

SECOND REGULAR SESSION

[PERFECTED]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 712

91ST GENERAL ASSEMBLY

Reported from the Committee on Public Health and Welfare, January 31, 2002, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 712, adopted February 12, 2002.

Taken up for Perfection February 12, 2002. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

3084S.07P

AN ACT

To repeal sections 44.010, 44.100, 190.500, 192.320, 473.697, 490.620 and 610.021, and to enact in lieu thereof twelve new sections relating to state emergency health powers, with an emergency clause, penalty provisions and an expiration date for a certain section.

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

Section A. Sections 44.010, 44.100, 190.500, 192.320, 473.697, 490.620 and 610.021, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 38.050, 44.010, 44.100, 44.240, 190.500, 192.021, 192.320, 195.041, 473.697, 490.620, 610.021 and 630.807, to read as follows:

38.050. 1. There is established a joint committee of the general assembly to be known as the "Joint Committee on Terrorism, Bioterrorism, and Homeland Security" to be composed of seven members of the senate and seven members of the house of representatives. The senate members of the joint committee shall be appointed by the president pro tem and minority floor leader of the senate and the house members shall be appointed by the speaker and minority floor leader of the house of representatives. The appointment of each member shall continue during the member's

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

term of office as a member of the general assembly or until a successor has been appointed to fill the member's place when his or her term of office as a member of the general assembly has expired. No party shall be represented by more than four members from the house of representatives nor more than four members from the senate. A majority of the committee shall constitute a quorum, but the concurrence of a majority of the members shall be required for the determination of any matter within the committee's duties.

2. The joint committee shall:

(1) Make a continuing study and analysis of all state government terrorism, bioterrorism, and homeland security efforts;

(2) Devise a standard reporting system to obtain data on each state government agency that will provide information on each agency's terrorism, bioterrorism, and homeland security status at least biennially;

(3) Determine from its study and analysis the need for changes in statutory law; and

(4) Make any other recommendation to the general assembly necessary to provide adequate terrorism, bioterrorism, and homeland security to the citizens of the state of Missouri.

3. The joint committee shall meet within thirty days after its creation and organize by selecting a chairperson and a vice chairperson, one of whom shall be a member of the senate and the other a member of the house of representatives. The chairperson shall alternate between members of the house and senate every two years after the committee's organization.

4. The committee shall meet at least quarterly. The committee may meet at locations other than Jefferson City when the committee deems it necessary.

5. The committee shall be staffed by legislative personnel as is deemed necessary to assist the committee in the performance of its duties.

6. The members of the committee shall serve without compensation but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties.

7. It shall be the duty of the committee to compile a full report of its activities for submission to the general assembly. The report shall be submitted not later than the fifteenth of January of each year in which the general assembly convenes in regular session and shall include any recommendations which the committee may have for legislative action as well as any recommendations for administrative or procedural changes in the internal management or organization of state or local government agencies and departments. Copies of the report containing such

recommendations shall be sent to the appropriate directors of state or local government agencies or departments included in the report.

8. The provisions of this section shall expire on December 31, 2007.

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 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 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 within this state, and that the safety and welfare of the inhabitants of this state require an invocation of the provisions of this section **or an act of bioterrorism that presents a clear and present danger to the safety and welfare of the inhabitants of this state that requires 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. 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.

190.500. 1. Notwithstanding any other provision of law to the contrary, a temporary license may be issued for no more than a twelve-month period by the appropriate licensing board to any otherwise qualified health care professional licensed **and in good standing** in another

state and who meets such other requirements as the licensing board may prescribe by rule and regulation, if the health care professional:

(1) Is acting pursuant to federal military orders under Title X for active duty personnel or Title XXXII for military reservists; and

(2) Is enrolled in an accredited training program for trauma treatment and disaster response in a hospital in this state; **or**

(3) If the health care professional is acting pursuant to the governor's declaration of a emergency as defined in section 44.010, RSMo, such temporary licensure shall be issued pursuant to this subdivision for a two-week period and, upon license verification, may be reissued every two weeks thereafter.

