

An act to amend Section 8571, 8627, 8627.5, 8634, and 8655 of, and to add Article 18.5 (commencing with Section 8663) to Chapter 7 of Division 1 of Title 2 of, the Government Code, and to amend Sections 120130, 120135, 120140, 120145, and 131080 of the Health and Safety Code, relating to emergency powers.

SECURED
COPY



THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the Religion is Essential Act.

SEC. 2. (a) Religion provides extensive benefits to our country, not only in meeting the spiritual needs of our populace, but also supporting social services, health care, and economic activity.

(b) Religion contributes \$1.2 trillion annually to the nation's economy and society. This includes charitable activities, health care, educational services, and millions of volunteer hours in programs that help the poor, individuals struggling with addiction or mental illness, and even job training programs. "Congregations, businesses inspired by faith, faith-based charities and institutions not only build communities and families, but also strengthen our economy in every town and city of the country." "The Socio-economic Contribution of Religion to American Society: An Empirical Analysis," a 2016 study by Brian J. Grim (Georgetown University) and Melissa E. Grim (Newseum Institute), published in the peer-reviewed journal, *Interdisciplinary Journal of Research on Religion*, Volume 12, Article 3.

(c) "The Constitution forbids laws that prohibit the free exercise of religion. That guarantee protects not just the right to be a religious person, holding beliefs inwardly and secretly; it also protects the right to act on those beliefs outwardly and publicly." *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246, 2276 (June 30, 2020) (Gorsuch, J., concurring).

(d) The United States Supreme Court has "long recognized the importance of protecting religious actions, not just religious status." *Id.* "[T]he First Amendment protects the 'freedom to act' as well as the 'freedom to believe.'" *Id.*, (quoting *Cantwell v. State of Connecticut*, 310 U.S. 296, 303 (1940)).

(e) The Free Exercise Clause of the United States Constitution guarantees religious believers, at a bare minimum, equal treatment under the law. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542 (1993).

(f) "What benefits the government decides to give, whether meager or munificent, it must give without discrimination against religious conduct." *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246, 2277 (June 30, 2020) (Gorsuch, J., concurring).

(g) The government violates the Free Exercise Clause whenever it "conditions receipt of an important benefit upon conduct proscribed by a religious faith, or ... denies such a benefit because of conduct mandated by a religious belief, thereby putting substantial pressure on an adherent to modify his behavior to violate his beliefs." *Thomas v. Review Bd. of Ind. Employment Sec. Division*, 450 U.S. 707, 717-18 (1981).

(h) "The First Amendment does not allow our leaders to decide which rights to honor and which to ignore." *Spell v. Edwards*, 962 F.3d 175, 183 (5th Cir., June 18, 2020) (Ho, J., concurring).

(i) "Government does not have carte blanche, even in a pandemic, to pick and choose which First Amendment rights are 'open' and which remain 'closed.'" *Id.* at p. 181.

(j) Government officials may not afford a greater degree of protection to commercial than to noncommercial speech, *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 513 (1981) (plurality opinion), or prefer the transmission of secular



views over religious ones, *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 830-31 (1995).

(k) The government may not devalue religious reasons for congregating by judging them to be of lesser import than nonreligious reasons. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993).

(l) The government may not permit “life-sustaining” operations to continue during a state of emergency without also permitting “soul-sustaining” operations such as religious services to continue, especially when the religious services “adhere to all the public health guidelines required of the other services.” *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir., May 9, 2020).

(m) Dr. Timothy P. Flanigan, Professor of Medicine at the Warren Alpert Medical School of Brown University, provided sworn testimony in federal court that religious services pose no greater threat to public health than other gatherings where the federal Centers for Disease Control and Prevention guidelines are followed, per Flanigan Expert Decl., *Calvary Chapel Dayton Valley v. Sisolak*, No. 3:20-cv-00303, Dkt. 38-31 (D. Nev. June 3, 2020). Dr. Flanigan concluded:

(1) “There is no scientific or medical reason that a religious service that follows the guidelines issued by the CDC would pose a more significant risk of spreading SARS-CoV-2 than gatherings or interactions at other establishments or institutions.” *Id.* at paragraph 27.

