

BILL ANALYSIS

Senate Research Center
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S.B. 399
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Infrastructure Development and Security
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DIGEST AND PURPOSE

Currently, under Texas law the state has a duty to protect the public health. As proposed, S.B. 399 is intended to provide the state with stronger public health powers to enable the state to rapidly detect and effectively respond to bio-terrorism and other emergency health threats. This bill is based on the Model State Emergencies Health Powers Act developed by the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Animal Health Commission is modified in SECTION 25 (Section 161.101, Agriculture Code).

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 418.004, Government Code, by adding Subdivision (8) to define "public health emergency"

SECTION 2. Amends Section 418.014, Government Code, by amending Subsection (e) and adding Subsections (f), (g), and (h), as follows:

(e) Requires the executive order or proclamation to be disseminated in English and Spanish and in a manner accessible to people with disabilities.

(f) Authorizes the governor, in consultation with the commissioner of public health (commissioner), to declare that a state of disaster constitutes a public health emergency to which the public health emergency provisions of Chapter 81 (Communicable Diseases), Health and Safety Code, and other laws apply. Provides that declaring a state of disaster that constitutes a public health emergency activates the public health emergency aspects of the state emergency management plan applicable to the area subject to the declaration.

(g) Authorizes the governor in consultation with the commissioner to renew a state of disaster that constitutes a public emergency, one time, for 30 days. Authorizes the governor to make an additional renewal only after consulting with the commissioner, the lieutenant governor, and the speaker of the house.

(h) Requires an executive order or proclamation declaring a state of disaster that constitutes a public health emergency "declaration" to identify the primary public health authority responsible for responding to the emergency.

SECTION 3. Amends Chapter 418C, Government Code, by adding Section 418.0425, as follows:

Sec. 418.0425. PUBLIC HEALTH EMERGENCY PLAN. (a) Requires the division of

emergency management in the office of the governor as part of the comprehensive state emergency management plan under Section 418.042, to prepare and keep current a public health emergency plan. Requires the plan to include certain guidelines to be used during a state of public health emergency.

(b) Requires the division to distribute the public health emergency plan and guidelines to those who will be responsible for implementing the plan.

(c) Requires the division, in developing the public health emergency plan, to take into consideration any cultural norms, values, and traditions that may be relevant.

SECTION 4. Amends Chapter 418, Government Code by adding Subchapter I, as follows:

SUBCHAPTER I. PUBLIC HEALTH EMERGENCY

Sec. 418.201. DUTIES OF PUBLIC HEALTH AUTHORITY. Requires the public health authority designated by the governor to be responsible for responding to the emergency during a state of disaster that constitutes a public health emergency, to coordinate all matters relating to the state's response during the emergency. Provides that the authority has primary jurisdiction, responsibility, and authority for: planning and executing public health emergency assessment, mitigation, preparedness response, and recover for the state; coordinating public health emergency response between state and local authorities, elected officials of other states, private organizations, or private sector companies; coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and organizing public information activities regarding state public health emergency response operations.

Sec. 418.202. IDENTIFICATION OF HEALTH PERSONNEL. (a) Requires the public health authority, after the declaration, to issue special identification for all public health personnel working during the emergency.

(b) Requires the identification to indicate the authority of the bearer to exercise public health functions and emergency powers during the state of disaster that constitutes a public health emergency.

(c) Requires public health personnel to wear the identification in plain view.

Sec. 418.203. SHARING INFORMATION BETWEEN HEALTH AUTHORITY AND PUBLIC SAFETY AUTHORITY. Authorizes public health authority personnel and public safety personnel to only share information relating to a reportable disease, health condition, or other suspicious event to the extent the information is needed for the treatment, control, investigation, and prevention of a public health emergency.

Sec. 418.204. UNLICENSED HEALTH CARE PROFESSIONALS. Provides that notwithstanding any other law, and subject to the terms of the public health emergency declaration, a health care professional who does not hold a license, certificate, or other permit issued by this state at the time a public health emergency is declared, is authorized to provide medical or health care services to a person in this state under certain conditions.

