

SECOND REGULAR SESSION

# SENATE BILL NO. 1000

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR DOUGHERTY.

Read 1st time January 22, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4128S.011

## AN ACT

To repeal sections 44.010, 44.100, 105.711, 192.320, 473.697 and 490.620, and to enact in lieu thereof ten new sections relating to state emergency health powers, with an emergency clause and penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 44.010, 44.100, 105.711, 192.320, 473.697 and 490.620, are repealed and ten new sections enacted in lieu thereof, to be known as sections 44.010, 44.100, 44.240, 105.711, 192.021, 192.320, 195.041, 473.697, 490.620 and 630.807, to read as follows:

44.010. As used in sections 44.010 to 44.130, the following terms mean:

(1) "Agency", the state emergency management agency;

(2) **"Bioterrorism", the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism in order to influence the conduct of government or to intimidate or coerce a civilian population;**

(3) "Director", the director of the state emergency management agency;

[(3)] (4) "Disasters", disasters which may result from terrorism, **including bioterrorism**, or from fire, wind, flood, earthquake, or other natural or man-made causes;

[(4)] (5) "Economic or geographic area", an area or areas within the state, or partly in this state and adjacent states, comprising political subdivisions grouped together for purposes of

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

administration, organization, control or disaster recovery and rehabilitation in time of emergency;

[(5)] (6) "Emergency", any state of emergency declared by proclamation by the governor, or by resolution of the legislature pursuant to sections 44.010 to 44.130 upon the actual occurrence **or imminent threat** of a natural or man-made disaster of major proportions within this state when the safety and welfare of the inhabitants of this state are jeopardized;

[(6)] (7) "Emergency management", government at all levels performing emergency functions, other than functions for which military forces are primarily responsible;

[(7)] (8) "Emergency management functions", "emergency management activities" and "emergency management service", those functions required to prepare for and carry out actions to prevent, minimize and repair injury and damage due to disasters, to include emergency management of resources and administration of such economic controls as may be needed to provide for the welfare of the people, either on order of or at the request of the federal government, or in the event the federal government is incapable of administering such control;

[(8)] (9) "Emergency resources planning and management", planning for, management and coordination of national, state and local resources;

[(9)] (10) "Executive officer of any political subdivision", the county commission or county supervisor or the mayor or other manager of the executive affairs of any city, town, village or fire protection district;

[(10)] (11) "Local organization for emergency management", any organization established under this law by any county or by any city, town, or village to perform local emergency management functions;

[(11)] (12) "Management", the activities of the emergency management director in the implementation of emergency operations plans during time of emergency;

[(12)] (13) "Planning", activities of the state and local emergency management agency in the formulation of emergency management plans to be used in time of emergency;

[(13)] (14) "Political subdivision", any county or city, town or village, or any fire district created by law.

44.100. 1. The emergency powers of the governor shall be as follows:

(1) The provisions of this section shall be operative only during the existence of a state of emergency [(referred to in this section as "emergency")]. The existence of an emergency may be proclaimed by the governor or by resolution of the legislature, if the governor in his proclamation, or the legislature in its resolution, finds that a natural or man-made disaster of major proportions has actually occurred **or there exists an imminent threat thereof** within this state, and that the safety and welfare of the inhabitants of this state require an invocation of the provisions of this section.

(2) Any emergency, whether proclaimed by the governor or by the legislature, shall terminate upon the proclamation thereof by the governor, or the passage by the legislature, of

a resolution terminating such emergency.

(3) During the period that the state of emergency exists or continues, the governor shall:

(a) Enforce and put into operation all plans, rules and regulations relating to disasters and emergency management of resources adopted under this law and to assume direct operational control of all emergency forces and volunteers in the state;

(b) Take action and give directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this law and with the orders, rules and regulations made pursuant thereof;

(c) Seize, take or requisition to the extent necessary to bring about the most effective protection of the public:

a. Any means of transportation, other than railroads and railroad equipment and fuel, and all fuel necessary for the propulsion thereof;

b. Any communication system or part thereof necessary to the prompt and efficient functioning of the emergency management of the state;

c. All stocks of fuel;

d. Facilities for housing, feeding and hospitalization of persons, including buildings and plants;

(d) Control, restrict and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods or services;

