

By: Leach

H.B. No. 3659

A BILL TO BE ENTITLED

1 AN ACT
2 relating to liability for certain claims arising during a pandemic
3 or other disaster or emergency.

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

5 SECTION 1. Section 51.014(a), Civil Practice and Remedies
6 Code, is amended to read as follows:

7 (a) A person may appeal from an interlocutory order of a
8 district court, county court at law, statutory probate court, or
9 county court that:

10 (1) appoints a receiver or trustee;

11 (2) overrules a motion to vacate an order that
12 appoints a receiver or trustee;

13 (3) certifies or refuses to certify a class in a suit
14 brought under Rule 42 of the Texas Rules of Civil Procedure;

15 (4) grants or refuses a temporary injunction or grants
16 or overrules a motion to dissolve a temporary injunction as
17 provided by Chapter 65;

18 (5) denies a motion for summary judgment that is based
19 on an assertion of immunity by an individual who is an officer or
20 employee of the state or a political subdivision of the state;

21 (6) denies a motion for summary judgment that is based
22 in whole or in part upon a claim against or defense by a member of
23 the electronic or print media, acting in such capacity, or a person
24 whose communication appears in or is published by the electronic or

1 print media, arising under the free speech or free press clause of
2 the First Amendment to the United States Constitution, or Article
3 I, Section 8, of the Texas Constitution, or Chapter 73;

4 (7) grants or denies the special appearance of a
5 defendant under Rule 120a, Texas Rules of Civil Procedure, except
6 in a suit brought under the Family Code;

7 (8) grants or denies a plea to the jurisdiction by a
8 governmental unit as that term is defined in Section 101.001;

9 (9) denies all or part of the relief sought by a motion
10 under Section 74.351(b), except that an appeal may not be taken from
11 an order granting an extension under Section 74.351;

12 (10) grants relief sought by a motion under Section
13 74.351(1);

14 (11) denies a motion to dismiss filed under Section
15 90.007;

16 (12) denies a motion to dismiss filed under Section
17 27.003;

18 (13) denies a motion for summary judgment filed by an
19 electric utility regarding liability in a suit subject to Section
20 75.0022; ~~or~~

21 (14) denies a motion filed by a municipality with a
22 population of 500,000 or more in an action filed under Section
23 54.012(6) or 214.0012, Local Government Code; or

24 (15) overrules an objection filed under Section
25 148.003(d) or denies all or part of the relief sought by a motion
26 under Section 148.003(f).

27 SECTION 2. Subchapter D, Chapter 74, Civil Practice and

1 Remedies Code, is amended by adding Section 74.155 to read as
2 follows:

3 Sec. 74.155. LIABILITY OF PHYSICIANS, HEALTH CARE
4 PROVIDERS, AND FIRST RESPONDERS DURING PANDEMIC. (a) In this
5 section:

6 (1) "Disaster declaration" means a declaration of a
7 state of disaster or emergency by the president of the United
8 States, a declaration of a state of disaster by the governor under
9 Chapter 418, Government Code, and any amendment, modification, or
10 extension of the declaration.

11 (2) "First responder" has the meaning assigned by
12 Section 421.095, Government Code.

13 (3) "Pandemic disease" means an infectious disease
14 that spreads to a significant portion of the population of a
15 country, multiple countries, or the world and that poses a
16 substantial risk of a significant number of human fatalities,
17 illnesses, or permanent long-term disabilities.

18 (b) Except in a case of reckless conduct or intentional,
19 wilful, or wanton misconduct, a physician, health care provider, or
20 first responder is not liable for an injury, including economic and
21 noneconomic damages, or death arising from care, treatment, or
22 failure to provide care or treatment relating to or impacted by a
23 pandemic disease or a disaster declaration related to a pandemic
24 disease, including:

25 (1) screening, assessing, diagnosing, or treating an
26 individual who is infected or suspected of being infected with a
27 pandemic disease;

1 (2) prescribing, administering, or dispensing a drug
2 or medicine for off-label or investigational use to treat an
3 individual who is infected or suspected of being infected with a
4 pandemic disease;

5 (3) diagnosing or treating an individual who is
6 infected or suspected of being infected with a pandemic disease
7 outside the normal area of the physician's or provider's specialty,
8 if any;