(2) “[T]here is no scientific or medical reason that people could not follow the CDC guidance just as carefully in a religious setting as they could in a non-religious setting. In fact, my experience has been that individuals in religious settings are observant of the rules established by their houses of worship.” *Id.* at paragraph 32.

(3) “[S]o long as the CDC guidelines are followed, there is no scientific or medical reason to prohibit religious services but not prohibit other activities or gatherings, nor is there any scientific or medical reason to allow certain activities or gatherings while not allowing religious services.” *Id.* at paragraph 33.

(4) “[S]o long as the CDC guidelines are followed, there is no scientific or medical reason to limit the number of persons at a religious gathering while not imposing the same restrictions on shopping malls, big box stores, restaurants or bars, gyms or fitness centers, barbershops or hair salons, movie theaters, museums, water parks, offices, workplace meetings, gambling casinos, factories, supermarkets, farmer’s markets, retail stores, demonstrations, or other places where individuals interact, gather, or share space.” *Id.* at paragraph 34.

SEC. 3. Section 8571 of the Government Code is amended to read:

8571. ~~During~~ Except as provided in Article 18.5 (commencing with Section 8663), during a state of war-emergency emergency, or a state of emergency the Governor may suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency, including subdivision (d) of Section 1253 of the Unemployment Insurance Code, where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency.

SEC. 4. Section 8627 of the Government Code is amended to read:

8627. ~~During~~ Except as provided in Article 18.5 (commencing with Section 8663), during a state of-emergency emergency, the Governor shall, to the extent he



deems they deem necessary, have complete authority over all agencies of the state government and the right to exercise within the area designated all police power vested in the state by the Constitution and laws of the State of California in order to effectuate the purposes of this chapter. In exercise thereof, ~~he~~ they shall promulgate, issue, and enforce such orders and regulations as ~~he deems they deem~~ necessary, in accordance with the provisions of Section 8567.

SEC. 5. Section 8627.5 of the Government Code is amended to read:

8627.5. (a) ~~The~~ Except as provided in Article 18.5 (commencing with Section 8663), the Governor may make, amend, or rescind orders and regulations during a state of emergency that temporarily suspend any state, county, city, or special district statute, ordinance, regulation, or rule imposing nonsafety related restrictions on the delivery of food products, pharmaceuticals, and other emergency necessities distributed through retail or institutional channels, including, but not limited to, hospitals, jails, restaurants, and schools. The Governor shall cause widespread publicity and notice to be given to all of these orders and regulations, or amendments and rescissions thereof.

(b) The orders and regulations shall be in writing and take effect immediately on issuance. The temporary suspension of any statute, ordinance, regulation, or rule shall remain in effect until the order or regulation is rescinded by the Governor, the Governor proclaims the termination of the state of emergency, or for a period of 60 days, whichever occurs first.

SEC. 6. Section 8634 of the Government Code is amended to read:

8634. ~~During~~ Except as provided in Article 18.5 (commencing with Section 8663), during a local ~~emergency~~ emergency, the governing body of a political subdivision, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread publicity and notice.

The authorization granted by this chapter to impose a curfew shall not be construed as restricting in any manner the existing authority of counties and cities and any city and county to impose pursuant to the police power a curfew for any other lawful purpose.

SEC. 7. Section 8655 of the Government Code is amended to read:

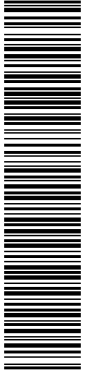
8655. ~~The~~ Except as provided in Article 18.5 (commencing with Section 8663), the state or its political subdivisions shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of a state or local agency or any employee of the state or its political subdivisions in carrying out the provisions of this chapter.

SEC. 8. Article 18.5 (commencing with Section 8663) is added to Chapter 7 of Division 1 of Title 2 of the Government Code, to read:

Article 18.5. Religion is Essential Act

8663. For purposes of this article, the following definitions shall apply:

(a) "Discriminatory action" means any of the following actions taken against an organization on the basis of that organization being a religious organization:



(1) Alter in any way the tax treatment of, or cause any tax, penalty, or payment to be assessed against, or deny, delay, revoke, or otherwise make unavailable an exemption from taxation.

