

NEBRASKA ADMINISTRATIVE CODE

TITLE 272, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 22

NEBRASKA STATE PATROL

Nebraska Handgun Purchase Permit Act

TITLE 272 NAC XXII

ALPHABETICAL TABLE OF CONTENTS

<u>Subject for Title</u>	<u>Statutory Authority</u>	<u>Code Section</u>
Application Process	Neb. Rev. Stat. § 69-2404	003
Application Form	Neb. Rev. Stat. § 69-2404	004
Accounting Practices	Neb. Rev. Stat. § 69-2404	014
Certificate Issuance Process	Neb. Rev. Stat. § 69-2405	006
Definitions	Neb. Rev. Stat. § 69-2402	002
Delegation	Neb. Rev. Stat. § 69-2405	013
Denial	Neb. Rev. Stat. § 69-2406 & § 69-2407	012
Disabilities Under The Act	Neb. Rev. Stat. § 69-2405	010
Investigation	Neb. Rev. Stat. § 69-2411	009
Permit Eligibility	Neb. Rev. Stat. § 69-2404, §69-2405 & §4-108	005
Relief From Disabilities	Neb. Rev. Stat. § 71-963	011
Revocation of Certificate	Neb. Rev. Stat. § 69-2407	007
Rights of Person Denied Permits	Neb. Rev. Stat. § 69-2406	008
Scope & Purpose	Neb. Rev. Stat. § 69-2401 & § 69-2425	001

TITLE 272 NAC XXII

NUMERICAL TABLE OF CONTENTS

<u>Subject for Title</u>	<u>Statutory Authority</u>	<u>Code Section</u>
Scope & Purpose	Neb. Rev. Stat. § 69-2401 & § 69-2425	001
Definitions	Neb. Rev. Stat. § 69-2402	002
Application Process	Neb. Rev. Stat. § 69-2404	003
Application Form	Neb. Rev. Stat. § 69-2404	004
Permit Eligibility	Neb. Rev. Stat. § 69-2404 & §69-2405 & §4-108	005
Certificate Issuance Process	Neb. Rev. Stat. § 69-2405	006
Revocation of Certificate	Neb. Rev. Stat. § 69-2407	007
Rights of Person Denied Permits	Neb. Rev. Stat. § 69-2406	008
Investigation	Neb. Rev. Stat. § 69-2411	009
Disabilities Under The Act	Neb. Rev. Stat. § 69-2405	010
Relief From Disabilities	Neb. Rev. Stat. § 71-963	011
Denial	Neb. Rev. Stat. § 69-2406 & §69-2407	012
Delegation	Neb. Rev. Stat. § 69-2405	013
Accounting Practices	Neb. Rev. Stat. § 69-2404 & §69-2405	014

TITLE 272, NEBRASKA ADMINISTRATIVE CODE

CHAPTER 22 – NEBRASKA HANDGUN PURCHASE PERMIT ACT

001 SCOPE AND PURPOSE

001.01 These regulations are to implement the Nebraska Handgun Purchase Permit Act pursuant to Nebraska Revised Statutes §§ 69-2401 and 69-2425. The general purpose of this act is to authorize the regulation of the purchase, rent or transfer of a handgun.

002 DEFINITIONS

002.01 “*Antique handgun or pistol*” shall mean any handgun or pistol, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898 and any replica of such a handgun or pistol if such replica (a) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (b) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

002.02 “*Criminal history record check*” shall include a check of the criminal history records of the Nebraska State Patrol and a check of the Federal Bureau of Investigation’s National Instant Criminal Background Check System; and

002.03 “*Handgun*” shall mean 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.

003 APPLICATION PROCESS

003.01 Any person desiring to purchase, lease, rent, or receive transfer of a handgun shall apply with the chief of police or sheriff of the applicant’s place of residence for a certificate. The certificate shall not be required if:

- (1) The person acquiring the handgun is a licensed firearms dealer under federal law;
- (2) The handgun is an antique handgun;
- (3) The person acquiring the handgun is authorized to do so on behalf of a law enforcement agency;
- (4) The transfer is a temporary transfer of a handgun and the transferee remains (a) in the line of sight of the transferor or (b) within the premises of an established shooting facility; or
- (5) The transfer is between a person and his or her spouse, sibling, parent, child, aunt, uncle, niece, nephew, or grandparent.

