

No. 03-13-00094-CV

In The Court Of Appeals
For The Third Court Of Appeals District
Austin, Texas

**CENTER FOR FOOD SAFETY, JOHN DOES 1 AND 2, DARLA CHERRY,
JENNIFER LOPEZ**

Appellants,

v.

**DAVID LAKEY, in his Official Capacity as Commissioner of the Texas
Department of State Health Services, TEXAS DEPARTMENT OF STATE
HEALTH SERVICES**

Appellees.

APPELLANTS' BRIEF

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TO THE HONORABLE THIRD COURT OF APPEALS:

STATEMENT OF THE CASE

On December 14, 2010, Appellants Center for Food Safety, John Does 1 and 2, Darla Cherry, and Jennifer Lopez (“Appellants”) filed the underlying writ of mandamus seeking to compel the Texas Department of State Health Services and its Commissioner, David Lakey, (“Appellees” or “DSHS”) to administer and enforce Section 821.003 of the Texas Health and Safety Code (“Section 821.003”), which sets minimum requirements for the treatment of live birds in Texas egg-laying facilities. (CR 90-91, 105) (Appendix 1). The petition alleges, among other things, that DSHS failed to discharge its mandatory nondiscretionary duty to enforce Section 821.003, thereby threatening the health and safety of Texas citizens and undermining the intent of the Texas Legislature. (CR 90-91, 107-108).

On March 9, 2011, DSHS filed a plea to the jurisdiction claiming that, because the agency has no mandatory duty to enforce Section 821.003, the court lacks jurisdiction over this petition. (CR 112-121). On January 15, 2013, the trial court granted the plea to the jurisdiction on the grounds that (1) while DSHS has extensive authority to investigate sanitary conditions in egg operations; (2) Section 821.003 of the Texas Health and Safety Code is not a “health law” within the

meaning of the agency’s mandatory duty provisions in Section 12.021; and, as a result, (3) although DSHS has the discretionary authority to enforce Section 821.003, enforcement of that provision is not a mandatory duty as to which mandamus relief is appropriate. (CR 868-869) (Appendix 2). This appeal followed.

ISSUE PRESENTED

1. Does a provision of the Texas Health and Safety Code that bars unsanitary conditions in egg production facilities constitute a “health law” within the meaning of Section 12.021 of the Texas Health and Safety Code, which imposes a mandatory duty on DSHS to “administer and enforce the health laws of this state ...”?

INTRODUCTION

This case is about DSHS’s refusal to discharge its legal duties to protect public health and safety from the spread of a disease that is guaranteed to occur. (CR 503-504). *Salmonella* is the only foodborne illness that is increasing in the United States, and Texas has seen a leap of infections in recent years. (CR 102, 544-545). Texas is one of the largest egg-producing states in the nation. (CR 583). The increase in *Salmonella* outbreaks is caused, in great part, by the unsanitary conditions found in egg production facilities—conditions which are proven to increase contagions of *Salmonella*. (CR 91, 639-653).

If the basic sanitary and health requirements for confined birds required by Section 821.003 of the Texas Health and Safety Code were enforced at egg-production facilities, the risk of *Salmonella* outbreaks would be reduced in the most likely food sources: eggs and poultry. *See* Tex. Health & Safety Code Ann. § 821.003 (Vernon 2005 & Supp. 2010) (CR 510) (Appendix 3). The Texas Legislature created DSHS “to better protect and promote the health of the people of this state.” Tex. Health & Safety Code Ann. § 11.002 (Vernon 2005 & Supp. 2010) (Appendix 4). Ensuring compliance with Section 821.003 is absolutely necessary to protect the public from outbreaks of *Salmonella* that are guaranteed to occur at a higher rate otherwise. (CR 518-519). Yet currently there is *no* enforcement of Section 821.003 in the egg industry, and egg producers continue to freely operate in violation of the law. (CR 107-108).

Despite the vital importance of maintaining sanitary conditions in Texas egg-producing facilities, DSHS insisted in the court below that the agency does not even have the authority, let alone a mandatory duty, to enforce Section 821.003. (CR 114, 338). The lower court disagreed with part of this assertion, holding that DSHS possesses the authority to enforce Section 821.003. (CR 868-869). But the lower court agreed with DSHS that the agency does not have a *mandatory* duty to

enforce Section 821.003. Rather, the court determined that DSHS has “broad discretion in how and when to exercise” their authority to “investigate egg farms regarding their sanitary conditions.” (CR 869). This ruling was based on a demonstrably false conclusion of law: that Section 821.003 is not a “health law” within the meaning of the Texas Health and Safety Code (“Health and Safety Code”), and thus DSHS has no duty to enforce it. (CR 868). This conclusion is at odds with the plain language and legislative history of the Health and Safety Code, which make clear that Section 821.003 is a “health law” that DSHS has a mandatory duty to enforce. Any other conclusion, moreover, would lead to an absurd and untenable result: that *no* agency in Texas has the duty to ensure basic sanitary conditions in Texas egg producing facilities. That cannot be the law.

RELEVANT STATUTORY PROVISIONS

1. HEALTH AND SAFETY CODE CHAPTER 11

Chapter 11, entitled “Organization of Texas Department of Health” includes Section 11.002, the “Purpose of Board and Department.” Section 11.002 provides that:

The Texas Board of Health and the Texas Department of Health are established to better protect and promote the health of the people of this state.

Tex. Health & Safety Code Ann. § 11.002 (Vernon 2005 & Supp. 2010) (Appendix 4).

2. HEALTH AND SAFETY CODE CHAPTER 12

Chapter 12 of the Health and Safety Code vests Appellees with comprehensive powers and duties relating to Texas health issues. Subchapter A, entitled “Powers and Duties of Department,” includes Section 12.001, which gives the board of health, since disbanded and powers transferred to the newly formed agencies,¹ including DSHS, sweeping authority over health issues:

- (a) The board has general supervision and control over all matters relating to the health of the citizens of this state.

The statute goes on to impose a series of mandates on the board:

- (b) The board shall:

- (1) adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner and file a copy of those rules with the department; and
- (2) examine, investigate, enter, and inspect any public place or public building as the board determines necessary for the discovery and suppression of disease and the enforcement of any health or sanitation law of this state.

Tex. Health & Safety Code Ann. § 12.001 (Vernon 2005 & Supp. 2010) (Appendix 5).

¹ See Tex. Health & Safety Code Ann. § 11.003 (Sunset Provision abolishing Texas Board of Health).

Subchapter C Section 12.021, entitled “Administrative and Enforcement Duties,” imposes a similar mandatory duty on the Commissioner:

The commissioner shall administer and enforce the health laws of this state under the board’s supervision.

Tex. Health & Safety Code Ann. § 12.021 (Vernon 2005 & Supp. 2010) (Appendix 6).

3. HEALTH AND SAFETY CODE CHAPTER 81

Chapter 81 is entitled “Communicable Diseases.” Subchapter B of Chapter 81, entitled “Prevention,” contains Section 82.021, entitled “Board’s Duty,” which imposes the following mandatory duty on DSHS:

The board shall exercise its power in matters relating to protecting the public health to prevent the introduction of disease into the state.

Tex. Health & Safety Code Ann. § 81.021 (Vernon 2005 & Supp. 2010) (Appendix 7).

Section 81.003 then lays out the definitions for Chapter 81 and states that:

(1) “Communicable disease” means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.

Tex. Health & Safety Code Ann. § 81.003 (Vernon 2005 & Supp. 2010) (Appendix 8).

4. HEALTH AND SAFETY CODE CHAPTER 821

Title 10 of the Health and Safety Code, entitled “Health and Safety of Animals,” includes Chapter 821 on the “Treatment and Disposition of Animals.”

Section 821.003 requires basic minimum standards for confining live birds. The statute states, in part:

- (a) This section applies to a person who receives live birds for transportation or for confinement:
 - (1) on wagons or stands;
 - (2) by a person who owns a grocery store, commission house, or other market house; or
 - (3) by any other person if the birds are to be closely confined.
- (b) The person shall immediately place the birds in coops, crates, or cages that are made of open slats or wire on at least three sides and that are of a height so that the birds can stand upright without touching the top.
- (c) The person shall keep clean water and suitable food in troughs or other receptacles in the coops, crates, or cages. The troughs or other receptacles must be easily accessible to the confined birds and must be placed so that the birds cannot defile their contents.
- (d) The person shall keep the coops, crates, or cages in a clean and wholesome condition and may place in each coop, crate, or cage only the number of birds that have room to move around and to stand without crowding each other.
- (e) The person may not expose the birds to undue heat or cold and shall immediately remove all injured, diseased, or dead birds from the coops, crates, or cages.

Tex. Health & Safety Code Ann. § 821.003 (Vernon 2005 & Supp. 2010) (Appendix 3).

Directly preceding it, Section 821.002 entitled “Treatment of Impounded Animals,” requires:

(a) A person who impounds or causes the impoundment of an animal under state law or municipal ordinance shall supply the animal with sufficient wholesome food and water during its confinement.

Tex. Health & Safety Code Ann. § 821.002 (Vernon 2005 & Supp. 2010) (Appendix 9).

Subchapter B of this same Title 10, entitled “The Disposition of Cruelly Treated Animals” under Section 821.022, entitled “Seizure of Cruelly Treated Animal” provides:

(a) If a peace officer or an officer who has responsibility for animal control in a county or municipality has reason to believe that an animal has been or is being cruelly treated, the officer may apply to a justice court or magistrate in the county or to a municipal court in the municipality in which the animal is located for a warrant to seize the animal.

Tex. Health & Safety Code Ann. § 821.022 (Vernon 2005 & Supp. 2010) (Appendix 10).

STATEMENT OF FACTS

A. Factual Background.

On or around November 17, 2010, several national, state, and local news organizations published the results of a Humane Society of the United States 28-day investigation of a Waelder, Texas egg-production facility operated by Cal-Maine Foods, Inc. The investigation revealed numerous and severe violations of almost every provision of Section 821.003, a Texas statute that sets minimum standards for confinement of live birds. (CR 90-91, 550-552). The footage from the investigation revealed severely overcrowded cages, cages and hens covered in feces, diseased and injured hens confined within the same cages as healthy birds, birds so injured or ill that they could not reach food and water, food and water that was contaminated with filth, disease-spreading flies carpeting all surfaces, and long-decaying hen carcasses in and around the cages alongside live birds. *Id.* In addition, many eggs destined for human consumption were covered in blood and feces and in close proximity to hen carcasses. *Id.* Because these unsanitary conditions are direct contributors to the spread of *Salmonella*, the investigation also revealed an ongoing serious risk to public health in Texas. (CR 103). Currently, there is no enforcement of Section 821.003 in the egg industry and egg producers are operating in violation of the law. (CR 107-108).

During the same period of time as the Waelder investigation, Cal-Maine Foods recalled over 9.5 million eggs because they were infected with *Salmonella* bacteria. (CR 508, 554-555). The recall was on the heels of previous nationwide contamination, also including Cal-Maine facilities, that involved recalling over 500 million eggs after approximately 2,400 *Salmonella*-related illnesses were reported from ingesting the eggs. (CR 508, 557-559, 572). The recall involved eggs distributed to food wholesalers and retailers in 22 states, including Texas. (CR 557). After the outbreak, the U.S. Food and Drug Administration (“FDA”) performed inspections at some of the facilities. (CR 508, 560-570). The inspectors found unsanitary and unsafe conditions at the egg production facilities that contributed to the *Salmonella* outbreaks. *Id.* These conditions were exactly the type prohibited by Section 821.003. *See* Tex. Health & Safety Code Ann. § 821.003. The conditions found at the FDA-inspected facilities, including manure-ridden cages as well as injured, diseased, or dead hens trapped in cages with healthy birds, mirrored conditions documented at Cal-Maine’s Waelder facility. (CR 105). Because DSHS allows these conditions to continue unabated in Texas, it is not a matter of *whether* these conditions will breed and spread *Salmonella* at

Texas facilities, but *when* these facilities will cause another outbreak if conditions do not change. (CR 103).

The health risks from *Salmonella*-infected eggs are well-established. *Salmonella* is a series of bacteria that causes a zoonotic disease, meaning it can be passed from animal to human through contact with the bacteria, and is commonly linked to egg and poultry consumption. (CR 102). *Salmonella* grows and is spread from bird to bird through contact with diseased birds and their feces. (CR 103). Conditions of squalor, including excessive excrement and overcrowding, provide a fertile breeding ground for *Salmonella* and greatly increase the chances of its presence in an egg-production facility. (CR 104, 639-653). Once a bird is infected with *Salmonella*, it transmits the bacteria into its eggs. *Id.* A person then contracts *Salmonella* by coming in contact with diseased birds or their feces, or by ingesting infected eggs.² (CR 102).

² *Salmonella* and avian influenza are the most common and most destructive zoonotic diseases transmissible to humans from poultry. (CR 101). Other dangerous zoonotic diseases transmissible to humans and associated with lack of sanitation in poultry handling include, for example, avian tuberculosis, chlamydiosis (causing flu-like symptoms and respiratory disease in humans), erysipelas (causing bacterial infection associated with cellulitis, endocarditis, encephalitis and arthritis in humans), cryptosporidiosis and campylobacteriosis (causing gastrointestinal illness in humans). Avian influenza is highly contagious and can be transmitted from human to human; in 2004 and again in 2007 strains were found in Gonzales County, Texas egg facilities. (CR 103). Gonzales County is the location of Cal-Maine and some of the Plaintiffs. *Id.* The transmission of all of these zoonotic diseases to humans can be greatly by

Salmonellosis, or an infection from *Salmonella* bacteria, causes severe illness and can cause death in children, the elderly, and those with impaired immune systems. (CR 102, 573). Salmonellosis is the only foodborne illness that is increasing in occurrences in the United States: there are approximately 1.4 million human cases of salmonellosis per year, accounting for over a third of foodborne illness-related deaths – with approximately 142,000 cases of salmonellosis known to be from egg consumption per year and around 400 to 600 annual human deaths. (CR 102, 544-545). According to DSHS’s own statements, Texas had more than four times its normal rate of *Salmonella* cases in 2010, with over 150 cases in more than 40 Texas counties, in part from eggs laid in overcrowded and unsanitary facilities. (CR 509, 577-579).

