

SENATE No. 2028

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to pandemic and disaster preparation and response in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 17 of the General Laws is hereby amended by striking out section
2 2A, as appearing in the 2006 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 2A. (a) Upon declaration by the governor that an emergency exists which is
5 detrimental to the public health or upon declaration of a state of emergency under chapter 639 of
6 the acts of 1950, as amended, the commissioner may, during such period of emergency, take
7 such action and incur such liabilities as he or she may consider necessary to assure the
8 maintenance of public health and the prevention of disease. The commissioner may establish
9 procedures to be followed during such emergency to ensure the continuation of essential public
10 health services and the enforcement of the same.

11 In circumstances where the governor declares that the emergency detrimental to public
12 health is limited to a specified local area, the appropriate local public health authority, as defined
13 in section 1 of chapter 111, may, with the approval of the commissioner, during such period of
14 emergency, take such action and incur such liabilities as it may deem necessary to assure the

15 maintenance of public health and the prevention of disease. Furthermore, in such circumstances,
16 such local public health authority may, with the approval of the commissioner, establish
17 procedures to be followed during such emergency to insure the continuation of essential public
18 health services and the enforcement of the same. Nothing in this section shall supersede the
19 normal operating authority of the local public health authorities, provided that such authority
20 shall not be exercised in a manner that conflicts with any procedure or order issued by the
21 Commissioner to assure the maintenance of public health and the prevention of disease during
22 such emergency.

23 (b) Upon declaring a public health emergency or state of emergency, the governor may
24 activate the state comprehensive emergency management plan and its associated processes,
25 including authority pursuant to chapter 639 of the acts of 1950. Such declaration may authorize
26 the deployment and use of any forces to which the plan applies and the use or distribution of any
27 supplies, equipment, materials, and facilities assembled, stockpiled, or available.

28 (c) During such public health emergency or state of emergency, any person who renders
29 assistance or advice during the emergency as provided in section 1 of chapter 258 shall be
30 protected from liability to the extent provided by chapter 258.

31 (d) During such public health emergency or state of emergency, any person owning or
32 controlling real estate or other premises who voluntarily and without compensation grants a
33 license or privilege, or otherwise permits the designation or use of the whole or any part or parts
34 of such real estate or premises for the purpose of assisting in responding to the emergency, shall
35 not be civilly liable for causing the death of, or injury to, any person on or about such real estate
36 or premises under such license, privilege, or other permission, or for causing loss of, or damage

37 to, the property of such person, except in the event of willful, wanton, or reckless misconduct.
38 The immunities provided in this subsection shall not apply to any person whose act or omission
39 caused in whole or in part such emergency or who would otherwise be liable therefore.

40 (e) The declaration of an emergency detrimental to the public health shall terminate when
41 so declared by the governor, or automatically after 90 days, unless renewed by the governor.
42 Each renewal shall terminate after 90 days unless renewed for an additional 90 days, or unless
43 sooner terminated by order of the general court.

44 (f) Upon termination of an emergency detrimental to the public health, all powers granted
45 to and exercised by the commissioner and local public health authorities under this section and
46 section 2B shall terminate.

47 SECTION 2. Said chapter 17 is hereby further amended by inserting after section 2A the
48 following section:-

49 Section 2B. (a) In this section, "Health care facility", means any non-federal institution,
50 building, or agency or portion thereof, whether public or private (for-profit or nonprofit) that is
51 used, operated, or designed to provide health services, medical treatment, or nursing,
52 rehabilitative, or preventive care to any person or persons. This includes, but is not limited to:
53 ambulatory surgical facilities, community health centers, health maintenance organizations,
54 home health agencies, hospices, hospitals, infirmaries, intermediate care facilities, kidney
55 treatment centers, long term care facilities, medical assistance facilities, mental health centers,
56 outpatient facilities, public health centers, rehabilitation facilities, residential treatments
57 facilities, skilled nursing facilities, and adult day-care centers. The term also includes, but is not
58 limited to, the following related property when used for or in connection with the foregoing:

59 alternate care sites, laboratories; research facilities; pharmacies; laundry facilities; health
60 personnel training and lodging facilities; patient, guest, and health personnel food service
61 facilities; and offices and office buildings for persons engaged in health care professions or
62 services. In this section, “Health care provider”, means any person or entity that provides health
63 care services including, but not limited to, health plans, health maintenance organizations,
64 hospitals, medical clinics and offices, special care facilities, medical laboratories, physicians,
65 pharmacists, dentists, physician assistants, nurse practitioners, registered and other nurses,
66 paramedics, and emergency medical or laboratory technicians. In this section, “Health care
67 professional”, includes, but is not limited to, a registered nurse, licensed practical nurse,
68 physician, physician assistant, dentist, pharmacist, pharmacy technician, psychologist and social
69 worker.

