

2001 ASSEMBLY BILL 849

February 25, 2002 – Introduced by Representatives UNDERHEIM, HUBER and MILLER, cosponsored by Senators MOEN and ROSENZWEIG. Referred to Committee on Public Health.

1 **AN ACT** *to renumber* 95.22 and 252.06 (4); *to amend* 166.03 (1) (b) 1., 252.02
2 (title), 252.05 (1), 252.06 (1) and 252.06 (10) (a); and *to create* 20.435 (1) (e),
3 95.22 (2), 157.055, 166.02 (1p), 166.02 (1r), 166.02 (1t), 166.02 (7), 166.02 (8),
4 166.03 (1) (b) 8., 166.03 (2) (a) 6., 250.01 (6g), 250.01 (6r), 250.03 (3), 250.042,
5 251.05 (3) (e), 252.02 (7), 252.041, 252.06 (4) (b), 252.06 (10) (b) 5., 252.06 (10)
6 (b) 6., 440.142, 895.46 (5) (c) and 979.012 of the statutes; **relating to:**
7 authorizing a declaration of and actions under a state of emergency related to
8 public health, requiring the exercise of rule-making authority, making an
9 appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the governor may proclaim a state of emergency for any portion of the state or the whole state if the governor determines that an emergency resulting from enemy action or a natural or man-made disaster exists. The state of emergency may not exceed 60 days for an emergency resulting from enemy action or 30 days from disasters, unless extended by a joint resolution of the legislature. The department of military affairs, through the division of emergency government, is the lead state agency to respond to the emergency. This bill allows the governor to

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proclaim a state of emergency related to public health and designate the department of health and family services (DHFS) as the lead state agency if the governor determines that a public health emergency exists. The bill defines a public health emergency as the occurrence or threat of a health condition that is caused by bioterrorism or a novel or previously controlled biological agent and that poses a high probability of a large number of deaths or serious injury and a high probability of widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of harm to a large number of people. Under the bill, during a state of emergency related to public health, the governor may suspend any administrative rule that would hinder necessary actions to respond to the emergency and increase the health threat to the population.

Current law relating to the duties of funeral directors prohibits a public officer, an employee or officer of a public institution, or a physician from sending the corpse of a person to a funeral director without having first made inquiry as to the desires of the next of kin or others who may be chargeable with the funeral expenses. No person who is not licensed as a funeral director by the funeral directors examining board may engage in the business of a funeral director. Further, no person may cremate a corpse without first obtaining a cremation permit from the appropriate county coroner or medical examiner. If a corpse is the subject of a coroner's or medical examiner's investigation concerning cause of death, no person may embalm or conduct an autopsy on the corpse without authorization from the appropriate coroner or medical examiner.

Under current law, DHFS must carry out a statewide immunization program to eliminate mumps, measles, German measles, diphtheria, whooping cough, poliomyelitis and other diseases that DHFS specifies by rule and to protect against tetanus. Any registered nurse, licensed practical nurse, nurse midwife, physician, physician assistant, respirator care practitioner, physician therapist, podiatrist, dietitian, athletic trainer, or occupational therapist who knows or has reason to know that a person treated or visited by him or her has a communicable disease or, having a communicable disease, has died, must report the appearance of the disease or the death to the local health officer; the local health officer must report, or require the person reporting, to report to DHFS. DHFS has broad authority to implement emergency measures necessary to control communicable diseases, that are diseases specified by DHFS by rule. DHFS or local health officers of local health departments may require isolation of a patient, quarantine of contacts, disinfection, or modified forms of these procedures. If a local health officer has a reasonable belief in the existence of a communicable disease or receives a diagnostic report of a physician or notification or a confirming report from a parent or caretaker, the local health officer must immediately quarantine, isolate, and impose restrictions on persons or take other communicable disease control measures. If DHFS or a local health officer determines it necessary for a particular communicable disease, no persons except the local health officer, his or her representative, the attending physicians and nurses, members of the clergy, members of a patient's immediate family, and other persons with a special permit from the local health officer may be in direct contact with the patient. Expenses for necessary medical care, food, and other articles necessary for

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the care of an infected person must be charged to the person or whoever is liable for his or her support.

