

1 SB97  
2 209074-2  
3 By Senator Whatley  
4 RFD: Judiciary  
5 First Read: 02-FEB-21  
6 PFD: 01/27/2021

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8       SYNOPSIS:               Under existing law, a state of emergency may  
9                               be declared by the Governor by proclamation or by  
10                              the Legislature by joint resolution. A state of  
11                              emergency terminates after 60 days unless extended  
12                              by proclamation of the Governor or joint resolution  
13                              of the Legislature.

14                             This bill would provide that a state of  
15                             emergency terminates after 14 days and may be  
16                             extended only by joint resolution of the  
17                             Legislature or, if the Legislature is not in  
18                             session, by joint proclamation of the President Pro  
19                             Tempore of the Senate and the Speaker of the House  
20                             of Representatives.

21                             This bill would provide that an order or  
22                             directive issued by the State Health Officer  
23                             relating to the outbreak of a disease or pandemic  
24                             has the full force and effect of law once it is  
25                             approved by the Governor and a copy is filed with  
26                             the Office of the Secretary of State.

1                   This bill would provide that the President  
2                   Pro Tempore of the Senate, in addition to the  
3                   Lieutenant Governor and Speaker of the House of  
4                   Representatives, may request in writing that the  
5                   Governor call the Legislature into special session  
6                   upon proclamation of a state of emergency.

7                   Also under existing law, during a state of  
8                   emergency, the Governor may file with the Secretary  
9                   of State an order or other directive that has the  
10                  effect of suspending a law, ordinance, rule, or  
11                  regulation once the Governor files the directive  
12                  with the Secretary of State.

13                  This bill would require the Governor to  
14                  provide a copy of a directive having the effect of  
15                  suspending a law to the President Pro Tempore of  
16                  the Senate and the Speaker of the House of  
17                  Representatives 48 hours before the directive may  
18                  take effect, with exceptions when the Governor  
19                  determines delaying the effect of a directive may  
20                  result in an imminent threat to human life.

21  
22                                   A BILL

23                                   TO BE ENTITLED

24                                   AN ACT

25  
26                   Relating to states of emergency; to amend Sections  
27                   22-2-8, 31-9-8, and 31-9-13, Code of Alabama 1975; to provide

1 that a state of emergency terminates after 14 days and may be  
2 extended only by joint resolution of the Legislature or, if  
3 the Legislature is not in session, by joint proclamation of  
4 the President Pro Tempore of the Senate and the Speaker of the  
5 House of Representatives; to provide that an order or  
6 directive issued by the State Health Officer relating to the  
7 outbreak of a disease or pandemic has the full force and  
8 effect of law once it is approved by the Governor and a copy  
9 is filed with the Secretary of State; to further provide for  
10 requesting a special session during a state of emergency; and  
11 to further provide for certain directives issued during a  
12 state of emergency.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 22-2-8, 31-9-8, and 31-9-13,  
15 Code of Alabama 1975, are amended to read as follows:

16 "§22-2-8.

17 "(a) The State Committee of Public Health shall  
18 elect an executive officer who shall be a physician licensed  
19 in the State of Alabama to be known as the State Health  
20 Officer and shall fix his or her term of office and salary.  
21 The qualifications of this individual shall be determined by  
22 the State Committee of Public Health. Before entering upon the  
23 duties of ~~his~~ the office, the State Health Officer shall  
24 execute to the State of Alabama a bond, to be approved by the  
25 Governor, in the amount of five thousand dollars (\$5,000.00)~~7~~  
26 for the faithful performance of ~~his~~ the duties of the office.

1           "(b) The State Health Officer so elected ~~shall,~~  
2           under the direction of the State Committee of Public Health  
3           and with the approval of the State Personnel Board, shall fix  
4           the salaries of the medical employees of the State Committee  
5           of Public Health. When the State Committee of Public Health is  
6           not in session, the State Health Officer, as executive officer  
7           of the Department of Public Health, shall act for ~~said the~~  
8           committee and shall have and discharge all the prerogatives  
9           and duties of ~~said the~~ committee. ~~He~~ The State Health Officer  
10          shall report his or her actions to the committee at its next  
11          meeting after ~~such the~~ action is taken, and ~~such the~~ action of  
12          ~~the State Health Officer~~ shall then be subject to confirmation  
13          or modification by the committee. The State Health Officer  
14          shall exercise general supervision over county boards of  
15          health and county health officers and promptly report to ~~said~~  
16          the county boards of health any delinquencies of official duty  
17          on the part of ~~said the~~ county health officers which may come  
18          to his or her knowledge, ~~keep himself informed in regard to~~  
19          ~~all diseases which may be in danger of invading the state~~

20               "(c) The State Health Officer shall stay informed  
21               with regard to an actual or potential outbreak of any disease  
22               or pandemic affecting this state and, as far as authorized by  
23               law, take prompt measures to prevent ~~such invasions~~ an  
24               outbreak and keep the Governor and the Legislature informed as  
25               to the health conditions prevailing in the state, especially  
26               as to outbreaks of any of the diseases enumerated in Chapter  
27               ~~11 of this title,~~ and submit to the Governor and Legislature

1 ~~such~~ recommendations as he or she deems proper to control,  
2 prevent, or minimize ~~such outbreaks.~~ an outbreak. If a state  
3 public health emergency has been declared pursuant to Section  
4 31-9-8, any order or directive issued by the State Health  
5 Officer to control, prevent, or minimize an outbreak of any  
6 disease or pandemic may not take effect unless and until the  
7 order or directive is approved by the Governor and a copy of  
8 the approved order or directive is filed in the Office of the  
9 Secretary of State, at which time the order or directive has  
10 the full force and effect of law.

