

2007 ASSEMBLY BILL 321

May 14, 2007 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Homeland Security and State Preparedness.

1 **AN ACT** *to amend* 118.07 (2), 165.25 (6) (b), 166.23, 250.042 (4) (b), 893.82 (2) (d)
2 1n., 895.46 (5) (am), 895.51 (title) and 895.51 (2); and *to create* 15.107 (18),
3 16.964 (1) (j), 16.9645, 895.51 (1) (bm), 895.51 (1) (dm), 895.51 (2m) and 895.51
4 (3m) of the statutes; **relating to:** designation of state agency status for certain
5 health care facilities that use volunteer providers during a declared state of
6 emergency; declarations of emergencies by counties; immunity from liability
7 for qualified food and emergency household products; creating an
8 interoperability council; and requiring public and private schools to conduct
9 tornado or other hazard drills.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

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JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Disaster Preparedness Planning.

State agent status for facility

Under current law, a behavioral health provider, health care provider, pupil services provider, or substance abuse prevention provider who, during a declared emergency, provides behavioral health services, health care services, pupil services, or substance abuse prevention services for which the person has been licensed or certified is, for the provision of those services, a state agent of the Department of Health and Family Services (DHFS) for purposes of several specified statutes. The services must have been provided on behalf of a health care facility on a voluntary, unpaid basis, except that the provider may accept reimbursement for travel, lodging, and meals.

For purposes of this statute, the term "health care facility" is defined by reference to another statute that includes various facilities approved or licensed by DHFS, and specifically mentions hospitals, nursing homes, and community-based residential facilities. In addition, the terms "behavioral health provider", "health care provider", "pupil services provider", and "substance abuse prevention provider" are defined as persons who have held specified types of state credentials (e.g., psychologists, physicians, nurses, school counselors, and substance abuse counselors) at any time within 10 years before the emergency is declared. However, this statute does not apply to persons whose credentials have been limited, suspended, revoked, or denied renewal.

Persons who satisfy the above requirements are considered under current law to be state agents of DHFS for the purpose of specified statutes. Those statutes require notice to the Department of Justice (DOJ) within a specified time period in order for a civil action to be brought, allow DOJ to represent the person in civil or administrative actions, limit damages to \$250,000 (with no punitive damages allowed), and require that the damages be paid by the state.

The bill also designates the health care facilities on whose behalf the services are provided during a declared state of emergency to be state agents of DHFS for purposes of those statutes.

County-declared emergency

The emergency under current law described above must be declared by the governor under s. 166.03 (1) (b) 1., stats., or by a city, village, or town under s. 166.23, stats. The bill expands s. 166.23, stats., to allow declarations of emergencies by governing bodies of counties. By including counties in that statute, the specified types of volunteer providers at health care facilities will be considered agents of DHFS under the statutes described above during an emergency declared by the governing body of a county.

Donated food and products

Under current law, any person engaging in the processing, distribution, or sale of food products, for profit or not for profit, who donates or sells, at a price not to exceed overhead and transportation costs, qualified food to a charitable organization or food distribution service is immune from civil liability for death or injury caused by the food. Any charitable organization that distributes qualified food free of charge to any person is immune from civil liability for death or injury caused by the food. These immunity provisions do not apply if the death or injury was caused by willful or wanton acts or omissions.

The bill extends the current immunity provision to include donating or selling, at a price not to exceed overhead and transportation costs, qualified food to a governmental unit. The bill also creates new immunity provisions to cover donating or selling, at a price not to exceed overhead and transportation costs, emergency household products to a charitable organization or governmental unit in response to a declared state of emergency; and to cover charitable organizations that distribute those emergency household products free of charge.

ASSEMBLY BILL 321Interoperability council

The bill makes the current state interoperability executive council, which was created by executive order, a statutory council attached to the Department of Administration (DOA) for administrative purposes.

The council is renamed the interoperability council and consists of 15 members including:

1. The executive director of the office of justice assistance (OJA), the adjutant general, the secretary of natural resources, the secretary of transportation, and a representative of DOA with knowledge of information technology, or their designees.

2. Ten members appointed by the governor for staggered 4-year terms, as follows: a police chief, an emergency medical services director, a fire chief, a sheriff, a local government elected official, a local emergency management director, a tribal representative, a hospital representative, a local health department representative, and one other person with relevant experience or expertise in interoperable communications.

