

By: Kolkhorst

S.B. No. 968

A BILL TO BE ENTITLED

AN ACT

relating to public health disaster and public health emergency preparedness and response; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 418, Government Code, is amended by adding Section 418.0435 to read as follows:

Sec. 418.0435. PERSONAL PROTECTIVE EQUIPMENT CONTRACTS.

(a) The division shall enter into a contract with a manufacturer of personal protective equipment that guarantees the division is given priority in the purchase of the equipment over other persons, including other states and local governments, during a public health disaster declared under Section 81.0813, Health and Safety Code.

(b) The division may purchase personal protective equipment under a contract described by Subsection (a) only if:

(1) a public health disaster is declared by the commissioner of state health services under Section 81.0813, Health and Safety Code; and

(2) the division determines the state's supply of personal protective equipment will be insufficient based on an evaluation of the personal protective equipment:

(A) held in reserve in this state; and

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

1 (c) The division shall pursue all available federal funding
2 to cover the costs of personal protective equipment purchased under
3 a contract described by Subsection (a).

4 SECTION 2. Section 81.003, Health and Safety Code, is
5 amended by amending Subdivision (7) and adding Subdivision (7-a) to
6 read as follows:

7 (7) "Public health disaster" means:

8 (A) a declaration by the governor of a state of
9 disaster; and

10 (B) a determination by the commissioner that
11 there exists an immediate threat from a communicable disease that:

12 (i) poses a high risk of death or serious
13 harm [~~long-term disability~~] to the public [~~a large number of~~
14 ~~people~~]; and

15 (ii) creates a substantial risk of harmful
16 public exposure [~~because of the disease's high level of contagion~~
17 ~~or the method by which the disease is transmitted~~].

18 (7-a) "Public health emergency" means a determination
19 by the commissioner, evidenced in an emergency order issued by the
20 commissioner, that there exists an immediate threat from a
21 communicable disease, health condition, or chemical, biological,
22 radiological, or electromagnetic exposure that:

23 (A) potentially poses a risk of death or severe
24 illness or harm to the public; and

25 (B) potentially creates a substantial risk of
26 harmful exposure to the public.

27 SECTION 3. The heading to Subchapter B, Chapter 81, Health

1 and Safety Code, is amended to read as follows:

2 SUBCHAPTER B. PREVENTION AND PREPAREDNESS

3 SECTION 4. Subchapter B, Chapter 81, Health and Safety
4 Code, is amended by adding Sections 81.025 and 81.026 to read as
5 follows:

6 Sec. 81.025. PREPAREDNESS PLANNING WITH OTHER STATE
7 AGENCIES. (a) The department, the commission, and the Texas
8 Division of Emergency Management shall jointly:

9 (1) conduct annual local and regional public health
10 disaster and public health emergency planning; and

11 (2) develop standard and uniform protocols for public
12 health disasters and public health emergencies.

13 (b) The department, the commission, and the Texas Division
14 of Emergency Management shall develop and enter into a memorandum
15 of understanding to clearly define the roles of each agency during a
16 public health disaster and during a public health emergency.

17 Sec. 81.026. HEALTH FACILITY PREPAREDNESS. (a) In this
18 section, "facility" means a health facility licensed by the
19 commission under Title 4.

20 (b) The executive commissioner by rule shall establish:

21 (1) a public health disaster and public health
22 emergency plan for facilities;

23 (2) minimum standards for the public health disaster
24 and public health emergency plans developed by each facility; and

25 (3) the minimum requirements for the amount of
26 personal protective equipment to be held in reserve by each
27 facility for use during a public health disaster or public health

1 emergency.

2 (c) Each facility shall develop and annually update a public
3 health disaster and public health emergency plan for the facility.

4 SECTION 5. Section 81.044, Health and Safety Code, is
5 amended by adding Subsection (b-1) to read as follows:

6 (b-1) In this subsection, "cycle threshold value" means for
7 a communicable disease test the number of thermal cycles required
8 for the fluorescent signal to exceed that of the background and
9 cross the threshold for a positive test. The executive
10 commissioner shall require the reports to contain the cycle
11 threshold values and their reference ranges for the reportable
12 disease that is the subject of the report.

13 SECTION 6. Section 81.081, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 81.081. DEPARTMENT'S DUTY. The department shall
16 coordinate statewide or regional efforts and collaborate with local
17 elected officials, including county officials, [~~impose control~~
18 measures] to prevent the spread of disease and [~~in the exercise of~~
19 its power to] protect the public health.