The increase of *Salmonella* outbreaks is caused, in part, by egg-production facilities that allow unsanitary conditions to fester—conditions which are proven to increase contagions of *Salmonella*. (CR 102, 644). As of 2011, the ten most recent scientific studies on controlling and preventing *Salmonella* occurrences in eggs all state that unsanitary conditions involving overcrowding and close proximity to excrement and decaying bodies increases the likelihood of *Salmonella* and other

reduced by adhering to basic hygiene and sanitation practices in egg production facilities. (CR 90-92).

food-borne disease outbreaks from eggs destined for human consumption. (CR 510, 639-653). The FDA has said that implementing basic sanitation measures, including measures similar to those that are lacking in Texas egg-production facilities, could reduce the occurrence and spread of *Salmonella* by 60 percent. (CR 246, 510). In Texas, these same sanitation measures are required by Section 821.003, and yet the law remains unenforced on a statewide basis. (CR 90-91).

B. Statutory Overview.

The Texas Legislature created DSHS “to better protect and promote the health of the people of this state.” Tex. Health & Safety Code Ann. § 11.002 (Appendix 4). To this end, Chapter 12 of the Health and Safety Code vests DSHS with comprehensive powers and duties relating to Texas health issues. Subchapter A, entitled “Powers and Duties of Board,” includes Section 12.001, which grants DSHS “general supervision and control over all matters relating to the health of the citizens of this state.” Tex. Health & Safety Code Ann. § 12.001(a) (Appendix 5).

The Legislature also imposed a mandatory duty on DSHS in Subchapter C entitled “Powers and Duties of the Commissioner,” Section 12.021, “Administration and Enforcement Duties,” which provides that DSHS “*shall* administer and enforce the health laws of this state...” Tex. Health & Safety Code Ann. § 12.021 (emphasis added) (Appendix 6). The Texas Legislature then granted

DSHS broad general and enumerated powers to discharge its duties, including the authority to “examine, investigate, enter, and inspect any public place or public building as the board determines necessary for the discovery and suppression of disease and the enforcement of any health or sanitation law of this state.” *Id.* at (b). The Health and Safety Code defines *Salmonella* as a communicable disease. *See* Tex. Health & Safety Code Ann. § 81.003 (Appendix 8) (including zoonotic diseases in the definition of “communicable diseases”); *see also* 25 Tex. Admin. Code § 97.3(a)(2)(A) (Appendix 11) (listing salmonellosis as reportable disease).

Section 821.003 falls under Title 10 of the Health and Safety Code. This provision – which is at the center of this lawsuit – requires basic minimum standards for confining live birds, and specifically includes birds kept for human food production, such as egg-laying hens.³ The statute specifically requires that (1) the area where birds are kept be in a “clean and wholesome condition”; (2) birds must be confined with enough room to “move around” and not “crowd[] each other;” (3) birds not be confined in a way that they “defile” their food and water; and (4) that all injured, diseased, or dead birds be “immediately” removed from confinement spaces. Tex. Health & Safety Code Ann. § 821.003 (Appendix 3).

³ The statute applies to all persons keeping birds in confinement, but specifically covers persons keeping birds for food production by listing those “who own[] a grocery store, commission house, or other market house.” Tex. Health & Safety Code Ann. § 821.003(a)(2) (Appendix 3).

Section 821.003 is the only law in Texas that regulates the conditions under which eggs are produced for human consumption. (CR 518). No other law requires basic minimum sanitation be met in the egg laying houses or prevents *Salmonella* from occurring in eggs. (CR 518, n. 74). While other laws control the storage and handling of eggs to prevent the spread of disease that is already present in the eggs, Section 821.003 is the only law that attempts to stop *Salmonella* from occurring in the first place. *Id.*

C. This Lawsuit.

The petition in this case was filed by several Texas residents who are exposed to health risks from eggs produced at Texas egg production facilities such as Cal-Maine, and who fear for their and their families' safety (the "resident-appellants").⁴ (CR 92-100) (Appendix 1). These residents were later joined by the Center for Food Safety, a national public interest group dedicated to protecting its members from the risks of unsafe food sources, including eggs. Center for Food Safety's Texas members suffered from the same risks and fear for their and their families' safety.

⁴ The injuries suffered by the Appellants are described in detail in the Petition and shall not be repeated here. DSHS has not challenged any of the Appellants' standing to bring this challenge outside of the general allegation that they have a "failure to state a claim." (CR 116).

In the wake of the Cal-Maine investigation, attorneys for the resident-appellants made a written demand upon DSHS to enforce Section 821.003, a Texas health and safety law that mandates sanitary conditions in Texas egg laying facilities. They received no response. (CR 91, 106). The resident-appellants thereafter filed their petition seeking a writ of mandamus to compel DSHS to discharge their duty to protect public health and safety from this threat. (CR 89).⁵

The petition alleges violations of Section 12.021 of the Health and Safety Code. (CR 107-108) (Appendix 1). Section 12.021 – as discussed above – vests DSHS with comprehensive powers and duties relating to Texas health issues. The petition specifically alleges that Subchapter C, entitled “Powers and Duties of Commissioner,” Section 12.021, entitled “Administration and Enforcement Duties,” imposes a nondiscretionary duty on the Commissioner by stating that he “shall administer and enforce the health laws of this state...” *See* Tex. Health & Safety Code Ann. § 12.021, (CR 107-108) (Appendix 6). The petition further alleges that, by taking a position that DSHS has no duty to “administer or enforce” Section 821.003, thereby allowing egg-production facilities to operate in violation of the law, DSHS is violating its mandatory nondiscretionary duty under Section

⁵ The Department of Agriculture was also listed as a Defendant in the original proceedings but was later dropped from the case by Appellants once it became clear that DSHS was the primary agency with authority to enter and inspect the hen houses themselves.

12.021 to “administer and enforce” Texas health law Section 821.003. (CR 92, 107-108) (Appendix 1). Appellants requested that the court compel DSHS to fulfill its mandatory duty under Section 12.021 to administer and enforce Section 821.003. (CR 108-109) (Appendix 1).

DSHS responded by filing a plea to the jurisdiction, motion for summary judgment, and second amended answer on March 9, 2011, asserting the defense of sovereign immunity. (CR 112). The agency claimed that the law did not confer the authority or a legal duty to enforce or administer Section 821.003. (CR 114, 338). DSHS further alleged in its motion for summary judgment that, under Section 821.022 of the Health and Safety Code, peace and animal control officers are the only agents with the authority to enforce Section 821.003. (CR 116).

In their response, Appellants argued that both the plain language of the Health and Safety Code and its legislative history demonstrate that Section 821.003 is a “health law” as to which within DSHS has a mandatory duty of enforcement. (CR 503-579). Appellants further explained that, because peace and animal control officers cannot address violations of Section 821.003 unless and until such violations are reported to them by DSHS, the agency’s contention that it has no ability or duty to investigate conditions at egg factories would effectively

render Section 821.003 unenforceable. (CR 527). That being so, Appellants argued, DSHS's abdication of authority to peace and animal controls officers to enforce Section 821.003 violated the agency's mandatory nondiscretionary duty to "administer and enforce the health laws" of Texas in Section 12.021. *Id.*

D. The Lower Court's Decision.

After a hearing on November 14, 2012, the trial court granted DSHS's plea. (CR 868-869) (Appendix 2). The trial court first rejected DSHS's argument that it lacks the authority to investigate egg-production facilities or consider violations of Section 821.003. *Id.* Instead, the trial court held that such authority exists under the agency's general powers, enumerated powers under Chapter 81, and "primary authority to prevent communicable diseases." (CR 868-869) (Appendix 2). The lower court reasoned that the agency has "extensive" authority to inspect and investigate egg-production facilities regarding "their sanitary conditions," and to consider violations of Section 821.003, in order to protect Texas citizens from communicable diseases. *Id.* The court also recognized the link between unsanitary conditions in egg operations and the spread of disease, and found that the agency's authority was not "restricted to only taking...action after an outbreak..." and could use its authority proactively to prevent the occurrence of a disease outbreak. *Id.* at 868.

Despite its finding that DSHS has ample *authority* to enforce Section 821.003, the lower court went on to hold that DSHS has no mandatory *duty* to enforce that provision because, in the lower court’s view, Section 821.003 is not a “health law” within the meaning of the Health and Safety Code. *Id.* at 869. Although the lower court recognized that Section 821.003 has a clear “sanitation component,” it accepted DSHS’s argument that the primary focus of Section 821.003 is to prevent animal cruelty, not to protect public health, and thus DSHS has no mandatory duty to enforce it. Instead, the lower court found, “the primary enforcement mechanism” for Section 821.003 is through “peace officers” (i.e., police) and “animal control officers,” not DSHS. (CR 869) (Appendix 2).

Based on these holdings, the lower court granted DSHS’s plea to the jurisdiction on the ground that, while DSHS has authority to “investigate egg farms regarding their sanitary conditions,” the agency has discretion as to “how and when to exercise that power.” *Id.* In light of the absence of a mandatory nondiscretionary duty to enforce Section 821.003, the trial court ruled that it had no jurisdiction to grant Appellants’ requested relief. (CR 869) (Appendix 2). This appeal followed.

STANDARD OF REVIEW

Whether a court has subject matter jurisdiction is a question of law. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). The standard of review for a plea to the jurisdiction is therefore de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656 (Tex. 2005).

SUMMARY OF THE ARGUMENT

The plain language of the Health and Safety Code makes clear that DSHS has a mandatory ministerial duty to administer or enforce Section 821.003. Section 12.021 of the Health and Safety Code provides that DSHS “shall” administer or enforce the health laws of Texas. Tex. Health & Safety Code Ann. § 12.021 (Appendix 6). Because Section 821.003 is a health law of the State, DSHS lacks discretion as to whether or not to exercise its enforcement powers. Mandamus is unquestionably proper to compel an agency—DSHS here—to perform a nondiscretionary mandatory duty that it has neglected or abandoned. *See City of Round Rock v. Whiteaker*, 241 S.W.3d 609, 628 (Tex. App.- Austin 2007) (person needs no authorization to seek mandamus to force a government official from acting unlawfully or to compel her to perform certain duties) (CR 513).

The lower court’s ruling to the contrary was error. The lower court started out on the right foot, by rejecting DSHS’s extreme argument that the agency does not even possess the authority to enforce Section 821.003. (CR 868). The lower court went wrong, however, when it concluded that, because Section 821.003 was in part intended to prevent animal cruelty, it is not a “health law” subject to the mandatory duty imposed on DSHS under Section 12.021. (CR 868-869). This conclusion ignores that Section 821.003 includes several provisions that are not solely about animal cruelty and are, on their face, exclusively designed to protect the public from the health risks caused by unsanitary warehousing of animals in the food industry. (CR 516-517). This fact alone is reason enough to reject DSHS’s “it’s-not-my-job” approach to statutory construction.

Any other interpretation, moreover, could lead to absurd results by rendering Section 821.003 unenforceable and endangering public health and safety. DSHS is the *only* agency in the State of Texas with the authority to determine whether commercial egg and poultry operations are complying with Section 821.003. (CR 526-527). While DSHS has extensive authority to address sanitation issues in egg-production facilities under the agency’s general powers, the only enforcement mechanism within Chapter 821 itself is through peace and animal control officers.

See Tex. Health & Safety Code Ann. § 821.022 (Appendix 10). The officers' authority to enforce Section 821.003, however, is entirely dependent on them receiving information from an outside source that an egg factory is violating Section 821.003. If the lower court's theory were correct and DSHS had no duty to exercise its authority, then Section 821.003 could be rendered entirely unenforceable: in the event DSHS declined to exercise its authority to investigate conditions at egg factories, peace and animal control officers would be unable to exercise their authority to correct any violations.

This is not a fanciful scenario. To the contrary, this litigation has confirmed that DSHS has taken no action—zero—to enforce Section 821.003. (CR 107-108, 207, 601). This litigation has further confirmed that, in DSHS's view, it does not even possess the authority to enforce Section 821.003, which means that there is no possibility—none—that the agency will seek to uncover violations of Section 821.003 in the future. (CR 338). The outcome is that, unless the lower court's decision is overturned, Section 821.003 will go entirely unenforced. The Texas Legislature could not have intended such a result when the statute was first enacted in 1913; and it certainly would not sanction such a result today in light of the dire threat to public health posed by egg factories—like the Cal-Maine facility in

Waelder Texas—that are failing to observe even the minimal health and safety standards imposed by Section 831.003.

ARGUMENT

In a case involving the construction of a statute, the court’s duty is to “give effect to the Legislature’s expressed intent.” *Iloff v. Iloff*, 339 S.W.3d 74, 79 (Tex. 2011). If the language of the statute is clear, its plain meaning “is determinative of that intent” unless the language is ambiguous or the plain meaning leads to absurd results that the legislature could not have possibly intended. *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009) *op. on reh’g*. Only if the meaning of the statutory language is ambiguous may courts look beyond its terms to ascertain legislative intent, especially in respect of “particular or isolated” provisions. *Lawson v. Baker*, 220 S.W. 260, 266 (Tex.Civ.App.—Austin 1920, writ ref’d).

To determine legislative intent, a court looks to “the language of the statute, relevant legislative history, the nature and object sought to be obtained, and the consequences following from alternate constructions.” *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 380 (Tex. 1998) (citing *Union Bankers Ins. Co. v. Shelton*, 889 S.W.2d 278, 280 (Tex. 1994)); *see also* Tex. Gov’t Code

Ann. § 311.023(1)-(5) (Appendix 12). Additionally, the court must diligently “consider at all times the old law, the evil, and the remedy” which the statute addresses. Tex. Gov’t Code Ann. § 312.005 (Appendix 13). A court also must presume that “the entire statute is intended to be effective,” that “a just and reasonable result is intended,” “a result feasible of execution is intended,” and that “public interest is favored over any private interest.” Tex. Gov’t Code Ann. § 311.021(2)-(5) (Appendix 14). All considerations of legislative intent lead to the conclusion that Section 821.003 is a public health and an animal cruelty law. (CR 521-522).

