

1-1 By: Janek S.B. No. 355
1-2 (In the Senate - Filed February 4, 2003; February 11, 2003,
1-3 read first time and referred to Committee on Infrastructure
1-4 Development and Security; May 14, 2003, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 9, Nays
1-6 0; May 14, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 355 By: Ogden

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to public health preparedness; providing criminal
1-11 penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subdivisions (2) and (7), Section 81.003, Health
1-14 and Safety Code, are amended to read as follows:

1-15 (2) "Health authority" means:

1-16 (A) a physician appointed as a health authority
1-17 ~~[such]~~ under Chapter 121 (Local Public Health Reorganization Act)
1-18 or the health authority's designee; or

1-19 (B) a physician appointed as a regional director
1-20 under Chapter 121 (Local Public Health Reorganization Act) who
1-21 performs the duties of a health authority or the regional
1-22 director's designee.

1-23 (7) "Public health disaster" means:

1-24 (A) a declaration by the governor of a state of
1-25 disaster; and

1-26 (B) a determination by the commissioner that
1-27 there exists an immediate threat from a communicable disease that:

1-28 (i) poses a high risk of death or serious
1-29 long-term disability to a large number of people; and

1-30 (ii) creates a substantial risk of public
1-31 exposure because of the disease's high level of contagion or the
1-32 method by which the disease is transmitted [~~"Regional director"~~
1-33 ~~means a physician appointed as such under Chapter 121 (Local Public~~
1-34 ~~Health Reorganization Act)].~~

1-35 SECTION 2. Section 81.004, Health and Safety Code, is
1-36 amended by adding Subsection (d) to read as follows:

1-37 (d) A designee of the commissioner may exercise a power
1-38 granted to or perform a duty imposed on the commissioner under this
1-39 chapter except as otherwise required by law.

1-40 SECTION 3. Subsection (d), Section 81.023, Health and
1-41 Safety Code, is transferred to Subchapter A, Chapter 81, Health and
1-42 Safety Code, redesignated as Section 81.011, Health and Safety
1-43 Code, and amended to read as follows:

1-44 Sec. 81.011. REQUEST FOR INFORMATION. [~~(d)~~] In times of
1-45 emergency or epidemic declared by the commissioner, the department
1-46 ~~[board]~~ is authorized to request information pertaining to names,
1-47 dates of birth, and most recent addresses of individuals from the
1-48 driver's license records of the Department of Public Safety for the
1-49 purpose of notification to individuals of the need to receive
1-50 certain immunizations or diagnostic, evaluation, or treatment
1-51 services for suspected communicable diseases.

1-52 SECTION 4. Section 81.041, Health and Safety Code, is
1-53 amended by adding Subsection (f) to read as follows:

1-54 (f) In a public health disaster, the commissioner may
1-55 require reports of communicable diseases or other health conditions
1-56 from providers without board rule or action. The commissioner
1-57 shall issue with a report required under this section appropriate
1-58 instructions for compliance.

1-59 SECTION 5. Subsection (a), Section 81.042, Health and
1-60 Safety Code, is amended to read as follows:

1-61 (a) A report under Subsection (b), (c), or (d) shall be made
1-62 to the local health authority ~~[or, if there is no local health~~
1-63 ~~authority, the regional director].~~

2-1 SECTION 6. Section 81.043, Health and Safety Code, is
 2-2 amended to read as follows:

2-3 Sec. 81.043. RECORDS AND REPORTS OF HEALTH AUTHORITY [~~AND~~
 2-4 ~~REGIONAL DIRECTOR~~]. (a) Each health authority [~~or regional~~
 2-5 ~~director~~] shall keep a record of each case of a reportable disease
 2-6 that is reported to the authority [~~or director~~].

2-7 (b) A health authority [~~or regional director~~] shall report
 2-8 reportable diseases to the department's central office at least as
 2-9 frequently as the interval set by board rule.

