship;
- Hospital, 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 or entity in control of the property or employer in control of the property has prohibited permit holders from carrying concealed handguns into or onto the place or premises (in such cases, "conspicuous notice" of such ban must be posted); or
- Into or onto any other place or premises where handguns are prohibited by state law.

Financial institutions and places of worship (added in legislation passed in 2009) can authorize security personnel on their premises to

carry concealed handguns, so long as each member is in compliance with the Concealed Handgun Permit Act and holds a valid concealed carry permit. Additionally, houses of worship must provide notice to congregants.

Permitholders can keep their handguns securely locked in their vehicles in the public parking lots of places where they are otherwise not allowed to carry a concealed handgun, unless doing so violates federal law.

Permitholders who violate the conditions of their concealed carry permits risk criminal sanction and loss of their permits. For most violations, the permit is not revoked upon a first offense. The exceptions that can result in a permit revocation upon a first offense are (1) failing to surrender a handgun when asked by a law enforcement officer or emergency services personnel and (2) failing to report injuries or property damage that occurs because of the discharge of a concealed handgun.

Municipalities are prevented from enacting ordinances more stringent than the requirements in the Concealed Handgun Permit Act.

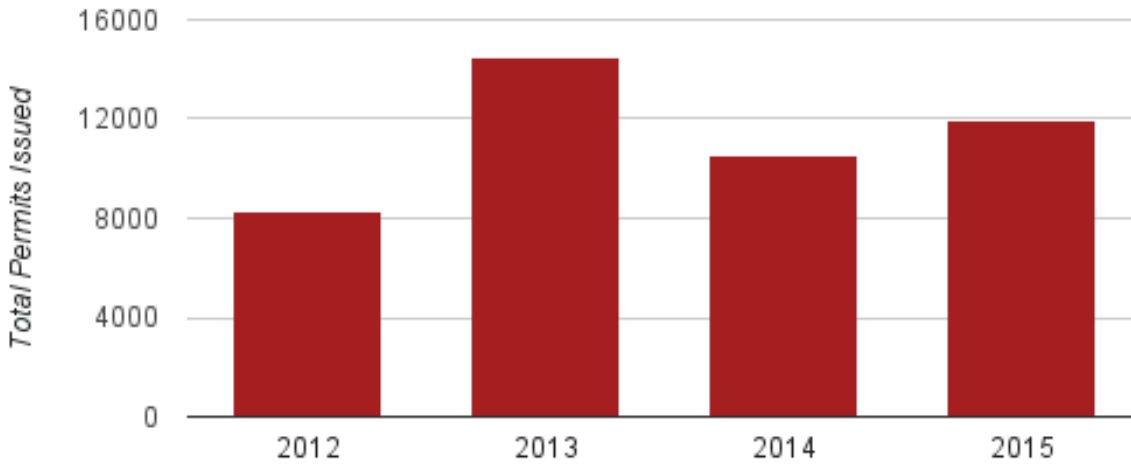
22. Neb. Rev. Stat. sec. 69-2441.