I. SECTION 12.021 IMPOSES A MANDATORY NONDISCRETIONARY DUTY ON DSHS TO ENFORCE SECTION 821.003.

The plain language of Section 12.021 of the Health and Safety Code imposes a mandatory, non-discretionary duty on DSHS to ensure that Section 821.003 is administered or enforced. Section 12.021 states that DSHS “shall...administer and enforce the health laws of this state,” and, as discussed below, Section 821.003 is a Texas health law on its face. So long as a law is a “health law,” then DSHS has a duty to administer and enforce it. Appellants’ position is therefore simple: shall means shall. *See* Tex. Gov’t Code Ann. § 311.016(2) (Appendix 15) (“‘Shall’ imposes a duty.”); *see also Barshop v. Medina County Underground Water*

Conservation Dist., 925 S.W.2d 618, 629 (Tex. 1996) (holding that usage of the word “shall” in a statute generally imposes a mandatory duty).⁶

The mandatory duty in Section 12.021 is non-discretionary because it leaves no discretion to Appellees about whether or not they may act. *Kassen v. Hatley*, 887 S.W.2d 4, 9 (Tex. 1994) (A ministerial duty is one that involves “actions which require obedience to orders or the performance of a duty to which the actor has no choice.”) In this case, the statute at issue contains no directory language or language that allows DSHS to decide whether the agency may exercise its authority. *Heart Hosp. of Austin v. Matthews*, 212 S.W.3d 331, 333 (Tex.App.—Austin 2006), *aff’d sub nom. Ogletree v. Matthews*, 262 S.W.3d 316 (Tex. 2007). By excluding any discretionary language, the Legislature made clear that Appellees could not pick and choose which “health law” they are charged with administering or enforcing.⁷

⁶ In this setting, the term “enforce” is given its broader meaning “to give force or effect to.” ENFORCE, Black’s Law Dictionary (9th ed. 2009) (“To give force or effect to (a law, etc.); to compel obedience to”).

⁷ Even if, once they exercise their authority, the actions they choose to take are discretionary with regard to how Appellees enforce or administer a law, the decision to exercise the agency’s authority is ministerial. *See Eubanks v. Wood*, 304 S.W.2d 567, 570 (Tex.Civ.App.—Eastland 1957, writ ref’d n.r.e.) (holding that an officer’s actions once he has responded to a call are discretionary, but the decision whether to respond to an emergency call in the first place is ministerial).

II. THE LOWER COURT ERRED IN CONCLUDING THAT SECTION 821.003 IS NOT A HEALTH LAW AS TO WHICH DSHS HAS A MANDATORY ENFORCEMENT DUTY.

The lower court’s refusal to recognize a mandatory duty on the part of DSHS to enforce Section 821.003 was error. The lower court was correct in recognizing that DSHS has the authority to enforce Section 831.003. The court went awry, however, by granting DSHS’s plea on the basis on the ground that Section 821.003 is not a “health law” for purposes of their legal duties under Chapter 12, holding instead the law was solely “to prevent animal cruelty.” (CR 868). There is no call to limit Section 821.003 as a statute solely preventing animal cruelty – to do so does not give effect to the true purpose behind each provision. The language, history, and structure of Chapter 821 show that the Texas Legislature intended for Section 821.003 to both prevent animal cruelty *and* disease transmission. (CR 521-522). In light of this dual intention, the lower court’s decision to read Section 831.003 out of the Health and Safety Code cannot stand. Instead, Appellants’ reading of the statute as falling within the mandatory duties imposed upon DSHS is the only way to give effect to the law as a whole.

A. Section 821.003 Is A Health Law On Its Face.

Section 821.003 constitutes a health law because one of its purposes is to protect the public from communicable diseases from poultry and eggs. Tex. Health & Safety Code Ann. § 821.003 (Appendix 3). The statute mandates minimum sanitation conditions that prevent and control transmission of a communicable disease that Appellees have a duty to prevent. *See* Tex. Health & Safety Code Ann. § 81.003 (Appendix 8). While the Health and Safety Code does not define “health law,” Black’s Dictionary defines the term as a “statute ordinance, or code that prescribes *sanitary* standards and regulations for the purpose of promoting and preserving the community’s health. HEALTH LAW, Black’s Law Dictionary (9th ed. 2009) (emphasis added).⁸

On its face, a major focus of Section 821.003 is to ensure that birds raised for food production are confined in a sanitary environment. The statute is specifically intended to cover the food supply because it applies to “a person who owns a grocery store, commission house, or other market house.” Tex. Health & Safety Code Ann. § 821.003(a)(2) (Appendix 3). The birds confined at grocery

⁸ “Health” is broadly defined as “[t]he state of being sound or whole in body, mind, or soul... Freedom from pain or sickness.” HEALTH, Black’s Law Dictionary (9th ed. 2009). Furthermore, Black’s Law Dictionary defines a subsection of health (“public health”) as “1. The health of the community at large. 2. The healthful or sanitary condition of the general body of people or the community en masse; esp., the methods of maintaining the health of the community, as by preventive medicine and organized care for the sick. Many cities have a “public health department” or other agency responsible for maintaining the public health; federal laws dealing with health are administered by the Department of Health and Human Services.” *Id.*

stores, commission houses, and market houses are all birds used in commerce for food production. Clearly then, the statute regulates sanitation in the food supply chain, which is a public health issue. *See City of Baltimore v. Bloecher & Schaff*, 132 A. 160 (Md. 1926) (holding that statute requiring basic sanitation standards at meat packing plants was valid uses of police power because sanitary conditions in meat processing protected the public health); *see also Sterrett & Oberle Packing Co. v. City of Portland*, 154 P. 410 (Or. 1916).

The plain language of the sanitation requirements in Section 821.003 goes above and beyond simple animal welfare; the statute clearly sets out to reduce the transmission of communicable diseases from birds raised for food production or consumption. For example, the law requires the immediate removal of all dead or diseased birds from where they are being confined. *See* Tex. Health & Safety Code Ann. § 821.003(e) (Appendix 3). Section 821.003 further mandates conditions of confinement that prevent exposure to feces. *See id.* at (d). It is a long-standing and well known fact that food borne illness, including *Salmonella*, is spread when healthy birds come into contact with diseased animals or excessive excrement. (CR 103, 644). The lower court's construction of the statute as solely intended to prevent animal cruelty is contrary to its plain language and must be rejected. *See*

Bennett v. Spear, 520 U.S. 154, 173, 117 S.Ct. 1154 (1997) (“It is the ‘cardinal principle of statutory construction’... [that] [i]t is our duty ‘to give effect, if possible, to every clause and word of a statute’... rather than to emasculate an entire section.”) (citing *United States v. Menasche*, 348 U.S. 528, 538 (1955) (quotations omitted)). To construe the statute more narrowly would render the law ineffective and defeat the legislative purpose. No further analysis is required. See *City of Rockwall v. Hughes*, 246 S.W.3d 621, 626 (Tex. 2008) (stating the rule that “[w]hen a statute’s language is clear and unambiguous, it is inappropriate to resort to rules of construction or extrinsic aids to construe the language.”) However, a view of the statute as a whole and its legislative history further dispels any speculation as to the purpose of the law.

B. Section 821.003’s Legislative History Confirms That It Was Intended To Protect Public Health.

The legislative history of Section 831.003 further confirms that the statute has a public health component and was never intended exclusively for preventing cruelty to animals. At the time it was first passed in the 1913 Texas Session, the Texas Legislature expressly stated that Chapter 821 was intended for two purposes: preventing animal cruelty and providing for sanitary and humane conditions for fowl. Act of March 31, 1913 33rd Leg. R.S. ch. 88, 1913 Tex. Gen. Laws

(Appendix 16) (CR 634-636). The caption of the original Act differentiates between other animals and birds by stating:

An Act for the preventing of cruelty to *animals*; for the prevention of impounding same without food or water; providing for the sanitary and humane treatment of *fowls* or other birds...

Caption to Act of March 31, 1913 33rd Leg. R.S. ch. 88, 1913 Tex. Gen. Laws (Appendix 16) (emphasis added).

By using the word “sanitary” with respect the treatment of “fowls”— but not “animals” generally — the Legislature made clear that Section 831.003 was additionally intended to protect public health by preventing the spread of communicable diseases from “fowl” to humans. (CR 521-522). The distinction recognizes the simple fact that birds kept for food production and consumption are more likely to spread disease if they are kept in unsanitary conditions. To ignore the delimitation between “animals” and “fowl” would defeat one the Legislature’s primary purposes in enacting this law.

Where a connection is clear, courts have affirmed the dual purposes of such laws. In a 1925 case, *Hogg v. Louisville & N.R. Co.*, the court interpreted a statute as being for the dual purposes of preventing animal cruelty and protecting public health. 127 S.E. 830, 831-32 (Ga. Ct. App. 1925). The statute at issue was a transport law, the caption of which read “[a]n act to prevent cruelty to animals

while in transit by railroad...” and prohibited confining livestock for longer than 28 hours without minimum conditions being met. *See* United States Statutes at Large, 59 Cong. Ch. 3594, June 29, 1906, 34 Stat. 607 (Appendix 17). The court in *Hogg v. Louisville* held that the statute’s “primary purpose, as its title imports, is to require humane treatment for animals while being transported, *and to prevent injury to the public health from their sale for food when made ill by hunger, thirst, or exhaustion.*” 127 S.E. at 831-32 (emphasis added). *See also Hendrick v. Boston & A.R. Co.*, 170 Mass. 44, 47, 48 N.E. 835, 836 (Mass. 1897) (holding that a transport law for livestock “was intended to prevent cruelty in the transportation of animals, as well as dangers to the public health from inducing diseases in animals which are to be used for food.”); *see also Brockway v. Am. Exp. Co.*, 168 Mass. 257, 259, 47 N.E. 87, 87 (Mass. 1897). In *Hogg*, the court found that the legislature intended to protect public health even without any indication in the written purpose of the law – the simple clear connection to ensuring a clean food supply was enough. The Texas Legislature drew an even more direct connection in Section 821.003 by *explicitly* stating in the original caption that it is not only for the humane treatment of the birds, but also for creating sanitary conditions. *See* Tex. Health & Safety Code Ann. § 821.003 (Appendix 3).

More recently, the Fourth Circuit performed this type of broad analysis by recognizing the Animal Welfare Act’s cockfighting regulations as important for preventing the substantial threat and spread of bird flu. *United States v. Gibert*, 677 F.3d 613, 620-22 (4th Cir. 2012), *cert. denied*, 133 S. Ct. 393 (U.S. 2012) (citing congressional testimony of Sen. Maria Cantwell, Rep. Elton Gallegly, and Sen. John Kerry to support the finding that “birds for cockfighting is known to have contributed to the spread of avian influenza in Asia and poses a threat to poultry and public health in the United States”).

The same sort of overlap is present here: inhumane conditions in overcrowded egg factories have unquestionably contributed to the spread of *Salmonella* throughout the United States, thereby posing a direct threat to human health. The lower court’s narrow construction of Section 831.003 ignores that, where a statute addresses overlapping concerns, the proper approach is to give effect to both of the statute’s purposes, rather than to simply assume that one necessarily trumps – and, as here, overrides – the other.

C. The Structure Of The Health And Safety Code Supports The Conclusion That 821.003 Is A Health Law.

That 821.003 is a “health law” is further confirmed by the statute’s structure. *See Bennett v. Spear*, 520 U.S. 154, 173, 117 S. Ct. 1154 (1997) (statutory

provisions must be construed in light of the whole statute); *Heart Hosp. of Austin*, 212 S.W.3d at 333 (stating that a court “consider[s] disputed provisions in the context of the entire statute, not in isolation”).

Just as the Legislature distinguished between impounded animals and confined birds in the legislative history discussed above, so too is the statute structured to support the two purposes of the law. Unlike Section 821.003, Section 821.002, “Treatment of Impounded Animals,” contains no sanitation component. Tex. Health & Safety Code Ann. § 821.002 (Appendix 9). The Legislature limited the requirements of Section 821.002 to providing “sufficient wholesome food and water during [the animal’s] confinement.” The difference between the two sections makes sense because impounded animals are not kept for human food production or consumption. These differences further illustrate that Section 821.003 is a health law with regard to poultry and egg-laying hens. *See Heart Hosp. of Austin*, 212 S.W.3d at 333 (stating that the court assumes “every word, phrase, and expression used in a statute was deliberately chosen and every word excluded was excluded purposefully”).⁹

and physical needs are healthier and safer for human consumption”, and “reducing flock prevalence results in a directly proportional reduction in human health risk.” Cal. Health & Safety Code Sec. 25995. “Egg-laying hens subjected to stress are more likely to have higher levels of pathogens in their intestine and the conditions increase the likelihood that consumers

Such a broad analysis is appropriate where – as here – there already exists a strong overlap between animal welfare and public health elsewhere in the Health and Safety Code. DSHS is charged with training animal control officers and overseeing issues relating to zoonotic animal diseases precisely because the Texas Legislature recognized the direct link between animal welfare and human health and safety.¹⁰ Indeed, DSHS’s own website recognizes the training of animal control officers as a “health topic,” further confirming the absence of a clear boundary between animal welfare and public health. (CR 522).

D. The Lower Court’s Conclusion That Section 821.003 Is Not A Health Law Which DSHS Has A Mandatory Duty To Enforce Leads To Absurd Results.

Finally, the trial court’s cramped construction of the law is improper because it leads to an absurd result: if DSHS continues to ignore Section 821.003, then *no* entity will be able to ensure compliance with the statute’s requirements. The lower

will be exposed to higher levels of food-borne pathogens.” Cal. Health & Safety Code Sec. 25995. As with California’s law, the Texas Legislature intended to include the health and sanitation component in Section 821.003 precisely because it knew of the risk to public health that follows from unsanitary and disease-causing conditions when food-producing animals are not maintained in wholesome environments.

¹⁰ See Tex. Health & Safety Code Ann. § 829.003(a) (Vernon 2005 & Supp. 2010) (DSHS “shall prescribe the standards and curriculum for basic and continuing education animal control courses”); see also § 829.004(a) (DSHS “shall offer at least two basic animal control courses every calendar year”); see Tex. Health & Safety Code Ann. §§ 81.002, 81.004 (Vernon 2005 & Supp. 2010) (establishing duty to protect public health from communicable diseases); see also 25 Tex. Admin. Code § 229.163 (Vernon 2005 & Supp. 2010) (requiring the reporting and setting out standards to prevent “diseases that are transmissible through food”).

court held that the primary duty of enforcement of the statute lies with peace and animal control officers and not DSHS. (CR 868-869) (Appendix 2). However, if DSHS continues declining to exercise its authority to determine whether egg operations are complying with the law, Section 821.003 cannot be enforced.

This is so because, under the Health and Safety Code, peace officers and animal control officers merely have authority to apply for a warrant and seize animals that have been cruelly treated. Tex. Health & Safety Code Ann. § 821.022 (Appendix 10). However, the officers may not exercise this authority unless they have reason to believe an animal “has been or is being cruelly treated.” *Id.* They may not enter egg-production facilities or poultry houses or any other corporate location where birds are being confined for food production until *after* they already are aware of violations. Put another way, the officers have to know that a violation is occurring before they can apply for a warrant to correct the violation.

