

House Bill 358

By: Representatives Setzler of the 35<sup>th</sup>, Barr of the 103<sup>rd</sup>, Tarvin of the 2<sup>nd</sup>, Ehrhart of the 36<sup>th</sup>, Hill of the 3<sup>rd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 3 of Title 38 of the Official Code of Georgia Annotated,  
2 relating to emergency powers, so as to provide when a declaration of a state of emergency  
3 or disaster by the Governor shall expire; to provide for extensions by the General Assembly;  
4 to provide for limitations on emergency powers; to provide for related matters; to provide an  
5 effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 3 of Chapter 3 of Title 38 of the Official Code of Georgia Annotated, relating to  
9 emergency powers, is amended by revising Code Section 38-3-51, relating to the emergency  
10 powers of the Governor, termination of emergency, limitations in energy emergency, and  
11 immunity, as follows:

12 "38-3-51.

13 (a) In the event of actual or impending emergency or disaster of natural or human origin,  
14 or pandemic influenza emergency, or impending or actual enemy attack, or a public health  
15 emergency, within or affecting this state or against the United States, the Governor may  
16 declare that a state of emergency or disaster exists. As a condition precedent to declaring

17 that a state of emergency or disaster exists as a result of a public health emergency, the  
18 Governor shall issue a call for a special session of the General Assembly pursuant to  
19 Article V, Section II, Paragraph VII of the Constitution of Georgia, which session shall  
20 convene at 8:00 A.M. on the second day following the date of such declaration for the  
21 purpose of concurring with or terminating the public health emergency. The state of  
22 emergency or disaster shall continue until the Governor finds that the threat or danger has  
23 passed or the emergency or disaster has been dealt with, to the extent that emergency or  
24 disaster conditions no longer exist, and terminates the state of emergency or disaster. No  
25 state of emergency or disaster may continue for longer than 30 days unless renewed by ~~the~~  
26 Governor concurrent resolution of the General Assembly for initial or successive periods  
27 of not longer than 90 days each. The General Assembly by concurrent resolution may  
28 terminate a state of emergency or disaster at any time. Thereupon, the Governor shall by  
29 appropriate action end the state of emergency or disaster.

30 (b) A declaration of a state of emergency or disaster shall activate the emergency and  
31 disaster response and recovery aspects of the state and local emergency or disaster plans  
32 applicable to the political subdivision or area in question and shall be authority for the  
33 deployment and use of any forces to which the plan or plans apply and for use or  
34 distribution of any supplies, equipment, and materials and facilities assembled, stockpiled,  
35 or arranged to be made available pursuant to Articles 1 through 3 of this chapter or any  
36 other law relating to emergencies or disasters.

37 (c) Subject to any limitations which may be prescribed by the General Assembly in  
38 concurring with the declaration of a state of emergency or disaster or adopting a concurrent  
39 resolution extending such state of emergency or disaster, the ~~The~~ Governor shall have and  
40 may exercise for such period as the state of emergency or disaster exists or continues the  
41 following additional emergency powers:

42 (1) To enforce all laws, rules, and regulations relating to emergency management and to  
43 assume direct operational control of all civil forces and helpers in the state;

