

SECOND REGULAR SESSION

HOUSE BILL NO. 1771

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BARRY AND REID (Co-sponsors).

Read 1st time January 31, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4129L.011

AN ACT

To repeal sections 44.010, 44.100, 105.711, 192.320, 473.697 and 490.620, RSMo, and to enact in lieu thereof nine new sections relating to emergencies, with penalty provisions and an emergency clause.

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

Section A. Sections 44.010, 44.100, 105.711, 192.320, 473.697 and 490.620, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 44.010, 44.100, 44.135, 105.711, 192.021, 192.320, 195.041, 473.697 and 490.620, to read as follows:

44.010. As used in sections 44.010 to [44.130] **44.135**, the following terms mean:

(1) "Agency", the state emergency management agency;

(2) **"Bioterrorism", the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or other living organism to influence the conduct of government, or to intimidate or coerce a civilian population;**

(3) "Director", the director of the state emergency management agency;

[(3)] (4) "Disasters", disasters which may result from terrorism, **including bioterrorism**, or from fire, wind, flood, earthquake, or other natural or man-made causes;

[(4)] (5) "Economic or geographic area", an area or areas within the state, or partly in this state and adjacent states, comprising political subdivisions grouped together for purposes of administration, organization, control or disaster recovery and rehabilitation in time of emergency;

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

15 [(5)] (6) "Emergency", any state of emergency declared by proclamation by the governor,
16 or by resolution of the legislature pursuant to sections 44.010 to [44.130] **44.135** upon the actual
17 occurrence **or imminent threat** of a natural or man-made disaster of major proportions within
18 this state when the safety and welfare of the inhabitants of this state are jeopardized;

19 [(6)] (7) "Emergency management", government at all levels performing emergency
20 functions, other than functions for which military forces are primarily responsible;

21 [(7)] (8) "Emergency management functions", "emergency management activities" and
22 "emergency management service", those functions required to prepare for and carry out actions
23 to prevent, minimize and repair injury and damage due to disasters, to include emergency
24 management of resources and administration of such economic controls as may be needed to
25 provide for the welfare of the people, either on order of or at the request of the federal
26 government, or in the event the federal government is incapable of administering such control;

27 [(8)] (9) "Emergency resources planning and management", planning for, management
28 and coordination of national, state and local resources;

29 [(9)] (10) "Executive officer of any political subdivision", the county commission or
30 county supervisor or the mayor or other manager of the executive affairs of any city, town,
31 village or fire protection district;

32 [(10)] (11) "Local organization for emergency management", any organization
33 established under [this law] **sections 44.010 to 44.135** by any county or by any city, town, or
34 village to perform local emergency management functions;

35 [(11)] (12) "Management", the activities of the emergency management director in the
36 implementation of emergency operations plans during time of emergency;

37 [(12)] (13) "Planning", activities of the state and local emergency management agency
38 in the formulation of emergency management plans to be used in time of emergency;

39 [(13)] (14) "Political subdivision", any county or city, town or village, or any fire district
40 created by law.

44.100. 1. The emergency powers of the governor shall be as follows:

2 (1) The provisions of this section shall be operative only during the existence of a state
3 of emergency (referred to in this section as "emergency"). The existence of an emergency may
4 be proclaimed by the governor or by resolution of the legislature, if the governor in [his] **the**
5 proclamation, or the legislature in its resolution, finds that a natural or man-made disaster of
6 major proportions has actually occurred **or an imminent threat thereof exists** within this state,
7 and that the safety and welfare of the inhabitants of this state require an invocation of the
8 provisions of this section.

9 (2) Any emergency, whether proclaimed by the governor or by the legislature, shall
10 terminate upon the proclamation thereof by the governor, or the passage by the legislature, of a

11 resolution terminating such emergency.

12 (3) During the period that the state of emergency exists or continues, the governor shall:

13 (a) Enforce and put into operation all plans, rules and regulations relating to disasters and
14 emergency management of resources adopted under [this law] **sections 44.010 to 44.135** and to
15 assume direct operational control of all emergency forces and volunteers in the state;

16 (b) Take action and give directions to state and local law enforcement officers and
17 agencies as may be reasonable and necessary for the purpose of securing compliance with the
18 provisions of [this law] **sections 44.010 to 44.135** and with the orders, rules and regulations
19 made pursuant thereof;

20 (c) Seize, take or requisition to the extent necessary to bring about the most effective
21 protection of the public:

