

1 State of Arkansas
2 93rd General Assembly
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4

A Bill

SENATE BILL 379

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6 By: Representative Gazaway
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE PROCESS FOR EMERGENCY
10 DECLARATIONS IN THE STATE OF ARKANSAS; CONCERNING
11 DIRECTIVES ISSUED TO ADDRESS A STATEWIDE STATE OF
12 DISASTER EMERGENCY RELATED TO PUBLIC HEALTH; TO
13 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 CONCERNING THE PROCESS FOR EMERGENCY
17 DECLARATIONS AND DIRECTIVES ADDRESSING A
18 STATEWIDE STATE OF DISASTER EMERGENCY
19 RELATED TO PUBLIC HEALTH; AND TO DECLARE
20 AN EMERGENCY.
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. DO NOT CODIFY. LEGISLATIVE INTENT. The General Assembly
27 finds that:

28 (1) The Tenth Amendment to the United States Constitution vests
29 in the states the rights and powers not delegated to the United States;

30 (2) The Tenth Amendment to the United States Constitution is
31 generally interpreted to permit states to establish and enforce laws
32 protecting the health, safety, and welfare of the public;

33 (3) When the State of Arkansas experiences emergency situations,
34 including statewide emergencies, it is critical to the public welfare that
35 the state provide an organized and measured response; and

36 (4) This act establishes a process for emergencies in this state



1 that provides for appropriate checks and balances of the legislative and
 2 executive branches of government to ensure that the state's response to
 3 emergencies is appropriate and well-designed to serve the needs of the
 4 state's citizens during the emergency.

5
 6 SECTION 2. Arkansas Code § 12-75-107 is amended to read as follows:

7 12-75-107. Declaration of disaster emergencies.

8 (a)(1) A disaster emergency shall be declared by executive order or
 9 proclamation of the Governor if he or she finds a disaster has occurred or
 10 that the occurrence or the threat of disaster is imminent.

11 (2) When time is critical because of rapidly occurring disaster
 12 emergency events, the Governor may verbally declare for immediate response
 13 and recovery purposes until the formalities of a written executive order or
 14 proclamation can be completed in the prescribed manner.

15 (b)(1) The state of disaster emergency shall continue until:

16 (A) The Governor finds that the threat or danger has
 17 passed and terminates the state of disaster emergency by executive order or
 18 proclamation; or

19 (B) The disaster has been dealt with to the extent that
 20 emergency conditions no longer exist and the employees engaged in the
 21 restoration of utility services have returned to the point of origin.

22 (2)(A) ~~No~~ Except as provided in subdivision (b)(2)(B) of this
 23 section, a state of disaster emergency may shall not continue for longer than
 24 sixty (60) days unless renewed by the Governor.

25 (B) A statewide state of disaster emergency related to
 26 public health under subsection (g) of this section shall not continue for
 27 longer than sixty (60) days unless renewed by the Governor, so long as the
 28 Legislative Council does not vote to deny the request for renewal.

29 (c)(1)(A) The General Assembly ~~by concurrent resolution~~ may terminate
 30 a state of disaster emergency, including without limitation a statewide state
 31 of disaster emergency related to public health under subsection (g) of this
 32 section, at any time by the passage of a concurrent resolution terminating
 33 the state of disaster emergency.

34 (B)(i) The House of Representatives shall debate and vote
 35 upon a concurrent resolution to terminate a state of disaster emergency under
 36 subdivision (c)(1)(A) of this section at a committee of the whole called

1 either by the Speaker of the House of Representatives or upon the written
2 request of at least fifty-one (51) members of the House of Representatives.

3 (ii) The House of Representatives may convene a
4 committee of the whole to consider a concurrent resolution to terminate a
5 state of disaster emergency at any time, including without limitation during
6 a regular, fiscal, or extraordinary session of the General Assembly.

7 (C)(i) The Senate shall debate and vote upon a concurrent
8 resolution to terminate a state of disaster emergency under subdivision
9 (c)(1)(A) of this section at a committee of the whole called either by the
10 President Pro Tempore of the Senate or upon the written request of at least
11 eighteen (18) members of the Senate.

