

BY: Commerce and Government Matters Committee

AMENDMENTS TO SENATE BILL NO. 314

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, at the top of the page, insert “EMERGENCY BILL”; strike line 2 in its entirety and substitute “Lobbyist Ethics - Registration and Reporting Requirements”; strike beginning with “altering” in line 9 down through “circumstances” in line 10 and substitute “exempting certain communications on behalf of a professional association, trade association, or certain federally tax exempt entities, by certain members of the association or entity from the criteria that require registration as a regulated lobbyist; exempting certain communications by students from the criteria that require registration; exempting certain communications made in the capacity of a certain officer, director, or employee of certain entities from the criteria that require registration; increasing the threshold amount of certain expenses above which an entity that makes certain communications must register as a regulated lobbyist; clarifying a provision that sets a threshold amount of compensation above which an entity that makes certain communications must register as a regulated lobbyist; exempting from certain lobbyist registration requirements a person who seeks to secure a business grant or loan for the purpose of locating, relocating, or expanding a business in or into the State; specifying that, under certain circumstances, an official or employee may not accept a gift from an individual who is exempt from registration as a regulated lobbyist”; strike beginning with “and” in line 12 down through “Law” in line 13 and substitute “altering the standard for a certain prohibited act of a regulated lobbyist; clarifying the threshold amount over which certain campaign contributions made by certain fiduciaries or subsidiaries of certain entities must be reported; clarifying the threshold amount over which a campaign contribution made by certain fiduciaries of certain entities at the suggestion or direction of the entity must be reported; requiring the State Board of Elections to adopt certain regulations to clarify campaign contribution reporting requirements for an officer of a nonprofit entity; making this Act an emergency measure; providing for the effective date of certain provisions of this Act; and generally relating to lobbyist ethics and disclosure of campaign contributions”; and strike in their entirety lines 14 through 23, inclusive, and substitute:

“BY repealing and reenacting, without amendments,

(Over)

Article 33 - Election Code
Section 14-102(b)
Annotated Code of Maryland
(1997 Replacement Volume and 2001 Supplement)

BY repealing and reenacting, with amendments,
Article 33 - Election Code
Section 14-103(b) and (c)
Annotated Code of Maryland
(1997 Replacement Volume and 2001 Supplement)

BY repealing and reenacting, with amendments,
Article - State Government
Section 15-505(b) and (c)(2)(i), 15-701, 15-703(f), 15-713, and 15-715
Annotated Code of Maryland
(1999 Replacement Volume and 2001 Supplement)

BY repealing and reenacting, without amendments,
Article - State Government
Section 15-703(a)
Annotated Code of Maryland
(1999 Replacement Volume and 2001 Supplement)

BY repealing and reenacting, with amendments,
Article - Election Law
Section 14-105
Annotated Code of Maryland
(As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of 2002)

Preamble

WHEREAS, To promote and retain confidence and trust in government, the General Assembly has adopted an extensive system of ethics laws to govern the activities of those individuals who are paid to attempt to influence the work of the Legislative Branch and Executive Branch; and

WHEREAS, It is of paramount importance that members of the general public who are not paid lobbyists continue to participate in the legislative process without administrative impediments;

and

WHEREAS, Although the current law governing lobbyist registration and reporting provides substantial and appropriate ethical requirements for paid lobbyists, some provisions of those laws have been misconstrued to apply to members of the general public and individuals who represent their own interests without the services of a paid lobbyist; and

WHEREAS, Because of the vital importance of citizen participation in the development of public policy in a democratic society, it is necessary to clarify that the State's extensive registration and disclosure laws for paid lobbyists do not apply to private citizens representing their own interest; now, therefore,”.

AMENDMENT NO. 2

On pages 2 through 4, strike in their entirety the lines beginning with line 3 on page 2 through line 2 on page 4, inclusive, and substitute:

“Article 33 - Election Code

14-102.

(b) Every person who has done business with the State, a county, municipal corporation, or other political subdivision of the State during a reporting period specified under subsection (a) of this section shall file the statement required by this title if during the reporting period he made or caused to be made a contribution to a candidate for an elective office of the State or for an elective office of a county or municipal corporation of the State in any primary or general election.

