

Firearm Laws

in Nebraska

2021



A Legislative Research Office Backgrounder

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Prepared by

**Kate Gaul
Research Analyst**

Designed by

**Elice Hubbert
Research Analyst**

April 2021



**Research
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2021-2**

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Introduction

*F*irearm Laws in Nebraska 2021 updates and revises a 2016 overview of Nebraska laws governing firearms. It includes a discussion of state and U.S. constitutional guarantees; outlines changes made by the Legislature to Nebraska gun laws between 2016 and 2020; and reviews broad trends in proposed firearm legislation over the past few years.

Like the report preceding it, this document does not take positions on the ownership, possession, sale, or use of firearms nor offer legal advice. In writing this report, we have endeavored to be neutral, while providing information during a time when the debate over firearms remains polarizing.

The 2021 issue of *Firearm Laws in Nebraska* is intended to be complementary to the [original 2016 report](#). While some aspects of the 2016 report have been reproduced in part in this update, the earlier report continues to provide interested parties salient information regarding Nebraska and federal firearm laws.

U.S. and state constitutional guarantees

No discussion of firearm laws can be considered complete without a nod to the fact that the right to keep and bear arms is guaranteed by the Second Amendment of the U.S. Constitution and Article 1, sec. 1 of the Nebraska Constitution.

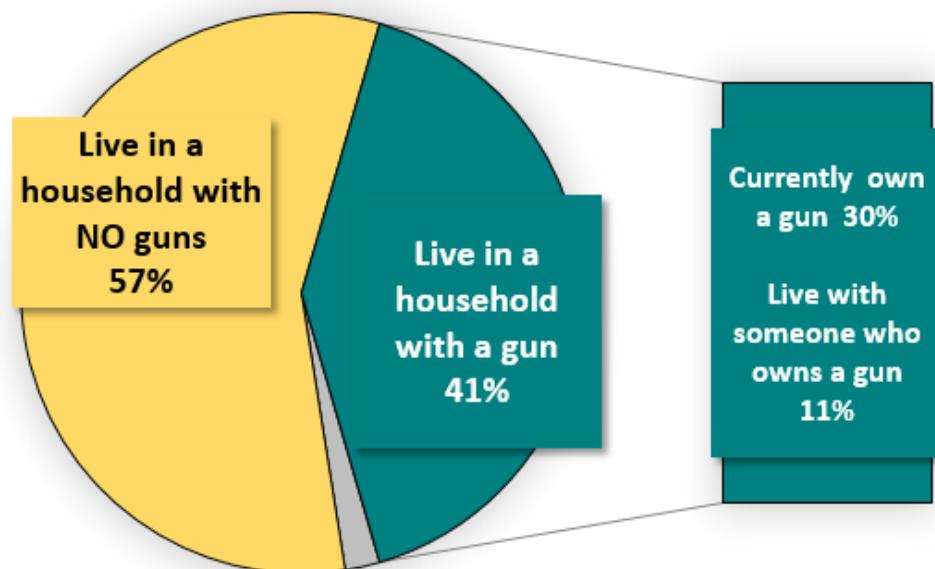
“A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.”

This simple language has caused much debate since the Founders chose, without much explanation, to put it into the Bill of Rights. No surprise that individual interpretations today tend to depend on how one feels about guns.

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

Gun ownership in U.S. households



Source: PEW Research Center “[America’s Complex Relationship With Guns](#),” pg. 4.
Note: In pie chart, share of respondents who did not offer an answer is shown but not labeled

Nebraska voters chose to add language protecting fundamental rights to possess firearms to the state Constitution in 1988, after a successful initiative petition drive to get the language on the ballot. The adopted language (*italicized*) was added to Article 1, sec. 1:

“All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, *and 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, and such rights shall not be denied or infringed by the state or any subdivision thereof.* To secure these rights, and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed.”

The language in Nebraska's Constitution leaves little doubt as to intent. However, in numerous instances, the Nebraska Supreme Court (court) has affirmed that the language in the Nebraska Constitution does not inhibit the state from reasonably regulating firearms. Shortly after the amendment's adoption, several cases sought to overturn criminal convictions involving firearms by arguing that the new "right to bear arms" language invalidated the laws.

In the consolidated case, *State v. Comeau*, 233 Neb. 907 (1989), the court addressed whether the new language made laws against possessing a defaced firearm and being a felon in possession of a firearm unconstitutional. The issue on appeal was whether the new language prevented the Legislature from passing *any* laws regulating the *possession* of firearms. The court held that reasonable regulation of the possession of firearms was not prohibited by the constitutional amendment and it looked to numerous high court rulings in other states with similar state constitutions guaranteeing the "right to bear arms."

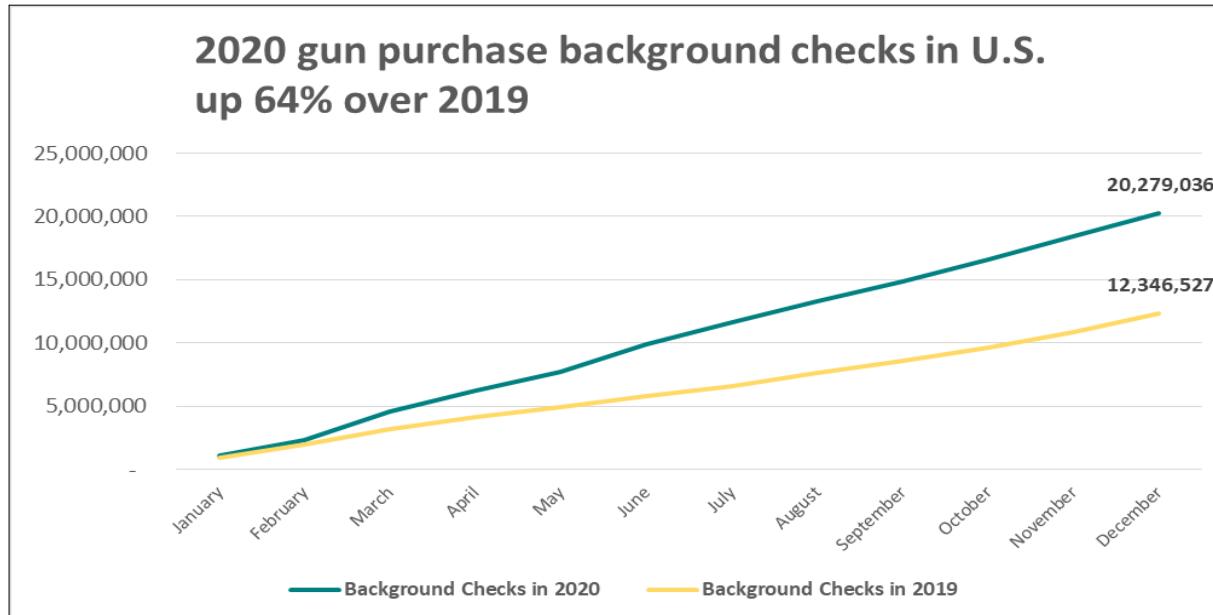
Among the rulings was West Virginia's Supreme

