

LEGISLATURE OF NEBRASKA  
 ONE HUNDRED THIRD LEGISLATURE  
 SECOND SESSION  
**LEGISLATIVE BILL 390**

Final Reading

Introduced by Christensen, 44; Kintner, 2; Pirsch, 4.

Read first time January 18, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to public safety; to amend section 81-829.40,  
 2 Reissue Revised Statutes of Nebraska, and sections  
 3 28-1204.04 and 81-829.42, Revised Statutes Cumulative  
 4 Supplement, 2012; to change provisions relating to  
 5 unlawful possession of a firearm at a school; to change  
 6 the Governor's powers relating to firearms and increase  
 7 the authorized expenditure amount for aerial fire  
 8 suppression or hazardous material response under the  
 9 Emergency Management Act; and to repeal the original  
 10 sections.

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

1                   Section 1. Section 28-1204.04, Revised Statutes  
2 Cumulative Supplement, 2012, is amended to read:

3                   28-1204.04 (1) Any person who possesses a firearm in a  
4 school, on school grounds, in a school-owned vehicle, or at a school-  
5 sponsored activity or athletic event is guilty of the offense of  
6 unlawful possession of a firearm at a school. Unlawful possession of  
7 a firearm at a school is a Class IV felony. This subsection shall not  
8 apply to (a) the issuance of firearms to or possession by members of  
9 the armed forces of the United States, active or reserve, National  
10 Guard of this state, or Reserve Officers Training Corps or peace  
11 officers or other duly authorized law enforcement officers when on  
12 duty or training, (b) the possession of firearms by peace officers or  
13 other duly authorized law enforcement officers when contracted by a  
14 school to provide school security or school event control services,  
15 (c) firearms which may lawfully be possessed by the person receiving  
16 instruction, for instruction under the immediate supervision of an  
17 adult instructor, (d) firearms which may lawfully be possessed by a  
18 member of a college or university rifle team, within the scope of  
19 such person's duties as a member of the team, (e) firearms which may  
20 lawfully be possessed by a person employed by a college or university  
21 in this state as part of an agriculture or a natural resources  
22 program of such college or university, within the scope of such  
23 person's employment, (f) firearms contained within a private vehicle  
24 operated by a nonstudent adult which are not loaded and (i) are  
25 encased or (ii) are in a locked firearm rack that is on a motor

1 vehicle, (g) firearms which may lawfully be possessed by a person for  
2 the purpose of using them, with the approval of the school, in a  
3 historical reenactment, in a hunter education program, or as part of  
4 an honor guard, or ~~(g)~~-(h) a handgun carried as a concealed handgun  
5 by a valid holder of a permit issued under the Concealed Handgun  
6 Permit Act in a vehicle or on his or her person while riding in or on  
7 a vehicle into or onto any parking area, which is open to the public  
8 and used by a school if, prior to exiting the vehicle, the handgun is  
9 locked inside the glove box, trunk, or other compartment of the  
10 vehicle, a storage box securely attached to the vehicle, or, if the  
11 vehicle is a motorcycle, a hardened compartment securely attached to  
12 the motorcycle while the vehicle is in or on such parking area,  
13 except as prohibited by federal law. For purposes of this subsection,  
14 encased means enclosed in a case that is expressly made for the  
15 purpose of containing a firearm and that is completely zipped,  
16 snapped, buckled, tied, or otherwise fastened with no part of the  
17 firearm exposed.

18 (2) Any firearm possessed in violation of subsection (1)  
19 of this section shall be confiscated without warrant by a peace  
20 officer or may be confiscated without warrant by school  
21 administrative or teaching personnel. Any firearm confiscated by  
22 school administrative or teaching personnel shall be delivered to a  
23 peace officer as soon as practicable.

24 (3) Any firearm confiscated by or given to a peace  
25 officer pursuant to subsection (2) of this section shall be declared

1 a common nuisance and shall be held by the peace officer prior to his  
2 or her delivery of the firearm to the property division of the law  
3 enforcement agency which employs the peace officer. The property  
4 division of such law enforcement agency shall hold such firearm for  
5 as long as the firearm is needed as evidence. After the firearm is no  
6 longer needed as evidence, it shall be destroyed in such manner as  
7 the court may direct.

