

ASSEMBLY BILL NO. 95—ASSEMBLYMEN WEBER, ALLEN, MABEY,
BEERS, BOBZIEN, CARPENTER, CHRISTENSEN, CLABORN,
COBB, GOEDHART, GOICOECHEA, KIRKPATRICK, KOIVISTO,
MARVEL, OHRENSCHALL, SETTELMAYER AND STEWART

FEBRUARY 13, 2007

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning the confiscation
of firearms during an emergency or a disaster.
(BDR 36-294)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to firearms; excluding from the powers granted to certain state officers during an emergency or a disaster the authority to take certain actions concerning firearms; authorizing civil suits against the State of Nevada, its political subdivisions and their officers and employees for the wrongful confiscation of a firearm during an emergency or a disaster; providing for the termination of employment or removal from office upon conviction of wrongfully confiscating a firearm during an emergency or a disaster; prohibiting an officer or employee of the State of Nevada or a political subdivision thereof or certain other persons from wrongfully confiscating a firearm during an emergency or a disaster; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 **Section 3** of this bill excludes from the emergency powers that the Governor
- 2 and the executive heads or governing bodies of the political subdivisions of this
- 3 State are authorized to exercise during an emergency or a disaster the authority to:
- 4 (1) confiscate or authorize the confiscation of firearms from persons in lawful
- 5 possession of the firearms; or (2) impose restrictions on certain aspects of the trade,



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possession or use of firearms that are in addition to those restrictions imposed by state and federal law. (Chapter 414 of NRS)

Section 10 of this bill prohibits the wrongful confiscation or authorization of the wrongful confiscation of a firearm during an emergency or a disaster by an emergency worker or officer or employee of the State or a political subdivision thereof. **Section 9** of this bill requires that an employee who is convicted of that crime must be terminated from his employment and an officer who is convicted of that crime must be removed from office or referred to the Assembly for the preparation of articles of impeachment.

Existing law provides limited civil immunity to the State, its political subdivisions and officers, employees and workers for certain injuries they cause to persons and property during an emergency or a disaster. (NRS 414.110) **Section 6** of this bill creates an exception to that immunity in cases of the wrongful confiscation of firearms during an emergency or a disaster. **Section 8** of this bill authorizes a person from whom a firearm is wrongfully confiscated during an emergency or a disaster to bring legal proceedings against the State, its political subdivisions and the officer, employee or worker who wrongfully confiscated or authorized the confiscation of the firearm.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 414 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *“Firearm” means any weapon from which a projectile is discharged by means of an explosive, spring, gas, air or other force. The term includes ammunition for a firearm.*

Sec. 3. *The emergency powers conferred upon the Governor and upon the executive heads or governing bodies of the political subdivisions of the State by this chapter do not include the authority to:*

1. Confiscate or authorize the confiscation of a firearm from a person unless the person is:

(a) In unlawful possession of the firearm; or

(b) Unlawfully carrying the firearm.

2. Impose a restriction or limitation on the transfer, sale, purchase, possession, ownership, transportation, registration or licensing of firearms that is in addition to the restrictions and limitations otherwise imposed by state or federal law.

Sec. 4. NRS 414.030 is hereby amended to read as follows:

414.030 As used in this chapter, the words and terms defined in NRS 414.031 to 414.038, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 5. NRS 414.070 is hereby amended to read as follows:

414.070 The provisions of this section are operative only during the existence of a state of emergency or declaration of disaster. The existence of such an emergency or disaster may be



1 proclaimed by the Governor or by resolution of the Legislature if
2 the Governor in his proclamation, or the Legislature in its
3 resolution, finds that an attack upon the United States has occurred
4 or is anticipated in the immediate future, or that a natural,
5 technological or man-made emergency or disaster of major
6 proportions has actually occurred within this State, and that the
7 safety and welfare of the inhabitants of this State require an
8 invocation of the provisions of this section. Any such emergency or
9 disaster, whether proclaimed by the Governor or by the Legislature,
10 terminates upon the proclamation of the termination thereof by the
11 Governor, or the passage by the Legislature of a resolution
12 terminating the emergency or disaster. During the period when a
13 state of emergency or declaration of disaster exists or continues, the
14 Governor may exercise the following additional powers:

15 1. To enforce all laws and regulations relating to emergency
16 management and to assume direct operational control of any or all
17 forces, including, without limitation, volunteers and auxiliary staff
18 for emergency management in the State.

