

ACT 169

H.B. NO. 2521

A Bill for an Act Relating to Control of Disease.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the tragic events of September 11, 2001, have focused attention on the State's ability to protect the health, safety, and well-being of its citizens and visitors. New and emerging dangers, including emergent and resurgent infectious diseases and incidents of civilian mass casualties, pose serious and immediate threats to the population.

Emergency health threats, including those caused by bioterrorism and epidemics, may require the exercise of extraordinary government functions. Therefore, an examination of our resources for the prevention, detection, management, and containment of public health emergencies should be undertaken.

The emergency powers embodied in chapters 127 and 128, Hawaii Revised Statutes, as vested in the civil defense system, are adequate to enable the State to respond rapidly and effectively to potential or actual public health emergencies. Accordingly, nothing in this Act is intended to supersede or otherwise limit chapters 127 and 128, Hawaii Revised Statutes.

Modifications to the authority of the department of health, as expressed in this Act, will enable the department to respond more effectively to emerging health problems prior to the need for declaration of a civil defense emergency.

Physical and workforce resources of the department may be inadequate to deal swiftly and effectively with emerging health problems resulting from a life-threatening epidemic or terrorist event, and assistance of private healthcare facilities and providers may be needed to protect the State's citizens and visitors. Therefore, the legislature finds and declares that public support of private healthcare facilities and providers that have assisted the department of health in dealing with emerging health problems resulting from an epidemic or terrorist event is in the public interest and for the public health, safety, and general welfare.

This Act provides for development of collaborative agreements to enable private providers to assist the department in carrying out essential public health functions under the direction of the department with the intent that they will be fairly compensated as well as protected in carrying out this vital public purpose.

SECTION 2. Chapter 325, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

“§325- Agreements; collaborative assistance in control of disease outbreaks. (a) The director may enter into agreements for collaborative assistance with licensed health care facilities and health care providers in the State to control an epidemic of a dangerous disease, which requires more physical facilities, materials, or personnel than the department has available.

(b) Whenever used in this section, unless a different meaning clearly appears from the context:

“Dangerous disease” means any illness or health condition that might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.

“Department” means the department of health.

“Director” means the director of health.

“Epidemic” means the occurrence of cases of an illness clearly in excess of normal expectancy, as determined by the director.

“Health care facility” means a facility as defined in section 323D-2.

“Health care provider” means a provider as defined in section 323D-2.

(c) Under collaborative agreements, health care facilities or health care providers shall provide prophylactic and treatment services for the epidemic disease in collaboration with and under the general direction of the department and shall seek reimbursement from the individuals who receive medical care, the parties responsible for their care, or their health plans. Persons having health plan benefits shall be responsible for any copayments to the facilities or health care providers.

(d) The agreements may provide that the department shall use reasonable efforts to seek legislative appropriations to reimburse health care facilities and health care providers for the use of physical facilities, professional services, and materials provided to persons without health plan coverage.

(e) Except in cases of wilful misconduct, the following persons shall not be liable for the death of or injury to any person who is provided care pursuant to this section or for damage to property when resulting from any act or omission in the performance of such services:

- (1) The State or any political subdivision;
- (2) A health care facility or health care provider acting at the direction of the department under an agreement as provided in this section; and
- (3) Persons engaged in disease prevention and control functions pursuant to this section or sections 325-8 and 325-9, including volunteers whose services are accepted by any authorized person.”

SECTION 3. Section 321-1, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) When in the judgment of the director, there is deemed to be a potential health hazard, the department[~~, through the director,~~] may take precautionary measures to protect the public through the imposition of an embargo [ø], the detention of products regulated by the department, [ø] the removal of products regulated by the department from the market, [ø] the declaration of quarantine[;], or by sequestering items suspected to be contaminated by toxic or infectious substances; provided that the director [must] shall find evidence of a health hazard within [seventy-two hours] seven days of the action taken or rescind the action. The director shall make public the findings.”

SECTION 4. Section 321-311.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§321-311.5[H]~~ **Epidemiologic investigations.** (a) The department may conduct investigations to determine the nature and extent of diseases and injuries deemed by the department to threaten the public health and safety.

(b) Every person, health care provider, and medical facility shall provide the patient’s name, the name of a minor patient’s parent or guardian, address, telephone number, age, sex, race or ethnicity, clinical signs and symptoms, laboratory test results, diagnostic interview data, treatment provided, and the disposition of the patient when requested by an authorized representative of the director for the purpose of conducting such an investigation. The authorized representative may only view the limited portion of the patient’s medical record, which is directly relevant in time and scope to the subject of the investigation.

