

By: Janek

S.B. No. 355

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

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

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

(B) 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.

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

SECTION 2. Section 418.014, Government Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The governor, in consultation with the commissioner of public health, may declare that a state of disaster constitutes a public health emergency to which the public health emergency 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, in consultation
4 with the commissioner of public health, for an additional 30 days.
5 An additional renewal requires the approval of designated
6 legislative leadership.

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

9 (2) "Health authority" means:

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

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

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

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

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

27 SECTION 5. Subsections (a), (b), and (c), Section 81.023,

1 Health and Safety Code, are amended to read as follows:

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

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

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

12 SECTION 6. Subsection (d), Section 81.023, Health and
13 Safety Code, is transferred to Subchapter A, Chapter 81, Health and
14 Safety Code, redesignated as Section 81.011, Health and Safety
15 Code, and amended to read as follows:

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

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

26 (f) In a public health emergency, the commissioner may
27 require reports of communicable diseases or other health conditions

1 from providers without board rule or action.

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

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

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

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

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

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

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

24 (f) Reports, records, and information relating to cases or
25 suspected cases of diseases or health conditions may be released to
26 the extent necessary during a public health emergency to law
27 enforcement personnel solely for the purpose of protecting the

1 health or life of the person identified in the report, record, or
2 information.

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

5 (d) A health authority may investigate the existence of
6 communicable disease within the boundaries of the health
7 authority's jurisdiction to determine the nature and extent of the
8 disease and to formulate and evaluate the control measures used to
9 protect the public health. A person shall provide records and other
10 information to the health authority on request according to the
11 health authority's written instructions. Records and other
12 information that are confidential or privileged remain
13 confidential or privileged in the hands of the health authority.

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

16 (a) For the purpose of an investigation under Section
17 81.061(c) or (d), the department or a health authority may
18 administer oaths, summon witnesses, and compel the attendance of a
19 witness or the production of a document. The department or a health
20 authority may request the assistance of a county or district court
21 to compel the attendance of a summoned witness or the production of
22 a requested document at a hearing.

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

26 (a) The department or [~~commissioner, the commissioner's~~
27 ~~designee,~~] a health authority[~~, or a health authority's designee~~]

1 may enter at reasonable times and inspect within reasonable limits
2 a public place in the performance of that person's duty to prevent
3 or control the entry into or spread in this state of communicable
4 disease by enforcing this chapter or the rules of the board adopted
5 under this chapter.

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

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

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

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

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

26 (a) A person commits an offense if the person knowingly
27 conceals or attempts to conceal from the department [~~board~~], a

1 health authority, or a peace officer, during the course of an
2 investigation under this chapter, the fact that:

3 (1) the person has, has been exposed to, or is the
4 carrier of a communicable disease that is a threat to the public
5 health; or

6 (2) a minor child or incompetent adult of whom the
7 person is a parent, managing conservator, or guardian has, has been
8 exposed to, or is the carrier of a communicable disease that is a
9 threat to the public health.

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

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

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

19 Sec. 81.068. REFUSING ENTRY OR INSPECTION; CRIMINAL
20 PENALTY. (a) A person commits an offense if the person knowingly
21 refuses or attempts to refuse entry to the department [~~board~~], a
22 health authority, or a peace officer on presentation of a valid
23 search warrant to investigate, inspect, or take samples on premises
24 controlled by the person or by an agent of the person acting on the
25 person's instruction.

26 (b) A person commits an offense if the person knowingly
27 refuses or attempts to refuse inspection under Section 81.064 or

1 entry or access under Section 81.065.

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

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

5 (a) A health authority has supervisory authority and
6 control over the administration of communicable disease control
7 measures in the health authority's jurisdiction unless
8 specifically preempted by the department [~~board~~]. Control measures
9 imposed by a health authority must be consistent with, and at least
10 as stringent as, the control measure standards in rules adopted by
11 the board.

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

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

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

26 (1) the individual, or the individual's parent, legal
27 guardian, or managing conservator if the individual is a minor,

1 does not comply with the written orders of the department or a
2 health authority under this section; or [~~and~~]

3 (2) a public health emergency exists, regardless of
4 whether the department or health authority has issued a written
5 order [~~the individual is infected or is reasonably suspected of~~
6 ~~being infected with a communicable disease that presents an~~
7 ~~immediate threat to the public health~~].

