

**SUBJECT:** Limiting liability of certified public accountants

**COMMITTEE:** Civil Practices — committee substitute recommended

**VOTE:** 5 ayes — T. Hunter, Hilbert, Culberson, Hartnett, Moffat  
1 nay — Alvarado  
1 present, not voting — Zbranek  
2 absent — Sadler, Tillery

**WITNESSES:** For — Fred Nemec, Robert R. Arms and Glen Whitley, Texas Society of Certified Public Accountants; R.C. Mann; S. Ike Guest  
Against — None

**DIGEST:** CSHB 505 would relieve the liability of certified public accountants (CPAs) for their negligent actions in certain situations. The liability limitation would only apply when the claimant seeking damages is not the client of the CPA, the act or omission does not involve fraud or when:

- the CPA was aware that the information was going to be made available to the claimant in relation to a specific transaction,
- the CPA communicated directly with the claimant regarding the information, *and*
- the CPA was aware that the claimant intended to rely on the CPA's financial statement or information and the CPA communicated that awareness by words or conduct.

This bill would apply to any suit commenced on or after the effective date of the bill, September 1, 1995.

**SUPPORTERS  
SAY:**

CPAs are increasingly being subjected to malpractice and negligence suits based on information or financial statements prepared for clients by parties who have no contractual relationship with the CPA. Essentially a CPA may be potentially liable to anyone who sees the work of that CPA.

In many instances a CPA may prepare a report relating to one particular aspect of interest to a client, but other information in that report might be helpful to others. The CPA may not have scrutinized the parts of the report unrelated to the client's concerns, but another person who the CPA never knew about might rely on that part of the report to that party's detriment.

Negligence law is based on the foreseeability of injuries and damages. In the situations that this bill would exclude from liability, a CPA really has no way to foresee the injury or the damages that might result from the injury.

The bill would still ensure that accountants would always be liable to their clients or anyone who an accountant is certain will rely on a report or other information prepared by that accountant. It would not affect any claims for fraud or any acts done intentionally. The only instance under this law where a CPA would not be held liable is when someone who the CPA had no idea was going to rely on the information produced by the CPA did so and was damaged by the CPA's negligence.

Recently, other states have passed laws limiting who is able to sue an accountant for negligence in the preparation of that accountant's work product.

**OPPONENTS  
SAY:**

This bill would limit the rights of injured parties to receive compensation for the harms done to them.

The situations in which a CPA could still be held liable under the bill are too narrow. A CPA would rarely be made aware of the reliance of another party, communicate directly with that other party and take some action indicating that the CPA knew that the other party was relying on information produced by the CPA. It should be more than enough to hold a CPA liable for negligence to third parties so long as the CPA had any knowledge that someone would be using the financial statement or

information prepared by the CPA. Additionally, it might be argued that a CPA should be aware that anytime information is prepared it might be relied on by third parties, so the CPA should take care to not be negligent in preparing any information.

The effective date provision of the bill would mean that if a person sustained damages through the negligence of a CPA before the bill took effect but had not yet filed suit, that person's claim would be nullified.

**NOTES:**

The committee substitute moved the section added by the bill from ch. 86 to ch. 92, added definitions of claimant and client, and clarifies language related to the liability of the CPA and the exceptions from such limitations of liability.