

# Most states have cut back public health powers amid pandemic

September 15 2021, by Lauren Weber and Anna Maria Barry-Jester

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This July 2020 file photo shows the Montana State Capitol in Helena, Mont. Amid the coronavirus pandemic, Montana's legislature passed restrictive laws severely curbing quarantine and isolation powers, increasing local officials' power over local health boards, preventing limits on religious gatherings, and banning employers—including in health care settings—from requiring vaccinations for COVID, the flu or anything else. Credit: Thom Bridge/Independent Record via AP, File

Republican legislators in more than half of U.S. states, spurred on by voters angry about lockdowns and mask mandates, are taking away the powers that state and local officials use to protect the public against infectious diseases.

A Kaiser Health News review of hundreds of pieces of legislation found that, in all 50 states, legislators have proposed bills to curb such public health powers since the COVID-19 pandemic began. While some governors vetoed bills that passed, at least 26 states pushed through laws that permanently weaken government authority to protect public health. In three additional states, an executive order, ballot initiative or state Supreme Court ruling limited long-held public health powers. More bills are pending in a handful of states whose legislatures are still in session.

In Arkansas, legislators banned mask mandates except in private businesses or state-run health care settings, calling them "a burden on the public peace, health, and safety of the citizens of this state." In Idaho, county commissioners, who typically have no public health expertise, can veto countywide public health orders. In Kansas and Tennessee, school boards, rather than health officials, have the power to close schools.

President Joe Biden last week announced sweeping vaccination mandates and other COVID-19 measures, saying he was forced to act partly because of such legislation. "My plan also takes on elected officials in states that are undermining you and these lifesaving actions," he said.

The KHN review showed that:

—In at least 16 states, legislators have limited the power of public health officials to order mask mandates, or quarantines or isolation. In some cases, they gave themselves or local elected politicians the authority to prevent the spread of infectious disease.

—At least 17 states passed laws banning COVID-19 vaccine mandates or passports or made it easier to get around vaccine requirements.

—At least nine states have new laws banning or limiting mask mandates. Executive orders or a court ruling limit mask requirements in five more.

Much of this legislation takes effect as COVID-19 hospitalizations in some areas are climbing to the highest numbers at any point in the pandemic, and children are back in school.



In this Thursday, Aug. 12, 2021 file photo, people celebrate after the Salt Lake County Council voted to overturn a school mask order for kids under the age of 12 issued earlier in the week by the county's top health official. Republican legislators in more than half of U.S. states, spurred on by voters angry over lockdowns and mask mandates, have passed laws to take away powers state and local officials use to protect the public against infectious diseases. Credit: AP Photo/Rick Bowmer

"We really could see more people sick, hurt, hospitalized or even die, depending on the extremity of the legislation and curtailing of the authority," said Lori Tremmel Freeman, head of the National Association of County and City Health Officials.

Public health academics and officials are frustrated that they, instead of the virus, have become the enemy. They argue this will have consequences that last long beyond this pandemic, diminishing their ability to fight the latest COVID-19 surge and future disease outbreaks, such as being able to quarantine people during a measles outbreak.

"It's kind of like having your hands tied in the middle of a boxing match," said Kelley Vollmar, executive director of the Jefferson County Health Department in Missouri.

But proponents of the new limits say they are a necessary check on executive powers and give lawmakers a voice in prolonged emergencies. Arkansas state Sen. Trent Garner, a Republican who co-sponsored his state's successful bill to ban mask mandates, said he was trying to reflect the will of the people.

"What the people of Arkansas want is the decision to be left in their hands, to them and their family," Garner said. "It's time to take the power away from the so-called experts, whose ideas have been woefully inadequate."



In this Tuesday, June 29, 2021 file photo, Arkansas Gov. Asa Hutchinson talks about COVID-19 vaccinations at the state Capitol in Little Rock, Ark. Hutchinson, called a special legislative session in early August 2021, asking lawmakers to carve out an exception for schools in a bill to ban mask mandates. They declined. The law is currently blocked by an Arkansas judge who deemed it unconstitutional. Legal battles are ongoing in other states as well, including Missouri, where a St. Louis County mask mandate is in dispute. Credit: AP Photo/Andrew Demillo

After initially signing the bill, Gov. Asa Hutchinson, R-Ark., expressed regret, calling a special legislative session in early August to ask lawmakers to carve out an exception for schools. Lawmakers declined. The law is currently blocked by an Arkansas judge who deemed it unconstitutional. Legal battles are ongoing in other states as well.

## A DELUGE OF BILLS

In Ohio, legislators gave themselves the power to overturn health orders and weakened school vaccine mandates. In Utah and Iowa, schools cannot require masks. In Alabama, state and local governments cannot issue vaccine passports and schools cannot require COVID-19 vaccinations.

The Montana Legislature passed some of the most restrictive laws of all, severely curbing public health's quarantine and isolation powers, increasing local elected officials' power over local health boards, preventing limits on religious gatherings and banning employers—including in health care settings—from requiring vaccinations for COVID-19, the flu or anything else.

Legislators there also passed limits on local officials: If jurisdictions add public health rules stronger than state public health measures, they could lose 20% of some grants.

Losing the ability to order quarantines has left Karen Sullivan, health officer for Montana's Butte-Silver Bow Health Department, terrified about what's to come, not only during the COVID-19 pandemic but for future measles and whooping cough outbreaks.

