
HOUSE BILL 1158

State of Washington

67th Legislature

2021 Regular Session

By Representatives Eslick, Ybarra, Dent, and Sutherland

Read first time 01/12/21. Referred to Committee on State Government & Tribal Relations.

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

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

4 **Sec. 1.** RCW 43.06.220 and 2019 c 472 s 2 are each amended to
5 read as follows:

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

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

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

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

18 (d) The transporting, possessing or using of gasoline, kerosene,
19 or combustible, flammable, or explosive liquids or materials in a
20 glass or uncapped container of any kind except in connection with the

1 normal operation of motor vehicles, normal home use or legitimate
2 commercial use;

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

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

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

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

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

17 (a) Liability for participation in interlocal agreements;

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

20 (c) Application of the family emergency assistance program;

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

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

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

27 (g) Such other statutory and regulatory obligations or
28 limitations prescribing the procedures for conduct of state business,
29 or the orders, rules, or regulations of any state agency if strict
30 compliance with the provision of any statute, order, rule, or
31 regulation would in any way prevent, hinder, or delay necessary
32 action in coping with the emergency, unless (i) authority to waive or
33 suspend a specific statutory or regulatory obligation or limitation
34 has been expressly granted to another statewide elected official,
35 (ii) the waiver or suspension would conflict with federal
36 requirements that are a prescribed condition to the allocation of
37 federal funds to the state, or (iii) the waiver or suspension would
38 conflict with the rights, under the First Amendment, of freedom of
39 speech or of the people to peaceably assemble. The governor shall
40 give as much notice as practical to legislative leadership and

1 impacted local governments when issuing orders under this subsection
2 (2) (g).

3 ~~(3) ((In imposing the restrictions provided for by RCW 43.06.010,~~
4 ~~and 43.06.200 through 43.06.270, the governor may impose them for~~
5 ~~such times, upon such conditions, with such exceptions and in such~~
6 ~~areas of this state he or she from time to time deems necessary.))~~
7 Any order issued under subsection (1) of this section must be
8 narrowly tailored, using the least restrictive means to accomplish a
9 compelling government interest.

10 (4) No order or orders ~~((concerning waiver or suspension of~~
11 ~~statutory obligations or limitations under subsection (2) of))~~ issued
12 under this section may continue for longer than thirty days unless
13 extended by the legislature through concurrent resolution approved by
14 a two-thirds vote in both the house of representatives and the
15 senate. If the legislature is not in session, the ~~((waiver or~~
16 ~~suspension of statutory obligations or limitations))~~ order or orders
17 may be extended in writing by the leadership of the senate and the
18 house of representatives until the legislature can extend the
19 ~~((waiver or suspension))~~ order or orders by concurrent resolution.
20 For purposes of this section, "leadership of the senate and the house
21 of representatives" means the majority and minority leaders of the
22 senate and the speaker and the minority leader of the house of
23 representatives.

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

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

29 (1) If an agency for good cause finds:

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

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

38 (c) In order to implement the requirements or reductions in
39 appropriations enacted in any budget for fiscal year 2009, 2010,

1 2011, 2012, or 2013, which necessitates the need for the immediate
2 adoption, amendment, or repeal of a rule, and that observing the time
3 requirements of notice and opportunity to comment upon adoption of a
4 permanent rule would be contrary to the fiscal needs or requirements
5 of the agency,

6 the agency may dispense with those requirements and adopt, amend, or
7 repeal the rule on an emergency basis. The agency's finding and a
8 concise statement of the reasons for its finding shall be
9 incorporated in the order for adoption of the emergency rule or
10 amendment filed with the office of the code reviser under RCW
11 34.05.380 and with the rules review committee.

12 (2) An emergency rule adopted under this section takes effect
13 upon filing with the code reviser, unless a later date is specified
14 in the order of adoption, and may not remain in effect for longer
15 than one hundred twenty days after filing. Identical or substantially
16 similar emergency rules may not be adopted in sequence unless
17 conditions have changed or the agency has filed notice of its intent
18 to adopt the rule as a permanent rule, and is actively undertaking
19 the appropriate procedures to adopt the rule as a permanent rule.
20 This section does not relieve any agency from compliance with any law
21 requiring that its permanent rules be approved by designated persons
22 or bodies before they become effective.

23 (3) Within seven days after the rule is adopted, any person may
24 petition the governor requesting the immediate repeal of a rule
25 adopted on an emergency basis by any department listed in RCW
26 43.17.010. Within seven days after submission of the petition, the
27 governor shall either deny the petition in writing, stating his or
28 her reasons for the denial, or order the immediate repeal of the
29 rule. In ruling on the petition, the governor shall consider only
30 whether the conditions in subsection (1) of this section were met
31 such that adoption of the rule on an emergency basis was necessary.
32 If the governor orders the repeal of the emergency rule, any sanction
33 imposed based on that rule is void. This subsection shall not be
34 construed to prohibit adoption of any rule as a permanent rule.

35 (4) Leadership of the senate and the house of representatives may
36 petition the agency to limit the duration of the emergency rule. If
37 at least two of the four leaders sign the petition, the rule may not
38 remain in effect for longer than 30 days after the petition is sent.
39 Identical or substantially similar emergency rules may not be adopted
40 in sequence unless conditions have changed or the agency has filed

1 notice of its intent to adopt the rule as a permanent rule, and is
2 actively undertaking the appropriate procedures to adopt the rule as
3 a permanent rule. This subsection (4) does not prohibit adoption of
4 any rule as a permanent rule. For purposes of this subsection (4),
5 "leadership of the senate and the house of representatives" means the
6 majority and minority leaders of the senate and the speaker and the
7 minority leader of the house of representatives.

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