(c) Every person, company, organization, association, health care provider, medical facility, or any other possible source of information shall provide names, addresses, telephone numbers, and locating information regarding an individual or group of individuals suspected of having been exposed to a disease or disease-causing substance that is the subject of an epidemiologic investigation when requested by an authorized representative of the director.

For the purposes of this subsection, “locating information” includes information contained in appointment, reservation, registration, invitation, attendance, billing, payment lists, or any other record that may help the department identify, locate, or contact individuals or groups suspected of having been exposed to a disease under investigation.

~~[(e)] (d)~~ No person, company, organization, association, health care provider, [or] medical facility, or other source that provides information requested by an authorized representative of the director, for the purpose of conducting an investigation under this section, shall be held civilly or criminally liable for providing that information to the department.

~~[(d)] (e)~~ All information provided to the department under this section shall be kept strictly confidential, except as the director determines is necessary to protect the public health and safety. Access to confidential records shall be restricted to those individuals specifically authorized to participate in any given investigation. However, epidemiologic and statistical information with no individual identifying information may be released to the public. The identities of individuals whose medical records are investigated shall be disclosed only to those persons authorized by the director or the director’s representative to conduct a specific investigation under this section or determined by the director to be necessary to protect the health and safety of the public.”

SECTION 5. Section 325-8, Hawaii Revised Statutes, is amended to read as follows:

~~“§325-8 Infected persons [,- removal] and quarantine. [When any person is infected or suspected of being infected with any infectious, communicable, or other disease dangerous to the public health, the department of health or its agent, may, for the safety of the public, remove the sick or infected person to a separate house or hospital, and provide the person with medical care and other necessaries, which shall be at the expense of the person’s self, the person’s parents or guardian, if able to meet the expense, otherwise at the expense of the county in which the person is ill or infected. The county council shall pay the expenses upon certification by the department or its agents that a person has been so removed and that expense has been incurred under this section.] (a) As used in this section:~~

“Communicable disease” means any disease declared to be “communicable” by the director of health.

“Dangerous disease” means a disease as defined in section 325-

“Quarantine” means the compulsory physical separation, including the restriction of movement or confinement of individuals or groups believed to have been exposed to or known to have been infected with a contagious disease, from individuals who are believed not to have been exposed or infected, by order of the department or a court of competent jurisdiction.

(b) In implementing a quarantine, the dignity of the individual quarantined shall be respected at all times and to the greatest extent possible, consistent with the objective of preventing or limiting the transmission of the disease to others. The needs of individuals quarantined shall be addressed in as systematic and competent a fashion as is reasonable under the circumstances. To the greatest extent possible, the premises in which individuals are quarantined shall be maintained in a safe and hygienic manner, designed to minimize the likelihood of further transmission of infection or other harm to individuals subject to quarantine. Adequate food, clothing, medication, and other necessities, access to counsel, means of communication with those in and outside these settings, and competent medical care shall be provided to the person quarantined.

To the greatest extent possible, cultural and religious beliefs shall be considered in addressing the needs of quarantined individuals. The department may establish and maintain places of quarantine and quarantine any individual by the least restrictive means necessary to protect the public health.

The department shall take all reasonable means to prevent the transmission of infection between or among quarantined individuals. The quarantine of any individual shall be terminated when the director determines that the quarantine of that individual is no longer necessary to protect the public health.

(c) An individual subject to quarantine shall obey the department’s rules and orders, shall not go beyond the quarantined premises, and shall not put the individual’s self in contact with any individual not subject to quarantine other than a physician, health care provider, or individual authorized to enter a quarantined premises by the department. Violation of any of the provisions of this subsection is a misdemeanor.

(d) No individual, other than an individual authorized by the department, shall enter a quarantined premises. Any individual entering a quarantined premises without permission of the department shall be guilty of a misdemeanor. If, by reason of an unauthorized entry into a quarantined premises, the individual poses a danger to public health, the individual may be subject to the quarantine pursuant to this section.

(e) Before quarantining an individual, the department shall obtain a written, ex parte order from a court of this State authorizing such action. A petition for an ex parte order shall be filed with the circuit court of the circuit in which the individual resides, is suspected of residing, or is quarantined under subsection (f). Proceedings on or related to a petition for an ex parte order shall be a civil action. The court shall grant an ex parte order upon finding that probable cause exists to believe a quarantine is warranted pursuant to this section. A copy of the ex parte order shall be given to the individual quarantined, along with notification that the individual has a right to a hearing under this section.

