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

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

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

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

(2) If a person is arrested for violation of s. 252.25 for failure to comply with
an order issued under ch. 252 relating to the control of an outbreak or epidemic, the
arresting law enforcement agency shall immediately submit a report of the arrest to
the chief clerk of each house of the legislature for distribution to the legislature under
s. 13.172 (2).

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

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

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

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

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

323.10 (1) The governor may issue an executive order declaring a state of
emergency for the state or any portion of the state if he or she determines that an
emergency resulting from a disaster or the imminent threat of a disaster exists. If
the governor determines that a public health emergency exists, he or she may issue
an executive order declaring a state of emergency related to public health for the
state or any portion of the state and may designate the department of health services
as the lead state agency to respond to that emergency. If the governor determines
that the emergency is related to computer or telecommunication systems, he or she
may designate the department of administration as the lead agency to respond to that emergency. A state of emergency shall not exceed 60 days, unless the state of emergency is extended by joint resolution of the legislature.

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

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

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

(b) If a state of emergency is declared that may exceed 30 days, the governor shall submit a copy of the executive order to the joint committee on legislative organization. If the cochairpersons of the committee do not notify the governor that the committee 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 the committee notify the governor that the committee has scheduled a meeting to review the order, the state of emergency may exceed 30 days only if approved or as modified by the committee.

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

323.12 (1) (d) Before issuing or directing issuance of any order banning gatherings of 50 or fewer individuals under this section, the governor, or the agency directed by the governor, submit to the legislature a report detailing the justification for the order, including how the restrictions in the order serve a compelling governmental interest and are narrowly tailored to achieve that compelling governmental interest.
SECTION 7. 323.14 (3) (c) of the statutes is created to read:

323.14 (3) (c) Before issuing or directing issuance of any order banning gatherings of 50 or fewer individuals under this section, the governing body of a local unit of government or its agent shall submit to the legislature a report detailing the justification for the order, including how the restrictions in the order serve a compelling governmental interest and are narrowly tailored to achieve that compelling governmental interest.

SECTION 8. Initial applicability.

(1) DECLARATION OF A STATE OF EMERGENCY. The treatment of s. 323.10 first applies retroactively to any executive order declaring a state of emergency in effect on the effective date of this subsection.

(END)