

HOUSE BILL REPORT

SCR 8402

As Passed House:

January 15, 2021

Brief Description: Extending certain gubernatorial orders issued in response to the COVID-19 state of emergency.

Sponsors: Senators Liias, Dhingra, Nobles and Saldaña.

Brief History:

Committee Activity:

None.

Floor Activity:

Passed House: 1/15/21, 54-44.

Brief Summary of Concurrent Resolution

- Extends proclamations 20-15, 20-20, 20-23, 20-28, 20-30, 20-31, 20-32, 20-36, 20-41, 20-43, 20-44, 20-45, 20-48, 20-49, 20-51, 20-52, 20-56, 20-59, 20-64, 20-65, 20-66, 20-69, 20-74, 20-79, 20-82, and 20-84 until the termination of the Coronavirus Disease 2019 State of Emergency or until rescinded by gubernatorial or legislative action.

Staff: Jason Zolle (786-7124) and Desiree Omli (786-7105).

Background:

The Governor's Emergency Powers.

The Governor has statutory authority to proclaim a state of emergency when a public disorder, disaster, energy emergency, or riot exists within the state and it affects life, health, property, or the public peace. An emergency proclamation permits the Governor to exercise the office's emergency powers, which are also provided by statute. These emergency powers fall into two general categories: the power to prohibit certain activities; and the

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power to waive or suspend certain statutory or regulatory provisions of law.

The activities that the Governor may prohibit in the area affected by the emergency include:

- being in a public place during the hours declared to be a period of curfew;
- assembling or gathering in public streets, or public or private parks or open areas;
- activities involving a Molotov cocktail or other explosive device, or gasoline or other flammable or explosive liquids;
- the sale, purchase, or dispensing of alcoholic beverages or other goods;
- the use of certain streets, highways, or other public ways; and
- other activities that the Governor reasonably believes should be prohibited to help preserve and maintain life, health, property, or the public peace.

The Governor's power to waive or suspend provisions of law includes both statutes and agency rules. Specifically, the Governor may waive or suspend statutory and regulatory obligations or limitations that prescribe the procedures for conduct of state business, and the Governor may waive or suspend state agency orders, rules, or regulations—but only if certain conditions are met. Those conditions are:

- strict compliance with the statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;
- authority to waive or suspend a specific provision has not already been expressly granted to another statewide elected official;
- the waiver or suspension would not conflict with federal requirements for federal funds to the state; and
- the waiver or suspension would not conflict with First Amendment rights to freedom of speech or peaceable assembly.

The Governor may also waive or suspend statutory obligations or limitations that concern the following areas:

- liability for participation in interlocal agreements;
- inspection fees owed to the Department of Labor and Industries;
- application of the Family Emergency Assistance Program;
- regulations, tariffs, and notice requirements under the jurisdiction of the Utilities and Transportation Commission;
- application of tax due dates and penalties relating to the collection of taxes; and
- permits for industrial, business, or medical uses of alcohol.

A state of emergency terminates when the Governor proclaims that the emergency is over. The Governor must terminate the state of emergency proclamation when order has been restored in the affected area.

The willful violation of a provision of an order issued under the Governor's emergency powers is a gross misdemeanor.

Extension of the Governor's Emergency Orders.

An order of the Governor that waives or suspends statutory or regulatory provisions is time-limited to 30 days, unless the order is extended by the Legislature. If the Legislature is in session, it may extend a Governor's order through concurrent resolution. If the Legislature is not in session, the Senate majority and minority leaders, the Speaker of the House of Representatives, and the House of Representatives minority leader may extend the Governor's order by letter.

Coronavirus Disease 2019 Proclamations.

On February 29, 2020, Governor Jay Inslee issued Proclamation 20-05, which declared a state of emergency throughout Washington as a result of the Coronavirus Disease 2019 (COVID-19) pandemic. The Governor has since exercised his emergency powers through a number of proclamations that prohibit certain activities and waive or suspend certain laws and regulations.

