

HOUSE BILL 575

E4
HB 17/21 – HGO

2lr2551

By: **Delegate Cox**

Introduced and read first time: January 31, 2022

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – Emergency Limitations**
3 **(Consent of the Governed Act)**

4 FOR the purpose of altering provisions relating to the Governor’s authority to declare and
5 enforce a state of emergency; providing for the burden of proof in a certain action
6 authorizing a certain person to seek damages from a certain defendant by proving
7 certain matters; and generally relating to emergency orders.

8 BY repealing and reenacting, with amendments,
9 Article – Public Safety
10 Section 14–107, 14–303, 14–304, 14–3A–02, and 14–3A–08(a)
11 Annotated Code of Maryland
12 (2018 Replacement Volume and 2021 Supplement)

13 BY repealing
14 Article – Public Safety
15 Section 14–302
16 Annotated Code of Maryland
17 (2018 Replacement Volume and 2021 Supplement)

18 BY adding to
19 Article – Public Safety
20 Section 14–3B–01 through 14–3B–06 to be under the new subtitle “Subtitle 3B.
21 Emergency Powers Limitations”
22 Annotated Code of Maryland
23 (2018 Replacement Volume and 2021 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
25 That the Laws of Maryland read as follows:

26 **Article – Public Safety**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 14–107.

2 (a) (1) **[If] SUBJECT TO SUBTITLE 3B OF THIS TITLE, IF** the Governor finds
3 that an emergency has developed or is impending due to any cause, the Governor shall
4 declare a state of emergency by executive order or proclamation.

5 (2) The state of emergency continues until the Governor:

6 (i) finds that the threat or danger has passed or the emergency has
7 been dealt with to the extent that emergency conditions no longer exist; and

8 (ii) terminates the state of emergency by executive order or
9 proclamation.

10 (3) A state of emergency may not continue for longer than **[30] 14** days
11 unless the Governor, **ON A VOTE OF APPROVAL BY THE GENERAL ASSEMBLY BY JOINT**
12 **RESOLUTION**, renews the state of emergency **FOR NOT MORE THAN AN ADDITIONAL 14**
13 **DAYS**.

14 (4) (i) The General Assembly by joint resolution may terminate a state
15 of emergency at any time.

16 (ii) After the General Assembly terminates a state of emergency, the
17 Governor shall issue an executive order or proclamation that terminates the state of
18 emergency.

19 (b) (1) Each executive order or proclamation that declares or terminates a
20 state of emergency shall indicate:

21 (i) the nature of the emergency;

22 (ii) the area threatened; and

23 (iii) the conditions that have brought about the state of emergency or
24 that make possible the termination of the state of emergency.

25 (2) Each executive order or proclamation shall be:

26 (i) disseminated promptly by means calculated to publicize its
27 contents; and

28 (ii) unless prevented or impeded by the circumstances of the
29 emergency, filed promptly with:

30 1. the Department;

2. the State Archives; and

3. the chief local records-keeping agency in the area to which the executive order or proclamation applies.

(c) (1) After the Governor declares a state of emergency, the Secretary shall coordinate the activities of the agencies of the State and of those political subdivisions included in the declaration in all actions that serve to prevent or alleviate the ill effects of the imminent or actual emergency.

(2) An executive order or proclamation that declares a state of emergency:

(i) activates the emergency response and recovery aspects of the State and local emergency plans applicable to the political subdivision or area covered by the declaration; and

(ii) is authority for:

1. the deployment and use of resources to which the State or local plans apply; and

2. the use or distribution of supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available in accordance with this subtitle or any other law that relates to emergencies.

(d) (1) After declaring a state of emergency, the Governor, if the Governor finds it necessary in order to protect the public health, welfare, or safety, may:

(i) suspend the effect of any statute or rule or regulation of an agency of the State or a political subdivision;

(ii) direct and compel the evacuation of all or part of the population from a stricken or threatened area in the State;

(iii) set evacuation routes and the modes of transportation to be used during an emergency;

(iv) direct the control of ingress to and egress from an emergency area, the movement of individuals in the area, and the occupancy of premises in the area;

(v) authorize the use of private property, in which event the owner of the property shall be compensated for its use and for any damage to the property;

(vi) provide for temporary housing; and

(vii) authorize the clearance and removal of debris and wreckage.

(2) The powers of the Governor under this subsection are in addition to any other authority vested in the Governor by law.

[14–302.