003.02 The application may be made in person or by mail.

- 003.03 The application form and certificate shall be made on forms approved by the Superintendent of Law Enforcement and Public Safety.
- 003.04 The application shall include the applicant's full name, address, date of birth and country of citizenship. If the applicant is not a United States citizen, the application shall include the applicant's place of birth and his or her alien or admission number.
- 003.05 If the application is made in person, the applicant shall also present a Nebraska motor vehicle operator's license, or state identification card reflecting the current address, or military identification card, or if the application is made by mail, the application form shall describe the license or card used for identification and be notarized by a notary public who has verified the identification of the application through such a license or card.
- 003.06 An applicant shall receive a certificate if he or she is twenty-one years of age or older and is not prohibited from purchasing or possessing a handgun by 18 U.S.C. 922.
- 003.07 A fee of five dollars shall be charged for each application for a certificate to cover the cost of a criminal history record check.

004 APPLICATION FORM

- 004.01 The application form will be designed by the Nebraska State Patrol and will include the following concerning the applicant:
 - 004.01A Full name and any previous name(s) used by applicant;
 - 004.01B Complete address;
 - 004.01C Date of birth;
 - 004.01D Proof of citizenship by birth certificate, passport or in alternative alien or admission number;
 - 004.01E Current motor vehicle operator's license number, state identification card number, or military identification card, if application is made in person;
 - 004.01F If the application is made by mail, the application form shall describe the license or card used for identification and be notarized by a notary public who has verified the identification of the applicant through such a license or card.
 - 004.01G Signature of applicant.
 - 004.01H Any application for a certificate pursuant to the Act shall be made

on the form approved by the Superintendent of Law Enforcement and Public Safety.

004.01I Any certificate issued in accordance with the Act shall be in the form approved by the Superintendent.

004.01J The printer shall provide application and certificate forms to issuing agencies only. Issuing agencies may provide blank applications to dealers, PROVIDED, the issuing agency shall ensure application forms are accounted for in a manner to allow proper audit of all funds received in furtherance of the Act.

004.01K Forms and permits can also be made available electronically in a secure manner to issuing agencies.

004.01L All certificates shall be maintained in a secure fashion by all law enforcement agencies for purposes of auditing.

005 PERMIT ELIGIBILITY

005.01 Applicants must:

005.01A Be at least twenty-one (21) years of age;

005.02B Not be prohibited from purchasing or possessing a handgun by 18 U.S.C. 922. Verification of this requirement requires clearance from the National Instant Criminal Background Check System (NICS) maintained by the Federal Bureau of Investigation. A summary of the relevant provisions of Section 922 of Title 18 of the United States Code can be reviewed on the State Patrol web-site at <http://www.statepatrol.nebraska.gov/>;

005.03C Not be prohibited from possessing a handgun under applicable federal, or state law or local law existing on September 6, 1991.

005.03D Be a U.S. citizen or a qualified alien under the Federal Immigration and Nationality Act. Such status shall be verified as required by Neb. Rev. Stat. § 4-108.

006 CERTIFICATE ISSUANCE PROCESS

006.01 If the application for a certificate is complete and all accompanying documentation is submitted, a permit will be issued to the applicant by the chief of police or by the sheriff within three days so long as the record check reveals no disqualifying information and applicant meets all of the requirements of the Act and these regulations.

006.02 In computing the three-day period, the day of receipt of the application shall not be included and the last day of the three-day period shall be included. The three-day period shall expire at 11:59 p.m. of the third day unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until 11:59 p.m. of the next day which is not a Saturday, Sunday, or legal holiday.

006.03 If an applicant does not meet the qualifications, the applicant will be notified by mail by the chief of police or sheriff's office indicating the reason for denying issuance of the certificate.

006.04 A fee of five dollars shall be charged for each application for a certificate to cover the cost of a criminal history record check.

