

SUBJECT: Repealing state indemnification for rural health care professional negligence

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — T. Hunter, Hilbert, Alvarado, Hartnett, Moffat, Zbranek

0 nays

3 absent — Culberson, Sadler, Tillery

WITNESSES: (*On original bill*)

For — Mike Slack and Carol Taylor, Texas Trial Lawyers Association

Against — None

On — Mike McKinney and Alicia D. Essary, Texas Health and Human Services Commission; Harold Freeman, Texas Medical Association; David Durden, Texas Department of Insurance; Nathan Anderson and Delmar Cain, Office of the Attorney General; Carol Peters, Center for Rural Health Initiatives; Betty Ressel, Comptroller of Public Accounts; Barbara Hawkins, Texas State Auditor's Office; Robert Norris, Legislative Budget Board

BACKGROUND: The 71st Legislature enacted a rural health care act, HB 18 by McKinney et al., designed to increase the quality of rural health care by allowing for the limitation of medical liability and providing state indemnification for doctors who provide charity care to at least 10 percent of their patients. It was the intention of the act to curb malpractice premiums of doctors in these areas, which are often higher than in urban areas.

DIGEST: CSHB 1362 would repeal ch. 110 of the Civil Practices and Remedies Code, which provides state indemnification for rural health care professionals, and Insurance Code art. 5.15-4, which requires the Department of Insurance to approve premium discounts for health care professionals who provide charity service to at least 10 percent of their patients. The two provisions would expire automatically on September 1, 1997, if not renewed by the Legislature.

This bill would take immediate effect if approved by two-thirds of the membership of each house.

**SUPPORTERS
SAY:**

The state's attempt to elevate the number of doctors serving in rural areas has not been successful. The majority of doctors who are claiming the liability indemnifications and receiving the discounts on their insurance premiums are in urban, not rural areas. It is the opinion of the Texas Medical Association that the malpractice provisions enacted in the rural health care act have not altered the practices or locations of any doctors, merely given doctors who had been taking in charity patients a break on their insurance premiums.

The most disturbing part of this rural health care promotion system is that the state will indemnify each claimant up to \$25,000 per injury and up to \$100,000 for each case of negligence regarding obstetrics or emergency practice. If every case currently filed under this statute now were to be paid to its maximum amount, the state would be liable for \$48 million. Of course, even at a more reasonable estimate based on the average amount of what is actually paid per claim and the total percentage of claims that are paid on, the comptroller's office estimates that the state will pay \$25.6 million over the next five years. The appropriation for these judgments and settlements is a maximum of \$2 million each year.

Because the rural health care improvement act is not fulfilling its purposes and because it will be forcing the state to spend money not appropriated, it should be repealed and replaced with other efforts to enhance the quality of rural health care.

Texas Performance Review recommended repealing ch. 110 in order to save the state \$25.6 million over the next five years.

**OPPONENTS
SAY:**

The original version of HB 1362 was intended to remove a number of the procedural requirements when pursuing claims under ch. 110. Many of these procedural devices cost the litigants a great deal of time and money. Those who spoke in favor of the original version of this bill had no desire to see the program completely removed, merely modified to make it more efficient and fair. It should be given the chance to see if it will improve the quality of rural health care, which it was intended to do.

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NOTES: The original version of HB 1362 only amended ch. 110 to remove certain procedural requirements. The committee substitute to HB 1362 repeals ch. 110 entirely and adds the repeal of art. 5.15-4.