
ENGROSSED HOUSE BILL 1391

State of Washington

55th Legislature

1997 Regular Session

By Representatives Appelwick, Costa, Sheahan, Constantine, Kenney, Radcliff, Blalock, Tokuda, Zellinsky, Lantz and Ogden

Read first time 01/24/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to unincorporated nonprofit associations; and
2 adding a new chapter to Title 24 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** PURPOSE. In order to encourage volunteerism
5 and provide more clarity in the law, this chapter specifies the duties,
6 rights, and obligations of eligible unincorporated nonprofit
7 associations that further various causes in the public interest. This
8 chapter is patterned after, but more limited than, the uniform
9 unincorporated nonprofit association act.

10 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
11 section apply throughout this chapter unless the context clearly
12 requires otherwise.

13 (1) "Member" means a person who, under the rules or practices of a
14 nonprofit association, (a) may participate in the selection of persons
15 authorized to manage the affairs of the nonprofit association or in the
16 development of policy of the nonprofit association; (b) participates in
17 its activities or attends its meetings; or (c) contributes money,
18 property, or services to such a nonprofit association.

1 (2) "Nonprofit association" means an unincorporated organization
2 that satisfies the criteria under section 3 of this act.

3 (3) "Person" means an individual; corporation; business trust;
4 estate; trust; partnership; association; joint venture; government;
5 governmental subdivision, agency, or instrumentality; or another legal
6 or commercial entity.

7 (4) "Relevant time" means as to a transfer or disposition of
8 property, the date of the transfer or disposition; as to contracting,
9 the date of the transaction; as to a tort, the date or duration of the
10 event giving rise to tort liability; and as to ownership of property,
11 the duration when the property rights are at issue.

12 (5) "State" means a state of the United States, the District of
13 Columbia, the Commonwealth of Puerto Rico, or a territory or insular
14 possession subject to the jurisdiction of the United States.

15 NEW SECTION. **Sec. 3.** ELIGIBILITY CRITERIA. (1) An unincorporated
16 association, that is organized for one or more of the following
17 purposes may, separate and apart from its members, own and dispose of
18 property, contract, enforce rights and incur liabilities in tort, and
19 sue and be sued, and the exposure of its officers, members, and
20 contributors to liabilities is limited, as provided in this chapter:
21 Promotion of amateur athletics or activities for youth; animal
22 husbandry; artistic, charitable, civic, community, or neighborhood
23 activities; cultural, educational, environmental preservation, historic
24 preservation, horticultural, literary, religious, scientific, or social
25 welfare purposes.

26 (2) This chapter does not apply to the following:

27 (a) A partnership, limited liability partnership, limited liability
28 company, Massachusetts trust, under chapter 23.90 RCW, or other
29 organization formed to engage in business or commercial activities;

30 (b) A joint venture or other association organized for making a
31 profit for members or investors or whose net earnings inure to the
32 benefit of any individual or a for profit entity; an estate in probate
33 or an estate in receivership or otherwise under the supervision of a
34 court; or a fraternal society;

35 (c) A governmental or quasi-governmental entity or a political
36 committee as defined in RCW 42.17.020;

37 (d) Homeowners associations; or

1 (e) An organization, a substantial part of whose activities consist
2 in engaging in business or commercial activities; conducting a licensed
3 profession or undertaking an enterprise regulated by a licensing system
4 under a state regulatory statute; or acting as a trade association.
5 However, the limitation upon commercial activities in this subsection
6 does not restrict such a nonprofit association from engaging in fund-
7 raising activities commonly conducted by local nonprofit organizations,
8 such as holding car washes, bake sales, rummage sales, dinners, or
9 auctions from time to time; making sales of literature, posters,
10 buttons, bumper stickers, apparel, and incidentals clearly identified
11 with the nonprofit association or with a message furthering its
12 purposes; soliciting donations and applying for grants; or charging
13 admission to its events or fees to participants in its activities to
14 defray expenses. Nothing in this subsection (2)(e) affects the
15 application of chapter 19.09 RCW to the charitable solicitations of an
16 organization.

17 NEW SECTION. **Sec. 4.** SUPPLEMENTARY GENERAL PRINCIPLES OF LAW AND
18 EQUITY. Principles of law and equity supplement this chapter unless
19 displaced by a particular provision of this chapter.