This bill requires DHFS to act as the public health authority during the period of a state of emergency related to public health, if the governor declares the state of emergency and designates the department as the lead state agency. During the state of emergency, the secretary of DHFS may designate a local health department as an agent of DHFS and confer upon the local health department, acting under that agency, the powers and duties of the public health authority.

Under the bill, as the public health authority, DHFS must inform state residents when a state of emergency related to public health has been declared or is terminated, how to protect themselves, and what actions the public health authority is taking to control a public health emergency. This information must be provided by all available and reasonable means calculated to inform the general public. From a sum sufficient appropriation of general purpose revenues created in the bill, DHFS may purchase, store, or distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies that DHFS determines are advisable to control a public health emergency. DHFS also may order any individual to receive a vaccination unless a vaccination is reasonably likely to lead to serious harm to the individual, and may isolate or quarantine any individual who is unable or unwilling for reasons of health, religion, or conscience to receive the vaccination. Further, the bill creates provisions relating to visitation during isolation or quarantine under a state of emergency related to public health to establish a penalty for any person, other than a person authorized by the public health authority or agent of the public health authority, who enters an isolation or quarantine premises. In addition, a person, whether authorized or not, who enters an isolation or quarantine premises may be subject to quarantine or isolation. A county or municipality is made liable for the expense of providing a reasonable means of communication for a person who is isolated or quarantined and for expenses for necessary medical care, food, and other articles needed for the care and treatment of an infected person who is quarantined or isolated in a place other than his or her residence or a family member's residence, unless third-party payment is available for these expenses. All health care providers who know or have reason to know that a person treated or visited by them has a communicable disease, or, having a communicable disease, has died, must report the communicable disease or death to the local health officer.

The bill also permits a public health authority, during a period of a state of emergency relating to public health, to do all of the following:

1. Issue and enforce orders that are reasonable and necessary to provide for the safe disposal of human remains, including by embalming, burial, cremation, interment, disinterment, transportation, and other disposal.
2. Take possession and control of any human remains.
3. Order the disposal, through burial or cremation, of any human remains of an individual who has died of a communicable disease, within 24 hours after the individual's death.

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4. If reasonable and necessary for emergency response, compel a funeral establishment, as a condition of its permit, to accept human remains or provide the use of its business to the public health authority for the period of the state of emergency.

5. Require the labeling of all human remains before disposal with all available identifying information and information concerning the circumstances of death, and require the tagging of the human remains of an individual with a communicable disease.

6. Maintain or require maintenance of a written or electronic record of all human remains that are disposed of and, if it is impossible to identify the human remains, require that fingerprints, photographs, or identifying dental information be obtained and a specimen of deoxyribonucleic acid be collected.

7. Authorize a county medical examiner or county coroner to appoint assistants or deputies, if necessary to perform the duties of the medical examiner or the coroner.

The bill requires a pharmacist or pharmacy to report to DHFS all of the following:

1. An unusual increase in the number of prescriptions dispensed or nonprescription drug products sold for the treatment of medical conditions, as specified by DHFS by rule.

2. An unusual increase in the number of antibiotic drug prescriptions dispensed.

3. Prescriptions dispensed for treatment of a disease that is relatively uncommon or may be associated with bioterrorism.

The bill also requires a coroner or medical examiner to report to DHFS any illness or health condition of a deceased that is caused by bioterrorism or by a novel or previously controlled or eradicated biological agent.

Lastly, beginning on July 1, 2002, after first consulting with the adjutant general, local health departments, health care providers, and law enforcement agencies, the bill requires DHFS to report biennially to the governor and to the legislature on the preparedness of the public health system to address public health emergencies. In addition, no later than 90 days after a state of emergency relating to public health is declared and the lead state agency is designated to respond to that emergency and no later than 90 days after the termination of this state of emergency, the lead state agency, either DHFS or the department of military affairs, must submit to the legislature and to the governor a report on the emergency powers used and the expenses incurred by the department and its agents.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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1 20.435 (1) (e) *Public health emergency.* A sum sufficient to defray all
2 expenditures necessary to respond to a state of emergency related to public health
3 only if the governor declares such an emergency and designates the department of
4 health and family services as the lead state agency to respond to the emergency
5 under s. 166.03 (1) (b) 1.

