

By: Kolkhorst

S.B. No. 968

A BILL TO BE ENTITLED

AN ACT

relating to public health disaster and public health emergency preparedness and response; providing a civil penalty.

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

SECTION 1. Subchapter B, Chapter 418, Government Code, is amended by adding Section 418.0125 to read as follows:

Sec. 418.0125. LIMITATIONS ON MEDICAL PROCEDURES. (a) In this section, "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:

(1) the patient's loss of life; or

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

(b) The Texas Medical Board during a declared state of disaster may not issue an order or adopt a regulation that limits or prohibits a nonelective medical procedure.

(c) The Texas Medical Board 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

1 prohibition is reasonably necessary to conserve resources for  
2 nonelective medical procedures or resources needed for disaster  
3 response. An order issued or regulation adopted under this  
4 subsection may not continue for more than 15 days unless renewed by  
5 the board.

6 (d) A person subject to an order issued or regulation  
7 adopted under this section who in good faith acts or fails to act in  
8 accordance with that order or regulation is not civilly or  
9 criminally liable and is not subject to disciplinary action for  
10 that act or failure to act.

11 (e) The immunity provided by Subsection (d) is in addition  
12 to any other immunity or limitation of liability provided by law.

13 (f) Notwithstanding any other law, this section does not  
14 create a civil, criminal, or administrative cause of action or  
15 liability or create a standard of care, obligation, or duty that  
16 provides the basis for a cause of action for an act or omission  
17 under this section.

18 SECTION 2. Subchapter C, Chapter 418, Government Code, is  
19 amended by adding Section 418.0435 to read as follows:

20 Sec. 418.0435. PERSONAL PROTECTIVE EQUIPMENT CONTRACTS.

21 (a) The division shall enter into a contract with a manufacturer of  
22 personal protective equipment that guarantees a set amount and  
23 stocked supply of the equipment for use during a public health  
24 disaster declared under Section 81.0813, Health and Safety Code.

25 (b) The division may purchase personal protective equipment  
26 under a contract described by Subsection (a) only if the division  
27 determines the state's supply of personal protective equipment will

1 be insufficient based on an evaluation of the personal protective  
2 equipment:

3 (1) held in reserve in this state; and

4 (2) supplied by or expected to be supplied by the  
5 federal government.

6 (c) The division shall pursue all available federal funding  
7 to cover the costs of personal protective equipment purchased under  
8 a contract described by Subsection (a).

9 SECTION 3. The heading to Subtitle D, Title 2, Health and  
10 Safety Code, is amended to read as follows:

11 SUBTITLE D. PREVENTION, CONTROL, AND REPORTS OF DISEASES; PUBLIC  
12 HEALTH DISASTERS AND EMERGENCIES

13 SECTION 4. The heading to Chapter 81, Health and Safety  
14 Code, is amended to read as follows:

15 CHAPTER 81. COMMUNICABLE DISEASES; PUBLIC HEALTH DISASTERS; PUBLIC  
16 HEALTH EMERGENCIES

17 SECTION 5. Section 81.003, Health and Safety Code, is  
18 amended by amending Subdivision (7) and adding Subdivision (7-a) to  
19 read as follows:

20 (7) "Public health disaster" means:

21 (A) a declaration by the governor of a state of  
22 disaster; and

23 (B) a determination by the commissioner that  
24 there exists an immediate threat from a communicable disease,  
25 health condition, or chemical, biological, radiological, or  
26 electromagnetic exposure that:

27 (i) poses a high risk of death or serious

1 harm [~~long-term disability~~] to the public [~~a large number of~~  
2 ~~people~~]; and

3 (ii) creates a substantial risk of harmful  
4 public exposure [~~because of the disease's high level of contagion~~  
5 ~~or the method by which the disease is transmitted~~].

6 (7-a) "Public health emergency" means a determination  
7 by the commissioner, evidenced in an emergency order issued by the  
8 commissioner, that there exists an immediate threat from a  
9 communicable disease, health condition, or chemical, biological,  
10 radiological, or electromagnetic exposure that:

11 (A) potentially poses a risk of death or severe  
12 illness or harm to the public; and

13 (B) potentially creates a substantial risk of  
14 harmful exposure to the public.

15 SECTION 6. The heading to Subchapter B, Chapter 81, Health  
16 and Safety Code, is amended to read as follows:

17 SUBCHAPTER B. PREVENTION AND PREPAREDNESS

18 SECTION 7. Section 81.044, Health and Safety Code, is  
19 amended by adding Subsection (b-1) to read as follows:

20 (b-1) In this subsection, "cycle threshold value" means for  
21 a communicable disease test the number of thermal cycles required  
22 for the fluorescent signal to exceed that of the background and  
23 cross the threshold for a positive test. The executive  
24 commissioner shall require the reports to contain the cycle  
25 threshold values and their reference ranges for the reportable  
26 disease that is the subject of the report.