20 NEW SECTION. **Sec. 5.** TERRITORIAL APPLICATION. Real and personal
21 property in this state may be acquired, held, encumbered, and
22 transferred by a nonprofit association whether or not the nonprofit
23 association or a member has any other relationship to this state.

24 NEW SECTION. **Sec. 6.** REAL AND PERSONAL PROPERTY--NONPROFIT
25 ASSOCIATION AS LEGATEE, DEVISEE, OR BENEFICIARY. (1) A nonprofit
26 association in its name may acquire, hold, encumber, or transfer an
27 estate or interest in real or personal property.

28 (2) A nonprofit association may be a legatee, devisee, or
29 beneficiary of a trust or contract.

30 NEW SECTION. **Sec. 7.** STATEMENT OF AUTHORITY AS TO REAL PROPERTY.
31 (1) A nonprofit association may execute and record in the office of the
32 auditor of the county in which the property is located a statement of
33 authority to transfer an estate or interest in real property in the
34 name of the nonprofit association.

1 (2) An estate or interest in real property in the name of a
2 nonprofit association may be transferred by a person so authorized in
3 a statement of authority recorded in the office of the auditor in the
4 county in which a transfer of the property would be recorded.

5 (3) A statement of authority must set forth:

6 (a) The name of the nonprofit association;

7 (b) The federal tax identification number, if any, of the nonprofit
8 association;

9 (c) The address in this state, including the street address, if
10 any, of the nonprofit association, or, if the nonprofit association
11 does not have an address in this state, its address out of state;

12 (d) That the nonprofit association is unincorporated; and

13 (e) The name or title of a person authorized to transfer an estate
14 or interest in real property held in the name of the nonprofit
15 association.

16 (4) A statement of authority must be executed in the same manner as
17 a deed by a person who is not the person authorized to transfer the
18 estate or interest.

19 (5) A filing officer may collect a fee for recording the statement
20 of authority in the amount authorized for recording a transfer of real
21 property.

22 (6) An amendment, including a cancellation, of a statement of
23 authority must meet the requirements for execution and recording of an
24 original statement. Unless canceled earlier, a recorded statement of
25 authority or its most recent amendment expires five years after the
26 date of the most recent recording.

27 (7) If the record title to real property is in the name of a
28 nonprofit association and the statement of authority is recorded in the
29 office of the auditor of the county in which a transfer of real
30 property would be recorded and has not yet expired, the authority of
31 the person named in a statement of authority is conclusive in favor of
32 a person who gives value without notice that the person, who was named
33 in the statement of authority, lacks authority.

34 NEW SECTION. **Sec. 8.** CONTRACTS AND TORTS. (1) A nonprofit
35 association may contract in its own name and enforce rights, duties,
36 and liabilities in contract and tort, separate and apart from its
37 members.

1 (2) A nonprofit association is liable in contract and tort to the
2 same extent that an association incorporated under chapter 24.03 RCW
3 would be under analogous circumstances.

4 NEW SECTION. **Sec. 9.** LIABILITY OF MEMBERS AND DONORS IN CONTRACT
5 AND TORT. (1) An officer or member of a nonprofit association may be
6 held personally liable for his or her own acts and omissions and for an
7 act, debt, obligation, tort, or liability of a nonprofit association to
8 the extent that such an officer, member, or participant in the affairs
9 of an association incorporated under chapter 24.03 RCW would be held
10 liable under analogous circumstances.

11 (2) An officer or member of a nonprofit association does not become
12 liable for a breach of contract of a nonprofit association, or its
13 tortious act or omission, or the tortious act or omission of another
14 for which the nonprofit association is liable, from the mere fact that
15 the person engages in one or more of the following:

16 (a) Participating in the management of the affairs of the nonprofit
17 association;

18 (b) Taking actions that cause others to consider the person a
19 member of the nonprofit association;

20 (c) Attending meetings of the nonprofit association;

21 (d) Paying dues or membership fees to the nonprofit association; or

22 (e) Making a donation to the nonprofit association.

