87R11404 YDB-F

By:  Burrows H.B. No. 3

A BILL TO BE ENTITLED

AN ACT

relating to state and local government responses to a pandemic disaster; creating a criminal offense.

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

SECTION 1.  Subtitle B, Title 4, Government Code, is amended by adding Chapter 418A to read as follows:

CHAPTER 418A. PANDEMIC EMERGENCY MANAGEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 418A.001.  SHORT TITLE. This chapter may be cited as the Texas Pandemic Response Act.

Sec. 418A.002.  PURPOSES. The purposes of this chapter are to:

(1)  reduce the vulnerability of residents and communities in this state to damage, injury, and loss of life and property resulting from a pandemic disaster;

(2)  prepare for prompt and efficient care and treatment of persons victimized or threatened by a pandemic disaster;

(3)  maintain employment levels for state residents to the extent possible;

(4)  protect and preserve individual liberties guaranteed under the United States Constitution and the Texas Constitution;

(5)  provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by a pandemic disaster;

(6)  clarify and strengthen the roles of the governor, state agencies, the judicial branch of state government, and local governments in the prevention of, preparation for, response to, and recovery from a pandemic disaster;

(7)  authorize and provide for cooperation in pandemic disaster mitigation, preparedness, response, and recovery;

(8)  authorize and provide for coordination of activities relating to pandemic disaster mitigation, preparedness, response, and recovery by state agencies and officers and similar state-local, interstate, federal-state, and foreign activities in which this state and the political subdivisions of this state may participate;

(9)  provide an emergency management system embodying all aspects of pandemic preparedness and response; and

(10)  assist in the mitigation of pandemic disasters aggravated by inadequate planning for and regulation of public and private resources.

Sec. 418A.003.  DEFINITIONS. In this chapter:

(1)  "Division" means the Texas Division of Emergency Management.

(2)  "Pandemic disaster" means the occurrence or imminent threat of an outbreak of an infectious disease that spreads to a significant portion of the population of multiple countries or the world and 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.

(3)  "Political subdivision" means a county or municipality.

Sec. 418A.004.  LIMITATIONS. This chapter does not:

(1)  grant the governor authority to enact law;

(2)  limit the authority of the governor to apply for, administer, or spend a grant, gift, or payment in aid of pandemic disaster mitigation, preparedness, response, or recovery;

(3)  interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(4)  interfere with dissemination of news or comment on public affairs, provided any communications facility or organization, including radio and television stations, wire services, Internet and cellular services, and newspapers, may be required to transmit or print public service messages providing information or instructions in connection with a pandemic disaster or potential pandemic disaster;

(5)  affect the jurisdiction or responsibilities of a law enforcement agency, fire department, or unit of the armed forces of the United States, or any of their personnel when on active duty, if state, local, or interjurisdictional emergency management plans rely on the agencies, departments, or units to perform duties related to pandemic disasters;

(6)  limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other power vested in the governor under the constitution or laws of this state independent of or in conjunction with any provision of this chapter;

(7)  authorize the seizure or confiscation of any firearm or ammunition from an individual who is lawfully carrying or possessing the firearm or ammunition; or

(8)  authorize any person to prohibit or restrict the business operations of a firearms or ammunition manufacturer, distributor, wholesaler, supplier, or retailer or a sport shooting range, as defined by Section 250.001, Local Government Code.

Sec. 418A.005.  APPLICABILITY OF OTHER LAW. Sections 418.020, 418.021, 418.022, 418.026, and 418.107 and Subchapters C-1 and D, Chapter 418, apply to a state of pandemic disaster declared under this chapter.

Sec. 418A.006.  CONFLICT WITH OTHER LAW. To the extent of any conflict between this chapter and Chapter 418, this chapter controls.

Sec. 418A.007.  CIVIL LIABILITY DURING PANDEMIC DISASTER. (a) An officer or employee of a state or local agency, or a volunteer acting at the direction of an officer or employee of a state or local agency, is considered for purposes of Section 437.222 to be a member of the Texas military forces ordered into active service of this state by proper authority and is considered to be discharging a duty in that capacity if the person is performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken or threatened by a pandemic disaster.

