

1987

Session Law 87-245

Florida Senate & House of Representatives

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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Sess. Law #	87-245	Sec. #	3	LOF cite
Prime Bill #	SR 11 11	Comp./Sim. Bills	HB 254, HR 411, HB 1024	
JLMC Hist. Cites	Senate	Comms. of Ref.	Senate	
	House		House	

COMMITTEE RECORDS

H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	✓
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Committee/Floor Tapes

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By the Committee on Judiciary and Representatives Carpenter, Bass, Bloom, Cosgrove, Sansom, Lippman, Silver, Logan, Sanderson, Gardner, Hawkins, Grindle, Reddick, Messersmith, Hanson, Burnsed, Healey, Harris, Clark, Crotty, Souto, Garcia, Jamerson, Arnold, Saunders, Glickman, Rochlin, Tobin, Goode, Rush, Gutman, Brown, Morse, Kelly, Toblissen, Trammell, Clements, Meffert, Hodges, Figg, Webster, Lawson, Wetherell, Gordon, Rehm, Liberti, Carlton, Young, D. L. Jones, Lombard, Casas, C. F. Jones, Mackenzie, Jennings, Rudd, Smith, Ascherl, Long, R. C. Johnson, Hill, Guber, Shelley, Mackey, Troxler, Morthan, Simone, Holland, King, Abrams, Metcaif, Thomas, Nergard

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A bill to be entitled

An act relating to civil liability; providing legislative findings; providing limited civil immunity to directors of certain nonprofit organizations; amending s. 607.014, F.S.; authorizing corporations to indemnify directors, officers, employees, agents, and volunteers against liability and related expenses; providing for a procedure to pay such expenses; providing limitations on such indemnity; amending s. 617.028, F.S.; providing civil immunity to certain persons associated with corporations not for profit; providing limitations on such immunity; creating s. 607.1645, F.S.; providing directors of a corporation immunity from civil liability; providing limitations; creating s. 607.165, F.S.; providing for the approval and authorization of certain transactions negotiated by a director; providing directors and members of supervisory committees of credit unions immunity from civil liability; providing limitations; providing trustees of a self-insurance trust fund immunity from civil liability; providing limitations; creating s. 627.9122, F.S.; requiring insurers to report additional information regarding officers' and directors' liability claims; amending s. 627.915, F.S.; requiring insurers to separately report certain information for officers' and

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1	directors' liability insurance; providing an	
2	effective date.	
3		
4	Be It Enacted by the Legislature of the State of Florida:	1:enc
5		
6	Section 1. <u>(1) The Legislature finds that the service</u>	1.25
7	<u>of qualified persons on the governing boards of nonprofit</u>	1.26
8	<u>corporations and associations is critical to the efficient and</u>	1.27
9	<u>effective conduct of such organizations in the provision of</u>	
10	<u>services and other benefits to the citizens of the state. The</u>	1.29
11	<u>Legislature further finds that, within reasonable limits,</u>	
12	<u>persons offering their services as directors of such nonprofit</u>	1.30
13	<u>organizations should be permitted to perform without undue</u>	
14	<u>concern for the possibility of litigation arising from the</u>	1.31
15	<u>discharge of their duties as policy makers.</u>	1.32
16	<u>(2) The Legislature further finds that the service of</u>	1.33
17	<u>qualified persons on the governing boards of corporations,</u>	
18	<u>credit unions, and self-insurance trust funds is in the public</u>	1.34
19	<u>interest and that within reasonable limitations, such persons</u>	1.35
20	<u>should be permitted to perform without undue concern for the</u>	
21	<u>possibility of litigation arising from the discharge of their</u>	1.36
22	<u>duties as policy makers. The Legislature further finds that</u>	1.37
23	<u>the case law of the state does not adequately delineate the</u>	1.38
24	<u>liability of those serving on governing boards, and that such</u>	1.39
25	<u>delineation through the clarification of the appropriate</u>	
26	<u>standard of care due an individual and a corporation by a</u>	1.40
27	<u>member of a governing board is essential in encouraging the</u>	1.41
28	<u>continued service of qualified persons on such governing</u>	1.42
29	<u>boards.</u>	
30	Section 2. <u>Directors of certain corporations and</u>	1.42
31	<u>associations not for profit; immunity from civil liability.--</u>	1.44

1	<u>(1) As used in this section, the term "director" means</u>	1.45
2	<u>a person who serves as a director, trustee, or member of the</u>	
3	<u>governing board of an organization.</u>	1.47
4	<u>(2) Any statement, vote, or decision regarding</u>	1:1us
5	<u>corporate management or policy taken as a director, at a duly</u>	1.48
6	<u>called meeting of the board of directors, by a director of a</u>	1.50
7	<u>nonprofit organization recognized under section 501(c)(3) or</u>	1.52
8	<u>section 501(c)(4) or section 501(c)(6), or of an agricultural</u>	
9	<u>or a horticultural organization recognized under section</u>	1.54
10	<u>501(c)(5), of the Internal Revenue Code of 1986, as amended,</u>	1.55
11	<u>shall be deemed to be an act of the organization for which no</u>	
12	<u>individual liability for civil damages shall exist, unless</u>	1.56
13	<u>such act or omission was committed in bad faith or with</u>	1.57
14	<u>malicious purpose or in a manner exhibiting wanton and willful</u>	
15	<u>disregard of human rights, safety, or property.</u>	1.58
16	Section 3. Section 607.014, Florida Statutes, is	1.58
17	amended to read:	
18	607.014 Indemnification of officers, directors,	1.59
19	employee, and agents.--	
20	(1) A corporation shall have power to indemnify any	1.61
21	person who was or is a party, or is threatened to be made a	1.62
22	party, to any threatened, pending, or completed action, suit,	1.63
23	or proceeding, whether civil, criminal, administrative, or	
24	investigative (other than an action by, or in the right of,	1.64
25	the corporation), by reason of the fact that he is or was a	1.65
26	director, officer, employee, or agent of the corporation or is	1.66
27	or was serving at the request of the corporation as a	
28	director, officer, employee, or agent of another corporation,	1.67
29	partnership, joint venture, trust, or other enterprise against	1.68
30	liability expenses (including attorneys' fees), judgments,	1.69
31	finer, and amounts paid in settlement, actually and reasonably	1.70

1	incurred by him in connection with such action-suit-or	1.71
2	proceeding, including any appeal thereof, if he acted in good	1.73
3	faith and in a manner he reasonably believed to be in, or not	1.74
4	opposed to, the best interests of the corporation and, with	
5	respect to any criminal action or proceeding, had no	1.75
6	reasonable cause to believe his conduct was unlawful. The	1.77
7	termination of any action-suit-or proceeding by judgment,	
8	order, settlement, or conviction or upon a plea of nolo	1.78
9	contendere or its equivalent shall not, of itself, create a	1.79
10	presumption that the person did not act in good faith and in a	1.80
11	manner which he reasonably believed to be in, or not opposed	
12	to, the best interests of the corporation or, with respect to	1.81
13	any criminal action or proceeding, had reasonable cause to	1.82
14	believe that his conduct was unlawful.	
15	(2) A corporation shall have power to indemnify any	1.83
16	person, who was or is a party-or-is-threatened-to-be-made-a	1.84
17	party, to any <u>proceeding</u> threatened-pending-or-completed	2.2
18	action-or-suit by or in the right of the corporation to	
19	procure a judgment in its favor by reason of the fact that he	2.3
20	is or was a director, officer, employee, or agent of the	2.4
21	corporation or is or was serving at the request of the	2.5
22	corporation as a director, officer, employee, or agent of	
23	another corporation, partnership, joint venture, trust, or	2.6
24	other enterprise, against expenses <u>and amounts paid in</u>	1:1us
25	<u>settlement not exceeding, in the judgment of the board of</u>	2.8
26	<u>directors, the estimated expense of litigating the proceeding</u>	2.9
27	<u>to conclusion, including-attorneys'-fees;</u> actually and	2.10
28	reasonably incurred by him in connection with the defense or	2.11
29	settlement of such <u>proceeding action-or-suit</u> , including any	2.12
30	appeal thereof, <u>such indemnification shall be authorized if</u>	2.13
31	<u>such person--if-he</u> acted in good faith and in a manner he	2.14

1	reasonably believed to be in, or not opposed to, the best	2.15
2	interests of the corporation, except that no indemnification	
3	shall be made <u>under this subsection</u> in respect of any claim,	2.16
4	issue, or matter as to which such person shall have been	2.18
5	adjudged to be liable for negligence or misconduct in the	
6	performance of his duty to the corporation unless, and only to	2.19
7	the extent that, the court in which such <u>proceeding</u> action or	2.20
8	<u>suit was brought, or any other court of competent</u>	2.21
9	<u>jurisdiction,</u> shall determine upon application that, despite	2.23
10	the adjudication of liability but in view of all circumstances	
11	of the case, such person is fairly and reasonably entitled to	2.25
12	indemnity for such expenses which such court shall deem	2.26
13	proper.	
14	(3) To the extent that a director, officer, employee,	2.28
15	or agent of a corporation has been successful on the merits or	2.29
16	otherwise in defense of any action, suit, or proceeding	
17	referred to in subsection (1) or subsection (2), or in defense	2.30
18	of any claim, issue, or matter therein, he shall be	2.31
19	indemnified against expenses (including attorneys' fees)	
20	actually and reasonably incurred by him in connection	2.32
21	therewith.	
22	(4) Any indemnification under subsection (1) or	2.33
23	subsection (2), unless pursuant to a determination by a court,	2.34
24	shall be made by the corporation only as authorized in the	2.35
25	specific case upon a determination that indemnification of the	2.36
26	director, officer, employee, or agent is proper in the	
27	circumstances because he has met the applicable standard of	2.37
28	conduct set forth in subsection (1) or subsection (2). Such	2.39
29	determination shall be made:	
30		
31		