(a) The General Assembly recognizes the Governor's broad authority in the exercise of the police power of the State to provide adequate control over persons and conditions during impending or actual public emergencies.

(b) This subtitle shall be broadly construed to carry out the purpose of this subtitle.]

14–303.

(a) **[During] SUBJECT TO SUBTITLE 3B OF THIS TITLE, DURING** a public emergency in the State, the Governor may proclaim a state of emergency and designate the emergency area:

(1) if public safety is endangered or on reasonable apprehension of immediate danger to public safety; and

(2) on:

(i) the Governor's own initiative; or

(ii) the application of:

1. the chief executive officer or governing body of a county or municipal corporation; or

2. the Secretary of State Police.

(b) After proclaiming a state of emergency, the Governor may promulgate reasonable orders, rules, or regulations that the Governor considers necessary to protect life and property or calculated effectively to control and terminate the public emergency in the emergency area, including orders, rules, or regulations to:

(1) control traffic, including public and private transportation, in the emergency area;

(2) designate specific zones in the emergency area in which the occupancy and use of buildings and vehicles may be controlled;

(3) control the movement of individuals or vehicles into, in, or from the designated zones;

(4) control places of amusement and places of assembly;

(5) control individuals on public streets;

(6) establish curfews;

(7) control the sale, transportation, and use of alcoholic beverages;

(8) control the possession, sale, carrying, and use of firearms, other dangerous weapons, and ammunition;

(9) control the storage, use, and transportation of explosives or flammable materials or liquids considered to be dangerous to public safety, including “Molotov cocktails”; and

(10) authorize the use of alternate care sites.

(c) Before an order, rule, or regulation promulgated under subsection (b) of this section takes effect, the Governor shall give reasonable notice of the order, rule, or regulation:

(1) in a newspaper of general circulation in the emergency area;

(2) through television or radio serving the emergency area; or

(3) by circulating notices or posting signs at conspicuous places in the emergency area.

(d) An order, rule, or regulation promulgated under subsection (b) of this section:

(1) takes effect from the time and in the manner specified in the order, rule, or regulation;

(2) may be amended or rescinded, in the same manner as the original order, by the Governor at any time during the state of emergency; and

(3) terminates when the Governor declares that the state of emergency no longer exists.

14–304.

(a) **[On] SUBJECT TO SUBTITLE 3B OF THIS TITLE,** ON reasonable apprehension that an energy emergency exists, the Governor may proclaim a state of emergency.

(b) Notwithstanding any other provision or limitation of State or local law, if the Governor proclaims a state of emergency under this section, in addition to any other order,

rule, or regulation promulgated under this subtitle, the Governor may promulgate orders, rules, or regulations to:

(1) establish and implement programs, controls, standards, priorities, and quotas for the allocation, conservation, and consumption of energy resources;

(2) suspend and modify existing standards and requirements affecting or affected by the use of energy resources, including those that relate to air quality control, the type and composition of various energy resources, the production and distribution of energy resources, and the hours and days during which public buildings and commercial and industrial establishments are authorized or required to remain open; and

(3) establish and implement regional programs and agreements to coordinate the energy resource programs and actions of the State with those of the federal government and of other states and localities.

(c) Instead of or in addition to the penalties provided in § 14–308 of this subtitle, an order, rule, or regulation promulgated by the Governor under this section may provide for:

(1) the imposition of a civil penalty not exceeding \$1,000 for each violation; and

(2) the method and conditions of collecting the civil penalty.

(d) (1) In this subsection, “Committee” means:

(i) the Joint Committee on Administrative, Executive, and Legislative Review; or

(ii) any other joint committee substituted by the General Assembly by law to carry out the responsibilities of the Joint Committee on Administrative, Executive, and Legislative Review with respect to an energy emergency.

(2) Before promulgating an order, rule, or regulation under this section, the Governor shall submit the order, rule, or regulation to the Committee for approval or rejection.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, if the Committee fails to take action on the order, rule, or regulation within 7 days after its submission, the order, rule, or regulation takes effect as promulgated by the Governor.

(ii) 1. If because of extraordinary circumstances it is not feasible to secure the prior approval of the Committee, an order, rule, or regulation takes effect immediately.

2. Within 2 days after it takes effect, the order, rule, or regulation shall be communicated to the chairman of the Committee.

3. The full Committee shall be convened within 5 days after the order, rule, or regulation is communicated to the chairman.

4. The order, rule, or regulation is subject to disapproval by the full Committee.

(4) All records of orders, rules, regulations, and Committee meetings are open to the public.

