

BILL ANALYSIS

S.B. 968
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State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The COVID-19 pandemic continues to highlight the various challenges and opportunities for improving the state's preparations for a public health disaster. However, there are still challenges in finding the right balance between an effective public health response system and the rights of individuals. S.B. 968 seeks to ensure that Texas is better prepared for a future public health emergency or disaster by improving the public health disaster response and coordination between state agencies. The bill also seeks to protect the rights of individuals during a public health crisis and provide the Department of State Health Services more timely medical information from physicians and health care professionals during a public health crisis.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Limitations on Medical Procedures

S.B. 968 amends the Government Code to prohibit the Texas Medical Board (TMB), during a declared state of disaster, from issuing an order or adopting a regulation that limits or prohibits a nonelective medical procedure. However, the TMB, during a declared state of disaster, may issue an order or adopt a regulation imposing a temporary limitation or prohibition on a medical procedure other than a nonelective medical procedure only if the limitation or prohibition is reasonably necessary to conserve resources for nonelective medical procedures or resources needed for disaster response. The order or regulation may not continue for more than 15 days unless it is renewed by the TMB. The bill provides the following:

- a person subject to an order or regulation who in good faith acts or fails to act in accordance with an order or regulation is not civilly or criminally liable and is not subject to disciplinary action for that act or failure to act;
- such immunity is in addition to any other immunity or limitation of liability provided by law; and
- "nonelective medical procedure" means a medical procedure, including a surgery, a physical exam, a diagnostic test, a screening, the performance of a laboratory test, and the collection of a specimen to perform a laboratory test, that if not performed within a reasonable time may, as determined in good faith by a patient's physician, result in:
 - the patient's loss of life; or

- a deterioration, complication, or progression of the patient's current or potential medical condition or disorder, including a physical condition or mental disorder.

These provisions of the bill regarding limitations on medical procedures do not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides the basis for a cause of action for an act or omission.

Personal Protective Equipment Contracts

S.B. 968 requires the Texas Division of Emergency Management (TDEM) to enter into a contract with a manufacturer of personal protective equipment (PPE) that guarantees a set amount and stocked supply of PPE for use during a declared public health disaster. The bill authorizes TDEM to purchase PPE under a contract only if TDEM determines the state's supply of PPE will be insufficient based on an evaluation of PPE held in reserve in Texas and supplied by or expected to be supplied by the federal government. The bill requires TDEM to pursue all available federal funding to cover the costs of PPE purchased under a contract.

Communicable Disease Prevention and Control Act

Definitions

S.B. 968 amends the Health and Safety Code, for purposes of the Communicable Disease Prevention and Control Act, to define "public health emergency" as a determination by the commissioner of state health services, evidenced in an emergency order issued by the commissioner, that there exists an immediate threat from a communicable disease, health condition, or chemical, biological, radiological, or electromagnetic exposure that potentially poses a risk of death or severe illness or harm to the public and potentially creates a substantial risk of harmful exposure to the public. The bill revises the definition of "public health disaster" to provide that the term means a declaration by the governor of a state of disaster and a determination by the commissioner of state health services that there exists an immediate threat from a communicable disease, health condition, or chemical, biological, radiological, or electromagnetic exposure that poses a high risk of death or serious harm to the public and creates a substantial risk of harmful public exposure.

Reporting Procedures

S.B. 968 requires the executive commissioner of the Health and Human Services Commission (HHSC) to require reports of diseases to contain the cycle threshold values and their reference ranges for the reportable disease that is the subject of the report. "Cycle threshold value" means for a communicable disease test the number of thermal cycles required for the fluorescent signal to exceed that of the background and cross the threshold for a positive test.

DSHS Duty to Control, Generally

S.B. 968 revises the provision conferring on the Department of State Health Services (DSHS) the general duty to impose control measures to prevent the spread of disease in the exercise of its power to protect the public health. The bill provides that DSHS instead is the preemptive authority for purposes of the Communicable Disease Prevention and Control Act and requires DSHS to coordinate statewide or regional efforts to protect public health. The bill requires DSHS to collaborate with local elected officials, including county and municipal official, to prevent the spread of disease and protect the public health.

Authority to Declare Public Health Disaster or Order Public Health Emergency

S.B. 968 authorizes the commissioner of state health services to declare a statewide or regional public health disaster or order a statewide or regional public health emergency if the commissioner determines an occurrence or threat to public health is imminent. The

commissioner may declare a public health disaster only if the governor declares a state of disaster for the occurrence or threat. The bill establishes that a public health disaster or public health emergency continues until the governor or commissioner terminates the disaster or emergency on a finding that the threat or danger has passed or the disaster or emergency has been managed to the extent emergency conditions no longer exist.

S.B. 968 establishes that a public health disaster or public health emergency expires on the 30th day after the date the disaster or emergency is declared or ordered by the commissioner. A public health disaster or public health emergency may only be renewed by the legislature or a designated legislative oversight board that has been granted authority under a statute enacted by the legislature to renew a public health disaster declaration or public health emergency order. The bill prohibits each renewal period from exceeding 30 days. The bill requires a declaration or order to include the following:

- a description of the nature of the disaster or emergency;
- a designation of the area threatened by the disaster or emergency;
- a description of the condition that created the disaster or emergency; and
- if applicable, the reason for renewing the disaster or emergency or the reason for terminating the disaster or emergency.

