

EMERGENCY HEALTH RESPONSE

AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Marda Dillree

This act amends professional licensing provisions, the powers and duties of local health departments, and provisions related to immunity from liability for governmental entities and certain professionals. The act establishes exceptions to certain licensing standards when a national, state, or local emergency is declared. The act amends certain prescription drug dispensing rules when emergencies are declared. The act authorizes local departments of health to investigate suspected bioterrorism and diseases and to provide public health assistance in a declared emergency. The act provides limited immunity from civil damages for governmental entities and certain health professionals responding to a declared emergency. This act has an immediate effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

26A-1-114, as last amended by Chapter 249, Laws of Utah 2002

58-1-307, as last amended by Chapter 63, Laws of Utah 2001

58-13-2, as last amended by Chapter 160, Laws of Utah 2000

58-17a-620, as enacted by Chapter 247, Laws of Utah 1996

63-30-3, as last amended by Chapters 15 and 248, Laws of Utah 1991

78-11-22, as last amended by Chapter 211, Laws of Utah 1987

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26A-1-114** is amended to read:

26A-1-114. Powers and duties of departments.

(1) A local health department may:

(a) subject to the provisions in Section 26A-1-108, enforce state laws, local ordinances,



28 department rules, and local health department standards and regulations relating to public
29 health and sanitation, including the plumbing code adopted by the Division of Occupational
30 and Professional Licensing under Section 58-56-4 and under Title 26, Chapter 15a, Food
31 Safety Manager Certification Act, in all incorporated and unincorporated areas served by the
32 local health department;

33 (b) establish, maintain, and enforce isolation and quarantine, and exercise physical
34 control over property and over individuals as the local health department finds necessary for
35 the protection of the public health;

36 (c) establish and maintain medical, environmental, occupational, and other laboratory
37 services considered necessary or proper for the protection of the public health;

38 (d) establish and operate reasonable health programs or measures not in conflict with
39 state law that:

40 (i) are necessary or desirable for the promotion or protection of the public health and
41 the control of disease; or

42 (ii) may be necessary to ameliorate the major risk factors associated with the major
43 causes of injury, sickness, death, and disability in the state;

44 (e) close theaters, schools, and other public places and prohibit gatherings of people
45 when necessary to protect the public health;

46 (f) abate nuisances or eliminate sources of filth and infectious and communicable
47 diseases affecting the public health and bill the owner or other person in charge of the premises
48 upon which this nuisance occurs for the cost of abatement;

49 (g) make necessary sanitary and health investigations and inspections on its own
50 initiative or in cooperation with the Department of Health or Environmental Quality, or both,
51 as to any matters affecting the public health;

52 (h) pursuant to county ordinance or interlocal agreement:

53 (i) establish and collect appropriate fees for the performance of services and operation
54 of authorized or required programs and duties;

55 (ii) accept, use, and administer all federal, state, or private donations or grants of funds,
56 property, services, or materials for public health purposes; and

57 (iii) make agreements not in conflict with state law that are conditional to receiving a
58 donation or grant;

59 (i) prepare, publish, and disseminate information necessary to inform and advise the
60 public concerning:

61 (i) the health and wellness of the population, specific hazards, and risk factors that may
62 adversely affect the health and wellness of the population; and

63 (ii) specific activities individuals and institutions can engage in to promote and protect
64 the health and wellness of the population;

65 (j) investigate the causes of morbidity and mortality;

66 (k) issue notices and orders necessary to carry out this part;

67 (l) conduct studies to identify injury problems, establish injury control systems,
68 develop standards for the correction and prevention of future occurrences, and provide public
69 information and instruction to special high risk groups;

70 (m) cooperate with boards created under Section 19-1-106 to enforce laws and rules
71 within the jurisdiction of the boards; [~~and~~]

72 (n) cooperate with the state health department, the Department of Corrections, the
73 Administrative Office of the Courts, the Division of Youth Corrections, and the Crime Victims
74 Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any
75 victims of a sexual offense[-];

76 (o) investigate suspected bioterrorism and disease pursuant to Section 26-23b-108; and

77 (p) provide public health assistance in response to a national, state, or local emergency,
78 a public health emergency as defined in Section 26-23b-102, or a declaration by the President
79 of the United States or other federal official requesting public health-related activities.

