

SUBJECT: Adopting the Uniform Unincorporated Nonprofit Association Act

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Brimer, Brady, Corte, Crabb, Eiland, Giddings, Janek, Rhodes

0 nays

1 absent — Solomons

WITNESSES: For — Millard H. Ruud; Alan Bromberg, Texas Business Law Foundation

Against — None

BACKGROUND: Nonprofit organizations may be formed in one of three ways: a nonprofit corporation, an unincorporated nonprofit association or a charitable trust. Nonprofit corporations are governed by the Texas Non-Profit Corporation Act, Art. 1396 VACS and charitable trusts are governed by trust law in the Property Code, but unincorporated associations have no particular statute governing their operations.

Unincorporated nonprofit associations at common law had no legal status as an entity. Anything an association desired to do had to be done in the names of the individual members. As a result, any gift or sale of property to an association had to be done by the members individually, the association had no legal right to sue or be sued and the members were each individually liable for acts performed by others in the association.

The Charitable Immunity and Liability Act, ch. 84, Civil Practice and Remedies Code, provides civil liability protection for charitable organizations (defined as an organization exempt from federal tax under sec. 501 of the Internal Revenue code organized for charitable purposes or any other organization operated exclusively for charitable purposes). 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 or a non-hospital charitable organization is limited to \$500,000 for each person and \$1,000,000 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.

DIGEST: CSHB 1661 would adopt the Texas Uniform Unincorporated Association Act. Its provisions include:

- requiring an unincorporated nonprofit association to keep its books and records for up to three years and make such records available for inspection by the public and the attorney general;
- allowing an unincorporated nonprofit association to be sued as an entity for contract or tort liability but maintain that persons are not liable for the acts or liabilities of an unincorporated nonprofit association merely by their connection with the association;
- allowing an unincorporated nonprofit association to acquire, hold, encumber or transfer property or an interest in property;
- allowing an unincorporated nonprofit association to execute and record a statement of authority as to real property similar to a deed;
- allowing a county clerk with whom a statement of authority is filed to charge a fee for its filing, renewal, amendment or cancellation;
- allowing an unincorporated nonprofit association to assert and defend claims so long as one or more of its members could have asserted or defended such a claim individually;
- allowing an association that has been inactive for three years to have its property dispersed by document or to a general charitable organization pursuing the same goals, provided that an unincorporated nonprofit association utilizing the charitable tax exemption provisions of sec. 501 of the Internal Revenue Code could only disperse its property to an organization operating under sec. 501;

- allowing a unincorporated nonprofit association to appoint an agent for service of process by filing with the secretary of state a statement to that effect and allowing the secretary of state to charge a fee for the administration of such filings;
- providing who is authorized to be served a summons and complaint on behalf of an unincorporated nonprofit association;
- requiring an unincorporated nonprofit association to provide the attorney general with the names, addresses and telephone numbers of persons authorized to receive service of process within ten days of a request from the office of the attorney general; and
- allowing any property vested in fiduciary on behalf of an unincorporated nonprofit association before the effective date of the bill to be transferred to the ownership of the association.

CSHB 1661 would take effect September 1, 1995

**SUPPORTERS
SAY:**

The Texas Uniform Unincorporated Nonprofit Association Act is necessary to consolidate in the statutes the legal basis for these associations to be considered legal entities. Texas case law currently recognizes the ability of these associations to do many of the things that the bill specifically outlines, so the bill would not be a substantial extension of current law. Nevertheless, the bill would make a significant change by applying the same law uniformly to all unincorporated nonprofit associations.

The bill is based on the national Uniform Unincorporated Nonprofit Association Act produced by the National Conference of Commissioners on Uniform State Laws to provide for standardization of the law nationwide, but includes some provisions tailored to local circumstances.

The only extension of Texas law would be the limitation of liability for the members of these associations for acts performed by other members. This legislation would in no way limit the liability of individual members for their own tortious acts, nor would it limit the liability of the association itself. Every member of an association would not be held liable for the

acts of other members or of the association when they had nothing to do with the act or omissions giving rise to liability.

The bill might also help protect those injured by tortious conduct by such associations. Since under current law the members of the association, not the association itself, is held liable for misconduct, the association does not insure itself against such acts. Many associations could fall under the protection of the Charitable Immunity and Liability Act (ch. 84, Civil Practice and Remedies Code), but that act would require the association to carry up \$1,000,000 in insurance to take advantage of its protections. By making the association, and not the members, liable, the association would be more likely to carry insurance to compensate others for any damages caused by the actions of the association.

Unincorporated nonprofit associations are primarily small groups like church groups, local PTAs and similar organizations. These groups rarely have the benefit of legal counsel to handle their affairs such as transferring property or protecting their members from liability. This legislation would help all such associations, no matter how small, to have the same basic rights that all nonprofit associations have.

While CSHB 1661 would allow county clerks or the secretary of state to charge filing fees to unincorporated nonprofit associations for documents that they may file, the filing of such documents would be completely voluntary.

**OPPONENTS
SAY:**

A troubling aspect of this bill is that it would require nonprofit charitable associations to keep books and records for three years, make them available to the public and give the attorney general the right to inspect such books. Such a requirement might impair the constitutional guarantee of freedom of association. Non-profit corporations are required to keep financial and voting records and to make those records available to the attorney general or to any member, but the public in general is not allowed to inspect corporate records. But the bill would essentially allow any member of the public to harass a particular association because of its purpose or politics by requiring it to produce its books for inspection.

Some unincorporated associations that would be covered by this bill are opposed to any governmental intervention in their affairs. While the attorney general would only become involved if there were some reason to suspect a violation of the law, many nonprofit unincorporated associations would prefer to avoid any interference from the government.

NOTES:

The introduced version of HB 1661 is different from the Uniform Unincorporated Nonprofit Association Act produced by the National Conference of Commissioners on Uniform State Laws (1992) by:

- requiring three members to form an association rather than two;
- not requiring the statement of authority filed with the county clerk to include a statement describing the action or procedure by which the statement of authority was issued;
- specifically allowing property to be transferred to an unincorporated nonprofit association by will;
- requiring an unincorporated nonprofit association maintain books and records and make those available to the attorney general;
- not specifically stating that a claim against an unincorporated nonprofit association does not abate simply because of a change in the persons authorized to manage the association; and
- not allowing for the automatic vesting to the association of property previously transferred to the association before the effective date of the act.

The committee substitute added to the introduced version the following provisions not included in the Uniform Unincorporated Nonprofit Association Act:

- requiring the unincorporated nonprofit association maintain books and records and make those available to the public for inspection;

- providing that an unincorporated nonprofit association organized under sec. 501 of the Internal Revenue Code may disperse its property only to another organization operating under sec. 501;
- requiring the filing of a statement appointing an agent for service of process must include the federal tax identification number if applicable;
- allowing a statement appointing an agent for service of process to be cancelled by a person authorized to manage the association; and
- requiring a unincorporated nonprofit association to give the attorney general information on whom is authorized to receive service of process for the association within ten days of such a request.