**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3526**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Hill

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Introduced in the House on January 12, 2021

Currently residing in the House Committee on **Judiciary**

Summary: Emergency proclamations

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/16/2020 House Prefiled

12/16/2020 House Referred to Committee on **Judiciary**

1/12/2021 House Introduced and read first time ([House Journal‑page 225](file:///h:\hj\20210112.docx))

1/12/2021 House Referred to Committee on **Judiciary** ([House Journal‑page 225](file:///h:\hj\20210112.docx))

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=3526&session=124&summary=B) at the website

**VERSIONS OF THIS BILL**

[12/16/2020](file:///p:\pprever\2021-22\3526_20201216.docx)

**A** **BILL**

TO AMEND SECTION 1‑3‑420, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE GOVERNOR’S AUTHORITY TO ISSUE PROCLAMATIONS OF EMERGENCY, SO AS TO TRANSFER THIS AUTHORITY TO THE GENERAL ASSEMBLY AND TO ESTABLISH CONDITIONS AND PROCEDURES FOR THE GENERAL ASSEMBLY TO DECLARE A STATE OF EMERGENCY; TO AMEND SECTION 16‑7‑20, RELATING TO POWERS OF LAW ENFORCEMENT OFFICERS DURING A STATE OF EMERGENCY, SO AS TO REMOVE PROVISIONS CONCERNING PROCLAMATIONS OF A STATE OF EMERGENCY BY THE GOVERNOR; TO AMEND SECTION 25‑1‑1860, RELATING TO THE GOVERNOR’S PROCLAMATION TO DISPERSE, SO AS TO DECLARE THAT THE PROVISIONS OF THIS SECTION MUST NOT BE USED OR IMPLEMENTED IN ANY MANNER THAT VIOLATES, ABRIDGES, OR INFRINGES UPON A PERSON’S RIGHT TO EXERCISE FREE SPEECH UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION OR SECTION 2, ARTICLE I OF THE STATE CONSTITUTION; TO AMEND SECTION 44‑4‑130, RELATING TO DEFINITIONS APPLICABLE TO THE EMERGENCY HEALTH POWERS ACT, SO AS TO REVISE THE DEFINITION OF “QUALIFYING HEALTH CONDITION”; TO AMEND SECTION 44‑4‑510, RELATING TO QUARANTINES IMPOSED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL DURING PUBLIC HEALTH EMERGENCIES, SO AS TO ELIMINATE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL’S AUTHORITY TO ISOLATE OR QUARANTINE CERTAIN INDIVIDUALS WHO REFUSE PHYSICAL EXAMINATION OR TESTING; TO AMEND SECTION 44‑4‑540, RELATING TO ISOLATION AND QUARANTINE PROCEDURES, SO AS TO ELIMINATE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL’S AUTHORITY TO ISOLATE OR QUARANTINE AN INDIVIDUAL OR A GROUP OF INDIVIDUALS THROUGH AN EXTRAJUDICIAL EMERGENCY ORDER SIGNED BY THE COMMISSIONER; AND TO REPEAL SECTIONS 16‑7‑10 RELATING TO ACTS CONSIDERED ILLEGAL DURING A STATE OF EMERGENCY, 25‑1‑445 RELATING TO ENTRY INTO AREAS UNDER CURFEW, 44‑1‑100 RELATING TO ASSISTANCE FROM PEACE AND HEALTH OFFICERS, 44‑4‑520 RELATING TO VACCINATIONS AND TREATMENT, AND 44‑4‑530 RELATING TO ISOLATION AND QUARANTINE OF INDIVIDUALS OR GROUPS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 1‑3‑420 of the 1976 Code is amended to read:

“Section 1‑3‑420. (A) The Governor, when in his opinion the facts warrant a proclamation of emergency, shall, pursuant to Section 18, Article IV of the State Constitution, provide the General Assembly information on the condition of the State and recommend for its consideration that the General Assembly, by ~~proclamation~~ joint resolution, declare that, because of ~~unlawful assemblage, violence or threats of violence,~~ enemy attack as described in Section 12, Article XVII of the State Constitution ~~or a public health emergency, as defined in Section 44‑4‑130~~, a danger exists to the person or property of any citizen and that the peace and tranquility of the State, or any political subdivision thereof, or any particular area of the State designated by ~~him~~ it, is threatened, and because thereof an emergency, with reference to such threats and danger, exists.

(B) The ~~Governor~~ General Assembly, upon the ~~issuance~~ enactment of a ~~proclamation~~ joint resolution as provided for in this section, must immediately file the ~~proclamation~~ joint resolution in the Office of the Secretary of State, which ~~proclamation~~ is effective upon ~~issuance~~ enactment and shall remain in full force and effect until revoked by the ~~Governor~~ General Assembly.