2-10 SECTION 7. Section 81.046, Health and Safety Code, is
 2-11 amended by amending Subsection (b) and adding Subsection (f) to
 2-12 read as follows:

2-13 (b) Reports, records, and information relating to cases or
 2-14 suspected cases of diseases or health conditions are not public
 2-15 information under Chapter 552, Government Code, and may not be
 2-16 released or made public on subpoena or otherwise except as provided
 2-17 by Subsections (c), [~~and~~] (d), and (f).

2-18 (f) Reports, records, and information relating to cases or
 2-19 suspected cases of diseases or health conditions may be released to
 2-20 the extent necessary during a public health disaster to law
 2-21 enforcement personnel solely for the purpose of protecting the
 2-22 health or life of the person identified in the report, record, or
 2-23 information. Only the minimum necessary information may be
 2-24 released as determined by the health authority or the department.

2-25 SECTION 8. Section 81.064, Health and Safety Code, is
 2-26 amended by amending Subsection (a) and adding Subsection (c) to
 2-27 read as follows:

2-28 (a) The department or [~~commissioner, the commissioner's~~
 2-29 ~~designee,~~] a health authority [~~, or a health authority's designee~~]
 2-30 may enter at reasonable times and inspect within reasonable limits
 2-31 a public place in the performance of that person's duty to prevent
 2-32 or control the entry into or spread in this state of communicable
 2-33 disease by enforcing this chapter or the rules of the board adopted
 2-34 under this chapter.

2-35 (c) Evidence gathered during an inspection by the
 2-36 department or health authority under this section may not be used in
 2-37 a criminal proceeding other than a proceeding to assess a criminal
 2-38 penalty under this chapter.

2-39 SECTION 9. Section 81.065, Health and Safety Code, is
 2-40 amended to read as follows:

2-41 Sec. 81.065. RIGHT OF ENTRY. (a) For an investigation or
 2-42 inspection, the commissioner, an employee of the department, or a
 2-43 health authority has the right of entry on land or in a building,
 2-44 vehicle, watercraft, or aircraft and the right of access to an
 2-45 individual, animal, or object that is in isolation, detention,
 2-46 restriction, or quarantine instituted by the commissioner, an
 2-47 employee of the department, or a health authority or instituted
 2-48 voluntarily on instructions of a private physician.

2-49 (b) Evidence gathered during an entry by the commissioner,
 2-50 department, or health authority under this section may not be used
 2-51 in a criminal proceeding other than a proceeding to assess a
 2-52 criminal penalty under this chapter.

2-53 SECTION 10. Subsection (a), Section 81.066, Health and
 2-54 Safety Code, is amended to read as follows:

2-55 (a) A person commits an offense if the person knowingly
 2-56 conceals or attempts to conceal from the department [~~board~~], a
 2-57 health authority, or a peace officer, during the course of an
 2-58 investigation under this chapter, the fact that:

2-59 (1) the person has, has been exposed to, or is the
 2-60 carrier of a communicable disease that is a threat to the public
 2-61 health; or

2-62 (2) a minor child or incompetent adult of whom the
 2-63 person is a parent, managing conservator, or guardian has, has been
 2-64 exposed to, or is the carrier of a communicable disease that is a
 2-65 threat to the public health.

2-66 SECTION 11. Subsection (a), Section 81.067, Health and
 2-67 Safety Code, is amended to read as follows:

2-68 (a) A person commits an offense if the person knowingly
 2-69 conceals, removes, or disposes of an infected or contaminated

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

3-4 SECTION 12. Section 81.068, Health and Safety Code, is
 3-5 amended to read as follows:

3-6 Sec. 81.068. REFUSING ENTRY OR INSPECTION; CRIMINAL
 3-7 PENALTY. (a) A person commits an offense if the person knowingly
 3-8 refuses or attempts to refuse entry to the department ~~[board]~~, a
 3-9 health authority, or a peace officer on presentation of a valid
 3-10 search warrant to investigate, inspect, or take samples on premises
 3-11 controlled by the person or by an agent of the person acting on the
 3-12 person's instruction.

