

26-303. Emergency powers of governor; termination; authorization for adjutant general; limitation; extension; report; notices; appeals

A. During a state of war emergency, the governor may:

1. Suspend the provisions of any statute prescribing the procedure for conduct of state business, or the orders or rules of any state agency, if the governor determines and proclaims that strict compliance with the provisions of any such statute, order or rule would in any way prevent, hinder or delay mitigation of the effects of the emergency.

2. Commandeer and use any property, except for firearms or ammunition or firearms or ammunition components, or personnel deemed necessary in carrying out the responsibilities vested in the office of the governor by this chapter as chief executive of this state, and thereafter this state shall pay reasonable compensation for the property as follows:

(a) If property is taken for temporary use, the governor, within ten days after the taking, shall determine the amount of compensation to be paid for the property. If the property is returned in a damaged condition, the governor, within ten days after its return, shall determine the amount of compensation to be paid for such damage.

(b) If the governor deems it necessary for this state to take title to property under this section, the governor shall then cause the owner of the property to be notified thereof in writing by registered mail, postage prepaid, and then cause a copy of the notice to be filed with the secretary of state.

(c) If the owner refuses to accept the amount of compensation fixed by the governor for the property referred to in subdivisions (a) and (b) of this paragraph, the amount of compensation shall be determined by appropriate proceedings in the superior court in the county where the property was originally taken.

B. During a state of war emergency, the governor shall have complete authority over all agencies of the state government and shall exercise all police power vested in this state by the constitution and laws of this state in order to effectuate the purposes of this chapter.

C. The powers granted to the governor by this chapter with respect to a state of war emergency shall terminate if the legislature is not in session and the governor, within twenty-four hours after the beginning of such a state of war emergency, has not issued a call for an immediate special session of the legislature for the purpose of legislating on subjects relating to such a state of war emergency.

D. The governor may proclaim a state of emergency, which shall take effect immediately in an area affected or likely to be affected if the governor finds that circumstances described in section 26-301, paragraph 15 exist.

E. During a state of emergency:

1. The governor shall have complete authority over all agencies of the state government and the right to exercise, within the area designated, all police power vested in this state by the constitution and laws of this state in order to effectuate the purposes of this chapter.

2. The governor may direct all agencies of the state government to use and employ state personnel, equipment and facilities to perform any activities designed to prevent or alleviate actual and threatened damage due to the emergency. The governor may direct such agencies to provide supplemental services and equipment to political subdivisions to restore any services in order to provide for the health and safety of the citizens of the affected area.

F. Except as provided in subsection G of this section, the powers granted to the governor by this chapter with respect to a state of emergency shall terminate when the state of emergency has been terminated by proclamation of the governor or by concurrent resolution of the legislature declaring it at an end.

G. Beginning January 2, 2023, the governor may issue an initial proclamation with respect to a state of emergency for a public health emergency as described in section 36-787 for a period of not more than thirty days. The governor may extend the state of emergency for not more than one hundred twenty days, but any extension may not be for a period of more than thirty days. The state of emergency shall terminate after one hundred twenty days, unless the state of emergency is extended, in whole or in part, by passage of a concurrent resolution of the legislature. The legislature may extend the state of emergency as many times as necessary by concurrent resolution, but any extension may not be for a period of more than thirty days. If a state of emergency for a public health emergency is not extended pursuant to this subsection, the governor may not proclaim a new state of emergency based on the same conditions without the passage of a concurrent resolution by the legislature consenting to the new state of emergency.

H. On the extension of a state of emergency for a public health emergency pursuant to subsection G of this section, the governor shall submit a written report to a joint committee of the health committees of the senate and the house of representatives, or their successor committees. After the first sixty days of a public health emergency, the director of the department of health services and a representative of the governor's office shall provide a briefing to the joint committee, and the joint committee shall give the extension of the public health emergency a favorable or unfavorable review. The joint committee shall provide the joint committee's recommendation to all members of the legislature and the governor. The outcome of the joint committee's review shall be conspicuously posted on the governor's and the department of health services public websites.

I. This chapter does not limit, modify or abridge the powers vested in the governor under the constitution or statutes of this state.

J. If authorized by the governor, the adjutant general has the powers prescribed in this subsection. If, in the judgment of the adjutant general, circumstances described in section 26-301, paragraph 15 exist, the adjutant general may:

1. Exercise those powers pursuant to statute and gubernatorial authorization following the proclamation of a state of emergency under subsection D of this section.

2. Incur obligations of \$100,000 or less for each emergency or contingency payable pursuant to section 35-192 as though a state of emergency had been proclaimed under subsection D of this section.

K. The powers exercised by the adjutant general pursuant to subsection J of this section expire seventy-two hours after the adjutant general makes a determination under subsection J of this section.

L. Pursuant to the second amendment of the United States Constitution and article II, section 26, Constitution of Arizona, and notwithstanding any other law, the emergency powers of the governor, the adjutant general or any other official or person do not allow the imposition of additional restrictions on the lawful possession, transfer, sale, transportation, carrying, storage, display or use of firearms or ammunition or firearms or ammunition components. A store that sells firearms or ammunition, or firearms or ammunition components, is an essential business and is protected from a qualified civil liability action pursuant to section 12-721.

M. This section does not:

1. Prohibit the governor, the adjutant general or other officials responding to an emergency from ordering the reasonable movement of stores of ammunition out of the way of dangerous conditions.
2. Allow a state agency or a city, town or county to permanently revoke any license held by a business or used to operate a business for not complying with an order issued by the governor with respect to a state of emergency proclaimed by the governor pursuant to section 36-787, subsection A unless the state agency or the city, town or county can demonstrate by clear and convincing evidence that the business caused the transmission of the disease that is the subject of the order due to the business's wilful misconduct or gross negligence.

N. Before a state agency, city, town or county suspends or permanently revokes, pursuant to subsection O of this section, a license held by a business or used to operate a business, the state agency, city, town or county shall provide the business with both of the following:

1. A written notice of noncompliance delivered by personal service or certified mail.
2. A written notice of intent to suspend or permanently revoke the license at least thirty days after the date of the notice of noncompliance provided pursuant to paragraph 1 of this subsection. The state agency, city, town or county shall present any new evidence of grounds for suspension or permanent revocation in the written notice required by this paragraph. A business that receives a notice pursuant to this paragraph and disputes the claim shall respond to the state agency, city, town or county within twenty days after receiving the notice.

O. Any dispute relating to the suspension or permanent revocation of a license held by a business or used to operate a business shall be resolved by a court of competent jurisdiction in this state. A state agency, city, town or county may not suspend or permanently revoke a license held by a business or used to operate a business until the business has received both notices prescribed in subsection N of this section and all appeals have been exhausted. The court may award reasonable attorney fees and damages to a business in an action relating to the suspension or permanent revocation of a license held by a business or used to operate a business.