70 (b) Specifically, but without limiting the generality of section 2A and notwithstanding the
71 provisions of any other law, the commissioner shall have and may exercise, or may direct or
72 authorize other state or local government agencies to exercise, authority relative to any one or
73 more of the following if necessary to protect the public health during an emergency declared
74 pursuant to section 2A or a state of emergency declared under chapter 639 of the acts of 1950..
75 During either type of declared emergency, a local public health authority as defined in section 1
76 of chapter 111 may exercise authority relative to subparagraphs (1), (2), (3), (4), (6), (7), (13),
77 (14), and (15); and with the approval of the Commissioner may exercise authority relative to
78 subparagraphs (5), (8), (9), (10), and (11): (1) to require the owner or occupier of premises to
79 permit entry into and investigation of the premises;

80 (2) to close, direct, and compel the evacuation of, or to decontaminate or cause to be
81 decontaminated any building or facility, and to allow the reopening of the building or facility
82 when the danger has ended;

83 (3) to decontaminate or cause to be decontaminated, or to destroy any material;

84 (4) to restrict or prohibit assemblages of persons;

85 (5) to require a health care facility to provide services or the use of its facility, or to
86 transfer the management and supervision of the health care facility to the department or to a local
87 public health authority;

88 (6) to control ingress to and egress from any stricken or threatened public area, and the
89 movement of persons and materials within the area;

90 (7) to adopt and enforce measures to provide for the safe disposal of infectious waste and
91 human remains, provided that religious, cultural, family, and individual beliefs of the deceased
92 person shall be followed to the extent possible when disposing of human remains, whenever that
93 may be done without endangering the public health;

94 (8) to procure, take immediate possession from any source, store, or distribute any anti-
95 toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or
96 medical supplies located within the commonwealth as may be necessary to respond to the
97 emergency;

98 (9) to require in-state health care providers to assist in the performance of vaccination,
99 treatment, examination, or testing of any individual as a condition of licensure, authorization, or
100 the ability to continue to function as a health care provider in the commonwealth;

101 (10) to waive the commonwealth's licensing requirements for health care professionals
102 with a valid license from another state in the United States or whose professional training would
103 otherwise qualify them for an appropriate professional license in the commonwealth;

104 (11) to allow for the dispensing of controlled substances by appropriate personnel
105 consistent with federal statutes as necessary for the prevention or treatment of illness;

106 (12) to authorize the chief medical examiner to appoint and prescribe the duties of such
107 emergency assistant medical examiners as may be required for the proper performance of the
108 duties of the office;

109 (13) to collect specimens and perform tests on any animal, living or deceased;

110 (14) to exercise authority under sections 95 and 96 of chapter 111;

111 (15) to care for any emerging mental health or crisis counseling needs that individuals
112 may exhibit, with the consent of the individuals.

113 Notwithstanding any provision of this section to the contrary, provided that, based on a
114 periodic review, the Commissioner has found that within the City of Boston, the local public
115 health authority has adequate and appropriate resources to exercise authority relative to
116 subparagraph (5), said local public health authority, after notifying the Commissioner, may
117 exercise authority relative to subparagraph (5) of this section during either type of declared
118 emergency unless such action is deemed by the Commissioner, after consultation with the local
119 public health authority, to be contrary to the interests of the Commonwealth.

120 Upon request or issuance of an order by the commissioner or his or her designee, or by a
121 local public health authority or its designee, an officer authorized to serve criminal process may

122 arrest without a warrant any person whom the officer has probable cause to believe has violated
123 an order given to effectuate the purposes of this subsection and shall use reasonable diligence to
124 enforce such order.

125 Any person who knowingly violates an order of the commissioner or his or her designee,
126 or of a local public health authority or its designee, given to effectuate the purposes of this
127 subsection shall be punished by imprisonment for not more than 6 months, or by a fine of not
128 more than one thousand dollars, or both.

129 (c) During an emergency declared pursuant to section 2A or a state of emergency
130 declared under chapter 639 of the acts of 1950 the commissioner may request assistance from the
131 Massachusetts emergency management agency and the department of state police.

132 (d) All state and local agencies of the Commonwealth engaged in responding to a public
133 health emergency declared pursuant to section 2A or a state of emergency declared under chapter
134 639 of the acts of 1950 shall consult and cooperate in:

135 (1) the exercise of their powers over routes of transportation and over materials and
136 facilities including but not limited to communication devices, carriers, public utilities, fuels,
137 food, clothing, and shelter; and

138 (2) Informing the people of the Commonwealth about how to protect themselves during
139 the emergency and its aftermath and what actions are being taken to control the emergency. For
140 the benefit of people of the Commonwealth who lack sufficient skills in English to understand
141 the information, reasonable efforts shall be made to provide the information in the primary
142 languages of those people as well as in English; and reasonable efforts shall be made to provide
143 the information in a manner accessible to individuals with disabilities.

144 (e) All state and local agencies of the Commonwealth engaged in responding to a public
145 health emergency declared pursuant to section 2A or a state of emergency declared under
146 chapter 639 of the acts of 1950 are authorized to share and disclose information to the extent
147 necessary for the treatment, control, and investigation of the emergency.

148 (f) To the extent practicable consistent with the protection of public health, prior to the
149 destruction of any property during the emergency, the department of public health or a local
150 public health authority shall institute appropriate civil proceedings against the property to be
151 destroyed in accordance with the existing laws and rules of the courts of this Commonwealth or
152 any such rules that may be developed by the courts for use during the emergency. Any property
153 acquired by the department of public health or a local public health authority through such
154 proceedings shall, after entry of the decree, be disposed of by destruction as the court may direct.