

E AND R AMENDMENTS TO LB390

Introduced by Murante, 49, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

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

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

1 or university in this state as part of an agriculture or a
2 natural resources program of such college or university, within the
3 scope of such person's employment, (f) firearms contained within
4 a private vehicle operated by a nonstudent adult which are not
5 loaded and (i) are encased or (ii) are in a locked firearm rack
6 that is on a motor vehicle, (g) firearms which may lawfully be
7 possessed by a person for the purpose of using them, with the
8 approval of the school, in a historical reenactment, in a hunter
9 education program, or as part of an honor guard, or ~~(g)~~ (h) a
10 handgun carried as a concealed handgun by a valid holder of a
11 permit issued under the Concealed Handgun Permit Act in a vehicle
12 or on his or her person while riding in or on a vehicle into or
13 onto any parking area, which is open to the public and used by
14 a school if, prior to exiting the vehicle, the handgun is locked
15 inside the glove box, trunk, or other compartment of the vehicle,
16 a storage box securely attached to the vehicle, or, if the vehicle
17 is a motorcycle, a hardened compartment securely attached to the
18 motorcycle while the vehicle is in or on such parking area, except
19 as prohibited by federal law. For purposes of this subsection,
20 encased means enclosed in a case that is expressly made for the
21 purpose of containing a firearm and that is completely zipped,
22 snapped, buckled, tied, or otherwise fastened with no part of the
23 firearm exposed.

24 (2) Any firearm possessed in violation of subsection
25 (1) of this section shall be confiscated without warrant by a
26 peace officer or may be confiscated without warrant by school
27 administrative or teaching personnel. Any firearm confiscated by

1 school administrative or teaching personnel shall be delivered to a
2 peace officer as soon as practicable.

3 (3) Any firearm confiscated by or given to a peace
4 officer pursuant to subsection (2) of this section shall be
5 declared a common nuisance and shall be held by the peace officer
6 prior to his or her delivery of the firearm to the property
7 division of the law enforcement agency which employs the peace
8 officer. The property division of such law enforcement agency shall
9 hold such firearm for as long as the firearm is needed as evidence.
10 After the firearm is no longer needed as evidence, it shall be
11 destroyed in such manner as the court may direct.

12 (4) Whenever a firearm is confiscated and held pursuant
13 to this section or section 28-1204.02, the peace officer who
14 received such firearm shall cause to be filed within ten days after
15 the confiscation a petition for destruction of such firearm. The
16 petition shall be filed in the district court of the county in
17 which the confiscation is made. The petition shall describe the
18 firearm held, state the name of the owner, if known, allege the
19 essential elements of the violation which caused the confiscation,
20 and conclude with a prayer for disposition and destruction in such
21 manner as the court may direct. At any time after the confiscation
22 of the firearm and prior to court disposition, the owner of the
23 firearm seized may petition the district court of the county in
24 which the confiscation was made for possession of the firearm. The
25 court shall release the firearm to such owner only if the claim
26 of ownership can reasonably be shown to be true and either (a)
27 the owner of the firearm can show that the firearm was taken from

1 his or her property or place of business unlawfully or without
2 the knowledge and consent of the owner and that such property or
3 place of business is different from that of the person from whom
4 the firearm was confiscated or (b) the owner of the firearm is
5 acquitted of the charge of unlawful possession of a handgun in
6 violation of section 28-1204, unlawful transfer of a firearm to
7 a juvenile, or unlawful possession of a firearm at a school. No
8 firearm having significant antique value or historical significance
9 as determined by the Nebraska State Historical Society shall be
10 destroyed. If a firearm has significant antique value or historical
11 significance, it shall be sold at auction and the proceeds shall be
12 remitted to the State Treasurer for distribution in accordance with
13 Article VII, section 5, of the Constitution of Nebraska.

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

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

26 (2) In order to effect the policy and purposes of the
27 act, the Governor may issue proclamations and make, amend, and

1 rescind the necessary orders, rules, and regulations to carry out
2 the act.

