

By: Capelo

H.B. No. 2988

Substitute the following for H.B. No. 2988:

By: McReynolds

C.S.H.B. No. 2988

A BILL TO BE ENTITLED

AN ACT

1
2 relating to public health preparedness; providing criminal
3 penalties.

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

5 SECTION 1. Section 418.004, Government Code, is amended by
6 adding a new Subdivision (7) and redesignating existing Subdivision
7 (7) as Subdivision (8) to read as follows:

8 (7) "Public health emergency" means an immediate
9 threat from a communicable disease as defined by Section 81.003,
10 Health and Safety Code, that:

11 (A) poses a high risk of death or serious
12 long-term disability to a large number of people; and

13 (B) creates a substantial risk of public exposure
14 because of the disease's high level of contagion or the method by
15 which the disease is transmitted.

16 (8) "Temporary housing" has the meaning assigned by
17 the Robert T. Stafford Disaster Relief and Emergency Assistance
18 Act, Pub. L. No. 93-288, as amended.

19 SECTION 2. Section 418.014, Government Code, is amended by
20 adding Subsections (f), ~~[and]~~ (g), and (h) to read as follows:

21 (f) The governor, in consultation with the commissioner of
22 public health, may declare that a state of disaster constitutes a
23 public health emergency to which the public health emergency
24 provisions of Chapter 81, Health and Safety Code, and other law

1 apply.

2 (g) A state of disaster that constitutes a public health
3 emergency may be renewed one time by the governor, upon the
4 recommendation of the commissioner of public health, for an
5 additional 30 days.

6 (h)(1) A state of disaster that constitutes a public health
7 emergency may be renewed for an additional period following the
8 period described in subsection (g).

9 (2) A renewal under this subsection requires:

10 (A) the recommendation of the commissioner of
11 health;

12 (B) a finding, by the governor, that a public
13 health emergency exists; and

14 (C) the approval of the speaker, the lieutenant
15 governor, and the chief justice of the Supreme Court of Texas.

16 (3) The renewal period under this subsection shall
17 last no longer than 30 days.

18 (4) A state of disaster that constitutes a public
19 health emergency may be renewed for additional periods under this
20 subsection provided that the requirements of subparagraphs (2) and
21 (3) are met.

22 SECTION 3. Subdivisions (2) and (7), Section 81.003, Health
23 and Safety Code, are amended to read as follows:

24 (2) "Health authority" means:

25 (A) a physician appointed as a health authority
26 [such] under Chapter 121 (Local Public Health Reorganization Act)
27 or the health authority's designee; or

1 (B) a physician appointed as a regional director
2 under Chapter 121 (Local Public Health Reorganization Act) who
3 performs the duties of a health authority or the regional
4 director's designee.

5 (7) "Public health emergency" means a declaration by
6 the governor of a state of disaster that constitutes a public health
7 emergency under Chapter 418, Government Code [~~"Regional director"~~
8 ~~means a physician appointed as such under Chapter 121 (Local Public~~
9 ~~Health Reorganization Act)].~~

10 SECTION 4. Section 81.004, Health and Safety Code, is
11 amended by adding Subsection (d) to read as follows:

12 (d) A designee of the commissioner may exercise a power
13 granted to or perform a duty imposed on the commissioner under this
14 chapter except as otherwise required by law.

15 SECTION 5. Subsections (a), (b), and (c), Section 81.023,
16 Health and Safety Code, are amended to read as follows:

17 (a) The department [~~board~~] shall develop immunization
18 requirements for children.

19 (b) The department [~~board~~] shall cooperate with the
20 Department of Protective and Regulatory Services in formulating and
21 implementing the immunization requirements for children admitted
22 to child-care facilities.

23 (c) The department [~~board~~] shall cooperate with the State
24 Board of Education in formulating and implementing immunization
25 requirements for students admitted to public or private primary or
26 secondary schools.