Court of Appeals, which the Nebraska court quoted at length:

"Our research has revealed that courts throughout the country have recognized that the right to keep and bear arms is not absolute, and these courts have uniformly upheld the police power of the state through its legislature to impose reasonable regulatory control over the state constitutional right to bear arms in order to promote the safety and welfare of its citizens."

In *State v. LaChapelle*, 234 Neb. 458 (1990), the court rejected an Article 1, sec. 1 challenge to Nebraska law prohibiting possession of machine guns, short rifles, or short shotguns, holding that the section was "a valid exercise of the State's police power in reasonable regulation of certain firearms," particularly when the statute regulated or prohibited possession of weapons more likely intended for criminal rather than lawful use.

Finally, in *State v. Harrington*, 236 Neb. 500 (1990), the court rejected the argument that felons have a right to possess firearms for purposes of self-defense, and reaffirmed this decision in the 2003 case, *State v. Mowell*, 267 Neb. 83.



Cumulative background checks conducted January 1 to December 31.

Note: Includes background checks for handguns, long guns, mixed transactions, and other gun-related equipment.

Source: [FBI/NICS Firearm Background Checks](#)

Nebraska firearm laws

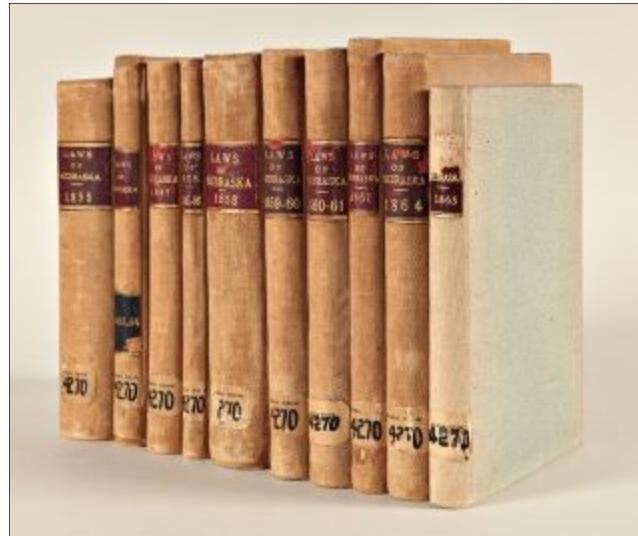
Nebraska has two major laws pertaining to firearms, both addressing handguns.

Nebraska's firearm purchase certificate statutes prescribe the procedures individuals must follow to buy handguns, while the Concealed Handgun Act creates a system to lawfully permit civilians to carry concealed handguns in public.

Firearm laws that pertain to unlawful use can be found in the Nebraska Criminal Code (Chapter 28), while laws regarding hunting with firearms compose another group of statutes (primarily found in Chapter 37).

Additionally, Nebraska statutes contain a hodge-podge of unrelated firearm laws. They include statutes pertaining to the distribution of child safety information, an act ensuring firearm ranges cannot be zoned out of business, and laws that address

removing firearms from persons who are subject to a protection order. These laws are discussed in the following sections of this report.



Nebraska firearm purchase certificate¹

In 1991, after two years of debate on three separate bills, the Legislature enacted LB 355 to establish a procedure for how handguns are sold at retail. During debate, legislators expressed concerns over the role readily available handguns played in suicide and so-called crimes of passion among intimates, family, and friends.

At the time, most Nebraskans faced few restrictions when purchasing handguns. Purchases required presenting a photo identification card and filling out a federal firearms form attesting the purchaser was not a felon, drug addict, or mentally incompetent. Purchasers paid for and took home their new handgun the same day.

The methods chosen by Nebraska and other states to help solve the problems they were seeing with handgun sales were: (1) a waiting period between when the gun was purchased and when it was physically transferred to the buyer, allowing for (2) a criminal background check to be conducted by law

enforcement to ensure the buyer was not a prohibited person.

LB 355, as originally proposed, contained a seven-day waiting period (described by the bill's sponsor as a cooling off period) during which law enforcement could conduct a background check. As enacted, the bill did not require a waiting period, but law enforcement was given up to two days to conduct background checks.

Nebraska's firearm purchase certificate law followed on the heels of enactments in at least 25 other states, including neighbors Iowa and South Dakota, and preceded by two years federal enactment of the Brady Handgun Violence Prevention Act (Brady Act) in 1993.

The Brady Act imposed a five-day waiting period on handgun purchases as an interim measure until the National Instant Criminal Background Check System (NICS) became operational in November 1998. The

NICS system created under the Brady Act is maintained by the FBI for conducting firearm background checks, including for gun dealers (federal firearm licensees), who perform background checks at the point of sale. These permanent provisions of the Brady Act apply to the sale of all firearms.

