

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0646.01 Jery Payne x2157

HOUSE BILL 22-1238

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House Committees

State, Civic, Military, & Veterans Affairs

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A BILL FOR AN ACT

101 CONCERNING OVERSIGHT OF THE EXERCISE OF POWERS GRANTED IN
102 THE CASE OF AN EMERGENCY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Section 1 of the bill makes a legislative declaration.

Current law gives the governor extraordinary powers when the governor declares a disaster emergency. Current law specifies that a state of disaster emergency ends after 30 days unless continued by the governor. It also authorizes the general assembly to end the state of disaster emergency by joint resolution. **Section 2** limits the ability of the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

governor to continue a declared disaster emergency by requiring the general assembly to affirmatively act by joint resolution to continue a declared disaster emergency beyond 12 months. Unless the general assembly acts by joint resolution to continue the state of disaster emergency, the state of disaster emergency that the governor has continued for 30-day increments terminates on the three hundred sixty-fifth day after the governor first declared a state of disaster emergency. Thereupon, the governor must issue an executive order or proclamation ending the state of disaster emergency.

Current law gives local health departments many powers to address epidemics. Many of these powers impose duties on people. **Section 3** requires the governing body of a local government to approve any portion of a local health department's public health order that imposes duties on a class of people. If a duty relates to an emergency (emergency duty), the local health department may impose the emergency duty immediately but must submit the duty to the governing body within 7 days after adoption for the governing body's review and approval. To continue in effect, the governing body must approve the duty within 30 days after the public health order was issued and during each calendar month it continues in effect.

A terminated emergency duty may not be reimposed unless a new emergency arises or the governing body approves it being reimposed. **Section 3** does not apply to a temporary emergency duty placed only on a single individual so long as the local health department has reasonable evidence to believe the individual is infected with a disease that causes an epidemic or was infected within the last 30 days.

Current law gives the department of public health and environment (department) many powers to address epidemics. Many of these powers involve the imposition of duties on people. **Section 4** requires that the department submit the imposition of an emergency duty on a class of people to the governor and general assembly for approval. The emergency duty must be submitted to:

- The governor within 7 days after adoption; and
- The general assembly:
 - Within 7 days after adoption if the emergency duty is imposed within the first 100 days of a regular session of the general assembly; or
 - Within the first 30 days of the next regular session of the general assembly if the duty is imposed in the last 20 days of a regular session of the general assembly or in between regular sessions of the general assembly.

For the emergency duty to continue:

- The governor must approve the emergency duty within 30 days after the department imposes the emergency duty and

each calendar month that the department intends the emergency duty to remain in effect; and

- The general assembly must approve the emergency duty each year that the department intends the emergency duty to remain in effect.

A terminated emergency duty may not be reimposed unless a new emergency arises or the governing body and general assembly approve it being reimposed. **Section 4** does not apply to a temporary emergency duty placed only on a single individual so long as the department has reasonable evidence to believe the individual is infected with a disease that causes an epidemic or was infected within the last 30 days.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) (a) The general
3 assembly hereby finds and declares that the imposition of emergency
4 health mandates on the public is an exercise of both executive and
5 legislative power. The ability to appropriate and allocate resources,
6 suspend statutes, or impose duties on citizens of and visitors to Colorado
7 that have the force and effect of law are legislative powers that are vested
8 in the general assembly by section 1 of article V of the Colorado
9 constitution. Therefore, under section 1 of article V and article III of the
10 Colorado constitution, the general assembly has the duty to participate in
11 the exercise of these legislative powers.

12 (b) The general assembly further declares that the legislative
13 bodies of political subdivisions of Colorado should participate in the
14 emergency exercise of legislative powers by the executive agencies of the
15 political subdivisions.

16 (2) (a) The general assembly hereby finds that:

17 (I) Epidemics may easily move across or have effects beyond the
18 borders of political subdivisions of Colorado;

19 (II) Modern life requires travel across multiple political

1 subdivisions of Colorado;

2 (III) A message disseminated by one political subdivision of
3 Colorado using modern communication methods will be received by
4 individuals in multiple other political subdivisions;

5 (IV) The imposition of duties on residents and visitors to political
6 subdivisions of Colorado can cause confusion, especially when the duties
7 are imposed without significant participation by elected officials;

8 (V) Confusion undermines the ability and willingness of people
9 to comply with the duties, and thus undermines the effectiveness of the
10 duties to stop the spread of an epidemic.