8 SECTION 20. 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 emergency, the department or health
19 authority is not required to provide notice under this subsection.

20 (d-1) In a public health emergency, 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 emergency, 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 21. Section 81.085, Health and Safety Code, is
14 amended by amending Subsections (a), (b), (c), (e), (f), and (h) and
15 adding Subsection (i) to read as 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 [~~commissioner and of the governing body of each county~~
2 ~~and municipality in the health authority's jurisdiction that has~~
3 ~~territory in the affected area~~].

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

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

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

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

1 fails or refuses to obey a rule, order, or instruction of the
2 department [~~board~~] or an order or instruction of a health authority
3 issued under a department [~~board~~] rule and published during an area
4 quarantine under this section. An offense under this subsection is
5 a felony of the third degree.

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

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

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

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

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

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

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

1 (C) any control measures imposed on the carrier
2 or conveyance, its passengers or crew, or its cargo or any other
3 object on board during the journey.

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

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

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

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

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

27 SECTION 24. Subsection (a), Section 81.089, Health and

1 Safety Code, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 Sec. 161.011. PERMISSION REQUIRED. A person, including an
27 officer or agent of this state or of an instrumentality or political

1 subdivision of this state, may not enter a private residence to
2 conduct a health inspection without first receiving:

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

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

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

12 (d) A justice of the peace may not order a person to perform
13 an autopsy on the body of a deceased person whose death was caused
14 by Asiatic cholera, bubonic plague, typhus fever, or smallpox. A
15 justice of the peace may not order a person to perform an autopsy on
16 the body of a deceased person whose death was caused by a
17 communicable disease designated by order of the commissioner of
18 public health during a public health emergency or disaster under
19 Chapter 418, Government Code.

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

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

25 Before any body, upon which an inquest is authorized by the
26 provisions of this Article, can be lawfully cremated, an autopsy
27 shall be performed thereon as provided in this Article, or a

1 certificate that no autopsy was necessary shall be furnished by the
2 medical examiner. Before any dead body can be lawfully cremated,
3 the owner or operator of the crematory shall demand and be furnished
4 with a certificate, signed by the medical examiner of the county in
5 which the death occurred showing that an autopsy was performed on
6 said body or that no autopsy thereon was necessary. It shall be the
7 duty of the medical examiner to determine whether or not, from all
8 the circumstances surrounding the death, an autopsy is necessary
9 prior to issuing a certificate under the provisions of this
10 section. No autopsy shall be required by the medical examiner as a
11 prerequisite to cremation in case death is caused by the
12 pestilential diseases of Asiatic cholera, bubonic plague, typhus
13 fever, or smallpox. All certificates furnished to the owner or
14 operator of a crematory by any medical examiner, under the terms of
15 this Article, shall be preserved by such owner or operator of such
16 crematory for a period of two years from the date of the cremation
17 of said body. A medical examiner is not required to perform an
18 autopsy on the body of a deceased person whose death was caused by a
19 communicable disease designated by order of the commissioner of
20 public health during a public health emergency or disaster under
21 Chapter 418, Government Code.

22 Sec. 10a. The body of a deceased person shall not be
23 cremated within 48 [~~forty-eight~~] hours after the time of death as
24 indicated on the regular death certificate, unless the death
25 certificate indicates death was caused by the pestilential diseases
26 of Asiatic cholera, bubonic plague, typhus fever, or smallpox, or
27 unless the time requirement is waived in writing by the county

1 medical examiner or, in counties not having a county medical
2 examiner, a justice of the peace. In a disaster or public health
3 emergency under Chapter 418, Government Code, the commissioner of
4 public health by order may designate other communicable diseases
5 for which cremation within 48 hours of the time of death is
6 authorized.

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

8 SECTION 32. (a) The change in law made by this Act to
9 Subsection (h), Section 81.085, and Subsection (a), Section 81.089,
10 Health and Safety Code, apply only to an offense committed on or
11 after the effective date of this Act. For purposes of this section,
12 an offense is committed before the effective date of this Act if any
13 element of the offense occurs before that date.

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