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:

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

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

Many businesses have been deemed non-essential or have faced restrictions or closures as a result of the governor's executive orders and directives contained therein. These executive orders and directives 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.

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

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

When reviewing the governor's directives, it is the intent of the legislature to prohibit the governor from extending or modifying arbitrary directives that serve no legitimate purpose and have caused irreparable harm to the New York state economy and the lives of all New Yorkers, including but not limited to, directives that:

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

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

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

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

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

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

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

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

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

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

[~~b. No later than 5 days prior to the extension or modification of 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

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

(ii) If the governor certifies that the extension or modification of a directive is necessary to address an exigent circumstance relating to an imminent threat to public health or safety, a directive shall be permitted to be extended or modified immediately without prior approval of the legislature. Certification of exigent circumstances shall require notification of such a threat and justification thereof being posted on the governor's website. Immediately following posting of such notification on his or her website as to the exigent need to extend or modify an executive order, the governor shall make a formal request to the legislature as provided in subparagraph (i) of this paragraph b. No later than five days following receipt of a request by the governor to extend or modify a directive under this subparagraph, 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 5 days of receiving a request from the governor, such request shall be deemed approved notwithstanding the failure of the legislature to adopt a concurrent resolution and such directive shall be allowed to be extended or modified as requested.

c. The governor shall provide an opportunity to comment on any directive he or she seeks to extend or modify. Comments shall be accepted via electronic means.

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

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

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

authorizations for additional extensions or modifications of a directive.

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

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

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