



Sub. S.B. 6*

125th General Assembly

(As Reported by S. Finance & Financial Institutions)

Sens. Stivers, Goodman, Jacobson, Spada, Harris, Robert Gardner, Randy Gardner, Fingerhut

BILL SUMMARY

- Modifies the powers and duties of the Director of Health, Department of Health, Public Health Council, and boards of health relative to the general powers of the Director, agreements to sell services or exchange information, investigations, quarantine and isolation, vaccinations and immunizations, the public health laboratory, enforcement of rules and orders, and other public health matters.
- Provides that "protected health information" (that is, information that identifies the individual or that could be used to identify the individual) reported to or obtained by the Director, Department, or a board of health is confidential and cannot be released without the individual's written consent, except under specified circumstances.
- Expands requirements under which certain health care entities must report information to the Department, establishes a criminal penalty for failure to comply with certain of those requirements, and authorizes the Director to impose a fine against any violator.
- Increases the penalty for violation of the prohibition against spreading contagion.

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* *This analysis was prepared before the report of the Senate Finance and Financial Institutions Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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CONTENT AND OPERATION

Powers and duties of the Department of Health

As discussed below, the bill modifies the powers and duties of the Director of Health, Department of Health, Public Health Council, and boards of health with respect to the general powers of the Director, agreements to sell services or exchange information, investigations, quarantine and isolation, vaccinations and immunizations, public health laboratory, enforcement of rules and orders, and other public health matters.

General powers of the Director of Health

(R.C. 3701.03)

Under current law, the Director of Health--as chief executive officer--is required to administer the health and sanitation laws and the rules of the Department of Health. The bill expressly authorizes the Director to take any action the Director considers necessary in fulfilling the duties the Revised Code establishes for the Director or Department and in exercising the authority the Revised Code grants to the Director or Department. It permits the adoption of rules (in accordance with the Administrative Procedure Act) as the Director considers necessary to provide for the effective fulfillment of those duties and exercise of that authority. In addition, the Director may designate Department employees and other individuals to administer the laws and rules on the Director's behalf.

The bill states, however, that nothing in this provision is to be construed as authorizing any action that would prevent the fulfillment of the duties established

for any other person or entity by law or would impair the exercise of the authority granted to any other person or entity by law.

Agreements to sell services or exchange information

(R.C. 3701.04(B))

Existing law authorizes the Director of Health to enter into agreements to sell services offered by the Department of Health to other departments, agencies, and institutions of this state. The bill permits the Director to enter into such agreements with other states or the United States.

The bill also authorizes the Director to enter into agreements with any person or government entity to share, exchange, or obtain information as the Director considers necessary to carry out the powers and duties established for the Director or the Department by the Revised Code or by rule. Such information may include confidential information and information that is considered "protected health information" under the bill (see **'Privacy of health information,'** below). Each agreement must specify the terms for use of the information being shared, exchanged, or obtained.

Investigations; confidentiality of information

(R.C. 3701.14 and 3701.147)

Current law requires the Director to make inquiry as to the cause of disease, especially when contagious, infectious, epidemic, or endemic, and to take prompt action to control it. The bill broadens this provision by specifying that the Director is to make inquiry "or investigate" as to the cause of disease, "illness, or any other health condition," including when the health condition is "pandemic." In addition, it authorizes the Director to conduct other investigations or inquiries at any time the Director considers a matter to be a threat to the public's health. The bill specifies, however, that nothing in this provision authorizes the Director to conduct an independent criminal investigation without the consent of each law enforcement agency with jurisdiction to conduct the criminal investigation.

The bill provides that, during an investigation or inquiry as to the cause of disease, illness, or health condition or when the Director considers a matter to be a threat to the public's health, the information reported to or obtained by the Director as part of the investigation or inquiry is confidential and cannot be released, *except* (1) as necessary for the Director or Department to perform the public health duties and exercise the public health powers established by the Revised Code and rule, (2) pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor, or (3) when the Director enters into an agreement to share or



exchange the information with a person or government entity that agrees to comply with these confidentiality requirements. The bill states that these confidentiality requirements apply during the Director's investigation or inquiry, notwithstanding any provision of the Revised Code to the contrary.

