

FILED ON: 10/7/2009

**HOUSE . . . . . No. 4271**

---

---

**The Commonwealth of Massachusetts**

---

By Mr. Murphy of Burlington, for the committee on Ways and Means, that the Senate Bill relative to pandemic and disaster preparation and response (Senate, No. 2028, amended) ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4271. October 7, 2009.

---

FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Charles A. Murphy	21st Middlesex

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

The Committee on Ways and Means recommends that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following:

1           “**SECTION 1.** Chapter 17 of the General Laws, as appearing in the 2008 Official Edition, is  
2 hereby amended by striking out section 2A and inserting in place thereof the following 2 sections:-

3           Section 2A. Upon declaration by the governor that a public health emergency exists, the  
4 commissioner may, during such period of emergency and with approval of the governor, take such action  
5 and incur such liabilities as he may consider necessary to assure the maintenance of public health and the  
6 prevention of disease. The commissioner may establish procedures to be followed during such  
7 emergency to ensure the continuation of essential public health services and the implementation of such  
8 services.

9           If the governor declares that a public health emergency is limited to a specified local area, the  
10 appropriate local public health authority, as defined in section 1 of chapter 111, may, subject to the  
11 approval of the commissioner, take such action during said public health emergency as it may deem  
12 necessary to assure the maintenance of public health and the prevention of disease. A local public health  
13 authority may, with the approval of the commissioner, establish procedures to be followed during such  
14 public health emergency to ensure the continuation of essential public health services and the  
15 implementation of such services. Nothing in this section shall supersede the normal operating authority  
16 of the local public health authorities, except that such authority shall not be exercised in a manner that

17 conflicts with any procedure or order issued by the commissioner to assure the maintenance of public  
18 health and the prevention of disease during such emergency.

19           Upon declaration of a public health emergency, a person owning or controlling real estate or  
20 other premises who voluntarily and without compensation grants a license or privilege, or otherwise  
21 permits the designation or use of such real estate or premises, in whole or in part, for the purpose of  
22 assisting in response to such an emergency, shall not be civilly liable for causing the death of, or injury to,  
23 any person on or about such real estate or premises under such license, privilege or other permission or  
24 for causing the loss of, or damage to, the property of such person, except in the event of willful, wanton or  
25 reckless misconduct. The immunities provided in this subsection shall not apply to any person whose act  
26 or omission caused such emergency, in whole or in part, or who would otherwise be liable therefor.

27           A declared public health emergency shall terminate when so declared by the governor or 90 days  
28 after its declaration, whichever occurs first. Upon termination of a public health emergency, all powers  
29 granted to and exercised by the commissioner and local public health authorities under this section and  
30 section 2B shall terminate.

31           Section 2B. (a) As used in this section the following terms shall, unless the context clearly  
32 requires otherwise, have the following meanings:-

33 ‘Health care facility’, a non-federal institution, building, agency or portion thereof, whether public or  
34 private, for-profit or nonprofit, that is used, operated or designed to provide health services, medical  
35 treatment or nursing, rehabilitative or preventive care to any person including, without limitation: adult  
36 day-care centers; ambulatory surgical facilities; community health centers; home health agencies;  
37 hospices; hospitals; infirmaries; intermediate care facilities; kidney treatment centers; long-term care  
38 facilities; medical assistance facilities; mental health centers; outpatient facilities; public health centers;  
39 rehabilitation facilities; residential treatment facilities; and skilled nursing facilities; and provided further,  
40 that the term ‘health care facility’ shall, without limitation, include, the following related properties when

41 used for, or in connection with, the foregoing: alternate care sites; health personnel training and lodging  
42 facilities; laboratories; laundry facilities; offices and office buildings for persons engaged in health care  
43 professions or services; patient, guest and health personnel food service facilities; pharmacies; and  
44 research facilities.

45 ‘Health care professional’, shall include, without limitation: a dentist; emergency medical technician;  
46 laboratory technician; licensed practical nurse; nurse practitioner; paramedic; pharmacist; pharmacy  
47 technician; physician; physician assistant; psychologist; registered nurse; or social worker.