Sec. 418.205. DISCIPLINARY ACTION. Requires a regulatory agency of this state to revoke or suspend the license, certificate, or other permit of an individual or facility that is regulated by the agency if the individual or entity does not assist the public health authority during a state of disaster that constitutes a public health emergency declared under this chapter.

Sec. 418.206. DISPOSAL OF CORPSE. (a) Requires the public health authority to clearly label every corpse with a communicable disease before the corpse is cremated or buried.

Requires the label to clearly identify the corpse as infected and include all available information to identify the decedent and the circumstances of death, including the disease.

(b) Requires every person in charge of disposing of a corpse with a communicable disease to maintain a written record of each corpse and all available information to identify the decedent and the circumstances of death and disposal. Requires a qualified person, if the corpse cannot be identified before disposal, to follow certain procedures.

(c) Requires all information gathered under this section to be promptly forwarded to the public health authority.

Sec. 418.207. **LIABILITY EXEMPTION.** (a) Provides that during a state of disaster that constitutes a public health emergency, a person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the real estate or premises for the purpose of sheltering persons, together with that person's successors in interest, if any, is immune from civil liability for any act or omission resulting in death, damage, or injury relating to the use of the real estate or premises, except as provided by Subsection (d).

(b) Provides that during a state of disaster that constitutes a public health emergency, a person or the person's agent performing a contract with, and under the direction of, the state or a political subdivision of the state, is immune from civil liability for any act or omission resulting in death, damage, or injury relating to the performance of the contract, except as provided by Subsection (d).

(c) Provides immunity from civil liability for a person or the person's agent who provides assistance or advice at the request of the state or a political subdivision of the state under this chapter for any act or omission resulting in death, damage, or injury relating to the assistance or advice during a state of disaster that constitutes a public health emergency, except as provided by Subsection (d).

(d) Provides that this section does not apply to: an act or omission that is intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others; or a person or the person's agent whose act or omission caused in whole or in part the public health emergency and who would otherwise be liable for that act or omission.

Sec. 418.208. **INFECTIOUS WASTE.** Requires public health authority personnel working during a state of disaster that constitutes a public health emergency who collect infectious waste to clearly label the waste as infectious waste and to state on the label the type of infectious waste, if known.

SECTION 5. Transfers Section 81.023(d), Health and Safety Code, to Chapter 81A, Health and Safety Code, redesignates it as Section 81.011, Health and Safety Code, and amends it as follows:

Sec. 81.011. Inserts heading: **REQUEST FOR INFORMATION.** Provides that in times of emergency or epidemic declared by the commissioner, the Texas Department of Health (TDH) rather than the Texas Board of Health (board) is authorized to request information pertaining to names, dates of birth, and most recent addresses of individuals from the driver's license records of the Department of Public Safety (DPS) for the purpose of notification to individuals of the need to receive certain immunizations or diagnostic, evaluation, or treatment services for suspected communicable diseases.

SECTION 6. Amends Section 81.041, Health and Safety Code, by amending Subsection (e) and adding Subsection (f), as follows:

(e) Provides that reportable diseases under this chapter for which the board will require reports include: acquired immune deficiency syndrome and human immunodeficiency virus infection; and diseases caused by the biological agents listed in 42 C.F.R. Section 72, App. A.

(f) Authorizes the commissioner to require reports of communicable diseases or other health conditions from providers without board rule or action in a public health emergency

SECTION 7. Amends Section 81.042(e), Health and Safety Code, to add emergency medical service personnel, a peace officer, or a firefighter to the list of persons required to report to the local health authority or the Texas Department of Health (TDH) a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d).

SECTION 8. Amends Section 81.044(b), Health and Safety Code, to require the board to require the reports to contain any information relating to a case that is necessary for the purposes of this chapter, including: the patient's name, home and work address, including city and county, age, date of birth, sex, race, and occupation; the name and address of the attending physician or dentist; and for diseases transmitted by insect or animal bites, the location of the insect or animal and the name and address of the owner of the animal.

SECTION 9. Amends Section 81.046, Health and Safety Code, by amending Subsection (b) and adding Subsection (f), as follows:

(b) Makes a conforming change.