12 (ii) The Senate may convene a committee of the whole
13 to consider a concurrent resolution to terminate a state of disaster
14 emergency at any time, including without limitation during a regular, fiscal,
15 or extraordinary session of the General Assembly.

16 ~~(2) Thereupon, the Governor shall issue an executive order or~~
17 ~~proclamation ending the state of disaster emergency~~ If the General Assembly
18 enacts a concurrent resolution terminating a state of disaster emergency
19 under subdivision (c)(1) of this section, the state of disaster emergency
20 shall terminate on the date on which the state of disaster emergency will
21 expire as provided in the executive order or proclamation declaring the state
22 of disaster emergency unless the concurrent resolution provides for an
23 earlier date of termination.

24 (3) If the Governor vetoes or otherwise does not approve a
25 concurrent resolution terminating a state of disaster emergency within five
26 (5) days, Sundays excepted, of its presentation to him or her, the House of
27 Representatives and the Senate may convene a committee of the whole in the
28 same manner provided in subdivisions (c)(1)(B) and (C) of this section for
29 the purpose of debating and voting upon a repassage of the concurrent
30 resolution that will override the Governor's failure to approve the
31 concurrent resolution.

32 (d)(1) All executive orders or proclamations issued under this section
33 shall indicate the nature of the disaster, the area or areas threatened, and
34 the conditions which have brought it about or which make possible termination
35 of the state of disaster emergency.

36 (2) In the case of a disaster, each provider of utility services

1 whose services were interrupted shall prepare a report describing:

2 (A) The type of disaster emergency;

3 (B) The duration of the disaster emergency, which includes
4 the time the utility personnel is dispensed to the work site and returns to
5 the personnel's point of origin; and

6 (C) The personnel utilized in responding to the disaster
7 emergency.

8 (3) If the disaster is related to public health, including
9 without limitation an infectious, contagious, and communicable disease, then
10 the executive order or proclamation shall specify that the state of disaster
11 emergency is related to public health.

12 (e) An executive order or proclamation shall be disseminated promptly
13 by means calculated to bring its contents to the attention of the general
14 public and, unless the circumstances attendant upon the disaster prevent or
15 impede, filed promptly with the Secretary of State.

16 (f) An executive order or proclamation of a state of disaster
17 emergency shall activate the disaster response and recovery aspects of the
18 state, local, and interjurisdictional disaster emergency plans applicable to
19 the political subdivision or area in question and be authority for the
20 deployment and use of any forces to which the plan or plans apply and for use
21 or distribution of any supplies, equipment, and materials and facilities
22 assembled, stockpiled, or arranged to be made available pursuant to this
23 chapter or any other provision of law relating to disaster emergencies.

24 (g)(1) The Governor shall declare a statewide state of disaster
25 emergency related to public health if a disaster related to public health,
26 including without limitation an infectious, contagious, and communicable
27 disease, includes:

28 (A) At least nineteen (19) counties of the state, either
29 at one (1) time or in the aggregate, if the states of disaster emergency are
30 related to the same disaster related to public health; or

31 (B) A total number of persons in counties under a state of
32 disaster emergency related to public health equal to or greater than twenty-
33 five percent (25%) of the population of the State of Arkansas according to
34 the most recent federal decennial census, either at one (1) time or in the
35 aggregate, if the states of disaster emergency are related to the same
36 disaster related to public health.

1 (2)(A) The House of Representatives and the Senate shall each
2 convene as a committee of the whole within eight (8) business days of the
3 declaration of a statewide state of disaster emergency related to public
4 health to vote upon and debate a concurrent resolution to terminate the
5 statewide state of disaster emergency related to public health.

6 (B) The House of Representatives and the Senate may each
7 convene as a committee of the whole under subdivision (g)(2)(A) of this
8 section at any time, including without limitation during a regular, fiscal,
9 or extraordinary session of the General Assembly.

10 (C)(i) If the General Assembly enacts a concurrent
11 resolution to terminate the statewide state of disaster emergency related to
12 public health at committees of the whole under subdivision (g)(2)(A) of this
13 section, the statewide state of disaster emergency related to public health
14 shall terminate on the date on which the statewide state of disaster
15 emergency related to public health will expire as provided in the executive
16 order or proclamation declaring the statewide state of disaster emergency
17 related to public health, unless the concurrent resolution provides for an
18 earlier date of termination.