The governor designates the chair and vice chair of the council.

Under the bill, OJA (which is housed in DOA) will provide staff support to the council and oversee the development and operation of a statewide public safety interoperable communication system.

The council serves in an advisory capacity to OJA and is responsible for the following activities relating to a statewide public safety interoperable communication system:

1. Identifying types of agencies and entities to be included in the system, in addition to public safety agencies.

2. Recommending short-term and long-term goals to develop the system and a strategy and timeline for achieving those goals.

3. Assisting OJA in identifying and obtaining funding to implement the system and advising OJA on allocating funds.

4. Making recommendations to OJA on:

a. Technical and operational standards, guidelines, and procedures for public safety interoperable communications.

b. Minimum standards for the communications systems, facilities, and equipment used by dispatch centers.

c. Certification criteria for persons operating dispatch center communications.

School tornado drills

Under current law, public and private schools are required to conduct a fire drill once each month but are not required to conduct tornado or other hazard drills. In addition, schools are required to maintain a record of each conducted fire drill for at least 7 years. The bill requires public and private schools to conduct a tornado or other hazard drill, without previous warning, at least twice annually, and maintain a record of each conducted tornado or other hazard drill for at least 7 years.

1 **SECTION 1.** 15.107 (18) of the statutes is created to read:

2 15.107 **(18)** INTEROPERABILITY COUNCIL. (a) There is created an interoperability
3 council, attached to the department of administration under s. 15.03.

4 (b) The council consists of all of the following:

5 1. The executive director of the office of justice assistance, the adjutant general,
6 the secretary of natural resources, the secretary of transportation, and a

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1 representative from the department of administration with knowledge of
2 information technology, or their designees.

3 2. Ten members appointed by the governor for staggered 4-year terms,
4 including a chief of police, a sheriff, a chief of a fire department, a director of
5 emergency medical services, a local government elected official, a local emergency
6 management director, a representative of a federally recognized American Indian
7 tribe or band in this state, a hospital representative, a local health department
8 representative, and one other person with relevant experience or expertise in
9 interoperable communications.

10 (c) The governor shall designate a member of the council as the chairperson and
11 a member as the vice chairperson.

12 **SECTION 2.** 16.964 (1) (j) of the statutes is created to read:

13 16.964 (1) (j) Provide staff support for the interoperability council under s.
14 16.9645 and oversight of the development and operation of a statewide public safety
15 interoperable communication system.

16 **SECTION 3.** 16.9645 of the statutes is created to read:

17 **16.9645 Interoperability council. (1)** In this section:

18 (a) “Council” means the interoperability council created under s. 15.107 (18).

19 (b) “Dispatch center” has the meaning given for “public safety answering point”
20 in s. 146.70 (1) (gm).

21 (c) “Interoperability” means the ability of public safety agencies to
22 communicate with each other and with agencies and entities identified under sub.
23 (2) (a) by means of radio or associated communications systems, including the
24 exchange of voice, data, or video communications on demand and in real time, as
25 needed and authorized.

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1 (d) “Public safety agency” has the meaning given in s. 146.70 (1) (g).

2 **(2)** The council shall do all of the following:

3 (a) Identify types of agencies and entities, including public works and
4 transportation agencies, hospitals, and volunteer emergency services agencies to be
5 included, in addition to public safety agencies, in a statewide public safety
6 interoperable communication system.

7 (b) Recommend short-term and long-term goals to achieve a statewide public
8 safety interoperable communication system.

9 (c) Recommend and periodically review a strategy and timeline for achieving
10 the goals under par. (b), including objectives for local units of government.

11 (d) Assist the office of justice assistance in identifying and obtaining funding
12 to implement a statewide public safety interoperable communication system.

13 (e) Advise the office of justice assistance on allocating funds, including those
14 available for homeland security, for the purpose of achieving the goals under par. (b).

15 (f) Make recommendations to the office of justice assistance on all of the
16 following:

17 1. Technical and operational standards for public safety interoperable
18 communication systems.

19 2. Guidelines and procedures for using public safety interoperable
20 communication systems.

21 3. Minimum standards for public safety interoperable communication systems,
22 facilities, and equipment used by dispatch centers.

