

2  
3 WHATLEY SUBSTITUTE FOR SB97  
4  
5  
6  
7

8 SYNOPSIS: Under existing law, a state of emergency may  
9 be declared by the Governor by proclamation or by  
10 the Legislature by joint resolution. A state of  
11 emergency terminates after 60 days unless extended  
12 by proclamation of the Governor or joint resolution  
13 of the Legislature.

14 This bill would provide that the  
15 proclamation or joint resolution declaring a state  
16 of emergency must describe the basis for justifying  
17 the state of emergency.

18 This bill would provide that a state of  
19 emergency terminates after 45 days unless extended  
20 and would provide that certain states of emergency  
21 may not extend beyond a total of 120 days without  
22 passage of a joint resolution by the Legislature.

23 This bill would provide that the President  
24 Pro Tempore of the Senate, in addition to the  
25 Lieutenant Governor and Speaker of the House of  
26 Representatives, may request in writing that the

1 Governor call the Legislature into special session  
2 upon proclamation of a state of emergency.

3 This bill would require the proclamation or  
4 joint resolution proclaiming a state of emergency  
5 to define in writing the basis upon which the state  
6 of emergency is justified and would limit the scope  
7 of the Governor's emergency powers to actions that  
8 bear a reasonable relationship to preventing or  
9 mitigating the cited emergency.

10 This bill would require the Governor, during  
11 a state public health emergency, to consult with  
12 members of the Legislative Council before issuing  
13 or approving any directive that would restrict,  
14 limit, or otherwise burden the conduct of private  
15 citizens or businesses.

16 This bill would provide that an order or  
17 directive issued by the State Health Officer  
18 relating to the outbreak of a disease or pandemic  
19 has the full force and effect of law once it is  
20 approved by the Governor and a copy is filed with  
21 the Office of the Secretary of State.

22 Also under existing law, municipalities have  
23 the power to adopt and enforce ordinances to compel  
24 vaccinations in order to prevent the introduction  
25 or spread of disease.

26 This bill would repeal the law authorizing  
27 municipalities to compel vaccinations.

1                   This bill would also make nonsubstantive,  
2                   technical revisions to update the existing code  
3                   language to current style.

4  
5                   A BILL  
6                   TO BE ENTITLED  
7                   AN ACT

8  
9                   Relating to states of emergency; to amend Sections  
10                  22-2-8, Code of Alabama 1975, to provide that an order or  
11                  directive issued by the State Health Officer relating to the  
12                  outbreak of a disease or pandemic has the full force and  
13                  effect of law once it is approved by the Governor and a copy  
14                  is filed with the Secretary of State; to amend Section 31-9-8,  
15                  and 31-9-13, Code of Alabama 1975; to provide that a state of  
16                  emergency terminates after 45 days and provide that certain  
17                  states of emergency may only be extended beyond 120 days by  
18                  joint resolution of the Legislature; to further provide for  
19                  requesting a special session during a state of emergency; to  
20                  further provide for the Governor's authority to issue and  
21                  approve directives during a state of emergency; to limit  
22                  certain orders mandating vaccinations; to repeal Section  
23                  11-47-132, Code of Alabama 1975, which authorizes  
24                  municipalities to adopt and enforce ordinances to compel  
25                  certain vaccinations; and to make nonsubstantive, technical  
26                  revisions to update the existing code language to current  
27                  style.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 22-2-8, 31-9-8, and 31-9-13,  
3 Code of Alabama 1975, are amended to read as follows:

4 "§22-2-8.

5 "(a) The State Committee of Public Health shall  
6 elect an executive officer who shall be a physician licensed  
7 in the State of Alabama to be known as the State Health  
8 Officer and shall fix his or her term of office and salary.  
9 The qualifications of this individual shall be determined by  
10 the State Committee of Public Health. Before entering upon the  
11 duties of ~~his~~ the office, the State Health Officer shall  
12 execute to the State of Alabama a bond, to be approved by the  
13 Governor, in the amount of five thousand dollars (\$5,000.00),  
14 for the faithful performance of ~~his~~ the duties of the office.

