

By: Hopson

H.B. No. 3667

A BILL TO BE ENTITLED

AN ACT

relating to allowing health care providers to provide services across state lines in catastrophic circumstances.

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

SECTION 1. Subtitle A, Title 3, Occupations Code, is amended by adding Chapter 116 to read as follows:

CHAPTER 116. HEALTH OR VETERINARY SERVICES PROVIDED IN CATASTROPHIC CIRCUMSTANCES

Sec. 116.001. SHORT TITLE. This chapter may be cited as the Uniform Emergency Volunteer Health Practitioners Act.

Sec. 116.002. DEFINITIONS. In this chapter:

(1) "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and that:

(A) is designated or recognized as a provider of those services under a disaster response and recovery plan adopted by an agency of the federal government or the division; or

(B) regularly plans and conducts its activities in coordination with an agency of the federal government or the division.

(2) "Division" has the meaning assigned by Section 418.004, Government Code.

(3) "Emergency" means an event or condition that is a

1 disaster as defined by Section 418.004, Government Code.

2 (4) "Emergency declaration" means a declaration of
3 emergency issued by a person authorized to do so under the laws of
4 this state, a political subdivision of this state, or a
5 municipality or other local government within this state.

6 (5) "Emergency Management Assistance Compact" means
7 the interstate compact approved by Congress (Pub. L. No. 104-321)
8 as provided by Chapter 778, Health and Safety Code.

9 (6) "Entity" means a person other than an individual.

10 (7) "Health facility" means an entity licensed under
11 the laws of this or another state to provide health or veterinary
12 services.

13 (8) "Health practitioner" means an individual
14 licensed under the laws of this or another state to provide health
15 or veterinary services.

16 (9) "Health services" means the provision of
17 treatment, care, advice or guidance, or other services or supplies
18 related to the health or death of individuals or human populations,
19 to the extent necessary to respond to an emergency, including:

20 (A) with respect to the physical or mental
21 condition or functional status of an individual or the structure or
22 function of the body:

23 (i) preventive, diagnostic, therapeutic,
24 rehabilitative, maintenance, or palliative care; and

25 (ii) counseling and assessment procedures
26 or other related services;

27 (B) the sale or dispensing of a drug, a device,

1 equipment, or another item to an individual in accordance with a
2 prescription; and

3 (C) funeral, cremation, cemetery, or other
4 mortuary services.

5 (10) "Host entity" means an entity operating in this
6 state that uses volunteer health practitioners to respond to an
7 emergency.

8 (11) "License" means an authorization by a state
9 agency to engage in health or veterinary services that are unlawful
10 without the authorization. The term includes authorization under
11 the laws of this state to an individual to provide health or
12 veterinary services based on a national certification issued by a
13 public or private entity.

14 (12) "Scope of practice" means the extent of the
15 authorization to provide health or veterinary services granted to a
16 health practitioner by a license issued to the practitioner in the
17 state in which the principal part of the practitioner's services
18 are rendered, including any conditions imposed by the licensing
19 authority.

20 (13) "Veterinary services" means the provision of
21 treatment, care, advice or guidance, or other services or supplies
22 related to the health or death of an animal or to animal
23 populations, to the extent necessary to respond to an emergency,
24 including:

25 (A) diagnosis, treatment, or prevention of an
26 animal disease, injury, or other physical or mental condition by
27 the prescription, administration, or dispensing of a vaccine, a

1 drug, surgery, or therapy;

2 (B) use of a procedure for reproductive
3 management; and

4 (C) monitoring and treatment of animal
5 populations for diseases that have spread or demonstrate the
6 potential to spread to humans.

7 (14) "Volunteer health practitioner" means a health
8 practitioner who provides health or veterinary services,
9 regardless of whether for compensation. The term does not include a
10 practitioner who receives compensation under a preexisting
11 employment relationship with a host entity or affiliate that
12 requires the practitioner to provide health services in this state,
13 unless the practitioner is not a resident of this state and is
14 employed by a disaster relief organization providing services in
15 this state while an emergency declaration is in effect.