27 SECTION 6. Subsection (d), Section 81.023, Health and

1 Safety Code, is transferred to Subchapter A, Chapter 81, Health and
2 Safety Code, redesignated as Section 81.011, Health and Safety
3 Code, and amended to read as follows:

4 Sec. 81.011. REQUEST FOR INFORMATION. [~~(d)~~] In times of
5 emergency or epidemic declared by the commissioner, the department
6 [~~board~~] is authorized to request information pertaining to names,
7 dates of birth, and most recent addresses of individuals from the
8 driver's license records of the Department of Public Safety for the
9 purpose of notification to individuals of the need to receive
10 certain immunizations or diagnostic, evaluation, or treatment
11 services for suspected communicable diseases.

12 SECTION 7. Section 81.041, Health and Safety Code, is
13 amended by adding Subsection (f) to read as follows:

14 (f) In a public health emergency, the commissioner may
15 require reports of communicable diseases or other health conditions
16 from providers without board rule or action.

17 SECTION 8. Subsection (a), Section 81.042, Health and
18 Safety Code, is amended to read as follows:

19 (a) A report under Subsection (b), (c), or (d) shall be made
20 to the local health authority [~~or, if there is no local health~~
21 ~~authority, the regional director~~].

22 SECTION 9. Section 81.043, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 81.043. RECORDS AND REPORTS OF HEALTH AUTHORITY [~~AND~~
25 ~~REGIONAL DIRECTOR~~]. (a) Each health authority [~~or regional~~
26 ~~director~~] shall keep a record of each case of a reportable disease
27 that is reported to the authority [~~or director~~].

1 (b) A health authority [~~or regional director~~] shall report
2 reportable diseases to the department's central office at least as
3 frequently as the interval set by board rule.

4 SECTION 10. Section 81.046, Health and Safety Code, is
5 amended by amending Subsection (b) and adding Subsection (f) to
6 read as follows:

7 (b) Reports, records, and information relating to cases or
8 suspected cases of diseases or health conditions are not public
9 information under Chapter 552, Government Code, and may not be
10 released or made public on subpoena or otherwise except as provided
11 by Subsections (c), ~~[and]~~ (d), and (f).

12 (f) Reports, records, and information relating to cases or
13 suspected cases of diseases or health conditions may be released to
14 the extent necessary during a public health emergency to law
15 enforcement personnel solely for the purpose of protecting the
16 health or life of the person identified in the report, record, or
17 information.

18 SECTION 11. Section 81.061, Health and Safety Code, is
19 amended by adding Subsection (d) to read as follows:

20 (d) A health authority may investigate the existence of
21 communicable disease within the boundaries of the health
22 authority's jurisdiction to determine the nature and extent of the
23 disease and to formulate and evaluate the control measures used to
24 protect the public health. A person shall provide records and other
25 information to the health authority on request according to the
26 health authority's written instructions. Records and other
27 information that are confidential or privileged remain

1 confidential or privileged in the hands of the health authority.

2 SECTION 12. Subsection (a), Section 81.062, Health and
3 Safety Code, is amended to read as follows:

4 (a) For the purpose of an investigation under Section
5 81.061(c) or (d), the department or a health authority may
6 administer oaths, summon witnesses, and compel the attendance of a
7 witness or the production of a document. The department or a health
8 authority may request the assistance of a county or district court
9 to compel the attendance of a summoned witness or the production of
10 a requested document at a hearing.

11 SECTION 13. Section 81.064, Health and Safety Code, is
12 amended by amending Subsection (a) and adding Subsection (c) to
13 read as follows:

14 (a) The department or [~~commissioner, the commissioner's~~
15 ~~designee,~~] a health authority[~~, or a health authority's designee~~]
16 may enter at reasonable times and inspect within reasonable limits
17 a public place in the performance of that person's duty to prevent
18 or control the entry into or spread in this state of communicable
19 disease by enforcing this chapter or the rules of the board adopted
20 under this chapter.

21 (c) Evidence gathered during an inspection by the
22 department or health authority under this section may not be used in
23 a criminal proceeding other than a proceeding to assess a criminal
24 penalty under this chapter.