48 ‘Local public health authority’, any body politic or political subdivision of the commonwealth that acts  
49 as a board of health, public health commission or health department for a city or town and includes any  
50 board of health and any regional board of health or regional health district as defined in section 27B of  
51 chapter 111.

52 (b) Upon declaration of a public health emergency pursuant to section 2A, the commissioner or a  
53 local public health authority acting at the direction of the commissioner may: (1) close, direct and compel  
54 the evacuation of, or decontaminate or cause to be decontaminated any public building or facility, and  
55 allow the reopening of the public building or facility when the danger has ended; (2) require a health care  
56 facility to provide services or the use of its facility, or to transfer the management and supervision of the  
57 health care facility to the department; (3) control ingress to and egress from any stricken or threatened  
58 public area, and the movement of persons and materials within that area; (4) adopt and enforce measures  
59 to provide for the safe disposal of infectious waste; (5) procure, store or distribute any anti-toxins, serums,  
60 vaccines, immunizing agents, antibiotics or other pharmaceutical agents or medical supplies as may be  
61 necessary to respond to the emergency; (6) waive, for a period of 30 days or until the declaration of a  
62 public health emergency pursuant to section 2A has terminated, whichever occurs first, licensing  
63 requirements for health care professionals with a valid license from another jurisdiction in the United  
64 States or whose professional training would otherwise qualify them for an appropriate professional

65 license in the commonwealth; (7) allow for the dispensing of controlled substances by appropriate  
66 personnel consistent with federal statutes as necessary for the prevention or treatment of illness; (8)  
67 authorize the chief medical examiner to appoint and prescribe the duties of emergency assistant medical  
68 examiners as may be required for the proper performance of the duties of the office; (9) care for any  
69 emerging mental health or crisis counseling needs that individuals may exhibit, with the consent of the  
70 individuals; and (10) request the assistance of the Massachusetts emergency management agency.

71           If the commissioner determines, based on an annual review, that within the city of Boston, the  
72 local public health authority has adequate and appropriate resources to exercise authority relative to  
73 clause (2), said local public health authority may exercise authority relative to said clause (2) during a  
74 public health emergency declared pursuant to section 2A, after notifying the commissioner, unless such  
75 action is deemed by the commissioner, after consultation with the local public health authority, to be  
76 contrary to the interests of the commonwealth.

77           Any person who knowingly violates an order of the commissioner or a local public health  
78 authority acting at the direction of the commissioner, issued pursuant to this subsection shall be punished  
79 by imprisonment in the house of corrections for not more than 6 months, or by a fine of not more than  
80 \$1,000, or both.

81           (c) All political subdivisions of the commonwealth responding to a public health emergency  
82 declared pursuant to section 2A shall consult with each other and shall cooperate with the commissioner  
83 in: (1) the exercise of their powers over routes of transportation, materials and facilities including, but not  
84 limited to, communication devices, carriers, public utilities, fuels, food, clothing and shelter; and (2)  
85 informing the public relative to protecting themselves during the emergency and its aftermath and  
86 informing them of actions being taken to control the emergency; provided, however, that reasonable  
87 efforts shall be made to provide such information in the primary language of the recipients of the

88 information as well as in English; and provided further, that reasonable efforts shall be made to provide  
89 such information in a manner accessible to individuals with disabilities.

90 (d) All political subdivisions of the commonwealth engaged in responding to a public health  
91 emergency may share and disclose information to the extent necessary for the treatment, control and  
92 investigation of an emergency.

93 **SECTION 2.** Section 1 of chapter 111 of the General Laws, as so appearing, is hereby amended by  
94 inserting after the definition of 'Inland waters' the following definition:-

95 'Local public health authority', any body politic or political subdivision of the commonwealth that acts  
96 as a board of health, public health commission or health department for a city or town and includes any  
97 board of health and any regional board of health or regional health district as defined in section 27B.

98 **SECTION 3.** Section 5 of said chapter 111, as so appearing, is hereby amended by inserting after the  
99 word 'disease', in line 4, the following words:- and adverse health conditions.