11 "§31-9-8.

12 "(a) ~~The provisions of this~~ This section shall be  
13 operative only during the existence of a state of emergency,  
14 referred to ~~hereinafter~~ as one of the states of emergency  
15 defined in Section 31-9-3. The existence of a state of  
16 emergency may be proclaimed by the Governor as provided in  
17 this subsection or by joint resolution of the Legislature if  
18 the Governor in the proclamation, or the Legislature in the  
19 resolution, finds that an attack upon the United States has  
20 occurred or is anticipated in the immediate future, or that a  
21 natural disaster of major proportions or a public health  
22 emergency has occurred or is reasonably anticipated in the  
23 immediate future within this state and that the safety and  
24 welfare of the inhabitants of this state require an invocation  
25 of the provisions of this section. If the state of emergency  
26 affects less than the entire state, the Governor or the

1 Legislature shall designate in the proclamation or resolution  
2 those counties to which the state of emergency applies.

3 "(b) The emergency, whether proclaimed by the  
4 Governor or by the Legislature, shall terminate ~~60~~ 14 days  
5 after the date on which it was proclaimed unless ~~the Governor~~  
6 ~~extends the emergency by proclamation or~~ the Legislature  
7 extends the emergency by a joint resolution or, if the  
8 Legislature is not in session, the President Pro Tempore of  
9 the Senate and the Speaker of the House of Representatives  
10 extend the emergency by signing a joint proclamation.

11 "(c) Upon proclamation by the Governor of a state of  
12 emergency, the Governor may call the Legislature into special  
13 session. Additionally, the Lieutenant Governor, President Pro  
14 Tempore of the Senate, or the Speaker of the House of  
15 Representatives may request in writing that the Governor call  
16 the Legislature into special session.

17 "(d) During the period that the proclaimed emergency  
18 exists or continues, the Governor shall have and may exercise  
19 the following additional emergency powers:

20 "(1) To enforce all laws, and rules, ~~and regulations~~  
21 relating to emergency management and to assume direct  
22 operational control of all emergency management forces and  
23 helpers in the state.

24 "(2) To sell, lend, lease, give, transfer, or  
25 deliver materials or perform services for emergency management  
26 purposes on such terms and conditions as the Governor shall  
27 prescribe and without regard to the limitations of any

1 existing law, and to account to the State Treasurer for any  
2 funds received for such property.

3 "(3) To procure, by purchase, condemnation, seizure,  
4 or other means, construct, lease, transport, store, maintain,  
5 renovate, or distribute materials and facilities for emergency  
6 management without regard to the limitations of any existing  
7 law; provided, that this authority shall not be exercised with  
8 regard to newspapers, wire facilities leased or owned by news  
9 services, and other news publications, and provided further,  
10 that he or she shall make compensation for the property so  
11 seized, taken, or condemned, on the following basis:

12 "a. ~~In case~~ If property is taken for temporary use,  
13 the Governor, within 30 days of the taking, shall fix the  
14 amount of compensation to be paid ~~therefor~~ for use of the  
15 property, and ~~in case~~ if the property ~~shall be~~ is returned to  
16 the owner in a damaged condition, or ~~shall not be~~ is not  
17 returned to the owner, the Governor shall fix within 30 days  
18 the amount of compensation to be paid for the damage or  
19 failure to return. Whenever the Governor ~~shall deem~~ deems it  
20 advisable for the state to take title to property taken under  
21 this section, he or she shall ~~forthwith cause the owner of the~~  
22 ~~property to be notified thereof~~ immediately notify the  
23 property owner in writing by registered or certified mail,  
24 postage prepaid, or by the best available means, and ~~forthwith~~  
25 ~~cause to be filed~~ file a copy of the notice with the Secretary  
26 of State.



1            "b. If the person entitled to receive the amount so  
2 determined by the Governor as just compensation is unwilling  
3 to accept the same as full and complete compensation for ~~such~~  
4 the property or the use thereof, he or she shall be paid 75  
5 percent of such amount and shall be entitled to recover from  
6 the State of Alabama, in an action brought in a court in the  
7 county of residence of the claimant or in Montgomery County,  
8 in the same manner as other condemnation claims are brought,  
9 within three years after the date of the Governor's award,  
10 such additional amount, if any, which when added to the amount  
11 so paid to him or her, shall be just compensation.

12            "(4) To provide for and compel the evacuation of all  
13 or part of the population from any stricken or threatened area  
14 or areas within the state and to take ~~such~~ steps as are  
15 necessary for the receipt and care of such evacuees.