But therein lies the rub, because the ability to determine whether violations of Section 821.003 are occurring lies solely with DSHS under the express powers granted to the agency under Chapter 12. *See* Tex. Health & Safety Code Ann. § 12.001(b) (the agency shall “examine, investigate, enter, and inspect any public place or public building as the board determines necessary for the discovery and

suppression of disease and the enforcement of any health or sanitation law of this state”) (Appendix 5). The Legislature granted DSHS the authority to “examine, investigate, enter, and inspect” in Section 12.001 to discharge its mandatory non-discretionary duty to “enforce and administer the health laws” of Texas. Tex. Health & Safety Code Ann. § 12.021(b) (Appendix 6). Peace and animal control officers, in contrast, have no such authority—instead, they must rely on DSHS for any information regarding violations of Section 821.003.

To give Section 821.003 effect, there must be a mechanism whereby an agency with the authority to determine whether violations are occurring informs the officers of violations.¹¹ An inspection program, or similar, by DSHS is the only reliable and meaningful way to trigger Chapter 821’s enforcement provisions and ensure compliance with Section 821.003. The statutory scheme would make sense if DSHS has the mandatory duty to enforce Section 821.003; if that were so, the agency would be obligated to inspect or investigate egg factories and pass on any violations to the enforcement officers. But here, the lower court ruled that DSHS

¹¹ Indeed, such a dual relationship is contemplated by the Legislature in the Communicable Disease Prevention and Control Act. Tex. Health & Safety Code Ann. §§ 81.001 *et seq.* While the duty to investigate and determine the existence of communicable diseases falls under DSHS’s authority, and while they have enumerated powers to issue certain control measures, the authority to “secure a property subject to a court order” or “prevent an individual from entering or leaving the property” is granted to peace officers. Measures to Prevent or Control the Entry into or Spread in the State of Certain Communicable Diseases; Providing a Penalty, 2013 Tex. Sess. Law Serv. Ch. 314 (H.B. 1690) (Appendix 19).

does not in fact have any duty to enforce or administer that law. (CR 869) (Appendix 2). And, without DSHS to determine whether violations are actually taking place, the officers are powerless to take action under Section 821.022. *See* Tex. Health & Safety Code Ann. § 821.022. When the lower court construed Section 821.003 that narrowly, it silenced the only trigger for the officers' authority to enforce. This mode of statutory interpretation cannot be countenanced. *Bray v. Tejas Toyota, Inc.*, 363 S.W.3d 777, 784 (Tex.App.—Austin 2012, no pet.) (“A cardinal rule of statutory construction is that the legislature is never presumed to do a useless or meaningless act.”) (citing *Hunter v. Fort Worth Capital Corp.*, 620 S.W.2d 547, 551 (Tex. 1981); *Tex. Lottery Com’n v. First State Bank of DeQueen*, 254 S.W.3d 677, 688 (Tex.App.—Austin 2008, pet. granted) *aff’d*, 325 S.W.3d 628 (Tex. 2010) (Patterson, J., dissenting) (discussing that an interpretation of a statute should not be adopted where it renders it ineffective)).

E. The Lower Court’s Interpretation of Section 821.003 Endangers Public Health.

The lower court’s unduly limited interpretation of Section 821.003 is also terrible public policy because it endangers public health. *See Tex. Lottery Com’n*, 254 S.W.3d at 687 (to ascertain and give effect to the Legislature’s intent enacting a statute, the court must consider the consequences of a particular construction)

(citing *State of Tex. v. Preslar*, 751 S.W.2d 477, 481 (Tex. 1988)). The trial court admitted that the statute had a sanitation component, but nonetheless inappropriately limited the intent of the statute to only that of preventing animal cruelty. (CR 868) (Appendix 2). If the lower court's ruling is upheld, it will defeat the Legislature's attempt to reduce disease transmission in poultry and egg production.

Section 821.003 is the only law that will prevent and control occurrence and transmission of communicable disease such as *Salmonella* between birds raised as food-producing animals and humans. Other Texas statutes focus on preventing *Salmonella* in prepared foods, or transmission between schoolchildren. *See, e.g.*, 25 Tex. Admin. Code §§ 97.7, 229.164. Section 821.003 is the only statute that focuses on preventing the conditions under which *Salmonella* occurs and multiplies in eggs *before* eggs reach the sales, transport, or consumer levels. If the health and sanitation components are read out of the statute, there is no law that will protect public health from *Salmonella* at the production point. (CR 518-519).

Statutes must be liberally construed to achieve their intended purposes and promote justice. Tex. Gov't Code § 312.006 (Appendix 18). In fact, remedial statutes related to public health, are among those intended to be interpreted most

broadly. *See Braugh v. Corpus Christi Bank & Trust*, 605 S.W.2d 691, 696 (Tex.Civ.App.—Corpus Christi 1980, no pet.) (a “universal rule” that demands “that a remedial . . . statute should be given the most comprehensive and liberal construction as possible to accomplish the legislative purpose”). Because Section 821.003 is undoubtedly remedial in nature, it must be construed broadly in order not to thwart legislative intent.¹²

Here again, the lower court ran afoul of a basic rule of statutory construction by construing Section 821.003 as narrowly as possible, despite its remedial nature. This ruling should not be permitted to stand. Here, there is no cause to read the statute as exclusively an animal cruelty statute where a clear sanitation and health component exists in the plain language of the law and the legislative history. The only way to give proper effect to the plain language and legislative history of Section 821.003, and to avoid absurd results and protect the public health, is to

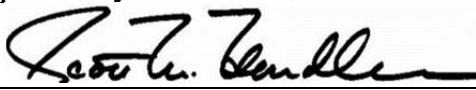
¹² Section 821 is a remedial statute, *see, e.g., State v. Almendarez*, 301 S.W.3d 886, 892 (Tex.App.—Corpus Christi 2009, no pet.) (comparing 821.023 with the Texas Penal Code). Section 821 is related to the public health. *See e.g. Bullitt County Bd. of Health v. Bullitt County Fiscal Court*, 2011-CA-001798-MR, 2012 WL 6062751 (Ky. Ct. App. Dec. 7, 2012) (public health laws are to be liberally construed); *Roe v. City of New York*, 232 F. Supp. 2d 240, 255 (S.D.N.Y. 2002) (in construing law and regulations governing public health, such legislation should be liberally construed); *Lindsey v. Tacoma-Pierce County Health Dep’t*, 8 F. Supp. 2d 1213, 1219 (W.D. Wash. 1997) (public health statutes are liberally construed because protecting and preserving the health of its citizens from disease is an important governmental function).

recognize Section 821.003 as a “health law” subject to DSHS’s mandatory enforcement duty.

CONCLUSION

For the reasons set forth above, the trial court’s ruling that Section 821.003 is not a “health law” under Section 12.021 of the Texas Health and Safety Code should be overruled.

Respectfully submitted,

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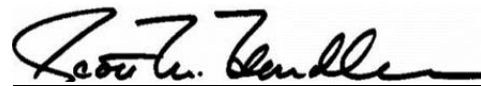
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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I certify that this brief was prepared with Microsoft Word 2012 using 14-point typeface for all text, except for footnotes which are in 12-point typeface., and that, according to that program's word-count function, the sections covered by TRAP 9.4(i)(1) contain 8,046 words.



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CERTIFICATE OF SERVICE

Pursuant to Tex. R. App. P. 9.5, I hereby certify that a true and correct copy of the foregoing document has been served by electronic mail, fax, and/or First Class US Mail – Return Receipt Requested on this, the 31st day of July, 2013 to the following parties:

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CAUSE NO. D-1-GN-10-004362

CENTER FOR FOOD SAFETY, JOHN
DOES 1 and 2, DARLA CHERRY, and
JENNIFER LOPEZ,

Plaintiffs/Relators,

v.

DAVID LAKEY, in his official capacity as
Commissioner of the Texas Department of
State Health Services, the TEXAS
DEPARTMENT OF STATE HEALTH
SERVICES, TODD STAPLES, in his
official capacity as the Commissioner of
the Texas Department of Agriculture, and
the TEXAS DEPARTMENT OF
AGRIGULTURE,

Defendants/Respondents.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

261st JUDICIAL DISTRICT

**PLAINTIFFS' FIRST AMENDED PETITION FOR WRIT OF MANDAMUS AND
APPLICATION FOR INJUNCTIVE AND DECLARATORY RELIEF**

Respectfully submitted by attorneys for Plaintiffs/Relators Center for Food Safety, John
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Plaintiffs/Relators Center for Food Safety, John Does 1 and 2, Darla Cherry, and Jennifer Lopez (“Plaintiffs”) file this First Amended Petition for Writ of Mandamus and Application for Injunctive and Declaratory Relief against the named Defendants/Respondents (“Defendants”) and would respectfully show the Court the following:

PRELIMINARY STATEMENT

This action arises out of a serious public health risk caused by unsanitary conditions in Texas egg production facilities. Adulterated eggs cause extreme sickness and even death, particularly among the young and elderly. Unsanitary conditions in Texas egg production facilities are caused primarily by operation practices including overcrowding cages with too many hens. Cages and birds in these conditions are covered in dust and fecal matter and often are in close proximity to decaying bodies of hens. These conditions increase the likelihood of Salmonella and other food-borne disease outbreaks from eggs destined for human consumption. Outbreaks of Salmonella in Texas increased more than four times last year alone, in part from eggs produced in overcrowded and unsanitary facilities.

To reduce the risk of causing and spreading diseases, the Texas Legislature enacted Texas Health and Safety Code § 821.003 (“Section 821.003”), which mandates that egg producers “shall” (1) keep coops, crates, or cages in a clean wholesome condition; (2) not overcrowd caged chickens; and (3) immediately remove all injured, diseased, or dead birds from coupes, crates, or cages. To ensure that Section 821.003 is observed, moreover, the Texas State Legislature imposed a mandatory, ministerial duty on the two Texas state agencies named as Defendants herein to administer and enforce the law and cease condoning violations.

Recent events have revealed, however, that Defendants not only have failed, and are

continuing to fail, to enforce Section 821.003 but are actively condoning violations of the law. On or around November 17, 2010, several national, state, and local news organizations published the results of a 28-day investigation of a Waelder, Texas egg production facility operated by Cal-Maine Foods, Inc., which revealed numerous and severe violations of almost every provision of Texas Health and Safety Code Section 821.003. This widely-disseminated evidence showed graphic video and photographic images of:

- hens confined in overcrowded cages with the rotting corpses of other birds;
- birds with severely injured legs, unable to reach food or water;
- diseased hens suffering from severe and bloody uterine prolapses; and
- hens covered in feces from birds in cages above them.

The investigation at Cal-Maine further revealed that filthy manure pits and trenches, in which several chickens drowned, were running underneath the chicken cages and into a pipe leading to an outside lagoon. Decaying bodies of dead hens were not properly disposed of, but rather left throughout the coop on floors, cage ledges and tops, and on carts near eggs being processed for human consumption. In addition, many of the eggs destined for human consumption were covered in waste that had piled in and around the cages, and at least one egg-laying barn was so infested with fly-covered hen carcasses that areas of the floor were barely visible.

The Cal-Maine investigation revealed in graphic detail the extent to which Defendants have failed to fulfill their mandatory duties under Texas state law. In the wake of the Cal-Maine exposé, counsel for a number of Texas residents – Plaintiffs herein – made a written demand upon all Defendants to administer and enforce Section 821.003 to prevent the spread of food-borne illness, but received no response from Defendants. As a result, the risk to public health posed by adulterated eggs continues unabated, with no relief in sight.

The only recourse left to Plaintiffs is to seek relief from this Court. This petition alleges, among other things, that the conditions exposed by the Cal-Maine investigation are unlawful and

pose a direct and serious threat to human health. Plaintiffs further allege, on information and belief, that similar conditions are common and ongoing in egg-laying operations throughout the State of Texas. Based on Defendants' failure to fulfill their mandated statutory duty to enforce and administer Section 821.003 and Defendants' implicit condoning of violations at Cal-Maine, and in order to prevent the serious health risk posed by unsanitary conditions in egg-producing facilities, Plaintiffs hereby file this First Amended Petition seeking mandamus, injunctive, and declaratory relief.

DISCOVERY CONTROL PLAN

1. Pursuant to Texas Rule of Civil Procedure 190.1, Plaintiffs state that they will move for discovery to be conducted pursuant to a Level 3 Plan, as specified in Texas Rule of Civil Procedure 190.4.

PARTIES

A. Plaintiffs

2. The Center for Food Safety ("CFS") is a Washington, D.C.-based public interest non-profit membership organization that has offices in San Francisco, C.A. and Washington, D.C. CFS has over 200,000 members nationwide, including in Texas. CFS seeks to ameliorate the adverse impacts of industrial farming and food production systems on human health, animal welfare, and the environment. CFS also supports and promotes sustainable forms of agriculture, including organic systems.

3. CFS was created to represent the interests of its staff and members in protecting the environment and human health from harmful food production technologies. Among these interests and concerns are the negative impacts of industrial agriculture technologies: pollution from chemical pesticides; water and air contamination from factory farming; contaminated or compromised food and food products; and biological pollution from genetically engineered crops and animals.

4. To achieve its goals, CFS disseminates to government agencies, members of Congress, and the general public a wide array of educational and informational materials that address the environmental impacts of industrial agricultural products. CFS also engages in litigation when necessary to ensure that our nation's laws are enforced with respect to food and agriculture.

5. CFS has invested significant resources in educating its members and petitioning the government about the negative impacts of factory farming.

6. CFS has many members who live in Texas, some with spouses and children, including young children. Four such members are Pat Baranski, Marsha Carter, Sumner Chase, and Stella Hansen.

7. CFS Members Baranski, Carter, Chase, and Hansen have all consumed eggs at one point believing that they were being produced in accordance with Texas health and safety laws and would not have done so if they had known the eggs had been produced in violation of Section 821.003. After learning of the conditions at the egg production facilities such as Cal-Maine, these members all became extremely concerned about the risk of eating adulterated eggs and stopped eating eggs produced by facilities that confined hens in cages, also known as "conventional eggs," to reduce their risk of contracting food-borne illness.

8. Some of these members have also purchased and consumed eggs from restaurants that, on information and belief, were produced in Texas facilities such as Cal-Maine believing that they were being produced in accordance with Texas health and safety laws, and would not have done so if they had known the eggs were produced in violation of state law.

9. Since learning of the conditions at egg production facilities like those at Cal-Maine, Pat Baranski only purchases eggs from local farmers that she knows and trusts. Baranski

loves eggs and buys about a dozen a week but refuses to buy conventional eggs, which are more affordable and convenient to purchase, because they may have been produced in factories like Cal-Maine. She feels that she pays a premium for the eggs she does buy.

