



State of Wisconsin
2023 - 2024 LEGISLATURE

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2023 SENATE BILL 401

August 25, 2023 - Introduced by Senators JACQUE and NASS, cosponsored by Representatives BEHNKE, BODDEN, BRANDTJEN, MURPHY and WICHGERS. Referred to Committee on Health.

AN ACT *to create* 36.41, 38.35, 39.295 and 252.23 of the statutes; **relating to:**

prohibiting institutions of higher education from conducting gain of function research on potentially pandemic pathogens, requiring reporting of the intention to conduct research on potentially pandemic pathogens, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits institutions of higher education in this state from conducting gain of function research on potentially pandemic pathogens. If an institution of higher education violates the provisions of the bill, the board overseeing the institution's receipt of state funds may not allocate any state funds to the institution for the following fiscal year. "Institution of higher education" is defined in the bill as an institution or college campus within the University of Wisconsin System, a technical college within the Technical College System, a tribally controlled college, or a private, nonprofit institution of higher education located in this state. "Gain of function research" is defined in the bill to mean research that may be reasonably anticipated to enhance the transmissibility or virulence of a potentially pandemic pathogen. "Potentially pandemic pathogen" is defined in the bill to mean a virus, bacteria, fungus, or eukaryotic parasite, or any

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strain or variant of a virus, bacteria, fungus, or eukaryotic parasite, that is any of the following: 1) likely, moderately, or highly transmissible and likely capable of wide and uncontrollable spread in human populations; 2) likely, moderately, or highly virulent and likely to cause significant mortality and morbidity in human beings; or 3) likely to pose a severe threat to public health and safety, the capacity of public health systems, or the security of this state if allowed to spread within the general population.

In addition, the bill requires a person to submit a report to the Department of Health Services at least 90 days before beginning research on a potentially pandemic pathogen. The report must include 1) the location where the research will be conducted; 2) the scope, nature, and purpose of the research; 3) the source of funding for the research; 4) the identity of the pathogen that will be used or analyzed in the research; 5) the potential impact the pathogen will have on the public if released into the general population; and 6) the measures the person will take to ensure the pathogen is not released. If a person does not timely provide this report, the person may be required to forfeit not less than \$50,000 nor more than \$100,000 for each day the person does not provide the report.

The bill allows DHS to request additional information about the research as needed to inform governmental authorities that the research will be conducted and to ensure adequate response plans and resources are available in the event a potentially pandemic pathogen is released into the general population. The bill allows DHS to request an executive order or an injunction to stop the research if DHS determines the research poses a substantial and unjustifiable risk to public health and safety, the capacity of public health systems, or the security of this state.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 36.41 of the statutes is created to read:

36.41 Prohibited potentially pandemic pathogen research. (1)

DEFINITIONS. In this section:

(a) “Gain of function research” means research that may reasonably be anticipated to enhance the transmissibility or virulence of a potentially pandemic pathogen.

(b) “Potentially pandemic pathogen” means a virus, bacteria, fungus, or

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eukaryotic parasite, or any strain or variant of a virus, bacteria, fungus, or eukaryotic parasite, that is any of the following:

1. Likely, moderately, or highly transmissible and likely capable of wide and uncontrollable spread in human populations.

2. Likely, moderately, or highly virulent and likely to cause significant mortality and morbidity in human beings.

3. Likely to pose a severe threat to public health and safety, the capacity of public health systems, or the security of this state if allowed to spread within the general population.

(2) PROHIBITION. No institution or college campus may conduct or provide funding to another entity to conduct gain of function research on potentially pandemic pathogens.

(3) PENALTY. (a) Notwithstanding any other provision of this chapter, if an institution or college campus violates sub. (2), the board may not allocate any state-funds appropriation under s. 20.285 to that institution or college campus for the following fiscal year.

(b) The penalty under this subsection applies if a state or federal court in this state finds that, on the basis of a preponderance of the evidence, the institution or college campus violated sub. (2).

SECTION 2. 38.35 of the statutes is created to read:

38.35 Prohibited potentially pandemic pathogen research. (1)

DEFINITIONS. In this section:

(a) “Gain of function research” means research that may reasonably be

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anticipated to enhance the transmissibility or virulence of a potentially pandemic pathogen.

(b) “Potentially pandemic pathogen” means a virus, bacteria, fungus, or eukaryotic parasite, or any strain or variant of a virus, bacteria, fungus, or eukaryotic parasite, that is any of the following:

1. Likely, moderately, or highly transmissible and likely capable of wide and uncontrollable spread in human populations.