1	(a) By the board of directors by a majority vote of a	2.42
2	quorum consisting of directors who were not parties to such	
3	action-suit-or proceeding;	2.43
4	(b) If such a quorum is not obtainable or, even if	2.44
5	obtainable, <u>by majority vote of a committee duly designated by</u>	2.45
6	<u>the board of directors (in which directors who are parties may</u>	2.46
7	<u>participate) consisting solely of two or more directors not at</u>	
8	<u>the time parties to the proceeding;</u>	2.47
9	(c) <u>By independent legal counsel:</u>	1:lus
10	<u>1. Selected by the board of directors prescribed in</u>	1:lus
11	<u>paragraph (a) or the committee prescribed in paragraph (b); or</u>	2.51
12	<u>2. If a quorum of the directors cannot be obtained for</u>	1:lus
13	<u>paragraph (a) and the committee cannot be designated under</u>	2.53
14	<u>paragraph (b), selected by majority vote of the full board of</u>	
15	<u>directors (in which directors who are parties may participate)</u>	2.54
16	<u>a-quorum-of-disinterested-directors-as-directors-by-independent</u>	2.55
17	<u>legal-counsel-in-a-written-opinion; or</u>	2.56
18	(d) (e) By the shareholders by a majority vote of a	1:lus
19	quorum consisting of shareholders who were not parties to such	2.59
20	action-suit-or proceeding <u>or, if no such quorum is</u>	2.60
21	<u>obtainable, by a majority vote of shareholders who were not</u>	2.61
22	<u>parties to such proceeding.</u>	
23	(5) <u>Evaluation of the reasonableness of expenses and</u>	1:lus
24	<u>authorization of indemnification shall be made in the same</u>	2.63
25	<u>manner as the determination that indemnification is</u>	
26	<u>permissible. However, if the determination of permissibility</u>	2.65
27	<u>is made by independent legal counsel, persons specified by</u>	2.66
28	<u>paragraph (4)(c) shall evaluate the reasonableness of expenses</u>	
29	<u>and may authorize indemnification.</u>	2.67
30	(6) <u>Expenses incurred by an officer or director in</u>	1:lus
31	<u>defending a civil or criminal proceeding may be paid by the</u>	2.69

1	<u>corporation in advance of the final disposition of such</u>	
2	<u>proceeding upon receipt of an undertaking by or on behalf of</u>	2.70
3	<u>such director or officer to repay such amount if he is</u>	2.71
4	<u>ultimately found not to be entitled to indemnification by the</u>	
5	<u>corporation pursuant to this section. Expenses incurred by</u>	2.73
6	<u>other employees and agents may be paid in advance upon such</u>	
7	<u>terms or conditions that the board of directors deems</u>	2.75
8	<u>appropriate.</u>	
9	(5)--Expenses, including attorneys' fees, incurred in	1:108
10	defending a civil or criminal action, suit, or proceeding may	2.77
11	be paid by the corporation in advance of the final disposition	2.78
12	of such action, suit, or proceeding upon a preliminary	
13	determination following one of the procedures set forth in	2.79
14	subsection (4) that the director, officer, employee, or agent	2.80
15	met the applicable standard of conduct set forth in subsection	2.81
16	(1) or subsection (2) or as authorized by the board of	2.82
17	directors in the specific case and, in either event, upon	
18	receipt of an undertaking by or on behalf of the director,	2.83
19	officer, employee, or agent to repay such amount, unless it	2.84
20	shall ultimately be determined that he is entitled to be	
21	indemnified by the corporation as authorized in this section.	3.1
22	<u>(7)(6) The indemnification and advancement of expenses</u>	3.2
23	<u>provided pursuant to this section are not exclusive, and a</u>	3.3
24	<u>corporation may shall have the power to make any other or</u>	3.4
25	<u>further indemnification or advancement of expenses of any of</u>	3.5
26	<u>its directors, officers, employees, or agents, under any</u>	3.6
27	<u>bylaw, agreement, vote of shareholders or disinterested</u>	3.8
28	<u>directors, or otherwise, both as to action in his official</u>	3.9
29	<u>capacity and as to action in another capacity while holding</u>	3.10
30	<u>such office, except an indemnification against gross</u>	3.11
31	<u>negligence or willful misconduct. However, indemnification or</u>	1:118

1	<u>advancement of expenses shall not be made to or on behalf of</u>	
2	<u>any director, officer, employee, or agent if a judgment or</u>	3.13
3	<u>other final adjudication establishes that his actions, or</u>	3.14
4	<u>omissions to act, were material to the cause of action so</u>	
5	<u>adjudicated and constitute:</u>	3.15
6	<u>(a) A violation of the criminal law, unless the</u>	1:1us
7	<u>director, officer, employee, or agent had reasonable cause to</u>	3.17
8	<u>believe his conduct was lawful or had no reasonable cause to</u>	
9	<u>believe his conduct was unlawful;</u>	3.18
10	<u>(b) A transaction from which the director, officer,</u>	1:1us
11	<u>employee, or agent derived an improper personal benefit;</u>	3.20
12	<u>(c) In the case of a director, a circumstance under</u>	1:1us
13	<u>which the liability provisions of s. 607.144 are applicable;</u>	3.22
14	<u>or</u>	
15	<u>(d) Willful misconduct or a conscious disregard for</u>	1:1us
16	<u>the best interests of the corporation in a proceeding by or in</u>	3.24
17	<u>the right of the corporation to procure a judgment in its</u>	
18	<u>favor or in a proceeding by or in the right of a shareholder.</u>	3.25
19	<u>(8) Indemnification and advancement of expenses as</u>	1:1us
20	<u>provided in this section shall continue as, unless otherwise</u>	3.29
21	<u>provided when authorized or ratified, to a person who has</u>	3.30
22	<u>ceased to be a director, officer, employee, or agent and shall</u>	3.31
23	<u>inure to the benefit of the heirs, executors, and</u>	
24	<u>administrators of such a person, unless otherwise provided</u>	3.32
25	<u>when authorized or ratified.</u>	
26	<u>(9) Unless the corporation's articles of incorporation</u>	1:1us
27	<u>provide otherwise, notwithstanding the failure of a</u>	3.34
28	<u>corporation to provide indemnification, and despite any</u>	
29	<u>contrary determination of the board or of the shareholders in</u>	3.35
30	<u>the specific case, a director, officer, employee, or agent of</u>	3.36
31	<u>the corporation who is or was a party to a proceeding may</u>	

1	<u>apply for indemnification or advancement of expenses, or both,</u>	3.37
2	<u>to the court conducting the proceeding, to the circuit court,</u>	3.38
3	<u>or to another court of competent jurisdiction. On receipt of</u>	3.40
4	<u>an application, the court, after giving any notice that it</u>	3.41
5	<u>considers necessary, may order indemnification and advancement</u>	3.43
6	<u>of expenses, including expenses incurred in seeking court-</u>	3.44
7	<u>ordered indemnification or advancement of expenses, if it</u>	
8	<u>determines that:</u>	
9	<u>(a) The director, officer, employee, or agent is</u>	1:lus
10	<u>entitled to mandatory indemnification under subsection (3), in</u>	3.47
11	<u>which case the court shall also order the corporation to pay</u>	3.48
12	<u>the director reasonable expenses incurred in obtaining court-</u>	
13	<u>ordered indemnification or advancement of expenses;</u>	3.49
14	<u>(b) The director, officer, employee, or agent is</u>	1:lus
15	<u>entitled to indemnification or advancement of expenses, or</u>	3.51
16	<u>both, by virtue of the exercise by the corporation of its</u>	
17	<u>power pursuant to subsection (7); or</u>	3.52
18	<u>(c) The director, officer, employee, or agent is</u>	1:lus
19	<u>fairly and reasonably entitled to indemnification or</u>	3.54
20	<u>advancement of expenses, or both, in view of all the relevant</u>	
21	<u>circumstances, regardless of whether such person met the</u>	3.55
22	<u>standard of conduct set forth in subsection (1), subsection</u>	3.56
23	<u>(2), or subsection (7).</u>	
24	<u>(10) For purposes of this section, the term</u>	1:lus
25	<u>"corporation" includes, in addition to the resulting</u>	3.58
26	<u>corporation, any constituent corporation (including any</u>	
27	<u>constituent of a constituent) absorbed in a consolidation or</u>	3.59
28	<u>merger, so that any person who is or was a director, officer,</u>	3.60
29	<u>employee, or agent of a constituent corporation, or is or was</u>	
30	<u>servng at the request of a constituent corporation as a</u>	3.61
31	<u>director, officer, employee, or agent of another corporation,</u>	

