

BILL ANALYSIS

Senate Research Center

S.B. 968
By: Kolkhorst
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The COVID-19 pandemic brought to light various challenges and opportunities to improve the state's preparedness to address a public health disaster. Under current law, challenges remain to find the right balance between an effective public health response system and the rights of individuals.

S.B. 968 seeks to ensure that Texas is better prepared for a future public health emergency or disaster by improving the public health disaster response and coordination between state agencies. S.B. 968 also seeks to protect the rights of individuals during a public health crisis and provide the Department of State Health Services more timely medical information from physicians and healthcare professionals during a public health crisis.

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

S.B. 968 amends current law relating to public health disaster and public health emergency preparedness and response and provides a civil penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Division of Emergency Management in SECTION 5 (Sections 418.305, 418.306, and 418.307) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 418, Government Code, by adding Section 418.0125, as follows:

Sec. 418.0125. LIMITATIONS ON MEDICAL PROCEDURES. (a) Defines "nonelective medical procedure."

(b) Prohibits the Texas Medical Board (TMB) during a declared state of disaster from issuing an order or adopting a regulation that limits or prohibits a nonelective medical procedure.

(c) Authorizes TMB during a declared state of disaster to issue an order or adopt a regulation imposing a temporary limitation or prohibition on a medical procedure other than a nonelective medical procedure only if the limitation or prohibition is reasonably necessary to conserve resources for nonelective medical procedures or resources needed for disaster response. Prohibits an order issued or regulation adopted under this subsection from continuing for more than 15 days unless renewed by TMB.

(d) Provides that a person subject to an order issued or regulation adopted under this section who in good faith acts or fails to act in accordance with that order or regulation is not civilly or criminally liable and is not subject to disciplinary action for that act or failure to act.

(e) Provides that the immunity provided by Subsection (d) is in addition to any other immunity or limitation of liability provided by law.

(f) Provides that, notwithstanding any other law, this section does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides the basis for a cause of action for an act or omission under this section.

SECTION 2. Amends Subchapter C, Chapter 418, Government Code, by adding Section 418.0435, as follows:

Sec. 418.0435. PERSONAL PROTECTIVE EQUIPMENT CONTRACTS. (a) Requires the Texas Division of Emergency Management (TDEM) to enter into a contract with a manufacturer or wholesale distributor of personal protective equipment (PPE) that guarantees a set amount and stocked supply of the equipment for use during a public health disaster declared under Section 81.0813, Health and Safety Code.

(b) Authorizes TDEM to purchase PPE under a contract described by Subsection (a) only if TDEM determines the state's supply of PPE will be insufficient based on an evaluation of the PPE:

(1) held in reserve in this state; and

(2) supplied by or expected to be supplied by the federal government.

(c) Requires TDEM to pursue all available federal funding to cover the costs of PPE purchased under a contract described by Subsection (a).

(d) Requires TDEM, in entering into a contract under Subsection (a), to ensure that the manufacturer is located in the United States to the extent practicable.

SECTION 3. Amends Subchapter E, Chapter 418, Government Code, by adding Section 418.1085, as follows:

Sec. 418.1085. LIMITATIONS ON CONSTRUCTION AND RELATED SERVICES. Prohibits the presiding officer of the governing body of a political subdivision from issuing an order during a declared state of disaster or local disaster to address a pandemic disaster that would limit or prohibit:

(1) housing and commercial construction activities, including related activities involving the sale, transportation, and installation of manufactured homes;

(2) the provision of governmental services for title searches, notary services, and recording services in support of mortgages and real estate services and transactions;

(3) residential and commercial real estate services, including settlement services; or

(4) essential maintenance, manufacturing, design, operation, inspection, security, and construction services for essential products, services, and supply chain relief efforts.

SECTION 4. Amends Subchapter H, Chapter 418, Government Code, by adding Section 418.1861, as follows:

Sec. 418.1861. DISEASE PREVENTION INFORMATION SYSTEM. (a) Requires the Department of State Health Services (DSHS), using existing resources, to develop and implement a disease prevention information system for dissemination of immunization information during a declared state of disaster or local state of disaster.

(b) Requires DSHS, during a declared state of disaster or local state of disaster, to ensure that educational materials regarding immunizations are available to local health authorities in this state for distribution to:

(1) public and private schools;

(2) child-care facilities as defined by Section 42.002 (Definitions), Human Resources Code;

(3) community centers offering youth services and programs;

(4) community centers offering services and programs to vulnerable populations, including communities of color, low-income individuals, and elderly individuals;

(5) local health care providers; and

(6) veterans homes as defined by Section 164.002 (Definitions), Natural Resources Code.

