

people in Article II, section 12, of the Montana constitution, a person who has not been convicted of a violent, felony crime and who is lawfully able to own or to possess a firearm under the Montana constitution is considered to be individually licensed and verified by the state of Montana within the meaning of the provisions regarding individual licensure and verification in the federal Gun-Free School Zones Act.

45-8-361. Possession or allowing possession of weapon in school building – exceptions - penalties - seizure and forfeiture or return authorized - definitions.

(1) A person commits the offense of possession of a weapon in a school building if the person purposely and knowingly possesses, carries, or stores a weapon in a school building.

(2) A parent or guardian of a minor commits the offense of allowing possession of a weapon in a school building if the parent or guardian purposely and knowingly permits the minor to possess, carry, or store a weapon in a school building.

(3)(a) Subsection (1) does not apply to law enforcement personnel.

(b) The trustees of a district may grant persons and entities advance permission to possess, carry, or store a weapon in a school building.

(4)(a) A person convicted under this section shall be fined an amount not to exceed \$500, imprisoned in the county jail for a term not to exceed 6 months, or both. The court shall consider

alternatives to incarceration that are available in the community.

(b)(i) A weapon in violation of this section may be seized and, upon conviction of the person possessing or permitting possession of the weapon, may be forfeited to the state or returned to the lawful owner.

(ii) If a weapon seized under the provisions of this section is subsequently determined to have been stolen or otherwise taken from the owner's possession without permission, the weapon must be returned to the lawful owner.

(5) As used in this section:

(a) "school building" means all buildings owned or leased by a local school district that are used for instruction or for student activities. The term does not include a home school provided for in 20-5-109.

(b) "weapon" means any type of firearm, a knife with a blade 4 or more inches in length, a sword, a straight razor, a throwing star, nunchucks, or brass or other metal knuckles. The term also includes any other article or instrument possessed with the purpose to commit a criminal offense.

Part 4. Montana Street Terrorism Enforcement and Prevention Act

45-8-406. Supplying of firearms to criminal street gang.

(1) A person commits the offense of supplying firearms to a criminal street gang if the person purposely or knowingly supplies, sells, or gives

possession or control of any firearm to another, and the person has actual knowledge that the other person will use the firearm to commit an offense enumerated in 45-8-405 while actively participating in any criminal street gang whose members engage in a pattern of criminal street gang activity.

(2) Subsection (1) does not apply to a person who is convicted as a principal to the offense committed by the person to whom the firearm was supplied, sold, or given.

(3) A person convicted of the offense of supplying firearms to a criminal street gang shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

Title 46. Criminal Procedure

Chapter 9. Bail

46-9-108. Conditions upon defendant's release - notice to victim of stalker's release.

(1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions: ...

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon; ...

[Current through 2003 Regular Session (no 2004 Session)]

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Chapter 28. Crimes and Punishment

Article 12. Offenses Against Public Health and Safety

28-1201. Terms, defined. For purposes of sections 28-1201 to 28-1212, unless the context otherwise requires:

(1) Firearm shall mean any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

(2) Fugitive from justice shall mean any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

(3) Juvenile shall mean any person under the age of eighteen years; ...

(6) Machine gun shall mean any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

(7) Short rifle shall mean a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

(8) Short shotgun shall mean a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

28-1202. Carrying concealed weapon; penalty; affirmative defense.

(1) Except as provided in subsection (2) of this section, any person who carries a weapon or weapons concealed on or about his or her person such as a revolver, pistol, bowie knife, dirk or knife with a dirk blade attachment, brass or iron knuckles, or any other deadly weapon

commits the offense of carrying a concealed weapon.

(2) It shall be an affirmative defense that the defendant was engaged in any lawful business, calling, or employment at the time he or she was carrying any weapon or weapons and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons for the defense of his or her person, property, or family.

(3) Carrying a concealed weapon is a Class I misdemeanor.

(4) In the case of a second or subsequent conviction under this section, carrying a concealed weapon is a Class IV felony.

28-1203. Transportation or possession of machine guns, short rifles, or short shotguns; penalty; exception.

(1) Any person or persons who shall transport or possess any machine gun, short rifle, or short shotgun commits a Class IV felony.

(2) The provisions of this section shall not be held to prohibit any act by peace officers, members of the United States armed services, or members of the National Guard of this state, in the lawful discharge of their duties, or persons qualified under the provisions of federal law relating to the short rifle, short shotgun, or machine gun.

28-1204. Unlawful possession of a revolver; exceptions; penalty.

(1) Any person under the age of eighteen years who possesses a pistol, revolver, or any other form of short-barreled hand firearm commits the offense of unlawful possession of a revolver.

(2) The provisions of this section shall not apply to the issuance of such firearms to members

of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps, when on duty or training, or to the temporary loan of pistols, revolvers, or any other form of short-barreled firearms for instruction under the immediate supervision of a parent or guardian or adult instructor.

(3) Unlawful possession of a revolver is a Class III misdemeanor.

28-1204.01. Unlawful transfer of a firearm to a juvenile; exceptions; penalty; county attorney; duty.

(1) Any person who knowingly and intentionally does or attempts to sell, provide, loan, deliver, or in any other way transfer the possession of a firearm to a juvenile commits the offense of unlawful transfer of a firearm to a juvenile. The county attorney shall have a copy of the petition served upon the owner of the firearm, if known, in person or by registered or certified mail at his or her last-known address.

(2) This section shall not apply to the transfer of a firearm other than the types specified in section 28-1204 to a juvenile:

(a) From a person related to such juvenile within the second degree of consanguinity or affinity if the transfer of physical possession of such firearm does not occur until such time as express permission has been obtained from the juvenile's parent or guardian;

(b) For a legitimate and lawful sporting purpose; or

(c) Who is under direct adult supervision in an appropriate educational program.

(3) This section shall apply to the transfer of any firearm described in section 28-1204, except as specifically provided in subsection (2) of section 28-1204.

(4) Unlawful transfer of a firearm to a juvenile is a Class IV felony.