007 REVOCACTION OF CERTIFICATE

007.01 If the chief of police or sheriff who issued the certificate determines that the applicant has become disqualified for the certificate under section 69-2404, he or she may immediately revoke the certificate and require the holder to surrender the certificate immediately.

007.02 If, within three years after the certificate has been issued, the issuing agency learns that the applicant was or has become disqualified under revision § 69-2414 the issuing agency shall immediately revoke the certificate and shall initiate action to cause its surrender or seizure.

008 RIGHTS OF PERSONS DENIED PERMITS

008.01 Any person who is denied a certificate, whose certificate is revoked, or who has not been issued a certificate upon expiration of the three-day period may appeal within ten days of receipt of the denial or revocation to the county court of the county of the applicant's place of residence.

008.02 The applicant shall file with the court the specific reasons for the denial or revocation by the chief of police or sheriff and a filing fee of ten dollars in lieu of any other filing fee required by law. The court shall issue its decision within thirty days of the filing of the appeal.

009 INVESTIGATION

009.01 The Chief of Police or Sheriff to whom the application was submitted, or his or her designee, shall conduct an investigation of the applicant which shall include at a minimum an inquiry of the Nebraska criminal history record, National Instant Criminal Background Check System (NICS) and the records of the agency to which application is made.

009.02 The investigation may include, but is not limited to, public records of all courts and government offices including notations or warrants and commitment orders issued by courts and mental health boards; interviews of individuals with reliable and pertinent information about the applicant.

010 DISABILITIES UNDER THE ACT

010.01 A certificate shall be denied pursuant to 18 USC 922 to:

010.01A Felons or persons who have been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.

010.01A(1) *“Felony of Crime punishable by imprisonment term for exceeding 1 year”* means any Federal, State or foreign offense for which the maximum penalty, whether or not imposed, is a capital punishment or imprisonment in excess of one year. The term shall not include any Federal or State offenses pertaining to antitrust violations, fair trade practices, restraints of trade practices, restraints of trade, or other similar offenses relating to the regulations of business practices, or any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less. What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged or set aside or for which a person has been pardoned or has had civil rights restored, shall not be considered a conviction for purposes of the Act or this part, unless such pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, or unless the person is prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

010.01B Persons who are fugitives from justice.

010.01B(1) *“Fugitive from Justice”* means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

010.01C Persons who are unlawful users of or addicted to any controlled substance.

010.01C(1) *“Unlawful User of or addicted to any controlled substance”* means any person who uses a controlled substance and has lost the power of self-control

with reference to the use of controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance

even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past 5 years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure.

010.01D Persons who have been adjudicated as mental defectives or have been committed to any mental institution.

010.01D(1) “*Adjudicated as a mental defective*” means a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

010.01D(1)(a) Is a danger to himself or to others; or

010.01D(1)(b) Lacks the mental capacity to contract or manage his own affairs. The term shall include a finding of insanity by a court in a

criminal case; and those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

010.01E Persons who are aliens and are illegally or unlawfully in the United States.

010.01E(1) “*Alien*” means any person not a citizen or national of the United States, or aliens illegally or unlawfully in the United States. Aliens who are unlawfully in the United States who are not in valid immigrant, nonimmigrant or parole status. The term includes any alien who unlawfully entered the United States without inspection and authorization by an immigration officer and who has not been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act (INA); who is a nonimmigrant and whose authorized period of stay has expired or who has violated the terms of the nonimmigrant category in which he or she was admitted; paroled under INA section 212(d)(5) whose authorized period of parole has expired or whose parole status has been terminated; or under an order of deportation, exclusion, or removal, or under an order to depart the United States voluntarily, whether or not he or she has left the United States.

010.01F Persons who have been discharged from the armed forces under dishonorable conditions.

010.01F(1) “*Dishonorable Discharge*” means separation from the U.S. Armed Forces resulting from a dishonorable discharge or dismissal adjudged by a general court-martial. The term does not include any separation from the Armed Forces resulting from any other discharge, e.g., a bad conduct discharge.

010.01G Persons who, having been citizens of the United States, have renounced their U.S. Citizenship.