(b)  A business or an entity operating during a pandemic disaster in this state is not liable for an injury caused by exposing or potentially exposing an individual to a disease if on the date of the exposure or potential exposure:

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

(2)  the business or entity knew of the risk of exposure or potential exposure;

(3)  the business or entity made a reasonable effort to comply with applicable federal, state, and local laws, rules, ordinances, declarations, and proclamations related to the pandemic disaster; and

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

(c)  A person who provides goods or renders services during a pandemic disaster in support of disaster response efforts and at the request of the governor or the governor's designee is not liable for an injury caused by the goods or services, regardless of the circumstances, so long as the act or omission giving rise to the injury was not wilful, reckless, grossly negligent, or inconsistent with a limit specified in the governor's request.

SUBCHAPTER B. POWERS AND DUTIES OF GOVERNOR

Sec. 418A.051.  RESPONSIBILITY OF GOVERNOR. The governor is responsible for meeting the dangers to this state and the residents of this state presented by a pandemic disaster. The governor may only exercise the authority granted by this chapter to address a pandemic disaster.

Sec. 418A.052.  EXECUTIVE ORDERS, PROCLAMATIONS, AND RULES. (a) The governor may issue, amend, or rescind an executive order, proclamation, or rule to further the purposes of this chapter.

(b)  An executive order, proclamation, or rule issued by the governor under this chapter has the force and effect of law.

Sec. 418A.053.  DECLARATION OF STATE OF PANDEMIC DISASTER. (a) The governor by executive order or proclamation may declare a state of pandemic disaster if the governor determines that a state of pandemic disaster is occurring in this state or that the occurrence or threat of a pandemic disaster is imminent.

(b)  Subject to Subsection (c), a state of pandemic disaster continues until the governor:

(1)  determines that:

(A)  the threat of a pandemic disaster has passed; or

(B)  the pandemic disaster has been addressed to the extent that emergency conditions no longer exist; and

(2)  terminates the state of pandemic disaster by executive order or proclamation.

(c)  A state of pandemic disaster may not continue for more than 30 days unless renewed by the governor. The legislature by law may terminate a state of pandemic disaster at any time. On termination by the legislature, the governor shall issue an executive order ending the state of pandemic disaster.

(d)  An executive order or proclamation issued under this section must include:

(1)  a description of the nature of the pandemic disaster;

(2)  a designation of the areas affected or threatened; and

(3)  a description of the conditions that caused the pandemic disaster or allowed the termination of the pandemic disaster.

(e)  The governor shall:

(1)  promptly disseminate an executive order or proclamation by any means intended to bring its contents to the attention of the public; and

(2)  unless the circumstances related to the pandemic disaster prevent or impede the filing, promptly file the order or proclamation with:

(A)  the division;

(B)  the secretary of state; and

(C)  the county clerk or municipal secretary in each area in which it applies.

Sec. 418A.054.  EFFECT OF PANDEMIC DISASTER DECLARATION. (a) An executive order or proclamation declaring a state of pandemic disaster:

(1)  activates the pandemic disaster preparedness and response components of the state emergency management plan required by Section 418.042, as applicable to the area subject to the declaration; and

(2)  authorizes the deployment and use of any resources to which the pandemic disaster recovery and rehabilitation components of the state emergency management plan apply and the use or distribution of any supplies, equipment, materials, or facilities assembled, stored, or arranged to be made available under this chapter or other law relating to disasters.

(b)  During a pandemic disaster, the pandemic disaster preparedness and response components of the state emergency management plan are activated as provided by that plan.

(c)  During a state of pandemic disaster and the following recovery period, the governor is the commander in chief of state agencies, boards, and commissions having emergency responsibilities. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or plans. This chapter does not restrict the governor's authority to issue those orders at the time of the pandemic disaster.

Sec. 418A.055.  SUSPENSION OF CERTAIN LAWS, ORDERS, AND RULES. (a) The governor may suspend the provisions of any regulatory statute prescribing procedures for conducting state business or a state agency order or rule if strict compliance with the statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with a pandemic disaster.

