

SUBJECT: Limiting liability for chambers of commerce

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 7 ayes — Gray, Hilbert, Bosse, Dutton, Nixon, Roman, Zbranek

0 nays

2 absent — Alvarado, Goodman

WITNESSES: For — Sherryl Boyd, Seguin Area Chamber of Commerce; Sandy Dochen, Greater Austin Chamber of Commerce; Robert Kamm, Texas Association of Business and Chambers of Commerce; Kirk King, Farmer's Branch Chamber of Commerce; Michael Meek, Greater New Braunfels Chamber of Commerce; Michael White, Greater Houston Partnership; Cathy Golden, Greater Dallas Chamber; Tristan Casteneda, Greater San Antonio Chamber of Commerce, Arlington Chamber of Commerce and Corpus Christi Chamber of Commerce

Against — Mike Slack, Texas Trial lawyers Association

On — None

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 the 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:

CSHB 539 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. To be eligible, the chamber could not directly or indirectly participate or intervene in any political campaign for or against a candidate or participate or contribute to a political action committee.

The limitation on liability applicable to a chamber would not extend to the cosponsor of any event or activity.

CSHB 539 would apply to causes of action that accrue after the bill's effective date of September 1, 1997.

SUPPORTERS  
SAY:

The immunity and liability provisions of CSHB 539 would allow local chambers of commerce to purchase adequate insurance at more affordable rates and encourage more members of the community to volunteer to serve as officers and directors of local chambers of commerce. The 560 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 the threat to their personal resources.

While CSHB 539 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 the 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 often work within the political process to achieve the goals of their organizations, but direct involvement in political campaigns or support or opposition of particular political candidates would bar a chamber from taking advantage of the liability limit. Advocacy and promotion of the causes they serve is not prohibited for any charitable organization, and many with limited liability already engage in such efforts, so chambers would not be unduly restricted by this provision.

**OPPONENTS  
SAY:**

Giving chambers of commerce charitable immunity would undermine the purposes of Chapter 84, the charitable organization liability limit, and is unnecessary under current tort law. Tort reform legislation enacted in the 1995 session, particularly the changes in joint and several liability law, significantly reduced the risk to officers and directors of chambers of commerce. Chamber officials can no longer be held liable for an entire harm unless they are found to be more than 50 percent liable for the damages. Such changes greatly reduce the likelihood that these officers would be joined as defendants in a lawsuit.

The cost of insurance for chambers of commerce is not a liability issue, but a problem of high risk activities or activities involving alcohol. Air shows, boat races and the like are high risk activities, and insurance companies set rates appropriate to the risk of those activities. Likewise, events where alcohol is involved increase liability risks. By including proper liability clauses in contracts with cosponsors or event directors, most of the liability of the chamber can be shifted to the people directly responsible for putting on the event.

NOTES:

The committee substitute to HB 539 added the prohibition against participating in a political campaigns or political action committees. It also would bar event cosponsors from receiving the same liability protection as the chamber.

A similar bill, HB 2677 by T. Hunter et al., passed the House in 1995 but died in the Senate Economic Development Committee. In 1991, HB 2850 by Place passed the House and was reported favorably by the Senate Economic Development Committee, but failed to reach a vote in the Senate.