25 SECTION 14. Section 81.065, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 81.065. RIGHT OF ENTRY. (a) For an investigation or

1 inspection, the commissioner, an employee of the department, or a
2 health authority has the right of entry on land or in a building,
3 vehicle, watercraft, or aircraft and the right of access to an
4 individual, animal, or object that is in isolation, detention,
5 restriction, or quarantine instituted by the commissioner, an
6 employee of the department, or a health authority or instituted
7 voluntarily on instructions of a private physician.

8 (b) Evidence gathered during an entry by the commissioner,
9 department, or health authority under this section may not be used
10 in a criminal proceeding other than a proceeding to assess a
11 criminal penalty under this chapter.

12 SECTION 15. Subsection (a), Section 81.066, Health and
13 Safety Code, is amended to read as follows:

14 (a) A person commits an offense if the person knowingly
15 conceals or attempts to conceal from the department [~~board~~], a
16 health authority, or a peace officer, during the course of an
17 investigation under this chapter, the fact that:

18 (1) the person has, has been exposed to, or is the
19 carrier of a communicable disease that is a threat to the public
20 health; or

21 (2) a minor child or incompetent adult of whom the
22 person is a parent, managing conservator, or guardian has, has been
23 exposed to, or is the carrier of a communicable disease that is a
24 threat to the public health.

25 SECTION 16. Subsection (a), Section 81.067, Health and
26 Safety Code, is amended to read as follows:

27 (a) A person commits an offense if the person knowingly

1 conceals, removes, or disposes of an infected or contaminated
2 animal, object, vehicle, watercraft, or aircraft that is the
3 subject of an investigation under this chapter by the department
4 [~~board~~], a health authority, or a peace officer.

5 SECTION 17. Section 81.068, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 81.068. REFUSING ENTRY OR INSPECTION; CRIMINAL
8 PENALTY. (a) A person commits an offense if the person knowingly
9 refuses or attempts to refuse entry to the department [~~board~~], a
10 health authority, or a peace officer on presentation of a valid
11 search warrant to investigate, inspect, or take samples on premises
12 controlled by the person or by an agent of the person acting on the
13 person's instruction.

14 (b) A person commits an offense if the person knowingly
15 refuses or attempts to refuse inspection under Section 81.064 or
16 entry or access under Section 81.065.

17 (c) An offense under this section is a Class A misdemeanor.

18 SECTION 18. Subsections (a) and (b), Section 81.082, Health
19 and Safety Code, are amended to read as follows:

20 (a) A health authority has supervisory authority and
21 control over the administration of communicable disease control
22 measures in the health authority's jurisdiction unless
23 specifically preempted by the department [~~board~~]. Control measures
24 imposed by a health authority must be consistent with, and at least
25 as stringent as, the control measure standards in rules adopted by
26 the board.

27 (b) A communicable disease control measure imposed by a

1 health authority in the health authority's jurisdiction may be
2 amended, revised, or revoked by the department [~~board~~] if the
3 department [~~board~~] finds that the modification is necessary or
4 desirable in the administration of a regional or statewide public
5 health program or policy. A control measure imposed by the
6 department may not be modified or discontinued until the department
7 authorizes the action.

8 SECTION 19. Subsection (e), Section 81.083, Health and
9 Safety Code, is amended to read as follows:

10 (e) An individual may be subject to court orders under
11 Subchapter G if the individual is infected or is reasonably
12 suspected of being infected with a communicable disease that
13 presents an immediate threat to the public health and:

14 (1) the individual, or the individual's parent, legal
15 guardian, or managing conservator if the individual is a minor,
16 does not comply with the written orders of the department or a
17 health authority under this section; or [~~and~~]

18 (2) a public health emergency exists, regardless of
19 whether the department or health authority has issued a written
20 order [~~the individual is infected or is reasonably suspected of~~
21 ~~being infected with a communicable disease that presents an~~
22 ~~immediate threat to the public health].~~

23 SECTION 20. Section 81.084, Health and Safety Code, is
24 amended by amending Subsection (b) and adding Subsections (d-1) and
25 (k) to read as follows:

26 (b) The department or health authority shall send notice of
27 its action by registered or certified mail or by personal delivery

1 to the person who owns or controls the property. If the property is
2 land or a structure or an animal or other property on the land, the
3 department or health authority shall also post the notice on the
4 land and at a place convenient to the public in [en] the county
5 courthouse [deor]. If the property is infected or contaminated as a
6 result of a public health emergency, the department or health
7 authority is not required to provide notice under this subsection.