(e) This section does not authorize the establishment of oil refineries, deep water ports, offshore drilling facilities, or other similar major capital facilities.

(f) In addition to the specific emergency powers contained in this subtitle, the General Assembly recognizes and confirms the Governor's power to exercise fully the authority necessary to implement any federal mandatory energy emergency program as set forth in any federal programs, laws, orders, rules, or regulations that relate to the allocation, conservation, or consumption of energy resources.

14-3A-02.

(a) **[If] SUBJECT TO SUBTITLE 3B OF THIS TITLE, IF** the Governor determines that a catastrophic health emergency exists, the Governor may issue a proclamation under this subtitle.

(b) The proclamation shall indicate:

(1) the nature of the catastrophic health emergency;

(2) the areas threatened or affected; and

(3) the conditions that:

(i) led to the catastrophic health emergency; or

(ii) made possible the termination of the emergency.

(c) (1) The Governor shall rescind a proclamation issued under this section whenever the Governor determines that the catastrophic health emergency no longer exists.

(2) Unless renewed, the proclamation expires 30 days after issuance.

(3) The Governor may renew the proclamation for successive periods, each not to exceed 30 days, if the Governor determines that a catastrophic health emergency continues to exist.

14-3A-08.

(a) (1) Except as provided in subsection (b) of this section, a person may not knowingly and willfully fail to comply with an order, requirement, or directive issued under this subtitle.

(2) A person who violates paragraph (1) of this subsection is guilty of a [misdemeanor] **CIVIL INFRACTION** and on conviction is subject to [imprisonment not exceeding 1 year or] a fine not exceeding [\$5,000 or both] **\$50**.

SUBTITLE 3B. EMERGENCY POWERS LIMITATIONS.

14-3B-01.

(A) WITHIN 3 DAYS AFTER THE ISSUANCE OF AN EMERGENCY ORDER UNDER THIS TITLE, THE GOVERNOR SHALL:

(1) IF IT IS NOT ALREADY IN SESSION, CONVENE THE GENERAL ASSEMBLY TO A SPECIAL SESSION, WITH VIDEO CONFERENCING OFFERED TO ANY MEMBER UNABLE TO ATTEND IN PERSON;

(2) PROVIDE THE MEMBERS, ELECTRONICALLY OR IN PERSON, COPIES OF ALL EXECUTIVE ORDERS AND ANY INTERPRETIVE GUIDANCE REGARDING THE ORDERS; AND

(3) RECEIVE INPUT FROM ANY MEMBER REGARDING ADDITIONAL GUIDANCE REQUESTED.

(B) ANY DECLARATION OF EMERGENCY MAY NOT EXCEED 14 DAYS UNLESS:

(1) THE GENERAL ASSEMBLY IS IN SESSION, IN WHICH CASE THE GENERAL ASSEMBLY MAY TERMINATE THE DECLARATION OF EMERGENCY SOONER THAN 14 DAYS OR MAY EXTEND THE EMERGENCY ORDER FOR NOT MORE THAN AN ADDITIONAL 14 DAYS; OR

(2) THE GOVERNOR ISSUES A CALL FOR A SPECIAL SESSION FOR THE PURPOSE OF UNDERTAKING LEGISLATIVE ACTION RELATED TO THE EMERGENCY WITHIN 3 DAYS OF THE EMERGENCY ORDER DECLARING THE EMERGENCY, AND THE GENERAL ASSEMBLY CONVENES THE SPECIAL SESSION WITHIN 10 DAYS OF THE DATE OF THE EMERGENCY ORDER DECLARING THE EMERGENCY.

1 **14-3B-02.**

2 **(A) AN EMERGENCY ORDER ISSUED UNDER THIS TITLE DOES NOT APPLY TO**
3 **MEMBERS OF THE GENERAL ASSEMBLY OR THE MARYLAND JUDICIARY.**

4 **(B) THE GOVERNOR MAY NOT THREATEN OR ARREST A MEMBER OF THE**
5 **GENERAL ASSEMBLY OR JUDICIARY FOR AN ALLEGED VIOLATION OF OR ATTEMPT**
6 **TO VIOLATE AN EMERGENCY ORDER ISSUED UNDER THIS TITLE.**