Quarantine and isolation; emergency actions by a health commissioner

(R.C. 3701.13 and 3707.34)

Existing law grants the Department of Health supreme authority in matters of quarantine, which it may declare, modify, or abolish. Under the bill the Department is also granted supreme authority in matters of "isolation," which it, too, may declare, modify, or abolish.

The bill provides that, in enforcing the law regarding quarantine and isolation, the health commissioner appointed by a board of health of a general or city health district may act on behalf of the board if (1) circumstances have rendered a meeting of the board to be impractical or impossible or (2) delaying action until a meeting of the board would compromise the public health. Each board of health is required by the bill to adopt a policy specifying the actions that may be taken by a health commissioner pursuant to this provision. Any action taken by a health commissioner in accordance with the board's policy is to be considered an action taken by the board until the board votes either to ratify or nullify the commissioner's action.

Vaccinations and immunizations; other pharmaceutical agents

(R.C. 3701.13 and 3701.16)

Under current law, the Department of Health is authorized to approve means of immunization against diphtheria, rubella, tetanus, hepatitis B, and other specified diseases. The bill adds mumps to the list of specified diseases, and provides that the Department also may take such actions as are necessary to encourage vaccination against any of the diseases.

The bill authorizes the Director of Health to purchase, store, and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies that the Director deems advisable in the interest of preparing for or responding to a public health emergency. However, the discretion granted by this provision does not relieve the Director of the Director's duty under current law to make necessary arrangements for the production and distribution of diphtheria antitoxin.

Public health laboratory

(R.C. 3701.15 and 3701.22)

The Department of Health is currently required to maintain a "chemical and bacteriological" laboratory for the examination of public water supplies, diagnosis of diseases, and analysis of patient specimens and food samples. The bill modifies this provision by doing the following:

(1) Referring to the laboratory as a "public health" laboratory rather than a "chemical and bacteriological" laboratory;

(2) Expanding the duties of the laboratory to include (a) diagnosis of, screening for, or confirmation of diseases or pathogens and (b) performance of biological, chemical, or radiological analyses or examinations as the Department deems necessary.

Duties of the Public Health Council

(R.C. 3701.06, 3701.34, 3701.35, 3701.56, and 6111.04(F)(7))

Under existing law, the Public Health Council is required to take evidence in appeals from the decision of the Director of Health in a matter relative to the approval or disapproval of plans, locations, estimates of cost, or other matters coming before the Director for official action. The bill removes this requirement.

Current law also requires the Public Health Council to adopt sanitary rules for general application throughout Ohio, to be known as the "sanitary code." The bill removes all references to the sanitary code and, instead, refers generally to Public Health Council or Department of Health "rules."

Enforcement of rules and orders; violations

(R.C. 3701.352, 3701.56, and 3701.99)

Currently, boards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, must enforce the quarantine and sanitary rules adopted by the Department of Health. Under the bill, these entities and individuals must also enforce the orders issued by the Director of Health, including quarantine and isolation orders, and the rules adopted by the Director.

Existing law prohibits the violation of any rule of the Public Health Council or any order of the Director issued under the Department of Health Law (R.C.

Chapter 3701.). Violation of this prohibition is a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense.

The bill expands the prohibition to include violations of any rule adopted by the Director or Department and any order of the Director or Department issued under the Department of Health Law or any other provision of the Revised Code. And, under the bill, a violation of the modified prohibition is a misdemeanor of the second degree on a first offense, a misdemeanor of the first degree on a second offense, and a felony of the fifth degree on each subsequent offense. The bill provides that a person cannot be prosecuted for such a violation if a more specific prohibition applies for the same violation.

Privacy of health information

(R.C. 3701.07, 3701.17, 3701.23(E), 3701.232(D), 3701.24(D), 3701.25(E), and 3707.06(C))

Under the bill, protected health information reported to or obtained by the Director of Health, the Department of Health, or a board of health of a city or general health district is confidential and cannot be released without the written consent of the individual who is the subject of the information, *except* as specified in one of the following:

- (1) As necessary to provide treatment to the individual;
- (2) As necessary to ensure the accuracy of the information;
- (3) As necessary for the Director or Department to perform the public health duties and exercise the public health powers established by the Revised Code and rule;
- (4) Pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor in connection with a criminal investigation or prosecution;
- (5) When the Director enters into an agreement to share or exchange the information with a person or government entity that agrees to comply with the same confidentiality requirements that the Director must meet.