80 (2) The local health department shall:

81 (a) establish programs or measures to promote and protect the health and general
82 wellness of the people within the boundaries of the local health department;

83 (b) investigate infectious and other diseases of public health importance and implement
84 measures to control the causes of epidemic and communicable diseases and other conditions
85 significantly affecting the public health which may include involuntary testing of convicted
86 sexual offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of
87 victims of sexual offenses for HIV infection pursuant to Section 76-5-503;

88 (c) cooperate with the department in matters pertaining to the public health and in the
89 administration of state health laws; and

90 (d) coordinate implementation of environmental programs to maximize efficient use of
91 resources by developing with the Department of Environmental Quality a Comprehensive
92 Environmental Service Delivery Plan that:

93 (i) recognizes that the Department of Environmental Quality and local health
94 departments are the foundation for providing environmental health programs in the state;

95 (ii) delineates the responsibilities of the department and each local health department
96 for the efficient delivery of environmental programs using federal, state, and local authorities,
97 responsibilities, and resources;

98 (iii) provides for the delegation of authority and pass through of funding to local health
99 departments for environmental programs, to the extent allowed by applicable law, identified in
100 the plan, and requested by the local health department; and

101 (iv) is reviewed and updated annually.

102 (3) The local health department has the following duties regarding public and private
103 schools within its boundaries:

104 (a) enforce all ordinances, standards, and regulations pertaining to the public health of
105 persons attending public and private schools;

106 (b) exclude from school attendance any person, including teachers, who is suffering
107 from any communicable or infectious disease, whether acute or chronic, if the person is likely
108 to convey the disease to those in attendance; and

109 (c) (i) make regular inspections of the health-related condition of all school buildings
110 and premises;

111 (ii) report the inspections on forms furnished by the department to those responsible for
112 the condition and provide instructions for correction of any conditions that impair or endanger
113 the health or life of those attending the schools; and

114 (iii) provide a copy of the report to the department at the time the report is made.

115 (4) If those responsible for the health-related condition of the school buildings and
116 premises do not carry out any instructions for corrections provided in a report in Subsection
117 (3)(c), the local health board shall cause the conditions to be corrected at the expense of the
118 persons responsible.

119 (5) The local health department may exercise incidental authority as necessary to carry
120 out the provisions and purposes of this part.

121 Section 2. Section **58-1-307** is amended to read:

122 **58-1-307. Exemptions from licensure.**

123 (1) Except as otherwise provided by statute or rule, the following persons may engage
124 in the practice of their occupation or profession, subject to the stated circumstances and
125 limitations, without being licensed under this title:

126 (a) a person serving in the armed forces of the United States, the United States Public
127 Health Service, the United States Department of Veterans Affairs, or other federal agencies
128 while engaged in activities regulated under this chapter as a part of employment with that
129 federal agency if the person holds a valid license to practice a regulated occupation or
130 profession issued by any other state or jurisdiction recognized by the division;

131 (b) a student engaged in activities constituting the practice of a regulated occupation or
132 profession while in training in a recognized school approved by the division to the extent the
133 activities are supervised by qualified faculty, staff, or designee and the activities are a defined
134 part of the training program;

135 (c) an individual engaged in an internship, residency, preceptorship, postceptorship,
136 fellowship, apprenticeship, or on-the-job training program approved by the division while
137 under the supervision of qualified persons;

138 (d) an individual residing in another state and licensed to practice a regulated
139 occupation or profession in that state, who is called in for a consultation by an individual
140 licensed in this state, and the services provided are limited to that consultation;

141 (e) an individual who is invited by a recognized school, association, society, or other
142 body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a
143 regulated occupation or profession if the individual does not establish a place of business or
144 regularly engage in the practice of the regulated occupation or profession in this state;

