

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 or
22 wholesale distributor of personal protective equipment that
23 guarantees a set amount and stocked supply of the equipment for use
24 during a public health disaster declared under Section 81.0813,
25 Health and Safety Code.

26 (b) The division may purchase personal protective equipment
27 under a contract described by Subsection (a) only if the division

1 determines the state's supply of personal protective equipment will
2 be insufficient based on an evaluation of the personal protective
3 equipment:

- 4 (1) held in reserve in this state; and
- 5 (2) supplied by or expected to be supplied by the
6 federal government.

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

10 (d) In entering into a contract under Subsection (a), the
11 division shall ensure that the manufacturer is located in the
12 United States to the extent practicable.

13 SECTION 3. Subchapter E, Chapter 418, Government Code, is
14 amended by adding Section 418.1085 to read as follows:

15 Sec. 418.1085. LIMITATIONS ON CONSTRUCTION AND RELATED
16 SERVICES. The presiding officer of the governing body of a
17 political subdivision may not issue an order during a declared
18 state of disaster or local disaster to address a pandemic disaster
19 that would limit or prohibit:

- 20 (1) housing and commercial construction activities,
21 including related activities involving the sale, transportation,
22 and installation of manufactured homes;

- 23 (2) the provision of governmental services for title
24 searches, notary services, and recording services in support of
25 mortgages and real estate services and transactions;

- 26 (3) residential and commercial real estate services,
27 including settlement services; or

1 (4) essential maintenance, manufacturing, design,
2 operation, inspection, security, and construction services for
3 essential products, services, and supply chain relief efforts.

4 SECTION 4. Subchapter H, Chapter 418, Government Code, is
5 amended by adding Section 418.1861 to read as follows:

6 Sec. 418.1861. DISEASE PREVENTION INFORMATION SYSTEM. (a)
7 The Department of State Health Services, using existing resources,
8 shall develop and implement a disease prevention information system
9 for dissemination of immunization information during a declared
10 state of disaster or local state of disaster.

11 (b) During a declared state of disaster or local state of
12 disaster, the Department of State Health Services shall ensure that
13 educational materials regarding immunizations are available to
14 local health authorities in this state for distribution to:

15 (1) public and private schools;

16 (2) child-care facilities as defined by Section
17 42.002, Human Resources Code;

18 (3) community centers offering youth services and
19 programs;

20 (4) community centers offering services and programs
21 to vulnerable populations, including communities of color,
22 low-income individuals, and elderly individuals;

23 (5) local health care providers; and

24 (6) veterans homes as defined by Section 164.002,
25 Natural Resources Code.

26 (c) The educational materials must include:

27 (1) the most recent immunization schedules by age as

1 recommended by the Centers for Disease Control and Prevention; and
2 (2) locations, if any, of local health care providers
3 that offer immunizations.

4 SECTION 5. Chapter 418, Government Code, is amended by
5 adding Subchapter J to read as follows:

6 SUBCHAPTER J. WELLNESS CHECKS FOR MEDICALLY FRAGILE INDIVIDUALS
7 DURING CERTAIN EMERGENCIES

8 Sec. 418.301. DEFINITIONS. In this subchapter:

9 (1) "Commission" means the Health and Human Services
10 Commission.

11 (2) "Department" means the Department of State Health
12 Services.

13 (3) "Emergency assistance registry" means the
14 registry maintained by the division that provides local emergency
15 planners and emergency responders with additional information on
16 the needs of certain individuals in their communities.

17 (4) "First responder" means any federal, state, or
18 local personnel who may respond to a disaster, including:

19 (A) public health and public safety personnel;

20 (B) commissioned law enforcement personnel;

21 (C) fire protection personnel, including
22 volunteer firefighters;

23 (D) emergency medical services personnel,
24 including hospital emergency facility staff;

25 (E) a member of the National Guard; or

26 (F) a member of the Texas State Guard.

27 (5) "Medically fragile individual" means any

1 individual who, during a time of disaster or emergency, would be
2 particularly vulnerable because of a medical condition, including
3 individuals:

4 (A) with Alzheimer's disease and other related
5 disorders;

6 (B) receiving dialysis services;

7 (C) who are diagnosed with a debilitating chronic
8 illness;

9 (D) who are dependent on oxygen treatment; and

10 (E) who have medical conditions that require
11 24-hour supervision from a skilled nurse.