(C) The provisions of this section shall apply regardless of whether the General Assembly has adjourned, recessed, receded, or is in annual session. If the Governor believes a proclamation of emergency is necessary at a time when the General Assembly is adjourned, recessed, or receded he shall convene the General Assembly in extra session pursuant to Section 19, Article IV of the State Constitution.

(D) Notwithstanding another provision of law, after the effective date of this subsection, the State or a local government may impose a curfew only when the General Assembly has declared a state of emergency due to enemy attack pursuant to subsection (A).”

SECTION 2. Section 16‑7‑20 of the 1976 Code is amended to read:

“Section 16‑7‑20. All law enforcement officers of the State or any of its subdivisions who may be called to duty in ~~the area designated by the Governor in his proclamation~~ an area due to a declared state of emergency, when engaged in the performance of duties in such area, shall have the full powers of constable at all places within such area and may pursue and arrest offenders against the laws of this State ~~or the provisions of the proclamation~~.”

SECTION 3. Section 25‑1‑1860 of the 1976 Code is amended to read:

“Section 25‑1‑1860. Whenever in the judgment of the Governor it may be necessary to use the military force under the provisions of Section 25‑1‑1850 the Governor shall forthwith, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time. In no event, however, may the provisions of this section be used or implemented in any manner that violates, abridges, or infringes upon a person’s right to exercise free speech under the First Amendment of the United States Constitution or Section 2, Article I of the State Constitution.”

SECTION 4. Section 44‑4‑130(R) of the 1976 Code is amended to read:

“(R) ‘Qualifying health condition’ means:

(1) a natural disaster; or

(2) an illness or health condition that may be caused by terrorism, epidemic or pandemic disease, or a novel infectious agent or biological or chemical agent and that poses a substantial risk of a significant number of human fatalities, ~~widespread illness,~~ or serious economic impact to the agricultural sector, including food supply.”

SECTION 5. Section 44‑4‑510(A) of the 1976 Code is amended to read:

“(A)~~(1)~~ During a state of public health emergency, DHEC may perform voluntary physical examinations or tests as necessary for the diagnosis or treatment of individuals.

~~(2)~~ ~~DHEC may isolate or quarantine, pursuant to the sections of this act and its existing powers under Section 44‑1‑140, any person whose refusal of physical examination or testing results in uncertainty regarding whether he or she has been exposed to or is infected with a contagious or possibly contagious disease or otherwise poses a danger to public health.~~”

SECTION 6. Section 44‑4‑540 of the 1976 Code is amended to read:

“Section 44‑4‑540. (A) ~~During a public health emergency, the isolation and quarantine of an individual or groups of individuals must be undertaken in accordance with the procedures provided in this section.~~

~~(B)(1)~~ ~~DHEC may temporarily isolate or quarantine an individual or groups of individuals through an emergency order signed by the commissioner or his designee, if delay in imposing the isolation or quarantine would significantly jeopardize DHEC’s ability to prevent or limit the transmission of a contagious or possibly contagious disease to others.~~

~~(2)~~ ~~The emergency order must specify the following: (i) the identity of the individual or groups of individuals subject to isolation or quarantine; (ii) the premises subject to isolation or quarantine; (iii) the date and time at which isolation or quarantine commences; (iv) the suspected contagious disease, if known; and (v) a copy of Article V of this act and relevant definitions of this act.~~

~~(3)~~ ~~A copy of the emergency order must be given to the individual(s) or groups of individuals to be isolated or quarantined, or if impractical to be given to a group of individuals, it may be posted in a conspicuous place in the isolation or quarantine premises.~~

~~(4)~~ ~~Within ten days after issuing the emergency order, DHEC must file a petition pursuant to subsection (C) of this section for a court order authorizing the continued isolation or quarantine of the isolated or quarantined individual or groups of individuals.~~

~~(C)~~(1) DHEC may make a written petition to the trial court for an order authorizing the isolation or quarantine of an individual or groups of individuals.

(2) A petition under ~~subsection (C)~~ item (1) must specify the following: (i) the identity of the individual or groups of individuals subject to isolation or quarantine; (ii) the premises subject to isolation or quarantine; (iii) the date and time at which isolation or quarantine commences; (iv) the suspected contagious disease, if known; ~~and (v) a statement of compliance with the conditions and principles for isolation or quarantine of Section 44‑4‑530(B);~~ and ~~(vi)~~(v) a statement of the basis upon which isolation or quarantine is justified in compliance with this article. The petition must be accompanied by a sworn affidavit of DHEC attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court’s consideration.

(3) Notice to individuals or groups of individuals identified in the petition must be accomplished within twenty‑four hours in accordance with the South Carolina Rules of Civil Procedure. If notice by mail or fax is not possible, notice must be made by personal service.

