

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 955

S.P. 307

In Senate, March 9, 2021

An Act To Narrowly Tailor Emergency Powers of the Governor and Other Public Officials

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator KEIM of Oxford.
Cosponsored by Representative FECTEAU of Augusta and
Senators: BENNETT of Oxford, FARRIN of Somerset, GUERIN of Penobscot,
Representatives: BRADSTREET of Vassalboro, MORRIS of Turner.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 37-B MRSA §742, sub-§1-A** is enacted to read:

3 **1-A. Limitation on emergency powers.** The exercise of any emergency power a state
4 or local official may have under the Constitution of Maine or the laws of this State that
5 binds or regulates the public is limited as provided in this subsection.

6 A. As used in this subsection, unless the context otherwise indicates, the following
7 terms have the following meanings.

8 (1) "Constitutional right" means any right guaranteed under the United States
9 Constitution or the Constitution of Maine including, but not limited to, the right to:

10 (a) Travel, work, assemble and speak;

11 (b) Exercise religion without government interference;

12 (c) Make contracts and hold property without government interference;

13 (d) Be free from unreasonable searches and seizures; and

14 (e) Purchase and keep firearms and ammunition.

15 (2) "Emergency order" means an order, decree, regulation or other mandate
16 proclaimed or promulgated by a state or local official.

17 (3) "State or local official" means the Governor, a person within the executive
18 branch or an elected or appointed member of a municipal government.

19 B. Notwithstanding any law to the contrary, an emergency order that is issued by a
20 state or local official that binds, curtails or infringes the rights of private parties must
21 be narrowly tailored to serve a compelling health or safety purpose. Only the Governor
22 may issue an order that infringes constitutional rights, and that order must be narrowly
23 tailored to serve a compelling health or safety purpose. Each emergency order must be
24 limited in duration, applicability and scope in order to reduce any infringement of the
25 rights of private parties or constitutional rights.

26 C. A court of this State has jurisdiction to hear a case challenging the legality of an
27 emergency order, including compliance with the limitations imposed on emergency
28 orders pursuant to this subsection. A court shall expedite consideration of a challenge
29 brought pursuant to this paragraph to the extent practicable. Inequality in the
30 applicability of the impact of emergency orders on analogous groups, situations and
31 circumstances may constitute one ground among others for a court to invalidate or
32 enjoin an emergency order, or some of its applications, on the basis that it is not
33 narrowly tailored to serve a compelling public health or safety purpose.

34 **SUMMARY**

35 This bill requires the emergency powers exercised by the Governor, a person within
36 the executive branch or a municipal official that bind, curtail or infringe the rights of private
37 parties to be narrowly tailored to serve a compelling health or safety purpose and to be
38 limited in duration, applicability and scope to reduce any infringement of individual liberty.
39 Only the Governor may issue an order that infringes a right guaranteed under the United
40 States Constitution or the Constitution of Maine, including, but not limited to, freedom of

1 travel, assembly, work, speech, religion, contract and purchase and possession of arms and
2 ammunition, and that order must be narrowly tailored to serve a compelling health or safety
3 purpose limited in duration, applicability and scope to reduce any infringement of a
4 constitutional right.

5 This bill also gives a state court jurisdiction to hear a case challenging the legality of
6 the exercise of emergency powers and requires the court to expedite consideration of the
7 case to the extent practicable. Inequality in the applicability of impact of emergency orders
8 on analogous groups, situations and circumstances may constitute one ground among
9 others for a court to invalidate or enjoin an emergency order, or some of its applications,
10 on the basis that it is not narrowly tailored to serve a compelling public health or safety
11 purpose.