15 "(b) The State Health Officer so elected ~~shall~~,  
16 under the direction of the State Committee of Public Health  
17 and with the approval of the State Personnel Board, shall fix  
18 the salaries of the medical employees of the State Committee  
19 of Public Health. When the State Committee of Public Health is  
20 not in session, the State Health Officer, as executive officer  
21 of the Department of Public Health, shall act for ~~said~~ the  
22 committee and shall have and discharge all the prerogatives  
23 and duties of ~~said~~ the committee. ~~He~~ The State Health Officer  
24 shall report his or her actions to the committee at its next  
25 meeting after ~~such~~ the action is taken, and ~~such~~ the action ~~of~~  
26 ~~the State Health Officer~~ shall then be subject to confirmation  
27 or modification by the committee. The State Health Officer

1 shall exercise general supervision over county boards of  
2 health and county health officers and promptly report to ~~said~~  
3 the county boards of health any delinquencies of official duty  
4 on the part of ~~said the~~ county health officers which may come  
5 to his or her knowledge., ~~keep himself informed in regard to~~  
6 ~~all diseases which may be in danger of invading the state~~

7 "(c) The State Health Officer shall stay informed  
8 with regard to an actual or potential outbreak of any disease  
9 or pandemic affecting this state and, as far as authorized by  
10 law, take prompt measures to prevent ~~such invasions~~ an  
11 outbreak and keep the Governor and the Legislature informed as  
12 to the health conditions prevailing in the state, especially  
13 as to outbreaks of any of the diseases enumerated in Chapter  
14 11 ~~of this title~~, and submit to the Governor and Legislature  
15 ~~such~~ recommendations as he or she deems proper to control,  
16 prevent, or minimize such outbreaks. an outbreak. If a state  
17 public health emergency has been declared pursuant to Section  
18 31-9-8, any order or other directive issued by the State  
19 Health Officer to control, prevent, or minimize an outbreak of  
20 any disease or pandemic may not take effect unless and until  
21 the order or directive is approved by the Governor and a copy  
22 of the approved order or directive is filed in the Office of  
23 the Secretary of State, at which time the order or directive  
24 has the full force and effect of law. Any order or other  
25 directive issued pursuant to the authority granted under this  
26 subsection is subject to the prohibition described in  
27 paragraph (f) (2)b. of Section 31-9-8.

1           "§31-9-8.

2           "(a) ~~The provisions of this~~ This section shall be  
3 operative only during the existence of a state of emergency,  
4 referred to ~~hereinafter~~ as one of the states of emergency  
5 defined in Section 31-9-3. The existence of a state of  
6 emergency may be proclaimed by the Governor as provided in  
7 this subsection or by joint resolution of the Legislature if  
8 the Governor in the proclamation,   or the Legislature in the  
9 resolution,   ~~finds that an attack upon the United States has~~  
10 ~~occurred or is anticipated in the immediate future, or that a~~  
11 ~~natural disaster of major proportions or a public health~~  
12 ~~emergency has occurred or is reasonably anticipated in the~~  
13 ~~immediate future within this state and that the safety and~~  
14 ~~welfare of the inhabitants of this state require~~ describes,  
15 with reasonable particularity, the basis for the state of  
16 emergency justifying an invocation of the provisions of this  
17 section. If the state of emergency affects less than the  
18 entire state, the Governor or the Legislature shall designate  
19 in the proclamation or joint resolution those counties to  
20 which the state of emergency applies.

21           "(b) (1) The A state of emergency, whether proclaimed  
22 by the Governor or by the Legislature, shall terminate ~~60~~ 45  
23 days after the date on which it was proclaimed. ~~unless the~~ The  
24 Governor,   ~~extends the emergency~~ by proclamation,   or the  
25 Legislature,   ~~extends the emergency~~ by passage of a joint  
26 resolution may extend a state of emergency for a total period  
27 up to 120 days, after which a state of emergency may only be

1 further extended by the Legislature through passage of a joint  
2 resolution.

3 "(2) Notwithstanding subdivision (1), the Governor,  
4 by proclamation, may extend, without limit, a state of  
5 emergency that affects less than one-third of all counties in  
6 the state, that is in response to an oil spill, or that is in  
7 response to a weather-related event, including, but not  
8 limited to, a hurricane, tornado, drought, or flood.

9 "(c) Upon proclamation by the Governor of a state of  
10 emergency, the Governor may call the Legislature into special  
11 session. Additionally, the Lieutenant Governor, President Pro  
12 Tempore of the Senate, or the Speaker of the House of of  
13 Representatives may request in writing that the Governor call  
14 the Legislature into special session.