(f) Notwithstanding subsection (e), the department may quarantine an individual without first obtaining a written, ex parte order from the court if any delay in the quarantine of the individual would pose an immediate threat to the public health. Following such a quarantine, the department shall promptly obtain a written, ex parte order from the court authorizing the quarantine.

(g) An individual quarantined pursuant to subsection (e) or (f) shall have the right to a court hearing to contest the ex parte order. If the individual, the individual’s guardian ad litem, or the individual’s counsel requests a hearing, the hearing shall be held within fourteen days of filing of the request. The request shall

be in writing and shall be filed with the circuit court in the circuit in which the individual is quarantined. A request for a hearing shall not alter or stay the quarantine of the individual. The department shall be notified of the request for a hearing at least ten days before the hearing. At the hearing, the department shall show that the quarantine is warranted pursuant to this section. If, after hearing all relevant evidence, the court finds that the criteria for quarantine under subsection (i) have been met by clear and convincing evidence, the court shall authorize the continued quarantine of the individual.

(h) On or after thirty days following the issuance of an ex parte order or a hearing as provided for in this section, an individual quarantined pursuant to this section may request in writing a court hearing to contest the continued quarantine. The hearing shall be held within fourteen days of the filing of the request. The request shall be in writing and shall be filed with the circuit court for the circuit in which the individual is quarantined. A request for a hearing shall not alter or stay the order of quarantine. The department shall be notified of the request for a hearing at least ten days before the hearing. At the hearing, the department shall show that continuation of the quarantine is warranted pursuant to this section. If, after hearing all relevant evidence, the court finds that the criteria for the quarantine under subsection (i) have been met by clear and convincing evidence, the court shall authorize the continued quarantine of the individual.

(i) A court may order an individual to be quarantined if the court finds that:

- (1) The individual is reasonably believed to have been exposed to or known to have been infected with a communicable or dangerous disease; and
- (2) A quarantine is the least restrictive means by which the public's health, safety, and welfare can be protected, due to the transmittable nature of the communicable or dangerous disease and the lack of preventive measures, or due to the failure by the individual quarantined to accept or practice less restrictive measures to prevent disease transmission.

(j) An individual quarantined pursuant to this section may request a hearing in the courts of this State regarding the individual's treatment and the terms and conditions of the quarantine. Upon receiving a request, the court shall fix a date for a hearing. The hearing shall take place within fourteen days of the filing of the request with the court. The request for a hearing shall not alter or stay the order of quarantine. The department shall be notified of the request for a hearing at least ten days before the hearing. If, upon a hearing, the court finds that the quarantine of the individual is not in compliance with subsection (b), the court may fashion remedies reasonable under the circumstances and consistent with this chapter.

(k) Judicial decisions shall be based upon clear and convincing evidence, and a written record of the disposition of the case shall be made and retained. If the personal appearance before the court of a quarantined individual is determined by the director to pose a threat to individuals at the proceeding and the quarantined individual does not waive the right to attend the proceeding, the court shall appoint a guardian ad litem as provided in article V of chapter 560, to represent the quarantined individual throughout the proceeding or shall hold the hearing via any means that allow all parties to participate as fully and safely as is reasonable under the circumstances.

(l) Upon written request, the court shall appoint counsel at state expense to represent individuals or groups of individuals who are or who are about to be quarantined pursuant to this section and who are not otherwise represented by counsel. Adequate means of communication between those individuals or groups and their counsel and guardians ad litem shall be provided.

(m) In any proceeding brought pursuant to this section, in consideration of the protection of the public's health, the severity of the emergency, and the

availability of necessary witnesses and evidence, the court may order the consolidation of claims by individuals involved or to be affected by a quarantine where:

- (1) The number of individuals involved or to be affected by a quarantine is so large as to render individual participation impractical;
- (2) There are questions of law or fact common to the individual claims or rights to be determined;
- (3) The group claims or rights to be determined are typical of the affected individuals' claims or rights; and
- (4) The entire group will be adequately represented in the consolidation.

(n) Each individual quarantined shall be responsible for the costs of food, lodging, and medical care, except for those costs covered and paid by the individual's health plan.''

SECTION 6. Section 325-79, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 325-80, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 325-81, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 325-82, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 325-83, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 325-84, Hawaii Revised Statutes, is repealed.

SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that extent the provisions of this Act are severable.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 14. This Act shall take effect upon its approval.

(Approved June 18, 2002.)

Note

1. Edited pursuant to HRS §23G-16.5.