100 **SECTION 4.** Section 5A of said chapter 111, as so appearing, is hereby amended by inserting after the  
101 word 'vaccine', in line 3, the following words:- immunizing agents, antibiotics and other pharmaceutical  
102 or medical supplies.

103 **SECTION 5.** Section 6 of said chapter 111, as so appearing, is hereby amended by inserting after the  
104 word 'the', in line 1, the first time it appears, the following:- (a).

105 **SECTION 6.** Section 6 of said chapter 111, as so appearing, is hereby amended by inserting after the  
106 word 'diseases', in lines 2 and 4, each time it appears, the following words:- , injuries and threats to  
107 health.

108 **SECTION 7.** Said section 6 of said chapter 111, as so appearing, is hereby further amended by inserting  
109 after subsection (a) the following 4 subsections:-

110 (b) The department shall specify the responsibilities of health care providers, medical examiners,  
111 and others to report, to the department or to a local public health authority, diseases, injuries and threats to  
112 health specified by the department. The department shall specify the responsibilities of local public  
113 health authorities to report diseases, injuries and threats to health to the department. The department may  
114 specify the responsibilities of pharmacists to report to the department unusual or increased prescription  
115 rates, unusual types of prescriptions or unusual trends in pharmacy visits that may indicate a threat to  
116 public health. Nothing in this section shall preempt the authority of a local public health authority to  
117 require direct reporting of diseases, injuries and threats to health to the local public health authority.

118 (c) Whenever the department or a local public health authority learns of a case of a reportable  
119 disease, an unusual cluster or a suspicious event that it reasonably believes may have been caused by a  
120 criminal act or that may result in a public health emergency under section 2A of chapter 17 or a state of  
121 emergency pursuant to chapter 639 of the acts of 1950 it shall immediately notify the appropriate federal,  
122 state and local public safety authorities. Sharing of such information pursuant to this section shall be  
123 restricted to that necessary for treatment and control of illness, investigation of the incident and  
124 prevention or control of the emergency.

125 (d) No person making a report under this section shall be liable in any civil or criminal action by  
126 reason of such report if it was made in good faith.

127 (e) Any person required to report who fails to file a report required by this section shall be subject  
128 to a fine of not more than \$1,000. An individual health care provider shall be subject to suspension or  
129 revocation of his license or certification if the failure to file a report is gross, wanton or willful  
130 misconduct and poses a serious risk to the public health.

131 **SECTION 8.** Section 7 of said chapter 111, as so appearing, is hereby amended by adding the following  
132 paragraph:-

133           The department may obtain, upon request, medical records and other information that the  
134 department considers necessary to carry out its responsibilities to investigate, monitor, prevent and  
135 control disease or conditions dangerous to the public health. All medical records shall be kept  
136 confidential and only those individuals who have a specific need to review such information shall be  
137 entitled to access to such information. Whoever violates this section shall be punished by a fine of not  
138 more than \$1,000.

139 **SECTION 9.** Said chapter 111 is hereby further amended by inserting after section 25O the following  
140 section:-

141           Section 25P. (a) As used in this section, the following words shall, unless the context clearly  
142 requires otherwise, have the following meanings:-

143 ‘System’, the Massachusetts system for advance registration.

144           (b) The department shall establish a registry of volunteer personnel who are available to provide  
145 services including, but not limited to, health and medical services. The registry shall be known as the  
146 Massachusetts system for advance registration. The department may establish requirements for  
147 registration including, but not limited to, the successful completion of certain training as determined by  
148 the department.

149           (c) The department shall establish a process to identify personnel in the system, which may  
150 include a requirement for photographic identification.

151           (d) The commissioner may activate the system:

152           (1) during a public health emergency declared by the governor pursuant to section 2A of chapter  
153 17;

154 (2) during a state of emergency declared by the governor pursuant to chapter 639 of the acts of  
155 1950;

156 (3) during a public health incident that demands an urgent response;

157 (4) pursuant to a request from a local public health authority when local resources have been or  
158 are expected to be exhausted during a public health incident that demands an urgent response; or

159 (5) pursuant to an official request from another state or from a province of Canada.

