

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 8-B

INTRODUCER: Senators Bean and Gruters

SUBJECT: Vaccinations During Public Health Emergencies

DATE: November 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 8-B amends s. 381.00315, F.S., to repeal the State Health Officer's authority to order an individual to be vaccinated for communicable diseases that have significant morbidity or mortality and present a severe danger to public health, potentially by any means necessary, during a public health emergency.

The bill takes effect upon becoming a law.

II. Present Situation:

State Health Officer Authority Related to Public Health Emergencies and Vaccinations

Specific to vaccinations, the State Surgeon General has the authority under s. 381.00315, F.S., to:

- Order an individual to be vaccinated for communicable diseases that pose a severe danger to public health;
- Order an individual into isolation or quarantine if the individual is unable or unwilling to be vaccinated for reasons of health, religion, or conscience; and
- Vaccinate an individual by any means necessary if the individual poses a danger to public health and there is no practical method to isolate or quarantine the individual.¹

Legislative History of Authority in Section 381.00315, F.S.

Section 381.00315, F.S., was created by the Legislature in 1996² and, when originally created, consisted of one paragraph granting the State Health Officer (the State Surgeon General) the authority to take any appropriate actions necessary to enforce public health advisories. The

¹ Section 381.00315(2)(d), F.S.

² Chapter 96-403, Laws of Fla.

section did not provide a definition of a public health advisory and it did not detail what the State Health Officer may or may not do as an “appropriate action” to enforce a public health advisory.

Not long after the terrorist attacks that occurred on September 11, 2001, America was soon thrown into turmoil once again due to a series of anthrax attacks in which letters laced with the deadly bacteria killed five Americans and sickened 17 others.³ Some of the first anthrax attacks occurred in Florida between October 4 and October 8, 2001, when a journalist named Bob Stevens with American Media was hospitalized and later died of anthrax inhalation, and anthrax was found at the company’s Boca Raton offices.⁴

In November of 2001, the Florida Legislature held Special Session C (from November 27-December 6, 2001) for the purpose of enacting a number of bills to provide for increased security measures in the event of subsequent terrorist attacks. As part of the special session, the Legislature established select committees to review the security needs of the state.⁵ During this review, issues came to light regarding the ability of hospitals to respond to large-scale bioterrorism attacks and provide treatment in situations where their capacity and systems of care were overwhelmed by large numbers of victims.⁶

To respond to the threat of potential bioterrorism, the Legislature significantly expanded the authority of the State Surgeon General to use the police power of the state to maintain public health. In the 2002 Session, the Legislature amended s. 381.00315, F.S., to grant the State Surgeon General the authority to declare public health emergencies and authorize the State Surgeon General to take actions necessary to protect the public health including, but not limited to:

- Directing prescription drug manufacturers to give priority to the shipping of specified drugs to pharmacies and health care providers within specified geographic areas;
- Directing pharmacists employed by the Department of Health (DOH) to compound necessary bulk medications;
- Temporarily reactivating certain inactive health care practitioner licenses; and
- Ordering an individual to be examined, tested, vaccinated, treated, or quarantined for communicable diseases that have significant morbidity or mortality and present a severe danger to the public health.⁷

In 2015, the statute was updated to include isolation as a tool for the State Surgeon General to use to protect the public health and to draw a distinction between the definitions of isolation and quarantine.⁸

³ See Federal Bureau of Investigation, *Amerithrax or Anthrax Investigation*, <https://www.fbi.gov/history/famous-cases/amerithrax-or-anthrax-investigation> (last visited Nov. 8, 2021).

⁴ See National Public Radio, *Timeline: How The Anthrax Terror Unfolded* (Feb. 15, 2011), <https://www.npr.org/2011/02/15/93170200/timeline-how-the-anthrax-terror-unfolded>.

⁵ See Florida Senate Committee on Health, Aging, and Long-Term Care, Staff Analysis and Economic Impact Statement: CS/SB 1262 (Mar. 6, 2002), https://www.flsenate.gov/Session/Bill/2002/1262/Analyses/20021262SHC_2002s1262.hc.pdf.

⁶ *Id.*

⁷ See s. 2, ch. 2002-269, Laws of Fla.

⁸ Chapter 2015-120, Laws of Fla.

Specific to vaccinations, the State Surgeon General has the authority under s. 381.00315, F.S., to:

- Order an individual to be vaccinated for communicable diseases that pose a severe danger to public health;
- Order an individual into isolation or quarantine if the individual is unable or unwilling to be vaccinated for reasons of health, religion, or conscience; and
- Vaccinate an individual by any means necessary if the individual poses a danger to public health and there is no practical method to isolate or quarantine the individual.

Public Health Emergency Declarations

A public health emergency is any occurrence, or threat, whether natural or manmade, that results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.⁹

Public health emergencies declared since the inception of the revised statute in 2002 include:¹⁰

- In 2009, Governor Charlie Crist directed Surgeon General Ana Viamonte Ros to declare a public health emergency for two cases of swine flu in Lee and Broward counties.¹¹
- In 2011, the Florida Legislature passed a bill directing Surgeon General Frank Farmer to issue a statewide public health emergency in response to the ongoing problem of prescription drug abuse.¹²
- In 2014, Governor Rick Scott directed the DOH to quarantine high-risk individuals traveling to Florida from Ebola virus affected countries; however, this order does not appear to be in conjunction with a formal public health emergency declaration.¹³
- In 2016, Surgeon General John Armstrong declared a public health emergency to respond to the emerging threat of Zika fever in south Florida.¹⁴
- In 2018, Governor Rick Scott directed Surgeon General Celeste Philip to declare a statewide public health emergency to combat the opioid epidemic.¹⁵
- In 2019, Surgeon General Scott Rivkees declared a public health emergency to respond to the outbreak of Hepatitis A in several counties in Florida.¹⁶

⁹ Section 381.00315(1)(c), F.S.

