

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF CULPEPER

Merrill C. "Sandy" Hall,)
and)
GG Ashburn, LLC (a Va. Corporation),)
and)
GG Cascades, LLC (a Va. Corporation),)
and)
Beyond Fitness, LLC (a Va. Corporation),)
and)
DGL, LLC (a Va. Corporation),)
and)
GG Midlothian, LLC (a Va. Corporation))
and)
GG Roanoke, LLC (a Va. Corporation))
and)
SSGG, LLC (a Va. Corporation))
and)
GG Gayton Crossing, LLC (a Va. Corporation))
and)
More Fitness, LLC (a Va. Corporation))
Petitioners,)

v.)

Civil Case No. _____

His Excellency, The Governor of)
The Commonwealth of Virginia,)
Ralph S. Northam,)

And)

Dr. M. Norman Oliver,)
Virginia State Health Commissioner,)

And)

Gary T. Settle)
Virginia State Police Superintendent)

Serve: Attorney General Mark R. Herring,)
Office of the Virginia Attorney General,)
202 N. Ninth Street, Richmond, Va. 23219)

Respondents.)



PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

COME NOW the Petitioners (herein after “Hall” or “Petitioners”) by and through their counsel, and hereby bring this verified action against Ralph S. Northam, in his official capacity as Governor of the Commonwealth of Virginia (herein after “Governor” or “Governor Northam” or “Respondent”), Gary T. Settle, in his official capacity as Superintendent of the Virginia State Police (herein after “Superintendent”) and M. Norman Oliver, in his official capacity as the State Health Commissioner (herein after “Commissioner” or “Commissioner Oliver”) and move this Court for the entry of a Declaratory Judgment in Petitioners’ favor, and for Injunctive Relief and state the following in support thereof:

PARTIES

1. Sandy Hall is a citizen of the Commonwealth of Virginia and is the fee simple owner of certain real property located in Culpeper County, Virginia that is the subject matter of this action. Petitioner Sandy Hall has filed, contemporaneously with this pleading an Affidavit in support of his claims (Attached hereto as “EXHIBIT A”).

2. GG Ashburn, LLC, is a Virginia Limited Liability Company organized under the laws of the Commonwealth of Virginia and authorized to transact business under the authority of the Virginia State Corporation Commission, and has its corporate headquarters in Culpeper, Virginia, with an address of 1300 Sunset Lane, Culpeper, Virginia.

3. GG Cascades, LLC, is a Virginia Limited Liability Company organized under the laws of the Commonwealth of Virginia and authorized to transact business under the

authority of the Virginia State Corporation Commission, and has its corporate headquarters in Culpeper, Virginia, with an address of 1300 Sunset Lane, Culpeper, Virginia.

4. Beyond Fitness, LLC, is a Virginia Limited Liability Company organized under the laws of the Commonwealth of Virginia and authorized to transact business under the authority of the Virginia State Corporation Commission, and has its corporate headquarters in Culpeper, Virginia, with an address of 1300 Sunset Lane, Culpeper, Virginia.

5. DGL, LLC, is a Virginia Limited Liability Company organized under the laws of the Commonwealth of Virginia and authorized to transact business under the authority of the Virginia State Corporation Commission, and has its corporate headquarters in Culpeper, Virginia, with an address of 1300 Sunset Lane, Culpeper, Virginia.

6. GG Midlothian, LLC, is a Virginia Limited Liability Company organized under the laws of the Commonwealth of Virginia and authorized to transact business under the authority of the Virginia State Corporation Commission, and has its corporate headquarters in Culpeper, Virginia, with an address of 1300 Sunset Lane, Culpeper, Virginia.

7. GG Roanoke, LLC is a Virginia Limited Liability Company organized under the laws of the Commonwealth of Virginia and authorized to transact business under the authority of the Virginia State Corporation Commission, and has its corporate headquarters in Culpeper, Virginia, with an address of 1300 Sunset Lane, Culpeper, Virginia.

8. SSGG, LLC, is a Virginia Limited Liability Company organized under the laws of the Commonwealth of Virginia and authorized to transact business under the authority of the Virginia State Corporation Commission, and has its corporate headquarters in Culpeper, Virginia, with an address of 1300 Sunset Lane, Culpeper, Virginia.

9. GG Gayton Crossing, LLC, is a Virginia Limited Liability Company organized under the laws of the Commonwealth of Virginia and authorized to transact business under the authority of the Virginia State Corporation Commission, and has its corporate headquarters in Culpeper, Virginia, with an address of 1300 Sunset Lane, Culpeper, Virginia.

10. More Fitness, LLC, is a Virginia Limited Liability Company organized under the laws of the Commonwealth of Virginia and authorized to transact business under the authority of the Virginia State Corporation Commission, and has its corporate headquarters in Culpeper, Virginia, with an address of 1300 Sunset Lane, Culpeper, Virginia.

11. Respondent Ralph S. Northam is the Governor of the Commonwealth of Virginia (hereinafter “Governor”), and is responsible for the promulgation and execution of Executive Order 53 (“EO 53”) (Attached hereto as “EXHIBIT B”) and Executive Order 55 (“EO 55”), (Attached hereto as “EXHIBIT C”) that directly affect and have harmed the Petitioner and his businesses.

12. Respondent M. Norman Oliver is the State Health Commissioner of the Commonwealth of Virginia (hereinafter “Commissioner”), and is responsible for the promulgation and execution of Public Health Emergency Order 1 (“EO 1”) (Attached hereto as “EXHIBIT D”), Public Health Emergency Order 2 (“EO 2”) (Attached hereto as “EXHIBIT E”), that directly affect and have harmed the Petitioner and his businesses.

13. Respondent Gary T. Settles is the Superintendent of the Virginia State Police (hereinafter “Superintendent”), and is responsible, among other things, for the enforcement of Virginia State Code and criminal violations of executive orders.

JURISDICTION AND VENUE

14. This Court has jurisdiction to grant the relief sought pursuant to Va. Code § 8.01-184, 8.01-620, and § 8.01-645.

15. Venue is proper and preferred in this Court pursuant to Va. Code § 8.01-261(15)(c), 8.01-261(1)(a) and (15), and § 8.01-261(5).

FACTS RELEVANT TO ALL CLAIMS

15. Petitioner Hall is the majority member in nine (9) private, Health Clubs and is affiliated with the franchise named Gold's Gym (Hall Affidavit, ¶ 8). His private membership Health Clubs provide and offer a variety of cardio and strength training equipment as well as group exercise programs to his members, which pay a monthly membership fee in order to utilize the Petitioners' facilities.

16. The core of Petitioners' businesses is providing each member a proven and safe platform to improve and maintain their physical and mental health and wellness. Science has demonstrated that regular physical activity has many positive health benefits, including (but not limited to) protection against chronic disease, improved physical and mental health and cognitive function, and better health-related quality of life. According to the Centers for Disease Control and Prevention (CDC), chronic diseases cause seven (7) out of ten (10) deaths in the U.S., and treating chronic diseases accounts for 86% of U.S. healthcare costs. Moreover, science has also demonstrated that a lack of physical activity is directly associated with the increase in health care costs and utilization. Petitioners' businesses are a private membership Health Club in each of the nine (9) locations.

17. On February 7, 2020, the State Health Commissioner purportedly declared COVID-19 a disease of public health threat.

18. On March 12, 2020, Governor Ralph S. Northam declared that a State of Emergency existed in the Commonwealth of Virginia (Executive Order 51) (Attached hereto as “EXHIBIT F”) authorizing him to prepare and coordinate the response to the potential spread of COVID-19, a communicable disease of public health threat.

19. On March 20, 2020, M. Norman Oliver, State Health Commissioner, and the Governor issued Public Health Emergency Order 1, declaring a Public Health Emergency resulting from the spread of COVID-19 virus affecting the health and safety of Virginians (Attached hereto as “EXHIBIT D”). In Public Health Emergency Order 1, the State Health Commissioner and the Governor restricted the number of PATRONS allowed in restaurants, fitness centers and theaters to ten (10) patrons or less in each establishment. A willful violation or refusal, failure or neglect to compile with this order is punishable as a Class One Misdemeanor pursuant to § 32.1-27 of the Code of Virginia.

20. On March 20, 2020, Ralph S. Northam, Governor of the Commonwealth of Virginia, issued Executive Order 52 directing the State Health Commissioner to increase the licensed bed capacity of any general hospital or nursing (Attached hereto as “EXHIBIT G”).

21. On March 25, 2020, State Health Commissioner, M. Norman Oliver and Governor Ralph S. Northam issued Public Health Emergency Order 2 (Attached hereto as “EXHIBIT E”)., pursuant to Virginia Code § 32.1-13 and § 32.1-20, prohibiting all inpatient and outpatient procedures and surgeries that require PPEs which, if delayed, are not anticipated to cause harm to the patient by negatively affecting the patients’ health outcomes

or leading to disability or death. This order excluded outpatient visits delivered in hospital-based clinics, the full suite of family planning services and procedures or the performance of surgery that if delayed or canceled would result in the patient's condition worsening.

22. On March 23, 2020, Governor Ralph S. Northam issued Executive Order 53 pursuant to Article 5 Section 7 of the Constitution of Virginia and by virtue of the authority vested in Code § 44-146.17 (Attached hereto as "EXHIBIT H"). In pertinent part Executive Order 53 Directive 4 ordered "closure of all public access to recreational and entertainment business effective 11:59 March 24, 2020 until 11:59 April 23, 2020." Directive 5 listed exempted essential retail business from closure and allowed them to remain open during normal business hours. Directive 6 permitted any brick and mortar retail businesses not exempted in Directive 5 to continue to operate but limited "to no more than 10 patrons per establishment". Executive Order 53 specifically directed that violations of paragraph 1, 3, 4 and 6 of the order be treated as a Class 1 Misdemeanor, in violation of § 44-146.17 or the Code of Virginia.

23. On April 15, 2020, Governor Ralph S. Northam amended Executive Order 53, in part, to extend its full force and effect until 11:59 May 7, 2020, including Directive 4 which specifically closed fitness centers, gymnasiums, recreations centers, indoor sports facilities and indoor exercise facilities and directed that violations of this amended order shall be treated as a Class 1 Misdemeanor, in violation of § 44-146.17 of the Code of Virginia.

24. On March 30, 2020, Governor Ralph S. Northam issued Executive Order 55 (Attached hereto as "EXHIBIT C"), listing 7 Directives. Directive 2 of Executive Order 55, ordered that all public and private in-person gatherings of more than 10 individuals are

prohibited. The 10-person limit includes parties, celebrations, religious, or other social events whether they occur indoors or outdoors. This restriction did NOT apply to the operation of businesses not required to close to the PUBLIC under Executive Order 53 or to the gathering of family members living in the same residence.

25. At the time of the Governor's issuance of EO 53, Petitioner believed the Order did not apply to his private membership Health Spa. EO 53 did not refer to any entity organized under the Health Club Act and defined in Virginia Code § 591-296 as a Health Spa. (Attached hereto as "EXHIBIT M"). Additionally, Petitioner observed the closure order was specific to "all public access," and his businesses are "private membership" Health Spa which do not permit "all public access." Petitioner was dissuaded of his plain reading of EO 53 by local government and law enforcement authorities, who notified him that each of his businesses were subject to the EO 53 closure requirements (Hall Affidavit, ¶ 11).

26. Consequently, and as a direct and proximate result of the Governor's actions under EO 53 and EO 55, on March 24, 2020, Petitioner was forced to close his nine (9) private membership Health Clubs. In doing so, Petitioner laid-off hundreds of employees, and was forced to prevent thousands of the members who had valid memberships to the private membership Health Clubs from accessing their premises. Petitioners' private membership Health Clubs, remain closed, and have been so (as of the date of the filing of this Petition) for twenty-eight (28) days. Each day that Petitioners' private membership Health Clubs remain closed, they incur significant and irreparable financial losses (Hall Affidavit, ¶ 11-25). With each passing day, the likelihood of his private membership Health Club being unable to re-open grows exponentially.

27. Petitioner believed that if EO 53 did apply to his private membership Health Clubs, that, at a minimum, they would be permitted re-open on April 24th. However, the Governor's subsequent issuance of EO 55 extended the forced closure until May 8th and gives the perception that his private membership Health Club will now not be allowed to re-open until June 10th. In fact, local government officials notified Petitioner that the effect of EO 55 on his business meant closure until June 10th. In response, Petitioner reached out to the Executive Branch, and received confirmation that the re-opening of "fitness and recreation centers" was indeed still scheduled for April 24th. (Hall Affidavit, ¶ 17-19). No specific statement was articulated about the current or future status of private membership Health Clubs. In response, Petitioner took significant steps to attempt to successfully re-open his private membership Health Clubs on April 24th.