16 Sec. 116.003. APPLICABILITY TO VOLUNTEER HEALTH
17 PRACTITIONERS. This chapter applies to volunteer health
18 practitioners who are registered with a system that complies with
19 Section 116.005 and who provide health or veterinary services in
20 this state for a host entity while an emergency declaration is in
21 effect.

22 Sec. 116.004. REGULATION OF SERVICES DURING EMERGENCY. (a)
23 While an emergency declaration is in effect, the division may
24 limit, restrict, or otherwise regulate:

25 (1) the duration of practice by volunteer health
26 practitioners;

27 (2) the geographical areas in which volunteer health

1 practitioners may practice;

2 (3) the types of volunteer health practitioners who
3 may practice; and

4 (4) any other matters necessary to coordinate
5 effectively the provision of health or veterinary services during
6 the emergency.

7 (b) An order issued under Subsection (a) may take effect
8 immediately, without prior notice or comment, and is not a rule
9 within the meaning of Chapter 2001, Government Code.

10 (c) A host entity that uses volunteer health practitioners
11 to provide health or veterinary services in this state shall:

12 (1) consult and coordinate its activities with the
13 division to the extent practicable to provide for the efficient and
14 effective use of volunteer health practitioners; and

15 (2) comply with laws in addition to this chapter
16 relating to the management of emergency health or veterinary
17 services.

18 Sec. 116.005. VOLUNTEER HEALTH PRACTITIONER REGISTRATION
19 SYSTEMS. (a) To qualify as a volunteer health practitioner
20 registration system, a system must:

21 (1) accept applications for the registration of
22 volunteer health practitioners before or during an emergency;

23 (2) include information about the licensing and good
24 standing of health practitioners that is accessible by authorized
25 persons;

26 (3) be capable of confirming whether a health
27 practitioner is licensed and in good standing before health or

1 veterinary services are provided by the practitioner under this
2 chapter; and

3 (4) meet one of the following conditions:

4 (A) be an emergency system for advance
5 registration of volunteer health care practitioners established by
6 a state and funded through the United States Department of Health
7 and Human Services under Section 319I, Public Health Service Act
8 (42 U.S.C. Section 247d-7b);

9 (B) be a local unit consisting of trained and
10 equipped emergency response, public health, and medical personnel
11 formed under Section 2801, Public Health Service Act (42 U.S.C.
12 Section 300hh);

13 (C) be operated by a:

14 (i) disaster relief organization;

15 (ii) licensing board;

16 (iii) national or regional association of
17 licensing boards or health practitioners;

18 (iv) health facility that provides
19 comprehensive inpatient and outpatient health care services,
20 including a tertiary care and teaching hospital; or

21 (v) governmental entity; or

22 (D) be designated by the division as a
23 registration system for purposes of this chapter.

24 (b) While an emergency declaration is in effect, the
25 division, a person authorized to act on behalf of the division, or a
26 host entity may confirm whether volunteer health practitioners used
27 in this state are registered with a registration system that

1 complies with Subsection (a). Confirmation is limited to obtaining
2 the identity of the practitioners from the system and determining
3 whether the system indicates that the practitioners are licensed
4 and in good standing.

5 (c) On request by a person in this state authorized under
6 Subsection (b) or a similarly authorized person in another state, a
7 registration system located in this state shall notify the person
8 of the identity of volunteer health practitioners and whether the
9 practitioners are licensed and in good standing.

10 (d) A host entity is not required to use the services of a
11 volunteer health practitioner even if the practitioner is
12 registered with a registration system that indicates that the
13 practitioner is licensed and in good standing.

14 Sec. 116.006. RECOGNITION OF VOLUNTEER HEALTH
15 PRACTITIONERS LICENSED IN OTHER STATES. (a) While an emergency
16 declaration is in effect, a volunteer health practitioner
17 registered with a registration system that complies with Section
18 116.005 who is licensed and in good standing in another state may
19 practice in this state to the extent authorized by this chapter as
20 if the practitioner were licensed in this state.