1	<u>partnership, joint venture, trust, or other enterprise, is in</u>	3.62
2	<u>the same position under this section with respect to the</u>	3.63
3	<u>resulting or surviving corporation as he would have with</u>	
4	<u>respect to such constituent corporation if its separate</u>	3.64
5	<u>existence had continued.</u>	
6	<u>(11) For purposes of this section, the term "other</u>	1:1us
7	<u>enterprises" includes employee benefit plans; the term</u>	3.66
8	<u>"expenses" includes counsel fees, including those for appeal;</u>	
9	<u>the term "liability" includes obligations to pay a judgment,</u>	3.67
10	<u>settlement, penalty, fine (including an excise tax assessed</u>	3.68
11	<u>with respect to any employee benefit plan), and expenses</u>	3.69
12	<u>actually and reasonably incurred with respect to a proceeding;</u>	
13	<u>the term "proceeding" includes any threatened, pending, or</u>	1:qq
14	<u>completed action, suit, or other type of proceeding, whether</u>	3.71
15	<u>civil, criminal, administrative, or investigative and whether</u>	
16	<u>formal or informal; the term "agent" includes a volunteer; and</u>	3.72
17	<u>the term "serving at the request of the corporation" includes</u>	3.73
18	<u>any service as a director, officer, employee, or agent of the</u>	3.74
19	<u>corporation that imposes duties on such persons, including</u>	3.75
20	<u>duties relating to an employee benefit plan and its</u>	
21	<u>participants or beneficiaries; and the term "not opposed to</u>	1:qq
22	<u>the best interest of the corporation" describes the actions of</u>	
23	<u>a person who acts in good faith and in a manner he reasonably</u>	3.79
24	<u>believes to be in the best interests of the participants and</u>	3.80
25	<u>beneficiaries of an employee benefit plan.</u>	
26	<u>(12)(b) A corporation shall have power to purchase and</u>	3.81
27	<u>maintain insurance on behalf of any person who is or was a</u>	3.82
28	<u>director, officer, employee, or agent of the corporation or is</u>	3.83
29	<u>or was serving at the request of the corporation as a</u>	3.84
30	<u>director, officer, employee, or agent of another corporation,</u>	
31	<u>partnership, joint venture, trust, or other enterprise against</u>	4.1

1	any liability asserted against him and incurred by him in any	4.2
2	such capacity or arising out of his status as such, whether or	4.3
3	not the corporation would have the power to indemnify him	
4	against such liability under the provisions of this section.	4.4
5	(13)(f) If any expenses or other amounts are paid by	1:lus
6	way of indemnification otherwise than by court order or action	4.7
7	by the shareholders or by an insurance carrier pursuant to	4.8
8	insurance maintained by the corporation, the corporation	
9	shall, not later than the time of delivery to shareholders of	4.9
10	written notice of the next annual meeting of shareholders,	4.10
11	unless such meeting is held within 3 months from the date of	4.11
12	such payment, and, in any event, within 15 months from the	4.12
13	date of such payment, deliver either personally or by mail to	
14	each shareholder of record at the time entitled to vote for	4.13
15	the election of directors a statement specifying the persons	4.14
16	paid, the amounts paid, and the nature and status at the time	4.15
17	of such payment of the litigation or threatened litigation.	
18	Section 4. Section 617.028, Florida Statutes, is	4.16
19	amended to read:	
20	617.028 <u>Indemnification and liability</u> of officers,	4.17
21	directors, managers, trustees, employees, and agents.--The	4.20
22	provisions of <u>ss. s. 607.014, 607.1645, and 607.165</u> apply to	4.22
23	corporations not for profit <u>and rural electric cooperatives</u>	
24	<u>organized under chapter 425.</u> Any reference to "directors" in	4.24
25	<u>those sections that-section</u> includes the directors, managers,	4.25
26	or trustees of a corporation not for profit <u>or of a rural</u>	4.26
27	<u>electric cooperative organized under chapter 425, provided</u>	4.27
28	<u>that the term "director" as used in s. 607.1645 shall not</u>	4.28
29	<u>include a director appointed by the developer to the board of</u>	
30	<u>directors of a condominium association under chapter 718 or a</u>	4.29
31	<u>cooperative association under chapter 719. Any reference to</u>	1:lus

1	<u>"shareholders" in those sections includes members of a</u>	
2	<u>corporation not for profit and members of a rural electric</u>	4.32
3	<u>cooperative organized under chapter 425.</u>	4.33
4	Section 5. Section 607.1645, Florida Statutes, is	4.34
5	created to read:	
6	<u>607.1645 Liability of directors.--</u>	1:lus
7	<u>(1) A director is not personally liable for monetary</u>	4.37
8	<u>damages to the corporation or any other person for any</u>	4.38
9	<u>statement, vote, or decision regarding corporate management or</u>	4.39
10	<u>policy taken as a director at a duly called meeting of the</u>	4.40
11	<u>board of directors, or any failure to take any action at such</u>	4.43
12	<u>meeting, unless:</u>	
13	<u>(a) The director breached or failed to perform his</u>	4.44
14	<u>duties as a director; and</u>	4.45
15	<u>(b) The director's breach of, or failure to perform,</u>	1:lus
16	<u>those duties constitutes:</u>	4.47
17	<u>1. A violation of the criminal law, unless the</u>	1:lus
18	<u>director had reasonable cause to believe his conduct was</u>	4.49
19	<u>lawful or had no reasonable cause to believe his conduct was</u>	4.50
20	<u>unlawful. A judgment or other final adjudication against a</u>	4.51
21	<u>director in any criminal proceeding for a violation of the</u>	4.52
22	<u>criminal law estops that director from contesting the fact</u>	4.53
23	<u>that his breach, or failure to perform, constitutes a</u>	
24	<u>violation of the criminal law; but does not estop the director</u>	4.54
25	<u>from establishing that he had reasonable cause to believe that</u>	4.55
26	<u>his conduct was lawful or had no reasonable cause to believe</u>	
27	<u>that his conduct was unlawful;</u>	4.56
28	<u>2. A transaction from which the director derived an</u>	1:lus
29	<u>improper personal benefit, either directly or indirectly;</u>	4.58
30	<u>3. A circumstance under which the liability provisions</u>	1:lus
31	<u>of s. 607.144 are applicable;</u>	4.60

1	<u>4. In a proceeding by or in the right of the</u>	1:1us
2	<u>corporation to procure a judgment in its favor or by or in the</u>	4.64
3	<u>right of a shareholder, conscious disregard for the best</u>	
4	<u>interest of the corporation, or willful misconduct; or</u>	4.65
5	<u>5. In a proceeding by or in the right of someone other</u>	1:1us
6	<u>than the corporation or a shareholder, recklessness or an act</u>	4.67
7	<u>or omission which was committed in bad faith or with malicious</u>	
8	<u>purpose or in a manner exhibiting wanton and willful disregard</u>	4.70
9	<u>of human rights, safety, or property.</u>	4.71
10	<u>(2) For the purposes of this section, the term</u>	1:1us
11	<u>"recklessness" means acting, or failing to act, in disregard</u>	4.72
12	<u>of a risk:</u>	
13	<u>1. Known, or so obvious that it should have been</u>	4.73
14	<u>known, to the director; and</u>	
15	<u>2. The consequences of which are known to the</u>	4.74
16	<u>director, or so obvious that they should have been known, to</u>	4.75
17	<u>be so great as to make it highly probable that harm would</u>	4.76
18	<u>follow from such action or omission.</u>	
19	Section 6. Section 607.165, Florida Statutes, is	4.76
20	created to read:	
21	<u>607.165 Director deemed not to have derived improper</u>	1:1us
22	<u>personal benefit.--</u>	4.78
23	<u>(1) For purposes of ss. 607.014 and 607.1645, a</u>	1:1us
24	<u>director is deemed not to have derived an improper personal</u>	4.80
25	<u>benefit from any transaction if the transaction and nature of</u>	
26	<u>any personal benefit derived by the director is not prohibited</u>	4.81
27	<u>by state or federal law or regulation and, without further</u>	4.82
28	<u>limitation:</u>	
29	<u>(a) The transaction and the nature of any personal</u>	1:1us
30	<u>benefits derived by a director are disclosed or known to the</u>	4.84
31	<u>board of directors or a committee of the board of directors</u>	5.4

1	<u>and the transaction was authorized, approved, or ratified by a</u>	
2	<u>majority of the disinterested members of the board of</u>	5.5
3	<u>directors or committee by a vote or consent;</u>	
4	<u>(b) The transaction and the nature of any personal</u>	1:1us
5	<u>benefits derived by a director are disclosed or known to all</u>	5.7
6	<u>directors voting on the matter, and the transaction was</u>	5.8
7	<u>authorized, approved, or ratified by at least two directors</u>	5.9
8	<u>who comprise a majority of the disinterested directors</u>	5.10
9	<u>(whether or not such disinterested directors constitute a</u>	
10	<u>quorum);</u>	
11	<u>(c) The transaction and the nature of any personal</u>	1:1us
12	<u>benefits derived by a director are disclosed or known to the</u>	5.12
13	<u>shareholders entitled to vote, and the transaction was</u>	5.13
14	<u>authorized, approved, or ratified by the affirmative vote or</u>	5.14
15	<u>written consent of such shareholders who hold a majority of</u>	
16	<u>the shares, the voting of which is not controlled by directors</u>	5.15
17	<u>who derived a personal benefit from or otherwise had a</u>	
18	<u>personal interest in the transaction; or</u>	5.16
19	<u>(d) The transaction was fair and reasonable to the</u>	1:1us
20	<u>corporation at the time it was authorized by the board, a</u>	5.18
21	<u>committee, or the shareholders, notwithstanding that a</u>	
22	<u>director received a personal benefit.</u>	5.19
23	<u>(2) Common or interested directors may be counted in</u>	1:1us
24	<u>determining the presence of a quorum at a meeting of the board</u>	5.21
25	<u>of directors or a committee thereof which authorizes,</u>	
26	<u>approves, or ratifies such a transaction.</u>	5.22
27	<u>(3) The circumstances set forth in subsection (1) are</u>	5.24
28	<u>not exclusive and do not preclude the existence of other</u>	
29	<u>circumstances under which a director will be deemed not to</u>	5.25
30	<u>have derived an improper benefit.</u>	
31		

