

House Research Act Summary

CHAPTER: 402

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TOPIC: Minnesota Emergency Health Powers Act

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Overview

This act establishes the Minnesota Emergency Health Powers Act, specifying the powers and duties of the governor and the commissioner of health during public health emergencies. This act was proposed by the Minnesota Department of Health, and the original bill was based in part on a model emergency health powers act prepared for the Centers for Disease Control and Prevention. In this act, the governor is authorized to declare a national security or peacetime emergency due to a public health emergency. Procedures are established for terminating and renewing public health emergencies, and the legislature is given oversight of peacetime emergencies declared due to public health emergencies. The governor's emergency powers under chapter 12 are modified. Principles governing isolation and quarantine are established, and due process procedures for persons under isolation or quarantine are created. The commissioner is directed to study several issues and report to the legislature by January 15, 2003. Sections 1 to 19 expire August 1, 2004.

- 1 **Title.** Names this act the Minnesota Emergency Health Powers Act.
- 2 **Bioterrorism.** Adds subd. 1c to § 12.03. Defines bioterrorism as the intentional use of a microorganism, virus, infectious substance, or biological product or component to cause death, disease, or biological malfunction in a human, animal, plant, or other living organism to influence the conduct of government or intimidate or coerce a civilian population.
- 3 **Facility.** Adds subd. 4d to § 12.03. Defines facility as any real property, building, structure, or other improvement to real property or any motor vehicle or other means of transportation. Specifies that facility does not include a private residence.
- 4 **Medical supplies.** Adds subd. 6a to § 12.03. Defines medical supplies as any medication, durable medical equipment, instruments, linens, or other material that a health care provider deems not essential to the operation of the provider's practice or facility. Specifies that medical supplies does not include medication, durable medical equipment, or other material that is an

individual's personal property and being used by the individual, or that has been borrowed or rented for treatment or care.

- 5 **Public health emergency.** Adds subd. 9a to § 12.03. Defines public health emergency as an occurrence or imminent threat of an illness or health condition in Minnesota:
- (1) where there is evidence to believe the illness or health condition is caused by bioterrorism or the appearance of a new or previously controlled or eradicated airborne infectious agent or airborne biological toxin; and
- (2) the illness or health condition poses a high probability of (a) a large number of deaths or serious or long-term disabilities in the affected population, or (b) widespread exposure to an airborne infectious or airborne toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.
- 6 **Specific authority.** Amends § 12.21, subd. 3. Amends a subdivision listing actions the governor may take to effect the policy and purposes of chapter 12, to give the governor authority to:
- procure facilities in accordance with the state's emergency operations plan and emergency management program;
 - enter into mutual aid arrangements or cooperative agreements with tribal authorities on behalf of the state;
 - control the entrance or exit of persons from stricken or threatened public places, the occupancy of facilities, and all forms of public and private transportation before, during, and after drills and emergencies; and
 - transfer the direction, personnel, or functions of state agencies for response or recovery programs.
- 7 **Declaration of national security emergency.** Amends § 12.31, subd. 1. Expands the governor's authority to declare a national security emergency, to allow an emergency to be declared when a public health emergency has occurred caused by enemy sabotage or other hostile action.
- 8 **Declaration of peacetime emergency.** Amends § 12.31, subd. 2. Expands the governor's authority to declare a peacetime emergency, to allow one to be declared when a public health emergency endangers life and property and local government resources are inadequate to handle the situation. Also allows the governor to exercise the powers granted for a peacetime emergency declared as a result of a public health emergency only if the legislature is in session at the time of the declaration or renewal, or if the governor calls a special session when an emergency is declared or renewed.
- 9 **Effect of declaration of peacetime emergency.** Amends § 12.31, subd. 3. Amends a subdivision specifying the effect of a peacetime emergency declaration, to clarify that a declaration of a peacetime emergency authorizes the governor to exercise any other powers and duties conferred by chapter 12 for peacetime emergencies (current law only specifies that a peacetime emergency declaration invokes necessary portions of the state emergency operations plan and may authorize aid and assistance).
- 10 **Declaration due to a public health emergency.** Adds § 12.311. Establishes consultation requirements for the governor or the director of emergency management before the governor may declare a national security or peacetime emergency due to a public health emergency, and allows the governor to act without consultation when necessary. When an emergency due to a public health emergency is declared, requires the governor and the commissioner of health to immediately report to specified members of the legislature on imposition of the emergency and

how it may affect the public.