8 (4) Whenever a firearm is confiscated and held pursuant  
9 to this section or section 28-1204.02, the peace officer who received  
10 such firearm shall cause to be filed within ten days after the  
11 confiscation a petition for destruction of such firearm. The petition  
12 shall be filed in the district court of the county in which the  
13 confiscation is made. The petition shall describe the firearm held,  
14 state the name of the owner, if known, allege the essential elements  
15 of the violation which caused the confiscation, and conclude with a  
16 prayer for disposition and destruction in such manner as the court  
17 may direct. At any time after the confiscation of the firearm and  
18 prior to court disposition, the owner of the firearm seized may  
19 petition the district court of the county in which the confiscation  
20 was made for possession of the firearm. The court shall release the  
21 firearm to such owner only if the claim of ownership can reasonably  
22 be shown to be true and either (a) the owner of the firearm can show  
23 that the firearm was taken from his or her property or place of  
24 business unlawfully or without the knowledge and consent of the owner  
25 and that such property or place of business is different from that of

1 the person from whom the firearm was confiscated or (b) the owner of  
2 the firearm is acquitted of the charge of unlawful possession of a  
3 handgun in violation of section 28-1204, unlawful transfer of a  
4 firearm to a juvenile, or unlawful possession of a firearm at a  
5 school. No firearm having significant antique value or historical  
6 significance as determined by the Nebraska State Historical Society  
7 shall be destroyed. If a firearm has significant antique value or  
8 historical significance, it shall be sold at auction and the proceeds  
9 shall be remitted to the State Treasurer for distribution in  
10 accordance with Article VII, section 5, of the Constitution of  
11 Nebraska.

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

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

23           (2) In order to effect the policy and purposes of the  
24 act, the Governor may issue proclamations and make, amend, and  
25 rescind the necessary orders, rules, and regulations to carry out the

1 act.

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

24 (4) A state of emergency proclamation shall activate  
25 state, city, village, county, and interjurisdictional emergency

1 management organizations and emergency operations plans applicable to  
2 the local government or area in question and shall be the authority  
3 for the deployment and use of any forces to which the plan or plans  
4 apply and for use or distribution of any supplies, equipment,  
5 materials, and facilities assembled, stockpiled, or arranged to be  
6 made available pursuant to the act or any other provision of law  
7 relating to disasters, emergencies, or civil defense emergencies.

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

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

18 (a) Suspend the provisions of any regulatory statute  
19 prescribing the procedures for conduct of state business or the  
20 orders, rules, or regulations of any state agency if strict  
21 compliance with the provisions of any statute, order, rule, or  
22 regulation would in any way prevent, hinder, or delay necessary  
23 action in coping with the disaster, emergency, or civil defense  
24 emergency;

25 (b) Utilize all available resources of the state

1 government and of each political subdivision of the state as are  
2 reasonably necessary to cope with the disaster, emergency, or civil  
3 defense emergency;

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

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

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

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

17 (g) Control ingress and egress to and from a disaster  
18 area, the movement of persons within the area, and the occupancy of  
19 premises in the area;

20 (h) Suspend or limit the sale, dispensing, or  
21 transportation of alcoholic beverages, ~~firearms~~, explosives, and  
22 combustibles; and

23 (i) Make provisions for the availability and use of  
24 temporary emergency housing.

25 (7) In the event of a civil defense emergency, the



1 Governor shall assume direct operational control over all or any part  
2 of the emergency management functions within this state.

3 Sec. 3. Section 81-829.42, Revised Statutes Cumulative  
4 Supplement, 2012, is amended to read:

5 81-829.42 (1) The Legislature recognizes that, while  
6 appropriations are adequate to meet the normal needs, the necessity  
7 exists for anticipating and making advance provision to care for the  
8 unusual and extraordinary burdens imposed on the state and its  
9 political subdivisions by disasters, emergencies, or civil defense  
10 emergencies. To meet such situations, it is the intention of the  
11 Legislature to confer emergency powers on the Governor, acting  
12 through the Adjutant General and the Nebraska Emergency Management  
13 Agency, and to vest him or her with adequate power and authority  
14 within the limitation of available funds appropriated to the  
15 Governor's Emergency Program to meet any disaster, emergency, or  
16 civil defense emergency.

17 (2) There is hereby established the Governor's Emergency  
18 Program. Funds appropriated to the program shall be expended, upon  
19 direction of the Governor, for any state of emergency. The state of  
20 emergency proclamation shall set forth the emergency and shall state  
21 that it requires the expenditure of public funds to furnish immediate  
22 aid and relief. The Adjutant General shall administer the funds  
23 appropriated to the program.

24 (3) It is the intent of the Legislature that the first  
25 recourse shall be to funds regularly appropriated to state and local

1 agencies. If the Governor finds that the demands placed upon these  
2 funds are unreasonably great, he or she may make funds available from  
3 the Governor's Emergency Program. Expenditures may be made upon the  
4 direction of the Governor for any or all emergency management  
5 functions or to meet the intent of the state emergency operations  
6 plans as outlined in section 81-829.41. Expenditures may also be made  
7 to state and federal agencies to meet the matching requirement of any  
8 applicable assistance programs.