28. On Wednesday, April 15, 2020, the Governor announced an amendment extending the effect of EO 53 from April 24, 2020, to May 8, 2020. (Attached hereto as "EXHIBIT J").

29. On Friday, April 17th, a mere two days after extending this closure of Petitioners' businesses, Governor Northam stated at his press conference that in his opinion "Virginia is not yet or near the point" where he can even consider taking any initial steps to re-open those businesses he had ordered closed. The natural inference is that the May 8th closure extension cannot be relied upon by Petitioner as a true and reliable date for re-opening. Private membership Health clubs will have been closed a total of thirty-eight (38) days even if authorized to re-open on May 8, 2020.

30. Consequently, and directly due to the Governor's actions, Petitioners' private membership Health Clubs are in jeopardy of permanent closure if forced by the Executive Order to remain closed past April 24th.

31. The Governor's actions, by and through his Executive Orders, specifically EO 53 and EO 54, constitute a "taking for public use," as defined in Article I, Section 11 of the Constitution of Virginia. Petitioners, or any other private membership health club operator's violation of the Governor's EO 53 as originally stated and as amended, shall be treated as a class one misdemeanor.¹

GROUNDS FOR DECLARATORY AND INJUNCTIVE RELIEF.

I. The Court must declare, as a matter of law, that Executive Order 53, as amended and Executive Order 55 do not apply to Petitioners' private membership health club businesses or require their closure.

32. Petitioner incorporates paragraphs 1-31 as if re-alleged herein.

33. On March 12, 2020, Governor Ralph S. Northam declared that a State of Emergency existed in the Commonwealth of Virginia (Executive Order 51) authorizing him to prepare and coordinate our response to the potential spread of COVID-19, a communicable disease of public health threat.

34. On March 20, 2020, M. Norman Oliver, State Health Commissioner, and Ralph S. Northam issued Public Health Emergency 1, declaring a Public Health Emergency

¹ In fact, on Sunday, April 19, 2020, a private membership health club owner in Roanoke Virginia was issued a criminal Virginia Uniform Summons for violation of "§ 44-146.17 (EO 53) non-essential business operating." It is a class one misdemeanor. (See: *Commonwealth of Virginia v. Thomas Milton, Jr.*).

resulting from the spread of COVID-19 virus affecting the health and safety of Virginians. In Public Health Emergency Order 1, the State Health Commissioner and Governor restricted the number of PATRONS allowed in restaurants, fitness centers and theaters to ten (10) patrons or less in each establishment. A willful violation or refusal, failure or neglect to comply with this order is punishable as a Class One Misdemeanor pursuant to § 32.1-27 of the Code of Virginia.

35. On March 23, 2020 Governor Ralph S. Northam issued Executive Order 53 pursuant to Article 5 Section 7 of the Constitution of Virginia and by virtue of the authority vested in him pursuant to Code § 44-146.17. In pertinent part, Executive Order 53 Directive 4 ordered “closure of all public access to recreational and entertainment business effective 11:59 March 24, 2020, until 11:59 April 23, 2020, as set forth below:...fitness centers, gymnasiums, recreations centers, indoor sports facilities and indoor exercise facilities.” Directive 5 listed exempted essential retail business from closure and allowed them to remain open during normal business hours. Directive 6 permitted any brick and mortar retail business not exempted in Section 5 to continue to operate but limit “to no more than ten (10) patrons per establishment”. Executive Order 53 as originally issued and as amended and extended on April 15, 2020, specifically directed violations of paragraphs (directives) 1, 3, 4 and 6 of this order shall be a Class 1 Misdemeanor pursuant to § 44-146.17 or the Code of Virginia.

36. On April 15, 2020, Governor Ralph S. Northam extended Executive Order 53 to remain in full force and effect until 11:59 May 7, 2020.

37. On March 30, 2020, Governor Ralph S. Northam issued Executive Order 55 in furtherance of EO 51 and EO 53, listing 7 Directives. Directive 2 prohibits all public and private in person gatherings of more than ten (10) individuals. This includes parties, celebrations, religious, or other social events wheaten they occur indoors or outdoors. This restriction does not apply; to the operation of businesses not required to close to the PUBLIC under Executive Order 53, or to the gathering of family members living in the same residence.

38. Virginia Constitution Article V, Section 7 Executive and Administrative Powers directs the “The Governor shall take care that the laws be faithfully executed.”

39. Virginia Code § 44-146.17 directs the Governor shall have the following power and duties: “he may direct and compel evacuation of all or-part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response or recovery actions; prescribed routs, modes of transportation and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises there in.”

40. Virginia Code § 44-146.17 states “Executive Orders, to include those declaring State of Emergency and directing evacuation, shall have the force and effective of law and the violation there of shall be punishable as a Class 1 Misdemeanor in every case where the Executive Order declares that its violation shall have such force and effect.”

41. Virginia Code § 32.1-13 authorizes the State Board of Health “may make separate orders and regulations to meet any emergency, not provided for by general

regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other dangers to the public life and health.”(Attached hereto as “EXHIBIT K”)

42. Virginia Code § 32.1-20 authorizes the State Health Commissioner to act as the State Board of Health when the Board is not in session (Attached hereto as “EXHIBIT L”).

43. Petitioners’ business have been in existence for over fifteen (15) years.

44. Petitioners’ authority to operate and regulatory parameters of private Membership Clubs is found in Virginia Code § 59.1-294, et. seq., also known as the Virginia Health Spa Act (Attached hereto as “EXHIBIT M”).

45. The purpose of the Virginia Health Club Act, as set forth in § 59.1-295, “is to safeguard the public interest against fraud, deceit, and financial hardship and to foster and encourage competition and fair dealing and prosperity in the field of health club services...”(Attached hereto as “EXHIBIT N”).

46. Petitioners’ businesses are defined as a “Health Club” whose primary purpose is to engage in the sale of memberships, Virginia Code § 59.1-296. As a result, Petitioners’ Health Clubs are a private “members only” establishment, not open to the public for access.

47. The orders of the Governor and Health Commissioner (Public Health Emergency Order 1) specifically prohibit more than ten (10) PATRONS in fitness centers and do not mention Health Clubs.

48. The Governor's Executive Order 53 directs closure of all PUBLIC ACCESS to fitness centers, gymnasiums, recreations centers, indoor sports facilities and indoor exercise facilities and does not mention Health Clubs.

49. The Petitioners are entitled to Declaratory Judgment and prohibitive injunction against the Respondents because they are a private membership Health Club that are not open to patrons or to subject to a "Closure of all public access." Therefore, Petitioners' private membership Health Clubs are not subject to the-specific directives of closure or limited access under Public Health Order 1 and Executive Order 53 as ordered and amended. Additionally, Petitioners are not subject to arrest or prosecution pursuant to Public Health Order 1 or Executive Order 53. The Court must rely on the plain language definition of Patron since it is a term not defined in the Executive Orders or the Public Health Orders. The plain meaning of Patron includes a person who is a customer, client or paying guest, but is not defined as, and does not, include a member or membership. The plain meaning of Member is defined as a person who is part of a society, party, community, or other body.

II. The Court must declare, as a matter of law, that Executive Order 53, as amended, and its Executive Order 55 are ultra vires acts unauthorized by law and unenforceable as it applies to Petitioners.

50. Petitioners re-allege and incorporate the foregoing paragraphs.

51. Petitioners seek a Declaratory Judgment and prohibitive injunction of enforcement of the criminal violations of a Class 1 Misdemeanor against Petitioner as *ultra vires* and outside of the scope of the Governor's authority. Governors of this Commonwealth wield their Executive and Administrative powers as stated in Article V, Section 7 of the Virginia Constitution. The Governor's authority to issue and enforce an executive order is

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found in Virginia Code § 44-146.17. Specifically, the Governor's authority to criminally penalize the violation of an executive order is further limited by Virginia Code § 44-146.17 only to instances where a State of Emergency has been declared AND an evacuation has been ordered. While Executive Order 51 of March 12, 2020 declared a State of Emergency in Virginia, no Executive Order currently in effect has authorized or declared an evacuation of any location or portion of the Commonwealth. To be more specific, the physical locations of each of Petitioners' private Membership Clubs are not subject of any order of evacuation.

52. Before the Governor can order a criminal penalty for Petitioners' operation of a private membership Health Club, Executive Order 53, and as amended, and Executive Order 55 must BOTH declare a State of Emergency **and** order an evacuation. Failure to order an evacuation during a declared State of Emergency eliminates the Governor's authority to criminalize ANY violation of an Executive Order.

53. Isolation is defined in Virginia Code § 32.4-48.06 as "the physical separation including confinement or restriction of movement, of any individual or individuals who are infected with our suspected to be infected with a communicable disease of public health threat in order to prevent or limit the transmission of the communicable diseases of public health threat to other unaffected and unexposed individuals."

54. Code section 44-146.17(1) further directs that executive orders declaring emergency and restricting movements under quarantine or isolation-type orders relating to communicable disease of public threats must follow the provisions, limitations and standards of Title 32.1, Chapter 2, Article 3.02. The governor has failed to do so, and does not have

the alternative powers he has exercised under Code § 44-146.17. In so doing, he acts ultra vires and violates the Suspension Clause under Virginia Constitution.

55. Quarantine is defined in Virginia Code § 32.1-48.06 as “the physical separation including confinement or restriction of movement, of any individual or individuals who are present within an affected area as defined here in or who are known to have been exposed or who may have reasonably been expected to be exposed to a communicable disease of public health threat and do not yet show signs symptoms of infection with the communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat of unexposed and uninflected individuals.”

56. Virginia Code § 32.1-48.07 lists the six items that the State Health Commissioner shall ensure prior to issuing any order of quarantine.

57. Virginia Code § 32.1-48.07 A5 directs that the State Health Commissioner shall immediately release from quarantine or isolation such quarantine or isolated persons that pose no risk of transmitting the communicable disease of public health threat to other persons.

58. Virginia Code § 32.1-48.08 “states the State Health Commissioner may declare a quarantine of any person or persons or any effected area after he finds that the quarantine is the necessary means to contain a communicable disease of public health threat.”

59. Virginia Code § 32.1-48.-08C further states “the State Health Order of Quarantine shall be for a duration consistent with the known incubation period consistent for such disease or if the incubation period is unknown for a period anticipated as being consistent with the incubation period of other similar infectious agents.”

60. Virginia Code § 32.1-48.09A lists nine specific actions the State Health Commissioner shall take prior to issuing an order of quarantine.

61. Virginia Code § 32.1-48.09D mandates that the State Health Commissioner...shall “as soon as practicable following the issuance of an order of quarantine file a petition seeking an *Ex Parte* court review and confirmation of the quarantine” in the Circuit Court for the city or county in which the person or persons reside or is located in or in the case of an infected area in the Circuit court of the infected jurisdiction or jurisdictions.

62. Virginia Code § 32.1-48.09G the Court shall review the petition of the State Health Commissioner “to confirm or extend the quarantine upon finding probable cause that quarantine was the necessary means to contain the disease of public health threat and is being implemented in the least restrictive environment to the address the public health threat effectively given the reasonable available information on effective control measures and the nature of the communicable disease of public health threat.”

63. Virginia Code § 32.1-48.010 sets forth out the provisions for any person or persons subject to an order of quarantine who files an appeal such order to have that matter heard in the Circuit Court for the City or County in which the subject or subjects reside or are located or the jurisdiction or jurisdictions of an effected area within 48 hours of filing of the petition of the appeal.

64. Virginia Code § 32.1-48.012 sets forth the eight (8) specific requirements the Commissioner shall prepare for a written order of isolation prior to placing any person or persons in isolation.

65. Virginia Code § 32.1-48.012D mandates that as soon as practicable following the issue of an order of isolation, the State Health Commissioner shall “file a petition seeking an *Ex Parte* court review and confirm the isolation” in the Circuit Court for the city or county in which the person or persons reside or is located in or in the case of an infected area in the Circuit Court of the infected jurisdiction or jurisdictions.

66. Virginia Code § 32.1-48.012H directs the Court shall review the petition of the State Health Commissioner and “confirm or extend the isolation upon finding probable cause that isolation was the necessary means and remains the least restrictive environment to address the public health threat effectively given the reasonable available information on effective control measures and the nature of the communicable disease of public health threat.”

67. Virginia Code § 32.1-48.013 sets forth the provisions for any person or persons subject to an order of isolation who files an appeal of such order to have that matter heard in the Circuit Court for the City or County in which the subject or subjects reside or are located or the jurisdiction or jurisdictions of an effected area within 48 hours of filing of the petition of the appeal.

68. The Virginia Code § 32.1-48.01, et. seq. sets forth the specific authority granted by the legislature to the State Health Commissioner in the circumstances of the declaration of a disease of public health threat.

69. On February 7, 2020, the State Health Commissioner declared COVID 19 a disease of public health threat.

70. Public Health Orders 1 and 2, issued by the State Health Commissioner did not order quarantine and did not order isolation for any person, persons or jurisdictions of the Commonwealth.