9 (4) delaying or canceling nonurgent or elective
10 medical, surgical, or dental procedures;

11 (5) delaying, canceling, or not accepting in-person
12 appointments for office or clinical visits, diagnostic tests,
13 scheduled treatment, physical or occupational therapy, or any other
14 diagnosis or treatment of an illness or condition not related to a
15 pandemic disease;

16 (6) using medical devices, equipment, or supplies
17 outside of their normal use, including using or modifying such
18 devices, equipment, or supplies for an unapproved use, to treat an
19 individual who is infected or suspected of being infected with a
20 pandemic disease;

21 (7) conducting tests on or providing treatment to an
22 individual who is infected or suspected of being infected with a
23 pandemic disease outside the premises of a health care facility;

24 (8) acts or omissions caused by a lack of personnel or
25 staffing, facilities, medical devices, supplies, or other
26 resources attributable to a pandemic disease that renders a
27 physician, health care provider, or first responder unable to

1 provide the same level or manner of care to any individual that
2 otherwise would have been acquired in the absence of the disease;
3 and

4 (9) acts or omissions arising from the use or nonuse of
5 personal protective equipment.

6 (c) This section does not alter the scope of practice of a
7 physician, health care provider, or first responder under the laws
8 of this state.

9 (d) The immunity provided by this section is in addition to
10 any other immunity or limitations of liability provided by law.

11 (e) This section applies only to a claim arising from care,
12 treatment, or failure to provide care or treatment that occurred
13 during a period beginning on the date that the president of the
14 United States or the governor makes a disaster declaration related
15 to a pandemic disease and ending 60 days after the date that the
16 declaration terminates.

17 SECTION 3. The heading to Section 79.0031, Civil Practice
18 and Remedies Code, is amended to read as follows:

19 Sec. 79.0031. LIABILITY OF ~~[VOLUNTEER]~~ HEALTH CARE PROVIDER
20 OR HEALTH CARE INSTITUTION.

21 SECTION 4. Sections 79.0031(a), (b), and (c), Civil
22 Practice and Remedies Code, are amended to read as follows:

23 (a) In this section:

24 (1) "Health care institution" has the meaning assigned
25 by Section 74.001.

26 (2) "Health care liability claim" has the meaning
27 assigned by Section 74.001.

1 (3) "Health [~~Volunteer health~~] care provider" means:

2 (A) a first responder, as that term is defined by
3 Section 421.095, Government Code;

4 (B) a health care provider, as that term is
5 defined by Section 74.001;

6 (C) a physician, as that term is defined by
7 Section 74.001; and

8 (D) a volunteer health care provider, as that
9 term is defined [~~has the meaning assigned~~] by Section 84.003,
10 regardless of whether the [~~The term includes an~~] individual [~~who~~]
11 is [~~not~~] affiliated with a charitable organization.

12 (b) Except in the case of reckless conduct or intentional,
13 wilful, or wanton misconduct, a [~~volunteer~~] health care provider is
14 immune from civil liability for an act or omission that occurs in,
15 or a health care liability claim that arises out of, giving care,
16 assistance, or advice if:

17 (1) the care, assistance, or advice is provided:

18 (A) [~~(1)~~] in relation to an incident that is a
19 man-made or natural disaster that endangers or threatens to
20 endanger individuals, property, or the environment; and

21 (B) [~~(2)~~] within the scope of the provider's
22 practice under the laws of this state; or

23 (2) the care, assistance, or advice is provided:

24 (A) in relation to a national or statewide health
25 care emergency that results in a declaration of a state of disaster
26 or emergency by the president of the United States or a declaration
27 of a state of disaster by the governor under Chapter 418, Government

1 Code;

2 (B) during a period beginning on the date the
3 declaration is made and ending 60 days after the date the
4 declaration terminates; and

5 (C) within the scope of the provider's practice
6 under the laws of this state.