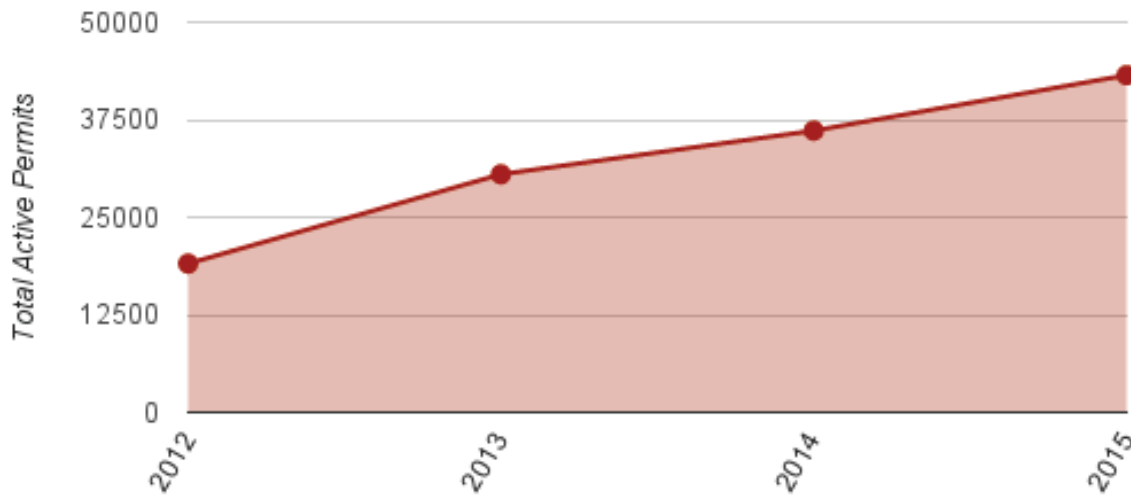
Concealed Carry Statistics

The State Patrol, which oversees the concealed carry program, provided the following data. The figures for "first issue," "renewals," and "replacements" all represent approved permits. Because the law allows for an appeal process for denials, this category may not reflect final action on these permits for any given year.

Total New Permits per Year (2012-2015)



Total Active Permits (2012-2015)



Nebraska Concealed Carry (2012-2015)

Year	First Issue	Renewals	Replacements	Denials	Total Permits Issued	Total Active Permits
2012	5566	2097	587	45	8250	19059
2013	12286	1355	992	82	14513	30505
2014	6901	2295	1361	96	10557	36094
2015	8178	2376	1799	135	11951	43204



Justification for the Use of Force



Self-defense is a topic often associated with firearms, particularly handguns. The U.S. Supreme Court recognizes defense of person and property as a valid exercise of one's constitutional right to bear arms.²³

Nebraska law allows for the use of force, including deadly force, to protect oneself, another, or one's property.²⁴

Deadly force is defined as force used with the purpose of causing or creating a substantial risk of causing death or serious bodily harm. Firing a firearm in the direction of another person or at occupied vehicles constitutes deadly force.

The use of force is justified if an individual believes it is immediately necessary to defend himself or herself against unlawful force by another.

The use of *deadly* force is justified if an individual believes it necessary to protect himself or herself or another against death, serious bodily harm, kidnapping, or sexual assault

compelled by force or threat. Deadly force is not justified if the individual initially provoked the situation or can avoid using deadly force by retreating, by surrendering possession of an object to a person exerting a claim to it, or by complying with an order to abstain from doing something which the individual has no right to do.

However, persons have no duty to retreat when accosted in their homes or workplaces, unless they were the initial aggressor or, in the latter case, the other party has a right to be in the workplace.

Deadly force is justifiable for protection of property under two scenarios: (1) To prevent someone from unlawfully taking possession of one's home; or (2) to prevent an arson, burglary, robbery, or other felonious theft or property destruction, when deadly force has been used or threatened and not responding with deadly force would expose anyone present to substantial danger of serious bodily harm.

23. For example, "[T]he inherent right of self-defense has been central to the Second Amendment right." *District of Columbia v. Heller*, 554 U.S. 570 (2008).

24. Statutes discussing justification for the use of force are found at Neb. Rev. Stat. secs. 28-1406 to 28-1416. The statutes are broader than discussed in this report, including, for example, when force is justified by law enforcement or for persons lawfully aiding law enforcement. These sections are not directly pertinent to a discussion of firearm laws for the general public.



Other Nebraska Firearm Laws

Drugs and narcotics

Knowingly or intentionally possessing a firearm while in violation of the state’s narcotics laws subjects one to being punished by the next higher penalty classification.²⁵

Carrying a concealed weapon

Carrying a concealed weapon under Nebraska law is a Class I misdemeanor upon the first conviction and a Class IV felony for subsequent convictions. Concealed weapons include handguns but also certain knives, brass or iron knuckles, or “any other deadly weapon.”²⁶

The law provides an affirmative defense to a charge of carrying a concealed weapon if the individual was engaged in lawful business and the circumstances were such that would justify a prudent person to arm themselves for protection of person, property, or family. Persons with a valid concealed handgun permit are also exempted if the concealed weapon is a handgun.

