

SENATE BILL REPORT

SB 5114

As of January 20, 2021

Title: An act relating to safely reopening Washington.

Brief Description: Concerning safely reopening Washington.

Sponsors: Senators Braun, Mullet, Brown, Dozier, Fortunato, Gildon, Holy, King, Muzzall, Rivers, Schoesler, Sheldon, Short, Wagoner, Wilson, L. and Wilson, J..

Brief History:

Committee Activity: State Government & Elections: 1/20/21.

Brief Summary of Bill

- Allows businesses, facilities, institutions, and all other places or organizations to immediately and safely reopen or resume under Phase 2 of the Healthy Washington Roadmap to Recovery plan.
- States the intent of the Legislature to regularly review the best available public health data to determine whether additional actions should be taken until January 10, 2022.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Staff: Melissa Van Gorkom (786-7491)

Background: State of Emergency. A state of emergency is proclaimed by the Governor after finding that a public disorder, disaster, energy emergency, or riot exists within the state or any part thereof which affects life, health, property, or the public peace.

Emergency Proclamation. The Governor may proclaim a state of emergency in the area affected. The state of emergency is effective upon the Governor's signature and remains in effect until the Governor declares its termination. The Governor must terminate a state of

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emergency when order has been restored in the area effected.

On February 29, 2020, the Governor proclaimed that a state of emergency exists in all counties in the state of Washington due to the outbreak of COVID-19.

Powers of the Governor. An emergency proclamation enables the Governor to prohibit specific activities, such as public gatherings, transfer of combustible materials, and the use of public streets at any time during the state of emergency. In a state of emergency, the Governor may also prohibit activities as the Governor reasonably believes is necessary to help preserve and maintain life, health, property, or the public peace.

The Governor has authority to waive or suspend statutory obligations or limitations for certain executive functions if strict compliance with the provision of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency, unless:

- authority is expressly granted to another statewide elected official; or
- the waiver or exemption would conflict with federal requirements that are a prescribed condition to the allocations of federal funds to the state, or first amendment rights of freedom of speech and of the people to peaceably assemble.

A waiver or suspension of statutory obligations or limitations issued by the Governor is limited to 30 days unless the Legislature extends it by concurrent resolution, or in writing by the leadership of the Senate and the House of Representatives if the Legislature is not in session. Leadership of the Senate and the House of Representatives means the majority and minority leaders of the Senate and the House of Representatives.

On January 5, 2021, the Governor announced the Healthy Washington-Roadmap to Recovery plan, later formalized under proclamation 20-25.12 on January 11, 2021, outlining a regional approach to opening activities based on four metrics:

- decreasing trend in a 14-day rate of new COVID-19 cases per 100,000 population;
- decreasing trend in a 14-day rate of new COVID-19 hospital admission rates per 100,000 population;
- average 7-day percent occupancy of ICU staffed beds less than 90 percent; and
- a 7-day percent positivity of COVID-19 tests less than 10 percent.

Under the proclamation all regions begin in Phase 1 as of January 11, 2021. Regions must meet all four metrics to move to Phase 2 under the Healthy Washington-Roadmap to Recovery plan.

Summary of Bill: The Legislature determines that the businesses, facilities, institutions, and all other places or organizations whose activities would be limited or restricted under the Healthy Washington-Roadmap to Recovery plan must be allowed to immediately and safely reopen or resume under Phase 2 of the Healthy Washington Roadmap to Recovery plan, as those provisions existed on the effective date of this section.

The Legislature intends to regularly review the best available public health data to determine whether additional actions should be taken until January 10, 2022. If the Legislature determines public health is deteriorating or that other considerations demand the approach to reopening must be changed, the Legislature intends to take additional action including, but not limited to, reverting to different phases of restrictions. If the Legislature determines public health is improving, the Legislature intends to take additional action to remove any remaining restrictions.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: This is a simple bill to allow restaurants to get directly into phase 2 and reopen safely and soon. The hospitality industry is the second largest in Washington, only second to Government. Businesses continue to be impacted by the current restrictions. Restaurants continue to pile on debt because they are not open. Restaurants are continually having to fluctuate based on the rules for restaurant operation during the pandemic. Restaurant employees have carried a disproportionate burden during this period. Chefs and bartenders are professionals trying to support their families. These employees cannot go on any longer without having a paycheck. Laying off people, sometimes more than once is sole crushing. Need to think of employees and give them their purpose back. What has happened to the small businesses and the working poor should keep you up at night and cause you to pivot however you can to show your humanity to those who desperately need to return to work. Assistance is needed in this industry that has been singled out and decimated by the pandemic.

