Senate Bill 385

By: Senators Thompson of the 33rd, Stokes of the 43rd and Tanksley of the 32nd

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Title 4 of the Official Code of Georgia Annotated, relating to animals, so as to authorize the Commissioner of Agriculture to require the reporting of certain animal diseases and syndromes; to provide for the contents of reports; to provide for the confidentiality of reports; to provide for limited exceptions and for the use of certain data; to provide that certain persons making such reports shall not be liable for civil damages; to provide for penalties and change the provisions relating to certain penalties; to amend Chapter 12 of Title 31 of the Official Code of Georgia Annotated, relating to control of hazardous conditions, preventable diseases, and metabolic disorders, so as to provide definitions of bioterrorism and public health emergency; to require health care providers, coroners, and medical examiners to report cases of bioterrorism and other conditions that pose a substantial risk of a public health emergency to the Department of Human Resources and the appropriate county board of health; to establish reporting requirements for pharmacists of increased or unusual prescriptions that may be related to bioterrorism; to require the Department of Human Resources to notify the Department of Public Safety of any potential causes of bioterrorism; to provide for the Department of Human Resources to identify persons exposed to bioterrorism; to authorize the closing and decontamination of facilities that may endanger the public health; to authorize the Department of Human Resources to promulgate rules and regulations for the management of a public health emergency and to prepare a public health emergency plan and draft executive order for the declaration of a public health emergency; to provide for referral of rules and regulations related to the management of a public health emergency by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary; to provide for a penalty for failure to comply with reporting requirements; to authorize the Department of Human Resources to promulgate rules and regulations related to vaccination and quarantine in a public health emergency; to provide for referral of rules and regulations related to vaccination and quarantine in a public health emergency by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary; to amend Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to general provisions related to law enforcement officers and agencies, so as to require law enforcement agencies to report unusual or suspicious health related

events to the Department of Human Resources and the appropriate county board of health; to amend Chapter 3 of Title 38 of the Official Code of Georgia Annotated, relating to emergency management, so as to authorize the Governor prior to declaring a state of emergency in the event of a public health emergency to issue a call for a special session of the General Assembly; to compel health care facilities to provide services or the use of their facilities during a public health emergency; to exclude certain firearms from limitations during an emergency; to change the emergency powers of the Governor regarding firearms; to authorize the Governor to direct the Department of Human Resources to coordinate the state´s response to a public health emergency; to provide for due process procedures related to quarantine or vaccination programs in a public health emergency; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 4 of the Official Code of Georgia Annotated, relating to animals, is amended by adding a new Code Section 4-4-6 to read as follows:

"4-4-6.

(a) The Commissioner is authorized to declare certain animal diseases and syndromes to be diseases requiring notice and to require the reporting thereof to the department in a manner and at such times as may be prescribed by the Commissioner. The department shall require that such data be supplied as is deemed necessary and appropriate for the prevention and control of certain diseases and syndromes as are determined by the Commissioner. All such reports and data shall be deemed confidential and shall not be open to inspection by the public; provided, however, that the Commissioner may release such reports and data in statistical form, for valid research purposes, and for other purposes as deemed appropriate by the Commissioner.

(b) Any person, including, but not limited to, any veterinarian or veterinary diagnostic laboratory and practice personnel and any person associated with any livestock farm, ranch, sales establishment, transportation, or slaughter, submitting reports or data in good faith to the department in compliance with this Code section shall not be liable for any civil damages therefor.

(c) Any person violating any provision of this Code section shall be guilty of a misdemeanor."

SECTION 2.

Said title is further amended by adding to Chapter 10 of said title, known as the "Bird Dealers Licensing Act," a new Code Section 4-10-7.3 to read as follows:

"4-10-7.3.

(a) The Commissioner is authorized to declare certain animal diseases and syndromes to be diseases requiring notice and to require the reporting thereof to the department in a manner and at such times as may be prescribed by the Commissioner. The department shall require that such data be supplied as is deemed necessary and appropriate for the prevention and control of certain diseases and syndromes as are determined by the Commissioner. All such reports and data shall be deemed confidential and shall not be open to inspection by the public; provided, however, that the Commissioner may release such reports and data in statistical form, for valid research purposes, and for other purposes as deemed appropriate by the Commissioner.

