



Summary: As of March 23, 2020, Governor Northam issued Executive Order 53 ("EO-53") that seeks to enforce "social distancing" by

- outlawing gatherings of 10 people or more,
- closing certain businesses, and
- setting a 10-patron limit on many, but not all, retail stores.

Violation of EO-53 allows the police to **arrest and charge** citizens with a Class I Misdemeanor.

In outlawing gatherings of 10 people or more, the order is not limited to businesses or public spaces; it applies to any assembly or meeting of persons, including those in private homes and facilities.

Nonetheless, as will be noted below, some "gatherings" of people in a building appear to remain potentially lawful. For example, some retail establishments such as grocery stores may operate with more than 10 patrons present. In addition, employment settings are not considered gatherings. Other exceptions will be noted below.

This order will be in effect on Wednesday, **March 25, 2020**, and continue until Thursday, **April 23, 2020**.

Offense Citation:

Violation of "Va. Code 44-146.17 (EO-53)"

New Crimes

The following acts constitute a **Class 1 misdemeanor**:

1. **All public or private in-person gatherings** of 10 or more individuals (includes religious services).
2. Failure to close **dining or congregation areas** in restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, tasting rooms, and farmers markets.
3. Failure to close all public access to **recreational and entertainment businesses**.
4. Failure of any non-essential "brick and mortar" **retail business** (defined below) to limit all in-person shopping to no more than 10 patrons per establishment.
5. Failure of any non-essential "brick and mortar" **retail business** to close if it cannot adhere to the 10-patron limit with proper social distancing requirements.

Message to Virginia police officers: Charging/Arresting

1. Re: **UNLAWFUL GATHERINGS**

You can arrest and charge a person with a **Class I misdemeanor** if s/he is in a meeting or assembly of 10 or more people in either a private area or a public place until April 23, 2020, which includes, but is not limited to:

- Church services
- Funeral gatherings
- Home parties
- Non-essential retail stores with *more than* 10 people in the store. (See below for explanation of the different number)

Exceptions (see below for details):

- Grocery stores
- Certain employment settings

2. Re: **BUSINESS CLOSURES**

You can arrest and charge a business owner (which includes a corporation) with a **Class I misdemeanor** who keeps a certain type of business (see below) open for business with the public.

[Note: You can get a more specific definition of any term used in this brief by looking up the code references listed next to it.]

To charge a "business," law enforcement may charge the business directly, rather than an individual employee. The procedure for doing so is set forth in Va. Code §19.2-76:

"If the accused is a corporation, partnership, unincorporated association or legal entity other than an individual, a summons may be executed by service on the entity in the same manner as provided in Title 8.01 for service of process on that entity in a civil proceeding. However, if the summons is served on the entity by delivery to a registered agent or to any other agent who is not an officer, director, managing agent or employee of the entity, such agent shall not be personally subject to penalty for failure to appear as provided in § 19.2-128, nor shall the agent be subject to punishment for contempt for failure to appear under his summons as provided in § 19.2-129."

Businesses that **must be closed** until April 23 include:

(a) **Eating/Drinking establishments**

- **Restaurants** (for definition look up Va. Code § 35.1-1)
- **Dining establishments** (not defined in code)
- **Food courts** (not defined in code)
- **Breweries** (see Va. Code § 4.1-500) and **microbreweries**
- **Distilleries** (not specifically defined but see Va. Code § 4.1-206)
- **Wineries** (see Va. Code § 4.1-100)
- **Tasting rooms** (not defined in code)
- **Farmers markets** (See Virginia Administrative Code: 24 VAC 30-551-10)

Note: These businesses may continue to offer delivery and take-out services.