(f) Authorizes reports, records, and information relating to cases or suspected cases of diseases or health conditions to be released to the extent necessary during a public health emergency to law enforcement personnel solely for the purpose of protecting the health or life of the person identified in the report, record, or information.

SECTION 10. Amends Section 81.048, Health and Safety Code, by adding Subsection (g), as follows:

(g) Requires the TDH or a local health authority to immediately notify DPS and federal health and public safety authorities if TDH or a local health authority learns of a case of a reportable disease, health condition, or other suspicious event that it reasonably believes has the potential to be caused by bioterrorism.

SECTION 11. Amends Section 81.061, Health and Safety Code, by adding Subsection (d) to authorize a health authority to investigate the existence of communicable disease within the boundaries of the health authority's jurisdiction to determine the nature and extent of the disease and to formulate and evaluate the control measures used to protect the public health. Requires a person to provide records and other information to the health authority on request according to the health authority's written instructions. Provides that confidential or privileged records or other information remain confidential or privileged in the hands of the health authority.

SECTION 12. Amends Section 81.062(a), Health and Safety Code, to authorize TDH or a health authority, for the purpose of an investigation under Section 81.061(c) or (d), to administer oaths, summon witnesses, and compel the attendance of a witness or the production of a document. Authorizes the TDH or a health authority to request the assistance of a county or district court to compel the attendance of a summoned witness or the production of a requested document at a hearing.

SECTION 13. Amends Section 81.083(e), Health and Safety Code, as follows:

(e) Provides that an individual may be subject to court orders under Subchapter G if the individual is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and either: (1) the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, does not comply with the written orders of the department or a health authority under this section; or (2) a public health emergency exists, regardless of whether the department or health authority has issued a written order rather than if the individual is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health.

SECTION 14. Amends Section 81.084, Health and Safety Code, by amending Subsection (b) and adding Subsections (d-1) and (k), as follows:

(b) Requires TDH or a health authority to send notice of its action by registered or certified mail or by personal delivery to the person who owns or controls the property. Requires, if the property is land or a structure or an animal or other property on the land, TDH or the health authority to also post the notice on the land and at a place convenient to the public in the county courthouse. Provides that if the property is infected or contaminated as a result of a public health emergency, TDH or the health authority is not required to provide notice under this subsection.

(d-1) Authorizes TDH or a health authority, in a public health emergency, by written order to require a person who owns or controls property to impose control measures that are technically feasible to disinfect or decontaminate the property or, if technically feasible control measures are not available, to order the person who owns or controls the property: (1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination; (2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or (3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the department or health authority authorizes entry into the structure or property.

(k) Authorizes TDH or a health authority in a public health emergency to impose additional control measures TDH or the health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

SECTION 15. Amends Section 81.085, Health and Safety Code, by amending Subsections (a), (b), (c), (e), (f), and (h) and adding Subsection (i), as follows:

(a) Authorizes the commissioner or one or more health authorities to impose an area quarantine coextensive with the area affected if an outbreak of communicable disease occurs in this state. Authorizes the commissioner to impose an area quarantine, if the commissioner has reasonable cause to believe that individuals or property in the area may be infected or contaminated with a communicable disease, for the period necessary to determine whether an outbreak of communicable disease has occurred. Authorizes a health authority to impose the quarantine only within the boundaries of the health authority's jurisdiction.

(b) Prohibits a health authority from imposing an area quarantine until the authority consults with TDH. Deletes text regarding obtaining the approval of the commissioner and of the governing body of each county and municipality in the affected area.

(c) Authorizes TDH to impose additional disease control measures in a quarantine area that it considers necessary and most appropriate to arrest, control, and eradicate the

threat to the public health. Authorizes a health authority to impose in a quarantine area under the authority's jurisdiction additional disease control measures that the health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health, absent preemptive action by TDH, rather than the board, under this chapter or by the governor under Chapter 418, Government Code (Texas Disaster Act of 1975).

(e) Authorizes TDH or a health authority to use all reasonable means of communication to inform persons in the quarantine area of TDH's, rather than the board's, or the health authority's orders and instructions during the period of area quarantine.