14-103.

(b) Each OFFICER, DIRECTOR, OR PARTNER WHO MAKES OR CAUSES TO BE MADE A CONTRIBUTION, AND EACH OFFICER, DIRECTOR, PARTNER, employee, agent, or other person who makes or causes to be made a [contribution] GIFT, DONATION, OR PAYMENT OF MONEY, REGARDLESS OF AMOUNT, at the suggestion or direction of a business entity shall report the contribution OR THE GIFT, DONATION, OR PAYMENT OF MONEY to the chief

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executive officer of the business entity so that it may be included in the statement filed by the business entity.

(c) For the purposes of this title, and except as provided in subsection (e) of this section, a contribution made by an officer, director, or partner of a business entity, and a [contribution] GIFT, DONATION, OR PAYMENT OF MONEY, REGARDLESS OF AMOUNT, made by an OFFICER, DIRECTOR, PARTNER, employee, agent, or other person at the suggestion or direction of a business entity, shall be attributed to the business entity and shall be included in the statement filed by the business entity as though made directly by it.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - State Government

15-505.

(b) Except as provided in subsection (c) of this section, an official or employee may not knowingly accept a gift, directly or indirectly, from an entity that the official or employee knows or has reason to know:

(1) does or seeks to do any business of any kind, regardless of amount, with the official's or employee's governmental unit;

(2) engages in an activity that is regulated or controlled by the official's or employee's governmental unit;

(3) has a financial interest that may be affected substantially and materially, in a manner distinguishable from the public generally, by the performance or nonperformance of the official's or employee's official duties; or

(4) (I) is a regulated lobbyist with respect to matters within the jurisdiction of the official or employee; OR

(II) IS EXEMPT FROM REGISTRATION AS A REGULATED LOBBYIST UNDER § 15-701(B)(2)(VI) OR (4) OF THIS TITLE, AND IS SEEKING TO INFLUENCE LEGISLATIVE ACTION OR EXECUTIVE ACTION WITH RESPECT TO MATTERS WITHIN THE JURISDICTION OF THE OFFICIAL OR EMPLOYEE.

(c) (2) Subject to paragraph (1) of this subsection, subsection (b) of this section does not apply to:

(i) 1. except for officials of the Legislative Branch, meals or beverages received and consumed by the official or employee in the presence of the donor or sponsoring entity;

2. for officials of the Legislative Branch, food or beverages received FROM A DONOR OR SPONSORING ENTITY, OTHER THAN AN INDIVIDUAL WHO IS EXEMPT FROM REGISTRATION AS A REGULATED LOBBYIST UNDER § 15-701(B)(2)(VI) OR (4) OF THIS TITLE, and consumed by the official in the presence of the donor or sponsoring entity as part of a meal or reception, to which were invited all members of a legislative unit;

3. for a member of the General Assembly, food or beverages received from a donor or sponsoring entity, other than an individual regulated lobbyist described in § 15-701(a)(1) of this title OR AN INDIVIDUAL WHO IS EXEMPT FROM REGISTRATION AS A REGULATED LOBBYIST UNDER § 15-701(B)(2)(VI) OR (4) OF THIS TITLE, during a period when the General Assembly is not in session, at a location that is within a county that contains the member's district, provided that the donor or sponsoring entity is located within a county that contains the member's district; or

4. for a member of the General Assembly, food or beverages received at the time and geographic location of a meeting of a legislative organization for which the member's presiding officer has approved the member's attendance at State expense;

15-701.