22 a. Any means of transportation, other than railroads and railroad equipment and fuel, and
23 all fuel necessary for the propulsion thereof;

24 b. Any communication system or part thereof necessary to the prompt and efficient
25 functioning of the emergency management of the state;

26 c. All stocks of fuel;

27 d. Facilities for housing, feeding and hospitalization of persons, including buildings and
28 plants;

29 (d) Control, restrict and regulate by rationing, freezing, use of quotas, prohibitions on
30 shipments, price fixing, allocation or other means the use, sale or distribution of food, feed, fuel,
31 clothing and other commodities, materials, goods or services;

32 (e) Prescribe and direct activities in connection with but not limited to use, conservation,
33 salvage and prevention of waste of materials, services and facilities, including production,
34 transportation, power and communication facilities, training and supply of labor, utilization of
35 industrial plants, health and medical care, nutrition, housing, including the use of existing and
36 private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection
37 and other essential civil needs;

38 (f) To use or distribute all or any of this property among the inhabitants of the state in
39 any area adversely affected by a natural or man-made disaster and to account to the state treasurer
40 for any funds received thereof;

41 (g) To waive or suspend the operation of any statutory requirement or administrative rule
42 regarding the licensing, certification or issuance of permits evidencing professional, mechanical
43 or other skills;

44 (h) In accordance with rules or regulations, to provide that all law enforcement
45 authorities and other emergency response workers and agencies of other states who may be
46 within this state at the request of the governor or pursuant to state or local mutual-aid agreements

47 or compacts shall have the same authority and possess the same powers, duties, rights, privileges
48 and immunities as are possessed by like law enforcement authorities and emergency response
49 workers and agencies of this state;

50 (i) To perform and exercise such other functions, powers and duties as may be necessary
51 to promote and secure the safety and protection of the civilian population.

52 2. When any property is seized, taken or requisitioned under this section, the circuit court
53 of the county in which the property was taken may on the application of the owner thereof or on
54 the application of the governor in cases where numerous claims may be filed, appoint three
55 disinterested commissioners in the manner provided by section 523.040, RSMo, to assess the
56 damages which the owners may have sustained by reason of the appropriation thereof. Upon the
57 application the amount due because of the seizure of property shall be determined in the manner
58 provided in chapter 523, RSMo, for the determination of damages in case of the exercise of the
59 power of eminent domain.

**44.135. 1. The state, any political subdivision of the state, the governor, the public
2 health authority, or any other state official, or any officer or employee thereof, shall not
3 be liable, except in cases of gross negligence or willful misconduct, for the death of or any
4 injury to persons or damage to property as a result of responding to an emergency.**

**5 2. During an emergency, any person owning or controlling real estate or other
6 premises who voluntarily and without compensation grants a license or privilege, or
7 otherwise permits the designation or use of the whole or any part of such real estate or
8 premises to shelter persons, together with such person's successors in interest, if any, shall
9 not be civilly liable for negligently causing the death of or injury to any person on or about
10 such real estate or premises under such license, privilege, or other permission, or for
11 negligently causing loss of or damage to the property of such person.**

**12 3. During an emergency, any private person, firm, or corporation, and any
13 employee or agent of such person, firm, or corporation in the performance of a contract
14 with and under the direction of the state or any political subdivision of the state assisting
15 in the emergency response shall not be civilly liable for causing the death of or injury to
16 any person or damage to any property except in the event of gross negligence or willful
17 misconduct.**

**18 4. During an emergency, any private person, firm, or corporation, and any
19 employee or agent of such person, firm, or corporation who renders assistance or advice
20 at the request of the state or any political subdivision of the state shall not be civilly liable
21 for causing the death of or injury to any person or damage to any property except in the
22 event of gross negligence or willful misconduct.**

23 5. The immunities provided in this section shall not apply to any private person,

24 **firm, or corporation, or any employee or agent of such person, firm, or corporation whose**
25 **act or omission caused in whole or in part the emergency and who would otherwise be**
26 **liable.**

105.711. 1. There is hereby created a "State Legal Expense Fund" which shall consist
2 of moneys appropriated to the fund by the general assembly and moneys otherwise credited to
3 such fund pursuant to section 105.716.

