

## SENATE BILL NO. 142

INTRODUCED BY G. LIND

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA PUBLIC HEALTH EMERGENCY ACT; PROVIDING DEFINITIONS; REQUIRING A PUBLIC HEALTH EMERGENCY PLAN; ESTABLISHING POWERS AND DUTIES IN PUBLIC HEALTH EMERGENCIES; PROVIDING FOR RECOGNITION OF LICENSURE OR REGISTRATION OF OUT-OF-STATE VOLUNTEER HEALTH CARE PRACTITIONERS AND VOLUNTEER PUBLIC HEALTH PROFESSIONALS; PROVIDING IMMUNITY FOR THE ACTIONS OF VOLUNTEER HEALTH CARE PRACTITIONERS AND VOLUNTEER PUBLIC HEALTH PROFESSIONALS; REQUIRING INCORPORATION OF THE NATIONAL INCIDENT MANAGEMENT SYSTEM REQUIREMENTS IN THE STATE DISASTER AND EMERGENCY PLAN; AND AMENDING SECTIONS 10-3-103, 10-3-111, 10-3-301, 10-3-302, 10-3-303, AND 10-3-312, MCA."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7 AND 9] may be cited as the "Montana Public Health Emergency Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7 AND 9], the following definitions apply:

(1) "Bioterrorism" means 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 a 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 adversely impact public health, including the disruption of the food or water supply.

~~(2) "Communicable disease" has the meaning provided in 50-1-101.~~

~~(3)~~(2) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(4)~~(3) "Disaster" has the meaning provided in 10-3-103.

~~(5) "Disaster and emergency services" has the meaning provided in 10-3-103.~~

~~(6)~~(4) "Division" means the division of disaster and emergency services of the department of military affairs.

~~(7)~~(5) "Emergency" has the meaning provided in 10-3-103.

~~(8)~~(6) "Incident" has the meaning provided in 10-3-103.

~~(9)~~(7) "Isolation" has the meaning provided in 50-1-101.

~~(10)~~(8) "Local board of health" means a county, city, city-county, or district board of health.

~~(11)~~(9) "Local public health agency" means an organization operated by a local government in the state, including local boards of health or local health officers, that principally acts to protect or preserve the public health.

~~(12)~~(10) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

~~(13)~~(11) "Public health emergency" means an occurrence or imminent threat of an illness or health condition that:

(a) is believed to be caused by:

(i) bioterrorism; OR

(ii) ~~the appearance of a novel or previously controlled or eliminated~~ AN infectious agent, TOXIC AGENT, RADIOLOGIC AGENT, or biological toxin; AND ~~or~~

~~— (iii) a natural disaster, a chemical attack or accidental release, or a nuclear attack or accident; and~~

(b) poses a high probability of:

(i) a large number of deaths in the affected population;

(ii) a large number of serious or long-term disabilities in the affected population; or

(iii) widespread exposure ~~to an infectious or toxic agent~~ that poses a significant risk of substantial future harm to a large number of people in the affected population.

~~(14)~~(12) "Quarantine" has the meaning provided in 50-1-101.

~~(15)~~(13) "State public health agency" means an organization or program operated by the state, including the department, that principally acts to protect or preserve the public health.

~~(16)~~(14) (a) "Volunteer health care practitioner" means any health care practitioner who is currently licensed and in good standing under Title 37 or the laws of any other state and is providing health care services in Montana, on a voluntary basis, and not within the normal course of the practitioner's employment.

(b) For purposes of subsection ~~(16)(a)~~ (14)(A), "licensed" includes licensure, registration, certification, a permit, or any other legal authorization to practice in the state of Montana or any other state.

~~(17)~~(15) (a) "Volunteer public health professional" means an individual who is currently licensed and in good standing under the laws of Montana or any other state and is providing professional services in Montana, on a voluntary basis, under the direction of the department or a local board of health and not within the normal course of the professional's employment.

(b) The term does not include a volunteer health care practitioner.

(c) For purposes of subsection ~~(17)(a)~~ (15)(A), "licensed" includes licensure, registration, certification, a permit, or any other legal authorization to practice in the state of Montana or any other state.

**NEW SECTION. Section 3. Public health emergency plan.** (1) In coordination with the division and other appropriate state, local, and tribal agencies, the department shall deliver to the governor a plan for responding to a public health emergency that is consistent with existing plans and powers, including THE NATIONAL INCIDENT MANAGEMENT SYSTEM REQUIREMENTS, WHICH MUST BE INCORPORATED IN the state disaster and emergency plan provided for in 10-3-301 ~~and the emergency resources management plan provided for in 10-3-504~~. The public health emergency plan must include provisions or guidelines in compliance with this section on the following:

(a) notifying and communicating with the population;

(b) central coordination of resources, personnel, and services, including persons in the public health system;

(c) the location, procurement, storage, transportation, maintenance, and distribution of essential materials, including medical supplies, drugs, antitoxins, and vaccines;

(d) the continued, effective operation of the judicial system, including the availability of individuals to act as emergency judges for matters of isolation and quarantine. The supreme court shall adopt procedures for designating emergency judges and provide the procedures and names of designated individuals to the department for inclusion in the plan.

