

A BILL TO BE ENTITLED

AN ACT

relating to public health preparedness; providing criminal penalties.

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

SECTION 1. Subdivisions (2) and (7), Section 81.003, Health and Safety Code, are amended to read as follows:

(2) "Health authority" means:

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

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

(7) "Public health disaster" means:

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

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

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

(ii) creates a substantial risk of public
exposure because of the disease's high level of contagion or the
method by which the disease is transmitted [~~"Regional director"~~]

1 ~~means a physician appointed as such under Chapter 121 (Local Public~~
2 ~~Health Reorganization Act)].~~

3 SECTION 2. Section 81.004, Health and Safety Code, is
4 amended by adding Subsection (d) to read as follows:

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

8 SECTION 3. Subsection (d), Section 81.023, Health and
9 Safety Code, is transferred to Subchapter A, Chapter 81, Health and
10 Safety Code, redesignated as Section 81.011, Health and Safety
11 Code, and amended to read as follows:

12 Sec. 81.011. REQUEST FOR INFORMATION. [~~(d)~~] In times of
13 emergency or epidemic declared by the commissioner, the department
14 [~~board~~] is authorized to request information pertaining to names,
15 dates of birth, and most recent addresses of individuals from the
16 driver's license records of the Department of Public Safety for the
17 purpose of notification to individuals of the need to receive
18 certain immunizations or diagnostic, evaluation, or treatment
19 services for suspected communicable diseases.

20 SECTION 4. Section 81.041, Health and Safety Code, is
21 amended by adding Subsection (f) to read as follows:

22 (f) In a public health disaster, the commissioner may
23 require reports of communicable diseases or other health conditions
24 from providers without board rule or action. The commissioner
25 shall issue with a report required under this section appropriate
26 instructions for compliance.

27 SECTION 5. Subsection (a), Section 81.042, Health and

1 Safety Code, is amended to read as follows:

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

5 SECTION 6. Section 81.043, Health and Safety Code, is
6 amended to read as follows:

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

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

14 SECTION 7. Section 81.046, Health and Safety Code, is
15 amended by amending Subsection (b) and adding Subsection (f) to
16 read as follows:

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

22 (f) Reports, records, and information relating to cases or
23 suspected cases of diseases or health conditions may be released to
24 the extent necessary during a public health disaster to law
25 enforcement personnel solely for the purpose of protecting the
26 health or life of the person identified in the report, record, or
27 information. Only the minimum necessary information may be

1 released as determined by the health authority or the department.

2 SECTION 8. Section 81.064, Health and Safety Code, is
3 amended by amending Subsection (a) and adding Subsection (c) to
4 read as follows:

5 (a) The department or [~~commissioner, the commissioner's~~
6 ~~designee,~~] a health authority[~~, or a health authority's designee~~]
7 may enter at reasonable times and inspect within reasonable limits
8 a public place in the performance of that person's duty to prevent
9 or control the entry into or spread in this state of communicable
10 disease by enforcing this chapter or the rules of the board adopted
11 under this chapter.

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

16 SECTION 9. Section 81.065, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 81.065. RIGHT OF ENTRY. (a) For an investigation or
19 inspection, the commissioner, an employee of the department, or a
20 health authority has the right of entry on land or in a building,
21 vehicle, watercraft, or aircraft and the right of access to an
22 individual, animal, or object that is in isolation, detention,
23 restriction, or quarantine instituted by the commissioner, an
24 employee of the department, or a health authority or instituted
25 voluntarily on instructions of a private physician.

26 (b) Evidence gathered during an entry by the commissioner,
27 department, or health authority under this section may not be used

1 in a criminal proceeding other than a proceeding to assess a
2 criminal penalty under this chapter.

3 SECTION 10. Subsection (a), Section 81.066, Health and
4 Safety Code, is amended to read as follows:

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

9 (1) the person has, has been exposed to, or is the
10 carrier of a communicable disease that is a threat to the public
11 health; or

12 (2) a minor child or incompetent adult of whom the
13 person is a parent, managing conservator, or guardian has, has been
14 exposed to, or is the carrier of a communicable disease that is a
15 threat to the public health.

