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# 2022 Georgia Code

## Title 38 - Military, Emergency Management, and Veterans Affairs

### Chapter 3 - Emergency Management

#### Article 3 - Emergency Powers

#### Part 1 - Governor

### § 38-3-51. Emergency Powers of Governor; Termination of Emergency; Limitations in Energy Emergency; Immunity

**Universal Citation:** GA Code § 38-3-51 (2022)

- a. In the event of actual or impending emergency or disaster of natural or human origin, or pandemic influenza emergency, or impending or actual enemy attack, or a public health emergency, within or affecting this state or against the United States, the Governor may declare that a state of emergency or disaster exists. As a condition precedent to declaring that a state of emergency or disaster exists as a result of a public health emergency, the Governor shall issue a call for a special session of the General Assembly pursuant to Article V, Section II, Paragraph VII of the Constitution of Georgia, which session shall convene at 8:00 A.M. on the second day following the date of such declaration for the purpose of concurring with or terminating the public health emergency. The state of emergency or disaster shall continue until the

Governor finds that the threat or danger has passed or the emergency or disaster has been dealt with, to the extent that emergency or disaster conditions no longer exist, and terminates the state of emergency or disaster. No state of emergency or disaster may continue for longer than 30 days unless renewed by the Governor. The General Assembly by concurrent resolution may terminate a state of emergency or disaster at any time. Thereupon, the Governor shall by appropriate action end the state of emergency or disaster.

- b. A declaration of a state of emergency or disaster shall activate the emergency and disaster response and recovery aspects of the state and local emergency or disaster plans applicable to the political subdivision or area in question and shall be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to Articles 1 through 3 of this chapter or any other law relating to emergencies or disasters.
- c. The Governor shall have and may exercise for such period as the state of emergency or disaster exists or continues the following additional emergency powers:
  1. To enforce all laws, rules, and regulations relating to emergency management and to assume direct operational control of all civil forces and helpers in the state;
  2. To seize, take for temporary use, or condemn property for the protection of the public in accordance with condemnation proceedings as provided by law;
  3. To sell, lend, give, or distribute all or any such property among the inhabitants of the state and to account to the proper agency for any funds received for the property; and
  4. To perform and exercise such other functions, powers, and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population.
- d. In addition to any other emergency powers conferred upon the Governor by law, he may:
  1. Suspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;
  2. Utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the emergency or disaster;

3. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;
  4. Commandeer or utilize any private property if he finds this necessary to cope with the emergency or disaster;  
  
**(4.1)** Compel a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary for emergency response. The use of such health care facility may include transferring the management and supervision of the health care facility to the Department of Public Health for a limited or unlimited period of time not extending beyond the termination of the public health emergency;
  5. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;
  6. Prescribe routes, modes of transportation, and destinations in connection with evacuation;
  7. Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;
  8. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, or combustibles; provided, however, that for purposes of this paragraph, the terms “explosives” and “combustibles” shall not include firearms or ammunition or any component thereof; and
  9. Make provision for the availability and use of temporary emergency housing.
- e. When the available funds are not sufficient for the purpose of paying the expenses incident to carrying out the provisions authorized by Articles 1 through 3 of this chapter, the Governor may transfer from any available fund in the state treasury such sum as may be necessary to meet the emergency or disaster; and the moneys so transferred shall be repaid to the fund from which transferred when moneys become available for that purpose by legislative appropriation or otherwise.
- f. In the event that the Governor proclaims an emergency or disaster, as defined by Articles 1 through 3 of this chapter, to be a catastrophe within the meaning of Article III, Section IX, Paragraph VI(b) of the Constitution of the state, the funds referred to in the paragraph may be utilized by the Governor for the purpose of carrying out the provisions authorized by Articles 1 through 3 of this chapter.
- g. In the event that the Governor proclaims an emergency or disaster, as defined in Articles 1 through 3 of this chapter, the Governor may provide welfare benefits to the citizens of this state in the form of grants to meet disaster related necessary expenses

or serious needs of individuals or families adversely affected by an emergency or disaster in those cases where the individuals or families are unable to meet the expenses or needs from other means, provided that such grants are authorized only when matching federal funds are available for such purposes pursuant to the Disaster Relief Act of 1974 (Pub. L. 93-288).