(b)  On request of a political subdivision, the governor may waive or suspend a deadline, including a deadline relating to a budget or ad valorem tax, imposed on the political subdivision by a statute or a state agency order or rule if the waiver or suspension is reasonably necessary to cope with the pandemic disaster.

(c)  The governor may suspend any of the following requirements in response to a pandemic emergency or disaster declaration of another jurisdiction if strict compliance with the requirement would prevent, hinder, or delay necessary action in assisting another state with coping with a pandemic emergency or disaster:

(1)  a registration requirement in an agreement entered into under the International Registration Plan under Section 502.091, Transportation Code, to the extent authorized by federal law;

(2)  a temporary registration permit requirement under Section 502.094, Transportation Code;

(3)  a provision of Subtitle E, Title 7, Transportation Code, to the extent authorized by federal law;

(4)  a motor carrier registration requirement under Chapter 643, Transportation Code;

(5)  a registration requirement under Chapter 645, Transportation Code, to the extent authorized by federal law; or

(6)  a fuel tax requirement under the International Fuel Tax Agreement described by 49 U.S.C. Section 31701 et seq., to the extent authorized by federal law.

(d)  For the purposes of Subsection (c), "pandemic emergency or disaster declaration of another jurisdiction" means a pandemic emergency declaration, a major pandemic disaster declaration, a pandemic state of emergency declaration, a state of pandemic disaster declaration, or a similar declaration related to a pandemic made by:

(1)  the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.); or

(2)  the governor of another state.

(e)  To the extent federal law requires this state to issue a special permit under 23 U.S.C. Section 127 or an executive order, a suspension issued under Subsection (c) is a special permit or an executive order.

Sec. 418A.056.  USE OF PUBLIC AND PRIVATE RESOURCES. (a) The governor may use all available resources of executive departments and agencies or their units that are reasonably necessary to cope with a pandemic disaster.

(b)  The governor may temporarily reassign resources, personnel, or functions of state agencies and political subdivisions for the purpose of performing or facilitating emergency services during a pandemic disaster.

(c)  The governor may commandeer or use private property if the governor finds it necessary to cope with a pandemic disaster, subject to the compensation requirements of Subchapter G, Chapter 418.

Sec. 418A.057.  MOVEMENT OF PEOPLE. (a) The governor may prescribe routes, modes of transportation, and destinations in connection with any evacuation necessary in a pandemic disaster.

(b)  The governor may control ingress and egress to and from a pandemic disaster area and the movement of persons and the occupancy of premises in the area.

Sec. 418A.058.  RESTRICTED SALE AND TRANSPORTATION OF MATERIALS. (a) The governor may suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles in response to a pandemic disaster.

(b)  The sale, dispensing, or transportation of firearms and ammunition may not be suspended or limited in response to a pandemic disaster.

Sec. 418A.059.  RULES. The governor may adopt rules necessary to implement this chapter, including rules for:

(1)  standards of eligibility for persons applying for benefits related to the pandemic disaster;

(2)  procedures for applying for the benefits;

(3)  procedures for the administration, investigation, filing, and approval of applications for the benefits;

(4)  procedures for the formation of local or statewide boards to act on applications for the benefits; and

(5)  procedures for appeals of decisions relating to applications for the benefits.

Sec. 418A.060.  RELIGIOUS FREEDOM. Actions taken under a declared state of pandemic disaster must satisfy the religious freedom protections of Chapter 110, Civil Practice and Remedies Code, and the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).

SUBCHAPTER C. LOCAL AND INTERJURISDICTIONAL PANDEMIC EMERGENCY MANAGEMENT

Sec. 418A.101.  PANDEMIC EMERGENCY MANAGEMENT DIRECTORS. (a) The presiding officer of the governing body of a political subdivision is designated as the pandemic emergency management director for that political subdivision.

(b)  A pandemic emergency management director serves as the governor's designated agent in the administration and supervision of duties under this chapter. A pandemic emergency management director may exercise the powers granted to the governor under this chapter on an appropriate local scale.

(c)  A pandemic emergency management director may designate a person to serve as pandemic emergency management coordinator. The pandemic emergency management coordinator shall serve as an assistant to the pandemic emergency management director for pandemic emergency management purposes.