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

25 (4) A state of emergency proclamation shall activate
26 state, city, village, county, and interjurisdictional emergency
27 management organizations and emergency operations plans applicable

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

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

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

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

26 (b) Utilize all available resources of the state
27 government and of each political subdivision of the state as are

1 reasonably necessary to cope with the disaster, emergency, or civil
2 defense emergency;

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

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

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

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

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

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

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

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

27 Sec. 3. Section 81-829.42, Revised Statutes Cumulative

1 Supplement, 2012, is amended to read:

2 81-829.42 (1) The Legislature recognizes that, while
3 appropriations are adequate to meet the normal needs, the necessity
4 exists for anticipating and making advance provision to care for
5 the unusual and extraordinary burdens imposed on the state and
6 its political subdivisions by disasters, emergencies, or civil
7 defense emergencies. To meet such situations, it is the intention
8 of the Legislature to confer emergency powers on the Governor,
9 acting through the Adjutant General and the Nebraska Emergency
10 Management Agency, and to vest him or her with adequate power and
11 authority within the limitation of available funds appropriated to
12 the Governor's Emergency Program to meet any disaster, emergency,
13 or civil defense emergency.

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

21 (3) It is the intent of the Legislature that the first
22 recourse shall be to funds regularly appropriated to state and
23 local agencies. If the Governor finds that the demands placed
24 upon these funds are unreasonably great, he or she may make funds
25 available from the Governor's Emergency Program. Expenditures may
26 be made upon the direction of the Governor for any or all emergency
27 management functions or to meet the intent of the state emergency

1 operations plans as outlined in section 81-829.41. Expenditures may
2 also be made to state and federal agencies to meet the matching
3 requirement of any applicable assistance programs.

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

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

27 (a) The purposes of the Emergency Management Act,

1 including emergency management functions and the responsibilities
2 of the Governor as outlined in the act;

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

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

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

21 (e) Opening up, repairing, and restoring roads and
22 highways;

23 (f) Repairing and restoring bridges;

24 (g) Furnishing transportation for supplies to alleviate
25 suffering and distress;

26 (h) Restoring means of communication;

27 (i) Furnishing medical services and supplies to prevent

1 the spread of disease and epidemics;

2 (j) Quelling riots and civil disturbances;

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

6 (l) Procurement and storage of special emergency supplies
7 or equipment, determined by the Adjutant General to be required
8 to provide rapid response by state government to assist local
9 governments in impending or actual disasters, emergencies, or civil
10 defense emergencies;

11 (m) Clearing or removing debris and wreckage which may
12 threaten public health or safety from publicly owned or privately
13 owned land or water; and

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

17 (6) If aerial fire suppression or hazardous material
18 response is immediately required, the Adjutant General may make
19 expenditures of up to ~~ten~~ twenty-five thousand dollars per event
20 without a state of emergency proclamation issued by the Governor.

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

25 (8) All obligations and expenses incurred by the Governor
26 in the exercise of the powers and duties vested in the Governor by
27 this section shall be paid by the State Treasurer out of available

1 funds appropriated to the Governor's Emergency Program, and the
2 Director of Administrative Services shall draw his or her warrants
3 upon the State Treasurer for the payment of such sum, or so much
4 thereof as may be required, upon receipt by him or her of proper
5 vouchers duly approved by the Adjutant General.

6 (9) This section shall be liberally construed in order
7 to accomplish the purposes of the Emergency Management Act and
8 to permit the Governor to adequately cope with any disaster,
9 emergency, or civil defense emergency which may arise, and the
10 powers vested in the Governor by this section shall be construed as
11 being in addition to all other powers presently vested in him or
12 her and not in derogation of any existing powers.

13 (10) Such funds as may be made available by the
14 government of the United States for the purpose of alleviating
15 distress from disasters, emergencies, and civil defense emergencies
16 may be accepted by the State Treasurer and shall be credited to a
17 separate and distinct fund unless otherwise specifically provided
18 in the act of Congress making such funds available or as otherwise
19 allowed and provided by state law.

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

23 2. On page 1, strike beginning with "the" in line 1
24 through line 10 and insert "public safety; to amend section
25 81-829.40, Reissue Revised Statutes of Nebraska, and sections
26 28-1204.04 and 81-829.42, Revised Statutes Cumulative Supplement,
27 2012; to change provisions relating to unlawful possession of a

1 firearm at a school; to change the Governor's powers relating to
2 firearms and increase the authorized expenditure amount for aerial
3 fire suppression or hazardous material response under the Emergency
4 Management Act; and to repeal the original sections."