(b) Any person, including, but not limited to, any veterinarian or veterinary diagnostic laboratory and practice personnel and any person associated with any bird dealer regulated by this chapter, submitting reports or data in good faith to the department in compliance with this Code section shall not be liable for any civil damages therefor."

SECTION 3.

Said title is further amended by striking Code Section 4-10-12, relating to penalties, and inserting in its place the following:

"4-10-12.

Any person who ~~acts as a bird dealer without a license in violation of this chapter~~ violates any provision of this chapter shall be guilty of a misdemeanor."

SECTION 4.

Said title is further amended by adding to Article 1 of Chapter 11 of said title, known as the "Georgia Animal Protection Act," a new Code Section 4-11-9.7 to read as follows:

"4-11-9.7.

(a) The Commissioner is authorized to declare certain animal diseases and syndromes to be diseases requiring notice and to require the reporting thereof to the department in a manner and at such times as may be prescribed by the Commissioner. The department shall require that such data be supplied as is deemed necessary and appropriate for the prevention and control of certain diseases and syndromes as are determined by the Commissioner. All such reports and data shall be deemed confidential and shall not be open to inspection by the public; provided, however, that the Commissioner may release such reports and data in statistical form, for valid research purposes, and for other purposes as deemed appropriate by the Commissioner.

(b) Any person, including, but not limited to, any veterinarian or veterinary diagnostic laboratory and practice personnel and any person associated with any pet dealer, kennel, animal shelter, or stable, submitting reports or data in good faith to the department in compliance with this Code section shall not be liable for any civil damages therefor."

SECTION 5.

Chapter 12 of Title 31 of the Official Code of Georgia Annotated, relating to control of hazardous conditions, preventable diseases, and metabolic disorders, is amended by adding a new Code Section 31-12-1.1 to read as follows:

"31-12-1.1.

As used in this chapter, the term:

(1) 'Bioterrorism' means the intentional creation or use of any microorganism, virus, infectious substance, or any component thereof, whether naturally occurring or bioengineered, to cause death, illness, disease, or other biological malfunction in a human, animal, plant, or other living organism in order improperly or illegally to influence the conduct of government, to interfere with or disrupt commerce, or to intimidate or coerce a civilian population.

(2) 'Public health emergency' means the occurrence or imminent threat of an illness or health condition that is reasonably believed to be caused by bioterrorism or the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin and poses a high probability of any of the following harms:

(A) A large number of deaths in the affected population;

(B) A large number of serious or long-term disabilities in the affected population; or

(C) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population."

SECTION 6.

Said chapter is further amended by striking Code Section 31-12-2, relating to reporting disease, confidentiality of information supplied, and immunity from liability as to information supplied, and inserting in its place the following:

"31-12-2.

(a) The department is empowered to declare certain diseases, ~~and~~ injuries, and conditions to be diseases requiring notice and to require the reporting thereof to the county board of health and the department in a manner and at such times as may be prescribed. The department shall require that such data be supplied as are deemed necessary and appropriate for the prevention of certain diseases, ~~and accidents~~ injuries, and conditions as are determined by the department. All such reports and data shall be deemed confidential

and shall not be open to inspection by the public; provided, however, the department may release such reports and data in statistical form or for valid research purposes.

(b) A health care provider, coroner, or medical examiner shall report to the department and the county board of health all known or presumptively diagnosed cases of persons harboring any illness or health condition that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency. Reportable illnesses and conditions include, without limitation, diseases caused by biological agents listed at 42 C.F.R. Part 72, app. A (2000) and any illnesses or conditions identified by the department as potential causes of a public health emergency.

(c) A pharmacist shall report to the department and the county board of health any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may reasonably be believed to be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency.

(d) Any person, including but not limited to practitioners of the healing arts, submitting in good faith reports or data to the department or county boards of health in compliance with the provisions of this Code section shall not be liable for any civil damages therefor.