3-13 (b) A person commits an offense if the person knowingly
 3-14 refuses or attempts to refuse inspection under Section 81.064 or
 3-15 entry or access under Section 81.065.

3-16 (c) An offense under this section is a Class A misdemeanor.

3-17 SECTION 13. Section 81.082, Health and Safety Code, is
 3-18 amended to read as follows:

3-19 Sec. 81.082. ADMINISTRATION OF CONTROL MEASURES. (a) A
 3-20 health authority has supervisory authority and control over the
 3-21 administration of communicable disease control measures in the
 3-22 health authority's jurisdiction unless specifically preempted by
 3-23 the department ~~[board]~~. Control measures imposed by a health
 3-24 authority must be consistent with, and at least as stringent as, the
 3-25 control measure standards in rules adopted by the board.

3-26 (b) A communicable disease control measure imposed by a
 3-27 health authority in the health authority's jurisdiction may be
 3-28 amended, revised, or revoked by the department ~~[board]~~ if the
 3-29 department ~~[board]~~ finds that the modification is necessary or
 3-30 desirable in the administration of a regional or statewide public
 3-31 health program or policy. A control measure imposed by the
 3-32 department may not be modified or discontinued until the department
 3-33 authorizes the action.

3-34 (c) The control measures may be imposed on an individual,
 3-35 animal, place, or object, as appropriate.

3-36 (d) A declaration of a public health disaster may continue
 3-37 for not more than 30 days. A public health disaster may be renewed
 3-38 one time by the commissioner for an additional 30 days.

3-39 (e) The governor may terminate a declaration of a public
 3-40 health disaster at any time.

3-41 (f) In this section, "control measures" includes:

- 3-42 (1) immunization;
- 3-43 (2) detention;
- 3-44 (3) restriction;
- 3-45 (4) disinfection;
- 3-46 (5) decontamination;
- 3-47 (6) isolation;
- 3-48 (7) quarantine;
- 3-49 (8) disinfestation;
- 3-50 (9) chemoprophylaxis;
- 3-51 (10) preventive therapy;
- 3-52 (11) prevention; and
- 3-53 (12) education.

3-54 SECTION 14. Subsection (e), Section 81.083, Health and
 3-55 Safety Code, is amended to read as follows:

3-56 (e) An individual may be subject to court orders under
 3-57 Subchapter G if the individual is infected or is reasonably
 3-58 suspected of being infected with a communicable disease that
 3-59 presents an immediate threat to the public health and:

3-60 (1) the individual, or the individual's parent, legal
 3-61 guardian, or managing conservator if the individual is a minor,
 3-62 does not comply with the written orders of the department or a
 3-63 health authority under this section; or ~~[and]~~

3-64 (2) a public health disaster exists, regardless of
 3-65 whether the department or health authority has issued a written
 3-66 order and the individual has indicated that the individual will not
 3-67 voluntarily comply with control measures ~~[is infected or is~~
 3-68 ~~reasonably suspected of being infected with a communicable disease~~
 3-69 ~~that presents an immediate threat to the public health].~~

4-1 SECTION 15. Section 81.084, Health and Safety Code, is
 4-2 amended by amending Subsection (b) and adding Subsections (d-1) and
 4-3 (k) to read as follows:

4-4 (b) The department or health authority shall send notice of
 4-5 its action by registered or certified mail or by personal delivery
 4-6 to the person who owns or controls the property. If the property is
 4-7 land or a structure or an animal or other property on the land, the
 4-8 department or health authority shall also post the notice on the
 4-9 land and at a place convenient to the public in ~~[on]~~ the county
 4-10 courthouse ~~[door]~~. If the property is infected or contaminated as a
 4-11 result of a public health disaster, the department or health
 4-12 authority is not required to provide notice under this subsection.