23 4. Certification criteria for persons who operate public safety interoperable
24 communication systems for dispatch centers.

25 **SECTION 4.** 118.07 (2) of the statutes is amended to read:

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1 118.07 (2) Once each month, without previous warning, the person having
2 direct charge of any public or private school shall drill all pupils in the proper method
3 of departure from the building as if in the case of a fire, except when the person
4 having direct charge deems that the health of the pupils may be endangered by
5 inclement weather conditions. At least twice annually, without previous warning,
6 the person having direct charge of any public or private school shall drill all pupils
7 in the proper method of evacuation to a safe location as if in the case of a tornado or
8 other hazard. The school board or governing body of the private school shall
9 maintain for at least 7 years a record of each fire drill and tornado or other hazard
10 drill conducted.

11 **SECTION 5.** 165.25 (6) (b) of the statutes is amended to read:

12 165.25 (6) (b) Volunteer health care providers who provide services under s.
13 146.89 or 250.042 (4) ~~and,~~ volunteer behavioral health providers, pupil services
14 providers, and substance abuse prevention providers who provide services under s.
15 250.042 (4), and health care facilities on whose behalf services are provided under
16 s. 250.042 (4) are, for the provision of those services, covered by this section and shall
17 be considered agents of the department of health and family services for purposes of
18 determining which agency head may request the attorney general to appear and
19 defend them.

20 **SECTION 6.** 166.23 of the statutes is amended to read:

21 **166.23 Emergency powers of counties, cities, villages and towns. (1)**
22 Notwithstanding any other provision of law to the contrary, the governing body of
23 any county, city, village, or town is empowered to declare, by ordinance or resolution,
24 an emergency existing within the county, city, village, or town whenever conditions
25 arise by reason of war, conflagration, flood, heavy snow storm, blizzard, catastrophe,

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1 disaster, riot or civil commotion, acts of God, and including conditions, without
2 limitation because of enumeration, which impair transportation, food or fuel
3 supplies, medical care, fire, health or police protection or other vital facilities of the
4 county, city, village, or town. The period of the emergency shall be limited by the
5 ordinance or resolution to the time during which the emergency conditions exist or
6 are likely to exist.

7 **(2)** The emergency power of the governing body conferred under sub. (1)
8 includes the general authority to order, by ordinance or resolution, whatever is
9 necessary and expedient for the health, safety, welfare and good order of the county,
10 city, village, or town in the emergency and includes without limitation because of
11 enumeration the power to bar, restrict or remove all unnecessary traffic, both
12 vehicular and pedestrian, from the local highways, notwithstanding any provision
13 of chs. 341 to 349 or any other provisions of law. The governing body of the county,
14 city, village, or town may provide penalties for violation of any emergency ordinance
15 or resolution not to exceed a \$100 forfeiture or, in default of payment of the forfeiture,
16 6 months' imprisonment for each separate offense.

17 **(2m)** If the governing body of a county, city, village, or town declares an
18 emergency under sub. (1) and intends to make use of behavioral health providers,
19 health care providers, pupil services providers, or substance abuse prevention
20 providers, as specified in s. 250.042 (4), the governing body or its agent shall, as soon
21 as possible, notify the department of health and family services of this intent.

22 **(3)** If, because of the emergency conditions, the governing body of the county,
23 city, village, or town is unable to meet with promptness, the chief executive officer
24 or acting chief executive officer of any county, city, village, or town shall exercise by
25 proclamation all of the powers conferred upon the governing body under sub. (1) or

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1 (2) which within the discretion of the officer appear necessary and expedient for the
2 purposes herein set forth. The proclamation shall be subject to ratification,
3 alteration, modification or repeal by the governing body as soon as that body can
4 meet, but the subsequent action taken by the governing body shall not affect the prior
5 validity of the proclamation.