6 **SECTION 2.** 95.22 of the statutes is renumbered 95.22 (1).

7 **SECTION 3.** 95.22 (2) of the statutes is created to read:

8 95.22 (2) The department shall provide the reports of any communicable
9 diseases under sub. (1) to the department of health and family services.

10 **SECTION 4.** 157.055 of the statutes is created to read:

11 **157.055 Disposal of human remains during state of emergency relating**
12 **to public health. (1)** In this section:

13 (a) “Funeral establishment” has the meaning given in s. 445.01 (6).

14 (b) “Public health authority” has the meaning given in s. 250.01 (6g).

15 **(2)** Notwithstanding ss. 69.18 (4), 445.04 (2), 445.14, 979.01 (3), (3m), and (4),
16 979.02, and 979.10, during a period of a state of emergency related to public health
17 declared by the governor under s. 166.03 (1) (b) 1., a public health authority may do
18 all of the following:

19 (a) Issue and enforce orders that are reasonable and necessary to provide for
20 the safe disposal of human remains, including by embalming, burial, cremation,
21 interment, disinterment, transportation, and other disposal.

22 (b) Take possession and control of any human remains.

23 (c) Order the disposal, through burial or cremation, of any human remains of
24 an individual who has died of a communicable disease, within 24 hours after the
25 individual’s death and consider, to the extent feasible, the religious, cultural, or

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1 individual beliefs of the deceased individual or his or her family in disposing of the
2 remains.

3 (d) If reasonable and necessary for emergency response, compel a funeral
4 establishment, as a condition of its permit under s. 445.105 (1), to accept human
5 remains or provide the use of its business or facility, including by transferring the
6 management and supervision of the funeral establishment to the public health
7 authority, for a period of time not to exceed the period of the state of emergency.

8 (e) Require the labeling of all human remains before disposal with all available
9 identifying information and information concerning the circumstances of death and,
10 in addition, require that the human remains of an individual with a communicable
11 disease be clearly tagged to indicate that remains contain a communicable disease
12 and, if known, the specific communicable disease.

13 (f) Maintain or require the maintenance of a written or electronic record of all
14 human remains that are disposed of, including all available identifying information
15 and information concerning the circumstances of death and disposal. If it is
16 impossible to identify human remains prior to disposal, the public health authority
17 may require that a qualified person obtain any fingerprints, photographs, or
18 identifying dental information, and collect a specimen of deoxyribonucleic acid from
19 the human remains and transmit this information to the public health authority.

20 (g) Notwithstanding s. 59.34 (1) or 59.35 (1), authorize a county medical
21 examiner or a county coroner to appoint emergency assistant medical examiners or
22 emergency deputy coroners, whichever is applicable, if necessary to perform the
23 duties of the office of medical examiner or coroner, and to prescribe the duties of the
24 emergency assistant medical examiners or emergency deputy coroners. The term of
25 any emergency appointment authorized under this paragraph may not exceed the

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1 period of the state of emergency. A county medical examiner or county coroner may
2 terminate an emergency appointment before the end of the period of the state of
3 emergency, if termination of the appointment will not impede the performance of the
4 duties of his or her office. From the appropriation under s. 20.435 (1) (e), the
5 department shall reimburse counties for the cost of any emergency medical
6 examiners or emergency deputy coroners appointed under this paragraph.

7 **SECTION 5.** 166.02 (1p) of the statutes is created to read:

8 166.02 (1p) “Biological agent” means any of the following:

9 (a) A select agent that is a virus, bacterium, rickettsia, fungus, or toxin that is
10 specified under 42 CFR 72, Appendix A.

11 (b) A genetically modified microorganism or genetic element from an organism
12 under par. (a) that is shown to produce or encode for a factor associated with a
13 disease.

14 (c) A genetically modified microorganism or genetic element that contains
15 nucleic acid sequences coding for a toxin under par. (a) or its toxic subunit.

16 **SECTION 6.** 166.02 (1r) of the statutes is created to read:

17 166.02 (1r) “Bioterrorism” means the intentional use of any biological,
18 chemical, or radiological agent to cause death, disease, or biological malfunction in
19 a human, animal, plant, or other living organism in order to influence the policy of
20 a governmental unit or to intimidate or coerce the civilian population.

