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**HOUSE BILL 1029**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Walsh and Klippert

Prefiled 12/16/20.

1 AN ACT Relating to orders and rules during a state of emergency;  
2 amending RCW 43.06.210, 43.06.220, 4.12.020, 34.05.350, 43.70.130,  
3 and 70.05.070; creating a new section; prescribing penalties; and  
4 declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The state Constitution declares that all  
7 political power is inherent in the people, and governments derive  
8 their just powers from the consent of the governed, and are  
9 established to protect and maintain individual rights. The  
10 Constitution further declares that no person shall be deprived of  
11 life, liberty, or property, without due process of law, and the right  
12 of petition and of the people peaceably to assemble for the common  
13 good shall never be abridged. Therefore, the legislature intends to  
14 protect the rights of the people by limiting and constraining the  
15 governor's power and scope of authority in the event of an emergency  
16 by ensuring proclamations of emergency are subject to judicial review  
17 and requiring legislative action to extend any proclamation.

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

1       (1) The proclamation of a state of emergency and other  
2 proclamations or orders issued by the governor pursuant to RCW  
3 43.06.010, and 43.06.200 through 43.06.270 as now or hereafter  
4 amended shall be in writing and shall be signed by the governor and  
5 shall then be filed with the secretary of state. A proclamation of a  
6 state of emergency is effective upon the governor's signature.

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

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

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

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

25       (a) The issuance of a proclamation of the governor declaring its  
26 termination: PROVIDED, That the governor must terminate said state of  
27 emergency proclamation when order has been restored in the area  
28 affected; or

29       (b) 14 days after a proclamation of a state of emergency is  
30 signed by the governor unless extended by the legislature through  
31 concurrent resolution. If the legislature is not in session, the  
32 state of emergency may be extended in writing by the leadership of  
33 the senate and the house of representatives until the legislature can  
34 extend the state of emergency by concurrent resolution. No individual  
35 extension may exceed 14 days. The legislature may pass subsequent  
36 resolutions of extension. For purposes of this section, "leadership  
37 of the senate and the house of representatives" means the majority  
38 and minority leaders of the senate and the speaker and the minority  
39 leader of the house of representatives.

1       (6) Any person may seek judicial review in the superior court of  
2 the county subject to an emergency proclamation to determine whether  
3 the facts identified in a proclamation as constituting an emergency  
4 constitute a circumstance addressed in existing law. Such judicial  
5 determination constitutes a determination that the proclamation of  
6 emergency is void.

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

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

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

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

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

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

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

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

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

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

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

39       (a) Liability for participation in interlocal agreements;

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

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

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

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

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

10 (g) Such other statutory and regulatory obligations or  
11 limitations prescribing the procedures for conduct of state business,  
12 or the orders, rules, or regulations of any state agency if strict  
13 compliance with the provision of any statute, order, rule, or  
14 regulation would in any way prevent, hinder, or delay necessary  
15 action in coping with the emergency, unless (i) authority to waive or  
16 suspend a specific statutory or regulatory obligation or limitation  
17 has been expressly granted to another statewide elected official,  
18 (ii) the waiver or suspension would conflict with federal  
19 requirements that are a prescribed condition to the allocation of  
20 federal funds to the state, or (iii) the waiver or suspension would  
21 conflict with the rights, under the First Amendment, of freedom of  
22 speech or of the people to peaceably assemble. The governor shall  
23 give as much notice as practical to legislative leadership and  
24 impacted local governments when issuing orders under this subsection  
25 (2)(g).

26 (3) ~~((In imposing the restrictions provided for by RCW 43.06.010,~~  
27 ~~and 43.06.200 through 43.06.270, the governor may impose them for~~  
28 ~~such times, upon such conditions, with such exceptions and in such~~  
29 ~~areas of this state he or she from time to time deems necessary.))~~  
30 Any order issued under subsections (1) and (2)(g) of this section  
31 must be narrowly tailored, using the least restrictive means to  
32 accomplish a compelling government interest to protect the public.

33 (4) No order or orders ~~((concerning waiver or suspension of~~  
34 ~~statutory obligations or limitations))~~ under ~~((subsection (2) of))~~  
35 this section may continue for longer than ~~((thirty))~~ 14 days unless  
36 extended or modified by the legislature through concurrent  
37 resolution. If the legislature is not in session, the ~~((waiver or~~  
38 ~~suspension of statutory obligations or limitations))~~ order or orders  
39 may be extended or modified in writing by the leadership of the  
40 senate and the house of representatives for up to 30 days, until the

1 legislature can extend the waiver or suspension by concurrent  
2 resolution. For purposes of this section, "leadership of the senate  
3 and the house of representatives" means the majority and minority  
4 leaders of the senate and the speaker and the minority leader of the  
5 house of representatives.

