

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 836 Session of 2020

INTRODUCED BY DIAMOND, COX, METCALFE, ROWE, RYAN, ZIMMERMAN, MALONEY, STRUZZI, BOROWICZ, KEEFER, HERSHEY, RADER, NELSON, KAUFFMAN, ECKER, GLEIM, GREGORY, KNOWLES, DUSH, JONES, SCHEMEL, TOBASH, RAPP, MUSTELLO, PUSKARIC, WARNER, STAATS, MENTZER, TOPPER, BERNSTINE, DOWLING, RIGBY, GREINER, GROVE, LEWIS, GAYDOS AND ROAE, APRIL 3, 2020

SENATOR REAGAN, VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, IN SENATE, AS AMENDED, JUNE 8, 2020

A CONCURRENT RESOLUTION

1 Terminating in part the March 6, 2020, Proclamation of Disaster
2 Emergency issued under the hand and Seal of the Governor,
3 Thomas Westerman Wolf.

4 ~~WHEREAS, A novel coronavirus, known as COVID 19, entered the <--~~
5 ~~United States in late January 2020 and has spread through the~~
6 ~~states, including this Commonwealth; and~~

7 ~~WHEREAS, On March 6, 2020, Governor Thomas Westerman Wolf~~
8 ~~issued a Proclamation of Disaster Emergency, published at 50-~~
9 ~~Pa.B. 1644 (March 21, 2020), citing a threat of imminent-~~
10 ~~disaster that was projected to be of such a magnitude and-~~
11 ~~severity as to necessitate extraordinary measures to protect the-~~
12 ~~health, safety and life of this Commonwealth's citizens; and~~

13 ~~WHEREAS, Since the issuance of the Proclamation of Disaster-~~
14 ~~Emergency, the Governor and his administration have issued-~~
15 ~~executive orders intended to mitigate the spread of COVID 19,~~

1 ~~directly resulting in severe disruption to the Commonwealth and~~
2 ~~its political subdivisions and which have and continue to~~
3 ~~produce critical and in some cases irreversible short term and~~
4 ~~long term negative economic consequences; and~~

5 ~~WHEREAS, Under the provisions of the Commonwealth's Emergency~~
6 ~~Management Code, specifically 35 Pa.C.S. § 7101 et seq., the~~
7 ~~General Assembly authorized the Governor to make a temporary~~
8 ~~proclamation or declaration of a disaster emergency by executive~~
9 ~~order for a period not to exceed 90 days if the health, safety~~
10 ~~or welfare of the citizens of this Commonwealth is threatened;~~
11 ~~and~~

12 ~~WHEREAS, On March 19, 2020, the Governor proclaimed by~~
13 ~~executive order that certain business operations (termed non-~~
14 ~~life sustaining) would be immediately closed for an indefinite~~
15 ~~period of time while other business operations (termed life-~~
16 ~~sustaining) could remain open to the public provided that the~~
17 ~~business operation adhered to "social distancing practices and~~
18 ~~other mitigation measures defined by the Centers for Disease~~
19 ~~Control and Prevention to protect workers and patrons"; and~~

20 ~~WHEREAS, Since the Governor's March 19, 2020, business-~~
21 ~~closure order, those business operations in this Commonwealth~~
22 ~~that were forced to close have experienced significant loss,~~
23 ~~massive layoffs, catastrophic economic injury and other~~
24 ~~unsustainable damage, some of which will never financially~~
25 ~~recover or reopen as a direct result; and~~

26 ~~WHEREAS, Since the Governor's March 19, 2020, business-~~
27 ~~closure order, more than 1.8 million Pennsylvanians have filed~~
28 ~~for unemployment benefits, or 27% of the workforce, rivaling the~~
29 ~~unemployment experienced during the Great Depression; and~~