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(a) Unless exempted under subsection (b) of this section, an entity shall register with the Ethics Commission as provided in this subtitle, and shall be a "regulated lobbyist" for the purposes of this title, if, during a reporting period, the entity:

(1) for the purpose of influencing any legislative action or, as to the development or adoption of regulations or the development or issuance of an executive order, executive action:

(i) 1. communicates with an official or employee of the Legislative Branch or Executive Branch in the presence of that official or employee; and

2. exclusive of the personal travel or subsistence expenses of the entity or a representative of the entity, incurs expenses of at least [\$100] \$500 or earns at least \$500 as compensation FOR SUCH COMMUNICATION AND ACTIVITIES RELATING TO THE COMMUNICATION; or

(ii) 1. communicates with an official or employee of the Legislative Branch or Executive Branch; and

2. earns at least \$5,000 as compensation FOR SUCH COMMUNICATION AND ACTIVITIES RELATING TO THE COMMUNICATION;

(2) in connection with or for the purpose of influencing any executive action, spends a cumulative value of at least \$100 for gifts, including meals, beverages, and special events, to one or more officials or employees of the Executive Branch;

(3) subject to subsection [(b)(3)] (B)(5) of this section, is compensated to influence executive action on a procurement contract that exceeds \$100,000;

(4) subject to subsection [(b)(4)] (B)(6) of this section, is compensated by a business entity to influence executive action to secure from the State a business grant or loan with a value of more than \$100,000 for the business entity;

(5) spends at least \$2,000, including expenditures for salaries, contractual employees, postage, telecommunications services, electronic services, advertising, printing, and

delivery services for the express purpose of soliciting others to communicate with an official to influence legislative action or executive action; or

(6) spends at least \$500 to provide compensation to one or more entities required to register under this subsection.

(b) (1) The following activities are exempt from regulation under this subtitle:

(i) appearances as part of the official duties of an elected or appointed official or employee of the State, a political subdivision of the State, or the United States, to the extent that the appearance is not on behalf of any other entity;

(ii) actions of a member of the news media, to the extent the actions are in the ordinary course of gathering and disseminating news or making editorial comment to the general public;

(iii) representation of a bona fide religious organization to the extent the representation is for the purpose of protecting the right of its members to practice the doctrine of the organization;

(iv) appearances as part of the official duties of an officer, director, member, or employee of an association engaged exclusively in representing counties or municipal corporations, to the extent that the appearance is not on behalf of any other entity; or

(v) actions as part of the official duties of a trustee, an administrator, or a faculty member of a nonprofit independent college or university in the State, provided the official duties of the individual do not consist primarily of attempting to influence legislative action or executive action.

(2) The following activities are exempt from regulation under this subtitle if the individual engages in no other acts during the reporting period that require registration:

(i) professional services in drafting bills or in advising clients on the construction or effect of proposed or pending legislation;

(Over)

(ii) appearances before the entire General Assembly, or any committee or subcommittee of the General Assembly, at the specific request of the body involved;

(iii) appearances before a legislative committee at the specific request of a regulated lobbyist, if the witness notifies the committee that the witness is testifying at the request of the regulated lobbyist;

(iv) appearances before an executive unit at the specific request of the executive unit involved; [or]

(v) appearances before an executive unit at the specific request of a regulated lobbyist, if the witness notifies the executive unit that the witness is testifying at the request of the regulated lobbyist; OR

(VI) WITH RESPECT TO THE COMPENSATION THRESHOLDS SPECIFIED IN SUBSECTION (A)(1) OF THIS SECTION, COMMUNICATION ON BEHALF OF A PROFESSIONAL ASSOCIATION, A TRADE ASSOCIATION, OR A CHARITABLE OR EDUCATIONAL ENTITY THAT IS FEDERALLY TAX EXEMPT UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE, BY A MEMBER OF THE ASSOCIATION OR ENTITY, UNLESS COMMUNICATION TO INFLUENCE LEGISLATIVE ACTION OR EXECUTIVE ACTION, AND THE PREPARATION AND PLANNING FOR SUCH COMMUNICATION, CONSTITUTES AT LEAST 20% OF THE MEMBER'S EMPLOYMENT ACTIVITIES DURING THE CURRENT OR PREVIOUS REPORTING PERIODS.

(3) AN ELEMENTARY, SECONDARY, OR POSTSECONDARY SCHOOL STUDENT OR STUDENT ORGANIZATION THAT COMMUNICATES AS PART OF A COURSE OR STUDENT ACTIVITY IS NOT SUBJECT TO THE REGISTRATION REQUIREMENTS BASED ON THE EXPENSE THRESHOLD UNDER SUBSECTION (A)(1)(I) OF THIS SECTION.