28-1204.02. Confiscation of firearm; disposition. Any firearm in the possession of a person in violation of section 28-1204 or 28-1204.01 shall be confiscated by a peace officer or other authorized law enforcement officer. Such firearm shall be held by the agency employing such officer until it no longer is required as evidence.

28-1204.04. Unlawful possession of a firearm on school grounds; penalty; exceptions; confiscation of certain firearms; disposition.

(1) Any person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event shall be guilty of the offense of unlawful possession of a firearm on school grounds. Unlawful possession of a firearm on school grounds is a Class II misdemeanor. This subsection shall not apply to (a) the issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training, (b) firearms which may lawfully be possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor, or (c) firearms contained within a private vehicle operated by a nonstudent adult which are not loaded and (i) are encased or (ii) are in a locked firearm rack that is on a motor vehicle. For purposes of this subsection, encased shall mean enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zippered, snapped, buckled, tied, or otherwise fastened with no part of the firearm exposed.

(2) Any firearm possessed in violation of subsection (1) of this section in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event shall be confiscated without warrant by a peace officer or may be confiscated without warrant by school administrative or teaching personnel. Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable.

(3) Any firearm confiscated by or given to a peace officer pursuant to subsection (2) of this section shall be declared a common nuisance and shall be held by the peace officer prior to his or her delivery of the firearm to the property division of the law enforcement agency which employs the peace officer. The property division of such law enforcement agency shall hold such firearm for as long as the firearm is needed as evidence. After the firearm is no longer needed as evidence it shall be destroyed in such manner as the court may direct.

(4) Whenever a firearm is confiscated and held pursuant to this section or section 28-1204.02, the peace officer who received such firearm shall cause to be filed within ten days after the confiscation a petition for destruction of such firearm. The petition shall be filed in the district court of the county in which the confiscation is made. The petition shall describe the firearm held, state the name of the owner, if known, allege the essential elements of the violation which caused the confiscation, and conclude with a prayer for disposition and destruction in such manner as the court may direct. At any time after the confiscation of the firearm and prior to court disposition, the owner of the firearm seized may petition the district court of the county in which the confiscation was made for

possession of the firearm. The court shall release the firearm to such owner only if the claim of ownership can reasonably be shown to be true and either (a) the owner of the firearm can show that the firearm was taken from his or her property or place of business unlawfully or without the knowledge and consent of the owner and that such property or place of business is different from that of the person from whom the firearm was confiscated or (b) the owner of the firearm is acquitted of the charge of unlawful possession of a revolver in violation of section 28-1204, unlawful transfer of a firearm to a juvenile, or unlawful possession of a firearm on school grounds. No firearm having significant antique value or historical significance as determined by the Nebraska State Historical Society shall be destroyed. If a firearm has significant antique value or historical significance, it shall be sold at auction and the proceeds deposited in the permanent school fund.

28-1205. Using a deadly weapon to commit a felony; penalty; separate and distinct offense.

(1) Any person who uses a firearm, a knife, brass or iron knuckles, or any other deadly weapon to commit any felony which may be prosecuted in a court of this state or who unlawfully possesses a firearm, a knife, brass or iron knuckles, or any other deadly weapon during the commission of any felony which may be prosecuted in a court of this state commits the offense of using a deadly weapon to commit a felony.

(2)(a) Use of a deadly weapon other than a firearm to commit a felony is a Class III felony.

(b) Use of a deadly weapon which is a firearm to commit a felony is a Class II felony.

(3) The crimes defined in this section shall be treated as separate and distinct offenses from the felony being committed, and sentences imposed under this section shall be consecutive to any other sentence imposed.

28-1206. Possession of a deadly weapon by a felon or a fugitive from justice; penalty.

(1) Any person who possesses any firearm or brass or iron knuckles and who has previously been convicted of a felony or who is a fugitive from justice commits the offense of possession of a deadly weapon by a felon or a fugitive from justice.

(2) Such felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3)(a) Possession of a deadly weapon other than a firearm by a felon or a fugitive from justice is a Class IV felony.

(b) Possession of a deadly weapon which is a firearm by a felon or a fugitive from justice is a Class III felony.

28-1207. Possession of a defaced firearm; penalty.

(1) Any person who knowingly possesses, receives, sells, or leases, other than by delivery to law enforcement officials, any firearm from which the manufacturer's identification mark or serial number has been removed, defaced, altered, or destroyed, commits the offense of possession of a defaced firearm.

(2) Possession of a defaced firearm is a Class IV felony.

28-1208. Defacing a firearm; penalty.

(1) Any person who intentionally removes, defaces, covers, alters, or destroys the manufacturer's identification mark or serial number or other distinguishing numbers on any firearm commits the offense of defacing a firearm.

(2) Defacing a firearm is a Class IV felony.

28-1211. Firearms; purchase, sell, trade, or convey; conditions. The State of Nebraska herewith permits its residents, not otherwise precluded by any applicable laws, to purchase, sell, trade, convey, deliver, or transport rifles, shotguns, ammunition, reloading components or firearm accessories in Nebraska and in states contiguous to Nebraska. This authorization is enacted to implement for this state the permissive firearms sales and delivery provisions in section 922(b), (3)(A) of Public Law 90-618 of the 90th Congress, Second Session. In the event that presently enacted federal restrictions on the purchase of rifles, shotguns, ammunition, reloading components, or firearm accessories are repealed by the United States Congress or set aside by courts of competent jurisdiction, this section shall in no way be interpreted to prohibit or restrict the purchase of shotguns, rifles, ammunition, reloading components, or firearm accessories by residents of Nebraska otherwise competent to purchase same in contiguous or other states.

28-1212.03. Stolen firearm; prohibited acts; violation; penalty. Any person who possesses, receives, retains, or disposes of a stolen firearm knowing that it has been or believing that it has been stolen shall be guilty of a Class IV felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

28-1213. Explosives, destructive devices, other terms; defined. For purposes of sections 28-1213 to 28-1239, unless the context otherwise requires:

(1) Person shall mean any individual, corporation, company, association, firm, partnership, limited liability company, society, or joint-stock company;

(2) Business enterprise shall mean any corporation, partnership, limited liability company, company, or joint-stock company;

(3) Explosive materials shall mean explosives, blasting agents, and detonators;

(4) Explosives shall mean any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, ignited cord, igniters, display fireworks as defined in section 28-1241, and firecrackers or devices containing more than one hundred thirty milligrams of explosive composition, but shall not include common fireworks as defined in such section, gasoline, kerosene, naphtha, turpentine, benzene, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches; ...

