

House Bill 339 (AS PASSED HOUSE AND SENATE)

By: Representatives Welch of the 110th, Willard of the 49th, Abrams of the 84th, Mills of the 25th, Maddox of the 127th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 3 of Chapter 3 of Title 38 of the Official Code of Georgia Annotated, relating to emergency powers, so as to revise the courts to which a challenge of a quarantine or vaccination order may be brought; to revise the manner of appealing orders concerning such challenges; to remove the Chief Judge of the Court of Appeals from the definition of authorized judicial officials for certain judicial emergencies; to extend the duration of a judicial emergency order when a public health emergency exists; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 3 of Title 38 of the Official Code of Georgia Annotated, relating to emergency powers, is amended by revising subsection (i) of Code Section 38-3-51, relating to emergency powers of the Governor, as follows:

"(i)(1) The Governor may direct the Department of Community 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 state courts, the superior courts, the Court of Appeals, or the Supreme Court~~ 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 ~~within 24 hours to the Court of Appeals, the Supreme Court pursuant to paragraph (7) of subsection (a) of Code Section 5-6-34. The Supreme Court, or to any available judge~~ 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."

SECTION 2.

Said article is further amended by revising paragraph (1) of Code Section 38-3-60, relating to definitions regarding judicial emergencies, as follows:

"(1) 'Authorized judicial official' means any of the following officials when acting with regard to his or her respective jurisdiction:

(A) The Chief Justice of the Georgia Supreme Court;

~~(B) The Chief Judge of the Georgia Court of Appeals;~~

~~(C)(B)~~ A chief judge of a Georgia superior court judicial circuit; or

~~(D)(C)~~ The replacement for or successor to any of the officials set forth in subparagraphs (A) through ~~(C)~~ and (B) of this paragraph, as determined by the applicable rules of incapacitation and succession, should such official become incapacitated or otherwise unable to act."

SECTION 3.

Said article is further amended by revising subsection (b) of Code Section 38-3-61, relating to declaration of judicial emergency, as follows:

"(b) An order declaring the existence of a judicial emergency shall be limited to an initial duration of not more than 30 days; provided, however, that the order may be modified or extended for no more than two periods not exceeding 30 days each unless a public health emergency exists as set forth in Code Section 38-3-51, in which case the Chief Justice of the Supreme Court of Georgia may extend the emergency order for so long as such emergency exists, as declared by the Governor. Any modification or extension of the initial order shall require information regarding the same matters set forth in subsection (a) of this Code section for the issuance of the initial order."

SECTION 4.

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