(4) AN INDIVIDUAL IS NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THIS SECTION BASED ON THE COMPENSATION THRESHOLDS SPECIFIED UNDER SUBSECTION (A)(1) OF THIS SECTION IF THE INDIVIDUAL'S

COMMUNICATIONS TO INFLUENCE LEGISLATIVE ACTION OR EXECUTIVE ACTION,
AND THE PREPARATION AND PLANNING FOR SUCH COMMUNICATIONS:

(I) ARE IN THE INDIVIDUAL'S CAPACITY AS AN OFFICER,
DIRECTOR, OR EMPLOYEE OF THE ENTITY PAYING THE COMPENSATION; AND

(II) DO NOT CONSTITUTE 20% OR MORE OF THE INDIVIDUAL'S
EMPLOYMENT ACTIVITIES AS AN OFFICER, DIRECTOR, OR EMPLOYEE OF THE
ENTITY DURING THE CURRENT OR PREVIOUS REPORTING PERIODS.

(5) Subsection (a)(3) of this section does not apply to a bona fide salesperson or
commercial selling agency employed or maintained by an employer for the purpose of soliciting or
securing a procurement contract unless the person engages in acts during the reporting period that
require registration under subsection (a)(1) or (2) of this section.

[~~(4)~~ (6) [Subsection] IF THE PERSON ENGAGES IN NO OTHER ACTS
DURING THE REPORTING PERIOD THAT REQUIRE REGISTRATION, SUBSECTION (a)(4)
of this section does not apply to:

(I) a bona fide full-time official or employee of a business entity seeking
to secure a business grant or loan; OR

(II) A PERSON WHO SEEKS TO SECURE A BUSINESS GRANT OR
LOAN FOR THE PURPOSE OF LOCATING, RELOCATING, OR EXPANDING A BUSINESS
IN OR INTO THE STATE.

(c) (1) Except for providing the authorization required by § 15-702 of this subtitle
and the report required by § 15-704(d) of this subtitle, an entity that compensates one or more
regulated lobbyists, and that reasonably believes that all expenditures requiring registration will be
reported by the regulated lobbyist or lobbyists, is exempt from the registration and reporting
requirements of this subtitle if the entity engages in no other act that requires registration.

(2) If a regulated lobbyist compensated by an entity that is exempt under
paragraph (1) of this subsection fails to report the information required by this subtitle, the entity

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immediately shall become subject to the registration and reporting requirements of this subtitle.

15-703.

(a) (1) At the times specified in subsection (d) of this section, each regulated lobbyist shall register with the Ethics Commission on a form provided by the Ethics Commission.

(2) A regulated lobbyist shall register separately for each entity that has engaged the regulated lobbyist for lobbying purposes.

(f) (1) Except as provided in paragraph (2) of this subsection, each registration shall terminate on the earlier of:

(i) the October 31 following the filing of the registration; or

(ii) an earlier termination date specified in an authorization filed with respect to that registration under § 15-702 of this subtitle.

(2) A regulated lobbyist may terminate the registration before the date specified in paragraph (1) of this subsection by:

(i) ceasing all activity that requires registration; and

(ii) after ceasing activity in accordance with item (i) of this paragraph:

1. filing a notice of termination with the Ethics Commission;

and

2. filing all reports required by this subtitle within 30 days after the filing of the notice of termination.”.

AMENDMENT NO. 3

On page 4, in line 12, strike “OF” and substitute “OR”; in line 22, after “PARAGRAPH”

insert a comma; and strike in their entirety lines 24 and 25, and substitute:

“15-713.

