



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2009 Wisconsin Act 42**  
[2009 Assembly Bill 316]

**Emergency Management**

2009 Wisconsin Act 42 resulted from enactment of 2009 Assembly Bill 316. That bill was introduced by the Joint Legislative Council based on the recommendations of the Special Committee on Emergency Management and Continuity of Government. More information about the Special Committee is available at the Legislative Council's Web site (<http://www.legis.state.wi/lc>) under study committees for the 2008 interim period.

Act 42 makes the following changes:

***Recodification of Chapter 166 of the Statutes***

Act 42 does the following regarding the emergency management provisions of the statutes:

- Moves the emergency management provisions of the statutes that were previously in ch. 166 to a newly created ch. 323.
- Reorganizes the entire chapter by subdividing it into the eight subchapters. The current ch. 166 consists of 18 sections that are not organized into subchapters.
- Makes nonsubstantive editorial changes to modernize language and make it consistent with current drafting style.
- Makes minor changes in the chapter. These include the following:
  - Creates a definition of the term disaster – “a severe or prolonged, natural or human-caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of this state or a portion of this state, or critical systems, including computer, telecommunications, or agricultural systems.”
  - Provides that an individual may not simultaneously serve as the head of emergency management for two or more counties.

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- Specifies that alleged violations on tribal land of the statutes relating to hazardous substances information may be enforced only by the Department of Justice.

### ***Liability and Licensure of Volunteers***

Under the law that was in effect prior to Act 42, certain health care providers who, during a declared state of emergency, provide services for which they are credentialed, are considered state agents of the Department of Health Services (DHS) for purposes of certain statutes related to lawsuits (notification to the state, legal representation by the state, limitation on damages, and payment of damages). They are also considered employees of the state for purposes of worker's compensation benefits. Those providers must have provided the services on behalf of a health care facility or mass clinic on a voluntary, unpaid basis, except that the provider may accept reimbursement for travel, lodging, and meals. In addition, the law provides that the health care facility on whose behalf the services are provided is, for the provision of those services, a state agent of DHS for purposes of the statutes related to litigation.

That law provides that the persons covered by this statute are a behavioral health provider (psychologist, social worker, clinical social worker, marriage and family therapist, or professional counselor); health care provider (nurse aide, physician, physician assistant, podiatrist, registered nurse, licensed practical nurse, nurse-midwife, dentist, pharmacist, veterinarian, or respiratory care practitioner); pupil services provider (school counselor, school psychologist, or school social worker); or substance abuse prevention provider (substance abuse counselor, clinical supervisor, or prevention specialist). In order for these persons to be covered by the law, they must have been credentialed by the specified Wisconsin regulatory agency at any time within the 10 years before a state of emergency is declared.

Act 42 makes the following changes in the above law:

- The statutes described above, as modified by the Act, are moved to a new chapter of the statutes - ch. 257, Stats., which will be entitled "Emergency Volunteer Health Care Practitioners."
- While the law that was in effect prior to Act 42 covers persons credentialed by Wisconsin regulatory agencies, the Act also includes persons who are credentialed by another state or territory that authorizes or qualifies the individual to perform acts that are substantially the same as those acts that an individual credentialed in Wisconsin may perform.
- The Act includes several providers who were not covered by the law that was in effect prior to Act 42 - emergency medical technicians, first responders, funeral directors, veterinary technicians, and clinical laboratory technicians.
- The Act requires DHS to establish and maintain an electronic system to verify credentials of and register providers willing to volunteer during an emergency.
- The Act requires that the provider must register in writing with the health care facility or mass clinic where he or she provides the services and be included in the DHS registry of providers willing to volunteer during an emergency.

### ***Agricultural Issues***

#### ***1. Pest Control***

In the 1965-66 Legislative Session, the Legislature ratified the pest control compact. However, that ratification was made contingent on ratification of the compact by Illinois, Iowa, Michigan, and Minnesota. While Illinois, Michigan, and Minnesota have ratified the compact, Iowa has not done so.