- 44 (2) To seize, take for temporary use, or condemn property for the protection of the public  
45 in accordance with condemnation proceedings as provided by law;
- 46 (3) To sell, lend, give, or distribute all or any such property among the inhabitants of the  
47 state and to account to the proper agency for any funds received for the property; and
- 48 (4) To perform and exercise such other functions, powers, and duties as may be deemed  
49 necessary to promote and secure the safety and protection of the civilian population.
- 50 (d) Subject to any limitations which may be prescribed by the General Assembly in  
51 concurring with the declaration of a state of emergency or disaster or adopting a concurrent  
52 resolution extending such state of emergency or disaster and in ~~fr~~ addition to any other  
53 emergency powers conferred upon the Governor by law, ~~he~~ the Governor may:
- 54 (1) Suspend any regulatory statute prescribing the procedures for conduct of state  
55 business, or the orders, rules, or regulations of any state agency, if strict compliance with  
56 any statute, order, rule, or regulation would in any way prevent, hinder, or delay  
57 necessary action in coping with the emergency or disaster;
- 58 (2) Utilize all available resources of the state government and of each political  
59 subdivision of the state as reasonably necessary to cope with the emergency or disaster;
- 60 (3) Transfer the direction, personnel, or functions of state departments and agencies or  
61 units thereof for the purpose of performing or facilitating emergency services;
- 62 (4) Commandeer or utilize any private property if ~~he~~ the Governor finds this necessary  
63 to cope with the emergency or disaster;
- 64 (4.1) Compel a health care facility to provide services or the use of its facility if such  
65 services or use are reasonable and necessary for emergency response. The use of such  
66 health care facility may include transferring the management and supervision of the  
67 health care facility to the Department of Public Health for a limited or unlimited period  
68 of time not extending beyond the termination of the public health emergency;

- 69 (5) Direct and compel the evacuation of all or part of the population from any stricken  
70 or threatened area within the state if ~~he~~ the Governor deems this action necessary for the  
71 preservation of life or other disaster mitigation, response, or recovery;
- 72 (6) Prescribe routes, modes of transportation, and destinations in connection with  
73 evacuation;
- 74 (7) Control ingress and egress to and from a disaster area, the movement of persons  
75 within the area, and the occupancy of premises therein;
- 76 (8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,  
77 explosives, or combustibles; provided, however, that for purposes of this paragraph, the  
78 terms 'explosives' and 'combustibles' shall not include firearms or ammunition or any  
79 component thereof; and
- 80 (9) Make provision for the availability and use of temporary emergency housing.
- 81 (e) When the available funds are not sufficient for the purpose of paying the expenses  
82 incident to carrying out the provisions authorized by Articles 1 through 3 of this chapter,  
83 the Governor may transfer from any available fund in the state treasury such sum as may  
84 be necessary to meet the emergency or disaster; and the moneys so transferred shall be  
85 repaid to the fund from which transferred when moneys become available for that purpose  
86 by legislative appropriation or otherwise.
- 87 (f) In the event that the Governor proclaims an emergency or disaster, as defined by  
88 Articles 1 through 3 of this chapter, to be a catastrophe within the meaning of Article III,  
89 Section IX, Paragraph VI(b) of the Constitution of the state, the funds referred to in the  
90 paragraph may be utilized by the Governor for the purpose of carrying out the provisions  
91 authorized by Articles 1 through 3 of this chapter.
- 92 (g) In the event that the Governor proclaims an emergency or disaster, as defined in  
93 Articles 1 through 3 of this chapter, the Governor may provide welfare benefits to the  
94 citizens of this state in the form of grants to meet disaster related necessary expenses or  
95 serious needs of individuals or families adversely affected by an emergency or disaster in

96 those cases where the individuals or families are unable to meet the expenses or needs from  
97 other means, provided that such grants are authorized only when matching federal funds  
98 are available for such purposes pursuant to the Disaster Relief Act of 1974 (Pub. L.  
99 93-288).

100 (h) If the Governor declares a state of emergency solely because of an energy emergency,  
101 ~~he~~ the Governor shall not have the authority to:

102 (1) Seize, take for temporary use, or condemn property other than energy resources as  
103 authorized by paragraph (2) of subsection (c) of this Code section;

104 (2) Sell, lend, give, or distribute property other than energy resources as authorized by  
105 paragraph (3) of subsection (c) of this Code section; or

106 (3) Commandeer or utilize property other than energy resources as authorized by  
107 paragraph (4) of subsection (d) of this Code section.