6 **SECTION 7.** 250.042 (4) (b) of the statutes is amended to read:

7 250.042 (4) (b) A behavioral health provider, health care provider, pupil
8 services provider, or substance abuse prevention provider who, during a state of
9 emergency declared under s. 166.03 (1) (b) 1. or 166.23, provides behavioral health
10 services, health care services, pupil services, or substance abuse prevention services
11 for which the behavioral health provider, health care provider, pupil services
12 provider, or substance abuse prevention provider has been licensed or certified or, as
13 a nurse's assistant, has met requirements, is, for the provision of these services a
14 state agent of the department for purposes of ss. 165.25 (6), 893.82, and 895.46 and
15 is an employee of the state for purposes of worker's compensation benefits. The
16 behavioral health services, health care services, pupil services, or substance abuse
17 prevention services shall be provided on behalf of a health care facility on a
18 voluntary, unpaid basis, except that the behavioral health provider, health care
19 provider, pupil services provider, or substance abuse prevention provider may accept
20 reimbursement for travel, lodging, and meals. The health care facility on whose
21 behalf the services are provided is, for the provision of the services, a state agent of
22 the department for purposes of ss. 165.25 (6), 893.82, and 895.46.

23 **SECTION 8.** 893.82 (2) (d) 1n. of the statutes is amended to read:

24 893.82 (2) (d) 1n. A behavioral health provider, health care provider, pupil
25 services provider, or substance abuse prevention provider who provides services

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1 under s. 250.042 (4) and a health care facility on whose behalf services are provided
2 under s. 250.042 (4), for the provision of those services.

3 **SECTION 9.** 895.46 (5) (am) of the statutes is amended to read:

4 895.46 (5) (am) A behavioral health provider, health care provider, pupil
5 services provider, or substance abuse prevention provider who provides services
6 under s. 250.042 (4) and a health care facility on whose behalf services are provided
7 under s. 250.042 (4).

8 **SECTION 10.** 895.51 (title) of the statutes is amended to read:

9 **895.51 (title) Civil liability exemption: food or emergency household**
10 **products; donation, sale, or distribution.**

11 **SECTION 11.** 895.51 (1) (bm) of the statutes is created to read:

12 895.51 (1) (bm) “Emergency household products” includes flashlights,
13 generators, blankets, personal care products, household cleaning products, and
14 emergency supplies.

15 **SECTION 12.** 895.51 (1) (dm) of the statutes is created to read:

16 895.51 (1) (dm) “Governmental unit” means the United States; the state; any
17 county, city, village, or town; any political subdivision, department, division, board,
18 or agency of the United States, the state, or any county, city, village, or town; or any
19 federally recognized American Indian tribe or band in this state or an agency of the
20 tribe or band.

21 **SECTION 13.** 895.51 (2) of the statutes is amended to read:

22 895.51 (2) Any person engaged in the processing, distribution, or sale of food
23 products, for profit or not for profit, who donates or sells, at a price not to exceed
24 overhead and transportation costs, qualified food to a charitable organization or, food
25 distribution service, or governmental unit is immune from civil liability for the death

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1 of or injury to an individual caused by the qualified food donated or sold by the
2 person.

3 **SECTION 14.** 895.51 (2m) of the statutes is created to read:

4 895.51 **(2m)** Any person engaged in the manufacturing, distribution, or sale
5 of emergency household products, for profit or not for profit, who donates or sells, at
6 a price not to exceed overhead and transportation costs, emergency household
7 products to a charitable organization or governmental unit in response to a state of
8 emergency declared under s. 166.03 (1) (b) 1. or 166.23 is immune from civil liability
9 for the death of or injury to an individual caused by the emergency household product
10 donated or sold by the person.

11 **SECTION 15.** 895.51 (3m) of the statutes is created to read:

12 895.51 **(3m)** Any charitable organization that distributes free of charge
13 emergency household products received under sub. (2m) is immune from civil
14 liability for the death of or injury to an individual caused by the emergency household
15 product distributed by the charitable organization.

16 **SECTION 16. Nonstatutory provisions.**

17 (1) INITIAL TERMS OF COUNCIL MEMBERS. Notwithstanding section 15.107 (18) (b)
18 2. of the statutes, as created by this act, the initial terms of 5 of the members of the
19 interoperability council appointed under section 15.107 (18) (b) 2. of the statutes, as
20 created by this act, shall expire on July 1, 2009, and the terms of the other 5 members
21 of the council appointed under section 15.107 (18) (b) 2. of the statutes, as created by
22 this act, shall expire on July 1, 2011.

23 **SECTION 17. Initial applicability.**

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1 (1) This treatment of section 895.51 (title), (1) (bm) and (dm), (2), (2m), and (3m)
2 of the statutes first applies to an injury or death occurring on the effective date of this
3 subsection.

4 (END)