Act 42 eliminates the need for Iowa to ratify the pest control compact in order for Wisconsin's ratification to take effect. Therefore, Wisconsin's ratification of the compact will take effect on the effective date of the Act.

## *2. Animal Carcasses*

The law that was in effect prior to the Act provides that a person may not deposit or throw into any specified body of water, or leave or deposit on any public highway or other place, the carcass of any animal. In addition, a dead animal may not be deposited or left on any premises under a person's control if it is exposed in such a manner that it could be reached by dogs or wild animals for a period longer than 24 hours in the months of April to November, or 48 hours in the months of December to March. No person is allowed to transport, haul, or drag along any highway the carcass of any animal suspected of having died from specified diseases or any other disease that DATCP designates as highly dangerous. Those carcasses are required to be burned or buried at least six feet below the surface of the ground and completely covered.

In addition, the law that was in effect prior to the Act provides that any dead animal found on a public highway or other public place must, if the owner of the animal cannot be found, be buried or otherwise disposed of at public expense by the local health department in the jurisdiction where the animal is found. However, this does not apply if the county exercises its authority under a statute allowing the removal of dead animals or contracting for removal and burial or other disposition with a private rendering plant. If a county does not exercise its authority under that statute, the owner of the carcass must dispose of it as specified in current law.

Act 42 repeals prior law and replaces it with a statute that provides that no person may do either of the following, directly or through an employee or agent: (a) transport or dispose of a carcass that the person knows or reasonably should know to be a diseased carcass in a manner that creates a significant and foreseeable risk of transmitting disease to humans or animals; or (b) dispose of a carcass in the waters of the state (except that this does not prohibit the use of farm-raised fish as bait). The Act also provides that no person who owns or controls a carcass, or owns or controls the land on which a carcass is located, may leave the carcass exposed to access by dogs or wild animals for more than 24 hours during the months of April to November or for more than 48 hours during the months of December to March if the person knows or reasonably should know that the carcass is exposed. In addition, DATCP may regulate the transportation and disposal of carcasses to prevent and control contagious and infectious diseases.

For purposes of the statute created by the Act, the term "carcass" is defined as the dead body, or any part of the dead body, of a livestock animal or other domestic animal. The term "contagious or infectious disease" is defined as a disease that is spread by contact, bodily secretions, or fomites, or that is caused by a pathogenic agent. A "fomite" is defined as an inanimate object or a substance that transfers infectious organisms from one animal to another. Finally, the Act defines "diseased carcass" as the carcass of a livestock animal or other domestic animal if the animal was any of the following at the time of death: (a) infected with a contagious or infectious disease; (b) potentially infected with such a disease, based on known exposure to such a disease; or (c) reasonably suspected of being infected with such a disease, based on symptoms or testing.

### *3. Plant Industry*

The law that was in effect prior to Act 42 provides that any person who violates any provision of ch. 94, Stats., for which a specific penalty is not prescribed must be fined not more than \$200 or imprisoned in the county jail for not more than six months, or both. Portions of ch. 94, Stats., for which no specific penalty is prescribed include provisions that deal with plant inspection and pest control, abatement of pests, inspection and licensing of nursery stock, and regulation of honeybees.

Act 42 increases the penalty to provide that any person who violates any provision of ch. 94, Stats., for which a specific penalty is not prescribed, or an order issued or rule promulgated under such a provision, may be fined not more than \$1,000 for the first offense and may be fined not less than \$500 nor more than \$5,000 or imprisoned not more than six months, or both for each subsequent offense. The Act also provides that in lieu of this criminal penalty, a person who violates any provision of this chapter for which a specific penalty is not prescribed, or an order issued or rule promulgated under such a provision, may be required to forfeit not less than \$200 nor more than \$5,000, or for an offense committed within five years of an offense for which a penalty has been assessed, may be required to forfeit not less than \$400 nor more than \$10,000.

In addition, the Act gives DATCP the authority to seek an injunction restraining any person from violating ch. 94, Stats., or a rule promulgated under that chapter.