108 (i)(1) Subject to any limitations which may be prescribed by the General Assembly in  
109 concurring with the declaration of a state of emergency or disaster or adopting a  
110 concurrent resolution extending such state of emergency or disaster, the ~~The~~ Governor  
111 may direct the Department of Public Health to coordinate all matters pertaining to the  
112 response of the state to a public health emergency including without limitation:

113 (A) Planning and executing public health emergency assessments, mitigation,  
114 preparedness response, and recovery for the state;

115 (B) Coordinating public health emergency responses between state and local  
116 authorities;

117 (C) Collaborating with appropriate federal government authorities, elected officials of  
118 other states, private organizations, or private sector companies;

119 (D) Coordinating recovery operations and mitigation initiatives subsequent to public  
120 health emergencies;

121 (E) Organizing public information activities regarding state public health emergency  
122 response operations; and

123 (F) Providing for special identification for public health personnel involved in a public  
124 health emergency.

125 (2) The following due process procedures shall be applicable to any quarantine or  
126 vaccination program instituted pursuant to a declaration of a public health emergency:

127 (A) Consonant with maintenance of appropriate quarantine rules, the department shall  
128 permit access to counsel in person or by such other means as practicable that do not  
129 threaten the integrity of the quarantine;

130 (B) An order imposing a quarantine or a vaccination program may be appealed but  
131 shall not be stayed during the pendency of the challenge. The burden of proof shall be  
132 on the state to demonstrate that there exists a substantial risk of exposing other persons  
133 to imminent danger. With respect to vaccination, the state's burden of proof shall be  
134 met by clear and convincing evidence. With respect to quarantine, the state's burden  
135 of proof shall be met by a preponderance of the evidence;

136 (C) An individual or a class may challenge the order before any available judge of the  
137 superior courts in the county where the individual or a member of the class resides or  
138 in Fulton County. Such judge, upon attestation of the exigency of the circumstances,  
139 may proceed ex parte with respect to the state or may appoint counsel to represent the  
140 interests of the state or other unrepresented parties. The judge hearing the matter may  
141 consolidate a multiplicity of cases or, on the motion of a party or of the court, proceed  
142 to determine the interests of a class or classes. The rules of evidence applicable to civil  
143 cases shall be applied to the fullest extent practicable taking into account the  
144 circumstances of the emergency. All parties shall have the right to subpoena and  
145 cross-examine witnesses, but in enforcement of its subpoena powers the court shall take  
146 into account the circumstances of the emergency. All proceedings shall be transcribed  
147 to the extent practicable. Filing fees shall be waived and all costs borne by the state;  
148 (D) The judge hearing the matter may enter an appropriate order upholding or  
149 suspending the quarantine or vaccination order. With respect to vaccination, the order

150 may be applicable on notice to the department or its agents administering the  
151 vaccination, or otherwise in the court's discretion. With respect to quarantines, the  
152 order shall be automatically stayed for 48 hours;

153 (E) The department or any party may immediately appeal any order to the Supreme  
154 Court pursuant to paragraph (7) of subsection (a) of Code Section 5-6-34. The Supreme  
155 Court, or any available Justice thereof in the event that circumstances render a full court  
156 unavailable, shall consider the appeal on an expedited basis and may suspend any time  
157 requirements for the parties to file briefs. In the event no Justice is available, then a  
158 panel of the Court of Appeals, or any Judge thereof in the event that circumstances  
159 render a panel unavailable, shall consider the appeal on an expedited basis and may  
160 suspend any time requirements for the parties to file briefs. If the trial judge has  
161 proceeded ex parte or with counsel appointed for the state, the trial court shall either  
162 direct the filing of an appeal in its order or itself certify the order for appeal. Filing fees  
163 for appeal shall be waived, all costs shall be borne by the state, and such appeals shall  
164 be heard expeditiously; and

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

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

171 **SECTION 2.**

172 This Act shall become effective upon its approval by the Governor or upon its becoming law  
173 without such approval.

174

**SECTION 3.**

175 All laws and parts of laws in conflict with this Act are repealed.