71. Neither Executive Order 51, Executive Order 53, and as amended, nor Executive Order 55 made any reference or statement to an order of quarantine or isolation issued by the State Health Commissioner.

72. In order for Petitioner or Petitioners' businesses to be quarantined or isolated or the jurisdiction in which his business operates be quarantined or isolated, the State Health Commissioner would be required to follow the process laid out in Virginia Code § 32.1-48.01 et seq and should have filed as soon as practicable an order of quarantine or an order of isolation seeking an *ex parte* review of the said orders with this Court, pursuant Virginia Code § 32.1-48.09 and § 32.1-48.012.

73. Governor Northam and State Health Commissioner Oliver's actions of declaring a *de facto* quarantine or isolation of the Petitioner, Petitioners' members and/or Petitioners' private membership Health Club is an *ultra vires* execution of authority and specifically violates the Petitioner, Petitioners' members and Petitioners' private membership Health Club of due process of the law outlined in Virginia Code § 32.01-48.01 et seq and should be temporarily and permanently enjoined against the Petitioner, Petitioners' members and Petitioners' private membership Health Clubs.

74. In addition, the governor's acts are *ultra vires* and have unconstitutional, suspensory effect upon the provisions of:

a. Art. 1, § 11: That no person shall be deprived of his life, liberty, or property without due process of law. As worded and applied to businesses and jobs, EO 53 effects a confiscation by legislative act, delegated to the Governor, without a judicial hearing after due notice, which the Constitution and Virginia common law forbid.

b. Art. 4, § 14, which forbids the General Assembly (and thereby, any executive delegated and exercising a legislative power) from enacting special or private laws affecting classes of businesses, trades, or jobs, and granting others special and exclusive rights.

c. Art. I, § 11, and the provisions of the Takings Clause stating that “No more private property may be taken than necessary to achieve the stated public use.”

d. Art. I, § 11: The General Assembly “shall not pass any law impairing the obligation of contracts.” EO 53 violates this provision as to multiple express and implied rights and obligations of contractual relationships that Petitioners’ businesses have with landlords, vendors, service providers, and employees. In addition, the right to form employment contracts without interference is enshrined in Code § 40.1-53.

75. As a result, Petitioners pray for a judgment declaring EO 53 and 55 invalid and devoid of effect to Petitioners.

III. If this Court were to determine that the General Assembly did intend to grant the Governor the implied scope of power he has exercised in Executive Order 53, then Code § 44-146.17 would itself be an unconstitutional delegation of power devoid of meaningful limits, policies, or standards.

76. Petitioners re-allege and incorporate the foregoing paragraphs, and assert the following alternative allegations.

77. If this Court somehow determines that Code § 44-146.17 does imply a grant of power to the Governor sufficient to cover the restrictive powers set forth in Executive

Order 53 and 55, then that means Code § 44-146.17 is itself defective for an improper delegation of power.

78. Delegations of legislative power are valid only if they establish specific policies and fix definite standards to guide the official, agency, or board in the exercise of the power. Delegations of legislative power which lack such policies and standards are unconstitutional and void.

79. Code § 44-146.17 does not pass this minimum threshold of standards of guidance and limitation, and should therefore be declared invalid.

REQUEST FOR RELIEF

WHEREFORE, Petitioners respectfully request this Honorable Court for the following relief:

(1) The entry of a declaratory judgment finding that the provisions of Executive Order Number Fifty-Three issued by the Governor on March 23, 2020, as amended on April 15, 2020, which effectuated a complete and categorical closure of all public access to fitness centers, gymnasiums, indoor sports facilities, and indoor exercise facilities, including but not limited to Petitioners' private membership Health Clubs in the Commonwealth and the provisions of Executive Order Number Fifty-Five issued by the Governor on March 23, 2020, ordering individuals within Virginia to remain at their places of residence and Order of Public Health Emergency One restricting the number of patrons allowed in "fitness centers" are: (a) not applicable to private, membership-Health Clubs; (b) *ultra vires* and beyond the scope of the Governor's executive authority under the Constitution of Virginia,

the Emergency Services and Disaster Law (Va. Code § 44.1-146.13, *et seq.*), and otherwise; (b) violative of Article I, § 7 of the Constitution of Virginia; and (c) violative of Article I, § 11 of the Constitution of Virginia; or, in the alternative, (d) that the plain meaning of the Executive Orders do not include private membership Health Clubs in its prohibitions from operations. Alternatively, Petitioners request a judgment declaring that Code § 44-146.17 does not pass this minimum threshold of standards of guidance and limitation, and should therefore be declared invalid;

(2) The immediate entry of a temporary injunction, on an emergency basis, enjoining the Governor and the Superintendent of the Virginia State Police, and all law enforcement divisions, agencies, and officers within the Commonwealth, from enforcing, in any manner (and under threat of criminal penalty), the prohibition on operation of and access of private membership Health Clubs as set forth in Paragraph 4 of Executive Order Number Fifty-Three issued by the Governor on March 23, 2020, (“EO 53”) as amended April 15, 2020, and permanent injunctive relief that the Court may find appropriate; and

(3) That the Petitioners be granted such other and further relief as the Court may deem appropriate under the circumstances.

Respectfully Submitted,
SANDY HALL/GOLDS GYM

By: 
Of Counsel


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Certificate of Service

I hereby certify that a true copy of the foregoing was hand-delivered to the offices of the Honorable Mark R. Herring, Attorney General of the Commonwealth of Virginia, at 202 N. 9th Street, Richmond, Virginia, 23219, this 21st day of April, 2020.



AFFIDAVIT OF MERRILL C. HALL

This 21st day of April 2020, after being duly sworn, your Affiant, Merrill C. Hall, made the following statement under oath:

1. I am Merrill C. "Sandy" Hall, and I am the Plaintiff in this action, along with the other Plaintiffs, and Virginia companies of which I own. I am a citizen of the Commonwealth, and currently reside in Culpeper, Virginia. Each Plaintiff companies' headquarters is located in Culpeper, Virginia.
2. I am one of the owners of the following Virginia companies that are also Plaintiffs in this action: GG Ashburn, LLC, GG Cascades, LLC, Beyond Fitness, LLC, DGL, LLC, GG Roanoke, LLC, GG Midlothian, LLC, SSGG, LLC, GG Gayton Crossing, LLC, and More Fitness, LLC.
3. I am one of the owners of nine (9) private, membership-only health clubs in locations throughout Virginia. Collectively, the owners of "Gold's Gym NOVA Group." These businesses do business as "Gold's Gym," and are located in the following places:
 - a. Woodbridge;
 - b. Sterling;
 - c. Herndon;
 - d. Ashburn;
 - e. Fredericksburg;
 - f. Midlothian;
 - g. Arboretum (Richmond);
 - h. Gayton Crossing (Richmond); and
 - i. Roanoke.



A. THE COVID-19 EFFECT.

- I. Having built thriving private membership health clubs throughout Virginia with plans to continue opening new clubs, right before COVID-19 infected the United States, the partners signed an agreement with a broker to take clubs to market in search of an equity partner. The vision is/was to grow to 50 clubs. It was the right time, unfortunately, COVID-19 ended this endeavor and has resulted in the forced closure of the existing 9 clubs as mandated by the Governor.
- II. The mandate by the Governor, under Executive Order 53, started a series of very difficult decisions related to our employees and members. When the mandate was issued, we were unsure of whether it applied to our private membership clubs. All businesses ordered closed were public access businesses. However, we were a private membership club; therefore, we believed it did not apply to us. We were dissuaded of this notion due to a visit to most of our facilities by various Sheriff's Departments or local health departments, notifying us that our business was included in the mandated closure. These officials told us that the closing of our facilities, as directed under Executive Order 53 needed to be implemented immediately.

This was a difficult process under a short time frame to provide proper notice to our employees and members. We lacked the ample notification needed to be provided to our landlords, and other vendors that are part of our daily operation notifying them that our facilities were mandated closed. Consequently, the immediate shutdown was extremely challenging.
- III. We immediately put together a management team made up of our general managers, regional managers, and ownership to implement customer-service procedures to deal with the 56,000 members that were looking for answers related to their membership agreements and services that were part of their contracts and paid for.
- IV. It was also important to provide information to the over 1100 employees regarding the current status of their employment related to this shutdown. Unfortunately, we had to inform these employees that under these circumstances, their positions would be no longer needed until the Governor allowed the facilities to reopen.
- V. I took the lead discussing the temporary closure with Sandy Harrington who is the commissioner in charge of the Virginia Health Club Act, Va. Code § 59.1- 294 et. seq. ("the Act"). Our private membership clubs are permitted to operate, and we are regulated by the state government under the Act. In Va. Code § 59.1-297.2 regarding temporary closures, there were certain provisions/requirements that needed to be met under this section by each location.
- VI. Once the required provisions were approved by the commissioner in charge, notices were posted in the windows at each facility so that our members would be officially notified of the temporary closure. With the commissioner's approval posted at the individual facilities, employees furloughed, customer and service teams in place, and essential

management teams at each facility, we were ready to start dealing with any membership issues that may have occurred during the temporary shutdown. In addition, our management/ownership team started to lay out a plan for reopening which was scheduled for April 24, 2020, as originally defined by Executive Order 53.

- VII. A short time later, Executive Order 55 was issued by the Governor which restricted travel and other group related activities, until June 10, 2020. The general public, as evidenced by our members' concerns, assumed that meant Executive Order 53 was extended and the closing of specific businesses, listed in item number four, including ours, would be until June 10th as well.
- VIII. The Governor, delivering the message publicly, created the perception that these other businesses, including ours, would be closed until June 10, 2020, although Executive Order 55 did not clearly state there was a modification to Executive Order 53 related to the originally scheduled opening date of April 24th, for our private membership health clubs. This created additional controversy and challenges related to customer service bringing a whole new level of complication related to communication with our members and our staff.
- IX. The lack of clarity by the Governor prompted me, to retain counsel and contact my local government representatives in an effort to achieve clarity on these issues. My concern was that Executive Order 53, as presented to us mandated the closure of our private membership health clubs, and that Executive Order 55 mandated that closure continue past April 24th to June 10th. In fact, local government officials in the counties where our clubs are located told us that we were closed until June 10th.

In response, I sent several emails to the Governor's office, including to his Chief of Staff Clark Mercer and Director of Policy, Matt Mansell, requesting clarification.

On April 3rd, 2020 Mr. Mansell responded to both me and my counsel by email, indicating that our understanding regarding our business being available to open on April 24th was correct, and that Executive Order 55 did not change the original April 24th re-opening designation, as outlined in Executive Order 53.

- X. While we were still several weeks away from opening, this clarification allowed us to send notices to our members indicating that as of April 3rd, 2020, we were still on schedule to reopen on April 24th.

This information was critical for our business, as it related to meeting certain requirements within the Virginia Health Act, the requirements of having proper dates posted on the facilities and giving formal notice to our members of the correct information regarding the reopening.

While the reduction in our revenue was significant at that time, we were still paying essential employees and customer service staff to communicate with our members. And while we could see the impact of the closure becoming significantly more difficult to deal

with financially, but we felt we could make it, so long as the end in sight would occur by April 24th.

- XI. While we were awaiting our April 24th opening, the federal government instituted certain relief for small businesses, such as the Small Business Administration's (SBA) small business Payroll Protection Plan (PPP), that would supposedly be available to small businesses like ours in the upcoming days and weeks. Our management team started to work on collecting data that we believed would be necessary to apply for these benefits that would be available relatively soon.

Once the official provisions for the loans were available we immediately submitted our applications for approval one business day after the program started and were available to submit to the SBA.

Unfortunately, the funds that were allocated were gone by the time our applications were being processed, and we have been told that we are in the queue, if additional monies are approved in the near future. Moreover, the benefits of the PPP loan are based on the ability of your business to be open at the time you receive the money from settlement with SBA. This timing is important because you have eight weeks from settlement to meet the required expenditures related to payroll for the possibility of forgiveness of the loan in the future. If these options are not available to us, then this program loses its ability to assist us with any real benefit.

Without financial relief from the SBA programs, this makes the circumstances that we are dealing with even more complicated regarding reopening and trying to mitigate the financial damages that we have already incurred up to that date, as well as the prospect of being able to bring our employees back as soon as possible.

- XII. Other problems started to become apparent as it related to our landlords and rent payments that are due at the first of each month.

On average our facilities ranging from 35,000 ft.² up to 70,000 ft.², means our rent, on a monthly basis, ranges between \$40,000 and \$107,000, which includes pro rata share of common area maintenance under the terms of the lease agreement.

