

BILL ANALYSIS

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S.B. 538
By: Schwertner et al.
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In late 2014, Texas saw the first confirmed case of Ebola in the United States. While the state was successful in stopping the spread of Ebola, the event exposed weaknesses in our state's ability to handle infectious disease outbreaks and provided an opportunity to be better equipped to handle the next such event. S.B. 538 is the result of recommendations made by the Governor's Task Force on Infectious Disease Preparedness and Response, as well as additional recommendations made by the Department of State Health Services. S.B. 538 is not simply a reaction to Ebola, rather it is a proactive step to prepare the state for the next infectious disease threat.

Specifically, S.B. 538 allows the governor to declare a state of infectious disease emergency, which would give the commissioner of the Department of State Health Services (DSHS) control over the disease control measures necessary to contain the infectious disease emergency. S.B. 538 also creates a mechanism to enforce infectious disease control orders to prevent the spread of diseases to the public. Additionally, the bill continues the Task Force on Infectious Disease Preparedness and Response as an advisory body to the governor.

Further changes:

- Require DSHS, subject to appropriations, to create a regional stockpile of personal protective equipment;
- Require DSHS, the Texas Department of Transportation, and the Texas Commission on Environmental Quality to evaluate portable treatment options for medical waste;
- Allow DSHS to test a pet's blood for infectious disease without a control order;
- Allow DSHS to release certain basic information to first responders in order to protect those responders from infectious diseases;
- Require DSHS or a local health authority to instruct an individual with an infectious disease on prevention;
- Grant DSHS the authority to stop a common carrier if an individual on board has been infected with, exposed to, or is a carrier of a communicable disease;
- Allow for cremation of remains without cremation authorization if the deceased person was infected with or exposed to an infectious disease;
- Require the appropriate agencies to review United States Centers for Disease Control and Prevention (CDC) recommendations for infectious disease control measures in animals and livestock; and
- Require DSHS to submit a report that includes progress made on implementing task force recommendations, recommendations for additional statutory changes, and a cost analysis of implementation.

As proposed, S.B. 538 amends current law relating to the control of infectious diseases.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 418.033, Government Code), SECTION 6 (Section 81.0895, Health and Safety Code), and SECTION 17 (Section 716.055, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 418, Government Code, by adding Subchapter B-1, as follows:

SUBCHAPTER B-1. STATE OF INFECTIOUS DISEASE EMERGENCY

Sec. 418.031. **DECLARATION OF STATE OF INFECTIOUS DISEASE EMERGENCY.** (a) Authorizes the governor of the State of Texas (governor), by executive order, to declare a state of infectious disease emergency if the governor, in consultation with the commissioner of state health services and the Texas Division of Emergency Management (division), finds that an infectious disease poses an imminent risk to the health and safety of the citizens of this state.

(b) Provides that the state of infectious disease emergency continues until the governor:

(1) finds that there is no longer an imminent risk to the health and safety of the citizens of this state; and

(2) terminates the state of emergency by executive order.

(c) Requires that an executive order or proclamation issued under this section include the name of the communicable disease and a description of the threat to public health and safety.

(d) Requires that an executive order or proclamation be disseminated promptly by means intended to bring its contents to the attention of the general public. Requires that an order or proclamation be filed promptly with the division and the secretary of state of the State of Texas (secretary of state).

Sec. 418.032. **EFFECT OF DECLARATION.** (a) Provides that an executive order or proclamation declaring a state of infectious disease emergency gives the commissioner of state health services authority for all state and local public health policy decisions, procedures, and disease control measures necessary to contain the infectious disease emergency.

(b) Requires the Department of State Health Services to issue specific statewide preparedness guidelines and procedures for local health and emergency management authorities in the case of a state of infectious disease emergency.

Sec. 418.033. **RULES.** Authorizes the executive commissioner of the Health and Human Services Commission to adopt rules necessary for carrying out the purposes of this subchapter.