Possession of prohibited firearms

Possession of a machine gun, short rifle, or short shotgun is a Class IV felony in Nebraska unless you are a police officer or member of the military engaged in the lawful discharge of your duties or are qualified under federal law to possess and transport these firearms.²⁷

Unlawful possession of a handgun

Persons under 18 are prohibited from possessing handguns unless they are members of the armed forces, active or reserve, National Guard, or the Reserve Officers Training Corps or when the transfer is a temporary loan for instruction under the direct supervision of a juvenile’s parent or guardian or an adult supervisor. Unlawful possession of a handgun is a Class I misdemeanor.²⁸

Transferring a firearm to a juvenile

A person who sells, provides, loans, delivers, or in any other way transfers a firearm to a person under 18

commits a Class III felony. The law provides for exceptions to this prohibition for (1) persons who are related to the juvenile and have permission from the parents, (2) a legitimate and lawful sporting purpose, or (3) an appropriate educational program under direct adult supervision when the firearm is a rifle or shotgun.²⁹

Unlawful possession of a firearm at a school

Possessing a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event is a Class IV felony. The law allows eight exceptions, including for on-duty law enforcement or military members, for law enforcement officers contracted by the schools to provide security, for instruction purposes, for members of a rifle drill team, for firearms legally possessed and secured in a locked vehicle by non-student adults or concealed carry permit holders, for historical re-enactments or hunter education, or by school employees as part of an agriculture or natural resources program.³⁰

Using a deadly weapon to commit a felony

Using a firearm to commit a felony is a Class IC felony itself, and possessing a firearm during the commission of a felony is a Class II felony.³¹

Possessing a deadly weapon by a prohibited person

Possessing a firearm if you have been previously convicted of a felony, are a fugitive from justice, or are the subject of a current domestic violence protection order or have been convicted within the past seven years of a misdemeanor crime of domestic violence is a Class ID felony for a first offense and a Class IB felony for subsequent offenses.³²

Defacing a firearm

Legal firearms become illegal if they are “defaced,” which means the identifying serial number has been purposefully removed. Since enactment of the federal Gun Control Act of 1968, every firearm manufactured or sold in the United States must carry a serial number stamped on

25. Neb. Rev. Stat. sec. 28-416(16).

26. Neb. Rev. Stat. sec. 28-1202.

27. Neb. Rev. Stat. sec. 28-1203.

28. Neb. Rev. Stat. sec. 28-1204.

29. Neb. Rev. Stat. sec. 28-1204.01.

30. Neb. Rev. Stat. sec. 28-1204.04.

31. Neb. Rev. Stat. sec. 28-1205.

32. Neb. Rev. Stat. sec. 28-1206.



the frame or receiver. In Nebraska, it is a Class III felony to knowingly possess, receive, sell, or lease a defaced firearm. It is also illegal to intentionally deface a firearm.³³

Discharging a firearm at an inhabited place

Unlawfully and intentionally discharging a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, or inhabited motor home or camper unit is a Class ID felony.³⁴

Possessing a stolen firearm

Knowingly possessing, receiving, retaining, or disposing of a stolen firearm, unless the intent is to return it to its rightful owner, is a Class III felony.³⁵

Discharging a firearm in certain cities and counties

Intentionally or recklessly discharging a firearm, while in or having just exited a motor vehicle, at or in the general direction of any person, dwelling, building, structure, occupied motor vehicle, occupied aircraft, or inhabited motor home or camper while in a city of the first class or the county containing a city of the primary or metropolitan class, is guilty of a Class IC felony.³⁶

Shooting from highway or bridge

Discharging a firearm from any public highway, road, or bridge is a Class III misdemeanor.³⁷

Civil disorders involving explosives or firearms

Teaching or demonstrating how to make a firearm when a person knows or reasonably should know an individual intends to use the information unlawfully or assembling for that purpose is a Class IV felony.³⁸

Hunter education

Nebraska requires persons age 12 through 29 years of age, who want to hunt using a firearm or air gun, to take a firearm hunter education program established by the Game and Parks Commission. The program must

provide instruction in safe firearm handling, shooting and sighting techniques, hunter ethics, game identification, and conservation management. Persons who successfully complete the program receive a certificate.³⁹