7 **(C) NEITHER THE GOVERNOR NOR ANY OFFICIAL OR EMPLOYEE OF THE**
8 **EXECUTIVE BRANCH MAY REQUIRE A MEMBER OF THE GENERAL ASSEMBLY OR**
9 **JUDICIARY OR ANY MEMBER OF THE PUBLIC TO REMAIN INDOORS, WEAR A FACE**
10 **COVERING, NOT CONGREGATE OR ASSEMBLE, CLOSE OR LIMIT CAPACITY OF A**
11 **BUSINESS, CHURCH, OR SCHOOL, OR INTERFERE WITH THE RIGHT TO OBTAIN AND**
12 **TRY ANY MEDICAL TREATMENT DESIRED FOR ANY ILLNESS UNDER AN EMERGENCY**
13 **ORDER ISSUED UNDER THIS TITLE, UNDER ANY EXECUTIVE ORDER, OR BY ANY**
14 **OTHER PURPORTED AUTHORITY.**

15 **14-3B-03.**

16 **(A) AN EMERGENCY ORDER ISSUED UNDER THIS TITLE MAY NOT BE**
17 **APPLIED TO A U.S. CITIZEN UNLESS THE ORDER HAS BEEN APPROVED BY A**
18 **TWO-THIRDS MAJORITY VOTE OF THE GENERAL ASSEMBLY WITHIN 72 HOURS OF**
19 **THE ISSUANCE OF THE ORDER.**

20 **(B) AN EMERGENCY ORDER ISSUED UNDER THIS TITLE IS NOT EFFECTIVE,**
21 **EVEN IF APPROVED BY THE GENERAL ASSEMBLY, UNLESS THE GOVERNOR HAS**
22 **PUBLISHED AND MADE THE ENTIRE ORDER AND ANY GUIDANCE REGARDING THE**
23 **ORDER AVAILABLE TO THE PUBLIC ON AN EASILY ACCESSIBLE ONLINE PLATFORM**
24 **AND FORMAT.**

25 **14-3B-04.**

26 **(A) THIS SECTION MAY NOT BE CONSTRUED TO ALLOW ANY**
27 **GOVERNMENTAL ENTITY TO PROHIBIT OR LIMIT IN-PERSON WORSHIP OR**
28 **RELIGIOUS EDUCATION OR TO TREAT IN-PERSON WORSHIP IN ANY DISPARATE**
29 **MANNER TO ANY SECULAR ACTIVITIES.**

30 **(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, THE GOVERNOR MAY**
31 **NOT CLOSE ANY BUSINESS OR HOUSE OF WORSHIP BY USE OF AN EMERGENCY ORDER**
32 **ISSUED UNDER THIS TITLE.**

(C) A BUILDING BELONGING TO A BUSINESS OR HOUSE OF WORSHIP MAY BE CLOSED UNDER THIS TITLE ONLY ON THE CERTIFICATION OF AT LEAST THREE INDEPENDENT EXPERTS THAT THE BUILDING IS PHYSICALLY OUT OF COMPLIANCE WITH AN APPLICABLE BUILDING CODE, AND THE ORDER PROVIDES NOTICE AND OPPORTUNITY TO APPEAL THE CLOSURE WITHIN 3 BUSINESS DAYS.

14-3B-05.

(A) AN EMERGENCY ORDER ISSUED UNDER THIS TITLE MAY NOT INCLUDE A REQUIREMENT THAT A U.S. CITIZEN REMAIN AT HOME.

(B) AN EMERGENCY ORDER ISSUED UNDER THIS TITLE MAY NOT INCLUDE A REQUIREMENT THAT A U.S. CITIZEN WEAR A FACE COVERING, RECEIVE A VACCINE, OR BE FORCED UNDER PENALTY OF LAW TO MAKE ANY OTHER HEALTH DECISION.

14-3B-06.

(A) AS USED IN THIS SECTION, "EMERGENCY ORDER" MEANS AN ORDER ISSUED IN RESPONSE TO AN EMERGENCY CONTEMPLATED BY THIS TITLE, OR ANY SIMILAR STATUTE ISSUED IN RESPONSE TO AN ALLEGED PUBLIC EMERGENCY, DISEASE OUTBREAK, PUBLIC HEALTH THREAT, OR SIMILAR OCCURRENCE, THAT HAS THE EFFECT OF RESTRAINING PERSONAL LIBERTY, SHUTTING DOWN BUSINESS, SEIZING PROPERTY, OR OTHERWISE INFRINGING ON ANY RIGHTS GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES OR THE MARYLAND CONSTITUTION.

