

HOUSE BILL NO. 499
INTRODUCED BY FRANKLIN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING EMERGENCY HEALTH POWERS AND COMMUNICABLE DISEASE LAWS TO ENSURE THE ABILITY TO ADEQUATELY RESPOND TO INCIDENTS AND DISASTERS INVOLVING BIOTERRORISM AND WEAPONS OF MASS DESTRUCTION; DEFINING TERMS; AMENDING SECTIONS 10-3-103, 45-5-623, 50-1-101, 50-1-202, 50-1-204, 50-2-101, 50-2-116, 50-2-118, 50-2-130, AND 50-16-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 10-3-103, MCA, is amended to read:

"10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or ~~man-made~~ artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, ~~or~~ accidents involving radiation byproducts or other hazardous materials, bioterrorism, or incidents involving weapons of mass destruction.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

(7) (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena,

requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency⁷²

~~(b) but the~~ The term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.

(8) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(9) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

(10) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings."

Section 2. Section 45-5-623, MCA, is amended to read:

"45-5-623. Unlawful transactions with children. (1) Except as provided for in 16-6-305, a person commits the offense of unlawful transactions with children if the person knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives an alcoholic beverage to a person under 21 years of age;

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian; or

(e) tattoos a child under the age of majority without the explicit in-person consent of the child's parent or guardian. For purposes of this subsection, "tattoo" has the meaning provided in ~~50-2-116(2)(k)(vi)~~ 50-2-116. Failure to adequately verify the identity of a parent or guardian is not an excuse for violation of this subsection.

(2) A person convicted of the offense of unlawful transactions with children shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. (See compiler's comments for contingent termination of certain text.)"

Section 3. Section 50-1-101, MCA, is amended to read:

"50-1-101. Definitions. Unless the context indicates otherwise, in this chapter, the following definitions apply:

(1) "Communicable disease" means ~~a disease designated communicable by the department~~ an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:

(a) in which an infectious agent normally lives and multiplies;

(b) on which an infectious agent depends primarily for survival; and

(c) where an infectious agent reproduces in a manner that allows the infectious agent to be transmitted to a susceptible host.

(4) "Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from nonisolated individuals to prevent or limit the transmission of the communicable disease to nonisolated individuals.

(5) "Quarantine" means the physical separation and confinement of an individual or groups of individuals who are or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease, from nonquarantined individuals, to prevent or limit the transmission of the communicable disease to nonquarantined individuals."

Section 4. Section 50-1-202, MCA, is amended to read:

"50-1-202. General powers and duties. The department ~~shall~~:

(1) shall study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) shall make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, shall administer any federal health program for which responsibilities are delegated to states;

(4) shall inspect and work in conjunction with custodial institutions and Montana university system units

periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4), shall submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) shall advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) shall develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(8) shall develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(9) shall conduct health education programs;

(10) shall provide consultation to school and local community health nurses in the performance of their duties;

(11) shall consult with the superintendent of public instruction on health measures for schools;

(12) shall develop, adopt, and administer rules setting standards for a program to provide services to children with disabilities, including standards for:

- (a) diagnosis;
- (b) medical, surgical, and corrective treatment;
- (c) aftercare and related services; and
- (d) eligibility;

(13) shall provide consultation to local boards of health;

(14) shall bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(15) shall accept and expend federal funds available for public health services;

(16) must have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(17) shall adopt rules imposing fees for the tests and services performed by the department's laboratory. Fees should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special

revenue fund for the use of the department in performing tests and services.

(18) shall adopt and enforce rules regarding ~~the definition of communicable diseases and~~ the reporting and control of communicable diseases;

(19) shall adopt and enforce rules regarding the transportation of dead human bodies;

(20) shall adopt and enforce rules and standards concerning the issuance of licenses to laboratories that conduct analysis of public water supply systems; ~~and~~

(21) shall adopt and enforce minimum sanitation requirements for tattooing as provided in 50-2-116, including regulation of premises, equipment, and methods of operation, solely oriented to the protection of public health and the prevention of communicable disease; and

(22) shall enact or take measures to prevent and alleviate injury from the release of biological, chemical, or radiological agents capable of causing imminent infection, disability, or death."

Section 5. Section 50-1-204, MCA, is amended to read:

"50-1-204. Quarantine and isolation measures. The department may adopt and enforce quarantine or isolation measures ~~against a state, county, or municipality~~ to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than \$10 or more than \$100. Receipts from fines, except justice's court fines, ~~shall~~ must be deposited in the state general fund."