Shotgun on highway

Having a loaded shotgun in or on any vehicle on any highway in the state, except as allowed by law, is a Class III misdemeanor.⁴⁰

Hunting game birds from vehicle

Unless you are disabled with a special permit, it is a Class III misdemeanor to hunt from a vehicle.⁴¹

Reserves and sanctuaries

Carrying firearms of any kind within the boundaries of a state game refuge is unlawful. Exceptions include when the Game and Parks Commission authorizes permits to kill animal or bird predators endangering game or domestic animals on adjacent private property or when the commission deems the number of deer on a reserve detrimental to habitat. It is also unlawful (again with exceptions pertaining to the capacity of the habitat) to carry firearms on the State Wild Game Preserve, which is a preserve authorized in the Wildcat Hills located in parts of Scotts Bluff, Banner, and Morrill counties.⁴²

Hunting near a home or feedlot

Hunting with a rifle within a 200-yard radius of an inhabited dwelling or livestock feedlot is Class III misdemeanor. The law provides an exception for owners, tenants, or operators and their guests hunting within the radius if the area is under the hunters' ownership or control.⁴³

Special rules for snowmobiles

Hunting from or with a snowmobile or carrying any shotgun or rimfire rifle, unless the firearm is unloaded and enclosed in a carrying case, while operating or riding on a snowmobile, is unlawful.⁴⁴

33. Neb. Rev. Stat. secs. 28-1207 to 28-1208.

34. Neb. Rev. Stat. sec. 28-1212.02.

35. Neb. Rev. Stat. sec. 28-1212.03.

36. Neb. Rev. Stat. sec. 28-1212.04.

37. Neb. Rev. Stat. sec. 28-1335.

38. Neb. Rev. Stat. secs. 28-1481 to 28-1482.

39. Neb. Rev. Stat. sec. 37-413.

40. Neb. Rev. Stat. sec. 37-522.

41. Neb. Rev. Stat. sec. 37-538.

42. Neb. Rev. Stat. secs. 37-708 and 37-712.

43. Neb. Rev. Stat. sec. 37-523.

44. Neb. Rev. Stat. sec. 60-6,342.



Nebraska Shooting Range Protection Act

In 2009, the Legislature implemented measures protecting existing shooting ranges from being zoned out of operation when urban development encroaches upon their facilities.

The Nebraska Shooting Range Protection Act allows shooting ranges that are existing and lawful to continue to operate notwithstanding any law, rule, regulation, ordinance, or resolution related to zoning, noise, or discharge of a firearm enacted by a city, county, village, or other political subdivision, so long as the range operates in compliance with shooting range performance standards developed by the Nebraska Game and Parks Commission. Shooting range performance standards are reviewed and revised, if necessary, every five years.⁴⁵

Domestic violence conviction and Protection from Domestic Abuse Act

The federal Gun Control Act makes possessing firearms unlawful for persons who are subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner or who have been convicted of a misdemeanor crime of domestic violence. Nebraska directs the State Court Administrator’s Office to notify persons of this fact when they have been convicted of misdemeanor domestic violence or are the subject of a domestic violence protection order.⁴⁶

When making an arrest for domestic violence, law enforcement officers must seize all weapons involved, including weapons used as a threat. Officers can also seize any firearm and ammunition in plain view or that is found pursuant to an authorized search, as deemed necessary for the safety of the officers or others. It is up to a court to determine the fate of the seized weapons.

Nebraska Mental Health Commitment Act

State and federal law prohibits persons who have been adjudicated mentally ill or have been committed to a mental health facility from possessing firearms. Provisions under the state’s Mental Health Commitment

Act establish a procedure that allows individuals to petition a mental health board for a hearing to remove their firearm-related disabilities and restore their rights to possess firearms.⁴⁷

Distribution of child safety information

Firearms dealers are required to distribute to all purchasers information developed by the Department of Health and Human Services pertaining to the dangers of leaving loaded firearms unattended around children.⁴⁸