(B) AN EMERGENCY ORDER ISSUED UNDER THIS TITLE SHALL:

(1) BE NARROWLY TAILORED TO MEET THE EXIGENCIES OF THE PUBLIC EMERGENCY;

(2) BE NO BROADER OR MORE BURDENSOME THAN IS NECESSARY TO MEET THE EXIGENCIES OF THE EMERGENCY OR IMMEDIATE THREAT OF AN EMERGENCY;

(3) BE ISSUED IN RESPONSE TO AN ACTUAL EMERGENCY OR IMMINENT THREAT OF AN EMERGENCY;

(4) GIVE DUE REGARD IN ITS SCOPE AND DURATION TO THE IMPACT ON THE STATE AND ITS CITIZENS WITH ALL REPORTS, ANALYSIS, AND ADVISORY OPINIONS OF ANY AND ALL ADVISORY COMMITTEES, WHETHER AD HOC OR FORMAL, MADE PUBLIC; AND

1 **(5) BE IN EFFECT NOT LONGER THAN IS NECESSARY TO MEET THE**
2 **EXIGENCY GIVING RISE TO THE EMERGENCY.**

3 **(C) IN THE EVENT ANY PERSON, INCLUDING THE ATTORNEY GENERAL,**
4 **BRINGS AN ACTION FOR DECLARATORY RELIEF OR INJUNCTIVE RELIEF TO ENFORCE**
5 **THIS SUBTITLE, THE BURDEN OF PROOF SHALL BE ON THE GOVERNMENT TO PROVE,**
6 **BY CLEAR AND CONVINCING EVIDENCE:**

7 **(1) THE EXISTENCE OF AN EMERGENCY;**

8 **(2) THE NEED FOR THE EMERGENCY ORDER ISSUED;**

9 **(3) THE NARROW TAILORING OF THE EMERGENCY ORDER;**

10 **(4) THAT THE EMERGENCY ORDER WAS NO BROADER THAN**
11 **NECESSARY TO MEET THE EXIGENCIES OF THE EMERGENCY;**

12 **(5) THAT DUE REGARD WAS GIVEN FOR THE IMPACT ON THE STATE,**
13 **THE PUBLIC AT LARGE, PUBLIC SAFETY, AND THE LONG-TERM ECONOMIC IMPACT**
14 **ON THE STATE AND ITS CITIZENS; AND**

15 **(6) THAT THE EMERGENCY ORDER WAS OR IS IN EFFECT NO LONGER**
16 **THAN IS NECESSARY TO MEET THE EXIGENCY GIVING RISE TO THE EMERGENCY.**

17 **(D) (1) IN ANY ACTION BROUGHT BY A PRIVATE PERSON TO ENFORCE**
18 **THIS SUBTITLE, IN ADDITION TO DECLARATORY OR INJUNCTIVE RELIEF, THE**
19 **PERSON MAY SEEK TREBLE DAMAGES FROM THE STATE OR OTHER DEFENDANT BY**
20 **PROVING, BY A PREPONDERANCE OF THE EVIDENCE, THAT ANY OF THE FOLLOWING**
21 **APPLY:**

22 **(I) THE PERSONAL OR BUSINESS ACTIVITIES OF THE PERSON**
23 **DO NOT PRESENT A SUBSTANTIAL RISK OF FURTHERING THE EMERGENCY;**

24 **(II) THE PERSONAL OR ECONOMIC IMPACT OF THE EMERGENCY**
25 **ORDER TO THE PERSON IS MORE SEVERE THAN THE IMPACTS OF THE EMERGENCY**
26 **TO THE PUBLIC AS A WHOLE; OR**

27 **(III) THE EMERGENCY ORDER IS OTHERWISE UNREASONABLE AS**
28 **APPLIED TO THE PERSON.**

29 **(2) A PERSON BRINGING AN ACTION UNDER THIS SUBSECTION IS NOT**
30 **REQUIRED TO PROVE MALICE BY THE STATE OR OTHER DEFENDANT.**

1 **(3) THE STATE WAIVES LIABILITY TO A MAXIMUM OF \$250,000 FOR**
2 **EACH INCIDENT IN AN ACTION BROUGHT UNDER THIS SUBSECTION.**

3 **(E) IF A PRIVATE PERSON PREVAILS IN ANY MANNER OF AN ACTION**
4 **AGAINST THE STATE OR OTHER DEFENDANT UNDER SUBSECTION (C) OR (D) OF THIS**
5 **SECTION, THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES AND COSTS TO**
6 **THE PRIVATE PERSON.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2022.