1	<u>Section 7. Liability of directors or supervisory</u>	5.26
2	<u>committee members of credit unions.--</u>	5.27
3	<u>(1) A director of a credit union organized under state</u>	5.28
4	<u>or federal law, or a member of the supervisory committee of</u>	
5	<u>such credit union, is not personally liable for monetary</u>	5.30
6	<u>damages to the credit union, its members, or any other persons</u>	
7	<u>for any statement, vote, or decision regarding corporate</u>	5.31
8	<u>management or policy taken as a director at a duly called</u>	5.32
9	<u>meeting of the board of directors or as a member of the</u>	
10	<u>supervisory committee at a duly called meeting of such</u>	5.34
11	<u>committee, or any failure to take any action at such meeting,</u>	5.35
12	<u>unless:</u>	
13	<u>(a) The director or the member of the supervisory</u>	5.37
14	<u>committee, breached or failed to perform his duties as a</u>	5.38
15	<u>director or as a member of the supervisory committee; and</u>	
16	<u>(b) The breach or failure to perform by the director</u>	5.40
17	<u>or the member of the supervisory committee constitutes:</u>	
18	<u>1. A violation of the criminal law, unless the</u>	1:1us
19	<u>director or the member of the supervisory committee had</u>	5.42
20	<u>reasonable cause to believe his conduct was lawful or had no</u>	5.44
21	<u>reasonable cause to believe his conduct was unlawful. A</u>	5.45
22	<u>judgment or other final adjudication against a director or a</u>	
23	<u>member of a supervisory committee in any criminal proceeding</u>	5.46
24	<u>for a violation of the criminal law estops that director or</u>	5.47
25	<u>member from contesting the fact that his breach, or failure to</u>	
26	<u>perform, constitutes a violation of the criminal law; but does</u>	5.50
27	<u>not estop the director or member of the supervisory committee</u>	5.51
28	<u>from establishing that he had reasonable cause to believe that</u>	5.53
29	<u>his conduct was lawful or had no reasonable cause to believe</u>	
30	<u>that his conduct was unlawful;</u>	5.54
31		

1	<u>2. A transaction from which the director or the member</u>	1:lus
2	<u>of the supervisory committee derived an improper personal</u>	5.58
3	<u>benefit, either directly or indirectly; or</u>	5.59
4	<u>3. Recklessness or an act or omission which was</u>	1:lus
5	<u>committed in bad faith or with malicious purpose or in a</u>	5.62
6	<u>manner exhibiting wanton and willful disregard of human</u>	
7	<u>rights, safety, or property.</u>	5.63
8	<u>(2) For the purposes of this section, the term</u>	1:lus
9	<u>"recklessness" means acting, or failing to act, in disregard</u>	5.64
10	<u>of a risk:</u>	
11	<u>1. Known, or so obvious that it should have been</u>	5.65
12	<u>known, to the director or member of the supervisory committee;</u>	
13	<u>and</u>	
14	<u>2. The consequences of which are known to the director</u>	5.67
15	<u>or the member of the supervisory committee, or so obvious that</u>	5.68
16	<u>they should have been known, to be so great as to make it</u>	
17	<u>highly probable that harm would follow from such action or</u>	5.69
18	<u>omission.</u>	
19	<u>Section 8. Liability of trustees of self-insurance</u>	5.70
20	<u>trust fund.--</u>	5.72
21	<u>(1) A trustee of any self-insurance trust fund</u>	1:lus
22	<u>organized under the laws of this state is not personally</u>	5.75
23	<u>liable for monetary damages to any person for any statement,</u>	
24	<u>vote, or decision regarding the management or policy of the</u>	5.76
25	<u>fund taken as a trustee at a duly called meeting of the board</u>	5.77
26	<u>of trustees or any failure to take any action at such meeting,</u>	5.79
27	<u>unless:</u>	5.80
28	<u>(a) The trustee breached or failed to perform his</u>	5.81
29	<u>duties as a trustee; and</u>	5.82
30	<u>(b) The trustee's breach of, or failure to perform,</u>	1:lus
31	<u>his duties constitutes:</u>	5.84

1	<u>1. A violation of the criminal law, unless the trustee</u>	1:lus
2	<u>had reasonable cause to believe his conduct was lawful or had</u>	6.2
3	<u>no reasonable cause to believe his conduct was unlawful. A</u>	6.4
4	<u>judgment or other final adjudication against a trustee in any</u>	6.5
5	<u>criminal proceeding for violation of the criminal law estops</u>	6.5
6	<u>that trustee from contesting the fact that his breach, or</u>	6.6
7	<u>failure to perform, constitutes a violation of the criminal</u>	6.7
8	<u>law; but does not estop the trustee from establishing that he</u>	6.8
9	<u>had reasonable cause to believe that his conduct was lawful or</u>	6.8
10	<u>had no reasonable cause to believe that his conduct was</u>	6.9
11	<u>unlawful;</u>	
12	<u>2. A transaction from which the trustee derived an</u>	1:lus
13	<u>improper personal benefit, either directly or indirectly; or</u>	6.11
14	<u>3. Recklessness or an act or omission which was</u>	1:lus
15	<u>committed in bad faith or with malicious purpose or in a</u>	6.14
16	<u>manner exhibiting wanton and willful disregard of human</u>	
17	<u>rights, safety, or property.</u>	6.15
18	<u>(2) For the purposes of this section, the term</u>	1:lus
19	<u>"recklessness" means acting or failing to act, in disregard of</u>	6.16
20	<u>a risk:</u>	
21	<u>(a) Known, or so obvious that it should have been</u>	6.17
22	<u>known, to the trustee; and</u>	
23	<u>(b) The consequences of which are known to the</u>	6.18
24	<u>trustee, or so obvious that they should have been known, to be</u>	6.19
25	<u>so great as to make it highly probable that harm would follow</u>	6.21
26	<u>from such action or omission.</u>	
27	<u>Section 9. Section 627.9122, Florida Statutes, is</u>	6.21
28	<u>created to read:</u>	6.22
29	<u>627.9122 Officers' and directors' liability claims;</u>	1:lus
30	<u>reports by insurers.--</u>	6.23
31		

1	<u>(1) Each insurer providing coverage for officers' and</u>	1:1us
2	<u>directors' liability coverage shall report to the Department</u>	6.24
3	<u>of Insurance any claim or action for damages claimed to have</u>	6.25
4	<u>been caused by error, omission, or negligence in the</u>	
5	<u>performance of the officer's or director's services, if the</u>	6.26
6	<u>claim resulted in:</u>	
7	<u>(a) A final judgment in any amount.</u>	6.27
8	<u>(b) A settlement in any amount.</u>	1:1us
9	<u>(c) A final disposition not resulting in payment on</u>	6.28
10	<u>behalf of the insured.</u>	
11		
12	<u>Reports shall be filed with the department no later than 60</u>	6.29
13	<u>days following the occurrence of any event listed in</u>	
14	<u>paragraphs (a), (b), or (c).</u>	6.30
15	<u>(2) The reports required by subsection (1) shall</u>	1:1us
16	<u>contain:</u>	6.31
17	<u>(a) The name, address, and position held by the</u>	1:1us
18	<u>insured, and the type of corporation or organization,</u>	6.32
19	<u>including classifications as provided in section 501 (c) of</u>	
20	<u>the Internal Revenue Code of 1954, as amended.</u>	6.33
21	<u>(b) The insured's policy number.</u>	6.34
22	<u>(c) The date of the occurrence which created the</u>	1:1us
23	<u>claim.</u>	6.35
24	<u>(d) The date the claim was reported to the insurer.</u>	6.36
25	<u>(e) The name of the injured person. This information</u>	6.37
26	<u>shall be privileged and confidential and shall not be</u>	
27	<u>disclosed by the department without the consent of the injured</u>	6.38
28	<u>person. This information may be used by the department for</u>	6.39
29	<u>purposes of identifying multiple or duplicate claims arising</u>	6.40
30	<u>out of the same occurrence.</u>	
31	<u>(f) The date of suit, if filed.</u>	6.41

1	<u>(g) The total number and names of all defendants</u>	1:1us
2	<u>involved in the claim.</u>	6.42
3	<u>(h) The date and amount of judgment or settlement,</u>	1:1us
4	<u>together with a copy of the settlement or judgment.</u>	6.43
5	<u>(i) In the case of a settlement, such information as</u>	1:1us
6	<u>the department may require with regard to the claimant's</u>	6.44
7	<u>anticipated future losses.</u>	6.45
8	<u>(j) The loss adjustment expense paid to defense</u>	1:1us
9	<u>counsel, and all other allocated loss adjustment expenses</u>	6.46
10	<u>paid.</u>	
11	<u>(k) The date and reason for final disposition, if no</u>	6.47
12	<u>judgment or settlement.</u>	
13	<u>(l) A summary of the occurrence which created the</u>	6.48
14	<u>claim, which shall include:</u>	
15	<u>1. Whether the injuries claimed were the result of</u>	6.49
16	<u>physical damage to the claimant, or were the result of damage</u>	
17	<u>to the reputation of the claimant, or were based on self-</u>	6.50
18	<u>dealing by the defendant, or were in the nature of a</u>	
19	<u>shareholder dispute.</u>	6.51
20	<u>2. A description of the type of activity which caused</u>	1:1us
21	<u>the injury.</u>	6.52
22	<u>3. The steps taken by the officers or directors to</u>	1:1us
23	<u>assure that similar occurrences are less likely in the future.</u>	6.53
24	<u>(m) Any other information required by the department</u>	6.54
25	<u>to analyze and evaluate the nature, causes, costs, and damages</u>	
26	<u>involved in officers' and directors' liability cases.</u>	6.55
27	<u>(3) The department shall include a summary of this</u>	1:1us
28	<u>information in its annual report.</u>	6.56
29	Section 10. Subsection (2) of section 627.915, Florida	6.56
30	Statutes, 1986 Supplement, is amended to read:	6.57
31	627.915 Insurer experience reporting.--	6.57