4-13 (d-1) In a public health disaster, the department or health
 4-14 authority by written order may require a person who owns or controls
 4-15 property to impose control measures that are technically feasible
 4-16 to disinfect or decontaminate the property or, if technically
 4-17 feasible control measures are not available, may order the person
 4-18 who owns or controls the property:

4-19 (1) to destroy the property, other than land, in a
 4-20 manner that disinfects or decontaminates the property to prevent
 4-21 the spread of infection or contamination;

4-22 (2) if the property is land, to securely fence the
 4-23 perimeter of the land or any part of the land that is infected or
 4-24 contaminated; or

4-25 (3) to securely seal off an infected or contaminated
 4-26 structure or other property on land to prevent entry into the
 4-27 infected or contaminated area until the department or health
 4-28 authority authorizes entry into the structure or property.

4-29 (k) In a public health disaster, the department or a health
 4-30 authority may impose additional control measures the department or
 4-31 health authority considers necessary and most appropriate to
 4-32 arrest, control, and eradicate the threat to the public health.

4-33 SECTION 16. Subsections (a), (b), (c), (e), (f), and (h),
 4-34 Section 81.085, Health and Safety Code, are amended to read as
 4-35 follows:

4-36 (a) If an outbreak of communicable disease occurs in this
 4-37 state, the commissioner or one or more health authorities may
 4-38 impose an area quarantine coextensive with the area affected. The
 4-39 commissioner may impose an area quarantine, if the commissioner has
 4-40 reasonable cause to believe that individuals or property in the
 4-41 area may be infected or contaminated with a communicable disease,
 4-42 for the period necessary to determine whether an outbreak of
 4-43 communicable disease has occurred. A health authority may impose
 4-44 the quarantine only within the boundaries of the health authority's
 4-45 jurisdiction.

4-46 (b) A health authority may not impose an area quarantine
 4-47 until the authority consults with ~~[and obtains the approval of]~~ the
 4-48 department. A health authority that imposes an area quarantine
 4-49 shall give written notice to and shall consult with ~~[commissioner~~
 4-50 ~~and of]~~ the governing body of each county and municipality in the
 4-51 health authority's jurisdiction that has territory in the affected
 4-52 area as soon as practicable.

4-53 (c) The department may impose additional disease control
 4-54 measures in a quarantine area that the department considers
 4-55 necessary and most appropriate to arrest, control, and eradicate
 4-56 the threat to the public health. Absent preemptive action by the
 4-57 department ~~[board]~~ under this chapter or by the governor under
 4-58 Chapter 418, Government Code (Texas Disaster Act of 1975), a health
 4-59 authority may impose in a quarantine area under the authority's
 4-60 jurisdiction additional disease control measures that the health
 4-61 authority considers necessary and most appropriate to arrest,
 4-62 control, and eradicate the threat to the public health.

4-63 (e) The department or health authority may use all
 4-64 reasonable means of communication to inform persons in the
 4-65 quarantine area of the department's ~~[board's]~~ or health authority's
 4-66 orders and instructions during the period of area quarantine. The
 4-67 department or health authority shall publish at least once each
 4-68 week during the area quarantine period, in a newspaper of general
 4-69 circulation in the area, a notice of the orders or instructions in

5-1 force with a brief explanation of their meaning and effect. Notice
 5-2 by publication is sufficient to inform persons in the area of their
 5-3 rights, duties, and obligations under the orders or instructions.

5-4 (f) The department [~~commissioner~~] or, with the department's
 5-5 [~~commissioner's~~] consent, a health authority may terminate an area
 5-6 quarantine.

5-7 (h) A person commits an offense if the person knowingly
 5-8 fails or refuses to obey a rule, order, or instruction of the
 5-9 department [~~board~~] or an order or instruction of a health authority
 5-10 issued under a department [~~board~~] rule and published during an area
 5-11 quarantine under this section. An offense under this subsection is
 5-12 a felony of the third degree.