21 **SECTION 7.** 166.02 (1t) of the statutes is created to read:

22 166.02 (1t) “Chemical agent” means a substance that has chemical properties
23 that produce lethal or serious effects in plants or animals.

24 **SECTION 8.** 166.02 (7) of the statutes is created to read:

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1 166.02 (7) “Public health emergency” means the occurrence or imminent threat
2 of an illness or health condition that meets all of the following criteria:

3 (a) Is believed to be caused by bioterrorism or a novel or previously controlled
4 or eradicated biological agent.

5 (b) Poses a high probability of any of the following:

6 1. A large number of deaths or serious or long-term disabilities among humans.

7 2. A high probability of widespread exposure to a biological, chemical, or
8 radiological agent that creates a significant risk of substantial future harm to a large
9 number of people.

10 **SECTION 9.** 166.02 (8) of the statutes is created to read:

11 166.02 (8) “Radiological agent” means radiation or radioactive material at a
12 level that is dangerous to human health.

13 **SECTION 10.** 166.03 (1) (b) 1. of the statutes is amended to read:

14 166.03 (1) (b) 1. Proclaim a state of emergency for the state or any portion
15 thereof of the state if he or she determines that an emergency resulting from enemy
16 action or natural or man-made disaster exists. If the governor determines that a
17 public health emergency exists, he or she may declare a state of emergency related
18 to public health and may designate the department of health and family services as
19 the lead state agency to respond to that emergency. The duration of such state of
20 emergency shall not exceed 60 days as to emergencies resulting from enemy action
21 or 30 days as to emergencies resulting from natural or man-made disaster, unless
22 either is extended by joint resolution of the legislature. A copy of the proclamation
23 shall be filed with the secretary of state. The proclamation may be revoked at the
24 discretion of either the governor by written order or the legislature by joint
25 resolution.

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1 **SECTION 11.** 166.03 (1) (b) 8. of the statutes is created to read:

2 166.03 (1) (b) 8. During a state of emergency related to public health, suspend
3 the provisions of any administrative rule if the strict compliance with that rule would
4 prevent, hinder, or delay necessary actions to respond to the emergency and increase
5 the health threat to the population.

6 **SECTION 12.** 166.03 (2) (a) 6. of the statutes is created to read:

7 166.03 (2) (a) 6. No later than 90 days after a state of emergency relating to
8 public health is declared and the department is designated under s. 166.03 (1) (b) 1.
9 as the lead state agency to respond to that emergency and no later than 90 days after
10 the termination of this state of emergency relating to public health, submit to the
11 legislature under s. 13.172 (2) and to the governor a report on all of the following:

12 a. The emergency powers used by the department of military affairs or its
13 agents.

14 b. The expenses incurred by the department of military affairs and its agents
15 in acting under the state of emergency related to public health.

16 **SECTION 13.** 250.01 (6g) of the statutes is created to read:

17 250.01 (6g) “Public health authority” means the department, if the governor
18 declares under s. 166.03 (1) (b) 1. a state of emergency related to public health and
19 designates the department as the lead state agency to respond to that emergency.

20 **SECTION 14.** 250.01 (6r) of the statutes is created to read:

21 250.01 (6r) “Public health emergency” has the meaning given in s. 166.02 (7).

22 **SECTION 15.** 250.03 (3) of the statutes is created to read:

23 250.03 (3) (a) No later than 90 days after a state of emergency relating to public
24 health is declared and the department is designated under s. 166.03 (1) (b) 1. as the
25 lead state agency to respond to that emergency and no later than 90 days after the

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1 termination of this state of emergency relating to public health, the department shall
2 submit to the legislature under s. 13.172 (2) and to the governor a report on all of the
3 following:

4 1. The emergency powers used by the public health authority or its agents.

5 2. The expenses incurred by the public health authority and its agents in acting
6 under the state of emergency related to public health.

7 (b) Biennially, beginning on July 1, 2002, after first consulting with the
8 adjutant general, local health departments, health care providers, as defined in s.
9 146.81 (1), and law enforcement agencies, as defined in s. 165.77 (1) (b), the
10 department shall submit to the legislature under s. 13.172 (2) and to the governor
11 a report on the preparedness of the public health system to address public health
12 emergencies.

