LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 289

Introduced by Ebke, 32.
Read first time January 15, 2015
Committee: Judiciary

A BILL FOR AN ACT relating to firearms; to amend sections 14-102, 15-255, 16-227, 17-556, and 18-1703, Reissue Revised Statutes of Nebraska; to prohibit certain regulation of firearms, ammunition, and firearm accessories by cities and villages as prescribed; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 14-102, Reissue Revised Statutes of Nebraska, is amended to read:

14-102 In addition to the powers granted in section 14-101, cities of the metropolitan class shall have power by ordinance:

Taxes, special assessments.

(1) To levy any tax or special assessment authorized by law;

Corporate seal.

(2) To provide a corporate seal for the use of the city, and also any official seal for the use of any officer, board, or agent of the city, whose duties under this act or under any ordinance require an official seal to be used. Such corporate seal shall be used in the execution of municipal bonds, warrants, conveyances, and other instruments and proceedings as this act or the ordinances of the city require;

Regulation of public health.

(3) To provide all needful rules and regulations for the protection and preservation of health within the city; and for this purpose they may provide for the enforcement of the use of water from public water supplies when the use of water from other sources shall be deemed unsafe;

Appropriations for debts and expenses.

(4) To appropriate money and provide for the payment of debts and expenses of the city;

Protection of strangers and travelers.

(5) To adopt all such measures as they may deem necessary for the accommodation and protection of strangers and the traveling public in person and property;

Concealed weapons, firearms, fireworks, explosives.

(6) To punish and prevent the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act, and the discharge of firearms, fireworks, or explosives of any description within the city, other than the discharge
of firearms at a shooting range pursuant to the Nebraska Shooting Range
Protection Act;

Sale of foodstuffs.

(7) To regulate the inspection and sale of meats, flour, poultry,
fish, milk, vegetables, and all other provisions or articles of food
exposed or offered for sale in the city;

Official bonds.

(8) To require all officers or servants elected or appointed in
pursuance of this act to give bond and security for the faithful
performance of their duties; but no officer shall become security upon
the official bond of another or upon any bond executed to the city;

Official reports of city officers.

(9) To require from any officer of the city at any time a report, in
detail, of the transactions of his or her office or any matter connected
therewith;

Cruelty to children and animals.

(10) To provide for the prevention of cruelty to children and
animals;

Dogs; taxes and restrictions.

(11) To regulate, license, or prohibit the running at large of dogs
and other animals within the city as well as in areas within three miles
of the corporate limits of the city, to guard against injuries or
annoyance from such dogs and other animals, and to authorize the
destruction of the dogs and other animals when running at large contrary
to the provisions of any ordinance. Any licensing provision shall comply
with subsection (2) of section 54-603 for service animals;

Cleaning sidewalks.

(12) To provide for keeping sidewalks clean and free from
obstructions and accumulations, to provide for the assessment and
collection of taxes on real estate and for the sale and conveyance
thereof, and to pay the expenses of keeping the sidewalk adjacent to such
real estate clean and free from obstructions and accumulations as herein
provided;

Planting and trimming of trees; protection of birds.

(13) To provide for the planting and protection of shade or
ornamental and useful trees upon the streets or boulevards, to assess the
cost thereof to the extent of benefits upon the abutting property as a
special assessment, and to provide for the protection of birds and
animals and their nests; to provide for the trimming of trees located
upon the streets and boulevards or when the branches of trees overhang
the streets and boulevards when in the judgment of the mayor and council
such trimming is made necessary to properly light such street or
boulevard or to furnish proper police protection and to assess the cost
thereof upon the abutting property as a special assessment;

Naming and numbering streets and houses.

(14) To provide for, regulate, and require the numbering or
renumbering of houses along public streets or avenues; to care for and
control and to name and rename streets, avenues, parks, and squares
within the city;

Weeds.

(15) To require weeds and worthless vegetation growing upon any lot
or piece of ground within the city to be cut and destroyed so as to abate
any nuisance occasioned thereby, to prohibit and control the throwing,
depositing, or accumulation of litter on any lot or piece of ground
within the city and to require the removal thereof so as to abate any
nuisance occasioned thereby, and if the owner fails to cut and destroy
weeds and worthless vegetation or remove litter, or both, after notice as
required by ordinance, to assess the cost thereof upon the lots or lands
as a special assessment. The notice required to be given may be by
publication in the official newspaper of the city and may be directed in
general terms to the owners of lots and lands affected without naming
such owners;
Animals running at large.

