



**House
Legislative
Analysis
Section**

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**IMMUNITY FOR NONPROFIT
VOLUNTEER OFFICERS**

**House Bill 6018 as introduced
First Analysis (9-19-96)**

**Sponsor: Rep. Jan Dolan
Committee: Commerce**

THE APPARENT PROBLEM:

In these litigious times, possible exposure to lawsuits is of increasing concern to people who do volunteer work and to the organizations that rely on them. Without some sort of protection for volunteers, nonprofits fear growing problems in finding willing helpers. According to one homeowner's association, for example, there was an incident in Farmington Hills that illustrates this concern. Reportedly, in 1995 an unincorporated homeowners association of residents living on a designated "natural beauty" road petitioned the city for a zoning change in order to preserve the unique rural character of their neighborhood from threatened overdevelopment. The city council agreed with the association and granted the zoning change. A developer then promptly sued the city and each member of the association who worked for the rezoning jointly and severally for one million dollars. The suit later was voluntarily dismissed as to the individual residents, but only after they had suffered loss of time and money and great emotional distress.

Public Act 129 of 1993 amended the Nonprofit Corporation Act to allow a nonprofit corporation to, by means of its articles of incorporation, assume liability for all acts and omissions of a "nondirector" volunteer occurring after the effective date of the provision in its articles of incorporation, if certain conditions are met. Legislation to provide similar protection to volunteer officers and volunteer directors has been proposed.

THE CONTENT OF THE BILL:

The Nonprofit Corporation Act currently provides that if a nonprofit corporation's articles of incorporation contain a provision specifying that the corporation assumes liability for a "nondirector" volunteer's acts or omissions, then a claim for monetary damages cannot be brought against the nondirector volunteer, but instead must be brought against the corporation. The bill would amend the act to provide that if a nonprofit assumes liability for nondirector volunteers, then a claim for monetary damages could not be brought against a volunteer director, officer, or other volunteer for his or her acts or

omission, but would have to be brought against the corporation (see BACKGROUND INFORMATION).

MCL 450.2556

BACKGROUND INFORMATION:

A complementary bill, House Bill 4824, would amend another section of the act (MCL 450.2209) to allow a nonprofit organization to assume liability for its volunteer directors and officers as well as nondirectors, via its articles of incorporation. This bill has passed the House and is awaiting action in the Senate Financial Services Committee.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill, together with House Bill 4824, would give the same protection to volunteer officers and volunteer directors that was granted to "nondirector" volunteers of nonprofit corporations by Public Act 129 of 1993. That is, it would protect volunteer officers and volunteer directors from personal liability, though their corporations would remain liable. Although the bill would apply to all nonprofit corporations, it is a direct response to problems faced by homeowner associations. These associations engage in a number of civic activities that are in the public interest, but the kind of lawsuit brought by a developer last year against some homeowner association volunteers serves as a powerful disincentive for people to volunteer to participate in these associations. By allowing a nonprofit corporation to assume liability for its volunteer officers, the bill should ease volunteers' fears about potential lawsuits and counter any related reluctance to offer volunteer services. Many organizations -- not just homeowner associations -- rely heavily on people who donate their time and energy, and

House Bill 6018 (9-19-96)

these organizations could be seriously hampered if these unpaid workers were no longer available. The bill would help both volunteer officers and the organizations that rely on them.

Response:

Because this bill would amend a section that references Section 209(e), which is the section of law House Bill 4824 proposes to amend, for the sake of clarity perhaps the two bills should be tie-barred.

Against:

Volunteers sometimes accept an enormous amount of responsibility, and the law should not absolve them of accountability for their actions. Each factual situation is different and the judicial system provides the proper forum in which to determine the extent of an individual's culpability. Furthermore, only anecdotal evidence was presented to suggest that the fear of lawsuits is seriously hampering the ability of homeowners' associations to obtain volunteer officers, let alone that volunteer officers are actually being sued or that insurance coverage for them is unavailable. If a problem does exist, however, the bill simply should allow a nonprofit corporation to indemnify its volunteers, instead of giving them blanket immunity.

Response:

Indemnification alone would not protect volunteer officers from the negative exposure and inconvenience of a lawsuit, and the mere perception of a litigious environment could be enough to discourage people from volunteering. Moreover, the proposed immunity is far from absolute: volunteer officers would be subject to a good faith standard of care, and would not be immune from liability for gross negligence, willful and wanton misconduct, an intentional tort, or conduct that would create tort liability under the automobile no-fault law. Finally, a nonprofit corporation would remain liable for the actions or omissions of its volunteer officers.

POSITIONS:

The United Way of Michigan supports the bill. (9-18-96)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.