19 (ii) This subdivision (g)(2)(C) does not prohibit
20 the Governor from terminating a statewide state of disaster emergency related
21 to public health at a date earlier than the date specified in the resolutions
22 of the House of Representatives and Senate terminating the statewide state of
23 disaster emergency related to public health.

24 (D) If the Governor vetoes or otherwise does not approve a
25 concurrent resolution terminating a statewide state of disaster emergency
26 related to public health within five (5) days, Sundays excepted, of its
27 presentation to him or her, the House of Representatives and the Senate may
28 convene a committee of the whole in the manner provided in subdivisions
29 (c)(1)(B) and (C) of this section for the purpose of debating and voting upon
30 a repassage of the concurrent resolution that will override the Governor's
31 failure to approve the concurrent resolution.

32 (3)(A) If the General Assembly does not terminate a statewide
33 state of disaster emergency related to public health, the statewide state of
34 disaster emergency related to public health shall not continue for longer
35 than sixty (60) days from the date of the executive order or proclamation
36 declaring the statewide state of disaster emergency related to public health

1 unless renewed by the Governor, so long as the Legislative Council does not
2 vote to deny the request for renewal.

3 (B) If the Governor desires to renew a statewide state of
4 disaster emergency related to public health, he or she shall submit a written
5 statement to the Legislative Council at least ten (10) days prior to the date
6 on which the statewide state of disaster emergency related to public health
7 will expire that includes without limitation the following information:

8 (i) The number of days that the statewide state of
9 disaster emergency related to public health will continue, not to exceed
10 sixty (60) days; and

11 (ii) The rationale for continuing the statewide
12 state of disaster emergency related to public health.

13 (C) A statewide state of disaster emergency related to
14 public health under this subdivision (g)(3) shall be renewed unless, by a
15 majority vote of a quorum present, the Legislative Council votes to deny the
16 Governor's request for renewal.

17 (D) After receiving the written statement of the Governor
18 under subdivision (g)(3)(B) of this section, the Legislative Council may
19 consider the renewal of a statewide state of disaster emergency related to
20 public health under subdivision (g)(3)(A) of this section at any time prior
21 to the expiration of the statewide state of disaster emergency related to
22 public health.

23 (E) If the Legislative Council does not deny the
24 Governor's request for renewal by a majority vote of a quorum present, the
25 statewide state of disaster emergency related to public health shall be
26 renewed for the number of days specified by the Governor in the written
27 statement under subdivision (g)(3)(B)(i) of this section.

28 (h)(1) If a state of disaster emergency related to public health is
29 not statewide upon its initial declaration but later becomes statewide by the
30 addition of areas to the state of disaster emergency declaration, the
31 Governor shall declare a statewide state of disaster emergency related to
32 public health under subdivision (g)(1) of this section.

33 (2) The statewide state of disaster emergency declaration under
34 subdivision (h)(1) of this section shall supersede past state of disaster
35 emergency declarations related to the same disaster related to public health.

36 (i)(1) The Legislative Council may meet at any time to perform its

1 duties under this section, including without limitation during a regular
2 session, fiscal session, or extraordinary session of the General Assembly.

3 (2) The duties of the Legislative Council under this section
4 shall not be delegated to a subset of the membership of the Legislative
5 Council, including without limitation a subcommittee of the Legislative
6 Council.

7 (3) The Legislative Council may adopt rules concerning the
8 performance of its duties under this section.

9
10 SECTION 3. Arkansas Code § 12-75-114(e)(7), concerning the disaster
11 emergency responsibilities of the Governor, is amended to read as follows:

12 (7)(A) Control ingress and egress to and from a disaster area,
13 the movement of persons within the area, and the occupancy of premises
14 therein.