These emergency orders include:

- Proclamation 20-15, which relates to the renewal of driver's licenses and identification cards;
- Proclamation 20-20, which concerns laws and rules relating to tax penalties, fees, interest, and due dates;
- Proclamation 20-23, which concerns energy, telecommunications, water, and other public utility service providers;
- Proclamation 20-28, which concerns portions of the Open Public Meetings Act and the Public Records Act that require activity that necessitates an in-person setting;
- Proclamation 20-30, which relates to requirements for unemployed persons to be actively seeking work in order to be eligible for unemployment insurance benefits;
- Proclamation 20-31, which relates to statutory and regulatory requirements for child-care providers to submit certain reports and meet certain rating levels, as well as requirements for certain child-care providers to undergo fingerprint-based background checks;
- Proclamation 20-32, which concerns continuing education, training, license renewals, retired active credential renewals, and delegation agreements for certain health care professionals, as well as supervision of certain medical assistants;
- Proclamation 20-36, which concerns the manufacture and distribution of hand sanitizer, the licensing and certification of health care facilities including pharmacies, and access to drug storage areas by individuals performing a legitimate nonpharmacy function;
- Proclamation 20-41, which concerns the renewal of personal and commercial driver's licenses;
- Proclamation 20-43, which concerns policies related to state administration and personnel operations governing the distribution of paychecks by mail, shared leave, and vacation leave;
- Proclamation 20-44, which concerns the transfer or discharge of nursing home

- residents to other long-term care facilities;
- Proclamation 20-45, which concerns legal procedures and processes related to petitions for protection orders in cases such as those involving domestic violence, harassment, sexual assault, and abuse of vulnerable adults;
 - Proclamation 20-48, which concerns certain statutory obligations or limitations regulating commercial drivers, commercial driver's licenses, and commercial learner's permits;
 - Proclamation 20-49, which concerns the garnishment of wages for the collection of judgments for consumer debt;
 - Proclamation 20-51, which concerns statutory obligations or limitations pertaining to voting by and meetings of members of certain nonprofit corporations including community associations, as well as the collection of assessments by community associations;
 - Proclamation 20-52, which extends proclamations relating to long-term care facilities and long-term care facility workers;
 - Proclamation 20-56, which concerns fuel tax agreements between the state and federally recognized Indian tribes;
 - Proclamation 20-59, which concerns temporary practice permits for individuals in certain health care professions;
 - Proclamation 20-64, which concerns the disclosure of certain records and identifying information of individuals obtained for the purpose of contact tracing, case investigation, or other public health purposes related to the COVID-19 emergency;
 - Proclamation 20-65, which concerns long-term care facilities and long-term care facility workers;
 - Proclamation 20-66, which concerns long-term care facilities and compliance by certain long-term care facilities with Safe Start recommendations and requirements issued by the Department of Social and Health Services and the Department of Health;
 - Proclamation 20-69, which concerns exemptions from the requirement that nonresidents attending an institution of higher education pay all or a portion of the nonresident tuition fees differential;
 - Proclamation 20-74, which concerns facilities administered by the Department of Social and Health Services Behavioral Health Administration, operated for the purposes of the Children's Long-Term Inpatient Program as contracted by the Health Care Authority, and Residential Treatment Facilities licensed by the Department of Health, and the required adherence to agency-issued Safe Start recommendations and requirements;
 - Proclamation 20-79, which concerns lump-sum payments accumulated in a retirement pension plan, retirement or retired pay, annuity, or any other similar periodic payment that is based on an individual's previous work;
 - Proclamation 20-82, which concerns the prohibition on retail establishments from providing customers with certain plastic bags, such as single-use plastic carryout bags, or paper carryout bags or reusable carryout bags made of film plastic that does not meet recycled content requirements; and

- Proclamation 20-84, which delays the repeal of statutes related to nonparental actions for child custody.

Summary of Concurrent Resolution:

The following proclamations are extended until the termination of the COVID-19 State of Emergency or until rescinded by gubernatorial or legislative action: 20-15, 20-20, 20-23, 20-28, 20-30, 20-31, 20-32, 20-36, 20-41, 20-43, 20-44, 20-45, 20-48, 20-49, 20-51, 20-52, 20-56, 20-59, 20-64, 20-65, 20-66, 20-69, 20-74, 20-79, 20-82, and 20-84.

Appropriation: None.

Fiscal Note: Not requested.