

SUBJECT: Limiting the liability of people who respond to disasters

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 6 ayes — Nixon, Gattis, Y. Davis, Hartnett, Rose, Woolley
0 nays
3 absent — Capelo, King, Krusee

SENATE VOTE: On final passage, March 27 — voice vote

WITNESSES: For — Kenneth Martin, Texas Chemical Council
Against — None

BACKGROUND: Civil Practice and Remedies Code, ch. 79 immunizes a person from civil liability for an act or omission that occurs in giving care, assistance, or advice with respect to managing an incident that involves hazardous materials, so long as certain conditions are met. Hazardous materials are those defined as such under state or federal law or a chemical, petroleum product, gas, or other substance that, if discharged or released, is likely to pose an imminent danger to the public, property, or environment. A person is not immune from liability if the conduct that caused harm was reckless or intentional or constituted wilful or wanton misconduct.

DIGEST: SB 513 would extend immunity from liability to a person who gave care, assistance, or advice during a manmade or natural disaster, as long as the assistance was at the request of a federal, state, or local agency and the person rendered it without compensation or the expectation of compensation, other than reimbursement for expenses.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: SB 513 logically would extend immunity from liability to those who render emergency services during manmade or natural disasters. Such immunity is necessary to maximize government resources and to provide the best

assistance possible when a disaster strikes. This liability limitation provision would apply only if a government agency requested the help of a private person or company for disaster assistance.

In developing plans for responding to disasters, agencies must mobilize both public and private resources. Some private firms may be reluctant to render services in these situations because of the potential liability they could face from acting as “good Samaritans.” SB 513 would encourage more private companies to participate in disaster assistance by ensuring them that they could help without being subject to liability for well-intentioned actions that might harm a person or property. This added private participation would help save government resources.

SB 513 would apply the appropriate standard for liability, requiring a person to have committed reckless, intentional, wilful, or wanton misconduct. This standard would protect emergency workers from liability for negligence. Emergency personnel work in high-stress environments where they must make split-second decisions without the benefit of hindsight. As a result, public policy consistently has dictated that emergency workers be protected from liability unless their acts meet a high standard of misconduct.

**OPPONENTS
SAY:**

The liability limitations proposed by SB 513 would preclude injured people from rightfully recovering for their injuries and from being able to have their day in court. The standards it would apply for making a person liable are the same as those for criminal conduct and are unnecessarily higher than those normally applied in tort law. Tortfeasors should be held liable for their torts, and excluding this class of people from liability would be unfair to those who might be injured.

SB 513 is not necessary to encourage private companies to provide disaster assistance. For many reasons, most private firms would not be likely to deny a governmental request to help the public during a disaster.