



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-5968/1
SWB&MLJ:amn

2019 ASSEMBLY BILL 1037

March 26, 2020 - Introduced by Representatives SORTWELL, RAMTHUN, BRANDTJEN and WICHGERS, cosponsored by Senators CRAIG and KAPENGA. Referred to Committee on Rules.

1 **AN ACT** *to renumber and amend* 323.10; and *to create* 175.39, 252.02 (7m),
2 252.02 (8), 323.10 (3), 323.12 (1) (d) and 323.14 (3) (c) of the statutes; **relating**
3 **to:** the length of time for a declared state of emergency; reporting of arrests for
4 a violation of an order relating to the control of an outbreak or epidemic;
5 requiring legislative approval of any statewide order mandating individuals to
6 stay at home for reasons related to an epidemic, pandemic, or communicable
7 disease; requiring a written report to the legislature detailing the justification
8 for any ban of gatherings of 50 or fewer individuals.

Analysis by the Legislative Reference Bureau

Under current law, the governor may issue an executive order declaring a state of emergency if he or she determines that an emergency exists due to disaster, public health emergency, or computer or telecommunications systems. Under current law, a state of emergency cannot exceed 60 days, unless it is extended by joint resolution of the legislature, and the executive order may be revoked at the discretion of either the governor by executive order or the legislature by joint resolution.

This bill requires the governor to submit a copy of any order declaring a state of emergency that may exceed 30 days to the Joint Committee on Legislative Organization. Under the bill, if the cochairpersons of JCLO do not notify the

ASSEMBLY BILL 1037

governor that JCLO has scheduled a meeting to review the order within 14 working days after the date the governor submits the order, the state of emergency may last for up to 60 days. If, within 14 working days after the date the governor submits the order, the cochairpersons of JCLO notify the governor that JCLO has scheduled a meeting to review the order, the state of emergency may exceed 30 days only if approved or as modified by JCLO. This bill applies retroactively to any executive order declaring a state of emergency that is in effect on the effective date of the bill.

Under current law, a person who fails to comply with an order issued by the Department of Health Services for the control of an outbreak or epidemic may be imprisoned for not more than 30 days or fined not more than \$500 or both. Under this bill, if a person is arrested for such a violation, the arresting law enforcement agency must immediately report the arrest to the legislature.

This bill provides that any statewide order issued by DHS or any other state agency requiring individuals to stay at their home or place of residence for reasons related to an epidemic, pandemic, or communicable disease may not go into effect unless legislation authorizing the specific order is enacted.

Under current law, the governor may issue an executive order declaring a state of emergency. During a declared state of emergency, state agencies have authority to issue orders and otherwise act to respond to the emergency. Regardless of whether a state of emergency has been declared, under current law, without additional approval, DHS may, among other things, close schools and forbid public gatherings in schools, churches, and other places to control outbreaks and epidemics, and authorize and implement all emergency measures necessary to control communicable diseases.

This bill requires that before any ban of gatherings of 50 or fewer individuals goes into effect, a written report be submitted to the legislature detailing the justification for the ban, including how the restrictions in the order serve a compelling governmental interest and are narrowly tailored to achieve that compelling governmental interest.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 175.39 of the statutes is created to read:

2 **175.39 Arrest for violation of an order related to the control of an**
3 **outbreak or epidemic. (1)** In this section, “law enforcement agency” has the
4 meaning given in s. 165.83 (1) (b).

5 **(2)** If a person is arrested for violation of s. 252.25 for failure to comply with
6 an order issued under ch. 252 relating to the control of an outbreak or epidemic, the

ASSEMBLY BILL 1037

1 arresting law enforcement agency shall immediately submit a report of the arrest to
2 the chief clerk of each house of the legislature for distribution to the legislature under
3 s. 13.172 (2).

4 **SECTION 2.** 252.02 (7m) of the statutes is created to read:

5 252.02 **(7m)** Before the department issues any order banning gatherings of 50
6 or fewer individuals under this section, the department of health services shall
7 submit to the legislature under s. 13.172 (2) a report detailing the justification for
8 the order, including how the restrictions in the order serve a compelling
9 governmental interest and are narrowly tailored to achieve that compelling
10 governmental interest.

11 **SECTION 3.** 252.02 (8) of the statutes is created to read:

12 252.02 **(8)** Any statewide order issued by the department or any other state
13 agency requiring individuals present in the state to stay at their home or place of
14 residence for reasons relating to an epidemic, pandemic, or communicable disease,
15 may not take effect unless legislation has been enacted authorizing the specific order.

16 **SECTION 4.** 323.10 of the statutes is renumbered 323.10 (1) and amended to
17 read:

18 323.10 **(1)** The governor may issue an executive order declaring a state of
19 emergency for the state or any portion of the state if he or she determines that an
20 emergency resulting from a disaster or the imminent threat of a disaster exists. If
21 the governor determines that a public health emergency exists, he or she may issue
22 an executive order declaring a state of emergency related to public health for the
23 state or any portion of the state and may designate the department of health services
24 as the lead state agency to respond to that emergency. If the governor determines
25 that the emergency is related to computer or telecommunication systems, he or she

ASSEMBLY BILL 1037**SECTION 4**

1 may designate the department of administration as the lead agency to respond to
2 that emergency. ~~A state of emergency shall not exceed 60 days, unless the state of~~
3 ~~emergency is extended by joint resolution of the legislature.~~

4 **(2)** A copy of the executive order shall be filed with the secretary of state. The
5 executive order may be revoked at the discretion of either the governor by executive
6 order or the legislature by joint resolution.

7 **SECTION 5.** 323.10 (3) of the statutes is created to read:

8 323.10 **(3)** (a) A state of emergency may not exceed 60 days, unless the state
9 of emergency is extended by joint resolution of the legislature.

10 (b) If a state of emergency is declared that may exceed 30 days, the governor
11 shall submit a copy of the executive order to the joint committee on legislative
12 organization. If the cochairpersons of the committee do not notify the governor that
13 the committee has scheduled a meeting to review the order within 14 working days
14 after the date the governor submits the order, the state of emergency may last for up
15 to 60 days. If, within 14 working days after the date the governor submits the order,
16 the cochairpersons of the committee notify the governor that the committee has
17 scheduled a meeting to review the order, the state of emergency may exceed 30 days
18 only if approved or as modified by the committee.

19 **SECTION 6.** 323.12 (1) (d) of the statutes is created to read:

20 323.12 **(1)** (d) Before issuing or directing issuance of any order banning
21 gatherings of 50 or fewer individuals under this section, the governor, or the agency
22 directed by the governor, submit to the legislature a report detailing the justification
23 for the order, including how the restrictions in the order serve a compelling
24 governmental interest and are narrowly tailored to achieve that compelling
25 governmental interest.