A regulated lobbyist may not:

(1) be engaged for lobbying purposes for compensation that is dependent in any manner on:

(i) the enactment or defeat of legislation;

(ii) the outcome of any executive action relating to the solicitation or securing of a procurement contract; or

(iii) any other contingency related to executive action or legislative action;

(2) initiate or encourage the introduction of legislation for the purpose of opposing the legislation;

(3) KNOWINGLY counsel any person to violate any provisions of this title or any other State or federal law;

(4) engage in or counsel any person to engage in fraudulent conduct;

(5) while engaging in lobbying activities, knowingly make to an official or employee a statement of material fact relating to lobbying activity that the regulated lobbyist knows to be false;

(6) engage in lobbying without being properly registered as a regulated lobbyist in accordance with § 15-701 of this subtitle;

(7) request an official or employee to recommend to a potential client the lobbying services of the regulated lobbyist or any other regulated lobbyist;

(Over)

(8) make a gift, directly or indirectly, to an official or employee if the regulated lobbyist knows or has reason to know the gift is in violation of Subtitle 5 of this title;

(9) make a gift directly or indirectly as a result of a solicitation or facilitation, which the regulated lobbyist knows or has reason to know is prohibited under § 15-505(a)(2) of this title;

(10) if the regulated lobbyist is an individual, engage in any charitable fund-raising activity at the request of an official or employee, including soliciting, transmitting the solicitation of, or transmitting a charitable contribution;

(11) unless in the ordinary course of business of the regulated lobbyist, make or facilitate the making of any loan of money, goods, or services to an official or employee;

(12) while engaging in lobbying activities on behalf of an entity, knowingly conceal from an official or employee, the identity of the entity;

(13) commit a criminal offense arising from lobbying activity; or

(14) if serving on the State or a local central committee of a political party, participate:

(i) as an officer of the central committee;

(ii) in fund-raising activity on behalf of the political party; or

(iii) in actions relating to filling a vacancy in a public office.

15-715.

(a) (1) In this section the following words have the meanings indicated.

(2) "Applicable contribution" means a contribution or series of contributions made to or for the benefit of an applicable recipient in a cumulative amount of more than \$500. A

contribution made to a political committee for an applicable recipient is deemed a contribution to the applicable recipient.

(3) "Applicable recipient" means a candidate for, or an official holding, any of the following offices:

- (i) Governor;
- (ii) Lieutenant Governor;
- (iii) Attorney General;
- (iv) Comptroller; or
- (v) member of the General Assembly.

(b) Subject to subsection (h) of this section, a person shall file a statement in accordance with this section if at any time during the reporting period the person:

(1) spent at least \$500 to provide compensation to one or more regulated lobbyists; and

(2) made or caused to be made an applicable contribution.

(c) A statement required by this section shall be filed with the State Board of Elections.

(d) (1) The reporting period is the 6-month period ending on either January 31 or July 31.

(2) The statement shall be filed within 5 days after the end of the reporting period.

(e) The statement required by this section shall be made under oath and shall contain:

(1) the name of each applicable recipient to whom an applicable contribution was made or caused to be made during the reporting period and, if not previously reported, during the preceding reporting period;

(2) the office held or sought by each applicable recipient named in item (1) of this paragraph;

(3) the aggregate contributions made to each applicable recipient;

(4) the name of each regulated lobbyist employed or retained by the person filing the statement; and

(5) if a contribution was made by another person but is attributed to the person filing the statement, the name of the person who made the contribution and the relationship of that person to the person filing the statement.

(f) If the person filing the statement is a business entity:

(1) (I) [a] AN APPLICABLE contribution[, regardless of amount,] made by an officer, director, or partner of the business entity [or, if made at the suggestion or direction of the business entity, by an employee, agent, or other person,] shall be attributed to the business entity; OR

(II) A CONTRIBUTION, REGARDLESS OF AMOUNT, IF MADE AT THE SUGGESTION OR DIRECTION OF THE BUSINESS ENTITY, BY AN OFFICER, DIRECTOR, PARTNER, EMPLOYEE, AGENT, OR OTHER PERSON, SHALL BE ATTRIBUTED TO THE BUSINESS ENTITY.

