

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2002

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Legislative Document

No. 2164

H.P. 1656

House of Representatives, March 11, 2002

**An Act to Provide Government with the Necessary Authority to Respond  
to a Public Health Emergency Caused by an Act of Bioterrorism.**

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Reference to the Committee on Health and Human Services suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Speaker SAXL of Portland. (GOVERNOR'S BILL)  
Cosponsored by President BENNETT of Oxford.

Be it enacted by the People of the State of Maine as follows:

2  
4       **Sec. 1. 22 MRSA §802, sub-§2**, as enacted by PL 1989, c. 487, §11, is amended to read:

6       **2. Health emergency.** In the event of an actual or  
8 threatened epidemic or outbreak of a communicable or occupational  
10 disease, the department may declare that a health emergency  
12 exists and may adopt emergency rules or implement rules  
previously adopted designed to become effective upon the  
declaration of a state of public health emergency by the  
Governor, the Governor's designee or a person acting in place of  
the Governor for the protection of the public health relating to:

14           A. Procedures for the isolation and placement of infected  
16 persons for purposes of care and treatment or infection  
18 control;

20           B. Procedures for the disinfection, seizure or destruction  
22 of contaminated property and for the disposition of the  
remains of victims of a communicable disease if there are no  
less restrictive alternatives to protecting public health or  
safety from the threat of communicable disease; and

24           C. The establishment of temporary facilities for the care  
26 and treatment of infected persons which shall be subject to  
28 the supervision and regulations of the department and to the  
limitations set forth in section 807.

30       **Sec. 2. 22 MRSA §802, sub-§2-A** is enacted to read:

32       **2-A. Declaration of state of public health emergency by**  
34 **Governor.** In addition to any other authority to act granted to  
36 the department under this chapter, the department may exercise  
any emergency health power granted to it by this chapter upon the  
declaration of a state of public health emergency by the  
38 Governor, the Governor's designee or a person acting in place of  
the Governor.

40       **Sec. 3. 22 MRSA §812, sub-§2**, as enacted by PL 1989, c. 487,  
42 §11, is amended to read:

44       **2. Time limits.** Orders issued pursuant to subsection 1,  
46 paragraphs A to E shall may not exceed ~~180~~ 30 days without  
48 further review as provided by section 813, subsection 1. If  
commitment pursuant to subsection 1, paragraph F, is sought by  
the department beyond the original 30 days, the department shall  
file a motion for review pursuant to section 813, subsection 2.

50       **Sec. 4. 22 MRSA §813, sub-§1**, as enacted by PL 1989, c. 487,  
§11, is amended to read:

2           **1. Treatment orders.** If the department determines that it  
is necessary to continue a treatment order issued pursuant to  
4 section 812, subsection 1, paragraphs A to E, it shall petition  
the District Court ~~which~~ that ordered the disposition for review  
6 of the original order. The court shall hold a hearing in  
accordance with section 811 and if the court finds that a public  
8 health threat would continue in the absence of a public health  
measure, it shall make additional orders that it ~~deems~~ determines  
10 necessary, provided that no treatment order exceeds ~~180~~ 30 days  
in duration without further review by the court.

12           **Sec. 5. 22 MRSA §814**, as enacted by PL 1989, c. 487, §11, is  
14 repealed.

16           **Sec. 6. 22 MRSA §820** is enacted to read:

18           **§820. Emergency health powers without court order**

20           **1. Power of department.** Upon the declaration of a public  
22 health emergency by the Governor, the Governor's designee or a  
person acting on behalf of the Governor pursuant to Title 37-B,  
24 section 742, the department may have immediate access to any  
health information from a medical provider, pharmacist or  
26 veterinarian related to a notifiable disease or a communicable  
disease not subject to departmental reporting requirements and  
28 that the department has determined presents an imminent public  
health risk, take any person into temporary custody and order  
30 specific emergency care, vaccination, treatment or evaluation of  
that person if:

32           A. The department has reasonable cause to believe that the  
34 person has either been exposed to, or is at significant risk  
of, transmitting a communicable disease that poses a serious  
36 and imminent threat to human or animal life;

38           B. The delay involved in securing a court order would pose  
an imminent risk to the person or pose a serious risk of  
40 transmission of the communicable disease; and

42           C. There are no less restrictive alternatives available to  
protect the public health and safety from the communicable  
44 disease.

46           **2. Person at risk of serious adverse reaction to**  
vaccination. A person at known risk of serious adverse reaction  
48 to a vaccination may not be vaccinated without that person's  
consent if alternative public health measures are feasible, even  
if those measures are more restrictive.

2           3. Person with sincere religious objection. A person who  
4           has a sincere religious belief that prohibits vaccination may not  
6           be vaccinated without that person's consent if alternative public  
              health measures are feasible, even if those measures are more  
              restrictive.

8           4. Judicial review. Unless the right to a hearing is  
10           waived in writing by a person detained under this section after  
12           opportunity to consult with an attorney, a hearing must be held  
14           within 72 hours after the person is detained or became subject to  
16           the exercise of the department's emergency public health powers  
              under this section, exclusive of Saturdays, Sundays and legal  
              holidays, to determine whether the person must remain in the  
              department's custody or subject to the exercise of the  
              department's emergency public health powers.