(c) Requires that the educational materials include:

(1) the most recent immunization schedules by age as recommended by the Centers for Disease Control and Prevention (CDC); and

(2) locations, if any, of local health care providers that offer immunizations.

SECTION 5. Amends Chapter 418, Government Code, by adding Subchapter J, as follows:

**SUBCHAPTER J. WELLNESS CHECKS FOR MEDICALLY FRAGILE INDIVIDUALS
DURING CERTAIN EMERGENCIES**

Sec. 418.301. DEFINITIONS. Defines "commission," "department," "emergency assistance registry," "first responder," and "medically fragile individual" for purposes of this subchapter.

Sec. 418.302. MEDICALLY FRAGILE INDIVIDUAL DESIGNATION. Requires TDEM to develop a process for designating individuals who are included in the emergency assistance registry as medically fragile for the purposes of Chapter 418 (Emergency Management).

Sec. 418.303. EMERGENCY ASSISTANCE REGISTRY ACCESS. Requires TDEM to authorize the following persons to access the emergency assistance registry to assist medically fragile individuals during an event described by Section 418.305: the Health and Human Services Commission (HHSC); DSHS; first responders; local governments; and local health departments.

Sec. 418.304. REQUIRED WELLNESS CHECK. Requires TDEM to collaborate with the persons authorized to access the emergency assistance registry under Section 418.303 and with applicable municipalities and counties to ensure that a wellness check is conducted on each medically fragile individual listed in the emergency assistance registry and located in an area that experiences an event described by Section 418.305 to ensure the individual has continuity of care and the ability to continue using electrically powered medical equipment, if applicable.

Sec. 418.305. EVENTS REQUIRING WELLNESS CHECKS. (a) Requires TDEM, in collaboration with HHSC and DSHS, to adopt rules regarding which events require a wellness check, including an extended power, water, or gas outage, a state of disaster

declared under this chapter, or any other event considered necessary by HHSC, DSHS, or TDEM.

(b) Provides that if more than one disaster is declared for the same event, or the same event qualifies as an event requiring a wellness check for multiple reasons under Subsection (a), only one wellness check is required to be conducted under this subchapter.

Sec. 418.306. REQUIREMENTS FOR WELLNESS CHECK. (a) Requires TDEM, in collaboration with HHSC and DSHS, by rule to develop minimum standards for conducting wellness checks. Requires each county and municipality to adopt procedures for conducting wellness checks in compliance with the minimum standards.

(b) Requires that a wellness check on a medically fragile individual under this subchapter:

(1) include:

(A) an automated telephone call and text to the individual;

(B) a personalized telephone call to the individual; and

(C) if the individual is unresponsive to a telephone call under Paragraph (B), an in-person wellness check; and

(2) be conducted in accordance with the minimum standards prescribed by TDEM rule and the procedures of the applicable county or municipality.

(c) Requires that a wellness check be conducted as soon as practicable but not later than 24 hours after the event requiring a wellness check occurs.

Sec. 418.307. RULES. Requires TDEM, in collaboration with HHSC and DSHS, to adopt rules to implement this subchapter.

SECTION 6. Amends the heading to Subtitle D, Title 2, Health and Safety Code, to read as follows:

SUBTITLE D. PREVENTION, CONTROL, AND REPORTS OF DISEASES; PUBLIC HEALTH DISASTERS AND EMERGENCIES

SECTION 7. Amends the heading to Chapter 81, Health and Safety Code, to read as follows:

CHAPTER 81. COMMUNICABLE DISEASES; PUBLIC HEALTH DISASTERS; PUBLIC HEALTH EMERGENCIES

SECTION 8. Amends Section 81.003, Health and Safety Code, by amending Subdivision (7) and adding Subdivision (7-a) to redefine "public health disaster" and to define "public health emergency" for Chapter 81.

SECTION 9. Amends the heading to Subchapter B, Chapter 81, Health and Safety Code, to read as follows:

SUBCHAPTER B. PREVENTION AND PREPAREDNESS

SECTION 10. Amends Section 81.044, Health and Safety Code, by adding Subsection (b-1), as follows:

(b-1) Defines "cycle threshold value." Requires the executive commissioner of HHSC to require the reports of polymerase chain reaction tests from clinical or hospital laboratories to contain the cycle threshold values and their reference ranges.

