

BILL ANALYSIS

Senate Research Center
87R8397 SCL-D

S.B. 968
By: Kolkhorst
Health & Human Services
3/26/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The COVID-19 pandemic brought to light various challenges and opportunities to improve the state's preparedness to address a public health disaster. Concerns over access to information, challenges in coordination between state agencies, and shortages in testing and personal protective equipment (PPE). As the pandemic continues, concerns also arose over legislative oversight of the state's response to COVID-19.

S.B. 968 seeks to ensure that Texas is better prepared for a future public health emergency or disaster. S.B. 968 clarifies the roles and responsibilities of the Department of State Health Services (DSHS) as well as other state agencies during a public health disaster or emergency.

Additionally, the bill outlines requirements for mandatory state PPE contracts, defines and delineates the difference between a public health disaster and a public health emergency, establishes legislative oversight, requires inter-agency/facility planning and preparedness, and creates the Office of the Chief State Epidemiologist.

As proposed, S.B. 968 amends current law relating to public health disaster and public health emergency preparedness and response and provides a civil penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 4 (Section 81.026, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Medical Board in SECTION 7 (Sections 81.0814 and 81.0815, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 418, Government Code, by adding Section 418.0435, as follows:

Sec. 418.0435. PERSONAL PROTECTIVE EQUIPMENT CONTRACTS. (a) Requires the Texas Division of Emergency Management (TDEM) to enter into a contract with a manufacturer of personal protective equipment (PPE) that guarantees TDEM is given priority in the purchase of the PPE over other persons, including other states and local governments, during a public health disaster declared under Section 81.0813, Health and Safety Code.

(b) Authorizes TDEM to purchase PPE under a contract described by Subsection (a) only if:

(1) a public health disaster is declared by the commissioner of state health services (commissioner) under Section 81.0813, Health and Safety Code; and

(2) TDEM determines the state's supply of PPE will be insufficient based on an evaluation of the PPE held in reserve in this state, and supplied by or expected to be supplied by the federal government.

(c) Requires TDEM to pursue all available federal funding to cover the costs of PPE purchased under a contract described by Subsection (a).

SECTION 2. Amends Section 81.003, Health and Safety Code, by amending Subdivision (7) and adding Subdivision (7-a) to redefine "public health disaster" and to define "public health emergency" for Chapter 81 (Communicable Diseases).

SECTION 3. Amends the heading to Subchapter B, Chapter 81, Health and Safety Code, to read as follows:

SUBCHAPTER B. PREVENTION AND PREPAREDNESS

SECTION 4. Amends Subchapter B, Chapter 81, Health and Safety Code, by adding Sections 81.025 and 81.026, as follows:

Sec. 81.025. PREPAREDNESS PLANNING WITH OTHER STATE AGENCIES. (a) Requires the Department of State Health Services (DSHS), the Health and Human Services Commission (HHSC), and TDEM to jointly:

(1) conduct annual local and regional public health disaster and public health emergency planning; and

(2) develop standard and uniform protocols for public health disasters and public health emergencies.

(b) Requires DSHS, HHSC, and TDEM to develop and enter into a memorandum of understanding to clearly define the roles of each agency during a public health disaster and during a public health emergency.

Sec. 81.026. HEALTH FACILITY PREPAREDNESS. (a) Defines "facility."

(b) Requires the executive commissioner of HHSC (executive commissioner) by rule to establish:

(1) a public health disaster and public health emergency plan for facilities;

(2) minimum standards for the public health disaster and public health emergency plans developed by each facility; and

(3) the minimum requirements for the amount of PPE to be held in reserve by each facility for use during a public health disaster or public health emergency.

(c) Requires that each facility develop and annually update a public health disaster and public health emergency plan for the facility.

SECTION 5. Amends Section 81.044, Health and Safety Code, by adding Subsection (b-1), as follows:

(b-1) Defines "cycle threshold value." Requires the executive commissioner to require that the reports contain the cycle threshold values and their reference ranges for the reportable disease that is the subject of the report.

SECTION 6. Amends Section 81.081, Health and Safety Code, as follows:

Sec. 81.081. DEPARTMENT'S DUTY. Requires DSHS to coordinate statewide or regional efforts and collaborate with local elected officials, including county officials, to prevent the spread of disease and protect the public health. Deletes existing text requiring DSHS to impose control measures to prevent the spread of disease in the exercise of its power to protect public health.