15 (B) This chapter does not permit the Governor to prohibit
16 members of the General Assembly from accessing the seat of government;

17
18 SECTION 4. Arkansas Code § 12-75-114, concerning the disaster
19 emergency responsibilities of the Governor, is amended to add an additional
20 subsection to read as follows:

21 (f)(1) An executive order or proclamation issued to meet or mitigate
22 dangers to the people and property of the state presented or threatened by a
23 statewide state of disaster emergency related to public health under § 12-75-
24 107(g):

25 (A) Shall be in effect for the remaining duration of the
26 statewide state of disaster emergency related to public health; and

27 (B) Except as provided in subdivision (f)(3) of this
28 section, shall be submitted to the Legislative Council for review.

29 (2)(A) If the Governor seeks to renew a statewide state of
30 disaster emergency related to public health under § 12-75-107(g), he or she
31 may also request the renewal of an executive order or proclamation under
32 subdivision (f)(1) of this section.

33 (B) If the Governor requests the renewal of more than one
34 (1) executive order or proclamation under subdivision (f)(2)(A) of this
35 section, the Legislative Council may consider each executive order or
36 proclamation individually.

1 SECTION 5. Arkansas Code § 20-7-110 is amended to read as follows:
 2 20-7-110. Study and prevention of diseases.

3 (a)(1) The State Board of Health has general supervision and control
 4 of all matters pertaining to the health of the citizens of this state.

5 (2) The board shall make a study of the causes and prevention of
 6 infectious, contagious, and communicable diseases, and, except as otherwise
 7 provided in this act, the board shall have direction and control of all
 8 matters of quarantine rules and enforcement. The board shall have full power
 9 and authority to prevent the entrance of such diseases from points outside
 10 the state.

11 (3) The board shall also have direction and control over all
 12 sanitary and quarantine measures for dealing with all infectious, contagious,
 13 and communicable diseases within the state and direction and control to
 14 suppress them and prevent their spread.

15 (b) Whenever the health of the citizens of this state is threatened by
 16 the prevalence of any epidemic or contagious disease in this or any adjoining
 17 state and, in the judgment of the Governor, the public safety demands action
 18 on the part of the board, then the Governor shall call the attention of the
 19 board to the facts and order it to take such action as the public safety of
 20 the citizens demands to prevent the spread of the epidemic or contagious
 21 disease.

22 (c)(1)(A) The board or its designee may adopt directives imposing
 23 restrictions upon individuals, commerce, or travel to prevent the
 24 introduction of infectious, contagious, and communicable disease into the
 25 state or from one place to another within the state.

26 (B) A directive under subdivision (c)(1)(A) of this
 27 section shall not be subject to the Arkansas Administrative Procedure Act, §
 28 25-15-201 et seq., and § 10-3-309.

29 (C) The board or its designee shall not combine multiple
 30 subjects or directives into a single directive under subdivision (c)(1)(A) of
 31 this section.

32 (2)(A) If the Governor has declared a statewide state of
 33 disaster emergency related to public health under § 12-75-107(g) and the
 34 board or its designee, either upon its own motion or pursuant to an order of
 35 the Governor under subsection (b) of this section, adopts one (1) or more
 36 directives imposing restrictions upon individuals, commerce, or travel under

1 subdivision (c)(1)(A) of this section within the area of the statewide state
2 of disaster emergency related to public health, then the directive shall be
3 subject to review and termination by the Executive Subcommittee of the
4 Legislative Council.

5 (B) A directive issued under this subdivision (c)(2)
6 shall:

7 (i) Not continue for longer than thirty (30) days
8 unless renewed under this subsection;

9 (ii) Become effective immediately upon its issuance
10 by the board or its designee;

11 (iii) Be drafted in a manner that allows for the
12 Executive Subcommittee of the Legislative Council to vote upon each directive
13 separately; and

14 (iv) Remain in effect unless a majority of a quorum
15 of the Executive Subcommittee of the Legislative Council votes to terminate
16 the directive.

17 (C) If the board or its designee issues more than one (1)
18 directive under subdivision (c)(2)(A) of this section, the Executive
19 Subcommittee of the Legislative Council may consider each directive
20 individually.

21 (D) The Executive Subcommittee of the Legislative Council
22 shall meet to consider the termination of a directive under subdivision
23 (c)(2)(A) of this section within four (4) business days of its issuance.

