



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB2879

Introduced 2/19/2021, by Rep. Deanne M. Mazzochi

SYNOPSIS AS INTRODUCED:

20 ILCS 3305/2

from Ch. 127, par. 1052

Amends the Illinois Emergency Management Agency Act. Provides that it is not the purpose of the Act or the policy of the State that the Act be used to combat the spread of any or every new disease. Provides that to the extent the Act is used to combat disease, the State has the burden to show that the disease in question is: (1) a bioweapon associated with domestic insurrection or a foreign agent, power or state; or whether local health departments and infrastructure have been destroyed or rendered incapacitated such that massive loss of life (at least 5% of a given population) is imminent within the next 30 days. Provides that any action or inaction by or on behalf of the State, the Governor, or any executive officer or agency and for which the State, the Governor, or executive officer or agency invokes the Act under the auspices of combatting disease in any generalized way, if under review by a court, shall have certain specified rules of statutory construction applied by the court. Provides that no injunction shall be issued against an individual or entity without the following: (1) the court must make specific findings that an injunction, as applied to the specific individual or entity is in the public interest and for the benefit of the public as a whole; and (2) the State posting a bond to protect the individual or entity from damages. Provides that if harm to the individual or entity involves the free exercise of speech, religion, assembly, education, or the right to earn a living, damages shall in no event be set less than \$500 per individual or entity impacted, per occurrence, per day. Provides that the amount shall be indexed to inflation beginning in 2021. Effective immediately.

LRB102 14634 RLC 19987 b

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Emergency Management Agency Act is
5 amended by changing Section 2 as follows:

6 (20 ILCS 3305/2) (from Ch. 127, par. 1052)

7 Sec. 2. Policy and Purposes.

8 (a) Because of the possibility of the occurrence of
9 disasters of unprecedented size and destructiveness resulting
10 from the explosion in this or in neighboring states of atomic
11 or other means from without or by means of sabotage or other
12 disloyal actions within, or from fire, flood, earthquake,
13 telecommunications failure, or other natural or technological
14 causes, and in order to insure that this State will be prepared
15 to and will adequately deal with any disasters, preserve the
16 lives and property of the people of this State and protect the
17 public peace, health, and safety in the event of a disaster, it
18 is found and declared to be necessary:

19 (1) To create an Illinois Emergency Management Agency
20 and to authorize emergency management programs within the
21 political subdivisions of the State.

22 (2) To confer upon the Governor and upon the principal
23 executive officer of the political subdivisions of the

1 State the powers provided herein.

2 (3) To provide for the rendering of mutual aid among
3 the political subdivisions and taxing districts of the
4 State and with other states and with respect to the
5 carrying out of an emergency management program.

6 (b) It is further declared to be the purpose of this Act
7 and the policy of the State that all emergency management
8 programs of this State be coordinated to the maximum extent
9 with the comparable programs of the federal government,
10 including its various departments and agencies, of other
11 states and localities and private agencies of every type, to
12 the end that the most effective preparation and use may be made
13 of the nation's resources and facilities for dealing with any
14 disaster that may occur.

15 (c) It is further declared that it is not the purpose of
16 this Act or the policy of the State that this Act be used to
17 combat the spread of any or every new disease. To the extent
18 this Act is used to combat disease, the State has the burden to
19 show that the disease in question is:

20 (1) a bioweapon associated with domestic insurrection
21 or a foreign agent, power or state; or

22 (2) whether local health departments and
23 infrastructure have been destroyed or rendered
24 incapacitated such that massive loss of life (at least 5%
25 of a given population) is imminent within the next 30
26 days.

1 (d) Any action or inaction by or on behalf of the State,
2 the Governor, or any executive officer or agency and for which
3 the State, the Governor, or executive officer or agency
4 invokes this Act under the auspices of combatting disease in
5 any generalized way, if under review by a court, shall have the
6 following rules of statutory construction applied by the
7 court:

8 (1) The action shall be presumed invalid and subject
9 to strict scrutiny.

10 (2) The balance of any equities must be in favor of
11 protection and preservation of individual and civil
12 liberties.

