HOUSE DOCKET, NO. 2064 FILED ON: 2/16/2021

HOUSE . . . . . No. 2424

The Commonwealth of Massachusetts

PRESENTED BY:

Nicholas A. Boldyga

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to further protect constitutional rights by limiting the emergency powers of the Governor.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Nicholas A. Boldyga	*3rd Hampden*	*2/16/2021*
Donald R. Berthiaume, Jr.	*5th Worcester*	*2/26/2021*
Michael J. Soter	*8th Worcester*	*3/8/2021*

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HOUSE . . . . . No. 2424

By Mr. Boldyga of Southwick, a petition (accompanied by bill, House, No. 2424) of Nicholas A. Boldyga, Donald R. Berthiaume, Jr., and Michael J. Soter relative to limiting the emergency powers of the Governor. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act to further protect constitutional rights by limiting the emergency powers of the Governor.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 639 of the acts of 1950 is hereby amended by inserting after section 22 the following section:-

Section 23. Nothing in this act grants additional emergency powers to the governor or any other official. State and local officials may issue nonbinding recommendations and guidelines, and they may help coordinate public and private action to prevent or respond to an emergency.

The exercise of any emergency power the governor or other official may have under the Massachusetts Constitution and state law that binds or regulates the public are limited as follows:

(a) Notwithstanding any other law, emergency orders, decrees, regulations, or other mandates (hereinafter, “orders”) issued by state or local officials that bind, curtail or infringe the rights of private parties must be narrowly tailored to serve a compelling public health or safety

purpose. Each order shall be limited in duration, applicability, and scope in order to reduce any infringement of individual liberty.

(b) State courts shall have jurisdiction to hear cases challenging the lawfulness of state and local emergency orders, including compliance with this act's limitations on such orders, and the courts shall expedite consideration of such challenges to the extent practicable. Inequality in the applicability or impact of emergency orders on analogous groups, situations, and circumstances may constitute one ground among others for a court to invalidate or enjoin an emergency order, or some of its applications, on the basis that it is not narrowly tailored to serve a compelling public health or safety purpose.

(c) To the extent that the Constitution or other law allows officials with state-wide authority to issue emergency orders, only the governor may issue such orders that infringe constitutional rights in a non-trivial manner from the date of this enactment. Constitutional rights include, but are not limited to: the rights to travel, work, assemble, and speak; the freedom of religious exercise; the non-impairment of contract and property rights; freedom from unreasonable searches and seizures; and the freedom to purchase lawful firearms and ammunition. Such state-wide emergency orders are further limited as follows:

(1) All such orders shall expire in 30 days unless:

(i) The Governor or Legislature by law terminates them earlier; or

(ii) The Legislature and Governor enact a bill or resolve into law, pursuant to Mass. Const. part 2, c. 1, § 1, art. 2, extends the order with a different expiration period.

Each House of the Legislature may vote to ratify or terminate emergency orders referenced in paragraph 1 by remote debate and electronic or other means as established by each chamber's rules, or in the absence of such rules, as specified by the presiding officer of each chamber.

Without subsequent authorization in law, the governor is barred during the pendency of a given emergency from reissuing any emergency order, or issuing another that is substantially similar to one that expired without legislative approval or that the Legislature rejected, except that the governor may re-impose such order based on significantly changed circumstances for a single period of up to three days if the governor calls upon the Legislature to reconsider the order and the changed circumstances.

SECTION 2. Section 2A of Chapter 17 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

An emergency detrimental to the public health shall terminate pursuant to the same processes described in Section 23 of Chapter 639 of the acts of 1950. Upon termination of such an emergency, all powers granted to and exercised by the commissioner under this section shall terminate.