5-13 SECTION 17. Subsections (b) and (i), Section 81.086, Health
 5-14 and Safety Code, are amended to read as follows:

5-15 (b) If the department or health authority has reasonable
 5-16 cause to believe that a carrier or conveyance has departed from or
 5-17 traveled through an area infected or contaminated with a
 5-18 communicable disease, the department or health authority may order
 5-19 the owner, operator, or authorized agent in control of the carrier
 5-20 or conveyance to:

5-21 (1) stop the carrier or conveyance at a port of entry
 5-22 or place of first landing or first arrival in this state; and

5-23 (2) provide [~~a statement in a form approved by the~~
 5-24 ~~board that includes information required by board rules, including~~
 5-25 information on passengers and cargo manifests[, and] that includes
 5-26 the details of:

5-27 (A) any illness suspected of being communicable
 5-28 that occurred during the journey;

5-29 (B) any condition on board the carrier or
 5-30 conveyance during the journey that may lead to the spread of
 5-31 disease; and

5-32 (C) any control measures imposed on the carrier
 5-33 or conveyance, its passengers or crew, or its cargo or any other
 5-34 object on board during the journey.

5-35 (i) The department or health authority may require an
 5-36 individual transported by carrier or conveyance who the department
 5-37 or health authority has reasonable cause to believe has been
 5-38 exposed to or is the carrier of a communicable disease to be
 5-39 isolated from other travelers and to disembark with the
 5-40 individual's personal effects and baggage at the first location
 5-41 equipped with adequate investigative and disease control
 5-42 facilities, whether the person is in transit through this state or
 5-43 to an intermediate or ultimate destination in this state. The
 5-44 department or health authority may investigate and, if necessary,
 5-45 isolate or involuntarily hospitalize the individual until the
 5-46 department or health authority approves the discharge as authorized
 5-47 by Section 81.083 [~~81.084~~].

5-48 SECTION 18. Subsection (a), Section 81.088, Health and
 5-49 Safety Code, is amended to read as follows:

5-50 (a) A person commits an offense if the person knowingly or
 5-51 intentionally:

5-52 (1) removes, alters, or attempts to remove or alter an
 5-53 object the person knows is a quarantine device, notice, or security
 5-54 item in a manner that diminishes the [~~device's~~] effectiveness of
 5-55 the device, notice, or item; or

5-56 (2) destroys an object the person knows is a
 5-57 quarantine device, notice, or security item.

5-58 SECTION 19. Subsection (a), Section 81.089, Health and
 5-59 Safety Code, is amended to read as follows:

5-60 (a) A person commits an offense if, before notifying the
 5-61 department [~~board~~] or health authority at a port of entry or a place
 5-62 of first landing or first arrival in this state, the person
 5-63 knowingly or intentionally:

5-64 (1) transports or causes to be transported into this
 5-65 state an object the person knows or suspects may be infected or
 5-66 contaminated with a communicable disease that is a threat to the
 5-67 public health;

5-68 (2) transports or causes to be transported into this
 5-69 state an individual who the person knows has or is the carrier of a

6-1 communicable disease that is a threat to the public health; or
 6-2 (3) transports or causes to be transported into this
 6-3 state a person, animal, or object in a private or common carrier or
 6-4 a private conveyance that the person knows is or suspects may be
 6-5 infected or contaminated with a communicable disease that is a
 6-6 threat to the public health.

6-7 SECTION 20. Subsection (d), Section 81.151, Health and
 6-8 Safety Code, is amended to read as follows:

6-9 (d) A copy of written orders made under Section 81.083, if
 6-10 applicable, and a medical evaluation must be filed with the
 6-11 application, except that a copy of the written orders need not be
 6-12 filed with an application for outpatient treatment.