School district policy regarding firearms

School districts in Nebraska must adopt policies providing for expelling students who knowingly and intentionally carry a firearm on school grounds, in school vehicles or vehicles being driven for a school function, or at school-sponsored activities or athletic events. Additionally, school districts must report information about any firearm-related expulsion to the state Department of Education.⁴⁹

Law enforcement officer handgun proficiency

Law enforcement officers must maintain a certain level of firearms proficiency, which is proved by annually qualifying on a handgun shooting course. The design of the course is submitted by the Director of the Law Enforcement Training Center and approved by the Nebraska Police Standards Advisory Council. Officers must qualify with the same make and model handgun as their primary duty weapon. For the qualification test, officers must shoot a minimum of 50 rounds of ammunition, at targets at varying distances, with a score of 70 percent or higher to pass.⁵⁰

Disposition of seized firearms

Firearms used in the commission of a crime and seized by law enforcement, when no longer needed as evidence, must be destroyed. Firearms that (1) have not been used in the commission of a crime, (2) have not been defaced or altered in any manner that violates state or federal law, (3) have a lawful use and can be lawfully possessed, and (4) were not seized as part of a domestic assault can be returned to the owner.⁵¹

45. Neb. Rev. Stat. secs. 37-1301 to 37-1310.

46. Neb. Rev. Stat. secs. 29-440, 29-2291, and 42-925.

47. Neb. Rev. Stat. sec. 71-963.

48. Neb. Rev. Stat. sec. 69-2426.

49. Neb. Rev. Stat. sec. 79-263.

50. Neb. Rev. Stat. secs. 81-1412 and 81-1412.01.

51. Neb. Rev. Stat. sec. 29-820(e) and (f).



Frequently Asked Questions about Firearm Laws

What are assault weapons?

“Assault weapon” is not defined in either state or federal law. However, the term generally refers to semiautomatic firearms with detachable, large-capacity magazines and at least one feature considered military-like, such as pistol grips or barrel shrouds. A federal assault weapons ban, in place from 1994 to 2004, defined assault weapon by outright banning 18 specific models and duplicates or copies of these models, as well as firearms with certain military-type features and large capacity magazines. The law defined large-capacity magazine as ammunition feeding devices capable of holding more than 10 rounds of ammunition.



An example of a large-capacity magazine, as previously defined by federal law.

A common misperception is that assault weapons are machine guns, which are fully automatic firearms that have been federally regulated since 1934. Civilians cannot own machine guns manufactured after 1986.

At least nine states and the District of Columbia either regulate or ban assault weapons as defined by those states.

Are private sellers required to conduct background checks on handgun buyers in Nebraska?

No. Generally, Nebraska law requires persons to have a handgun purchase certificate before purchasing, leasing, renting, or receiving a handgun and prohibits persons from selling, leasing, renting, or transferring a handgun

to persons who do not have a certificate. The background check is required as part of the application for a handgun purchase certificate and that check is conducted by the authorizing law enforcement agency, either the local sheriff's office or police department. However, private sellers are not exempt from laws prohibiting knowingly selling a firearm to a felon or a juvenile.

Are concealed carry permits issued in Nebraska honored by other states and are permits issued in other states recognized in Nebraska?

Not automatically. Nebraska recognizes permits issued by other states if the Attorney General determines the requirements in another state are equal to or greater than the standards imposed by Nebraska law. A list of such states can be found on the State Patrol's website. Reciprocity by other states is dependent on actions in those states. Nebraskans must check with those states to determine whether Nebraska concealed carry permits are recognized and must abide by those states' laws when traveling there with a concealed handgun.

Are pawnbrokers considered “firearms dealers” under federal law?

Yes, if the persons' business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money. (See, 18 U.S.C. 921(a)(12).)

Can individuals personally transport lawfully owned firearms across state lines?

Yes. Federal law allows individuals who lawfully possess firearms to transport firearms across state lines, notwithstanding state law, so long as the firearms are unloaded and inaccessible during transport. (States and local regulations on firearms differ widely and travelers are well advised to be aware of pertinent laws in other jurisdictions.)

Can individuals send firearms across state lines?

