2007 ASSEMBLY BILL 321


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

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

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

(b) The council consists of all of the following:
1. The executive director of the office of justice assistance, the adjutant general, the secretary of natural resources, the secretary of transportation, and a
representative from the department of administration with knowledge of
information technology, or their designees.

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

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

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

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

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

16.9645 Interoperability council. (1) In this section:

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

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

(c) “Interoperability” means the ability of public safety agencies to
communicate with each other and with agencies and entities identified under sub.
(2) (a) by means of radio or associated communications systems, including the
exchange of voice, data, or video communications on demand and in real time, as
needed and authorized.
(d) “Public safety agency” has the meaning given in s. 146.70 (1) (g).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166.23 Emergency powers of counties, cities, villages and towns. (1)
Notwithstanding any other provision of law to the contrary, the governing body of
any county, city, village, or town is empowered to declare, by ordinance or resolution,
an emergency existing within the county, city, village, or town whenever conditions
arise by reason of war, conflagration, flood, heavy snow storm, blizzard, catastrophe,
disaster, riot or civil commotion, acts of God, and including conditions, without
limitation because of enumeration, which impair transportation, food or fuel
supplies, medical care, fire, health or police protection or other vital facilities of the
county, city, village, or town. The period of the emergency shall be limited by the
ordinance or resolution to the time during which the emergency conditions exist or
are likely to exist.

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

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

(3) If, because of the emergency conditions, the governing body of the county,
city, village, or town is unable to meet with promptness, the chief executive officer
or acting chief executive officer of any county, city, village, or town shall exercise by
proclamation all of the powers conferred upon the governing body under sub. (1) or
(2) which within the discretion of the officer appear necessary and expedient for the purposes herein set forth. The proclamation shall be subject to ratification, alteration, modification or repeal by the governing body as soon as that body can meet, but the subsequent action taken by the governing body shall not affect the prior validity of the proclamation.

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

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

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

893.82 (2) (d) 1n. A behavioral health provider, health care provider, pupil services provider, or substance abuse prevention provider who provides services
under s. 250.042 (4) and a health care facility on whose behalf services are provided
under s. 250.042 (4), for the provision of those services.

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

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

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

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

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

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

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

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

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

895.51 (2) Any person engaged 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, or governmental unit is immune from civil liability for the death
of or injury to an individual caused by the qualified food donated or sold by the
person.

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

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

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

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

**SECTION 16. Nonstatutory provisions.**

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

**SECTION 17. Initial applicability.**
(1) This treatment of section 895.51 (title), (1) (bm) and (dm), (2), (2m), and (3m) of the statutes first applies to an injury or death occurring on the effective date of this subsection.