SECTION 11. Amends Section 81.081, Health and Safety Code, as follows:

Sec. 81.081. DEPARTMENT'S DUTY. Provides that DSHS is the preemptive authority for purposes of Chapter 81 and is required to coordinate statewide or regional efforts to protect public health. Requires DSHS to collaborate with local elected officials, including county and municipal officials, to prevent the spread of disease and protect the public health. Deletes existing text requiring DSHS to impose control measures to prevent the spread of disease in the exercise of its power to protect the public health.

SECTION 12. Amends Subchapter E, Chapter 81, Health and Safety Code, by adding Sections 81.0813, 81.0814, and 81.0815, as follows:

Sec. 81.0813. AUTHORITY TO DECLARE PUBLIC HEALTH DISASTER OR ORDER PUBLIC HEALTH EMERGENCY. (a) Authorizes the commissioner of state health services (commissioner) to declare a statewide or regional public health disaster or order a statewide or regional public health emergency if the commissioner determines an occurrence or threat to public health is imminent. Authorizes the commissioner to declare a public health disaster only if the governor declares a state of disaster under Chapter 418, Government Code, for the occurrence or threat.

(b) Provides that, except as provided by Subsection (c), a public health disaster or public health emergency continues until the governor or commissioner terminates the disaster or emergency on a finding that the threat or danger has passed, or that the disaster or emergency has been managed to the extent emergency conditions no longer exist.

(c) Provides that a public health disaster or public health emergency expires on the 30th day after the date the disaster or emergency is declared or ordered by the commissioner. Authorizes a public health disaster to only be renewed by the legislature or by the commissioner with the approval of a designated legislative oversight board that has been granted authority under a statute enacted by the legislature to approve the renewal of a public health disaster declaration. Prohibits each renewal period from exceeding 30 days.

(d) Requires that a declaration or order issued under this section include certain information regarding the description, scope, and nature of the disaster or emergency.

(e) Requires that a declaration or order issued under this section be disseminated promptly by means intended to bring its contents to the public's attention. Requires that a statewide or regional declaration or order be filed promptly with the Office of the Governor and the secretary of state. Requires that a regional declaration or order be filed with the county clerk or municipal secretary in each area to which it applies, unless the circumstances attendant on the disaster or emergency prevent or impede the filing.

Sec. 81.0814. CONSULTATION WITH TASK FORCE ON INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE. Requires the commissioner, after declaring a public health disaster or ordering a public health emergency, to consult with the Task Force on Infectious Disease Preparedness and Response, including any subcommittee the task force forms to aid in the rapid assessment of response efforts.

Sec. 81.0815. FAILURE TO REPORT; CIVIL PENALTY. (a) Provides that a health care facility that fails to submit a report required by DSHS under a public health disaster is liable to this state for a civil penalty of not more than \$1,000 for each failure.

(b) Authorizes the attorney general at the request of DSHS to bring an action to collect a civil penalty imposed under this section.

SECTION 13. Amends Sections 161.00705(a) and (c), Health and Safety Code, as follows:

(a) Requires DSHS to maintain a registry of persons who receive an immunization or antiviral, rather than an immunization, antiviral, and other medication, administered to prepare for a potential disaster, public health disaster, rather than public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency or in response to a declared disaster, public health disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency. Requires a health care provider who administers an immunization or antiviral, rather than an immunization, antiviral, and other medication, to provide the data elements to DSHS. Makes conforming and nonsubstantive changes.

(c) Makes conforming and nonsubstantive changes to this subsection.

SECTION 14. Amends Subchapter A, Chapter 161, Health and Safety Code, by adding Section 161.0085, as follows:

Sec. 161.0085. COVID-19 VACCINE PASSPORTS PROHIBITED. (a) Defines "COVID-19."

(b) Prohibits a governmental entity in Texas from issuing a vaccine passport, vaccine pass, or other standardized documentation to certify an individual's COVID-19 vaccination status to a third party for a purpose other than health care or otherwise publish or share any individual's COVID-19 immunization record or similar health information for a purpose other than health care.

(c) Prohibits a business in Texas from requiring a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business. Provides that a business that fails to comply with this subsection is not eligible to receive a grant or enter into a contract payable with state funds.

