87R5789 YDB-D

By:  Schaefer H.B. No. 1406

A BILL TO BE ENTITLED

AN ACT

relating to judicial review of certain orders regarding a declared state of disaster or public health disaster or issued to prevent the spread of a communicable disease.

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

SECTION 1.  Subchapter A, Chapter 418, Government Code, is amended by adding Section 418.007 to read as follows:

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

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

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

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

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

SECTION 2.  Subchapter A, Chapter 81, Health and Safety Code, is amended by adding Section 81.016 to read as follows:

Sec. 81.016.  JUDICIAL REVIEW OF PUBLIC HEALTH DISASTER ORDER OR CONTROL MEASURE ORDER. (a) A person has standing to file suit in a court of this state to challenge a provision of an order issued by the governor, the commissioner, the department, or a health authority that relates to a declared public health disaster or is imposed as a control measure to prevent the spread of a communicable disease if the provision in the order is alleged to cause injury to the person or burden a right of the person that is protected by the state or federal constitution or by a state or federal law.

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

(1)  mitigates a threat to the public caused by the public health disaster or a communicable disease; and

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

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

SECTION 3.  Section 418.007, Government Code, as added by this Act, and Section 81.016, Health and Safety Code, as added by this Act, apply only to an order issued on or after the effective date of this Act. An order issued before the effective date of this Act is governed by the law in effect immediately before that date and that law is continued in effect for that purpose.

SECTION 4.  This Act takes effect September 1, 2021.