16 SECTION 11. Subsection (a), Section 81.067, Health and
17 Safety Code, is amended to read as follows:

18 (a) A person commits an offense if the person knowingly
19 conceals, removes, or disposes of an infected or contaminated
20 animal, object, vehicle, watercraft, or aircraft that is the
21 subject of an investigation under this chapter by the department
22 [~~board~~], a health authority, or a peace officer.

23 SECTION 12. Section 81.068, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 81.068. REFUSING ENTRY OR INSPECTION; CRIMINAL
26 PENALTY. (a) A person commits an offense if the person knowingly
27 refuses or attempts to refuse entry to the department [~~board~~], a

1 health authority, or a peace officer on presentation of a valid
2 search warrant to investigate, inspect, or take samples on premises
3 controlled by the person or by an agent of the person acting on the
4 person's instruction.

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

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

9 SECTION 13. Section 81.082, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 81.082. ADMINISTRATION OF CONTROL MEASURES. (a) A
12 health authority has supervisory authority and control over the
13 administration of communicable disease control measures in the
14 health authority's jurisdiction unless specifically preempted by
15 the department [~~board~~]. Control measures imposed by a health
16 authority must be consistent with, and at least as stringent as, the
17 control measure standards in rules adopted by the board.

18 (b) A communicable disease control measure imposed by a
19 health authority in the health authority's jurisdiction may be
20 amended, revised, or revoked by the department [~~board~~] if the
21 department [~~board~~] finds that the modification is necessary or
22 desirable in the administration of a regional or statewide public
23 health program or policy. A control measure imposed by the
24 department may not be modified or discontinued until the department
25 authorizes the action.

26 (c) The control measures may be imposed on an individual,
27 animal, place, or object, as appropriate.

1 (d) A declaration of a public health disaster may continue
2 for not more than 30 days. A public health disaster may be renewed
3 one time by the commissioner for an additional 30 days.

4 (e) The governor may terminate a declaration of a public
5 health disaster at any time.

6 (f) In this section, "control measures" includes:

- 7 (1) immunization;
- 8 (2) detention;
- 9 (3) restriction;
- 10 (4) disinfection;
- 11 (5) decontamination;
- 12 (6) isolation;
- 13 (7) quarantine;
- 14 (8) disinfestation;
- 15 (9) chemoprophylaxis;
- 16 (10) preventive therapy;
- 17 (11) prevention; and
- 18 (12) education.

19 SECTION 14. Subsection (e), Section 81.083, Health and
20 Safety Code, is amended to read as follows:

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

25 (1) the individual, or the individual's parent, legal
26 guardian, or managing conservator if the individual is a minor,
27 does not comply with the written orders of the department or a

1 health authority under this section; or ~~and~~

2 (2) a public health disaster exists, regardless of
3 whether the department or health authority has issued a written
4 order and the individual has indicated that the individual will not
5 voluntarily comply with control measures ~~[is infected or is~~
6 ~~reasonably suspected of being infected with a communicable disease~~
7 ~~that presents an immediate threat to the public health]~~.

8 SECTION 15. Section 81.084, Health and Safety Code, is
9 amended by amending Subsection (b) and adding Subsections (d-1) and
10 (k) to read as follows:

11 (b) The department or health authority shall send notice of
12 its action by registered or certified mail or by personal delivery
13 to the person who owns or controls the property. If the property is
14 land or a structure or an animal or other property on the land, the
15 department or health authority shall also post the notice on the
16 land and at a place convenient to the public in ~~on~~ the county
17 courthouse ~~door~~. If the property is infected or contaminated as a
18 result of a public health disaster, the department or health
19 authority is not required to provide notice under this subsection.

20 (d-1) In a public health disaster, the department or health
21 authority by written order may require a person who owns or controls
22 property to impose control measures that are technically feasible
23 to disinfect or decontaminate the property or, if technically
24 feasible control measures are not available, may order the person
25 who owns or controls the property:

26 (1) to destroy the property, other than land, in a
27 manner that disinfects or decontaminates the property to prevent

1 the spread of infection or contamination;

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

5 (3) to securely seal off an infected or contaminated
6 structure or other property on land to prevent entry into the
7 infected or contaminated area until the department or health
8 authority authorizes entry into the structure or property.

