

STATE OF NEW YORK

7103

2021-2022 Regular Sessions

IN ASSEMBLY

April 22, 2021

Introduced by M. of A. RA, TANNOUSIS, BYRNE, TAGUE, SIMPSON, SMULLEN, PALMESANO, DiPIETRO, SALKA, HAWLEY, ANGELINO, LEMONDES, MONTESANO, BRABENEC, B. MILLER, MORINELLO, M. MILLER, DURSO, WALSH, GALLAHAN, LAWLER, WALCZYK, MANKTELOW -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to enacting the "stop continuing unnecessary orders and mandates at once act"; and to amend chapter 71 of the laws of 2021, amending the executive law relating to the termination of certain executive powers, in relation to requiring the governor to notify the legislature of a proposed extension or modification of an executive order

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "stop continuing unnecessary orders and mandates at once act".

3 § 2. Legislative intent. The legislature seeks to provide legislative
4 review and authorization of any executive orders issued by the governor
5 which would extend or modify a directive issued in response to the
6 COVID-19 pandemic. To date, nothing has been done to balance the powers
7 of the governor and the legislature. In fact, the executive branch has
8 been given more power. This act serves as a necessary measure to ensure
9 that the power of the executive is checked and that the elected repre-
10 sentatives of the people of New York in the legislature are empowered to
11 effectively govern in times of crisis. Further, it is the intent of this
12 act to allow businesses to operate with proper public health guidelines
13 such as the wearing of face coverings, social distancing and sanitation
14 protocols without further government interference.

15 Many businesses have been deemed non-essential or have faced
16 restrictions or closures as a result of the governor's executive orders
17 and directives contained therein. These executive orders and directives
18 have been overreaching and anti-business. Businesses have had to jump

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 through hoops to remain open and make ends meet. These executive orders
2 and directives have led to establishments putting "Cuomo Chips" on the
3 menu so they can stay in business.

4 The legislature recognizes that New York's businesses are the backbone
5 of our state economy and the legislature must act boldly to address the
6 negative impacts the governor's various executive directives have had on
7 the state's economy by reviewing and approving all extension and modifi-
8 cations of directives moving forward.

9 When reviewing the governor's directives, it is the intent of the
10 legislature to prohibit the governor from extending or modifying arbi-
11 trary directives that serve no legitimate purpose and have caused irre-
12 parable harm to the New York state economy and the lives of all New
13 Yorkers, including but not limited to, directives that:

14 (1) place a curfew or limitation on businesses requiring them to cease
15 all on premises service and consumption of food and beverages or other-
16 wise cease sales and require closure at a set time whether licensed by
17 the state liquor authority or otherwise;

18 (2) require a business licensed by the state liquor authority to serve
19 alcoholic beverages for on premises consumption or for off premises
20 consumption only if the service of such alcoholic beverage is accompa-
21 nied by the purchase of a food item by each individual that is being
22 served an alcoholic beverage;

23 (3) require the closing of a business or house of worship;

24 (4) place restrictions on operations or capacity limitations on busi-
25 nesses, including, but not limited to, restaurants, bars, event and
26 catering halls, billiard/dart halls, bowling alleys, liquor stores,
27 gyms, amusement parks, horse racing and auto racing tracks, and movie
28 theaters, provided however, that enforcement of public health guidelines
29 such as the wearing of face coverings and sanitation shall be permitted;
30 and

31 (5) place limits on gatherings at private residences or houses of
32 worship, provided however, that enforcement of public health guidelines
33 such as the wearing of face coverings and sanitation shall be permitted.

34 § 3. Subdivision 4 of section 29-a of the executive law, as added by
35 chapter 640 of the laws of 1978, is amended to read as follows:

36 4. The legislature may terminate or modify by concurrent resolution
37 executive orders issued under this section at any time.

38 § 4. Subdivision 2 of section 2 of chapter 71 of the laws of 2021,
39 amending the executive law relating to the termination of certain execu-
40 tive powers, is amended to read as follows:

41 2. Any directive previously issued pursuant to chapter 23 of the laws
42 of 2020 in effect at the time of the repeal of such chapter shall be
43 permitted to continue for 30 days from the effective date of this chap-
44 ter notwithstanding the repeal of chapter 23 of the laws of 2020 and
45 following the expiration of such 30 day period, any extensions or
46 modifications of such directives shall be subject to the following
47 provisions:

48 a. The governor ~~[may]~~ shall apply to the state legislature for author-
49 ization to extend or modify any directive, by executive order, that has
50 been issued and remains in effect on the effective date of this act for
51 additional 30 day increments in a manner provided for in this section,
52 provided that the purpose of extending or modifying the directive is to
53 issue a public health directive related to managing the COVID-19 pandem-
54 ic.

55 ~~[b. No later than 5 days prior to the extension or modification of~~
56 ~~such a directive, the governor shall notify including via electronic~~

~~means the relevant committee chairs in the assembly and senate and the speaker of the assembly and temporary president of the senate of his or her intent to extend or modify any directive, and shall include therewith the certification required by subdivision 1 of this section, to describe the need for extension or modification of such directive and the threat to the public health or safety that requires the extension or modification. If the governor certifies that the extension or modification of such a directive is necessary to address any exigent circumstances that address an imminent threat to public health or safety, he or she shall provide such certification required by the commissioner of health as provided in subdivision 1 of this section as soon as possible, but in any event, prior to the issuance of an extension or modification of such a directive. The governor shall provide an opportunity to comment on any such directive by the relevant committee chairs, which comments may be received after the issuance of the directive and shall not affect the validity thereof.~~