1	(2) Each insurer transacting fire, homeowner's	6.58
2	multiple peril, commercial multiple peril, medical	6.59
3	malpractice, products liability, workers' compensation,	
4	private passenger automobile liability, commercial automobile	6.60
5	liability, private passenger automobile physical damage,	6.61
6	commercial automobile physical damage, <u>officers' and</u>	
7	<u>directors' liability insurance</u> , or other liability insurance	6.62
8	shall report, for each such line of insurance, the information	6.63
9	specified in this subsection to the department. The	6.64
10	information shall be reported for direct Florida business only	6.65
11	and shall be reported on a calendar-year basis annually by	6.66
12	April 1 for the preceding calendar year:	
13	(a) Direct premiums written.	6.68
14	(b) Direct premiums earned.	6.70
15	(c) Loss reserves for all known claims:	6.71
16	1. At beginning of the year.	6.72
17	2. At end of the year.	6.73
18	(d) Reserves for losses incurred but not reported:	6.74
19	1. At beginning of the year.	6.77
20	2. At end of the year.	6.78
21	(e) Allocated loss adjustment expense:	6.79
22	1. Reserve at beginning of the year.	6.80
23	2. Reserve at end of the year.	6.81
24	3. Paid during the year.	6.82
25	(f) Unallocated loss adjustment expense:	6.83
26	1. Reserve at beginning of the year.	6.84
27	2. Reserve at end of the year.	7.1
28	3. Paid during the year.	7.2
29	(g) Direct losses paid.	7.4
30	(h) Underwriting income or loss.	7.6
31	(i) Commissions and brokerage fees.	7.8

1	(j) Taxes, licenses, and fees.	7.9
2	(k) Other acquisition costs.	7.10
3	(l) General expenses.	7.11
4	(m) Policyholder dividends.	7.12
5	(n) Net investment gain or loss and other income gain	7.14
6	or loss allocated pro rata by earned premium to Florida	
7	business utilizing the investment allocation formula contained	7.16
8	in the National Association of Insurance Commissioner's	
9	Profitability Report by line by state.	7.18
10	Section 11. <u>Nothing in this act shall be construed as</u>	7.19
11	<u>increasing or decreasing the liability of any person not</u>	7.20
12	<u>herein specifically delineated.</u>	
13	Section 12. This act shall take effect July 1, 1987,	7.20
14	or upon becoming a law, whichever occurs later.	7.21
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By the Committee on Judiciary-Civil and Senator Weinstock

This publication was produced at an average cost of 1.5 cents per page for the information of members of the legislature and the public.

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A bill to be entitled
An act relating to civil liability of
directors, officers, and trustees of not-for-
profit organizations, associations,
corporations, or trusts; providing immunity
from civil liability for certain uncompensated
directors, officers, and trustees of such
entities; providing exceptions, providing for
evidence; providing for application of act;
providing severability, providing an effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) For the purpose of this section, the
term "not-for-profit organization" means an organization,
association, corporation, or trust that has tax-exempt status
under paragraph (3), paragraph (4), or paragraph (6) of
subsection 501(c) of the Internal Revenue Code, as amended.

(2) Notwithstanding any other law, a director,
officer, or trustee of the governing body of any not-for-
profit organization who serves without compensation, other
than for per diem and reimbursement of actual expenses, is
immune from civil liability arising from the conduct of the
affairs of the not-for-profit organization, except when the
conduct amounts to gross negligence or willful or wanton
misconduct. There shall be no immunity for any action taken
as the operator of a motor vehicle.

(3)(a) Presumptive evidence of the tax-exempt status
of an organization, association, corporation, or trust under
paragraph (3), paragraph (4), or paragraph (6) of subsection

1 501(c) of the Internal Revenue Code, as amended, may consist
2 of:

3 1. A letter from the United States Internal Revenue
4 Service to the organization, association, corporation, or
5 trust giving preliminary or final approval to its application
6 for tax-exempt status under one of those paragraphs; or

7 2. An official publication of the United States
8 Internal Revenue Service listing the organization,
9 association, corporation, or trust as having approved tax-
10 exempt status under one of those paragraphs.

11 (b) Presumptive evidence of the uncompensated status
12 of a defendant may consist of an affidavit of the chief
13 financial officer of the not-for-profit organization.

14 (c) On the motion of a defendant based upon this
15 subsection, the court shall determine whether that defendant
16 is entitled to the benefit of subsection (2). If the court
17 finds that that defendant is entitled to the benefit of
18 subsection (2) and does not find reasonable probability of
19 gross negligence or willful or wanton misconduct, it shall
20 dismiss the cause of action as to that defendant.

21 Section 2. This act does not apply to any cause of
22 action that accrued prior to the effective date of this act.

23 Section 3. If any provision of this act or the
24 application thereof to any person or circumstance is held
25 invalid, the invalidity shall not affect other provisions or
26 applications of the act which can be given effect without the
27 invalid provision or application; and to this end the
28 provisions of this act are declared severable.

29 Section 4. This act shall take effect upon becoming a
30 law.

31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 278

The committee substitute for SB 278 provides that uncompensated officers, directors and trustees would not be granted immunity for actions taken as the operator of a motor vehicle

By the Committee on Commerce and Senators Jennings, Barron, Thomas, Childers, Crenshaw, Scott, Hair, Lanqley, Deratany, Johnson, Hollingsworth, Brown, Hill, Grant, Peterson, Beard, Malchon, Woodson, Thurman and Plummer

This publication was produced at an average cost of 1.5 cents per page for the information of members of the Legislature and the public.

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A bill to be entitled
An act relating to civil liability; amending s. 607.014, F.S.; authorizing corporations to indemnify directors, officers, employees, agents, and volunteers against liability and related expenses; providing for a procedure to pay such expenses; providing limitations on such indemnity; amending s. 617.028, F.S.; providing civil immunity to such persons associated with corporations not for profit; providing limitations on such immunity; providing for the approval and authorization of certain transactions negotiated by such persons; creating s. 607.1645, F.S.; providing officers, directors, and volunteers of a corporation immunity from civil liability; providing limitations; creating s. 607.165, F.S.; providing for the approval and authorization of certain transactions negotiated by an officer or director, the board of directors, or shareholders of a corporation; providing directors, officers, committee members, chief operating officers, executive officers and volunteers, of credit unions immunity from civil liability; providing limitations; providing trustees, officers, or volunteers of a self-insurance trust fund immunity from civil liability; providing limitations; providing trustees, directors, officers, members, or volunteers of a nonprofit organization immunity from civil liability;

1 providing limitations; providing an effective
2 date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Section 607.014, Florida Statutes, is
7 amended to read:

8 607.014 Indemnification of officers, directors,
9 employees, and agents.--

10 (1) A corporation shall have power to indemnify any
11 person who was or is a party, ~~or is threatened to be made a~~
12 ~~party,~~ to any threatened, ~~pending, or completed action, suit,~~
13 ~~or proceeding, whether civil, criminal, administrative, or~~
14 ~~investigative~~ (other than an action by, or in the right of,
15 the corporation), by reason of the fact that he is or was a
16 director, officer, employee, or agent of the corporation or is
17 or was serving at the request of the corporation as a
18 director, officer, employee, or agent of another corporation,
19 partnership, joint venture, trust, or other enterprise against
20 liability ~~expenses (including attorneys' fees), judgments,~~
21 ~~finer, and amounts paid in settlement actually and reasonably~~
22 ~~incurred by him~~ in connection with such ~~action, suit, or~~
23 proceeding, including any appeal thereof, if he acted in good
24 faith and in a manner he reasonably believed to be in, or not
25 opposed to, the best interests of the corporation and, with
26 respect to any criminal action or proceeding, had no
27 reasonable cause to believe his conduct was unlawful. The
28 termination of any ~~action, suit, or~~ proceeding by judgment,
29 order, settlement, or conviction or upon a plea of nolo
30 contendere or its equivalent shall not, of itself, create a
31 presumption that the person did not act in good faith and in a

1 | manner which he reasonably believed to be in, or not opposed
2 | to, the best interests of the corporation or, with respect to
3 | any criminal action or proceeding, had reasonable cause to
4 | believe that his conduct was unlawful.

5 | (2) A corporation shall have power to indemnify any
6 | person who was or is a party, ~~or is threatened to be made a~~
7 | party, to any proceeding ~~threatened, pending, or completed~~
8 | ~~action or suit~~ by or in the right of the corporation to
9 | procure a judgment in its favor by reason of the fact that he
10 | is or was a director, officer, employee, or agent of the
11 | corporation or is or was serving at the request of the
12 | corporation as a director, officer, employee, or agent of
13 | another corporation, partnership, joint venture, trust, or
14 | other enterprise against expenses and amounts paid in
15 | settlement not exceeding, in the judgment of the board of
16 | directors, the estimated expense of litigating the proceeding
17 | to conclusion, including attorneys' fees, actually and
18 | reasonably incurred ~~by him~~ in connection with the defense or
19 | settlement of such proceeding ~~action or suit~~, including any
20 | appeal thereof, if he acted in good faith and in a manner he
21 | reasonably believed to be in, or not opposed to, the best
22 | interests of the corporation, except that no indemnification
23 | shall be made under this subsection in respect of any claim,
24 | issue, or matter as to which such person shall have been
25 | adjudged to be liable ~~for negligence or misconduct in the~~
26 | ~~performance of his duty to the corporation~~ unless, and only to
27 | the extent that, the court in which such action or suit was
28 | brought, or any other court of competent jurisdiction, shall
29 | determine upon application that, despite the adjudication of
30 | liability but in view of all circumstances of the case, such
31 |

1 person is fairly and reasonably entitled to indemnity for such
2 expenses which such court shall deem proper.

