

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; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 3 of this bill excludes from the emergency powers that the Governor and the executive heads or governing bodies of the political subdivisions of this State are authorized to exercise during an emergency or a disaster the authority to: (1) confiscate firearms from persons in lawful possession of the firearms; or (2) impose additional restrictions on certain aspects of the trade, possession or use of firearms, ammunition and components thereof. (Chapter 414 of NRS)

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 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.



* A B 9 5 R 1 *

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. *Pursuant to Amendment II of the Constitution of the United States and Section 11 of Article 1 of the Constitution of the State of Nevada, and notwithstanding any other provision of law, the emergency powers conferred upon the Governor and upon the executive heads or governing bodies of the political subdivisions of this State must not be construed to allow:*

1. 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; or

2. The imposition of additional restrictions as to the lawful possession, transfer, sale, carrying, storage, display or use of:

(a) Firearms;

(b) Ammunition; or

(c) Components of firearms or ammunition.

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



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

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

10 3. ~~[[To]]~~ *Except as otherwise provided in section 3 of this act,*
11 *to* procure, by purchase, condemnation, seizure or other means,
12 construct, lease, transport, store, maintain, renovate or distribute
13 materials and facilities for emergency management without regard
14 to the limitations of any existing law. ~~[[He]]~~ *The Governor* shall
15 make compensation for the property so seized, taken or condemned
16 on the following basis:

17 (a) If property is taken for temporary use, the Governor, within
18 90 days after the taking, shall fix the amount of compensation to be
19 paid therefor. If the property is returned to the owner in a damaged
20 condition, or is not returned to the owner, the Governor shall fix
21 within 90 days the amount of compensation to be paid for the
22 damage or failure to return the property. ~~[[Whenever]]~~ *If* the
23 Governor deems it advisable for the State to take title to property
24 taken under this section, he shall forthwith cause the owner of
25 ~~[[such]]~~ *the* property to be notified thereof in writing by registered or
26 certified mail, postage prepaid, or by the best means available, and
27 forthwith cause to be filed a copy of the notice with the Secretary of
28 State.

29 (b) Within the 90-day period prescribed in paragraph (a), the
30 Governor shall make an offer in writing to the person or persons
31 entitled to receive it of the amount of money proposed to be paid as
32 full compensation. If the offer is accepted, the money must be paid
33 out of such fund, funds or other sources as are available and no
34 further action ~~[[either]]~~ in law or in equity may ever be maintained in
35 connection therewith. If the offer of payment is refused, the person
36 or persons entitled thereto have the same rights as plaintiffs in
37 actions of eminent domain insofar as the fixing of damages and
38 compensation is concerned, NRS 37.060, 37.070, 37.080 and
39 37.090, so far as applicable, apply, and proceedings must be had in
40 conformity therewith so far as possible. ~~[[Such]]~~ *The* action must be
41 commenced within 1 year after the receipt of the offer of settlement
42 from the Governor.

43 4. To provide for and compel the evacuation of all or part of
44 the population from any stricken or threatened area or areas within



the State and to take such steps as are necessary for the receipt and care of those persons.

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

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

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

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

1. A person from whom a firearm is confiscated in violation of section 3 of this act may seek relief in a suit, action or other proceeding at law or in equity, including, without limitation, an action for the return of the firearm, against:

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

(b) The officer or employee of the State or a political subdivision thereof or worker who confiscated or authorized the 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. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

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