(e) the method of evacuating populations and housing and feeding the evacuated populations;

(f) the identification and training of health care providers to diagnose and treat individuals with infectious diseases or toxic exposures during an emergency;

(g) the treatment, decontamination, or vaccination of individuals;

(h) the safe disposal of contaminated materials, infectious or other wastes, and human remains;

(i) the safe and effective protection of individuals isolated, quarantined, vaccinated, tested, treated, or decontaminated;

- (j) the identification by the department or local public health agencies of:
  - (i) sites where individuals can be isolated, quarantined, or decontaminated;
  - (ii) sites where medical supplies, food, and other essential material can be distributed to the population;
  - (iii) sites where public health and emergency workers can be housed and fed;
  - (iv) routes and means of transportation of people and materials;
  - (v) relevant cultural norms, values, religious principles, and traditions; and
  - (vi) other measures necessary to carry out the purposes of this section.

(2) The department shall coordinate with the division and other appropriate state, local, and tribal agencies for the annual review of the plan and shall modify the plan as necessary.

(3) The plan must incorporate the goals and priorities of public health emergency plans developed by local public health agencies.

**NEW SECTION. Section 4. Declaration of public health emergency -- effect -- termination.** (1) A state of public health emergency may be declared by the governor when the governor determines that a public health emergency exists. Prior to issuing a declaration, the governor shall consult with state public health agencies and local public health agencies and may consult with any additional public health experts or other experts as determined necessary. ~~The governor may declare a public health emergency without consultation when the situation calls for prompt and timely action.~~

- (2) A state of public health emergency must be declared by an executive order that specifies:
  - (a) the nature of the public health emergency;
  - (b) the political subdivisions or geographic areas subject to the declaration;
  - (c) the conditions that have brought about the public health emergency; and
  - (d) the primary state public health agency or local public health agency responding to the emergency.

Unless specified otherwise, the department is the primary public health agency responding to a public health emergency.

(3) The declaration of a state of public health emergency activates the response and recovery aspects of the state, local, and interjurisdictional public health disaster and emergency plans in the affected political subdivisions or geographic areas. The declaration authorizes the deployment and use of any forces to which the plans apply and the use or distribution of any supplies, equipment, and materials assembled, stockpiled, or available and the use of facilities pursuant to [sections 1 through 7 AND 9].

- (4) The governor shall terminate a state of public health emergency when:

- (a) the public health emergency has passed;
  - (b) the public health emergency has been dealt with to the extent that public health emergency conditions no longer exist; or
  - (c) at any time the legislature terminates the state of public health emergency by joint resolution.
- However, after termination of the state of public health emergency, public health emergency services required as a result of the public health emergency may continue.

NEW SECTION. Section 5. Emergency powers. ~~During a state of public health emergency, the governor is commander-in-chief of the militia and of all other forces available for incident, emergency, or disaster duty. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in the state public health emergency plan and by appropriate executive orders. In addition, the governor may:~~

- ~~—— (1) suspend the provisions of any regulatory statute prescribing procedures for conducting state business or rules of any state agency if the strict compliance with the statute or rule would prevent, hinder, or delay necessary action, including emergency purchases, to respond to the public health emergency by state public health agencies or local public health agencies or would increase the health threat to the population;~~
- ~~—— (2) use all available resources of the state government and political subdivisions, as reasonably necessary to respond to the public health emergency;~~
- ~~—— (3) transfer the direction, personnel, or functions of state agencies to perform or facilitate response and recovery programs regarding the public health emergency;~~
- ~~—— (4) mobilize all or any part of the organized militia into service. An order directing the organized militia to report for active duty must state the purpose for which the militia is mobilized and the objectives to be accomplished;~~
- ~~—— (5) provide aid to and seek aid from other states in accordance with any interstate agreements; and~~
- ~~—— (6) seek aid from the federal government in accordance with federal programs or requirements. DURING A STATE OF PUBLIC HEALTH EMERGENCY, THE GOVERNOR HAS ALL POWERS AND AUTHORITIES VESTED IN THE GOVERNOR UNDER PARTS 1 THROUGH 4 OF THIS CHAPTER.~~

NEW SECTION. Section 6. Interstate licensure recognition -- volunteer health care practitioners -- volunteer public health care professionals. (1) Subject to subsection (2), whenever a state of emergency, disaster, or public health emergency is in effect:

(a) a volunteer health care practitioner or a volunteer public health professional who is licensed for the practice of health care or public health services and who is in good standing in another state may practice in Montana to the extent authorized by law as if the person had been licensed in Montana;

(b) a volunteer health care practitioner or volunteer public health professional shall adhere to the scope and standards of practice set forth in licensing provisions, practice acts, or other laws or policies of Montana.