7 (c) A health care institution is immune from civil liability
8 for:

9 (1) an act or omission by a ~~[volunteer]~~ health care
10 provider providing care, assistance, or advice at the institution's
11 facility or under the institution's direction if [+

12 ~~[-(1)]~~ the provider is immune from civil liability under
13 Subsection (b); or ~~[and]~~

14 (2) a health care liability claim arising out of the
15 circumstances described by Subsection (b) [the institution does not
16 have an expectation of compensation from or on behalf of the
17 recipient of the care, assistance, or advice in excess of
18 reimbursement for expenses incurred by the institution in
19 connection with the provision of the care, assistance, or advice].

20 SECTION 5. Title 6, Civil Practice and Remedies Code, is
21 amended by adding Chapter 148 to read as follows:

22 CHAPTER 148. LIABILITY DURING PANDEMIC EMERGENCY

23 Sec. 148.001. DEFINITIONS. In this chapter:

24 (1) "Pandemic disease" has the meaning assigned by
25 Section 74.155.

26 (2) "Pandemic emergency" means a state of disaster
27 declared by the governor under Chapter 418, Government Code, in

1 response to a pandemic disease.

2 Sec. 148.002. PRODUCTS LIABILITY ACTIONS RELATED TO
3 PANDEMIC EMERGENCY. (a) This section applies only to the following
4 products:

5 (1) clothing or equipment worn to minimize exposure to
6 hazards of a pandemic disease that cause injury or illness;

7 (2) medical devices, equipment, and supplies used
8 during a pandemic emergency or to treat individuals infected or
9 suspected to be infected with a pandemic disease, including
10 devices, equipment, and supplies used or modified for an unapproved
11 use to treat or prevent the spread of the disease or used outside of
12 their normal use to treat or prevent the spread of the disease;

13 (3) drugs, medicines, or vaccines used to treat or
14 prevent the spread of a pandemic disease, including drugs,
15 medicines, or vaccines prescribed, dispensed, or administered for
16 an unapproved use in an attempt to treat or prevent the spread of
17 the disease or used outside of their normal use in an attempt to
18 treat or prevent the spread of the disease;

19 (4) tests to diagnose or determine immunity to a
20 pandemic disease;

21 (5) commercial cleaning, sanitizing, or disinfecting
22 supplies used to prevent the spread of a pandemic disease; or

23 (6) any component of a product described by this
24 subsection.

25 (b) A person who designs, manufactures, sells, or donates a
26 product described by Subsection (a) during a pandemic emergency is
27 not liable for personal injury, death, or property damage caused by

1 the product unless:

2 (1) the person:

3 (A) had actual knowledge of a defect in the
4 product when the product left the person's control; or

5 (B) acted with actual malice in designing,
6 manufacturing, selling, or donating the product; and

7 (2) the product presents an unreasonable risk of
8 substantial harm to an individual using or exposed to the product.

9 (c) A person who designs, manufactures, labels, sells, or
10 donates a product described by Subsection (a) during a pandemic
11 emergency is not liable for personal injury, death, or property
12 damage caused by a failure to warn or provide adequate instructions
13 regarding the use of a product unless:

14 (1) the person acted with actual malice in failing to
15 warn or provide adequate instructions regarding the use of the
16 product; and

17 (2) the failure to warn or provide adequate
18 instructions regarding the use of the product presents an
19 unreasonable risk of substantial harm to an individual using or
20 exposed to the product.

21 (d) A person is not liable for personal injury, death, or
22 property damage caused by or resulting from the person's selection,
23 distribution, or use of a product described by Subsection (a)
24 during a pandemic emergency unless:

25 (1) the person:

26 (A) had actual knowledge of a defect in the
27 product when the person selected, distributed, or used the product;

1 or

2 (B) acted with actual malice in selecting,
3 distributing, or using the product; and

4 (2) the product presents an unreasonable risk of
5 substantial harm to an individual using or exposed to the product.

