

**First Extraordinary Session
Seventy-second General Assembly
STATE OF COLORADO**

BILLPAPER

LLS NO. 20B-0009.01 Jason Gelender x4330

HOUSE BILL

HOUSE SPONSORSHIP

Humphrey, Champion, Pelton, Soper, Williams D.

SENATE SPONSORSHIP

Marble,

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING LIMITATIONS ON EMERGENCY ORDERS THAT BIND OR**
102 **REGULATE THE PUBLIC.**

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>.)

The bill limits the power of the governor and other state and local officials with respect to emergency orders, decrees, regulations, or other mandates (emergency orders) that bind or regulate the public by:

- Requiring emergency orders that bind, curtail, or infringe the rights of private parties to be narrowly tailored to serve a compelling public health or safety purpose and limited in

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.

- duration, applicability, and scope in order to reduce any infringement of individual liberty;
- Stating that state courts have jurisdiction to hear cases challenging the lawfulness of state and local emergency orders, requiring courts to expedite consideration of such challenges so that they are heard within 72 hours of being filed and to apply a strict scrutiny standard of judicial review when reviewing such challenges, and stating further that inequality in the applicability or impact of emergency orders on analogous groups, situations, and circumstances may constitute a ground for a court to invalidate or enjoin an emergency order, or some of its applications, as not narrowly tailored to serve a compelling public health or safety purpose;
 - Allowing only the governor to issue an emergency order that infringes constitutional rights in a nontrivial manner and specifically identifying as constitutional rights the rights to travel, work, assemble, and speak; freedom of religious exercise; the nonimpairment of contract and property rights; freedom from unreasonable searches and seizures; and freedom to purchase lawful firearms and ammunition;
 - Further limiting such infringing emergency orders by:
 - Making an emergency order expire in 7 days unless the general assembly is in a regular legislative session and has at least 15 days to consider and vote to ratify, by a 2/3 supermajority vote, or terminate, by a simple majority vote, the emergency order or the governor calls the general assembly into a special legislative session for the purpose of considering and voting on the emergency order; and
 - If the 7-day expiration does not apply, making any such order expire in 30 days unless:
 - The governor or the general assembly terminates the order sooner; or
 - The general assembly, by a 2/3 supermajority vote, adopts a joint resolution ratifying the order during the 30-day period;
 - Authorizing each house of the general assembly to vote to ratify or terminate emergency orders by remote debate and electronic or other means; and
 - Stating that if, during the pendency of a given emergency, the governor reissues any emergency order or issues another emergency order that is substantially similar to an emergency order that expired without legislative approval

or that the general assembly terminated, the reissued or substantially similar emergency order shall not take effect unless the general assembly, by a 2/3 vote of the members of each house, adopts a joint resolution ratifying the emergency order.

The bill also states that state and local officials may issue nonbinding recommendations and guidelines that do not include provisions for enforcement or surveillance and that they may help coordinate public and private action to prevent or respond to an emergency.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add 24-33.5-704.7**
3 as follows:

4 **24-33.5-704.7. Emergency power limitation act.** (1) THE SHORT
5 TITLE OF THIS SECTION IS THE "EMERGENCY POWERS CHECKS AND
6 BALANCES ACT".

7 (2) NOTHING IN THIS SECTION GRANTS ADDITIONAL EMERGENCY
8 POWERS TO THE GOVERNOR OR TO ANY OTHER STATE OR LOCAL OFFICIAL.

9 (3) STATE AND LOCAL OFFICIALS MAY ISSUE NONBINDING
10 RECOMMENDATIONS AND GUIDELINES THAT DO NOT INCLUDE PROVISIONS
11 FOR ENFORCEMENT OR SURVEILLANCE AND THEY MAY HELP COORDINATE
12 PUBLIC AND PRIVATE ACTION TO PREVENT OR RESPOND TO AN
13 EMERGENCY.

14 (4) THE EXERCISE OF ANY EMERGENCY POWER THAT THE
15 GOVERNOR OR ANY OTHER OFFICIAL MAY HAVE UNDER THE STATE
16 CONSTITUTION OR STATE LAW THAT BINDS OR REGULATES THE PUBLIC IS
17 LIMITED AS FOLLOWS:

18 (a) NOTWITHSTANDING ANY OTHER LAW, EMERGENCY ORDERS,
19 DECREES, REGULATIONS, OR OTHER MANDATES, COLLECTIVELY REFERRED
20 TO IN THIS SECTION AS "EMERGENCY ORDERS", ISSUED BY STATE OR LOCAL

1 OFFICIALS THAT BIND, CURTAIL, OR INFRINGE THE RIGHTS OF PRIVATE
2 PARTIES MUST BE NARROWLY TAILORED TO SERVE A COMPELLING PUBLIC
3 HEALTH OR SAFETY PURPOSE. EACH EMERGENCY ORDER MUST BE LIMITED
4 IN DURATION, APPLICABILITY, AND SCOPE IN ORDER TO REDUCE ANY
5 INFRINGEMENT OF INDIVIDUAL LIBERTY.

