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## HOUSE BILL NO. 5023

Offered August 18, 2020

Prefiled August 17, 2020

A BILL to amend and reenact §§ 32.1-13, 32.1-20, 35.1-10, 40.1-22, and 44-146.17 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 2 of Title 32.1 a section numbered 32.1-38.1, relating to public health emergency; emergency orders and regulations; limitations.

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Patron—Byron

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Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 32.1-13, 32.1-20, 35.1-10, 40.1-22, and 44-146.17 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 2 of Title 32.1 a section numbered 32.1-38.1 as follows:

**§ 32.1-13. Emergency orders and regulations.**

A. The Board may make separate orders and regulations to meet any emergency, not provided for by general regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious, and infectious diseases and other dangers to the public life and health, provided that the Board (i) provides notice and receives oral and written comment and (ii) conducts at least one public hearing on the proposed order or regulation. An emergency order or regulation made pursuant to this subsection shall be valid for no more than 45 days from the effective date of such order or regulation.

B. The Board may extend an emergency order or regulation adopted pursuant to subsection A. The Board shall (i) provide notice and receive oral and written comment and (ii) conduct at least one public hearing on the order or regulation proposed to be extended prior to extending such order or regulation. Each such extension shall be valid for a period of no more than 45 days. An emergency order or regulation may be extended multiple times in accordance with this subsection; however, no emergency order or regulation adopted pursuant to subsection A shall be extended beyond a date that is 18 months from the effective date of the initial emergency order or regulation adopted pursuant to subsection A. If the Board wishes to continue regulating the subject matter of the emergency order or regulation adopted pursuant to subsection A beyond the end of the 18-month period described in this subsection, the Board shall adopt regulations to replace the emergency order or regulation in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

**§ 32.1-20. Vested with authority of Board.**

A. The Commissioner shall be vested with all the authority of the Board when it is not in session, subject to such rules and regulations as may be prescribed by the Board.

B. In any case in which the Commissioner exercises the authority of the Board to enact any order or regulation to meet an emergency, not provided for by general regulation, for the purpose of suppressing nuisances dangerous to the public health or communicable, contagious, or infectious diseases or other dangers to the public life and health, such emergency order or regulation shall be valid for no more than 30 days from the effective date of the emergency order or regulation. Upon expiration of such 30-day period, the emergency order or regulation shall become ineffective unless an order or regulation effectuating the purpose of the emergency order or regulation made by the Commissioner is adopted by the Board pursuant to § 32.1-13.

**§ 32.1-38.1. Reports of suspected violations of orders and regulations during a public health emergency.**

The Department shall not receive any report alleging a violation of any emergency regulation or order by a business or private entity unless such report includes the first and last name of the person making the report and at least one method by which the person may be contacted. All such reports shall be a matter of public record.

**§ 35.1-10. Measures to prevent transmission of disease.**

A. Nothing in this title applicable to restaurants shall prevent the Commissioner from taking whatever action he deems necessary to control the spread of preventable diseases as set forth in Title 32.1, including but not limited to the exclusion of employees, the medical examination of any employee, the immediate closing of a hotel, restaurant, summer camp, or campground, and the taking of samples for testing.

B. Any action taken by the Commissioner pursuant to this section shall be valid for no more than 45

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59 *days from the effective date of such action. Upon expiration of such 45-day period, the action shall*  
60 *become invalid unless an order or regulation effectuating the purpose of the action taken by the*  
61 *Commissioner pursuant to this section is adopted by the Board in accordance with § 32.1-13.*

62 **§ 40.1-22. Safety and Health Codes Commission continued as Safety and Health Codes Board.**