12 Sec. 418.302. MEDICALLY FRAGILE INDIVIDUAL DESIGNATION.

13 The division shall develop a process for designating individuals
14 who are included in the emergency assistance registry as medically
15 fragile for the purposes of this chapter.

16 Sec. 418.303. EMERGENCY ASSISTANCE REGISTRY ACCESS. The
17 division shall authorize the following persons to access the
18 emergency assistance registry to assist medically fragile
19 individuals during an event described by Section 418.305:

20 (1) the commission;

21 (2) the department;

22 (3) first responders;

23 (4) local governments; and

24 (5) local health departments.

25 Sec. 418.304. REQUIRED WELLNESS CHECK. The division shall
26 collaborate with the persons authorized to access the emergency
27 assistance registry under Section 418.303 and with applicable

1 municipalities and counties to ensure that a wellness check is
2 conducted on each medically fragile individual listed in the
3 emergency assistance registry and located in an area that
4 experiences an event described by Section 418.305 to ensure the
5 individual has:

- 6 (1) continuity of care; and
7 (2) the ability to continue using electrically powered
8 medical equipment, if applicable.

9 Sec. 418.305. EVENTS REQUIRING WELLNESS CHECKS. (a) The
10 division, in collaboration with the commission and the department,
11 shall adopt rules regarding which events require a wellness check,
12 including:

- 13 (1) an extended power, water, or gas outage;
14 (2) a state of disaster declared under this chapter;
15 or
16 (3) any other event considered necessary by the
17 commission, the department, or the division.

18 (b) If more than one disaster is declared for the same
19 event, or the same event qualifies as an event requiring a wellness
20 check for multiple reasons under Subsection (a), only one wellness
21 check is required to be conducted under this subchapter.

22 Sec. 418.306. REQUIREMENTS FOR WELLNESS CHECK. (a) The
23 division, in collaboration with the commission and the department,
24 by rule shall develop minimum standards for conducting wellness
25 checks. Each county and municipality shall adopt procedures for
26 conducting wellness checks in compliance with the minimum
27 standards.

1 (b) A wellness check on a medically fragile individual under
2 this subchapter must:

3 (1) include:

4 (A) an automated telephone call and text to the
5 individual;

6 (B) a personalized telephone call to the
7 individual; and

8 (C) if the individual is unresponsive to a
9 telephone call under Paragraph (B), an in-person wellness check;
10 and

11 (2) be conducted in accordance with the minimum
12 standards prescribed by division rule and the procedures of the
13 applicable county or municipality.

14 (c) A wellness check must be conducted as soon as
15 practicable but not later than 24 hours after the event requiring a
16 wellness check occurs.

17 Sec. 418.307. RULES. The division, in collaboration with
18 the commission and the department, shall adopt rules to implement
19 this subchapter.

20 SECTION 6. The heading to Subtitle D, Title 2, Health and
21 Safety Code, is amended to read as follows:

22 SUBTITLE D. PREVENTION, CONTROL, AND REPORTS OF DISEASES; PUBLIC
23 HEALTH DISASTERS AND EMERGENCIES

24 SECTION 7. The heading to Chapter 81, Health and Safety
25 Code, is amended to read as follows:

26 CHAPTER 81. COMMUNICABLE DISEASES; PUBLIC HEALTH DISASTERS; PUBLIC
27 HEALTH EMERGENCIES

1 SECTION 8. Section 81.003, Health and Safety Code, is
2 amended by amending Subdivision (7) and adding Subdivision (7-a) to
3 read as follows:

4 (7) "Public health disaster" means:

5 (A) a declaration by the governor of a state of
6 disaster; and

7 (B) a determination by the commissioner that
8 there exists an immediate threat from a communicable disease,
9 health condition, or chemical, biological, radiological, or
10 electromagnetic exposure that:

11 (i) poses a high risk of death or serious
12 harm [~~long-term disability~~] to the public [~~a large number of~~
13 ~~people~~]; and

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

17 (7-a) "Public health emergency" means a determination
18 by the commissioner, evidenced in an emergency order issued by the
19 commissioner, that there exists an immediate threat from a
20 communicable disease, health condition, or chemical, biological,
21 radiological, or electromagnetic exposure that:

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

24 (B) potentially creates a substantial risk of
25 harmful exposure to the public.