145 (f) an individual licensed under the laws of this state, other than under this title, to
146 practice or engage in an occupation or profession, while engaged in the lawful, professional,
147 and competent practice of that occupation or profession;

148 (g) an individual licensed in a health care profession in another state who performs that
149 profession while attending to the immediate needs of a patient for a reasonable period during
150 which the patient is being transported from outside of this state, into this state, or through this
151 state;

152 (h) an individual licensed in another state or country who is in this state temporarily to
153 attend to the needs of an athletic team or group, except that the practitioner may only attend to
154 the needs of the athletic team or group, including all individuals who travel with the team or
155 group in any capacity except as a spectator;

156 (i) an individual licensed and in good standing in another state, who is in this state:

157 (i) temporarily, under the invitation and control of a sponsoring entity;

158 (ii) for a reason associated with a special purpose event, based upon needs that may
159 exceed the ability of this state to address through its licensees, as determined by the division;

160 and

161 (iii) for a limited period of time not to exceed the duration of that event, together with
162 any necessary preparatory and conclusionary periods. The requirements of Section

163 63A-10-105 do not apply to exemptions authorized by the division pursuant to this Subsection

164 (1)(i);

165 (j) an individual who:

166 (i) is certified as an athletic trainer by the National Athletic Trainers Association Board
167 of Certification or another entity approved by the division;

168 (ii) is employed or officially associated with an educational institution, a professional
169 sports organization, or a bona fide amateur sports organization; and

170 (iii) only provides athletic training services:

171 (A) to athletes of the educational institution or sports organization to which the
172 individual is employed or officially associated;

173 (B) at an official athletic training, practice, or competition site; and

174 (C) that are within the scope of the individual's certification; and

175 (k) a law enforcement officer, as defined under Section 53-13-103, who:

176 (i) is operating a voice stress analyzer in the course of the officer's full-time
177 employment with a federal, state, or local law enforcement agency;

178 (ii) has completed the manufacturer's training course and is certified by the
179 manufacturer to operate that voice stress analyzer; and

180 (iii) is operating the voice stress analyzer in accordance with Section 58-64-601,
181 regarding deception detection instruments.

182 (2) A practitioner temporarily in this state who is exempted from licensure under

183 Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the
184 practitioner derives authority to practice. Violation of any limitation imposed by this section
185 constitutes grounds for removal of exempt status, denial of license, or other disciplinary
186 proceedings.

187 (3) An individual who is licensed under a specific chapter of this title to practice or
188 engage in an occupation or profession may engage in the lawful, professional, and competent
189 practice of that occupation or profession without additional licensure under other chapters of
190 this title, except as otherwise provided by this title.

191 (4) Upon the declaration of a national, state, or local emergency, a public health
192 emergency as defined in Section 26-23b-102, or a declaration by the President of the United
193 States or other federal official requesting public health-related activities, the division in
194 collaboration with the board may:

195 (a) suspend the requirements for permanent or temporary licensure of persons who are
196 licensed in another state. Persons exempt under this Subsection (4)(a) shall be exempt from
197 licensure for the duration of the emergency while engaged in the scope of practice for which
198 they are licensed in the other state[-];

199 (b) modify, under the circumstances described in Subsections (4) and (5), the scope of
200 practice restrictions under this title for persons who are licensed under this title as:

201 (i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah
202 Osteopathic Medical Practice Act;

203 (ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31c, Nurse Licensure
204 Compact;

205 (iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;

206 (iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter 17a,
207 Pharmacy Practice Act;

208 (v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act; and

209 (vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist
210 Practice Act;

211 (c) suspend the requirements for licensure under this title and modify the scope of
212 practice in the circumstances described in Subsections (4) and (5) for medical services
213 personnel or paramedics certified under Title 26, Chapter 8a, Utah Emergency Medical

214 Services System Act; and

215 (d) suspend requirements in Subsections 58-17a-620(3) through (6) which require
 216 certain prescriptive procedures.