(7)(a) Destructive devices shall mean:

(i) Any explosive, incendiary, chemical or biological poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I) vessel or container intentionally caused to rupture or mechanically explode by expanding pressure from any gas, acid, dry ice, or other chemical mixture, or (J) any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

(ii) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision

(7)(a)(i) of this section from which a destructive device may be readily assembled.

(b) The term destructive device shall not include (i) any device which is neither designed nor redesigned for use as a weapon to be used against person or property, (ii) any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, (iii) surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686, as such sections existed on July 20, 2002, (iv) any other device which the Nebraska State Patrol finds is not likely to be used as a weapon or is an antique, or (v) any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;

(8) Federal permittee shall mean any lawful user of explosive materials who has obtained a federal user permit under 18 U.S.C. chapter 40, as such chapter existed on July 20, 2002;

(9) Federal licensee shall mean any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers', or dealers' license under 18 U.S.C. chapter 40, as such chapter existed on July 20, 2002; and

(10) Smokeless propellants shall mean solid propellants commonly called smokeless powders in the trade and used in small arms ammunition.

28-1220. Possession of a destructive device; penalty; permit or license for explosive materials; no defense.

(1) Any person who has in his possession a destructive device, as defined in subdivision (7) of section 28-1213, commits the offense of possession of a destructive device.

(2) A permit or license issued under any state or federal law to possess, own, use, distribute, sell, manufacture, store, or handle in any manner explosive materials shall not be a defense to the crime of possession of a destructive device as defined in this section.

(3) Possession of a destructive device is a Class IV felony.

28-1239. Explosives control; exceptions to sections; enumerated. In addition to the exceptions provided in sections 28-1213 to 28-1239, such sections shall not apply to:

(1) The use of explosive materials in medicines and medicinal agents in forms prescribed by the official United States Pharmacopoeia or the National Formulary;

(2) The sale, transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any state or political subdivision thereof;

(3) Small arms ammunition and components thereof;

(4) The storage or possession of or dealing in black powder used for recreation purposes by a sportsperson;

(5) The storage or possession of or dealing in smokeless propellants, percussion caps, primers, and other components used by a sportsperson in the reloading of small arms ammunition;

(6) Bona fide war trophies capable of exploding and innocently found explosive materials possessed under circumstances negating an intent to use the same unlawfully, but the owner thereof shall surrender such items forthwith to any nationally certified hazardous device technician or military explosive ordnance expert upon demand by a law enforcement officer or agency or fire department; and

(7) The storage in minimum amounts necessary for lawful educational purposes of explosive materials to be used in the natural science laboratories of any state-accredited school system.

Chapter 69. Personal Property

Article 24. Handguns

69-2401. Legislative findings and declarations. The Legislature hereby finds and declares that the state has a valid interest in the regulation of the purchase, lease, rental, and transfer of handguns and that requiring a certificate prior to the purchase, lease, rental, or transfer of a handgun serves a valid public purpose.

69-2402. Terms, defined. For purposes of sections 69-2401 to 69-2425:

(1) 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; and

(2) 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.

69-2403. Sale, lease, rental, and transfer; certificate required; exceptions. Except as provided in section 69-2409, a person shall not purchase, lease, rent, or receive transfer of a handgun until he or she has obtained a certificate in accordance with section 69-2404. Except as provided in section 69-2409, a person shall not sell, lease, rent, or transfer a handgun to a person who has not obtained 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.

69-2404. Certificate; application; fee. 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 application may be made in person or by mail. The application form and certificate shall be made on forms approved by the Superintendent of Law Enforcement and Public Safety. The application shall state the applicant's full name, social security number, address, and date of birth. If the application is made in person, the applicant shall also present a current Nebraska motor vehicle operator's license, state identification card, 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 applicant through such a license or card. 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. A fee of five dollars shall be charged for each application for a certificate to cover the cost of a criminal history record check.

69-2405. Application; chief of police or sheriff; duties; immunity. Upon the receipt of an application for a certificate, the chief of police or sheriff shall issue a certificate or deny a certificate and furnish the applicant the specific reasons for the denial in writing. The chief of police or sheriff shall be permitted up to two days in which to conduct an investigation to determine whether the applicant is prohibited by law from purchasing or possessing a handgun. If the certificate or denial is mailed to the applicant, it shall be mailed to the applicant's address by first-class mail within the two-day period. If it is determined that the purchase or possession of a handgun by the applicant would be in violation of applicable federal, state, or local law, the chief of police or sheriff shall deny the certificate. In computing the two-day period, the day of receipt of the application shall not be included and the last day of the two-day period shall be included. The two-day period shall expire at 11:59 p.m. of the second 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. No later than the end of the two-day period the chief of police or sheriff shall issue or deny such certificate and, if the certificate is denied, furnish the applicant the specific reasons for denial in writing. No civil liability shall arise to any law enforcement agency if such law enforcement agency complies with sections 69-2401, 69-2403 to 69-2408, and 69-2409.01.

69-2406. Certificate; denial or revocation; appeal; filing fee. Any person who is denied a certificate, whose certificate is revoked, or who has not been issued a certificate upon expiration of the two-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. 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.

69-2407. Certificate; contents; term; revocation. A certificate issued in accordance with section 69-2404 shall contain the holder's name, social security number, address, and date of birth and the effective date of the certificate. A certificate shall authorize the holder to acquire any number of handguns during the period that the certificate is valid. The certificate shall be valid throughout the state and shall become invalid three years after its effective date. 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. Revocation may be appealed pursuant to section 69-2406.