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

9 **Sec. 4.** RCW 4.12.020 and 2001 c 45 s 2 are each amended to read  
10 as follows:

11 Actions for the following causes shall be tried in the county  
12 where the cause, or some part thereof, arose:

13 (1) For the recovery of a penalty or forfeiture imposed by  
14 statute;

15 (2) Against a public officer, or person specially appointed to  
16 execute his or her duties, for an act done by him or her in virtue of  
17 his or her office, or against a person who, by his or her command or  
18 in his or her aid, shall do anything touching the duties of such  
19 officer;

20 (3) For the recovery of damages for injuries to the person or for  
21 injury to personal property, the plaintiff shall have the option of  
22 suing either in the county in which the cause of action or some part  
23 thereof arose, or in the county in which the defendant resides, or if  
24 there be more than one defendant, where some one of the defendants  
25 resides, at the time of the commencement of the action; and

26 (4) For judicial review of an emergency proclamation under RCW  
27 43.06.210.

28 **Sec. 5.** RCW 34.05.350 and 2011 1st sp.s. c 2 s 1 are each  
29 amended to read as follows:

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

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

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

1 (c) In order to implement the requirements or reductions in  
2 appropriations enacted in any budget for fiscal year 2009, 2010,  
3 2011, 2012, or 2013, which necessitates the need for the immediate  
4 adoption, amendment, or repeal of a rule, and that observing the time  
5 requirements of notice and opportunity to comment upon adoption of a  
6 permanent rule would be contrary to the fiscal needs or requirements  
7 of the agency,  
8 the agency may dispense with those requirements and adopt, amend, or  
9 repeal the rule on an emergency basis. The agency's finding and a  
10 concise statement of the reasons for its finding shall be  
11 incorporated in the order for adoption of the emergency rule or  
12 amendment filed with the office of the code reviser under RCW  
13 34.05.380 and with the rules review committee.

14 (2) An emergency rule adopted under this section takes effect  
15 upon filing with the code reviser, unless a later date is specified  
16 in the order of adoption, and may not remain in effect for longer  
17 than one hundred twenty days after filing. An emergency rule adopted  
18 during a state of emergency proclaimed under RCW 43.06.210 may not  
19 remain in effect for longer than 30 days after the state of emergency  
20 ceases to exist. Identical or substantially similar emergency rules  
21 may not be adopted in sequence unless conditions have changed or the  
22 agency has filed notice of its intent to adopt the rule as a  
23 permanent rule, and is actively undertaking the appropriate  
24 procedures to adopt the rule as a permanent rule. This section does  
25 not relieve any agency from compliance with any law requiring that  
26 its permanent rules be approved by designated persons or bodies  
27 before they become effective.

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

1 (4) No more than three days after an emergency rule is adopted  
2 during a state of emergency proclaimed under RCW 43.06.210, the  
3 agency shall provide an opportunity for oral comment to be received  
4 by the agency in a rule-making hearing that follows RCW 34.05.325 (4)  
5 and (5). The agency must provide notice of the hearing as described  
6 in RCW 34.05.320(1).

7 **Sec. 6.** RCW 43.70.130 and 1990 c 132 s 2 are each amended to  
8 read as follows:

9 (1) The secretary of health shall:

10 ~~((1))~~ (a) Exercise all the powers and perform all the duties  
11 prescribed by law with respect to public health and vital statistics;

12 ~~((2))~~ (b) Investigate and study factors relating to the  
13 preservation, promotion, and improvement of the health of the people,  
14 the causes of morbidity and mortality, and the effects of the  
15 environment and other conditions upon the public health, and report  
16 the findings to the state board of health for such action as the  
17 board determines is necessary;

18 ~~((3))~~ (c) Strictly enforce all laws for the protection of the  
19 public health and the improvement of sanitary conditions in the  
20 state, and all rules, regulations, and orders of the state board of  
21 health;

22 ~~((4))~~ (d) Enforce the public health laws of the state and the  
23 rules and regulations promulgated by the department or the board of  
24 health in local matters, when in its opinion an emergency exists and  
25 the local board of health has failed to act with sufficient  
26 promptness or efficiency, or is unable for reasons beyond its control  
27 to act, or when no local board has been established, and all expenses  
28 so incurred shall be paid upon demand of the secretary of the  
29 department of health by the local health department for which such  
30 services are rendered, out of moneys accruing to the credit of the  
31 municipality or the local health department in the current expense  
32 fund of the county;

33 ~~((5))~~ (e) Investigate outbreaks and epidemics of disease that  
34 may occur and advise local health officers as to measures to be taken  
35 to prevent and control the same;

36 ~~((6))~~ (f) Exercise general supervision over the work of all  
37 local health departments and establish uniform reporting systems by  
38 local health officers to the state department of health;

1       (~~(7)~~) (g) Have the same authority as local health officers,  
2 except that the secretary shall not exercise such authority unless  
3 the local health officer (~~(fails or)~~) is unable to do so, or when in  
4 (~~(a)~~) a proclaimed state of emergency the safety of the public  
5 health demands it, or by agreement with the local health officer or  
6 local board of health;

