State of North Carolina

ROY COOPER

GOVERNOR

July 28, 2020

EXECUTIVE ORDER NO. 153

RESTRICTING LATE NIGHT SERVICE OF ALCOHOLIC BEVERAGES

Background Statement

The COVID-19 Public Health Emergency

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, and 146-152; and

WHEREAS, more than 116,000 people in North Carolina have had laboratory-confirmed cases of COVID-19, and over 1,800 people in North Carolina have died from COVID-19; and

The Need to Take Additional COVID-19 Measures

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, slowing and controlling community spread of COVID-19 is critical to ensuring that the state's healthcare facilities remain able to accommodate those who require medical assistance; and

WHEREAS, in Executive Order No. 141, issued on May 20, 2020, the undersigned urged that all people in North Carolina follow social distancing recommendations, including that

everyone wear a cloth face covering, wait six (6) feet apart and avoid close contact, and wash hands often or use hand sanitizer; and

WHEREAS, to reduce COVID-19 spread, the undersigned, in Executive Order No. 141, required safety measures in certain business settings, limited mass gatherings, and closed certain types of businesses and operations; and

WHEREAS, the undersigned issued Executive Order Nos. 147 and 151 to address troubling trends in COVID-19 metrics following the issuance of Executive Order No. 141, including increasing daily case counts of COVID-19, increasing emergency department visits for COVID-19-like illnesses, increasing hospitalizations for COVID-19, and a continued elevated percentage of positive COVID-19 tests; and

WHEREAS, Executive Order No. 147 continued the measures of Executive Order No. 141 and imposed additional measures tailored to mitigate the spread of COVID-19, including requiring face coverings in certain settings; and

WHEREAS, Executive Order No. 151 continued the measures of Executive Order Nos. 141 and 147 in place until August 7, 2020 at 5:00 pm; and

WHEREAS, while taking a phased approach to re-opening restaurants and other businesses, the undersigned cautioned that with an increase in the spread of COVID-19, it could be necessary to reinstate certain restrictions eased by Executive Order No. 141 so as to protect the health, safety, and welfare of North Carolinians; and

WHEREAS, North Carolina's daily case counts of COVID-19 have been increasing and remain at a high level, the percentage of COVID-19 tests that are positive remains elevated, emergency department visits for COVID-19-like illnesses are increasing, and hospitalizations for COVID-19 have increased; and

WHEREAS, these trends, and the continued high rates of COVID-19 across North Carolina, require the undersigned to take additional measures to slow the spread of the virus during the pandemic; and

Risk Factors for COVID-19 Infection

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings that are indoors, where air does not circulate freely and where people are less likely to maintain social distancing by staying six (6) feet apart; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings where people are in close physical proximity for an extended period of time (more than 15 minutes); and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in gatherings of larger groups of people because these gatherings offer more opportunity for person-to-person contact with someone infected with COVID-19; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings where consistently wearing face coverings is difficult; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings where people have higher respiratory effort from actions like talking loudly, yelling, singing, and laughing, all of which cause more propulsion of respiratory droplets; and

WHEREAS, certain types of businesses by their very nature present greater risks of the spread of COVID-19 because of the nature of the activity, the way that people have traditionally acted and interacted with each other in that space, and the duration that patrons stay in the establishment; and

WHEREAS, to lower the risk of contracting and transmitting COVID-19, the undersigned has imposed restrictions on businesses that limit the number of contacts between people,

particularly in settings that are indoors or, involve people being in close physical proximity for an extended period of time; and

COVID-19 Transmission Risks Arising from Alcohol Consumption

WHEREAS, some restaurants stay open until early morning hours with limited food service but with continued consumption of alcohol, and patrons frequenting those businesses during late hours often do not maintain social distancing; and

WHEREAS, the Center for Disease Control and Prevention ("CDC") and the North Carolina Department of Health and Human Services ("DHHS") have stated that the consumption of alcohol lowers inhibitions and makes people more likely to engage in behaviors that increase the risk of spread of COVID-19; and

WHEREAS, the consumption of alcohol makes people less likely to practice social distancing or wear face coverings as required by Executive Order No. 147 and other Orders designed to stop the spread of COVID-19; and

WHEREAS, people who are drinking beverages cannot consistently wear face coverings; and