3 (3) To the extent that a director, officer, employee,
4 or agent of a corporation has been successful on the merits or
5 otherwise in defense of any ~~action, suit, or~~ proceeding
6 referred to in subsection (1) or subsection (2), or in defense
7 of any claim, issue, or matter therein, he shall be
8 indemnified against expenses ~~(including attorneys' fees)~~
9 actually and reasonably incurred by him in connection
10 therewith.

11 (4) Any indemnification under subsection (1) or
12 subsection (2), unless pursuant to a determination by a court,
13 shall be made by the corporation only as authorized in the
14 specific case upon a determination that indemnification of the
15 director, officer, employee, or agent is proper in the
16 circumstances because he has met the applicable standard of
17 conduct set forth in subsection (1) or subsection (2). Such
18 determination shall be made:

19 (a) By the board of directors by a majority vote of a
20 quorum consisting of directors who were not parties to such
21 ~~action, suit, or~~ proceeding;

22 (b) If such a quorum is not obtainable or, even if
23 obtainable, by majority vote of a committee duly designated by
24 the board of directors (in which directors who are parties may
25 participate) consisting solely of two or more directors not at
26 the time parties to the proceeding;

27 (c) By independent legal counsel:

28 1. Selected by the board of directors prescribed in
29 paragraph (a) or the committee prescribed in paragraph (b), or

30 2. If a quorum of the directors cannot be obtained for
31 paragraph (a) and the committee cannot be designated under

1 paragraph (b), selected by majority vote of the full board of
2 directors (in which directors who are parties may participate)
3 ~~a quorum of disinterested directors so directs, by independent~~
4 ~~legal counsel in a written opinion; or~~

5 (d) (e) By the shareholders by a majority vote of a
6 quorum consisting of shareholders who were not parties to such
7 action, suit, or proceeding or, if no such quorum is
8 obtainable, by a majority vote of shareholders who were not
9 parties to such proceeding.

10 (5) Evaluation of the reasonableness of expenses and
11 authorization of indemnification shall be made in the same
12 manner as the determination that indemnification is
13 permissible. However, if the determination of permissibility
14 is made by independent legal counsel, persons specified by
15 paragraph (4)(c) shall evaluate the reasonableness of expenses
16 and may authorize indemnification.

17 (6) Expenses incurred by an officer or director in
18 defending a civil or criminal proceeding may be paid by the
19 corporation in advance of the final disposition of such
20 proceeding upon receipt of an undertaking by or on behalf of
21 such director or officer to repay such amount if he is
22 ultimately found not to be entitled to indemnification by the
23 corporation pursuant to this section. Expenses incurred by
24 other employees and agents may be paid in advance upon such
25 terms or conditions that the board of directors deems
26 appropriate.

27 ~~(5) Expenses, including attorneys' fees, incurred in~~
28 ~~defending a civil or criminal action, suit, or proceeding may~~
29 ~~be paid by the corporation in advance of the final disposition~~
30 ~~of such action, suit, or proceeding upon a preliminary~~
31 ~~determination following one of the procedures set forth in~~

1 ~~subsection (4) that the director, officer, employee, or agent~~
2 ~~met the applicable standard of conduct set forth in subsection~~
3 ~~(1) or subsection (2) or as authorized by the board of~~
4 ~~directors in the specific case and, in either event, upon~~
5 ~~receipt of an undertaking by or on behalf of the director,~~
6 ~~officer, employee, or agent to repay such amount, unless it~~
7 ~~shall ultimately be determined that he is entitled to be~~
8 ~~indemnified by the corporation as authorized in this section.~~

9 (7)(6) The indemnification and advancement of expenses
10 provided pursuant to this section are not exclusive, and a
11 corporation may shall have the power to make any other or
12 further indemnification or advancement of expenses of any of
13 its directors, officers, employees, or agents, under any
14 bylaw, agreement, vote of shareholders or disinterested
15 directors, or otherwise, both as to action in his official
16 capacity and as to action in another capacity while holding
17 such office, except an indemnification against gross
18 negligence or willful misconduct. However, indemnification or
19 advancement of expenses shall not be made to or on behalf of
20 any director, officer, employee, or agent if a judgment or
21 other final adjudication establishes that his actions, or
22 omissions to act, were material to the cause of action so
23 adjudicated and constitute:

24 (a) A violation of the criminal law, unless the
25 director, officer, employee, or agent had reasonable cause to
26 believe his conduct was lawful or had no reasonable cause to
27 believe his conduct was unlawful;

28 (b) A transaction from which the director, officer,
29 employee, or agent derived an improper personal benefit;

1 (c) In the case of a director, a circumstance under
2 which the liability provisions of s. 607.144 are applicable;
3 or

4 (d) Willful misconduct or a conscious disregard for
5 the best interests of the corporation in a proceeding by or in
6 the right of the corporation to procure a judgment in its
7 favor or in a proceeding by or in the right of a shareholder.

8 ~~(8)†~~ Indemnification and advancement of expenses as
9 provided in this section shall continue as, unless otherwise
10 provided when authorized or ratified to a person who has
11 ceased to be a director, officer, employee, or agent and shall
12 inure to the benefit of the heirs, executors, and
13 administrators of such a person, unless otherwise provided
14 when authorized or ratified.

15 (9) Unless the corporation's articles of incorporation
16 provide otherwise, notwithstanding the failure of a
17 corporation to provide indemnification, and despite any
18 contrary determination of the board or of the shareholders in
19 the specific case, a director, officer, employee, or agent of
20 the corporation who is or was a party to a proceeding may
21 apply for indemnification or advancement of expenses, or both,
22 to the court conducting the proceeding, to the circuit court,
23 or to another court of competent jurisdiction. On receipt of
24 an application, the court, after giving any notice that it
25 considers necessary, may order indemnification and advancement
26 of expenses, including expenses incurred in seeking court-
27 ordered indemnification or advancement of expenses, if it
28 determines that:

29 (a) The director, officer, employee, or agent is
30 entitled to mandatory indemnification under subsection (3), in
31 which case the court shall also order the corporation to pay

1 the director reasonable expenses incurred in obtaining court-
2 ordered indemnification or advancement of expenses;

3 (b) The director, officer, employee, or agent is
4 entitled to indemnification or advancement of expenses, or
5 both, by virtue of the exercise by the corporation of its
6 power pursuant to subsection (7); or

7 (c) The director, officer, employee, or agent is
8 fairly and reasonably entitled to indemnification or
9 advancement of expenses, or both, in view of all the relevant
10 circumstances, regardless of whether such person met the
11 standard of conduct set forth in subsection (1), subsection
12 (2), or subsection (7).

13 (10) For purposes of this section, the term
14 "corporation" includes, in addition to the resulting
15 corporation, any constituent corporation (including any
16 constituent of a constituent) absorbed in a consolidation or
17 merger, so that any person who is or was a director, officer,
18 employee, or agent of a constituent corporation, or is or was
19 servng at the request of a constituent corporation as a
20 director, officer, employee, or agent of another corporation,
21 partnership, joint venture, trust, or other enterprise, is in
22 the same position under this section with respect to the
23 resulting or surviving corporation as he would have with
24 respect to such constituent corporation if its separate
25 existence had continued.

26 (11) For purposes of this section, the term "other
27 enterprises" includes employee benefit plans; the term
28 "expenses" includes counsel fees, including those for appeal;
29 the term "liability" includes obligations to pay a judgment,
30 settlement, penalty, fine (including an excise tax assessed
31 with respect to any employee benefit plan), and expenses

1 actually and reasonably incurred with respect to a proceeding;
2 the term "proceeding" includes any threatened, pending, or
3 completed action, suit, or other type of proceeding, whether
4 civil, criminal, administrative, or investigative and whether
5 formal or informal; the term "agent" includes a volunteer; and
6 the term "serving at the request of the corporation" includes
7 any service as a director, officer, employee, or agent of the
8 corporation that imposes duties on such persons, including
9 duties relating to an employee benefit plan, its participants
10 or beneficiaries; and the term "not opposed to the best
11 interest of the corporation" describes the actions of a person
12 who acts in good faith and in a manner he reasonably believes
13 to be in the best interests of the participants and
14 beneficiaries of an employee benefit plan.

15 (12)(8) A corporation shall have power to purchase and
16 maintain insurance on behalf of any person who is or was a
17 director, officer, employee, or agent of the corporation or is
18 or was serving at the request of the corporation as a
19 director, officer, employee, or agent of another corporation,
20 partnership, joint venture, trust, or other enterprise against
21 any liability asserted against him and incurred by him in any
22 such capacity or arising out of his status as such, whether or
23 not the corporation would have the power to indemnify him
24 against such liability under the provisions of this section.