- h. If the Governor declares a state of emergency solely because of an energy emergency, he shall not have the authority to:
1. Seize, take for temporary use, or condemn property other than energy resources as authorized by paragraph (2) of subsection (c) of this Code section;
  2. Sell, lend, give, or distribute property other than energy resources as authorized by paragraph (3) of subsection (c) of this Code section; or
  3. Commandeer or utilize property other than energy resources as authorized by paragraph (4) of subsection (d) of this Code section.
- i. 1. The Governor may direct the Department of Public Health to coordinate all matters pertaining to the response of the state to a public health emergency including without limitation:
- A. Planning and executing public health emergency assessments, mitigation, preparedness response, and recovery for the state;
  - B. Coordinating public health emergency responses between state and local authorities;
  - C. Collaborating with appropriate federal government authorities, elected officials of other states, private organizations, or private sector companies;
  - D. Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies;
  - E. Organizing public information activities regarding state public health emergency response operations; and
  - F. Providing for special identification for public health personnel involved in a public health emergency.
2. The following due process procedures shall be applicable to any quarantine or vaccination program instituted pursuant to a declaration of a public health emergency:
- A. Consonant with maintenance of appropriate quarantine rules, the department shall permit access to counsel in person or by such other means as practicable that do not threaten the integrity of the quarantine;
  - B. An order imposing a quarantine or a vaccination program may be appealed but shall not be stayed during the pendency of the challenge. The burden of proof shall be on the state to demonstrate that there exists a

substantial risk of exposing other persons to imminent danger. With respect to vaccination, the state's burden of proof shall be met by clear and convincing evidence. With respect to quarantine, the state's burden of proof shall be met by a preponderance of the evidence;

- C. An individual or a class may challenge the order before any available judge of the superior courts in the county where the individual or a member of the class resides or in Fulton County. Such judge, upon attestation of the exigency of the circumstances, may proceed ex parte with respect to the state or may appoint counsel to represent the interests of the state or other unrepresented parties. The judge hearing the matter may consolidate a multiplicity of cases or, on the motion of a party or of the court, proceed to determine the interests of a class or classes. The rules of evidence applicable to civil cases shall be applied to the fullest extent practicable taking into account the circumstances of the emergency. All parties shall have the right to subpoena and cross-examine witnesses, but in enforcement of its subpoena powers the court shall take into account the circumstances of the emergency. All proceedings shall be transcribed to the extent practicable. Filing fees shall be waived and all costs borne by the state;
- D. The judge hearing the matter may enter an appropriate order upholding or suspending the quarantine or vaccination order. With respect to vaccination, the order may be applicable on notice to the department or its agents administering the vaccination, or otherwise in the court's discretion. With respect to quarantines, the order shall be automatically stayed for 48 hours;
- E. The department or any party may immediately appeal any order to the Supreme Court pursuant to paragraph (7) of subsection (a) of Code Section 5-6-34. The Supreme Court, or any available Justice thereof in the event that circumstances render a full court unavailable, shall consider the appeal on an expedited basis and may suspend any time requirements for the parties to file briefs. In the event no Justice is available, then a panel of the Court of Appeals, or any Judge thereof in the event that circumstances render a panel unavailable, shall consider the appeal on an expedited basis and may suspend any time requirements for the parties to file briefs. If the trial judge has proceeded ex parte or with counsel appointed for the state, the trial court shall either direct the filing of an appeal in its order or itself certify the order for appeal. Filing fees for appeal shall be waived, all costs

shall be borne by the state, and such appeals shall be heard expeditiously;  
and

F. No provisions of this paragraph shall be construed to limit or restrict the right of habeas corpus under the laws of the United States.

j. Any individual, partnership, association, or corporation who acts in accordance with an order, rule, or regulation entered by the Governor pursuant to the authority granted by this Code section will not be held liable to any other individual, partnership, association, or corporation by reason thereof in any action seeking legal or equitable relief.

A listing of Executive Orders issued in 2020 can be found at <https://gov.georgia.gov/executive-action/executive-orders>.