6-13 SECTION 21. Subsection (c), Section 81.152, Health and
 6-14 Safety Code, is amended to read as follows:

6-15 (c) Any application must contain the following information
 6-16 according to the applicant's information and belief:

6-17 (1) the person's name and address;

6-18 (2) the person's county of residence in this state;

6-19 (3) a statement that the person is infected with or is
 6-20 reasonably suspected of being infected with a communicable disease
 6-21 that presents a threat to public health and that the person meets
 6-22 the criteria of this chapter for court orders for the management of
 6-23 a person with a communicable disease; and

6-24 (4) a statement, to be included only in an application
 6-25 for inpatient treatment, that the person fails or refuses to comply
 6-26 with written orders of the department or health authority under
 6-27 Section 81.083, if applicable.

6-28 SECTION 22. Subsection (a), Section 81.162, Health and
 6-29 Safety Code, is amended to read as follows:

6-30 (a) The judge or designated magistrate may issue a
 6-31 protective custody order if the judge or magistrate determines:

6-32 (1) that the health authority or department has stated
 6-33 its opinion and the detailed basis for its opinion that the person
 6-34 is infected with or is reasonably suspected of being infected with a
 6-35 communicable disease that presents an immediate threat to the
 6-36 public health; and

6-37 (2) that the person fails or refuses to comply with the
 6-38 written orders of the health authority or the department under
 6-39 Section 81.083, if applicable.

6-40 SECTION 23. Section 161.011, Health and Safety Code, is
 6-41 amended to read as follows:

6-42 Sec. 161.011. PERMISSION REQUIRED. A person, including an
 6-43 officer or agent of this state or of an instrumentality or political
 6-44 subdivision of this state, may not enter a private residence to
 6-45 conduct a health inspection without first receiving:

6-46 (1) permission obtained from a lawful adult occupant
 6-47 of the residence; or

6-48 (2) an authorization to inspect the residence for a
 6-49 specific public health purpose by a magistrate or by an order of a
 6-50 court of competent jurisdiction on a showing of a probable
 6-51 violation of a state health law, a control measure under Chapter 81,
 6-52 or a health ordinance of a political subdivision.

6-53 SECTION 24. Subsection (d), Article 49.10, Code of Criminal
 6-54 Procedure, is amended to read as follows:

6-55 (d) A justice of the peace may not order a person to perform
 6-56 an autopsy on the body of a deceased person whose death was caused
 6-57 by Asiatic cholera, bubonic plague, typhus fever, or smallpox. A
 6-58 justice of the peace may not order a person to perform an autopsy on
 6-59 the body of a deceased person whose death was caused by a
 6-60 communicable disease during a public health disaster.

6-61 SECTION 25. Sections 10 and 10a, Article 49.25, Code of
 6-62 Criminal Procedure, are amended to read as follows:

6-63 Sec. 10. When a body upon which an inquest ought to have
 6-64 been held has been interred, the medical examiner may cause it to be
 6-65 disinterred for the purpose of holding such inquest.

6-66 Before any body, upon which an inquest is authorized by the
 6-67 provisions of this Article, can be lawfully cremated, an autopsy
 6-68 shall be performed thereon as provided in this Article, or a
 6-69 certificate that no autopsy was necessary shall be furnished by the

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

7-19 Sec. 10a. The body of a deceased person shall not be
 7-20 cremated within 48 [~~forty-eight~~] hours after the time of death as
 7-21 indicated on the regular death certificate, unless the death
 7-22 certificate indicates death was caused by the pestilential diseases
 7-23 of Asiatic cholera, bubonic plague, typhus fever, or smallpox, or
 7-24 unless the time requirement is waived in writing by the county
 7-25 medical examiner or, in counties not having a county medical
 7-26 examiner, a justice of the peace. In a public health disaster, the
 7-27 commissioner of public health may designate other communicable
 7-28 diseases for which cremation within 48 hours of the time of death is
 7-29 authorized.

7-30 SECTION 26. This Act takes effect September 1, 2003.

7-31 * * * * *