8 (d-1) In a public health emergency, the department or health
9 authority by written order may require a person who owns or controls
10 property to impose control measures that are technically feasible
11 to disinfect or decontaminate the property or, if technically
12 feasible control measures are not available, may order the person
13 who owns or controls the property:

14 (1) to destroy the property, other than land, in a
15 manner that disinfects or decontaminates the property to prevent
16 the spread of infection or contamination;

17 (2) if the property is land, to securely fence the
18 perimeter of the land or any part of the land that is infected or
19 contaminated; or

20 (3) to securely seal off an infected or contaminated
21 structure or other property on land to prevent entry into the
22 infected or contaminated area until the department or health
23 authority authorizes entry into the structure or property.

24 (k) In a public health emergency, the department or a health
25 authority may impose additional control measures the department or
26 health authority considers necessary and most appropriate to
27 arrest, control, and eradicate the threat to the public health.

1 SECTION 21. Section 81.085, Health and Safety Code, is
2 amended by amending Subsections (a), (b), (c), (e), (f), and (h) and
3 adding Subsection (i) to read as follows:

4 (a) If an outbreak of communicable disease occurs in this
5 state, the commissioner or one or more health authorities may
6 impose an area quarantine coextensive with the area affected. The
7 commissioner may impose an area quarantine, if the commissioner has
8 reasonable cause to believe that individuals or property in the
9 area may be infected or contaminated with a communicable disease,
10 for the period necessary to determine whether an outbreak of
11 communicable disease has occurred. A health authority may impose
12 the quarantine only within the boundaries of the health authority's
13 jurisdiction.

14 (b) A health authority may not impose an area quarantine
15 until the authority consults with [~~and obtains the approval of~~] the
16 department [commissioner and of the governing body of each county
17 and municipality in the health authority's jurisdiction that has
18 territory in the affected area]. A health authority that imposes an
19 area quarantine shall give written notice to and shall consult with
20 the governing body of each county and municipality in the health
21 authority's jurisdiction that has territory in the affected area as
22 soon as practicable.

23 (c) The department may impose additional disease control
24 measures in a quarantine area that the department considers
25 necessary and most appropriate to arrest, control, and eradicate
26 the threat to the public health. Absent preemptive action by the
27 department [board] under this chapter or by the governor under

1 Chapter 418, Government Code (Texas Disaster Act of 1975), a health
2 authority may impose in a quarantine area under the authority's
3 jurisdiction additional disease control measures that the health
4 authority considers necessary and most appropriate to arrest,
5 control, and eradicate the threat to the public health.

6 (e) The department or health authority may use all
7 reasonable means of communication to inform persons in the
8 quarantine area of the department's [~~board's~~] or health authority's
9 orders and instructions during the period of area quarantine. The
10 department or health authority shall publish at least once each
11 week during the area quarantine period, in a newspaper of general
12 circulation in the area, a notice of the orders or instructions in
13 force with a brief explanation of their meaning and effect. Notice
14 by publication is sufficient to inform persons in the area of their
15 rights, duties, and obligations under the orders or instructions.

16 (f) The department [~~commissioner~~] or, with the department's
17 [~~commissioner's~~] consent, a health authority may terminate an area
18 quarantine.

19 (h) A person commits an offense if the person knowingly
20 fails or refuses to obey a rule, order, or instruction of the
21 department [~~board~~] or an order or instruction of a health authority
22 issued under a department [~~board~~] rule and published during an area
23 quarantine under this section. An offense under this subsection is
24 a felony of the third degree.

25 (i) An area quarantine must be accomplished by the least
26 restrictive means necessary to protect the public health
27 considering the availability of resources.