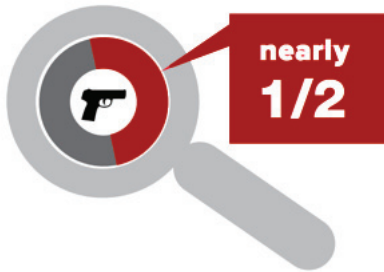
Shipping firearms across state lines must be done by a federal firearms licensee to a federal firearms licensee in the receiving state, with some exceptions. Individuals can ship firearms from their home state to themselves in the care of another individual in another state to engage in lawful activity, such as hunting. Another exception is shipping inherited firearms under the terms of a will. Handguns must be shipped by common or contract carrier because they cannot legally be mailed through the U.S. Postal Service.



What is a straw purchase?

A straw purchase is buying a gun for someone else under false pretenses and it is illegal. Federally licensed firearms dealers must transfer firearms to the persons who complete the Firearms Transaction Record (Form 4473) and on whom the background check is performed.

Nearly half of gun trafficking investigations were related to straw purchases.



(Source: ATF)

Can Nebraskans buy a handgun from firearms dealers in other states?

Not without going through a Nebraska gun dealer. Federal law prohibits federally licensed firearms dealers from selling handguns to persons who do not reside in the state where the firearms dealer’s licensed premises is located. However, the out-of-state dealer can ship the handgun to a dealer whose premises is licensed within the state of the buyer. The buyer can then take delivery from the home-state dealer. Licensees can sell a rifle or shotgun to individuals who are not residents of their states in an over-the-counter transaction, provided that the sale complies with laws of the states where the dealer is licensed and where the buyer resides.

How can persons who have lost their firearms rights due to mental illness regain those rights?

Upon release from commitment or treatment, persons who have a firearm-related disability because of a mental-health adjudication or involuntary commitment and cannot obtain a Nebraska handgun purchase certificate or a concealed carry permit can petition the mental health board to remove the disability. The process is outlined in Neb. Rev. Stat. sec. 71-963.

Can felons have their gun rights restored?

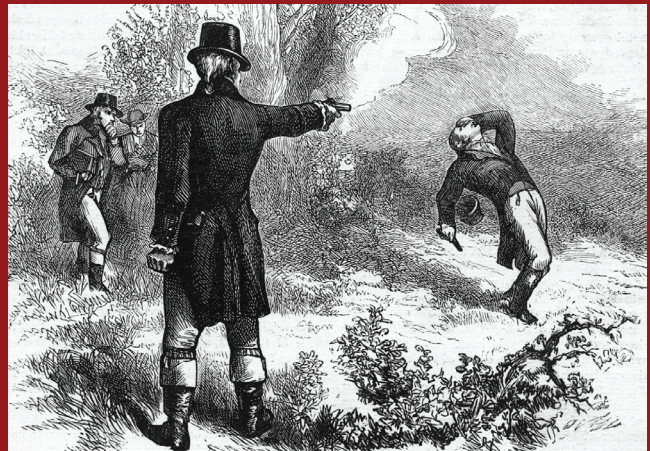
Under certain limited circumstances. Felons whose convictions have been set aside or expunged, or for which the person has been pardoned or has had civil rights restored are not considered “convicted” under federal firearms laws, unless that person was expressly prohibited from possessing firearms by the law of the jurisdiction in which the proceedings were held. In Nebraska, gun rights can be restored upon receiving a pardon by the state’s Board of Pardons.

Can individuals take firearms on planes?

Yes. The Transportation Security Administration allows unloaded firearms to be taken on airplanes as checked luggage. Firearms must be secured in locked, hard-sided containers. Each firearm must be declared each time when checking luggage.

Early Nebraska Gun Law

The earliest firearms laws in Nebraska were prohibitions on dueling and carrying concealed weapons, laws common in many states in the late 19th century.



Death by dueling constituted murder. Concealed weapons included pistols, bowie-knives, dirks, and other dangerous weapons. Then, as now, an exception was included for persons engaged in the pursuit of lawful business when circumstances justified a “prudent man” to carry a concealed weapon for defense of self, property, or family.

In 1929, the Legislature banned machine guns, reflecting national concerns about a crime wave fueled by gangsters’ bootlegging during the Prohibition era.