4 2. Moneys in the state legal expense fund shall be available for the payment of any claim
5 or any amount required by any final judgment rendered by a court of competent jurisdiction
6 against:

7 (1) The state of Missouri, or any agency of the state, pursuant to section 536.050 or
8 536.087, RSMo, or section 537.600, RSMo;

9 (2) Any officer or employee of the state of Missouri or any agency of the state, including,
10 without limitation, elected officials, appointees, members of state boards or commissions,
11 **volunteers who respond to emergencies at the request of state and local agencies**, and
12 members of the Missouri national guard upon conduct of such officer or employee arising out
13 of and performed in connection with his or her official duties on behalf of the state, or any
14 agency of the state, provided that moneys in this fund shall not be available for payment of
15 claims made under chapter 287, RSMo; or

16 (3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse or other health
17 care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335,
18 336, 337 or 338, RSMo, who is employed by the state of Missouri or any agency of the state,
19 under formal contract to conduct disability reviews on behalf of the department of elementary
20 and secondary education or provide services to patients or inmates of state correctional facilities
21 on a part-time basis;

22 (b) Any physician licensed to practice medicine in Missouri under the provisions of
23 chapter 334, RSMo, and his professional corporation organized pursuant to chapter 356, RSMo,
24 who is employed by or under contract with a city or county health department organized under
25 chapter 192, RSMo, or chapter 205, RSMo, or a city health department operating under a city
26 charter, or a combined city-county health department to provide services to patients for medical
27 care caused by pregnancy, delivery and child care, if such medical services are provided by the
28 physician pursuant to the contract without compensation or the physician is paid from no other
29 source than a governmental agency except for patient co-payments required by federal or state
30 law or local ordinance;

31 (c) Any physician licensed to practice medicine in Missouri under the provisions of
32 chapter 334, RSMo, who is employed by or under contract with a federally funded community
33 health center organized under Section 315, 329, 330 or 340 of the Public Health Services Act (42

34 U.S.C. 216, 254c) to provide services to patients for medical care caused by pregnancy, delivery
35 and child care, if such medical services are provided by the physician pursuant to the contract
36 or employment agreement without compensation or the physician is paid from no other source
37 than a governmental agency or such a federally funded community health center except for
38 patient co-payments required by federal or state law or local ordinance. In the case of any claim
39 or judgment that arises under this paragraph, the aggregate of payments from the state legal
40 expense fund shall be limited to a maximum of one million dollars for all claims arising out of
41 and judgments based upon the same act or acts alleged in a single cause against any such
42 physician, and shall not exceed one million dollars for any one claimant;

43 (d) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or
44 registered pursuant to chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who
45 provides medical, dental or nursing treatment within the scope of his license or registration at
46 a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo,
47 a city health department operating under a city charter, or a combined city-county health
48 department, or a nonprofit community health center qualified as exempt from federal taxation
49 under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such treatment is
50 restricted to primary care and preventive health services, provided that such treatment shall not
51 include the performance of an abortion, and if such medical, dental or nursing services are
52 provided by the physician, dentist, physician assistant, dental hygienist or nurse without
53 compensation. In the case of any claim or judgment that arises under this paragraph, the
54 aggregate of payments from the state legal expense fund shall be limited to a maximum of five
55 hundred thousand dollars, for all claims arising out of and judgments based upon the same act
56 or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one
57 claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall
58 be limited to five hundred thousand dollars; or

59 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or
60 registered to practice medicine, nursing or dentistry or to act as a physician assistant or dental
61 hygienist in Missouri under the provisions of chapter 332, RSMo, chapter 334, RSMo, or chapter
62 335, RSMo, who provides medical, nursing or dental treatment within the scope of his license
63 or registration to students of a school whether a public, private or parochial elementary or
64 secondary school, if such physician's treatment is restricted to primary care and preventive health
65 services and if such medical, dental or nursing services are provided by the physician, dentist,
66 physician assistant, dental hygienist, or nurse without compensation. In the case of any claim
67 or judgment that arises under this paragraph, the aggregate of payments from the state legal
68 expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims
69 arising out of and judgments based upon the same act or acts alleged in a single cause and shall

70 not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased
71 pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars;
72 or

73 (4) Staff employed by the juvenile division of any judicial circuit.