6 (b) STATE COURTS HAVE JURISDICTION TO HEAR CASES
7 CHALLENGING THE LAWFULNESS OF STATE AND LOCAL EMERGENCY
8 ORDERS, INCLUDING COMPLIANCE WITH LIMITATIONS ON SUCH
9 EMERGENCY ORDERS SET FORTH IN THIS SECTION, AND THE COURTS SHALL
10 EXPEDITE CONSIDERATION OF SUCH CHALLENGES SO THAT THEY ARE
11 HEARD WITHIN SEVENTY-TWO HOURS OF BEING FILED AND SHALL APPLY A
12 STRICT SCRUTINY STANDARD OF JUDICIAL REVIEW WHEN CONSIDERING
13 SUCH CHALLENGES. INEQUALITY IN THE APPLICABILITY OR IMPACT OF
14 EMERGENCY ORDERS ON ANALOGOUS GROUPS, SITUATIONS, AND
15 CIRCUMSTANCES MAY CONSTITUTE ONE GROUND AMONG OTHERS FOR A
16 COURT TO INVALIDATE OR ENJOIN AN EMERGENCY ORDER, OR SOME OF ITS
17 APPLICATIONS, ON THE BASIS THAT IT IS NOT NARROWLY TAILORED TO
18 SERVE A COMPELLING PUBLIC HEALTH OR SAFETY PURPOSE.

19 (c) ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION
20 (4)(c), TO THE EXTENT THAT THE STATE CONSTITUTION OR STATE LAW
21 ALLOWS THE GOVERNOR OR ANY OTHER STATE OFFICIAL TO ISSUE
22 EMERGENCY ORDERS, ONLY THE GOVERNOR MAY ISSUE ANY EMERGENCY
23 ORDER THAT INFRINGES CONSTITUTIONAL RIGHTS IN A NONTRIVIAL
24 MANNER. CONSTITUTIONAL RIGHTS INCLUDE, BUT ARE NOT LIMITED TO:
25 THE RIGHTS TO TRAVEL, WORK, ASSEMBLE, AND SPEAK; THE FREEDOM OF
26 RELIGIOUS EXERCISE; THE NONIMPAIRMENT OF CONTRACT AND PROPERTY
27 RIGHTS; FREEDOM FROM UNREASONABLE SEARCHES AND SEIZURES; AND

1 THE FREEDOM TO PURCHASE LAWFUL FIREARMS AND AMMUNITION.
2 INFRINGING EMERGENCY ORDERS ARE FURTHER LIMITED AS FOLLOWS:

3 (I) ANY SUCH EMERGENCY ORDER EXPIRES IN SEVEN DAYS UNLESS
4 THE GENERAL ASSEMBLY IS IN A REGULAR LEGISLATIVE SESSION AND HAS
5 AT LEAST FIFTEEN DAYS TO CONSIDER AND VOTE TO RATIFY, BY ADOPTING
6 A JOINT RESOLUTION BY A VOTE OF TWO-THIRDS OF THE MEMBERS OF EACH
7 HOUSE, OR TERMINATE, BY ADOPTING A JOINT RESOLUTION BY A VOTE OF
8 A MAJORITY OF THE MEMBERS OF EACH HOUSE, THE EMERGENCY ORDER OR
9 THE GOVERNOR CALLS THE GENERAL ASSEMBLY INTO A SPECIAL
10 LEGISLATIVE SESSION FOR THE PURPOSE OF CONSIDERING AND VOTING ON
11 THE EMERGENCY ORDER;

12 (II) IF THE SEVEN-DAY EXPIRATION SET FORTH IN SUBSECTION
13 (4)(c)(I) OF THIS SECTION DOES NOT APPLY, ANY SUCH ORDER EXPIRES IN
14 THIRTY DAYS UNLESS:

15 (A) THE GOVERNOR, OR THE GENERAL ASSEMBLY, BY ADOPTING
16 A JOINT RESOLUTION BY A MAJORITY VOTE OF THE MEMBERS OF EACH
17 HOUSE, TERMINATES THE ORDER SOONER; OR

18 (B) THE GENERAL ASSEMBLY, BY ADOPTING A JOINT RESOLUTION
19 BY A VOTE OF TWO-THIRDS OF THE MEMBERS OF EACH HOUSE, RATIFIES
20 THE ORDER DURING THE THIRTY-DAY PERIOD.

21 (5) EACH HOUSE OF THE GENERAL ASSEMBLY MAY VOTE TO RATIFY
22 OR TERMINATE EMERGENCY ORDERS SUBJECT TO THE REQUIREMENTS OF
23 SUBSECTION (4)(c) OF THIS SECTION BY REMOTE DEBATE AND ELECTRONIC
24 OR OTHER MEANS AS ESTABLISHED BY EACH HOUSE'S RULES, OR IN THE
25 ABSENCE OF SUCH RULES AND TO THE EXTENT NOT PROHIBITED BY SUCH
26 RULES, AS SPECIFIED BY THE PRESIDING OFFICER OF EACH HOUSE.

27 (6) IF, DURING THE PENDENCY OF A GIVEN EMERGENCY, THE

1 GOVERNOR REISSUES ANY EMERGENCY ORDER OR ISSUES ANOTHER
2 EMERGENCY ORDER THAT IS SUBSTANTIALLY SIMILAR TO AN EMERGENCY
3 ORDER THAT EXPIRED WITHOUT LEGISLATIVE APPROVAL OR THAT THE
4 GENERAL ASSEMBLY TERMINATED, THE REISSUED OR SUBSTANTIALLY
5 SIMILAR EMERGENCY ORDER SHALL NOT TAKE EFFECT UNLESS THE
6 GENERAL ASSEMBLY, BY A TWO-THIRDS VOTE OF THE MEMBERS OF EACH
7 HOUSE, ADOPTS A JOINT RESOLUTION RATIFYING THE EMERGENCY ORDER.

8 **SECTION 2. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, or safety.