(2) Disallow, deny, or otherwise make unavailable a deduction for state tax purposes of any charitable contribution made to or by the organization.

(3) Impose, levy, or assess a monetary fine, fee, civil or criminal penalty, damages award, or injunction.

(4) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any:

(A) State grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, or other similar benefit from or to the organization.

(B) Entitlement or benefit under a state benefit program from or to the organization.

(C) License, certification, accreditation, recognition, or other similar benefit, position, or status from or to the organization.

(b) "Religious organization" means any of the following:

(1) A house of worship, including, but not limited to, churches, synagogues, shrines, mosques, and temples.

(2) A religious group, corporation, association, educational institution, ministry, order, society, or similar entity, regardless of whether it is integrated or affiliated with a house of worship.

(3) An officer, owner, employee, manager, religious leader, clergymember, or minister of an entity or organization described in paragraph (1) or (2).

(c) "Religious services" means a meeting, gathering, or assembly of two or more persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or other activities that are deemed necessary by the religious organization for the exercise of religion.

(d) "State and local governments" includes any of the following:

(1) The state or a political subdivision of the state.

(2) An agency of the state or of a political subdivision of the state, including a department, bureau, board, commission, council, court, or public institution of higher education.

(3) A person acting under color of state law.

(4) A private person suing under or attempting to enforce a law, rule, or regulation adopted by the state or a political subdivision of the state.

8663.1. (a) (1) During a state of emergency, the Governor shall deem religious services to be an essential service and to be necessary and vital to the health and welfare of the public.

(2) During a local emergency, the governing body of the city or county or the official designated pursuant to Section 8630 shall deem religious services to be an essential service and to be necessary and vital to the health and welfare of the public.

(b) During a state of emergency or a local emergency, the state and local governments shall not take a discriminatory action against a religious organization and shall permit a religious organization to continue operating and engaging in religious services to the same or greater extent that other organizations or businesses that provide essential services that are necessary and vital to the health and welfare of the public are permitted to operate.



(c) The state and local governments shall not enforce any health, safety, or occupancy requirement that imposes a substantial burden on a religious service unless the state or local government demonstrates that applying the burden to the religious service is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

(d) Except as provided by subdivision (c), this section does not prohibit the state or local governments from requiring religious organizations to comply with health, safety, or occupancy requirements issued by the state or federal government that are applicable to all organizations and businesses that provide essential services.

8663.2. (a) (1) Subject to paragraph (2), a religious organization may assert a violation of Section 8663.1 as a claim against the state or a local government in a judicial or administrative proceeding or as a defense in a judicial or administrative proceeding without regard to whether the proceeding is brought by or in the name of the state, a private person, or any other party.

(2) A religious organization shall not bring an action to assert a claim pursuant to this subdivision later than two years after the date that the organization knew or should have known that a discriminatory action or other violation of Section 8663.1 was taken against that religious organization.

(b) (1) Subject to paragraph (2), a religious organization that successfully asserts a claim or defense pursuant to subdivision (a) may be entitled to any of the following:

(A) Declaratory relief.

(B) Injunctive relief to prevent or remedy a violation of Section 8663.1 or the effects of such a violation.

(C) Compensatory damages for pecuniary and nonpecuniary losses.

(D) Reasonable attorneys' fees and costs.

(E) Any other appropriate relief.

(2) All claims for money or damages are governed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

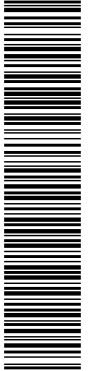
8663.3. (a) This article shall be construed in favor of a broad protection of the free exercise of religion.

(b) The protection of free exercise of religion afforded by this article are in addition to the protections provided under federal law, state law, and the state and federal constitutions. This article does not preempt or repeal any state or local law that is equally or more protective of free exercise of religion. This article shall not be construed to narrow the meaning or application of any state or local law protecting free exercise of religion.