In 2006, the Legislature increased the timeframe for a background check to three days via LB 1227. The bill also brought Nebraska's handgun purchase laws into compliance with the Brady Act by including NICS in the criminal history record check to purchase handguns. (See, Neb. Rev. Stat. sec. 69-2402(2).)

Using the purchase certificate to buy guns

Although amended over the years, Nebraska's handgun certificate law functions similarly to how it was devised in 1991. (Note: The law contains language directing the Nebraska State Patrol to develop and administer a background check system. This portion of the law was never implemented.)

To purchase handguns in Nebraska, an individual first must apply, either in person or by mail, for a certificate at the designated law enforcement agency in his or her county of residence. This is most often the county sheriff. The application fee for a firearm purchase certificate is \$5 and has not increased since 1991. Certificates are good for three years and renewable using the same application procedure and paying the \$5 fee.

An applicant must be at least 21 years of age and a resident of Nebraska (but not necessarily a U.S. citizen); present a Nebraska operator's license, state identification card, or military identification card (notarized, if applying by mail); and complete an application form, which is used by the law enforcement agency to run a background check. The background check is for the purpose of determining whether the applicant is prohibited from purchasing or possessing a handgun under 18 U.S.C. 922. (For a list of these "prohibitors" under federal law, see the list on page 8.)

With some exceptions, an individual cannot purchase, lease, rent, or receive transfer of a handgun

without the certificate, including purchases from private sellers. However, the law lacks a mechanism to enforce this provision. Notably, private sellers do not have access to the same federal firearms database used by law enforcement and federally licensed firearms dealers to conduct background checks. Therefore, stricter control of private sales would almost certainly require that a buyer and seller conduct their transaction at a gun store or where a federally licensed firearms dealer does business.

The firearms purchase certificate and an identification card must be presented when purchasing a handgun from a firearms dealer. As in any firearms purchase from a federally licensed gun dealer, the purchaser also completes the Firearms Transaction Record (Form 4473), which is a form promulgated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Nebraska, like most states, does not limit the number or frequency of firearm purchases made during the three-year permit period, provided the permitholder continues to meet the legal requirements to purchase and possess firearms.

Although originally devised to conduct the sale of handguns, the certificate is acceptable proof to purchase rifles or shotguns, but is not required for these purchases. In such cases, the firearms dealer must request a NICS background check at the point of sale.



Concealed Handgun Permit Act²

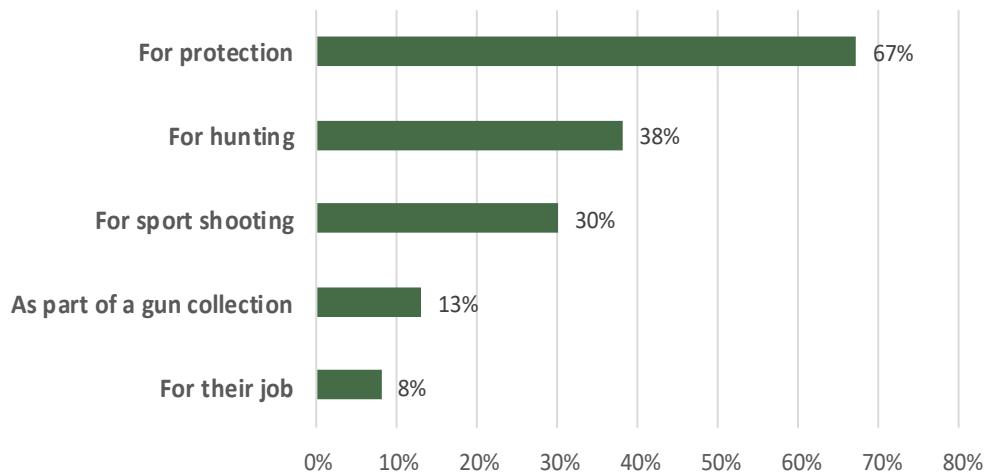
Nebraska's first gun laws prohibited dueling and carrying a concealed weapon.

The criminal charge of carrying a concealed weapon includes an affirmative defense. That is, an individual does not commit the crime of carrying a concealed weapon if, while engaged in any lawful business, the circumstances are such as to justify a prudent person to carry a weapon for the defense of his or her person, property, or family.

In 2006, legislators provided another exception to the crime of carrying a concealed weapon by allowing an

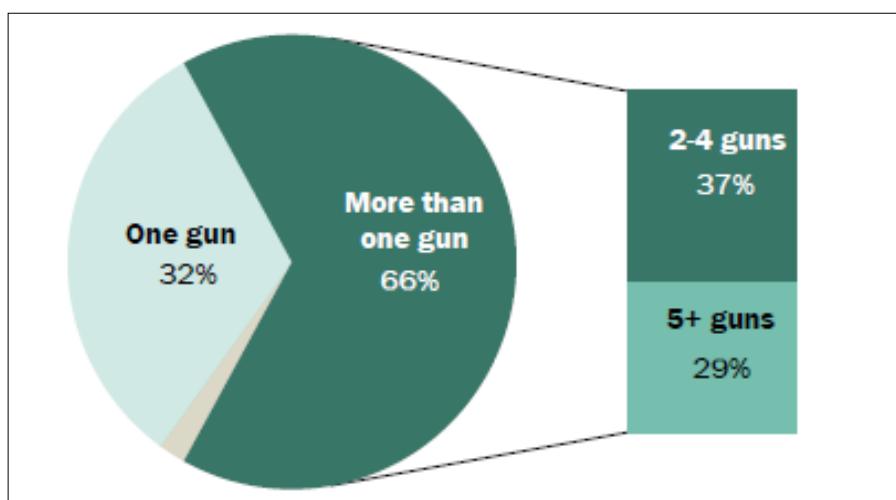
individual to qualify for and purchase a permit to carry a concealed handgun (LB 454). An individual does not have to attest to any direct threat or need for personal self-defense to seek a permit—although, anecdotally, a fair number of persons cite self-defense as a reason to seek a concealed carry permit. In a recent Pew Research Center survey, two-thirds of gun owners cite self-defense as the top reason for owning a firearm. (*America's Complex Relationship with Guns*, June 2017, Pew Research Center, pg. 9.) Additionally, Nebraska's concealed handgun permit (CHP) is an acceptable alternative to the firearm purchase certificate for buying firearms.