30 ~~WHEREAS, In an effort to more effectively manage the~~

1 ~~mitigation of the spread of COVID-19 while safely permitting~~
2 ~~critical businesses to reopen and allowing citizens to work, the~~
3 ~~General Assembly passed Senate Bill No. 613, Printer's No. 1636,~~
4 ~~which provided for a COVID-19 Emergency Mitigation Plan for~~
5 ~~Businesses, that required the Governor to develop a business~~
6 ~~mitigation plan for this Commonwealth following the Federal~~
7 ~~guidance provided by the Centers for Disease Control and~~
8 ~~Prevention and conforming to the March 28, 2020, Advisory~~
9 ~~Memorandum on Identification of Essential Critical~~
10 ~~Infrastructure Workers During COVID-19 Response, as published by~~
11 ~~the United States Cybersecurity and Infrastructure Security~~
12 ~~Agency (CISA); and~~

13 ~~WHEREAS, On April 20, 2020, the Governor vetoed Senate Bill~~
14 ~~No. 613, Printer's No. 1636, positing in his veto message that,~~
15 ~~"Reopening tens of thousands of businesses too early will only~~
16 ~~increase the spread of the virus, place more lives at risk,~~
17 ~~increase the death tolls, and extend the length of economic~~
18 ~~hardships created by the pandemic"; and~~

19 ~~WHEREAS, In response to the severe and deteriorating negative~~
20 ~~economic consequences of the Governor's March 19, 2020, business~~
21 ~~closure order on businesses and workers in this Commonwealth,~~
22 ~~the General Assembly passed House Bill No. 2388, Printer's No.~~
23 ~~3719, which required the Secretary of Community and Economic~~
24 ~~Development to immediately issue waivers for the following~~
25 ~~business operations: vehicle dealers, lawn and garden centers,~~
26 ~~cosmetology salons and barber shops, messenger services, animal~~
27 ~~grooming services and manufacturing operations; and required the~~
28 ~~business operations to adhere to social distancing practices and~~
29 ~~other mitigation measures defined by the Centers for Disease~~
30 ~~Control and Prevention and orders issued by the Secretary of~~

1 ~~Health; and~~

2 ~~WHEREAS, On May 19, 2020, the Governor vetoed House Bill No.~~
3 ~~2388, Printer's No. 3719, positing in his veto message that,~~
4 ~~"This legislation is an infringement on the authority and~~
5 ~~responsibility of the executive and violates the separation of~~
6 ~~powers which is critical to the proper functioning of our~~
7 ~~democracy"; and~~

8 ~~WHEREAS, In continuing efforts to address the severe and~~
9 ~~unmitigated negative economic consequences to citizens seeking~~
10 ~~to purchase or sell a home in this Commonwealth, and in an~~
11 ~~effort to prevent homelessness, the General Assembly also passed~~
12 ~~House Bill No. 2412, Printer's No. 3720, which required the~~
13 ~~Secretary of Community and Economic Development to immediately~~
14 ~~issue a waiver to the Governor's March 19, 2020, business~~
15 ~~closure order to permit providers of real estate services,~~
16 ~~including legal services, residential and commercial real estate~~
17 ~~services and settlement services, to conduct business; and~~
18 ~~required the business operations to adhere to social distancing~~
19 ~~practices and other mitigation measures defined by the Centers~~
20 ~~for Disease Control and Prevention and orders issued by the~~
21 ~~Secretary of Health; and~~

22 ~~WHEREAS, On May 19, 2020, the Governor vetoed House Bill No.~~
23 ~~2412, Printer's No. 3720, positing in his veto message that,~~
24 ~~"This legislation is an infringement on the authority and~~
25 ~~responsibility of the executive and violates the separation of~~
26 ~~powers which is critical to the proper functioning of our~~
27 ~~democracy"; and~~

28 ~~WHEREAS, As a result of the disparate impact that the COVID-~~
29 ~~19 virus is having among the Commonwealth's counties, where some~~
30 ~~counties experienced few cases of COVID 19 and others~~