We knew that without the scheduled revenue that is applicable when we are open and operating, maintaining these payments would be impossible. We have sent several notices to our landlords trying to keep them informed of the current situation and the effects of the Governor's mandate on our business. While they are sympathetic, at the same time, they understandably have requirements that they have to meet regarding their debt service on the buildings that we occupy. They certainly understand that the closure of our business has been directly ordered by the Governor and there is nothing we can do at this time.

Unfortunately, we have already been served a “default notice” at one of our locations related to not being able to pay the rent on time for April. We have not ever been in default before on this lease agreement.

While we are trying to figure out ways to work with the landlords, to bridge the timeline while we are closed, it is difficult when the certainty of when we will be allowed to operate our business is unknown. It is certainly a concern that our rent numbers on our locations is approximately \$750,000 a month.

We have also had to work with our banks in hopes of getting deferrals on our debt service during the closure. In some cases that has been achieved and in other cases we are still working on trying to come to agreements with our banking arrangements for those deferrals.

Other expenses like general insurance, utilities, franchise fees, employee’s medical insurance and other contract expenses still need to be paid on a monthly basis regardless of our ability to be open. This complicates our ability to have the resources to reopen if and when we are released by the Governor.

- XIII. On April 15th, the Governor made a new announcement amending Executive Order 53 to extend the closure date to May 8, 2020.
- XIV. I have no confidence whatsoever that this May 8th date is solid, and we all believe that re-open date will move once again as we approach it in the next several weeks.
- XV. With no end date in sight and mounting problems related to default notices, SBA loans not being funded, as well as cash reserves being depleted for essential employees to maintain customer service, it seems like it is inevitable that the businesses will be required to close and never re-open.

Our locations will be forced to close permanently based on the Governor’s arbitrary decision to isolate our business and categorize us as “non-essential businesses.”

- XVI. We take enormous pride in our facilities and quite frankly we are one of the only businesses out there that have cleaning staff working every hour of our operation. Before the arrival of COVID-19 in Virginia, we conducted our business with a sharp focus on both hygiene and safety for the benefit of our members. We supply disinfectant for our members to use before and after using our equipment. In addition, we provide hand sanitizer throughout the facilities for their use.

Other retail businesses that are still operating, with limited or no restrictions, don’t provide any of these services on a regular basis, let alone any increase in services that they should be providing now while operating under these circumstances.

We had already instituted a plan, which was presented to the Governor’s office prior to his April 15th change to Executive Order 53. (See, Exhibit A, attached hereto). This

includes our commitment, if authorized to reopen, to include measures for social distancing and additional cleaning services. We submitted this plan to the Governor's office before his April 15th public notice, in hopes that he would allow our facilities to open on schedule on April 24th, but there was no response and the Governor extended the time until May 8th.

XVII. At this point, with all our options exhausted related to potential solutions to this significant and critical problem, we have no other options than to attempt to save our businesses through the court process. If we had another option, we would try it. As a small business owner, it's not unusual to deal with incoming problems that happen daily or weekly throughout each year. Typically, these problems come with parameters that are definable. In this case the parameters are still undefinable, which creates complications on putting a plan together to resolve the problems which is reopening when you don't control those timelines of your "own" business.

In most cases it's typically a bank, landlord or customer service issue that creates a problem for your business which you can typically resolve by being attentive to the issue. Unfortunately, in this case, no amount of attention from us is going to solve the problem. Therefore, the mandate issued by the Governor, which ultimately takes control of my business, allows me no movement to resolve the problem financially. His taking of my business has created financial hardship and exposure to landlords, banks and members. At this point with no viable source of revenue through SBA programs, even if we had such funding at this time, the magnitude of our problem would overwhelm the nominal amount of money that we would receive from this program. As most people understand 75% of the SBA payroll protection loan has to be spent on payroll re-engaging your employees. At this point that would be difficult considering I cannot even open my facility. Part of the benefit of this program is to allow the business time with payroll expenses covered to restructure their income stream for survival in the future. And, it does not help the business to have money under this provision and pay an employee to sit at home and not be developing the business in real time.


As you can see with 75% of the loan required to payroll and a limited amount of time to prove that you've spent the payroll in the first eight weeks from settlement with SBA, there is a time sensitive qualifying factor for forgiveness. The balance of the money can be used for other items regarding utilities and rent, unfortunately some of those expenses on the facilities that we operate would not even come close to covering a month's rent on the facility, let alone two months and still counting.

XVIII. Governor Northam, by his Executive Orders has literally destroyed my business in Executive Order 53. I believe that he unfairly applied certain rules to us while allowing the other businesses to run freely. This arbitrary selection of my businesses to be restricted certainly has damaged a lot of people including owners, employees and members. The long-term financial damage after years of development as a small business owner will be time consuming and difficult to recover at this time.

We never want to see sickness and death of any kind in our communities, and we feel like our private membership health clubs are, and rightly should be, a part of the solution as it relates to the continued health and wellness with our members by alleviating obesity, hypertension, heart disease, diabetes while increasing lung function, circulation and muscle mass.

KNOWETH FURTHER, AFFIANT SAYETH NOT.


Sworn under oath, this 21st day of April 2020.



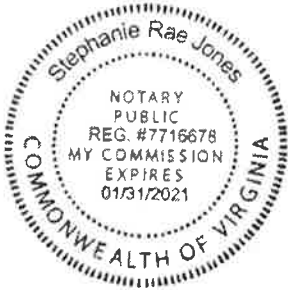
Affiant

Notary Certification

Sworn and subscribed to me, a Notary Public for the Commonwealth of Virginia, in the County of Culpeper this day, April 21, 2020, by the affiant Merrill C Hall.



Notary Public



Thank you for taking the time to read this and address the needs of tens of thousands of Virginia employees currently being overlooked.

Efforts to fight viruses, illnesses and depression and to encourage good habits that boost the body's immune system are not new. They are as old as time itself. What is new, however, is the importance health clubs play in advancing these efforts and the size of the job market that this industry supports.

Health Clubs & Virginia's Economy

Virginia has 926 health clubs with over 55,000 employees servicing 1.5M Virginians. The health club industry contributes \$740M to Virginia's economy. Golds gym has 39 locations and has thousands of employees in the Virginia market. Companies like, US Fitness, which operates One Life Fitness and Sport & Health, employs 2,500 Virginia residents across our 24 locations. However, mid-size companies like ours and American Family Fitness, Crunch Fitness, ACAC and many more have not been afforded any meaningful relief to this point. Despite having zero revenue, our doors shut and being forced into furloughing 98% of our workforces, our greatest fear at this point is not only surviving this crisis but also that when we emerge, we still won't be allowed to run our business.

Let Health Clubs & Retailers Open Fairly When Restrictions Ease

Arbitrary gathering person limits effectively shut us down before non-essential businesses were closed. Health clubs took extraordinary measures before the outbreak to protect our members and increased those procedures at the initial outbreak, and we are continuing to this day to work together to implement guidelines that ensure our staff and are members are safe.

1. Typical assembly use: A-3 allows approximately 650 occupants in the case of a 50,000 ft.² building.
2. Limit Business Capacity by Size: While the "10 patron" limit was a part of the original social distancing protocols for businesses, regardless of the size of their commercial space, there have been natural inequities in its application. For example, 10 people in a 300 square foot restaurant cannot maintain 6 feet of distance, but a 50,000 square foot business has a significantly greater ability to safely handle a higher capacity of patrons while practicing social distancing than the current limit provides (as has been seen in businesses such as Lowe's). Without a modest increase in the patron capacity limits for Health Clubs (based on facility square footage), it would be unlikely that they would be able to re-open for business on April 24th.
3. 1 Patron per 115 square feet: This ensures minimum 6-foot radius for each person. It allows for a functioning economy while also protecting people. Please note that this would be a calculation based on office space not assembly use, so it is significantly conservative in this application.

Health Club: New Operating Guidelines from April 24TH through June 10TH

1. Cardio: Eliminating every other piece of cardio equipment to ensure social distancing. Eliminating every other spin bike in our spin studios.
2. Classes: Reducing the size of our classes to support social distancing. We would provide 15-30 minutes between classes to disinfect equipment and members can file in and out of studios safely.
3. Housekeeping Budgets & Zone Cleaning: Management and general staff members will be assigned designated areas of the club to monitor and maintain while the club is in operation. These additional staff members will work in conjunction with housekeeping to keep each zone within the facility sanitized and clean during operation.
4. Disinfectant Stations: Prior to our closure, we installed disinfectant stations throughout our clubs. We more than doubled our sanitization stations and would continue to keep them stocked and visible.



5. Hand sanitation stations: Throughout the gym, there are several hand sanitizing stations with anti-bacterial foam. We ask everyone to use this upon entering the gym as well as throughout your workout. Over the past weeks, we have installed additional dispensers throughout all locations.
6. Individual towels: Upon arrival each member will be provided a towel for equipment disinfecting efforts.
7. No cash transactions: (all charged to account) Cash transactions will not be permitted. All concession or payments will be made by the account on file via electronic transfer.
8. Individual member check-in: Members will not be permitted within 6 feet of each other anywhere in the establishment. Markers will be made every 6 feet from the doorway to the scan in counter at the front desk. Employees will manually check members in without contact being made. Member must remain 6 feet away from employee while this manual check-in process takes place.
9. Backpack sprayer: Before opening and after closing each day every piece of equipment will be sprayed with approved disinfectant until further notice.
10. Open-door policy: We will install hand sanitizing stations on pedestals outside the front door with signage indicating please use before entering.
11. Kids Club: Will be temporarily closed from April 24th – June 10th.
12. American Red Cross: Golds Gym will be working in conjunction with the American Red Cross to schedule blood drives at the facilities in support of the local communities from April 24th – June 10th. Schedule to be posted.

If health clubs are restricted by arbitrary gatherings limits, we will not survive this crisis. Now is not the time to render extinct an industry solely focused on preventative care. We exist to curb health care costs, to fight diseases like obesity, diabetes, heart disease and to help boost people's immune systems to fight viruses and illness.

Sincerely,

Sandy Hall, Michael Krongaard and Christian Morganti
Gold's Gym Virginia
Headquartered – Culpeper, Virginia



Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER FIFTY-THREE (2020)

**TEMPORARY RESTRICTIONS ON RESTAURANTS, RECREATIONAL,
ENTERTAINMENT, GATHERINGS, NON-ESSENTIAL RETAIL BUSINESSES,
AND CLOSURE OF K-12 SCHOOLS DUE TO NOVEL CORONAVIRUS (COVID-19)**

Importance of the Issue

The Commonwealth of Virginia continues to respond to the novel coronavirus (COVID-19) pandemic. On March 13, 2020, I ordered all K-12 schools in the Commonwealth closed for two weeks. On March 17, 2020, I, along with the Virginia State Health Commissioner, issued an Order of the Governor and State Health Commissioner Declaration of Public Health Emergency (later amended) limiting the number of patrons in restaurants, fitness centers, and theaters to no more than 10 per establishment. Despite these measures, COVID-19 presents an ongoing threat to our communities. Information from the Virginia Department of Health reveals occurrences of the virus in every region of the Commonwealth. Indeed, the data suggests that in several regions there may be community spread of the virus.

Now, we must take additional long term action to mitigate the impacts of this virus on our Commonwealth. Guidance on School Closures from the Centers for Disease Control and Prevention indicates that medium term closures (8-20 weeks) have greater impact on minimizing the spread of COVID-19 than shorter term closures (2-8 weeks). This guidance is consistent with the expertise of public health officials and their models of continuing spread of COVID-19 throughout the Commonwealth and the nation. Unnecessary person-to-person contact increases the risk of transmission and community spread. Consequently, we must limit such interactions to those necessary to access food and essential materials. Protecting the health and ensuring the safety of every Virginian is my highest priority.

Directive

Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the *Code of Virginia* and in furtherance of Executive Order 51, I order the following:



1. Effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020, all public and private in person gatherings of 10 or more individuals are prohibited.
2. Cessation of all in-person instruction at K-12 schools, public and private, for the remainder of the 2019-2020 school year. Facilities providing child care services may remain open. On March 18, 2020, the Commissioner of the Virginia Department of Social Services, Duke Storen, issued [a letter](#) with guidance for daycare providers operating in the Commonwealth, including group size limits of 10 and stringent public health guidelines to prevent the spread of COVID-19. That guidance remains effective and I urge all Virginians with school-age children to review it. In addition, I urge child care providers to prioritize services for children of essential personnel, while asking all families with the ability to keep their children home, to do so. To that end, the Virginia Department of Social Services and the Virginia Department of Education will issue guidance to communities about operationalizing emergency child care services for essential personnel.
3. Closure of all dining and congregation areas in restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, tasting rooms, and farmers markets effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020. Restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, tasting rooms, and farmers markets may continue to offer delivery and take-out services.
4. Closure of all public access to recreational and entertainment businesses, effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020 as set forth below:
 - Theaters, performing arts centers, concert venues, museums, and other indoor entertainment centers;
 - Fitness centers, gymnasiums, recreation centers, indoor sports facilities, and indoor exercise facilities;
 - Beauty salons, barbershops, spas, massage parlors, tanning salons, tattoo shops, and any other location where personal care or personal grooming services are performed that would not allow compliance with social distancing guidelines to remain six feet apart;
 - Racetracks and historic horse racing facilities; and
 - Bowling alleys, skating rinks, arcades, amusement parks, trampoline parks, fairs, arts and craft facilities, aquariums, zoos, escape rooms, indoor shooting ranges, public and private social clubs, and all other places of indoor public amusement.