Percent of gun owners saying each is a major reason why they own a gun



Source: Pew Research Center, "["America's Complex Relationship with Guns,"](#) pg. 9.

Most gun owners own multiple guns



Note: Share of respondents who did not offer an answer shown but not labeled.

Source: Pew Research Center, "["America's Complex Relationship with Guns,"](#) pg. 22.

Qualifying for a concealed handgun permit

As might be expected, an individual seeking a CHP must meet stricter standards than those required for a firearm purchase certificate. The differences include a training requirement, submission of a set of fingerprints as part of the background check, and more disqualifying factors. The CHP fee, which does not include the cost of the required training class, is \$100. But the permit is valid for five years, so long as the permit holder continues to meet the qualifications for possessing a handgun. The cost to renew is \$50, but there is no additional training requirement.

Prior to applying for a CHP, an individual (1) must successfully complete, within the previous three years, a handgun and safety training course approved by the Nebraska State Patrol as meeting the statutory requirements of the act or (2) be a member of the military or the National Guard who has received handgun training that meets the act's minimum safety and training requirement within the previous three years.

In addition to being lawfully allowed to possess firearms under state and federal law and at least 21 to

possess handguns, a concealed carry permit holder must not have been convicted of any misdemeanor crime of violence or any crime involving firearms, controlled substances, or unlawful use of a weapon, nor be adjudged mentally incompetent or mentally ill and dangerous within the past 10 years prior to application.

Further, an applicant must have been a Nebraska resident for at least 180 days or be a member of the U.S. armed forces, a spouse of a member of the armed forces, or a new state 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.

Application is made in person to the Nebraska State Patrol, which conducts the background check. An applicant must present a government-issued identification document and a certificate verifying completion of an approved handgun training course conducted by an approved instructor.

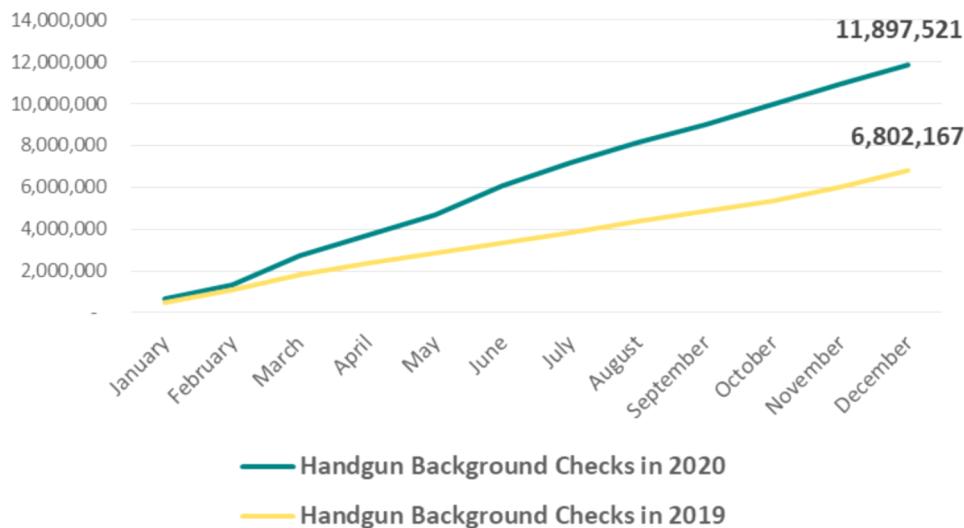
2019 Federal Denials	
Reasons why the NICS Section denies	
January 1, 2019 – December 31, 2019	
PROHIBITED CATEGORY DESCRIPTION	TOTAL
Convicted of a crime punishable by more than one year or a misdemeanor punishable by more than two years	46,107
Unlawful User/Addicted to a Controlled Substance	14,208
Under Indictment/information for a crime punishable by imprisonment for a term exceeding one year	7,953
Fugitive from Justice	7,889
Misdemeanor Crime of Domestic Violence Conviction	7,812
State Prohibitor	7,671
Adjudicated Mental Health	5,977
Protection/Restraining Order for Domestic Violence	3,136
Illegal/Unlawful Alien	2,758
Dishonorable Discharge	48
Federally Denied Persons File	33
Renounced U.S. Citizenship	0
TOTAL 2019 FEDERAL DENIALS	103,592

Source: [FBI 2019 NICS Operations Report](#), pg.20.

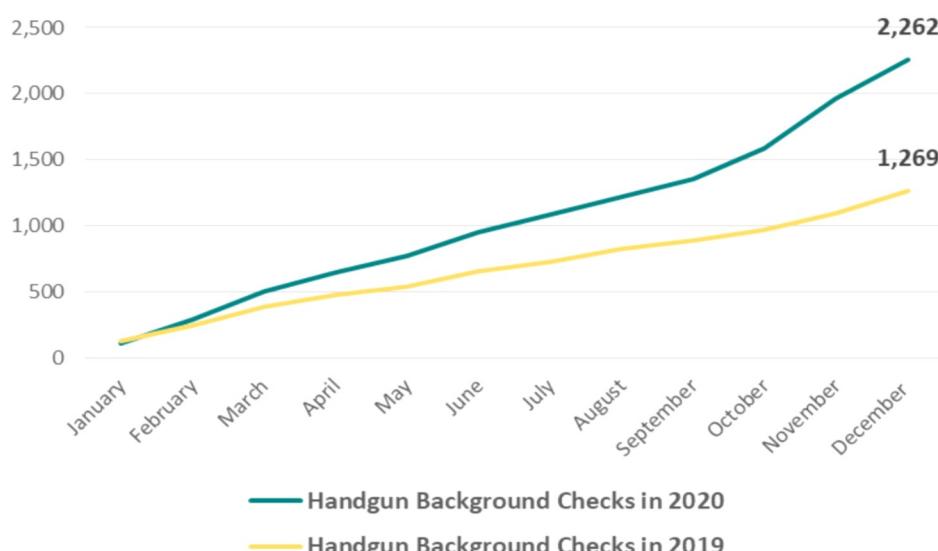
The year 2020 saw a dramatic increase in U.S. gun sales. The government does not track firearms sales, but it does track background checks required to buy guns from licensed dealers. According to statistics from the FBI's National Instant Background Check System (NICS), background checks for handgun purchases from January through December were up 75 percent over 2019. In Nebraska, background checks for handgun purchases in 2020 were up 78 percent over 2019 levels.