1 ~~experienced wider spread of the virus, the General Assembly~~
2 ~~passed Senate Bill No. 327, Printer's No. 1700, which, among~~
3 ~~other COVID-19 provisions, established the COVID-19 County~~
4 ~~Emergency Mitigation Plan for Businesses; and~~

5 ~~WHEREAS, The COVID-19 County Emergency Mitigation Plan for~~
6 ~~Businesses authorized the governing body of a county, in~~
7 ~~consultation with its county emergency management agency, county~~
8 ~~health department, county health officer or any other~~
9 ~~appropriate health or emergency management official, to develop~~
10 ~~and implement a countywide plan to mitigate the spread of COVID-~~
11 ~~19 for businesses within the county; and required the business-~~
12 ~~mitigation plan for the county follow the Federal guidance-~~
13 ~~provided by the Centers for Disease Control and Prevention and-~~
14 ~~conform to the March 28, 2020, Advisory Memorandum on-~~
15 ~~Identification of Essential Critical Infrastructure Workers~~
16 ~~During COVID-19 Response, as published by CISA; and~~

17 ~~WHEREAS, On May 19, 2020, the Governor vetoed Senate Bill No.~~
18 ~~327, Printer's No. 1700, positing in his veto message that,~~
19 ~~"This prohibition is a legislative infringement on executive-~~
20 ~~rule making authority and violates the separation of powers-~~
21 ~~which is critical to the proper functioning of our democracy";-~~
22 ~~and~~

23 ~~WHEREAS, In response to the unprecedented and well documented~~
24 ~~economic harms being experienced by this Commonwealth's citizens-~~
25 ~~and businesses, each chamber of the General Assembly has passed~~
26 ~~other legislation substantially similar to Senate Bill No. 613,~~
27 ~~House Bill No. 2388, House Bill No. 2412 and Senate Bill No.~~
28 ~~327, to require the Secretary of Community and Economic-~~
29 ~~Development to issue waivers to the Governor's March 19, 2020,-~~
30 ~~business closure order for residential and commercial-~~

1 ~~construction, restaurant operations, outdoor events and curbside~~
2 ~~retail services and required the business operations to adhere~~
3 ~~to social distancing practices and other mitigation measures~~
4 ~~defined by the Centers for Disease Control and Prevention and~~
5 ~~orders issued by the Secretary of Health; and~~

6 ~~WHEREAS, It is evident, notwithstanding bipartisan support~~
7 ~~for these legislative efforts, and with apparent disregard to~~
8 ~~the ongoing economic harm being experienced in this Commonwealth~~
9 ~~by millions of citizens and businesses, that the Governor, by~~
10 ~~and through his use of the temporary emergency powers under 35-~~
11 ~~Pa.C.S. § 7101 et seq., has demonstrated that he will not~~
12 ~~cooperatively manage the COVID-19 crisis to the benefit of all~~
13 ~~Pennsylvanians; and~~

14 ~~WHEREAS, Since the issuance of the March 6, 2020,~~
15 ~~Proclamation of Disaster Emergency, the documented cases of~~
16 ~~COVID-19 have peaked and have continuously declined; and~~

17 ~~WHEREAS, Based on data provided by the Department of Health,~~
18 ~~the most immediate and direct threat posed by the COVID-19 virus~~
19 ~~is to older citizens and those individuals with preexisting~~
20 ~~health conditions, a fact which was referenced in the seventh~~
21 ~~clause of the March 6, 2020, Proclamation of Disaster Emergency~~
22 ~~that has now been proven; and~~

23 ~~WHEREAS, 35 Pa.C.S. § 7301(c) provides broad contemporaneous~~
24 ~~authority, without preconditions, to the General Assembly to~~
25 ~~terminate all or part of a state of emergency by concurrent~~
26 ~~resolution at any time; and~~