11 (VI) The imposition of duties on residents without the oversight
12 of elected officials who are accountable to the people undermines the
13 willingness of people to comply with the duties and thus undermines the
14 effectiveness of the duties to stop the spread of an epidemic.

15 (b) Therefore, the general assembly declares that citizens'
16 involvement through their elected officials in the imposition of mandates:

17 (I) Will increase confidence in, understanding of, and willingness
18 to obey duties imposed to stop the spread of epidemics; and

19 (II) Is a matter of mixed statewide and local concern.

20 **SECTION 2.** In Colorado Revised Statutes, 24-33.5-704, **amend**
21 (4) as follows:

22 **24-33.5-704. The governor and disaster emergencies - response**
23 **- duties and limitations.** (4) (a) TO DECLARE A disaster emergency, ~~shall~~
24 ~~be declared~~ THE GOVERNOR MUST ACT by executive order or proclamation
25 ~~of the governor if the governor finds~~ AND BASED ON A FINDING THAT a
26 disaster has occurred or that ~~this~~ AN occurrence or the threat ~~thereof~~ OF
27 AN OCCURRENCE is imminent. The state of disaster emergency ~~shall~~

1 ~~continue~~ CONTINUES:

2 (I) Until the governor finds that the threat of danger has passed or
3 that the disaster has been dealt with to the extent that emergency
4 conditions no longer exist and the governor terminates the state of
5 disaster emergency by executive order or proclamation; ~~but no~~

6 (II) ~~state of disaster emergency may continue~~ For longer than
7 thirty days unless renewed by the governor EVERY THIRTY DAYS OR UNTIL
8 TERMINATED UNDER SUBSECTION (4)(a)(IV) OF THIS SECTION;

9 (III) UNTIL THE GENERAL ASSEMBLY TERMINATES THE STATE OF
10 DISASTER EMERGENCY BY JOINT RESOLUTION UNDER SUBSECTION (4)(b)(I)
11 OF THIS SECTION; OR

12 (IV) IF CONTINUED UNDER SUBSECTION (4)(a)(II) OF THIS SECTION,
13 FOR A MAXIMUM OF THREE HUNDRED SIXTY-FIVE DAYS AFTER THE
14 GOVERNOR INITIALLY DECLARED THE DISASTER EMERGENCY UNLESS THE
15 GENERAL ASSEMBLY ACTS BY JOINT RESOLUTION TO CONTINUE THE STATE
16 OF DISASTER EMERGENCY, IN ACCORDANCE WITH SUBSECTION (4)(b)(II)
17 OF THIS SECTION.

18 (b) (I) The general assembly, by joint resolution, may terminate
19 a state of disaster emergency at any time. ~~Thereupon~~ UPON PASSAGE OF
20 THE JOINT RESOLUTION, the governor shall issue an executive order or
21 proclamation ending the state of disaster emergency.

22 (II) THE GENERAL ASSEMBLY, BY JOINT RESOLUTION, MAY
23 CONTINUE A STATE OF DISASTER EMERGENCY BEYOND THREE HUNDRED
24 SIXTY-FIVE DAYS AFTER THE GOVERNOR DECLARED THE DISASTER
25 EMERGENCY. IF THE GENERAL ASSEMBLY DOES NOT ACT BY JOINT
26 RESOLUTION TO CONTINUE THE STATE OF DISASTER EMERGENCY, THE
27 STATE OF DISASTER EMERGENCY AUTOMATICALLY TERMINATES THREE

1 HUNDRED SIXTY-FIVE DAYS AFTER THE GOVERNOR DECLARED THE STATE
2 OF DISASTER EMERGENCY. ON THE THREE HUNDRED SIXTY-FIFTH DAY
3 AFTER THE GOVERNOR DECLARED THE STATE OF DISASTER EMERGENCY,
4 THE GOVERNOR SHALL ISSUE AN EXECUTIVE ORDER OR PROCLAMATION
5 ENDING THE STATE OF DISASTER EMERGENCY.