Based on surveys of gun retailers, the National Shooting Sports Foundation, an industry trade group, reports that a large number of firearm purchasers in 2020 were first-time gun buyers. Among first-time purchasers, African Americans constituted 58 percent and women made up 40 percent.

U.S. handgun purchase background checks up 75% in 2020



Nebraska handgun purchase background checks up 78% in 2020



Changes to Nebraska firearm laws, 2017-2020

Since *Firearm Laws in Nebraska* was published in 2016, senators have adopted five changes to the state's laws affecting firearms and gun owners. These changes are briefly described in this section.

Removing a firearm disability, Laws 2018, LB 100³

State and federal laws prohibit 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 the procedure that allows individuals to petition a mental health board for a hearing to remove their firearm-related disabilities.

LB 100 requires petitioners to prove by "clear and convincing evidence" that the petitioner is unlikely to act in a manner dangerous to public safety; and granting the relief is not contrary to the public interest.

This change mirrors the standard of proof such boards must use when determining a person is mentally ill and dangerous under state law. If a mental health board determines this standard is met, firearm rights must be restored to the petitioner.

Exceptions to possession on school property, Laws 2018, LB 321⁴

Possessing a firearm in a school building, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event has been a Class IV felony since 1994.

The law allows eight exceptions, including for: (1) on-duty law enforcement or military members; (2) law enforcement officers contracted by a school to provide security; (3) instruction; (4) members of a rifle drill team; (5) firearms legally possessed and secured in a locked vehicle by non-student adults; (6) concealed carry permitholders, provided the firearms are securely locked in their vehicles if they exit their vehicle on campus; (7) historical reenactments, hunter

education, or as part of an honor guard; or (8) school employees as part of an agriculture or natural resources program.

LB 321 expands the exception for university or college drill teams to include teams competing with pistols and shotguns.

Permit application exception to open records laws, Laws 2018, LB 902⁵

LB 902 limits the information about gun owners that is accessible under the state's public records statutes.

Any federal, state, county, or local governmental entity can withhold from the general public information regarding firearm registration, possession, sale, or use obtained for purposes of an application permitted or required by law or contained in a permit or license issued by a governmental entity.

The information must be made available to any law enforcement agency upon request.

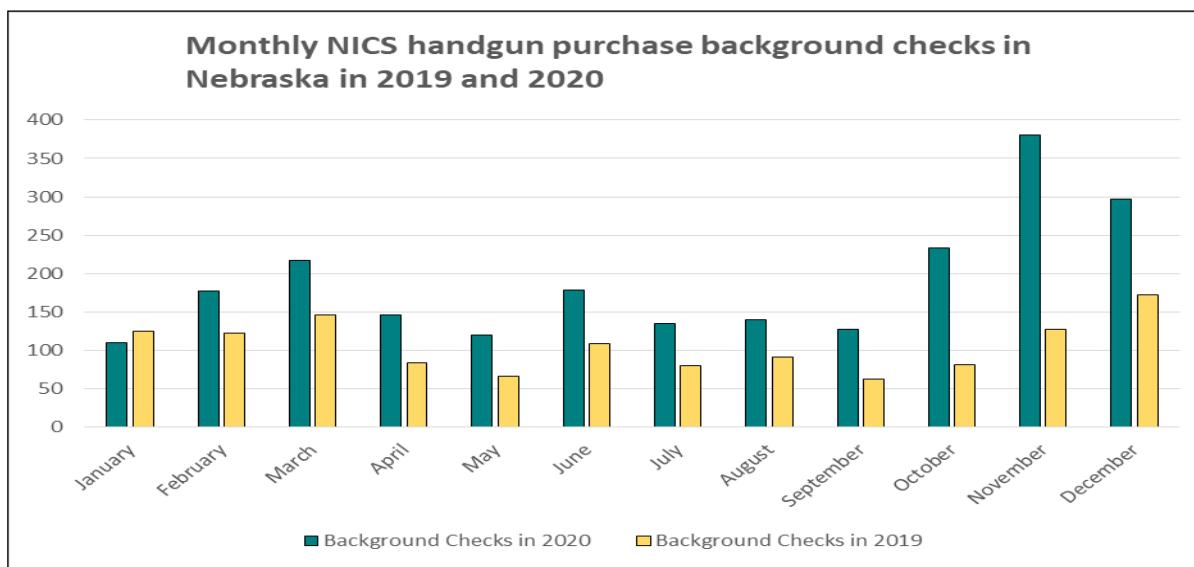
Juvenile prohibited person, Laws 2018, LB 990⁶

LB 990 creates the new offense of possession of a firearm by a prohibited juvenile offender.

Persons who are under 25 years of age who knowingly possess a firearm commit the offense of possession of a firearm by a prohibited juvenile offender if they have been previously adjudicated an offender in juvenile court for an act that would constitute a felony or an act constituting a misdemeanor crime of domestic violence if committed by an adult.

Possession of a firearm by a prohibited juvenile offender is a Class IV felony for a first offense and a Class IIIA felony for a second or subsequent offense.

