

By: Janek

S.B. No. 810

A BILL TO BE ENTITLED

AN ACT

1
2 relating to control measures and court orders for management of
3 persons with communicable diseases.

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

5 SECTION 1. Section 81.082, Health and Safety Code, is
6 amended by adding Subsection (c-1) to read as follows:

7 (c-1) A health authority may designate health care
8 facilities within the health authority's jurisdiction that are
9 capable of providing services for the examination, observation,
10 quarantine, isolation, treatment, or imposition of control
11 measures during a public health disaster or during an area
12 quarantine under Section 81.085. A health authority may not
13 designate a nursing home or other institution licensed under
14 Chapter 242.

15 SECTION 2. Section 81.083, Health and Safety Code, is
16 amended by adding Subsections (k) and (l) to read as follows:

17 (k) If the department or a health authority has reasonable
18 cause to believe that a group of five or more individuals has been
19 exposed to or infected with a communicable disease, the department
20 or health authority may order the members of the group to implement
21 control measures that are reasonable and necessary to prevent the
22 introduction, transmission, and spread of the disease in this
23 state. If the department or health authority adopts control
24 measures under this subsection, each member of the group is subject

1 to the requirements of this section.

2 (1) An order under Subsection (k) must be in writing and be
3 delivered personally or by registered or certified mail to each
4 member of the group, or the member's parent, legal guardian, or
5 managing conservator if the member is a minor. If the name,
6 address, and county of residence of any member of the group is
7 unknown at the time the order is issued, the department or health
8 authority must publish notice in a newspaper of general circulation
9 in the county that includes the area of the suspected exposure and
10 any other county in which the department or health authority
11 suspects a member of the group resides. The notice must contain the
12 following information:

13 (1) that the department or health authority has
14 reasonable cause to believe that a group of individuals is ill with,
15 has been exposed to, or is the carrier of a communicable disease;

16 (2) the suspected time and place of exposure to the
17 disease;

18 (3) a copy of any orders under Subsection (k);

19 (4) instructions to an individual to provide the
20 individual's name, address, and county of residence to the
21 department or health authority if the individual knows or
22 reasonably suspects that the individual was at the place of the
23 suspected exposure at the time of the suspected exposure;

24 (5) that the department or health authority may
25 request that an application for court orders under Subchapter G be
26 filed for the group, if applicable; and

27 (6) that a criminal penalty applies to an individual

1 who:

2 (A) is a member of the group; and

3 (B) knowingly refuses to perform or allow the
4 performance of the control measures in the order.

5 SECTION 3. Section 81.151, Health and Safety Code, is
6 amended by adding Subsection (e) to read as follows:

7 (e) A single application may be filed for a group if:

8 (1) the department or health authority reasonably
9 suspects that a group of five or more persons has been exposed to or
10 infected with a communicable disease; and

11 (2) each person in the group meets the criteria of this
12 chapter for court orders for the management of a person with a
13 communicable disease.

14 SECTION 4. Subchapter G, Chapter 81, Health and Safety
15 Code, is amended by adding Section 81.1511 to read as follows:

16 Sec. 81.1511. APPLICABILITY OF SUBCHAPTER TO GROUP. To the
17 extent possible, and except as otherwise provided, if a group
18 application is filed under Section 81.151(e), the provisions of
19 this subchapter apply to the group in the same manner as they apply
20 to an individual, except that:

21 (1) except as provided by Subdivision (2), any
22 statement or determination regarding the conduct or status of a
23 person must be made in regard to the majority of the members of the
24 group;

25 (2) any finding or statement related to compliance
26 with orders under Section 81.083 must be made for the entire group;

27 (3) any notice required to be provided to a person

1 must:

2 (A) in addition to being sent to each individual
3 in the group for whom the department or health authority has an
4 address, be published in a newspaper of general circulation in the
5 county that includes the area of the suspected contamination and
6 any other county in which the department or health authority
7 suspects a member of the group resides;

8 (B) state that the group is appointed an attorney
9 but that a member of the group is entitled to the member's own
10 attorney on request; and

11 (C) include instructions for any person who
12 reasonably suspects that the person was at the place of the
13 suspected exposure at the time of the suspected exposure to provide
14 the person's name, address, and county of residence to the
15 department or health authority; and

16 (4) an affidavit of medical evaluation for the group
17 may be based on evaluation of one or more members of the group if the
18 physician reasonably believes that the condition of the individual
19 or individuals represents the condition of the majority of the
20 members of the group.