6 (c) All executive orders or proclamations issued under this
7 subsection (4) ~~shall~~ MUST indicate the nature of the disaster, the area
8 threatened, and the conditions that brought it about or that make possible
9 termination of the state of disaster emergency. THE GOVERNOR SHALL:

10 (I) DISSEMINATE an executive order or proclamation ~~shall be~~
11 ~~disseminated~~ promptly by means calculated to bring its contents to the
12 attention of the general public; and

13 (II) Unless the circumstances ~~attendant upon~~ ACCOMPANYING the
14 disaster prevent or impede ~~shall be~~ THE ACTION, promptly ~~filed~~ FILE THE
15 EXECUTIVE ORDER OR PROCLAMATION with the office of emergency
16 management in the division of homeland security and emergency
17 management, the secretary of state, the county clerk and recorder, and
18 emergency management agencies in the area to which it applies.

19 **SECTION 3.** In Colorado Revised Statutes, 25-1-506, **amend**
20 (3)(b) introductory portion; and **add** (5) as follows:

21 **25-1-506. County or district public health agency - oversight**
22 **of emergency powers and duties by elected officials - definitions.**

23 (3) (b) In addition to other powers and duties AND SUBJECT TO
24 SUBSECTION (5) OF THIS SECTION, an agency ~~shall have~~ HAS the following
25 duties:

26 (5) (a) IN ACCORDANCE WITH THIS SUBSECTION (5), AN AGENCY
27 MUST SUBMIT AN EMERGENCY DUTY, INCLUDING A PROHIBITION, THAT AN

1 AGENCY ADOPTS UNDER SUBSECTION (3) OF THIS SECTION AND THAT IS
2 IMPOSED ON A CLASS OF PEOPLE TO THE FOLLOWING FOR APPROVAL OR
3 REJECTION:

4 (I) IF THE AGENCY IS A COUNTY BOARD OF HEALTH, THE BOARD OF
5 COUNTY COMMISSIONERS THAT OPERATES THE COUNTY BOARD OF HEALTH
6 OR, IF THE AGENCY IS A DISTRICT BOARD OF HEALTH, THE BOARD OF
7 COUNTY COMMISSIONERS FOR EACH COUNTY THAT PARTICIPATES IN THE
8 DISTRICT BOARD OF HEALTH; OR

9 (II) IF THE BOARD OF HEALTH IS A MUNICIPAL BOARD OF HEALTH,
10 THE GOVERNING BODY OF THE MUNICIPAL CORPORATION.

11 (b) (I) IN AN EMERGENCY, INCLUDING AN EPIDEMIC, A COUNTY,
12 DISTRICT, OR MUNICIPAL BOARD OF HEALTH MAY IMPOSE AN EMERGENCY
13 DUTY IMMEDIATELY BUT SHALL SUBMIT THE EMERGENCY DUTY FOR
14 APPROVAL WITHIN SEVEN DAYS AFTER ADOPTION. AN EMERGENCY DUTY
15 AUTOMATICALLY TERMINATES, UNLESS APPROVED IN ACCORDANCE WITH
16 SUBSECTION (5)(a) OF THIS SECTION, WITHIN THIRTY DAYS AFTER BEING
17 ADOPTED. TO CONTINUE IN EFFECT, AN EMERGENCY DUTY MUST BE
18 APPROVED EACH CALENDAR MONTH. IF THE GOVERNING BODY DOES NOT
19 APPROVE THE CONTINUATION OF AN EMERGENCY DUTY IN A GIVEN MONTH,
20 THE EMERGENCY DUTY AUTOMATICALLY TERMINATES ON THE FIRST DAY
21 OF THE NEXT CALENDAR MONTH.

