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## HOUSE BILL NO. 5075

Offered August 18, 2020

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A BILL to amend and reenact §§ 32.1-13, 32.1-20, 32.1-42, and 44-146.17 of the Code of Virginia, relating to Emergency Services and Disaster Law; Commissioner of Health; emergency orders and regulations; limitations.

Patrons—LaRock, Cole, M.L., Walker and Wright; Senator: Ruff

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, 32.1-42, and 44-146.17 of the Code of Virginia are amended and reenacted 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.

B. Notwithstanding any other provision of law, the Board shall not make any order or regulation pursuant to this section unless, based on the evidence available to the Board, (i) such order or regulation is necessary to suppress a nuisance dangerous to the public health or a communicable, contagious, or infectious disease or other danger to the public life and health; (ii) no alternatives to the proposed order or regulation that are reasonable in light of the impact on quality of life and economic well-being exist; and (iii) the provisions of such order or regulation are narrowly tailored to address the nuisance dangerous to the public health or a communicable, contagious, or infectious disease or other danger to the public life and health. Evidence considered by the Board in making such order or regulation shall be made part of the record of such decision. Any order or regulation adopted pursuant to this section shall comply with the requirements of § 57-2.02.

C. An order or regulation made by the Board pursuant to subsection B shall be valid for a period not to exceed 15 days. The Board may extend an order or regulation made pursuant to subsection B one time, for a period not to exceed 15 days, if (i) the Board provides notice of its intent to extend the order or regulation and holds at least one public hearing, which shall include opportunity for public comment, prior to such extension and (ii) based on the evidence available to the Board, (a) such order or regulation is necessary to suppress a nuisance dangerous to the public health or a communicable, contagious, or infectious disease or other danger to the public life and health; (b) no alternatives to the proposed order or regulation that are reasonable in light of the impact on quality of life and economic well-being exist; and (c) the provisions of such order or regulation are narrowly tailored to address the nuisance dangerous to the public health or a communicable, contagious, or infectious disease or other danger to the public life and health. Evidence considered by the Board in extending such order or regulation shall be made part of the record of such decision.

D. Any order that (i) limits the number of individuals who may gather together in person, in public or private, or (ii) categorizes individuals on the basis of their relationship to or association with such individuals and limits the categories of individuals with whom an individual who is not known or reasonably suspected to have been exposed to or infected with a communicable disease of public health threat may associate shall be deemed to negatively impact the quality of life and economic well-being of residents of the Commonwealth.

E. Any person who violates an order or regulation made pursuant to this section is subject to a civil penalty of no more than \$100 per violation. Such civil penalty is payable to the Literary Fund. In no case shall any person be assessed a total of more than \$1,000 in penalties for violations of the same order or regulation.

**§ 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. Any order or regulation made by the Commissioner pursuant to this section shall be subject to the requirements of § 32.1-13.

**§ 32.1-42. Emergency rules and regulations.**

The Board of Health may promulgate regulations and orders to meet any emergency or to prevent a potential emergency caused by a disease dangerous to public health, including, but not limited to, procedures specifically responding to any disease listed pursuant to § 32.1-35 that is determined to be

59 caused by an agent or substance used as a weapon or any communicable disease of public health threat  
60 that is involved in an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05  
61 et seq.) of this chapter. *Any regulation or order adopted by the Board pursuant to this section shall be*  
62 *subject to the provisions of § 32.1-13.*

63 **§ 44-146.17. Powers and duties of Governor.**

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

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

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

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

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

84 Executive orders, to include those declaring a state of emergency and directing evacuation, shall have  
85 the force and effect of law ~~and the violation thereof shall be punishable as a Class 1 misdemeanor, and~~  
86 ~~any person who violates such an order is subject to a civil penalty of no more than \$100 per violation~~  
87 ~~in every case where the executive order declares that its violation shall have such force and effect. Such~~  
88 ~~civil penalty is payable to the Literary Fund. In no case shall any person be assessed a total of more~~  
89 ~~than \$1,000 in penalties for violations of the same executive order.~~

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

94 ~~Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and~~  
95 ~~emergencies, no~~ No rule, regulation, or order issued under this section shall have any effect beyond June  
96 30 next following the next adjournment of the regular session of the General Assembly ~~but the same or~~  
97 ~~a similar rule, regulation, or order may thereafter be issued again if not contrary to law 15 days after the~~  
98 ~~date of issuance. If, however, the General Assembly does not take any action on the rule, regulation, or~~  
99 ~~order within the 15 days during which the rule, regulation, or order is effective, the Governor may once~~  
100 ~~again issue the same rule, regulation, or order but shall thereafter be prohibited from issuing the same~~  
101 ~~or a similar rule, regulation, or order relating to the same emergency.~~

102 Notwithstanding the foregoing or any other provision of law, the Governor shall not issue any rule,  
103 regulation, or order pursuant to this subdivision unless, based on the evidence available to the  
104 Governor, (i) such rule, regulation, or order is necessary to address a compelling circumstance; (ii) no  
105 alternatives to the proposed rule, regulation, or order that are reasonable in light of the impact on  
106 quality of life and economic well-being exist; and (iii) the provisions of such rule, regulation, or order  
107 are narrowly tailored to address the compelling circumstance. Evidence considered by the Governor in  
108 issuing such rule, regulation, or order shall be made part of the record of such decision. The Governor  
109 may extend a rule, regulation, or order issued pursuant to this paragraph one time, for a period not to  
110 exceed 15 days, if (a) the Governor provides notice of his intent to extend the rule, regulation, or order  
111 and holds at least one public hearing, which shall include opportunity for public comment, prior to such  
112 extension and (b) based on the evidence available to the Governor, (1) such rule, regulation, or order is  
113 necessary to address a compelling circumstance; (2) no alternatives to the proposed rule, regulation, or  
114 order that are reasonable in light of the impact on quality of life and economic well-being exist; and (3)  
115 the provisions of such rule, regulation, or order are narrowly tailored to address the compelling  
116 circumstance. Evidence considered by the Governor in extending such rule, regulation, or order shall be  
117 made part of the record of such decision. For the purposes of this paragraph, any rule, regulation, or  
118 order that (A) limits the number of individuals who may gather together in person, in public or private,  
119 or (B) categorizes individuals on the basis of their relationship to or association with such individuals  
120 and limits the categories of individuals with whom an individual who is not known or reasonably

121 *suspected to have been exposed to or infected with a communicable disease of public health threat may*  
122 *associate shall be deemed to negatively impact the quality of life and economic well-being of residents*  
123 *of the Commonwealth. Any rule, regulation, or order adopted pursuant to this section shall comply with*  
124 *the requirements of § 57-2.02;*

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

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

132 (4) To make such studies and surveys of industries, resources, and facilities in the Commonwealth as  
133 may be necessary to ascertain the capabilities of the Commonwealth and to plan for the most efficient  
134 emergency use thereof;

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

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

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

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

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

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