69-2408. False information on application; other violations; penalties; confiscation of handgun. Any person who willfully provides false information on an application form for a certificate under section 69-2404 shall, upon conviction, be guilty of a Class IV felony, and any person who intentionally violates any other provision of sections 69-2401, 69-2403 to 69-2407, and 69-2409.01 shall, upon conviction, be

guilty of a Class I misdemeanor. As a part of the judgment of conviction, the court may order the confiscation of the handgun.

69-2409. Automated criminal history files; legislative intent; system implementation; Nebraska State Patrol; superintendent; duties; purchase, lease, rental, or transfer; election. It is the intent of the Legislature that the Nebraska State Patrol implement an expedited program of upgrading Nebraska's automated criminal history files to be utilized for, among other law enforcement purposes, an instant criminal history record check on handgun purchasers when buying a handgun from a licensed importer, manufacturer, or dealer so that such instant criminal history record check may be implemented as soon as possible on or after January 1, 1995.

The patrol's automated arrest and conviction records shall be reviewed annually by the Superintendent of Law Enforcement and Public Safety who shall report the status of such records within thirty days of such review to the Governor and the Clerk of the Legislature. The instant criminal history record check system shall be implemented by the patrol on or after January 1, 1995, when, as determined by the Superintendent of Law Enforcement and Public Safety, eighty-five percent of the Nebraska arrest and conviction records since January 1, 1965, available to the patrol are included in the patrol's automated system. Not less than thirty days prior to implementation and enforcement of the instant check system, the patrol shall send written notice to all licensed importers, manufacturers, and dealers outlining the procedures and toll-free number described in sections 69-2410 to 69-2423.

Upon implementation of the instant criminal history record check system, a person who desires to purchase, lease, rent, or receive transfer of a handgun from a licensed importer, manufacturer, or dealer may elect to obtain such handgun either under sections 69-2401, 69-2403 to 69-2408, and 69-2409.01 or under sections 69-2409.01 and 69-2410 to 69-2423.

69-2410. Importer, manufacturer, or dealer; sale or delivery; duties. No importer, manufacturer, or dealer licensed pursuant to 18 U.S.C. 923 shall sell or deliver any handgun to another person other than a licensed importer, manufacturer, dealer, or collector until he or she has:

(1)(a) Inspected a valid certificate issued to such person pursuant to sections 69-2401, 69-2403 to 69-2408, and 69-2409.01; and

(b) Inspected a valid identification containing a photograph of such person which appropriately and completely identifies such person; or

(2)(a) Obtained a completed consent form from the potential buyer or transferee, which form shall be established by the Nebraska State Patrol and provided by the licensed importer, manufacturer, or dealer. The form shall include only the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee;

(b) Inspected a valid identification containing a photograph of the potential buyer or transferee which appropriately and completely identifies such person;

(c) Requested by toll-free telephone call or other electromagnetic communication that the Nebraska State Patrol conduct a criminal history record check; and

(d) Received a unique approval number for such inquiry from the Nebraska State Patrol indicating the date and number on the consent form.

69-2411. Request for criminal history record check; Nebraska State Patrol; duties; fee.

(1) Upon receipt of a request for a criminal history record check, the Nebraska State Patrol shall as soon as possible during the licensee's telephone call or by return telephone call:

(a) Review its criminal history records to determine if the potential buyer or transferee is prohibited from receipt or possession of a handgun pursuant to state or federal law; and

(b) Either (i) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a handgun or (ii) provide the licensee with a unique approval number.

(2) In the event of electronic failure or similar emergency beyond the control of the Nebraska State Patrol, the patrol shall immediately notify a requesting licensee of the reason for and estimated length of such delay. In any event, no later than the end of the next business day the Nebraska State Patrol shall either (a) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a handgun or (b) provide the licensee with a unique approval number. If the licensee is not informed by the end of the next business day that the potential buyer is prohibited from receipt or possession of a handgun, and regardless of whether the unique approval number has been received, the licensee may complete the sale or delivery and shall not be deemed to be in violation of sections 69-2410 to 69-2423 with respect to such sale or delivery.

(3) A fee of three dollars shall be charged for each request of a criminal history record check required pursuant to section 69-2410, which amount shall be transmitted monthly to the Nebraska State Patrol. Such amount shall be for the purpose of covering the costs of the criminal history record check.

69-2413. Nebraska State Patrol; toll-free telephone number; personnel. The Nebraska State Patrol shall establish a toll-free telephone number which shall be operational seven days a week between 8 a.m. and 10 p.m. for purposes of responding to requests under section 69-2410. The Nebraska State Patrol shall employ and train such personnel as is necessary to expeditiously administer the provisions of sections 69-2410 to 69-2423.

69-2414. Records; amendment; procedure. Any person who is denied the right to purchase or receive a handgun as a result of procedures established by sections 69-2410 to 69-2423 may request amendment of the record pertaining to him or her by petitioning the Nebraska State Patrol. If the Nebraska State Patrol fails to amend the record within seven days, the person requesting the amendment may petition the county court of the county in which he or she resides for an order directing the patrol to amend the record. If the person proves by a preponderance of the evidence that the record should be amended, the court shall order the record be amended. If the record demonstrates that such person is not prohibited from receipt or possession of a handgun by state or federal law, the Nebraska State Patrol shall destroy any records it maintains which contain any information derived from the criminal history record check.

69-2416. Licensed importer, manufacturer, or dealer; compliance not required; when. A licensed importer, manufacturer, or dealer shall not be required to comply with the provisions of subdivision (2) of section 69-2410 and sections 69-2411 to 69-2423 in the event of:

(1) Unavailability of telephone service at the licensed premises due to (a) the failure of the entity which provides telephone service in the state, region, or other geographical area in which the licensee is located to provide telephone service to the premises due to the location of such premises or (b) the interruption of telephone service by reason of hurricane, flood, natural disaster, other act of God, war, riot, or other bona fide emergency or reason beyond the control of the licensee; or

(2) Failure of the Nebraska State Patrol to comply reasonably with the requirements of sections 69-2410 to 69-2423.