SECTION 2. Amends Section 81.008, Health and Safety Code, as follows:

Sec. 81.008. **COMMUNICABLE DISEASE IN ANIMALS; EXCHANGE OF INFORMATION.** (a) Authorizes the Texas Department of Health (TDH) or a local health authority, if TDH or the local health authority has reasonable cause to believe that an animal has been infected with, has been exposed to, or is the carrier of a communicable disease, to obtain a sample of the animal's blood or other bodily fluid to perform a test for an infectious disease without the permission of the animal's owner or a control order under Section 81.084 (Application of Control Measure to Property).

(b) Creates this subdivision from existing text and makes no further change.

SECTION 3. Amends Section 81.046, Health and Safety Code, by amending Subsection (b) and adding Subsection (f-1), as follows:

(b) Adds a reference to Subsection (f-1) and makes no further change.

(f-1) Authorizes TDH to release to first responders the name and basic contact information of a person if:

(1) TDH reasonably believes that the person is infected with, has been exposed to, or is the carrier of a communicable disease; and

(2) the communicable disease poses a serious health risk to first responders that do not wear the appropriate personal protective equipment.

SECTION 4. Amends Section 81.083, Health and Safety Code, by amending Subsections (a), (b), and (e), and adding Subsection (d-1), as follows:

(a) Requires any person, including a physician, who examines or treats an individual who has a communicable disease, or, TDH or a local health authority, to instruct the individual about certain safety measures and sets forth those safety measures.

(b) Authorizes TDH or a health authority, if TDH or the health authority has reasonable cause to believe that an individual is infected with, rather than ill with, has been exposed to, or is the carrier of a communicable disease, to order the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state. Provides that the order may require the individual to remain in a health care facility or other location, including the individual's home.

(d-1) Authorizes a peace officer, including a sheriff or constable, to use reasonable force to secure an individual subject to an order issued under Subsection (b) and, except as directed by TDH or the health authority, prevent the individual from leaving the facility or other location designated in the order.

(e) Provides that an individual may to be subject to emergency detention under Section 81.0891 or court orders under Subchapter G (Court Orders for Management of Persons with Communicable Diseases) if the individual is infected with, has been exposed to, or is the carrier of or is reasonably suspected of being infected with, having been exposed to, or being the carrier of a communicable disease that presents an immediate threat to the public health and;

(1)-(2) Makes no change to these subdivisions.

SECTION 5. Amends Sections 81.086(b), (c), and (i), Health and Safety Code, as follows:

(b) Authorizes TDH or a health authority, if TDH or the health authority has reasonable cause to believe that a carrier or conveyance has departed from or traveled through an area infected or contaminated with a communicable disease or that an individual transported by the carrier or conveyance is infected with, has been exposed to, or is the carrier of a communicable disease, to order the owner, operator, or authorized agent in control of the carrier or conveyance to:

(1)-(2) Makes no change to these subdivisions.

(c) Authorizes TDH or a health authority to impose necessary technically feasible control measures under Section 81.083 (Application of Control Measure to Individual) or 81.084

to prevent the introduction and spread of communicable disease in this state if TDH or the health authority, after inspection, has reasonable cause to believe that a carrier or conveyance:

(1) Makes conforming change;

(A)-(B) Creates paragraphs from existing Subdivision (1) and Subdivision (2) text.

(2) has an individual on board who is infected with, has been exposed to, or is the carrier of a communicable disease.

(i) Authorizes TDH or a health authority to require that an individual transported by carrier or conveyance who TDH or the health authority has reasonable cause to believe is infected with, has been exposed to, or is the carrier of a communicable disease to be isolated from other travelers and to disembark with the individual's personal effects and baggage at the first location equipped with adequate investigative and disease control facilities, whether the person is in transit through this state or to an intermediate or ultimate destination in this state. Authorizes TDH or a health authority to investigate and, if necessary, isolate or involuntarily hospitalize the individual until TDH or the health authority approves the discharge as authorized by Section 81.083.