(4) A hearing must be held on any petition filed pursuant to this subsection within five days of filing of the petition. In extraordinary circumstances and for good cause shown, DHEC may apply to continue the hearing date on a petition filed pursuant to this section for up to ten days, which continuance the court may grant in its discretion giving due regard to the rights of the affected individuals, the protection of the public’s health, the severity of the emergency, and the availability of necessary witnesses and evidence.

(5)(a) The court must grant the petition if, by a preponderance of the evidence, isolation or quarantine is shown to be reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease.

(b) An order authorizing isolation or quarantine may do so for a period not to exceed thirty days.

(c) The order must: (i) identify the isolated or quarantined individuals or groups of individuals by name or shared or similar characteristics or circumstances; (ii) specify factual findings warranting isolation or quarantine pursuant to this act; (iii) include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this act; and (iv) served on affected individuals or groups of individuals in accordance with the South Carolina Rules of Civil Procedure. If notice by mail or fax is not possible, notice must be made by personal service.

(d) Prior to the expiration of an order issued pursuant to this item, DHEC may move to continue the isolation or quarantine for additional periods not to exceed thirty days each. The court must consider the motion in accordance with standards set forth in this item.

~~(D)~~(B)(1) An individual or group of individuals isolated or quarantined pursuant to this act may apply to the trial court for an order to show cause why the individual or group of individuals should not be released. The court must rule on the application to show cause within forty‑eight hours of its filing. If the court grants the application, the court must schedule a hearing on the order to show cause within twenty‑four hours from issuance of the order to show cause. The issuance of the order to show cause does not stay or enjoin the isolation or quarantine order.

(2)(a) An individual or group of individuals isolated or quarantined pursuant to this act may request a hearing in the trial court for remedies regarding breaches to the conditions of isolation or quarantine. A request for a hearing does not stay or enjoin the isolation or quarantine order.

(b) Upon receipt of a request under this subsection alleging extraordinary circumstances justifying the immediate granting of relief, the court must fix a date for hearing on the matters alleged not more than twenty‑four hours from receipt of the request.

(c) Otherwise, upon receipt of a request under this subsection, the court must fix a date for hearing on the matters alleged within five days from receipt of the request.

(3) In any proceedings brought for relief under this subsection, in extraordinary circumstances and for good cause shown, DHEC may move the court to extend the time for a hearing, which extension the court in its discretion may grant giving due regard to the rights of the affected individuals, the protection of the public’s health, the severity of the emergency, and the availability of the necessary witnesses and evidence.

~~(E)~~(C) A record of the proceedings pursuant to this section must be made and retained. In the event that, given a state of public health emergency, parties cannot personally appear before the court, proceedings may be conducted by their authorized representatives and be held via any means that allow all parties to fully participate.

~~(F)~~(D) The court must appoint counsel to represent individuals or groups of individuals who are or who are about to be isolated or quarantined pursuant to the provisions of this act and who are not otherwise represented by counsel. Payment for these appointments must be made in accordance with other appointments for legal representation in actions arising outside of matters in this act, and is not the responsibility of any one state agency. Appointments last throughout the duration of the isolation or quarantine of the individual or groups of individuals. DHEC must provide adequate means of communication between such individuals or groups of individuals and their counsel. Where necessary, additional counsel for DHEC from other state agencies or from private attorneys appointed to represent state agencies, must be appointed to provide adequate representation for the agency and to allow timely hearings of the petitions and motions specified in this section.

~~(G)~~(E) In any proceedings brought pursuant to this section, to promote the fair and efficient operation of justice and having given due regard to the rights of the affected individuals, the protection of the public’s health, the severity of the emergency, and the availability of necessary witnesses and evidence, the court may order the consolidation of individual claims into groups of claims where:

(1) the number of individuals involved or to be affected is so large as to render individual participation impractical;

(2) there are questions of law or fact common to the individual claims or rights to be determined;

(3) the group claims or rights to be determined are typical of the affected individuals’ claims or rights; and

(4) the entire group will be adequately represented in the consolidation.

~~(H)~~ ~~Notwithstanding the provisions of subsection (A), prior to the Governor declaring a public health emergency, as defined in Section 44‑4‑130, the isolation and quarantine of an individual or groups of individuals pursuant to Section 44‑1‑80, 44‑1‑110, 44‑1‑140, 44‑4‑520, 44‑4‑530, or 44‑4‑540 must be undertaken in accordance with the procedures provided in this section.~~”

SECTION 7. Sections 16‑7‑10, 25‑1‑445, 44‑1‑100, 44‑4‑520, and 44‑4‑530 of the 1976 Code are repealed.

SECTION 8. This act takes effect upon approval by the Governor.

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