

By: Vasut

H.B. No. 173

A BILL TO BE ENTITLED

AN ACT

relating to state and local government responses to disasters.

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

SECTION 1. Section 418.004, Government Code, is amended by amending Subdivisions (1) and (3) and adding Subdivisions (3-a) and (3-b) to read as follows:

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic emergency, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat or cold, cybersecurity event, [~~other public calamity requiring emergency action~~], or energy emergency.

(3) "Energy emergency" means a temporary statewide, regional, or local shortage of petroleum, natural gas, or liquid fuel energy supplies or electricity generation that makes emergency measures necessary to reduce demand or allocate supply.

(3-a) "Epidemic emergency" means the occurrence or imminent threat of an outbreak of a communicable disease in this state that threatens widespread or severe damage, injury, or loss of life or property in this state resulting from any natural or man-made cause related to the outbreak. An epidemic emergency does

1 not mean the occurrence or imminent threat of an outbreak of an
2 communicable disease for which there is widespread availability of
3 an effective vaccine against infection.

4 (3-b) "Communicable disease" has the meaning assigned
5 by Section 81.003, Health and Safety Code.

6 SECTION 2. Section 418.006, Government Code, is amended to
7 read as follows:

8 Sec. 418.006. CIVIL LIABILITY. (a) An officer or employee
9 of a state or local agency, or a volunteer acting at the direction
10 of an officer or employee of a state or local agency, is considered
11 for purposes of Section 437.222 to be a member of the Texas military
12 forces ordered into active service of the state by proper authority
13 and is considered to be discharging a duty in that capacity if the
14 person is performing an activity related to sheltering or housing
15 individuals in connection with the evacuation of an area stricken
16 or threatened by disaster.

17 (b) A business or an entity operating during a disaster for
18 an epidemic emergency is not liable for an injury caused by exposing
19 or potentially exposing an individual to a disease if on the date of
20 the exposure or potential exposure:

21 (1) the business or entity is authorized to do
22 business in this state; and

23 (2) the act or omission giving rise to the exposure or
24 potential exposure was not wilful, reckless, or grossly negligent.

25 (c) A person who provides goods or renders services during a
26 disaster in support of disaster response efforts and at the request
27 of the governor or the governor's designee is not liable for an

1 injury caused by the goods or services, regardless of the
2 circumstances, so long as the act or omission giving rise to the
3 injury was not wilful, reckless, grossly negligent, or inconsistent
4 with a limit specified in the governor's request.

5 SECTION 3. Subchapter A, Chapter 418, Government Code, is
6 amended by adding Section 418.007 to read as follows:

7 Sec. 418.007. JUDICIAL REVIEW OF DISASTER ORDER. (a) A
8 person has standing to file suit in a court of this state to
9 challenge a provision of an order issued by the governor or the
10 presiding officer of the governing body of a political subdivision
11 that relates to a declared state of disaster if the provision in the
12 order is alleged to cause injury to the person or burden a right of
13 the person that is protected by the state or federal constitution or
14 by a state or federal law.

15 (b) The issuer of the order has the burden of proving the
16 challenged provision in the order:

17 (1) mitigates a threat to the public caused by the
18 disaster; and

19 (2) is the least restrictive means of mitigating the
20 threat.

21 (c) The court shall enter a judgment invalidating the
22 challenged provision in the order if the court finds the issuer of
23 the order has not satisfied the burden imposed under Subsection
24 (b).

25 SECTION 4. Section 418.012, Government Code, is amended to
26 read as follows:

27 Sec. 418.012. EXECUTIVE ORDERS. (a) The [~~Under this~~

1 ~~chapter, the]~~ governor and the presiding officer of a political
2 subdivision may issue executive orders, proclamations, and
3 regulations consistent with the provisions of this chapter and
4 amend or rescind them. [~~Executive orders, proclamations, and~~
5 ~~regulations have the force and effect of law.~~]

6 (b) In the event of a conflict between executive orders,
7 proclamations, or regulations enacted pursuant to this chapter by
8 the governor and a presiding officer of a political subdivision, an
9 executive order, proclamation, or regulation enacted by the
10 governor controls.

11 (c) Unless expressly authorized by statute, the governor
12 and the president officer of a governing body of a political
13 subdivision may not issue an executive order, proclamation, or
14 regulation that:

15 (1) requires a person other than a public employee or
16 licensed professional providing medical services to wear a mask or
17 personal protective equipment during a declared state of disaster;

18 (2) prohibits or limits a person from attending or
19 participating in a religious service or activity;

20 (3) violates Chapter 110, Civil Practice and Remedies
21 Code or the Religious Freedom Restoration Act of 1993 (42 U.S.C.
22 2000bb et seq.);

23 (4) prohibits or limits the sale, dispensing, or
24 transportation of firearms or ammunition;

25 (5) alters any voting standard, practice, or
26 procedure; or

27 (6) restricts the otherwise lawful operation of a

1 business or industry or the activities of an individual by
2 distinguishing between essential and nonessential services
3 provided or obtained by the business, industry, or individual.

