

Pandemic Bill Will Improve Liability Protections for Texas healthcare community

Sen. Kelly Hancock and Rep. Jeff Leach have filed a pandemic liability protection bill in the Texas Legislature. Senate Bill 6 and House Bill 3659 provide heightened COVID liability protections for physicians, healthcare providers, healthcare institutions, and first responders for patient care and treatment during the declared COVID-19 pandemic. In addition, these same protections would be triggered in the event of future man-made or natural disasters.

“Our healthcare workers should be protected from unwarranted COVID-related lawsuits,” said TAPA Chair Dr. Howard Marcus.

Gov. Gregg Abbott declared pandemic liability protection an emergency item, and both House Speaker Dade Phelan and Lt. Gov. Dan Patrick have indicated the issue will receive swift consideration. Governor Patrick declared the item to be one of his priorities for the 2021 session.

The bill describes a wide range of scenarios in which liability protections apply, including care or treatment outside the normal practice area of a physician’s or provider’s specialty.

“Doctors, nurses, and support staff are putting their lives, their livelihoods, and their families’ health at considerable risk in treating known or suspected COVID-infected patients. They deserve more than our praise. They need and deserve liability protections,” Dr. Marcus said.

Thirty-two states—either through executive order or state law—have granted healthcare workers and facilities limited liability protection in battling the COVID-19 outbreak, Dr. Marcus said. “Texas should do the same,” he added.

The granting of limited liability protection acknowledges the dangerous clinical environment, its unique circumstances, and the severe constraints health care workers face while confronting an invisible and often unrecognizable invader.

Protections would take effect March 13, 2020, the date Governor Abbott declared COVID-19 a statewide public health emergency. Other states have used the date of emergency declaration as the start date of their COVID liability laws.

The pandemic liability bill does not provide blanket immunity, nor does it preclude COVID patients or their aggrieved families from filing lawsuits. It does not protect bad actors who are grossly negligent, engage in willful misconduct, or are consciously indifferent to their patient’s welfare and safety, said Dr. Marcus. Instead, it protects those who put their safety at risk when working in a healthcare setting if they make a good faith effort to provide appropriate medical care, he added.

These are the same standards that apply in Good Samaritan law and in Texas’ emergency care protections, which have been in force since 2003. The forward-looking portion of the bill automatically would trigger the same limited liability protections for any future statewide, catastrophic public health emergency when declared by the Texas governor or the president of the United States.

Texas law currently provides liability protection to volunteers who respond to declared disasters and emergencies. SB 6 and HB 3259 would extend that protection to all physicians, providers, and facilities.

Five other states have enacted similar laws that provide limited liability protections when “triggered” by declared emergencies. “Because the Texas Legislature meets just every other year, such a provision will be an important part of our disaster preparation plans,” said Dr. Marcus.

To date, some [9,594 COVID-19 lawsuits have been filed nationally](#), according to the Washington, DC law firm Hunton Andrews Kirth.

A [recent report](#) from the American Tort Reform Association documented the scope of the COVID liability epidemic. Through the final 10 months of 2020, the report found:

- More than 175,000 television advertisements promoting legal services or soliciting legal claims related to COVID-19 or the coronavirus ran in this country and
- The estimated purchase price of those ads was \$34.4 million.

SB 6 and HB 3259 stem from a year-long joint effort of TAPA and the Texas Civil Justice League. Co-authors of SB 6 include Sens. Paul Bettencourt, Donna Campbell, Brandon Creighton, Joan Huffman, Jane Nelson, Angela Paxton, Charles Perry, and Drew Springer.