(d)  A person, other than a pandemic emergency management director exercising under Subsection (b) a power granted to the governor, may not seize state or federal resources without prior authorization from the division or the state or federal agency responsible for those resources.

Sec. 418A.102.  SUSPENSION OF DEADLINES IMPOSED BY LOCAL LAW. (a) Notwithstanding any other law, a deadline imposed by local law on a political subdivision, including a deadline relating to a budget or ad valorem tax, is suspended if:

(1)  the territory of the political subdivision is wholly or partly located in an area in which a pandemic disaster has been declared by the president of the United States or the governor; and

(2)  the presiding officer of the political subdivision proclaims that the political subdivision is unable to comply with the requirement because of the pandemic disaster.

(b)  The presiding officer of the political subdivision may issue an order ending the suspension of a deadline under this section. A deadline may not be suspended for more than 30 days after the date the presiding officer issues the proclamation described by Subsection (a)(2).

Sec. 418A.103.  PREEMPTION. Any local order or rule issued in response to a state or local state of pandemic disaster is superseded and void to the extent that it is inconsistent with orders, declarations, or proclamations issued by the governor or the Department of State Health Services.

Sec. 418A.104.  LIMITATION ON ALTERATION OF VOTING PROCEDURES. (a) An election official of a political subdivision seeking to alter, in response to a pandemic disaster, any voting standard, practice, or procedure in a manner not otherwise expressly authorized by the Election Code, must first obtain approval of the proposed alteration from the secretary of state by submitting a written request for approval to the secretary of state.

(b)  The secretary of state by written order may approve a proposed alteration requested under Subsection (a). An election official of a political subdivision may not alter any voting standard, practice, or procedure in a manner not otherwise expressly authorized by the Election Code without a written order of approval from the secretary of state.

Sec. 418A.105.  LIMITATION ON AD VALOREM TAX RATE OF CERTAIN COUNTIES AND MUNICIPALITIES. (a) In this section:

(1)  "No-new-revenue tax rate" and "voter-approval tax rate" have the meanings assigned by Section 26.04, Tax Code.

(2)  "Tax year" has the meaning assigned by Section 1.04, Tax Code.

(b)  This section applies only to a county or municipality:

(1)  the presiding officer of the governing body of which issues an order requiring the closure of a private business in response to a pandemic; and

(2)  for which the governor issues a written determination finding that the presiding officer of the governing body of the county or municipality has taken an action described by Subdivision (1).

(c)  Notwithstanding Chapter 26, Tax Code, or any other law, the governing body of a county or municipality to which this section applies may not adopt an ad valorem tax rate for the current tax year that exceeds the lesser of the county's or municipality's no-new-revenue tax rate or voter-approval tax rate for that tax year.

(d)  For purposes of making the calculation required under Section 26.013, Tax Code, in a tax year in which this section applies to a county or municipality, the difference between the county's or municipality's actual tax rate and voter-approval tax rate is considered to be zero.

(e)  A county or municipality is no longer subject to the limitation prescribed by this section in the first tax year in which the governor rescinds the written determination issued under Subsection (b)(2).

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 418A.151.  QUALIFICATIONS FOR RENDERING AID. A person who holds a license, certificate, or other permit issued by a state or political subdivision of any state evidencing that a person possesses certain specific professional, mechanical, or other skills may render aid in this state through the use of the applicable skill to meet a pandemic disaster. This state shall give due consideration to the license, certificate, or other permit.

Sec. 418A.152.  CRIMINAL PENALTY FOR VIOLATION OF PANDEMIC COMPONENTS OF EMERGENCY MANAGEMENT PLAN. (a) A person commits an offense if the person violates a provision of the pandemic components of a state, local, or interjurisdictional emergency management plan or a rule, order, or ordinance adopted under those provisions.

(b)  An offense under this section is punishable by a fine only in an amount not to exceed $1,000.

(c)  This section may be enforced by state and local officials.

Sec. 418A.153.  SHELTER OPERATIONS. The Department of State Health Services shall develop, with the direction, oversight, and approval of the division, an addendum to the pandemic components of the state emergency management plan that includes provisions for:

(1)  developing medical special needs categories;

(2)  categorizing the requirements of individuals with medical special needs; and

(3)  establishing minimum health-related standards for short-term and long-term shelter operations in shelters operated with state funds or receiving state assistance.

