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SENATE BILL NO. 46

Offered January 12, 2022

Prefiled December 28, 2021

A *BILL to amend and reenact § 32.1-48.010 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 44-146.17:1.1, relating to certain emergency and quarantine orders; additional procedural requirements.*

Patron—Petersen

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-48.010 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 44-146.17:1.1 as follows:

§ 32.1-48.010. Appeal of any order of quarantine.

A. Any person or persons subject to an order of quarantine or a court-ordered extension of any such order pursuant to this article *and any other person who is affected by an order of quarantine* may file an appeal of the order of quarantine as such order applies to such person or persons in the circuit court for the city or county in which the subject or subjects of the order *or other person who is affected by the order of quarantine* reside or are located or the circuit court for the jurisdiction or jurisdictions for any affected area. Any petition for appeal shall be in writing, shall set forth the grounds on which the order of quarantine is being challenged vis-a-vis the subject person or persons or affected area, and shall be served upon the State Health Commissioner or his legal representative.

B. A hearing on the appeal of the order of quarantine shall be held within 48 hours of the filing of the petition for appeal or, if the 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the hearing shall be held on the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

In extraordinary circumstances, for good cause shown, the Commissioner may request a continuance of the hearing, which the court shall only grant after giving due regard to the rights of the affected individuals, the protection of the public health and safety, the severity of the emergency, and the availability of witnesses and evidence.

C. Any person appealing an order of quarantine shall have the burden of proving that he is not properly the subject of the order of quarantine.

D. The filing of an appeal shall not stay any order of quarantine.

E. Upon receiving multiple appeals of an order of quarantine that applies to a group of persons or an affected area, the court may, on the motion of any party or on the court's own motion, consolidate the cases in a single proceeding for all appeals when (i) there are common questions of law or fact relating to the individual claims or rights to be determined; (ii) the claims of the consolidated cases are substantially similar; and (iii) all parties to the appeals will be adequately represented in the consolidation.

F. The circuit court shall not conduct a de novo review of the order of quarantine; however, the court shall consider the existing record and such supplemental evidence as the court shall consider relevant. The court shall conduct the hearing on an appeal of an order of quarantine in a manner that will protect the health and safety of court personnel, counsels, witnesses, and the general public and in accordance with rules of the Supreme Court of Virginia pursuant to subsection C of § 17.1-503. The court may, for good cause shown, hold all or any portion of the hearings in camera upon motion of any party or upon the court's own motion.

G. Upon completion of the hearing, the court may (i) vacate or modify the order of quarantine as such order applies to any person who filed the appeal and who is not, according to the record and the supplemental evidence, appropriately subject to the order of quarantine; (ii) vacate or modify the order of quarantine as such order applies to all persons who filed an appeal and who are not, according to the record and the supplemental evidence, appropriately subject to the order of quarantine; (iii) confirm the order of quarantine as it applies to any person or all appealing parties upon a finding that such person or persons are appropriately subject to the order of quarantine and that quarantine is being implemented in the least restrictive environment to address the public health threat effectively, given the reasonably available information on effective control measures and the nature of the communicable disease of public health threat; or (iv) confirm the order of quarantine as it applies to all persons subject to the order upon finding that all such persons are appropriately subject to the order of quarantine and that quarantine is being implemented in the least restrictive environment to address the public health threat

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SB46

59 effectively, given the reasonably available information on effective control measures and the nature of
60 the communicable disease of public health threat.

61 In any case in which the court shall vacate the order of quarantine as it applies to any person who
62 has filed a request for review of such order and who is subject to such order or as it applies to all
63 persons seeking judicial review who are subject to such order, the person or persons shall be
64 immediately released from quarantine unless such order to vacate the quarantine shall be stayed by the
65 filing of an appeal to the Supreme Court or the Court of Appeals. Any party to the case may file an
66 appeal of the circuit court decisions to the Court of Appeals. Parties to the case shall include any person
67 who is subject to an order of quarantine and has filed an appeal of such order with the circuit court and
68 the State Health Commissioner.

69 H. Appeals of any final order of any circuit court regarding the State Health Commissioner's petition
70 for review and confirmation or extension of an order of quarantine or any appeal of an order of
71 quarantine by a person or persons who are subject to such order shall be appealable to the Court of
72 Appeals, with an expedited review in accordance with the rules of the court pursuant to subsection C of
73 § 17.1-503.

74 I. Appeals of any circuit court order relating to an order of quarantine shall not stay any order of
75 quarantine.

76 J. Persons requesting judicial review of any order of quarantine shall have the right to be represented
77 by an attorney in all proceedings. If the person is unable to afford an attorney, counsel shall be
78 appointed for the person by the circuit court for the jurisdiction in which the person or persons who are
79 subject to the order of quarantine reside or, in the case of an affected area, by the circuit court for the
80 jurisdiction or jurisdictions for the affected area. Counsel so appointed shall be paid at a rate established
81 by the Supreme Court of Virginia from the Commonwealth's criminal fund.

82 **§ 44-146.17:1.1. Certain emergency orders; additional requirements.**

83 *In any case in which an order issued by the Governor pursuant to subdivision (1) of § 44-146.17*
84 *includes any measure that closes schools or businesses or restricts the movement of healthy persons*
85 *within the area to which the order applies, all of the rights, protections, and procedures of Article 3.02*
86 *(§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1 shall apply.*