SECTION 6. Amends Subchapter E, Chapter 81, Health and Safety Code, by adding Sections 81.0891, 81.0892, 81.0893, 81.0894, and 81.0895, as follows:

Sec. 81.0891. EMERGENCY DETENTION OF INDIVIDUAL SUBJECT TO CONTROL ORDER. (a) Authorizes a peace officer, without a warrant, to take an individual into custody if the officer has reason to believe and does believe that:

(1) the individual is subject to a written control order under Section 81.083;

(2) the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, is not complying with or does not intend to comply with the control order; and

(3) there is a substantial risk of serious harm to others unless the individual is immediately detained.

(b) Provides that a substantial risk of serious harm to others under Subsection (a)(3) may be demonstrated by:

(1) a previous violation of a control order by the individual or, if the individual is a minor, the individual's parent, legal guardian, or managing conservator;

(2) evidence of illness and deterioration of the person's physical condition to the extent that the person cannot remain at liberty; or

(3) information provided to the peace officer by the local health authority or TDH.

(c) Authorizes the peace officer to form the belief that the individual be subject to emergency detention under this section:

(1) on information and belief from a credible person, including a local health authority or TDH; or

(2) on the basis of the conduct of the individual or the circumstances under which the individual is found.

(d) Requires a peace officer who takes an individual into custody under Subsection (a) to immediately transport the individual to:

(1) the nearest appropriate health facility (facility); or

(2) a location considered suitable by TDH or the local health authority, including the individual's home.

(e) Requires a peace officer who takes an individual into custody under Subsection (a) to immediately inform the individual orally in simple, nontechnical terms:

(1) of the reason for the detention; and

(2) that a staff member of the facility, or TDH or the local health authority if the individual is detained at a location under Subsection (d)(2), will inform the individual of the individual's rights under Section 81.0895 not later than 24 hours after the time the individual is taken into custody under this section.

Sec. 81.0892. PEACE OFFICER'S NOTIFICATION OF DETENTION. (a) Requires a peace officer to immediately file with a facility, or the local health authority or TDH if the individual is detained at a location under Section 81.0891(d)(2), a notification of detention after transporting an individual to that facility or location under Section 81.0891.

(b) Requires that the notification of detention contain certain information from the peace officer and sets forth the information to be contained in the notification of detention.

(c) Requires that, if the individual is detained at a facility under Section 81.0891(d)(1), the facility in which the individual is detained include in the detained individual's file the notification of detention described by this section.

(d) Requires the peace officer to give the notification of detention on a specific form. Sets forth the language to be used in the form.

(e) Prohibits a health facility, a local health authority, or TDH from requiring a peace officer to execute any form other than the form provided by Subsection (d) as a condition of accepting for temporary admission an individual detained under Section 81.0891.

Sec. 81.0893. ACCEPTANCE OF PERSON. Requires that a facility temporarily accept an individual for whom a peace officer files a notification of detention under Section 81.0892(a).

Sec. 81.0894. RELEASE FROM DETENTION. (a) Provides that an individual detained under Section 81.0891 is authorized to be detained in custody for not longer than 48 hours after the time the individual is presented to the facility or location unless a written order for further custody or detention is obtained under Subchapter G.

(b) Provides that if the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day, the individual is authorized to be detained until 4 p.m. on the first succeeding business day. Provides that if the 48-hour period ends at a different time, the individual is authorized to be detained only until 4 p.m. on the day the 48-hour period ends.

(c) Authorizes the presiding judge or magistrate, if extremely hazardous weather conditions exist or a disaster occurs, to by written order made each day, extend by

an additional 24 hours the period during which the individual is authorized to be detained. Requires that the written order declare that an emergency exists because of the weather or the occurrence of a disaster.

Sec. 81.0895. RIGHTS OF INDIVIDUALS DETAINED. (a) Provides that an individual subject to emergency detention under Section 81.0891 has the right:

(1) to be advised of the location of detention, the reasons for the detention, and the fact that the detention could result in a longer period of court-ordered management;

(2) to a reasonable opportunity to communicate with and retain an attorney;

(3) to be released from a facility as provided by Section 81.0894;

(4) to be advised that communications with a health professional, local health authority, or the department may be used in proceedings for further detention; and

(5) to a reasonable opportunity to communicate with a relative or other responsible person who has a proper interest in the individual's welfare.