010.01G(1) “*Renounced U.S. Citizenship*” means a person has renounced his U.S. citizenship if the person,

having been a citizen of the United States, has renounced citizenship either before a diplomatic or consular officer of the United States in a foreign state pursuant to 8 U.S.C. 1481(a)(5); or before an officer designated by the Attorney General when the United States is in a state of war pursuant to 8 U.S.C. 1481(a)(6). The term shall not include any renunciation of citizenship that has been reversed as a result of administrative or judicial appeal.

010.01H Persons who have committed a Misdemeanor Crime of Domestic Violence. Misdemeanor crime of violence means a Federal, State or local offense that:

010.01H(1) Is a misdemeanor under Federal or State law or, in States which do not classify offenses as misdemeanors, is an offense punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine. (This is true whether or not the State statute specifically defines the offense as a “misdemeanor” or as a “misdemeanor crime of domestic violence.” The term includes all such misdemeanor convictions in Indian Courts established pursuant to 25 CFR part 11.);

010.01H(2) Has, as an element, the use or attempted use of physical force (e.g., assault and battery), or the threatened use of a deadly weapon; and

010.01H(3) Was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, (e.g., the equivalent of a “common law” marriage even if such relationship is not recognized under the law), or a person similarly situated to a spouse, parent, or guardian of the victim (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home would be similarly situated to a spouse).

010.01H(4) A person shall not be considered to have been convicted of such an offense for purposes of this part unless:

010.01H(4)(a) The person is considered to have been convicted by the jurisdiction in which the proceedings were held.

010.01H(4)(b) The person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

010.01H(4)(c) In the case of a prosecution for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either 002.08(c)(1) The case was tried by a jury, or 002.08(c)(2) The person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

010.01H(5) A person shall not be considered to have been convicted of such an offense for purposes of this part if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense) unless the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, and the person is not otherwise prohibited by the law of the jurisdiction in which the proceeding were held from receiving or possessing any firearms.

010.01I Person who are subject to a domestic restraining order or domestic protection Nebraska order. “Subject to a domestic restraining

order” means the person is subject to a court order that:

- 010.01I(1) Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
- 010.01I(2) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- 010.01I(3) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
- 010.01I(4) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

010.02

A certificate shall be denied to those persons who are prohibited from possessing a firearm pursuant to 28-1206, to include those convicted of:

010.02A Misdemeanor Crime of Domestic Violence

- 010.02A(1) A crime that is classified as a misdemeanor under the laws of the United States or the District of Columbia or the laws of any state, territory, possession, or tribe;
- 010.02A(2) A crime that has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; and
- 010.02A(3) A crime that that is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323; or

010.02B Assault in the third degree under section 28-310, or

010.02C False imprisonment in the second degree under section 28-315, or

010.02D First offense domestic assault in the third degree, or

under subsection (1) of section 28-323, or

010.02E Fugitive from justice, for example, the subject of an active felony or misdemeanor warrant, or

010.02F Any attempt or conspiracy to commit one of the offenses listed in B through F above.

010.03 A certificate shall be denied to persons prohibited from purchasing or possessing a handgun by city or village ordinance existing on September 6, 1991.

011 RELIEF FROM DISABILITIES

011.01 A certificate shall not be denied to any person who has been granted relief from applicable disabilities.

011.01A Any decision made by any mental health board or court or commissioners that finds that a person is not likely to act in a manner that is dangerous to public safety and removes the person's firearm disability caused by a mental health board or court commitment shall not be considered a disqualifier for purposes of the act or this chapter.

012 DENIAL

012.01 The agency to which application is made shall preserve evidence for the reason for denial for at least 30 days for use as evidence should the denial be appealed.

013 DELEGATION

013.01 Any activity required to be performed by the Chief of Police or Sheriff may be performed by his/her authorized designee.

014 ACCOUNTING PRACTICES

014.01 Chiefs of Police and Sheriffs acting pursuant to the Act shall establish accounting practices to assure proper disposition of all funds received and to allow an effective audit trail.

Enabling Legislation
LB355 Sec. 23