(e) Prescribe and direct activities in connection with but not limited to use, conservation, salvage and prevention of waste of materials, services and facilities, including production, transportation, power and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection and other essential civil needs;

(f) To use or distribute all or any of this property among the inhabitants of the state in any area adversely affected by a natural or man-made disaster and to account to the state treasurer for any funds received thereof;

(g) To waive or suspend the operation of any statutory requirement or administrative rule regarding the licensing, certification or issuance of permits evidencing professional, mechanical or other skills;

(h) In accordance with rules or regulations, to provide that all law enforcement authorities and other emergency response workers and agencies of other states who may be within this state at the request of the governor or pursuant to state or local mutual-aid agreements or compacts shall have the same authority and possess the same powers, duties, rights, privileges and immunities as are possessed by like law enforcement authorities and

emergency response workers and agencies of this state;

(i) To perform and exercise such other functions, powers and duties as may be necessary to promote and secure the safety and protection of the civilian population.

2. When any property is seized, taken or requisitioned under this section, the circuit court of the county in which the property was taken may on the application of the owner thereof or on the application of the governor in cases where numerous claims may be filed, appoint three disinterested commissioners in the manner provided by section 523.040, RSMo, to assess the damages which the owners may have sustained by reason of the appropriation thereof. Upon the application the amount due because of the seizure of property shall be determined in the manner provided in chapter 523, RSMo, for the determination of damages in case of the exercise of the power of eminent domain.

**44.240. 1. Neither the state, its political subdivisions, the governor, the public health authority, or any other state official, nor any officer or employee thereof, except in cases of gross negligence or willful misconduct, shall be liable for the death of or any injury to persons, or damage to property, as a result of responding to a declared emergency.**

**2. During a state of emergency, any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons, together with that person's successors in interest, if any, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises under such license, privilege, or other permission, or for negligently causing loss of, or damage to, the property of such person.**

**3. During a state of emergency, any private person, firm or corporation and employees and agents of such person, firm or corporation in the performance of a contract with, and under the direction of, the state or its political subdivisions assisting in the emergency response shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.**

**4. During a state of emergency, any private person, firm or corporation and employees and agents of such person, firm or corporation, who renders assistance or advice at the request of the state or its political subdivisions shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.**

**5. The immunities provided in this section shall not apply to any private person, firm, or corporation or employees and agents of such person, firm, or**

**corporation whose act or omission caused in whole or in part the emergency and who would otherwise be liable therefor.**

105.711. 1. There is hereby created a "State Legal Expense Fund" which shall consist of moneys appropriated to the fund by the general assembly and moneys otherwise credited to such fund pursuant to section 105.716.

2. Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against:

(1) The state of Missouri, or any agency of the state, pursuant to section 536.050 or 536.087, RSMo, or section 537.600, RSMo;

(2) Any officer or employee of the state of Missouri or any agency of the state, including, without limitation, elected officials, appointees, members of state boards or commissions; **volunteers who respond to emergencies at the request of state and local agencies;** and members of the Missouri national guard upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state, provided that moneys in this fund shall not be available for payment of claims made under chapter 287, RSMo; or

(3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse or other health care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335, 336, 337 or 338, RSMo, who is employed by the state of Missouri or any agency of the state, under formal contract to conduct disability reviews on behalf of the department of elementary and secondary education or provide services to patients or inmates of state correctional facilities on a part-time basis;

(b) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, and his professional corporation organized pursuant to chapter 356, RSMo, who is employed by or under contract with a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, or a city health department operating under a city charter, or a combined city-county health department to provide services to patients for medical care caused by pregnancy, delivery and child care, if such medical services are provided by the physician pursuant to the contract without compensation or the physician is paid from no other source than a governmental agency except for patient co-payments required by federal or state law or local ordinance;

(c) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, who is employed by or under contract with a federally funded community health center organized under Section 315, 329, 330 or 340 of the Public Health Services Act (42 U.S.C. 216, 254c) to provide services to patients for medical care caused by pregnancy, delivery and child care, if such medical services are provided by the physician pursuant to the contract

or employment agreement without compensation or the physician is paid from no other source than a governmental agency or such a federally funded community health center except for patient co-payments required by federal or state law or local ordinance. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of one million dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause against any such physician, and shall not exceed one million dollars for any one claimant;