5. Essential retail businesses may remain open during their normal business hours. Such businesses are:
 - Grocery stores, pharmacies, and other retailers that sell food and beverage products or pharmacy products, including dollar stores, and department stores with grocery or pharmacy operations;
 - Medical, laboratory, and vision supply retailers;
 - Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;
 - Automotive parts, accessories, and tire retailers as well as automotive repair facilities;
 - Home improvement, hardware, building material, and building supply retailers;
 - Lawn and garden equipment retailers;
 - Beer, wine, and liquor stores;
 - Retail functions of gas stations and convenience stores;
 - Retail located within healthcare facilities;
 - Banks and other financial institutions with retail functions;
 - Pet and feed stores;
 - Printing and office supply stores; and
 - Laundromats and dry cleaners.
6. Effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020, any brick and mortar retail business not listed in paragraph 5 may continue to operate but must limit all in-person shopping to no more than 10 patrons per establishment. If any such business cannot adhere to the 10 patron limit with proper social distancing requirements, it must close.
7. All businesses shall, to the extent possible, adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and other appropriate workplace guidance from state and federal authorities while in operation.
8. Although business operations offering professional rather than retail services may remain open, they should utilize teleworking as much as possible. Where telework is not feasible, such business must adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and apply the relevant workplace guidance from state and federal authorities.
9. Nothing in the Order shall limit: (a) the provision of health care or medical services; (b) access to essential services for low-income residents, such as food

banks; (c) the operations of the media; (d) law enforcement agencies; or (e) the operation of government.

Violation of paragraphs 1, 3, 4, and 6 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the *Code of Virginia*.

Effective Date of this Executive Order

This Executive Order shall be effective March 23, 2020, amends Amended Order of the Governor and State Health Commissioner Declaration of Public Health Emergency, Order of Public Health Emergency One, and shall remain in full force and in effect until amended or rescinded by further executive order.


Given under my hand and under the Seal of the Commonwealth of Virginia, this 23rd day of March, 2020.





Ralph S. Northam, Governor

Attest:



Kelly Thomasson, Secretary of the Commonwealth



Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER FIFTY-FIVE (2020)

**TEMPORARY STAY AT HOME ORDER
DUE TO NOVEL CORONAVIRUS (COVID-19)**

To reinforce the Commonwealth's response to COVID-19 and in furtherance of Executive Orders 51 (March 12, 2020) and 53 (March 23, 2020) and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the *Code of Virginia*, I order the following:

1. All individuals in Virginia shall remain at their place of residence, except as provided below by this Order and Executive Order 53. To the extent individuals use shared or outdoor spaces, whether on land or on water, they must at all times maintain social distancing of at least six feet from any other person, with the exception of family or household members or caretakers. Individuals may leave their residences for the purpose of:
 - a. Obtaining food, beverages, goods, or services as permitted in Executive Order 53;
 - b. Seeking medical attention, essential social services, governmental services, assistance from law enforcement, or emergency services;
 - c. Taking care of other individuals, animals, or visiting the home of a family member;
 - d. Traveling required by court order or to facilitate child custody, visitation, or child care;
 - e. Engaging in outdoor activity, including exercise, provided individuals comply with social distancing requirements;
 - f. Traveling to and from one's residence, place of worship, or work;

PLAINTIFF'S
EXHIBIT

- g. Traveling to and from an educational institution;
 - h. Volunteering with organizations that provide charitable or social services; and
 - i. Leaving one's residence due to a reasonable fear for health or safety, at the direction of law enforcement, or at the direction of another government agency.
- 2. All public and private in-person gatherings of more than ten individuals are prohibited. This includes parties, celebrations, religious, or other social events, whether they occur indoor or outdoor. This restriction does not apply:
 - a. To the operation of businesses not required to close to the public under Executive Order 53; or
 - b. To the gathering of family members living in the same residence.
- 3. Institutions of higher education shall cease all in-person classes and instruction, and cancel all gatherings of more than ten individuals. For purposes of facilitating remote learning, performing critical research, or performing essential functions, institutions of higher education may continue to operate, provided that social distancing requirements are maintained.
- 4. Effective April 1, 2020 at 11:59 p.m., cessation of all reservations for overnight stays of less than 14 nights at all privately-owned campgrounds, as defined in § 35.1-1 of the *Code of Virginia*.
- 5. Closure of all public beaches as defined in § 10.1-705 of the *Code of Virginia* for all activity, except exercising and fishing. Social distancing requirements must be followed.
- 6. All relevant state agencies shall continue to work with all housing partners to execute strategies to protect the health, safety, and well-being of Virginians experiencing homelessness during this pandemic and to assist Virginians in avoiding evictions or foreclosures.
- 7. As provided in Executive Order 53, nothing in this Order shall limit: (a) the provision of health care or medical services; (b) access to essential services for low-income residents, such as food banks; (c) the operations of the media; (d) law enforcement agencies; or (e) the operation of government.

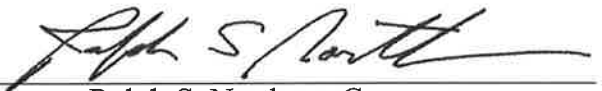
Violation of paragraphs 2, 3, 4, and 5 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the *Code of Virginia*.

Effective Date of this Executive Order

This Executive Order shall be effective March 30, 2020, amends Amended Order of the Governor and State Health Commissioner Declaration of Public Health Emergency, Order of Public Health Emergency One and Executive Order 53, and shall remain in full force and in effect until June 10, 2020, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 30th day of March, 2020.





Ralph S. Northam, Governor

Attest:



Kelly Thomasson, Secretary of the Commonwealth



COMMONWEALTH of VIRGINIA

Executive Department

AMENDED ORDER OF THE GOVERNOR AND STATE HEALTH COMMISSIONER DECLARATION OF PUBLIC HEALTH EMERGENCY

Order of Public Health Emergency One

WHEREAS, the State Health Commissioner declared COVID-19 a disease of public health threat on February 7, 2020; and

WHEREAS, Virginia Governor Ralph S. Northam declared a state of emergency due to COVID-19 on March 12, 2020 in Executive Order No. 51 by virtue of the authority vested in the Governor by Article V, Section 7 of the Constitution of Virginia and by §§ 44-146.17 and 44-75.1 of the *Code of Virginia*; and

WHEREAS, COVID-19 spreads from person-to-person, transmitted via respiratory droplets, and can be spread from an infected person who does not have symptoms to another person; and

WHEREAS, no current vaccine or known treatment options exist at this time; and

WHEREAS, the Commonwealth of Virginia, seeks to contain, control, and prevent additional COVID-19 infections and unnecessary risk to citizens; and

WHEREAS, on March 17, 2020, Virginia Governor Ralph S. Northam announced new measures to combat COVID-19 and support impacted Virginians; and

WHEREAS, in an effort to increase social distancing to inhibit spread of the virus, Virginia Governor Ralph S. Northam included in that announcement that all restaurants, fitness centers, and theaters are mandated to significantly reduce capacity to 10 patrons, or close; while encouraged to continue carry-out and takeaway options; and

WHEREAS, the State Health Commissioner desires to protect the public health of all Virginians by increasing social distancing in restaurants, fitness centers, and theaters; and

WHEREAS, pursuant to § 32.1-13 of the *Code of Virginia*, the State Health Commissioner, acting for the State Board of Health (Board) when it is not in session pursuant to § 32.1-20 of the *Code of Virginia*, is vested with authority to make separate orders to meet any emergency not provided for by general regulations, for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases; and

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WHEREAS, pursuant to § 35.1-10 of the *Code of Virginia*, the State Health Commissioner may take whatever action he deems necessary, to include ordering immediate closure of a restaurant, to control the spread of a preventable disease.

NOW THEREFORE, the Governor and State Health Commissioner hereby issue this Order declaring a public health emergency resulting from the spread of COVID-19 virus affecting the health and safety of Virginians, and restrict the number of patrons allowed in restaurants, as defined in § 35.1-1 of the *Code of Virginia*, fitness centers, and theaters, as defined in § 15.2-2820 of the *Code of Virginia*, to 10 patrons or less in any such establishment in order to inhibit spread of the virus. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the *Code of Virginia*, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the *Code of Virginia*.


In addition, the observation of 11 or more patrons in a restaurant may result in immediate operation permit suspension per the Food Regulations at 12VAC5-421-3770 (Summary Suspension of a Permit) by a district health director as authorized by the State Health Commissioner.

The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order pursuant to § 32.1-27 of the *Code of Virginia*.

WHEREAS, this Order hereby amends the Order dated March 17, 2020, shall be effective as of March 16, 2020, and shall remain in full force and effect until amended or rescinded. Citation of this Order shall be Commonwealth of Virginia Amended Order of Public Health Emergency One.

Given under my hand and under the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia this 20th Day of March 2020.


Ralph S. Northam, Governor


M. Norman Oliver, MD, MA
State Health Commissioner



COMMONWEALTH of VIRGINIA

Executive Department

ORDER OF THE GOVERNOR AND STATE HEALTH COMMISSIONER

Order of Public Health Emergency Two

WHEREAS, the State Health Commissioner declared COVID-19 a disease of public health threat on February 7, 2020; and

WHEREAS, Virginia Governor Ralph S. Northam declared a state of emergency due to COVID-19 on March 12, 2020 in Executive Order No. 51 by virtue of the authority vested in the Governor by Article V, Section 7 of the Constitution of Virginia and by §§ 44-146.17 and 44-75.1 of the *Code of Virginia*; and

WHEREAS, the Governor and State Health Commissioner issued Order of Public Health Emergency One on March 17, 2020, as amended on March 20, 2020, declaring a public health emergency; and

WHEREAS, COVID-19 spreads from person-to-person, transmitted via respiratory droplets, and can be spread from an infected person who does not have symptoms to another person; and

WHEREAS, no current vaccine or known treatment options exist at this time; and

WHEREAS, the supply chain in the Commonwealth for health care personal protective equipment (PPE), to include gowns, masks, face shields and respirators, has been severely disrupted by the significant increased use of such equipment worldwide in response to COVID-19, such that there are now critical shortages of this equipment for health care workers; and

WHEREAS, it is anticipated that due to the continuing spread of COVID-19, a critical shortage of needed hospital beds will result; and

WHEREAS, the Commonwealth of Virginia seeks to curtail the spread of the COVID-19 pandemic in the Commonwealth, protect our health care workers, and ensure sufficient hospital beds necessary to serve Virginians' medical needs; and

WHEREAS, pursuant to § 32.1-13 of the *Code of Virginia*, the State Health Commissioner, acting for the State Board of Health when it is not in session pursuant to § 32.1-20 of the *Code of Virginia*, is vested with authority to make separate orders to meet any emergency not provided for by general regulations, for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases.

NOW THEREFORE, the Governor and State Health Commissioner hereby issue this Order prohibiting all inpatient and outpatient surgical hospitals licensed under 12 VAC 5-410, free-standing endoscopy centers, physicians' offices, and dental, orthodontic, and endodontic offices in

the Commonwealth from providing procedures and surgeries that require PPE, which if delayed, are not anticipated to cause harm to the patient by negatively affecting the patient's health outcomes, or leading to disability or death. This does not include outpatient visits delivered in hospital-based clinics.

This Order does not apply to the full suite of family planning services and procedures nor to treatment for patients with emergency or urgent needs. Inpatient and outpatient surgical hospitals licensed under 12 VAC 5-410, free-standing endoscopy centers, physicians' offices, and dental, orthodontic, and endodontic offices may perform any procedure or surgery that if delayed or canceled would result in the patient's condition worsening. Outpatient surgical hospitals are encouraged to work with their local inpatient hospitals to assist with surge capacity needs.

Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the *Code of Virginia*, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the *Code of Virginia*. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order pursuant to § 32.1-27 of the *Code of Virginia*.

WHEREAS, this Order shall remain in full force and effect until April 24, 2020. Citation of this Order shall be Commonwealth of Virginia Order of Public Health Emergency Two.

Given under my hand and under the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia this 25th Day of March, 2020.