21 SECTION 5. Section 81.152, Health and Safety Code, is
22 amended by adding Subsection (d) to read as follows:

23 (d) A group application must contain the following
24 information according to the applicant's information and belief:

25 (1) a description of the group and the location where
26 the members of the group may be found;

27 (2) a narrative of how the group has been exposed or

1 infected;

2 (3) an estimate of how many persons are included in the
3 group;

4 (4) to the extent known, a list containing the name,
5 address, and county of residence in this state of each member of the
6 group;

7 (5) if the applicant is unable to obtain the name and
8 address of each member of the group:

9 (A) a statement that the applicant has sought
10 each of the unknown names and addresses; and

11 (B) the reason that the names and addresses are
12 unavailable; and

13 (6) a statement, to be included only in an application
14 for inpatient treatment, that the members of the group fail or
15 refuse to comply with written orders of the department or health
16 authority under Section 81.083, if applicable.

17 SECTION 6. Subchapter G, Chapter 81, Health and Safety
18 Code, is amended by adding Section 81.1531 to read as follows:

19 Sec. 81.1531. APPOINTMENT OF ATTORNEY FOR GROUP. (a) A
20 judge shall appoint an attorney to represent a group identified in a
21 group application under Section 81.151(e) and shall appoint an
22 attorney for each person who is listed in the application if
23 requested by a person in the group who does not have an attorney.

24 (b) To the extent possible, the provisions of this chapter
25 that apply to an individual's attorney apply to a group's attorney.

26 SECTION 7. Subsection (a), Section 81.159, Health and
27 Safety Code, is amended to read as follows:

1 (a) The commissioner shall designate health care facilities
2 throughout the state that are capable of providing services for the
3 examination, observation, isolation, or treatment of persons
4 having or suspected of having a communicable disease. However, the
5 commissioner may not designate:

6 (1) a nursing home or custodial care home required to
7 be licensed under Chapter 242; or

8 (2) an intermediate care facility for the mentally
9 retarded required to be licensed under Chapter 252.

10 SECTION 8. Section 81.162, Health and Safety Code, is
11 amended by adding Subsections (f) and (g) to read as follows:

12 (f) Notwithstanding Section 81.161 or Subsection (c), a
13 judge or magistrate may issue a temporary protective custody order
14 before the filing of an application for a court order for the
15 management of a person with a communicable disease under Section
16 81.151 if:

17 (1) the judge or magistrate takes testimony that an
18 application under Section 81.151, together with a motion for
19 protective custody under Section 81.161, will be filed with the
20 court on the next business day; and

21 (2) the judge or magistrate determines based on
22 evidence taken under Subsection (d) that there is probable cause to
23 believe that the person presents a substantial risk of serious harm
24 to himself or others to the extent that the person cannot be at
25 liberty pending the filing of the application and motion.

26 (g) A temporary protective custody order issued under
27 Subsection (f) may continue only until 4 p.m. on the first business

1 day after the date the order is issued unless the application for a
2 court order for the management of a person with a communicable
3 disease and a motion for protective custody, as described by
4 Subsection (f)(1), are filed at or before that time. If the
5 application and motion are filed at or before 4 p.m. on the first
6 business day after the date the order is issued, the temporary
7 protective custody order may continue for the period reasonably
8 necessary for the court to rule on the motion for protective
9 custody.

10 SECTION 9. Subsections (b) and (d), Section 81.165, Health
11 and Safety Code, are amended to read as follows:

12 (b) The hearing must be held not later than 72 hours after
13 the time that the person was detained under the protective custody
14 order. If the period ends on a Saturday, Sunday, or legal holiday,
15 the hearing must be held on the next day that is not a Saturday,
16 Sunday, or legal holiday. The judge or magistrate may postpone the
17 hearing for an additional 24 hours if the judge or magistrate
18 declares that an extreme emergency exists because of extremely
19 hazardous weather conditions that threaten the safety of the person
20 or another essential party to the hearing. If the area in which the
21 person is found, or the area where the hearing will be held, is
22 under a public health disaster, the judge or magistrate may
23 postpone the hearing until the period of disaster is ended.