27 SECTION 8. Section 81.081, Health and Safety Code, is

1 amended to read as follows:

2           Sec. 81.081. DEPARTMENT'S DUTY. The department is the  
3 preemptive authority for purposes of this chapter and shall  
4 coordinate statewide or regional efforts to protect public health.  
5 The department shall collaborate with local elected officials,  
6 including county and municipal officials, [~~impose control~~  
7 measures] to prevent the spread of disease and [~~in the exercise of~~  
8 ~~its power to~~] protect the public health.

9           SECTION 9. Subchapter E, Chapter 81, Health and Safety  
10 Code, is amended by adding Sections 81.0813, 81.0814, and 81.0815  
11 to read as follows:

12           Sec. 81.0813. AUTHORITY TO DECLARE PUBLIC HEALTH DISASTER  
13 OR ORDER PUBLIC HEALTH EMERGENCY. (a) The commissioner may declare  
14 a statewide or regional public health disaster or order a statewide  
15 or regional public health emergency if the commissioner determines  
16 an occurrence or threat to public health is imminent. The  
17 commissioner may declare a public health disaster only if the  
18 governor declares a state of disaster under Chapter 418, Government  
19 Code, for the occurrence or threat.

20           (b) Except as provided by Subsection (c), a public health  
21 disaster or public health emergency continues until the governor or  
22 commissioner terminates the disaster or emergency on a finding  
23 that:

24                   (1) the threat or danger has passed; or  
25                   (2) the disaster or emergency has been managed to the  
26 extent emergency conditions no longer exist.

27           (c) A public health disaster or public health emergency

1 expires on the 30th day after the date the disaster or emergency is  
2 declared or ordered by the commissioner. A public health disaster  
3 or public health emergency may only be renewed by the legislature or  
4 a designated legislative oversight board that has been granted  
5 authority under a statute enacted by the legislature to renew a  
6 public health disaster declaration or public health emergency  
7 order. Each renewal period may not exceed 30 days.

8 (d) A declaration or order issued under this section must  
9 include:

10 (1) a description of the nature of the disaster or  
11 emergency;

12 (2) a designation of the area threatened by the  
13 disaster or emergency;

14 (3) a description of the condition that created the  
15 disaster or emergency; and

16 (4) if applicable:

17 (A) the reason for renewing the disaster or  
18 emergency; or

19 (B) the reason for terminating the disaster or  
20 emergency.

21 (e) A declaration or order issued under this section must be  
22 disseminated promptly by means intended to bring its contents to  
23 the public's attention. A statewide or regional declaration or  
24 order shall be filed promptly with the office of the governor and  
25 the secretary of state. A regional declaration or order shall be  
26 filed with the county clerk or municipal secretary in each area to  
27 which it applies, unless the circumstances attendant on the

1 disaster or emergency prevent or impede the filing.

2 Sec. 81.0814. EXPERT PANEL. (a) Immediately after  
3 declaring a public health disaster or issuing a public health  
4 emergency order, the commissioner shall appoint an expert panel  
5 composed of five physicians and four other health care providers  
6 who have extensive experience involving treatments, therapeutics,  
7 and prophylactics for communicable diseases and other important  
8 knowledge and experience related to the disaster or order.

9 (b) The commissioner shall appoint a presiding officer for  
10 the expert panel.

11 (c) The expert panel shall meet during the public health  
12 disaster or emergency to provide recommendations on the disaster or  
13 emergency to the chief state epidemiologist appointed under Section  
14 1001.0515.

15 (d) The expert panel is abolished on the termination of the  
16 public health disaster or emergency for which the panel was  
17 established.

18 Sec. 81.0815. FAILURE TO REPORT; CIVIL PENALTY. (a) A  
19 health care facility that fails to submit a report required by the  
20 department under a public health disaster or emergency is liable to  
21 this state for a civil penalty of not more than \$1,000 for each  
22 failure.

23 (b) The attorney general at the request of the department  
24 may bring an action to collect a civil penalty imposed under this  
25 section.

26 SECTION 10. Subchapter A, Chapter 161, Health and Safety  
27 Code, is amended by adding Section 161.0085 to read as follows:

1 Sec. 161.0085. COVID-19 VACCINE PASSPORTS PROHIBITED. (a)

2 In this section, "COVID-19" means the 2019 novel coronavirus  
3 disease.

4 (b) A governmental entity in this state may not issue a  
5 vaccine passport, vaccine pass, or other standardized  
6 documentation to certify an individual's COVID-19 vaccination  
7 status to a third party for a purpose other than health care or  
8 otherwise publish or share any individual's COVID-19 immunization  
9 record or similar health information for a purpose other than  
10 health care.

11 (c) A business in this state may not require a customer to  
12 provide any documentation certifying the customer's COVID-19  
13 vaccination or post-transmission recovery on entry to, to gain  
14 access to, or to receive service from the business. A business that  
15 fails to comply with this subsection is not eligible to receive a  
16 grant or enter into a contract payable with state funds.