2. Licensure information and confirmation of health care professionals acting pursuant to this section may be obtained by any available means, including electronic mail.

3. For purposes of this section, the term "health care professional" shall mean as defined in section 383.130, RSMo.

192.021. 1. As defined by rule, 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 are reasonably suspected to be associated with bioterrorism.

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

3. 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) Knowingly fails to report or conceals a case of any 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 interest 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.**

610.021. Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:

(1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any

insurance company acting on behalf of a public government body as its insured, shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record;

(2) Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public within seventy-two hours after execution of the lease, purchase or sale of the real estate;

(3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body must be made available with a record of how each member voted to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term "personal information" means information relating to the performance or merit of individual employees;

(4) The state militia or national guard or any part thereof;

(5) Nonjudicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment;

(6) Scholastic probation, expulsion, or graduation of identifiable individuals, including records of individual test or examination scores; however, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;

(7) Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again;

(8) Welfare cases of identifiable individuals;

(9) Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups;

- (10) Software codes for electronic data processing and documentation thereof;
- (11) Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid;
- (12) Sealed bids and related documents, until the bids are opened; and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected;
- (13) Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such;
- (14) Records which are protected from disclosure by law;
- (15) Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest;
- (16) Records relating to municipal hot lines established for the reporting of abuse and wrongdoing;
- (17) Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product; [and]
- (18) [In preparation for and implementation of electric restructuring, a municipal electric utility may close that portion of its financial records and business plans which contains information regarding the name of the suppliers of services to said utility and the cost of such services, and the records and business plans concerning the municipal electric utility's future marketing and service expansion areas. However, this exception shall not be construed to limit access to other records of a municipal electric utility, including but not limited to the names and addresses of its business and residential customers, its financial reports, including but not limited to its budget, annual reports and other financial statements prepared in the course of business, and other records maintained in the course of doing business as a municipal electric utility. This exception shall become null and void if the state of Missouri fails to implement by December 31, 2001, electric restructuring through the adoption of statutes permitting the same in this state]
- (a) A municipal utility receiving a public records request for information considered to be proprietary, highly confidential, critical to security of the utility, or for a public record that would compromise the security of the utility system, may, within thirty days of such request, provide the requested material or file a motion pursuant to this subsection with the circuit court having jurisdiction over the municipal utility, stating that the competitive position or security of the utility would be materially jeopardized or compromised by release of the requested material. If, based on such motion, the court finds for the municipal utility, the court shall either order the record closed or order such portion of the record that should be closed to be redacted**

from any record made available pursuant to this subsection.

(b) Any person may bring an action pursuant to this section in the circuit court having jurisdiction to authorize disclosure of the information requested, which would otherwise be closed pursuant to this section. The court may order that all or part of the information requested be released to the person bringing the action. In making the determination as to whether the requested information shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public or to the municipal utility in regard to the need to effectively operate the municipal utility. The records in question may be examined by the court in camera. The court may find that the party seeking disclosure shall bear the reasonable and necessary costs and attorney fees of both parties, unless the court finds that the decision of the municipal utility not to open its records was substantially unjustified under all relevant circumstances, and in that event, the court may assess such reasonable and necessary costs and attorney's fees to the municipal utility.

(c) If the court finds by a preponderance of the evidence that the municipal utility has purposely violated this section, the records custodian of the municipal utility, or the municipal utility shall be subject to a civil penalty in an amount not to exceed five hundred dollars and the court shall order payment by such individual or municipal utility of all costs and attorney fees as provided by section 610.027, RSMo; and

(19) Specific information on existing or proposed security systems or security vulnerabilities for any building or property owned or leased by a public governmental body. Such records may include photographs, schematic diagrams, recommendations, or consultations made to analyze or enhance security of the building or property. Information related to the total costs budgeted and expended to protect such structures and systems shall not be a closed record pursuant to this subdivision and such disclosures shall not specifically identify buildings, sites or specific purposes of the expenditures. This exception shall become null and void on December 31, 2007.

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.

T

Unofficial

Bill

Copy