(b) **Recreational and Entertainment Centers**

- **Theaters** (see Va. Code §15.2-2820)
- **Performing arts centers** and **concert venues**
- **Museums** (see Va. Code § 55.1-2600)
- **Other indoor entertainment centers**
- **Fitness centers** and **gymnasiums**
- **Recreation centers**
- **Indoor sports facilities**, and **indoor exercise facilities**
- **Beauty salons** and **barbershops** (see Va. Code § 54.1-700)

- **Spas** (see Va. Code § 4.1-100 for “day spa” and Va. Code § 54.1-700 for “esthetics spa;” 13 VAC 5-63-200)
- **Massage parlors** (see Va. Code § 58.1-3706(A)(4) and Va. Code § 54.1-3000)
- **Tanning salons** (see Va. Code § 59.1-310.1 for “tanning facility”)
- **Tattoo shops** (See Va. Code § 54.1-700)
- 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 (see Va. Code § 54.1-700 which would include nail care, waxing, cosmetics, and the like [To qualify under this “catchall” provision, the personal care or personal grooming service must require two people to be within six feet of one another])
- **Racetracks** (see Va. Code § 59.1-365) and **historic horse racing facilities**
- **Bowling alleys**
- **Skating rinks**
- **Arcades**
- **Amusement parks**
- **Trampoline parks**
- **Fairs**
- **Arts and craft facilities**
- **Aquariums and zoos**
- **Escape rooms**
- **Indoor shooting ranges**
- **Public and private social clubs** (see Va. Code § 15.2-2820) and
- All other places of **indoor public amusement**



Note: However, EO-53 does not appear to prevent an individual from providing a service for profit in a private home. The FAQ issued along with EO-53 explicitly states that a person may “provide personal services (tanning services, make-up, haircuts and styling, etc.)” to “clients in their home,” even when the “business” is otherwise closed.

3. **Re: RETAIL ESTABLISHMENTS (10-Person Limit)**

You can arrest and charge a retail business owner (which includes a corporation) with a **Class 1 misdemeanor** who does not limit in-person shopping to 10 patrons or less, or close his or her retail business when there are more than 10 patrons inside that are not following social distancing requirements.

Exceptions: Essential retail businesses during normal business hours. EO-53 specifically excludes the following from the 10-person and social-distancing limits (because they are considered “essential retail businesses”):

- **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**
- **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**

Additional Exceptions to EO-53

Professional Service Business Operations

EO-53 specifically states that “business operations offering professional rather than retail services may remain open.” (See Va. Code § 2.2-4301)

This includes the personal services rendered by:

- medical doctors
- dentists
- architects
- professional engineers
- certified public accountants
- attorneys-at-law and/or
- veterinarians

See Va. Code §§ 58.1-439.18; 13.1-543 and 13.1-1102.

“Employment Settings”:

EO-53 specifically states that “For the purposes of this order, employment settings are not considered gatherings.”

Activities within a “Catchall” Exception involving:

- The provision of health care or medical services
- access to essential services for low-income residents, such as food banks
- The operations of the media
- The operations of law enforcement agencies and/or
- The operation of government

Who Enforces this Order? Does local law enforcement have the authority to enforce this order?

The power and authority to enforce this order would be the general power of law enforcement to enforce violations of the criminal law. For a sheriff, that authority would be Va. Code § 15.2-1609, which provides, *inter alia*, that a sheriff “shall enforce the law or see that it is enforced in the locality from which he is elected.” For a police department, that authority would be Va. Code § 15.2-1704(A), which provides “the police force of a locality is hereby invested with all the power and authority which formerly belonged to the office of constable at common law and is responsible for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances.”

Therefore, a sheriff or police officer would be authorized to enforce a violation of paragraphs 1, 3, 4, and 6 of EO-53, because such a violation would be a Class 1 misdemeanor. The officer should issue a summons pursuant to Va. Code § 19.2-74(A)(1), unless the person fails or refuses to discontinue the unlawful act, or the person is believed by the arresting officer to be likely to disregard the summons, or the person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, Va. Code § 19.2-74(A)(1), or that person refuses to give such written promise to appear under the provisions of that section. Va. Code § 19.2-74(A)(3).

In order to cite this order, prosecutors and officers should ask the Court to take judicial notice of the Governor’s Executive Order 53 (EO-53).

[This document is provided for Law Enforcement by the Virginia Commonwealth’s Attorneys’ Services Council pursuant to Va. Code § 2.2-3705.7\(29\): for the training of state prosecutors and law-enforcement personnel](#)

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