(d) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered pursuant to chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides medical, dental or nursing treatment within the scope of his license or registration at a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, a city health department operating under a city charter, or a combined city-county health department, or a nonprofit community health center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such treatment is restricted to primary care and preventive health services, provided that such treatment shall not include the performance of an abortion, and if such medical, dental or nursing services are provided by the physician, dentist, physician assistant, dental hygienist or nurse without compensation. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars; or

(e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered to practice medicine, nursing or dentistry or to act as a physician assistant or dental hygienist in Missouri under the provisions of chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides medical, nursing or dental treatment within the scope of his license or registration to students of a school whether a public, private or parochial elementary or secondary school, if such physician's treatment is restricted to primary care and preventive health services and if such medical, dental or nursing services are provided by the physician, dentist, physician assistant, dental hygienist, or nurse without compensation. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars; or

(4) Staff employed by the juvenile division of any judicial circuit.

3. The department of health and senior services shall promulgate rules regarding contract procedures and the documentation of care provided under paragraphs (b), (c), (d), and (e) of subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to the provisions of section 105.721, provided in subsection 5 of this section, shall not apply to any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721, to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance obtained and maintained in force by any physician, dentist, physician assistant, dental hygienist, or nurse for coverage concerning his or her private practice and assets shall not be considered available under subsection 5 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. However, a physician, nurse, dentist, physician assistant, or dental hygienist may purchase liability or malpractice insurance for coverage of liability claims or judgments based upon care rendered under paragraphs (c), (d), and (e) of subdivision (3) of subsection 2 of this section which exceed the amount of liability coverage provided by the state legal expense fund under those paragraphs. Even if paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is repealed or modified, the state legal expense fund shall be available for damages which occur while the pertinent paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is in effect.

4. All payments shall be made from the state legal expense fund by the commissioner of administration with the approval of the attorney general. Payment from the state legal expense fund of a claim or final judgment award against a physician, dentist, physician assistant, dental hygienist, or nurse described in paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section shall only be made for services rendered in accordance with the conditions of such paragraphs.

5. Except as provided in subsection 3 of this section, in the case of any claim or judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri, or an agency of the state, the aggregate of payments from the state legal expense fund and from any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed the limits of liability as provided in sections 537.600 to 537.610, RSMo. No payment shall be made from the state legal expense fund or any policy of insurance procured with state funds pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other policy of liability insurance have been exhausted.

6. The provisions of section 33.080, RSMo, notwithstanding, any moneys remaining to

the credit of the state legal expense fund at the end of an appropriation period shall not be transferred to general revenue.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

**192.021. 1. Pharmacists shall report to the department any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be potential causes of a state of emergency as defined in section 44.010, RSMo. Prescription-related events that require a report include, but are not limited to:**

- (1) An unusual increase in the number of prescriptions to treat conditions identified by the department of health and senior services by regulation;**
- (2) An unusual increase in the number of prescriptions for antibiotics;**
- (3) Any prescription that treats a disease that is relatively uncommon or may be associated with bioterrorism.**

**2. The report shall be made electronically or in writing within twenty-four hours to the department.**

**3. Every veterinarian, livestock owner, or veterinary diagnostic laboratory director shall report animals having or suspected of having any disease, illness or health condition identified by the department of health and senior services by regulation as a potential cause of an emergency as defined in section 44.010, RSMo. The report shall be made electronically or in writing within twenty-four hours of diagnosis or discovery to the department and shall include as much of the following information as is available: the specific illness or health condition that is the subject of the report; the suspected locating information of the animal, the name and address of any known owner, and the name and address of the reporting individual.**

**4. Out-of-state laboratories which collect specimens within the state of Missouri shall report to the department all cases of persons who harbor any illness or health condition that may be potential causes of an emergency as defined in section 44.010, RSMo. Reportable illnesses and conditions include, but are not limited**



to, the diseases, illnesses or health conditions identified by the department by regulation. Results shall be reported by the laboratory that performs the test, but an in-state laboratory that sends specimens to an out-of-state laboratory is also responsible for reporting results.