19 2. To sell, lend, lease, give, transfer or deliver materials or
20 perform services for the purpose of emergency management on such
21 terms and conditions as the Governor prescribes and without regard
22 to the limitations of any existing law, and to account to the State
23 Treasurer for any funds received for such property.

24 3. ~~[[Fe]]~~ *Except as otherwise provided in section 3 of this act,*
25 *to* procure, by purchase, condemnation, seizure or other means,
26 construct, lease, transport, store, maintain, renovate or distribute
27 materials and facilities for emergency management without regard
28 to the limitations of any existing law. ~~[[He]]~~ *The Governor* shall
29 make compensation for the property so seized, taken or condemned
30 on the following basis:

31 (a) If property is taken for temporary use, the Governor, within
32 90 days after the taking, shall fix the amount of compensation to be
33 paid therefor. If the property is returned to the owner in a damaged
34 condition, or is not returned to the owner, the Governor shall fix
35 within 90 days the amount of compensation to be paid for the
36 damage or failure to return the property. ~~[[Whenever]]~~ *If* the
37 Governor deems it advisable for the State to take title to property
38 taken under this section, he shall forthwith cause the owner of
39 ~~[[such]]~~ *the* property to be notified thereof in writing by registered or
40 certified mail, postage prepaid, or by the best means available, and
41 forthwith cause to be filed a copy of the notice with the Secretary of
42 State.

43 (b) Within the 90-day period prescribed in paragraph (a), the
44 Governor shall make an offer in writing to the person or persons
45 entitled to receive it of the amount of money proposed to be paid as



1 full compensation. If the offer is accepted, the money must be paid
2 out of such fund, funds or other sources as are available and no
3 further action ~~either~~ in law or in equity may ever be maintained in
4 connection therewith. If the offer of payment is refused, the person
5 or persons entitled thereto have the same rights as plaintiffs in
6 actions of eminent domain insofar as the fixing of damages and
7 compensation is concerned, NRS 37.060, 37.070, 37.080 and
8 37.090, so far as applicable, apply, and proceedings must be had in
9 conformity therewith so far as possible. ~~Such~~ *The* action must be
10 commenced within 1 year after the receipt of the offer of settlement
11 from the Governor.

12 4. To provide for and compel the evacuation of all or part of
13 the population from any stricken or threatened area or areas within
14 the State and to take such steps as are necessary for the receipt and
15 care of those persons.

16 5. Subject to the provisions of the State Constitution, to remove
17 from office any public officer having administrative responsibilities
18 under this chapter for willful failure to obey an order or regulation
19 adopted pursuant to this chapter. ~~Such~~ *The* removal must be upon
20 charges after service upon the officer of a copy of the charges and
21 after giving him an opportunity to be heard in his defense. Pending
22 the preparation and disposition of charges, the Governor may
23 suspend the officer for a period not exceeding 30 days. A vacancy
24 resulting from removal or suspension pursuant to this section must
25 be filled as provided by law.

26 6. To perform and exercise such other functions, powers and
27 duties as are necessary to promote and secure the safety and
28 protection of the civilian population.

29 **Sec. 6.** NRS 414.110 is hereby amended to read as follows:

30 414.110 1. All functions under this chapter and all other
31 activities relating to emergency management are hereby declared to
32 be governmental functions. ~~Neither~~ *Except as otherwise provided*
33 *in section 8 of this act, neither* the State nor any political
34 subdivision thereof nor other agencies of the State or political
35 subdivision thereof, nor except in cases of willful misconduct, gross
36 negligence ~~or~~ or bad faith, any worker complying with or
37 reasonably attempting to comply with this chapter, or any order
38 or regulation adopted pursuant to the provisions of this chapter, or
39 pursuant to any ordinance relating to any necessary emergency
40 procedures or other precautionary measures enacted by any political
41 subdivision of the State, is liable for the death of or injury to
42 persons, or for damage to property, as a result of any such activity.
43 The provisions of this section do not affect the right of any person to
44 receive benefits to which he would otherwise be entitled under this
45 chapter, or under the provisions of chapters 616A to 616D,



1 inclusive, or chapter 617 of NRS, or under any pension law, nor the
2 right of any such person to receive any benefits or compensation
3 pursuant to any act of Congress.

4 2. Any requirement for a license to practice any professional,
5 mechanical or other skill does not apply to any authorized worker
6 who, in the course of performing his duties as such, practices that
7 professional, mechanical or other skill during an emergency or
8 disaster.

