

SUBJECT: Charitable immunity from liability for local chambers of commerce

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — Nixon, Gattis, King, Krusee, Rose, Woolley

1 nay — Y. Davis

2 absent — Capelo, Hartnett

SENATE VOTE: On final passage, March 11 — voice vote

WITNESSES: *(On House companion bill, HB 974:)*

For — Michael Meek, Texas Chamber of Commerce Executives; Phil Neighbors, San Marcos Area Chamber of Commerce; Art Roberts, Texas Association of Business

Against — Bill Liebebe, Texas Trial Lawyers Association

BACKGROUND: The Charitable Immunity and Liability Act (CILA), codified as Civil Practice and Remedies Code, chapter 84, exempts insured charitable organizations' volunteers from liability for acts within the scope of their duties but does not exempt the organization itself. The law defines a charitable organization as a tax-exempt organization under U.S. Internal Revenue Code, secs. 501(c)(3) or 501(c)(4), if the organization is organized and operated exclusively for charitable, religious, youth recreational, neighborhood crime prevention or control, or other purposes. Volunteers, including board members and officers, of a charitable organization generally are immune from civil liability for acts or omissions in the scope of their duties. Liability of a charitable organization, other than a hospital, is limited to \$500,000 per person or \$1 million per occurrence of bodily injury or death and \$100,000 per occurrence of injury to or destruction of property. Liability is not limited for acts or omissions that are intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others.

In 1997, Congress enacted the Volunteer Protection Act (VPA), codified in 42 U.S.C., secs. 14502 *et seq.* VPA allows states to opt out of its protection by

enacting their own contrary laws. It exempts volunteers other than officers and directors of local chambers of commerce from liability.

DIGEST:

CSSB 360 would amend the definition of “charitable organization” to include a local chamber of commerce if it was exempt from federal income tax under Internal Revenue Code, sec. 501(c)(6), did not contribute directly or indirectly to a political action committee (PAC), and did not participate or intervene in a political campaign for or against a candidate for public office. Charitable immunity would not apply to a statewide trade association that represented a chamber of commerce, nor to a cosponsor of an event with a chamber of commerce, unless the cosponsor was a charitable organization.

The bill would take effect September 1, 2003.

SUPPORTERS
SAY:

CSSB 360 would give volunteer officers and directors of local chambers of commerce the protection they need to carry out their duties. Local chambers perform an important civic function by promoting small and large businesses and by boosting their local economies. They provide a public benefit similar to that provided by charitable, religious, and other charitable organizations, and they deserve the same limitations on liability.

The bill would follow the intent of CILA and VPA by exempting board members and officers of local chambers of commerce from liability. The purpose of both CILA and VPA is to encourage volunteerism by immunizing those who offer their services as volunteers. Chambers of commerce promote business, foster economic growth, and help to make their communities a better place to live. Volunteer leaders are the backbone of local chambers of commerce. However, because of the high costs of liability and unwarranted litigation, chambers’ volunteer board members and officers face high costs in buying insurance to cover their activities. Chambers find it difficult to recruit board members and officers because of these costs and the possibility that members and officers could be subject to personal liability for their actions.

CSSB 360 would enable chambers to afford to continue working for Texas while allowing them to have sufficient insurance to compensate for any liability. The cost of procuring business is a large burden to chambers, especially in small communities where budgets are smaller. Many chambers have had to drop their insurance because of high premiums. Capping the

amount of liability a chamber could be assessed would reduce the cost of liability insurance and enable more chambers to buy it.

The bill would not allow those who participate in political activity to enjoy liability limitations. Like 501(c)(3) organizations, local chambers of commerce do not participate in political activity.

**OPPONENTS
SAY:**

CSSB 360 would run counter to the intent of state law in defining local chambers of commerce as charitable organizations. The law does not exempt chambers of commerce from liability because they are promoters of business, not charitable organizations under CILA. These laws were meant to protect true charities such as churches and Little Leagues, whose sole purpose is to perform charitable activities. Promoting business is not bad, but neither is it charitable. It is not comparable to the work of churches, animal shelters, and other organizations organized for the sole purpose of promoting social welfare. This legislation has been introduced in each of the past three sessions and rightfully has not been enacted.

Although chambers of commerce claim not to be politically involved, their actions indicate otherwise. For example, chambers' boards of directors and officers often meet to discuss political issues such as avoiding the application of business taxes and government regulation.

NOTES:

The committee substitute would exclude from the bill's application a statewide trade organization that represents a local chamber.

The companion bill, HB 974 by Rose, et al., was considered by the House Civil Practices Committee on March 12 and left pending.

Similar bills were filed in each of the past three sessions. During the 77th Legislature, SB 78 by Haywood passed the Senate but died in the House Civil Practices Committee, as did the companion bill, HB 1547 by Uher. During the 76th Legislature, SB 348 by Haywood passed the Senate but died in the House Civil Practices Committee, along with the companion bill, HB 1416 by Uher. During the 75th Legislature, HB 539 by Uher passed the House but died

in the Senate Economic Development Committee, while SB 189 by Haywood passed the Senate but died in the House Civil Practices Committee.