74 3. The department of health and senior services shall promulgate rules regarding contract
75 procedures and the documentation of care provided under paragraphs (b), (c), (d), and (e) of
76 subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal
77 expense fund or any policy of insurance procured pursuant to the provisions of section 105.721,
78 provided in subsection 5 of this section, shall not apply to any claim or judgment arising under
79 paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. Any claim
80 or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of
81 this section shall be paid by the state legal expense fund or any policy of insurance procured
82 pursuant to section 105.721, to the extent damages are allowed under sections 538.205 to
83 538.235, RSMo. Liability or malpractice insurance obtained and maintained in force by any
84 physician, dentist, physician assistant, dental hygienist, or nurse for coverage concerning his or
85 her private practice and assets shall not be considered available under subsection 5 of this section
86 to pay that portion of a judgment or claim for which the state legal expense fund is liable under
87 paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. However, a
88 physician, nurse, dentist, physician assistant, or dental hygienist may purchase liability or
89 malpractice insurance for coverage of liability claims or judgments based upon care rendered
90 under paragraphs (c), (d), and (e) of subdivision (3) of subsection 2 of this section which exceed
91 the amount of liability coverage provided by the state legal expense fund under those paragraphs.
92 Even if paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is
93 repealed or modified, the state legal expense fund shall be available for damages which occur
94 while the pertinent paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this
95 section is in effect.

96 4. All payments shall be made from the state legal expense fund by the commissioner
97 of administration with the approval of the attorney general. Payment from the state legal expense
98 fund of a claim or final judgment award against a physician, dentist, physician assistant, dental
99 hygienist, or nurse described in paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection
100 2 of this section shall only be made for services rendered in accordance with the conditions of
101 such paragraphs.

102 5. Except as provided in subsection 3 of this section, in the case of any claim or
103 judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri,
104 or an agency of the state, the aggregate of payments from the state legal expense fund and from
105 any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed

106 the limits of liability as provided in sections 537.600 to 537.610, RSMo. No payment shall be
107 made from the state legal expense fund or any policy of insurance procured with state funds
108 pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other
109 policy of liability insurance have been exhausted.

110 6. The provisions of section 33.080, RSMo, notwithstanding, any moneys remaining to
111 the credit of the state legal expense fund at the end of an appropriation period shall not be
112 transferred to general revenue.

113 7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
114 is promulgated under the authority delegated in sections 105.711 to 105.726 shall become
115 effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo.
116 Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or
117 adopted prior to August 28, 1999, if it fully complied with the provisions of chapter 536, RSMo.
118 This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the
119 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to
120 disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking
121 authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

**192.021. 1. All pharmacists licensed in this state shall report to the department of
2 health and senior services any unusual or increased prescription rates, unusual types of
3 prescriptions, or unusual trends in pharmacy visits that may be potential causes of an
4 emergency, as defined in section 44.010, RSMo. Prescription-related events that require
5 a report include, but are not limited to:**

6 **(1) An unusual increase in the number of prescriptions to treat conditions identified
7 by rule of the department;**

8 **(2) An unusual increase in the number of prescriptions for antibiotics; and**

9 **(3) Any prescription that treats a disease that is relatively uncommon or may be
10 associated with bioterrorism.**

11

12 **Such report shall be made electronically or in writing within twenty-four hours to the
13 department.**

14 **2. Every veterinarian, livestock owner, or veterinary diagnostic laboratory director
15 shall report any animal having or suspected of having any disease, illness, or health
16 condition identified by rule of the department as a potential cause of an emergency, as
17 defined in section 44.010, RSMo. Such report shall be made electronically or in writing
18 within twenty-four hours of diagnosis or discovery to the department and shall include as
19 much of the following information as is available:**

20 **(1) The specific illness or health condition that is the subject of the report;**

- 21 (2) The suspected locating information of the animal;
22 (3) The name and address of any known owner of the animal; and
23 (4) The name and address of the reporting individual.
- 24 **4. Any out-of-state laboratory that collects specimens in Missouri shall report to**
25 **the department any case involving persons who harbor any illness or health condition that**
26 **may be potential causes of an emergency, as defined in section 44.010, RSMo. A reportable**
27 **illness or condition includes, but is not limited to, any of the diseases, illnesses, or health**
28 **conditions identified by rule of the department. Such results shall be reported by the**
29 **laboratory that performs the test, but an in-state laboratory that sends specimens to an**
30 **out-of-state laboratory is also responsible for reporting such results.**

192.320. [Any person or persons violating any of the provisions of sections 192.010,
2 192.020 to 192.490, 192.600 to 192.620 or who shall leave any pesthouse, or isolation hospital,
3 or quarantined house or place without the consent of the health officer having jurisdiction, or
4 who evades or breaks quarantine or knowingly conceals a case of contagious, infectious, or
5 communicable disease, or who removes, destroys, obstructs from view, or tears down any
6 quarantine card, cloth or notice posted by the attending physician or by the health officer, or by
7 direction of a proper health officer, shall be deemed guilty of a class A misdemeanor]**1. No**
8 **person shall:**