(2) Prior to providing services in Montana, a volunteer health care practitioner or a volunteer public health professional who is licensed for the practice of health care or public health services in another state must register with the appropriate licensing agency in the state of Montana. The licensing agency shall verify the credentials, current licensure, and good standing of the licensee in the other state or states prior to registering the licensee.

**NEW SECTION. Section 7. Administrative disciplinary sanctions.** (1) A licensing board, a licensing program, or any other disciplinary authority in Montana:

(a) may impose administrative sanctions upon a volunteer health care practitioner or a volunteer public health professional for unprofessional conduct in response to an emergency, disaster, or public health emergency that occurs in Montana; and

(b) shall report any administrative sanctions imposed upon a volunteer health care practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

(2) In determining whether to impose administrative sanctions under subsection (1), a licensing board or other disciplinary authority in Montana shall consider any exigent circumstances in which the conduct took place in light of the emergency, disaster, or public health emergency.

**NEW SECTION. Section 8. Public health agencies -- powers and duties.** During a declared state of public health emergency, AS DEFINED IN [SECTION 2], the department, in collaboration with the division, local public health agencies, and other appropriate state, local, and tribal agencies, is the lead agency for coordinating matters pertaining to the public health emergency response of the state, ~~including:~~

~~—— (1) planning and executing public health emergency assessment, mitigation, preparedness, response, and recovery;~~

~~—— (2) organizing public information activities regarding public health emergency response operations;~~

~~—— (3) informing members of the public when a state of public health emergency has been declared or terminated, how to protect themselves, and what actions are being taken to control the emergency. The~~

department, in collaboration with local public health agencies and tribal health agencies, shall use all available and reasonable means to get the information promptly to the public:

- ~~———— (4) coordinating recovery operations and mitigation initiatives subsequent to public health emergencies;~~
- ~~———— (5) collaborating with public and private sector partners and elected officials of other states;~~
- ~~———— (6) closing or directing the evacuation of any facility that it has reasonable cause to believe may endanger the public health;~~
- ~~———— (7) using materials and facilities, including communication devices, carriers, real estate, fuels, food, clothing, and health care facilities, as may be reasonable and necessary to respond to the public health emergency;~~
- ~~———— (8) coordinating with the department of transportation, local law enforcement, local governments, and others to control roads and public areas by prescribing routes and modes of transportation and by controlling or limiting ingress and egress to and from any threatened public area as may be reasonable and necessary to respond to the public health emergency;~~
- ~~———— (9) adopting and enforcing measures to provide for the safe disposal of infectious waste or contaminated material as may be reasonable and necessary to respond to the public health emergency;~~
- ~~———— (10) adopting and enforcing measures to provide for the safe disposal of human remains as may be reasonable and necessary to respond to the public health emergency;~~
- ~~———— (11) directing the control of health care supplies by purchasing and distributing antitoxins, serums, vaccines, immunizing agents, antibiotics, antidotes, and other pharmaceutical agents, medical supplies, or personal protective equipment to prepare for or control the public health emergency;~~
- ~~———— (12) protecting individuals by using every available means to prevent the transmission of communicable disease or exposure to toxins and apply proper controls and treatment in all cases of communicable disease or toxic exposures, including testing, examination, screening, treatment, isolation, quarantine, decontamination, or vaccination consistent with powers granted and defined under Title 50; and~~
- ~~———— (13) providing public information about and referrals to mental health support personnel to address psychological responses concerning the public health emergency AS OUTLINED IN THE PUBLIC HEALTH EMERGENCY PLAN DESCRIBED IN [SECTION 3].~~

NEW SECTION. **Section 9. Rulemaking authority.** The department, the department of labor and industry, and the department of military affairs may adopt rules as necessary to implement [sections 1 through 7 AND 9].

**Section 10.** 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 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, 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 emergency.

(b) 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) "Public health emergency" has the meaning provided in [section 2].

~~(10)~~(11) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.



(12) "Volunteer health care practitioner" has the meaning provided in [section 2].

(13) "Volunteer public health professional" has the meaning provided in [section 2]."