6 Sec. 148.003. LIABILITY FOR CAUSING EXPOSURE TO PANDEMIC
7 DISEASE. (a) A person is not liable for injury or death caused by
8 exposing an individual to a pandemic disease during a pandemic
9 emergency unless the claimant establishes that:

10 (1) the person who exposed the individual:

11 (A) knowingly failed to warn the individual of or
12 remediate a condition that the person knew was likely to result in
13 the exposure of an individual to the disease, provided that the
14 person:

15 (i) had control over the condition;

16 (ii) knew that the individual was more
17 likely than not to come into contact with the condition; and

18 (iii) had a reasonable opportunity and
19 ability to remediate the condition or warn the individual of the
20 condition before the individual came into contact with the
21 condition; or

22 (B) knowingly failed to implement or comply with
23 government-promulgated standards, guidance, or protocols intended
24 to lower the likelihood of exposure to the disease that were
25 applicable to the person or the person's business, provided that
26 the person:

27 (i) had a reasonable opportunity and

1 ability to implement or comply with the standards, guidance, or
2 protocols; and

3 (ii) refused to implement or comply with or
4 acted with flagrant disregard of the standards, guidance, or
5 protocols; and

6 (2) reliable scientific evidence shows that the
7 failure to warn the individual of the condition, remediate the
8 condition, or implement or comply with the government-promulgated
9 standards, guidance, or protocols was the cause in fact of the
10 individual contracting the disease.

11 (b) Except as provided by Subsection (c), not later than the
12 120th day after the date a defendant files an answer to a claim to
13 which Subsection (a) applies, the claimant shall serve on the
14 defendant:

15 (1) a report authored by at least one qualified expert
16 that provides a factual and scientific basis for the assertion that
17 the defendant's failure to act caused the individual to contract a
18 pandemic disease; and

19 (2) a curriculum vitae for each expert whose opinion
20 is included in the report.

21 (c) The deadline for serving the report and curriculum vitae
22 required by Subsection (b) may be extended by written agreement of
23 the affected parties.

24 (d) A defendant must file an objection to the sufficiency of
25 the report and serve the objection on the claimant not later than 21
26 days after the later of:

27 (1) the date the report is served on the defendant; or

1 (2) the date the defendant's answer to the claim is
2 filed.

3 (e) If a court determines that a report served under
4 Subsection (b) does not represent an objective, good faith effort
5 to provide a factual and scientific basis for the assertion that the
6 defendant's failure to act caused the injured individual to
7 contract a pandemic disease, the court may grant the claimant, on
8 one occasion, a 30-day period to cure any deficiency in the report.

9 (f) If a sufficient report is not timely served under this
10 section, the court, on the defendant's motion, shall enter an
11 order:

12 (1) dismissing the claim with respect to the
13 defendant, with prejudice; and

14 (2) awarding to the defendant reasonable attorney's
15 fees and costs of court incurred by the defendant in the action.

16 (g) Nothing in this section shall be construed to mean that
17 a single expert must address all causation issues with respect to
18 all defendants.

19 (h) A report served under this section:

20 (1) is not admissible in evidence by any party;

21 (2) may not be used in a deposition, trial, or other
22 proceeding; and

23 (3) may not be referred to by any party during the
24 course of the action, except in a proceeding to determine if a
25 report is sufficient or timely.

26 (i) After a claim to which Subsection (a) applies is filed,
27 all claimants, collectively, may take not more than two depositions

1 before the expert report is served as required by Subsection (b).

2 Sec. 148.004. LIABILITY OF EDUCATIONAL INSTITUTIONS FOR
3 CERTAIN ACTIONS DURING PANDEMIC EMERGENCY. (a) In this section,
4 "educational institution" means an institution or program that
5 facilitates learning or the acquisition of knowledge, skills,
6 values, beliefs, or habits. The term includes public and private
7 preschools, child-care facilities, primary and secondary schools,
8 colleges, and universities.

9 (b) An educational institution is not liable for damages
10 arising from a cancellation or modification of a course, program,
11 or activity of the institution if the cancellation or modification
12 arose during a pandemic emergency and was caused, in whole or in
13 part, by the emergency.