~~c. No later than 5 days prior to the extension or modification of a directive only explicitly affecting specific municipalities, the governor shall notify including via electronic means the relevant executive leaders of such municipalities and such municipal legislature of his or her intent to extend or modify any such directive, and shall include therewith the certification required by subdivision 1 of this section to describe the need for extension or modification of such directive and the specific threat to the public health or safety that requires the extension or modification. If the governor certifies that the extension or modification of such a directive is necessary to address any exigent circumstances that address an imminent threat to the public health or safety, he or she shall provide such certification required by the commissioner of health as provided in subdivision 1 of this section, as soon as possible but in any event, prior to the issuance of an extension or modification of such a directive. The governor shall provide an opportunity to comment on any such directive by such executive leaders and legislatures, which comments may be received after the issuance of the directive and shall not affect the validity thereof.]~~

b. No later than five days prior to any proposed extension or modification of such a directive, the governor shall notify, including via electronic means, each member of the legislature of his or her request for authorization to extend or modify a directive. A request made by the governor pursuant to this act shall be made for each directive individually, and shall include with each request to the legislature the certification required by subdivision 1 of this section to describe the need for such extension or modification. Notice of the governor's request to extend or modify any directive shall be immediately posted on the governor's website; and in the event a directive that the governor is requesting to extend or modify explicitly affects a municipality, the governor shall also notify, including via electronic means, the chief executive officer of such municipality of his or her request.

(i) Upon receiving a request from the governor as to his or her desire to extend or modify any directive, the speaker of the assembly and temporary president of the senate shall call their respective houses of the legislature into session to consider the governor's request. No later than five days following receipt of a request by the governor to extend or modify a directive, the legislature, upon a majority vote of the members in each house, may approve such a request by concurrent resolution. If the legislature fails to return to session to consider the governor's request to extend or modify any directive within five

1 days of receiving a request from the governor, such request shall be
2 deemed approved notwithstanding the failure of the legislature to adopt
3 a concurrent resolution and such directive shall be allowed to be
4 extended or modified as requested.

5 (ii) If the governor certifies that the extension or modification of a
6 directive is necessary to address an exigent circumstance relating to an
7 imminent threat to public health or safety, a directive shall be permit-
8 ted to be extended or modified immediately without prior approval of the
9 legislature. Certification of exigent circumstances shall require
10 notification of such a threat and justification thereof being posted on
11 the governor's website. Immediately following posting of such notifica-
12 tion on his or her website as to the exigent need to extend or modify an
13 executive order, the governor shall make a formal request to the legis-
14 lature as provided in subparagraph (i) of this paragraph b. No later
15 than five days following receipt of a request by the governor to extend
16 or modify a directive under this subparagraph, the legislature, upon a
17 majority vote of the members in each house, may approve such a request
18 by concurrent resolution. If the legislature fails to return to session
19 to consider the governor's request to extend or modify any directive
20 within 5 days of receiving a request from the governor, such request
21 shall be deemed approved notwithstanding the failure of the legislature
22 to adopt a concurrent resolution and such directive shall be allowed to
23 be extended or modified as requested.

24 c. The governor shall provide an opportunity to comment on any direc-
25 tive he or she seeks to extend or modify. Comments shall be accepted via
26 electronic means.

27 d. No directive shall be modified pursuant to this section unless such
28 modification is solely for the purpose of altering the numeric amount or
29 percentage of individuals, businesses, vaccination locations or provid-
30 ers or administrators, or other entities impacted by a directive, or
31 placing additional restrictions or reducing existing restrictions
32 related to testing, quarantine, social distancing, air quality or
33 filtration, or mask requirements, for any entity located in the state,
34 including but not limited to modification of individuals eligible for
35 vaccination or modification of limits on the seating capacity of a busi-
36 ness to operate during a state of emergency.

37 e. No directive shall be extended or modified to the extent that such
38 directive prohibits the adoption by any municipality of this state a
39 local executive order within such municipality's existing power except
40 where such an order conflicts with any executive order issued by the
41 state.

42 f. No directive may be extended or modified more than once unless the
43 governor has responded, including electronically, to any comments
44 provided by [~~the chairs of any relevant committee or relevant municipal~~
45 ~~entities pursuant to this section which have been received within 5 days~~
46 ~~of the time required for such notice pursuant to paragraph b of this~~
47 ~~subdivision, and which may be attested to in the notice by the governor~~
48 ~~to the relevant chairs and the leaders as provided in paragraph b of~~
49 ~~this subdivision, which shall be deemed sufficient for purposes of the~~
50 ~~effectiveness of such directive]~~ any member of the legislature or chief
51 executive of a municipality that received notice pursuant to this
52 section. Comments of state legislators and municipal chief executives
53 shall be posted on the governor's website along with responses thereto.
54 Certification that responses have been made and posted online shall be
55 included along with any request by the governor to the legislature for

1 authorizations for additional extensions or modifications of a
2 directive.

3 g. The legislature may terminate by concurrent resolution executive
4 orders issued under this section at any time.

5 h. [~~Directives~~] No extension or modification of a directive shall be
6 effective [~~from the time and in the manner prescribed in such orders~~
7 ~~and~~] until approved by the legislature pursuant to this section;
8 provided, however, that any exigent extension or modification that is
9 approved by the legislature pursuant to subparagraph (ii) of paragraph b
10 of this subdivision shall be deemed to have been effective upon the
11 governor providing notice on his or her website of such necessary
12 exigent action. All directives shall be published as soon as practica-
13 ble in the state bulletin and as provided in this section and this act.

14 § 5. This act shall take effect immediately and shall apply to any
15 proposed extension or modification of a directive requested by the
16 governor on or after the effective date of this act; provided, however,
17 that the amendments to section 2 of chapter 71 of the laws of 2021 made
18 by section four of this act shall not affect the repeal of such section
19 and shall be deemed repealed therewith.