9 3. As used in this section, "worker" includes, without
10 limitation, any full-time or part-time paid, volunteer or auxiliary
11 employee of this State, of any political subdivision thereof, of other
12 states, territories, possessions or the District of Columbia, of the
13 Federal Government, of any neighboring country, or of any political
14 subdivision thereof, or of any agency or organization, performing
15 services for emergency management at any place in this State
16 subject to the order or control of, or pursuant to a request of, the
17 State Government or any political subdivision thereof.

18 **Sec. 7.** NRS 13.020 is hereby amended to read as follows:

19 13.020 ~~[Actions]~~ *Except as otherwise provided in section 8 of*
20 *this act, actions* for the following causes must be tried in the county
21 where the cause, or some part thereof, arose, subject to the power of
22 the court to change the place of trial:

23 1. For the recovery of a penalty or forfeiture imposed by statute
24 , ~~[§]~~ except ~~[§]~~ that when it is imposed for an offense committed on a
25 lake, river or other stream of water ~~[§]~~ *which is* situated in two or
26 more counties, the action may be brought in any county bordering
27 on ~~[such]~~ *that* lake, river or stream, and opposite to the place where
28 the offense was committed.

29 2. Against a public officer, or person especially appointed to
30 execute his duties, for an act done by him in virtue of his office, or
31 against a person who, by his command ~~[§]~~ or in his aid, does
32 anything touching the duties of the officer.

33 3. Against the State of Nevada or any agency of the State for
34 any tort action, except that any such tort action may also be brought
35 in Carson City.

36 **Sec. 8.** Chapter 41 of NRS is hereby amended by adding
37 thereto a new section to read as follows:

38 *1. A person from whom a firearm is confiscated in violation*
39 *of section 10 of this act may seek relief in a suit, action or other*
40 *proceeding at law or in equity, including, without limitation, an*
41 *action for the return of the firearm, against:*

42 *(a) The State of Nevada or a political subdivision thereof; and*

43 *(b) The officer or employee of the State or a political*
44 *subdivision thereof or worker who confiscated or authorized the*
45 *confiscation of the firearm.*



2. *The proceeding may be commenced in a court of competent jurisdiction in the county in which:*

(a) *The person bringing the proceeding resides; or*

(b) *The firearm may be found.*

3. *If a person who brings a proceeding pursuant to this section prevails, the court shall award him, in addition to any other remedy provided by law, reasonable attorney's fees and costs.*

4. *As used in this section:*

(a) *"Firearm" has the meaning ascribed to it in section 2 of this act.*

(b) *"Worker" has the meaning ascribed to it in NRS 414.110.*

Sec. 9. Chapter 193 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *If, during the course of his employment, an employee of this State or a political subdivision thereof is convicted of violating section 10 of this act, the employer upon discovery of the conviction shall terminate the employment of the employee.*

2. *If, during the course of his tenure in office, an officer of any county, city or township of the State is convicted of violating section 10 of this act, the court as part of the penalty for such a conviction shall remove the officer from his office.*

3. *If, during the course of his tenure in office, an elected or appointed officer of the State is convicted of violating section 10 of this act, the prosecuting officer who obtained the conviction shall file a certified copy of the judgment roll with the Secretary of State. The Secretary of State shall lay the certified copy of the judgment roll before the Assembly at its next session for the preparation of articles of impeachment.*

4. *This section does not apply to a justice or judge of the court system.*

Sec. 10. Chapter 197 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *An officer or employee of this State or a political subdivision thereof or a worker who, during an emergency or a disaster, intentionally or knowingly confiscates or authorizes the confiscation of a firearm from a person other than a person who is:*

(a) *In unlawful possession of the firearm; or*

(b) *Unlawfully carrying the firearm,*

↪ is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, or by a fine of not more than \$10,000, or by both fine and imprisonment.



1 2. *In addition to any other penalty, the court shall order the*
2 *person to pay restitution.*

3 3. *As used in this section:*

4 (a) *“Disaster” has the meaning ascribed to it in NRS 414.0335.*

5 (b) *“Emergency” has the meaning ascribed to it in*
6 *NRS 414.0345.*

7 (c) *“Firearm” has the meaning ascribed to it in section 2 of*
8 *this act.*

9 (d) *“Worker” has the meaning ascribed to it NRS 414.110.*

10 **Sec. 11.** This act becomes effective upon passage and
11 approval.