26 SECTION 9. The heading to Subchapter B, Chapter 81, Health
27 and Safety Code, is amended to read as follows:

1 SUBCHAPTER B. PREVENTION AND PREPAREDNESS

2 SECTION 10. Section 81.044, Health and Safety Code, is
3 amended by adding Subsection (b-1) to read as follows:

4 (b-1) In this subsection, "cycle threshold value" means for
5 a communicable disease test the number of thermal cycles required
6 for the fluorescent signal to exceed that of the background and
7 cross the threshold for a positive test. The executive
8 commissioner shall require the reports of polymerase chain reaction
9 tests from clinical or hospital laboratories to contain the cycle
10 threshold values and their reference ranges.

11 SECTION 11. Section 81.081, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 81.081. DEPARTMENT'S DUTY. The department is the
14 preemptive authority for purposes of this chapter and shall
15 coordinate statewide or regional efforts to protect public health.
16 The department shall collaborate with local elected officials,
17 including county and municipal officials, [~~impose control~~
18 measures] to prevent the spread of disease and [~~in the exercise of~~
19 its power to] protect the public health.

20 SECTION 12. Subchapter E, Chapter 81, Health and Safety
21 Code, is amended by adding Sections 81.0813, 81.0814, and 81.0815
22 to read as follows:

23 Sec. 81.0813. AUTHORITY TO DECLARE PUBLIC HEALTH DISASTER
24 OR ORDER PUBLIC HEALTH EMERGENCY. (a) The commissioner may declare
25 a statewide or regional public health disaster or order a statewide
26 or regional public health emergency if the commissioner determines
27 an occurrence or threat to public health is imminent. The

1 commissioner may declare a public health disaster only if the
2 governor declares a state of disaster under Chapter 418, Government
3 Code, for the occurrence or threat.

4 (b) Except as provided by Subsection (c), a public health
5 disaster or public health emergency continues until the governor or
6 commissioner terminates the disaster or emergency on a finding
7 that:

8 (1) the threat or danger has passed; or

9 (2) the disaster or emergency has been managed to the
10 extent emergency conditions no longer exist.

11 (c) A public health disaster or public health emergency
12 expires on the 30th day after the date the disaster or emergency is
13 declared or ordered by the commissioner. A public health disaster
14 may only be renewed by the legislature or by the commissioner with
15 the approval of a designated legislative oversight board that has
16 been granted authority under a statute enacted by the legislature
17 to approve the renewal of a public health disaster declaration.
18 Each renewal period may not exceed 30 days.

19 (d) A declaration or order issued under this section must
20 include:

21 (1) a description of the nature of the disaster or
22 emergency;

23 (2) a designation of the area threatened by the
24 disaster or emergency;

25 (3) a description of the condition that created the
26 disaster or emergency; and

27 (4) if applicable:

1 (A) the reason for renewing the disaster or
2 emergency; or

3 (B) the reason for terminating the disaster or
4 emergency.

5 (e) A declaration or order issued under this section must be
6 disseminated promptly by means intended to bring its contents to
7 the public's attention. A statewide or regional declaration or
8 order shall be filed promptly with the office of the governor and
9 the secretary of state. A regional declaration or order shall be
10 filed with the county clerk or municipal secretary in each area to
11 which it applies, unless the circumstances attendant on the
12 disaster or emergency prevent or impede the filing.

13 Sec. 81.0814. CONSULTATION WITH TASK FORCE ON INFECTIOUS
14 DISEASE PREPAREDNESS AND RESPONSE. After declaring a public health
15 disaster or ordering a public health emergency, the commissioner
16 shall consult with the Task Force on Infectious Disease
17 Preparedness and Response, including any subcommittee the task
18 force forms to aid in the rapid assessment of response efforts.

