

SUBJECT: Charitable immunity for certain health care providers

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 6 ayes — Gray, Bosse, Dutton, Goodman, Nixon, Roman
0 nays
3 absent — Hilbert, Alvarado, Zbranek

SENATE VOTE: On final passage, April 25 — voice vote

WITNESSES: For — None
Against — None
On — Mike Slack, Texas Trial Lawyers Association

BACKGROUND : The Charitable Immunity and Liability Act of 1987, chapter 84 of the Civil Practice and Remedies Code, provides civil liability protection for charitable organizations. Under its provisions, volunteer officers, directors, trustees and direct service volunteers are immune from any civil liability for acts that are not intentional, willfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others. A volunteer is liable if the injury involves the operation of a motor vehicle, to the extent covered by insurance. Charitable organizations must have liability insurance coverage to be eligible for limited liability.

DIGEST: SB 1105 would amend the definition of volunteer in the charitable immunity and liability act to include certain individuals voluntarily providing health care services without compensation or expectation of compensation. The bill would apply to licensed doctors; retired physicians eligible to provide health care services but exempt from annual registration fees; and active or retired physician's assistants, registered nurses, licensed vocational nurses, pharmacists, podiatrists, or dentists.

Such volunteers would be immune from civil liability for any act or omission when providing health care services if the services were within the

scope of their practice and the patient or patient's guardian signed a written statement (1) acknowledging the volunteer was providing care without expectation of compensation and (2) waiving the patient's right to recover damages in exchange for receiving uncompensated care services.

The bill would take effect September 1, 1997.

**SUPPORTERS
SAY:**

SB 1105 would help improve, at no cost to the state, access to health care services for uninsured people living in rural and urban underserved areas by capitalizing on the volunteer spirit and professional expertise of active or retired health care professionals. It would extend liability protections to health care professionals that are now granted to other volunteers and volunteer organizations.

Recruitment and retention of health care volunteers is difficult in part due to concerns that professional liability insurance will not cover volunteer acts. Also, many retired professionals with free time and a lifetime's experience in health care hesitate to offer their volunteer services without specific legal protection from liability.

Patients would not incur greater risk in receiving care from volunteer health care professionals because the immunity to liability would be limited to services provided only within their scope of practice. Furthermore, the clinics or organizations in which most of them would probably be rendering care would have liability insurance. The health care professionals also would still be subject to penalties and sanctions imposed on practices or conduct prohibited under their respective licensing acts.

**OPPONENTS
SAY:**

This bill may not significantly increase the pool of health care professionals to provide uncompensated health care services. Most people who desire and have the time to volunteer do so already, relying on existing liability protections granted to charitable organizations and public entities.

**OTHER
OPPONENTS
SAY:**

SB 1105 should be amended to require the statement waiving the rights of patients to recover damages for injuries to be written in the patient's primary language.