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HOUSE BILL NO. 157

Offered January 12, 2022

Prefiled January 9, 2022

A BILL to amend and reenact §§ 32.1-13, 32.1-20, 35.1-10, and 40.1-22 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.

Patrons—Byron and Walker

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-13, 32.1-20, 35.1-10, and 40.1-22 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 days from the effective date of such action. Upon expiration of such 45-day period, the action shall*

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HB157

59 *become invalid unless an order or regulation effectuating the purpose of the action taken by the*
60 *Commissioner pursuant to this section is adopted by the Board in accordance with § 32.1-13.*

61 **§ 40.1-22. Safety and Health Codes Commission continued as Safety and Health Codes Board.**

62 (1) The Safety and Health Codes Commission is continued and shall hereafter be known as the
63 Safety and Health Codes Board. The Board shall consist of fourteen members, twelve of whom shall be
64 appointed by the Governor. One member shall, by reason of previous vocation, employment or
65 affiliation, be chosen to represent labor in the manufacturing industry; one member shall, by reason of
66 previous vocation, employment or affiliation, be chosen to represent labor in the construction industry;
67 one member shall, by reason of previous vocation, employment or affiliation, be chosen to represent
68 industrial employers; one member shall be chosen from and be a representative of the general public;
69 one member shall be a representative of agricultural employers; one member shall, by reason of previous
70 vocation, employment or affiliation, be chosen to represent agricultural employees; one member shall, by
71 reason of previous vocation, employment or affiliation, be chosen to represent construction industry
72 employers; one member shall be a representative of an insurance company; one member shall be a labor
73 representative from the boiler pressure vessel industry; one member shall be a labor representative
74 knowledgeable in chemicals and toxic substances; one member shall be an employer representative of
75 the boiler pressure vessel industry; one member shall be an industrial representative knowledgeable in
76 chemical and toxic substances, and the Director of the Department of Environmental Quality or his duly
77 authorized representative shall be a member ex officio with full membership status. The Commissioner
78 of Health or his duly authorized representative shall also be a member ex officio with full membership
79 status.

80 (2) The first appointive members shall be appointed as follows: one for a term of four years, one for
81 a term of three years, one for a term of two years, and one for a term of one year. Of the members
82 appointed to represent the construction industry, one shall be appointed for the term of two years and
83 one shall be appointed for the term of four years. Succeeding appointments shall be for terms of four
84 years each but other vacancies shall be filled by appointment for the unexpired term.

85 (3) The Board shall annually select a chairman from its members. The Board shall meet at least once
86 every six months; other meetings may be held upon call of the chairman or any three members of the
87 Board. Five members of the Board shall constitute a quorum.

88 (4) The Board shall study and investigate all phases of safety in business establishments, the
89 application of this title thereto, and shall serve as advisor to the Commissioner.

90 (5) The Board, with the advice of the Commissioner, is hereby authorized to adopt, alter, amend, or
91 repeal rules and regulations to further, protect and promote the safety and health of employees in places
92 of employment over which it has jurisdiction and to effect compliance with the Federal Occupational
93 Safety and Health Act of 1970 (P.L. 91-596), and as may be necessary to carry out its functions
94 established under this title. The Commissioner shall enforce such rules and regulations. All such rules
95 and regulations shall be designed to protect and promote the safety and health of such employees. In
96 making such rules and regulations to protect the occupational safety and health of employees, the Board
97 shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best
98 available evidence, that no employee will suffer material impairment of health or functional capacity.
99 However, such standards shall be at least as stringent as the standards promulgated by the Federal
100 Occupational Safety and Health Act of 1970 (P.L. 91-596). In addition to the attainment of the highest
101 degree of health and safety protection for the employee, other considerations shall be the latest available
102 scientific data in the field, the feasibility of the standards, and experience gained under this and other
103 health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of
104 objective criteria and of the performance desired. Such standards when applicable to products which are
105 distributed in interstate commerce shall be the same as federal standards unless deviations are required
106 by compelling local conditions and do not unduly burden interstate commerce.

107 (6) Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 shall apply to the adoption of rules and regulations
108 under this section and to proceedings before the Board.

109 (6a) The Board shall provide, without regard to the requirements of Chapter 40 (§ 2.2-4000 et seq.)
110 of Title 2.2, for an emergency temporary standard to take immediate effect upon publication in a
111 newspaper of general circulation, published in the City of Richmond, Virginia, if it determines that
112 employees are exposed to grave danger from exposure to substances or agents determined to be toxic or
113 physically harmful or from new hazards, and that such emergency standard is necessary to protect
114 employees from such danger. The publication mentioned herein shall constitute notice that the Board
115 intends to adopt such standard within a period of six months. The Board by similar publication shall
116 prior to the expiration of six months give notice of the time and date of, and conduct a hearing on, the
117 adoption of a permanent standard.

118 ~~The~~ *An emergency temporary standard adopted pursuant to this subdivision shall expire within six*
119 ~~months or 45 days after the date on which it became effective, when superseded by a permanent~~
120 ~~standard; or when repealed by the Board, whichever occurs first; or when repealed by the Board. The~~

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

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