**Section 11.** Section 10-3-111, MCA, is amended to read:

**"10-3-111. Personnel immune from liability.** (1) The state, a political subdivision of the state, or the agents or representatives of the state or a political subdivision of the state are not liable for personal injury or property damage sustained by a person appointed or acting as a volunteer civilian defense worker, a volunteer health care practitioner acting pursuant to [sections 1 through 7 AND 9], a volunteer public health professional acting pursuant to [sections 1 through 7 AND 9], or a member of an agency engaged in civilian defense activity during an incident, disaster, or emergency, or public health emergency. This section does not affect the right of a person to receive benefits or compensation to which the person might otherwise be entitled under the workers' compensation law or a pension law or an act of congress.

(2) The following persons or entities are not liable for the death of or injury to persons or for damage to property as a result of an act or omission arising out of activities undertaken in response to an incident, disaster, emergency, or public health emergency and while complying with or reasonably attempting to comply with parts 1 through 4 or 12 of this chapter or [sections 1 through 7 AND 9] or an order or rule promulgated under the provisions of parts 1 through 4 or 12 of this chapter or [sections 1 through 7 AND 9]:

(a) the state or a political subdivision of the state; or,

(b) except in cases of willful misconduct, gross negligence, or bad faith;

(i) the employees, agents, or representatives of the state or a political subdivision of the state; or

(ii) a volunteer or auxiliary civilian defense worker, or a member of an agency engaged in civilian defense activity, during an incident, disaster, or emergency a volunteer health care practitioner, a volunteer public health professional, or the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with parts 1 through 4 or 12 of this chapter or an order or rule promulgated under the provisions of parts 1 through 4 or 12 of this chapter or pursuant to an ordinance relating to blackout or other precautionary measures enacted by a political subdivision of the state, are not liable for the death of or injury to persons or for damage to property as a result of any activity specified in this subsection."

**SECTION 12.** SECTION 10-3-301, MCA, IS AMENDED TO READ:

**"10-3-301. State disaster and emergency plan.** (1) The state disaster and emergency plan and

program may provide for:

- (a) prevention and minimization of injury and damage caused by disaster;
- (b) prompt and efficient response to an incident, emergency, or disaster;
- (c) emergency relief;
- (d) identification of areas particularly vulnerable to disasters;
- (e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;
- (f) organization of personnel and chains of command;
- (g) coordination of federal, state, and local disaster and emergency activities; and
- (h) other necessary matters.

(2) (a) In preparing and maintaining the state disaster and emergency plan and program, the division may seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division may encourage them to seek advice from these sources.

(b) The national incident management system requirements must be incorporated in the state disaster and emergency plan."

**Section 13.** Section 10-3-302, MCA, is amended to read:

**"10-3-302. Declaration of emergency -- effect and termination.** (1) A state of emergency may be declared by the governor when ~~he~~ the governor determines that an emergency as defined in 10-3-103 exists.

(2) An executive order or proclamation of a state of emergency ~~shall activate~~ activates the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and ~~be~~ is authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies.

(3) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which ~~shall~~ must be determined by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency.

(4) The declaration of a state of emergency does not preclude the declaration of a state of public health

emergency under [sections 1 through 7 AND 9]."

**Section 14.** Section 10-3-303, MCA, is amended to read:

**"10-3-303. Declaration of disaster -- effect and termination.** (1) A state of disaster may be declared by the governor when ~~he~~ the governor determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster ~~shall activate~~ activates the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and ~~be~~ is authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies.

(3) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which ~~shall~~ must be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(4) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.

(5) The declaration of a state of disaster does not preclude the declaration of a state of public health emergency under [sections 1 through 7 AND 9]."

**Section 15.** Section 10-3-312, MCA, is amended to read:

**"10-3-312. Maximum expenditure by governor -- appropriation.** (1) Whenever an emergency, including a public health emergency, or a disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed \$16 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be

used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to exceed \$500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178. The statutory appropriation in this subsection may be used by any state agency designated by the governor."

NEW SECTION. **Section 16. Consistency with public health emergency provisions.** The department of labor and industry shall ensure that each board or program implements its authority in a manner that is consistent with the provisions of ~~Title 10, chapter 3, parts 1 through 4, and [sections 1 through 9]~~ [SECTIONS 6 AND 7].

NEW SECTION. **Section 17. Codification instruction.** (1) [Sections 1 through 7 AND 9] are intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [sections 1 through 7 AND 9].

(2) [SECTION 8] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 50, CHAPTER 1, PART 2, AND THE PROVISIONS OF TITLE 50, CHAPTER 1, PART 2, APPLY TO [SECTION 8].

~~(2)~~(3) [Section 45 16] is intended to be codified as an integral part of Title 37, chapter 1, and the provisions of Title 37, chapter 1, apply to [section 45 16].

NEW SECTION. **Section 18. Two-thirds vote required -- contingent voidness.** Because [section 11] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If [this act] is not approved by at least two-thirds of the members of each house of the legislature, then [section 11] is void.

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