22 (II) A COUNTY, DISTRICT, OR MUNICIPAL BOARD OF HEALTH SHALL
23 NOT REIMPOSE AN EMERGENCY DUTY THAT HAS TERMINATED IN
24 ACCORDANCE WITH THIS SUBSECTION (5)(b) UNLESS THE DUTY IS:

25 (A) BASED ON A NEW EMERGENCY WITH A DIFFERENT CAUSE; OR

26 (B) APPROVED IN ACCORDANCE WITH THIS SUBSECTION (5) BY THE
27 BOARD OF COUNTY COMMISSIONERS OR BY THE GOVERNING BODY OF A

1 MUNICIPALITY, AS APPLICABLE.

2 (c) THIS SUBSECTION (5) DOES NOT APPLY TO AN EMERGENCY
3 DUTY PLACED ONLY ON A SINGLE INDIVIDUAL, SUCH AS A QUARANTINE, SO
4 LONG AS THE AGENCY HAS REASONABLE EVIDENCE TO BELIEVE THE
5 INDIVIDUAL IS INFECTED WITH A DISEASE THAT CAUSES AN EPIDEMIC OR
6 WAS INFECTED WITHIN THE LAST THIRTY DAYS WITH A DISEASE THAT
7 CAUSES AN EPIDEMIC.

8 (d) AS USED IN THIS SUBSECTION (5), UNLESS THE CONTEXT
9 OTHERWISE REQUIRES:

10 (I) "EMERGENCY DUTY" MEANS A LEGAL OBLIGATION BASED ON A
11 POLICY, INCLUDING AN ORDER, THAT IS ADOPTED UNDER THIS SECTION
12 AND THAT IS IMPOSED ON A CLASS OF PEOPLE IN A POLITICAL SUBDIVISION
13 OF THE STATE ON THE BASIS OF AN EMERGENCY AND WITHOUT FOLLOWING
14 THE PROCEDURES NORMALLY REQUIRED TO IMPOSE A DUTY IN THE
15 POLITICAL SUBDIVISION OF THE STATE.

16 (II) "GOVERNING BODY" MEANS THE BODY AUTHORIZED TO
17 LEGISLATE FOR THE MUNICIPALITY.

18 **SECTION 4.** In Colorado Revised Statutes, 25-1.5-102, **amend**
19 (1) introductory portion; and **add** (3) as follows:

20 **25-1.5-102. Epidemic and communicable diseases - powers and**
21 **duties of department - rules - definitions.** (1) SUBJECT TO SUBSECTION
22 (3) OF THIS SECTION, the department has, in addition to all other powers
23 and duties imposed upon it by law, the powers and duties provided in this
24 section as follows:

25 (3) (a) AN EMERGENCY DUTY, INCLUDING A PROHIBITION, THAT IS
26 ADOPTED UNDER THIS SECTION AND IMPOSED ON A CLASS OF PEOPLE MUST
27 BE APPROVED, IN ACCORDANCE WITH THIS SUBSECTION (3), BY THE

1 GOVERNOR AND THE GENERAL ASSEMBLY.

2 (b) IN AN EMERGENCY, INCLUDING AN EPIDEMIC, THE DEPARTMENT
3 MAY IMPOSE A DUTY IMMEDIATELY. IF THE DEPARTMENT IMPOSES A DUTY
4 BASED ON AN EMERGENCY, THE DEPARTMENT SHALL SUBMIT THE
5 EMERGENCY DUTY FOR REVIEW AND APPROVAL OR REJECTION TO:

6 (I) THE GOVERNOR WITHIN SEVEN DAYS AFTER ADOPTION; AND

7 (II) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE
8 PRESIDENT OF THE SENATE, FOR THE PURPOSE OF SEEKING APPROVAL BY
9 THE GENERAL ASSEMBLY ACTING BY JOINT RESOLUTION, NO LATER THAN:

10 (A) SEVEN DAYS AFTER THE EMERGENCY DUTY IS IMPOSED IF THE
11 EMERGENCY DUTY IS IMPOSED DURING THE FIRST ONE HUNDRED DAYS OF
12 A REGULAR SESSION OF THE GENERAL ASSEMBLY; OR

13 (B) THE THIRTIETH DAY OF THE NEXT REGULAR SESSION OF THE
14 GENERAL ASSEMBLY IF THE EMERGENCY DUTY IS IMPOSED IN THE LAST
15 TWENTY DAYS OF A REGULAR SESSION OF THE GENERAL ASSEMBLY OR IN
16 BETWEEN REGULAR SESSIONS OF THE GENERAL ASSEMBLY.