(e) Whenever the department learns of any case of an unusual illness, health condition, or death, or an unusual cluster of such events, or any other suspicious health related event that it reasonably believes has the potential to be caused by bioterrorism, it shall immediately notify the Department of Public Safety and other appropriate public safety authorities."

SECTION 7.

Said chapter is further amended by adding a new Code Section 31-12-2.1 to read as follows:

"31-12-2.1.

(a) The department shall ascertain the existence of any illness or health condition that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency; investigate all such cases to determine sources of infection and to provide for proper control measures; and define the distribution of the illness or health condition. The department shall:

(1) Identify, interview, and counsel, as appropriate, all individuals reasonably believed to have been exposed to risk;

(2) Develop information relating to the source and spread of the risk; and

(3) Close, evacuate, or decontaminate, as appropriate, any facility and decontaminate or destroy any contaminated materials when the department reasonably suspects that such material or facility may endanger the public health.

(b) The department shall promulgate rules and regulations appropriate for management of any public health emergency declared pursuant to the provisions of Code Section 38-3-51, with particular regard to coordination of the public health emergency response of the state pursuant to subsection (i) of said Code section. Such rules and regulations shall be applicable to the activities of all entities created pursuant to Chapter 3 of this title in such circumstances, notwithstanding any other provisions of law. In developing such rules and regulations, the department shall consult and coordinate as appropriate with the Georgia Emergency Management Agency, the Federal Emergency Management Agency, the Georgia Department of Public Safety, the Georgia Department of Agriculture, and the federal Centers for Disease Control and Prevention. The department is authorized, in the course of management of a declared public health emergency, to adopt and implement emergency rules and regulations pursuant to the provisions of subsection (b) of Code Section 50-13-4. Such rules and regulations shall be adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' but shall be automatically referred by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary.

(c) The department shall promulgate, prepare, and maintain a public health emergency plan and draft executive order for the declaration of a public health emergency pursuant to Code Section 38-3-51 and Chapter 13 of Title 50. In preparation of such public health emergency plan and draft executive order, the department shall consult and coordinate as appropriate with the Georgia Emergency Management Agency, the Federal Emergency Management Agency, the Georgia Department of Public Safety, the Georgia Department of Agriculture, and the federal Centers for Disease Control and Prevention.″

SECTION 8.

Said chapter is further amended by striking in its entirety Code Section 31-12-3, relating to power to require immunization, and inserting in its place the following:

″31-12-3.

(a) The department and all county boards of health are empowered to require, by appropriate rules and regulations, persons located within their respective jurisdictions to submit to vaccination against contagious or infectious disease where the particular disease may occur, whether or not the disease may be an active threat. The department may, in addition, require such other measures to prevent the conveyance of infectious matter from infected persons to other persons as may be necessary and appropriate. <u>The department</u>

shall promulgate appropriate rules and regulations for the implementation of the provisions of this Code section in the case of a declaration of a public health emergency and shall include provisions permitting consideration of the opinion of a person´s personal physician as to whether the vaccination is medically appropriate or advisable for such person. Such rules and regulations shall be adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' but shall be automatically referred by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary.

(b) In the absence of an epidemic or immediate threat thereof, this Code section shall not apply to any person who objects in writing thereto on grounds that such immunization conflicts with his religious beliefs."

SECTION 9.

Said chapter is further amended by striking in its entirety Code Section 31-12-4, relating to isolation and segregation of diseased persons and quarantine, and inserting in its place the following:

"31-12-4.

The department and all county boards of health may, from time to time, require the isolation or segregation of persons with communicable diseases or conditions likely to endanger the health of others. The department may, in addition, require quarantine or surveillance of carriers of disease and persons exposed to, or suspected of being infected with, infectious disease until they are found to be free of the infectious agent or disease in question. The department shall promulgate appropriate rules and regulations for the implementation of the provisions of this Code section in the case of a declaration of a public health emergency. Such rules and regulations shall be adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' but shall be automatically referred by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary."

SECTION 10.

Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to general provisions related to law enforcement officers and agencies, is amended by adding a new subsection (d) to Code Section 35-1-8, relating to acquisition, collection, classification, and preservation of information assisting in identifying deceased persons and locating missing persons, to read as follows:

"(d) Report any case of an unusual illness, health condition, or death, or an unusual cluster of such events, or any other suspicious health related event to the Department of Human Resources and the appropriate county board of health."

SECTION 11.

Chapter 3 of Title 38 of the Official Code of Georgia Annotated, relating to emergency management, is amended by renumbering paragraphs (1), (2), (3), (4), and (5) of Code Section 38-3-3, relating to definitions, as paragraphs (2), (3), (4), (5), and (7), respectively and adding new paragraphs (1) and (6) to read as follows:

"(1) 'Bioterrorism' means the intentional creation or use of any microorganism, virus, infectious substance, or any component thereof, whether naturally occurring or bioengineered, to cause death, illness, disease, or other biological malfunction in a human, animal, plant, or other living organism in order improperly or illegally to influence the conduct of government, to interfere with or disrupt commerce, or to intimidate or coerce a civilian population."

"(6) 'Public health emergency' means the occurrence or imminent threat of an illness or health condition that is reasonably believed to be caused by bioterrorism or the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin and poses a high probability of any of the following harms:

(A) A large number of deaths in the affected population;

(B) A large number of serious or long-term disabilities in the affected population; or

(C) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population."

SECTION 12.

Said chapter is further amended by striking subsection (a) of Code Section 38-3-51, relating to emergency powers of the Governor, termination of emergency, limitations in energy emergency, and immunity, and inserting in its place the following:

"(a) In the event of actual or impending emergency or disaster of natural or ~~manmade~~ human origin, or impending or actual enemy attack, or a public health emergency, within or affecting this state or against the United States, the Governor may declare that a state of emergency or disaster exists. As a condition precedent to declaring that a state of emergency or disaster exists as a result of a public health emergency, the Governor shall issue a call for a special session of the General Assembly pursuant to Article II, Section V, Paragraph VII of the Constitution of Georgia, which session shall convene at 8:00 A.M. on the second day following the date of such declaration for the purpose of concurring with or terminating the public health emergency. The state of emergency or disaster shall continue until the Governor finds that the threat or danger has passed or the emergency or disaster has been dealt with, to the extent that emergency or disaster conditions no longer exist, and terminates the state of emergency or disaster. No state of emergency or disaster may continue for longer than 30 days unless renewed by the Governor. The General

Assembly by concurrent resolution may terminate a state of emergency or disaster at any time. Thereupon, the Governor shall by appropriate action end the state of emergency or disaster."

SECTION 13.

Said chapter is further amended by inserting between paragraphs (4) and (5) of subsection (d) of Code Section 38-3-51, relating to emergency powers of the Governor, termination of emergency, limitations in energy emergency, and immunity, a new paragraph (4.1) to read as follows:

"(4.1) Compel a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary for emergency response. The use of such health care facility may include transferring the management and supervision of the health care facility to the Department of Human Resources for a limited or unlimited period of time not extending beyond the termination of the public health emergency;".

SECTION 14.

Said chapter is further amended by striking paragraph (8) of subsection (d) of Code Section 38-3-51 of the Official Code of Georgia Annotated, relating to emergency powers of the Governor, termination of emergency, limitation in energy emergency, and immunity, and inserting in its place the following:

"(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles; provided, however, that any limitation on firearms under this Code section shall not include an individual firearm owned by a private citizen which was legal and owned by that citizen prior to the declaration of state of emergency or disaster or thereafter acquired in compliance with all applicable laws of this state and the United States; and".

SECTION 15.

Said chapter is further amended by striking subsection (i) of Code Section 38-3-51, relating to emergency powers of the Governor, termination of emergency, limitations in energy emergency, and immunity, and inserting in its place the following:

"(i)(1) The Governor may direct the Department of Human Resources to coordinate all matters pertaining to the response of the state to a public health emergency including without limitation:

(A) Planning and executing public health emergency assessments, mitigation, preparedness response, and recovery for the state;

(B) Coordinating public health emergency responses between state and local authorities;

(C) Collaborating with appropriate federal government authorities, elected officials of other states, private organizations, or private sector companies;

(D) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies;

(E) Organizing public information activities regarding state public health emergency response operations; and

(F) Providing for special identification for public health personnel involved in a public health emergency.