(2) each officer, director, or partner of the business entity who makes or causes to be made [a] AN APPLICABLE contribution[, regardless of amount,] shall report the contribution to the chief executive officer of the business entity;

(3) each OFFICER, DIRECTOR, PARTNER, employee, agent, or other person who makes or causes to be made a contribution, regardless of amount, at the suggestion or direction of the business entity shall report the contribution to the chief executive officer of the business entity;

(4) APPLICABLE contributions made by, or caused to be made by, a subsidiary, 30% or more of the equity of which the business entity owns or controls, shall be attributed to the business entity; and

(5) if a subsidiary described in item (4) of this subsection made an expenditure to provide compensation to one or more regulated lobbyists, the expenditure shall be attributed to the business entity.

(g) (1) Notwithstanding the requirements of subsection (f) of this section, a contribution made by an individual who serves as a trustee or member of the board of directors or as an officer of a not for profit organization is not attributable to the organization and the individual is not required to report the contribution to the chief executive officer of the organization, unless:

[(1)] (I) the contribution is made on the recommendation of the not for profit organization; or

[(2)] (II) the individual who made the contribution is paid by the not for profit organization.

(2) THE STATE BOARD OF ELECTIONS SHALL ADOPT REGULATIONS THAT DEFINE "OFFICER" FOR THE PURPOSES OF THIS SUBSECTION.

(h) A person who files, under the provisions of Article 33, Title 14 of the Code, all information required by this section may satisfy the requirements of this section by submitting a notice to that effect on the appropriate prescribed form.

(i) The State Board of Elections shall:

(1) prescribe and make available forms for the statement and notice required by this section;

(2) retain each statement filed under this section in the same manner, and subject

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to the same standards of public access, as a statement filed under the provisions of Article 33, Title 14 of the Code; and

(3) report any violation of this section to the Ethics Commission.

(j) The statement required under this section shall be filed in the manner prescribed for statements filed under Article 33, Title 14 of the Code.

(k) (1) A person who knowingly and willfully fails to comply with the requirements of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

(2) If a person in violation of this section is a business entity, each officer and partner of a business entity who knowingly authorized or participated in the violation of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Election Law

14-105.

(a) Except as provided in subsection [(e)] (F) of this section, [a] AN APPLICABLE contribution made by an officer, director, or partner of a business entity DOING PUBLIC BUSINESS [or, if made at the suggestion or direction of a business entity, by an employee, agent, or other person,] shall be attributed to the business entity.

(b) Except as provided in subsection [(e)] (F) of this section, each officer, director, or partner of a business entity DOING PUBLIC BUSINESS who makes or causes to be made [a] AN APPLICABLE contribution shall report the APPLICABLE contribution to the chief executive officer of the business entity.

(c) A CONTRIBUTION BY AN OFFICER, DIRECTOR, PARTNER, EMPLOYEE, AGENT, OR OTHER PERSON MADE AT THE SUGGESTION OR DIRECTION OF A BUSINESS ENTITY DOING PUBLIC BUSINESS SHALL BE ATTRIBUTED TO THE BUSINESS ENTITY.

(D) Each OFFICER, DIRECTOR, PARTNER, employee, agent, or other person who, at the suggestion or direction of a business entity DOING PUBLIC BUSINESS, makes a contribution or causes a contribution to be made, shall report the contribution to the chief executive officer of the business entity.

[(d)] (E) (1) Business done with a governmental entity by a subsidiary of a business entity shall be attributed to the business entity if 30% or more of the equity of the subsidiary is owned or controlled by the business entity.

(2) Contributions made by, caused to be made by, or attributed to a subsidiary described in paragraph (1) of this subsection shall be attributed to the business entity.

[(e)] (F) (1) Subject to paragraph (2) of this subsection, a contribution made by an individual who serves as a trustee or member of the board of directors of a not-for-profit organization DOING PUBLIC BUSINESS is not attributable to the organization, and the individual is not required to report the contribution to the chief executive officer of the organization.

(2) This subsection does not apply if:

(i) the contribution is made on the recommendation of the not-for-profit organization; or

(ii) the individual described in paragraph (1) of this subsection is paid by the not-for-profit organization.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect on the taking effect of Chapter ____ (S.B. 1) of the Acts of the General Assembly of 2002. If Section 3 of this Act takes effect, Section 1 of this Act shall be abrogated and of no further force and effect.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and, except as provided in Section 4 of this Act, shall take effect from the date it is enacted.”.