69-2417. Nebraska State Patrol; licensee; liability defense; when. Compliance with sections 69-2410 to 69-2423 shall be a defense by the Nebraska State Patrol and the licensee transferring a handgun in any cause of action under the laws of this state for liability for damages arising from the importation or manufacture, or the subsequent sale or transfer, of any handgun which has been shipped or transported in interstate or foreign commerce to any person who has been convicted in any court of any crime punishable by a term of more than one year.

69-2418. Instant criminal history record check; requirements; exemptions. Sections 69-2410 to 69-2423 shall not apply to:

(1) Any handgun, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898;

(2) Any replica of any firearm described in subdivision (1) of this section if such replica is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition and 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; and

(3) Any firearm which is a curio or relic as defined by 27 C.F.R. 178.11.

69-2419. Criminal history records; prohibited acts; violation; penalty. Any licensed importer, manufacturer, or dealer who knowingly and intentionally requests a criminal history record check from the Nebraska State Patrol for any purpose other than compliance with sections 69-2410 to 69-2423 or knowingly and intentionally disseminates any criminal history record information to any person other than the subject of such information shall be guilty of a Class I misdemeanor.

69-2420. False statement; false identification; prohibited acts; violation; penalty. Any person who, in connection with the purchase, transfer, or attempted purchase of a handgun pursuant to sections 69-2410 to 69-2423, knowingly and intentionally makes any materially false oral or written statement or knowingly and intentionally furnishes any false identification intended or likely to deceive the licensee shall be guilty of a Class IV felony.

69-2421. Sale or delivery; violation; penalty. Any licensed importer, manufacturer, or dealer who knowingly and intentionally sells or delivers a handgun in violation of sections 69-2401 to 69-2425 shall be guilty of a Class IV felony.

69-2422. Obtaining handgun for prohibited transfer; violation; penalty. For purposes of sections 69-2401 to 69-2425, any person who knowingly and intentionally obtains a handgun for the purposes of transferring it to a person who is prohibited from receipt or possession of a handgun by state or federal law shall be guilty of a Class IV felony.

69-2424. Rules and regulations. The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out sections 69-2401 to 69-2425.

69-2425. City or village ordinance; not preempted. Any city or village ordinance existing on September 6, 1991, shall not be preempted by sections 69-2401 to 69-2425.

69-2426. Dealers of firearms; distribution of information; Firearm Information Fund; created.

(1) Dealers of firearms shall distribute to all purchasers information developed by the Department of Health and Human Services regarding the dangers of leaving loaded firearms unattended around children.

(2) There is hereby created the Firearm Information Fund. Private contributions shall be credited by the State Treasurer to such fund for the implementation of the provisions of this section.

[Current through 2004 Regular Session]

Lincoln Municipal Code

Title 9. Public Peace and Welfare Chapter 9.36. Weapons

9.36.020. Minors Not to be Furnished with Firearms and Weapons.

(a) It shall be unlawful for any person to sell, loan, or furnish to any minor any gun, fowling piece, or other firearm, any ammunition or component thereof, or any pocket knife having a blade more than three and one-half inches in length; provided, it shall be lawful to sell, loan, or furnish shotguns or rifles, of a type commonly used for hunting, and any ammunition or component thereof for the same, to persons eighteen years of age or older.

(b) This section shall not apply to delivery or transfer of rifles or shotguns or ammunition or components thereof to a juvenile:

(1) By the juvenile's parent or legal guardian for a legitimate and lawful sporting purpose; or

(2) Who is under direct adult supervision in an appropriate educational or competitive shooting program.

9.36.025. Firearms Offered for Sale at Retail; Access Restricted. It shall be unlawful for any person to display for sale at retail any firearm or firearms, or any ammunition for firearms or reloading components thereof, without such firearm or firearms, or ammunition for firearms or reloading components thereof, being secured so as to cause them to be inaccessible without the assistance of authorized sales personnel of the retailer.

9.36.030. Report of Sale of Firearms. Any person, firm, association, or corporation dealing in firearms of any type shall, on the same day of the sale of any firearm, except a shotgun or a rifle of a type commonly used for hunting, report the sale to the Police Department on forms as prescribed and furnished by the Police Department. The report shall contain all the information requested thereon.

9.36.090. Transporting Explosives; Port of Entry; Routes; Penalty. It shall be unlawful for any person, firm, or corporation to convey, or transport through any street, avenue, alley, or other public place within the city, any dynamite, nitro-glycerine, gunpowder, guncotton, TNT, or any other explosive material, including fireworks of every nature or description, without first having stopped at a port of entry hereinafter desig-

nated, and having notified the Police Department of the city of their intention to move said vehicle within or through the city and requesting a police escort. Such vehicle, or vehicles, shall follow such route, or routes, as may be designated to them by such police escort. The City Council shall, by resolution, designate ports of entry at which all such vehicles shall stop.

9.36.100 Unlawful Possession of Firearms.

It shall be unlawful for any person to possess any firearm within the corporate limits or on any property of the City of Lincoln outside the corporate limits when that person has been convicted of any one of the following offenses within the last ten years: Stalking in violation of *Neb. Rev. Stat. § 28-311.03* or any other comparable or similar state statute from another state; Violation of a protection order as set forth in *Neb. Rev. Stat. § 42-924* or Violation of a foreign protection order as set forth in *Neb. Rev. Stat. § 42-931*; False imprisonment in the second degree in violation of *Neb. Rev. Stat. § 28-315*; Sexual assault in the third degree in violation of *Neb. Rev. Stat. § 28-320*; Impersonating a peace officer in violation of *Neb. Rev. Stat. § 28-610*; or, Impersonating police officer in violation of Lincoln Municipal Code § 9.08.060; Debauching a Minor in violation of *Neb. Rev. Stat. § 28-805*; Obstructing government operations in violation of *Neb. Rev. Stat. § 28-901*; Resisting arrest in violation of *Neb. Rev. Stat. § 28-904*; Resisting officer in violation of Lincoln Municipal Code § 9.08.030; Obstructing a peace officer in violation of *Neb. Rev. Stat. § 28-906*; Interfering with an officer making an arrest in violation of Lincoln Municipal Code § 9.08.020; Carrying concealed weapon in violation of *Neb. Rev. Stat. § 28-1202*; Criminal child enticement in violation of *Neb. Rev. Stat. § 28-311*; Implements for escape in violation of *Neb. Rev. Stat. § 28-913*; Unlawful possession of explosives, second degree in violation of *Neb. Rev. Stat. § 28-1216*; Use of explosives without a permit in violation of *Neb. Rev. Stat. § 28-1218*; Concealing the death of another person in violation of *Neb. Rev. Stat. § 28-1302*; Minors not to be furnished with firearms, ammunition, or weapons in violation of Lincoln Municipal Code § 9.36.020; Discharge of firearms unlawful in violation of Lincoln Municipal Code 9.36.010; and Criminal attempt (where the crime attempted is a felony or any of the above Nebraska State Statute misdemeanor violations) in violation of *Neb. Rev. Stat. § 28-201*.