10. Since learning of the conditions at egg production facilities like those at the Cal-Maine facility, Marsha Carter and her husband only purchase eggs from a neighbor who raises chickens. Carter does not feel safe purchasing conventional eggs from grocery stores and she has paid a premium for grocery store eggs that conform to Texas health and safety laws. If she cannot access her neighbor's eggs, she and her family are forced to eat fewer eggs. Carter would like the freedom to eat eggs at restaurants knowing that they are produced lawfully.

11. Sumner Chase currently purchases cage-free, organic eggs from Whole Foods in Dallas County on a weekly basis. Chase is forced to pay a premium for these eggs because he does not want to consume anything harmful or give anything harmful to his wife. While Chase only purchases cage-free, organic eggs for his home, he eats eggs at restaurants which may and likely do come from facilities that violate Section 821.003. Chase is aware that food borne illness can come from conditions that violate Section 821.003 and is very concerned about the increased risks of Salmonella from eating such eggs.

12. Stella Hansen feels forced to avoid consuming eggs or egg products from restaurants because of safety concerns even though she would like to be able to eat foods such as omelets when she and her family go out for family breakfasts.

Hansen only purchases organic and humanely raised eggs even though it is difficult for her family to pay for them and she feels she cannot afford them. Hansen has a very difficult time finding access to markets that sell eggs she knows are safe.

13. Plaintiff John Doe 1, who is concurrently moving to appear using a pseudonym, is

a senior citizen who pays taxes in Gonzales County, Texas. He and his spouse own and live on property within the jurisdiction of Waelder, Texas. Doe 1's house is so near the Cal-Maine facility at Waelder that he can smell the operations from his home, which smells strongly of manure. He sometimes feels as though he is breathing particulates.

14. Doe 1 is a consumer of eggs. He has regularly purchased and consumed eggs produced in Texas facilities that likely included Cal-Maine believing that they were being produced in accordance with Texas health and safety laws. Doe 1 felt terrible and saddened when he learned of the conditions at the Cal-Maine facility. He trusted the Texas government to act in accordance with its laws, and believes that his trust has been violated.

15. Doe 1 has also purchased and consumed eggs from restaurants that, on information and belief, were produced in Texas facilities such as Cal-Maine believing that they were being produced in accordance with Texas health and safety laws. Doe 1 is concerned that eggs he consumes at restaurants could make him sick if they are not produced in accordance with these laws.

16. Doe 1 has also purchased eggs at grocery stores that carry eggs from Texas egg production facilities, including HEB Gonzales and Wal-Marts in Gonzales, Caldwell, and Bastrop.

17. Doe 1 is concerned about the health risks associated with eating diseased eggs, particularly because of his age. Doe 1 is aware that Salmonella can be contracted from eating eggs that are infected and that the likelihood of serious illness or death is much higher for the senior citizens.

18. Doe 1 is also aware that eggs are more likely to carry diseases and pathogens when they are produced in conditions that violate Section 821.003.

19. Since learning of the conditions at the Cal-Maine facility, Doe 1 buys eggs from free-roaming chickens when they are available, even though they are more expensive than conventional eggs. He is willing to pay a higher price to ensure his family's safety. Because such eggs are often unavailable, however, Doe 1 is still forced to purchase conventional eggs that were likely produced in violation of Section 821.003.

20. Due to the proximity of Doe 1's residence to the Cal-Maine facility, his age, and his purchasing habits, he and his family are constantly at risk for contracting diseases transmitted to humans by animals generated at unkempt, improperly regulated egg-production facilities, such as Cal-Maine's Waelder, Texas operation.

21. Because Doe 1 also comes into contact with employees from Cal-Maine during his regular shopping trips while running errands such as going to the post office, and during trips to restaurants where he sees employees from Cal-Maine, he is concerned that this contact increases his and his family's risk for contracting a zoonotic disease such as avian influenza and tuberculosis.

22. Doe 1 is concerned for the health and safety of his spouse, to whom he may have unknowingly fed eggs that may have been produced unlawfully. It repels him to think that he could have been endangering his family.

23. Plaintiff Darla Cherry lives with her husband and daughter in Gonzales County, Texas.

24. Cherry regularly purchased and consumed eggs produced in Texas facilities that likely included Cal-Maine believing that they were being produced in accordance with Texas health and safety laws. Cherry has cooked such eggs for her husband and daughter.

25. Cherry has been very worried about her risk of contracting food-borne illness

since learning of the conditions at the Cal-Maine facility. She finds the purchasing process nerve-racking because she cannot know in advance which eggs are good or bad. She often asks herself whether she is buying the right ones.

26. Cherry wishes she could purchase eggs that she could be certain are produced in compliance with Section 821.003, but she finds organic and humanely raised egg prohibitively expensive. Instead, she has to take a chance on potentially diseased eggs from facilities like Cal-Maine.

27. Cherry has also purchased and consumed eggs from restaurants that, on information and belief, were produced in Texas facilities such as Cal-Maine believing that they were being produced in accordance with Texas health and safety laws.

28. Cherry has also purchased eggs at grocery stores that carry eggs from Texas egg production facilities such as Cal-Maine, including HEB and Wal-Mart located in Guadalupe, Gonzalez, and Wilson counties.

29. Cherry is concerned about the health risks associated with eating diseased eggs, particularly because she has purchased eggs from locations where Cal-Maine and others like it deliver its eggs. Cherry is aware that Salmonella can be contracted from eating infected eggs and that she is at risk of contracting a serious illness from consuming them.

30. Cherry is also aware that eggs produced in unsanitary conditions are more likely to carry diseases and pathogens that can pass from chickens to humans.

31. Due to Cherry's purchasing habits, she and her husband and daughter are constantly at risk for contracting diseases generated at unkempt, improperly regulated egg-production facilities, such as Cal-Maine's Waelder, Texas operations.

32. Plaintiff Jennifer Lopez is a tax-paying resident of Travis County, Texas.

33. Lopez is a vegetarian who consumes eggs. In the past, she regularly purchased and consumed eggs produced in Texas facilities that likely included Cal-Maine believing that they were being produced in accordance with Texas health and safety laws. She also cooked such eggs for her boyfriend and other friends. She would not have done so if she had known that they were produced in violation of Section 821.003.

34. Lopez purchases and consumes eggs from restaurants that, on information and belief, might have been produced in Texas facilities such as Cal-Maine believing that they had been produced in accordance with Texas health and safety laws.

35. Lopez has purchased eggs at grocery stores that carry eggs from Texas egg production facilities such as Cal-Maine, including HEB, Central Market, Whole Foods, and Wal-Mart in El Paso and Travis County. She would not have done so if she had known that they were produced in violation of Section 821.003.

36. Since learning about the conditions at facilities like Cal-Maine, Lopez only buys organic and humanely raised eggs for her home. She was appalled by the results of the Cal-Maine investigation and has grave concerns about the health risks associated with eating adulterated eggs from facilities like Cal-Maine. Lopez is aware that Salmonella can be contracted from eating infected eggs and that she is at risk of contracting a serious illness from consuming them.

37. Lopez is aware that diseased eggs are more likely to carry diseases and pathogens that can be passed from chickens to humans when the eggs are produced in conditions that violate Section 821.003.

38. Lopez often refrains from eating eggs because she is cautious about where they

may come from. She now only buys organic and humanely raised eggs, which cost twice as much as conventional eggs. Lopez feels this is a financial burden on her.

39. Plaintiff John Doe 2, who is concurrently moving to appear using a pseudonym, lives and operates a business with his wife Gonzales County, Texas.

40. Doe 2 was a contract egg producer for over a decade. Doe 2 obtained a contract with a major commercial egg producer in Texas, called an “integrator,” and purchased the facility equipment with loan over \$200,000.

41. Doe 2 was supplied with birds by the integrator and given the protocol for production, which specified the number of hens per cage. According to that protocol, Doe 2 was required at the time to cram 5 birds each cage, which resulted in cage fatigue, heat stress and death, filth, and injury. For example, the overcrowding mandated by the protocol caused the hens’ legs to weaken and become entangled with the wire floor, making it difficult to remove them from the cages. He witnessed the integrator’s employees pulling hens out of cages so hard that it ripped their legs from their bodies. The overcrowding of the hens also caused mass “die-outs” during heat waves due to lack of air circulation, which caused suffocation.

42. When Doe 2 discussed his concerns about the inhumane conditions that resulted from protocol compliance with the integrator, it refused to remedy the issues and insisted that the protocol be followed. Instead, the integrator implemented new practices that would not allow the hens to molt, which caused extreme stress, reduced egg quality and quantity and increased the likelihood of injury and death.

43. Eventually Doe 2 was forced to close his contract. Doe 2 is unable to buy additional equipment or convert his existing equipment to other methods of production, such as cage free, because of his existing loan.

44. Doe 2 is unable to continue his existing business with a lower flock density because eggs produced in violation of Section 821.003 can be produced for so much less money that he cannot compete.

45. Many of the practices that made it difficult for Doe 2 to run his company were violations of 821.003. Doe 2 ultimately quit the egg production business. Doe 2 would not have contracted with the integrator or taken out the loan if he has known that the eggs would be produced in violation of Section 821.003.

46. Doe 2 has incurred substantial costs as a result of entering into a contract that could not be satisfied without violating Section 821.003. Because he cannot compete with egg producers who are willing to violate state law and utilize inhumane conditions in egg producing factories, Doe 2 has no viable means of recouping his costs.

B. Defendants

47. The Texas Department of State Health Services is the Texas state agency that is obligated to execute the Texas Health and Safety Code, including Section 821.003. *See* TEX. HEALTH & SAFETY CODE § 12.021.

48. Defendant David Lakey is Commissioner of the Texas Department of State Health Services. He is being sued in his official capacity.

49. The Texas Department of Agriculture is the Texas state agency that is obligated to execute the Texas Agriculture Code. *See* TEX. AG. CODE § 12.001.

50. Defendant Todd Staples is Commissioner of the Texas Department of Agriculture. He is being sued in his official capacity.

51. Defendant David Lakey, sued in his official capacity as Commissioner of the

Texas Department of State Health Services, and the Texas Department of State Health Services, are state agents and may be served at Texas Department of State Health Services, P.O. Box, 149347, Austin, Texas, 78714, and at tommy.boukris@dshs.state.tx.us and david.lakey@dshs.state.tx.us.

52. Todd Staples, sued in his official capacity as the Commissioner of the Texas Department of Agriculture, and the Texas Department of Agriculture, are state agents and may be served at 1700 N. Congress, 11th Floor Austin, Texas 78701, and at todd.staples@texasagriculture.gov.

53. Pursuant to the Declaratory Judgments Act the Attorney General of the State of Texas shall be served at 209 W. 14th St., Austin, Texas 78701, attn: Bill Cobb.

STATEMENT OF JURISDICTION AND VENUE

54. This District Court has jurisdiction over this matter pursuant to Article V, Section 8 of the Texas Constitution and The Texas Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code § 31.001, et seq.

55. Venue for this original petition and application lies in Travis County, Texas. Texas Civ. Prac. & Rem. Code § 15.014.

FACTS

56. Every year 280 million eggs are produced in the United States destined for human consumption. Many of these eggs are produced in Texas at facilities where unsanitary and inhumane environments increase the risk of unhealthy eggs reaching consumers.

A. Zoonotic Diseases in Poultry

57. Zoonotic diseases are infectious animal diseases that are communicable to humans. Poultry carry a wide variety of zoonotic diseases, with Salmonella and Avian Influenza

being the most common and most destructive.

58. Salmonella is the most common zoonotic disease transmitted to humans from chickens and is contracted from eating contaminated eggs. Salmonella may also be transmitted from chickens to humans via direct contact with infected chickens. Workers who are exposed to Salmonella at facilities like Cal-Maine can then spread the diseases to others.

59. Conditions of squalor, including excessive excrement and unclean cages, coops, and barns, provide a fertile breeding ground for Salmonella.

60. Salmonella can lead to fever, diarrhea, severe abdominal cramps, and in some instances, even death. Infants, the elderly, pregnant women, and individuals with compromised immune systems are most likely to experience severe symptoms and death from salmonellosis.

61. The U.S. Food and Drug Administration estimates that 142,000 people a year fall sick from Salmonella in eggs and that approximately 400 people die each year with acute salmonellosis.

62. In 2010, there was four times the number of Salmonella cases in Texas from adulterated eggs than in the prior year. 165 Salmonella cases were reported in Texas between mid-May and August of 2010, with 29 cases in central Texas, including eight in Travis County.

63. Avian Influenza, or bird flu, is transmitted from chickens to humans via direct contact, or through contact with chicken feces. The disease can then be passed from human to human.

64. Avian Influenza can cause serious eye infections such as conjunctivitis as well as fever, cramping, nausea, severe respiratory illness, and death.

65. The potential for the Avian Influenza virus to become highly infectious to other

birds and humans is greatly increased in facilities where chickens are confined in crowded cages with excessive numbers of birds.

66. In 2004 and 2007, highly contagious strains of Avian Influenza were found in Texas, including in Gonzales County where Cal-Maine and some Plaintiffs are located. Both times they were found at facilities where chickens are confined in crowded cages with excessive numbers of birds.

B. Public Health Risks of Extreme Overcrowding and Unsanitary Conditions in Egg Production Facilities

67. Extreme overcrowding and unsanitary conditions in egg production creates environmental conditions that weaken hens and dramatically increase the human health risk from contaminated eggs.

68. Where cages are vertically tiered and have wire floors, the bottom tiers of cages, as well as the hens inside, are often covered in feces from the hens above them.

69. Placing too many hens in cages stresses the birds, which lowers and compromises their immune systems. This, in turn, leads to the rapid spread of bacteria, infection, and disease from bird to bird.

70. On information and belief, Texas facilities that overcrowd their cages distribute eggs to counties and grocery stores chains in which Plaintiffs shop.

71. The negative health effects of unsanitary and overcrowded caging practices in egg production facilities are well established.

72. Facilities with relatively larger flock sizes and higher flock densities per cage have a higher risk of hens becoming infected with pathogens that can affect humans. The higher risk is due to many factors, but overcrowding is the primary cause. Infected hens can easily

transmit diseases to uninfected hens, particularly where hens have lowered immunity because of environmental stress.

73. Birds confined in overcrowded and unsanitary cages also have a higher risk of contracting a zoonotic disease because of increased exposure to contaminated feces. Cages are difficult to disinfect in facilities with a high density of birds, particularly when the cages are vertically tiered because excrement continuously falls from above. These conditions result in high numbers of flies and vectors, which are leading carriers of zoonotic diseases.