19 Sec. 81.0815. FAILURE TO REPORT; CIVIL PENALTY. (a) A
20 health care facility that fails to submit a report required by the
21 department under a public health disaster is liable to this state
22 for a civil penalty of not more than \$1,000 for each 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 13. Sections [161.00705](#)(a) and (c), Health and
27 Safety Code, are amended to read as follows:

1 (a) The department shall maintain a registry of persons who
2 receive an immunization or[7] antiviral[~~7~~, ~~and other medication~~]
3 administered to prepare for a potential disaster, public health
4 disaster [~~emergency~~], terrorist attack, hostile military or
5 paramilitary action, or extraordinary law enforcement emergency or
6 in response to a declared disaster, public health disaster
7 [~~emergency~~], terrorist attack, hostile military or paramilitary
8 action, or extraordinary law enforcement emergency. A health care
9 provider who administers an immunization or[7] antiviral[~~7~~, ~~or other~~
10 ~~medication~~] shall provide the data elements to the department. At
11 the request and with the authorization of the health care provider,
12 the data elements may be provided through a health information
13 exchange as defined by Section 182.151.

14 (c) The department shall track adverse reactions to an
15 immunization or[7] antiviral[~~7~~, ~~and other medication~~] administered
16 to prepare for a potential disaster, public health disaster
17 [~~emergency~~], terrorist attack, hostile military or paramilitary
18 action, or extraordinary law enforcement emergency or in response
19 to a declared disaster, public health disaster [~~emergency~~],
20 terrorist attack, hostile military or paramilitary action, or
21 extraordinary law enforcement emergency. A health care provider
22 who administers an immunization or[7] antiviral[~~7~~, ~~or other~~
23 ~~medication~~] may provide data related to adverse reactions to the
24 department.

25 SECTION 14. Subchapter A, Chapter 161, Health and Safety
26 Code, is amended by adding Section 161.0085 to read as follows:

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

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

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

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

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

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

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

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

27 SECTION 15. Subchapter C, Chapter 1001, Health and Safety

1 Code, is amended by adding Section 1001.0515 to read as follows:

2 Sec. 1001.0515. OFFICE OF CHIEF STATE EPIDEMIOLOGIST. (a)

3 The commissioner shall:

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

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

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

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

14 (b) The chief state epidemiologist must:

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

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

19 (c) The chief state epidemiologist serves as:

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

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

26 (d) The chief state epidemiologist may provide professional
27 and scientific consultation regarding epidemiology and disease

1 control, harmful exposure, and injury prevention to state agencies,
2 health facilities, health service regions, local health
3 authorities, local health departments, and other entities.

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

15 SECTION 16. Section 1001.089(a)(2), Health and Safety Code,
16 is amended to read as follows:

17 (2) "Local public health entity" means a local health
18 authority, local health unit, local health department, or public
19 health district.

20 SECTION 17. Section 81.082(e), Health and Safety Code, is
21 repealed.

22 SECTION 18. (a) In this section, "council" means the
23 Preparedness Coordinating Council advisory committee established
24 by the Health and Human Services Commission under Section 1001.035,
25 Health and Safety Code, for the Department of State Health
26 Services.

27 (b) In coordination with the emergency management council

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

11 (c) Not later than nine months after the date the declared
12 public health disaster related to the 2019 novel coronavirus
13 disease is terminated, or September 1, 2023, whichever is earlier,
14 the council shall prepare and submit a written report to the
15 governor, the lieutenant governor, the speaker of the house of
16 representatives, and the members of the legislature on the results
17 of the study conducted under Subsection (b) of this section. The
18 report must include recommendations for legislative improvements
19 for public health disaster and public health emergency response and
20 preparedness.

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

22 SECTION 19. Section 418.0125, Government Code, as added by
23 this Act, applies only to an order issued or regulation adopted on
24 or after the effective date of this Act.

25 SECTION 20. As soon as practicable, but not later than
26 August 31, 2022, the Department of State Health Services shall
27 implement the disease prevention information system as required by

1 Section 418.1861, Government Code, as added by this Act.

2 SECTION 21. As soon as practicable after the effective date
3 of this Act, the Texas Division of Emergency Management shall adopt
4 the rules necessary to implement Subchapter J, Chapter 418,
5 Government Code, as added by this Act.

6 SECTION 22. (a) The Department of State Health Services
7 and the Preparedness Coordinating Council advisory committee are
8 required to implement this Act only if the legislature appropriates
9 money specifically for that purpose. If the legislature does not
10 appropriate money specifically for that purpose, the department and
11 council may, but are not required to, implement this Act using other
12 appropriations available for that purpose.

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

15 SECTION 23. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 968 passed the Senate on April 21, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 30, 2021, by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

I hereby certify that S.B. No. 968 passed the House, with amendments, on May 26, 2021, by the following vote: Yeas 146, Nays 2, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor