

Governor's emergency powers, Minn. Stat. ch 12

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Topics

1. Overview of ch. 12 provisions
2. History - emergency powers
3. Questions

Overview

Ch. 12 Provisions

Policy Declared (§ 12.02)

“Because of the existing and increasing possibility of the occurrence of natural and other disasters of major size and destructiveness and in order to (1) ensure that preparations of this state will be adequate to deal with disasters, (2) generally protect the public peace, health, and safety, and (3) preserve the lives and property of the people of the state, the legislature finds and declares it necessary.... to confer upon the governor and upon governing bodies of the political subdivisions of the state the emergency and disaster powers provided in this chapter”.

Emergency Declarations (§ 12.31)

A governor may declare the following emergencies:

- **National security** – federal government indicates the imminence of a national security emergency or major Minnesota disaster from enemy sabotage or other hostile action
- **Peacetime** – an act of nature, a technological failure or malfunction, a terrorist incident, an industrial accident, a hazardous materials accident, or a civil disturbance endangers life and property and local government resources are inadequate to handle the situation

Peacetime Emergency (§ 12.31)

- Limited to 5 days unless extended by executive council up to 30 days
- When declaring a Peacetime Emergency, governor must immediately notify House and Senate majority and minority party leaders
- Must be given prompt and general publicity and filed with the secretary of state

Legislature (§ 12.31, subd. 2)

- If governor determines a need to extend a Peacetime Emergency beyond 30 days and legislature is not in session, governor must immediately call a special session
- By majority vote of House and Senate, legislature may terminate a Peacetime Emergency extending beyond 30 days
- The legislature's authority to end a peacetime emergency does not limit the governor's authority over or command of the Minnesota National Guard

Emergency Powers (§ 12.21)

Cooperate with the federal government and other states in matters pertaining to emergency management, including the direction and control of:

- the conduct of persons in the state, including entrance or exit from any stricken or threatened public place, and facility occupancy
- public meetings or gatherings
- the evacuation, reception, and sheltering of persons
- the movement of pedestrians and all forms of public and private transportation

Emergency Powers, cont.

- Require any person – except members of the military and officers of the state or a political subdivision – to perform emergency management services (§ 12.34)
- Commandeer for emergency management purposes any motor vehicles, tools, appliances, medical supplies, or other personal property and any facilities – compensation required (§ 12.34)
- Order temporary care facilities to care for seriously ill or injured persons when regional hospital systems are overwhelmed (§ 12.61)
- Acting through MDH, order a person who refuses treatment, testing, or vaccination into isolation or quarantine (§ 12.39)

Emergency Powers, cont.

- Authorize MDE to alter school schedules, curtail school activities, or order schools closed, including charter schools and elementary schools enrolling prekindergarten pupils in district programs (§ 12.21)
- Transfer the direction, personnel, or functions of state agencies to perform or facilitate response and recovery (§ 12.21)
- Request aid from professionals licensed in another state or Canada, with corresponding Minnesota license requirements waived while the person is rendering aid (§ 12.42)

Emergency Powers, cont.

- Without complying with time-consuming procedures and formalities, enter into contracts and incur obligations necessary to protect the health and safety of persons and the safety of property, and to provide emergency assistance to victims (§ 12.36)
- Direct the safe disposition of dead human bodies as may be reasonable and necessary for emergency response, and limit visitations and funerals due to public health risks (§ 12.381)
- Alter or adjust the working hours, leave policies, and payroll of executive branch employees to minimize the impact of emergency – conforming to applicable state laws, rules, and collective bargaining agreements to the extent practicable (§ 12.21)
- Require local emergency management agencies to execute and enforce gubernatorial orders and rules (§ 12.28)

Force of law (§§ 12.21 and 12.32)

- Governor may make, amend, and rescind executive orders and rules necessary to carry out the provisions of ch. 12, without formal rulemaking
- Orders and rules have the full force and effect of law during the emergency if approved by the executive council and filed with the secretary of state
- Any inconsistent rule (state agency) or ordinance (political subdivision) is suspended during the declared emergency and to the extent the emergency exists

Default criminal penalty (§ 12.45)

Unless a different penalty or punishment is specifically prescribed, a person who willfully violates a provision of ch. 12 or a rule or order having the force and effect of law and issued under authority of ch. 12 is:

- guilty of a misdemeanor, and
- upon conviction must be punished by a fine not to exceed \$1,000, or by imprisonment for not more than 90 days

History

Emergency Powers

1951: Civil Defense

Minnesota Civil Defense Act (Laws 1951, ch. 694)

Among other things, the act:

- declared that in order to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property of the people of the state, it is necessary to, among other things, grant the governor new emergency powers;
- authorized the governor to declare a Civil Defense Emergency lasting up to 30 days in the event of an actual attack on the United States or, within Minnesota, a major disaster from enemy sabotage or other hostile action;
- authorized the governor, during a declared Civil Defense Emergency, to make, amend, and rescind orders, rules, and regulations within the limits conferred herein – with such having the force and effect of law if approved by the executive council and filed with the secretary of state;
- suspended any conflicting rule, regulation, or ordinance of any agency or political subdivision of the state during the Civil Defense Emergency and to the extent the conflict exists; and
- required the governor, if the legislature was not in session, to immediately convene the House and Senate when declaring a Civil Defense Emergency.

1979: Peacetime

Peacetime Emergency established (Laws 1979, ch. 65)

Among other things, the act:

- authorized the governor to declare a Peacetime Emergency when an act of nature, industrial accident, or hazardous materials accident endangers life and property and local government resources are inadequate;
- provided that a declaration of peacetime emergency invokes the response and recovery aspects of the state's civil defense plan and may authorize aid; and
- limited the duration of a peacetime emergency to five days, unless extended by resolution of the executive council up to 30 days.

1996: Modernization

The Minnesota Emergency Management Act of 1996 (Laws 1996, ch. 344)

Among other things, the act:

- modernized ch. 12 statutes and programs to expressly address emergencies and disasters generally, including natural disasters;
- changed “Civil Defense Emergency” to its current name, “National Security Emergency”; and
- added “civil disturbance” to the list of events for which a governor may declare a Peacetime Emergency.

1999: "Y2K"

Triggering events expanded before Year 2000 (Laws 1999, ch. 250)

Among other things, the act added the following events for which a governor may declare a Peacetime Emergency:

- technological failure or malfunction, and
- terrorist incident.

2002: Public Health Emergency

The Minnesota Emergency Health Powers Act (Laws 2002, ch. 402)

Among other things, the act:

- created a new Public Health Emergency and authorized the governor to declare a National Security Emergency or a Peacetime Emergency in response to a Public Health Emergency;
- granted the governor power to restrict entrance or exit from any stricken or threatened public place, occupancy of facilities, and all forms of private and public transportation;
- provided that an emergency declared due to a Public Health Emergency automatically terminates 30 days after declaration unless renewed by the governor;
- provided that gubernatorial orders and rules issued during a Peacetime Emergency declared due to a Public Health Emergency have the full force and effect of law if approved by the executive council and filed with the secretary of state;

Public Health Emergency, cont.

The Minnesota Emergency Health Powers Act (Laws 2002, ch. 402)

The act also:

- empowered the governor to compel participation in emergency management, commandeer personal property and facilities, direct dead body disposition, limit funerals and visitations, and issue orders and rules that have the force and effect of law during a Public Health Emergency;
- required the governor, when declaring or renewing a Peacetime Emergency due to a Public Health Emergency, to call the legislature into session;
- required the governor, when declaring an emergency in response to a Public Health Emergency, to notify House and Senate leadership and the chairs and ranking minority members of the House and Senate judiciary and health committees regarding how the emergency may impact the public; and
- authorized the legislature to terminate an emergency declared due to a Public Health Emergency at any time by a majority vote of each body.

2005: All-hazards Approach

Public Health Emergency Repealed (Laws 2005, chs. 149 & 150)

Among other things, the act:

- removed references to Public Health Emergency, or simply allowed them to expire;
- retained and in some cases modified specific pieces of the expiring 2002 language, including provisions allowing the legislature to end any Peacetime Emergency by majority vote if the Emergency extends beyond 30 days, and requiring the governor to call a special session when extending a Peacetime Emergency beyond 30 days; and
- authorized the governor to exercise ch. 12 emergency powers and issue orders and rules that have the force and effect of law during any peacetime emergency.

Questions?



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