**South Carolina General Assembly**

124th Session, 2021-2022

**S. 382**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Cash, Massey and Rice

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Introduced in the Senate on January 12, 2021

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

Summary: Emergency proclamation by Governor

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2020 Senate Prefiled

12/9/2020 Senate Referred to Committee on **Judiciary**

1/12/2021 Senate Introduced and read first time ([Senate Journal‑page 293](file:///h:\sj\20210112.docx))

1/12/2021 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 293](file:///h:\sj\20210112.docx))

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\382_20201209.docx)

**A** **BILL**

TO AMEND SECTION 1-3-420 OF THE 1976 CODE, RELATING TO A PROCLAMATION OF EMERGENCY BY THE GOVERNOR, TO PROVIDE THAT A STATE OF EMERGENCY DECLARED BY THE GOVERNOR MAY NOT LAST MORE THAN FIFTEEN DAYS UNLESS THE GENERAL ASSEMBLY ADOPTS A CONCURRENT RESOLUTION AUTHORIZING THE STATE OF EMERGENCY TO REMAIN IN PLACE FOR A LONGER PERIOD OF TIME, TO PROVIDE THAT INACTION BY THE GENERAL ASSEMBLY DOES NOT CONSTITUTE CONSENT, TO PROVIDE THAT THE GOVERNOR CANNOT DECLARE A NEW STATE OF EMERGENCY FOR CIRCUMSTANCES ARISING FROM THE SAME OR A SIMILAR OR RELATED IMMINENT THREAT, EVENT, OCCURRENCE, OR INCIDENT, AND TO PROVIDE THAT A CHANGE IN THE DEGREE OF IMPACT OF AN UNDERLYING IMMINENT THREAT, EVENT, OCCURRENCE, OR INCIDENT DOES NOT CONSTITUTE GROUNDS FOR A NEW DECLARATION OF A STATE OF EMERGENCY; AND TO AMEND SECTION 25-1-440(a)(1) AND (2) OF THE 1976 CODE, RELATING TO THE GOVERNOR’S ADDITIONAL POWERS AND DUTIES DURING A DECLARED EMERGENCY, TO PROVIDE THAT THE GENERAL ASSEMBLY MUST ADOPT A CONCURRENT RESOLUTION AUTHORIZING A DECLARED STATE OF EMERGENCY IF IT IS TO REMAIN IN PLACE FOR LONGER THAN FIFTEEN DAYS, TO PROVIDE THAT INACTION BY THE GENERAL ASSEMBLY DOES NOT CONSTITUTE CONSENT, TO PROVIDE THAT THE GOVERNOR CANNOT DECLARE A NEW STATE OF EMERGENCY FOR CIRCUMSTANCES ARISING FROM THE SAME OR A SIMILAR OR RELATED IMMINENT THREAT, EVENT, OCCURRENCE, OR INCIDENT, AND TO PROVIDE THAT A CHANGE IN THE DEGREE OF IMPACT OF AN UNDERLYING IMMINENT THREAT, EVENT, OCCURRENCE, OR SIMILAR INCIDENT DOES NOT CONSTITUTE GROUNDS FOR A NEW DECLARATION OF A STATE OF EMERGENCY.

Whereas, during the COVID-19 pandemic, the Governor has issued a litany of “state of emergency” declarations all of which purported to constitute responses to separate and independent “emergencies”; and

Whereas, in accordance with these declarations, the Governor has invoked some of the extraordinary powers granted to him by the General Assembly for use during times of emergency and has issued a series of executive orders implementing those powers; and

Whereas, the state Attorney General has issued an opinion concurring with the Governor’s assertion of his power to issue such a series of emergency decrees, notwithstanding the provision in current law that expressly limits the term of emergency declarations to a period of fifteen days without the consent of the General Assembly; and

Whereas, the Attorney General’s opinion argues that the consent of the General Assembly to extending a declared state of emergency beyond fifteen days is implicitly assumed unless refusal to consent is explicitly made by the General Assembly; and

Whereas, in Ike’s Korner Grill v. South Carolina, a circuit court concurred with the Attorney General’s opinion concerning the implied consent of the General Assembly to the Governor’s series of emergency decrees; and

Whereas, the General Assembly desires to reaffirm its intent to limit the power of the Governor to issue only one such emergency declaration for each event or circumstance, notwithstanding any changes that might have occurred with respect thereto. Now, therefore,

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)(1) The Governor, when in his opinion the facts warrant, shall, by proclamation, declare that, because of unlawful assemblage, violence or threats of violence, 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, is threatened, and because thereof an emergency, with reference to such threats and danger, exists.

(2) A proclamation declaring a state of emergency pursuant to item (1) of this subsection shall not continue for a period of more than fifteen days without the express consent of the General Assembly. The General Assembly shall express its consent through the adoption of a concurrent resolution for that purpose. The concurrent resolution shall include the amount of time in excess of fifteen days for which the General Assembly is consenting.

(3) Inaction by the General Assembly with respect to consenting to a period longer than fifteen days does not constitute implied consent on behalf of the General Assembly to the extension of a state of emergency or the issuance of a new state of emergency.

(B) The Governor, upon the issuance of a proclamation as provided for in ~~this section~~ subsection (A)(1), must immediately file the proclamation in the Office of the Secretary of State, which proclamation is effective upon issuance and remain in full force and effect until revoked by the Governor, until the expiration of fifteen days after its issuance, or until the expiration of the extended time period consented to by the General Assembly, provided, however, that the Governor may revoke the proclamation prior to the expiration of either time period if there is no longer an emergency.

(C)(1) Upon the expiration of a state of emergency proclaimed by the Governor pursuant to subsection (A), the Governor may not issue another proclamation declaring a state of emergency for circumstances arising from the same or a similar or related imminent threat, event, occurrence, or incident.

(2) Changing circumstances or a change in the degree of impact of an underlying imminent threat, event, occurrence, or incident giving rise to a state of emergency are not sufficient grounds upon which to declare a new state of emergency subsequent to an original state of emergency declared pursuant to subsection (A).”

SECTION 2. Section 25-1-440(a)(1) and (2) of the 1976 Code is amended to read:

“(1) issue emergency proclamations and regulations and amend or rescind them. These proclamations and regulations have the force and effect of law as long as the declared state of emergency exists;

(2)(i)(A) declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency, as defined in Section 44-4-130, has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation. A declared state of emergency shall not continue for a period of more than fifteen days without the express consent of the General Assembly. The General Assembly shall express its consent through the adoption of a concurrent resolution for that purpose. The concurrent resolution shall include the amount of time in excess of fifteen days for which the General Assembly is consenting.

(B) Inaction by the General Assembly with respect to consenting to a period longer than fifteen days does not constitute implied consent on behalf of the General Assembly to the extension of a state of emergency or the issuance of a new state of emergency.

(ii)(A) Upon the expiration of a state of emergency proclaimed by the Governor pursuant to subitem (i), the Governor may not issue another proclamation declaring a state of emergency for circumstances arising from the same or a similar or related imminent threat, event, occurrence, or incident.

(B) Changing circumstances or a change in the degree of impact of an underlying imminent threat, event, occurrence, or incident giving rise to a state of emergency are not sufficient grounds upon which to declare a new state of emergency subsequent to an original state of emergency declared pursuant to subitem (i);”

SECTION 3. This act takes effect upon approval by the Governor.

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