13 (3) The burden of proof shall be on the State to
14 establish any fact by at least clear and convincing
15 evidence.

16 (4) The court may not presume agency expertise or give
17 deference to the Governor or any executive officer or
18 agency on questions of scientific analysis, particularly
19 for any disease that is newly discovered.

20 (5) Any impacted individual or entity has a due
21 process right to counsel and to have counsel appointed for
22 the person or entity, at the cost of the State, by a court.
23 If the State has not funded appropriations for this
24 purpose, the State may not use this Act to initiate
25 actions against any legal Illinois resident.

26 (6) All data that the State, Governor, or executive

1 officer or agency is relying on to justify the action or
2 inaction must be produced to an impacted individual or
3 entity, and the impacted individual or entity must have at
4 least 5 calendar days to respond before any action may be
5 taken against the individual or entity that impairs or
6 infringes the individual's or entity's civil liberties,
7 property, business, or place of worship.

8 (7) No injunction shall be issued against an
9 individual or entity without the following:

10 (A) The court must make specific findings that an
11 injunction, as applied to the specific individual or
12 entity is in the public interest and for the benefit of
13 the public as a whole.

14 (B) The State posting a bond to protect the
15 individual or entity from damages. If harm to the
16 individual or entity involves the free exercise of
17 speech, religion, assembly, education, or the right to
18 earn a living, damages shall in no event be set less
19 than \$500 per individual or entity impacted, per
20 occurrence, per day. The amount shall be indexed to
21 inflation beginning in 2021.

22 (8) Any unit of local government, school district,
23 whether a home rule unit or non-home rule unit, may secure
24 injunctive relief against the State, the Governor, or any
25 executive officer or agency on behalf of its residents if
26 the State seeks to condition its receipt of a governmental

1 benefit, including, but not limited to, licensing,
2 funding, or capital expenditures. Counsel for the entity
3 shall be appointed by the court if requested.

4 (9) The right to a speedy trial in any criminal matter
5 subject to this subsection may not be suspended:

6 (A) absent consent of the defendant; or

7 (B) if the defendant is experiencing an active
8 diseased state that would be a threat to others and no
9 reasonable accommodation can be made.

10 (10) All postponements by the prosecution or court in
11 a matter subject to the emergency provisions of this Act
12 that collectively exceed 180 calendar days are
13 presumptively invalid.

14 (11) Defendants in custody awaiting trial are presumed
15 to be suffering prejudice for any delay, not consented to
16 by defendant, in excess of 90 days.

17 (12) Blanket orders by the court suspending trials in
18 general are null and void after 30 days and may not be
19 renewed absent approval of a resolution by majority vote
20 of both the House and Senate of the General Assembly.

21 (13) The court may not use any action, inaction,
22 specificity, or lack of specificity by the General
23 Assembly as justifying, permitting, or approving of the
24 action or inaction by or on behalf of the State, the
25 Governor, or any executive officer or agency unless:

26 (A) both the House and Senate of the General

1 Assembly have issued a resolution, by majority vote,
2 approving of the action; or

3 (B) legislation exists that authorizes the
4 specific action or inaction by or on behalf of the
5 State, the Governor, or any executive officer or
6 agency. Exercise of governmental powers without
7 express, knowing, affirmative legislative approval
8 shall be construed narrowly and against the State, the
9 Governor, or executive officer or agency. Failure of
10 the State, the Governor, or executive officer or
11 agency to secure the approval from the General
12 Assembly shall be construed against the State, the
13 Governor, or executive officer or agency operating
14 under the authority of this Act. The only exceptions
15 to this provision are as follows:

16 (i) if neither house of the General Assembly
17 can be populated so as to secure a Constitutional
18 quorum. Under that circumstances, the Governor's
19 power shall be limited to 30 days, with no
20 extensions unless further authorized by
21 legislative resolution by majority vote; or

22 (ii) unanimous decision of the President of
23 the Senate, Senate Minority Leader, Speaker of the
24 House of Representatives, and House Minority
25 Leader.

26 (Source: P.A. 87-168; 88-606, eff. 1-1-95.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.