13 **SECTION 16.** 250.042 of the statutes is created to read:

14 **250.042 Powers and duties of the department as public health**
15 **authority. (1)** If the governor declares a state of emergency related to public health
16 under s. 166.03 (1) (b) 1. and designates the department as the lead state agency, the
17 department shall act as the public health authority during the period of the state of
18 emergency. During the period of the state of emergency, the secretary may designate
19 a local health department as an agent of the department and confer upon the local
20 health department, acting under that agency, the powers and duties of the public
21 health authority.

22 **(2)** As the public health authority, the department may do any of the following:

23 (a) From the appropriation under s. 20.435 (1) (e), purchase, store, or distribute
24 antitoxins, serums, vaccines, immunizing agents, antibiotics, and other

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1 pharmaceutical agents or medical supplies that the department determines are
2 advisable to control a public health emergency.

3 (b) Act as specified in s. 252.041.

4 **(3)** (a) As the public health authority, the department shall inform state
5 residents of all of the following:

6 1. When a state of emergency related to public health has been declared or is
7 terminated.

8 2. How to protect themselves from a public health emergency.

9 3. What actions the public health authority is taking to control a public health
10 emergency.

11 (b) The public health authority shall provide the information specified in par.
12 (a) by all available and reasonable means calculated to inform the general public,
13 including reasonable efforts to make the information accessible to individuals with
14 disabilities and to provide the information in the primary languages of individuals
15 who do not understand English.

16 **SECTION 17.** 251.05 (3) (e) of the statutes is created to read:

17 251.05 **(3)** (e) Act as agent of the department, if designated by the secretary
18 under s. 250.042 (1).

19 **SECTION 18.** 252.02 (title) of the statutes is amended to read:

20 **252.02** (title) **Powers and duties of department.**

21 **SECTION 19.** 252.02 (7) of the statutes is created to read:

22 252.02 **(7)** The department shall promulgate rules that specify medical
23 conditions treatable by prescriptions or nonprescription drug products for which
24 pharmacists and pharmacies must report under s. 440.142 (1).

25 **SECTION 20.** 252.041 of the statutes is created to read:

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1 **252.041 Compulsory vaccination during a state of emergency.** During
2 the period of a state of emergency related to public health under which the
3 department is authorized to act as the lead state agency, as specified in s. 250.042
4 (2), the department may do all of the following as necessary to address a public health
5 emergency:

6 **(1)** Order any individual to receive a vaccination unless the vaccination is
7 reasonably likely to lead to serious harm to the individual or unless the individual,
8 for reasons of religion or conscience, refuses to obtain the vaccination.

9 **(2)** Isolate or quarantine, under s. 252.06, any individual who is unable or
10 unwilling for reasons specified under sub. (1) to receive vaccination under sub. (1).

11 **SECTION 21.** 252.05 (1) of the statutes is amended to read:

12 252.05 **(1)** ~~Any person licensed, permitted, registered or certified under ch. 441~~
13 ~~or 448 knowing or having~~ health care provider, as defined in s. 146.81 (1), who knows
14 or has reason to know that a person treated or visited by him or her has a
15 communicable disease, or having a communicable disease, has died, shall report the
16 appearance of the communicable disease or the death to the local health officer. The
17 local health officer shall report this information to the department or shall direct the
18 person reporting to report to the department. Any person directed to report shall
19 submit this information to the department.

20 **SECTION 22.** 252.06 (1) of the statutes is amended to read:

21 252.06 **(1)** The department or the local health officer acting on behalf of the
22 department may require isolation of ~~the a patient~~ or of an individual under s. 252.041
23 (2), quarantine of contacts, concurrent and terminal disinfection, or modified forms
24 of these procedures as may be necessary and ~~which are~~ as determined by the
25 department by rule.

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1 **SECTION 23.** 252.06 (4) of the statutes is renumbered 252.06 (4) (a).

2 **SECTION 24.** 252.06 (4) (b) of the statutes is created to read:

3 252.06 (4) (b) If s. 250.042 (1) applies, all of the following apply:

4 1. No person, other than a person authorized by the public health authority or
5 agent of the public health authority, may enter an isolation or quarantine premises.