20 SECTION 7. Subchapter E, Chapter 81, Health and Safety
21 Code, is amended by adding Sections 81.0813, 81.0814, 81.0815, and
22 81.0816 to read as follows:

23 Sec. 81.0813. AUTHORITY TO DECLARE PUBLIC HEALTH DISASTER
24 OR ORDER PUBLIC HEALTH EMERGENCY. (a) The commissioner may declare
25 a statewide or regional public health disaster or order a statewide
26 or regional public health emergency if the commissioner determines
27 an occurrence or threat to public health is imminent. The

1 commissioner may declare a public health disaster only if the
2 governor declares a state of disaster under Chapter 418, Government
3 Code, for the occurrence or threat.

4 (b) Except as provided by Subsection (c), a public health
5 disaster or public health emergency continues until the governor or
6 commissioner terminates the disaster or emergency on a finding
7 that:

8 (1) the threat or danger has passed; or

9 (2) the disaster or emergency has been managed to the
10 extent emergency conditions no longer exist.

11 (c) A public health disaster or public health emergency
12 expires on the 30th day after the date the disaster or emergency is
13 declared or ordered unless the disaster or emergency is renewed by
14 the commissioner. A public health disaster or public health
15 emergency renewed by the commissioner expires on the 60th day after
16 the date the disaster or emergency is declared or ordered unless the
17 disaster or emergency is renewed by the legislature or a designated
18 legislative board.

19 (d) A declaration or order issued under this section must
20 include:

21 (1) a description of the nature of the disaster or
22 emergency;

23 (2) a designation of the area threatened by the
24 disaster or emergency;

25 (3) a description of the condition that created the
26 disaster or emergency; and

27 (4) if applicable:

1 (A) the reason for renewing the disaster or
2 emergency; or

3 (B) the reason for terminating the disaster or
4 emergency.

5 (e) A declaration or order issued under this section must be
6 disseminated promptly by means intended to bring its contents to
7 the public's attention. A statewide or regional declaration or
8 order shall be filed promptly with the office of the governor and
9 the secretary of state. A regional declaration or order shall be
10 filed with the county clerk or municipal secretary in each area to
11 which it applies, unless the circumstances attendant on the
12 disaster or emergency prevent or impede the filing.

13 Sec. 81.0814. EFFECT OF PUBLIC HEALTH DISASTER. (a) During
14 a public health disaster, the commissioner may:

15 (1) require without the adoption of a rule and in the
16 format and manner prescribed by the commissioner:

17 (A) reports of communicable diseases or other
18 health conditions; and

19 (B) additional reporting of information related
20 to the disaster from local health authorities, health care
21 providers, health care facilities, and laboratories;

22 (2) waive the fee required under Section [12.033](#) for
23 any type of vaccine, serum, or therapeutic the commissioner
24 determines is needed to respond to the disaster;

25 (3) authorize the issuance of control measure orders
26 under Section [81.083](#) or [81.084](#) by electronic delivery in accordance
27 with this section if necessary to respond to the disaster; and

1 (4) in accordance with rules adopted by the Texas
2 Medical Board and subject to Subsection (d), issue a statewide or
3 regional standing delegation order for the performance of acts
4 necessary to respond to the disaster.

5 (b) During a public health disaster, the commissioner
6 shall:

7 (1) to the extent possible, collaborate with an entity
8 required to report under Subsection (a)(1)(B) to plan and implement
9 a standardized and efficient method for submitting information to
10 the department; and

11 (2) determine the information in the reports and
12 records related to the cases or suspected cases of communicable
13 diseases or health conditions that are the subject of the disaster
14 that may be released to:

15 (A) a local health authority or public health
16 region designated by the department under Section [121.007](#);

17 (B) law enforcement personnel, first responders,
18 and computer-aided dispatch systems solely for the purpose of
19 protecting the health or life of a first responder or the person
20 identified in the report, record, or information;

21 (C) a county judge or the mayor of a
22 municipality; or

23 (D) a local emergency management coordinator of a
24 political subdivision.

25 (c) Electronic delivery of a control measure order
26 authorized under Subsection (a)(3) is in addition to a delivery
27 method authorized under Section [81.083](#) or [81.084](#), as applicable.

1 To issue a control measure order electronically, the commissioner
2 must obtain the consent of the individual to whom the order is
3 issued.

4 (d) If the commissioner is not a physician licensed to
5 practice medicine in this state, the department's chief medical
6 executive may issue a standing delegation order under Subsection
7 (a)(4). The Texas Medical Board may not take disciplinary action
8 against the commissioner or executive for issuing a standing
9 delegation order in accordance with this section. The commissioner
10 or executive is not liable for an act performed under a standing
11 delegation order issued in accordance with this section.

