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2021 New Mexico Statutes

Chapter 12 - Miscellaneous Public Affairs Matters

Article 10A - Public Health Emergency Response

Section 12-10A-5 - Declaring a state of public health emergency; terminating the emergency.

Universal Citation: NM Stat § 12-10A-5 (2021)

A. A state of public health emergency may be declared by the governor upon the occurrence of a public health emergency. Prior to a declaration of a state of public health emergency, the governor shall consult with the secretary of health. The governor shall authorize the secretary of health, the secretary of public safety and the director to coordinate a response to the public health emergency.

B. A state of public health emergency shall be declared in an executive order that specifies:

- (1) the nature of the public health emergency;
- (2) the political subdivisions or geographic areas affected by the public health emergency;
- (3) the conditions that caused the public health emergency;

- (4) the expected duration of the public health emergency, if less than thirty days;
- (5) the public health officials needed to assist in the coordination of a public health emergency response; and
- (6) any other provisions necessary to implement the executive order.

C. A declaration of a state of public health emergency shall not abrogate any disease-reporting requirements set forth in the Public Health Act [Chapter 24, Article 1 NMSA 1978].

D. A declaration of a state of public health emergency shall be terminated:

- (1) by the governor, after consultation with the secretary of health, upon determining that there is no longer a public health emergency; or
- (2) automatically after thirty days, unless renewed by the governor after consultation with the secretary of health.

E. Upon the termination of a state of public health emergency, the secretary of health shall consult with the secretary of public safety and the director to ensure public safety during termination procedures.

History: Laws 2003, ch. 218, § 5.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

Valid enforcement of public health emergency orders. — Where governor Michelle Lujan Grisham issued an executive order that a public health emergency existed in New Mexico due to the spread of COVID-19, invoked her powers under the All Hazard Emergency Management Act (AHEMA), §§ 12-10-1 to 12-10-10 NMSA 1978, and declared a public health emergency under the Public Health Emergency Response Act (PHERA), §§ 12-10A-1 to 12-10A-19 NMSA 1978, pursuant to 12-10A-5 NMSA 1978, and where the secretary of the New Mexico department of health, citing the governor's executive orders,

the PHERA, the Public Health Act (PHA), §§ 24-1-1 to 24-1-41 NMSA 1978, the Department of Health Act, §§ 9-7-1 to 9-7-18 NMSA 1978, and inherent constitutional powers, issued a series of public health emergency orders which restricted mass gatherings and the operations of certain businesses, requiring some to close entirely, and where approximately fourteen small businesses and business owners, the real parties in interest, filed suit against petitioners seeking declaratory relief to the effect that the secretary of health's emergency orders during the COVID-19 crisis are not authorized by the PHERA, and therefore the PHERA's penalty provision, 12-10A-19 NMSA 1978, is inapplicable, and where petitioners filed a petition for writ of superintending control and stay to resolve whether the emergency orders temporarily restricting business operations in response to the COVID-19 pandemic are authorized by and enforceable under the PHERA, the New Mexico supreme court granted the writ of superintending control, concluding that the legislature, through the PHERA, authorized petitioners to respond to a public health emergency through measures including the secretary of health's emergency orders temporarily restricting business operations, and petitioners may therefore utilize the PHERA's civil administrative penalty provision to enforce the secretary of health's emergency orders restricting business operations. *Grisham v. Reeb*, 2021-NMSC-006.

Public health order was not ultra vires or arbitrary and capricious. — Where, following the secretary of the department of health's (secretary) reinstatement of a ban on indoor dining, pursuant to an emergency health order issued to combat the spread of the coronavirus in New Mexico, six food and drink establishments (real parties in interest) filed an application in the district court seeking a temporary restraining order (TRO) and a preliminary and permanent injunction against governor Lujan Grisham and the secretary, claiming that the indoor dining ban is ultra vires and not enforceable and is unreasonable, arbitrary and capricious, and where the district court issued a temporary restraining order restraining governor Lujan Grisham and the secretary from enforcing the restrictions imposed upon restaurants and breweries, and where petitioners filed an emergency petition for a writ of superintending control and stay of the TRO, the New Mexico supreme court, taking judicial notice of the serious health risks posed by COVID-19, a highly contagious and potentially fatal disease, the disease's transmission within New Mexico, and the emergency orders issued by governor Lujan Grisham and the secretary, held that it was within the secretary's statutory authority to issue the public health order banning indoor dining, because the public health order does not infringe on the legislative branch by imposing through executive order substantive policy changes in an area of law reserved to the legislature, and the unique risks of indoor dining and the increased COVID-19 cases among New Mexico restaurant staff during the time period when indoor dining restrictions were relaxed show a real and substantial relation between the public health order's

temporary prohibition and object of controlling and suppressing the spread of COVID-19.
Lujan Grisham v. Romero, 2021-NMSC-009.

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