H-0238.2

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**HOUSE BILL 1158**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Representatives Eslick, Ybarra, Dent, and Sutherland

AN ACT Relating to limiting unilateral actions by the executive branch in emergencies; and amending RCW 43.06.220 and 34.05.350.

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

**Sec.**  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; and

(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~~)) its termination 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 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.~~)) Any order issued under subsection (1) of this section must be narrowly tailored, using the least restrictive means to accomplish a compelling government interest.

(4) No order or orders ((~~concerning waiver or suspension of statutory obligations or limitations under subsection (2) of~~)) issued under this section may continue for longer than thirty days unless extended by the legislature through concurrent resolution approved by a two-thirds vote in both the house of representatives and the senate. If the legislature is not in session, the ((~~waiver or suspension of statutory obligations or limitations~~)) order or orders 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~~)) order or orders 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.

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

**Sec.**  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 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.

(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.

(4) Leadership of the senate and the house of representatives may petition the agency to limit the duration of the emergency rule. If at least two of the four leaders sign the petition, the rule may not remain in effect for longer than 30 days after the petition is sent. 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 subsection (4) does not prohibit adoption of any rule as a permanent rule. For purposes of this subsection (4), "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.

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