

BILL ANALYSIS

Senate Research Center
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S.B. 1616
By: Bettencourt
Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the COVID-19 crisis of 2020, many political subdivisions of the State of Texas used emergency powers to impose sweeping restrictions and criminal penalties on everyday Texas citizens, business owners and their employees, school children and their families. These political subdivisions used those same emergency powers to release felony-charged criminals from jail. In many cases, the attorney general or various courts found that these political subdivisions exceeded the emergency powers granted to them under state law.

S.B. 1616 amends the Texas Disaster Act of 1975 to reduce the powers of local governments during disasters. Further, the bill clarifies the definition of "disaster" to explicitly exclude an epidemic or the spread of a communicable disease, and limits the applicability to public health disasters as defined by Section 81.003, Health and Safety Code.

Finally, S.B. 1616 amends the Communicable Disease Prevention and Control Act by reducing penalties for violations to civil, rather than criminal, penalties.

As proposed, S.B. 1616 amends current law relating to powers and duties of governmental entities during a public health disaster and provides civil penalties.

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 Subchapter E, Chapter 418, Government Code, by adding Sections 418.1012 and 418.1013, as follows:

Sec. 418.1012. DEFINITION. Provides that, notwithstanding Section 418.004 (Definitions), in Subchapter E (Local and Interjurisdictional Emergency Management), the term "disaster" does not include an epidemic or the spread of a communicable disease.

Sec. 418.1013. APPLICABILITY OF SUBCHAPTER. Provides that Subchapter E does not apply to a public health disaster as defined by Section 81.003 (Definitions), Health and Safety Code.

SECTION 2. Amends Section 81.083(l), Health and Safety Code, to require that the notice relating to suspected exposure of communicable disease include, among other information, that a civil penalty, rather than a criminal penalty, applies to an individual who is a member of the group and who knowingly refuses to perform or allow the performance of the control measures in the order.

SECTION 3. Amends the heading to Section 81.085, Health and Safety Code, to read as follows:

Sec. 81.085. New heading: AREA QUARANTINE; CIVIL PENALTY.

SECTION 4. Amends Section 81.085(h), Health and Safety Code, as follows:

(h) Provides that a person is liable to this state for a civil penalty of not more than \$500, rather than provides that a person commits an offense, if the person knowingly fails or refuses to obey a rule, order, or instruction of the Department of State Health Services (DSHS) or an order or instruction of a health authority issued under a DSHS rule and published during an area quarantine under Section 81.085 (Area Quarantine; Criminal Penalty). Authorizes the attorney general or the district or county attorney for the county in which the violation occurs, on request of DSHS or a health authority, to:

- (1) sue to collect the civil penalty; and
- (2) recover reasonable investigation costs, attorney's fees, and witness and deposition fees incurred by the attorney general, district or county attorney, DSHS, or health authority, as applicable, in the civil action.

Deletes existing text providing that an offense under this subsection is a felony of the third degree.

SECTION 5. Amends Sections 81.087, 81.088, and 81.089, Health and Safety Code, as follows:

Sec. 81.087. New heading: VIOLATION OF CONTROL MEASURE ORDERS; CIVIL PENALTY. (a) Provides that a person is liable to this state for a civil penalty of not more than \$500, rather than a person commits an offense, if the person knowingly refuses to perform or allow the performance of certain control measures ordered by DSHS or a health authority under Sections 81.083-81.086. Makes a nonsubstantive change.

(b) Authorizes the attorney general or the district or county attorney for the county in which the violation occurs, on request of DSHS or a health authority, to:

- (1) sue to collect the civil penalty; and
- (2) recover reasonable investigation costs, attorney's fees, and witness and deposition fees incurred by the attorney general, district or county attorney, DSHS, or health authority, as applicable, in the civil action.

Deletes existing text providing that an offense under this section is a Class B misdemeanor.

Sec. 81.088. New heading: REMOVAL, ALTERATION, OR DESTRUCTION OF QUARANTINE DEVICES; CIVIL PENALTY. (a) Provides that a person is liable to this state for a civil penalty of not more than \$500, rather than provides that a person commits an offense, if the person knowingly or intentionally commits certain acts relating to the tampering of quarantine devices.

(b) Authorizes the attorney general or the district or county attorney for the county in which the violation occurs, on request of DSHS or a health authority, to:

- (1) sue to collect the civil penalty; and
- (2) recover reasonable investigation costs, attorney's fees, and witness and deposition fees incurred by the attorney general, district or county attorney, DSHS, or health authority, as applicable, in the civil action.

Deletes existing text providing that an offense under this section is a Class B misdemeanor.

Sec. 81.089. New heading: TRANSPORTATION; CIVIL PENALTY. (a) Provides that a person is liable to this state for a civil penalty of not more than \$500, rather than provides that a person commits an offense, if, before notifying DSHS or health authority at a port

of entry or a place of first landing or first arrival in this state, the person knowingly or intentionally transports or causes to be transported into this state certain objects, animals, or individuals infected or contaminated with a communicable disease that are a threat to the public health.

(b) Authorizes the attorney general or the district or county attorney for the county in which the violation occurs, on request of DSHS or a health authority, to:

(1) sue to collect the civil penalty; and

(2) recover reasonable investigation costs, attorney's fees, and witness and deposition fees incurred by the attorney general, district or county attorney, DSHS, or health authority, as applicable, in the civil action.

Deletes existing text providing that an offense under this section is a Class A misdemeanor, except that if the person acts with the intent to harm or defraud another, the offense is a felony of the third degree.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2021.