(b) Requires that an individual detained under Section 81.0891, not later than 24 hours after the time the individual is admitted to a facility or detained in another location, be informed of the rights provided by this section and this subchapter:

(1) orally in simple, nontechnical terms and in writing in the person's primary language, if possible; or

(2) through the use of a means reasonably calculated to communicate with a hearing or visually impaired individual, if applicable.

(c) Requires the executive commissioner of the Health and Human Services Commission by rule to prescribe the manner in which the individual is informed of the individual's rights under this subchapter.

SECTION 7. Amends Section 81.152(c), Health and Safety Code, as follows:

(c) Requires that any application contain the following information according to the applicant's information and belief:

(1)-(2) Makes no change to these subdivisions;

(3) a statement that the person is infected with, has been exposed to, or is the carrier of or is reasonably suspected of being infected with, having been exposed to, or being the carrier of a communicable disease that presents a threat to public health and that the person meets the criteria of this chapter for court orders for the management of a person with a communicable disease; and

(4) Makes no change to this subdivision.

SECTION 8. Amends Section 81.158(a), Health and Safety Code, as follows:

(a) Requires that an affidavit of medical evaluation be dated and signed by the commissioner of health and human services (commissioner) or the commissioner's designee, or by a health authority with the concurrence of the commissioner or the commissioner's designee. Requires that the certificate include:

(1)-(6) Makes no change to these subdivisions;

(7) the opinion of the health authority or TDH and the reason for that opinion, including laboratory reports, that:

(A) the examined person is infected with, has been exposed to, or is the carrier of or is reasonably suspected of being infected with, having been exposed to, or being the carrier of a communicable disease that presents a threat to public health; and

(B) Makes no change to this paragraph.

SECTION 9. Amends Section 81.162(a), Health and Safety Code, as follows:

(a) Authorizes the judge or designated magistrate to issue a protective custody order if the judge or magistrate determines:

(1) that the health authority or TDH has stated its opinion and the detailed basis for its opinion that the person is infected with, has been exposed to, or is the carrier of or is reasonably suspected of being infected with, having been exposed to, or being the carrier of a communicable disease that presents an immediate threat to the public health; and

(2) Makes no change to this subdivision.

SECTION 10. Amends Section 81.165(a), Health and Safety Code, as follows:

(a) Requires that a hearing be held to determine if:

(1) Makes a nonsubstantive change;

(2) the health authority or TDH has stated its opinion and the detailed basis for its opinion that the person is infected with, has been exposed to, or is the carrier of or is reasonably suspected of being infected with, having been exposed to, or being the carrier of a communicable disease that presents an immediate threat to public health.

SECTION 11. Amends Section 81.166(d), Health and Safety Code, to amend the notification of probable cause hearing to include certain language. Sets forth the language to be used in the notification form.

SECTION 12. Amends Section 81.170(f), Health and Safety Code, to require the jury to determine if the person is infected with, has been exposed to, or is the carrier of or is reasonably suspected of being infected with, having been exposed to, or being the carrier of a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has refused or failed to follow the orders of the health authority. Prohibits the jury from making a finding about the type of services to be provided to the person.

SECTION 13. Amends Section 81.171(a), Health and Safety Code, as follows:

(a) Requires the court to enter an order denying an application for a court order for temporary or extended management if after a hearing the judge or jury fails to find, from clear and convincing evidence, that the person:

(1) is infected with, has been exposed to, or is the carrier of or is reasonably suspected of being infected with, having been exposed to, or being the carrier of a communicable disease that presents a threat to the public health;

(2)-(3) Makes no change to these subdivisions.

SECTION 14. Amends Section 81.172(a), Health and Safety Code, as follows:

(a) Authorizes the judge or jury to determine that a person requires court-ordered examination, observation, isolation, or treatment only if the judge or jury finds, from clear and convincing evidence, that:

(1) the person is infected with, has been exposed to, or is the carrier of or is reasonably suspected of being infected with, having been exposed to, or being the carrier of a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed or refused to follow the orders of the health authority or TDH; and

(2) Makes no change to this subdivision.