4 SECTION 5. Subchapter B, Chapter 418, Government Code, is
5 amended by adding Section 418.0125 to read as follows:

6 Sec. 418.0125. LIMIT ON ASSESSMENT OF FEES. (a) If the
7 governor issues an executive order, proclamation, or regulation
8 during a declared state of disaster that restricts the operation of
9 a business or nonprofit entity or a category of businesses, a
10 business or nonprofit entity whose operation is restricted by the
11 order, proclamation, or regulation may not be assessed any fee,
12 including a licensing fee, by this state during the time the
13 operation of the business or nonprofit entity is restricted by the
14 order, proclamation, or regulation.

15 (b) If a business or nonprofit entity paid an annual fee or
16 other fee in advance to this state for the business's or nonprofit
17 entity's operations, the business or nonprofit entity is entitled
18 to a pro rata refund of the fee for the period of time its operations
19 were restricted by an executive order, proclamation, or regulation
20 of the governor described by Subsection (a).

21 (c) A business or nonprofit entity may opt to have the
22 amount of any refund due under this section credited toward a future
23 fee requirement.

24 SECTION 6. Section 418.014, Government Code, is amended by
25 amending Subsection (c) and adding Subsection (c-1) to read as
26 follows:

27 (c) A state of disaster may not continue for more than 30

1 days unless renewed by the governor. A state of disaster for an
2 epidemic emergency, energy emergency, or any man-made cause
3 affecting more than half the counties of this state may not continue
4 for more than 60 days unless renewed by the legislature. In no case
5 may a state of disaster continue for longer than 180 days unless
6 renewed by the legislature. The legislature [~~by law~~] may terminate
7 a state of disaster at any time. On termination by the legislature,
8 the governor shall issue an executive order ending the state of
9 disaster.

10 (c-1) The governor may not declare a state of disaster based
11 on the same or a substantially similar finding for which a state of
12 disaster was declared under Subsection (a) by the governor within
13 the preceding 12 months.

14 SECTION 7. Section 418.0155, Government Code, is amended to
15 read as follows:

16 Sec. 418.0155. SUSPENSION LIST. (a) The governor's
17 office, using existing resources, shall compile and maintain a
18 comprehensive list of state agency [~~regulatory statutes and~~] rules
19 that may require suspension during a disaster.

20 (b) On request by the governor's office, a state agency that
21 would be impacted by the suspension of a [~~statute or~~] rule on the
22 list compiled under Subsection (a) shall review the list for
23 accuracy and shall advise the governor's office regarding any
24 [~~statutes or~~] rules that should be added to the list.

25 SECTION 8. Section 418.016, Government Code, is amended by
26 amending Subsections (a) and (e) and adding Subsection (a-1) to
27 read as follows:

1 Sec. 418.016. SUSPENSION OF CERTAIN [~~LAWS AND~~] RULES AND
2 REQUIREMENTS; APPLICATION OF CERTAIN CONTRACTING REQUIREMENTS.

3 (a) The governor may not suspend a state agency order or rule
4 except as specifically authorized by this chapter. The governor
5 may suspend [~~the provisions of any regulatory statute prescribing~~
6 ~~the procedures for conduct of state business or~~] the orders or rules
7 of a state agency if strict compliance with the [~~provisions,~~]
8 orders[~~7~~] or rules would in any way prevent, hinder, or delay
9 necessary action or prompt response in coping with a disaster.

10 (a-1) During a state of disaster declared by the governor
11 and notwithstanding any other law, the contracting requirements in
12 Subtitle D, Title 10, that inhibit or prevent prompt response to a
13 disaster do not apply to a state agency in contracting for goods or
14 services related to the declared state of disaster.

15 (e) On request of a political subdivision, the governor may
16 waive or suspend a deadline imposed by [~~a statute or~~] the orders or
17 rules of a state agency on the political subdivision, including a
18 deadline relating to a budget or ad valorem tax, if the waiver or
19 suspension is reasonably necessary to cope with a disaster.

20 SECTION 9. Section 418.019, Government Code, is repealed.

21 SECTION 10. Section 418.020, Government Code, is amended by
22 amending Subsection (c) to read as follows:

23 (c) Under regulations prescribed by the governor, the
24 governor may temporarily suspend or modify for a period of not more
25 than 60 days any public health, safety, zoning, intrastate
26 transportation, or other [~~law or~~] regulation if by proclamation the
27 governor considers the suspension or modification essential to

1 provide temporary housing or emergency shelter for disaster
2 victims.

3 SECTION 11. Section 418.042, Government Code, is amended by
4 amending Subsection (c) to read as follows:

5 (c) All or part of the state emergency management plan may
6 be incorporated into regulations of the division or executive
7 orders [~~that have the force and effect of law~~].