The provisions of this section shall not apply to (a) the issuance of firearms or the possession by members of the Armed Forces of the United States, active or reserve, the National Guard of this state, or Reserve Officers Training Corps, when on duty or training; or (b) a peace officer as defined by *Neb. Rev. Stat. § 28-109(14)*.

9.36.110 Firearms in Attended Motor Vehicle; Unlawful. It shall be unlawful for any person to keep a firearm in an unattended motor vehicle for a period in excess of twenty-four hours.

The provisions of this section shall not apply to members of the Armed Forces of the United States, active or reserve, the National Guard of this state, or Reserve Officers Training Corps, when on duty or training, or peace officers or other duly authorized law enforcement officers, nor shall it apply to vehicles containing firearms that are parked in locked enclosures or buildings, such as garages or other storage facilities.

9.36.120 Firearm; Defined. For purposes of Sections 9.36.100 and 9.36.110 of the Lincoln Municipal Code, "firearm" shall mean any weapon which is designed to or may be readily con-

verted to expel any projectile by action of an explosive or frame or receiver of any such weapon including, but not limited to, any pistol, revolver, shotgun, or rifle.

[Lincoln Municipal Code current through March 1, 2005]

Omaha Municipal Code

Chapter 19 Occupation Taxes Article II. Schedule

19-51. Firearm dealers. All applicants for a permit to engage in the business of buying, selling, renting, pawning, pledging or trading any firearms, as provided in section 19-371 et seq., shall pay a permit fee in the amount of \$48.00 per year. Such fee shall be prorated at \$4.00 per month or any portion thereof when an application is made other than at the start of a calendar year

Article XI. Firearm Dealers Division 1. Generally

Sec. 19-361. Definition. For the purposes of this article, the words "firearm dealer" shall mean any person who is engaged in the business of buying, selling, renting, pawning, pledging or trading any firearm, but shall not include any person having an established place of business who is engaged in the business of buying any firearms solely for resale to a person who possesses a federal firearms dealer's license and has an established place of business.

19-362. Record of transactions. All persons who shall engage in the business of a firearm dealer shall keep a book in which shall be legibly written in ink, at the time of any purchase, sale, rental, pawn, pledge or trade of a firearm, an accurate account, description, and identification and serial number, in the English language, of the firearm, the amount of money loaned, paid, or allowed in trade thereon or therefor, when the same was received, and the name, residence and description of the person selling, buying, renting, or trading the same, which book as well as the firearm purchased or taken in trade shall be at all reasonable times open to the inspection of the chief of police, or any member of the police department.

19-363. Daily reports. It shall be the duty of every firearm dealer to make and mail to the chief of police by certified mail every day, for the book required in section 19-362, a list of all firearms or other valuable things received or deposited, purchased, mortgaged, or taken in trade during the previous day, together with the time received, purchased, or taken in trade or in pledge, or from whom the same were purchased or taken in trade; provided the report required by this section shall not apply to Sundays or holidays, but the report of Monday of each week or the first business day thereafter shall cover the business transactions of the Saturday previous, and also the Sunday or holidays previous if any such transactions shall take place on said last-mentioned day; provided that no persons shall be required to furnish such description of any firearm purchased from manufacturers or wholesale dealers having an established place of business or of firearms purchased at open sale from any bankrupt stock, or from any other person doing business and having an established place of business, but such goods must be accom-

panied by a bill of sale or other evidence of open and legitimate purchase, and must be shown to the chief of police or any member of the police department when demanded.

19-364. Retention of firearms. No firearm received on deposit, purchased or taken in trade by any firearm dealer shall be sold or permitted to be taken from the place of business of such person for the period of ten days after the mailing to the chief of police of the copy and statement as required by section 19-363 requiring a list of all firearms or other valuable things received or deposited, purchased, mortgaged, or taken in trade during the previous day.

Division 2. Permit

19-371. Required. It shall be unlawful for any person to engage in business as a firearm dealer without first obtaining a permit to do so from the permits and inspections division.

19-372. Federal license required. No permit shall be issued under the provisions of this division to an applicant who does not possess a valid, current license issued by the Alcohol, Tobacco, Tax and Firearms Division of the Internal Revenue Service of the Department of the Treasury of the United States.

19-373. Bond. The applicant for a permit required by the provisions of this division shall execute a continuing bond to the city in the sum of \$2,000.00 with good and sufficient corporate surety, approved and filed as required by the ordinances of the city and conditioned for the faithful compliance with the provisions of this division.

19-374. Fee. The fee for a permit required by the provisions of this division shall be as provided in section 19-51 of this Code.

19-375. Approval. Before any permit is issued under the provisions of this division, the application therefor shall be approved by the chief of police.

19-376. Business location. No person operating under the provisions of this division shall be allowed to do business in more than one place under one permit, and every permit shall state the place where such business is to be carried on.

19-377. Transfer. Permits issued under the provisions of this division shall not be transferable, nor shall they be assigned.

19-378. Renewal. Any permit issued under the provisions of this division shall be renewed on or before December 31 next succeeding the date of issuance, and annually thereafter.

19-379. Suspension or revocation - Grounds. Any permit issued under the provisions of this division may be suspended or revoked for the violation by the permittee of:

(a) Any provision of this division or other applicable provision of this Code, state law or city ordinance, rule or regulation; or

(b) Any other provision of this Code, state law or city ordinance classified as a misdemeanor or felony.