S.B. 968 requires a declaration or order to be disseminated promptly by means intended to bring its contents to the public's attention. The bill requires a statewide or regional declaration or order to be filed promptly with the office of the governor and the secretary of state and requires a regional declaration or order to be filed with the county clerk or municipal secretary in each area to which it applies, unless the circumstances attendant on the disaster or emergency prevent or impede the filing.

Expert Panel

S.B. 968 requires the commissioner, immediately after declaring a public health disaster or issuing a public health emergency order, to appoint an expert panel composed of five physicians and four other health care providers who have extensive experience involving treatments, therapeutics, and prophylactics for communicable diseases and other important knowledge and experience related to the disaster or order. The bill requires the commissioner to appoint the presiding officer of the panel and requires the panel to meet during the disaster or emergency to provide recommendations on the disaster or emergency to the chief state epidemiologist appointed under the bill's provisions. The expert panel is abolished on the termination of the disaster or emergency for which the panel was established.

Failure to Report; Civil Penalty

S.B. 968 makes a health care facility that fails to submit a report required by DSHS under a public health disaster or emergency liable to the state for a civil penalty of not more than \$1,000 for each failure. The attorney general at the request of DSHS may bring an action to collect the civil penalty imposed under these provisions.

COVID-19 Vaccine Passports

S.B. 968 prohibits a governmental entity in Texas from issuing a vaccine passport, vaccine pass, or other standardized documentation to certify an individual's COVID-19 vaccination status to a third party for a purpose other than health care or otherwise publish or share any individual's COVID-19 immunization record or similar health information for a purpose other than health care. The bill prohibits a business in Texas from requiring a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business and a business that fails to comply with the prohibition is not eligible to receive a grant or enter into a contract payable with state funds. The bill provides the following:

- each appropriate state agency must ensure that businesses in Texas comply with the prohibition and each appropriate state agency may require compliance with the prohibition as a condition for a license, permit, or other state authorization necessary for conducting business in Texas; and
- the vaccine passport provisions of the bill may not be construed to do the following:
 - restrict a business from implementing COVID-19 screening and infection control protocols in accordance with state and federal law to protect public health; or
 - interfere with an individual's right to access the individual's personal health information under federal law.

Office of Chief State Epidemiologist

S.B. 968 requires the commissioner to do the following:

- establish an Office of Chief State Epidemiologist within DSHS to provide expertise in public health activities and policy in Texas by evaluating epidemiologic, medical, and health care information and identifying pertinent research and evidence-based best practices; and
- appoint a physician licensed to practice medicine in Texas as the chief state epidemiologist to administer the Office of Chief State Epidemiologist.

The bill provides that the chief state epidemiologist, as follows:

- must be certified by the TMB in a medical specialty and have significant experience in public health and an advanced degree in public health, epidemiology, or a related field;
- serves as the DSHS expert on epidemiological matters and on communicable and noncommunicable diseases and as DSHS's senior science representative and primary contact for the CDC and other federal agencies related to epidemiologic science and disease surveillance;
- must report to the state operations center, under the direction of the chief of TDEM, during a declared public health disaster to provide expertise and support Texas' response to the disaster;
- may provide professional and scientific consultation regarding epidemiology and disease control, harmful exposure, and injury prevention to state agencies, health facilities, health service regions, local health authorities, local health departments, and other entities; and
- may access information from DSHS to implement duties of the epidemiologist's office.

Reports, records, and information provided to the Office of Chief State Epidemiologist that relate to an epidemiologic or toxicologic investigation of human illness or conditions and of environmental exposure that are harmful or believed to be harmful to the public health are confidential and not subject to disclosure under state public information law and may not be released or made public on subpoena or otherwise, except for statistical purposes if released in a manner that prevents identification of any person.

Preparedness Coordinating Council Advisory Committee

S.B. 968 requires the Preparedness Coordinating Council advisory committee, under the direction of the emergency management council, to conduct a study on Texas' response to the 2019 novel coronavirus disease. The bill provides the following:

- the committee must examine the roles of DSHS, HHSC, and TDEM relating to public health disaster and emergency planning and response efforts and determine the efficacy of the state emergency operations plan in appropriately identifying agency responsibilities;
- the committee may collaborate with an institution of higher education in Texas to conduct the study;
- not later than December 1, 2022, the committee must prepare and submit a written report to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature on the results of the study; and

- the report must include recommendations for legislative improvements for public health disaster and public health emergency response and preparedness.

These provisions of the bill expire September 1, 2023.

Implementation Contingent on Specific Appropriation

Implementation of a provision of the bill by DSHS and the Preparedness Coordinating Council advisory committee is mandatory only if a specific appropriation is made for that purpose. The bill requires DSHS to use any available federal money to implement the bill's provisions.

Repealed Provisions

S.B. 968 repeals Sections 81.082(d) and (e), Health and Safety Code, which provide that a declaration of a public health disaster may continue for not more than 30 days, that a public health disaster may be renewed one time by the commissioner for an additional 30 days, and that the governor may terminate a declaration of a public health disaster at any time.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.