The 1960s saw enactment of a flurry of gun-related laws. Among these were prohibitions on juveniles possessing revolvers (1961), felons or fugitives possessing firearms with a barrel less than 12 inches in length (1967), and anyone possessing a defaced pistol (also 1967).

The era of state handgun regulation began in 1991 with passage of LB 355 to address concerns about the ready availability of handguns to persons, who, in the heat of the moment, might shoot themselves or others.



Appendix A: History of Federal Firearm Acts

National Firearms Act of 1934

The National Firearms Act (NFA) of 1934 imposed a tax on the manufacture and transfer of certain firearms and an occupational tax on persons and entities engaged in importing, manufacturing, and selling those firearms.

Firearms regulated by the act came to be known as “NFA firearms,” which had to be registered with the Department of Treasury. They included shotguns with barrels less than 18 in. long, rifles with barrels less than 16 in. (the slang term is sawed-off), machine guns (known notoriously at the time as Tommy guns) and other fully automatic firearms, silencers or mufflers, and a novelty category of firearms concealable in innocuous-looking items such as pens and umbrellas.

Federal Firearms Act of 1938

In 1938, Congress amended the NFA to require gun manufacturers, importers, and dealers to be licensed and required licensees to maintain customer records. The term “federal firearm licensee” (FFL) is used today to refer to gun dealers who must abide by the federal law’s requirements.

The act prohibited gun sales to convicted felons and persons under indictment for violent crime, as well as persons who could not buy firearms because of state law, but did not create any framework for how dealers were to get this information other than the relying on the “honor system” of the buyer.

Gun Control Act of 1968

The major thrust of the Gun Control Act of 1968 was enhancement of the federal firearms licensee system. The Gun Control Act repealed the Federal Firearms Act of 1938, but most of its provisions were re-enacted in the new act.

The changes included bans on (1) the interstate shipment of firearms to or from persons who are not federally licensed firearms dealers, manufacturers, importers, or collectors; (2) the direct mail order of firearms; (3) the import of firearms unless they are designed for “sporting purposes”; (4) the sale of handguns to unlicensed persons from another state; (5) the sale to minors (under age 18 for long guns and 21 for handguns); and (6) the sale of firearms to a broadened class of “prohibited persons.” The act also instituted the requirement that only federal firearms license holders could engage in the manufacture or sale of guns.

The act increased FFL fees and required licensees to keep a federal form (known as Form 4473) detailing information about each gun and buyer. The information is retained by

the dealer, available solely for government inspection and criminal investigations. The forms are not collected into a central registry, which is federally prohibited.

Firearms Owners’ Protection Act of 1986

Although the Firearms Owners’ Protection Act of 1986 (FOPA) loosened some requirements on gun dealers, FOPA is best known for its provision making it illegal to transfer or possess machine guns purchased after 1986. Machine guns lawfully owned prior to FOPA’s effective date can continue to be owned and transferred, provided they are registered in accordance with NFA requirements.

Brady Handgun Violence Protection Act of 1993

Named for the press officer who was left brain damaged in the assassination attempt on President Ronald Reagan in 1981, the Brady Handgun Violence Protection Act of 1993 (or, commonly, the Brady Act) imposed a five-day waiting period before the purchase of a handgun. The waiting period was intended to give law enforcement time to conduct a background check to determine whether the prospective buyer was eligible to purchase a firearm. Initially, the requirements applied only to handgun sales by licensed dealers but, in 1998, the law became applicable to the sale of shotguns and rifles.

The act also required the FBI to create a computerized, national database that would allow instant approval for gun sales and replace the five-day waiting period. In November 1998, the FBI launched the National Instant Criminal Background Check System (NICS), which is the universal, primary system used by gun dealers and law enforcement to determine whether prospective gun buyers are eligible to buy firearms.

Public Safety and Recreational Firearms Use Protection Act of 1994, also known as the Federal Assault Weapons Ban

A subtitle of the Violent Crime Control and Law Enforcement Act of 1994, the Assault Weapons Ban prohibited the manufacture, transfer and possession of semiautomatic assault weapons as defined by the act and the transfer and possession of ammunition-feeding devices (magazines) capable of holding more than 10 rounds of ammunition.

