

By: Schaefer

H.B. No. 119

A BILL TO BE ENTITLED

1 AN ACT
2 relating to judicial review of certain orders issued to address a
3 declared state of disaster, declared public health disaster, or
4 ordered public health emergency or to prevent the spread of a
5 communicable disease.

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

7 SECTION 1. Subchapter A, Chapter 418, Government Code, is
8 amended by adding Section 418.007 to read as follows:

9 Sec. 418.007. JUDICIAL REVIEW OF DISASTER ORDER. (a) A
10 person has standing to file suit in a court of this state to
11 challenge a provision of an order issued by the governor or the
12 presiding officer of the governing body of a political subdivision
13 that relates to a declared state of disaster if the provision is
14 alleged to cause injury to the person or burden a right of the
15 person that is protected by the state or federal constitution or by
16 a state or federal law.

17 (b) The person who issues the order has the burden of
18 proving the challenged provision in the order:

19 (1) mitigates a threat to the public caused by the
20 disaster; and

21 (2) is the least restrictive means of mitigating the
22 threat.

23 (c) The court shall enter a judgment invalidating the
24 challenged provision in the order if the court finds the person who

1 issued the order has not satisfied the burden imposed under
2 Subsection (b).

3 SECTION 2. Subchapter A, Chapter 81, Health and Safety
4 Code, is amended by adding Section 81.018 to read as follows:

5 Sec. 81.018. JUDICIAL REVIEW OF ORDERS RELATED TO PUBLIC
6 HEALTH DISASTER, PUBLIC HEALTH EMERGENCY, OR CONTROL MEASURE. (a)
7 A person has standing to file suit in a court of this state to
8 challenge a provision of an order issued by the governor, the
9 commissioner, the department, or a health authority that relates to
10 a declared public health disaster or an ordered public health
11 emergency or is imposed as a control measure to prevent the spread
12 of a communicable disease if the provision is alleged to cause
13 injury to the person or burden a right of the person that is
14 protected by the state or federal constitution or by a state or
15 federal law.

16 (b) The issuer of the order has the burden of proving the
17 challenged provision in the order:

18 (1) mitigates a threat to the public caused by the
19 public health disaster, the public health emergency, or a
20 communicable disease; and

21 (2) is the least restrictive means of mitigating the
22 threat.

23 (c) The court shall enter a judgment invalidating the
24 challenged provision in the order if the court finds the issuer of
25 the order has not satisfied the burden imposed under Subsection
26 (b).

27 SECTION 3. Section 418.007, Government Code, as added by

1 this Act, and Section 81.018, Health and Safety Code, as added by
2 this Act, apply only to an order issued on or after the effective
3 date of this Act. An order issued before the effective date of this
4 Act is governed by the law in effect immediately before that date,
5 and that law is continued in effect for that purpose.

6 SECTION 4. This Act takes effect September 1, 2023.