15 "(d) During the period that the ~~proclaimed~~ state of  
16 emergency exists or continues, the Governor shall have and may  
17 exercise the following additional emergency powers:

18 "(1) To enforce all laws, and rules, ~~and regulations~~  
19 relating to emergency management and to assume direct  
20 operational control of all emergency management forces and  
21 helpers in the state.

22 "(2) To sell, lend, lease, give, transfer, or  
23 deliver materials or perform services for emergency management  
24 purposes on such terms and conditions as the Governor shall  
25 prescribe and without regard to the limitations of any  
26 existing law, and to account to the State Treasurer for any  
27 funds received for such property.

1           "(3) To procure, by purchase, condemnation, seizure,  
2 or other means, construct, lease, transport, store, maintain,  
3 renovate, or distribute materials and facilities for emergency  
4 management without regard to the limitations of any existing  
5 law; provided, that this authority shall not be exercised with  
6 regard to newspapers, wire facilities leased or owned by news  
7 services, and other news publications, and provided further,  
8 that he or she shall make compensation for the property so  
9 seized, taken, or condemned, on the following basis:

10           "a. ~~In case~~ If property is taken for temporary use,  
11 the Governor, within 30 days of the taking, shall fix the  
12 amount of compensation to be paid ~~therefor~~ for use of the  
13 property, and ~~in case~~ if the property ~~shall be~~ is returned to  
14 the owner in a damaged condition, or ~~shall not be~~ is not  
15 returned to the owner, the Governor shall fix within 30 days  
16 the amount of compensation to be paid for the damage or  
17 failure to return. Whenever the Governor ~~shall deem~~ deems it  
18 advisable for the state to take title to property taken under  
19 this section, he or she shall ~~forthwith cause the owner of the~~  
20 ~~property to be notified thereof~~ immediately notify the  
21 property owner in writing by registered or certified mail,  
22 postage prepaid, or by the best available means, and ~~forthwith~~  
23 ~~cause to be filed~~ file a copy of the notice with the Secretary  
24 of State.

25           "b. If the person entitled to receive the amount so  
26 determined by the Governor as just compensation is unwilling  
27 to accept the same as full and complete compensation for ~~such~~

1 the property or the use thereof, he or she shall be paid 75  
2 percent of such amount and shall be entitled to recover from  
3 the State of Alabama, in an action brought in a court in the  
4 county of residence of the claimant or in Montgomery County,  
5 in the same manner as other condemnation claims are brought,  
6 within three years after the date of the Governor's award,  
7 such additional amount, if any, which when added to the amount  
8 so paid to him or her, shall be just compensation.

9 "(4) To provide for and compel the evacuation of all  
10 or part of the population from any stricken or threatened area  
11 or areas within the state and to take ~~such~~ steps as are  
12 necessary for the receipt and care of such evacuees.

13 "(5) ~~To~~ Subject to subsection (g), to perform and  
14 exercise ~~such~~ other functions, powers, and duties as are  
15 necessary to promote and secure the safety and protection of  
16 the civilian population if reasonably related to preventing,  
17 mitigating, or otherwise responding to the conditions  
18 described in the proclamation or joint resolution warranting  
19 the declaration of a state of emergency.

20 "(6) To employ ~~such~~ measures and give ~~such~~  
21 directions to the state or local boards of health as may be  
22 reasonably necessary for the purpose of securing compliance  
23 with ~~the provisions of~~ this article or with the findings or  
24 recommendations of ~~such~~ the boards of health by reason of  
25 conditions arising from enemy attack or the threat of enemy  
26 attack or otherwise.

1           "(7) To utilize the services and facilities of  
2 existing officers and agencies of the state and of the  
3 political subdivisions thereof. All such officers and agencies  
4 shall cooperate with and extend their services and facilities  
5 to the Governor as he or she may request.

6           "(8) With due consideration to the recommendations  
7 of local authorities, the Governor may formulate and execute  
8 plans and regulations for the control of traffic in order to  
9 provide for the rapid and safe movement of evacuation over  
10 public highways and streets of people, troops, or vehicles and  
11 materials for national defense or for use in any defense  
12 industry, and may coordinate the activities of the departments  
13 or agencies of the state and of the political subdivisions  
14 thereof concerned directly or indirectly with public highways  
15 and streets, in a manner ~~which~~ that will best effectuate ~~such~~  
16 the plans.