Ralph S. Northam, Governor



M. Norman Oliver, MD, MPH
State Health Commissioner



Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER FIFTY-ONE (2020)

DECLARATION OF A STATE OF EMERGENCY DUE TO NOVEL CORONAVIRUS (COVID-19)

Importance of the Issue

The Commonwealth of Virginia is monitoring an outbreak of a respiratory illness referred to as the coronavirus (COVID-19), which has spread from Wuhan, Hubei Province, China to more than 80 other locations internationally, including the Commonwealth. The Virginia Department of Health (VDH) has been working with local, state, and federal officials, healthcare and emergency management experts, and various state agencies to form a COVID-19 Taskforce to prepare for and respond to this threat. Given recent confirmed occurrences of COVID-19 within the Commonwealth and in neighboring states, as well as information from the Centers for Disease Control and Prevention, it is anticipated that the disease will spread.

Therefore, on this date, March 12, 2020, I declare that a state of emergency exists in the Commonwealth of Virginia to continue to prepare and coordinate our response to the potential spread of COVID-19, a communicable disease of public health threat. The anticipated effects of COVID-19 constitute a disaster as described in § 44-146.16 of the *Code of Virginia (Code)*. By virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the *Code*, as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim a state of emergency. Accordingly, I direct state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 *et seq.* of the *Code*.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

- A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state plans.

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- B. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.
- C. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.
- D. Activation of § 59.1-525 *et seq.* of the *Code* related to price gouging.
- E. Activation of the Virginia National Guard to State Active Duty.
- F. Authorization of a maximum of \$10,000,000 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act, 42 U.S.C. § 5121 *et seq.* Included in this authorization is \$1,000,000 for the Department of Military Affairs, if it is called to State Active Duty.

Effective Date of this Executive Order

This Executive Order shall be effective March 12, 2020, and shall remain in full force and in effect until June 10, 2020 unless sooner amended or rescinded by further executive order. Termination of this Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 12th day of March, 2020.



Handwritten signature of Ralph S. Northam in black ink.

Ralph S. Northam, Governor

Attest:

Handwritten signature of Kelly Thomasson in black ink.

Kelly Thomasson, Secretary of the Commonwealth



Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER FIFTY-TWO (2020)

INCREASES IN HOSPITAL BED CAPACITY IN RESPONSE TO NOVEL CORONAVIRUS (COVID-19)

Importance of the Issue

The Commonwealth of Virginia anticipates a sudden, yet temporary need to increase bed capacity in general hospitals and nursing homes within the Commonwealth. The increase may be needed to serve persons who become acutely ill due to the outbreak of a respiratory illness referred to as the novel coronavirus (COVID-19). Based on information from the Virginia Department of Health and the Centers for Disease Control and Prevention, the number of cases of COVID-19 continues to increase within the Commonwealth and in neighboring states. It is anticipated that the number of persons who will need to be admitted to a hospital or nursing home for care within our communities may exceed the current capacity of our hospitals and nursing homes. Certain requirements in the *Code of Virginia* limit the ability of our hospitals and nursing homes to increase quickly their bed capacity in response to this expected higher demand.

Directive

Therefore, by virtue of the authority vested in me by the Constitution of Virginia, by §§ 2.2-103 and 44-146.13 *et seq.* of the *Code*, and notwithstanding the provisions of Article 1.1 of Chapter 4 of Title 32.1 of the *Code*, I direct the State Health Commissioner, at his discretion, to authorize any general hospital or nursing home to increase licensed bed capacity as determined necessary by the Commissioner to respond to increased demand for beds resulting from COVID-19. Notwithstanding Virginia Code § 32.1-132, I further direct any beds added by a general hospital or nursing home pursuant to an authorization of the Commissioner under this Order will constitute licensed beds that do not require further approval or the issuance of a new license.

These actions are in concert with, and further the provisions of, Executive Order 51 in marshalling all resources and appropriate preparedness, response, and recovery measures to respond to the emergency. Any authorization by the Commissioner to increase bed capacity, and

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the authority for any resulting increased number of beds, will expire 30 days after the expiration or rescission of Executive Order 51, as it may be amended.

Effective Date of this Executive Order


This Executive Order shall be effective March 20, 2020, and shall remain in full force and in effect until July 10, 2020, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 20th day of March, 2020.




Ralph S. Northam, Governor

Attest:


Kelly Thomasson, Secretary of the Commonwealth



Code of Virginia
Title 44. Military and Emergency Laws
Chapter 3.2. Emergency Services and Disaster Law

§ 44-146.17. Powers and duties of Governor.

The Governor shall be Director of Emergency Management. He shall take such action from time to time as is necessary for the adequate promotion and coordination of state and local emergency services activities relating to the safety and welfare of the Commonwealth in time of disasters.

The Governor shall have, in addition to his powers hereinafter or elsewhere prescribed by law, the following powers and duties:

(1) To proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of this chapter including, but not limited to such measures as are in his judgment required to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources under any state or federal emergency services programs.

He may adopt and implement the Commonwealth of Virginia Emergency Operations Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments and other organizations.

He may direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response or recovery actions; prescribe routes, modes of transportation and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein.

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

Such executive orders declaring a state of emergency may address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1.

Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, no rule, regulation, or order issued under this section shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly but the same or a similar rule, regulation, or order may thereafter be issued again if not contrary to law;

(2) To appoint a State Coordinator of Emergency Management and authorize the appointment or employment of other personnel as is necessary to carry out the provisions of this chapter, and to remove, in his discretion, any and all persons serving hereunder;

(3) To procure supplies and equipment, to institute training and public information programs relative to emergency management and to take other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces in time of need;

(4) To make such studies and surveys of industries, resources, and facilities in the Commonwealth as may be necessary to ascertain the capabilities of the Commonwealth and to plan for the most efficient emergency use thereof;

(5) On behalf of the Commonwealth enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of the Commonwealth. After a state of emergency is declared in another state and the Governor receives a written request for assistance from the executive authority of that state, the Governor may authorize the use in the other state of personnel, equipment, supplies, and materials of the Commonwealth, or of a political subdivision, with the consent of the chief executive officer or governing body of the political subdivision;

(6) To delegate any administrative authority vested in him under this chapter, and to provide for the further delegation of any such authority, as needed;

(7) Whenever, in the opinion of the Governor, the safety and welfare of the people of the Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, he may declare a state of emergency to exist;

(8) To request a major disaster declaration from the President, thereby certifying the need for federal disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth, its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting from the disaster;

(9) To provide incident command system guidelines for state agencies and local emergency response organizations; and

(10) Whenever, in the opinion of the Governor or his designee, an employee of a state or local public safety agency responding to a disaster has suffered an extreme personal or family hardship in the affected area, such as the destruction of a personal residence or the existence of living conditions that imperil the health and safety of an immediate family member of the employee, the Governor may direct the Comptroller of the Commonwealth to issue warrants not to exceed \$2,500 per month, for up to three calendar months, to the employee to assist the employee with the hardship.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1981, c. 116; 1990, c. 95; 1997, c. 893; 2000, c. 309; 2004, cc. 773, 1021; 2006, c. 140; 2007, cc. 729, 742; 2008, cc. 121, 157.

Code of Virginia
 Title 59.1. Trade and Commerce
 Chapter 24. Virginia Health Club Act



§ 59.1-296. Definitions.

As used in this chapter:

"Business day" means any day except a Sunday or a legal holiday.

"Buyer" means a natural person who enters into a health club contract.

"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

"Comparable alternate facility" means a health club facility that is reasonably of like kind, in nature and quality, to the health club facility originally contracted, whether such facility is in the same location but owned or operated by a different health club or is at another location of the same health club.

"Contract price" means the sum of the initiation fee, if any, and all monthly fees except interest required by the health club contract.

"Facility" means a location where health club services are offered as designated in a health club contract.

"Health club" means any person, firm, corporation, organization, club or association whose primary purpose is to engage in the sale of memberships in a program consisting primarily of physical exercise with exercise machines or devices, or whose primary purpose is to engage in the sale of the right or privilege to use exercise machines or devices. The term "health club" shall not include the following: (i) bona fide nonprofit organizations, including, but not limited to, the Young Men's Christian Association, Young Women's Christian Association, or similar organizations whose functions as health clubs are only incidental to their overall functions and purposes; (ii) any private club owned and operated by its members; (iii) any organization primarily operated for the purpose of teaching a particular form of self-defense such as judo or karate; (iv) any facility owned or operated by the United States; (v) any facility owned or operated by the Commonwealth of Virginia or any of its political subdivisions; (vi) any nonprofit public or private school or institution of higher education; (vii) any club providing tennis or swimming facilities located in a residential planned community or subdivision, developed in conjunction with the development of such community or subdivision, and deriving at least 80 percent of its membership from residents of such community or subdivision; and (viii) any facility owned and operated by a private employer exclusively for the benefit of its employees, retirees, and family members and which facility is only incidental to the overall functions and purposes of the employer's business and is operated on a nonprofit basis.

"Health club contract" means an agreement whereby the buyer of health club services purchases, or becomes obligated to purchase, health club services.

"Health club services" means and includes services, privileges, or rights offered for sale or provided by a health club.

"Initiation fee" means a nonrecurring fee charged at or near the beginning of a health club membership, and includes all fees or charges not part of the monthly fee.

"Monthly fee" means the total consideration, including but not limited to, equipment or locker rental, credit check, finance, medical and dietary evaluation, class and training fees, and all other similar fees or charges and interest, but excluding any initiation fee, to be paid by a buyer, divided by the total number of months of health club service use allowed by the buyer's contract, including months or time periods called "free" or "bonus" months or time periods and such months or time periods that are described in any other terms suggesting that they are provided free of charge, which months or time periods are given or contemplated when the contract is initially executed.

"Out of business" means the status of a facility that is permanently closed and for which there is no comparable alternate facility.

"Prepayment" means payment of any consideration for services or the use of facilities made prior to the day on which the services or facilities of the health club are fully open and available for regular use by the members.

"Relocation" means the provision of health club services by the health club that entered into the membership contract at a location other than that designated in the member's contract.

1984, c. 738; 1985, c. 585; 1986, c. 187; 1990, cc. 392, 433; 1991, c. 149; 1992, c. 102; 2003, c. 344; 2007, c. 683; 2010, c. 439; 2014, c. 459.



Commonwealth of Virginia
Office of the Governor

Executive Order

AMENDED NUMBER FIFTY-THREE (2020)

**EXTENSION OF TEMPORARY RESTRICTIONS ON RESTAURANTS,
RECREATIONAL, ENTERTAINMENT, GATHERINGS, NON-ESSENTIAL RETAIL
BUSINESSES, AND CLOSURE OF K-12 SCHOOLS
DUE TO NOVEL CORONAVIRUS (COVID-19)**

Importance of the Issue

Since issuing Executive Order 53 on March 23, 2020, the Commonwealth of Virginia has continued to implement aggressive measures to respond to and to mitigate the spread of the novel coronavirus (COVID-19) and its effects on Virginians. Data collected by the Virginia Department of Health, however, shows that the virus continues to spread across the state adversely affecting thousands of Virginians. Therefore, it is necessary to extend certain measures previously undertaken to ensure the safety and wellbeing of Virginians.

Directive

Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the *Code of Virginia* and in furtherance of Executive Order 51, I order the following:

1. Effective **11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Wednesday, June 10, 2020**, all public and private in person gatherings of more than 10 individuals are prohibited, as further clarified in Executive Order 55.
2. Cessation of all in-person instruction at K-12 schools, public and private, for the remainder of the 2019-2020 school year. Facilities providing child care services may remain open. On March 18, 2020, the Commissioner of the Virginia Department of Social Services, Duke Storen, issued a letter with guidance for daycare providers operating in the Commonwealth, including group size limits of 10 and stringent public health guidelines to prevent the spread of COVID-19. That guidance remains effective and I urge all Virginians with school-age children to review it. In addition, I urge child care providers to prioritize services

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for children of essential personnel, while asking all families with the ability to keep their children home, to do so. To that end, the Virginia Department of Social Services and the Virginia Department of Education will issue guidance to communities about operationalizing emergency child care services for essential personnel.

