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PUBLIC HEALTH EMERGENCY AUTHORITY IN VERMONT

GOVERNOR'S AUTHORITY

DECLARATION OF A STATE OF EMERGENCY

- Pursuant to 20 V.S.A. chapter 1, the Governor has “general direction and control of the emergency management agency [Vermont Emergency Management, which is part of the Department of Public Safety] and shall be responsible for the carrying out of the provisions of this chapter.” 20 V.S.A. § 8(a).
- Pursuant to 20 V.S.A. § 9 “...in the event of an all-hazards event in or directed upon the United States or Canada that causes or may cause substantial damage or injury to persons or property within the bounds of the State in any manner, the Governor may proclaim a state of emergency within the entire State or any portion or portions of the State.”
- An “all-hazards event” includes incidents such as natural disasters, civil insurrection, terrorist attacks, and a “health or disease-related emergency.” 20 V.S.A. § 2(1).

POWERS DURING A STATE OF EMERGENCY

- Once the Governor has declared a state of emergency, the Governor is authorized to exercise certain powers “for as long as the Governor determines the emergency to exist.” 20 V.S.A. § 9.
- These powers are set forth in 20 V.S.A. §§ 8, 9, and 11 and range from the specific, such as setting maximum rates of speed and controlling traffic, to the more general, such as authority to utilize any of the property, services, and resources of the State to carry out emergency actions.

POWERS RELEVANT TO COVID-19

- Authority to “employ such measures and give such directions to the State or local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this chapter,” to order evacuation of persons within all or a portion of the State, and to seize property, including supplies and medicines (20 V.S.A. §§ 9(4) and (9), 11(3))
- Authority to use the services and facilities of existing officers and agencies of the State and its towns, 20 V.S.A. § 9(5), and to “perform and exercise such other functions, powers and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population” (20 V.S.A. § 11(6))
- In a national state of emergency, authority to cooperate with federal departments and agencies as long as those actions are not inconsistent with the Constitution and laws of the State (20 V.S.A. § 9(8))

COMMISSIONER OF
HEALTH'S AUTHORITY

HEALTH ORDERS: 18 V.S.A. § 126

“(a) The Commissioner or the selectboard may issue a health order to:

- (1) prevent, remove, or destroy any public health hazard;
- (2) mitigate a significant public health risk;
- (3) correct any violation of this title or any rules promulgated thereunder; or
- (4) correct any violation of a permit restriction or requirement.”

HEALTH ORDERS- *CONTINUED*

Pursuant to 18V.S.A. § 126(d), such actions may include:

(3) testing, sampling, monitoring, surveying, or other analytical operations required to determine the nature, extent, duration, or severity of the public health hazard or public health risk;

(5) the quarantine or isolation of any area, persons, animals, or materials;

(6) the closing of, and the prohibition of assemblage in any food or lodging establishment, church, school, or any other place of assemblage;

(7) the cessation of any acts, discharges, or processes contributing to a public health hazard or public health risk;

(8) the medical or veterinary treatment of any agent that is contributing to a public health hazard or a public health risk;

(9) the giving of notice to potential users, including travelers, of the goods or services, of the nature, extent, and possible health effects of the public health hazard or public health risk, and precautions to be taken by such users; or

(10) any other affirmative acts or prohibitions necessary to mitigate a significant public health risk.

EMERGENCY HEALTH ORDERS: 18 V.S.A. § 127

- Health officers can issue emergency health orders “without a prior hearing... when necessary to prevent, remove, or destroy an imminent and substantial public health hazard, or to mitigate an imminent and substantial significant public health risk.”

QUARANTINE: 18 V.S.A. § 1004A

- “The Commissioner of Health shall have the power to quarantine a person diagnosed with or suspected of having a disease dangerous to the public health.”

**SPECIFIC QUESTIONS
CONCERNING THE
STATE OF EMERGENCY**

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- **Can the Governor order that in-state travel be restricted or that individuals be quarantined?**
 - It would appear so under the Governor's authority to regulate traffic, order evacuations, and take any other actions deemed necessary. In addition, if the federal government is ordering travel restrictions or quarantines, the Governor is authorized to cooperate with federal agencies in carrying out those efforts. 20 V.S.A. § 9(8).
 - The Commissioner of Health also has explicit authority under 18 V.S.A. § 1004a to "quarantine a person diagnosed with or suspected of having a disease dangerous to the public health." See, 18 V.S.A. § 126(d)(5).

SPECIFIC QUESTIONS CONCERNING THE STATE OF EMERGENCY- *CONTINUED*

- **Can the Governor order the suspension or waiver of an Executive Branch rule or policy?**
 - Yes. Pursuant to 20 V.S.A. § 8(b)(1), the Governor has the authority as head of emergency management to “make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this chapter.”

SPECIFIC QUESTIONS CONCERNING THE STATE OF EMERGENCY- *CONTINUED*

- **Can the Governor bypass the General Assembly and impose laws on his own?**
 - No; pursuant to the Vermont Constitution, only the General Assembly can pass a bill amending or repealing an existing law or creating a new law. Vt. Const. Chap. II, §§ 2, 6, and 11.
 - As to the State budget, only the General Assembly can raise revenue or appropriate funds. Vt. Const. Chap. II § 6; Chap. II § 20 (Governor “may draw upon the Treasury for such sums as may be appropriated by the General Assembly”); *Hunter v. State*, 177 Vt. 339, 347 (2004) (“[O]nly the Legislature has the power to appropriate funds for the support of governmental programs.”). Therefore, the Governor cannot implement statutes on his own or bypass the General Assembly to impose a budget on his own.
 - *Although the Governor does not have the authority to appropriate funds, 32 V.S.A. § 706 provides the Governor with limited authority to transfer balances of appropriations of up to \$50,000. Our office, and JFO, can provide a more detailed response on budget-related issues as needed.*