

2020 SPECIAL SESSION I

INTRODUCED

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HOUSE BILL NO. 5023

Offered August 18, 2020

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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.

Patron—Byron

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

121 standard; or when repealed by the Board, whichever occurs first; ~~or when repealed by the Board.~~ The
 122 Board may extend an emergency temporary standard pursuant to this subdivision for an additional 45
 123 days if the Board (i) provides notice and receives oral and written comment and (ii) conducts at least
 124 one public hearing on the emergency temporary standard proposed to be extended prior to extending
 125 such emergency temporary standard. Each such extension shall be valid for a period of no more than
 126 45 days. An emergency temporary standard may be extended multiple times in accordance with this
 127 subdivision; however, no emergency temporary standard adopted pursuant to this subdivision shall be
 128 extended beyond a date that is six months from the effective date of the initial emergency temporary
 129 standard adopted pursuant to this subdivision. If the Board wishes to continue regulating the subject
 130 matter of the emergency temporary standard, the Board shall adopt a permanent standard or a rule or
 131 regulation in accordance with this section.

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

139 **§ 44-146.17. Powers and duties of Governor.**

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

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

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

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

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

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

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

167 ~~Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and~~
 168 ~~emergencies, no~~ No rule, regulation, or order issued under this section shall have any effect beyond ~~June~~
 169 ~~30 next following the next adjournment of the regular session of the General Assembly but the same or~~
 170 ~~a similar rule, regulation, or order may thereafter be issued again if not contrary to law 45 days after the~~
 171 ~~date of issuance. Unless the General Assembly takes action on the rule, regulation, or order within the~~
 172 ~~45 days during which the rule, regulation, or order is effective, the Governor shall thereafter be~~
 173 ~~prohibited from issuing the same or a similar rule, regulation, or order relating to the same emergency;~~

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

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

181 (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.