1 SECTION 22. Subsections (b) and (i), Section 81.086, Health
2 and Safety Code, are amended to read as follows:

3 (b) If the department or health authority has reasonable
4 cause to believe that a carrier or conveyance has departed from or
5 traveled through an area infected or contaminated with a
6 communicable disease, the department or health authority may order
7 the owner, operator, or authorized agent in control of the carrier
8 or conveyance to:

9 (1) stop the carrier or conveyance at a port of entry
10 or place of first landing or first arrival in this state; and

11 (2) provide [~~a statement in a form approved by the~~
12 ~~board that includes information required by board rules, including~~]
13 information on passengers and cargo manifests[~~, and~~] that includes
14 the details of:

15 (A) any illness suspected of being communicable
16 that occurred during the journey;

17 (B) any condition on board the carrier or
18 conveyance during the journey that may lead to the spread of
19 disease; and

20 (C) any control measures imposed on the carrier
21 or conveyance, its passengers or crew, or its cargo or any other
22 object on board during the journey.

23 (i) The department or health authority may require an
24 individual transported by carrier or conveyance who the department
25 or health authority has reasonable cause to believe has been
26 exposed to or is the carrier of a communicable disease to be
27 isolated from other travelers and to disembark with the

1 individual's personal effects and baggage at the first location
2 equipped with adequate investigative and disease control
3 facilities, whether the person is in transit through this state or
4 to an intermediate or ultimate destination in this state. The
5 department or health authority may investigate and, if necessary,
6 isolate or involuntarily hospitalize the individual until the
7 department or health authority approves the discharge as authorized
8 by Section 81.083 [~~81.084~~].

9 SECTION 23. Subsection (a), Section 81.088, Health and
10 Safety Code, is amended to read as follows:

11 (a) A person commits an offense if the person knowingly or
12 intentionally:

13 (1) removes, alters, or attempts to remove or alter an
14 object the person knows is a quarantine device, notice, or security
15 item in a manner that diminishes the [~~device's~~] effectiveness of
16 the device, notice, or item; or

17 (2) destroys an object the person knows is a
18 quarantine device, notice, or security item.

19 SECTION 24. Subsection (a), Section 81.089, Health and
20 Safety Code, is amended to read as follows:

21 (a) A person commits an offense if, before notifying the
22 department [~~board~~] or health authority at a port of entry or a place
23 of first landing or first arrival in this state, the person
24 knowingly or intentionally:

25 (1) transports or causes to be transported into this
26 state an object the person knows or suspects may be infected or
27 contaminated with a communicable disease that is a threat to the

1 public health;

2 (2) transports or causes to be transported into this
3 state an individual who the person knows has or is the carrier of a
4 communicable disease that is a threat to the public health; or

5 (3) transports or causes to be transported into this
6 state a person, animal, or object in a private or common carrier or
7 a private conveyance that the person knows is or suspects may be
8 infected or contaminated with a communicable disease that is a
9 threat to the public health.

10 SECTION 25. Subsection (d), Section 81.151, Health and
11 Safety Code, is amended to read as follows:

12 (d) A copy of written orders made under Section 81.083, if
13 applicable, and a medical evaluation must be filed with the
14 application, except that a copy of the written orders need not be
15 filed with an application for outpatient treatment.

16 SECTION 26. Subsection (c), Section 81.152, Health and
17 Safety Code, is amended to read as follows:

18 (c) Any application must contain the following information
19 according to the applicant's information and belief:

20 (1) the person's name and address;

21 (2) the person's county of residence in this state;

22 (3) a statement that the person is infected with or is
23 reasonably suspected of being infected with a communicable disease
24 that presents a threat to public health and that the person meets
25 the criteria of this chapter for court orders for the management of
26 a person with a communicable disease; and

27 (4) a statement, to be included only in an application

1 for inpatient treatment, that the person fails or refuses to comply
2 with written orders of the department or health authority under
3 Section 81.083, if applicable.

4 SECTION 27. Subsection (a), Section 81.162, Health and
5 Safety Code, is amended to read as follows:

6 (a) The judge or designated magistrate may issue a
7 protective custody order if the judge or magistrate determines:

8 (1) that the health authority or department has stated
9 its opinion and the detailed basis for its opinion that the person
10 is infected with or is reasonably suspected of being infected with a
11 communicable disease that presents an immediate threat to the
12 public health; and

13 (2) that the person fails or refuses to comply with the
14 written orders of the health authority or the department under
15 Section 81.083, if applicable.

