

By: Schaefer

H.B. No. 1406

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to judicial review of certain orders regarding a declared  
3 state of disaster or public health disaster or issued to prevent the  
4 spread of a communicable disease.

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

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

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

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

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

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

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

1 (b).

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

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

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

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

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

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

23 (b).

24 SECTION 3. Section 418.007, Government Code, as added by  
25 this Act, and Section 81.016, Health and Safety Code, as added by  
26 this Act, apply only to an order issued on or after the effective  
27 date of this Act. An order issued before the effective date of this

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1 Act is governed by the law in effect immediately before that date  
2 and that law is continued in effect for that purpose.

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