8 SECTION 12. Subchapter E, Chapter 418, Government Code, is
9 amended by adding Section 418.1081 to read as follows:

10 Sec. 418.1081. LIMIT ON ASSESSMENT OF FEES DURING DECLARED
11 LOCAL DISASTER. (a) If the presiding officer of the governing body
12 of a political subdivision issues an order or proclamation during a
13 declared local state of disaster that restricts the operation of a
14 business or nonprofit entity or a category of businesses, a
15 business or nonprofit entity whose operation is restricted by the
16 order or proclamation may not be assessed any fee, including a
17 permit fee, by the political subdivision during the time the
18 operation of the business or nonprofit entity is restricted by the
19 order or proclamation.

20 (b) If a business or nonprofit entity paid an annual fee or
21 other fee in advance to a political subdivision for the business's
22 or nonprofit entity's operations, the business or nonprofit entity
23 is entitled to a pro rata refund of the fee for the period of time
24 its operations were restricted by an order or proclamation of the
25 political subdivision described by Subsection (a).

26 (c) A business or nonprofit entity may opt to have the
27 amount of any refund due under this section credited toward a future

1 fee requirement.

2 SECTION 13. Section 418.173, Government Code, is amended to
3 read as follows:

4 Sec. 418.173. PENALTY FOR VIOLATION OF EMERGENCY MANAGEMENT
5 PLAN. (a) A state, local, or interjurisdictional emergency
6 management plan may provide that the intentional or knowing
7 violation of a state, local, or interjurisdictional emergency
8 management plan [~~failure to comply with the plan~~] or [~~with~~] a rule,
9 order, or ordinance adopted under the plan is an offense.

10 (b) The plan may prescribe a fine-only punishment for the
11 offense in an amount that does not exceed \$500.00 [~~but may not~~
12 ~~prescribe a fine that exceeds \$1,000 or confinement in jail for a~~
13 ~~term that exceeds 180 days~~].

14 SECTION 14. Section 433.001, Government Code, is amended to
15 read as follows:

16 Sec. 433.001. PROCLAMATION OF STATE OF EMERGENCY. On
17 application of the chief executive officer or governing body of a
18 county or municipality during an emergency, the governor may
19 proclaim a state of emergency and designate the area involved. For
20 the purposes of this section an emergency exists in the following
21 situations:

22 (1) a riot or unlawful assembly by three or more
23 persons acting together by use of force or violence;

24 (2) if a clear and present danger of the use of
25 violence exists; or

26 (3) a natural or man-made disaster for which a state of
27 disaster has not been declared by the governor pursuant to Chapter

1 [418](#).

2 SECTION 15. Section [433.002](#), Government Code, is amended by
3 amending Subsection (b) to read as follows:

4 (b) The directive may provide for:

5 (1) control of public and private transportation in
6 the affected area;

7 (2) designation of specific zones in the affected area
8 in which, if necessary, the use and occupancy of buildings and
9 vehicles may be controlled;

10 (3) control of the movement of persons;

11 (4) control of places of amusement or assembly; and

12 (5) establishment of curfews[~~+~~

13 ~~(6) control of the sale, transportation, and use of~~
14 ~~alcoholic beverages, weapons, and ammunition, except as provided by~~
15 ~~Section [433.0045](#); and~~

16 ~~(7) control of the storage, use, and transportation of~~
17 ~~explosives or flammable materials considered dangerous to public~~
18 ~~safety].~~

19 SECTION 16. Section [81.082](#), Health and Safety Code, is
20 amended by amending Subsection (d) to read as follows:

21 (d) A declaration of a public health disaster may continue
22 for not more than 30 days unless renewed by the legislature. [~~A~~
23 ~~public health disaster may be renewed one time by the commissioner~~
24 ~~for an additional 30 days.~~]

25 SECTION 17. Section [51.408](#), Occupations Code, is amended by
26 amending Subsection (b) to read as follows:

27 (b) An emergency license issued under this section expires

1 on the date indicated by the executive director, but not later than
2 the 90th day after the date the license is issued. If the governor
3 declares a [an extended] state of disaster that is renewed under
4 Section 418.014, Government Code, the executive director may extend
5 the term of an emergency license to an expiration date after the
6 90th day after the date the license was issued.

7 SECTION 18. Subsections 418.006(b-c), Government Code,
8 added by this Act, apply only to a cause of action that accrued on or
9 after March 13, 2020. A cause of action that accrued before March
10 13, 2020, is governed by the law applicable to the cause of action
11 immediately before the effective date of this Act, and that law is
12 continued in effect for that purpose.

13 SECTION 19. This Act takes effect immediately if it
14 receives a vote of two-thirds of all the members elected to each
15 house, as provided by Section 39, Article III, Texas Constitution.
16 If this Act does not receive the vote necessary for immediate
17 effect, this Act takes effect on the 91st day after the last day of
18 the legislative session.