

SUBJECT: Exempting TYC volunteers from civil liability

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 6 ayes — Gray, Bosse, Goodman, Nixon, Roman, Zbranek
0 nays
3 absent — Hilbert, Alvarado, Dutton

WITNESSES: For — None
Against — Chris Elliott, Texas Trial Lawyers Association
On — Neil Nichols, Joan Timmons and Steve Robinson, Texas Youth Commission

BACKGROUND : The Texas Charitable Immunity and Liability Act of 1987 exempts direct service volunteers of charitable organizations acting in good faith and in the course and scope of their duties from civil liability for any act or omission resulting in death, damage or injury that was not intentional, willfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others. Volunteers are liable for death, damage or injury arising from the operation or use of any motor-driven equipment.
The act does not apply to “governmental units.”

DIGEST: HB 1756 would exempt Texas Youth Commission (TYC) volunteers from liability for damages arising from acts or omissions resulting in personal injury, death or property damage if the act or omission was in the course and scope of the volunteer’s duties and was not intentional or grossly negligent.
A volunteer would be liable for personal injury, death or property damage related to the operation or use of any motor-driven equipment. The volunteer would be liable for the greater of (1) the amount of financial responsibility required under the Transportation Code, or (2) the amount of any liability insurance coverage that applied.

HB 1756 would take effect September 1, 1997, and would apply only to a cause of action that accrued on or after the effective date.

**SUPPORTERS
SAY:**

HB 1756 would give TYC volunteers the same protection that the Charitable Immunity and Liability Act provides for other volunteers of charitable organizations. There is no reasonable basis for the current distinction between these categories of volunteers — they both donate their time and energy to provide many of the same services, including tutoring, mentoring, assisting with recreational activities, doing clerical work, and fund raising.

In enacting the Charitable Immunity and Liability Act, the Legislature found that the willingness of volunteers to offer their services to charitable organizations is deterred by the possibility of personal liability; that because of these concerns over personal liability, volunteers were withdrawing from services in all capacities; and that the citizens of Texas have an overriding interest in the continued and increased delivery of volunteer services that must be balanced with other policy considerations. These same concerns continue to apply to volunteers of government agencies, including the TYC.

It is unfair to ask TYC volunteers to expose themselves to liability when they work alongside TYC employees who are indemnified as state government employees. In addition, the TYC sometimes contracts with charitable organizations whose volunteers are protected by the Charitable Immunity and Liability Act, so a TYC volunteer with no protection from liability could be working alongside the volunteer of a TYC contractor who would be protected by the act. HB 1756 would address this inequity by extending similar protection from civil liability to TYC volunteers.

In addition to providing fair protections for current volunteers, the bill would encourage more people to volunteer with the TYC. Last year, more than 87,000 hours of volunteer service were contributed to benefit youth at the TYC, and this bill could help increase that amount. Unfortunately, potential volunteers are currently in the position where they must choose between volunteering for the TYC with no statutory protection from liability and volunteering for a charitable organization with protection from the Charitable Immunity and Liability Act. If Texas wants to encourage volunteerism for state agencies such as the TYC, it should not put potential

volunteers in the position of having to choose a safer route. Texas needs to show its volunteers that it values them the same way it values volunteers of charitable organizations by providing them with equal protection.

HB 1756 would retain protections for anyone injured by a volunteer whose act or omission was outside the scope of their volunteer duties, intentional or grossly negligent. In addition, volunteers would remain liable to a reasonable extent for their acts or omissions related to the use or operation of any motor-driven equipment. The bill would not provide blanket immunity.

OPPONENTS
SAY:

HB 1756 is not necessary. No lawsuits have been filed against a TYC volunteer, and none are pending. The TYC has not made any concrete showing that volunteers are being scared off by visions of potential civil liability.

The bill would take legal protections away those who may be injured by a TYC volunteer. Most would agree that encouraging volunteerism is a worthy goal, but it should not be done at the expense of people who may be injured by the acts of a TYC volunteer. The need to protect innocent victims far outweighs the need to give volunteers a higher comfort level regarding civil liability for their actions.

There seems to be a flood of legislation proposing or granting immunity or capping liability for volunteers of various organizations, and this bill would add to that unfortunate trend. There is a danger that it would discourage proper selection and training of volunteers.

HB 1756 should contain a provision like one found in the Charitable Immunity and Liability Act that would state that the provisions of the bill only apply to the liability of TYC volunteers and do not apply to the liability of the TYC for acts or omissions of its volunteers. As it is currently written, the bill is unclear because it does not address the issue of TYC liability.

OTHER
OPPONENTS
SAY:

If it is good public policy for TYC volunteers to receive protection from civil liability, then it should be good public policy for all state agency volunteers to receive the same protections. This type of reform should be done in a comprehensive manner, rather than in a piecemeal fashion.

HB 1756
House Research Organization
page 4

NOTES:

Other bills that would exempt certain volunteers from civil liability include HB 2480, by Averitt et al., relating to volunteer health care providers, and SB 1479, by Bivins, relating to volunteers at higher education institutions. SB 1479 passed the Senate on May 6. HB 2480 has been reported favorably as substituted by the House Civil Practices Committee.