3. Closure of all dining and congregation areas in restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, tasting rooms, and farmers markets effective **11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, May 7, 2020**. Restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, tasting rooms, and farmers markets may continue to offer delivery and take-out services.
4. Closure of all public access to recreational and entertainment businesses, effective **11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, May 7, 2020** as set forth below:
 - Theaters, performing arts centers, concert venues, museums, and other indoor entertainment centers;
 - Fitness centers, gymnasiums, recreation centers, indoor sports facilities, and indoor exercise facilities;
 - Beauty salons, barbershops, spas, massage parlors, tanning salons, tattoo shops, and any other location where personal care or personal grooming services are performed that would not allow compliance with social distancing guidelines to remain six feet apart;
 - Racetracks and historic horse racing facilities; and
 - Bowling alleys, skating rinks, arcades, amusement parks, trampoline parks, fairs, arts and craft facilities, aquariums, zoos, escape rooms, indoor shooting ranges, public and private social clubs, and all other places of indoor public amusement.
5. Essential retail businesses may remain open during their normal business hours. Such businesses are:
 - Grocery stores, pharmacies, and other retailers that sell food and beverage products or pharmacy products, including dollar stores, and department stores with grocery or pharmacy operations;
 - Medical, laboratory, and vision supply retailers;
 - Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;
 - Automotive parts, accessories, and tire retailers as well as automotive repair facilities;
 - Home improvement, hardware, building material, and building supply retailers;

- Lawn and garden equipment retailers;
 - Beer, wine, and liquor stores;
 - Retail functions of gas stations and convenience stores;
 - Retail located within healthcare facilities;
 - Banks and other financial institutions with retail functions;
 - Pet and feed stores;
 - Printing and office supply stores; and
 - Laundromats and dry cleaners.
6. Effective **11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, May 7, 2020**, any brick and mortar retail business not listed in paragraph 5 may continue to operate but must limit all in-person shopping to no more than 10 patrons per establishment. If any such business cannot adhere to the 10 patron limit with proper social distancing requirements, it must close.
 7. All businesses shall, to the extent possible, adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and other appropriate workplace guidance from state and federal authorities while in operation.
 8. Although business operations offering professional rather than retail services may remain open, they should utilize teleworking as much as possible. Where telework is not feasible, such business must adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and apply the relevant workplace guidance from state and federal authorities.
 9. Nothing in the Order shall limit: (a) the provision of health care or medical services; (b) access to essential services for low-income residents, such as food banks; (c) the operations of the media; (d) law enforcement agencies; or (e) the operation of government.
 10. The waiver of § 18.2-422 of the *Code of Virginia* so as to allow the wearing of a medical mask, respirator, or any other protective face covering for the purpose of facilitating the protection of one's personal health in response to the COVID-19 public health emergency declared by the State Health Commissioner on February 7, 2020 and reflected in Executive Order 51 declaring a state of emergency in the Commonwealth. Executive Order 51 is so amended. This waiver is effective as of **March 12, 2020 until 11:59 p.m. on Wednesday, June 10, 2020**.
 11. Continued cancellation of all specially-scheduled state conferences and large events until **11:59 p.m. on Wednesday, June 10, 2020**.

12. Continued cessation of all official travel outside of Virginia by state employees, with increased flexibility for inter-state commuters and essential personnel until **11:59 p.m. on Wednesday, June 10, 2020.**
13. Nothing in this Order abrogates the provisions of Executive Orders 51 or 55, which are still in full force and effect.

Violation of paragraphs 1, 3, 4, and 6 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the *Code of Virginia*.

Effective Date of this Executive Order

This Executive Order amends Amended Order of the Governor and State Health Commissioner Declaration of Public Health Emergency, Order of Public Health Emergency One, and Executive Order 55 and shall remain in full force and in effect according to the expiration dates included herein or amended or rescinded by further executive order.

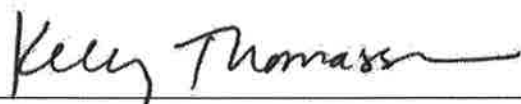
Given under my hand and under the Seal of the Commonwealth of Virginia, this 15th day of April, 2020.





Ralph S. Northam, Governor

Attest:



Kelly Thomasson, Secretary of the Commonwealth

Code of Virginia
Title 32.1. Health
Chapter 1. Administration Generally

§ 32.1-13. Emergency orders and regulations.

The Board may make separate orders and regulations to meet any emergency, not provided for by general regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other dangers to the public life and health.

Code 1950, § 32-12; 1979, c. 711.



Code of Virginia
Title 32.1. Health
Chapter 1. Administration Generally

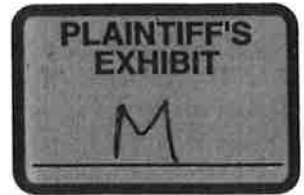
§ 32.1-20. Vested with authority of Board.

The Commissioner shall be vested with all the authority of the Board when it is not in session, subject to such rules and regulations as may be prescribed by the Board.

Code 1950, § 32-28; 1979, c. 711.



Code of Virginia



Virginia Health Club Act

§ 59.1-294. Short title.

This chapter shall be known and may be cited as the "Virginia Health Club Act."

1984, c. 738; 2014, c. 459.

§ 59.1-295. Statement of purpose.

The purpose of this chapter is to safeguard the public interest against fraud, deceit, and financial hardship, and to foster and encourage competition, fair dealing and prosperity in the field of health club services by prohibiting false and misleading advertising, and dishonest, deceptive, and unscrupulous practices by which the public has been injured in connection with contracts for health club services.

1984, c. 738; 2014, c. 459.

§ 59.1-296. Definitions.

As used in this chapter:

"Business day" means any day except a Sunday or a legal holiday.

"Buyer" means a natural person who enters into a health club contract.

"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

"Comparable alternate facility" means a health club facility that is reasonably of like kind, in nature and quality, to the health club facility originally contracted, whether such facility is in the same location but owned or operated by a different health club or is at another location of the same health club.

"Contract price" means the sum of the initiation fee, if any, and all monthly fees except interest required by the health club contract.

"Facility" means a location where health club services are offered as designated in a health club contract.

"Health club" means any person, firm, corporation, organization, club or association whose primary purpose is to engage in the sale of memberships in a program consisting primarily of physical exercise with exercise machines or devices, or whose primary purpose is to engage in the sale of the right or privilege to use exercise machines or devices. The term "health club" shall not include the following: (i) bona fide nonprofit organizations, including, but not limited to, the Young Men's Christian Association, Young Women's Christian Association, or similar organizations whose functions as health clubs are only incidental to their overall functions and purposes; (ii) any private club owned and operated by its members; (iii) any organization primarily operated for the purpose of teaching a particular form of self-defense such as judo or karate; (iv) any facility owned or operated by the United States; (v) any facility owned or operated by the Commonwealth of Virginia or any of its political subdivisions; (vi) any nonprofit public or private school or institution of higher education; (vii) any club providing tennis or swimming facilities located in a residential planned community or subdivision, developed in conjunction with the development of such community or subdivision, and deriving at least 80 percent of its membership from residents of such community or subdivision; and (viii) any facility owned and operated by a private employer exclusively for the benefit of its employees, retirees, and family members and which facility is only incidental to the overall functions and purposes of the employer's business and is operated on a nonprofit basis.

"Health club contract" means an agreement whereby the buyer of health club services purchases, or becomes obligated to purchase, health club services.

"Health club services" means and includes services, privileges, or rights offered for sale or provided by a health club.

"Initiation fee" means a nonrecurring fee charged at or near the beginning of a health club membership, and includes all fees or charges not part of the monthly fee.

"Monthly fee" means the total consideration, including but not limited to, equipment or locker rental, credit check, finance, medical and dietary evaluation, class and training fees, and all other similar fees or charges and interest, but excluding any initiation fee, to be paid by a buyer, divided by the total number of months of health club service use allowed by the buyer's contract, including months or time periods called "free" or "bonus" months or time periods and such months or time periods that are described in any other terms suggesting that they are provided free of charge, which months or time periods are given or contemplated when the contract is initially executed.

"Out of business" means the status of a facility that is permanently closed and for which there is no comparable alternate facility.

"Prepayment" means payment of any consideration for services or the use of facilities made prior to the day on which the services or facilities of the health club are fully open and available for regular use by the members.

"Relocation" means the provision of health club services by the health club that entered into the membership contract at a location other than that designated in the member's contract.

1984, c. 738; 1985, c. 585; 1986, c. 187; 1990, cc. 392, 433; 1991, c. 149; 1992, c. 102; 2003, c. 344; 2007, c. 683; 2010, c. 439; 2014, c. 459.

§ 59.1-296.1. Registration; fees.

A. It shall be unlawful for any health club to offer, advertise, or execute or cause to be executed by the buyer any health club contract in this Commonwealth unless each facility of the health club has been properly registered with the Commissioner at the time of the offer, advertisement, sale or execution of a health club contract. The registration shall (i) disclose the address, ownership, date of first sales and date of first opening of the facility and such other information as the Commissioner may require consistent with the purposes of this chapter, (ii) be renewed annually on July 1, and (iii) be accompanied by the appropriate registration fee per each annual registration in the amount indicated below:

Number of unexpired
contracts originally written

for more than one month	Registration fee
0 to 250	\$200
251 to 500	\$300
501 to 2000	\$700
2001 or more	\$800

Further, it shall be accompanied by a late fee of \$50 if the registration renewal is neither postmarked nor received on or before July 1. In the event that a club operates multiple facilities, a \$50 late fee for the first facility and \$25 for each additional facility shall accompany the registrations. For each successive 30 days after August 1, an additional \$25 shall be added for each facility. Each separate facility where health club services are offered shall be considered a separate facility and shall file a separate registration, even though the separate facilities are owned or operated by the same health club.

B. Any health club that sells a health club contract prior to registering pursuant to this section and, if required, submits the appropriate surety required by § 59.1-306 shall pay a late filing fee of \$100 for each 30-day period the registration or surety is late. This fee shall be in addition to all other penalties allowed by law.

C. A registration shall be amended within 21 days if there is a change in the information included in the registration.

D. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

1985, c. 585; 1988, c. 13; 1990, cc. 392, 433; 2010, c. 439; 2014, c. 459.

§ 59.1-296.2. Contracts sold on prepayment basis.

A. Each health club selling contracts or health club services on a prepayment basis shall notify the Commissioner of the proposed facility for which prepayments will be solicited and shall deposit all funds received from such prepayment contracts in an account established in a financial institution authorized to transact business in the Commonwealth until the health club has commenced operations in the facility and the facility has remained open for a period of 30 days. The account shall be established and maintained only in a financial institution that agrees in writing with the Commissioner to hold all funds deposited and not to release such funds until receipt of written authorization from the Commissioner. The prepayment funds deposited will be eligible for withdrawal by the health club after the facility has been open and providing services pursuant to its health club contracts for 30 days and the Commissioner gives written authorization for withdrawal.

B. The provisions of this section shall not apply to any facility duly registered pursuant to the provisions of § 59.1-296.1 for which a bond or letter of credit in the amount of \$100,000 has been posted.

1985, c. 585; 1990, cc. 392, 433; 2010, c. 439; 2014, c. 459.

§ 59.1-296.2:1. Prepayment contracts; prohibited practices; relocation; refund.

A. No health club shall sell a health club contract on a prepayment basis without disclosing in the contract the date on which the facility shall open. The opening date shall not be later than 12 months from the signing of the contract.

B. No health club shall close or relocate any facility without first giving notice to the Commissioner and conspicuously posting a notice both within and outside each entrance to the facility being closed or relocated of the closing or relocation date. Such notice shall be provided at least 30 days prior to the closing or relocation date. If a relocation is to occur, the Commissioner and the facility's members shall be provided with the address of the specific new facility at the time of this notice.

C. No health club shall knowingly and willfully make any false statement in any registration application, statement, report, or other disclosure required by this chapter.

D. No health club shall refuse or fail, after notice from the Commissioner, to produce for the Commissioner's review any of the health club's books or records required to be maintained by this chapter.

E. Unless it so discloses fully in 10-point bold-faced type or larger on the face of each health club contract, no health club shall sell any health club contract if any owner of the health club, regardless of the extent of his ownership, previously owned in whole or in part a health club that closed for business any facility and failed to:

1. Refund all moneys due to holders of health club contracts; or
2. Provide comparable alternate facilities with another health club that agreed in writing to honor all provisions of the health club contracts or at another facility operated by the originally contracting health club.

F. No health club that has failed to provide the Commissioner the appropriate surety pursuant to § 59.1-306 shall sell a health club contract unless that contract contains a statement that reads as follows: "This club is not permitted, pursuant to the Virginia Health Club Act, to accept any initiation fee in excess of \$125 or any payment for more than the prorated monthly fee for the month when the contract is initially executed plus one full month in advance."

Such disclosure shall be printed in 10-point bold-faced type or larger on the face of each contract.

1990, cc. 392, 433; 1993, c. 686; 2003, c. 344; 2004, c. 988; 2010, c. 439; 2014, c. 459.

§ 59.1-296.3. Initiation fees.

Whenever a refund is due a buyer, any initiation fee charged by a health club shall be prorated over the life of the contract or 12 months, whichever is greater.

1985, c. 585; 1990, cc. 392, 433; 2014, c. 459.

§ 59.1-297. Right of cancellation.