16            "(5) ~~To~~ Subject to subsection (b) of Section  
17 31-9-13, to perform and exercise ~~such~~ other functions, powers,  
18 and duties as are necessary to promote and secure the safety  
19 and protection of the civilian population.

20            "(6) To employ ~~such~~ measures and give ~~such~~  
21 directions to the state or local boards of health as may be  
22 reasonably necessary for the purpose of securing compliance  
23 with ~~the provisions of~~ this article or with the findings or  
24 recommendations of ~~such~~ the boards of health by reason of  
25 conditions arising from enemy attack or the threat of enemy  
26 attack or otherwise.

1           "(7) To utilize the services and facilities of  
2 existing officers and agencies of the state and of the  
3 political subdivisions thereof. All such officers and agencies  
4 shall cooperate with and extend their services and facilities  
5 to the Governor as he or she may request.

6           "(8) With due consideration to the recommendations  
7 of local authorities, the Governor may formulate and execute  
8 plans and regulations for the control of traffic in order to  
9 provide for the rapid and safe movement of evacuation over  
10 public highways and streets of people, troops, or vehicles and  
11 materials for national defense or for use in any defense  
12 industry, and may coordinate the activities of the departments  
13 or agencies of the state and of the political subdivisions  
14 thereof concerned directly or indirectly with public highways  
15 and streets, in a manner ~~which~~ that will best effectuate ~~such~~  
16 the plans.

17           "(9) To establish agencies and offices and to  
18 appoint temporary executive, technical, clerical, and other  
19 personnel as may be necessary to carry out ~~the provisions of~~  
20 this article without regard to the State Merit System Act.

21           "~~(b)~~ (e) The proclamation of a state of public  
22 health emergency shall activate the disaster response and  
23 recovery aspects of the state, local, and inter-jurisdictional  
24 disaster emergency plans in the affected political  
25 subdivisions or geographic areas. Such declaration authorizes  
26 the deployment and use of any forces to which the plans apply  
27 and the use or distribution of any supplies, equipment, and

1 materials and facilities assembled, stockpiled, or available  
2 pursuant to this article.

3 ~~"(c)~~ (f) (1) When a state of public health emergency  
4 has been declared or terminated, the State Board of Health  
5 shall inform members of the public on how to protect  
6 themselves and what actions are being taken to control the  
7 emergency.

8 "(2) When a state public health emergency has been  
9 declared, any order or directive issued by the State Health  
10 Officer pursuant to the authority granted under Title 22 to  
11 abate any condition prejudicial to public health or otherwise  
12 control, prevent, or minimize an outbreak of any disease or  
13 pandemic may not take effect unless and until the order or  
14 directive is approved by the Governor, as provided in Section  
15 22-2-8.

16 ~~"(d)~~ (g) (1) Nothing in this section shall authorize  
17 the seizure or confiscation of any firearm or ammunition from  
18 any individual who is lawfully carrying or possessing the  
19 firearm or ammunition except as provided in subdivision (2).

20 "(2) A law enforcement officer who is acting in the  
21 lawful discharge of the officer's official duties may disarm  
22 an individual if the officer reasonably believes that it is  
23 immediately necessary for the protection of the officer or  
24 another individual. The officer shall return the firearm to  
25 the individual before discharging that individual unless the  
26 officer arrests that individual for engaging in criminal  
27 activity or seizes the firearm as evidence pursuant to an

1 investigation for the commission of a crime or, at the  
2 discretion of the officer, the individual poses a threat to  
3 himself or herself or to others.

4 "§31-9-13.

5 "(a) All Subject to subsection (b), all  
6 proclamations, orders, rules, and regulations promulgated or  
7 other directives issued by the Governor as authorized by this  
8 article shall have the full force and effect of law when a  
9 copy thereof is filed in the office of the Secretary of State.  
10 All existing laws, ordinances, rules, and regulations or parts  
11 thereof inconsistent with the provisions of this article or of  
12 any proclamation, order, rule, or regulation other directive  
13 issued under the authority of this article, shall be suspended  
14 during the period of time and to the extent that such  
15 inconsistency exists. The Secretary of State shall cause to be  
16 printed and distributed to the ~~probate~~ judges of probate of  
17 the several counties and to the clerks of the several  
18 municipalities of this state a copy of each proclamation,  
19 order, rule, or regulation other directive issued under the  
20 authority of this article.

21 "(b) A proclamation, order, rule, or other directive  
22 issued under the authority of this article that would suspend  
23 an existing law, ordinance, rule or regulation may not take  
24 effect until 48 hours after the Governor has provided a copy  
25 of the directive to the President Pro Tempore of the Senate  
26 and the Speaker of the House of Representatives; provided,  
27 however, if the Governor determines in good faith that

1 delaying the effect of the directive would result in an  
2 imminent threat to human life, the Governor may declare the  
3 directive immediately effective, but must still provide a copy  
4 of the directive to the President Pro Tempore of the Senate  
5 and Speaker of the House of Representatives as soon as  
6 practical."

7           Section 2. This act shall become effective  
8 immediately upon its passage and approval by the Governor, or  
9 its otherwise becoming law.