24 (E) If the Executive Subcommittee of the Legislative
25 Council, by a majority vote of a quorum present, does not vote to terminate a
26 directive under subdivision (c)(2)(A) of this section, it shall continue for
27 the number of days specified by the board or its designee.

28 (F) If the Executive Subcommittee of the Legislative
29 Council votes to terminate a directive, the directive shall be terminated
30 immediately.

31 (3)(A) A directive under subdivision (c)(2) of this section
32 shall not continue for longer than thirty (30) days from the date of its
33 issuance by the board or its designee unless renewed by the board or its
34 designee, so long as the Legislative Council does not deny the request for
35 renewal.

36 (B) If the board or its designee desires to renew a

1 directive under subdivision (c)(2) of this section, it shall submit a written
 2 statement to the Legislative Council at least ten (10) days prior to the date
 3 on which the directive will expire that includes without limitation the
 4 following information:

5 (i) The number of days that the directive will
 6 continue, not to exceed thirty (30) days; and

7 (ii) The rationale for continuing the directive.

8 (C) A directive under subdivision (c)(3)(A) of this
 9 section shall be renewed unless the Legislative Council, by a majority vote
 10 of a quorum present, denies the request to renew the directive.

11 (D) After receiving the written statement under
 12 subdivision (c)(3)(B) of this section, the Legislative Council may consider
 13 the renewal of a directive at any time prior to the expiration of the
 14 directive.

15 (E) If the Legislative Council does not deny the request
 16 to renew the directive by a majority vote of a quorum present prior to the
 17 expiration of the directive, the directive shall be renewed for the number of
 18 days specified by the board or its designee in the written statement under
 19 subdivision (c)(3)(B)(i) of this section.

20 (4)(A) The Legislative Council may meet at any time to perform
 21 its duties under this section, including without limitation during a regular
 22 session, fiscal session, or extraordinary session of the General Assembly.

23 (B) Except as provided in this section, the duties of the
 24 Legislative Council under this section shall not be delegated to a subset of
 25 the membership of the Legislative Council, including without limitation a
 26 subcommittee of the Legislative Council.

27 (C) The Legislative Council may adopt rules concerning the
 28 performance of its duties under this section.

29
 30 SECTION 6. DO NOT CODIFY. TEMPORARY LANGUAGE. (a) If a state of
 31 disaster emergency meeting the description of a statewide state of disaster
 32 emergency related to public health under § 12-75-107(g) as created by this
 33 act is in effect on the effective date of this act, then renewals of the
 34 state of disaster emergency shall comply with § 12-75-107(g)(3) regarding
 35 renewals of a statewide state of disaster emergency related to public health.

36 (b)(1) If on the effective date of this act the Governor has in effect

1 one (1) or more executive orders or proclamations issued to meet or mitigate
2 dangers to the people and property of the state presented or threatened by a
3 state of disaster emergency meeting the description of a statewide state of
4 disaster emergency related to public health under § 12-75-107(g) as created
5 by this act, then the executive orders or proclamations shall comply with §
6 12-75-114(f)(2) regarding renewals of an executive order or proclamation.

7 (2) Executive orders or proclamations issued after the effective
8 date of this act related to a state of disaster emergency in effect on the
9 effective date of this act meeting the description of a statewide state of
10 disaster emergency related to public health under § 12-75-107(g) as created
11 by this act shall comply with § 12-75-114(f)(3) regarding termination by the
12 Legislative Council.

13
14 SECTION 7. DO NOT CODIFY. TEMPORARY LANGUAGE. (a) If the State
15 Board of Health or its designee has one (1) or more directives that serve as
16 restrictions upon individuals, commerce, or travel to prevent the
17 introduction of infectious, contagious, and communicable disease into the
18 state or from one place to another within the state in effect on the
19 effective date of this act that are related to a state of disaster emergency
20 meeting the description of a statewide state of disaster emergency related to
21 public health under § 12-75-107(g) as created by this act, the board or its
22 designee shall file those directives with the following committees within
23 three (3) business days of the effective date of this act:

24 (1) The Senate Committee on Public Health, Welfare, and Labor;

25 (2) The House Committee on Public Health, Welfare, and Labor;

26 and

27 (3) The Legislative Council.