WHEREAS, when people gather to consume alcohol in public, they often speak loudly, laugh, yell, or sing, spreading respiratory droplets that contain the COVID-19 virus; and

WHEREAS, national and international outbreaks of COVID-19 have been linked to places like bars, clubs, and restaurants where people consume alcohol in close proximity to one another, and to super-spreading events in which a single person infects a large number of people; and

WHEREAS, data reveals that there is an increase in the number of younger individuals who are being infected by COVID-19; and

WHEREAS, though bars in North Carolina remain closed, the undersigned is concerned about the role that alcohol consumption in other businesses serving food and drink late at night plays in promoting the spread of COVID-19 for the reasons mentioned above; and

WHEREAS, some, but not all, county and municipal governments have imposed restrictions on the sale of alcohol as part of their efforts to prevent the spread of COVID-19; and

WHEREAS, the undersigned, in consultation with the Secretary of Health and Human Services, the Secretary of the Department of Public Safety, and the Director of the Division of Emergency Management, has determined that limitations on the sale of alcohol in businesses and other establishments that serve alcohol to the public for on-premises consumption is necessary to counter the spread of COVID-19; and

Statutory Authority and Determinations

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.12(3)(e), the Division of Emergency Management must coordinate with the State Health Director to revise the North Carolina Emergency Operations Plan as conditions change, including making revisions to set "the appropriate conditions for quarantine and isolation in order to prevent the further transmission of disease," and following this coordination, the Emergency Management Director and the State Health Director have recommended that the Governor develop and order the plan and actions identified in this Executive Order; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the undersigned may take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because not all local authorities have enacted such appropriate ordinances regarding sale of alcoholic beverages for on-premises consumption or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact, thus needed control cannot be imposed locally; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if enacted or declared, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1) authorizes the undersigned to prohibit and restrict the movement of people in public places; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments, and other places to and from which people may travel or at which they may congregate; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(3) authorizes the undersigned to restrict the possession, transportation, sale, purchase, and consumption of alcoholic beverages; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict other activities or conditions, the control of which may be reasonably necessary to maintain order and protect lives or property during a state of emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(1), when the undersigned imposes the prohibitions and restrictions enumerated in N.C. Gen. Stat. § 166A-19.31(b), the undersigned may amend or rescind the prohibitions and restrictions imposed by local authorities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "give such directions to State and

local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article."

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and for the reasons and pursuant to the statutes listed above, **IT IS ORDERED**:

Section 1. Definitions

A. "Bars" means establishments that are not eating establishments or restaurants as defined in N.C. Gen. Stat. §§ 18B-1000(2) and 18B-1000(6), that have a permit to sell alcoholic beverages for onsite consumption under N.C. Gen. Stat. § 18B-1001, and that are principally engaged in the business of selling alcoholic beverages for onsite consumption.

B. "Breweries, Wineries and Distilleries" are those establishments which produce alcoholic beverages pursuant to a commercial permit issued by the Alcoholic Beverage Commission (N.C. Gen. Stat. §§ 18B-1101 to 18B-1105) and are authorized by such permit to also have retail sales to consumers.

C. "Restaurants" means permitted food establishments, under N.C. Gen. Stat. § 130A-248, and other establishments that both prepare and serve food. This includes, but is not limited to, restaurants, cafeterias, food halls, dining halls, food courts, and food kiosks. This includes not only free-standing locations but also locations within other businesses or facilities, including, but not limited to airports, shopping centers, educational institutions, or private or members-only clubs where food and beverages are permitted to be consumed on premises.

Section 2. Temporary Restrictions Regarding Alcoholic Beverage Sales for Onsite Consumption

For the reasons and pursuant to the authority as set forth above:

A. To control the spread of COVID-19 and protect lives during the State of Emergency, this Section lists restrictions upon the sale, purchase, and service of alcoholic beverages, along with restrictions on business establishments and other places to or from which people may travel or at which they may congregate. Restaurants, breweries, wineries, distilleries, and any other businesses or organizations that (1) are not currently required to close under existing Executive Orders issued to address this State of Emergency and that (2) sell or serve alcoholic beverages for onsite consumption are prohibited from operating unless they follow the restrictions stated in this Section.