9 (k) In a public health disaster, the department or a health
10 authority may impose additional control measures the department or
11 health authority considers necessary and most appropriate to
12 arrest, control, and eradicate the threat to the public health.

13 SECTION 16. Subsections (a), (b), (c), (e), (f), and (h),
14 Section 81.085, Health and Safety Code, are amended to read as
15 follows:

16 (a) If an outbreak of communicable disease occurs in this
17 state, the commissioner or one or more health authorities may
18 impose an area quarantine coextensive with the area affected. The
19 commissioner may impose an area quarantine, if the commissioner has
20 reasonable cause to believe that individuals or property in the
21 area may be infected or contaminated with a communicable disease,
22 for the period necessary to determine whether an outbreak of
23 communicable disease has occurred. A health authority may impose
24 the quarantine only within the boundaries of the health authority's
25 jurisdiction.

26 (b) A health authority may not impose an area quarantine
27 until the authority consults with [~~and obtains the approval of~~] the

1 department. A health authority that imposes an area quarantine
2 shall give written notice to and shall consult with [~~commissioner~~
3 ~~and of~~] the governing body of each county and municipality in the
4 health authority's jurisdiction that has territory in the affected
5 area as soon as practicable.

6 (c) The department may impose additional disease control
7 measures in a quarantine area that the department considers
8 necessary and most appropriate to arrest, control, and eradicate
9 the threat to the public health. Absent preemptive action by the
10 department [~~board~~] under this chapter or by the governor under
11 Chapter 418, Government Code (Texas Disaster Act of 1975), a health
12 authority may impose in a quarantine area under the authority's
13 jurisdiction additional disease control measures that the health
14 authority considers necessary and most appropriate to arrest,
15 control, and eradicate the threat to the public health.

16 (e) The department or health authority may use all
17 reasonable means of communication to inform persons in the
18 quarantine area of the department's [~~board's~~] or health authority's
19 orders and instructions during the period of area quarantine. The
20 department or health authority shall publish at least once each
21 week during the area quarantine period, in a newspaper of general
22 circulation in the area, a notice of the orders or instructions in
23 force with a brief explanation of their meaning and effect. Notice
24 by publication is sufficient to inform persons in the area of their
25 rights, duties, and obligations under the orders or instructions.

26 (f) The department [~~commissioner~~] or, with the department's
27 [~~commissioner's~~] consent, a health authority may terminate an area

1 quarantine.

2 (h) A person commits an offense if the person knowingly
3 fails or refuses to obey a rule, order, or instruction of the
4 department [~~board~~] or an order or instruction of a health authority
5 issued under a department [~~board~~] rule and published during an area
6 quarantine under this section. An offense under this subsection is
7 a felony of the third degree.

8 SECTION 17. Subsections (b) and (i), Section 81.086, Health
9 and Safety Code, are amended to read as follows:

10 (b) If the department or health authority has reasonable
11 cause to believe that a carrier or conveyance has departed from or
12 traveled through an area infected or contaminated with a
13 communicable disease, the department or health authority may order
14 the owner, operator, or authorized agent in control of the carrier
15 or conveyance to:

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

18 (2) provide [~~a statement in a form approved by the~~
19 ~~board that includes information required by board rules, including~~
20 information on passengers and cargo manifests~~, and~~] that includes
21 the details of:

22 (A) any illness suspected of being communicable
23 that occurred during the journey;

24 (B) any condition on board the carrier or
25 conveyance during the journey that may lead to the spread of
26 disease; and

27 (C) any control measures imposed on the carrier

1 or conveyance, its passengers or crew, or its cargo or any other
2 object on board during the journey.

3 (i) The department or health authority may require an
4 individual transported by carrier or conveyance who the department
5 or health authority has reasonable cause to believe has been
6 exposed to or is the carrier of a communicable disease to be
7 isolated from other travelers and to disembark with the
8 individual's personal effects and baggage at the first location
9 equipped with adequate investigative and disease control
10 facilities, whether the person is in transit through this state or
11 to an intermediate or ultimate destination in this state. The
12 department or health authority may investigate and, if necessary,
13 isolate or involuntarily hospitalize the individual until the
14 department or health authority approves the discharge as authorized
15 by Section 81.083 [~~81.084~~].

