

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 705

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO MARTIAL LAW; AMENDING SECTION 46-601, IDAHO CODE, TO PROVIDE FOR  
2 CERTAIN LIMITATIONS DURING A STATE OF EXTREME EMERGENCY AND TO MAKE A  
3 TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY AND PROVIDING AN EF-  
4 FECTIVE DATE.  
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 46-601, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 46-601. AUTHORITY OF GOVERNOR.

10 (1) (a) The governor may proclaim a state of extreme emergency and then  
11 order into the active service of the state the national guard, as he may  
12 deem proper.

13 (b) "State of extreme emergency" means:

14 (i) The duly proclaimed existence of conditions threatening  
15 the safety of persons or property within the state, or any part  
16 thereof, caused by an enemy attack or threatened attack; or

17 (ii) The duly proclaimed existence of conditions threatening per-  
18 sons or property within the state, or any part thereof, caused by  
19 such conditions as fire, flood, storm, epidemic, pandemic, vol-  
20 cano, earthquake, violent insurrection, riot, revolt, explosion,  
21 cyber attack on critical infrastructure, or other conditions that  
22 by reason of their magnitude are or are likely to be beyond the con-  
23 trol of the services, personnel, equipment, and facilities of any  
24 county, any city, or any city and county or result in mass casual-  
25 ties.

26 (c) "Enemy attack" means an actual attack by terrorists or a foreign na-  
27 tion by terrorism, hostile air raids, or other form of warfare upon the  
28 state or any other state or territory of the United States.

29 (d) "Violent insurrection" means a violent movement or violent actions  
30 by persons intending to overthrow the lawful government.

31 (e) "Terrorism" is as defined in section 18-8102, Idaho Code.

32 (2) (a) During a declared state of extreme emergency, the governor  
33 shall have authority over all executive agencies and departments of the  
34 state government, including all separate boards and commissions, and  
35 the right to exercise within the area or regions wherein the state of  
36 extreme emergency exists, subject to the provisions of this section,  
37 police power vested in the state by the constitution and the laws of the  
38 state of Idaho; provided, however, that the governor's exercise thereof  
39 must be limited to promulgation, issuance, and enforcement of written  
40 rules and orders necessary to support the national guard, essential to  
41 protect life or property, ensure the continuity of the constitutional  
42 form of government, or that are otherwise required to mitigate seri-

1       ous harm created by the conditions giving rise to the state of extreme  
2 emergency. Such rules and orders must be narrowly focused without plac-  
3 ing unnecessary restrictions on the ability for a person or persons,  
4 regardless of job type or classification, to work, provide for their  
5 families, or otherwise contribute to the economy of the state of Idaho.

6       (b) Such rules and orders must, whenever practicable, be prepared in  
7 advance of extreme emergency, and the governor shall cause widespread  
8 publicity and notice to be given of such rules and orders. Rules and or-  
9 ders issued under the authority of this section must not become opera-  
10 tive until the governor proclaims a state of extreme emergency. Such  
11 rules and orders shall be filed in the office of the secretary of state  
12 as soon as possible after their issuance. A copy of such rules and or-  
13 ders shall likewise be filed in the office of the county clerk of each  
14 county, any portion of which is included within the area wherein a state  
15 of extreme emergency has been proclaimed.

16       (c) The state of extreme emergency must terminate by either the expira-  
17 tion of the period for which it was proclaimed or the need for said state  
18 of extreme emergency has ceased.

19       (d) Whenever the governor declares a state of extreme emergency encom-  
20 passing twelve (12) or more counties, the powers granted by the legis-  
21 lature to the governor in paragraph (a) of this subsection shall be re-  
22 voked on the ninetieth day of the proclaimed state of extreme emergency  
23 unless the legislature is in regular session or the governor issues a  
24 proclamation convening an extraordinary session of the legislature for  
25 the purpose of having the legislature vote on whether to revoke any or  
26 all powers granted to the governor in paragraph (a) of this subsection.  
27 If the governor elects to issue a proclamation convening an extraordi-  
28 nary session, such proclamation must identify a date for the legisla-  
29 ture to convene that is no later than twenty-one (21) days after the is-  
30 suance of the proclamation. The governor, consistent with section 9,  
31 article IV of the constitution of the state of Idaho, may identify addi-  
32 tional subjects for legislation during the extraordinary session, in-  
33 cluding the appropriation of necessary emergency funds.

34       (e) In the event those conditions giving rise to the state of extreme  
35 emergency prevent or render it impracticable for a legislator to par-  
36 ticipate in the regular or extraordinary session, the legislator shall  
37 be replaced by an interim successor designated and qualified in accor-  
38 dance with the emergency interim legislative succession act, as pro-  
39 vided in sections 67-413 through 67-426, Idaho Code.

40       (f) The governor may not circumvent the ninety (90) day limitation by  
41 redeclaring successive states of extreme emergency for the same condi-  
42 tions that gave rise to the proclaimed state of extreme emergency.

43       (3) During any proclaimed state of extreme emergency, insurrection, or  
44 martial law, neither the governor nor any agency of any governmental entity  
45 or political subdivision of the state shall ~~impose~~:

46       (a) Impose or enforce federal restrictions prohibited under Idaho law  
47 on the lawful possession, manufacturing, transfer, sale, transport,  
48 storage, display, or use of firearms or ammunition or otherwise suspend  
49 or unconstitutionally limit any rights guaranteed by the United States  
50 constitution or the constitution of the state of Idaho, including but

1 not limited to the right to peaceable assembly and free exercise of  
2 religion. The transport, storage, transfer, sale, import and export,  
3 distribution, repair, maintenance, and manufacture of and commerce in  
4 firearms, ammunition, and related accessories and components, shooting  
5 ranges, and other goods and services directly related to lawful firearm  
6 possession, use, storage, repair, maintenance, sale or transfer, and  
7 training in the use of firearms are declared to be life-sustaining,  
8 essential businesses and services for the purposes of safety and secu-  
9 rity in times of declared emergency or any other statutorily authorized  
10 responses to disaster, war, acts of terrorism, riot or civil disorder,  
11 public health crises, or emergencies of whatever kind or nature;

12 (b) Suspend or revoke a license to carry concealed weapons or refuse  
13 to accept and process an application for a license to carry concealed  
14 weapons, except in accordance with the provisions of chapter 33, title  
15 18, Idaho Code; or

16 (c) Notwithstanding the provisions of subsection (5) of this section,  
17 seize, commandeer, or confiscate in any manner any privately owned  
18 firearm, ammunition, or firearms or ammunition components that are pos-  
19 sessed, carried, displayed, sold, transferred, transported, stored, or  
20 used in connection with otherwise lawful conduct.

21 (4) During any state of extreme emergency, the governor may not alter,  
22 adjust, or suspend any provision of the Idaho Code but for good cause may tem-  
23 porarily suspend enforcement of particular provisions that prevent, hinder,  
24 or delay necessary action to respond to the state of extreme emergency. The  
25 governor shall file a notice describing the temporary suspension of enforce-  
26 ment of any particular provisions with the office of the secretary of state  
27 as soon as possible after such suspension, and copies thereof shall be de-  
28 livered to the speaker of the Idaho house of representatives, the president  
29 pro tempore of the Idaho senate, and the chief justice of the Idaho supreme  
30 court.

31 (5) Nothing in this section shall prohibit the governor from deploying  
32 the national guard as he may deem proper.

33 SECTION 2. An emergency existing therefor, which emergency is hereby  
34 declared to exist, this act shall be in full force and effect on and after  
35 July 1, 2022.