74. The increased flock risk for zoonotic diseases caused by overcrowded and unsanitary caging practices means an increased food safety risk for consumers. These conditions also increase human-health risk for workers and nearby residents who come into contact with birds or people who have been at an infected facility.

75. The U.S. Department of Agriculture has determined that there is a direct correlation between facilities that test positive for high levels of Salmonella and eggs that carry Salmonella.

C. The Cal-Maine Facility and Investigation

76. Cal-Maine is the nation's largest egg producer, with roughly 26 million laying hens throughout the country, almost ten percent of all laying hens in the United States.

77. On information and belief, the Cal-Maine facility in Waelder, Texas, confines more than one million laying hens in overcrowded and vertically-tiered cages.

78. In addition to raising hens and egg production, Cal-Maine Foods, Inc., together with its subsidiaries, including but not limited to Cal-Maine Farms, Inc., Southern Equipment Distributors, Inc., South Texas Applicators, Inc., and Cal-Maine Partnership, Ltd., also grades,

markets, and distributes shell eggs throughout Texas and other states in the southeastern, southwestern, mid-western, and mid-Atlantic regions of the United States.

79. Cal-Maine sells eggs produced at its Waelder, Texas facility to HEB Grocery, a large supermarket chain that operates numerous stores open to the public in Texas, for resale to individual consumers.

80. Cal-Maine sells eggs produced at its Waelder, Texas facility to other grocery store chains, super stores, and various other stores that re-sell Cal-Maine products to individual consumers in Texas.

81. On or around November 17, 2010, several national, state, and local news organizations published the results of a 28-day investigation of the Cal-Maine facility at Waelder, Texas, that showed numerous and severe violations of Texas Health and Safety Code Section 821.003.

82. The footage from the investigation showed hens so densely packed into cages that they could not move freely, stretch their wings, or lie down.

83. The footage showed dead hens left in and around cages and throughout the coop. Judging from the severe level of decay, many carcasses had been there for long periods of time.

84. The footage also showed injured and diseased birds, including birds with broken wings and legs, who could not access food and water, which is only placed in the front of the cages.

85. Federal officials have mandated recalls of eggs produced in facilities similar to Cal-Maine's Waelder facility based on their discovery of conditions similar to those documented above.

D. Defendants' Knowing Failure to Enforce Section 821.003

86. On information and belief, Defendants took no action to administer and enforce Section 821.003 at Texas egg-production facilities prior to, during, or subsequent to the investigation at Cal-Maine, despite widespread media coverage of same.

87. On January 23, 2009, the Animal Legal Defense Fund submitted a state open records request to Defendants seeking any documents relating to its administration of Section 821.003. Defendants' only response was a one-page excerpt from a training manual.

88. Upon learning of the Cal-Maine investigation, several of the Plaintiffs, through their counsel, sent demand letters to Defendants asking them to enforce Section 821.003. Plaintiffs received no response.

89. On information and belief, Defendants continue to take no action to administer and enforce Section 821.003 so as to prevent conditions such as those exposed at the Cal-Maine facility, thereby implicitly condoning the unlawful facilities.

GOVERNING LAW

90. Texas Health and Safety Code Section 821.003 provides that persons who receive live birds for confinement "shall" keep coops, crates, or cages in a clean, wholesome condition, "shall" not confine so many chickens to one cage as to allow for overcrowding, "shall" make clean food and water easily accessible to birds, and "shall immediately" remove all injured, diseased, or dead birds from coops, crates, or cages.

91. The Texas Department of State Health Services and its Commissioner have a mandatory duty to to administer and enforce Section 821.003. Section 12.021 of the Texas Health and Safety Code states that the Commissioner of State Health Services "shall administer and enforce the health laws of [Texas]." Section 821.003 is contained within the Texas Health

and Safety Code and is therefore a state health law under the purview of the Texas Department of Health Services and its Commissioner, Defendant David Lakey.

92. The Texas Department of Agriculture and its Commissioner have a mandatory duty to administer and enforce Section 821.003. Section 12.001 of the Texas Agriculture Code provides that the Texas Commissioner of Agriculture “shall execute all applicable laws relating to agriculture.”

93. Section 2.001 of the Texas Agriculture Code defines “agriculture” as including the practice of “raising . . . hens.” The practice of “raising hens” is, in turn, governed by Section 821.003 of the Texas Health and Safety Code. Section 821.003 is therefore under the purview of the Texas Department of Agriculture and its Commissioner, Defendant Todd Staples.

CAUSE OF ACTION

Defendants have Failed to Perform Their Mandatory Duties to Enforce and Administer or Execute Section 821.003 and have Implicitly Condoned Its Violation.

94. Plaintiffs incorporate the foregoing paragraphs by reference.

95. Texas egg-producing facilities are subject to the requirements of Texas Health and Safety Code Section 821.003 because they receive live birds that “are to be closely confined.”

96. Based on the specific conditions documented at Cal-Maine’s Waelder, Texas facility and described above, Cal-Maine was and is operating in violation of Section 821.003.

97. Upon information and belief, there are other large-scale egg-production facilities in Texas are similarly violating Section 821.003.

98. The Texas Department of State Health Services and its Commissioner have taken

no action to ensure that Texas egg producers are complying with the requirements of Section 821.003.

99. The Texas Department of Agriculture and its Commissioner have taken no action to ensure that Texas egg producers are complying with the requirements of Section 821.003.

100. The Texas Department of State Health Services and its Commissioner are failing to fulfill their mandatory, ministerial duty to “administer” and “enforce” Texas Health and Safety Code Section 821.003. TEX. HEALTH & SAFETY CODE § 12.021

101. The Texas Department of Agriculture and its Commissioner are failing to fulfill their mandatory, ministerial duty to “execute all applicable laws relating to agriculture,” which include Section 821.003. TEX. AG. CODE § 12.001.

102. The Texas Department of State Health Services and its Commissioner are actively condoning violations of Section 821.003 by allowing known violations, such as those occurring at Cal-Maine, to continue unabated.

103. The Texas Department of Agriculture and its Commissioner are actively condoning violations of Section 821.003 by allowing known violations, such as those occurring at Cal-Maine, to continue unabated.

CLAIMS FOR RELIEF AND PRAYER

A. Writ of Mandamus

104. Plaintiffs seek mandamus relief because there is no other adequate remedy at law to redress the Defendants’ failure to perform their mandatory, ministerial duties to administer, and enforce Section 821.003, and because such failure endangers public health and welfare by increasing the risk of food-borne illness and zoonotic diseases from adulterated eggs.

105. Based on the failures of Defendant to carry out their mandatory, ministerial duties to enforce Section 821.003, Plaintiffs ask the Court to issue a Writ of Mandamus compelling the Defendants to administer and enforce Texas Health and Safety Code Section 821.003.

B. Declaratory Judgment

106. Plaintiffs ask the Court to enter a declaratory judgment finding that Defendants have a mandatory duty to administer and enforce Texas Health and Safety Code Section 821.003.

C. Injunctive Relief

107. Plaintiffs also request that the Court provide an equitable remedy, enjoining the Defendants to take action as this Court deems equitable to enforce Section 821.003, including, at a minimum, administering the law by promulgating guidance for egg-laying operations that operate under Texas Health and Safety Code Section 821.003.

D. Attorneys' Fees and Costs, and Other Relief

108. Plaintiffs also respectfully request that the Court award attorneys' fees and costs, as well as such further relief, legal or equitable, as the Court deems necessary and just.

Respectfully Submitted,

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Attorneys for Plaintiffs.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded electronically and by United States Postal Service First Class Mail on this 6th day of October, 2011, to all named defendants.

Dawn E. Reveley _____

Dawn E. Reveley


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5. While Defendants do not lack authority to investigate egg farms regarding their sanitary conditions, they are given broad discretion in how and when to exercise that power. Accordingly, the Court finds that it lacks jurisdiction to provide the remedy requested by Plaintiffs.

IT IS THEREFORE ORDERED that Defendants', David Lakey in his official capacity as the Commissioner of the Texas Department of State Health Services, and the Texas Department of State Health Services' Plea to the Jurisdiction is GRANTED.

IT IS FURTHER ORDERED that all of the Plaintiffs' claims against Defendants, David Lakey, in his official capacity as the Commissioner of the Texas Department of State Health Services, and the Texas Department of State Health Services are DISMISSED for lack of subject matter jurisdiction.

SIGNED THIS 14 day of January, 2012.



JUDGE GISELA D. TRIANA

AGREED AS TO FORM ONLY:

EUGENE A. CLAYBORN
Administrative Law Division
OFFICE OF THE TEXAS ATTORNEY GENERAL
Attorneys for Defendants

Date: _____

SCOTT M. HENDLER
HENDLERLAW, P.C.
Attorneys for Plaintiffs

Date: _____

3

Vernon's Texas Statutes and Codes Annotated
Health and Safety Code (Refs & Annos)
Title 10. Health and Safety of Animals
Chapter 821. Treatment and Disposition of Animals
Subchapter A. Treatment of Animals

V.T.C.A., Health & Safety Code § 821.003

§ 821.003. Treatment of Live Birds

Currentness

(a) This section applies to a person who receives live birds for transportation or for confinement:

- (1) on wagons or stands;
- (2) by a person who owns a grocery store, commission house, or other market house; or
- (3) by any other person if the birds are to be closely confined.

(b) The person shall immediately place the birds in coops, crates, or cages that are made of open slats or wire on at least three sides and that are of a height so that the birds can stand upright without touching the top.

(c) The person shall keep clean water and suitable food in troughs or other receptacles in the coops, crates, or cages. The troughs or other receptacles must be easily accessible to the confined birds and must be placed so that the birds cannot defile their contents.

(d) The person shall keep the coops, crates, or cages in a clean and wholesome condition and may place in each coop, crate, or cage only the number of birds that have room to move around and to stand without crowding each other.

(e) The person may not expose the birds to undue heat or cold and shall immediately remove all injured, diseased, or dead birds from the coops, crates, or cages.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Editors' Notes

REVISOR'S NOTE

2010 Main Volume

The source law refers to “live fowls, poultry or other birds.” The references to “fowls” and “poultry” are omitted from the revised law because those terms are included within the meaning of “birds.”

V. T. C. A., Health & Safety Code § 821.003, TX HEALTH & S § 821.003
Current through the end of the 2011 Regular Session and First Called Session of the 82nd Legislature

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Vernon's Texas Statutes and Codes Annotated

Health and Safety Code (Refs & Annos)

Title 2. Health

Subtitle A. Texas Department of Health (Refs & Annos)

Chapter 11. Organization of Texas Department of Health (Refs & Annos)

V.T.C.A., Health & Safety Code § 11.002

§ 11.002. Purpose of Board and Department

Currentness

The Texas Board of Health and the Texas Department of Health are established to better protect and promote the health of the people of this state.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

V. T. C. A., Health & Safety Code § 11.002, TX HEALTH & S § 11.002

Current through Chapters effective immediately through Chapter 65 of the 2013 Regular Session of the 83rd Legislature

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Vernon's Texas Statutes and Codes Annotated

Health and Safety Code (Refs & Annos)

Title 2. Health

Subtitle A. Texas Department of Health (Refs & Annos)

Chapter 12. Powers and Duties of Texas Department of Health

Subchapter A. Powers and Duties of Board

V.T.C.A., Health & Safety Code § 12.001

§ 12.001. General Powers and Duties

Currentness

- (a) The board has general supervision and control over all matters relating to the health of the citizens of this state.
- (b) The board shall:
- (1) adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner and file a copy of those rules with the department; and
 - (2) examine, investigate, enter, and inspect any public place or public building as the board determines necessary for the discovery and suppression of disease and the enforcement of any health or sanitation law of this state.
- (c) The board has all the powers, duties, and functions granted by law to:
- (1) the Texas Board of Health;
 - (2) the state commissioner of health;
 - (3) the Texas Department of Health;
 - (4) the Texas Board of Health Resources; and
 - (5) the Texas Department of Health Resources.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Editors' Notes

REVISOR'S NOTE

2010 Main Volume

The source law requires the board to adopt rules “not inconsistent with law.” The revised law omits this requirement as unnecessary since an agency may not adopt rules that are inconsistent with law.

Notes of Decisions (3)

V. T. C. A., Health & Safety Code § 12.001, TX HEALTH & S § 12.001

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Vernon's Texas Statutes and Codes Annotated
Health and Safety Code (Refs & Annos)

Title 2. Health

Subtitle A. Texas Department of Health (Refs & Annos)

Chapter 12. Powers and Duties of Texas Department of Health

Subchapter C. Powers and Duties of Commissioner

V.T.C.A., Health & Safety Code § 12.021

§ 12.021. Administration and Enforcement Duties

Currentness

The commissioner shall administer and enforce the health laws of this state under the board's supervision.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

V. T. C. A., Health & Safety Code § 12.021, TX HEALTH & S § 12.021

Current through the end of the 2011 Regular Session and First Called Session of the 82nd Legislature

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Vernon's Texas Statutes and Codes Annotated
Health and Safety Code (Refs & Annos)

Title 2. Health

Subtitle D. Prevention, Control, and Reports of Diseases

Chapter 81. Communicable Diseases

Subchapter B. Prevention

V.T.C.A., Health & Safety Code § 81.021

§ 81.021. Board's Duty

Currentness

The board shall exercise its power in matters relating to protecting the public health to prevent the introduction of disease into the state.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

V. T. C. A., Health & Safety Code § 81.021, TX HEALTH & S § 81.021

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Vernon's Texas Statutes and Codes Annotated
Health and Safety Code (Refs & Annos)
Title 2. Health
Subtitle D. Prevention, Control, and Reports of Diseases
Chapter 81. Communicable Diseases
Subchapter A. General Provisions (Refs & Annos)

V.T.C.A., Health & Safety Code § 81.003

§ 81.003. Definitions

Effective: September 1, 2003

Currentness

In this chapter:

- (1) "Communicable disease" means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.

- (2) "Health authority" means:
 - (A) a physician appointed as a health authority under Chapter 121 (Local Public Health Reorganization Act) or the health authority's designee; or

 - (B) a physician appointed as a regional director under Chapter 121 (Local Public Health Reorganization Act) who performs the duties of a health authority or the regional director's designee.

- (3) "Health professional" means an individual whose:
 - (A) vocation or profession is directly or indirectly related to the maintenance of the health of another individual or of an animal; and

 - (B) duties require a specified amount of formal education and may require a special examination, certificate or license, or membership in a regional or national association.

- (4) "Local health department" means a department created under Chapter 121 (Local Public Health Reorganization Act).

- (5) "Physician" means a person licensed to practice medicine by the Texas State Board of Medical Examiners.

