

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1171

Introduced by Christensen, 44.

Read first time January 19, 2012

Committee:

A BILL

1 FOR AN ACT relating to government; to adopt the Nebraska Balance of

2 Powers Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 8 of this act shall be known and
2 may be cited as the Nebraska Balance of Powers Act.

3 Sec. 2. The Legislature finds and declares that:

4 (1) The Tenth Amendment of the Constitution of the United
5 States guarantees and reserves to the states and the people all
6 powers not delegated to the federal government elsewhere in the
7 Constitution of the United States as such powers were publicly
8 understood at the time that the amendment was ratified on December
9 15, 1791, subject only to modification by duly ratified subsequent
10 amendments to the Constitution of the United States. Such guarantee
11 is a compact between the people of the State of Nebraska and the
12 United States as of the time that the State of Nebraska was admitted
13 to statehood in 1867. In accordance with such compact, the Tenth
14 Amendment reserves to the State of Nebraska that, other than the
15 enumerated powers expressly delegated to the United States under
16 Article I, section 8, of the Constitution of the United States, the
17 United States Congress and the federal government will not exercise
18 any purported additional control over or commandeer rights belonging
19 to the State of Nebraska or its people;

20 (2) The Constitution of the United States affirms that
21 the sole and sovereign power to regulate a state's business and
22 affairs rests in the state legislature and has always been a
23 compelling state concern and central to state sovereignty.
24 Accordingly, the meaning and understanding of Article I, section 8,
25 of the Constitution of the United States is a compact between the

1 people of the State of Nebraska and the United States as of the time
2 that the State of Nebraska was admitted to statehood. Further, the
3 power to regulate commerce among the several states as delegated to
4 the United States Congress in Article I, section 8, clause 3, of the
5 Constitution of the United States, known as the commerce clause, as
6 understood at the time of ratification of the Constitution of the
7 United States, was meant to empower the United States Congress to
8 regulate (a) the buying and selling of products made by others, (b)
9 associated finance and financial instruments, and (c) navigation and
10 other carriage, across state jurisdictional lines. Such power to
11 regulate commerce does not include the power to regulate agriculture,
12 manufacturing, mining, major crimes, or land use, nor does such power
13 include activities that merely substantially affect commerce;

14 (3) The commerce clause was not meant or understood to
15 authorize the United States Congress or the federal judicial branch
16 to regulate the state courts in the matter of state substantive law
17 or state judicial procedure. Such meaning and understanding as it
18 pertains to the validity of religious, sectarian, or foreign law as
19 being controlling or influential precedent has never been modified by
20 any duly ratified amendment of the Constitution of the United States.
21 Accordingly, the meaning and understanding of Article I, section 8,
22 the establishment clause of the First Amendment, and the Tenth
23 Amendment of the Constitution of the United States is a compact
24 between the people of the State of Nebraska and the United States as
25 of the time that the State of Nebraska was admitted to statehood;

1 (4) Article I, section 8, clause 18, of the Constitution
2 of the United States, known as the necessary and proper clause, does
3 not empower the federal government to do anything it deems necessary
4 or proper. It is a limitation of power under the common law doctrine
5 of principals and incidents, which restricts the power of the United
6 States Congress to exercise incidental powers. There are two main
7 conditions required for something to be incidental, and therefore,
8 necessary and proper: The law or power exercised must be directly
9 applicable to the main, enumerated power and it must be lesser than
10 the main power;

11 (5) Article I, section 8, clause 1, of the Constitution
12 of the United States, known as the general welfare clause, does not
13 empower the federal government with the ability to do anything it
14 deems good. It is a general restriction limiting the exercise of the
15 enumerated powers of the United States Congress set forth in Article
16 I, section 8, of the Constitution of the United States requiring that
17 the United States Congress only enact laws which serve all citizens
18 well and equally. When James Madison was asked if this clause were a
19 grant of power, he replied with "If not only the means but the
20 objects are unlimited, the parchment should be thrown into the fire
21 at once." The general welfare clause is a limitation on the power of
22 the federal government to act in the welfare of all when passing laws
23 in pursuance of the powers delegated to the United States; and

24 (6) Because the Ninth Amendment of the Constitution of
25 the United States secures and reserves to the people of this state,

1 as against the federal government, their natural rights to life,
2 liberty, and property using the traditional concept of ordered
3 liberty and as secured by state law, including, but not limited to,
4 their rights as they were understood and secured by the law at the
5 time that the amendment was ratified on December 15, 1791, as well as
6 their rights as they were understood and secured by the law in the
7 State of Nebraska at the time the Constitution of Nebraska was
8 adopted, the people of this state hereby proclaim that the guarantee
9 of such rights is a compact between the people of the State of
10 Nebraska and the United States as of the time that the State of
11 Nebraska was admitted to statehood.

12 Sec. 3. (1) The Legislature acknowledges that the
13 commerce clause, the general welfare clause, and the necessary and
14 proper clause of the Constitution of the United States were amended
15 and made more specific and limiting at the insistence of the people
16 through the creation of the Bill of Rights, specifically the Second,
17 Ninth, and Tenth Amendments of the Constitution of the United States.
18 All amendments contained within the Bill of Rights were for the
19 purpose of further restricting federal powers and vesting or
20 retaining the ultimate power and control of the states by the people
21 within the states. Therefor, the State of Nebraska specifically
22 rejects and denies any federal claim of expanded or additional
23 authority which the federal government may from time to time attempt
24 to exert, exercise, or enforce under the commerce clause, the general
25 welfare clause, or the necessary and proper clause because such

1 actions disrupt and degrade the emphasis of the founding fathers on
2 the balance of powers.