**History.** Ga. L. 1951, p. 224, § 7; Ga. L. 1973, p. 74, § 4; Ga. L. 1974, p. 558, § 1; Ga. L. 1975, p. 1551, § 1; Ga. L. 1977, p. 192, §§ 2, 3; Ga. L. 1981, p. 389, § 2; Ga. L. 1983, p. 3, § 59; Ga. L. 2002, p. 1386, §§ 12-15; Ga. L. 2009, p. 184, § 4/HB 217; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 701, § 1/HB 339; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2014, p. 599, § 2-3/HB 60.

### **Cross references.**

Governor's power to postpone or extend qualifying periods for election during state of emergency, § 21-2-50.1 .

For further provisions regarding emergency powers of Governor, §§ 38-2-6 , 38-3-22 , 45-12-29 et seq.

Power of Public Service Commission to allocate utility service so as to protect public health, safety, and welfare, § 46-2-71 .

### **Code Commission notes.**

Pursuant to Code Section 28-9-5, in 2004, "Article V, Section II" was substituted for "Article II, Section V" in subsection (a).

### **Editor's notes.**

Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.' "

Ga. L. 2014, p. 599, § 2-1/HB 60, not codified by the General Assembly, provides: “This part shall be known to be in honor of Representative Bobby Franklin.”

For application of this statute in 2020, see Executive Orders 03.23.20.01 and 04.20.20.01.  
For application of this statute in 2022, see Executive Orders 3.31.21.02 and 04.23.21.01.

A listing of Executive Orders issued in 2020 and 2022 can be found at <https://gov.georgia.gov/executive-action/executive-orders>.

### **U.S. Code.**

The federal Disaster Relief Act of 1974, referred to in subsection (g) of this Code section, is codified at 42 U.S.C. § 3231 et seq., and 42 U.S.C. § 5121 et seq.

### **Law reviews.**

For note on the 2002 amendment of this Code section, see 19 Georgia. St. U.L. Rev. 1 (2002).

For article, “Is Georgia Prepared for a Health Pandemic? Legal Issues Regarding Emergency Preparedness and Declaration of Emergency Health Pandemic in Georgia,” see 15 (No. 6) Ga. St. B.J. 30 (2010).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 47 (2014).

For article, “Lurching from Complacency to Panic in the Fight Against Dangerous Microbes: A Blueprint for a Common Secure Future,” see 67 Emory L.J. 337 (2018).

For article, “The Case for Streamlining Emergency Declaration Authorities and Adapting Legal Requirements to Ever-Changing Public Health Threats,” see 67 Emory L.J. 397 (2018).

For article, “Do State Lines Make Public Health Emergencies Worse? Federal Versus State Control of Quarantine,” see 67 Emory L.J. 491 (2018).

For article, “Proposed Constitutional Carry Act of 2019: To Amend Title 12 of the Official Code of Georgia Annotated, Relating to the Use or Possession of Any Handgun in Parks, Historic Sites, or Recreational Areas; and to Amend Title 16 of the Official Code of Georgia Annotated, Relating to the Definition of Carrying and Possession of Firearms & Executive

Order by the Governor Temporarily Extending Renewal Requirements for Weapons Carry Licenses,” see 37 Ga. St. U.L. Rev. 219 (2020).

For article, “Preemption: Executive Order by the Governor to Ensure a Safe & Healthy Georgia: Preemption,” see 37 Ga. St. U.L. Rev. 95 (2020).

For article, “Mandatory Quarantine: Administrative order by the Georgia Department of Public Health for Public Health Control Measures: Isolation Protocol,” see 37 Ga. St. U.L. Rev. 81 (2020).

For article on the 2020 amendment of this Code section, see 37 Ga. St. U.L. Rev. 135 (2020).

For article, “Forced Business Closures: Executive Orders by the Governor Closing Private Businesses,” see 37 Ga. St. U.L. Rev. 111 (2020).

For article, “Public Health State of Emergency: Executive Order by the Governor Declaring a Public Health State of Emergency,” see 37 Ga. St. U.L. Rev. 17 (2020).

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