17 (c) (I) AN EMERGENCY DUTY TERMINATES UNLESS APPROVED BY
18 THE GOVERNOR WITHIN THIRTY DAYS AFTER BEING ADOPTED. TO
19 CONTINUE IN EFFECT, AN EMERGENCY DUTY MUST BE APPROVED AGAIN BY
20 THE GOVERNOR EACH CALENDAR MONTH. IF AN EMERGENCY DUTY IS NOT
21 APPROVED BY THE END OF THE CALENDAR MONTH, THE EMERGENCY DUTY
22 TERMINATES ON THE FIRST DAY OF THE NEXT CALENDAR MONTH.

23 (II) THE GENERAL ASSEMBLY MAY TERMINATE AN EMERGENCY
24 DUTY AT ANY TIME BY JOINT RESOLUTION.

25 (III) AN EMERGENCY DUTY AUTOMATICALLY TERMINATES UNLESS
26 APPROVED BY THE GENERAL ASSEMBLY DURING EACH CALENDAR YEAR. IF
27 AN EMERGENCY DUTY IS NOT APPROVED BY THE END OF THE MOST RECENT

1 REGULAR SESSION OF THE GENERAL ASSEMBLY, THE EMERGENCY DUTY
2 AUTOMATICALLY TERMINATES ON THE FIRST DAY FOLLOWING
3 ADJOURNMENT SINE DIE OF THE MOST RECENT REGULAR SESSION OF THE
4 GENERAL ASSEMBLY.

5 (IV) THE DEPARTMENT SHALL NOT REIMPOSE AN EMERGENCY
6 DUTY THAT HAS TERMINATED IN ACCORDANCE WITH THIS SUBSECTION
7 (3)(c) UNLESS THE EMERGENCY DUTY IS:

8 (A) BASED ON A NEW EMERGENCY WITH A DIFFERENT CAUSE; OR

9 (B) APPROVED IN ACCORDANCE WITH THIS SUBSECTION (3)(c) BY
10 THE GOVERNOR AND BY THE GENERAL ASSEMBLY.

11 (d) THIS SUBSECTION (3) DOES NOT APPLY TO AN EMERGENCY
12 DUTY, SUCH AS A QUARANTINE, PLACED ONLY ON A SINGLE INDIVIDUAL SO
13 LONG AS THE DEPARTMENT HAS REASONABLE EVIDENCE TO BELIEVE THAT
14 THE INDIVIDUAL IS INFECTED WITH A DISEASE THAT CAUSES AN EPIDEMIC
15 OR WAS INFECTED WITHIN THE LAST THIRTY DAYS WITH A DISEASE THAT
16 CAUSES AN EPIDEMIC.

17 (e) AS USED IN THIS SUBSECTION (3), UNLESS THE CONTEXT
18 OTHERWISE REQUIRES, "EMERGENCY DUTY" MEANS A LEGAL OBLIGATION
19 BASED ON A POLICY, INCLUDING AN ORDER, THAT IS ADOPTED UNDER THIS
20 SECTION AND THAT IS IMPOSED ON A CLASS OF PEOPLE ON THE BASIS OF AN
21 EMERGENCY AND WITHOUT FOLLOWING THE REQUIREMENTS OF ARTICLE
22 4 OF TITLE 24.

23 **SECTION 5. Act subject to petition - effective date -**
24 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
25 the expiration of the ninety-day period after final adjournment of the
26 general assembly; except that, if a referendum petition is filed pursuant
27 to section 1 (3) of article V of the state constitution against this act or an

1 item, section, or part of this act within such period, then the act, item,
2 section, or part will not take effect unless approved by the people at the
3 general election to be held in November 2022 and, in such case, will take
4 effect on the date of the official declaration of the vote thereon by the
5 governor.

6 (2) This act applies to:

7 (a) Disaster emergencies that are imposed or continue to apply on
8 or after the applicable effective date of this act; and

9 (b) Duties that are imposed or that continue to apply on or after
10 the applicable effective date of this act.