(c) This article applies to, and in cases of conflict supersedes, any state law that impinges upon the free exercise of religion protected by this article, unless a conflicting statute is expressly made exempt from the application of this article. This article also applies to, and in cases of conflict supersedes, any ordinance, rule, regulation, order, opinion, decision, practice, or other exercise of the state government's authority that impinges upon the free exercise of religion protected by this article.

(d) If any provision of this article or an application of its provisions to a particular person or circumstance is held to be invalid under law, the remainder of this article and the application of its provisions to any other person or circumstance shall not be affected.

SEC. 9. Section 120130 of the Health and Safety Code is amended to read:



120130. (a) The department shall establish a list of reportable diseases and conditions. For each reportable disease and condition, the department shall specify the timeliness requirements related to the reporting of each disease and condition, and the mechanisms required for, and the content to be included in, reports made pursuant to this section. The list of reportable diseases and conditions may include both communicable and noncommunicable diseases. The list may include those diseases that are either known to be, or suspected of being, transmitted by milk or milk-based products. The list may be modified at any time by the department, after consultation with the California Conference of Local Health Officers. Modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be implemented without being adopted as a regulation, except that the revised list shall be filed with the Secretary of State and printed in the California Code of Regulations as required pursuant to subdivision (e). Those diseases listed as reportable shall be properly reported as required to the department by the health officer.

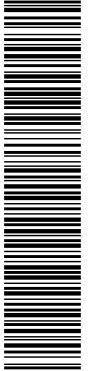
(b) The department shall establish a list of communicable diseases and conditions for which clinical laboratories shall submit a culture or a specimen to the local public health laboratory. The list shall set forth the conditions under which the culture and specimen shall also be submitted to the State Public Health Laboratory. The list may be modified at any time by the department, in consultation with appropriate local public health stakeholders, including, but not limited to, local health officers and public health laboratory directors. Both establishment and modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be implemented without being adopted as a regulation, except that the initial list and any modifications shall be filed with the Secretary of State and printed in the California Code of Regulations as required pursuant to subdivision (e).

(c) The Except as provided in Article 18.5 (commencing with Section 8663) of Chapter 7 of Division 1 of Title 2 of the Government Code, the department may from time to time adopt and enforce regulations requiring strict or modified isolation, or quarantine, for any of the contagious, infectious, or communicable diseases, if in the opinion of the department the action is necessary for the protection of the public health.

(d) The Except as provided in Article 18.5 (commencing with Section 8663) of Chapter 7 of Division 1 of Title 2 of the Government Code, the health officer may require strict or modified isolation, or quarantine, for any case of contagious, infectious, or communicable disease, when this action is necessary for the protection of the public health.

(e) The lists established pursuant to subdivisions (a) and (b) and any subsequent modifications shall be published in Title 17 of the California Code of Regulations.

(f) Notwithstanding any other provision of law, no civil or criminal penalty, fine, sanction, or finding, or denial, suspension, or revocation of licensure for any person or facility may be imposed based upon a failure to provide the notification of a reportable disease or condition or to provide the submission of a culture or specimen that is required under this section, unless the name of the disease or condition that is required to be reported, or for which a culture or specimen is required to be submitted, was printed in the California Code of Regulations and the department notified the



person or facility of the disease or condition at least six months prior to the date of the claimed failure to report or submit.

(g) Commencing July 1, 2009, or within one year of the establishment of a state electronic laboratory reporting system, whichever is later, a report generated pursuant to this section, or Section 121022, by a laboratory shall be submitted electronically in a manner specified by the department. The department shall allow laboratories that receive incomplete patient information to report the name of the provider who submitted the request to the local health officer.

(h) The department may, through its ~~Internet Web site~~ internet website and via electronic mail, advise out-of-state laboratories that are known to the department to test specimens from California residents of the new reporting requirements.