"In the midst of delta and other variants that are out there, we're quite frankly a nervous wreck about it," Sullivan said. "Relying on morality and goodwill is not a good public health practice."



In this Wednesday, May 19, 2021 file photo, Lt. Gov. Janice McGeachin tears up a FEMA COVID agreement as she announces her run for Idaho governor at the Downtown Event Center in Idaho Falls, Idaho. While Republican Idaho Gov. Brad Little was traveling out of state, McGeachin signed a surprise executive order banning mask mandates that she later promoted for her upcoming campaign against him. He later reversed the ban, tweeting, "I do not like petty politics. I do not like political stunts over the rule of law." Credit: John Roark/The Idaho Post-Register via AP, File

While some public health officials tried to fight the national wave of legislation, the underfunded public health workforce was consumed by trying to implement the largest vaccination campaign in U.S. history and had little time for political action.

Freeman said her city and county health officials group has meager influence and resources, especially in comparison with the American Legislative Exchange Council, a corporate-backed conservative group that promoted a model bill to restrict the emergency powers of governors and other officials. The draft legislation appears to have inspired dozens of state-level bills, according to the KHN review. At least 15 states passed laws limiting emergency powers. In some states, governors can no longer institute mask mandates or close businesses, and their executive orders can be overturned by legislators.

When North Dakota's legislative session began in January, a long slate of bills sought to rein in public health powers, including one with language similar to ALEC's. The state didn't have a health director to argue against the new limits because three had resigned in 2020.

Fighting the bills not only took time, but also seemed dangerous, said Renae Moch, public health director for Bismarck, who testified against a measure prohibiting mask mandates. She then received an onslaught of hate mail and demands for her to be fired.

Lawmakers overrode the governor's veto to pass the bill into law. The North Dakota Legislature also banned businesses from asking whether patrons are vaccinated against or infected with the coronavirus and curbed the governor's emergency powers.

The new laws are meant to reduce the power of governors and restore the balance of power between states' executive branches and legislatures, said Jonathon Hauenschild, director of the ALEC task force on communications and technology. "Governors are elected, but they were delegating a lot of authority to the public health official, often that they had appointed," Hauenschild said.

**'LIKE TURNING OFF A LIGHT SWITCH'**





In this March 9, 2021, file photo, students with signs ride in the back of a pickup truck around Flathead High School to protest the Kalispell School District's face mask requirement in Kalispell, Mont. Amid the coronavirus pandemic, Montana's legislature has passed restrictive laws severely curbing public health's quarantine and isolation powers, increasing local elected officials' power over local health boards, preventing limits on religious gatherings and banning employers—including in health care settings—from requiring vaccinations for covid, the flu or anything else. Credit: Hunter D'Antuono/Flathead Beacon via AP, File

When the Indiana Legislature overrode the governor's veto to pass a bill that gave county commissioners the power to review public health orders, it was devastating for Dr. David Welsh, the public health officer

in rural Ripley County.

People immediately stopped calling him to report COVID-19 violations, because they knew the county commissioners could overturn his authority. It was "like turning off a light switch," Welsh said.

Another county in Indiana has already seen its health department's mask mandate overridden by the local commissioners, Welsh said.

He's considering stepping down after more than a quarter-century in the role. If he does, he'll join at least 303 public health leaders who have retired, resigned or been fired since the pandemic began, according to an ongoing analysis by KHN and The Associated Press. That means 1 in 5 Americans have lost a local health leader during the pandemic.

"This is a deathblow," said Brian Castrucci, CEO of the de Beaumont Foundation, which advocates for public health. He called the legislative assault the last straw for many seasoned public health officials who have battled the pandemic without sufficient resources, while also being vilified.

Public health groups expect further combative legislation. ALEC's Hauenschild said the group is looking into a Michigan law that allowed the legislature to limit the governor's emergency powers without Democratic Gov. Gretchen Whitmer's signature.

Curbing the authority of public health officials has also become campaign fodder, particularly among Republican candidates running further on the right. While Republican Idaho Gov. Brad Little was traveling out of state, Lt. Gov. Janice McGeachin signed a surprise executive order banning mask mandates that she later promoted for her upcoming campaign against him. He later reversed the ban, tweeting: "I do not like petty politics. I do not like political stunts over the rule of

law."



In this Tuesday, Aug. 24, 2021 file photo, supporters of a bill that would prohibit public and private employers from requiring vaccinations or punishing workers who don't receive them rally in favor of the legislation demonstrate outside the Ohio Statehouse in Columbus, Ohio. Republican legislators in more than half of U.S. states, spurred on by voters angry over lockdowns and mask mandates, have passed laws to take away powers state and local officials use to protect the public against infectious diseases. Credit: AP Photo/Andrew Welsh-Huggins

At least one former lawmaker—former Oregon Democratic state Sen. Wayne Fawbush—said some of today's politicians may come to regret these laws.

Fawbush was a sponsor of 1989 legislation during the AIDS crisis. It banned employers from requiring health care workers, as a condition of employment, to get an HIV vaccine, if one became available.

But 32 years later, that means Oregon cannot require health care workers to be vaccinated against COVID-19. Calling lawmaking a "messy business," Fawbush said he certainly would not have pushed the bill through if he had known then what he does now.

"Legislators need to obviously deal with immediate situations," Fawbush said. "But we have to look over the horizon. It's part of the job responsibility to look at consequences."

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