63 (1) The Safety and Health Codes Commission is continued and shall hereafter be known as the  
64 Safety and Health Codes Board. The Board shall consist of fourteen members, twelve of whom shall be  
65 appointed by the Governor. One member shall, by reason of previous vocation, employment or  
66 affiliation, be chosen to represent labor in the manufacturing industry; one member shall, by reason of  
67 previous vocation, employment or affiliation, be chosen to represent labor in the construction industry;  
68 one member shall, by reason of previous vocation, employment or affiliation, be chosen to represent  
69 industrial employers; one member shall be chosen from and be a representative of the general public;  
70 one member shall be a representative of agricultural employers; one member shall, by reason of previous  
71 vocation, employment or affiliation, be chosen to represent agricultural employees; one member shall, by  
72 reason of previous vocation, employment or affiliation, be chosen to represent construction industry  
73 employers; one member shall be a representative of an insurance company; one member shall be a labor  
74 representative from the boiler pressure vessel industry; one member shall be a labor representative  
75 knowledgeable in chemicals and toxic substances; one member shall be an employer representative of  
76 the boiler pressure vessel industry; one member shall be an industrial representative knowledgeable in  
77 chemical and toxic substances, and the Director of the Department of Environmental Quality or his duly  
78 authorized representative shall be a member ex officio with full membership status. The Commissioner  
79 of Health or his duly authorized representative shall also be a member ex officio with full membership  
80 status.

81 (2) The first appointive members shall be appointed as follows: one for a term of four years, one for  
82 a term of three years, one for a term of two years, and one for a term of one year. Of the members  
83 appointed to represent the construction industry, one shall be appointed for the term of two years and  
84 one shall be appointed for the term of four years. Succeeding appointments shall be for terms of four  
85 years each but other vacancies shall be filled by appointment for the unexpired term.

86 (3) The Board shall annually select a chairman from its members. The Board shall meet at least once  
87 every six months; other meetings may be held upon call of the chairman or any three members of the  
88 Board. Five members of the Board shall constitute a quorum.

89 (4) The Board shall study and investigate all phases of safety in business establishments, the  
90 application of this title thereto, and shall serve as advisor to the Commissioner.

91 (5) The Board, with the advice of the Commissioner, is hereby authorized to adopt, alter, amend, or  
92 repeal rules and regulations to further, protect and promote the safety and health of employees in places  
93 of employment over which it has jurisdiction and to effect compliance with the Federal Occupational  
94 Safety and Health Act of 1970 (P.L. 91-596), and as may be necessary to carry out its functions  
95 established under this title. The Commissioner shall enforce such rules and regulations. All such rules  
96 and regulations shall be designed to protect and promote the safety and health of such employees. In  
97 making such rules and regulations to protect the occupational safety and health of employees, the Board  
98 shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best  
99 available evidence, that no employee will suffer material impairment of health or functional capacity.  
100 However, such standards shall be at least as stringent as the standards promulgated by the Federal  
101 Occupational Safety and Health Act of 1970 (P.L. 91-596). In addition to the attainment of the highest  
102 degree of health and safety protection for the employee, other considerations shall be the latest available  
103 scientific data in the field, the feasibility of the standards, and experience gained under this and other  
104 health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of  
105 objective criteria and of the performance desired. Such standards when applicable to products which are  
106 distributed in interstate commerce shall be the same as federal standards unless deviations are required  
107 by compelling local conditions and do not unduly burden interstate commerce.

108 (6) Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 shall apply to the adoption of rules and regulations  
109 under this section and to proceedings before the Board.

110 (6a) The Board shall provide, without regard to the requirements of Chapter 40 (§ 2.2-4000 et seq.)  
111 of Title 2.2, for an emergency temporary standard to take immediate effect upon publication in a  
112 newspaper of general circulation, published in the City of Richmond, Virginia, if it determines that  
113 employees are exposed to grave danger from exposure to substances or agents determined to be toxic or  
114 physically harmful or from new hazards, and that such emergency standard is necessary to protect  
115 employees from such danger. The publication mentioned herein shall constitute notice that the Board  
116 intends to adopt such standard within a period of six months. The Board by similar publication shall  
117 prior to the expiration of six months give notice of the time and date of, and conduct a hearing on, the  
118 adoption of a permanent standard.