The bill does not apply to possession of firearms by members of the U.S. armed forces, active or reserve, Nebraska National Guard, or Reserve Officers Training Corps; peace officers; or other duly



Source: [FBI/NICS Firearm Background Checks](#)

authorized law enforcement officers when on duty or training.

Prior to reaching age 25, persons subject to this prohibition can petition the district court or juvenile court, if under age 19, for an exemption, which allows restoration of their firearm rights. When deciding on petitions, judges must consider such things as the individual's behavior since the adjudication and his or her likelihood to engage in further criminal activity.

Possessing a stolen firearm, Laws 2020, LB 582⁷

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.

LB 582 makes it a crime to possess, receive, retain, or dispose of a stolen firearm if a person *should have known* or had *reasonable cause to believe* the gun was stolen. Conviction of this crime is a Class IIA felony.

Firearm laws within the Nebraska Criminal Code⁸

Drugs and narcotics⁹

Narcotics violations committed while knowingly or intentionally possessing a firearm increase the crime to the next higher penalty classification.

Carrying a concealed weapon¹⁰

Carrying a concealed weapon 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."

The law provides an affirmative defense to a charge of carrying a concealed weapon provided that the individual was engaged in lawful business and the circumstances justified a prudent person to arm themselves for protection of person, property, or family. The law also exempts concealed handgun permitholders.

Possession of prohibited firearms¹¹

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.

Unlawful possession of a handgun¹²

Persons under 18 are prohibited from possessing handguns unless they are members of the armed forces, active or reserve, National Guard, or 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.

Transferring a firearm to a juvenile¹³

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.

Using a deadly weapon to commit a felony¹⁴

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

Possessing a deadly weapon by a prohibited person¹⁵

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. (Note: Laws 2018, LB 990 added a new prohibited person: possession of a firearm by a prohibited juvenile offender. This provision is discussed further on page 10.)

Defacing a firearm¹⁶

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 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.

Discharging a firearm at an inhabited place¹⁷

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.

Discharging a firearm in certain cities and counties¹⁸

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 a Class IC felony.

Shooting from highway or bridge¹⁹

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

Civil disorders involving explosives or firearms²⁰

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.



Firearm laws pertaining to hunting

Hunter education ²¹

Nebraska requires persons ages 12 through 29, who want to hunt using firearms or air guns, to take a firearm hunter education program established by the Nebraska 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.

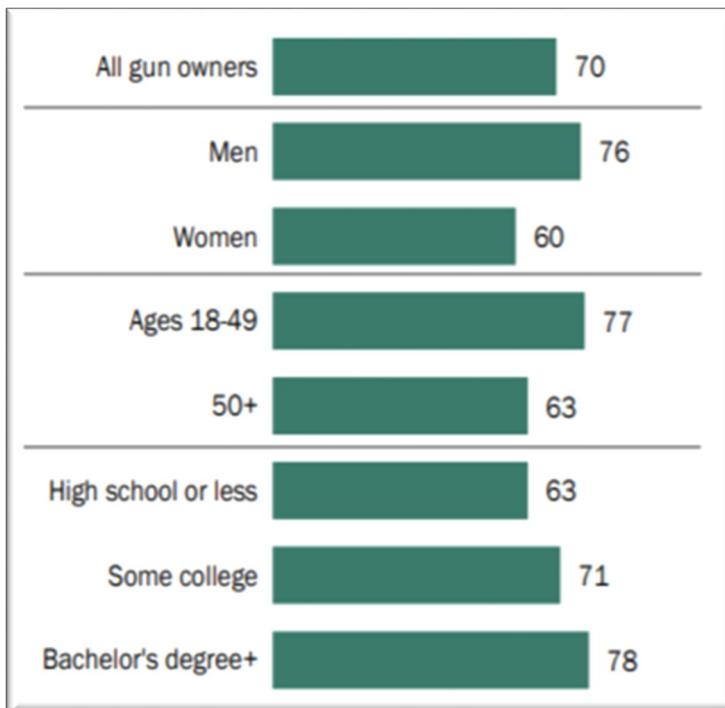
Shotgun on highway ²²

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.

Hunting game birds from vehicle ²³

Hunting from a vehicle is a Class III misdemeanor, unless the individual is disabled and holds a special hunting permit.

Percent of gun owners saying they have taken a gun safety course



Source: Pew Research Center, "[America's Complex Relationship with Guns](#)," pg. 49.

Reserves and sanctuaries ²⁴

Carrying firearms of any kind within the boundaries of a state game refuge is unlawful. Exceptions include when the Nebraska 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.

Hunting near a home or feedlot ²⁵

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

Special rules for snowmobiles ²⁶

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.

Miscellaneous firearm laws

Power of cities and villages to regulate concealed handguns²⁷

The Concealed Handgun Permit Act pre-empts local law. Therefore, cities and villages cannot regulate the ownership, possession, or transportation of concealed handguns that are owned, possessed, or transported by a valid concealed handgun permitholder.

Justification for the use of force²⁸

The ability to defend one's person and property is a fundamental tenet of our justice system. The U.S. Supreme Court recognizes defense of person and property as a valid exercise of one's constitutional right to bear arms. (*District of Columbia v. Heller*, 554 U.S. 570, 2008.)

Nebraska law allows for the use of force, including deadly force, to protect oneself, another, or one's property. 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 threat of death, serious bodily harm, kidnapping, or sexual assault. Deadly force is not justified if the individual initially provoked the situation or can avoid using deadly force by retreating, surrendering possession of an object to a person exerting a claim to it, or complying with an order to abstain from doing something which the individual has no right to do.

However, an individual has no duty to retreat when accosted in one's home or workplace, unless he or she was 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.

Firearms seizure pursuant to an arrest for domestic violence²⁹

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 firearms and ammunition in plain view or 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.

Disposition of seized firearms³⁰

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.

Firearms restrictions for domestic violence convictions³¹

When sentencing individuals convicted of misdemeanor domestic violence, Nebraska courts must provide written or oral notification that such individuals are prohibited under federal law from shipping, transporting, receiving, or possessing firearms or ammunition.