160 The location of assignment for duty may be within the commonwealth, or may be in another state or a  
161 province of Canada if an official request for assistance has been received from such state or province.

162 (e) If the situation within the commonwealth for which the system is activated requires either  
163 staffing levels or expertise of personnel that are beyond the capacity of the system to provide, the  
164 commissioner may request personnel from other states having similar personnel registries. Under such  
165 circumstances, when acting as authorized personnel in the commonwealth, out-of-state personnel shall  
166 receive the protections provided under subsection (h) to members of the system. This subsection shall not  
167 apply to, or affect a deployment under, chapter 339 of the acts of 2000 or under section 58 of chapter 300  
168 of the acts of 2002.

169 (f) Any mobile assets and response resources of the national disaster medical system in the  
170 commonwealth may be activated for duty when they are not formally activated in federal service, by the  
171 commissioner under the circumstances provided under clauses (1) to (4), inclusive of subsection (d).  
172 When so activated, individuals who are members of the national disaster medical system shall receive the  
173 protections provided in subsection (h) to members of the Massachusetts system for advance registration.

174 (g) Any Massachusetts medical reserve corps, established pursuant to section 300hh-15 of chapter  
175 42 of the United States Code, may be activated for duty under the circumstances stated in clauses (1) to  
176 (4), inclusive of said subsection (d) and when such activation is requested by the governor and authorized

177 by the medical reserve corps' authorization mechanisms, members of such corps shall receive the  
178 protections provided in subsection (h) to members of the system.

179 (h) In the absence of any other protections provided by law, whenever activated for duty pursuant  
180 to this section, a member of the system shall not be liable in a suit for damages as a result of good-faith  
181 acts or omissions while engaged in the performance of his duties as a volunteer pursuant to this section;  
182 provided, however, that this subsection shall not apply in the case of willful, wanton or reckless actions  
183 by a member of the system occurring during the performance of the member's duties.

184 (i) The department of public health may adopt rules and regulations to implement this section.

185 **SECTION 10.** Section 94A of said chapter 111 of the General Laws, as appearing in the 2008 Official  
186 Edition, is hereby amended by striking out subsection (d) and inserting in place thereof the following  
187 subsection:-

188 (d) Upon order of the commissioner or his agent or at the request of a local public health authority  
189 pursuant to such order, law enforcement authorities shall assist emergency medical technicians or other  
190 appropriate medical personnel in the transportation of such person to the tuberculosis treatment center. No  
191 law enforcement authority or medical personnel shall be held criminally or civilly liable as a result of an  
192 act or omission carried out in good faith in reliance on such order.

193 **SECTION 11.** Said chapter 111 is hereby further amended by striking out section 95, as so appearing,  
194 and inserting in place thereof the following section:-

195 Section 95. (a) As used in this section the following words shall, unless the context clearly  
196 requires otherwise, have the following meanings:-

197 'Isolation', separation for the period of communicability of infected individuals or animals from other  
198 individuals or animals in such places and under such conditions as will prevent the direct or indirect

199 transmission of an infectious agent to susceptible people or to other individuals or animals who may  
200 spread the agent to others.

201 ‘Quarantine’, restricting the freedom of movement of well individuals or domestic animals that have been  
202 exposed to a communicable disease for a period of time relating to the usual incubation period of the  
203 disease in order to prevent effective contact with those not so exposed.

204 (b) Whenever the commissioner, or a local public health authority within its jurisdiction,  
205 determines that there is reasonable cause to believe that a disease or condition dangerous to the public  
206 health exists or may exist or that there is an immediate risk of an outbreak of such a disease or condition  
207 and that certain measures are necessary to decrease or eliminate the risk to public health, the  
208 commissioner or local public health authority may issue an order of isolation or quarantine to an  
209 individual or a group of individuals; provided, however, that, as used in this section, a disease or  
210 condition dangerous to the public health shall not include acquired immune deficiency syndrome, AIDS,  
211 or the human immunodeficiency virus, HIV. The order may be an oral order in exigent circumstances  
212 and, in such case, it shall be followed by a written order as soon as reasonably possible. The written order  
213 shall be delivered personally to the individual subject to the order, but if that is not possible, shall be  
214 delivered in a manner that is reasonably calculated to notify the individual or group that the order has  
215 been issued. In the case of a group, delivery may include delivery through the mass media and posting in  
216 a place where group members are reasonably likely to see it. If the commissioner determines that non-  
217 compliance would pose a serious danger to public health, the written order shall state that non-compliance  
218 would pose such a danger.