(2) The following due process procedures shall be applicable to any quarantine or vaccination program instituted pursuant to a declaration of a public health emergency:

(A) Consonant with maintenance of appropriate quarantine rules, the department shall permit access to counsel in person or by such other means as practicable that do not threaten the integrity of the quarantine;

(B) An order imposing a quarantine or a vaccination program may be appealed but shall not be stayed during the pendency of the challenge. The burden of proof shall be on the state to demonstrate that there exists a substantial risk of exposing other persons to imminent danger. With respect to vaccination, the state´s burden of proof shall be met by clear and convincing evidence. With respect to quarantine, the state´s burden of proof shall be met by a preponderance of the evidence;

(C) An individual or a class may challenge the order before any available judge of the state courts, the superior courts, the Court of Appeals, or the Supreme Court. Such judge, upon attestation of the exigency of the circumstances, may proceed ex parte with respect to the state or may appoint counsel to represent the interests of the state or other unrepresented parties. The judge hearing the matter may consolidate a multiplicity of cases or, on the motion of a party or of the court, proceed to determine the interests of a class or classes. The rules of evidence applicable to civil cases shall be applied to the fullest extent practicable taking into account the circumstances of the emergency. All parties shall have the right to subpoena and cross-examine witnesses, but in enforcement of its subpoena powers the court shall take into account the circumstances of the emergency. All proceedings shall be transcribed to the extent practicable. Filing fees shall be waived and all costs borne by the state;

(D) The judge hearing the matter may enter an appropriate order upholding or suspending the quarantine or vaccination order. With respect to vaccination, the order may be applicable on notice to the department or its agents administering the

vaccination, or otherwise in the court´s discretion. With respect to quarantines, the order shall be automatically stayed for 48 hours;

(E) The department or any party may appeal any order within 24 hours to the Court of Appeals, the Supreme Court, or to any available judge thereof in the event that circumstances render a full court unavailable. If the trial judge has proceeded ex parte or with counsel appointed for the state, the trial court shall either direct the filing of an appeal in its order or itself certify the order for appeal. Filing fees for appeal shall be waived, all costs shall be borne by the state, and such appeals shall be heard expeditiously; and

(F) No provisions of this paragraph shall be construed to limit or restrict the right of habeas corpus under the laws of the United States.

(j) Any individual, partnership, association, or corporation who acts in accordance with an order, rule, or regulation entered by the Governor pursuant to the authority granted by this Code section will not be held liable to any other individual, partnership, association, or corporation by reason thereof in any action seeking legal or equitable relief.″

SECTION 16.

Chapter 13 of Title 50 of the Official Code of Georgia Annotated, the "Georgia Administrative Procedure Act," is amended by striking subsection (b) of Code Section 50-13-4, relating to procedural requirements for adoption, amendment, or repeal of rules, emergency rules, limitation on action to contest rules, and legislative override, and inserting in its place the following:

″(b) If any agency finds that an imminent peril to the public health, safety, or welfare, including but not limited to, summary processes such as quarantines, contrabands, seizures, and the like authorized by law without notice, requires adoption of a rule upon fewer than 30 days´ notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. Any such rule adopted relative to a public health emergency shall be submitted as promptly as reasonably practicable to the House of Representatives and Senate Committees on Judiciary. The rule may be effective for a period of not longer than 120 days but the adoption of an identical rule under paragraphs (1) and (2) of subsection (a) of this Code section is not precluded; provided, however, that such a rule adopted pursuant to discharge of responsibility under an executive order declaring a state or emergency or disaster exists as a result of a public health emergency, as defined in Code Section 38-3-3, shall be effective for the duration of the emergency or disaster and for a period of not more than 120 days thereafter.″

SECTION 17.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 18.

All laws and parts of laws in conflict with this Act are repealed.