25 (13)(9) If any expenses or other amounts are paid by
26 way of indemnification otherwise than by court order or action
27 by the shareholders or by an insurance carrier pursuant to
28 insurance maintained by the corporation, the corporation
29 shall, not later than the time of delivery to shareholders of
30 written notice of the next annual meeting of shareholders,
31 unless such meeting is held within 3 months from the date of

1 such payment, and, in any event, within 15 months from the
2 date of such payment, deliver either personally or by mail to
3 each shareholder of record at the time entitled to vote for
4 the election of directors a statement specifying the persons
5 paid, the amounts paid, and the nature and status at the time
6 of such payment of the litigation or threatened litigation.

7 Section 2. Section 617.028, Florida Statutes, is
8 amended to read:

9 617.028 Indemnification and liability of officers,
10 directors, managers, trustees, employees, volunteers, and
11 agents.--The provisions of ss. 617.014, 617.1645, and
12 617.165 apply to corporations not for profit. Any reference
13 to "directors" in those sections ~~that-section~~ includes the
14 directors, managers, or trustees of a corporation not for
15 profit. Any reference to "shareholders" in those sections
16 includes members of a corporation not for profit.

17 Section 3. Section 607.1645, Florida Statutes, is
18 created to read:

19 607.1645 Liability of directors, officers, and
20 volunteers.--

21 (1) A director, officer, or volunteer is not
22 personally liable for monetary damages to the corporation or
23 any other person for any action taken as a director, officer,
24 or volunteer, or any failure to take any action, unless the
25 person asserting liability proves by clear and convincing
26 evidence that:

27 (a) The director, officer, or volunteer breached or
28 failed to perform his duties as a director, officer, or
29 volunteer; and

30 (b) The director's, officer's, or volunteer's breach
31 of, or failure to perform, those duties constitutes:

1 1. A violation of the criminal law, unless the
2 director, officer, or volunteer had reasonable cause to
3 believe his conduct was lawful or had no reasonable cause to
4 believe his conduct was unlawful. A judgment or other final
5 adjudication against a director, officer, or volunteer in any
6 criminal proceeding for a violation of the criminal law estops
7 that director, officer, or volunteer from contesting the fact
8 that his breach, or failure to perform, constitutes a
9 violation of the criminal law, but does not estop the
10 director, officer, or volunteer from establishing that he had
11 reasonable cause to believe that his conduct was lawful or had
12 no reasonable cause to believe that his conduct was unlawful;

13 2. A transaction from which the director, officer, or
14 volunteer derived an improper personal benefit;

15 3. A circumstance under which the liability provisions
16 of s. 607.144 are applicable;

17 4. In a proceeding by or in the right of the
18 corporation to procure a judgment in its favor or by or in the
19 right of a shareholder, conscious disregard for the best
20 interest of the corporation or willful misconduct; or

21 5. In a proceeding by or in the right of someone other
22 than the corporation or a shareholder, recklessness or willful
23 misconduct.

24 (2) For purposes of this section, the term:

25 (a) "Officer" means a corporation's president; any
26 vice president in charge of a principal business unit,
27 division, or function of the corporation; any other officer
28 who performs a policymaking function, or any other person who
29 performs similar policymaking functions, for the corporation;
30 and any other person made a party to a proceeding by virtue of
31 being a named officer of the corporation.

1 (b) "Recklessness" means the acting, or omission to
2 act, in conscious disregard of a risk:

3 1. Known, or so obvious that it should have been
4 known, to the director, officer, or volunteer; and

5 2. Known to the director, officer, or volunteer, or so
6 obvious that it should have been known, to be so great as to
7 make it highly probable that harm would follow from such
8 action or omission.

9 (c) "Volunteer" means an individual performing
10 services for a corporation who does not receive compensation
11 or any other remuneration for such services, other than
12 reimbursement for expenses actually incurred, and includes a
13 volunteer serving as a director, officer, trustee, or direct
14 service volunteer.

15 Section 4. Section 607.165, Florida Statutes, is
16 created to read:

17 607.165 Director, officer, or volunteer deemed not to
18 have derived improper personal benefit.--

19 (1) For purposes of ss. 607.014 and 607.1645, a
20 director, officer, or volunteer is deemed not to have derived
21 an improper personal benefit from any transaction if, without
22 limitation:

23 (a) The transaction and the nature of any personal
24 benefits derived by the director, officer, or volunteer of the
25 corporation are disclosed or known to the board of directors
26 or a committee of the board of directors and the transaction
27 was authorized, approved, or ratified by a majority of the
28 disinterested members of the board of directors or committee
29 by a vote or consent;

30 (b) The transaction and the nature of any personal
31 benefits derived by directors, officers, or volunteers are

1 disclosed or known to all directors voting on the matter, and
2 the transaction was authorized, approved, or ratified by at
3 least two directors who comprise a majority of the
4 disinterested directors (whether or not such disinterested
5 directors constitute a quorum);

6 (c) The transaction and personal benefit were
7 disclosed or known to the shareholders entitled to vote, and
8 the transaction was authorized, approved, or ratified by the
9 affirmative vote or written consent of such shareholders who
10 hold a majority of the shares, the voting of which is not
11 controlled by directors who derived a personal benefit from or
12 otherwise had a personal interest in the transaction; or

13 (d) The transaction was fair and reasonable to the
14 corporation at the time it was authorized by the board, a
15 committee, or the shareholders, notwithstanding that a
16 director, officer, or volunteer received a personal benefit.

17 (2) Common or interested directors may be counted in
18 determining the presence of a quorum at a meeting of the board
19 of directors or a committee thereof which authorizes,
20 approves, or ratifies such a transaction.

21 (3) The circumstances set forth in paragraphs (a),
22 (b), (c), and (d) of subsection (1) are not exclusive and do
23 not preclude the existence of other circumstances under which
24 a director, officer, or volunteer will be deemed not to have
25 derived an improper benefit.

26 Section 5. Liability of directors, officers, chief
27 operating officers, committee members, executive officers, and
28 volunteers of credit unions --

29 (1) A director, officer, chief operating officer,
30 committee member, executive officer, or volunteer of a credit
31 union organized under chapter 657, Florida Statutes, is not

1 personally liable for monetary damages to the credit union,
2 its members, or any other persons for any action taken as a
3 director, officer, chief operating officer, committee member,
4 executive officer, or volunteer, or any failure to take any
5 action, unless the person asserting liability proves by clear
6 and convincing evidence that:

7 (a) The director, officer, chief operating officer,
8 committee member, executive officer, or volunteer breached or
9 failed to perform his duties as a director, officer, chief
10 operating officer, committee member, executive officer, or
11 volunteer; and

12 (b) The director's, officer's, chief operating
13 officer's, committee member's, executive officer's, or
14 volunteer's breach of, or failure to perform, constitutes:

15 1. A violation of the criminal law, unless the
16 director, officer, chief operating officer, committee member,
17 executive officer, or volunteer had reasonable cause to
18 believe his conduct was lawful or had no reasonable cause to
19 believe his conduct was unlawful. A judgment or other final
20 adjudication against a director, officer, chief operating
21 officer, committee member, executive officer, or volunteer in
22 any criminal proceeding for a violation of the criminal law
23 estops that director, officer, chief operating officer,
24 committee member, executive officer, or volunteer from
25 contesting the fact that his breach, or failure to perform,
26 constitutes a violation of the criminal law; but does not
27 estop the director, officer, chief operating officer,
28 committee member, executive officer, or volunteer from
29 establishing that he had reasonable cause to believe that his
30 conduct was lawful or had no reasonable cause to believe that
31 his conduct was unlawful;

1 2. A transaction from which the director, officer,
2 chief operating officer, committee member, executive officer,
3 or volunteer derived an improper personal benefit; or

4 3. Recklessness or willful misconduct.

5 (2) For purposes of this section, the term:

6 (a) "Recklessness" means the acting, or omission to
7 act, in conscious disregard of a risk:

8 1. Known, or so obvious that it should have been
9 known, to the director, officer, chief operating officer,
10 committee member, executive officer, or volunteer; and

11 2. Known to the director, officer, chief operating
12 officer, committee member, executive officer, or volunteer, or
13 so obvious that it should have been known, to be so great as
14 to make it highly probable that harm would follow from such
15 action or omission.

16 (b) "Volunteer" means an individual performing
17 services for a credit union who does not receive compensation
18 or any other remuneration for such services, other than
19 reimbursement for expenses actually incurred, and includes a
20 volunteer serving as a director, officer, chief operating
21 officer, committee member, executive officer, or direct
22 service volunteer.

23 Section 6. Liability of trustees, officers, and
24 volunteers of self-insurance trust fund.--

25 (1) A trustee, officer, or volunteer of any self-
26 insurance trust fund organized under the laws of this state is
27 not personally liable for monetary damages to any person for
28 any action taken as a trustee, officer, or volunteer, or any
29 failure to take any action, unless the person asserting
30 liability proves by clear and convincing evidence that:

31

1 (a) The trustee, officer, or volunteer breached or
2 failed to perform his duties as a trustee, officer, or
3 volunteer; and

4 (b) The trustee's, officer's, or volunteer's breach
5 of, or failure to perform, his duties constitutes:

6 1. A violation of the criminal law, unless the
7 trustee, officer, or volunteer had reasonable cause to believe
8 his conduct was lawful or had no reasonable cause to believe
9 his conduct was unlawful. A judgment or other final
10 adjudication against a trustee, officer, or volunteer in any
11 criminal proceeding for violation of the criminal law estops
12 that trustee, officer, or volunteer from contesting the fact
13 that his breach, or failure to perform, constitutes a
14 violation of the criminal law; but does not estop the trustee,
15 officer, or volunteer from establishing that he had reasonable
16 cause to believe that his conduct was lawful or had no
17 reasonable cause to believe that his conduct was unlawful;

18 2. A transaction from which the trustee, officer, or
19 volunteer derived an improper personal benefit; or

20 3. Recklessness or willful misconduct.