17 (d) Notwithstanding any other law, each appropriate state  
18 agency shall ensure that businesses in this state comply with  
19 Subsection (c) and may require compliance with that subsection as a  
20 condition for a license, permit, or other state authorization  
21 necessary for conducting business in this state.

22 (e) This section may not be construed to:

23 (1) restrict a business from implementing COVID-19  
24 screening and infection control protocols in accordance with state  
25 and federal law to protect public health; or

26 (2) interfere with an individual's right to access the  
27 individual's personal health information under federal law.

1 SECTION 11. Subchapter C, Chapter 1001, Health and Safety  
2 Code, is amended by adding Section 1001.0515 to read as follows:

3 Sec. 1001.0515. OFFICE OF CHIEF STATE EPIDEMIOLOGIST. (a)  
4 The commissioner shall:

5 (1) establish an Office of Chief State Epidemiologist  
6 within the department to provide expertise in public health  
7 activities and policy in this state by:

8 (A) evaluating epidemiologic, medical, and  
9 health care information; and

10 (B) identifying pertinent research and  
11 evidence-based best practices; and

12 (2) appoint a physician licensed to practice medicine  
13 in this state as the chief state epidemiologist to administer the  
14 Office of Chief State Epidemiologist.

15 (b) The chief state epidemiologist must:

16 (1) be board certified in a medical specialty; and

17 (2) have significant experience in public health and  
18 an advanced degree in public health, epidemiology, or a related  
19 field.

20 (c) The chief state epidemiologist serves as:

21 (1) the department expert on epidemiological matters  
22 and on communicable and noncommunicable diseases; and

23 (2) the department's senior science representative and  
24 primary contact for the Centers for Disease Control and Prevention  
25 and other federal agencies related to epidemiologic science and  
26 disease surveillance.

27 (d) The chief state epidemiologist shall report to the state

1 operations center, under the direction of the chief of the Texas  
2 Division of Emergency Management, during a declared public health  
3 disaster to provide expertise and support this state's response to  
4 the disaster.

5 (e) The chief state epidemiologist may provide professional  
6 and scientific consultation regarding epidemiology and disease  
7 control, harmful exposure, and injury prevention to state agencies,  
8 health facilities, health service regions, local health  
9 authorities, local health departments, and other entities.

10 (f) Notwithstanding any other law, the chief state  
11 epidemiologist may access information from the department to  
12 implement duties of the epidemiologist's office. Reports, records,  
13 and information provided to the Office of Chief State  
14 Epidemiologist that relate to an epidemiologic or toxicologic  
15 investigation of human illness or conditions and of environmental  
16 exposure that are harmful or believed to be harmful to the public  
17 health are confidential and not subject to disclosure under Chapter  
18 552, Government Code, and may not be released or made public on  
19 subpoena or otherwise, except for statistical purposes if released  
20 in a manner that prevents identification of any person.

21 SECTION 12. Sections 81.082(d) and (e), Health and Safety  
22 Code, are repealed.

23 SECTION 13. (a) In this section, "council" means the  
24 Preparedness Coordinating Council advisory committee established  
25 by the Health and Human Services Commission under Section 1001.035,  
26 Health and Safety Code, for the Department of State Health  
27 Services.

1           (b) Under the direction of the emergency management council  
2 established by the governor under Section 418.013, Government Code,  
3 the council shall conduct a study on this state's response to the  
4 2019 novel coronavirus disease. The council shall examine the  
5 roles of the Department of State Health Services, the Health and  
6 Human Services Commission, and the Texas Division of Emergency  
7 Management relating to public health disaster and emergency  
8 planning and response efforts and determine the efficacy of the  
9 state emergency operations plan in appropriately identifying  
10 agency responsibilities. The council may collaborate with an  
11 institution of higher education in this state to conduct the study.

12           (c) Not later than December 1, 2022, the council shall  
13 prepare and submit a written report to the governor, the lieutenant  
14 governor, the speaker of the house of representatives, and the  
15 members of the legislature on the results of the study conducted  
16 under Subsection (b) of this section. The report must include  
17 recommendations for legislative improvements for public health  
18 disaster and public health emergency response and preparedness.

19           (d) This section expires September 1, 2023.

20           SECTION 14. Section 418.0125, Government Code, as added by  
21 this Act, applies only to an order issued or regulation adopted on  
22 or after the effective date of this Act.

23           SECTION 15. (a) The Department of State Health Services  
24 and the Preparedness Coordinating Council advisory committee are  
25 required to implement this Act only if the legislature appropriates  
26 money specifically for that purpose. If the legislature does not  
27 appropriate money specifically for that purpose, the department and

1 council may, but are not required to, implement this Act using other  
2 appropriations available for that purpose.

3 (b) The Department of State Health Services shall use any  
4 available federal money to implement this Act.

5 SECTION 16. This Act takes effect immediately if it  
6 receives a vote of two-thirds of all the members elected to each  
7 house, as provided by Section 39, Article III, Texas Constitution.  
8 If this Act does not receive the vote necessary for immediate  
9 effect, this Act takes effect September 1, 2021.