18           Notice of the hearing must be served upon the person detained  
20           under this section at least 24 hours before the hearing, and the  
22           notice must specify: the time, date and place of the hearing;  
24           the grounds and underlying facts upon which the emergency  
              detention is sought; the person's right to appear at the hearing  
              and to present and cross-examine witnesses; and the person's  
              right to counsel pursuant to section 811.

26           In order to continue the involuntary detention or involuntary  
28           medical examination, vaccination, treatment, isolation or  
              quarantine under this section, the department must prove by clear  
              and convincing evidence that:

30                   A. The person has been exposed to or is at serious risk of  
32                   transmitting a communicable disease that constitutes a  
34                   significant and imminent risk to public health or safety; and

36                   B. No less restrictive alternatives to protect the public  
                      health and safety exist.

38           Upon making the finding described in this subsection, the court  
40           may order the person committed to the custody of the department  
42           or subject to the exercise of the department's public health  
44           emergency powers for a period not to exceed 30 days. The court  
46           may issue a commitment order immediately after the hearing, or it  
              may take the matter under advisement and issue its decision  
              within 24 hours of the hearing. If the court does not issue an  
              order of commitment within 24 hours of completion of the hearing,  
              it shall dismiss the petition and the person must be released  
              from custody immediately.

48                   5. Appeal. A person ordered by the District Court or  
50           Superior Court to be subject to the custody of the department or  
52           the exercise of the department's public health emergency powers  
              may appeal from that order as follows.

2           A. A person aggrieved from an order of the District Court  
may appeal to the Superior Court.

4           B. A person aggrieved from an order of the Superior Court  
6           may appeal to the Supreme Judicial Court.

8           C. Any findings of fact of the District Court or Superior  
10           Court may not be set aside unless clearly erroneous.

12           D. An order of the District Court or Superior Court remains  
in effect pending the appeal.

14           E. The Maine Rules of Civil Procedure apply to the conduct  
16           of the appeals, except as otherwise specified in this  
subsection.

18           **Sec. 7. 22 MRSA §2843-A, sub-§9**, as enacted by PL 1993, c.  
20           609, §1, is amended to read:

22           **9. Application.** This section does not apply to the  
24           disposition of the remains of a deceased person under section  
26           802, subsection 2, paragraph B or chapter 709. This section does  
28           not diminish or otherwise alter the authority of a medical  
examiner or other official authorized under chapter 711. This  
section does not alter the rights and obligations of the  
decendent's next of kin under Title 18-A.

30           **Sec. 8. 37-B MRSA §742, sub-§1, ¶D** is enacted to read:

32           D. If the Governor or another person under paragraph A  
34           declares by proclamation a state of public health emergency,  
36           the Governor or that person shall, to the extent feasible,  
also disseminate that proclamation to persons with  
disabilities.

38           **Sec. 9. Governor to convene Public Health Emergency Planning**  
**Commission.** The Governor shall convene the Public Health  
40           Emergency Planning Commission to review the provisions of state  
42           law relevant to public health emergency preparedness, consider  
44           measures to safeguard individual dignity and medical record  
46           confidentiality and examine strategies to protect the public from  
48           the threat of communicable disease and acts of bioterrorism. The  
50           commission shall submit a report that includes its findings and  
52           recommendations, including suggested legislation, to the Joint  
Standing Committee on Health and Human Services and the  
Legislative Council by November 6, 2002. The commission is not  
authorized to introduce legislation to the Legislature.  
Following receipt and review of the report, the joint standing  
committee of the Legislature having jurisdiction over health and  
human services matters may report out a bill to the First Regular  
Session of the 121st Legislature.



2 subsequent to the issuance of a court order for involuntary  
3 medical treatment, subject to the requirement that any such order  
4 must be subject to judicial review within 30 days.

5 5. It allows the Department of Human Services to dispose of  
6 the remains of victims of a communicable disease during a public  
7 health emergency if there are no less restrictive alternatives to  
8 protecting public health or safety from the threat of  
9 communicable disease.

10 6. It requires that if the Governor or another person  
11 declares by proclamation a state of public health emergency, the  
12 Governor or that person shall, to the extent feasible, also  
13 disseminate that proclamation to persons with disabilities.

14 7. It requires the Governor to convene the Public Health  
15 Emergency Planning Commission to review the provisions of state  
16 law relevant to public health emergency preparedness, consider  
17 measures to safeguard individual dignity and medical record  
18 confidentiality and examine strategies to protect the public from  
19 the threat of communicable diseases and acts of bioterrorism and  
20 report back to the Joint Standing Committee on Health and Human  
21 Services and the Legislative Council.

22 8. It requires the Joint Standing Committee on  
23 Appropriations and Financial Affairs to develop a mechanism for  
24 the financing of a response to a declaration of a state of public  
25 health emergency by the Governor, the Governor's designee or a  
26 person acting in place of the Governor.  
27  
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