

- SUBJECT:** Limited liability for chambers of commerce
- COMMITTEE:** Civil Practices — favorable, without amendment
- VOTE:** 5 ayes — T. Hunter, Hilbert, Culberson, Hartnett, Moffat
1 nay — Zbranek
3 absent — Alvarado, Sadler, Tillery
- WITNESSES:** For — Arthur A. Roberts and Chris Shields, Texas Association of Business and Chambers of Commerce; E.S. Darsey, Belton Area Chamber of Commerce; Paul Hindelang, Georgetown Chamber of Commerce and Texas Chamber of Commerce Executives; Kory Wallace, Taylor Chamber of Commerce; Linda Bowman, Texas Chamber of Commerce Executives

Against — Mike Slack, Texas Trial Lawyers Association
- BACKGROUND:** The Charitable Immunity and Liability Act of 1987, chapter 84 of the Texas Civil Practice and Remedies Code, provides civil liability protection for charitable organizations. Chapter 84 immunizes a volunteer officer, director or trustee, and direct service volunteers, from any civil liability for acts that are not intentional, willfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others. A volunteer is liable if the injury involved the operation of a motor vehicle, to the extent covered by insurance.
- The liability of an employee of a non-hospital charitable organization and a non-hospital charitable organization itself is limited to \$500,000 for each person and \$1 million per occurrence for personal injury and \$100,000 per occurrence for damage to property, but only if the organization insures itself and its employees for those amounts.
- Chapter 84 has a three-part definition of what constitutes a charitable organization. A charitable organization may be:
- an organization exempt from federal tax under sec. 501 of the Internal Revenue Code, organized for charitable purposes;

- any other organization operated exclusively for charitable purposes so long as it does not engage in activities not related to its purpose, does not participate in political campaigns, and normally receives more than one-third of its yearly support from gifts, grants, contributions or membership fees; or
- a homeowners association as defined by the Internal Revenue Code.

DIGEST: HB 2677 would add to the definition of charitable organizations with limited liability a chamber of commerce exempt from federal tax under sec. 501 of the Internal Revenue Code. The bill would not apply to causes of action that accrue before its effective date of September 1, 1995.

SUPPORTERS SAY: The net effect of the immunity and liability provisions of CSHB 2677 would be that local chambers of commerce would be able to purchase adequate insurance at more affordable rates. The 589 local chambers of commerce in Texas serve a valuable public purpose and because only local chambers would be eligible under sec. 501 of the Internal Revenue Code, no statewide group would qualify for the liability limits in the bill.

Occasionally, chambers of commerce are sued as a result of injuries that occur at a chamber-sponsored civic event, such as a bike race or a fish fry. When the plaintiffs discover that the chamber itself has few assets and usually no insurance, they add to the lawsuit members of the chamber's board, who often have substantial assets and insurance. These board members rarely, if ever, have individual liability, and are usually dropped from the suit. Nonetheless, the settlement value is such that these directors do sometimes incur personal legal costs. These potential liability concerns may cause some community leaders to decline to serve on their local chamber board or only do so reluctantly because of a threat to their personal resources.

While HB 2677 would limit the liability of volunteers to these organizations, it would actually serve to benefit injured parties as well. Currently, chambers of commerce do not need to carry any insurance. Under this bill, they would be required to carry \$1 million of insurance for personal injuries if they wish to be eligible for limited liability. Additionally, such limits lower the cost of obtaining such insurance by more than 50 percent. Anyone injured by the actions of these organizations or their volunteers could receive as much as \$1 million per occurrence

(\$500,000 for an individual personal injury), but without this legislation, the injured person might receive little or nothing from such an organization.

Chambers of commerce do work with the political process to achieve the goals of their organizations, but such work does not involve direct involvement in political campaigns or support or opposition of particular political candidates, which is prohibited of other charitable organization under Texas Civil Practice and Remedies Code sec. 84.003(1)(b). Additionally, chambers would be willing to have their liability limited contingent upon not engaging in such activity. Advocacy and promotion of the areas they serve is not prohibited for any charitable organization, and many with limited liability doubtless already engage in such efforts.

OPPONENTS
SAY:

Chambers of commerce are political advocacy organizations, not charities, and as such they should not be able to receive the same immunities as other charities. The stated purpose of these chambers is to bring business into their communities. To do this, they often support political campaigns and engage in lobbying activities at all levels of government.

Under sec. 84.003(1)(b) a charitable organization that receives the charitable organization liability limits must not "directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office." However, there is no such restriction for chambers of commerce. Chambers should not have the ability to conduct these clearly non-charitable activities and still receive the same liability benefits as such bona fide charities as church groups and community support organizations.

NOTES:

SB 1100 by Haywood, an identical bill to HB 2677, has been referred to the Senate Jurisprudence Committee. During the 73rd Legislature, HB 2236 by T. Hunter and SB 93 by Lucio, both similar to HB 2677, failed to be reported out of committee. During the 72nd Legislature, HB 2850 by Place, a similar bill, was passed by the House and reported favorably by the Senate Economic Development Committee, but failed to reach a vote in the Senate.