217 (5) Persons exempt under Subsections (4)(a) and (c) and persons operating under
 218 modified scope of practice provisions under Subsection (4)(b):

219 (a) shall be exempt from licensure or subject to modified scope of practice for the
 220 duration of the emergency;

221 (b) must be engaged in the distribution of medicines or medical devises in response to
 222 the emergency or declaration; and

223 (c) must be employed by or volunteering for a local or state department of health.

224 Section 3. Section **58-13-2** is amended to read:

225 **58-13-2. Emergency care rendered by licensee.**

226 (1) A person licensed under Title 58, Occupations and Professions, to practice as any
 227 of the following health care professionals, who is under no legal duty to respond, and who in
 228 good faith renders emergency care at the scene of an emergency gratuitously and in good faith,
 229 is not liable for any civil damages as a result of any acts or omissions by the person in
 230 rendering the emergency care:

231 [~~1~~] (a) osteopathic physician;

232 [~~2~~] (b) physician and surgeon;

233 [~~3~~] naturopath;

234 (c) naturopathic physician;

235 [~~4~~] (d) dentist or dental hygienist;

236 [~~5~~] (e) chiropractic physician;

237 [~~6~~] (f) physician assistant;

238 [~~7~~] (g) optometrist; [or]

239 [~~8~~] (h) nurse licensed under Section 58-31b-301[-] or 58-31c-102;

240 (i) podiatrist;

241 (j) certified nurse midwives;

242 (k) respiratory therapists; or

243 (l) pharmacist, pharmacy technicians, and pharmacy interns.

244 (2) (a) This Subsection (2) applies to health care professionals:

- 245 (i) described in Subsection (1);
- 246 (ii) who are under no legal duty to respond to the circumstances described in
- 247 Subsection (2)(b);
- 248 (iii) who are acting within the scope of the health care professional's license, or within
- 249 the scope of practice as modified under Subsection 58-1-307(4); and
- 250 (iv) who are acting in good faith without compensation or remuneration as defined in
- 251 Subsection 58-13-3(2).

252 (b) A health care professional described in Subsection (2)(a) is not liable for any civil
 253 damages as a result of any acts or omissions by the health care professional in rendering care as
 254 a result of:

- 255 (i) implementation of measures to control the causes of epidemic and communicable
- 256 diseases and other conditions significantly affecting the public health or necessary to protect
- 257 the public health as set out in Title 26A, Chapter 1, Local Health Departments;
- 258 (ii) investigating and controlling suspected bioterrorism and disease as set out in Title
- 259 26, Chapter 23b, Detection of Public Health Emergencies Act; and
- 260 (iii) responding to a national, state, or local emergency, a public health emergency as
- 261 defined in Section 26-23b-102, or a declaration by the President of the United States or other
- 262 federal official requesting public health-related activities.

263 Section 4. Section **58-17a-620** is amended to read:

264 **58-17a-620. Prescriptions issued within the public health system.**

265 (1) As used in this section:

266 (a) "Department of Health" means the state Department of Health created in Section
 267 26-1-4.

268 (b) "Health department" means either the Department of Health or a local health
 269 department.

270 (c) "Local health departments" means the local health departments created in Title
 271 26A, Chapter 1, Local Health Departments.

272 (2) A health department may implement the prescription, distribution, dispensing,
 273 compounding, and administering procedure under Subsection (3) for prescription drugs, other
 274 than controlled substances, for use in:

- 275 (a) clinics providing:

276 [~~(a)~~] (i) sexually transmitted disease treatment;

277 [~~(b)~~] (ii) fluoride treatment; [~~or~~]

278 [~~(c)~~] (iii) travel immunization[-]; or

279 (iv) immunization; or

280 (b) responses to bioterrorism, epidemic or pandemic disease, or a public health

281 emergency as defined in Section 26-23b-102, a national, state, or local emergency, or a

282 declaration by the President of the United States or other federal official requesting public

283 health-related activities.