Additionally, with respect to protected health information reported to or obtained by the Department, such information may be released in accordance with (1) to (5), above, *only if* the Director determines that the person or entity to which the information is being released has a legitimate need to know the information in order for the person or entity to perform their designated duties or functions.

The bill defines "**protected health information**" as information, whether in oral, written, electronic, visual, pictorial, physical, or any other form, that describes an individual's past, present, or future physical or mental health status or condition, receipt of treatment or care, or purchase of health products, *if* the information (1) reveals the identity of the individual who is the subject of the information or (2) could be used to reveal the identity of the individual who is the subject of the information, either by using the information alone or with other information that is available to predictable recipients of the information.

The bill provides, however, that information that does not identify an individual may be released in summary, statistical, or aggregate form.

These provisions of the bill do not apply to protected health information when another provision of the Revised Code establishes the manner in which the Director or Department must maintain the confidentiality of the information or the manner in which the information may be released.

Reporting requirements

Application

Trauma centers (R.C. 3701.072). The bill requires the Public Health Council to adopt rules, in accordance with the Administrative Procedure Act, under which a trauma center is required to report to the Director of Health information describing the trauma center's preparedness and capacity to respond to disasters, mass casualties, and bioterrorism. The rules may require the reporting of any information the Council considers necessary for the Director to obtain a proper description of a trauma center's preparedness and capacity to respond. The Director must review all information received under this provision, and may conduct an evaluation of a trauma center's preparedness and capacity to respond.

For purposes of this provision, "**bioterrorism**" means the 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, animal, plant, or other living organism as a means of influencing the conduct of government or intimidating or coercing a population. "**Trauma center**" has the same meaning as in the Division of Emergency Medical Services Law (R.C. Chapter 4765.).

Health care providers (R.C. 3701.23 and 3701.24(B)). Under current law, boards of health, health authorities or officials, and physicians in localities in which there are not health authorities or officials, must promptly report to the

Department of Health the existence of specified contagious or infectious diseases. The bill expands the application of this requirement to "health care providers" (rather than physicians) in localities in which there are no health authorities or officials and to coroners and medical examiners. In addition, it requires the reporting of other illnesses, health conditions, or unusual infectious agents or biological toxins posing a risk of human fatality or disability, as specified by the Public Health Council. These reports are to be submitted on forms and in the manner prescribed by the Director.

For purposes of this section, "**health care provider**" is defined as any person, business or other organization, or government entity that provides health care services to individuals.

Out-of-state medical laboratories (R.C. 3701.231). Under the bill, if a medical laboratory outside Ohio is used to perform a test or other diagnostic or investigative analysis that may result in information pertaining to an Ohio resident that must be reported by a health care provider under Ohio law, the entity using the laboratory is to ensure that the laboratory complies with those reporting requirements. The entity must verify to the Director of Health that the laboratory is complying with the requirements.

Pharmacies and pharmacists (R.C. 3701.232). The bill authorizes the Public Health Council to adopt rules, in accordance with the Administrative Procedure Act, under which a pharmacy or pharmacist is required to report significant changes in medication usage that may be caused by bioterrorism, epidemic or pandemic disease, or established or novel infectious agents or biological toxins posing a risk of human fatality or disability. If rules are adopted, the events that may require a report include the following:

- (1) An unexpected increase in the number of prescriptions for antibiotics;
- (2) An unexpected increase in the number of prescriptions for medication to treat fever or respiratory or gastrointestinal complaints;
- (3) An unexpected increase in sales of, or the number of requests for information on, over-the-counter medication to treat fever or respiratory or gastrointestinal complaints;
- (4) Any prescription for medication used to treat a disease that is relatively uncommon and may have been caused by bioterrorism;
- (5) Any other event specified in the rules adopted by the Public Health Council.

