

CHAPTER 370

S.B. No. 202

AN ACT

relating to the liability of certain charitable organizations and their volunteers.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 84 to read as follows:

CHAPTER 84. CHARITABLE IMMUNITY AND LIABILITY

Sec. 84.001. NAME OF ACT. This Act may be cited as the Charitable Immunity and Liability Act of 1987.

Sec. 84.002. FINDINGS AND PURPOSES. The Legislature of the State of Texas finds that:

(1) robust, active, bona fide, and well-supported charitable organizations are needed within Texas to perform essential and needed services;

(2) the willingness of volunteers to offer their services to these organizations is deterred by the perception of personal liability arising out of the services rendered to these organizations;

(3) because of these concerns over personal liability, volunteers are withdrawing from services in all capacities;

(4) these same organizations have a further problem in obtaining and affording liability insurance for the organization and its employees and volunteers;

(5) these problems combine to diminish the services being provided to Texas and local communities because of higher costs and fewer programs;

(6) the citizens of this state have an overriding interest in the continued and increased delivery of these services that must be balanced with other policy considerations; and

(7) because of the above conditions and policy considerations, it is the purpose of this Act to reduce the liability exposure and insurance costs of these organizations and their employees and volunteers in order to encourage volunteer services and maximize the resources devoted to delivering these services.

Sec. 84.003. **DEFINITIONS.** In this chapter:

(1) "Charitable organization" means:

(A) any organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code, if it is a nonprofit corporation, foundation, community chest, or fund organized and operated exclusively for charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, or educational purposes, excluding private primary or secondary schools, alumni associations and related on-campus organizations, or is organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community; or

(B) any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, or educational organization, excluding alumni associations and related on-campus organizations, or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, and that:

(i) is organized and operated exclusively for one or more of the above purposes;

(ii) does not engage in activities which in themselves are not in furtherance of the purpose or purposes;

(iii) does not directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office;

(iv) dedicates its assets to achieving the stated purpose or purposes of the organization;

(v) does not allow any part of its net assets on dissolution of the organization to inure to the benefit of any group, shareholder, or individual; and

(vi) normally receives more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees.

(2) "Volunteer" means a person rendering services for or on behalf of a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred, and such term includes a person serving as a director, officer, trustee, or direct service volunteer.

(3) "Employee" means any person, including an officer or director, who is in the paid service of a charitable organization, but does not include an independent contractor.

(4) "Good faith" means the honest, conscientious pursuit of activities and purposes that the organization is organized and operated to provide.

Sec. 84.004. **VOLUNTEER LIABILITY.** (a) Except as provided by Subsection (c) of this section and Section 84.007 of this Act, a volunteer who is serving as an officer,

director, or trustee of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of his duties or functions as an officer, director, or trustee within the organization.

(b) Except as provided by Subsection (c) of this section and Section 84.007 of this Act, a volunteer who is serving as a direct service volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in good faith and in the course and scope of his duties or functions within the organization.

(c) A volunteer of a charitable organization is liable to a person for death, damage, or injury to the person or his property proximately caused by any act or omission arising from the operation or use of any motor-driven equipment, including an airplane, to the extent insurance coverage is required by Section 1A, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), and to the extent of any existing insurance coverage applicable to the act or omission.

(d) The provisions of this section apply only to the liability of volunteers and do not apply to the liability of the organization for acts or omissions of volunteers.

Sec. 84.005. **EMPLOYEE LIABILITY.** Except as provided in Section 84.007 of this Act, in any civil action brought against an employee of a nonhospital charitable organization for damages based on an act or omission by the person in the course and scope of the person's employment, the liability of the employee is limited to money damages in a maximum amount of \$500,000 for each person and \$1,000,000 for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

Sec. 84.006. **ORGANIZATION LIABILITY.** Except as provided in Section 84.007 of this Act, in any civil action brought against a nonhospital charitable organization for damages based on an act or omission by the organization or its employees or volunteers, the liability of the organization is limited to money damages in a maximum amount of \$500,000 for each person and \$1,000,000 for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

Sec. 84.007. **APPLICABILITY.** (a) This chapter does not apply to an act or omission that is intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others.

(b) This chapter does not limit or modify the duties or liabilities of a member of the board of directors or an officer to the organization or its members and shareholders.

(c) This chapter does not limit the liability of an organization or its employees or volunteers if the organization was formed substantially to limit its liability under this chapter.

(d) This chapter does not apply to organizations formed to dispose, remove, or store hazardous waste, industrial solid waste, radioactive waste, municipal solid waste, garbage, or sludge as those terms are defined under applicable state and federal law. This subsection shall be liberally construed to effectuate its purpose.

(e) Sections 84.005 and 84.006 of this chapter do not apply to a health care provider as defined in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), unless the provider is a federally funded migrant or community health center under the Public Health Service Act (42 U.S.C.A. Sections 254 (b) and (c)) or unless the provider usually provides discounted services at or below costs based on the ability of the beneficiary to pay. Acceptance of Medicare or Medicaid payments will not disqualify a health care provider under this section. In no event shall Sections 84.005 and 84.006 of this chapter apply to a general hospital or special hospital as defined in the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) or a facility or institution licensed under the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes), or Chapter

413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes).

(f) This chapter does not apply to a governmental unit or employee of a governmental unit as defined in the Texas Tort Claims Act (Subchapter A, Chapter 101, Civil Practice and Remedies Code).

(g) Sections 84.005 and 84.006 of this Act do not apply to any charitable organization that does not have liability insurance coverage in effect on any act or omission to which this chapter applies. The coverage shall apply to the acts or omissions of the organization and its employees and volunteers and be in the amount of at least \$500,000 for each person and \$1,000,000 for each single occurrence for death or bodily injury and \$100,000 for each single occurrence for injury to or destruction of property. The coverage may be provided under a contract of insurance or other plan of insurance authorized by statute. Nothing in this chapter shall limit liability of any insurer or insurance plan in an action under Chapter 21, Insurance Code, or in an action for bad faith conduct, breach of fiduciary duty, or negligent failure to settle a claim.

Sec. 84.008. SEVERABILITY. If any clause or provision of this chapter or its application to any person or organization is held unconstitutional, such invalidity does not affect other clauses, provisions, or applications of this chapter that can be given effect without the invalid clause or provision and shall not affect or nullify the remainder of the Act or any other clause or provision, but the effect shall be confined to the clause or provision held to be invalid or unconstitutional and to this end the Act is declared to be severable.

SECTION 2. This Act takes effect September 1, 1987, and applies only to causes of action that accrue on or after that date. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for this purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 6, 1987, by a viva-voce vote; May 23, 1987, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 23, 1987, House granted request of the Senate; May 31, 1987, Senate adopted Conference Committee Report by the following vote: Yeas 28, Nays 1. Passed the House, with amendments, on May 22, 1987, by a non-record vote; May 23, 1987, House granted request of the Senate for appointment of Conference Committee; June 1, 1987, House adopted Conference Committee Report by a non-record vote.

Approved June 16, 1987.

Effective Sept. 1, 1987.