

SUBJECT: Limiting liability for the donation of drugs and other medical devices

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 5 ayes — Gray, Hilbert, Goodman, Nixon, Roman

0 nays

4 absent — Alvarado, Bosse, Dutton, Zbranek

WITNESSES: For — Robert Bernstein; Lillie Gilligan, GlaxoWellcome, Inc.

Against — Mike Slack, Texas Trial Lawyers Association

On — None

DIGEST: CSHB 21 would allow a person authorized to possess a drug or medical device to donate it in good faith to a nonprofit health care organization authorized to possess it. The donor could not be held liable based on the nature, age, packaging or condition of the donated item. The nonprofit health care organization would have to use the items in providing free or reduced cost health care.

Nonprofit organizations would include charitable organizations exempt from federal income tax and any other bona fide charitable organizations operated for the purpose of providing free or reduced cost health care. Nonprofit organizations would be required to carry \$500,000 in liability insurance per each person and \$1 million per occurrence in order for the immunity from liability to apply.

The immunity from liability would not apply to a person who donated a drug that was known to be contaminated or a drug or device that would violate state or federal law. Additionally, if the person knowingly, or with conscious indifference, donated a device that would be harmful to the health or well-being of another person, no immunity would be applicable.

CSHB 21 would take effect September 1, 1997, and apply to a cause of action that accrued on or after that date.

**SUPPORTERS
SAY:**

The cost of health care has forced a number of people to look to nonprofit health care organizations for such services. These organizations are woefully underfunded, but a source of medical supplies could become available to them but for the substantial risk of liability for donating drugs or medical devices. CSHB 21 would shield from liability those who donate drugs and medical devices that would help to improve the quality of care furnished at these nonprofit health care organizations.

This legislation would not allow anyone to give away harmful or contaminated drugs without a risk of liability, but it would allow good faith donations of drugs or devices that are known not to be harmful to the health of others. The drugs would have to be donated by someone entitled to possess them and given to someone entitled to possess the drugs. Such requirements would reduce the risk that such drugs would be dispensed by a person who was not qualified and licensed to dispense or prescribe the drug. Devices that are injected, implanted or otherwise placed in the human body would not be subject to immunity; only durable medical equipment like wheelchairs or crutches or exterior devices such as braces could be immune from liability. The use of such devices would not pose a risk to patients of these nonprofit organizations.

This legislation would not allow the nonprofit health care organization to escape liability if the drug or device were misused. The liability of such organizations is already covered in chapter 84 of the Civil Practices and Remedies Code. This legislation also would require that drugs or devices be donated to organizations that maintain liability insurance for the acts or omissions of their volunteers or employees. Such a requirement would help ensure that if patients were injured by the misuse of a device by a person providing health care for one of these organizations, they would be able to receive compensation for the harm done to them.

**OPPONENTS
SAY:**

HB 21 would limit the rights of some injured parties to receive full compensation for the harms done to them. Drugs and medical devices are dangerous even when used and dispensed by competent, trained professionals. Nonprofit health care organizations may not always employ people who are fully qualified to dispense or use such drugs or devices. Without the donator being held to some degree of liability for the safety of

their products, the likelihood of people being harmed when going to free or reduced health care providers could increase.

NOTES:

The committee substitute added a definition of medical device, the requirement that the organization to which the drug or device was donated be authorized to possess it, and excluded from liability protections for drugs or devices that would violate state or federal law or were known to be contaminated. It would also require the organization to meet certain insurance requirements in order for immunity from liability to apply.