

## Amendment No. 448

Assembly Amendment to Assembly Bill No. 95

(BDR 36-294)

**Proposed by:** Assembly Committee on Government Affairs**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

HAC/MSM



Date: 4/16/2007

A.B. No. 95—Makes various changes concerning the confiscation of firearms during an emergency or a disaster. (BDR 36-294)



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:**

**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 ~~[or authorize the confiscation of]~~ 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 ~~[that are in addition to those restrictions imposed by state and federal law;]~~ , **ammunition and components thereof**. (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] 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 the State by this chapter do not include the authority to:*~~

~~*1. Confiscate or authorize the*~~ *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* ~~*;*~~

~~*2. Impose a restriction or limitation on*~~ *; or*

*2. The imposition of additional restrictions as to the lawful possession, 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;* *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:

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

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

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

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

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

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

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

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

48 **Sec. 6.** ~~[(NRS 414.110 is hereby amended to read as follows:)]~~

49 ~~— 414.110 1. All functions under this chapter and all other activities relating~~  
50 ~~to emergency management are hereby declared to be governmental functions.~~  
51 ~~[(Neither)]~~ ~~Except as otherwise provided in section 8 of this act, neither the State~~  
52 ~~nor any political subdivision thereof nor other agencies of the State or political~~  
53 ~~subdivision thereof, nor except in cases of willful misconduct, gross negligence [.]~~

or bad faith, any worker complying with or reasonably attempting to comply with this chapter, or any order or regulation adopted pursuant to the provisions of this chapter, or pursuant to any ordinance relating to any necessary emergency procedures or other precautionary measures enacted by any political subdivision of the State, is liable for the death of or injury to persons, or for damage to property, as a result of any such activity. The provisions of this section do not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, or under any pension law, nor the right of any such person to receive any benefits or compensation pursuant to any act of Congress.

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

3. As used in this section, "worker" includes, without limitation, any full-time or part-time paid, volunteer or auxiliary employee of this State, of any political subdivision thereof, of other states, territories, possessions or the District of Columbia, of the Federal Government, of any neighboring country, or of any political subdivision thereof, or of any agency or organization, performing services for emergency management at any place in this State subject to the order or control of, or pursuant to a request of, the State Government or any political subdivision thereof. **(Deleted by amendment.)**

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

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

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

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

3. Against the State of Nevada or any agency of the State for any tort action, except that any such tort action may also be brought in Carson City. **(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 ~~10~~ 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. ~~[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.]~~  
(Deleted by amendment.)

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.~~

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

~~3. As used in this section:~~

~~(a) "Disaster" has the meaning ascribed to it in NRS 414.0335.~~

~~(b) "Emergency" has the meaning ascribed to it in NRS 414.0345.~~

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

~~(d) "Worker" has the meaning ascribed to it NRS 414.110.]~~ (Deleted by amendment.)

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