6 2. A violation of subd. 1. is subject to a fine not to exceed \$10,000 or
7 imprisonment not to exceed 9 months, or both.

8 3. Any person, whether authorized under subd. 1. or not, who enters an
9 isolation or quarantine premises may be subject to isolation or quarantine under this
10 section.

11 **SECTION 25.** 252.06 (10) (a) of the statutes is amended to read:

12 252.06 (10) (a) ~~Expenses~~ Except as provided in par. (b) 5., expenses for
13 necessary medical care, food, and other articles needed for the care and treatment
14 of the infected person shall be charged against the person or whoever is liable for the
15 person's support.

16 **SECTION 26.** 252.06 (10) (b) 5. of the statutes is created to read:

17 252.06 (10) (b) 5. If a person is quarantined or isolated in a place that is not the
18 residence of the person or of an immediate family member of the person, the expenses
19 of necessary medical care, food, and other articles needed for the care and treatment
20 of the person.

21 **SECTION 27.** 252.06 (10) (b) 6. of the statutes is created to read:

22 252.06 (10) (b) 6. The expense of providing a reasonable means of
23 communication for the person.

24 **SECTION 28.** 440.142 of the statutes is created to read:

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1 **440.142 Reporting potential causes of public health emergency.** A
2 pharmacist or pharmacy shall report to the department of health and family services
3 all of the following:

4 **(1)** An unusual increase in the number of prescriptions dispensed or
5 nonprescription drug products sold for the treatment of medical conditions specified
6 by the department of health and family services by rule under s. 252.02 (7).

7 **(2)** An unusual increase in the number of prescriptions dispensed that are
8 antibiotic drugs.

9 **(3)** The dispensing of a prescription for treatment of a disease that is relatively
10 uncommon or may be associated with bioterrorism, as defined in s. 166.02 (1r).

11 **SECTION 29.** 895.46 (5) (c) of the statutes is created to read:

12 895.46 **(5)** (c) An emergency assistant medical examiner or an emergency
13 deputy coroner appointed under the authority of s. 157.055 (2) (h).

14 **SECTION 30.** 979.012 of the statutes is created to read:

15 **979.012 Reporting deaths of public health concern.** **(1)** If a coroner or
16 medical examiner is aware of the death of a person who, at the time of his or her
17 death, had an illness or a health condition that satisfies s. 166.02 (7) (a), the coroner
18 or medical examiner shall report the illness or health condition to the department
19 of health and family services in writing or by electronic transmission within 24 hours
20 of learning of the deceased's illness or health condition.

21 **(2)** In a report under sub. (1), the coroner or medical examiner shall include all
22 of the following information if such information is available:

23 (a) The illness or health condition of the deceased.

24 (b) The name, date of birth, gender, race, occupation, and home and work
25 addresses of the deceased.

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1 (c) The name and address of the coroner or medical examiner.

2 (d) If the illness or health condition was related to an animal or insect bite, the
3 suspected location where the bite occurred and the name and address of the owner
4 of the the animal or insect, if an owner is identified.

5 **SECTION 31. Nonstatutory provisions.**

6 (1) MEDICAL CONDITIONS FOR WHICH PHARMACEUTICAL DRUGS ARE DISPENSED OR
7 SOLD; RULES.

8 (a) The department of health and family services shall submit in proposed form
9 the rules required under section 252.02 (7) of the statutes, as created by this act, to
10 the legislative council staff under section 227.15 (1) of the statutes no later than the
11 first day of the 6th month beginning after the effective date of this subsection.

12 (b) Using the procedure under section 227.24 of the statutes, the department
13 of health and family services may promulgate rules required under section 252.02
14 (7) of the statutes, as created by this act, for the period before the effective date of the
15 rules submitted under paragraph (a), but not to exceed the period authorized under
16 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a),
17 (2) (b) and (3) of the statutes, the department of health and family services is not
18 required to provide evidence that promulgating a rule under this paragraph as an
19 emergency rule is necessary for the preservation of the public peace, health, safety,
20 or welfare and is not required to provide a finding of emergency for a rule
21 promulgated under this paragraph.

22 **SECTION 32. Effective dates.** This act takes effect on the day after publication,
23 except as follows:

