

An Act To Balance Emergency Powers

Be it enacted by the People of the State of Maine as follows:

Sec. 1. [37-B MRSA §742](#), sub-§1-A is enacted to read:

1-A. Limitation on emergency powers. The exercise of any emergency power a state or local official may have under the Constitution of Maine or the laws of this State that binds or regulates the public is limited as provided in this subsection.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Constitutional right" means any right guaranteed under the United States Constitution or the Constitution of Maine including, but not limited to, the right to:

(a) Travel, work, assemble and speak;

(b) Exercise religion without government interference;

(c) Make contracts and hold property without government interference;

(d) Be free from unreasonable searches and seizures; and

(e) Purchase and keep firearms and ammunition.

(2) "Emergency order" means an order, decree, regulation or other mandate proclaimed or promulgated by a state or local official.

(3) "State or local official(s)" means the Governor, a person within the executive branch or an elected or appointed member(s) of a municipal government.

B. Notwithstanding any law to the contrary, an emergency order that is issued by a state or local official that binds, curtails or infringes the rights of private parties must be narrowly tailored to serve a compelling health or safety purpose. Only the Governor may issue an order that infringes constitutional rights, and that order must be narrowly tailored to serve a compelling health or safety purpose. Each emergency order must be limited in duration, applicability and scope in order to reduce any infringement of the rights of private parties or constitutional rights.

C. A court of this State has jurisdiction to hear a case challenging the legality of an emergency order, including compliance with the limitations imposed on emergency orders pursuant to this subsection. A court shall expedite consideration of a challenge brought pursuant to this paragraph to the extent practicable. Inequality in the applicability of the 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.

Sec. 2. 37-B MRSA §742, sub-§1, ¶E is enacted to read:

E. An order issued by the Governor pursuant to this subsection following an emergency proclamation expires the soonest of:

(1) Fourteen days following issuance of the order;

(2) The termination of the state of emergency by the Governor or the Legislature pursuant to section 743; and

(3) The issuance of a different emergency proclamation by the Governor.

Sec. 3. 37-B MRSA §742, sub-§1, ¶F is enacted to read:

F. The Governor, during the pendency of a state of emergency, may not reissue or renew an emergency proclamation, issue another emergency proclamation that is substantially similar to one that expired or reissue an emergency proclamation that the Legislature has terminated pursuant to paragraph F without approval of the Legislature pursuant to paragraph F, except that the Governor, based on significant changes in circumstances, may reimpose such an emergency proclamation for a single period of 3 days if the Governor calls upon the Legislature to reconsider the order and changed circumstances.

Sec. 4. 37-B MRSA §742, sub-§1, ¶G is enacted to read:

G. After 14 days have elapsed from the issuance of an emergency proclamation by the Governor, all emergency powers revert to the Legislature. Emergency proclamations shall be extended or discontinued by the Legislature pursuant to this paragraph.

(1) The Legislature may extend an emergency proclamation issued pursuant to this subsection up to a maximum of 14 days by a 2/3 majority vote in each House of the Legislature. Additional 14-day extensions of the emergency proclamation may be approved, but only if done in compliance with this subparagraph.

(2) Either House of the Legislature may terminate an emergency proclamation or an emergency order issued pursuant to this subsection, in whole or in part, by a majority vote.

(3) Debate and voting conducted pursuant to this paragraph by each House of the Legislature may be done remotely by electronic or other means as established by each House's rules, or in the absence of such rules, as specified by the presiding officer of each House.

Sec. 4. 37-B MRSA §742, sub-§1, ¶H is enacted to read:

H. Notwithstanding any provision of this subsection to the contrary, the Governor may not restrict the operation of any essential business, which is any private business that employs a person in this State, without restricting all essential businesses in the same manner.

Sec. 5. 37-B MRSA §743, sub-§2 is amended to read:

2. Limitation. No state of emergency may continue for longer than ~~30~~ 14 days unless renewed by the Governor. The Legislature, by joint resolution, may terminate a state of emergency at any time. Thereupon, the Governor shall issue an executive proclamation ending the state of emergency.

SUMMARY

This bill requires the emergency powers exercised by the Governor, a person within the executive branch or a municipal official that bind, curtail or infringe the rights of private parties to be narrowly tailored to serve a compelling health or safety purpose and to be limited in duration, applicability and scope to reduce any infringement of individual liberty. Only the Governor may issue an order that infringes a right guaranteed under the United States Constitution or the Constitution of Maine, including, but not limited to, freedom of travel, assembly, work, speech, religion, contract and purchase and possession of arms and ammunition, and that order must be narrowly tailored to serve a compelling health or safety purpose limited in duration, applicability and scope to reduce any infringement of a constitutional right.

This bill also gives a state court jurisdiction to hear a case challenging the legality of the exercise of emergency powers and requires the court to expedite consideration of the case to the extent practicable. Inequality in the applicability of 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.

This bill also places limitations on the powers of the Governor to issue and maintain powers pursuant to an emergency proclamation, including:

1. Limiting the length of the time period of an emergency proclamation to 14 days;
2. Requiring an extension of an emergency proclamation beyond 14 days to be approved by a 2/3 vote of each House of the Legislature;
3. Allowing the Senate or House, individually, by a majority vote, to discontinue an emergency proclamation;

4. Prohibiting the Governor, during a state of emergency, from reissuing or renewing an emergency proclamation, issuing a similar proclamation to one that has expired or reissuing an emergency proclamation that the Legislature has discontinued; an
5. Requiring an order issued by the Governor following the declaration of a state of emergency to expire 14 days following the issuance of the order, termination of the state of emergency by the Governor or the Legislature or declaration of a different state of emergency by the Governor, whichever occurs first.