



Emergency Power Limitation Act

Summary: The model requires that any exercise of emergency powers by state or local officials be narrowly tailored to serve a compelling public health or safety purpose, with expedited judicial review of these requirements. It also provides that all state-wide emergency orders infringing constitutional rights will expire automatically after a short period of time unless the Legislature ratifies them in existing or special sessions.

Whereas, state and local officials, including the governor, may only exercise such police powers as the Constitution and Legislature confers upon them by law; and

Whereas, the issuance of emergency orders by state and local officials infringe liberty and constitute an exception to legislators' exclusive power to enact binding rules of behavior on citizens, such emergency orders should be limited in scope and duration to the maximum extent possible.

Therefore, be it enacted:

Section 1. Nothing in this act grants additional emergency powers to the governor or any other official.

Section 2. State and local officials may issue nonbinding recommendations and guidelines, and they may help coordinate public and private action to prevent or respond to an emergency.

Section 3. The exercise of any emergency power the governor or other official may have under the [specified state] Constitution and state law that binds or regulates the public are limited as follows:

- (a) Notwithstanding any other law, emergency orders, decrees, regulations, or other mandates (hereinafter, "orders") issued by state or local officials that bind, curtail or infringe the rights of private parties must be narrowly tailored to serve a compelling public health or safety purpose. Each order shall be limited in duration, applicability, and scope in order to reduce any infringement of individual liberty.
- (b) State courts shall have jurisdiction to hear cases challenging the lawfulness of state and local emergency orders, including compliance with this act's limitations on such orders, and the courts shall expedite consideration of such challenges to the extent practicable. Inequality in the



applicability or impact of emergency orders on analogous groups, situations, and circumstances may constitute one ground among others for a court to invalidate or enjoin an emergency order, or some of its applications, on the basis that it is not narrowly tailored to serve a compelling public health or safety purpose.

- (c) To the extent that the Constitution or other law allows officials with state-wide authority to issue emergency orders, only the governor may issue such orders that infringe constitutional rights in a non-trivial manner from the date of this enactment. Constitutional rights include, but are not limited to: the rights to travel, work, assemble, and speak; the freedom of religious exercise; the nonimpairment of contract and property rights; freedom from unreasonable searches and seizures; and the freedom to purchase lawful firearms and ammunition. Such state-wide emergency orders are further limited as follows:

- (1) All such orders shall expire in [7] days unless the Legislature is in session and has at least [15] days to consider and vote to ratify or overturn the order, or the governor calls the Legislature into special session or extends the session for such purpose;
- (2) All such orders shall expire in [30] days unless:
 - a. The Governor or Legislature [by law] terminates them earlier;
or
 - b. The Legislature ratifies such orders with a joint resolution during that [30] day period.

Section 4. Each House of the Legislature may vote to ratify or terminate emergency orders referenced in Section 3 by remote debate and electronic or other means as established by each chamber's rules, or in the absence of such rules, as specified by the presiding officer of each chamber.

Section 5. Without subsequent authorization in law, the governor is barred during the pendency of a given emergency from reissuing any emergency order, or issuing another that is substantially similar to one that expired without legislative approval or that the Legislature rejected, except that the governor may re-impose such order based on significantly changed circumstances for a single period of up to three days if the governor calls upon the Legislature to reconsider the order and the changed circumstances.