19-380. Same - Hearing. Before any permit issued under the provisions of this division is suspended or revoked, the permittee shall be given notice of the date and time for a hearing to show cause, if any there be, why such permit should not be revoked. Such hearing shall be within seven days of the date of the notice. At the time and place set for the show-cause hearing, the police chief shall hear all the testimony as to whether or not grounds for the revocation or suspension of the permit exist.

19-381. Same - Action at hearing. If, upon the conclusion of the hearing thereon, it shall appear that grounds for the suspension or revocation of a permit issued under the provisions of this division exist, the police chief shall so find and impose such suspension or revocation as he may deem proper under the circumstances.

19-382. Same - Appeals. A finding, and the action taken thereon, by the police chief at the conclusion of the hearing on the suspension or revocation of a permit issued under the provisions of this division may be appealed by the permittee to the city council upon written application to the council therefor. Upon hearing such appeal, the council may reverse, change or modify the finding or action of the police chief. A permit shall remain in effect pending the outcome of such appeal.

Division 3. Firearms Exhibitions

19-383. Permit required. It shall be unlawful for any person to promote or sponsor a firearms exhibition without first obtaining a permit to do so from the permits and inspections division.

19-384. Federal license required. No permit shall be issued under the provisions of this division to an applicant who does not possess a valid, current license issued by the Alcohol, Tobacco, Tax and Firearms Division of the Internal Revenue Service of the Department of the Treasury of the United States.

19-385. Date of application for permit. No permit for a firearm exhibition shall be issued unless applied for more than five days before the date of such exhibition.

19-386. Permit fee. The fee for a firearms exhibition sponsor's permit shall be \$10.00, and this fee shall be waived for retail and/or wholesale firearms dealers currently licensed to do business in the city.

19-387. Duration of exhibition. No firearms exhibition shall continue for more than three consecutive days.

19-388. Approval of permits. Before any permit is issued under the provisions of this division, the application therefor shall be approved by the police chief or someone under his direction.

19-389. Location. No person operating under the provisions of this division shall be allowed to do business in more than one place under one permit.

19-390. Transfer of permit. Permits issued under the provisions of this division shall not be transferable, nor shall they be assigned.

19-391. Duties of promoter. It shall be the duty of the person promoting or sponsoring a firearms exhibition to provide:

(a) Security personnel at each entrance to the exhibition, who shall check every firearm brought into the exhibition by the general public for the purpose of determining that the firearms are not loaded.

(b) Twenty-four-hour-per-day security at the site of the exhibition.

(c) A written notice to each exhibitor stating that all applicable federal, state, and local laws and ordinances must be observed.

(d) To the chief of police or his agent(s), a list of the names and addresses of all exhibitors.

19-392. Duties of exhibitors. Any person who is designated as an exhibitor under section 19-391(d), shall keep an accurate record of all firearms sold, purchased, bartered or traded for, regardless of their antiquity or value or whether said firearms are functioning or nonfunctioning. The record shall be kept in the English language

and shall list the serial number, if any, the calibre or gauge, the manufacturer's name, and the name and address of the buyer or seller. Said record shall be made available to the police department, at the request of the police department, during the time of the firearms exhibition and for a period of two years thereafter.

19-392.1. Exhibition or sale of ammunition. It shall be unlawful to exhibit or sell any ammunition in an assembled state at a firearms exhibition.

19-392.2. Possession of concealable weapons. Notwithstanding any other provision of this Code, an exhibitor who is a nonresident of this city may possess concealable firearms without registering them with the chief of police. Such possession shall be legal only at the site of the exhibition, while in direct route to or from the exhibition and during the time of exhibition.

Chapter 20 Offenses Article VII. Weapons Division 1. Generally

20-191. Definitions. For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them:

Concealable firearm: A firearm having a barrel less than 18 inches in length.

Firearm: Any instrument which releases a projectile by means of an explosive charge.

Machine gun: Any firearm which shoots, is designed to shoot, or can be readily restored to shoot automatically more than one shot without manual reloading by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination of parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

Paint ball gun: Any gun which releases a paint ball propelled by spring mechanism or compressed gas.

Stun gun: Any hand-held electronic device that is powered by an internal power source, such as batteries, and that is capable of introducing an electrical current into the body of a person which when introduced shall be capable of disrupting a person's central nervous system and rendering him/her temporarily incapable of normal functioning. The electrical current may be introduced into the human body by means of direct pressure to the body from fixed electrodes on the electronic device and/or one or more electrodes attached to a length of wire and which, upon being fired from a firearm or mechanical device, strikes the human body.

Weapon: A firearm, stun gun or any other instrument the use of which is intended or likely to cause death or bodily injury.

20-193. Confiscation. As a part of the judgment of conviction of any person under this article, confiscation of the weapon shall be ordered by the court.

20-195. Possession or transportation of firearms.

(a) It shall be unlawful for any person to knowingly or purposely transport in any conveyance or in any other manner, or to possess off his own premises, any rifle, shotgun, air gun, air rifle, paint ball gun or machine gun unless the same is unloaded and contained in any enclosed gun case, or unloaded and broken down. The removal of the bolt from any such firearm or carrying the same in a holster type gun case

without further breaking down such firearm shall not be deemed to be in compliance with the requirements of this section.

(b) The provisions of this section shall not be applicable to:

- (1) Authorized law enforcement officers;
- (2) The armed forces of the United States, including ROTC units and the National Guard in the performance of their duties;
- (3) The carrying of unloaded and uncased rifles in parades or using rifles in ceremonials;
- (4) The possession of rifles, machine guns, or shotguns at shows or exhibits; or
- (5) Any other lawful use, purpose or activity, including but not limited to skeet and trap shooting, target shooting at rifle ranges, hunter safety instruction conducted by qualified instructors, when such do not endanger public safety or are detrimental to public welfare; provided, however:

a. The prior approval of the police chief shall have been obtained for such use, purpose or activity; and

b. With respect to skeet and trap shooting ranges located or to be located in public parks, the final determination of the safety of the same shall be made by the city council.

