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Bill Analysis

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Primary Sponsors: Reps. Stoltzfus and Hood

Elizabeth Molnar, Attorney

SUMMARY

Limitations on state and local health orders to prevent disease

- Requires the approval of the General Assembly before an order issued by the Department of Health (ODH) to prevent the spread of a contagious disease is valid and limits an approved order's validity to 30 days.
- Requires a public hearing with an opportunity for public testimony before an emergency measure issued by a local board of health regarding an epidemic of contagious or infectious disease or a condition or event endangering the public health becomes effective and limits such a measure's validity to 30 days.
- Prohibits an order issued by ODH or a local board from doing any of the following: prescribing the time, place, and manner for holding an election; impairing contracts without due process; seizing property or closing businesses without due process; requiring testing or the use of personal protective equipment without consent; or establishing a general mandatory quarantine or isolation.

Authority to quarantine and isolate

- Requires the approval of the General Assembly before ODH may quarantine or isolate individuals in the event of an epidemic or pandemic of a communicable, life-threatening disease.
- Specifies that, once approved, the quarantine or isolation is effective for not more than 30 days.

Disease testing

- With respect to a test for the presence or absence of a communicable, life-threatening disease, codifies the requirement that informed consent be obtained before administering the test and specifies that the test's physical results are the property of the tested individual.

- Establishes a civil cause of action and a criminal penalty of not less than \$100,000 for violating the bill's testing provisions.

Elections and enemy attacks

- Eliminates the Governor's authority to postpone a state or local election in an emergency resulting from an enemy attack.

DETAILED ANALYSIS

Limitations on state and local health orders to prevent disease

Ohio Department of Health (ODH)

Existing statutory law authorizes ODH to issue special or standing orders or rules for preventing the spread of contagious or infectious diseases, but does not set conditions on ODH exercising that authority. The bill instead requires the approval of the General Assembly before such an order or rule becomes valid.¹ Within five days of its submission to the General Assembly for approval, the General Assembly may approve, modify, or limit the order or rule or may deny its approval.

If approved, an order or rule is valid for not more than 30 days and is prohibited from doing any of the following:

- Prescribing the time, place, and manner for holding an election;
- Causing impairment of contracts without due process of law;
- Causing the seizure of property or a business closure or preventing access to a business without due process of law;
- Establishing a general mandatory statewide quarantine or isolation that applies to individuals neither directly exposed to nor medically diagnosed with an epidemic or pandemic disease;
- Requiring testing of any kind or the use of masks, gloves, or any other covering without an individual's consent.

Local boards of health

Current statutory law authorizes a board of health of a city or general health district to issue orders and regulations to prevent or restrict disease generally² and in the case of an epidemic or threatened epidemic or when a contagious disease is unusually present, to declare

¹ R.C. 3701.13(B).

² A board of health also is authorized to issue orders and regulations as are necessary for its own government, for public health, and for the prevention, abatement, or suppression of nuisances. R.C. 3709.20 and 3709.21.

those orders and regulations to be emergency measures.³ Under existing law, an emergency measure is effective immediately. The bill instead requires a public hearing with an opportunity for public testimony before an emergency measure can take effect. The bill also limits the measure's effectiveness to a period of not more than 30 days. After 30 days have elapsed, the board may declare new orders or rules in accordance with the bill's requirements.

Just as is the case for ODH orders under the bill, a local board order cannot do any of the following:

- Prescribe the time, place, and manner for holding an election;
- Cause impairment of contracts without due process of law;
- Cause the seizure of property or a business closure or prevent access to a business without due process of law;
- Establish a general mandatory quarantine or isolation that applies to individuals neither directly exposed to nor medically diagnosed with an epidemic or pandemic disease;
- Require testing of any kind or the use of masks, gloves, or other coverings without an individual's consent.⁴

The foregoing prohibitions also apply to the following circumstances:

- When a board closes a school within its jurisdiction or prohibits public gatherings during an epidemic or threatened epidemic or when a contagious disease is unusually present;⁵
- When a board, with the permission of ODH, closes public highways or establishes a quarantine of one city or township against another;⁶
- When imposing a quarantine on vessels, railroads, or other public or private vehicles conveying persons, baggage, or freight in time of epidemic or threatened epidemic or when a contagious disease is unusually present.⁷

ODH authority to quarantine and isolate

Current law specifies that ODH has ultimate authority in matters of quarantine and isolation and does not set any limits on ODH's exercise of this authority. The bill instead grants ODH administrative responsibility in these matters and establishes limits on that responsibility in the event of an epidemic or pandemic of a contagious, life-threatening disease.⁸ In such

³ R.C. 3709.20 and 3709.21.