SECTION 7. Amends Subchapter E, Chapter 81, Health and Safety Code, by adding Sections 81.0813, 81.0814, 81.0815, and 81.0816, as follows:

Sec. 81.0813. AUTHORITY TO DECLARE PUBLIC HEALTH DISASTER OR ORDER PUBLIC HEALTH EMERGENCY. (a) Authorizes the commissioner to declare a statewide or regional public health disaster or order a statewide or regional public health emergency if the commissioner determines an occurrence or threat to public health is imminent. Authorizes the commissioner to declare a public health disaster only if the governor declares a state of disaster under Chapter 418 (Emergency Management), Government Code, for the occurrence or threat.

(b) Provides that, except as provided by Subsection (c), a public health disaster or public health emergency continues until the governor or commissioner terminates the disaster or emergency on a finding that the threat or danger has passed, or that the disaster or emergency has been managed to the extent emergency conditions no longer exist.

(c) Provides that a public health disaster or public health emergency expires on the 30th day after the date the disaster or emergency is declared or ordered unless the disaster or emergency is renewed by the commissioner. Provides that a public health disaster or public health emergency renewed by the commissioner expires on the 60th day after the date the disaster or emergency is declared or ordered unless the disaster or emergency is renewed by the legislature or a designated legislative board.

(d) Requires that a declaration or order issued under this section include certain information regarding the description, scope, and nature of the disaster or emergency.

(e) Requires that a declaration or order issued under this section be disseminated promptly by means intended to bring its contents to the public's attention. Requires that a statewide or regional declaration or order be filed promptly with the Office of the Governor and the secretary of state. Requires that a regional declaration or order be filed with the county clerk or municipal secretary in each area to which it applies, unless the circumstances attendant on the disaster or emergency prevent or impede the filing.

Sec. 81.0814. EFFECT OF PUBLIC HEALTH DISASTER. (a) Authorizes the commissioner, during a public health disaster, to:

(1) require without the adoption of a rule and in the format and manner prescribed by the commissioner:

(A) reports of communicable diseases or other health conditions;
and

(B) additional reporting of information related to the disaster from local health authorities, health care providers, health care facilities, and laboratories;

(2) waive the fee required under Section 12.033 (Distribution and Administration of Certain Vaccines and Sera) for any type of vaccine, serum, or therapeutic the commissioner determines is needed to respond to the disaster;

(3) authorize the issuance of control measure orders under Section 81.083 (Application of Control Measures to Individual) or 81.084 (Application of Control Measures to Property) by electronic delivery in accordance with this section if necessary to respond to the disaster; and

(4) in accordance with rules adopted by the Texas Medical Board (TMB) and subject to Subsection (d), issue a statewide or regional standing delegation order for the performance of acts necessary to respond to the disaster.

(b) Requires the commissioner, during a public health disaster, to:

(1) to the extent possible, collaborate with an entity required to report under Subsection (a)(1)(B) to plan and implement a standardized and efficient method for submitting information to DSHS; and

(2) determine the information in the reports and records related to the cases or suspected cases of communicable diseases or health conditions that are the subject of the disaster that are authorized to be released to:

(A) a local health authority or public health region designated by DSHS under Section 121.007 (Public Health Regions);

(B) law enforcement personnel, first responders, and computer-aided dispatch systems solely for the purpose of protecting the health or life of a first responder or the person identified in the report, record, or information;

(C) a county judge or the mayor of a municipality; or

(D) a local emergency management coordinator of a political subdivision.

(c) Provides that electronic delivery of a control measure order authorized under Subsection (a)(3) is in addition to a delivery method authorized under Section 81.083 or 81.084, as applicable. Requires the commissioner, to issue a control measure order electronically, to obtain the consent of the individual to whom the order is issued.

(d) Authorizes DSHS's chief medical executive, if the commissioner is not a physician licensed to practice medicine in this state, to issue a standing delegation order under Subsection (a)(4). Prohibits TMB from taking disciplinary action against the commissioner or executive for issuing a standing delegation order in accordance with this section. Provides that the commissioner or executive is not liable for an act performed under a standing delegation order issued in accordance with this section.