20-198. Sale of firearm to minor; penalty.

(a) It shall be unlawful for any person to sell or otherwise furnish or deliver any firearm, component parts or ammunition to any individual who is known, or there is reason to believe that the individual is less than 18 years of age, and if the firearm, component parts or ammunition is a concealable firearm, to any person who has not reached the age of 21.

(b) Any adult convicted under the provisions of this section shall be punished by a mandatory fine of \$500.00 and by mandatory imprisonment of six months.

20-199. Display of firearms or ammunition.

It shall be unlawful for any person purposely or knowingly to exhibit for sale or distribution in a display window or any other place which can be seen from a public thoroughfare any firearm or ammunition therefor.

20-200. Permit required for purchasing or renting firearm. It shall be unlawful for any person to sell or rent a concealable firearm to any person who has not obtained a written permit from the chief of police as provided for in this article.

20-201. Pawning firearm. It shall be unlawful for any person to pawn, pledge or store a concealable firearm or to accept a firearm in pawn or as a pledge of or for storage from a person who has not registered it as provided for in this article.

20-202. Report of sales and rentals of firearms. Any person engaged in the sale, pawning, exchange, loan, rental or delivery of firearms must preserve and furnish daily to the chief of police a record of such transaction indicating the date of the transaction, a description of the firearm, including number, color, make, caliber, and all other identifying marks, and the name, address, age, height, complexion, color of hair, color of eyes, weight, and apparent deformities or peculiarities of the person with whom such transaction was had.

20-203. Possession of machine guns.

(a) It shall be unlawful for any person to possess any machine gun.

(b) It shall be an affirmative defense under this section that the accused is a member of one or more of the following classes:

- (1) Authorized law enforcement officers in the performance of their official duties;
- (2) The armed forces of the United States, including ROTC units and the National Guard in the performance of their duties;
- (3) Any person or persons or corporation licensed by the federal government as a dealer in machine guns under the provisions of the National Firearms Act; or
- (4) Any person lawfully purchasing and possessing a machine gun under applicable federal law.

20-204. Unlawful possession of concealable firearm; exceptions.

(a) Any person who has not reached the age of 21 who possesses a concealable firearm as defined in this article commits the offense of unlawful possession of a concealable firearm.

(b) The provisions of this section shall not apply to the issuance of such firearms to members of the armed forces of the United States, active or reserve, national guard of the state, or reserve officer training corps, when on duty or training, or to the temporary loan of pistols, revolvers, or any other form of concealable firearms for instruction under the immediate supervision of a parent or guardian or adult instructor.

20-205. Penalties. Any person who has not reached the age of 21 convicted under the provisions of sections 20-203 and 20-204 shall be punished as follows:

(a) For a first conviction, any person so offending shall be punished by a fine of not exceeding \$500.00, and by mandatory imprisonment of not less than 30 days and not more than six months.

(b) For any second conviction, any persons so offending shall be punished by a fine not exceeding \$500.00 and a mandatory imprisonment of not less than 30 days and not more than six months.

(c) For any subsequent conviction, any persons so offending shall be punished by a fine of not exceeding \$500.00, and by mandatory imprisonment of not less than 60 days and not more than six months.

Division 2. Firearm Registration

20-251. Required. It shall be unlawful for any person to own, have possession of or maintain control over any concealable firearm which has not been registered to said person with the chief of police in accordance with this division, except when such possession or control is with the knowledge and express consent of the person in whose name such concealable firearm is registered.

20-252. Confiscation of firearm upon conviction of violation. As a part of the judgment of conviction of any person under this division, confiscation of a concealable firearm may be ordered by the court.

20-253. Application.

(a) Any person desiring to register a concealable firearm shall make an application to the chief of police stating therein that he or she holds the qualifications to register a concealable firearm in accordance with this section.

(b) The chief of police will conduct an investigation to determine if the applicant is qualified to register the firearm. A concealable firearm may not be registered to any person who:

(1) Is currently the subject of an active protection order.

(2) Has provided false information on the registration request.

(3) Has a conviction of an offense listed below which has not been pardoned or set aside under state or federal law:

- a. Any felony;
- b. Carrying a concealed weapon or being a minor in possession of a concealable firearm;
- c. Within the previous five years, assault, child abuse, or violation of any provision of Chapter 20, article VII of the Omaha Municipal Code.

(4) Has been convicted of any charge of domestic violence, including stalking or harassment.

(5) Has a record of mental disorder which would show the applicant to be a danger to self or to others.

(6) Is a fugitive from justice in this state or any other jurisdiction.

(7) Has been dishonorably discharged from the United States Armed Forces.

(8) Is a user of, or addicted to, unlawful controlled substances.

(9) Is not a citizen of the United States.

(10) Is under the age of 21 years.

(c) A registration fee of \$10.00 shall accompany each application made to the chief of police for each concealable firearm. The fee will be applied to the administrative costs of processing the application.

20-254. Issuance or denial of permit. Upon the filing of an application for registration of a concealable firearm, the chief of police shall issue a permit or deny a permit and furnish the applicant the specific reasons for the denial in writing. A failure to furnish the applicant a written denial shall constitute issuance of a permit.

20-255. Consideration of application by chief of police; custody of firearm pending decision on permit. The chief of police shall be permitted seven days in which to consider an application for registration of a concealable firearm. The chief of police may take custody of the concealable firearm in the applicant's possession while the application is under consideration whenever he determines that it is in the best interests of public safety to do so.

20-256. Disposition of firearm upon denial of permit. Any person whose application for registration of a concealable firearm is denied shall have ten days in which to provide for proper registration or other lawful disposition of the concealable firearm. During this time the chief of police shall maintain custody of the concealable firearm. If the applicant fails to provide for the proper registration or other lawful disposition of the concealable firearm within this time, it shall be presumed that the concealable firearm is an unregistered concealable firearm and the chief of police may apply to the municipal court for an order of confiscation.

[Omaha Municipal Code codified through Ord. 36763 enacted Aug. 31, 2004]