192.320. 1. Any person or persons [violating] shall be deemed guilty of a class A misdemeanor who:

(1) **Violate** any of the provisions of sections 192.010, 192.020 to 192.490, 192.600 to 192.620 [or who shall leave any pesthouse, or isolation hospital, or quarantined house or place without the consent of the health officer having jurisdiction, or who evades or breaks quarantine or knowingly conceals a case of contagious, infectious, or communicable disease, or who removes, destroys, obstructs from view, or tears down any quarantine card, cloth or notice posted by the attending physician or by the health officer, or by direction of a proper health officer, shall be deemed guilty of a class A misdemeanor.];

(2) **Refuse to submit to medical examination or testing for an infectious, contagious, communicable or dangerous disease as ordered by the department of health and senior services;**

(3) **Refuse to perform a medical examination or test for an infectious, contagious, communicable or dangerous disease as ordered by the department of health and senior services;**

(4) **Refuse to comply with any isolation or quarantine order issued by the department or the local public health agency;**

(5) **Knowingly puts himself or herself in contact with any person subject to isolation or quarantine, except for physicians or other health care providers, public health authorities, or persons authorized to enter an isolation or quarantine premises by the public health authority who are providing necessary care and services for those persons subject to isolation or quarantine;**

(6) **Fail to report or knowingly conceals a case of an infectious, contagious, communicable or dangerous disease as required by the department of health and senior services;**

(7) **Refuse to cooperate with the department or local public health agency in its investigation of an actual or threatened outbreak of an infectious, contagious, communicable or dangerous disease; or**

(8) **Removes, destroys, obstructs from view, or tears down any quarantine card, cloth or notice posted by the attending physician or by the department of health and senior services or the local public health agency.**

2. Any person violating the provisions of this section during an emergency as defined in section 44.010, RSMo, shall be deemed guilty of a class D felony.

**3. In addition to proceedings pursuant to subsections 1 and 2 of this section, the attorney general may file suit in the circuit court of the county in which the person is located for injunctive relief.**

**195.041. In the event of an emergency as defined in section 44.010, RSMo, the department of health and senior services may waive the registration and record keeping requirements set forth in sections 195.010 to 195.100, RSMo, and their attendant regulations if the department determines such a waiver would be in the best interests of the public health.**

473.697. Whenever application shall be made to any probate division for letters of administration upon the estate of any person supposed to be dead, because of the absence of such person for five consecutive years from the place of his last known domicile within this state, **or because such person was exposed to a specific peril of death due to an actual or suspected terrorist event**, or because, having been a resident of this state, such person has heretofore gone from and has not returned to this state for five consecutive years, or, because, having been such resident of this state, such person shall hereafter go from and shall not return to this state for five consecutive years, or, because being a resident of this state, such person shall have so concealed or conducted himself within this state that he shall not have been heard of for five consecutive years by the judge of the probate division having jurisdiction of his estate, or by the persons interested therein, then said court, if satisfied that the applicant would be entitled to such letters if the supposed decedent were in fact dead, shall cause a notice to such supposed deceased person to be published in a newspaper, published in the county, once a week for four consecutive weeks, setting forth the fact that such application has been made, together with notice that on a day certain, which shall be at least two weeks after the last publication of such notice, the court will hear evidence concerning the alleged absence of the supposed decedent, and the circumstances and duration thereof. The persons applying for such letters of administration shall file a petition stating the facts upon which such application is based and the place where such supposed deceased person resided when last heard from by him or by any person within his knowledge.

490.620. If any person who shall have resided in this state [go] **goes** from and [do] **does** not return to this state for five successive years, he **or she** shall be presumed to be dead in any case wherein his **or her** death shall come in question, unless proof be made that he **or she** was alive within that time. **The fact that such person was exposed to a specific peril of death due to an actual or suspected terrorist event may be a sufficient basis for determining at any time after such exposure that he or she died less than five years after the date his or her absence commenced.**

**630.807. During an emergency as defined in section 44.010, RSMo, the department of mental health shall provide information about and referrals to mental**

**health support personnel to address psychological responses to the emergency. The department of health and senior services may provide information and referrals to the department of mental health to assist the department in providing psychological responses to the emergency.**

Section B. Because of the immediate need for state emergency powers this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval.

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