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S.B. 311
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. McColley and Roegner

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SUMMARY

- Immediately rescinds the portion of the Director of Health's order issued April 30, 2020, requiring individuals to stay home and requiring or continuing the closure of businesses.
- Specifies that all orders issued by the Director on or after April 29, 2020, cease to be effective 14 days after the bill takes effect, unless the Joint Committee on Agency Rule Review (JCARR) approves extensions of those orders by a specified vote.
- Prohibits any future order of the Director from being effective for more than 14 days unless, at the Director's request, JCARR approves an extension by that same vote.
- Requires a future order of the Director that applies on a statewide basis to be signed by the Governor.
- Specifies that the Director may make certain public health rules to prevent the spread of disease only in accordance with the Administrative Procedure Act, and prohibits the Director from making emergency rules, rule amendments, or rescissions under the Act.
- Gives any Ohio citizen standing to seek a court order that the Director comply with the bill's requirements, and specifies that the citizen is not required to prove that irreparable harm will result if the court does not issue the order.
- Prohibits executive action that would prohibit in-person high school graduations or restrict in-person high school graduations in specified ways during 2020.
- Declares an emergency.

DETAILED ANALYSIS

Department of Health orders and rules

Current orders

The bill immediately rescinds the portion of the Director of Health's order issued April 30, 2020, requiring individuals to stay home and requiring or continuing the closure of businesses. Further, the bill specifies that all orders issued by the Director of Health on or after April 29, 2020, cease to be effective 14 days after the bill takes effect, unless the Joint Committee on Agency Rule Review (JCARR) approves extensions of those orders by a majority vote that includes at least three members of the House of Representatives and three members of the Senate.¹

Since April 29, the Director has issued five orders in response to the COVID-19 pandemic, described in the table below. Under the bill, those orders cease to be effective 14 days after the bill takes effect, unless JCARR approves extensions.²

Date	Topic
April 29, 2020	Extends the closure of all K-12 schools in Ohio through June 30, 2020.
April 30, 2020	Modifies the previous stay at home order and allows some businesses to reopen.
May 13, 2020	Requires all laboratories conducting COVID-19 testing to make daily aggregate testing reports to the Department of Health.
May 14, 2020	Allows bars and restaurants to reopen for dine-in service, with exceptions.
May 14, 2020	Allows hair salons, day spas, nail salons, barber shops, tattoo parlors, body piercing locations, and tanning facilities to reopen, with exceptions.

Future orders and rules

The bill requires a future order of the Director of Health that applies statewide to be signed by the Governor and prohibits any future order, statewide or not statewide, from being effective for more than 14 days unless, at the Director's request, JCARR approves an extension by a majority vote that includes at least three members of the House of Representatives and three members of the Senate. JCARR must determine the period of the extension, if any. In making its determination, JCARR must consider information submitted to JCARR from local

¹ Section 3 of the bill.

² The Director's orders are [available here](#). The information provided in the table is current as of May 19, 2020.

health departments regarding the impact an extension will have in the health departments' jurisdictions.

For purposes of the bill, an order is considered to be effective for more than 14 days if the order includes an effective period that exceeds 14 days or if the substance of the order is contained in multiple subsequently issued orders whose combined effective period exceeds 14 days. (For example, the Director could not bypass the bill's restriction by issuing a series of orders with the same substance that each last only 14 days.)

The bill also specifies that the Director may make certain public health rules (as opposed to orders, governed by the provisions described above) only in accordance with the Administrative Procedure Act, which involves the JCARR rule review process. And, the Director may not make those rules as emergency rules, rule amendments, or rescissions under the Act, which generally allows agencies to change rules on an emergency basis without going through the typical rulemaking procedure.

The bill's rulemaking restriction applies to rules adopted under R.C. 3701.13, which gives the Director authority relating to the preservation of life and health and matters of quarantine and isolation and for approving methods of immunization and encouraging vaccination. The section specifically references the Director adopting rules for preventing use of fluoroscopes for nonmedical purposes, for preventing the spread of contagious or infectious disease, governing the receipt and conveyance of remains of deceased persons, and governing other sanitary matters best controlled by a general rule.

Finally, the bill specifies the bill's provisions do not confer authority to the Director or Governor beyond the authority otherwise provided under the Ohio Constitution or Revised Code.³

Enforcement

Under the bill, any Ohio citizen has standing to seek a court order that the Director of Health comply with the bill's requirements. The citizen is not required to prove that irreparable harm will result if the court does not issue the order.

In general, a person who asks a court for a preliminary injunction against a government agency (an order that the agency take an action or refrain from taking an action, issued before the court makes a final decision in the case) must show that the person has standing, meaning that the person is actually injured by the agency's actions. And, the person must show that irreparable harm will result if the court does not grant the injunction. The bill allows an Ohio citizen to seek an injunction against the Director of Health without meeting those requirements.⁴

³ R.C. 101.35, 101.36, and 3701.13.

⁴ R.C. 101.36(C).

High school graduations

The bill prohibits the Governor or any director, officer, or employee of an executive agency⁵ (including the Director of Health) from making an order to do any of the following during 2020:

1. Prohibit in-person high school graduation ceremonies;
2. Restrict the number of high school graduates, school faculty, or administrators who may attend;
3. Limit the number of attendees to less than four per graduate;
4. Limit when or what time of the day the graduation ceremonies must occur;
5. Limit the duration of the ceremonies;
6. Limit where or in what type of room or facility the graduation ceremony may be conducted;
7. Require the graduates, attendees, school faculty, or administrators to exercise social distancing at a physical distance that exceeds the federal social distancing guidelines;
8. Apply social distancing restrictions against members of the same household.⁶

Emergency clause

The bill declares an emergency, meaning that it takes effect immediately and is not subject to the referendum.

HISTORY

Action	Date
Introduced	05-15-20

S0311-I-133/ks

⁵ “Executive agency” includes the office of Governor, a department created under section 121.02 of the Revised Code (administrative departments), or any other state agency, department, board, or commission controlled or directed by the Governor or otherwise subject to the Governor’s authority.

⁶ Section 1 of the bill.