Section 6. Section 50-2-101, MCA, is amended to read:

"50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means ~~a disease designated as communicable by the department~~ an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:

(a) in which an infectious agent normally lives and multiplies;

(b) on which an infectious agent depends primarily for survival; and

(c) where an infectious agent reproduces in a manner that allows the infectious agent to be transmitted

to a susceptible host.

~~(3)~~(4) "Institutional control" means a legal or regulatory mechanism designed to protect public health and safety or the environment that:

- (a) limits access to or limits or conditions the use of environmentally contaminated property or media;
- (b) provides for the protection or preservation of environmental cleanup measures; or
- (c) informs the public that property is or may be environmentally impaired or that there are limitations on the access to or use of environmentally contaminated properties or media.

(5) "Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from nonisolated individuals to prevent or limit the transmission of the communicable disease to nonisolated individuals.

~~(4)~~(6) "Local board" means a county, city, city-county, or district board of health.

~~(5)~~(7) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

~~(6)~~(8) "Physician" means a physician legally authorized to practice medicine in this state.

(9) "Quarantine" means the physical separation and confinement of an individual or groups of individuals who are or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease, from nonquarantined individuals, to prevent or limit the transmission of the communicable disease to nonquarantined individuals."

Section 7. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards. (1) Local boards shall:

- (a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix the health officer's salary;
- (b) elect a presiding officer and other necessary officers;
- (c) employ necessary qualified staff;
- (d) adopt bylaws to govern meetings;
- (e) hold regular meetings quarterly and hold special meetings as necessary;
- (f) supervise destruction and removal of all sources of filth that cause disease;
- (g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) ~~adopt and enforce isolation and quarantine persons who have~~ measures to prevent the spread of communicable diseases in coordination with the department;

~~(b) require isolation of persons or things that are infected with communicable diseases;~~

~~(e)(b)~~ furnish treatment for persons who have communicable diseases;

~~(d)(c)~~ prohibit the use of places that are infected with communicable diseases;

~~(e)(d)~~ require and provide means for disinfecting places that are infected with communicable diseases;

~~(f)(e)~~ accept and spend funds received from a federal agency, the state, a school district, or other persons;

~~(g)(f)~~ contract with another local board for all or a part of local health services;

~~(h)(g)~~ reimburse local health officers for necessary expenses incurred in official duties;

~~(i)(h)~~ abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

~~(j)(i)~~ adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. The fees must be deposited with the county treasurer.

~~(k)(j)~~ adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives;

(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401; and

(vi) for the regulation, as necessary, of the practice of tattooing, which may include registering tattoo

artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and inserting indelible colors.

~~(h)~~(k) adopt regulations for the establishment of institutional controls that have been selected or approved by the:

(i) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(ii) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7."

Section 8. Section 50-2-118, MCA, is amended to read:

"50-2-118. Powers and duties of local health officers. (1) Local health officers or their authorized representatives shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth ~~which~~ that might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) of this section to the department;

(g) ~~as prescribed by rules adopted by the department,~~ establish and maintain quarantines quarantine and isolation measures as enacted by the local board of health;

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of ~~his~~ the local health officer's appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state

department under this chapter are violated;

(k) validate state licenses issued by the department in accordance with chapters 50 through 53 of this title.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician ~~shall~~ may not act as a physician to anyone."

Section 9. Section 50-2-130, MCA, is amended to read:

"50-2-130. Local regulations no more stringent than state regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not adopt a rule under 50-2-116(1)(i), ~~(2)(k)(iii)~~ (2)(j)(iii), or ~~(2)(k)(v)~~ (2)(j)(v) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement 50-2-116(1)(i), ~~(2)(k)(iii)~~ (2)(j)(iii), or ~~(2)(k)(v)~~ (2)(j)(v) that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and
 (b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or ~~by~~ making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section

does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule."

Section 10. Section 50-16-603, MCA, is amended to read:

"50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or ~~their~~ the entity's authorized representatives may not be released except:

- (1) for statistical purposes, if no identification of individuals can be made from the information released;
- (2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;
- (3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;
- (4) as allowed by Title 50, chapters 17 and 18;
- (5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease or to alleviate and prevent injury caused by the release of biological, chemical, or radiological agents capable of causing imminent disability, death, or infection;
- (6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. If the health care information is required in a subsequent court proceeding involving child abuse, the information may be disclosed only in camera and documents containing the information must be sealed by the court upon conclusion of the proceedings.
- (7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part."

NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

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