284 (3) The following prescription, distribution, dispensing, compounding, and

285 administering procedure shall be carried out in accordance with the requirements of Subsection

286 (4) and may be used only in the clinics listed under Subsection (2)(a) or in response to

287 emergencies or declarations under Subsection (2)(b):

288 (a) a physician writes and signs a prescription for prescription drugs, other than

289 controlled substances, without the name and address of the patient and without the date the

290 prescription is provided to the patient; [~~and~~]

291 (b) the physician authorizes a [~~registered nurse~~] person licensed under Chapter 31b,

292 Nurse Practice Act, Chapter 70, Physician Assistant Act, or Chapter 31c, Nurse Licensure

293 Compact, employed by the health department to complete the prescription written under

294 Subsection (3)(a) by inserting the patient's name and address, and the date the prescription is

295 provided to the patient, in accordance with the physician's standing written orders and a written

296 health department protocol approved by the physician and the medical director of the state

297 Department of Health[-]; and

298 (c) a person licensed under Chapter 31b, Nurse Practice Act, Chapter 70, Physician

299 Assistant Act, or Chapter 31c, Nurse Licensure Compact, employed by a health department

300 personally administers the drugs or medicines other than controlled substances pursuant to a

301 prescription issued in compliance with this section in order to supply the immediate needs of

302 the patient.

303 (4) When allowing prescriptions to be written, or prescription drugs other than

304 controlled substances to be distributed, dispensed, compounded, or administered, under

305 Subsection (3), the health department shall employ a physician who:

306 (a) assumes specific responsibility for all prescriptions issued in his name under the

307 procedure in Subsection (3) by the health department; and

308 (b) enters into a written signed agreement with the health department, which agreement
309 is approved by the division and states:

310 (i) the terms and conditions under which the physician will prepare and sign
311 prescriptions that do not include the name and address of the patient and the date the
312 prescription is provided to the patient;

313 (ii) the methods which will be used to ensure the signed prescriptions are secure and
314 not available for unauthorized use;

315 (iii) the minimum qualifications and training of a [~~registered nurse~~] a person described
316 in Subsection (3)(b) authorized by the physician and department to complete and provide
317 prescriptions to a patient;

318 (iv) under what conditions prescriptions completed by an authorized [~~registered nurse~~]
319 person will be provided to a patient in accordance with standing orders and written protocols,
320 and the specific prescription drugs for which prescriptions may be written;

321 (v) the manner in which the physician will audit and review the records of patients
322 receiving prescriptions; and

323 (vi) the manner in which records of prescriptions issued will be maintained for audit by
324 the physician and division.

325 (5) The health department shall file and maintain with the division a current copy of all
326 agreements signed by physicians under Subsection (4).

327 (6) (a) All prescription forms to be used by a physician and health department in
328 accordance with this section shall be serially numbered according to a numbering system
329 assigned to that health department by the division.

330 (b) All prescriptions issued shall contain all information required under this chapter
331 and rules adopted under this chapter.

332 Section 5. Section **63-30-3** is amended to read:

333 **63-30-3. Immunity of governmental entities from suit.**

334 (1) Except as may be otherwise provided in this chapter, all governmental entities are
335 immune from suit for any injury which results from the exercise of a governmental function,
336 governmentally-owned hospital, nursing home, or other governmental health care facility, and
337 from an approved medical, nursing, or other professional health care clinical training program

338 conducted in either public or private facilities.

339 (2) Subsections (2)(a) through (c) are unique or essential core governmental functions
340 and, notwithstanding the waiver of immunity provisions of Section 63-30-10, governmental
341 entities, political subdivisions, and their officers and employees are immune from suit for any
342 injury or damage resulting from the implementation of or the failure to:

343 (a) implement measures to control the causes of epidemic and communicable diseases
344 and other conditions significantly affecting the public health or necessary to protect the public
345 health as set out in Title 26A, Chapter 1, Local Health Departments;

346 (b) investigate and control suspected bioterrorism and disease as set out in Title 26,
347 Chapter 23b, Detection of Public Health Emergencies Act; and

348 (c) respond to a national, state, or local emergency, a public health emergency as
349 defined in Section 26-23b-102, or a declaration by the President of the United States or other
350 federal official requesting public health-related activities.