27 ~~WHEREAS, On April 13, 2020, the Pennsylvania Supreme Court in~~
28 ~~*Friends of Danny DeVito v. Wolf* (No. 68 MM 2020, 2020 WL-~~
29 ~~1847100), affirmed the General Assembly's authority to terminate~~
30 ~~a state of emergency, writing that, "As a counterbalance to the~~

1 ~~exercise of the broad powers granted to the Governor, the~~
2 ~~Emergency Code provides that the General Assembly by concurrent~~
3 ~~resolution may terminate a state of disaster emergency at any~~
4 ~~time"; and~~

5 ~~WHEREAS, The Court, in reviewing the takings without~~
6 ~~compensation claims raised by businesses subject to the~~
7 ~~Governor's March 19, 2020, business closure order in *Friends of*~~
8 ~~*Danny DeVito v. Wolf*, also specifically affirmed that the~~
9 ~~Emergency Code, "provides the General Assembly with the ability~~
10 ~~to terminate the order at any time. 35 Pa.C.S. § 7301(c)";~~
11 ~~therefore be it~~

12 ~~RESOLVED (the Senate concurring), That the General Assembly,~~
13 ~~in consideration of the orders issued by the Governor to~~
14 ~~mitigate the spread of COVID 19 and the effect the orders have~~
15 ~~had on the public health and the Commonwealth's economy, hereby~~
16 ~~terminate in part the Proclamation of Disaster Emergency issued~~
17 ~~on March 6, 2020, to the extent the Proclamation and the orders~~
18 ~~issued pursuant to the Proclamation regulate the conduct of~~
19 ~~business operations deemed non life sustaining differently than~~
20 ~~the conduct of business operations deemed life sustaining under~~
21 ~~the March 19, 2020, business closure order as amended; and be it~~
22 ~~further~~

23 ~~RESOLVED, That upon adoption of this concurrent resolution by~~
24 ~~both chambers of the General Assembly, the Chief Clerk of the~~
25 ~~House of Representatives shall do all of the following:~~

26 ~~(1) Transmit a copy of this resolution to the Secretary~~
27 ~~of the Commonwealth as an official action of the General~~
28 ~~Assembly under the authority provided under 35 Pa.C.S. §~~
29 ~~7301(c) to terminate all or part of a state of emergency.~~

30 ~~(2) Transmit a copy of this resolution to the Director~~

1 ~~of the Pennsylvania Emergency Management Agency.~~

2 ~~(3) Transmit this resolution to the Legislative~~
3 ~~Reference Bureau for publication in the Pennsylvania Bulletin~~
4 ~~under 45 Pa.C.S. § 725(a)(4).~~

5 ~~(4) Provide public notice of adoption of this resolution~~
6 ~~by publishing a summary of it in newspapers of general~~
7 ~~circulation in this Commonwealth within five days of adoption~~
8 ~~by the House of Representatives and the Senate.~~

9 WHEREAS, 35 PA.C.S. § 7301(C) (RELATING TO GENERAL AUTHORITY <--
10 OF GOVERNOR) AUTHORIZES THE GOVERNOR TO DECLARE A STATE OF
11 DISASTER EMERGENCY; AND

12 WHEREAS, ON MARCH 6, 2020, THE GOVERNOR ISSUED A PROCLAMATION
13 DECLARING A DISASTER EMERGENCY IN RESPONSE TO THE EXISTENCE OF
14 COVID-19 CASES IN PENNSYLVANIA; AND

15 WHEREAS, ON JUNE 3, 2020, THE GOVERNOR ISSUED AN AMENDMENT TO
16 THE PROCLAMATION OF DISASTER EMERGENCY RENEWING THE MARCH 6,
17 2020, DECLARATION FOR AN ADDITIONAL 90 DAYS; AND

18 WHEREAS, THE JUNE 3, 2020, AMENDMENT PROVIDES THAT ALL
19 "DIRECTIVES, AUTHORIZED ACTIONS AND PROVISIONS" OF THE MARCH 6,
20 2020, PROCLAMATION SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL
21 RESCINDED BY THE GOVERNOR OR "TERMINATED BY LAW"; AND