Nebraska Shooting Range Protection Act³²

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.

Domestic violence protection order³³

Nebraska judges can enjoin persons subject to domestic violence protection orders from possessing or purchasing firearms. Notice must be given to those individuals.

Distribution of child safety information³⁴

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.

School district policy regarding firearms³⁵

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

Law enforcement officer handgun proficiency³⁶

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. A score of 70 percent or higher is required to pass.

Nebraska firearm legislation trends

Some 45 firearm-related bills were introduced in the Legislature from 2015 through 2020, excluding bills that were largely technical and only peripherally concerned guns.

Many were minor adjustments, such as expanding the definition of a postsecondary institution's rifle drill team to allow pistols and shotguns on school grounds; some proposed changes to the criminal code that would strengthen the ability to prosecute violent crimes committed with guns; while other bills sought changes to how firearms are purchased or addressed curbing firearm violence. These latter bills, those that address individuals' rights and society's safety, tend to be the ones that provoke controversy.

The right to carry

Since statehood and probably before, Nebraska has allowed its citizens to openly carry their firearms simply by not statutorily prohibiting the practice. This leaves cities free to enact ordinances as they see fit if not otherwise prohibited by state statute. For example, the city of Omaha forbids openly carrying handguns.

For just as long, and until fairly recently, Nebraska criminalized carrying concealed weapons, including firearms. Such laws were common in other states, too. Through the early and mid-20th century, a handful of states authorized carrying concealed handguns. The intermittent trend culminated in 1987, when Florida approved concealed handgun legislation and a wave of states followed suit. Then the issue dropped off the legislative radar, only to be revived in the mid-90s.

From 1996 to 2006, lawful concealed carry dominated the Nebraska Legislature's discussion of firearms, as it did in many state capitals. The legislation was

promoted by the National Rifle Association and supported by many other state and local gun organizations and individuals. A bill to approve a permit to allow carrying concealed handguns was introduced in every session of the Legislature during those years.

Carrying firearms in public continues to be a driver of legislation and emotion. Eleven bills pertaining to aspects of concealed carry have come before the Legislature since 2015, with one passing. LB 190 in 2016 extended residency to military spouses for purposes of applying for a concealed carry permit and eliminated a requirement that applicants be U.S. citizens.

Several bills have addressed inadvertently carrying concealed handguns into places where they are prohibited, putting permitholders at risk of being revoked. None passed.

LB 340 (2015) would have required businesses to conspicuously post signage prohibiting concealed handguns, while LB 681 (2015) and LB 501 (2017) would have made carrying a concealed handgun into a prohibited place a violation of the permit only when a permitholder was asked to leave the premises and refused to do so. Finally, both LB 635 and LB 769 in 2016 would have expanded the places where concealed carrying is permitted, including into bars.

LB 502 (2017) would have allowed Nebraska residents to carry concealed handguns in the state without a permit, but would have retained the current

permit system so that Nebraska residents could carry a concealed handgun in states that recognize Nebraska's permit as valid in their states. (This practice is called "reciprocity." Nebraska recognizes reciprocity with other states whose statutory standards are equal to or greater than Nebraska's. A current list of these states can be found on the Nebraska State Patrol's website, <https://statepatrol.nebraska.gov/services/concealed-handgun-permits/nebraska-reciprocity>.)

Finally, how to lawfully transport firearms became an issue after the Nebraska Supreme Court in *State v. Senn*, 295 Neb. 315 (2016), upheld a conviction for carrying a concealed weapon that seemed to broaden the definition of the criminal act of carrying a concealed weapon to include how guns are frequently transported in personal vehicles: unloaded and secured in a gun case. The ruling created a gray area, especially for persons who do not have a concealed carry permit. Prior to *Senn*, if a handgun was secured in a case but out of reach of the driver, it was not considered to be an unlawfully concealed weapon.

Legislation was introduced in 2018 and 2019 (LB 666 and LB 54, respectively) to clarify that individuals who are not concealed carry permitholders can legally transport a firearm in a case if the firearm is unloaded. The definition of "case" included a hard-sided or soft-sided box, container, or receptacle intended to be designed for the purpose of storing and transporting firearms, or a firearm manufacturer's original packaging. The bills did not pass.



Gun violence

Nationally, measures to address gun violence, in particular school shootings, have regained prominence since the 2018 school shooting at Marjory Stoneman Douglas High School in Parkland, FL. Nebraska senators considered four such bills in the 106th Legislature. None passed.

LB 58 (2019) proposed Nebraska adopt a “red flag law.” Nineteen states have enacted such laws, the majority of them since the Parkland school shooting. In general, the laws provide a mechanism to alert authorities to potential suicidal or violence-prone individuals and, if warranted, to remove any guns from their possession for a time deemed sufficient to address the concerns. (For a broader discussion of red flag laws see, *Raising Red Flags: Mental Health and Firearms*, 2019, Nebraska Legislative Research Office.)

Two other bills addressing firearm violence were introduced in 2019.

LB 275 would have required law enforcement to electronically notify the Nebraska Commission on Law Enforcement and Criminal Justice when a person is denied a purchase permit or a concealed handgun permit. The information would be entered into the Nebraska Criminal Justice Information System, providing a comprehensive system for law enforcement to share when someone who is not supposed to have a gun tries to get one.

LB 343 would have created the School Safety Rapid Response Option Act, which would have permitted school governing bodies to authorize employees who hold valid concealed handgun permits to carry concealed handguns in school buildings or vehicles, upon school grounds, or at school-sponsored activities or athletic events.

Finally, 2020 saw the introduction of LB 816, which proposed adding suicide prevention training to the firearms safety course required for a concealed handgun permit and distributing suicide prevention literature to persons acquiring firearms, but it also contained provisions controversial to many gun owners. The controversial provisions included adding

semiautomatic rifles and shotguns to the category of firearms requiring a purchase certificate, instituting a mandatory waiting period before issuing a firearm purchase certificate, and requiring closer scrutiny of firearms sold at gun shows. The bill’s public hearing drew an estimated 400 gun rights advocates to the State Capitol Building.