24 (d) The person and his attorney shall have an opportunity at
25 the hearing to appear and present evidence to challenge the
26 allegation that the person presents a substantial risk of serious
27 harm to himself or others. If the health authority advises the

1 court that the person must remain in isolation or quarantine and
2 that exposure to the judge, jurors, or the public would jeopardize
3 the health and safety of those persons and the public health, a
4 magistrate or a master may order that a person entitled to a hearing
5 for a protective custody order may not appear in person and may
6 appear only by teleconference or another means the magistrate or
7 master finds appropriate to allow the person to speak, to interact
8 with witnesses, and to confer with the person's attorney.

9 SECTION 10. Subsections (b) and (c), Section 81.167, Health
10 and Safety Code, are amended to read as follows:

11 (b) A person under a protective custody order shall be
12 detained in an appropriate inpatient health facility that has been
13 designated by the commissioner or by a health authority and
14 selected by the health authority under Section 81.159.

15 (c) A person under a protective custody order may be
16 detained in a nonmedical facility used to detain persons who are
17 charged with or convicted of a crime only with the consent of the
18 medical director of the facility and only if the facility has
19 respiratory isolation capability for airborne communicable
20 diseases. The person may not be detained in a nonmedical facility
21 under this subsection for longer than 72 hours, excluding
22 Saturdays, Sundays, legal holidays, ~~and~~ the period prescribed by
23 Section 81.165(b) for an extreme weather emergency, and the
24 duration of a public health disaster. The person must be isolated
25 from any person who is charged with or convicted of a crime.

26 SECTION 11. Subsection (c), Section 81.168, Health and
27 Safety Code, is amended to read as follows:

1 (c) The head of a facility shall discharge a person held
2 under a protective custody order if:

3 (1) the head of the facility does not receive notice
4 within 72 hours after detention begins, excluding Saturdays,
5 Sundays, legal holidays, ~~and~~ the period prescribed by Section
6 81.165(b) for an extreme weather emergency, and the duration of a
7 public health disaster, that a probable cause hearing was held and
8 the person's continued detention was authorized;

9 (2) a final court order for the management of a person
10 with a communicable disease has not been entered within the time
11 prescribed by Section 81.154; or

12 (3) the health authority or commissioner determines
13 that the person no longer meets the criteria for protective custody
14 prescribed by Section 81.162.

15 SECTION 12. Section 81.169, Health and Safety Code, is
16 amended by adding Subsection (i) to read as follows:

17 (i) Notwithstanding Subsection (d), if the health authority
18 advises the court that the person must remain in isolation or
19 quarantine and that exposure to the judge, jurors, or the public
20 would jeopardize the health and safety of those persons and the
21 public health, a judge may order that a person entitled to a hearing
22 may not appear in person and may appear only by teleconference or
23 another means that the judge finds appropriate to allow the person
24 to speak, to interact with witnesses, and to confer with the
25 person's attorney.

26 SECTION 13. Section 81.176, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 81.176. DESIGNATION OF FACILITY. In a court order for
2 the temporary or extended management of a person with a
3 communicable disease specifying inpatient care, the court shall
4 commit the person to a health care facility designated by the
5 commissioner or a health authority in accordance with Section
6 81.159.

7 SECTION 14. Section 81.177, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 81.177. COMMITMENT TO PRIVATE FACILITY. (a) The
10 court may order a person committed to a private health care facility
11 at no expense to the state if the court receives:

12 (1) an application signed by the person or the person's
13 guardian or next friend requesting that the person be placed in a
14 designated private health care facility at the person's or
15 applicant's expense; and

16 (2) a written agreement from the head of the private
17 health care facility to admit the person and to accept
18 responsibility for the person in accordance with this chapter.

19 (b) Notwithstanding Subsection (a) and Section 81.175(e),
20 the court may order a person committed to a private health care
21 facility at no expense to the state, a county, a municipality, or a
22 hospital district if:

23 (1) a state of disaster or a public health disaster has
24 been declared or an area quarantine is imposed under Section
25 81.085;

26 (2) the health care facility is located within the
27 disaster area or area quarantine, as applicable; and

1 (3) the judge determines that there is no public
2 health care facility within the disaster area or area quarantine,
3 as applicable, that has appropriate facilities and the capacity
4 available to receive and treat the person.

5 (c) The head of the private facility designated under
6 Subsection (b) shall accept responsibility with respect to the
7 person who is committed to that facility.

8 SECTION 15. This Act takes effect immediately if it
9 receives a vote of two-thirds of all the members elected to each
10 house, as provided by Section 39, Article III, Texas Constitution.
11 If this Act does not receive the vote necessary for immediate
12 effect, this Act takes effect September 1, 2007.