219 (c) Isolation and quarantine orders shall utilize the least restrictive means necessary to prevent a  
220 serious danger to public health and may include, but shall not be limited to, restricting a person from  
221 being present in certain places including, but not limited to, school or work; confinement to private  
222 homes; confinement to other private or public premises; or isolation or quarantine of an area.

223 (d) It shall be a violation of section 4 of chapter 151B for an employer to discharge or reduce  
224 any benefits of an employee because such employee is subject to an order of isolation or quarantine or  
225 because a child under 15 years of age of whom the wage earner has custody and responsibility is subject  
226 to an order of isolation or quarantine.

227 (e) The individual or group subject to an order of isolation or quarantine shall be informed that  
228 the order may be appealed by filing a petition in superior court challenging the order at any time. If an  
229 individual fails to comply with the order within the time specified in the order, the commissioner or the  
230 local public health authority may apply to a judge of the superior court for an order requiring the  
231 individual to comply with the order within the time specified in the order of the court and to take  
232 whatever other action the court considers appropriate in the circumstances to protect the public health.  
233 The law enforcement authorities of the city or town where the individual is present shall enforce the court  
234 order.

235 (f) This section shall not affect the authority of the department to isolate or quarantine individuals  
236 with active tuberculosis pursuant to the requirements and procedures specified in sections 94A to 94H,  
237 inclusive, and regulations promulgated thereunder.

238 **SECTION 12.** Section 96A of said chapter 111, as so appearing, is hereby amended by striking out, in  
239 lines 5 and 6, the words ‘except under section ninety-six’.

240 **SECTION 13.** Section 12C of chapter 112 of the General Laws, as so appearing, is hereby amended by  
241 inserting after the word ‘programs’, in line 2, the second time it appears, the following words:- , and no  
242 other person assisting in the foregoing,.

243 **SECTION 14.** Said section 12C of said chapter 112, as so appearing, is hereby further amended by  
244 adding the following sentence:- This section shall not apply in the case of willful, wanton or reckless  
245 actions.

246 **SECTION 15.** Section 12V of said chapter 112, as so appearing, is hereby amended by striking out, in  
247 line 1, the words ‘, whose usual and regular duties do not include the provision of emergency medical  
248 care, and’.

249 **SECTION 16.** Section 13 of chapter 122 of the General Laws, as so appearing, is hereby amended by  
250 striking out, in line 6, the words ‘, and it shall have the same authority to remove such person thereto as is  
251 conferred upon boards of health by section ninety-five of chapter one hundred and eleven’.

252 **SECTION 17.** Chapter 175 of the General Laws is hereby amended by inserting after section 24F the  
253 following section:-

254           Section 24G. (a) Any policy, contract, agreement, plan or certificate of insurance for coverage of  
255 health care services, including any sickness, health or welfare plan issued within or without the  
256 commonwealth, including, but not limited to, those of a carrier as defined in section 1 of chapter 176O, or  
257 other state approved health plans, shall provide that in the event of a declaration of a public health  
258 emergency declared pursuant to section 2A of chapter 17 or state of emergency declared pursuant to  
259 chapter 639 of the acts of 1950, which necessitates a suspension of all elective procedures, there shall be a  
260 waiver of administrative requirements within the zone of that suspension of elective procedures including,  
261 but not limited to, utilization review, prior authorization, advance notification upon admission or delivery  
262 of services and limitation on provider networks for treating or transferring patients. During such declared  
263 public health emergency or state of emergency, all prompt claims payment requirements, including the  
264 payment of interest for late processing, shall be waived for services rendered during any such emergency.  
265 The division of insurance shall promulgate regulations regarding the waiver of administrative  
266 requirements and claims payment requirements during a public health emergency.