119 ~~The~~ *An emergency temporary standard adopted pursuant to this subdivision shall expire within six*  
120 ~~months or 45 days after the date on which it became effective, when superseded by a permanent~~

standard; or when repealed by the Board, whichever occurs first; ~~or when repealed by the Board.~~ The Board may extend an emergency temporary standard pursuant to this subdivision for an additional 45 days if the Board (i) provides notice and receives oral and written comment and (ii) conducts at least one public hearing on the emergency temporary standard proposed to be extended prior to extending such emergency temporary standard. Each such extension shall be valid for a period of no more than 45 days. An emergency temporary standard may be extended multiple times in accordance with this subdivision; however, no emergency temporary standard adopted pursuant to this subdivision shall be extended beyond a date that is six months from the effective date of the initial emergency temporary standard adopted pursuant to this subdivision. If the Board wishes to continue regulating the subject matter of the emergency temporary standard, the Board shall adopt a permanent standard or a rule or regulation in accordance with this section.

(7) Any person who may be adversely affected by a standard issued under this title may challenge the validity of such standard in the Circuit Court of the City of Richmond by declaratory judgment. The determination of the Safety and Health Codes Board shall be conclusive if supported by substantial evidence in the record considered as a whole. Adoption of a federal occupational safety and health standard shall be deemed to be sufficient evidence to support promulgation of such standard. The filing of a petition for declaratory judgment shall not operate as a stay of the standard unless the court issues a preliminary injunction.

**§ 44-146.17. Powers and duties of Governor.**

The Governor shall be Director of Emergency Management. He shall take such action from time to time as is necessary for the adequate promotion and coordination of state and local emergency services activities relating to the safety and welfare of the Commonwealth in time of disasters.

The Governor shall have, in addition to his powers hereinafter or elsewhere prescribed by law, the following powers and duties:

(1) To proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of this chapter including, but not limited to such measures as are in his judgment required to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources under any state or federal emergency services programs.

He may adopt and implement the Commonwealth of Virginia Emergency Operations Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments and other organizations.

He may direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response or recovery actions; prescribe routes, modes of transportation and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein.

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

Such executive orders declaring a state of emergency may address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1.

~~Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, no~~ No rule, regulation, or order issued under this section shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly but the same or a similar rule, regulation, or order may thereafter be issued again if not contrary to law 45 days after the date of issuance. Unless the General Assembly takes action on the rule, regulation, or order within the 45 days during which the rule, regulation, or order is effective, the Governor shall thereafter be prohibited from issuing the same or a similar rule, regulation, or order relating to the same emergency;

(2) To appoint a State Coordinator of Emergency Management and authorize the appointment or employment of other personnel as is necessary to carry out the provisions of this chapter, and to remove, in his discretion, any and all persons serving hereunder;

(3) To procure supplies and equipment, to institute training and public information programs relative to emergency management and to take other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces in time of need;

(4) To make such studies and surveys of industries, resources, and facilities in the Commonwealth as

182 may be necessary to ascertain the capabilities of the Commonwealth and to plan for the most efficient  
183 emergency use thereof;

184 (5) On behalf of the Commonwealth enter into mutual aid arrangements with other states and to  
185 coordinate mutual aid plans between political subdivisions of the Commonwealth. After a state of  
186 emergency is declared in another state and the Governor receives a written request for assistance from  
187 the executive authority of that state, the Governor may authorize the use in the other state of personnel,  
188 equipment, supplies, and materials of the Commonwealth, or of a political subdivision, with the consent  
189 of the chief executive officer or governing body of the political subdivision;

190 (6) To delegate any administrative authority vested in him under this chapter, and to provide for the  
191 further delegation of any such authority, as needed;

192 (7) Whenever, in the opinion of the Governor, the safety and welfare of the people of the  
193 Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, he  
194 may declare a state of emergency to exist;

195 (8) To request a major disaster declaration from the President, thereby certifying the need for federal  
196 disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth,  
197 its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting  
198 from the disaster;

199 (9) To provide incident command system guidelines for state agencies and local emergency response  
200 organizations; and

201 (10) Whenever, in the opinion of the Governor or his designee, an employee of a state or local  
202 public safety agency responding to a disaster has suffered an extreme personal or family hardship in the  
203 affected area, such as the destruction of a personal residence or the existence of living conditions that  
204 imperil the health and safety of an immediate family member of the employee, the Governor may direct  
205 the Comptroller of the Commonwealth to issue warrants not to exceed \$2,500 per month, for up to three  
206 calendar months, to the employee to assist the employee with the hardship.