16 SECTION 18. Subsection (a), Section 81.088, Health and
17 Safety Code, is amended to read as follows:

18 (a) A person commits an offense if the person knowingly or
19 intentionally:

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

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

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

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

5 (1) transports or causes to be transported into this
6 state an object the person knows or suspects may be infected or
7 contaminated with a communicable disease that is a threat to the
8 public health;

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

12 (3) transports or causes to be transported into this
13 state a person, animal, or object in a private or common carrier or
14 a private conveyance that the person knows is or suspects may be
15 infected or contaminated with a communicable disease that is a
16 threat to the public health.

17 SECTION 20. Subsection (d), Section 81.151, Health and
18 Safety Code, is amended to read as follows:

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

23 SECTION 21. Subsection (c), Section 81.152, Health and
24 Safety Code, is amended to read as follows:

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

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

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

2 (3) a statement that the person is infected with or is
3 reasonably suspected of being infected with a communicable disease
4 that presents a threat to public health and that the person meets
5 the criteria of this chapter for court orders for the management of
6 a person with a communicable disease; and

7 (4) a statement, to be included only in an application
8 for inpatient treatment, that the person fails or refuses to comply
9 with written orders of the department or health authority under
10 Section 81.083, if applicable.

11 SECTION 22. Subsection (a), Section 81.162, Health and
12 Safety Code, is amended to read as follows:

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

15 (1) that the health authority or department has stated
16 its opinion and the detailed basis for its opinion that the person
17 is infected with or is reasonably suspected of being infected with a
18 communicable disease that presents an immediate threat to the
19 public health; and

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

23 SECTION 23. Section 161.011, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 161.011. PERMISSION REQUIRED. A person, including an
26 officer or agent of this state or of an instrumentality or political
27 subdivision of this state, may not enter a private residence to

1 conduct a health inspection without first receiving:

2 (1) permission obtained from a lawful adult occupant
3 of the residence; or

4 (2) an authorization to inspect the residence for a
5 specific public health purpose by a magistrate or by an order of a
6 court of competent jurisdiction on a showing of a probable
7 violation of a state health law, a control measure under Chapter 81,
8 or a health ordinance of a political subdivision.

9 SECTION 24. Subsection (d), Article 49.10, Code of Criminal
10 Procedure, is amended to read as follows:

11 (d) A justice of the peace may not order a person to perform
12 an autopsy on the body of a deceased person whose death was caused
13 by Asiatic cholera, bubonic plague, typhus fever, or smallpox. A
14 justice of the peace may not order a person to perform an autopsy on
15 the body of a deceased person whose death was caused by a
16 communicable disease during a public health disaster.

17 SECTION 25. Sections 10 and 10a, Article 49.25, Code of
18 Criminal Procedure, are amended to read as follows:

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

22 Before any body, upon which an inquest is authorized by the
23 provisions of this Article, can be lawfully cremated, an autopsy
24 shall be performed thereon as provided in this Article, or a
25 certificate that no autopsy was necessary shall be furnished by the
26 medical examiner. Before any dead body can be lawfully cremated,
27 the owner or operator of the crematory shall demand and be furnished

1 with a certificate, signed by the medical examiner of the county in
2 which the death occurred showing that an autopsy was performed on
3 said body or that no autopsy thereon was necessary. It shall be the
4 duty of the medical examiner to determine whether or not, from all
5 the circumstances surrounding the death, an autopsy is necessary
6 prior to issuing a certificate under the provisions of this
7 section. No autopsy shall be required by the medical examiner as a
8 prerequisite to cremation in case death is caused by the
9 pestilential diseases of Asiatic cholera, bubonic plague, typhus
10 fever, or smallpox. All certificates furnished to the owner or
11 operator of a crematory by any medical examiner, under the terms of
12 this Article, shall be preserved by such owner or operator of such
13 crematory for a period of two years from the date of the cremation
14 of said body. A medical examiner is not required to perform an
15 autopsy on the body of a deceased person whose death was caused by a
16 communicable disease during a public health disaster.

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

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