3 (2) The people of the State of Nebraska are aware that
4 the federal government has amended and altered the spirit and the
5 meaning of the commerce clause without proper legislative authority
6 through amendment. Therefor, the State of Nebraska rejects and denies
7 such unauthorized and excessive abuse of power which has primarily
8 acted as a detriment to a state's and an individual's rights and
9 thereby deliberately altered the balance of powers.

10 (3) In accordance with the Constitution of the United
11 States, the United States Congress and the federal government are
12 denied the power to establish laws within this state which are
13 repugnant and obtrusive to the Constitution of the United States, the
14 Constitution of Nebraska, state law, and the citizens of this state.
15 The federal government is restrained from and confined in authority
16 by the eighteen items set forth in Article I, section 8, of the
17 Constitution of the United States.

18 (4) The United States Congress and the federal government
19 are hereby denied the power to bind the states under foreign statute,
20 court order or opinion, or executive order, other than those
21 provisions duly ratified by the United States Congress as a treaty if
22 the treaty does not violate the Constitution of Nebraska or the
23 Constitution of the United States.

24 (5) No authority has been given to the legislative
25 branch, the executive branch, or the judicial branch of the United

1 States to preempt legislation or to destroy the balance of powers set
2 forth in the Constitution of the United States.

3 (6) The Nebraska Balance of Powers Act shall serve as
4 notice and a demand to the federal government to cease and desist any
5 and all activities outside the scope of the federal government's
6 constitutionally designated powers and which diminish the balance of
7 powers.

8 Sec. 4. (1) The Committee on Nullification of Federal
9 Laws is created. The committee shall consist of the Speaker of the
10 Legislature, who shall serve as chairperson of the committee, and six
11 members of the Legislature from each congressional district,
12 appointed by the Executive Board of the Legislative Council. Members
13 of the committee shall serve two-year terms beginning and ending on
14 the first day of the regular session of the Legislature of each odd-
15 numbered year. The committee shall meet on the call of the
16 chairperson.

17 (2) The committee shall recommend, propose, and call for
18 a vote by simple majority to nullify in its entirety a specific
19 federal law or regulation that is outside the scope of the powers
20 delegated by the people of the State of Nebraska to the federal
21 government in the Constitution of the United States. The committee
22 shall make its recommendation within thirty days after receiving the
23 federal legislation for consideration and process.

24 (3) The committee may review any and all existing federal
25 statutes, judicial mandates, and executive orders for the purpose of

1 determining constitutionality. The committee may recommend for
2 nullification existing federal statutes, judicial mandates, and
3 executive orders enacted before the effective date of this act.

4 (4) Upon the committee's recommendation for
5 nullification, the Legislature shall vote on whether to nullify the
6 federal action within thirty legislative days after the committee's
7 recommendation. Until the vote, the federal action does not have the
8 force and effect of law in this state. The appropriate documentation
9 reflecting the Legislature's vote shall be documented in the
10 Legislative Journal.

11 (5) If the Legislature votes by simple majority to
12 nullify any federal statute, judicial mandate, or executive order on
13 the grounds of constitutionality, the State of Nebraska and its
14 citizens shall not recognize or be obligated to abide by such
15 statute, judicial mandate, or executive order.

16 (6) The committee shall communicate the intentions of the
17 Nebraska Balance of Powers Act to the legislatures of the several
18 states to assure that the State of Nebraska continues in the same
19 esteem and friendship as exists as of the effective date of this act,
20 and that it considers union for specific national purposes, and
21 particularly those enumerated in the Constitution of the United
22 States, to be friendly to the peace, happiness, and prosperity of all
23 of the states.

24 Sec. 5. Within thirty days after the effective date of
25 this act, the Clerk of the Legislature shall send a copy of the

1 Nebraska Balance of Powers Act to the President of the United States,
2 the President of the United States Senate, the Speaker and Clerk of
3 the United States House of Representatives, and each member of the
4 Nebraska congressional delegation with the request that the act be
5 officially entered into the congressional record.

6 Sec. 6. It shall be the duty of the Legislature to adopt
7 and enact any and all measures that may become necessary to prevent
8 the wrongful enforcement of any federal law or regulation duly
9 nullified within the boundaries and the limits of the State of
10 Nebraska.

11 Sec. 7. In accordance with Article III, section 2, of the
12 Constitution of the United States, in any cause of action between the
13 State of Nebraska and the federal government regarding nullification
14 of a federal statute, judicial mandate, or executive order, the
15 Supreme Court of the United States shall have original jurisdiction.
16 In the event of improper adjudication, the interest of the people of
17 the State of Nebraska shall be maintained and retained through state
18 referendum.

19 Sec. 8. Under the Tenth Amendment of the Constitution of
20 the United States, the people of the State of Nebraska retain their
21 exclusive power to regulate this state, subject only to the guarantee
22 of the Fourteenth Amendment of the Constitution of the United States
23 that the people of the State of Nebraska shall exercise such
24 sovereign power in accordance with each citizen's lawful privileges
25 or immunities and in compliance with the requirements of due process

1 and equal protection under the law.