Washington is one of only five states closed to indoor dining. The hospitality industry is ready to reopen and help the state recover. People are currently forced to meet up in spaces that are less managed and controlled such as private homes. The restaurant communities can provide an outlet for people to gather safely because they have the necessary precautions in place. Restaurants follow strict protocols that limit the risks to staff and customers. We agree with many of the restrictions put in place and believe that the safety protocols are working, so please let us open. Restaurants have served thousands of guests without a front of house member coming down with COVID. Eastside of the state has a unique challenge of being near boarder in Idaho who has different rules leading to people going to Idaho for dining.

Bowling industry is important to the community to provide people with a safe environment. Please allow us to open at 25 percent so that we can stay in business and continue to provide

services, such as fundraising and Special Olympics, to support the community. Bowling centers are safer than retail and grocery facilities that are allowed to stay open, but are only allowed to have six people if the facility which does not make sense. Only been open for two months since the shutdown, but have had no cases. All businesses are essential and should be allowed to open at 25 percent.

In the last 55 weeks my fitness club has operated 11 weeks at full capacity, 37 weeks at zero, five weeks at 25 percent, and now ten days at 10 percent with only nine months of revenue, yet expenses do not stop. Data shows zero outbreaks from fitness or less than half of 1 percent. There are studies from Oregon Public Broadcast Network that there have been 3300 excess deaths in Washington through October and only half are COVID. The others are spikes in other health issues. Fitness centers reduce the strain on the health system by reducing medical issues such as diabetes. Fitness is part of the solution and we feel all businesses can operate safely at 25 percent capacity. Established youth activities provide structured options for safe return to play where guidelines are enforced. Safe return to play for sports will have a positive effect on mental, emotional, and physical health. This has become an equity issue as families who can afford it are traveling out of state to play while others cannot afford it.

Current safe start plan does not allow for predictability and planning that all operators need. The first two metrics in the Governor's plan are based on fundamental flaws that may not ever let regions reopen because they compare percentages on a week by week basis rather than a fixed point in time. Data and science should not be the only thing considered because data can be presented to support whatever narrative you would like. The bill emphasizes the strength and resilience of the people of Washington and celebrates the concept of individual responsibility.

The Legislature is the best entity to lead us through this crisis with elected members and different areas of expertise to make these decisions. Tried everything we can with the Judiciary to do something about this and it has been unsuccessful. The Legislative branch has an essential role in this by representing people who are not being listened to by the Governor. Should not punish these people for the few people who do not follow the rules. Big box and grocery stores have been able to be open for many months now, but small businesses have suffered. The playing field must be leveled. Business communities are protectors and not infectors providing a safe space for employees and patrons. The entertainment, fitness, hospitality, and retail industry all provide structured activities people can enjoy while wearing masks, physically distancing, and washing hands. Phase 2 would provide local businesses the opportunity to regain some of their losses and safely ease back to full capacity.

CON: Goal as a state is to balance the spread of disease, return of learning and safe reopening of the economy. Metrics used under the plan are a mix of trend and threshold levels that give us visibility and confidence in the trajectory of disease and health system capacity so we do not find ourselves having an overwhelmed health system. Phase 1 is

intended to prevent surges or further disease growth so we do not get to the point of overwhelming the system and have to make difficult decisions regarding who receives care. Los Angeles shows how bad this pandemic can get as medical care and even oxygen is being rationed based on the likelihood of survival. The work Washington is doing is making a difference and saving lives. Washington is 44th in deaths per 100,000 across the nation. We have one of the lowest rates of deaths even though we were the first case of COVID and had 37 of the first 50 deaths across the nation.

There are a few regions that are close to qualifying for phase 2 currently. These will be updated each Friday under the Governor's plan. The bill moves too fast without health data to support, or a transparent process for how to balance the risk of COVID disease on Washington residents with the reopening of the state. There has been an alarming rise of cases at the hospital since Thanksgiving. We all have COVID fatigue, but we must follow science and data and not open the state too early. COVID has made health jobs harder because of the precautions and fear. Healthcare workers are fatigued and inundated with COVID patients that can quickly overrun hospital capacity. People of color are essential workers in our community, they are the healthcare workers, delivery drivers, grocery workers and are at a higher risk of getting COVID and many of the patients in hospitals are black and brown essential workers. When you get COVID you are hospitalized for months which puts a huge strain on the healthcare system and families and does not help with economic recovery. Forcing our economy to reopen in phase 2 regardless of regional caseloads, scientific data, and expert recommendations is the epitome of irresponsibility.

