

SUBJECT: Liability for officers of nonprofit corporations

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 6 ayes — Bosse, Clark, Hope, Martinez Fischer, Nixon, Zbranek
0 nays
3 absent — Janek, Dutton, Smithee

SENATE VOTE: On final passage, April 19 — voice vote

WITNESSES: None

BACKGROUND: The Texas Non-Profit Corporation Act (Art. 1369-1.01, *et seq.*, V.T.C.S.) governs the rights, powers, and duties of nonprofit corporations and their officers and directors.

DIGEST: SB 731 would make an officer of a nonprofit corporation not liable to either the corporation or a third party for actions or omissions in the person's capacity as a corporate officer, as long as the officer exercised that conduct in good faith, with ordinary care, and in a way that the officer reasonably believed to be in the corporation's best interest. The bill would not affect the corporation's potential liability for acts or omissions of the officer.

The bill would take effect September 1, 2001, and would apply only to causes of action filed on or after that date.

SUPPORTERS SAY: SB 731 would offer the legal protection needed to ensure that people will not be deterred from serving as officers of nonprofit corporations. Without such protection from liability for good-faith acts, nonprofit corporate officers may face large litigation expenses and potential liability. For-profit corporations are authorized by the Business Corporations Act to provide legal defense for officers, to pay judgments against them for good-faith acts taken on behalf of the corporation, and to insure against such costs. Nonprofit corporations have no such statutory authority and may not be able financially or legally to defend their officers or to pay any damages for which they are held liable.

Even if the nonprofit corporation can do this, the cost of buying liability insurance to cover officers would take resources away from the corporation's primary mission. SB 731 would eliminate this problem.

However, by preserving the liability of the corporation for its officers' acts, the bill would guarantee that a person harmed by an act of the corporation's officers would not be left without recourse for that harm.

OPPONENTS
SAY:

Eliminating corporate officers' liability would result in the public subsidizing nonprofit corporations by requiring citizens to bear the costs of the officers' mistakes. This would be unfair and unjustified, especially since not all nonprofit corporations are charitable organizations with whose mission the public may generally agree.