28 (b)(1) The Senate Committee on Public Health, Welfare, and Labor and
29 the House Committee on Public Health, Welfare, and Labor shall:

30 (A) Review the directives within fifteen (15) days of
31 receipt from the board or its designee under subsection (a) of this section;
32 and

33 (B) Recommend to the Legislative Council whether the
34 directives should be continued or terminated.

35 (2) The Senate Committee on Public Health, Welfare, and Labor
36 and the House Committee on Public Health, Welfare, and Labor may invite one

1 (1) or more other committees of the General Assembly to participate in the
2 review of a directive if either the Senate Committee on Public Health,
3 Welfare, and Labor or the House Committee on Public Health, Welfare, and
4 Labor believes the subject matter of the directive aligns with the duties or
5 jurisdiction of one (1) or more other committees of the General Assembly.

6 (c)(1) After receiving the recommendation under subsection (b) of this
7 section, the Legislative Council shall consider whether to approve the
8 continuation of the directive or to terminate the directive.

9 (2) Consideration of the Legislative Council shall occur within
10 thirty (30) days of the effective date of this act.

11 (3) If there is more than one (1) directive in effect on the
12 effective date of this act, the Legislative Council may consider each
13 directive individually.

14 (d)(1) If the Legislative Council, by a majority vote of a quorum
15 present, does not terminate a directive under this section within thirty (30)
16 days of the effective date of this act, the directive shall not continue for
17 longer than thirty (30) days unless renewed by the board so long as the
18 Legislative Council does not deny the request to renew.

19 (2) If the board desires to renew a directive under this
20 section, it shall submit a written statement to the Legislative Council at
21 least ten (10) days prior to the expiration of the directive that includes
22 without limitation the following information:

23 (A) The number of days that the directive will continue,
24 not to exceed thirty (30) days; and

25 (B) The rationale for continuing the directive.

26 (3) A directive under this subsection shall be renewed unless
27 the Legislative Council, by a majority vote of a quorum present, denies the
28 request to renew the directive.

29 (4) After receiving the written statement of the board under
30 subdivision (d)(2) of this section, the Legislative Council may consider the
31 renewal of a directive under this section at any time prior to its
32 expiration.

33 (5) If the Legislative Council does not deny the request to
34 renew the directive, it shall be renewed for the number of days specified by
35 the board in the written statement under subdivision (d)(2)(A) of this
36 section.

1 (e)(1) The Legislative Council may meet at any time to perform its
2 duties under this section, including without limitation during a regular
3 session, fiscal session, or extraordinary session of the General Assembly.

4 (2) The duties of the Legislative Council under this section
5 shall not be delegated to a subset of the membership of the Legislative
6 Council, including without limitation a subcommittee of the Legislative
7 Council.

8 (3) The Legislative Council may adopt rules concerning the
9 performance of its duties under this section.

10
11 SECTION 8. SEVERABILITY. If any provision of this act or the
12 application of this act to any person or circumstance is held invalid, the
13 invalidity shall not affect other provisions or applications of this act that
14 can be given effect without the invalid provision or application, and to this
15 end, the provisions of this act are declared severable.

16
17 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
18 General Assembly of the State of Arkansas that the public health emergency
19 related to coronavirus 2019 (COVID-19) highlights the need for an expanded
20 approach to emergency situations to allow for input of both the legislative
21 and executive branches to ensure preservation of the public peace, health,
22 and safety; that this act revises the process for the issuance and extension
23 of emergency declarations to allow for legislative input to ensure that the
24 necessary considerations are taken into account during emergencies; and that
25 this act is immediately necessary to allow the state to be able to better
26 respond to emergency situations and ensure the protection of the health,
27 safety, and welfare of the citizens of the State of Arkansas. Therefore, an
28 emergency is declared to exist, and this act being immediately necessary for
29 the preservation of the public peace, health, and safety shall become
30 effective on:

31 (1) The date of its approval by the Governor;

32 (2) If the bill is neither approved nor vetoed by the Governor,
33 the expiration of the period of time during which the Governor may veto the
34 bill; or

35 (3) If the bill is vetoed by the Governor and the veto is
36 overridden, the date the last house overrides the veto.