23 (3) An officer or member of a nonprofit association, who asserts
24 the status of a nonprofit association as a defense to personal
25 liability in contract or tort, has a burden of proving by clear,
26 cogent, and convincing evidence that at the relevant time the nonprofit
27 association was in fact operated and held out to the public as an
28 entity, owning property and contracting in its own name, separate and
29 apart from its members and has filed a statement of authority pursuant
30 to section 7 of this act. If such a filing has not been recorded, the
31 court may consider the following factors: How its property was held
32 and funds and accounts kept; the manner in which its activities were
33 conducted; its advertising and correspondence; its contracting; any
34 founding documents; whether the nonprofit corporation had been
35 incorporated and may be reinstated or whether an application for
36 incorporation is pending; its duration and the scope of its activities;
37 whether any commingling of assets of the nonprofit association and its
38 members occurred; and the appearance or reputation of the nonprofit

1 association to the general public or that segment of the public coming
2 into contact with it. If, based on these factors, the court finds the
3 existence of a nonprofit association but for the filing of the
4 statement of authority, the court may in the interests of justice find
5 that the nonprofit association was in existence.

6 (4) A court may deny a nonprofit association status under this
7 chapter in order to: (a) Prevent fraud or manifest injustice; (b)
8 protect the public from injury from an unfair or deceptive act or other
9 violation of laws relating to consumer protection or charitable
10 solicitations; or (c) allow restitution or secure compensation to
11 victims for damages resulting from hazardous substances or criminal
12 activity.

13 NEW SECTION. **Sec. 10.** CAPACITY TO ASSERT AND DEFEND--STANDING.

14 (1) A nonprofit association, in its name, may institute, defend,
15 intervene, or participate in a judicial, administrative, or other
16 governmental proceeding or in an arbitration, mediation, or any other
17 form of alternative dispute resolution.

18 (2) A nonprofit association may assert a claim in its name on
19 behalf of its members if one or more members of the nonprofit
20 association have standing to assert a claim in their own right, the
21 interests the nonprofit association seeks to protect are germane to its
22 purposes, and neither the claim asserted nor the relief requested
23 requires the participation of a member.

24 (3) A member of, or a person considered to be a member by, a
25 nonprofit association may assert a claim against the nonprofit
26 association. A nonprofit association may assert a claim against a
27 member or person considered to be a member by the association.

28 (4) A claim for relief by or against a nonprofit association does
29 not abate solely by reason of a change in its members or persons
30 authorized to manage the affairs of the nonprofit association.

31 NEW SECTION. **Sec. 11.** EFFECT OF JUDGMENT OR ORDER. A judgment or
32 order against a nonprofit association is not by itself a judgment or
33 order against a member, a person considered to be a member by the
34 nonprofit association, or a person authorized to participate in the
35 management or affairs of the nonprofit association.

1 NEW SECTION. **Sec. 12.** DISPOSITION OF PERSONAL PROPERTY OF
2 INACTIVE NONPROFIT ASSOCIATION. If a nonprofit association has been
3 inactive for three years or longer, or a different period specified in
4 a document of the nonprofit association, a person in possession or
5 control of personal property of the nonprofit association may transfer
6 custody of the property to:

7 (1) Satisfy outstanding debts or claims against the nonprofit
8 association;

9 (2) The donor if the property is donated to the nonprofit
10 association with a condition or a reservation that the property be
11 returned if no longer in use;

12 (3) A person specified in a document of the nonprofit association
13 to receive the property under those circumstances; or

14 (4) If no person is so specified, a nonprofit association or
15 nonprofit corporation pursuing broadly similar purposes or to a
16 government or governmental subdivision, agency, or instrumentality.

17 NEW SECTION. **Sec. 13.** SERVICE OF PROCESS. Process may be served
18 upon any officer or a managing agent of the nonprofit association. In
19 an action affecting real property of the nonprofit association, process
20 may also be served upon the person named in a statement of authority
21 recorded under section 7 of this act.

22 NEW SECTION. **Sec. 14.** CAPTIONS NOT LAW. Captions used in this
23 chapter are not any part of the law.

24 NEW SECTION. **Sec. 15.** SEVERABILITY. If any provision of this act
25 or its application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 16.** CODIFICATION. Sections 1 through 15 of
29 this act constitute a new chapter in Title 24 RCW.

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