

SUBJECT: Liability immunity for nonprofit corporation officers

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 7 ayes — Bosse, Janek, Dutton, Hope, Nixon, Smithee, Zbranek
0 nays
2 absent — Alvarado, Goodman

SENATE VOTE: On final passage, April 28 — voice vote

WITNESSES: (*On House companion bill, HB 2217*)
For — Robert Floyd, Texas Society of Association Executives
Against — None

BACKGROUND: The Texas Non-Profit Corporations Act (TNPCA), art. 1396, Texas Civil Statutes, provides procedures for operation of nonprofit corporations. Under the law, directors are immune from liability for acts or omissions, under art. 1396-2.28. The immunity applies when the director acts in good faith, with ordinary care, and in a manner reasonably believed to be in the best interest of the corporation.

DIGEST: SB 1344 would eliminate liability for any officer of a nonprofit corporation for any acts or omissions made in the officer's official capacity so long as the conduct was exercised in good faith, with ordinary care, and when the officer reasonably believed it to be in the best interest of the corporation.

SB 1344 would take effect September 1, 1999 and would apply to actions filed on or after that date.

SUPPORTERS SAY: SB 1344 would clarify the TNPCA and allow officers and directors of these nonprofit corporations to be treated equally. This legislation would not expand immunity from liability to a new group, as many currently interpret current law as already covering officers as well as directors. What it would do is clarify the Legislature's intent that both officers and directors of nonprofit corporations should be treated equally.

This legislation would help to ensure that qualified, committed individuals continue to volunteer their time as officers of nonprofit corporations to continue to provide services to the community. Many people are reluctant to serve or they may resign because of the possibility of unlimited liability.

While officers may be indemnified for actions brought against them, such indemnification is not automatic and must be approved by the board. In addition, such indemnification normally would cost the corporation by requiring it either to have to use corporate funds or to carry insurance to cover such actions.

**OPPONENTS
SAY:**

Officers of nonprofit organizations already may be indemnified by the corporation for acts committed in good faith. When this protection is extended beyond indemnification to immunity, the persons bringing suits are deprived of their ability to recover anything for harm caused.