

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 390

Introduced by Christensen, 44; Kintner, 2.

Read first time January 18, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Emergency Management Act; to amend section
2 81-829.40, Reissue Revised Statutes of Nebraska, and
3 section 81-829.36, Revised Statutes Cumulative
4 Supplement, 2012; to prohibit the suspension or
5 limitation on the sale, dispensing, or transportation of
6 firearms or ammunition by the Governor during a state of
7 emergency; to proscribe prohibitions or restrictions on
8 the possession, use, carrying, transfer, transportation,
9 storage, or display of firearms or ammunition during a
10 state of emergency; and to repeal the original sections.

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

1 Section 1. Section 81-829.36, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 81-829.36 Sections 81-829.36 to 81-829.75 and section 3
4 of this act shall be known and may be cited as the Emergency
5 Management Act.

6 Sec. 2. Section 81-829.40, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 81-829.40 (1) The Governor shall be responsible for
9 meeting the dangers to the state and people presented by disasters,
10 emergencies, and civil defense emergencies, and in the event of
11 disaster, emergency, or civil defense emergency beyond local control,
12 he or she may assume direct operational control over all or any part
13 of the emergency management functions within this state. He or she
14 shall have general direction and control of emergency management and
15 the Nebraska Emergency Management Agency and shall be responsible for
16 carrying out the provisions of the Emergency Management Act.

17 (2) In order to effect the policy and purposes of the
18 act, the Governor may issue proclamations and make, amend, and
19 rescind the necessary orders, rules, and regulations to carry out the
20 act.

21 (3) A state of emergency proclamation shall be issued by
22 the Governor if he or she finds that a disaster, emergency, or civil
23 defense emergency has occurred or that the occurrence or threat
24 thereof is imminent. All proclamations issued under this subsection
25 shall indicate the nature of the disaster, emergency, or civil

1 defense emergency, the area or areas threatened, and the conditions
2 which have brought about the state of emergency. All proclamations
3 shall be disseminated promptly by means calculated to bring the
4 contents to the attention of the general public and shall be promptly
5 filed with the Nebraska Emergency Management Agency, the Secretary of
6 State, and the clerks of the local governments in the area to which
7 it applies. The proclamation shall continue in effect until the
8 Governor finds that the threat or danger has passed or the disaster,
9 emergency, or civil defense emergency has been dealt with to the
10 extent that those conditions no longer exist and terminates the
11 proclamation by letter of notice to such agency, the Secretary of
12 State, and the clerks of the local governments in the area to which
13 it applies. The Legislature by resolution may terminate a state of
14 emergency proclamation at any time, whereupon the Governor shall
15 terminate the proclamation by letter of notice to such agency, the
16 Secretary of State, and the clerks of the local governments in the
17 area to which it applies.

18 (4) A state of emergency proclamation shall activate
19 state, city, village, county, and interjurisdictional emergency
20 management organizations and emergency operations plans applicable to
21 the local government or area in question and shall be the authority
22 for the deployment and use of any forces to which the plan or plans
23 apply and for use or distribution of any supplies, equipment,
24 materials, and facilities assembled, stockpiled, or arranged to be
25 made available pursuant to the act or any other provision of law

1 relating to disasters, emergencies, or civil defense emergencies.

2 (5) During the continuance of any state of emergency the
3 Governor shall be commander in chief of the organized and unorganized
4 militia and of all other forces available for emergency management
5 duty. To the greatest extent practicable, the Governor shall delegate
6 or assign command authority by prior arrangement embodied in
7 appropriate proclamations, orders, rules, and regulations, but
8 nothing shall restrict his or her authority to do so by orders issued
9 at the time of the disaster, emergency, or civil defense emergency.

10 (6) In addition to any other powers conferred upon the
11 Governor by law, he or she may:

12 (a) Suspend the provisions of any regulatory statute
13 prescribing the procedures for conduct of state business or the
14 orders, rules, or regulations of any state agency if strict
15 compliance with the provisions of any statute, order, rule, or
16 regulation would in any way prevent, hinder, or delay necessary
17 action in coping with the disaster, emergency, or civil defense
18 emergency;

19 (b) Utilize all available resources of the state
20 government and of each political subdivision of the state as are
21 reasonably necessary to cope with the disaster, emergency, or civil
22 defense emergency;

23 (c) Transfer the direction, personnel, or functions of
24 state departments and agencies or units thereof for the purpose of
25 performing or facilitating emergency management;

1 (d) Subject to any applicable requirements for
2 compensation under section 81-829.57, commandeer or utilize any
3 private property if he or she finds this necessary to cope with the
4 disaster, emergency, or civil defense emergency;

5 (e) Direct and compel the evacuation of all or part of
6 the population from any stricken or threatened area within the state
7 if he or she deems this action necessary for the preservation of life
8 or other emergency management;

9 (f) Prescribe routes, modes of transportation, and
10 destinations in connection with evacuation;

11 (g) Control ingress and egress to and from a disaster
12 area, the movement of persons within the area, and the occupancy of
13 premises in the area;

14 (h) Suspend or limit the sale, dispensing, or
15 transportation of alcoholic beverages, ~~firearms~~, explosives, and
16 combustibles; and

17 (i) Make provisions for the availability and use of
18 temporary emergency housing.

19 (7) In the event of a civil defense emergency the
20 Governor shall assume direct operational control over all or any part
21 of the emergency management functions within this state.

22 Sec. 3. (1) Notwithstanding any other law, no person
23 acting on behalf or under the authority of the state or a political
24 subdivision of the state may do any of the following during a
25 declared state of emergency:

1 (a) Prohibit or restrict the otherwise lawful possession,
2 use, carrying, transfer, transportation, storage, or display of a
3 firearm or ammunition;

4 (b) Seize or confiscate, or authorize the seizure or
5 confiscation of, any otherwise lawfully possessed firearm or
6 ammunition unless the person acting on behalf of or under the
7 authority of the state or a political subdivision of the state is (i)
8 defending himself or herself or another from an assault, (ii)
9 arresting a person in actual possession of a firearm or ammunition
10 for a violation of law, or (iii) seizing or confiscating the firearm
11 or ammunition as evidence of a crime; or

12 (c) Require registration of any firearm or ammunition for
13 which registration is not otherwise required by law.

14 (2) Subdivision (1)(a) of this section as it relates to
15 transfer of a firearm or ammunition shall not apply to the commercial
16 sale of firearms or ammunition if an authorized authority has ordered
17 an evacuation or general closure of businesses in the affected area.

18 (3) Any individual aggrieved by a violation of this
19 section may seek relief in an action at law or in equity for redress
20 against any person who subjects such individual, or causes such
21 individual to be subjected, to an action prohibited by this section.

22 (4) In addition to any other remedy at law or in equity,
23 an individual aggrieved by the seizure or confiscation of a firearm
24 or ammunition in violation of this section may bring an action for
25 the return of such firearm or ammunition, or the value thereof if the

1 firearm or ammunition is no longer available, in the county court of
2 the county in which that individual resides or in which such firearm
3 or ammunition is located or in which the seizure or confiscation
4 occurred.

5 (5) In any action or proceeding to enforce this section,
6 the court shall award a prevailing plaintiff costs and reasonable
7 attorney's fees.

8 Sec. 4. Original section 81-829.40, Reissue Revised
9 Statutes of Nebraska, and section 81-829.36, Revised Statutes
10 Cumulative Supplement, 2012, are repealed.