A. Every health club contract for the sale of health club services may be cancelled under the following circumstances:

1. A buyer may cancel the contract without penalty within three business days of its making and, upon notice to the health club of the buyer's intent to cancel, shall be entitled to receive a refund of all moneys paid under the contract.
2. A buyer may cancel the contract if the facility relocates or goes out of business and the health club fails to provide comparable alternate facilities within five driving miles of the location designated in the health club contract. Upon receipt of notice of the buyer's intent to cancel, the health club shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1.
3. The contract may be cancelled if the buyer dies or becomes physically unable to use a substantial portion of the services for 30 or more consecutive days. If the buyer becomes physically unable to use a substantial portion of the services for 30 or more consecutive days and wishes to cancel his contract, he must provide the health club with a signed statement from his doctor, physician assistant, or nurse practitioner verifying that he is physically unable to use a substantial portion of the health club services for 30 or more consecutive days. Upon receipt of notice of the buyer's intent to cancel, the health club shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1. In the case of disability, the health club may require the buyer to submit to a physical examination by a doctor, physician assistant, or nurse practitioner agreeable to the buyer and the health club within 30 days of receipt of notice of the buyer's intent to cancel. The cost of the examination shall be borne by the health club.

B. The buyer shall notify the health club of cancellation in writing, by certified mail, return receipt requested, or personal delivery, to the address of the health club as specified in the health club contract.

C. If the customer has executed any credit or lien agreement with the health club or its representatives or agents to pay for all or part of health club services, any such negotiable instrument executed by the buyer shall be returned to the buyer within 30 days after such cancellation.

D. If the club agrees to allow a consumer to cancel for any other reason not outlined in this section, upon receipt of notice of cancellation by the buyer, the health club shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1.

1984, c. 738; 1990, cc. 392, 433; 2003, c. 344; 2004, c. 855; 2006, c. 396; 2010, c. 439; 2014, c. 459.

§ 59.1-297.1. Payment and calculation of refunds.

A. All refunds for cancellation of membership shall be paid within 30 days of the health club's receipt of written notice of cancellation by the buyer and calculated by:

1. Dividing the contract price by the term of the contract in days;
2. Multiplying the number obtained in subdivision 1 by the number of days between the effective date of the contract and the date of cancellation; and
3. Subtracting the number obtained in subdivision 2 from the total price paid on the health club contract.

B. In the event of the health club going out of business, the date of cancellation shall be the date the health club ceased providing health club services at the facility.

C. A health club issuing a refund to a buyer under this chapter shall do so within 30 days of the health club receiving a notice of cancellation pursuant to § 59.1-297, or within 30 days of the permanent closing of the facility designated in the buyer's contract.

2003, c. 344; 2010, c. 439; 2014, c. 459.

§ 59.1-297.2. Automatic termination of a health club contract.

A health club contract shall be considered terminated automatically if the designated facility closes permanently and the health club does not provide a comparable alternate facility. A facility closes temporarily if it closes for a reasonable period of time (i) for renovations to all or a portion of the facility, (ii) because the lease for the facility has been canceled, or (iii) because of a fire, or a flood or other act of God, or other cause not within the reasonable control

of the health club. If a facility closes temporarily, it shall within 14 days from the time of the temporary closing provide notice of the date it expects to reopen, which date shall be within a reasonable period of time from the time the facility temporarily closes, to the Commissioner and shall conspicuously post such notice both within and outside each entrance to the facility.

2003, c. 344; 2010, c. 439; 2014, c. 459.

§ 59.1-298. Notice to buyer.

A copy of the executed health club contract shall be delivered to the buyer at the time the contract is executed. All health club contracts shall (i) be in writing, (ii) state the name and physical address of the health club, (iii) be signed by the buyer, (iv) designate the date on which the buyer actually signed the contract, (v) state the starting and expiration dates of the initial membership period, (vi) separately identify any initiation fee, (vii) either in the contract itself or in a separate notice provided to the buyer at the time the contract is executed, notify each buyer that the buyer should attempt to resolve with the health club any complaint the buyer has with the health club, and that the Virginia Department of Agriculture and Consumer Services regulates health clubs in the Commonwealth pursuant to the provisions of the Virginia Health Club Act, and (viii) contain the provisions set forth in § 59.1-297 under a conspicuous caption: "BUYER'S RIGHT TO CANCEL" that shall read substantially as follows:

If you wish to cancel this contract, you may cancel by making or delivering written notice to this health club. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be delivered or mailed to _____ (Health club shall insert its name and mailing address).

If canceled within three business days, you will be entitled to a refund of all moneys paid. You may also cancel this contract if this club goes out of business or relocates and fails to provide comparable alternate facilities within five driving miles of the facility designated in this contract. You may also cancel if you become physically unable to use a substantial portion of the health club services for 30 or more consecutive days, and your estate may cancel in the event of your death. You must prove you are unable to use a substantial portion of the health club services by a doctor's, physician assistant's, or nurse practitioner's certificate, and the health club may also require that you submit to a physical examination, within 30 days of the notice of cancellation, by a doctor, physician assistant, or nurse practitioner agreeable to you and the health club. If you cancel after the three business days, the health club may retain or collect a portion of the contract price equal to the proportionate value of the services or use of facilities you have already received. Any refund due to you shall be paid within 30 days of the effective date of cancellation.

1984, c. 738; 1990, cc. 392, 433; 2003, c. 344; 2004, c. 855; 2006, c. 396; 2010, c. 439; 2013, c. 24; 2014, c. 459.

§ 59.1-299. Duration of contract.

No health club contract shall have a duration for a period longer than thirty-six months, including any renewal period; however, a health club contract may exceed 36 months provided that:

1. Any initiation fee does not exceed 10 times the initial monthly fee;
2. All payments for health club services, other than the initiation fee, are collected as monthly fees on a monthly basis;
3. After an initial term of not more than 12 months, either party may cancel the health club contract upon not more than 30 days' notice; and
4. The monthly fee is never reduced below 80 percent of the monthly fee at the time the contract is initially executed.

1984, c. 738; 1990, cc. 392, 433; 1992, c. 117; 2014, c. 459.

§ 59.1-300. Provisions of this chapter not exclusive.

The provisions of this chapter are not exclusive and do not relieve the parties or the contracts subject thereto from compliance with all other applicable provisions of law.

1984, c. 738.

§ 59.1-301. Noncomplying contract voidable.

Any health club contract that does not comply with the applicable provisions of this chapter shall be voidable at the option of the buyer.

1984, c. 738; 2014, c. 459.

§ 59.1-302. Fraud rendering contract void.

Any health club contract entered into by the buyer upon any false or misleading information, representation, notice, or advertisement of the health club or the health club's agents shall be void and unenforceable.

1984, c. 738; 2014, c. 459.

§ 59.1-303. Waiver of provisions void and unenforceable.

Any waiver by the buyer of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

1984, c. 738.

§ 59.1-304. Notice of preservation of buyers' rights.

All health club contracts and any promissory note executed by the buyer in connection therewith shall contain the following provision on the face thereof in at least 10-point, boldface type:

NOTICE

ANY HOLDER OF THIS CONTRACT OR NOTE IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

1984, c. 738; 2014, c. 459.

§ 59.1-305. Prohibition against assignment of health club contract cutting off buyer's right of action or defense against seller; conditions.

Whether or not the health club has complied with the notice requirements of § 59.1-304, any right of action or defense arising out of a health club contract which the buyer has against the health club, and which would be cut off by assignment, shall not be cut off by assignment of the contract to any third party holder, whether or not the holder acquires the contract in good faith and for value.

1984, c. 738; 2003, c. 344; 2014, c. 459.

§ 59.1-306. Bond or letter of credit required; exception.

A. Every health club, before it enters into a health club contract and accepts any moneys in excess of the prorated monthly fee for the month when the contract is initially executed plus one month's fees or accepts any initiation fee in excess of \$125, shall file and maintain with the Commissioner, in form and substance satisfactory to him, a bond with corporate surety, from a company authorized to transact business in the Commonwealth or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation in the amounts indicated below:

Number of applicable contracts	Amount of bond or letter of credit
0 to 250	\$10,000
251 to 500	\$20,000
501 to 750	\$30,000
751 to 1000	\$40,000
1001 to 1250	\$50,000
1251 to 1500	\$60,000

1501 to 1750	\$70,000
1751 to 2000	\$80,000
2001 or more	\$100,000

For purposes of calculating the number of applicable unexpired health club contracts when determining the required amount of bond or letter of credit, health club contracts entered into on or after January 1, 2005, with a term that exceeds 13 months shall be counted as multiple health club contracts, such that the number of applicable contracts counted with respect thereto shall equal the total of the number of full years and any partial year in its term. However, this paragraph shall not apply (i) to health club contracts that are payable only on a monthly basis and for which the initiation fee is no more than \$250 or (ii) if the number of the health club's contracts in effect with a term that exceeds 13 months is less than 10 percent of the total of its health club contracts.

The number of applicable unexpired contracts shall be separately calculated for each facility.

A health club shall file a separate bond or letter of credit with respect to each separate facility, even though the separate facilities are owned or operated by the same health club.

However, no health club shall be required to file with the Commissioner bonds or letters of credit in excess of \$300,000. If the \$300,000 limit is applicable, then the bonds or letters of credit filed by the health club shall apply to all facilities owned or operated by the same health club.

B. A health club may sell health club contracts of up to 36 months' duration for a facility for which a health club has not filed a bond or letter of credit so long as the amount of payment actually charged, due or received under the health club contracts each month by the health club or any holder thereunder does not exceed the monthly fee calculated pursuant to the definition thereof in § 59.1-296, with the exception that the payment actually charged may include a maximum initiation fee of \$125 for health club contracts of 13 months or more in duration.

1984, c. 738; 1985, c. 585; 1990, cc. 392, 433; 1992, c. 117; 2004, c. 988; 2010, c. 439; 2014, c. 459.

§ 59.1-307. Bond or letter of credit; persons protected.

A. The bond or letter of credit required by § 59.1-306 shall be in favor of the Commonwealth for the benefit of (i) any buyer injured by having paid money for health club services in a facility that fails to open by the date provided by the contract, which date shall not be in excess of 12 months from the signing of the contract; (ii) any buyer injured by having paid money for health club services in a facility which goes out of business prior to the expiration of the buyer's health club contract; or (iii) any buyer injured as a result of a violation of this chapter.

B. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be cancelled or terminated except with the consent of the Commissioner.

1984, c. 738; 1987, c. 547; 2014, c. 459.

§ 59.1-308. Change in ownership of health club.

For purposes of this chapter, a health club shall be considered a new health club and subject to the requirements of a bond or letter of credit at the time the health club changes ownership. Any health club that has more than 50 percent ownership by the same person or persons shall be considered as owned by the same owner. A change in ownership shall not release, cancel, or terminate liability under any bond or letter of credit previously filed unless the Commissioner agrees in writing to such release, cancellation, or termination because the new owner has filed a new bond or letter of credit for the benefit of the previous owner's members or because the former owner has refunded all unearned payments to its members. Every change in ownership shall be reported in writing to the Commissioner at least 10 days prior to the effective date of the change in ownership.

1984, c. 738; 1985, c. 585; 1990, cc. 392, 433; 2014, c. 459.

§ 59.1-308.1. Production of records.

Every health club, upon the written request of the Commissioner, shall make available to the Commissioner its prepayment bank account records and all membership contracts for inspection and copying, to enable the Commissioner reasonably to determine compliance with this chapter. Every health club shall maintain a true copy of each health club contract executed between the health club and a buyer. Each contract shall be maintained for its term, including any renewal. Every health club shall maintain the executed health club contracts at a designated location where the contracts may be inspected by the Commissioner. If the location designated by the health club is outside Virginia, the health club shall pay the reasonable travel costs of an inspection by the Commissioner.

1985, c. 585; 1990, cc. 392, 433; 2014, c. 459.

§ 59.1-308.2. Investigations.

A. The Commissioner may:

1. Make necessary public or private investigations within or without this Commonwealth to determine any violations of the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter; and
2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation.

B. For the purpose of any investigation or proceeding under this chapter, the Commissioner may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

D. If any person fails to obey a subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

E. The Board may adopt reasonable regulations to implement the provisions of this chapter and such regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2.

1990, cc. 392, 433.

§ 59.1-309. Enforcement; penalties.

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) of this title.

1984, c. 738.

§ 59.1-310. Applicability.

Sections 59.1-297, 59.1-298, 59.1-299, 59.1-304, and 59.1-305 shall not apply to health club contracts entered into before September 15, 2004.

1984, c. 738; 2014, c. 459.

Code of Virginia
Title 59.1. Trade and Commerce
Chapter 24. Virginia Health Club Act

§ 59.1-295. Statement of purpose.

The purpose of this chapter is to safeguard the public interest against fraud, deceit, and financial hardship, and to foster and encourage competition, fair dealing and prosperity in the field of health club services by prohibiting false and misleading advertising, and dishonest, deceptive, and unscrupulous practices by which the public has been injured in connection with contracts for health club services.

1984, c. 738; 2014, c. 459.