- 9 **(1) Violate any of the provisions of sections 192.010, 192.020 to 192.490, or 192.600**
10 **to 192.620;**
- 11 **(2) Refuse to submit to medical examination and testing for an infectious,**
12 **contagious, communicable, or dangerous disease as ordered by the department of health**
13 **and senior services;**
- 14 **(3) Refuse to perform a medical examination or test for an infectious, contagious,**
15 **communicable, or dangerous disease as ordered by the department of health and senior**
16 **services;**
- 17 **(4) Refuse to comply with an isolation or quarantine order issued by the**
18 **department of health and senior services or a local public health agency;**
- 19 **(5) Knowingly put himself or herself in contact with any person subject to isolation**
20 **or quarantine, except for physicians or other health care providers, public health**
21 **authorities, or persons authorized to enter an isolation or quarantine premises by the**
22 **public health authority who are providing necessary care and services for those persons**
23 **subject to isolation or quarantine;**
- 24 **(6) Remove, destroy, obstruct from view, or tear down any quarantine card, cloth,**
25 **or notice posted by the attending physician, the department of health and senior services,**
26 **or a local public health agency;**

27 (7) Fail to report or knowingly conceal a case of an infectious, contagious,
28 communicable, or dangerous disease required to be reported by the department of health
29 and senior services; or

30 (8) Refuse to cooperate with the department of health and senior services or a local
31 public health agency in the department's or agency's investigation of an actual or
32 threatened outbreak of an infectious, contagious, communicable, or dangerous disease.

33 2. Any person who violates this section is guilty of a class A misdemeanor. Any
34 person who violates this section during an emergency, as defined in section 44.010, RSMo,
35 is guilty of a class D felony.

36 3. In addition to any proceedings initiated pursuant to subsections 1 and 2 of this
37 section, the attorney general may file suit in the circuit court of the county in which such
38 person resides for injunctive relief.

 195.041. In an emergency, as defined in section 44.010, RSMo, the department of
2 health and senior services may waive the registration and record keeping requirements set
3 forth in sections 195.010 to 195.100, and any rules promulgated thereunder, if the
4 department determines such waiver is in the best interest of public health.

 473.697. Whenever application shall be made to any probate division for letters of
2 administration upon the estate of any person supposed to be dead, because of the absence of such
3 person for five consecutive years from the place of [his] **such person's** last known domicile
4 within this state, **or because such person was exposed to a specific peril of death due to an**
5 **actual or suspected terrorist event**, or because, having been a resident of this state, such person
6 has heretofore gone from and has not returned to this state for five consecutive years, or, because,
7 having been such resident of this state, such person shall hereafter go from and shall not return
8 to this state for five consecutive years, or, because being a resident of this state, such person shall
9 have so concealed or conducted himself **or herself** within this state that [he] **such person** shall
10 not have been heard of for five consecutive years by the judge of the probate division having
11 jurisdiction of [his] **such person's** estate, or by the persons interested therein, then said court,
12 if satisfied that the applicant would be entitled to such letters if the supposed decedent were in
13 fact dead, shall cause a notice to such supposed deceased person to be published in a newspaper,
14 published in the county, once a week for four consecutive weeks, setting forth the fact that such
15 application has been made, together with notice that on a day certain, which shall be at least two
16 weeks after the last publication of such notice, the court will hear evidence concerning the
17 alleged absence of the supposed decedent, and the circumstances and duration thereof. The
18 persons applying for such letters of administration shall file a petition stating the facts upon
19 which such application is based and the place where such supposed deceased person resided
20 when last heard from by [him] **such person** or by any person within [his] **such person's**

21 knowledge.

490.620. If any person who shall have resided in this state go from and do not return to
2 this state for five successive years, [he] **such person** shall be presumed to be dead in any case
3 wherein [his] **such person** death shall come in question, unless proof be made that [he] **such**
4 **person** was alive within that time. **The fact that such person was exposed to a specific peril**
5 **of death may be a sufficient basis for determining at any time after such exposure that such**
6 **person died less than five years after the date such person's absence commenced.**

Section B. Because immediate action is necessary to provide emergency powers for the
2 state section A of this act is deemed necessary for the immediate preservation of the public
3 health, welfare, peace, and safety, and is hereby declared to be an emergency act within the
4 meaning of the constitution, and section A of this act shall be in full force and effect upon its
5 passage an approval.