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HOUSE BILL NO. 1038

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 32.1-13, 32.1-20, 35.1-10, and 44-146.17, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to emergency rules, regulations, and orders; prohibition on mask mandates.

Patron—Scott, P.A.

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-13, 32.1-20, 35.1-10, and 44-146.17, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 32.1-13. Emergency orders and regulations.

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. *However, no such order or regulation shall require (i) the wearing of masks or other face coverings or (ii) businesses to require customers to wear masks or other face coverings while on the premises of the business.*

§ 32.1-20. Vested with authority of Board.

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. *However, no such rule or regulation shall require (i) the wearing of masks or other face coverings or (ii) businesses to require customers to wear masks or other face coverings while on the premises of the business.*

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

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. *However, no such action shall require (i) the wearing of masks or other face coverings or (ii) businesses to require customers to wear masks or other face coverings while on the premises of the business.*

§ 44-146.17. (Effective until July 1, 2023) 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. *However, the Governor shall not have the authority to issue any rule, regulation, or order pursuant to this subdivision that requires (i) the wearing of masks or other face coverings or (ii) businesses to require customers to wear masks or other face coverings while on the premises of the business.*

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have

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HB1038

59 the force and effect of law and the violation thereof shall be punishable as a civil penalty of not more
60 than \$500 or as a Class 1 misdemeanor in every case where the executive order declares that its
61 violation shall have such force and effect. Where an executive order declares a violation shall be
62 punishable as a civil penalty, such violation shall be charged by summons and may be executed by a
63 law-enforcement officer when such violation is observed by the officer. The summons used by a
64 law-enforcement officer pursuant to this section shall be, in form, the same as the uniform summons for
65 motor vehicle law violations as prescribed pursuant to § 46.2-388. The proceeds of such civil penalties
66 collected pursuant to this section shall be paid and collected only in lawful money of the United States
67 and paid into the state treasury to the credit of the Literary Fund.

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

72 Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and
73 emergencies, no rule, regulation, or order issued under this section shall have any effect beyond June 30
74 next following the next adjournment of the regular session of the General Assembly but the same or a
75 similar rule, regulation, or order may thereafter be issued again if not contrary to law;

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

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

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

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

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

94 (7) Whenever, in the opinion of the Governor, the safety and welfare of the people of the
95 Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, to
96 declare a state of emergency to exist;

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

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

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

109 (11) During a disaster caused by a communicable disease of public health threat for which a state of
110 emergency has been declared pursuant to subdivision (7), to establish a program through which the
111 Governor may purchase PPE for private, nongovernmental entities and distribute the PPE to such
112 private, nongovernmental entities. If federal funding is available to establish and fund the program, the
113 Governor, if necessary to comply with any conditions attached to such federal funding, shall be entitled
114 to seek reimbursement for such purchases from the private, nongovernmental entities and may establish
115 and charge fees to recover the cost of administering the program, including the cost of procuring and
116 distributing the PPE. However, if federal funding is not available to establish and fund the program, the
117 Governor shall, prior to making such purchases, receive a contract for payment for purchase from the
118 private nongovernmental entities for the full cost of procuring and distributing the PPE, which shall
119 include any amortized costs of administering the program. Any purchase made by the Governor pursuant
120 to this subdivision shall be exempt from the provisions of the Virginia Public Procurement Act (§

2.2-4300 et seq.), except the Governor shall be encouraged to comply with the provisions of § 2.2-4310 when possible. The Governor shall also provide for competition where practicable and include a written statement regarding the basis for awarding any contract. Prior to implementing such a program, the Department of Emergency Management shall consult with and survey private, nongovernmental entities in order to assess demand for participation in the program as well as the quantity and types of personal protective equipment such entities would like to procure.

As used in this subdivision, "personal protective equipment" or "PPE" means equipment or supplies worn or employed to minimize exposure to hazards that cause serious workplace injuries and illnesses and may include items such as gloves, safety glasses and shoes, earplugs or muffs, hard hats, respirators, coveralls, vests, full body suits, hand sanitizer, plastic shields, or testing for the communicable disease of public health threat.

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(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;

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