(d) Requires each appropriate state agency, notwithstanding any other law, to ensure that businesses in Texas comply with Subsection (c) and authorizes each agency to require compliance with that subsection as a condition for a license, permit, or other state authorization necessary for conducting business in Texas.

(e) Prohibits this section from being construed to:

(1) restrict a business from implementing COVID-19 screening and infection control protocols in accordance with state and federal law to protect public health; or

(2) interfere with an individual's right to access the individual's personal health information under federal law.

SECTION 15. Amends Subchapter C, Chapter 1001, Health and Safety Code, by adding Section 1001.0515, as follows:

Sec. 1001.0515. OFFICE OF CHIEF STATE EPIDEMIOLOGIST. (a) Requires the commissioner to:

(1) establish an Office of Chief State Epidemiologist within DSHS to provide expertise in public health activities and policy in this state by evaluating epidemiologic, medical, and health care information, and by identifying pertinent research and evidence-based best practices; and

(2) appoint a physician licensed to practice medicine in this state as the chief state epidemiologist to administer the Office of Chief State Epidemiologist.

(b) Requires the chief state epidemiologist to:

(1) be board certified in a medical specialty; and

(2) have significant experience in public health and an advanced degree in public health, epidemiology, or a related field.

(c) Provides that the chief state epidemiologist serves as:

(1) the DSHS expert on epidemiological matters and on communicable and noncommunicable diseases; and

(2) DSHS's senior science representative and primary contact for the CDC and other federal agencies related to epidemiologic science and disease surveillance.

(d) Authorizes the chief state epidemiologist to provide professional and scientific consultation regarding epidemiology and disease control, harmful exposure, and injury prevention to state agencies, health facilities, health service regions, local health authorities, local health departments, and other entities.

(e) Authorizes the chief state epidemiologist, notwithstanding any other law, to access information from DSHS to implement duties of the epidemiologist's office. Provides that reports, records, and information provided to the Office of Chief State Epidemiologist that relate to an epidemiologic or toxicologic investigation of human illness or conditions and of environmental exposure that are harmful or believed to be harmful to the public health are confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, and are prohibited from being released or made public on subpoena or otherwise, except for statistical purposes if released in a manner that prevents identification of any person.

SECTION 16. Amends Section 1001.089(a)(2), Health and Safety Code, to redefine "local public health entity" for Section 1001.089 (Public Health Data).

SECTION 17. Repealer: Section 81.082(e) (relating to authorizing the governor to terminate a declaration of a public health disaster at any time), Health and Safety Code.

SECTION 18. (a) Provides that in this section, "council" means the Preparedness Coordinating Council advisory committee (council) established by HHSC under Section 1001.035 (Advisory Committees), Health and Safety Code, for DSHS.

(b) Requires the council, in coordination with the emergency management council established by the governor under Section 418.013 (Emergency Management Council), Government Code, to conduct a study on this state's response to the 2019 novel coronavirus disease. Requires the council to examine the roles of DSHS, HHSC, and TDEM relating to public health disaster and emergency planning and response efforts and determine the efficacy of the state emergency operations plan in appropriately identifying agency responsibilities. Authorizes the council to collaborate with an institution of higher education in this state to conduct the study.

(c) Requires the council, not later than nine months after the date the declared public health disaster related to the 2019 novel coronavirus disease is terminated, or September 1, 2023, whichever is earlier, to prepare and submit a written report to the governor, the lieutenant governor, the speaker of the Texas House of Representatives, and the members of the legislature on the results of the study conducted under Subsection (b) of this section. Requires that the report include recommendations for legislative improvements for public health disaster and public health emergency response and preparedness.

(d) Provides that this section expires September 1, 2023.

SECTION 19. Makes application of Section 418.0125, Government Code, as added by this Act, prospective.

SECTION 20. Requires DSHS, as soon as practicable, but not later than August 31, 2022, to implement the disease prevention information system as required by Section 418.1861, Government Code, as added by this Act.

SECTION 21. Requires TDEM, as soon as practicable after the effective date of this Act, to adopt the rules necessary to implement Subchapter J, Chapter 418, Government Code, as added by this Act.

SECTION 22. (a) Provides that DSHS and the council are required to implement this Act only if the legislature appropriates money specifically from that purpose. Provides that if the legislature does not appropriate money specifically for that purpose, DSHS and the council are authorized, but not required, to implement this Act using other appropriations available for that purpose.

(b) Requires DSHS to use any available federal money to implement this Act.

SECTION 23. Effective date: upon passage or September 1, 2021.