SECTION 15. Amends Section 81.174(a), Health and Safety Code, as follows:

(a) Requires the judge to dismiss the jury, if any, after a hearing in which a person is found:

(1) to be infected with, to have been exposed to, or to be the carrier of or to be reasonably suspected of being infected with, having been exposed to, or being a carrier of a communicable disease;

(2)-(3) Makes no change to these subdivisions.

SECTION 16. Amends Chapter 81, Health and Safety Code, by adding Subchapters J and K, as follows:

SUBCHAPTER J. TASK FORCE ON INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE

Sec. 81.401. DEFINITION. Defines "task force."

Sec. 81.402. PURPOSE AND FINDINGS. Provides that the legislature finds that:

(1) infectious diseases are responsible for more deaths worldwide than any other single cause;

(2) the State of Texas has a responsibility to safeguard and protect the health and well-being of its citizens from the spread of infectious diseases;

(3) on September 30, 2014, the first case of Ebola diagnosed in the United States occurred in Dallas, Texas;

(4) addressing infectious diseases requires the coordination and cooperation of multiple governmental entities at the local, state, and federal levels;

(5) public health and medical preparedness and response guidelines are crucial to protect the safety and welfare of our citizens; and

(6) Texas has nationally recognized infectious disease experts and other highly trained professionals across the state with the experience needed to minimize any potential risk to the people of Texas.

Sec. 81.403. TASK FORCE; DUTIES. (a) Provides that the Task Force on Infectious Disease Preparedness and Response (task force) is created as an advisory panel to the governor.

(b) Requires the task force to:

(1) provide expert, evidence-based assessments, protocols, and recommendations related to state responses to infectious diseases, including Ebola; and

(2) serve as a reliable and transparent source of information and education for Texas leadership and citizens.

Sec. 81.404. APPOINTMENT OF MEMBERS; TERMS. (a) Authorizes the governor to appoint members of the task force as necessary, including members from relevant state agencies, members with expertise in infectious diseases and other issues involved in the prevention of the spread of infectious diseases, and members from institutions of higher education in this state.

(b) Requires the governor to appoint a director of the task force from among the members of the task force.

(c) Authorizes the governor to fill any vacancy that occurs on the task force and to appoint additional members as needed.

(d) Provides that members of the task force serve at the pleasure of the governor.

(e) Requires a state or local employee appointed to the task force to perform any duties required by the task force in addition to the regular duties of the employee.

Sec. 81.405. REPORTS. Authorizes the task force to make written reports on its findings and recommendations, including legislative recommendations, to the governor and legislature.

Sec. 81.406. MEETINGS. (a) Requires the task force to meet at times and locations as determined by the director of the task force.

(b) Authorizes the task force to meet telephonically.

(c) Authorizes the task force to hold public hearings to gather information. Requires the task force to endeavor to meet in various parts of the state to encourage local input.

(d) Authorizes the task force to meet in executive session to discuss matters that are confidential by state or federal law or to ensure public security or law enforcement needs.

Sec. 81.407. ADMINISTRATIVE SUPPORT. Requires state agencies with members on the task force to provide administrative support for the task force.

Sec. 81.408. REIMBURSEMENT. Provides that task force members serve without compensation and are not entitled to reimbursement for travel expenses.

[Sections 81.409-81.450 reserved for expansion]

SUBCHAPTER K. STATEWIDE INFECTIOUS DISEASE CONTROL MEASURES; PREPARATION

Sec. 81.451. PERSONAL PROTECTIVE EQUIPMENT. (a) Defines "personal protective equipment."

(b) Requires TDH to establish a stockpile, or regional stockpiles, of personal protective equipment to support responses to infectious disease emergencies in the state, if funds are appropriated for the purposes of this section.

Sec. 81.452. MOBILE APPLICATION. Authorizes TDH to contract to establish a mobile application for wireless communications devices that might be used by health officials and health care providers to monitor the spread of an infectious disease in real time.