¹⁰ The listed public health emergencies are all the public health emergency declarations which the DOH has records of since the passage of the expanded s. 381.00315, F.S., in 2002. A full list of all public health emergency declarations, including supplemental declarations, is on file with the staff of the Senate Health Policy Committee.

¹¹ Don Browne, Southwest Florida Online – Sunday Morning News, *Florida Declares Health Emergency* (May 2, 2009), <http://swflorida.blogspot.com/2009/05/florida-declares-health-emergency.html> (last visited Nov. 8, 2021).

¹² Section 28, ch. 2011-141, Laws of Fla.

¹³ Office of the Governor, Executive Order 14-280 (Establishes Ebola Virus Disease Response Protocol), Oct. 25, 2014, https://www.flgov.com/wp-content/uploads/2014/10/SKMBT_C35314102515490.pdf.

¹⁴ Florida Department of Health, Declaration of Public Health Emergency for Miami-Dade, Hillsborough, Lee, and Santa Rosa Counties (Feb. 3, 2016), http://www.floridahealth.gov/documents/newsroom/press-releases/2016/02/020416-declaration-public-health-emergency.pdf?utm_source=article.

¹⁵ Office of the Governor, Executive Order 17-146 (Opioid Epidemic), May 3, 2017, <https://www.flgov.com/wp-content/uploads/2017/05/17146.pdf>.

¹⁶ Florida Department of Health, Declaration of Public Health Emergency (Aug. 1, 2019), available at <http://www.floridahealth.gov/documents/newsroom/press-releases/2019/08/phe-hav-filed-08-01-2019.pdf>.

- In 2020, Governor Ron DeSantis directed State Surgeon General Rivkees to declare a public health emergency resulting from the outbreak of the COVID-19 pandemic.¹⁷

Treatment of Vaccinations during Public Health Emergencies

To date, Florida has not required the administration of a vaccine due to a public health emergency. Vaccines have been addressed as preventative measures for two of the diseases for which public health emergencies were declared, but in neither case were vaccines considered mandatory. During the swine flu public health emergency, the DOH planned for the distribution of a vaccine. Documentation for the vaccine campaign plan provided that “everyone is encouraged to receive their season flu vaccine and the H1N1 flu vaccine when they become available” and that the state should “vaccinate all Floridians who choose to be vaccinated in accordance with federal guidance.”¹⁸ Additionally, the public health emergency declaration for Hepatitis A stated that Hepatitis A is a vaccine-preventable, communicable disease. The declaration stated that “health care practitioners *should* actively screen for and vaccinate” patients but did not require anyone to be vaccinated.¹⁹

Legal Authority in Florida for the Maintenance of Public Health

As detailed above, the DOH and the State Surgeon General are vested with a wide range of powers for the purpose of protecting the public health. However, the ultimate authority and responsibility for protecting the public health is vested in the Florida Legislature.

In the seminal Florida case on public health authority, *Varholy v. Sweat*, the Florida Supreme Court found in 1943 that “[g]enerally speaking, rules and regulations necessary to protect the public health are legislative questions, and appropriate methods intended and calculated to accomplish these ends will not be disturbed by the courts.”²⁰ Although the “legislative authority in this legitimate field of the police power, like as in other fields, is fenced about by constitutional limitations, and it cannot properly be exercised beyond such reasonable interferences as are really of action of individuals as are really necessary to preserve and protect the public health.”²¹ Every reasonable presumption must “be indulged in favor of the validity of legislative action in this important field, [and] also in favor of the validity of the regulations and actions of the health authorities.”²²

Varholy appears to recognize that the Florida Legislature has broad discretion to protect the public health as it sees fit, within the bounds of the Florida and United States Constitutions, and

¹⁷ Office of the Governor, Executive Orders 20-52 (Emergency Management – COVID-19 Public Health Emergency), Mar. 9, 2020, https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf, and 20-51 (Establishes COVID-19 Response Protocol and Directs Public Health Emergency), Mar. 1, 2020, https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-51.pdf.

¹⁸ See Florida Department of Health, *Novel Influenza A H1N1 Outbreak: The Florida Response* (last updated March 24, 2021), *H1N1 Broadcast Planning for the Vaccine Campaign*, slides 10 (in notes) and 11, <http://www.floridahealth.gov/diseases-and-conditions/influenza/satellite.html> (last visited Nov. 8, 2021).

¹⁹ Florida Department of Health, *supra* note 12 (emphasis added).

²⁰ *Varholy v. Sweat*, 15 So. 2d 267, 269 (Fla. 1943).

²¹ *Id.* at 270.

²² *Id.*

that the Legislature has the ultimate authority to decide which state police powers may, and may not, be used to protect the public health.

III. Effect of Proposed Changes:

SB 8-B amends s. 381.00315, F.S., to revise the State Health Officer's authority relating to vaccines during public health emergencies. Specifically, the bill repeals the authority of the Surgeon General to:

- Order an individual to be vaccinated for communicable diseases that pose a severe danger to public health;
- Order an individual into isolation or quarantine if the individual is unable or unwilling to be vaccinated for reasons of health, religion, or conscience; and
- Vaccinate an individual by any means necessary if the individual poses a danger to public health and there is no practical method to isolate or quarantine the individual.²³

The bill takes effect upon becoming law

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²³ Section 381.00315(2)(d), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.00315, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.