22 WHEREAS, PURSUANT TO SECTION 12 OF ARTICLE I OF THE
23 CONSTITUTION OF PENNSYLVANIA, THE POWER TO SUSPEND LAWS BELONGS
24 TO THE LEGISLATURE; AND

25 WHEREAS, 35 PA.C.S. § 7301(C) AUTHORIZES THE GENERAL ASSEMBLY
26 BY CONCURRENT RESOLUTION TO TERMINATE A STATE OF DISASTER
27 EMERGENCY AT ANY TIME; AND

28 WHEREAS, 35 PA.C.S. § 7301(C) PROVIDES THAT UPON THE
29 TERMINATION OF THE DECLARATION BY CONCURRENT RESOLUTION OF THE
30 GENERAL ASSEMBLY, "THE GOVERNOR SHALL ISSUE AN EXECUTIVE ORDER

1 OR PROCLAMATION ENDING THE STATE OF DISASTER EMERGENCY";

2 THEREFORE BE IT

3 RESOLVED (THE SENATE CONCURRING), THAT THE GENERAL ASSEMBLY,
4 IN ACCORDANCE WITH 35 PA.C.S. § 7301(C) AND ITS ARTICLE I,
5 SECTION 12 POWER TO SUSPEND LAWS, HEREBY TERMINATE THE DISASTER
6 EMERGENCY DECLARED ON MARCH 6, 2020, AS AMENDED AND RENEWED, IN
7 RESPONSE TO COVID-19; AND BE IT FURTHER

8 RESOLVED, THAT UPON ADOPTION OF THIS CONCURRENT RESOLUTION BY
9 BOTH CHAMBERS OF THE GENERAL ASSEMBLY, THE SECRETARY OF THE
10 SENATE SHALL NOTIFY THE GOVERNOR OF THE GENERAL ASSEMBLY'S
11 ACTION WITH THE DIRECTIVE THAT THE GOVERNOR ISSUE AN EXECUTIVE
12 ORDER OR PROCLAMATION ENDING THE STATE OF DISASTER EMERGENCY IN
13 ACCORDANCE WITH THIS RESOLUTION AND 35 PA.C.S. § 7301(C); AND BE
14 IT FURTHER

15 RESOLVED, THAT UPON ADOPTION OF THIS CONCURRENT RESOLUTION BY
16 BOTH CHAMBERS OF THE GENERAL ASSEMBLY, THE CHIEF CLERK OF THE
17 HOUSE OF REPRESENTATIVES SHALL DO ALL OF THE FOLLOWING:

18 (1) TRANSMIT A COPY OF THIS RESOLUTION TO THE SECRETARY
19 OF THE COMMONWEALTH AS AN OFFICIAL ACTION OF THE GENERAL
20 ASSEMBLY UNDER THE AUTHORITY PROVIDED UNDER 35 PA.C.S. §
21 7301(C) TO TERMINATE A STATE OF EMERGENCY.

22 (2) TRANSMIT A COPY OF THIS RESOLUTION TO THE DIRECTOR
23 OF THE PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY.

24 (3) TRANSMIT THIS RESOLUTION TO THE LEGISLATIVE
25 REFERENCE BUREAU FOR PUBLICATION IN THE PENNSYLVANIA BULLETIN
26 UNDER 45 PA.C.S. § 725(A)(4).

27 (4) PROVIDE PUBLIC NOTICE OF ADOPTION OF THIS RESOLUTION
28 BY PUBLISHING A SUMMARY OF IT IN NEWSPAPERS OF GENERAL
29 CIRCULATION IN THIS COMMONWEALTH WITHIN FIVE DAYS OF ADOPTION
30 BY THE SENATE AND THE HOUSE OF REPRESENTATIVES.