⁴ R.C. 3709.20.

⁵ R.C. 3707.26.

⁶ R.C. 3707.05.

⁷ R.C. 3707.04.

⁸ R.C. 3701.13(A).

circumstances, the bill authorizes ODH to recommend to the General Assembly a plan for quarantine or isolation procedures for individuals directly exposed to or diagnosed with the epidemic or pandemic disease.

The bill also provides that such a plan does not take effect unless it receives the approval of the General Assembly. To be approved, a plan must provide for cooperation with local boards of health. And, if approved, the plan remains in effect for a period not to exceed 30 days. The bill does not provide for a process by which a plan may be extended.

Disease testing

In general, a health care provider must obtain an individual's informed consent before performing a medical procedure or initiating treatment.⁹ The bill codifies this requirement for a health care provider before administering a test for (1) the presence or absence of a communicable, life-threatening disease or infection or (2) an immune response to such a disease or infection that is the subject of an epidemic or pandemic.¹⁰ In the case of a minor individual, the bill requires the health care provider to obtain the informed consent of the minor individual's parent or legal guardian. In either circumstance, the consent must be in writing.

Physical test results

Under the bill, the physical results of an individual's test, including any partial or complete biometric record of the individual's DNA sequence, are the property of the individual and are to be transmitted only to the individual tested, or in the case of a minor individual, the individual's parent or legal guardian.

If the individual or parent or legal guardian does not take possession of the physical results of a test, the laboratory responsible for conducting the test must destroy those results when they are no longer needed for the limited purpose of diagnosing the individual or determining the presence of an immune response to the disease or infection identified in the individual's written consent.

The laboratory conducting the test or any other public or private entity is prohibited from maintaining any DNA collected for the limited purpose of the test. The bill also prohibits biological material or any related record of such material from being stored, held, or transmitted in any format, including an electronic, digital, or paper format, by the laboratory conducting the test or any other public or private entity. The laboratory must certify in writing to the individual tested that any biometric record has been destroyed and that no related record has been stored, held, or transmitted to a third party.

⁹ Ohio courts have consistently followed an Ohio appellate court decision, *Leach v. Shapiro* (1984), 13 Ohio App.3d 393, 395, finding that a physician who treats a person without consent has generally committed a battery. See, e.g. *State v. Bennett*, 2d Dist. Montgomery No. 27943, 2019-Ohio-2996, citing *Maglosky v. Kest*, Cuyahoga App. No. 85382, 2005 Ohio 5133, at ¶ 24.

¹⁰ R.C. 3701.234.

Civil liability and criminal penalties

Under the bill, a health care provider, laboratory, or public or private entity is liable in damages to any person in a civil action for injury or loss to person or property that allegedly arises from the provider's, laboratory's, or entity's failure to comply with the bill's requirements.¹¹ The bill also establishes criminal penalties for failing to comply with its provisions – with a fine of not less than \$100,000 per incident.¹²

Elections and enemy attacks

In the event of an emergency resulting from an enemy attack, current law requires the Governor to postpone a state or local election for a period of not more than six months if the Governor determines it to be in the public interest.¹³ The bill eliminates the Governor's authority and instead authorizes the General Assembly to postpone the election, but only for a period of 90 days. It also specifies that in no other circumstance shall an election be postponed, canceled, or conducted in any manner other than that already prescribed in statutory law.

HISTORY

Action	Date
Introduced	05-19-20

H0649-I-133/ec

¹¹ R.C. 3701.234(D).

¹² R.C. 3701.99.

¹³ R.C. 161.09.