351 [~~2~~] (3) (a) For the purposes of this chapter only, the following state medical programs
352 and services performed at a state-owned university hospital are unique or essential to the core
353 of governmental activity in this state and are considered to be governmental functions:

354 (i) care of a patient referred by another hospital or physician because of the high risk
355 nature of the patient's medical condition;

356 (ii) high risk care or procedures available in Utah only at a state-owned university
357 hospital or provided in Utah only by physicians employed at a state-owned university acting in
358 the scope of their employment;

359 (iii) care of patients who cannot receive appropriate medical care or treatment at
360 another medical facility in Utah; and

361 (iv) any other service or procedure performed at a state-owned university hospital or by
362 physicians employed at a state-owned university acting in the scope of their employment that a
363 court finds is unique or essential to the core of governmental activity in this state.

364 (b) If any claim under this Subsection (3) exceeds the limits established in Section
365 63-30-34, the claimant may submit the excess claim to the Board of Examiners and the
366 Legislature under Title 63, Chapter 6.

367 [~~3~~] (4) The management of flood waters and other natural disasters and the
368 construction, repair, and operation of flood and storm systems by governmental entities are

369 considered to be governmental functions, and governmental entities and their officers and
370 employees are immune from suit for any injury or damage resulting from those activities.

371 ~~[(4)]~~ (5) Officers and employees of a Children's Justice Center are immune from suit
372 for any injury which results from their joint intergovernmental functions at a center created in
373 Title 62A, Chapter 4a, Child and Family Services.

374 Section 6. Section **78-11-22** is amended to read:

375 **78-11-22. Good Samaritan Act.**

376 (1) A person who renders emergency care at or near the scene of, or during an
377 emergency, gratuitously and in good faith, is not liable for any civil damages or penalties as a
378 result of any act or omission by the person rendering the emergency care, unless the person is
379 grossly negligent or caused the emergency. As used in this section, "emergency" means an
380 unexpected occurrence involving injury, threat of injury, or illness to a person or the public,
381 including motor vehicle accidents, disasters, actual or threatened discharges, removal, or
382 disposal of hazardous materials, and other accidents or events of a similar nature. "Emergency
383 care" includes actual assistance or advice offered to avoid, mitigate, or attempt to mitigate the
384 effects of an emergency.

385 (2) A person who gratuitously, and in good faith, assists governmental agencies or
386 political subdivisions in the activities described in Subsections (2)(a) through (c) is not liable
387 for any civil damages or penalties as a result of any act or omission unless the person rendering
388 assistance is grossly negligent:

389 (a) implementation of measures to control the causes of epidemic and communicable
390 diseases and other conditions significantly affecting the public health, or necessary to protect
391 the public health as set out in Title 26A, Chapter 1, Local Health Departments;

392 (b) investigating and controlling suspected bioterrorism and disease as set out in Title
393 26, Chapter 23b, Detection of Public Health Emergencies Act; and

394 (c) responding to a national, state, or local emergency, a public health emergency as
395 defined in Section 26-23b-102, or a declaration by the President of the United States or other
396 federal official requesting public health-related activities.

397 Section 7. **Effective date.**

398 If approved by two-thirds of all the members elected to each house, this act takes effect
399 upon approval by the governor, or the day following the constitutional time limit of Utah

400 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
401 the date of veto override.

Legislative Review Note
as of 1-30-03 9:19 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0160

Emergency Health Response Amendments

05-Feb-03

11:07 AM

State Impact

Any fiscal impact associated with this bill can be handled within existing budgetary levels.

Individual and Business Impact

There may be individual benefit to the extent that certain health care professionals reduce their liability for civil damages.

Office of the Legislative Fiscal Analyst