9           (4) Assistance shall be provided from the funds  
10 appropriated to the Governor's Emergency Program to political  
11 subdivisions of this state which have suffered from a disaster,  
12 emergency, or civil defense emergency to such an extent as to impose  
13 a severe financial burden exceeding the ordinary capacity of the  
14 subdivision affected. Applications for aid under this section shall  
15 be made to the Nebraska Emergency Management Agency on such forms as  
16 shall be prescribed and furnished by the agency. The forms shall  
17 require the furnishing of sufficient information to determine  
18 eligibility for aid and the extent of the financial burden incurred.  
19 The agency may call upon other agencies of the state in evaluating  
20 such applications. The Adjutant General shall review each application  
21 for aid under this section and recommend its approval or disapproval,  
22 in whole or in part, to the Governor. If the Governor approves, he or  
23 she shall determine and certify to the Adjutant General the amount of  
24 aid to be furnished. The Adjutant General shall thereupon issue his  
25 or her voucher to the Director of Administrative Services who shall

1 issue his or her warrants therefor to the applicant.

2 (5) When a state of emergency has been proclaimed by the  
3 Governor, the Adjutant General, upon order of the Governor, shall  
4 have authority to expend funds for purposes including, but not  
5 limited to:

6 (a) The purposes of the Emergency Management Act,  
7 including emergency management functions and the responsibilities of  
8 the Governor as outlined in the act;

9 (b) Employing for the duration of the state of emergency  
10 additional personnel and contracting or otherwise procuring all  
11 necessary appliances, supplies, and equipment;

12 (c) Performing services for and furnishing materials and  
13 supplies to state government agencies and local governments with  
14 respect to performance of any duties enjoined by law upon such  
15 agencies and local governments which they are unable to perform  
16 because of extreme climatic phenomena and receiving reimbursement in  
17 whole or in part from such agencies and local governments able to pay  
18 therefor under such terms and conditions as may be agreed upon by the  
19 Adjutant General and any such agency or local government;

20 (d) Performing services for and furnishing materials to  
21 any individual in connection with alleviating hardship and distress  
22 growing out of extreme climatic phenomena and receiving reimbursement  
23 in whole or in part from such individual under such terms as may be  
24 agreed upon by the Adjutant General and such individual;

25 (e) Opening up, repairing, and restoring roads and

1 highways;

2 (f) Repairing and restoring bridges;

3 (g) Furnishing transportation for supplies to alleviate  
4 suffering and distress;

5 (h) Restoring means of communication;

6 (i) Furnishing medical services and supplies to prevent  
7 the spread of disease and epidemics;

8 (j) Quelling riots and civil disturbances;

9 (k) Training individuals or governmental agencies for the  
10 purpose of perfecting the performance of emergency management duties  
11 as provided in the Nebraska emergency operations plans;

12 (l) Procurement and storage of special emergency supplies  
13 or equipment, determined by the Adjutant General to be required to  
14 provide rapid response by state government to assist local  
15 governments in impending or actual disasters, emergencies, or civil  
16 defense emergencies;

17 (m) Clearing or removing debris and wreckage which may  
18 threaten public health or safety from publicly owned or privately  
19 owned land or water; and

20 (n) Such other measures as are customarily necessary to  
21 furnish adequate relief in cases of disaster, emergency, or civil  
22 defense emergency.

23 (6) If aerial fire suppression or hazardous material  
24 response is immediately required, the Adjutant General may make  
25 expenditures of up to ~~ten~~twenty-five thousand dollars per event

1 without a state of emergency proclamation issued by the Governor.

2 (7) The Governor may receive such voluntary contributions  
3 as may be made from any nonfederal source to aid in carrying out the  
4 purposes of this section and shall credit the same to the Governor's  
5 Emergency Cash Fund.

6 (8) All obligations and expenses incurred by the Governor  
7 in the exercise of the powers and duties vested in the Governor by  
8 this section shall be paid by the State Treasurer out of available  
9 funds appropriated to the Governor's Emergency Program, and the  
10 Director of Administrative Services shall draw his or her warrants  
11 upon the State Treasurer for the payment of such sum, or so much  
12 thereof as may be required, upon receipt by him or her of proper  
13 vouchers duly approved by the Adjutant General.

14 (9) This section shall be liberally construed in order to  
15 accomplish the purposes of the Emergency Management Act and to permit  
16 the Governor to adequately cope with any disaster, emergency, or  
17 civil defense emergency which may arise, and the powers vested in the  
18 Governor by this section shall be construed as being in addition to  
19 all other powers presently vested in him or her and not in derogation  
20 of any existing powers.

21 (10) Such funds as may be made available by the  
22 government of the United States for the purpose of alleviating  
23 distress from disasters, emergencies, and civil defense emergencies  
24 may be accepted by the State Treasurer and shall be credited to a  
25 separate and distinct fund unless otherwise specifically provided in

1 the act of Congress making such funds available or as otherwise  
2 allowed and provided by state law.

3           Sec. 4. Original section 81-829.40, Reissue Revised  
4 Statutes of Nebraska, and sections 28-1204.04 and 81-829.42, Revised  
5 Statutes Cumulative Supplement, 2012, are repealed.