2020 South Dakota Legislature

House Bill 1296

ENROLLED

AN ACT

ENTITLED An Act to revise the authority of the Governor in times of a disaster, act of terrorism, or emergency and to declare an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 34-48A-5 be AMENDED:

34-48A-5. Authority of Governor in time of disaster, terrorist attack, or emergency--Limitations. .

In the event of disaster, war, act of terrorism as defined in state law, or emergency that is beyond local government capability, the Governor:

(1) May assume direct operational control over all or any part of the emergency management functions within the state which may affect all or any portion of the state;

(2) May declare an emergency or disaster to exist in the stricken area and employ emergency management to assist local authorities to affect relief, evacuation, and restoration as deemed necessary to preserve life or other disaster or emergency mitigation, response, or recovery;

(3) May call upon and use any facilities, equipment, other nonmedical supplies, and resources available from any source, other than personal or private funds, in order to carry out the purposes of this chapter by contributing to the expense incurred in providing relief in such amounts as the Governor shall determine, provided that nothing in this section may be construed to authorize the taking of firearms, as defined in § 22-1-2, without the consent of the owner;

(4) May suspend any rule of a state agency, or the enforcement by a state agency of any statute that regulates, or that prescribes the promulgation of a rule to regulate, the procedures for the conduct of state business or the business of a local subdivision, if strict compliance with the provisions of the rule or statute would in any way prevent, hinder, or delay necessary action in managing a disaster, war,

act of terrorism, or emergency, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, oil spill, or other water or air contamination, epidemic, blight, drought, pandemic, infestation, explosion, riot, or hostile military or paramilitary action, which is determined by the Governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby;

(5) May control the ingress and egress in a designated disaster or emergency area, the movement of vehicles upon highways within the area, the movement of persons within the area, and the occupancy of premises within the area;

(6) May procure, acquire, store, distribute, and dispense any pharmaceutical agents or medical supplies located within the state as may be reasonable and necessary to respond to the disaster, emergency, or act of terrorism;

(7) May appoint and prescribe the duties of such out-of-state health care providers as may be reasonable and necessary to respond to the disaster, emergency, or act of terrorism;

(8) May provide for the examination and safe disposal of any dead body as may be reasonable and necessary to respond to the disaster, emergency, or act of terrorism;

(9) May provide for the protection, construction or reconstruction, repair, and maintenance of public or private transportation facilities; and

(10) May, by executive order, suspend the provisions of any statute prescribing procedures for the conducting of local subdivision business, if strict compliance with the provisions of any statute would in any way prevent, hinder, or delay necessary action in coping with the emergency.

Nothing in this section may be construed to authorize the suspension of § 34-48A-5.1 or to authorize any activity prohibited under § 34-48A-5.1.

The powers granted to the Governor under this section shall remain in effect for a period of six months and may be restored for one or more successive six-month periods by declaration of the Governor that the conditions permitting such powers persist.

Section 2. That a NEW SECTION be added:

34-48A-5.1. Governmental authority--Disaster--Terrorist attack--Emergencies--Limitations related to firearms and weapons.

No state agency, political subdivision, or any elected or appointed official or employee of this state or of a political subdivision may, under any governmental authority or color of law, including any other statutorily authorized responses to disaster, war, acts of terrorism, or emergencies of whatever kind or nature:

(1) Prohibit, regulate, or curtail the otherwise lawful possession, carrying, sale, transportation, transfer, defensive use, or other lawful use of any:
   (a) Firearm, including any component or accessory;
   (b) Ammunition, including any component or accessory;
   (c) Ammunition-reloading equipment and supplies; or
   (d) Personal weapons other than firearms;

(2) Seize, commandeer, or confiscate in any manner, any:
   (a) Firearm, including any component or accessory;
   (b) Ammunition, including any component or accessory;
   (c) Ammunition-reloading equipment and supplies; or
   (d) Personal weapons other than firearms;

(3) Suspend or revoke a permit to carry a concealed pistol issued pursuant to chapter 23-7, except as expressly authorized in that chapter;

(4) Refuse to accept an application for a permit to carry a concealed pistol, provided the application has been properly completed in accordance with chapter 23-7;

(5) Close or limit the operating hours of any entity engaged in the lawful selling or servicing of any firearm, including any component or accessory, ammunition, including any component or accessory, ammunition-reloading equipment and supplies, or personal weapons other than firearms, unless the closing or limitation of hours applies equally to all forms of commerce within the jurisdiction;

(6) Close or limit the operating hours of any indoor or outdoor shooting range; or

(7) Place restrictions or quantity limitations on any entity regarding the lawful sale or servicing of any:
   (a) Firearm, including any component or accessory;
   (b) Ammunition, including any component or accessory;
   (c) Ammunition-reloading equipment and supplies; or
   (d) Personal weapons other than firearms.

Any person aggrieved by a violation of this section may file an action for damages, injunctive relief, or other appropriate redress in the circuit court having jurisdiction over the county in which the aggrieved person resides or in which the violation occurred.

Section 3. This Act is repealed on July 1, 2021.

Section 4. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

An Act to revise the authority of the Governor in times of a disaster, act of terrorism, or emergency and to declare an emergency.

I certify that the attached Act originated in the:

House as Bill No. 1296

_____
Chief Clerk

_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1296
File No. ____
Chapter No. _____

Received at this Executive Office
this _____ day of _____,

2020 at _____M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 2020

_____
Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Filed _____, 2020
at _____ o'clock __M.

_____
Secretary of State

By _____
Asst. Secretary of State