- 11 **Termination of declaration; public health emergency.** Adds § 12.312. Makes a national security or peacetime emergency declared due to a public health emergency automatically terminate 30 days after its original declaration unless renewed by the governor as provided in section 8. Makes any renewal of an emergency declaration also terminate automatically after 30 days, unless again renewed by the governor. Allows the legislature, by a majority vote of each body, to terminate an emergency declared due to a public health emergency at any time after the date of original declaration. Makes a termination by the legislature override any renewal by the governor.
- 12 **Governor's orders and rules, effect.** Amends § 12.32. Gives orders and rules adopted by the governor under this chapter during a peacetime emergency declared due to a public health emergency the full force and effect of law (current law gives orders and rules adopted by the governor under this chapter during a national security or energy supply emergency the full force and effect of law).
- 13 **Emergency powers.** Amends § 12.34, subd. 1. Allows the governor to exercise the powers listed in this subdivision during a peacetime emergency declared due to public health emergency, as well as during a national security emergency as current law allows. Also adds to the list of powers the governor may exercise, to allow the governor or other listed persons to commandeer medical supplies and facilities. Specifies that the power to commandeer may be exercised only for emergency management purposes as directed by the governor or another person with the power to commandeer.
- 14 **Safe disposition of dead human bodies.** Adds § 12.381. During a national security or peacetime emergency declared due to a public health emergency, gives the governor authority to ensure safe disposition of dead human bodies related to the public health emergency. Requires a person in charge of the body of a person who died due to a public health emergency to keep a written record to identify the decedent, circumstances of death, and disposition of the body. If a body cannot be identified, requires a qualified person to take fingerprints, photographs, and DNA from the body to the extent possible and forward all information collected to the commissioner. Names data collected, other than data required for a death certificate, as death investigation data and classifies it as nonpublic data or private data on individuals. Clarifies that the data are not medical examiner data. Limits disclosure of death investigation data to relatives as necessary to identify decedents or for public health or public safety investigations.
- 15 **Testing and treatments.** Adds § 12.39. Affirms that individuals have a fundamental right to refuse medical testing and treatment ordered pursuant to a national security, peacetime, or public health emergency; specifies the consequences of refusal; and requires health care providers to notify individuals of this right before providing testing or treatment, when feasible.
Subd. 1. Refusal of treatment. Provides that notwithstanding any laws, rules, or orders adopted in response to a national security emergency, peacetime emergency, or public health emergency, individuals maintain their fundamental right to refuse medical treatment, testing, examination, vaccination, participation in experimental procedures, collection of specimens, and preventive treatment programs. If the commissioner of health directs an individual to submit to a medical procedure or protocol after infection with or exposure to a communicable disease or toxic agent and if the individual refuses, the commissioner may order the individual to be isolated or quarantined.
Subd. 2. Information given. Requires health care providers to notify individuals of the right to refuse an examination, testing, treatment, or vaccination under subdivision 1 before providing

the care, when feasible, and the consequences of refusal.

- 16 **Death investigation data.** Adds subd. 1a to § 13.3806. Adds a cross-reference in the Data Practices Act to the section in chapter 12 governing the classification and release of death investigation data.
- 17 **Isolation or quarantine directive.** Adds subd. 10a to § 13.3806. Adds a cross-reference in the Data Practices Act to the section in chapter 144 governing the classification of data in a commissioner's directive to isolate or quarantine a person or group.
- 18 **Isolation and quarantine of persons.** Adds § 144.419. Defines terms for this and the following section, and establishes requirements for isolating or quarantining individuals. Also specifies when a person's isolation or quarantine must terminate, affirms that isolated or quarantined persons have a fundamental right to refuse medical testing or treatment and specifies the consequences of such refusal, and prohibits unauthorized persons from entering an isolation or quarantine area.

Subd. 1. Definitions. Defines the following terms for this section and the due process section: bioterrorism, communicable disease, isolation, and quarantine. (The definitions for bioterrorism, isolation, and quarantine are the same as the definitions of those terms in chapter 12).

Subd. 2. General requirements. Requires the commissioner or any person acting under the commissioner's authority to comply with the listed requirements when isolating or quarantining individuals or groups:

- isolation or quarantine must be by the least restrictive means necessary;
- isolated individuals must be confined separately from quarantined individuals;
- the health status of isolated and quarantined individuals must be monitored regularly;
- if a quarantined individual becomes infectious, that individual must be isolated;
- isolated and quarantined individuals must be immediately released when they pose no known risk of transmitting a communicable or potentially communicable disease to others;
- the needs of isolated and quarantined individuals must be addressed in a systematic and competent fashion; and
- premises used for isolation and quarantine must be maintained in a safe and hygienic manner.

Subd. 3. Termination. Requires a person's isolation or quarantine to terminate automatically on the expiration date of the court order authorizing isolation or quarantine, or before the order expires if the commissioner determines that the person's isolation or quarantine is no longer necessary to protect the public.

Subd. 4. Right to refuse treatment. Specifies that all isolated or quarantined persons have the right to refuse medical treatment, testing, examinations, vaccination, participation in experimental procedures and protocols, collection of specimens, and preventive treatment programs. If a person refuses to submit to medical procedures and protocols as directed by the commissioner of health, the person may be subject to continued isolation or quarantine.