(16) To prohibit and regulate the running at large or the herding or driving of domestic animals, such as hogs, cattle, horses, sheep, goats, fowls, or animals of any kind or description within the corporate limits and provide for the impounding of all animals running at large, herded, or driven contrary to such prohibition; and to provide for the forfeiture and sale of animals impounded to pay the expense of taking up, caring for, and selling such impounded animals, including the cost of advertising and fees of officers;

Use of streets.

(17) To regulate the transportation of articles through the streets, to prevent injuries to the streets from overloaded vehicles, and to regulate the width of wagon tires and tires of other vehicles;

Playing on streets and sidewalks.

(18) To prevent or regulate the rolling of hoops, playing of ball, flying of kites, the riding of bicycles or tricycles, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks or to frighten teams or horses; to regulate the use of vehicles propelled by steam, gas, electricity, or other motive power, operated on the streets of the city;

Combustibles and explosives.

(19) To regulate or prohibit the transportation and keeping of gunpowder, oils, and other combustible and explosive articles;

Public sale of chattels on streets.

(20) To regulate, license, or prohibit the sale of domestic animals or of goods, wares, and merchandise at public auction on the streets, alleys, highways, or any public ground within the city;

Signs and obstruction in streets.

(21) To regulate and prevent the use of streets, sidewalks, and public grounds for signs, posts, awnings, awning posts, scales, or other like purposes; to regulate and prohibit the exhibition or carrying or
conveying of banners, placards, advertisements, or the distribution or
posting of advertisements or handbills in the streets or public grounds
or upon the sidewalks;

Disorderly conduct.

(22) To provide for the punishment of persons disturbing the peace
and good order of the city by clamor and noise, intoxication,
drunkenness, fighting, or using obscene or profane language in the
streets or other public places or otherwise violating the public peace by
indecent or disorderly conduct or by lewd and lascivious behavior;

Vagrants and tramps.

(23) To provide for the punishment of vagrants, tramps, common
street beggars, common prostitutes, habitual disturbers of the peace,
pickpockets, gamblers, burglars, thieves, or persons who practice any
game, trick, or device with intent to swindle, persons who abuse their
families, and suspicious persons who can give no reasonable account of
themselves; and to punish trespassers upon private property;

Disorderly houses, gambling, offenses against public morals.

(24) To prohibit, restrain, and suppress tippling shops, houses of
prostitution, opium joints, gambling houses, prize fighting, dog
fighting, cock fighting, and other disorderly houses and practices, all
games and gambling and desecration of the Sabbath, commonly called
Sunday, and all kinds of indecencies; to regulate and license or prohibit
the keeping and use of billiard tables, ten pins or ball alleys, shooting
galleries except as provided in the Nebraska Shooting Range Protection
Act, and other similar places of amusement; and to prohibit and suppress
all lotteries and gift enterprises of all kinds under whatsoever name
carried on, except that nothing in this subdivision shall be construed to
apply to bingo, lotteries, lotteries by the sale of pickle cards, or
raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska
Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the
Nebraska Small Lottery and Raffle Act, or the State Lottery Act;
Police regulation in general.

(25) To make and enforce all police regulations for the good government, general welfare, health, safety, and security of the city and the citizens thereof in addition to the police powers expressly granted herein; and in the exercise of the police power, to pass all needful and proper ordinances and impose fines, forfeitures, penalties, and imprisonment at hard labor for the violation of any ordinance, and to provide for the recovery, collection, and enforcement thereof; and in default of payment to provide for confinement in the city or county prison, workhouse, or other place of confinement with or without hard labor as may be provided by ordinance;

Fast driving on streets.

(26) To prevent horseracing and immoderate driving or riding on the street and to compel persons to fasten their horses or other animals attached to vehicles while standing in the streets;

Libraries, art galleries, and museums.

(27) To establish and maintain public libraries, reading rooms, art galleries, and museums and to provide the necessary grounds or buildings therefor; to purchase books, papers, maps, manuscripts, works of art, and objects of natural or of scientific curiosity, and instruction therefor; to receive donations and bequests of money or property for the same in trust or otherwise and to pass necessary bylaws and regulations for the protection and government of the same;

Hospitals, workhouses, jails, firehouses, etc.; garbage disposal.

(28) To erect, designate, establish, maintain, and regulate hospitals or workhouses, houses of correction, jails, station houses, fire engine houses, asphalt repair plants, and other necessary buildings; and to erect, designate, establish, maintain, and regulate plants for the removal, disposal, or recycling of garbage and refuse or to make contracts for garbage and refuse removal, disposal, or recycling, or all of the same, and to charge equitable fees for such removal, disposal, or
recycling, or all of the same, except as hereinafter provided. The fees collected pursuant to this subdivision shall be credited to a single fund to be used exclusively by the city for the removal, disposal, or recycling of garbage and refuse, or all of the same, including any costs incurred for collecting the fee. Before any contract for such removal, disposal, or recycling is let, the city council shall make specifications therefor, bids shall be advertised for as now provided by law, and the contract shall be let to the lowest and best bidder, who shall furnish bond to the city conditioned upon his or her carrying out the terms of the contract, the bond to be approved by the city council. Nothing in this act, and no contract or regulation made by the city council, shall be so construed as to prohibit any person, firm, or corporation engaged in any business in which garbage or refuse accumulates as a byproduct from selling, recycling, or otherwise disposing of his, her, or its garbage or refuse or hauling such garbage or refuse through the streets and alleys under such uniform and reasonable regulations as the city council may by ordinance prescribe for the removal and hauling of garbage or refuse;

Market places.

(29) To erect and establish market houses and market places and to provide for the erection of all other useful and necessary buildings for the use of the city and for the protection and safety of all property owned by the city; and such market houses and market places and buildings aforesaid may be located on any street, alley, or public ground or on land purchased for such purpose;

Cemeteries, registers of births and deaths.

(30) To prohibit the establishment of additional cemeteries within the limits of the city, to regulate the registration of births and deaths, to direct the keeping and returning of bills of mortality, and to impose penalties on physicians, sextons, and others for any default in the premises;
Plumbing, etc., inspection.

(31) To provide for the inspection of steam boilers, electric light appliances, pipefittings, and plubbings, to regulate their erection and construction, to appoint inspectors, and to declare their powers and duties, except as herein otherwise provided;

Fire limits and fire protection.

(32) To prescribe fire limits and regulate the erection of all buildings and other structures within the corporate limits; to provide for the removal of any buildings or structures or additions thereto erected contrary to such regulations, to provide for the removal of dangerous buildings, and to provide that wooden buildings shall not be erected or placed or repaired in the fire limits; but such ordinance shall not be suspended or modified by resolution nor shall exceptions be made by ordinance or resolution in favor of any person, firm, or corporation or concerning any particular lot or building; to direct that all and any building within such fire limits, when the same shall have been damaged by fire, decay, or otherwise, to the extent of fifty percent of the value of a similar new building above the foundation, shall be torn down or removed; and to prescribe the manner of ascertaining such damages and to assess the cost of removal of any building erected or existing contrary to such regulations or provisions, against the lot or real estate upon which such building or structure is located or shall be erected, or to collect such costs from the owner of any such building or structure and enforce such collection by civil action in any court of competent jurisdiction;

Building regulations.

(33) To regulate the construction, use, and maintenance of party walls, to prescribe and regulate the thickness, strength, and manner of constructing stone, brick, wood, or other buildings and the size and shape of brick and other material placed therein, to prescribe and regulate the construction and arrangement of fire escapes and the placing
of iron and metallic shutters and doors therein and thereon, and to
provide for the inspection of elevators and hoist-way openings to avoid
accidents; to prescribe, regulate, and provide for the inspection of all
plumbing, pipefitting, or sewer connections in all houses or buildings
now or hereafter erected; to regulate the size, number, and manner of
construction of halls, doors, stairways, seats, aisles, and passageways
of theaters, tenement houses, audience rooms, and all buildings of a
public character, whether now built or hereafter to be built, so that
there may be convenient, safe, and speedy exit in case of fire; to
prevent the dangerous construction and condition of chimneys, fireplaces,
hearth, stoves, stovepipes, ovens, boilers, and heating appliances used
in or about any building or a manufactory and to cause the same to be
removed or placed in safe condition when they are considered dangerous;
to regulate and prevent the carrying on of manufactures dangerous in
causing and promoting fires; to prevent the deposit of ashes in unsafe
places and to cause such buildings and enclosures as may be in a
dangerous state to be put in a safe condition; to prevent the disposing
of and delivery or use in any building or other structure, of soft,
shelly, or imperfectly burned brick or other unsuitable building material
within the city limits and provide for the inspection of the same; to
provide for the abatement of dense volumes of smoke; to regulate the
construction of areaways, stairways, and vaults and to regulate partition
fences; to enforce proper heating and ventilation of buildings used for
schools, workhouses, or shops of every class in which labor is employed
or large numbers of persons are liable to congregate;

Warehouses and street railways.

(34) To regulate levees, depots and depot grounds, and places for
storing freight and goods and to provide for and regulate the laying of
tracks and the passage of steam or other railways through the streets,
alleys, and public grounds of the city;

Lighting railroad property.
(35) To require the lighting of any railway within the city, the
cars of which are propelled by steam, and to fix and determine the
number, size, and style of lampposts, burners, lamps, and all other
fixtures and apparatus necessary for such lighting and the points of
location for such lampposts; and in case any company owning or operating
such railways shall fail to comply with such requirements, the council
may cause the same to be done and may assess the expense thereof against
such company, and the same shall constitute a lien upon any real estate
belonging to such company and lying within such city and may be collected
in the same manner as taxes for general purposes;

City publicity.

(36) To provide for necessary publicity and to appropriate money for
the purpose of advertising the resources and advantages of the city;

Offstreet parking.

(37) To erect, establish, and maintain offstreet parking areas on
publicly owned property located beneath any elevated segment of the
National System of Interstate and Defense Highways or portion thereof, or
public property title to which is in the city on May 12, 1971, or
property owned by the city and used in conjunction with and incidental to
city-operated facilities, and to regulate parking thereon by time
limitation devises or by lease;

Public passenger transportation systems.

(38) To acquire, by the exercise of the power of eminent domain or
otherwise, lease, purchase, construct, own, maintain, operate, or
contract for the operation of public passenger transportation systems,
excluding taxicabs and railroad systems, including all property and
facilities required therefor, within and without the limits of the city,
to redeem such property from prior encumbrance in order to protect or
preserve the interest of the city therein, to exercise all powers granted
by the Constitution of Nebraska and laws of the State of Nebraska or
exercised by or pursuant to a home rule charter adopted pursuant thereto,
including but not limited to receiving and accepting from the government
of the United States or any agency thereof, from the State of Nebraska or
any subdivision thereof, and from any person or corporation donations,
devises, gifts, bequests, loans, or grants for or in aid of the
acquisition, operation, and maintenance of such public passenger
transportation systems and to administer, hold, use, and apply the same
for the purposes for which such donations, devises, gifts, bequests,
loans, or grants may have been made, to negotiate with employees and
enter into contracts of employment, to employ by contract or otherwise
individuals singularly or collectively, to enter into agreements
authorized under the Interlocal Cooperation Act or the Joint Public
Agency Act, to contract with an operating and management company for the
purpose of operating, servicing, and maintaining any public passenger
transportation systems any city of the metropolitan class shall acquire
under the provisions of this act, and to exercise such other and further
powers as may be necessary, incident, or appropriate to the powers of
such city; and

Regulation of air quality.

(39) In addition to powers conferred elsewhere in the laws of the
state and notwithstanding any other law of the state, to implement and
enforce an air pollution control program within the corporate limits of
the city under subdivision (23) of section 81-1504 or subsection (1) of
section 81-1528, which program shall be consistent with the federal Clean
Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include
without limitation those involving injunctive relief, civil penalties,
criminal fines, and burden of proof. Nothing in this section shall
preclude the control of air pollution by resolution, ordinance, or
regulation not in actual conflict with the state air pollution control
regulations.

Sec. 2. Section 15-255, Reissue Revised Statutes of Nebraska, is
amended to read:
15-255 A city of the primary class may prohibit riots, routs, noise, or disorderly assemblies; prevent the discharge use of firearms, rockets, powder, fireworks, or other dangerous and combustible material; prohibit carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act; arrest, punish, fine, or set at work on streets or elsewhere vagrants and persons found without visible means of support or legitimate business; regulate and prevent the transportation of gunpowder or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or its products, or other explosives or inflammables; regulate use of lights in stables, shops, or other places and building of bonfires; and regulate and prohibit the piling of building material or any excavation or obstruction of the streets.

Sec. 3. Section 16-227, Reissue Revised Statutes of Nebraska, is amended to read:

16-227 A city of the first class may prevent and restrain riots, routs, noises, disturbances, breach of the peace, or disorderly assemblies in any street, house, or place in the city; regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, and alleys or about or in the vicinity of any buildings; regulate, prevent, and punish the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act; arrest, regulate, punish, fine, or set at work on the streets or elsewhere all vagabonds and persons found in the city without visible means of support or some legitimate business; regulate and prevent the transportation or storage of gunpowder or other explosive or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or any other productions thereof, and other materials of like nature, the use of lights in stables, shops, or other places, and the building of bonfires; and regulate and prohibit the
piling of building material or any excavation or obstruction in the
street.

Sec. 4. Section 17-556, Reissue Revised Statutes of Nebraska, is
amended to read:

17-556 Cities of the second class and villages shall have power to
prevent and restrain riots, routs, noises, disturbances, or disorderly
assemblages; to regulate, prevent, restrain, or remove nuisances in
residential parts of municipalities and to designate what shall be
considered a nuisance; to regulate, punish, and prevent the discharge of
firearms, rockets, powder, fireworks, or any other dangerous combustible
material in the streets, lots, grounds, alleys, or about or in the
vicinity of any buildings; to regulate, prevent, and punish the carrying
of concealed weapons, except the carrying of a concealed handgun in
compliance with the Concealed Handgun Permit Act; and to arrest,
regulate, punish, fine, or set at work on the streets or elsewhere all
vagrants and persons found without means of support or some legitimate
business.

Sec. 5. Section 18-1703, Reissue Revised Statutes of Nebraska, is
amended to read:

18-1703 (1)(a) Cities and villages do shall not have the power to
regulate the ownership, possession, or transportation, carrying,
registration, transfer, and storage of firearms, ammunition, and firearm
accessories except as provided in this section of a concealed handgun, as
such ownership, possession, or transportation is authorized under the
Concealed Handgun Permit Act, except as expressly provided by state law,
and shall not have the power to require registration of a concealed
handgun owned, possessed, or transported by a permitholder under the act.
Any existing city or village ordinance, permit, or regulation regulating
the ownership, possession, or transportation of a concealed handgun, as
such ownership, possession, or transportation is authorized under the
act, except as expressly provided under state law, and any existing city
or village ordinance, permit, or regulation requiring the registration of a concealed handgun owned, possessed, or transported by a permitholder under the act, is declared to be null and void as against any permitholder possessing a valid permit under the act.

(b) This subsection does not prohibit:

(i) A law enforcement agency from enacting and enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by a peace officer in the course of his or her official duties;

(ii) Zoning ordinances that encompass firearms businesses along with other businesses, except that zoning ordinances that are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited;

(iii) Any city or village from regulating or prohibiting the carrying of firearms and ammunition by an employee of the city or village during and in the course of the employee's official duties except as provided in section 69-2441; and

(iv) A court or hearing officer from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or agency.

(2)(a) A person adversely affected by an ordinance, a measure, an enactment, a rule, or a policy adopted or enforced by a city or village that violates this section may file an action in a court of competent jurisdiction against the city or village for:

(i) Declarative and injunctive relief; and

(ii) Actual and consequential damages attributed to the violation.

(b) A person is adversely affected for purposes of this subsection if:

(i) The person is an individual who meets all of the following requirements:

(A) The individual lawfully resides within the United States;
(B) The individual may legally possess a firearm under the laws of Nebraska; and

(C) The individual is or was subject to the ordinance, measure, enactment, rule, or policy of the city or village. An individual is or was subject to the ordinance, measure, enactment, rule, or policy of the city or village if the individual is or was physically present within the boundaries of the city or village for any reason; or

(ii) The person is a membership organization that:

(A) Includes two or more individuals described in subdivision (2)(b)(i) of this section; and

(B) Is dedicated in whole or in part to protecting the rights of persons who possess, own, or use firearms for competitive, sporting, defensive, or other lawful purposes.

(3) A prevailing plaintiff in an action under this section is entitled to recover from the city or village:

(a) The greater of:

(i) Actual damages, including consequential damages; or

(ii) Liquidated damages of three times the plaintiff's attorney's fees;

(b) Court costs; and

(c) Reasonable attorney's fees.

(4) For purposes of this section:

(a) Ammunition means fixed cartridge ammunition, shotgun shells, the individual components of fixed cartridge ammunition and shotgun shells, projectiles for muzzle loading firearms, and any propellant used in a firearm or in firearm ammunition;

(b) Firearm means any weapon that is capable of expelling or designed to expel or that may be readily converted to expel a projectile by means of an explosion; and

(c) Firearm accessory means any device adapted to enable the wearing or carrying about one's person of a firearm or the storage or mounting of
a firearm in or on any conveyance or any attachment or device

specifically adapted to be inserted into or affixed onto any firearm to

enable, alter, or improve the functioning capabilities of the firearm.

Sec. 6. Original sections 14-102, 15-255, 16-227, 17-556, and

18-1703, Reissue Revised Statutes of Nebraska, are repealed.