### *Computation of School Days*

Current law provides that no state aid may be paid to a school district that fails to hold school for at least 180 days each year, with the days to be computed in accordance with s. 115.01 (10), Stats. That latter statute provides that school days are days on which school is actually taught and also include the following: (1) days on which school is closed by order of the school district administrator because of inclement weather and days on which parent-teacher conferences are held, not to exceed five days during the school term; and (2) days on which school is closed by order of a local health officer.

Act 42 also includes days on which school is closed by order of the state DHS. In addition, it includes days on which school is closed by order of the school district administrator because of a threat to the health or safety of pupils or school personnel (but not including inclement weather, which already is covered by the law) unless the school board determines that the days will not count as school days.

The Act also requires the Department of Public Instruction (DPI) to promulgate rules establishing criteria for waiving the requirement to schedule at least the number of hours of direct pupil instruction specified by statute if school is closed by order of the local health officer or DHS, or is closed by order of the school district administrator because of a threat to health or safety.

### *Hospital Variances*

The statutes provide that the Pharmacy Examining Board (PEB) or its designee may grant a variance to a requirement of ch. 450, Stats., which relates to regulation of pharmacists and pharmacies, or a rule promulgated by the PEB if all of the following conditions are met: (1) the PEB or designee determines that a natural or man-made disaster or emergency exists or has occurred; (2) the pharmacist has requested the variance; and (3) the PEB or designee determines that the variance is necessary to protect the public health, safety, or welfare. If a member of the PEB disagrees with a decision made by a designee, the chairperson of the PEB is required to call a meeting as soon as practicable to review the decision and the PEB may affirm or modify the designee's decision. A variance is for a stated term not

to exceed 90 days, except that the PEB or designee may extend the variance upon request by a pharmacist if it determines that an extension is necessary to protect the public health, safety, or welfare.

Act 42 creates a similar provision for the Secretary of DHS with respect to hospitals. Under the Act, the Secretary or his or her designee may grant a variance to a statute affecting hospitals or a rule of DHS affecting hospitals if all of the conditions are met: (1) the Secretary or designee determines that a disaster, as defined in the Act, has occurred; (2) a hospital has requested the variance; and (3) the Secretary or designee determines that the variance is necessary to protect the public health, safety, or welfare. A variance is for a stated term not to exceed 90 days, except that the secretary or designee may extend the variance upon request by the hospital if he or she determines that an extension is necessary to protect the public health, safety, or welfare.

### ***Public Works Mutual Assistance***

Currently, the Adjutant General is required to furnish guidance and establish standards for emergency management programs of local governments.

Act 42 requires that standards for public works include a suggestion that local governments, or federally recognized American Indian tribes or bands, adopt the mutual assistance agreement created by the Division of Emergency Management for the intergovernmental collaboration of public works personnel, equipment, and resources during an emergency. The Adjutant General must consult with public works associations and organizations regarding the content of that agreement. The Act also defines the term "public works."

### ***Computer or Telecommunication Systems Emergencies***

Current law allows the Governor to declare a state of emergency for the state or any portion of the state if he or she determines that certain emergencies or disasters exist. If the Governor determines that a public health emergency exists, he or she may declare a state of emergency related to public health and may designate DHS as the lead state agency to respond to that emergency. The Act provides that if the Governor determines that an emergency related to computer or telecommunication systems exists, he or she may designate DOA as the lead agency to respond to that emergency.

Current law provides that subject to approval by the Governor, the Adjutant General must develop and promulgate a state plan of emergency management for the security of persons and property. In developing the plan, the Adjutant General must seek the advice of DHS with respect to the emergency medical aspects of the plan. The Act requires that the Adjutant General seek the advice of DOA with respect to aspects of the plan related to computer or telecommunication systems.

Current law requires the Adjutant General to prescribe and carry out statewide training programs and exercises. The Adjutant General is required to consult with DHS regarding the provision of incident command system training to local health department personnel. The Act requires the Adjutant General to consult with DOA regarding the provision of incident command system training for emergencies related to computer or telecommunication systems.

***Effective Date:*** Act 42 has a general effective date of October 21, 2009.

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