17           "(9) To establish agencies and offices and to  
18 appoint temporary executive, technical, clerical, and other  
19 personnel as may be necessary to carry out ~~the provisions of~~  
20 this article without regard to the State Merit System Act.

21           "~~(b)~~ (e) The proclamation of a state ~~of~~ public  
22 health emergency shall activate the disaster response and  
23 recovery aspects of the state, local, and inter-jurisdictional  
24 disaster emergency plans in the affected political  
25 subdivisions or geographic areas. Such declaration authorizes  
26 the deployment and use of any forces to which the plans apply  
27 and the use or distribution of any supplies, equipment, and

1 materials and facilities assembled, stockpiled, or available  
2 pursuant to this article.

3 ~~"(c)~~ (f) (1) When a state of public health emergency  
4 has been declared or terminated, the State Board of Health  
5 shall inform members of the public on how to protect  
6 themselves and what actions are being taken to control the  
7 emergency.

8 "(2) a. When a state public health emergency has been  
9 declared, any order or other directive issued by the State  
10 Health Officer pursuant to the authority granted under Title  
11 22 to abate any condition prejudicial to public health or  
12 otherwise control, prevent, or minimize an outbreak of any  
13 disease or pandemic may not take effect unless and until the  
14 order or directive is approved by the Governor and filed with  
15 the Secretary of State, as provided in Section 22-2-8.

16 "b. Notwithstanding paragraph a., under no  
17 circumstances may the Governor or the State Health Officer,  
18 during a state of emergency, order the vaccination of  
19 individuals over an assertion made that the vaccination cannot  
20 be administered because of a bona fide medical condition or is  
21 contrary to a bona fide religious belief or otherwise  
22 sincerely held personal belief.

23 "(g) During a state public health emergency, before  
24 the Governor may issue any proclamation, rule, order, or other  
25 directive pursuant to subdivision (d) (5) or approve any order  
26 or other directive pursuant to subsection (c) of Section  
27 22-2-8, which directive would restrict, limit, or otherwise

1 burden the conduct of private citizens or businesses, he or  
2 she shall make a good faith attempt to consult with members of  
3 the Legislative Council regarding the content, scope, and  
4 purpose of the directive.

5           "~~(d)~~ (h) (1) Nothing in this section shall authorize  
6 the seizure or confiscation of any firearm or ammunition from  
7 any individual who is lawfully carrying or possessing the  
8 firearm or ammunition except as provided in subdivision (2).

9           "(2) A law enforcement officer who is acting in the  
10 lawful discharge of the officer's official duties may disarm  
11 an individual if the officer reasonably believes that it is  
12 immediately necessary for the protection of the officer or  
13 another individual. The officer shall return the firearm to  
14 the individual before discharging that individual unless the  
15 officer arrests that individual for engaging in criminal  
16 activity or seizes the firearm as evidence pursuant to an  
17 investigation for the commission of a crime or, at the  
18 discretion of the officer, the individual poses a threat to  
19 himself or herself or to others.

20           "§31-9-13.

21           "All orders, rules, ~~and regulations promulgated or~~  
22 other directives issued by the Governor as authorized by this  
23 article shall have the full force and effect of law when a  
24 copy thereof is filed in the office of the Secretary of State.  
25 All existing laws, ordinances, rules, and regulations or parts  
26 thereof inconsistent with the provisions of this article or of  
27 any proclamation, order, rule, or regulation other directive

1 issued under the authority of this article, shall be suspended  
2 during the period of time and to the extent that such  
3 inconsistency exists. The Secretary of State shall cause to be  
4 printed and distributed to the ~~probate~~ judges of probate of  
5 the several counties and to the clerks of the several  
6 municipalities of this state a copy of each proclamation,  
7 order, rule, or regulation other directive issued under the  
8 authority of this article."

9 Section 2. Section 11-47-132, Code of Alabama 1975,  
10 providing for a system of compulsory vaccination by cities and  
11 towns, is repealed.

12 Section 3. This act shall become effective January  
13 1, 2022, upon its passage and approval by the Governor, or its  
14 otherwise becoming law.