Persons Testifying: PRO: Senator John Braun, Prime Sponsor; Kathy Lambert, King County; Mark Matthias, Beaches YGHF, Inc; Tim Eyman, Permanent Offense; Carrie Lundgren, Cedars at Pier One; Janet Gullberg, citizen; Brian McMenamain, McMenamains Inc; Tara Doyle-Enneking, Puyallup Sumner Chamber of Commerce; Bryan Reynolds, Anthem Coffee; Krista Linden, FARM 12/Step by Step; Kristin Keyes-Halterman, citizen; Wayne Lunday, High Cascades Agency; Shawn Logan, City of Othello; Tyson Bryant, citizen; Aaron Lang, citizen; Jenny Kuenzli, Anytime Fitness; Blair McHaney, Worx of Wenatchee Valley; Thomas Shofner, citizen; Crista Niles, Covington small business advocate; Ali Novinger, Beaches Restaurant; Sherri McMillan, Northwest Personal Training; Eric Sawyer, business consultant; Danielle Miller, Hot Yoga Experience; Derek Baziotis, Benes; Chris Siemens, Mustard Seed/Noodle Express; Phil Champlin, Washington State Sports Alliance; Chad White, CW Hospitality Group; Mychal Dynes, Little Conejo; Julia Gorton, Washington Hospitality Association; Dannielle Knutson, Budd Bay, Oyster House, River's Edge; Lorri Jones, Blazing Onion; Eddie Williams, Lilac Lanes; Heather Poncet, Ethan Stowell Restaurants; Branden Karow, Ethan Stowell Restaurants; Sasha Sleiman, Wenatchee Valley Chamber of Commerce.

CON: Kristiana de Leon, Black Diamond City Council; Lacy Fehrenbach, Department of Health; Kat Wood, UFCW 21; Neeru Kaur, registered nurse; Teresa DeLeon, healthcare worker; Jane Hopkins, SEIU Healthcare 1199NW.

Persons Signed In To Testify But Not Testifying: PRO: Lora Butterfield, Fife Milton Edgewood Chamber of Commerce; Kimberly Jeffery; Richard Johnson, citizen; Norma Parrish, Sr. Citizens; John Axtell, citizen; Dawn Apperson, Back Alley Bar & Grill; Dawson West, Contractor; Steve Waters, Backwoods Brewing Company; Mark Zoller, citizen; Ashlee Silva, citizen; Robert Cole, Supreme Commander; Jonita Harder, citizen; Kyle LaPierre, citizen; Richard Aasen, citizen; Scott Binder, Results Fitness Training; Renee Kruger, citizen; Kyle Anderson, citizen; Ed Kivi, Kivi Creations; Debbie Belden, Farrars Bistro; Alan Erickson, citizen; Mike Horrobin, citizen; Tod Petersen, citizen; Avery Rubelt, La Sorrentina pizzeria; Greg Walden, Atomic Screenprinting & Embroidery; Carl Cadwell, Pacific Clinic; Jacque Farrell, Farrelli's Pizza; Jennifer Summa, citizen; Kevin Kirkpatrick, citizen; Troy Erickson, Boeing; Dung Erickson, citizen; Rachel Berrios, citizen; Janell Dynes, Little Conejo; Darci Smith, citizen; Mary Schuldheisz, citizen; Kevin Summers, Taps Growler House LLC.; Carolyn Saletto, Gym Star Sports Center; Patty Armstrong, citizen; Shaun Brown, citizen; Tobin Haapala, citizen; Ramon Chavez Escobar, citizen; Alex Bennett, citizen; Jason Summers, citizen; John Solin, Oak Harbor Cinema, LLC; Sarah Gunning Moser, Lighthouse for Literacy, LLC; Jakeb Lee, citizen; Jeff Pack, citizen; Jim Zupkus, Eco Depot Solar; Heidi Heineman, citizen; Oren Jensen, citizen; Paul MacLurg, Thrive Fitness; Jonathan Looper, citizen; Robert Taylor, citizen; Stephanie Swanberg, Tri-City Regional Chamber of Commerce; Lori Flannery, citizen; Erika Carlson, citizen; Josh Riddle, Farm It LLac; Josh Riddle, Farm It LLac; Tana Wyrick, citizen; Virginia Fjeld, citizen; Pharaoh Skinner, pharaohs family farm; Bill Marcum, Kelso Longview Chamber of Commerce; Jheremy Brown, citizen; Ryan Casey, Orangetheory Fitness; Christopher Odum, Planet Fitness; Chase Cooper, citizen; Olena Anoshchenko, citizen; Amy Salts, citizen; Karyce Wolfe, citizen; Carrie Buckel, The Lime; Cody Oakes, citizen; Chris Corbin, Chuck e cheese; Mark Starr, David's Pizza; Joe Schiessl, City of Richland; Tommy Gantz, AWB; Shelley Vanderheyden, citizen; Gloria Garcia; Don Britain, Mayor, city of Kennewick; Susan Bradrick, Christian Homeschool Network of WA & Christian Heritage Home Educators of WA; Angel Goering, Herb Niemann's Steak and Schnitzel House; Heather Brownlee, citizen; David Wear Jr, Atlas Fare Restaurant; Robert Terry, Saute on Sixth LLC; Jennifer Jarvis, Vintage Cafe; Shauna Washburn, United Moving & Storage; Melissa Porcaro, CAN Do Kids, LLC; Darren Gillespie, Anytime Fitness; Dustin Meyers, citizen; Tom Sutera, Game Day Sports Bar and Grill; zoe gotchall, citizen; Dorothy Knauss, City of Chewelah; Desmond Phillips, citizen; Michele Woodhouse, citizen; Josh McDonald, Washington Wine Institute; Jonathan Knight, Anytime Fitness; William Jollymore, Jollymore's; Jason Pinney, Main Event Sports Grill; Gary Zilm, Salmon Crk Hgts American Legion Post 176; Victor Johnson, citizen; Brad Swartz, Fitness Quest; Elizabeth Swanson, citizen; Amy Collins, citizen; Annie McGrath, WA Brewers Guild; Stephanie McKendrick, citizen; Noah Lukosky, citizen; Rebecca Faust, citizen; Sheldon Gustafson, citizen; Mary Ann C. Kmetz, citizen; troy woody, citizen; Chris Goddard, Narrows Plaza Bowl; Lori Miller, Springmill Property Mgmt. Company; Darin Lorton, citizen; John Corbin, Theatres Northwest; Aubrey Flores, citizen; Andre Brown, citizen; Wendy VanArsdale, Experience 46 Degrees; Carol Chapman, citizen; Mike Wingfield, citizen; Jadie Russell, Release Society; Jennifer Bennett, citizen; Robert Berning, citizen; Macauley Martin, citizen; Chris Underwood, citizen; Sara Hyatt, Hyatt