2. Likely, moderately, or highly virulent and likely to cause significant mortality and morbidity in human beings.

3. Likely to pose a severe threat to public health and safety, the capacity of public health systems, or the security of this state if allowed to spread within the general population.

(2) PROHIBITION. No district board or technical college may conduct or provide funding to another entity to conduct gain of function research on potentially pandemic pathogens.

(3) PENALTY. (a) Notwithstanding any other provision of this chapter, if a district board or technical college violates sub. (2), the board may not allocate any state-funds appropriation under s. 20.292 to that district board or technical college for the following fiscal year.

(b) The penalty under this subsection applies if a state or federal court in this state finds that, on the basis of a preponderance of the evidence, the district board or technical college violated sub. (2).

SECTION 3. 39.295 of the statutes is created to read:

39.295 Prohibited potentially pandemic pathogen research. (1)

DEFINITIONS. In this section:

(a) “Gain of function research” means research that may reasonably be anticipated to enhance the transmissibility or virulence of a potentially pandemic pathogen.

(b) “Institution of higher education” means an institution or college campus within the University of Wisconsin System, a technical college within the technical college system, a tribally controlled college, or a private, nonprofit institution of higher education located in this state.

(c) “Potentially pandemic pathogen” means a virus, bacteria, fungus, or eukaryotic parasite, or any strain or variant of a virus, bacteria, fungus, or eukaryotic parasite, that is any of the following:

1. Likely, moderately, or highly transmissible and likely capable of wide and uncontrollable spread in human populations.

2. Likely, moderately, or highly virulent and likely to cause significant mortality and morbidity in human beings.

3. Likely to pose a severe threat to public health and safety, the capacity of public health systems, or the security of this state if allowed to spread within the general population.

(2) PROHIBITION. No institution of higher education may conduct or provide funding to another entity to conduct gain of function research on potentially pandemic pathogens.

(3) PENALTY. (a) Notwithstanding any other provision of this chapter, if an

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institution of higher education violates sub. (2), the board may not allocate any state funds to that institution of higher education for the following fiscal year.

(b) The penalty under this subsection applies if a state or federal court in this state finds that, on the basis of a preponderance of the evidence, the institution of higher education violated sub. (2).

SECTION 4. 252.23 of the statutes is created to read:

252.23 Potentially pandemic pathogen research; report requirement.

(1) DEFINITION. In this section, “potentially pandemic pathogen” has the meaning given in s. 36.41 (1) (b).

(2) REPORT REQUIREMENT. (a) A person that intends to conduct research on a potentially pandemic pathogen, regardless of whether the person will use state funds for the research, shall, at least 90 days before beginning the research and in the form prescribed by the department, submit a report to the department on the intended research that includes all of the following:

1. The location where the research will be conducted.
2. The scope, nature, and purpose of the research.
3. The source of funding for the research.
4. The identity of the potentially pandemic pathogen, including the strains or variants of the pathogen, that will be used or analyzed in the research.
5. The potential impact the potentially pandemic pathogen will have on the public if released into the general population.
6. The measures the person will take to ensure the potentially pandemic pathogen is not released into the general population.

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(b) Upon request by the department, a person that submits a report under par. (a) shall provide to the department any additional information the department determines is necessary for the department to do any of the following:

1. Properly inform federal, state, and local governmental authorities that the research will be conducted.

2. Ensure adequate response plans and resources are available in the event a potentially pandemic pathogen is released into the general population.

(c) If, after reviewing the information a person submits under pars. (a) and (b), the department determines that the person's intended research poses a substantial and unjustifiable risk to public health and safety, the capacity of public health systems, or the security of this state, the department may do any of the following:

1. For research conducted by an institution or college campus within the University of Wisconsin System or a technical college within the technical college system, request that the governor issue an order prohibiting the conduct of the research.

2. For research conducted by a person other than a person listed in subd. 1., request that the attorney general commence legal action for an injunction enjoining the conduct of the research.

(3) PENALTY. A person that violates sub. (2) (a) may be required to forfeit not less than \$50,000 nor more than \$100,000 for each violation. Each day of continued violation constitutes a separate offense.

SECTION 5. Initial applicability.

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(1) The treatment of s. 252.23 first applies to research that is scheduled to begin 120 days after the effective date of this subsection.

(END)