

SUBJECT: Safety consultant liability immunity for injury or occupational diseases

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Brimer, Rhodes, Corte, Elkins, Giddings, Janek, Solomons,
Woolley

0 nays

1 absent — Dukes

WITNESSES: For — Forrest Roan, American Insurance Association

Against — None

On — Steve Bent, Texas Association of Responsible Nonsubscribers;
Nancy Moore, Texas Department of Insurance

BACKGROUND : The Texas Workers Compensation Act requires certain employers to have their workplaces reviewed by a safety consultant from the Workers Compensation Commission, the employer's insurance carrier, or an independent firm providing such services. Safety consultants are required to file a written report with the commission and the employer identifying any hazardous conditions or practices they find. Under the act, safety consultants are not liable for an accident based on an allegation that their actions could have caused or prevented the accident.

In 1994, a Houston district court ruled that safety consultants were not immune from liability for occupational diseases under this provision because the term “accident” did not encompass occupational diseases.

DIGEST: HB 1305 would make safety consultant also immune from liability for injuries and occupational diseases that their actions allegedly could have prevented.

The bill would take effect September 1, 1997, and apply to any cause of action pending on or after that date.

**SUPPORTERS
SAY:**

HB 1305 would clarify the conditions under which safety consultants are protected from liability without changing the basic intent of current law. The original intent of extending such immunity to safety consultants was to provide sufficient legal protection so that they would not be inhibited from pointing out safety problems but would conduct a thorough and complete review. The term “accident” was intended to cover all safety situations, but recent judicial decisions have demonstrated that more specific language is necessary. HB 1305 would correct the oversight in the original law.

HB 1305 would also make the language in this provision consistent with other parts of worker health and safety statutes, which generally refer to injuries and occupational diseases rather than to accidents.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The companion bill, SB 1275 by Armbrister, is pending in the Senate Economic Development Committee.