Sec. 81.453. PORTABLE MEDICAL WASTE TREATMENT. Requires TDH, the Texas Department of Transportation (TxDOT), and the Texas Commission on Environmental Quality (TCEQ) to:

- (1) evaluate portable treatment options for medical waste to render pathogens in that waste noninfectious; and
- (2) develop procedures to rapidly deploy the portable treatment options through vendor contracts or state purchase.

SECTION 17. Amends Subchapter B, Chapter 716, Health and Safety Code, by adding Section 716.055, as follows:

Sec. 716.055. EXCEPTION: DEPARTMENT OF STATE HEALTH SERVICES AUTHORIZATION. (a) Authorizes a crematory establishment to cremate the deceased person's human remains without receipt of a cremation authorization form signed by the authorizing agent if the Department of State Health Services (DSHS) certifies that:

- (1) the deceased person was infected with, was exposed to, or was a carrier of a communicable disease that presents a threat to public health; and
- (2) burial of the body would pose a public health risk.

(b) Authorizes the executive commissioner of the Health and Human Services Commission to adopt rules necessary to implement this section.

SECTION 18. Amends the heading to Section 716.204, Health and Safety Code, to read as follows:

Sec. 716.204. IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY.

SECTION 19. Amends Section 716.204, Health and Safety Code, by adding Subsection (c), as follows:

(c) Provides that if Section 716.055(a) applies, a cemetery organization, a business operating a crematory or columbarium, a funeral director, an embalmer, or a funeral establishment is not criminally liable or liable in a civil action for cremating the human remains of a deceased person.

SECTION 20. Requires DSHS, the Texas Animal Health Commission, the Texas A&M Veterinary Diagnostic laboratory, and the Texas A&M College of Medicine and Biomedical Sciences to:

- (1) review documents published or updated by the federal Centers for Disease Control and Prevention providing guidance on infection control measures, including quarantine, for pets and livestock animals exposed to infectious diseases;
- (2) incorporate the recommendations of the federal Centers for Disease Control and Prevention in developing and revising guidelines for this state to use in preventing the spread of infectious disease through pets and livestock;

(3) evaluate the current facilities and capabilities of this state to implement the guidelines adopted under Subdivision (2) of this section, including an evaluation of the sufficiency and capacity of available quarantine facilities;

(4) solicit public feedback in developing any recommendations for legislative, administrative, or executive action to address perceived problems; and

(5) submit a report on any findings, evaluations, and recommendations to the governor and the legislature not later than December 1, 2016.

SECTION 21. (a) Requires DSHS, no later than December 1, 2015, to submit a report to the legislature regarding the preparedness of this state for containing an infectious disease outbreak.

(b) Requires that the report under this section include:

(1) any progress that DSHS has made on implementing recommendations of the Task Force on Infectious Disease Preparedness and Response;

(2) recommendations for statutory changes that are necessary to enable the department to implement the recommendations of the Task Force on Infectious Disease Preparedness and Response;

(3) a cost analysis for the implementation of any recommendations of the Task Force on Infectious Disease Preparedness and Response that DSHS determines are not possible to implement using existing resources;

(4) an evaluation of portable medical waste treatment options under Section 81.453, Health and Safety Code, as added by this Act, proposed procedures for deploying the portable treatment options, any projected costs for those treatments, and any legislative recommendations necessary to implement any proposed portable medical waste treatment solutions; and

(5) any recommendations for legislation or other measures that would assist the department in preparing for an infectious disease outbreak.

(c) Requires DSHS to coordinate with other state agencies as necessary to complete the report under this section. Requires that the report specify if DSHS determines that a recommendation be implemented by another state agency.

SECTION 22. Provides that, on the effective date of this Act, a member serving on the Task Force on Infectious Disease Preparedness and Response created by executive order of the governor continues to serve on the Task Force on Infectious Disease Preparedness and Response under Subchapter J, Chapter 81, Health and Safety Code, as added by this Act.

SECTION 23. Effective date: upon passage or September 1, 2015.