"Bioterrorism" has the same meaning as set forth above under **"Trauma centers."**

Poison prevention and treatment centers; other health-related entities (R.C. 3701.19 and 3701.201). The bill authorizes the Public Health Council also to adopt rules, in accordance with the Administrative Procedure Act, under which a poison prevention and treatment center or other health-related entity is required to report events that may be caused by bioterrorism, epidemic or pandemic disease, or established or novel infectious agents or biological or chemical toxins posing a risk of human fatality or disability. If rules are adopted, the events that may require a report include the following:

(1) An unexpected pattern or increase in the number of telephone inquiries or requests to provide information about poison prevention and treatment and available services;

(2) An unexpected pattern or increase in the number of requests to provide specialized treatment, consultation, information, and educational programs to health care professionals and the public;

(3) An unexpected pattern or increase in the number of requests for information on established or novel infectious agents or biological or chemical toxins posing a risk of human fatality or disability that is relatively uncommon and may have been caused by bioterrorism;

(4) Any other event specified in the rules adopted by the Public Health Council.

The bill requires each poison prevention and treatment center and other health-related entity to comply with any reporting requirement established in rules adopted under this provision.

"Bioterrorism" has the same meaning as set forth above under **"Trauma centers."**

Failure to comply with reporting requirements; penalty; fines

(R.C. 3701.23(C), 3701.232(C), 3701.24(C), 3701.25(B), 3701.57, 3701.571, 3701.99(A), and 3707.06(B))

The bill prohibits any person from failing to comply with the reporting requirements applicable to boards of health, health authorities or officials, health care providers in localities in which there are no health authorities or officials, coroners and medical examiners, pharmacies and pharmacists, persons designated by Public Health Council rules to report certain AIDS related information, and

physicians attending a patient suffering from specified diseases. A violation of this prohibition is a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense.

The bill also prohibits any physician attending persons suffering from cholera, plague, or other specified diseases from failing to comply with a requirement of existing law to report certain information to the health commissioner within whose jurisdiction the sick person is found. The existing requirement, and the bill's prohibition against failure to comply with the requirement, also apply to the owner of the building in which the sick person resides and to the head of the family.

The bill permits the Director of Health, in an adjudication under the Administrative Procedure Act, to impose a fine against any person who violates these prohibitions. The Director may also impose a fine against any poison prevention and treatment center or other health-related entity that fails to comply with the bill's reporting requirement. The Director is to adopt rules establishing the amount of the fines that may be imposed. On request of the Director, the Attorney General must bring and prosecute to judgment a civil action to collect any fine imposed under this provision that remains unpaid. All fines collected are to be deposited into the state treasury to the credit of the General Operations Fund. (Under current law, all fines or judgments collected by the Department of Health for specified violations, including violations of any orders or rules of the Department, are paid into the General Revenue Fund.)

Spreading contagion

(R.C. 3701.99(C))

Existing law (R.C. 3701.81) prohibits any person, knowing or having reasonable cause to believe that the person is suffering from a "dangerous, contagious" disease, from knowingly failing to take reasonable measures to prevent exposing other persons to the disease. It also prohibits any person, having charge of a person whom the person knows or has reasonable cause to believe is suffering from a "dangerous, contagious" disease, from recklessly failing to take reasonable measures to protect others, and to inform health authorities. And, lastly, it prohibits any person, having charge of a public conveyance or place of public accommodation or trade, and knowing or having reasonable cause to believe that persons using the conveyance or place have been exposed to a "dangerous, contagious" disease, from negligently failing to take reasonable measures to protect the public, and to inform health authorities. A violation of any of these prohibitions is a misdemeanor of the second degree.

Under the bill, the penalty for a violation is increased to a misdemeanor of the second degree on a first offense, a misdemeanor of the first degree on a second offense, and a felony of the fifth degree on each subsequent offense.

Other provisions: renumbering and conforming changes

(R.C. 339.89, 3701.04(A)(5), 3701.06, 3701.13, 3701.14(B), 3701.146, 3701.161, 3701.162, 3701.221, 3701.241, 3701.501, 3701.99(E), 3707.38, 3715.02, 3901.46, 4736.01, and 6111.04; Sections 3 and 4)

The bill relocates (from R.C. 3701.14(B) to 3701.146) the existing provisions regarding actions taken by the Director of Health and Public Health Council with respect to tuberculosis. In addition, it renumbers several existing sections, makes corrections, and makes other conforming changes necessitated by its provisions.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-23-03	p. 65
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