- (6) "Public health district" means a district created under Chapter 121 (Local Public Health Reorganization Act).

(7) "Public health disaster" means:

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

(B) a determination by the commissioner that there exists an immediate threat from a communicable disease that:

(i) poses a high risk of death or serious long-term disability to a large number of people; and

(ii) creates a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

(8) "Reportable disease" includes only a disease or condition included in the list of reportable diseases.

(9) "Resident of this state" means a person who:

(A) is physically present and living voluntarily in this state;

(B) is not in the state for temporary purposes; and

(C) intends to make a home in this state, which may be demonstrated by the presence of personal effects at a specific abode in the state; employment in the state; possession of a Texas driver's license, motor vehicle registration, voter registration, or other similar documentation; or other pertinent evidence.

(10) "School authority" means:

(A) the superintendent of a public school system or the superintendent's designee; or

(B) the principal or other chief administrative officer of a private school.

(11) "Sexually transmitted disease" means an infection, with or without symptoms or clinical manifestations, that may be transmitted from one person to another during, or as a result of, sexual relations between two persons and that may:

(A) produce a disease in, or otherwise impair the health of, either person; or

(B) cause an infection or disease in a fetus in utero or a newborn.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, § 2.167, eff. Sept. 1, 2003.

Editors' Notes

REVISOR'S NOTE

2010 Main Volume

- (1) The revised law omits the source law definitions of board, commissioner, and department. “Board” is defined as the Texas Board of Health, “commissioner” is defined as the commissioner of health, and “department” is defined as the Texas Department of Health in Section 11.001.
- (2) The revised law omits the definition in the source law of “person” as unnecessary because under the definitions section of the Code Construction Act (Section 311.005, Government Code) “person” includes any legal entity.
- (3) The revised law omits the source law definition of “report” from the definitions section of the revised law because the meaning of the term is clear from each context in which it appears and in some contexts it is not the defined meaning.
- (4) The revised law omits the source law definitions of “financially responsible adult” and “standard serological test for syphilis” from the definitions section of the revised law and includes them as source law for the sections in which they appear.
- (5) The source law refers to Article 4436b, Vernon's Texas Civil Statutes. That statute is codified in the code as Chapter 121, and the revised law reflects that change.

V. T. C. A., Health & Safety Code § 81.003, TX HEALTH & S § 81.003

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Vernon's Texas Statutes and Codes Annotated
Health and Safety Code (Refs & Annos)
Title 10. Health and Safety of Animals
Chapter 821. Treatment and Disposition of Animals
Subchapter A. Treatment of Animals

V.T.C.A., Health & Safety Code § 821.002

§ 821.002. Treatment of Impounded Animals

Currentness

(a) A person who impounds or causes the impoundment of an animal under state law or municipal ordinance shall supply the animal with sufficient wholesome food and water during its confinement.

(b) If an animal impounded under Subsection (a) continues to be without necessary food and water for more than 12 successive hours, any person may enter the pound or corral as often as necessary to supply the animal with necessary food and water. That person may recover the reasonable cost of the food and water from the owner of the animal. The animal is not exempt from levy and sale on execution of a judgment issued to recover those costs.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Notes of Decisions (1)

V. T. C. A., Health & Safety Code § 821.002, TX HEALTH & S § 821.002

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Vernon's Texas Statutes and Codes Annotated
Health and Safety Code (Refs & Annos)
Title 10. Health and Safety of Animals
Chapter 821. Treatment and Disposition of Animals
Subchapter B. Disposition of Cruelly Treated Animals

V.T.C.A., Health & Safety Code § 821.022

§ 821.022. Seizure of Cruelly Treated Animal

Effective: September 1, 2003
Currentness

(a) If a peace officer or an officer who has responsibility for animal control in a county or municipality has reason to believe that an animal has been or is being cruelly treated, the officer may apply to a justice court or magistrate in the county or to a municipal court in the municipality in which the animal is located for a warrant to seize the animal.

(b) On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court or magistrate shall issue the warrant and set a time within 10 calendar days of the date of issuance for a hearing in the appropriate justice court or municipal court to determine whether the animal has been cruelly treated.

(c) The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the hearing.

Credits

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 387, § 1, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 1043, § 2, eff. Sept. 1, 2003.

Editors' Notes

REVISOR'S NOTE

2010 Main Volume

The source law refers to “an incorporated city or town.” The revised law substitutes the term “municipality” for “city or town” because that is the term used in the Local Government Code. In addition, since under the Local Government Code all municipalities are incorporated, the revised law omits the reference to “incorporated” as redundant.

Notes of Decisions (22)

V. T. C. A., Health & Safety Code § 821.022, TX HEALTH & S § 821.022

Current through Chapters effective immediately through Chapter 65 of the 2013 Regular Session of the 83rd Legislature

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Texas Administrative Code
Title 25. Health Services
Part 1. Department of State Health Services
Chapter 97. Communicable Diseases
Subchapter A. Control of Communicable Diseases

25 TAC § 97.3
Tex. Admin. Code tit. 25, §97.3

§ 97.3. What Condition to Report and What Isolates to Report or Submit

Currentness

(a) Humans.

(1) Identification of notifiable conditions.

(A) A summary list of notifiable conditions and reporting time frames is published on the Department of State Health Services web site at <http://www.dshs.state.tx.us/idcu/>. Copies are filed in the Emerging and Acute Infectious Disease Branch, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(B) Repetitive test results from the same patient do not need to be reported except those for mycobacterial infections.

(2) Notifiable conditions or isolates.

(A) Confirmed and suspected human cases of the following diseases/infections are reportable: acquired immune deficiency syndrome (AIDS); amebiasis; amebic meningitis and encephalitis; anaplasmosis; anthrax; arboviral infections caused by California serogroup virus, Eastern equine encephalitis (EEE) virus, Powassan virus, St. Louis encephalitis (SLE) virus, Western equine encephalitis (WEE) virus, and West Nile (WN) virus; babesiosis; botulism-adult and infant; brucellosis; campylobacteriosis; Chagas' disease; chancroid; chickenpox (varicella); Chlamydia trachomatis infection; Creutzfeldt-Jakob disease (CJD); cryptosporidiosis; cyclosporiasis; dengue; diphtheria; ehrlichiosis; shiga-toxin producing Escherichia coli infection; gonorrhea; Hansen's disease (leprosy); Haemophilus influenzae type b infection, invasive; hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis A, B, C, and E, (acute); hepatitis B, (acute and chronic) identified prenatally or at delivery; perinatal hepatitis B infection; human immunodeficiency virus (HIV) infection; influenza-associated pediatric mortality; legionellosis; leishmaniasis; listeriosis; Lyme disease; malaria; measles (rubeola); meningococcal infection, invasive; novel influenza; mumps; pertussis; plague; poliomyelitis, acute paralytic; poliovirus infection, non-paralytic; Q fever; rabies; relapsing fever; rubella (including congenital); salmonellosis, including typhoid fever; severe acute respiratory syndrome (SARS) as defined by the United States Centers for Disease Control and Prevention; shigellosis; smallpox; spotted fever group rickettsioses (such as Rocky Mountain spotted fever); streptococcal disease: invasive group A, invasive group B, or invasive Streptococcus pneumoniae; syphilis; Taenia solium and undifferentiated Taenia infections, including cysticercosis; tetanus; trichinosis; tuberculosis; tularemia; typhus; Vibrio infection, including cholera (specify species); viral hemorrhagic fevers; yellow fever; yersiniosis; and vancomycin-intermediate resistant Staphylococcus aureus (VISA), and vancomycin-resistant Staphylococcus aureus (VRSA).

(B) In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern should be reported by the most expeditious means.

(3) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(A) AIDS, chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with §§ 97.132-97.134 of this title (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV));

(B) for tuberculosis disease - complete name, date of birth, physical address and county of residence, information on which diagnosis was based or suspected. In addition, if known, radiographic or diagnostic imaging results and date(s); all information necessary to complete the most recent versions of forms TB 400 A & B (Report of Case and Patient Services), TB 340 (Report of Contacts) and TB 341 (Continuation of Report of Contacts); laboratory results used to guide prescribing, monitoring or modifying antibiotic treatment regimens for tuberculosis to include, but not limited to, liver function studies, renal function studies, and serum drug levels; pathology reports related to diagnostic evaluations of tuberculosis; reports of imaging or radiographic studies; records of hospital or outpatient care to include, but not limited to, histories and physical examinations, discharge summaries and progress notes; records of medication administration to include, but not limited to, directly observed therapy (DOT) records, and drug toxicity and monitoring records; a listing of other patient medications to evaluate the potential for drug-drug interactions; and copies of court documents related to court ordered management of tuberculosis.

(C) for contacts to a known case of tuberculosis - complete name; date of birth; physical address; county of residence; and all information necessary to complete the most recent versions of forms TB 400 A & B (Report of Case and Patient Services), TB 340 (Report of Contacts), and TB 341 (Continuation of Report of Contacts);

(D) for other persons identified with latent TB infection - complete name; date of birth; physical address and county of residence; and diagnostic information;

(E) for hepatitis B (chronic and acute) identified prenatally or at delivery - mother's name, address, telephone number, age, date of birth, sex, race and ethnicity, preferred language, hepatitis B laboratory test results; estimated delivery date or date and time of birth; name and phone number of delivery hospital or planned delivery hospital; name of infant; name, phone number, and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant;

(F) for hepatitis A, B, C, and E - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, including all positive and negative hepatitis panel results, liver function tests, and symptoms), date of onset, pregnancy status, and physician name, address, and telephone number;

(G) for perinatal hepatitis B - name of infant; date of birth; sex; race; ethnicity; name, phone number and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant, hepatitis B laboratory test results;

(H) for chickenpox - name, date of birth, sex, race and ethnicity, address, date of onset, and varicella vaccination history;

(I) for VISA; and VRSA - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, anatomic site of culture, and clinical indicators), date of onset, and physician name, address, and telephone number;

(J) for Hansen's disease - name; date of birth; sex; race and ethnicity; social security number; disease type; place of birth; address; telephone number; date entered Texas; date entered U.S.; education/employment; insurance status; location and inclusive dates of residence outside U.S.; date of onset and history prior to diagnosis; date of initial biopsy and result; date initial drugs prescribed and name of drugs; name, date of birth and relationship of household contacts; and name, address, and telephone number of physician;

(K) for novel influenza investigations occurring during an influenza pandemic--minimal reportable information on individual cases, a subset of cases or aggregate data will be specified by the department;

(L) for all other notifiable conditions listed in paragraph (2)(A) of this subsection - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results and specimen source, and clinical indicators), date of onset, and physician name, address, and telephone number; and

(M) other information may be required as part of an investigation in accordance with Texas Health and Safety Code, § 81.061.

(4) Diseases requiring submission of cultures. For all anthrax (*Bacillus anthracis*), botulism-adult and infant (*Clostridium botulinum*), brucellosis (*Brucella* species), *E.coli* 0157:H7, isolates or specimens from cases where Shiga-toxin activity is demonstrated, *Listeria monocytogenes*, meningococcal infection, invasive (*Neisseria meningitidis* from normally sterile sites), plague (*Yersinia pestis*), tuberculosis (*Mycobacterium tuberculosis* complex), tularemia (*Francisella tularensis*), all *Staphylococcus aureus* with a vancomycin MIC greater than 2 microg/mL, and *Vibrio* species - pure cultures shall be submitted accompanied by a current department Specimen Submission Form.

(5) Laboratory reports. Reports from laboratories shall include name, patient identification number, address, telephone number, age, date of birth, sex, race and ethnicity, specimen submitter name, address, and phone number, specimen type, date specimen collected, disease test and test result, normal test range, date of test report, and physician name and telephone number.

(b) Animals.

(1) Clinically diagnosed or laboratory-confirmed animal cases of the following diseases are reportable: anthrax, arboviral encephalitis, Chagas' disease, *Mycobacterium tuberculosis* infection in animals other than those housed in research facilities, plague, and psittacosis. Also, all non-negative rabies tests performed on animals from Texas at laboratories located outside of Texas shall be reported; all non-negative rabies tests performed in Texas will be reported by the

laboratory conducting the testing. In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(2) The minimal information that shall be reported for each disease includes species and number of animals affected, disease or condition, name and phone number of the veterinarian or other person in attendance, and the animal(s) owner's name, address, and phone number. Other information may be required as part of an investigation in accordance with Texas Health and Safety Code, § 81.061.

Credits

Source: The provisions of this §97.3 adopted to be effective March 16, 1994, 19 TexReg 1453; amended to be effective July 26, 1996, 21 TexReg 6622; amended to be effective March 5, 1998, 23 TexReg 1954; amended to be effective January 1, 1999, 23 TexReg 12663; amended to be effective March 26, 2000, 25 TexReg 2343; amended to be effective December 20, 2000, 25 TexReg 12426; amended to be effective August 5, 2001, 26 TexReg 5658; amended to be effective December 12, 2002, 27 TexReg 11547; amended to be effective May 29, 2003, 28 TexReg 4151; amended to be effective June 5, 2007, 32 TexReg 2997; amended to be effective December 20, 2012, 37 TexReg 9777.

Current through June 30, 2013

25 TAC § 97.3, 25 TX ADC § 97.3

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Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 3. Legislative Branch (Refs & Annos)
Subtitle B. Legislation
Chapter 311. Code Construction Act (Refs & Annos)
Subchapter C. Construction of Statutes (Refs & Annos)

V.T.C.A., Government Code § 311.023

§ 311.023. Statute Construction Aids

Currentness

In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

- (1) object sought to be attained;
- (2) circumstances under which the statute was enacted;
- (3) legislative history;
- (4) common law or former statutory provisions, including laws on the same or similar subjects;
- (5) consequences of a particular construction;
- (6) administrative construction of the statute; and
- (7) title (caption), preamble, and emergency provision.

Credits

Acts 1985, 69th Leg., ch. 479, § 1, eff. Sept. 1, 1985.

Notes of Decisions (97)

V. T. C. A., Government Code § 311.023, TX GOVT § 311.023

Current through Chapters effective immediately through Chapter 65 of the 2013 Regular Session of the 83rd Legislature

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Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 3. Legislative Branch (Refs & Annos)
Subtitle B. Legislation
Chapter 312. Construction of Laws
Subchapter A. Construction Rules for Civil Statutes (Refs & Annos)

V.T.C.A., Government Code § 312.005

§ 312.005. Legislative Intent

Currentness

In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy.

Credits

Acts 1985, 69th Leg., ch. 479, § 1, eff. Sept. 1, 1985.