21 (b) A volunteer health practitioner qualified under
22 Subsection (a) is not entitled to the protections of this chapter if
23 the practitioner is licensed in more than one state and any license
24 of the practitioner is suspended, revoked, or subject to an agency
25 order limiting or restricting practice privileges or has been
26 voluntarily terminated under threat of sanction.

27 Sec. 116.007. NO EFFECT ON CREDENTIALING AND PRIVILEGING.

1 (a) In this section:

2 (1) "Credentialing" means obtaining, verifying, and
3 assessing the qualifications of a health practitioner to provide
4 treatment, care, or services in or for a health facility.

5 (2) "Privileging" means the authorizing by an
6 appropriate authority, such as a governing body, of a health
7 practitioner to provide specific treatment, care, or services at a
8 health facility subject to limits based on factors that include
9 license, education, training, experience, competence, health
10 status, and specialized skill.

11 (b) This chapter does not affect credentialing or
12 privileging standards of a health facility and does not preclude a
13 health facility from waiving or modifying those standards while an
14 emergency declaration is in effect.

15 Sec. 116.008. PROVISION OF VOLUNTEER HEALTH OR VETERINARY
16 SERVICES; ADMINISTRATIVE SANCTIONS. (a) Subject to Subsections (b)
17 and (c), a volunteer health practitioner shall adhere to the scope
18 of practice for a similarly licensed practitioner established by
19 the licensing provisions or other laws of this state.

20 (b) Except as otherwise provided by Subsection (c), this
21 chapter does not authorize a volunteer health practitioner to
22 provide a service that is outside the practitioner's scope of
23 practice, even if a similarly licensed practitioner in this state
24 would be permitted to provide the service.

25 (c) The division may modify or restrict the health or
26 veterinary services that a volunteer health practitioner may
27 provide under this chapter. An order under this subsection may take

1 effect immediately, without prior notice or comment, and is not a
2 rule within the meaning of Chapter 2001, Government Code.

3 (d) A host entity may restrict the health or veterinary
4 services that a volunteer health practitioner may provide under
5 this chapter.

6 (e) A volunteer health practitioner does not engage in
7 unauthorized practice unless the practitioner has reason to know of
8 any limitation, modification, or restriction under this section or
9 that a similarly licensed practitioner in this state would not be
10 permitted to provide the service. A volunteer health practitioner
11 has reason to know of a limitation, modification, or restriction or
12 that a similarly licensed practitioner in this state would not be
13 permitted to provide a service if:

14 (1) the practitioner knows the limitation,
15 modification, or restriction exists or that a similarly licensed
16 practitioner in this state would not be permitted to provide the
17 service; or

18 (2) from all the facts and circumstances known to the
19 practitioner at the relevant time, a reasonable person would
20 conclude that the limitation, modification, or restriction exists
21 or that a similarly licensed practitioner in this state would not be
22 permitted to provide the service.

23 (f) In addition to the authority granted by the law of this
24 state other than this chapter to regulate the conduct of health
25 practitioners, a licensing board or other disciplinary authority in
26 this state:

27 (1) may impose administrative sanctions on a health

1 practitioner licensed in this state for conduct outside of this
2 state in response to an out-of-state emergency;

3 (2) may impose administrative sanctions on a
4 practitioner not licensed in this state for conduct in this state in
5 response to an in-state emergency; and

6 (3) shall report any administrative sanction imposed
7 on a practitioner licensed in another state to the appropriate
8 licensing board or other disciplinary authority in any other state
9 in which the practitioner is known to be licensed.

10 (g) In determining whether to impose an administrative
11 sanction under Subsection (f), a licensing board or other
12 disciplinary authority shall consider the circumstances in which
13 the conduct took place, including any exigent circumstances, and
14 the practitioner's scope of practice, education, training,
15 experience, and specialized skill.