267           (b) Upon the end of the public health emergency or state of emergency, there shall be within 180  
268 days a reconciliation of charges and reimbursements, during which time claims may be adjusted or re-  
269 adjudicated based on the provisions of any contract between the provider and health carrier, except that

270 such reimbursement shall not be conditioned on the execution during the public health emergency or state  
271 of emergency of utilization review, pre-notification or pre-authorization requirements. In the event that  
272 there is no contract between the provider and health carrier, reconciliation shall be based on  
273 reimbursement amounts equal to the carrier's usual and customary reimbursement rates in force at the  
274 date of service, except that for services provided to MassHealth members, reconciliation shall be based on  
275 reimbursement amounts equal to the MassHealth reimbursement rates in force on the date of service.  
276 Upon completion of the reconciliation, any carrier overpayments shall be reimbursed by the provider to  
277 the carrier and any underpayments shall be paid by the carrier to the provider. Investigations of fraud and  
278 resultant recovery actions shall not be subject to the reconciliation period, but shall be initiated within 3  
279 years after the date of the declared end of the public health emergency or state of emergency.

280 (c) A health care insurer shall include the provisions of subsections (a) and (b) in all contracts  
281 between the insurer and a health care provider.

282 **SECTION 18.** Chapter 268 of the General Laws is hereby amended by inserting after section 33A the  
283 following section:-

284 Section 33B. Whoever falsely makes, forges, counterfeits, alters or tampers with an identification  
285 card or other insignia issued by or under the authority of the commonwealth or by or under the authority  
286 of a Massachusetts medical reserve corps or a Massachusetts disaster medical assistance team established  
287 pursuant to federal law or whoever, with intent to defraud, uses or possesses any such identification card  
288 or insignia or impersonates or falsely represents himself to be or not to be a person to whom such  
289 identification card or insignia has been duly issued or whoever willfully allows another person to have or  
290 use any such identification card or insignia issued for his use alone shall be punished by a fine of not  
291 more than \$5,000 or by imprisonment for not more than 1 year, or both such fine and imprisonment.

292 **SECTION 19.** Notwithstanding any general or special law to the contrary, a health care provider, as  
293 defined in section 1 of chapter 111 of the General Laws, and a provider, as defined in section 1 of chapter

294 118G of the General Laws, shall not be liable in a suit for damages or subject to administrative or  
295 licensing sanctions as a result of good-faith acts or omissions while engaged in the performance of duties  
296 as a volunteer participating in a preparedness program sanctioned by a state agency, as defined in section  
297 1 of chapter 6A of the General Laws, or by a local public health authority, as defined in said section 1 of  
298 said chapter 111, or as an employee in rendering emergency care, treatment, advice or assistance in direct  
299 response to a declared public health emergency under section 2A of chapter 17 of the General Laws or a  
300 declared state of emergency under chapter 639 of the acts of 1950. This section shall not apply in the  
301 case of willful, wanton or reckless actions by a provider occurring in the performance of the provider's  
302 duties during such emergency.

303 **SECTION 20.** Notwithstanding any general or special law to the contrary, the department of public  
304 health shall convene a panel of public health preparedness experts to assess current funding resources  
305 available for preparedness activities in the commonwealth and to examine what funding will be needed to  
306 sustain state and local preparedness activities. The panel, which shall include representatives from  
307 hospitals, local public health authorities and other health and medical providers, shall convene within 30  
308 days of the effective date of this act and report to the joint committee on public health, the joint  
309 committee on health care financing and the house and senate committees on ways and means within 9  
310 months of the effective date of this act.

311 **SECTION 21.** Sections 92, 93, 94, 96, 97, 105, 110, 110B and 113 of chapter 111 of the General Laws  
312 are hereby repealed.

313 **SECTION 22.** Subsection (c) of section 24G of chapter 175 of the General Laws shall apply to all  
314 contracts between the insurer and a health care provider entered into, renewed or amended on or after the  
315 effective date of this act.”; and by striking out the title and inserting in place thereof the following title:  
316 “An Act relative to public health emergency preparation and response in the Commonwealth.”.