

BILL ANALYSIS

Senate Research Center
87R16268 YDB-F

C.S.S.B. 1025
By: Birdwell et al.
State Affairs
4/1/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1025 clarifies that only the legislature may suspend a provision of the Penal, Criminal Procedure, or Election codes during any disaster declaration.

Additionally, only the legislature may restrict or impair the occupancy of a business or house of worship by category or region. S.B. 1025 restricts the governor's ability to suspend or limit the sale, use, and transportation of alcoholic beverages, firearms, explosives, and combustibles during times of disaster, but reauthorizes this power exclusively for emergency situations, where such measures better correspond to situations wherein citizen conduct has deteriorated to unrest, riot, or open revolt.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1025 amends current law relating to the authority of the legislature, governor, and certain political subdivisions with respect to disaster or emergencies.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 418.002, Government Code, as follows:

Sec. 418.002. PURPOSES. Sets forth certain purposes of Chapter 418 (Emergency Management), including the purpose to reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property, resulting from natural or man-made disasters, rather than resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary action.

SECTION 2. Amends Section 418.004(1), Government Code, to redefine "disaster" in Chapter 418.

SECTION 3. Amends Subchapter B, Chapter 418, Government Code, by adding Section 418.0125, as follows:

Sec. 418.0125. CERTAIN POWER RELATED TO BUSINESSES RESERVED TO LEGISLATURE. (a) Provides that, notwithstanding any other law, during a declared state of disaster, only the legislature has the authority to restrict or impair the operation or occupancy of businesses in this state by category or region to appropriately respond to the disaster.

(b) Requires the governor by proclamation to convene the legislature in special session to respond to a declared state of disaster if the governor finds that the authority of the legislature under Subsection (a) should be exercised and the legislature is not convened in regular or special session.

SECTION 4. Amends Section 418.014, Government Code, by amending Subsections (b) and (c) and adding Subsection (c-1), as follows:

(b) Provides that, except as provided by Subsection (c) or (c-1), rather than as provided by Subsection (c), the state of disaster continues until the governor finds that the threat or danger has passed or that the disaster has been dealt with to the extent that emergency conditions no longer exist, and until the governor terminates the state of disaster by executive order.

(c) Prohibits a state of disaster from continuing for more than 30 days unless renewed by the governor, subject to Subsection (c-1).

(c-1) Requires the governor by proclamation, if the governor finds that a state of disaster described by Section 8(c), Article IV, Texas Constitution, requires renewal and the legislature is not convened in regular or special session, to convene the legislature in special session to renew, extend, or otherwise respond to the state of disaster. Prohibits the governor from declaring a new state of disaster based on the same or a substantially similar finding as a prior state of disaster subject to this subsection that was terminated or not renewed by the legislature.

SECTION 5. Amends Section 418.0155, Government Code, by adding Subsections (c) and (d), as follows:

(c) Requires the governor's office to publish the list compiled under Subsection (a) (relating to requiring the governor's office to compile and maintain a comprehensive list of regulatory statutes and rules that may require suspension during a disaster) on the office's Internet website.

(d) Requires each state agency impacted by the suspension of a statute or rule on the list compiled under Subsection (a) to publish on the agency's Internet website a list of those statutes and rules. Requires that the agency's list be posted or updated within 24 hours of any suspension, and be accessible by selecting or viewing not more than two Internet web pages after accessing the agency's Internet's home page.

SECTION 6. Amends Section 418.016(a), Government Code, to authorize the governor, subject to Sections 418.0125 and 418.0165, to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster. Makes a nonsubstantive change.

SECTION 7. Amends Subchapter B, Chapter 418, Government Code, by adding Section 418.0165, as follows:

Sec. 418.0165. LIMITATION ON POWER TO SUSPEND LAWS OR RULES. (a) Prohibits the governor, notwithstanding any provision of Chapter 418, from suspending a provision of Chapter 418 or Chapter 433 (State of Emergency), or a law or rule related to the application of Chapter 325 (Texas Sunset Act), the suspension of which results in the continuation of a state agency beyond the date prescribed in statute for the abolishment of the agency.

(b) Authorizes the governor to suspend a provision of the Code of Criminal Procedure, Election Code, or Penal Code only during the first 30 days of a declared state of disaster.

(c) Requires the governor by proclamation, if the governor finds that a suspension authorized by Subsection (b) should be continued for more than 30 days and the legislature is not convened in regular or special session, to convene the legislature in special session to respond to a state of disaster.

SECTION 8. Amends Subchapter B, Chapter 418, Government Code, by adding Section 418.027, as follows:

Sec. 418.027. **PREEMPTION OF DECLARATION OF LOCAL DISASTER.** Prohibits a declaration of local disaster issued under Subchapter E (Local and Interjurisdictional Emergency Management) from conflicting with, or expanding or limiting the scope of, a declaration of disaster issued under Subchapter B (Powers and Duties of Governor) unless expressly authorized by a proclamation or executive order issued by the governor under Chapter 418.

SECTION 9. Amends Section 433.001, Government Code, as follows:

Sec. 433.001. **PROCLAMATION OF STATE OF EMERGENCY.** Provides that, for the purposes of this section an emergency exists in certain situations, including if a clear and present danger of the use of force or violence, rather than the use of violence, exists, or a natural or man-made disaster related to the use of force or violence such as civil unrest or insurrection. Makes a nonsubstantive change.

SECTION 10. Amends Section 433.002, Government Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Authorizes the governor's directive, subject to Section 433.0025, to provide for certain restrictions regarding transportation and public places during a state of emergency. Makes a nonsubstantive change.

(d) Provides that a directive issued under Section 433.002 (Issuance of Directives) applies only within the jurisdictional boundaries of the county or municipality for which an application was made under Section 433.001.

SECTION 11. Amends Chapter 433, Government Code, by adding Section 433.0025, as follows:

Sec. 433.0025. **CERTAIN POWER RELATED TO BUSINESSES RESERVED TO LEGISLATURE.** (a) Provides that, during a state of emergency, only the legislature has the authority to restrict or impair the operation or occupancy of businesses in this state by category or region to appropriately respond to the emergency.

(b) Requires the governor by proclamation to convene the legislature in special session to respond to a state of emergency if the governor finds that the authority of the legislature under Subsection (a) should be exercised and the legislature is not convened in regular or special session.

SECTION 12. Repealer: Section 418.019 (Restricted Sale and Transportation of Materials), Government Code.

SECTION 13. Makes application of this Act prospective.

SECTION 14. Effective date: December 1, 2021, contingent upon approval by the voters of the constitutional amendment proposed by S.J.R. 45, 87th Legislature, Regular Session, 2021, or a similar constitutional amendment proposed at that session regarding the powers of the governor and the legislature following certain disaster or emergency declarations.