12 Sec. 81.0815. EFFECT OF PUBLIC HEALTH EMERGENCY ORDER. (a)
13 During a public health emergency, the commissioner may:

14 (1) require, without the adoption of a rule and in the
15 format and manner prescribed by the commissioner, reports of
16 communicable diseases or other health conditions;

17 (2) waive the fee required under Section [12.033](#) for
18 any type of vaccine, serum, or therapeutic the commissioner
19 determines is needed to respond to the emergency; and

20 (3) in accordance with rules adopted by the Texas
21 Medical Board and subject to Subsection (b), issue a statewide or
22 regional standing delegation order for the performance of acts
23 necessary to respond to the emergency.

24 (b) If the commissioner is not a physician licensed to
25 practice medicine in this state, the department's chief medical
26 executive may issue a standing delegation order under Subsection
27 (a)(3). The Texas Medical Board may not take disciplinary action

1 against the commissioner or chief medical executive for issuing a
2 standing delegation order in accordance with this section. The
3 commissioner or executive is not liable for an act performed under a
4 standing delegation order issued in accordance with this section.

5 Sec. 81.0816. FAILURE TO REPORT; CIVIL PENALTY. (a) A
6 person who fails to submit a report required under Section 81.0814
7 or 81.0815 is liable to this state for a civil penalty of not more
8 than \$1,000 for each failure.

9 (b) The attorney general at the request of the department
10 may bring an action to collect a civil penalty imposed under this
11 section.

12 SECTION 8. Subchapter C, Chapter 1001, Health and Safety
13 Code, is amended by adding Section 1001.0515 to read as follows:

14 Sec. 1001.0515. OFFICE OF CHIEF STATE EPIDEMIOLOGIST. (a)
15 The commissioner shall:

16 (1) establish an Office of Chief State Epidemiologist
17 within the department to provide expertise in public health
18 activities and policy in this state by:

19 (A) evaluating epidemiologic, medical, and
20 health care information; and

21 (B) identifying pertinent research and
22 evidence-based best practices; and

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

26 (b) The chief state epidemiologist must:

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

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

4 (c) The chief state epidemiologist serves as:

5 (1) the department expert on epidemiological matters
6 and on communicable and noncommunicable diseases; and

7 (2) the department's senior science representative and
8 primary contact for the Centers for Disease Control and Prevention
9 and other federal agencies related to epidemiologic science and
10 disease surveillance.

11 (d) The chief state epidemiologist may provide professional
12 and scientific consultation regarding epidemiology and disease
13 control, harmful exposure, and injury prevention to state agencies,
14 health facilities, health service regions, local health
15 authorities, local health departments, and other entities.

16 (e) Notwithstanding any other law, the chief state
17 epidemiologist may access information from the department to
18 implement duties of the epidemiologist's office. Reports, records,
19 and information provided to the Office of Chief State
20 Epidemiologist that relate to an epidemiologic or toxicologic
21 investigation of human illness or conditions and of environmental
22 exposure that are harmful or believed to be harmful to the public
23 health are confidential and not subject to disclosure under Chapter
24 552, Government Code, and may not be released or made public on
25 subpoena or otherwise, except for statistical purposes if released
26 in a manner that prevents identification of any person.

27 SECTION 9. The following provisions of the Health and

1 Safety Code are repealed:

- 2 (1) Section 12.033(d);
- 3 (2) Section 81.041(f); and
- 4 (3) Sections 81.082(d) and (e).

5 SECTION 10. (a) In this section, "council" means the
6 Preparedness Coordinating Council advisory committee established
7 by the Health and Human Services Commission under Section 1001.035,
8 Health and Safety Code, for the Department of State Health
9 Services.

10 (b) The council shall conduct a study on this state's
11 response to the 2019 novel coronavirus disease. The council may
12 collaborate with an institution of higher education in this state
13 to conduct the study.

14 (c) Not later than December 1, 2022, the council shall
15 prepare and submit a written report to the governor, the lieutenant
16 governor, the speaker of the house of representatives, and the
17 members of the legislature on the results of the study conducted
18 under Subsection (b) of this section. The report must include
19 recommendations for legislative improvements for public health
20 disaster and public health emergency response and preparedness.

21 (d) This section expires September 1, 2023.

22 SECTION 11. This Act takes effect immediately if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary for immediate
26 effect, this Act takes effect September 1, 2021.