7       (~~(8)~~) (h) Cause to be made from time to time, personal health  
8 and sanitation inspections at state owned or contracted institutions  
9 and facilities to determine compliance with sanitary and health care  
10 standards as adopted by the department, and require the governing  
11 authorities thereof to take such action as will conserve the health  
12 of all persons connected therewith, and report the findings to the  
13 governor;

14       (~~(9)~~) (i) Review and approve plans for public water system  
15 design, engineering, operation, maintenance, financing, and emergency  
16 response, as required under state board of health rules;

17       (~~(10)~~) (j) Take such measures as the secretary deems necessary  
18 in order to promote the public health, to establish or participate in  
19 the establishment of health educational or training activities, and  
20 to provide funds for and to authorize the attendance and  
21 participation in such activities of employees of the state or local  
22 health departments and other individuals engaged in programs related  
23 to or part of the public health programs of the local health  
24 departments or the state department of health. The secretary is also  
25 authorized to accept any funds from the federal government or any  
26 public or private agency made available for health education training  
27 purposes and to conform with such requirements as are necessary in  
28 order to receive such funds; and

29       (~~(11)~~) (k) Establish and maintain laboratory facilities and  
30 services as are necessary to carry out the responsibilities of the  
31 department.

32       (2) (a) Any emergency order or policy issued by the secretary in  
33 response to a proclaimed state of emergency must identify the area of  
34 the state in which the emergency exists. Such area may not exceed a  
35 single county in any single proclamation. The secretary may issue  
36 multiple proclamations intended to address simultaneous emergencies  
37 in multiple counties, even where those simultaneous emergencies arise  
38 from the same facts constituting an emergency.

39       (b) No order or policy issued under this subsection (2) may  
40 continue for longer than 14 days unless extended or modified by the



1 legislature through concurrent resolution. If the legislature is not  
2 in session, the order or policy may be extended or modified in  
3 writing by the majority and minority leaders of the senate and the  
4 speaker and the minority leader of the house of representatives for  
5 up to 30 days, until the legislature can extend the order or policy  
6 by concurrent resolution.

7 (c) Any order or policy issued under this subsection (2) must be  
8 narrowly tailored, using the least restrictive means to accomplish a  
9 compelling government interest to protect the public.

10 **Sec. 7.** RCW 70.05.070 and 2020 c 20 s 1066 are each amended to  
11 read as follows:

12 (1) The local health officer, acting under the direction of the  
13 local board of health or under direction of the administrative  
14 officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

15 ~~((1))~~ (a) Enforce the public health statutes of the state,  
16 rules of the state board of health and the secretary of health, and  
17 all local health rules, regulations and ordinances within his or her  
18 jurisdiction including imposition of penalties authorized under RCW  
19 70A.125.030 and 70A.105.120, the confidentiality provisions in RCW  
20 70.02.220 and rules adopted to implement those provisions, and filing  
21 of actions authorized by RCW 43.70.190;

22 ~~((2))~~ (b) Take such action as is necessary to maintain health  
23 and sanitation supervision over the territory within his or her  
24 jurisdiction;

25 ~~((3))~~ (c) Control and prevent the spread of any dangerous,  
26 contagious or infectious diseases that may occur within his or her  
27 jurisdiction;

28 ~~((4))~~ (d) Inform the public as to the causes, nature, and  
29 prevention of disease and disability and the preservation, promotion  
30 and improvement of health within his or her jurisdiction;

31 ~~((5))~~ (e) Prevent, control or abate nuisances which are  
32 detrimental to the public health;

33 ~~((6))~~ (f) Attend all conferences called by the secretary of  
34 health or his or her authorized representative;

35 ~~((7))~~ (g) Collect such fees as are established by the state  
36 board of health or the local board of health for the issuance or  
37 renewal of licenses or permits or such other fees as may be  
38 authorized by law or by the rules of the state board of health;

1        ~~((8))~~ (h) Inspect, as necessary, expansion or modification of  
2 existing public water systems, and the construction of new public  
3 water systems, to assure that the expansion, modification, or  
4 construction conforms to system design and plans;

5        ~~((9))~~ (i) Take such measures as he or she deems necessary in  
6 order to promote the public health, to participate in the  
7 establishment of health educational or training activities, and to  
8 authorize the attendance of employees of the local health department  
9 or individuals engaged in community health programs related to or  
10 part of the programs of the local health department.

11        (2) (a) Any emergency order issued by a local health officer in  
12 response to a proclaimed state of emergency must be narrowly  
13 tailored, using the least restrictive means to accomplish a  
14 compelling government interest to protect the public.

15        (b) An order issued under this subsection (2) may not continue  
16 for longer than 14 days unless extended or modified by the  
17 legislature through concurrent resolution. If the legislature is not  
18 in session, the order may be extended or modified in writing by the  
19 majority and minority leaders of the senate and the speaker and the  
20 minority leader of the house of representatives for up to 30 days,  
21 until the legislature can extend the order by concurrent resolution.

22        NEW SECTION.    **Sec. 8.** This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of  
24 the state government and its existing public institutions, and takes  
25 effect immediately.

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