B. Restaurants, breweries, wineries, distilleries, and any other businesses or organizations that (1) are not currently required to close under existing Executive Orders issued to address this State of Emergency and that (2) sell or serve alcoholic beverages for onsite consumption shall cease the sale and service of alcoholic beverages for onsite consumption between 11:00 pm and 7:00 am. The agents or employees of establishments that are permitted to sell or serve alcoholic beverages for onsite consumption shall likewise not sell or serve alcoholic beverages for onsite consumption between 11:00 pm and 7:00 am.

C. Restaurants, breweries, wineries, distilleries, and any other businesses or organizations may not provide off-site table service, catering service or bartending service for the sale and consumption of alcoholic beverages between 11:00 pm and 7:00 am for the purposes of consumption at the premises where the alcoholic beverage is being served.

D. Restaurants, breweries, wineries, distilleries, and any other businesses or organizations otherwise authorized to remain open after 11:00 pm under existing law may continue to do so under this Executive Order so long as there is no sale or service of alcohol for onsite consumption.

E. Nothing in this Executive Order shall be interpreted to change the laws regarding the hours of sales for alcoholic beverages for off-premises consumption or authorize sale, service, possession, transportation, or consumption of alcoholic beverages at times or places where not previously allowed before this Executive Order was issued. Nothing in this Executive Order shall be interpreted to impact the operations of bars, which remain closed.

F. Restaurants, breweries, wineries, distilleries, and any other businesses or organizations that serve food and beverages remain subject to all requirements and guidance set forth in Executive Order Nos. 141, 147, and 151, including but not limited to the requirements to ensure social distancing and ensure sanitation in Executive Order No. 141 Section 6(C).

Section 3. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 4. Effect on local emergency management orders.

A. The restrictions imposed in this Executive Order are minimum requirements, and local governments can impose greater restrictions. The undersigned recognizes that although COVID-19 has had a heavy impact upon all parts of North Carolina, the impact of COVID-19 has been and will likely continue to be different in different parts of North Carolina. There will also be differences in different parts of North Carolina in the number and nature of restaurants and how restaurants may serve alcohol, the subject-matter of this Executive Order. As such, the undersigned acknowledges that counties and cities may deem it necessary to adopt ordinances and issue state of emergency declarations which impose restrictions or prohibitions on the sale of alcoholic beverages to a greater degree than in this Executive Order, to the extent authorized under North Carolina law. To that end, nothing herein, except where specifically stated below in Subsections B of this Section, is intended to limit or prohibit counties and cities in North Carolina from enacting ordinances and issuing state of emergency declarations which impose greater restrictions or prohibitions on the sale or consumption of alcoholic beverages to the extent authorized under North Carolina law.

B. Local governments cannot set more permissive policies concerning the sale of alcoholic beverages for onsite consumption during the hours specified herein. Notwithstanding Subsection A above, the undersigned amends all local prohibitions and restrictions imposed under any local state of emergency declarations to remove any language that permits the sale of alcoholic beverages for onsite consumption after 11:00 pm or before 7:00 am or otherwise directly conflicts with this Executive Order. The undersigned also hereby prohibits during the pendency of this Executive Order the adoption of any prohibitions and restrictions under any local state of emergency declarations that permit the sale of alcoholic beverages for onsite consumption after 11:00 pm or before 7:00 am or otherwise directly conflicts with this Executive Order.

Section 5. Savings Clause.

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 6. Distribution.

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 7. Enforcement.

A. Pursuant to N.C. Gen. Stat.§ 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.

B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.

C. In addition to being enforced by state and local law enforcement officers, this Executive Order is enforceable by the Division of Alcohol Law Enforcement of the North Carolina Department of Public Safety as set forth under N.C. Gen. Stat. § 18B-500. Pursuant to N.C. Gen. Stat. § 18B-500(b1) and for the reasons set forth above, the undersigned determines that enforcement of this Executive Order is needed to protect people because of the disaster and State of Emergency from the spread of COVID-19, and the undersigned directs the Division of Alcohol Law Enforcement to take enforcement action as necessary against entities acting in violation of this Executive Order.

D. Establishments under the jurisdiction of the Alcoholic Beverage Control Commission that are determined to have violated this Executive Order may be subject to sanction pursuant to N.C. Gen. Stat. § 18B-203(a)(12).

Section 8. Effective Date.

This Executive Order is effective at 11:00 pm on July 31, 2020. This Executive Order shall remain in effect through 11:00 pm on August 31, 2020 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 28th day of July in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State