14 SECTION 6. (a) For purposes of Section 74.155, Civil
15 Practice and Remedies Code, as added by this Act, the legislature
16 finds that:

17 (1) the widespread effect of Coronavirus Disease 2019
18 ("COVID-19") in this state has resulted in a state of disaster as
19 declared by the governor under Section 418.014, Government Code;

20 (2) the frequency and severity of such cases in this
21 state have severely taxed the physicians and health care providers,
22 including health care institutions, stressed the state's health
23 care system, and created shortages of medical staff, therapeutics,
24 hospital beds, testing equipment, and safety supplies;

25 (3) physicians and health care providers often have
26 inadequate facilities to respond to the disaster;

27 (4) physicians and health care providers often have

1 inadequate test kits and monitoring devices to properly assess all
2 those presenting themselves for care or treatment;

3 (5) because of the number and severity of cases, many
4 physicians and health care providers in this state have been forced
5 to prioritize care and treatment;

6 (6) many physicians and health care providers have
7 placed themselves, their loved ones, and their livelihoods at risk
8 by trying to respond to the disaster;

9 (7) at the current time, there is no certainty as far
10 as how long this crisis will last;

11 (8) a pandemic, including the COVID-19 pandemic,
12 requires an enormous response from governments working in
13 coordination with physicians and health care providers in the
14 community;

15 (9) protecting physicians and health care providers
16 from unnecessary liability supports their efforts during a
17 pandemic, including the COVID-19 pandemic;

18 (10) there is a strong public interest to be served by
19 this Act; and

20 (11) while some prior rights will be impaired by this
21 Act, the impairment is not significant and the interest of
22 protecting the public and ensuring adequate care vastly outweighs
23 those rights.

24 (b) Because of the conditions stated in Subsection (a) of
25 this section, the purpose of Section 74.155, Civil Practice and
26 Remedies Code, as added by this Act, is to improve and modify the
27 system by which health care liability claims are determined in

1 order to:

2 (1) promote the public health, safety, and welfare of
3 all citizens and ensure access to care and treatment during a
4 pandemic by broadly protecting physicians and health care
5 providers, including health care institutions, in this state from
6 liability that may relate to the care or treatment of individuals
7 associated with a pandemic, including COVID-19;

8 (2) provide for prompt and swift medical and health
9 care responses to the citizens of this state suffering from
10 COVID-19;

11 (3) recognize that many physicians and health care
12 providers responding to these situations may not have the full
13 benefits of the medical devices and facilities they would in
14 non-disaster situations;

15 (4) encourage physicians and health care providers
16 from other states to respond, if necessary, to the COVID-19
17 disaster in this state as declared by the president of the United
18 States and by the governor; and

19 (5) ensure that the focus and resources of physicians
20 and health care providers in responding to the COVID-19 disaster
21 are being addressed.

22 SECTION 7. The purposes of Section [79.0031](#), Civil Practice
23 and Remedies Code, as amended by this Act, are to:

24 (1) provide for prompt and swift medical and health
25 care responses to individuals in this state suffering from a
26 man-made or natural disaster, including a state of disaster or
27 emergency in this state declared by the president of the United

1 States or a state of disaster declared by the governor under Section
2 [418.014](#), Government Code;

3 (2) recognize that many physicians and health care
4 providers responding to these situations may not have the full
5 benefits of the medical devices and facilities they would in
6 non-disaster situations;

7 (3) encourage physicians and health care providers
8 from other states to respond, if necessary, to a state of disaster
9 or emergency in this state declared by the president of the United
10 States or a state of disaster declared by the governor under Section
11 [418.014](#), Government Code; and

12 (4) ensure that the focus and resources of physicians
13 and health care providers in these situations are being properly
14 directed after a state of disaster or emergency is declared by the
15 president of the United States or a state of disaster is declared by
16 the governor under Section [418.014](#), Government Code.

17 SECTION 8. (a) Section 74.155 and Chapter 148, Civil
18 Practice and Remedies Code, as added by this Act, apply only to an
19 action commenced on or after March 13, 2020, for which a judgment
20 has not become final before the effective date of this Act. An
21 action commenced before March 13, 2020, or an action for which a
22 judgment has become final before the effective date of this Act is
23 governed by the law applicable to the action immediately before the
24 effective date of this Act, and that law is continued in effect for
25 that purpose.

26 (b) Section [79.0031](#), Civil Practice and Remedies Code, as
27 amended by this Act, applies only to an action commenced on or after

1 the effective date of this Act. An action commenced before the
2 effective date of this Act is governed by the law applicable to the
3 action immediately before the effective date of this Act, and that
4 law is continued in effect for that purpose.

5 SECTION 9. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2021.