Notes of Decisions (240)

V. T. C. A., Government Code § 312.005, TX GOVT § 312.005

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Title 3. Legislative Branch (Refs & Annos)
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Chapter 311. Code Construction Act (Refs & Annos)
Subchapter C. Construction of Statutes (Refs & Annos)

V.T.C.A., Government Code § 311.021

§ 311.021. Intention in Enactment of Statutes

Currentness

In enacting a statute, it is presumed that:

- (1) compliance with the constitutions of this state and the United States is intended;
- (2) the entire statute is intended to be effective;
- (3) a just and reasonable result is intended;
- (4) a result feasible of execution is intended; and
- (5) public interest is favored over any private interest.

Credits

Acts 1985, 69th Leg., ch. 479, § 1, eff. Sept. 1, 1985.

Notes of Decisions (40)

V. T. C. A., Government Code § 311.021, TX GOVT § 311.021

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Government Code (Refs & Annos)
Title 3. Legislative Branch (Refs & Annos)
Subtitle B. Legislation
Chapter 311. Code Construction Act (Refs & Annos)
Subchapter B. Construction of Words and Phrases (Refs & Annos)

V.T.C.A., Government Code § 311.016

§ 311.016. “May,” “Shall,” “Must,” etc.

Currentness

The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:

- (1) “May” creates discretionary authority or grants permission or a power.
- (2) “Shall” imposes a duty.
- (3) “Must” creates or recognizes a condition precedent.
- (4) “Is entitled to” creates or recognizes a right.
- (5) “May not” imposes a prohibition and is synonymous with “shall not.”
- (6) “Is not entitled to” negates a right.
- (7) “Is not required to” negates a duty or condition precedent.

Credits

Added by Acts 1997, 75th Leg., ch. 220, § 1, eff. May 23, 1997.

Notes of Decisions (5)

V. T. C. A., Government Code § 311.016, TX GOVT § 311.016

Current through Chapters effective immediately through Chapter 65 of the 2013 Regular Session of the 83rd Legislature

16

STATE HUMANE SOCIETY—AUTHORIZES OFFICERS OF
SAME TO MAKE ARRESTS FOR CRUELTY TO ANIMALS.

S. B. No. 210.]

CHAPTER 88.

An Act for the preventing of cruelty to animals; for the prevention of impounding same without food or water; providing for the sanitary and humane treatment of fowls or other birds; prescribing penalties; providing that agents and officers of the State Humane Society may make arrests, and may take charge of neglected, abandoned or cruelly treated animals, and destroy same under certain circumstances; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Every person who overdrives, wilfully overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, or needlessly mutilates or kills, or carries in or upon any vehicle, or otherwise in a cruel or inhumane manner, or causes or procures to be done, or who having the charge or custody of any animal unnecessarily fails to provide it with proper food, drink or cruelly abandons it, shall, upon conviction be punished by fine of not less than ten dollars nor more than two hundred and fifty dollars.

SEC. 2. Every person who shall impound, or cause to be impounded in any pound or corral under the laws of this State or of any municipality in this State, any animal, shall supply to the same during such confinement a sufficient quantity of wholesome food and water, and in default thereof, upon conviction, be punished by fine or not less than five nor more than fifty dollars.

SEC. 3. In case any animal shall be at any time impounded as aforesaid and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any person from time to time and as often as it shall be necessary, to enter into or upon any pound or corral in which such animal shall be confined, and to supply to it necessary food and water so long as it shall be so confined; such persons shall not be liable to any action for such entry, and the reasonable cost for such food and water may be collected by him or the owner of the animals; and the said animal shall not be exempt from levy and sale, upon execution issued upon a judgment therefor.

SEC. 4. Every person who shall receive live fowls, poultry or other birds for transportation or to be confined on wagons or stands, or by the owners of grocery stores, commission houses, or other market houses, or by other persons when to be closely confined shall place same immediately in coops, crates or cages made of open slats or wire on at least three sides, and of such height, that the fowls can stand upright without touching the top, and shall have troughs or other receptacles easy of access at all times by the birds confined therein and so placed that their contents shall not be defiled by them, in which troughs or other receptacles clean water and suitable food shall be constantly kept: shall keep such coops, crates or cages in a clean and wholesome condition; shall place only such numbers in each coop, crate or cage as can stand without crowding one another, but have room to move around: shall not expose same to undue heat or cold; shall remove immediately all injured, diseased or dead fowls or other birds, and in default thereof shall, upon conviction, be punished by fine of not less than five nor more than two

hundred dollars, or by both such fine and imprisonment, for each offense.

SEC. 5. When any person arrested under any provision of this Act is, at the time of such arrest, in charge of any vehicle drawn by or containing any animal cruelly treated, any agent of said humane society, having been authorized by the sheriff of the county to make arrests in such cases, may take charge of such animal and such vehicle and its contents, and the animal or animals drawing same, and shall give notice thereof to the owner, if known, and shall care and provide for them until their owner shall take charge of the same; and such agent shall have a lien on said animals and on said vehicle and its contents for the expense of such care and provision, or the said expense or any part thereof remaining unpaid may be recovered by such agent in a civil action.

SEC. 6. Any officer or agent of the said humane society may lawfully take charge of any animal found abandoned, neglected or cruelly treated and shall thereupon give notice thereof to the owner, if known, and may care and provide for such animal until the owner shall take charge of same, and the expense of such care and provision shall be a charge against the owner of such animal and collectible from such owner by said humane society in an action therefor.

SEC. 7. When said humane society shall provide neglected abandoned animals with proper food, shelter and care, it may detain such animals until the expense of such food, shelter and care is paid, and shall have a lien upon such animals therefor.

SEC. 8. Any agent or officer of the said humane society may lawfully destroy or cause to be destroyed any animal in his charge, when, in the judgment of such agent or officer, and by written certificate of two reputable citizens called to view same in his presence, one of whom may be selected by the owner of said animal if he shall so request, and who shall give their written certificates that such animal appears to be injured, disabled, diseased, past recovery, or unfit for any useful purpose.

SEC. 9. Any person or corporation entitled to a lien under any of the provisions of this Act may enforce the same by selling the animals and other personal property upon which such lien is given, at public auction, upon giving notice to the owner, if he be known, of the time and place of such sale, at least five days previous thereto, and by posting three notices of the time and place of such sale in three public places within the county, at least five days previous thereto; and if the owner be not known, then such notice shall be posted at least ten days previous to such sale.

SEC. 10. Officers and agents of said humane society shall be provided with a certificate by said society that they are such officers or agents in such form as the directors of said society may choose, or with a badge bearing the name and seal of said society; and shall if requested, show such certificate or badge when acting officially.

SEC. 11. Any member of the Texas State Humane Society may require the sheriff of any county, the constable of any precinct or the marshal or any policeman of any town or city, or any agent of said society authorized by the sheriff to make arrests for the violation of this Act, to arrest any person found violating any of the provisions of this Act, and to take possession of any animal cruelly treated in their respective counties, cities or towns.

SEC. 12. In this Act the word "animal" shall be held to include every living dumb creature; the words "torture" and "cruelty" shall be held to include every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted or allowed to continue, when there is a reasonable remedy or relief, and the words "owner" and "person" shall be held to include corporations, and the knowledge and act of agents and employes of corporations in regard to animals transported, owned, employed by or in custody of the corporation shall be held to be the knowledge and acts of such corporations.

SEC. 13. All Acts or parts of Acts in conflict with this Act are hereby repealed.

SEC. 14. Nothing in this Act shall be held to apply to or in any manner affect any indictment, trial, writ of error, appeal or other proceedings, judgment, or sentence in case of violation of the provisions of this Section by this Act repealed now pending in any court in this State, and the same shall be held, conducted and adjudged as provided by the law in force before this Act shall take effect. Any offense under the provisions of the Section by this Act repealed which shall have been committed before this Act takes effect shall be required to be prosecuted and punished in accordance with the law in force at the time of the commission of such offense.

SEC. 15. The fact that there is now no law in this State adequately covering the protection of animals from cruelty, and the crowded condition of the calendar, creates an emergency, and an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

[NOTE.—S. B. No. 210 passed the Senate by a two-thirds vote, yeas 25, nays 0; and passed the House of Representatives March 27, 1913, but no vote given.]

Approved March 31, 1913.

Takes effect 90 days after adjournment.

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34 Stat. 607-608

59 Cong. Ch. 3594, June 29, 1906, 34 Stat. 607

UNITED STATES STATUTES AT LARGE

59TH CONGRESS - 1ST SESSION

Convening December 4, 1905

An Act

To prevent cruelty to animals while in transit by railroad or other means of transportation from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia, and repealing sections forty-three hundred and eighty-six, forty-three hundred and eighty-seven, forty-three hundred and eighty-eight, forty-three hundred and eighty-nine, and forty-three hundred and ninety of the United States Revised Statutes.

June 29, 1906

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Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 3. Legislative Branch (Refs & Annos)
Subtitle B. Legislation
Chapter 312. Construction of Laws
Subchapter A. Construction Rules for Civil Statutes (Refs & Annos)

V.T.C.A., Government Code § 312.006

§ 312.006. Liberal Construction

Currentness

(a) The Revised Statutes are the law of this state and shall be liberally construed to achieve their purpose and to promote justice.

(b) The common law rule requiring strict construction of statutes in derogation of the common law does not apply to the Revised Statutes.

Credits

Acts 1985, 69th Leg., ch. 479, § 1, eff. Sept. 1, 1985.

Notes of Decisions (46)

V. T. C. A., Government Code § 312.006, TX GOVT § 312.006

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2013 Tex. Sess. Law Serv. Ch. 314 (H.B. 1690) (VERNON'S)

VERNON'S TEXAS SESSION LAW SERVICE 2013

Eighty-Third Legislature, 2013 Regular Session

Additions are indicated by **Text**; deletions by ~~Text~~ .

Vetoed are indicated by ~~Text~~ ;

stricken material by ~~Text~~ .

CHAPTER 314

H.B. No. 1690

MEASURES TO PREVENT OR CONTROL THE ENTRY INTO OR SPREAD IN THIS
STATE OF CERTAIN COMMUNICABLE DISEASES; PROVIDING A PENALTY

AN ACT

relating to measures to prevent or control the entry into or spread
in this state of certain communicable diseases; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 81.003, Health and Safety Code, is amended by adding Subdivision (4-a) to read as follows:

<< TX HEALTH & S § 81.003 >>

(4-a) "Peace officer" has the meaning assigned by Article 2.12, Code of Criminal Procedure. The term includes a sheriff or constable.

SECTION 2. Section 81.083, Health and Safety Code, is amended by adding Subsection (m) to read as follows:

<< TX HEALTH & S § 81.083 >>

(m) A peace officer, including a sheriff or constable, may use reasonable force to:

(1) secure the members of a group subject to an order issued under Subsection (k); and

(2) except as directed by the department or health authority, prevent the members from leaving the group or other individuals from joining the group.

SECTION 3. Section 81.084, Health and Safety Code, is amended by adding Subsection (l) to read as follows:

<< TX HEALTH & S § 81.084 >>

(l) A peace officer, including a sheriff or constable, may use reasonable force to:

(1) secure a property subject to a court order issued under this section; and

(2) except as directed by the department or health authority, prevent an individual from entering or leaving the property subject to the order.

SECTION 4. Section 81.085, Health and Safety Code, is amended by adding Subsection (j) to read as follows:

<< TX HEALTH & S § 81.085 >>

(j) A peace officer, including a sheriff or constable, may use reasonable force to:

(1) secure a quarantine area; and

(2) except as directed by the department or health authority, prevent an individual from entering or leaving the quarantine area.

SECTION 5. Section 81.162, Health and Safety Code, is amended by adding Subsection (h) to read as follows:

<< TX HEALTH & S § 81.162 >>

(h) The judge or magistrate may direct a peace officer, including a sheriff or constable, to prevent a person who is the subject of a protective custody order from leaving the facility designated to detain the person if the court finds that a threat to the public health exists because the person may attempt to leave the facility.

SECTION 6. Section 81.163, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

<< TX HEALTH & S § 81.163 >>

(a) A protective custody order shall direct a peace officer, including a sheriff or constable, to take the person who is the subject of the order into protective custody and transport the person immediately to an appropriate inpatient health facility that has been designated by the commissioner as a suitable place.

(f) A protective custody order issued under Section 81.162 may direct an emergency medical services provider to provide an ambulance and staff to immediately transport the person who is the subject of the order to an appropriate inpatient health facility designated by the order or other suitable facility. The provider may seek reimbursement for the costs of the transport from any appropriate source.

SECTION 7. Section 81.185, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

<< TX HEALTH & S § 81.185 >>

(a) The order for temporary detention shall direct a peace officer, including a sheriff or constable, to take the person into custody and immediately transport the person to an appropriate inpatient health care facility. The person shall be transported to a facility considered suitable by the health authority if an appropriate inpatient health care facility is not available.

(e) The order for temporary detention may direct an emergency medical services provider to provide an ambulance and staff to immediately transport the person who is the subject of the order to an appropriate inpatient health care facility designated by the order or other suitable facility. The provider may seek reimbursement for the costs of the transport from any appropriate source.

SECTION 8. Section 81.190, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

<< TX HEALTH & S § 81.190 >>

(g) If the department or health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge or the public would jeopardize the health and safety of those persons and the public health, the judge may order that a person entitled to a hearing may not appear in person and may appear only by teleconference or another means that the judge finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

SECTION 9. Subchapter G, Chapter 81, Health and Safety Code, is amended by adding Section 81.212 to read as follows:

<< TX HEALTH & S § 81.212 >>

Sec. 81.212. EVADING OR RESISTING APPREHENSION OR TRANSPORT; CRIMINAL PENALTY. (a) A person who is subject to a protective custody order or temporary detention order issued by a court under this subchapter commits an offense if the person resists or evades apprehension by a sheriff, constable, or other peace officer enforcing the order or resists or evades transport to an appropriate inpatient health care facility or other suitable facility under the order.

(b) A person commits an offense if the person assists a person who is subject to a protective custody order or temporary detention order issued by a court under this subchapter in resisting or evading apprehension by a sheriff, constable, or other peace officer enforcing the order or in resisting or evading transport to an appropriate inpatient health care facility or other suitable facility under the order.

(c) An offense under this section is a Class A misdemeanor.

<< Note: TX HEALTH & S § 81.003 >>

SECTION 10. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 11. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Passed by the House on April 25, 2013: Yeas 134, Nays 2, 2 present, not voting; passed by the Senate on May 20, 2013: Yeas 31, Nays 0.

Approved June 14, 2013.

Effective June 14, 2013.