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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

S.B. 311
133rd General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsors: Sens. McColley and Roegner

Effective date: Vetoed

Alyssa Bethel, Attorney

SUMMARY

- Would have prohibited the Department of Health (ODH) from issuing a general, mandatory statewide or regional quarantine or isolation order that applies to and is enforced against individuals who have not been either directly exposed to or medically diagnosed with the disease that is the subject of the order.
- Would have prohibited ODH from using existing authority in a manner that *has the effect of being* a general, mandatory statewide or regional quarantine or isolation order that applies to and is enforced against individuals who have not been either directly exposed to or medically diagnosed with the disease that is the subject of the order, rule, or action.
- Would have allowed the General Assembly to adopt a concurrent resolution to rescind certain ODH orders or rules for preventing the spread of contagious or infectious diseases.

DETAILED ANALYSIS

On December 3, 2020, Governor DeWine vetoed S.B. 311. The following describes the provisions of the act that would have become law but for the Governor's veto.

Department of Health orders regarding disease

The bill would have modified three different provisions of law that give the Department of Health (ODH) authority to act to prevent the spread of disease. Those current law provisions do the following:

1. State that ODH has supervision of all matters relating to the preservation of the life and health of the people, has ultimate authority in matters of quarantine and isolation, and may declare, modify, and enforce quarantine and isolation;

2. Allow ODH to make special or standing orders or rules for preventing the spread of contagious or infectious diseases;
3. Require the Director of ODH to investigate or make inquiry as to the cause of disease or illness, including contagious, infectious, epidemic, pandemic, or endemic conditions, and take prompt action to control and suppress it.

Regarding provision (1) above, the bill would have removed the word “ultimate” and would have prohibited ODH from using the provision to issue a general, mandatory statewide or regional quarantine or isolation order that applies to and is enforced against individuals who have not been either directly exposed to or medically diagnosed with the disease that is the subject of the order.¹ The bill also would have prohibited ODH from using its authority under the second and third provisions in a manner that *has the effect of being* a general, mandatory statewide or regional quarantine or isolation order that applies to and is enforced against individuals who have not been either directly exposed to or medically diagnosed with the disease that is the subject of the order, rule, or action.²

Continuing law does not specifically define “quarantine” or “isolation.” According to general principles of Ohio law, a term must be read in context and construed according to the rules of common usage. Words that have acquired a technical or particular meaning, whether by legislative definition or otherwise, must be construed accordingly.³ Merriam-Webster defines “quarantine” as “a restraint upon the activities or communication of persons or the transport of goods designed to prevent the spread of disease or pests,” “a place in which those under quarantine are kept,” “a state of enforced isolation” “to isolate from normal relations or communication.”⁴ Merriam-Webster defines isolation as “the action of isolating,” “the condition of being isolated.”⁵ According to the federal Centers for Disease Control and Prevention, a quarantine is used to keep an individual who *might have been exposed* to a disease away from others, while isolation is the separation of a person who *is infected* with a disease from those who are not.⁶

Rescission of order or rule

Additionally, under the bill, the General Assembly would have been able to adopt a concurrent resolution to rescind a special or standing order issued by ODH for preventing the

¹ R.C. 3701.13(A).

² R.C. 3701.13(B) and 3701.14(A).

³ R.C. 1.42, not in the bill.

⁴ <https://www.merriam-webster.com/dictionary/quarantine>.

⁵ <https://www.merriam-webster.com/dictionary/isolation>.

⁶ Centers for Disease Control and Prevention, *Quarantine and Isolation*.

spread of contagious or infectious diseases under the provision of law listed as (2) above (see **COMMENT**).⁷

COMMENT

The bill would have allowed the General Assembly to rescind certain ODH orders or rules by adopting a concurrent resolution. A reviewing court might have examined this provision of the bill because the Ohio Constitution specifies that, “The General Assembly shall enact no law except by bill,” which must be presented to the Governor for approval and, unless an exception applies, is subject to the referendum. The Ohio Supreme Court has previously ruled that a resolution cannot have the effect of a law.⁸

HISTORY

Action	Date
Introduced	05-15-20
Reported, S. Health, Human Services & Medicaid	09-02-20
Passed Senate (20-13)	09-23-20
Reported, H. State & Local Gov't	11-19-20
Passed House (58-32)	11-19-20
Vetoed	12-03-20

20-SB311-133

⁷ R.C. 3701.13(B).

⁸ Ohio Constitution, Article II, Sections 1c, 1d, and 15 and *Cleveland Terminal and Valley Railroad Company v. State*, 85 Ohio St. 251, 294 (1912).