SEC. 10. Section 120135 of the Health and Safety Code is amended to read:

120135. ~~The Except as provided in Article 18.5 (commencing with Section 8663) of Chapter 7 of Division 1 of Title 2 of the Government Code, the department may establish and maintain places of quarantine or isolation.~~

SEC. 11. Section 120140 of the Health and Safety Code is amended to read:

120140. ~~Upon Except as provided in Article 18.5 (commencing with Section 8663) of Chapter 7 of Division 1 of Title 2 of the Government Code, upon being informed by a health officer of any contagious, infectious, or communicable-disease disease, the department may take measures as are necessary to ascertain the nature of the disease and prevent its spread. To that end, the department may, if it considers it proper, take possession or control of the body of any living person, or the corpse of any deceased person.~~

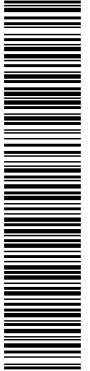
SEC. 12. Section 120145 of the Health and Safety Code is amended to read:

120145. ~~The Except as provided in Article 18.5 (commencing with Section 8663) of Chapter 7 of Division 1 of Title 2 of the Government Code, the department may quarantine, isolate, inspect, and disinfect persons, animals, houses, rooms, other property, places, cities, or localities, whenever in its judgment the action is necessary to protect or preserve the public health.~~

SEC. 13. Section 131080 of the Health and Safety Code is amended to read:

131080. ~~The Except as provided in Article 18.5 (commencing with Section 8663) of Chapter 7 of Division 1 of Title 2 of the Government Code, the department may advise all local health authorities, and, when in its judgment the public health is menaced, it shall control and regulate their action.~~

SEC. 14. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



LEGISLATIVE COUNSEL'S DIGEST

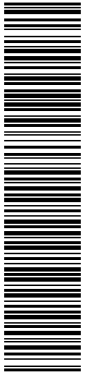
Bill No. _____
as introduced, _____.
General Subject: Emergency powers: essential services: religious services.

Existing law, the California Emergency Services Act, authorizes the Governor to proclaim a state of emergency, and local governments to proclaim a local emergency, when specified conditions of disaster or extreme peril to the safety of persons and property exist, and authorizes the Governor or the local government to exercise certain powers in response to that emergency. Existing law grants immunity to the state and its political subdivisions for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of a state or local agency or any employee of the state or its political subdivisions in carrying out the California Emergency Services Act.

Existing law establishes the State Department of Public Health, headed by the State Public Health Officer, and sets forth its powers and duties, including the administration of provisions relating to the prevention and control of communicable disease. Existing law authorizes the department to adopt and enforce regulations requiring strict or modified isolation, or quarantine, for any of the contagious, infectious, or communicable diseases, if in the opinion of the department the action is necessary for the protection of the public health.

On March 4, 2020, the Governor proclaimed a state of emergency in response to the 2019 novel coronavirus disease (COVID-19) pandemic. Pursuant to specified provisions relating to the prevention and control, the State Public Health Officer ordered all individuals living in the state to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined in the United States Cybersecurity and Infrastructure Security Agency's guidance on the essential critical infrastructure workforce. Pursuant to authority under specified provisions of the California Emergency Services Act, the Governor issued Executive Order No. N-33-20 requiring all residents to immediately heed those state public health directives.

This bill, the Religion is Essential Act, would, during a state of emergency or local emergency, require the Governor or the local government to deem religious services to be an essential service and to be necessary and vital to the health and welfare of the public. The bill would prohibit the state and local government from taking a discriminatory action against a religious organization, as those terms are defined, and would require the state and local government to permit a religious organization to continue operating and engaging in religious services during a state of emergency to the same or greater extent that other organizations or businesses that provide essential services that are necessary and vital to the health and welfare of the public are permitted to operate. The bill would prohibit the state and local government from enforcing any health, safety, or occupancy requirement that imposes a substantial burden on a religious service unless the state or local government demonstrates that applying the burden to



the religious service is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

This bill would authorize a religious organization to assert a violation of these provisions as a claim against the state or a local government in a judicial or administrative proceeding or as a defense in a judicial or administrative proceeding, as specified. The bill would entitle a religious organization that successfully asserts a claim or defense to certain relief, as specified. The bill would make related findings and declarations.

By imposing additional duties on a local government in the exercise of emergency powers, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

