

SUBJECT: Volunteer first responders under Good Samaritan liability protection

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — B. Cook, Strama, P. King, Martinez Fischer, Raymond,
Woolley

0 nays

3 absent — Madden, Miller, Talton

WITNESSES: For — Randall Pitts, EMS Association of Texas

Against — None

BACKGROUND: Under Civil Practices and Remedies Code, sec. 74.151, a person who in good faith administers emergency care, including using an automated external defibrillator, is not liable for civil damages for an act performed during the emergency unless that act is willfully or wantonly negligent.

Government Code, sec. 421.095 defines a first responder as a public safety employee or volunteer whose duties include responding rapidly to an emergency. These include:

- a peace officer whose duties include responding rapidly to an emergency;
- fire protection personnel who are full-time law enforcement or fire department employees;
- a volunteer firefighter who is certified by the Texas Commission on Fire Protection or by the State Firemen's and Fire Marshalls' Association of Texas; or a member of an organized volunteer fire-fighting unit that renders fire-fighting services without remuneration and conducts a minimum of two drills each month, each two hours long; and
- an individual certified as emergency medical services personnel by the Department of State Health Services.

DIGEST: HB 2117 would amend Civil Practice and Remedies Code, sec. 74.151 to provide that a person who in good faith administered emergency care using an automated external defibrillator or who in good faith administered emergency care as a volunteer who was a first responder would not be liable in civil damages for an act performed during the emergency unless the act was willfully or wantonly negligent. The bill would specify that its purpose was to clarify rather than change existing law.

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, 2007.

SUPPORTERS SAY: HB 2117 would specify that voluntary responders are under the Good Samaritan law so that they unquestionably would be protected from liability for acts performed while assisting in a medical emergency situation. Liability protection in Texas law for volunteer emergency personnel currently is implied, but not codified. In rural communities, volunteer emergency services personnel are the first responders and need liability protection to do their jobs.

OPPONENTS SAY: First responders already have limited liability for medical emergency situations through federal law. The Federal Volunteer Act of 1997, 42 U.S.C. 14503, limits the liability of volunteers for non-profit or governmental organizations, under certain circumstances, for harm caused by acts or omissions of that volunteer while acting on behalf of the organization, within the scope of the volunteer's duties, and with proper authorization.

NOTES: The bill as filed would have provided liability protection for public safety volunteers whose duties included responding rapidly to an emergency. The committee substitute instead would provide liability protection to volunteers who are first responders as defined under Government Code, sec. 421.095.