

## Texas Senate Passes Pandemic Civil Liability Protections for Businesses

*The Texas Senate approved legislation to provide liability protections for businesses that operated in good faith during the COVID-19 pandemic.*

DANIEL FRIEND | APRIL 8, 2021



*A lone construction worker visits the P. Terry's on 6th and Congress. (The Texan/Ben Billups)*

In a 29 to 1 vote, the Texas Senate passed [Senate Bill \(SB\) 6](#), which if approved by the lower chamber would provide civil liability protections for businesses that operated during the pandemic since the statewide disaster declaration was first declared in March 2020.

But the bill did not make its way out of the chamber without an intra-party dispute, with criticism coming from the Texas GOP chairman Allen West and a lone nay vote coming from Sen. Bob Hall (R-Edgewood).

“Senate Bill 6 allows Texas to continue reopening safely and will bolster a global leading economy by giving businesses the assurance that they will not be forced to spend their hard earned resources fighting off frivolous lawsuits,” said Sen. Kelly Hancock (R-North Richland Hills), the bill’s author, as he introduced the legislation on the floor.

“Importantly, this legislation does not shield bad actors,” said Hancock. “This is not an immunity bill.”

Hancock emphasized that SB 6 aims to strike a balance between protecting businesses that operated during the COVID-19 pandemic while not protecting those that operated with “willful and wanton neglect.”

Sen. Roland Gutierrez (D-San Antonio) said he was initially going to vote against the bill, but changed his mind with the understanding that some people could still be held liable, such as a local restaurant owner who knowingly permits an employee with COVID-19 to cook food.

“There’s 650 cases today,” said Hancock. “There will be litigation due to those people who do not follow proper protocols, and did not properly take care of the health and welfare of their customers as well as their employees.”

But at the other end, some Republicans expressed concern that SB 6 could create new guidelines that businesses would be required to follow.

West released a [statement](#) on Thursday in opposition to Hancock’s legislation and its companion bill in the state House.

“Texas Senate Bill 6 and House Bill 3659 nobly endeavor to protect businesses during a pandemic, but only at the expense of surrendering essential liberties to government edicts and orders in their business operations,” said West.

Similar outcry was seen by West and other Republicans [against the proposed “Texas Pandemic Response Act”](#) from Rep. Dustin Burrows (R-Lubbock), which contains similar civil liability protections.

Under the committee substitute of SB 6 that was brought to the floor, a person or business would not be liable for “injury or death caused by exposing an individual to a pandemic disease during a pandemic emergency” unless those filing the lawsuit can establish several things.

First, a claimant would need to establish that the person who exposed the individual to the disease had knowledge and control over a condition that would likely result in exposure and failed to warn the individual.

Alternatively, the claimant could establish that the person who exposed the individual “failed to comply with government-promulgated standards, guidance, or protocols intended to lower the likelihood of exposure,” as long as the person had a reasonable opportunity to implement those standards and refused to comply with them and as long as those standards did not conflict with other standards the person did comply with.

Second, the claimant would also have to establish that “reliable scientific evidence” demonstrates that the failure to warn the exposed person or comply with the government standards “was the cause in fact of the individual contracting the disease.”

Like West, Hall expressed concerns about the legislation, saying SB 6 would require “a business or individual to jump through hoops to prevent liability they would apart from this bill not have.”

Hall offered an amendment that would have simply stated, “A person is not liable for injury or death caused by exposing an individual to a pandemic disease during a pandemic emergency, unless the claimant established that the person intentionally exposed the individual to the disease.”

At Sen. Royce West's (D-Dallas) request, Hall said he would be willing to modify the amendment to use the word "knowingly" in place of "intentionally."

But the amendment was tabled by Hancock, who said that it would provide "blanket immunity."

"This would protect actors that are making their own rules, and that's not what we're trying to do here," said Hancock.

"[W]e have no desire to protect those people that are not following health and safety guidelines," said Hancock, but added, "We also don't want to force protocols on individuals where their local officials may have not implemented them."

To that end, Hancock introduced an amendment that was adopted without objection to clarify that businesses would be protected even if "at that time the guideline was to conduct business in a normal fashion without restrictions."

"Let's take an example in my district," Hancock told *The Texan*. "Colleyville local officials required no additional guidelines. Yet, even if the county had guidelines and the state had guidelines and the fed had guidelines, businesses in Colleyville are still protected because their local officials did not have any guidelines."

"My guess is Allen West never saw the amendment that was gonna be offered before he made his statement," said Hancock. "It may be that he doesn't have a lack of knowledge as the bill, but it was maybe a lack of contacting our office to get a hold of the amendment that addressed his issues."

Hancock said that West never contacted his office about the legislation.

Now that the Senate has approved the legislation, it moves over to the Texas House of Representatives for further consideration.

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