Construction, Inc.; Lori Wood, citizen; Dr Brent Clark, Inland Northwest surgery center and Family Foot Center; Brandon Fenton, The Black Diamond; Debra Lang, citizen; John Gray, The Prosser house; Christopher Hernandez, citizen; Angie Lee, U.S. Martial Arts Center & USA Taekwondo Washington; Jessie Tanner, Beauty Bar | Salon + Lounge; Ryan Porter, Wild Man Brewing Company; Pete Schultheis, citizen; Natalie Chavez, citizen; Mark Lindberg, citizen; Mike DiFabio, Fortside Brewing Company/President NorthBank Brewers Alliance; James Trodahl, citizen; James Johnson, PCO 33rd 0516; Benjamin Hill, citizen; Brad Huillet, citizen; Thomas O'Brien, Point Roberts Independent Business Council; Richard McCullough, citizen; Veronica Jones, citizen; Laurie Hulscher, citizen; Tony Sailer, citizen; Elona Kearney, citizen; George Penn, XPROi A/V; Aaron DeMarc, Renton Coil Spring; Travis Peterson, citizen; Colby Lowe, Llc; Cat Davis, Ling Ling's LLC; Fiona Conerly, citizen; Joseph Matthews, citizen; Gary Wray, Wray Brothers LLC; Karl Kanthak, small business owner; Joshua Maine, brunswick bar and grill; Jessey Dreyer, citizen; Andrea Murphy, Alarm Communications, Inc; Deborah Billing, citizen.

CON: Michelle Anderson, Chasing Dreams; Rhonda Clay, citizen; Shari Silverman, citizen; Kayla Meduna, citizen; Tiffany Taylor, citizen; Korine Close, citizen; Robin Charwood, citizen; Annie Horton, citizen; Diane Smith, citizen; Laurie Stout, citizen; Marilyn Devries, citizen; Mary Holder, citizen; Jordan Gregoire, citizen; Stanley Dammel, citizen; Kat Wood, UFCW 21; Brandon Hopper, Working Washington; Linda Davis, Working Washington; Mariel Andrade, Working Washington; Errol Manly-Smick, Working Washington; Paúl Quiñonez Figueroa, Working Washington; Disne Campbell, Former Norhshore School Board Director 1980's and Founding Trustee Cascadia College; Marie Gallagher, citizen; Ryan Rosenkranz, Washington State Nurses Association; Darrylynn Penney, TDSA; Brianna Patterson, Tacoma Restaurant Workers United; Evelyn Marquez, citizen; Ryan Rosenkranz, RN, Washington State Nurses Association; Julia Barcott, RN, Washington State Nurses Association.

OTHER: Thomas Bright, citizen; Wyatt Sweet, citizen; Kenneth Zimmerman, citizen.