

- SUBJECT:** Indemnifying phlebotomists under contract with TDCJ
- COMMITTEE:** Civil Practices — favorable, without amendment
- VOTE:** 8 ayes — B. Cook, Strama, Madden, Martinez Fischer, Miller, Raymond, Talton, Woolley
- 0 nays
- 1 absent — P. King
- WITNESSES:** For — None
- Against — None
- On —Melinda Bozarth, Texas Department of Criminal Justice (TDCJ)
- BACKGROUND:** Under Civil Practices Code, sec. 104.002, the state agrees to indemnify for actual damages, court costs, and attorney's fees certain persons listed in sec. 104.001. The list includes physicians and psychiatrists under contract with a state agency and chaplains or spiritual advisors under contract with TDCJ. The state indemnifies:
- a negligence cause of action, except a willful or wrongful act or gross negligence;
 - deprivation of right, privilege, or immunity cause of action secured by the state Constitution or laws, except if the actor is found to have acted in bad faith, with conscious indifference or reckless disregard; or
 - actions determined by the attorney general or his designee to be in the interest of the state.
- DIGEST:** HB 1194 would amend Civil Practices and Remedies Code, sec. 104.001 to add phlebotomists who were performing services under contract with TDCJ to the list of those indemnified by the state for actual damages, court costs, and attorney's fees.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007. It would apply only to causes of action that accrued on or after the effective date.

**SUPPORTERS
SAY:**

Contracted phlebotomists are used to draw blood samples from inmates at TDCJ when the use of some force may be necessary to obtain the sample. State law currently does not indemnify these phlebotomists if an offender files suit, and the potential of being subjected to lawsuits remains a concern for them. Because state law requires a blood sample to obtain inmate DNA, the state should indemnify phlebotomists contracted to assist TDCJ in obtaining that sample.

Other professionals in frequent contact with inmates, including physicians, psychiatrists, chaplains, and spiritual advisors, are indemnified by the state for their costs if they are sued, and phlebotomists should be added to the list. State indemnification does not apply to willful or wrongful acts, gross negligence, actions taken in bad faith, with conscious indifference, or reckless disregard, or actions that the attorney general determined were not in the interest of the state.

**OPPONENTS
SAY:**

No apparent opposition.