16 SECTION 28. Section 161.011, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 161.011. PERMISSION REQUIRED. A person, including an
19 officer or agent of this state or of an instrumentality or political
20 subdivision of this state, may not enter a private residence to
21 conduct a health inspection without first receiving:

22 (1) permission obtained from a lawful adult occupant
23 of the residence; or

24 (2) an authorization to inspect the residence for a
25 specific public health purpose by a magistrate or by an order of a
26 court of competent jurisdiction on a showing of a probable
27 violation of a state health law, a control measure under Chapter 81,

1 or a health ordinance of a political subdivision.

2 SECTION 29. Subsection (d), Article 49.10, Code of Criminal
3 Procedure, is amended to read as follows:

4 (d) A justice of the peace may not order a person to perform
5 an autopsy on the body of a deceased person whose death was caused
6 by Asiatic cholera, bubonic plague, typhus fever, or smallpox. A
7 justice of the peace may not order a person to perform an autopsy on
8 the body of a deceased person whose death was caused by a
9 communicable disease designated by order of the commissioner of
10 public health during a public health emergency or disaster under
11 Chapter 418, Government Code.

12 SECTION 30. Sections 10 and 10a, Article 49.25, Code of
13 Criminal Procedure, are amended to read as follows:

14 Sec. 10. When a body upon which an inquest ought to have
15 been held has been interred, the medical examiner may cause it to be
16 disinterred for the purpose of holding such inquest.

17 Before any body, upon which an inquest is authorized by the
18 provisions of this Article, can be lawfully cremated, an autopsy
19 shall be performed thereon as provided in this Article, or a
20 certificate that no autopsy was necessary shall be furnished by the
21 medical examiner. Before any dead body can be lawfully cremated,
22 the owner or operator of the crematory shall demand and be furnished
23 with a certificate, signed by the medical examiner of the county in
24 which the death occurred showing that an autopsy was performed on
25 said body or that no autopsy thereon was necessary. It shall be the
26 duty of the medical examiner to determine whether or not, from all
27 the circumstances surrounding the death, an autopsy is necessary

1 prior to issuing a certificate under the provisions of this
2 section. No autopsy shall be required by the medical examiner as a
3 prerequisite to cremation in case death is caused by the
4 pestilential diseases of Asiatic cholera, bubonic plague, typhus
5 fever, or smallpox. All certificates furnished to the owner or
6 operator of a crematory by any medical examiner, under the terms of
7 this Article, shall be preserved by such owner or operator of such
8 crematory for a period of two years from the date of the cremation
9 of said body. A medical examiner is not required to perform an
10 autopsy on the body of a deceased person whose death was caused by a
11 communicable disease designated by order of the commissioner of
12 public health during a public health emergency or disaster under
13 Chapter 418, Government Code.

14 Sec. 10a. The body of a deceased person shall not be
15 cremated within 48 [~~forty-eight~~] hours after the time of death as
16 indicated on the regular death certificate, unless the death
17 certificate indicates death was caused by the pestilential diseases
18 of Asiatic cholera, bubonic plague, typhus fever, or smallpox, or
19 unless the time requirement is waived in writing by the county
20 medical examiner or, in counties not having a county medical
21 examiner, a justice of the peace. In a disaster or public health
22 emergency under Chapter 418, Government Code, the commissioner of
23 public health by order may designate other communicable diseases
24 for which cremation within 48 hours of the time of death is
25 authorized.

26 SECTION 31. This Act takes effect September 1, 2003.

27 SECTION 32. (a) The change in law made by this Act to

1 Subsection (h), Section 81.085, and Subsection (a), Section 81.089,
2 Health and Safety Code, apply only to an offense committed on or
3 after the effective date of this Act. For purposes of this section,
4 an offense is committed before the effective date of this Act if any
5 element of the offense occurs before that date.

6 (b) An offense committed before the effective date of this
7 Act is covered by the law in effect when the offense was committed,
8 and the former law is continued in effect for that purpose.