16 Sec. 116.009. RELATION TO OTHER LAWS. (a) This chapter does
17 not limit rights, privileges, or immunities provided to volunteer
18 health practitioners by laws other than this chapter. Except as
19 otherwise provided by Subsection (b), this chapter does not affect
20 requirements for the use of health practitioners under the
21 Emergency Management Assistance Compact.

22 (b) The division, under the Emergency Management Assistance
23 Compact, may incorporate into the emergency forces of this state
24 volunteer health practitioners who are not officers or employees of
25 this state or a political subdivision of this state.

26 Sec. 116.010. REGULATORY AUTHORITY. The division may adopt
27 rules to implement this chapter. In adopting rules, the division

1 shall consult with and consider the recommendations of the entity
2 established to coordinate the implementation of the Emergency
3 Management Assistance Compact and shall consult with and consider
4 rules adopted by similarly empowered agencies in other states to
5 promote uniformity in the application of this chapter and to make
6 the emergency response systems in the various states reasonably
7 compatible.

8 Sec. 116.011. LIMITATIONS ON CIVIL LIABILITY FOR VOLUNTEER
9 HEALTH PRACTITIONERS. (a) Subject to Subsection (c), a volunteer
10 health practitioner who provides health or veterinary services
11 under this chapter is not liable for damages for an act or omission
12 of the practitioner in providing those services.

13 (b) A person is not vicariously liable for damages for an
14 act or omission of a volunteer health practitioner if the
15 practitioner is not liable for the damages under Subsection (a).

16 (c) This section does not limit the liability of a volunteer
17 health practitioner for:

18 (1) wilful misconduct or wanton, grossly negligent,
19 reckless, or criminal conduct;

20 (2) an intentional tort;

21 (3) breach of contract;

22 (4) a claim asserted by a host entity or by an entity
23 located in this or another state that employs or uses the services
24 of the practitioner; or

25 (5) an act or omission relating to the operation of a
26 motor vehicle, vessel, aircraft, or other vehicle.

27 (d) A person who operates, uses, or relies on information

1 provided by a volunteer health practitioner registration system
2 under this chapter is not liable for damages for an act or omission
3 relating to that operation, use, or reliance unless the act or
4 omission is an intentional tort or is wilful misconduct or wanton,
5 grossly negligent, reckless, or criminal conduct.

6 Sec. 116.012. WORKERS' COMPENSATION COVERAGE. (a) In this
7 section, "injury" means a physical or mental injury or disease for
8 which an employee of this state who is injured or contracts the
9 disease in the course of the employee's employment would be
10 entitled to benefits under the workers' compensation law of this
11 state.

12 (b) A volunteer health practitioner who dies or is injured
13 as the result of providing health or veterinary services under this
14 chapter is considered an employee of this state for the purpose of
15 receiving benefits for the death or injury under the workers'
16 compensation law of this state if:

17 (1) the practitioner is not otherwise eligible for
18 such benefits for the injury or death under the law of this or
19 another state; and

20 (2) the practitioner, or in the case of death the
21 practitioner's personal representative, elects coverage under the
22 workers' compensation law of this state by making a claim under that
23 law.

24 (c) The commissioner of workers' compensation shall adopt
25 rules, enter into agreements with other states, or take other
26 measures to facilitate the receipt of benefits for injury or death
27 under the workers' compensation law of this state by volunteer

1 health practitioners who reside in other states, and may waive or
2 modify requirements for filing, processing, and paying claims that
3 unreasonably burden the practitioners.

4 (d) To promote uniformity of application of this chapter
5 with other states that enact similar legislation, the commissioner
6 of workers' compensation shall consult with and consider the
7 practices for filing, processing, and paying claims by agencies
8 with similar authority in other states.

9 SECTION 2. In applying and construing Chapter 116,
10 Occupations Code, as added by this Act, a court or governmental
11 entity shall take into consideration the need to promote uniformity
12 of the law with respect to the subject matter of this Act among
13 states that enact similar uniform laws.

14 SECTION 3. This Act takes effect September 1, 2009.