

HOUSE BILL REPORT

EHB 1391

As Passed House

March 14, 1997

Title: An act relating to unincorporated nonprofit associations.

Brief Description: Regulating unincorporated nonprofit associations.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives Appelwick, Costa, Sheahan, Constantine, Kenney, Radcliff, Blalock, Tokuda, Zellinsky, Lantz and Ogden).

Brief History:

Committee Activity:

Law & Justice: 3/5/97 [DP].

Floor Activity:

Passed House: 3/14/97, 94-0.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Radcliff; Sherstad and Skinner.

Staff: Bill Perry (786-7123).

Background: Individuals may organize themselves in a variety of more or less structured ways to pursue common goals or to conduct business or other activities. Among the formal arrangements that are possible are corporations, partnerships, limited partnerships, limited liability partnerships, and limited liability companies. An entity that is organized for reasons other than making a profit may formally incorporate as a nonprofit corporation.

Nonprofit associations may incorporate under the Nonprofit Corporations Act or the Nonprofit Miscellaneous and Mutual Corporations Act by filing articles of incorporation with the secretary of state. Nonprofit corporations may form for any lawful purpose, including charitable, benevolent, educational, civic, patriotic, political, religious, and social. Nonprofit corporations are managed by a board of directors and officers. The powers of a nonprofit corporation include the power to sue and be sued, engage in property transactions, lend money, make contracts, and

incur liabilities. A nonprofit corporation may not issue stock, make income disbursements to members, officers or directors, or make loans or advance credit to directors or officers. Members of a nonprofit corporation are not personally liable for the debts and obligations of the corporation. A director or an officer of a nonprofit corporation is not personally liable for a discretionary decision or a failure to make a discretionary decision unless the decision or failure to decide constitutes gross negligence.

Additional statutory provisions, not as detailed as the nonprofit incorporation laws, cover some aspects of the legal status of organizations such as granges, homeowners associations, fraternal societies, and agricultural marketing associations.

Many nonprofit groups, however, may pursue their goals without the formality of incorporation or the explicit coverage of any particular statute. Such groups include some churches, sororities, fraternities, social clubs, neighborhood associations, and charitable organizations. These nonprofit groups operate as unincorporated associations governed by their own rules and procedures. There is often ambiguity as to whether these associations are legal entities capable of suing, being sued, or engaging in property transactions. In addition, the rights and liabilities of members relating to contract and tort claims against the association are unclear. There are no statutes governing the status of nonprofit associations and the rights and liabilities of members.

The Uniform Law Commission has drafted a model act regarding unincorporated nonprofit associations. The uniform act covers any unincorporated organization of two or more persons joined by mutual consent for common, nonprofit purpose. The act prescribes the legal status of such an organization with respect to the rights and obligations of property ownership, contract, and tort.

Summary of Bill: A modified version of the model uniform unincorporated nonprofit associations act is adopted. No particular form of association, no particular documents, and no registration are required by an association in order for it to come under the coverage of the act. Coverage is determined by the nature of the association and its activities.

DEFINITION OF NONPROFIT ASSOCIATION.

The act is more prescriptive in defining nonprofit associations than is the model act. Specific purposes are identified that qualify or disqualify an association for coverage under the act. Permissible purposes of a nonprofit association are:

- o promotion of amateur athletics or activities for youth;
- o animal husbandry;
- o artistic, charitable, civic, community, or neighborhood activities; or

- o cultural, educational, environmental preservation, historic preservation, horticultural, literary, religious, scientific, or social welfare purposes.

Specifically excluded from the coverage of the act are:

- o organizations formed to engage in business or commercial activities;
- o joint ventures organized to make a profit for members or investors;
- o estates under the supervision of a court;
- o fraternal societies;
- o governmental entities;
- o political committees;
- o homeowners associations; or
- o organizations, a substantial part of whose activities consist of conducting business or commercial activities, or a licensed profession, or acting as a trade association.

However, the exclusion for commercial activity does not extend to fund-raising activities commonly conducted by local nonprofit organizations,— such as occasional car washes, bake sales, or auctions.

RIGHTS AND RESPONSIBILITIES OF NONPROFIT ASSOCIATIONS.

Nonprofit associations are authorized to acquire, hold, encumber, and transfer real and personal property. An association may contract and may sue or be sued on a contract or on a tort action. Specific provisions are made with respect to real property and with respect to the liability of members of an association.

Statement of Authority.

An association may record with the county auditor a statement of authority to transfer real property. A person named in the statement may then transfer real property in the name of the association.

A statement of authority must be executed in the same manner as a deed and by a person other than the one named in the statement. The contents of the statement are prescribed. A statement of authority expires upon the earlier of its cancellation or five years after its last recording.

A recorded statement provides conclusive authority for the transfer of the association's property by the person named in the statement to a purchaser who gives value for the property so long as the purchaser does not have notice that the named person in fact lacks the authority to transfer the property.

Liability.

A nonprofit association is given legal standing separate and apart from its members, and the association itself is liable in contract and tort to the same extent as a nonprofit corporation would be in an analogous situation.

Officers and members of nonprofit associations are given the same protections from personal liability as officers and members of nonprofit corporations would have in analogous situations. An officer or member defending against personal liability has the burden of proving by clear, cogent, and convincing evidence that the association was in fact operated and held out to the public as an entity separate and apart from its members, and that the association had filed a statement of authority. If no statement was filed, the court may nonetheless consider other factors to find nonprofit association status. Those factors include:

- o how property was held and funds kept;
- o how activities were conducted;
- o advertising and correspondence;
- o contracting;
- o founding documents;
- o past or pending incorporation;
- o duration and scope of activities;
- o commingling of assets; and
- o appearance and reputation of the association.

A court may also disregard nonprofit association status in order to:

- o prevent fraud or manifest injustice;
- o protect the public from unfair or deceptive acts; or
- o allow restitution to victims of hazardous substances or criminal acts.

OTHER PROVISIONS.

If an association is inactive for three years or longer, or for some other period specified in a document of the association, a person with possession of association property may dispose of it:

- o to satisfy debts of the association;
- o by returning it to the donor if the property was donated;
- o by delivering it to a person specified in a document of the association; or
- o by giving it to a nonprofit association or corporation of similar purposes or to a government entity.

Service of process may be made upon an officer or managing agent of the association, and if the process concerns real property, upon the person named in a recorded statement of authority.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill provides needed certainty and a simplified process for informal associations. Nonprofit associations are a valuable part of democracy, but the current uncertainty in the law discourages citizens from volunteer nonprofit work.

Testimony Against: None.

Testified: Jorgen Bader, Seattle Community Council Federation (pro); Jeffrey Michka, Coalition of Washington Communities (pro); and Chris Leman, Coalition of Washington Communities (pro).