Subd. 5. Citizen right to entry. Paragraph (a) prohibits any unauthorized person from entering an isolation or quarantine area. If a person poses a danger to the public health because of his or her unauthorized entry, makes the person subject to isolation or quarantine.

Paragraph (b) gives the family member of an isolated or quarantined person the right to choose to enter an isolation or quarantine area, and requires the commissioner to allow the family member to enter the area if the family member signs a consent form. Prohibits the family member from holding the department, the commissioner, or the state liable for any consequence of entering the area. If the family member poses a danger to the public health after entering the area, allows the family member to be isolated or quarantined.

- 19 **Due process for isolation or quarantine of persons.** Adds § 144.4195. Requires the commissioner of health to obtain an ex parte court order authorizing isolation or quarantine except in certain circumstances, gives individuals being isolated or quarantined the right to court hearings on continued isolation or quarantine and the conditions of isolation or quarantine, and establishes requirements for court orders issued under this section.

Subd. 1. Ex parte order for isolation or quarantine. Before isolating or quarantining a person or group, directs the commissioner to obtain a written, ex parte order authorizing the isolation or quarantine. Allows evidence to be conveyed by electronic communication. Requires a court to grant such an order if the court finds probable cause exists to believe isolation or quarantine is warranted. Specifies what the order must include, and lists to whom the commissioner must provide copies of the order. Specifies that one order may be sufficient to quarantine or isolate a group of people, and specifies where such an order must be posted to give the group access to it. Prohibits a person from being isolated or quarantined for longer than 21 days without a court hearing. Allows an isolated or quarantined person to request a court hearing at any time.

Subd. 2. Temporary hold upon commissioner's directive. Allows the commissioner to isolate or quarantine a person or group by a directive of the commissioner, without obtaining an ex parte court order, if a delay in isolating or quarantining would significantly jeopardize the commissioner's ability to prevent or limit transmission of the disease to others. Establishes notice requirements. Within 24 hours after imposing the isolation or quarantine, directs the commissioner to apply for an ex parte court order authorizing it. Requires the court to rule on such an application within 24 hours of receiving it. Prohibits a person from being held after the temporary hold expires unless an ex parte order is obtained.

Subd. 3. Court hearing. Allows a person isolated or quarantined to request a court hearing to contest an ex parte court order or temporary hold, requires such hearings to be held within 72 hours of receiving the request, and specifies that a request for a hearing does not stay the isolation or quarantine order. Requires the commissioner to petition the court if the commissioner wishes to extend an isolation or quarantine order for longer than 21 days, and specifies how notice must be provided and what the notice must include. Allows the court to order continued isolation or quarantine if it finds, by clear and convincing evidence, that the person or persons at issue would pose an imminent health threat to others if not isolated or quarantined. Prohibits an isolation or quarantine authorized by this subdivision from lasting more than 30 days unless extended by the court.

Subd. 4. Hearing on conditions of isolation or quarantine. Allows an isolated or quarantined person to request a hearing on the terms and conditions of isolation or quarantine, and requires such a hearing to be held within seven days of the request. Specifies that the hearing request does not alter the isolation or quarantine order. If the court finds the terms or conditions of isolation or quarantine do not comply with law, allows the court to fashion appropriate remedies.

Subd. 5. Judicial decisions. Requires court orders issued under this section to be based on clear and convincing evidence, and requires the court to make a written record of the case. Specifies that all isolated or quarantined persons have the right to counsel. Requires requests for hearings to be filed and acted on according to laws and court rules.

Subd. 6. Data privacy. Classifies data on individuals contained in a commissioner's directive for isolation or quarantine, as health data.

Subd. 7. Delegation. Allows the commissioner to delegate the authority in subdivisions 1 and 3 to local public health boards.

20 **Study of emergency health powers issues.** Paragraph (a) requires the commissioner of health to study and submit recommendations to the legislature on statutory changes to strengthen the state's capacity to deal with a public health emergency while protecting the constitutional and other rights of citizens. Before submitting the recommendations to the legislature, requires the commissioner to publish the recommendations in the State Register and provide a comment period of at least 30 days. Requires the report and recommendations, and any written comments, to be submitted to the legislature by January 15, 2003. Requires the report to address at least the following: immunity from liability for health care providers and others; emergency measures concerning dangerous facilities and materials, the control of health care supplies and facilities, and limiting public gatherings and transportation; ways to detect and prevent the spread of disease; due process protections; enforcement methods; ways to preserve the effectiveness of certain antibiotics; and the impact of each recommendation on the constitutional and other rights of citizens.

Paragraph (b) requires the commissioner to consult with certain persons in developing the report and recommendations, and to describe the impact of each recommendation on citizens' rights. Specifies that all meetings must be open to the public and adequate notice of the meetings must be provided.

21 **Sunset.** Makes sections 1 to 19 expire August 1, 2004.

22 **Effective date.** Makes this bill effective the day following final enactment.