Sec. 81.0815. EFFECT OF PUBLIC HEALTH EMERGENCY ORDER. (a) Authorizes the commissioner, during a public health emergency, to:

(1) require, without the adoption of a rule and in the format and manner prescribed by the commissioner, reports of communicable diseases or other health conditions;

(2) waive the fee required under Section 12.033 for any type of vaccine, serum, or therapeutic the commissioner determines is needed to respond to the emergency; and

(3) in accordance with rules adopted by TMB and subject to Subsection (b), issue a statewide or regional standing delegation order for the performance of acts necessary to respond to the emergency.

(b) Authorizes DSHS's chief medical executive, if the commissioner is not a physician licensed to practice medicine in this state, to issue a standing delegation order under Subsection (a)(3). Prohibits TMB from taking disciplinary action against the commissioner or chief medical executive for issuing a standing delegation order in accordance with this section. Provides that the commissioner or executive is not liable for an act performed under a standing delegation order issued in accordance with this section.

Sec. 81.0816. FAILURE TO REPORT; CIVIL PENALTY. (a) Provides that a person who fails to submit a report required under Section 81.0814 or 81.0815 is liable to this state for a civil penalty of not more than \$1,000 for each failure.

(b) Authorizes the attorney general, at the request of DSHS, to bring an action to collect a civil penalty imposed under this section.

SECTION 8. Amends Subchapter C, Chapter 1001, Health and Safety Code, by adding Section 1001.0515, as follows:

Sec. 1001.0515. OFFICE OF CHIEF STATE EPIDEMIOLOGIST. (a) Requires the commissioner to:

(1) establish an Office of Chief State Epidemiologist within DSHS to provide expertise in public health activities and policy in this state by evaluating epidemiologic, medical, and health care information, and by identifying pertinent research and evidence-based best practices; and

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

(b) Requires the chief state epidemiologist to:

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

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

(c) Provides that the chief state epidemiologist serves as:

(1) the DSHS expert on epidemiological matters and on communicable and noncommunicable diseases; and

(2) DSHS's senior science representative and primary contact for the Centers for Disease Control and Prevention (CDC) and other federal agencies related to epidemiologic science and disease surveillance.

(d) Authorizes the chief state epidemiologist to provide professional and scientific consultation regarding epidemiology and disease control, harmful exposure, and injury prevention to state agencies, health facilities, health service regions, local health authorities, local health departments, and other entities.

(e) Authorizes the chief state epidemiologist, notwithstanding any other law, to access information from DSHS to implement duties of the epidemiologist's office. Provides that reports, records, and information provided to the Office of Chief State Epidemiologist that relate to an epidemiologic or toxicologic investigation of human illness or conditions and of environmental exposure that are harmful or

believed to be harmful to the public health are confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, and are prohibited from being released or made public on subpoena or otherwise, except for statistical purposes if released in a manner that prevents identification of any person.

SECTION 9. Repealer: Section 12.033(d) (relating to authorizing the commissioner to waive the fee requirement for certain types of vaccines or serums), Health and Safety Code.

Repealer: Section 81.041(f) (relating to authorizing the commissioner to require reports of communicable diseases or other health conditions from providers under certain circumstances), Health and Safety Code.

Repealer: Sections 81.082(d) (relating to prohibiting the declaration of a public health disaster from continuing for more than 30 days) and (e) (relating to authorizing the governor to terminate a declaration of a public health disaster at any time), Health and Safety Code.

SECTION 10. (a) Provides that in this section, "council" means the Preparedness Coordinating Council advisory committee established by HHSC under Section 1001.035 (Advisory Committees), Health and Safety Code, for DSHS.

(b) Requires the council to conduct a study on this state's response to the 2019 novel coronavirus disease. Authorizes the council to collaborate with an institution of higher education in this state to conduct the study.

(c) Requires the council, not later than December 1, 2022, to prepare and submit a written report to the governor, the lieutenant governor, the speaker of the Texas House of Representatives, and the members of the legislature on the results of the study conducted under Subsection (b) of this section. Requires that the report include recommendations for legislative improvements for public health disaster and public health emergency response and preparedness.

(d) Provides that this section expires September 1, 2023.

SECTION 11. Effective date: upon passage or September 1, 2021.