Of the four bills, only LB 58 advanced to General File. All died with the end of the 2020 session.



The last word

Firearms are a highly regulated commodity. Laws at the federal, state, and local levels all play roles in their regulation and gun laws vary widely among the states. Having a firearm is a constitutionally guaranteed right that exempts no one from the inherent responsibilities. Gun owners are well-advised to know and understand the law in their jurisdiction and when traveling, particularly across state lines.

The following websites provide information on various aspects of gun law. Any views expressed on these sites are the views of those organizations.

- ◊ [ATF state gun law digest](#)
- ◊ [ATF link to federal laws](#)
- ◊ [Nebraska State Patrol](#), concealed carry permit reciprocity with other states
- ◊ [Rand State Firearm Law Navigator](#)

Appendix A

Carrying firearms in public

State banned places

Nebraska is an “open carry” state, but has no statutes addressing the practice. Concealed carry with a permit has been lawful since 2006. The Concealed Handgun Permit Act, specifically Neb. Rev. Stat. sec. 69-2441, *prohibits carrying concealed handguns* in any:

- 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 career school, a 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;
- Place or premises where the person, persons, entity, or entities in control of the property or employer in control of the property has prohibited permitholders from carrying concealed handguns into or onto the place or premises; or
- Any other place or premises where handguns are prohibited by state law.



Federally banned locations

The federal government *prohibits carrying firearms* in these locations (generally per 18 U.S.C. sec. 930, unless noted otherwise):

- Federal courthouses and federal buildings, or any building owned, leased, or rented by the federal government;

Carrying firearms in public, continued ...

- Federal buildings in national forests, although not in the forests themselves (states control whether firearms are allowed in national forests in their states);
- Visitor centers and ranger stations in national parks (again, states control whether firearms are allowed in national forests in their states);
- The secure areas of airports or when attempting to board or while onboard an airplane;
- Federal prisons;
- U.S. Army Corps of Engineers' controlled dam areas;
- National cemeteries (CFR 553.33);
- Military bases;
- Post offices; or
- Bureau of Land Management buildings, but carrying on BLM land is generally allowed unless prohibited by the state, with three exceptions: the San Pedro Riparian Zone in Arizona, the Wallace Conservation Forest in Idaho, and the Red Rock National Conservation Area in Nevada.

Native American reservations

- Carry on reservations is a complex interplay between federal, state, and tribal jurisdiction. It is also dependent on whether or not the individual seeking to carry the firearm is a Native American. The authority of tribal governments to regulate or prohibit carrying firearms is highly dependent on the particular reservation.

Private businesses

- This is purely a business decision. Nebraska's concealed handgun law requires businesses to post signs if concealed carry on their premises is prohibited. Businesses can choose to also prohibit openly carrying firearms into their establishments.

Municipal ordinances

- Nebraska cities cannot enact ordinances pertaining to concealed handgun permit holders that are stricter than state law, but are free to impose restrictions pertaining to openly carrying firearms. Omaha prohibits individuals from openly carrying handguns within city limits.



Endnotes

Nebraska Firearm Purchase Certificate

¹Neb. Rev. Stat. secs. 69-2401 to 69-2426.

Concealed Handgun Act

²Neb. Rev. Stat. secs. 69-2427 to 69-2449.

Changes to Nebraska firearm laws, 2017 to 2020

³Neb. Rev. Stat. sec. 71-963.

⁴Neb. Rev. Stat. sec. 28-1204.04.

⁵Neb. Rev. Stat. sec. 84-712.05.

⁶Neb. Rev. Stat. sec. 28-1204.05.

⁷Neb. Rev. Stat. sec. 28-1212.03.

Firearm laws within the Nebraska Criminal Code

⁸Neb. Rev. Stat. secs. 28-101 to 28-1357 and 28-1601 to 28-1603.

⁹Neb. Rev. Stat. sec. 28-416(16).

¹⁰Neb. Rev. Stat. sec. 28-1202.

¹¹Neb. Rev. Stat. sec. 28-1203.

¹²Neb. Rev. Stat. sec. 28-1204.

¹³Neb. Rev. Stat. sec. 28-1204.01.

¹⁴Neb. Rev. Stat. sec. 28-1205.

¹⁵Neb. Rev. Stat. sec. 28-1206.

¹⁶Neb. Rev. Stat. secs. 28-1207 to 28-1208.

¹⁷Neb. Rev. Stat. sec. 28-1212.02.

¹⁸Neb. Rev. Stat. sec. 28-1212.04.

¹⁹Neb. Rev. Stat. sec. 28-1335.

²⁰Neb. Rev. Stat. secs. 28-1481 to 28-1482.

Firearm laws pertaining to hunting

²¹Neb. Rev. Stat. sec. 37-413.

²²Neb. Rev. Stat. sec. 37-522.

²³Neb. Rev. Stat. sec. 37-538.

²⁴Neb. Rev. Stat. secs. 37-708 and 37-712.

²⁵Neb. Rev. Stat. sec. 37-523.

²⁶Neb. Rev. Stat. sec. 60-6,342.

Miscellaneous firearm laws

²⁷Neb. Rev. Stat. sec. 18-1703.

²⁸Neb. Rev. Stat. secs. 28-1406 to 28-1416.

²⁹Neb. Rev. Stat. sec. 29-440.

³⁰Neb. Rev. Stat. sec. 29-820(e) and (f).

³¹Neb. Rev. Stat. sec. 29-2291.

³²Neb. Rev. Stat. secs. 37-1301 to 37-1310.

³³Neb. Rev. Stat. secs. 42-924, 42-925.

³⁴Neb. Rev. Stat. sec. 69-2426.

³⁵Neb. Rev. Stat. sec. 79-263.

³⁶Neb. Rev. Stat. secs. 81-1412 to 81-1412.01.

