

SUBJECT: Recourse for providers in hospital membership or privilege process

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — Bosse, Janek, Clark, Hope, Martinez Fischer, Nixon  
0 nays  
3 absent — Dutton, Smithee, Zbranek

WITNESSES: For — (*On original version:*) Ace Pickens, Michael Sharp (*On committee substitute:*) Charles Bailey, Texas Hospital Association; Harold Freeman, Texas Medical Association  
  
Against — Charles Bailey, Texas Hospital Association

BACKGROUND: Health and Safety Code, sec. 241.101 regulates the relationship between physicians and hospitals with regard to medical staff membership and privileges. It requires hospital credentials committees to act expeditiously and give physicians due process in reviewing applications for membership or privileges. In this regard, a hospital:

- ! may not deny an application for any reason that is otherwise prohibited by law;
- ! may require documentation of competency in the area for which privileges are sought;
- ! may not differentiate on the basis of academic medical degree; and
- ! may require graduate medical education or board certification for physicians if equal recognition is given to certain nationally accredited training programs accredited and certification programs.

DIGEST: CSHB 3152 would amend Health and Safety Code, sec. 241.101, to require hospitals to give physicians due process as defined by federal guidelines on good faith professional review activities. Physicians could request alternative dispute resolution procedures or binding arbitration if the hospital's credential's committee did not take action on a completed application or its determination. A physician would have the same option if

the hospital conducted a professional review action that the physician believed was taken without due process and that lasted longer than 30 days.

If the hospital did not agree to alternative dispute resolution, it would have to enter binding arbitration at the physician's request. This would not authorize a cause of action, except to require a hospital to participate in binding arbitration.

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, 2001.

**SUPPORTERS  
SAY:**

CSHB 3152 would give physicians the ability to defend their practice privileges. Hospital membership and practice privileges are central to some physicians' practices. Without them, physicians could lose a considerable sum of money and patients. The law proscribes due process but does not allow physicians any recourse if due process is not followed. Physicians should have some recourse if the hospital takes an action that harms a physician's practice.

This bill would provide a way of resolving disputes that did not involve legal action. The two-step process — alternative dispute resolution and binding arbitration — would be sufficient to get both parties to resolve their differences without going to court. Physicians should not be able to sue for damages because this could open up hospitals to excessive litigation and second guessing that could make them less likely to take action against a physician.

**OPPONENTS  
SAY:**

CSHB 3152 would not give physicians enough resources to defend their practices. Alternative dispute resolution and binding arbitration are not free and would be paid by the physician. This bill should direct hospitals to reimburse physicians in cases where the dispute resolution resulted in the physician returning to the hospital.

**NOTES:**

The committee substitute gave physicians recourse through alternative dispute resolution and binding arbitration and removed a provision that

would have allowed physicians to bring a cause of action and seek damages including actual damages, court costs and attorney's fees, and other relief.