

Initiative No. 1114

June 9, 2020

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-3870.1/20

ATTY/TYPIST: KS:jlb

BRIEF DESCRIPTION:

Initiative No. 1114

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AN ACT Relating to state of emergency proclamations and emergency rule making; amending RCW 43.06.210, 43.06.220, and 34.05.350; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** The legislature finds that the state Constitution declares that all political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights. The Constitution further declares that no person shall be deprived of life, liberty, or property, without due process of law, and the right of petition and of the people peaceably to assemble for the common good shall never be abridged. Therefore, the legislature intends to protect the rights of the people by limiting and constraining the executive's power and scope of authority in the event of an emergency by ensuring proclamations of emergency are

subject to judicial review and requiring legislative action to extend any governor's proclamation of emergency or agency emergency rule making.

Sec. 2. RCW 43.06.210 and 2013 c 21 s 1 are each amended to read as follows:

(1) The proclamation of a state of emergency and other proclamations or orders issued by the governor pursuant to RCW 43.06.010, and 43.06.200 through 43.06.270 as now or hereafter amended shall be in writing and shall be signed by the governor and shall then be filed with the secretary of state. A proclamation of a state of emergency is effective upon the governor's signature.

(2) A proclamation of a state of emergency must identify the area of the state in which the emergency exists. Such area may not exceed a single county in any single proclamation. The governor may issue multiple proclamations intended to address simultaneous emergencies in multiple counties, even where those simultaneous emergencies arise from the same specific facts constituting an emergency.

(3) A proclamation of a state of emergency must identify the specific facts giving rise to the emergency in the area covered by that proclamation and the specific facts under which order will be determined to have been restored in the area affected. Facts giving rise to an emergency may not include circumstances addressed in existing statutes or regulations.

(4) The governor shall give as much public notice as practical through the news media of the issuance of proclamations or orders pursuant to RCW 43.06.010, and 43.06.200 through 43.06.270 as now or hereafter amended.

(5) The state of emergency shall cease to exist (~~upon the~~) the earlier of:

(a) The issuance of a proclamation of the governor declaring its termination: PROVIDED, That the governor must terminate said state

of emergency proclamation when order has been restored in the area affected; or

(b) Fourteen days after a proclamation of a state of emergency is signed by the governor unless extended by the legislature through concurrent resolution. No individual extension may exceed fourteen days. The legislature may pass subsequent resolutions of extension.

(6) Any person may seek judicial review of an emergency proclamation in the superior court of the county subject to an emergency proclamation. The court's review shall be limited to determining whether the facts identified in a proclamation as constituting an emergency exist within the county and whether they constitute a circumstance addressed in existing law. The court shall accord first priority to challenges to an emergency proclamation, may hear arguments, and shall, within five days, render its final decision. Judicial determination that the facts do not exist within the county or are a circumstance addressed in existing law constitutes a determination that the proclamation of emergency is void. The decision of the superior court is final.

(7) No court of the state of Washington other than the superior court of the county subject to an emergency proclamation has jurisdiction over any action or proceeding regarding the emergency proclamation.

Sec. 3. RCW 43.06.220 and 2019 c 472 s 2 are each amended to read as follows:

(1) The governor after proclaiming a state of emergency and prior to terminating such, may, in the area described by the proclamation issue an order prohibiting:

(a) Any person being on the public streets, or in the public parks, or at any other public place during the hours declared by the governor to be a period of curfew;

(b) Any number of persons, as designated by the governor, from assembling or gathering on the public streets, parks, or other open areas of this state, either public or private;

(c) The manufacture, transfer, use, possession or transportation of a molotov cocktail or any other device, instrument or object designed to explode or produce uncontained combustion;

(d) The transporting, possessing or using of gasoline, kerosene, or combustible, flammable, or explosive liquids or materials in a glass or uncapped container of any kind except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use;

(e) The sale, purchase or dispensing of alcoholic beverages;

(f) The sale, purchase or dispensing of other commodities or goods, as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace;

(g) The use of certain streets, highways or public ways by the public; and

(h) Such other activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace.

(2) The governor after proclaiming a state of emergency and prior to terminating such may, in the area described by the proclamation, issue an order or orders concerning waiver or suspension of statutory obligations or limitations in the following areas:

(a) Liability for participation in interlocal agreements;

(b) Inspection fees owed to the department of labor and industries;

(c) Application of the family emergency assistance program;

(d) Regulations, tariffs, and notice requirements under the jurisdiction of the utilities and transportation commission;

(e) Application of tax due dates and penalties relating to collection of taxes;

(f) Permits for industrial, business, or medical uses of alcohol; and

(g) Such other statutory and regulatory obligations or limitations prescribing the procedures for conduct of state

business, or the orders, rules, or regulations of any state agency 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 (i) authority to waive or suspend a specific statutory or regulatory obligation or limitation has been expressly granted to another statewide elected official, (ii) the waiver or suspension would conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, or (iii) the waiver or suspension would conflict with the rights, under the First Amendment, of freedom of speech or of the people to peaceably assemble. The governor shall give as much notice as practical to legislative leadership and impacted local governments when issuing orders under this subsection (2)(g).

(3) In imposing the restrictions provided for by RCW 43.06.010, and 43.06.200 through 43.06.270, the governor may not impose (~~them for such times, upon such conditions, with such exceptions and in such areas of this state he or she from time to time deems necessary~~) conditions or exceptions on such restrictions.

(4) (~~No order or orders concerning waiver or suspension of statutory obligations or limitations under subsection (2) of this section may continue for longer than thirty days unless extended by the legislature through concurrent resolution. If the legislature is not in session, the waiver or suspension of statutory obligations or limitations may be extended in writing by the leadership of the senate and the house of representatives until the legislature can extend the waiver or suspension by concurrent resolution. For purposes of this section, "leadership of the senate and the house of representatives" means the majority and minority leaders of the senate and the speaker and the minority leader of the house of representatives.~~) A resolution of the legislature extending an emergency proclamation may rescind or modify all or any part of the emergency proclamation.

(5) Any person willfully violating any provision of an order issued by the governor under this section is guilty of a (~~gross~~) misdemeanor.

Sec. 4. RCW 34.05.350 and 2011 1st sp.s. c 2 s 1 are each amended to read as follows:

(1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

(2) (~~An~~) (a) Except as provided in (b) of this subsection, an emergency rule adopted under this section takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing. Identical or substantially similar emergency rules may not be adopted in sequence unless conditions

have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. This section does not relieve any agency from compliance with any law requiring that its permanent rules be approved by designated persons or bodies before they become effective.

(b) Notwithstanding any other provision of this section or this chapter, the immediate adoption, amendment, or repeal of a rule found necessary for the preservation of the public health, safety, or general welfare pursuant to subsection (1) of this section may not remain in effect for longer than fourteen days after filing unless extended by the legislature through concurrent resolution.

(3) Within seven days after the rule is adopted, any person may petition the governor requesting the immediate repeal of a rule adopted on an emergency basis by any department listed in RCW 43.17.010. Within seven days after submission of the petition, the governor shall either deny the petition in writing, stating his or her reasons for the denial, or order the immediate repeal of the rule. In ruling on the petition, the governor shall consider only whether the conditions in subsection (1) of this section were met such that adoption of the rule on an emergency basis was necessary. If the governor orders the repeal of the emergency rule, any sanction imposed based on that rule is void. This subsection shall not be construed to prohibit adoption of any rule as a permanent rule.

NEW SECTION. **Sec. 5.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 6.** This act may be known and cited as the fourteen-day emergency powers act.

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