

SENATE BILL NO. 144

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY SENATOR REINBOLD

Introduced: 1/18/22

Referred: Community and Regional Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to disaster emergencies."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 18.15.390 is amended by adding a new subsection to read:

4 (b) Before the department takes a public health measure or imposes a
5 requirement under (a) of this section, the action or requirement must be approved by
6 the legislature by law.

7 * **Sec. 2.** AS 22.10.020 is amended by adding a new subsection to read:

8 (j) The superior court is the court of original jurisdiction over all causes of
9 action challenging the lawfulness of state and local emergency orders, including
10 compliance with limitations on emergency orders under AS 26.23.023 and
11 AS 29.20.650. The superior court shall expedite consideration of challenges to the
12 lawfulness of state and local emergency orders so that they are heard within 72 hours
13 of being filed and shall apply a strict scrutiny standard of judicial review. Inequality in
14 the applicability or impact of emergency orders on analogous groups, situations, and
15 circumstances is grounds for the superior court to invalidate or enjoin an emergency

1 order, or some of its applications, on the basis that it is not narrowly tailored to serve a
2 compelling public health or safety purpose.

3 * **Sec. 3.** AS 26.23.020(c) is amended to read:

4 (c) If the governor finds that a disaster has occurred or that a disaster is
5 imminent or threatened, the governor shall, by proclamation, declare a condition of
6 disaster emergency. The disaster emergency remains in effect until the governor finds
7 that the danger has passed or the disaster has been dealt with so that the emergency no
8 longer exists. The governor may terminate the disaster emergency by proclamation. A
9 proclamation of disaster emergency may not remain in effect longer than 30 days
10 unless extended by the legislature by **law. The governor may not issue more than**
11 **one proclamation for the same or a related condition of disaster emergency** [A
12 CONCURRENT RESOLUTION]. The proclamation must indicate the nature of the
13 disaster, the area threatened or affected, and the conditions that have brought it about
14 or that make possible the termination of the disaster emergency. A proclamation to
15 declare a condition of disaster emergency must also state whether the governor
16 proposes to expend state funds to respond to the disaster under (i) or (j) of this section.
17 **If the governor issues a proclamation that is substantially similar to a disaster**
18 **emergency proclamation that expired without legislative approval or that the**
19 **legislature terminated, the substantially similar proclamation of disaster**
20 **emergency may not take effect unless the legislature, by an affirmative vote of**
21 **two-thirds of the membership of each house, adopts a concurrent resolution**
22 **ratifying the proclamation of disaster emergency.**

23 * **Sec. 4.** AS 26.23 is amended by adding a new section to read:

24 **Sec. 26.23.023. Limitations on emergency orders that regulate the public.**

25 (a) Nothing in this section grants additional emergency powers to the governor or to
26 any other state official.

27 (b) The state may issue nonbinding recommendations and guidelines that do
28 not include provisions for enforcement and that may help coordinate public and
29 private action to prevent or respond to an emergency.

30 (c) The exercise of an emergency power granted to the governor or another
31 state official by law that binds or regulates the public is limited as provided in this

1 subsection. Emergency orders that bind, curtail, or infringe the rights of private parties
2 must be narrowly tailored to serve a compelling public health or safety purpose. Each
3 emergency order must be limited in duration, applicability, and scope in order to
4 reduce any infringement of individual liberty. Only the governor may issue an
5 emergency order that infringes constitutional rights, including the right to travel, work,
6 assemble, and speak, the free exercise of religion, contract and property rights,
7 freedom from unreasonable searches and seizures, and the freedom to purchase lawful
8 firearms and ammunition in a nontrivial manner. Emergency orders that infringe on
9 constitutional rights are further limited as follows:

10 (1) An emergency order expires in seven days unless

11 (A) the legislature is in a regular session and has at least 15
12 days to consider and vote to ratify the order by adopting a concurrent
13 resolution by an affirmative vote of two-thirds of the membership of each
14 house or terminate the emergency order by adopting a concurrent resolution by
15 an affirmative vote of a majority of the membership of each house; or

16 (B) the governor calls the legislature into a special session for
17 the purpose of considering and voting on the emergency order;

18 (2) If the seven-day expiration period under (1) of this paragraph does
19 not apply, the order expires in 30 days unless

20 (A) the governor, or the legislature, by adopting a concurrent
21 resolution by a majority vote of the membership of each house, terminates the
22 order within 30 days; or

23 (B) the legislature, by adopting a concurrent resolution by an
24 affirmative vote of two-thirds of the membership of each house, ratifies the
25 order within 30 days.

26 (d) Each house may vote to ratify or terminate an emergency order under (c)
27 of this section by remote debate and electronic or other means as established by the
28 uniform rules, or, in the absence of uniform rules governing remote debate and
29 electronic means, to the extent not prohibited by rules specified by the presiding
30 officer of each house.

31 (e) In this section, "emergency order" means an emergency order, decree,

1 proclamation, regulation, or other mandate.

2 * **Sec. 5.** AS 29.10.200 is amended by adding a new paragraph to read:

3 (68) AS 29.20.650 (limitations on emergency orders that relate to the
4 public).

5 * **Sec. 6.** AS 29.20 is amended by adding a new section to read:

6 **Sec. 29.20.650. Limitations on emergency orders that regulate the public.**

7 (a) A municipality may issue nonbinding recommendations and guidelines that do not
8 include provisions for enforcement or surveillance and that may help coordinate public
9 and private action to prevent or respond to an emergency.

10 (b) To the extent that the municipality may issue emergency orders, the
11 municipality may not issue an emergency order that infringes constitutional rights in a
12 nontrivial manner. In this subsection, constitutional rights include the right to travel,
13 work, assemble, and speak, the free exercise of religion, contract and property rights,
14 freedom from unreasonable searches and seizures, and the freedom to purchase lawful
15 firearms and ammunition.