Sec. 418A.154.  PERSONNEL SURGE CAPACITY PLANNING. (a) With the direction, oversight, and approval of the division and the assistance of the Department of State Health Services, health care facilities, county officials, trauma service area regional advisory councils, and other appropriate entities, each council of government, regional planning commission, or similar regional planning agency created under Chapter 391, Local Government Code, shall develop a regional plan for personnel surge capacity during pandemic disasters, including plans for providing personal protective equipment, lodging, and meals for pandemic disaster relief workers and volunteers.

(b)  An entity developing a regional plan for personnel surge capacity with regard to lodging shall consult with representatives of emergency responders, infrastructure and utility repair personnel, and other representatives of agencies, entities, or businesses essential to the planning process.

Sec. 418A.155.  MEDICAL SPECIAL NEEDS VOLUNTEERS. (a) An entity responsible for the care of individuals with medical special needs shall develop and distribute information on volunteering in connection with a pandemic disaster.

(b)  The division shall provide information to interested parties and the public regarding the process for identifying and training volunteers to assist groups of people, including people with medical special needs and residents of assisted living facilities.

Sec. 418A.156.  ATTORNEY GENERAL AS LEGAL ADVISOR ON ISSUES RELATED TO DECLARED PANDEMIC DISASTER. (a) This section applies only during a declared state of pandemic disaster under Section 418A.053 and the 90-day period following the expiration or termination of the pandemic disaster declaration.

(b)  The attorney general may provide legal counsel to a political subdivision subject to a declared state of pandemic disaster under Section 418A.053 on issues related to pandemic disaster mitigation, preparedness, response, and recovery applicable to the area subject to the pandemic disaster declaration.

(c)  A request for legal counsel under this section may be submitted only by:

(1)  the emergency management director designated under Section 418.1015 for the political subdivision;

(2)  the county judge or a commissioner of a county subject to the declaration; or

(3)  the mayor of a municipality subject to the declaration.

Sec. 418A.157.  OFF-CAMPUS PROGRAMS APPROVED FOR AVERAGE DAILY ATTENDANCE DURING PANDEMIC DISASTER. (a) Notwithstanding any other law, the commissioner of education may, based on criteria developed by the commissioner, approve instructional programs provided off-campus by an entity other than a school district or open-enrollment charter school as a program in which participation by a student of a district or charter school shall be counted for purposes of determining average daily attendance, in accordance with Section 48.005(h), Education Code, during a pandemic disaster.

(b)  A student of a district or charter school may attend an instructional program provided off-campus by an entity other than a school district or open-enrollment charter school if the district or charter school does not offer full-time in-person education for the student.

(c)  A student attending an off-campus instructional program described by Subsection (b) shall be counted in the average daily attendance of the district of residence. The off-campus instructional program shall provide attendance figures to the school district weekly.

(d)  If a district of residence fails to compensate the off-campus instructional program before the 46th day after the date of receiving a bill, the commissioner of education shall reimburse the off-campus instructional program from funding deducted from the district.

SECTION 2.  Section 418.004(1), Government Code, is amended 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, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, cybersecurity event, other public calamity requiring emergency action, or energy emergency. The term does not include a pandemic.

SECTION 3.  Section 418.005(b), Government Code, is amended to read as follows:

(b)  Each person described by Subsection (a) shall complete a course of training provided or approved by the division of not less than three hours regarding the responsibilities of state and local governments under this chapter and Chapter 418A not later than the 180th day after the date the person:

(1)  takes the oath of office, if the person is required to take an oath of office to assume the person's duties as a public officer;

(2)  otherwise assumes responsibilities as a public officer, if the person is not required to take an oath of office to assume the person's duties; or

(3)  is designated as an emergency management coordinator under Section 418.1015(c).

SECTION 4.  Section 418A.007, Government Code, as added by this Act, applies only to a cause of action that accrued on or after March 13, 2020. A cause of action that accrued before March 13, 2020, is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.