(f) Authorizes the TDH, rather than the commissioner, or with the department's, rather than the commissioner's, consent, a health authority to terminate an area quarantine.

(h) Provides that a person commits an offense if the person knowingly fails or refuses to obey a rule, order, or instruction of the TDH rather than the board, or an order or instruction of a health authority issued under a department rule, rather than board rule, and published during an area quarantine under this section. Provides that an offense under this subsection is a felony of the third degree.

(i) Requires an area quarantine to be accomplished by the least restrictive means necessary to protect the public health considering the availability of resources.

SECTION 16. Amends Sections 81.086(b) and (i), Health and Safety Code, as follows:

(b) Authorizes TDH or a health authority to order the owner, operator, or authorized agent in control of the carrier or conveyance to provide information on passengers and cargo manifests, rather than a statement in a form approved by the board that includes information required by board rules, that includes certain details, if the department or health authority has reasonable cause to believe that a carrier or conveyance has departed from or traveled through an area infected or contaminated with a communicable disease

(i) Makes a conforming change in reference to Section 81.083 rather than 81.084.

SECTION 17. Amends Section 81.088(a), Health and Safety Code, to provide that a person commits an offense if the person knowingly or intentionally: (1) removes, alters, or attempts to remove or alter an object the person knows is a quarantine device, notice, or security item in a manner that diminishes the effectiveness of the device, notice, or item; or (2) destroys an object the person knows is a quarantine device, notice, or security item.

SECTION 18. Amends Section 81.151(d), Health and Safety Code, to require a copy of written orders made under Section 81.083, if applicable, and a medical evaluation to be filed with the application, except that a copy of the written orders need not be filed with an application for outpatient treatment.

SECTION 19. Amends Section 81.152(c), Health and Safety Code, to make a conforming change.

SECTION 20. Amends Section 81.162(a), Health and Safety Code, to make a conforming change.

SECTION 21. Amends Section 161.011, Health and Safety Code, to make a conforming change

SECTION 22. Amends Article 49.10(d), Code of Criminal Procedure, to prohibit a justice of the peace from ordering a person to perform an autopsy on the body of a deceased person whose death was caused by a communicable disease designated by order of the commissioner during a public health emergency or disaster under Chapter 418, Government Code.

SECTION 23. Amends Sections 10 and 10a, Article 49.25, Code of Criminal Procedure as follows:

Sec. 10. Provides that a medical examiner is not required to perform an autopsy on the body of a deceased person whose death was caused by a communicable disease designated by order of the commissioner during a public health emergency or disaster under Chapter 418, Government Code.

Sec. 10a. Authorizes the commissioner by order in a disaster or public health emergency under Chapter 418, Government Code, to designate other communicable diseases for which cremation within 48 hours of the time of death is authorized. Makes a nonsubstantive change.

SECTION 24. Amends Chapter 562 B, Occupations Code, by adding Section 562.055, to read as follows:

Sec. 562.055. REPORT TO TEXAS DEPARTMENT OF HEALTH. Requires a pharmacist to report any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins, that might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. Delineates prescription-related events that require a report.

SECTION 25. Amends Sections 161.101(a), (b), and (c), Agriculture Code, as follows:

(a) Requires a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of certain diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Texas Animal Health Commission (commission) within 24 hours after diagnosis of the diseases.

(b) Provides that in addition to reporting required by Subsection (a), the commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of a disease other than bluetongue in an animal to the commission within 24 hours after diagnosis if the disease meets certain requirements.

(c) Authorizes the commission to adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report a disease not covered by Subsection (a) or (b) if the commission determines that action to be necessary for the protection of animal health in this state.

SECTION 26. Requires the division of emergency management in the office of the governor, not later than November 1, 2004, to review and develop, as necessary, the public health emergency plan as required by Section 418.0425, Government Code, as added by this Act.

SECTION 27. Effective date: September 1, 2003.

SECTION 28. Makes application of the change in law made by this Act to Section 81.085(h), Health and Safety Code, prospective.