The act banned 18 models of semiautomatic firearms by name, revolving cylinder shotguns, and other semiautomatic firearms with at least two specified military-style features coupled with the ability to accept a detachable magazine.

The act required congressional reauthorization, which Congress declined to do, and the law expired in 2004.



Appendix B: Firearm Legislation Introduced in the 104th Legislature

LB 14 would provide a definition for “facsimile firearm” in the criminal code and make criminally using facsimile firearms a Class III felony. (Krist)

LB 30 would prohibit disclosure of any applicant or permitholder information regarding firearms registration, possession, sale, or use. (McCoy)

LB 60 would generally prohibit businesses from enacting policies against keeping firearms in vehicles in their public parking lots, so long as the firearms were safely secured. (Kintner)

LB 137 would make it a crime statewide to knowingly and intentionally discharge a firearm from inside or nearby a motor vehicle. Currently, the provisions—aimed at preventing drive-by shootings—applies only within the territorial boundaries of any city of the first class or county containing a city of the metropolitan class or primary class. (Johnson)

LB 184 would allow private schools to authorize security personnel to carry concealed handguns on their premises in the same manner that the Concealed Handgun Permit Act allows places of worship to authorize the practice. (Ebke)

LB 190 would extend residency to the spouses of military members for purposes of applying for a Nebraska concealed carry permit. The bill also would strike the requirement that concealed carry permit holders be U.S. citizens. (Bloomfield)

LB 225 would strike the word “rifle” from the description of school shooting teams, which are one of the exceptions to who may lawfully carry firearms on school grounds. (Schnoor)

LB 289 would pre-empt local gun laws in favor of state law. (Ebke)

LB 340 would define “posted conspicuous notice” and mandate the size, content, and where the signs, meant to signal that concealed carrying of handguns is prohibited within a premises, are displayed. (Brasch)

LB 603 would establish a procedure law enforcement officials would be required to use when processing certain firearms transactions. The procedure would be similar to that used for processing handgun purchase certificates in Nebraska, but would pertain to firearms regulated by the National Firearms Act, a category that includes machine guns. (Bloomfield)

LB 612 would clarify when deadly force is permissible in self-defense and would remove any duty to retreat from any place where an individual is lawfully present before resorting to defensive deadly force. (Kintner)

LB 635 would allow persons with a concealed carry permit to carry a concealed handgun in bars. (Garrett)

LB 638 would extend the period of time a concealed carry permit is valid for members of the armed forces to the length of time they are on active duty, up to a maximum of 10 years. Currently, all concealed carry permits are valid for 5 years. (Garrett)

LB 681 would make refusing to remove a concealed handgun from a place of business when requested by a person in control of the premises a violation of a permit to carry a concealed handgun. Currently, it is a violation when the request is made. (Schnoor)

LB 769 would allow the state or any political subdivision to auction forfeited or abandoned firearms to firearm dealers and other licensed persons. The bill also would significantly reduce the number of places where concealed carry permitholders are not allowed to carry concealed handguns. (Garrett)

LB 815 requires that petitioners seeking to have a mental-health related firearms disability removed must prove by clear and convincing evidence they have met the statutory requirements to restore their gun rights. (Stinner)

LB 839 would require persons purchasing certain types of tactical gear to undergo the same federal background check that is required of firearm purchases and would deny the purchase of tactical gear to anyone not passing the check. “High capacity ammunition clips” are included among the tactical gear listed in the bill. (Chambers)

LB 971 requires a hearing to determine whether an individual is prohibited from possessing firearms before confiscated firearms are returned to an individual who had been placed into emergency protective custody or committed under the Nebraska Mental Health Commitment Act. (Gloor)

LB 1090 would require the State Patrol to notify certain officials when denying an application for a certificate to purchase a handgun. (Hansen)

LB 1108 would require law enforcement or the prosecuting attorney to, in regards to civil forfeitures, file a report with the Auditor of Public Accounts providing certain information about forfeited firearms. (Garrett)



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