21 (2) For purposes of this section, the term:

22 (a) "Recklessness" means the acting, or omission to
23 act, in conscious disregard of a risk:

24 1. Known, or so obvious that it should have been
25 known, to the trustee, officer, or volunteer; and

26 2. Known to the trustee, officer, or volunteer, or so
27 obvious that it should have been known, to be so great as to
28 make it highly probable that harm would follow from such
29 action or omission.

30 (b) "Volunteer" means an individual performing
31 services for a self-insurance trust fund who does not receive

1 compensation or any other remuneration for such services,
2 other than reimbursement for expenses actually incurred, and
3 includes a volunteer serving as a trustee, officer, or direct
4 service volunteer.

5 Section 7. (1) A director, officer, trustee, member,
6 or volunteer of a nonprofit organization is not personally
7 liable for monetary damages to any person for any action taken
8 as a director, officer, trustee, member, or volunteer, or any
9 failure to take any action, unless the person asserting
10 liability proves by clear and convincing evidence that:

11 (a) The director, officer, trustee, member, or
12 volunteer breached or failed to perform his duties as a
13 director, officer, trustee, member, or volunteer; and

14 (b) The director's, officer's, trustee's, member's, or
15 volunteer's breach of, or failure to perform, those duties
16 constitutes:

17 1. A violation of the criminal law, unless the
18 director, officer, trustee, member, or volunteer had
19 reasonable cause to believe his conduct was lawful or had no
20 reasonable cause to believe his conduct was unlawful. A
21 judgment or other final adjudication against a director,
22 officer, trustee, member, or volunteer in any criminal
23 proceeding for a violation of the criminal law estops that
24 director, officer, trustee, member, or volunteer from
25 contesting the fact that his breach, or failure to perform,
26 constitutes a violation of the criminal law; but does not
27 estop the director, officer, trustee, member, or volunteer
28 from establishing that he had reasonable cause to believe that
29 his conduct was lawful or had no reasonable cause to believe
30 that his conduct was unlawful;
31

1 2. A transaction from which the director, officer,
2 trustee, member, or volunteer derived an improper personal
3 benefit; or

4 3. Recklessness or willful misconduct.

5 (2) For purposes of this section, the term:

6 (a) "Nonprofit organization" means an entity, other
7 than a corporation, recognized under section 501(c)(3),
8 section 501(c)(4), or section 501(c)(6) of the Internal
9 Revenue Code of 1986.

10 (b) "Recklessness" means the acting, or omission to
11 act, in conscious disregard of a risk:

12 1. Known, or so obvious that it should have been
13 known, to the director, officer, trustee, member, or
14 volunteer; and

15 2. Known to the director, officer, trustee, member, or
16 volunteer, or so obvious that it should have been known, to be
17 so great as to make it highly probable that harm would follow
18 from such action or omission.

19 (c) "Volunteer" means an individual performing
20 services for a nonprofit organization who does not receive
21 compensation or any other remuneration for such services,
22 other than reimbursement for expenses actually incurred, and
23 includes a volunteer serving as a director, officer, trustee,
24 or direct service volunteer.

25 Section 8. This act shall take effect July 1, 1987, or
26 upon becoming a law, whichever occurs later.

27
28 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
29 COMMITTEE SUBSTITUTE FOR
30 Senate Bill's 1096, 963, & 654

31 This committee substitute makes no substantial changes.

By Senators Jennings, Barron, Thomas, W.D. Childers, Crenshaw, Scott, Hair, Langley, Lurataw, Robinson, Pullingworth, Brown, Hill, Grant and Peterson

This publication was produced at an average cost of 1.5 cents per page for the information of members of the legislature and the public.

A bill to be entitled

An act relating to civil liability; amending s. 607.014, F.S.; authorizing corporations to indemnify directors, officers, employees, agents, and volunteers against liability and related expenses; providing for a procedure to pay such expenses; providing limitations on such indemnity; amending s. 617.028, F.S.; providing civil immunity to such persons associated with corporations not for profit; providing limitations on such immunity; providing for the approval and authorization of certain transactions negotiated by such persons; creating s. 607.1645, F.S.; providing officers, directors, and volunteers of a corporation immunity from civil liability; providing limitations; creating s. 607.165, F.S.; providing for the approval and authorization of certain transactions negotiated by an officer or director, the board of directors, or shareholders of a corporation; providing directors, officers, committee members, chief operating officers, executive officers and volunteers, of credit unions immunity from civil liability; providing limitations; providing trustees, officers, or volunteers of a self-insurance trust fund immunity from civil liability; providing limitations; providing trustees, directors, officers, members, or volunteers of a nonprofit organization immunity from civil liability;

1 providing limitations; providing an effective
2 date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Section 607.014, Florida Statutes, is
7 amended to read:

8 607.014 Indemnification of officers, directors,
9 employees, and agents.--

10 (1) A corporation shall have power to indemnify any
11 person who was or is a party, ~~or is threatened to be made a~~
12 ~~party,~~ to any ~~threatened,~~ ~~pending,~~ ~~or completed~~ ~~action,~~ ~~suit,~~
13 ~~or proceeding,~~ ~~whether civil,~~ ~~criminal,~~ ~~administrative,~~ ~~or~~
14 ~~investigative~~ (other than an action by, or in the right of,
15 the corporation), by reason of the fact that he is or was a
16 director, officer, employee, or agent of the corporation or is
17 or was serving at the request of the corporation as a
18 director, officer, employee, or agent of another corporation,
19 partnership, joint venture, trust, or other enterprise against
20 liability ~~expenses~~ ~~(including attorneys' fees)~~ ~~,~~ ~~judgments,~~
21 ~~finer,~~ ~~and amounts paid in settlement~~ ~~actually and reasonably~~
22 incurred by him in connection with such ~~action,~~ ~~suit,~~ ~~or~~
23 proceeding, including any appeal thereof, if he acted in good
24 faith and in a manner he reasonably believed to be in, or not
25 opposed to, the best interests of the corporation and, with
26 respect to any criminal action or proceeding, had no
27 reasonable cause to believe his conduct was unlawful. The
28 termination of any ~~action,~~ ~~suit,~~ ~~or~~ proceeding by judgment,
29 order, settlement, or conviction or upon a plea of nolo
30 contendere or its equivalent shall not, of itself, create a
31 presumption that the person did not act in good faith and in a

1 manner which he reasonably believed to be in, or not opposed
2 to, the best interests of the corporation or, with respect to
3 any criminal action or proceeding, had reasonable cause to
4 believe that his conduct was unlawful.

5 (2) A corporation shall have power to indemnify any
6 person who was or is a party, ~~or is threatened to be made a~~
7 party, to any proceeding threatened, pending, or completed
8 action or suit by or in the right of the corporation to
9 procure a judgment in its favor by reason of the fact that he
10 is or was a director, officer, employee, or agent of the
11 corporation or is or was serving at the request of the
12 corporation as a director, officer, employee, or agent of
13 another corporation, partnership, joint venture, trust, or
14 other enterprise against expenses and amounts paid in
15 settlement not exceeding, in the judgment of the board of
16 directors, the estimated expense of litigating the proceeding
17 to conclusion, including attorneys' fees, actually and
18 reasonably incurred by him in connection with the defense or
19 settlement of such proceeding action or suit, including any
20 appeal thereof, if he acted in good faith and in a manner he
21 reasonably believed to be in, or not opposed to, the best
22 interests of the corporation, except that no indemnification
23 shall be made under this subsection in respect of any claim,
24 issue, or matter as to which such person shall have been
25 adjudged to be liable ~~for negligence or misconduct in the~~
26 ~~performance of his duty to the corporation~~ unless, and only to
27 the extent that, the court in which such action or suit was
28 brought, or any other court of competent jurisdiction, shall
29 determine upon application that, despite the adjudication of
30 liability but in view of all circumstances of the case, such
31

1 person is fairly and reasonably entitled to indemnity for such
2 expenses which such court shall deem proper.

3 (3) To the extent that a director, officer, employee,
4 or agent of a corporation has been successful on the merits or
5 otherwise in defense of any ~~action, suit, or~~ proceeding
6 referred to in subsection (1) or subsection (2), or in defense
7 of any claim, issue, or matter therein, he shall be
8 indemnified against expenses ~~(including attorneys' fees)~~
9 actually and reasonably incurred by him in connection
10 therewith.

11 (4) Any indemnification under subsection (1) or
12 subsection (2), unless pursuant to a determination by a court,
13 shall be made by the corporation only as authorized in the
14 specific case upon a determination that indemnification of the
15 director, officer, employee, or agent is proper in the
16 circumstances because he has met the applicable standard of
17 conduct set forth in subsection (1) or subsection (2). Such
18 determination shall be made:

19 (a) By the board of directors by a majority vote of a
20 quorum consisting of directors who were not parties to such
21 ~~action, suit, or~~ proceeding;

22 (b) If such a quorum is not obtainable or, even if
23 obtainable, by majority vote of a committee duly designated by
24 the board of directors (in which directors who are parties may
25 participate) consisting solely of two or more directors not at
26 the time parties to the proceeding;

27 (c) By independent legal counsel:

28 1. Selected by the board of directors prescribed in
29 paragraph (a) or the committee prescribed in paragraph (b); or

30 2. If a quorum of the directors cannot be obtained for
31 paragraph (a) and the committee cannot be designated under

1 paragraph (b), selected by majority vote of the full board of
 2 directors (in which directors who are parties may participate)
 3 a quorum of disinterested directors so directs, by independent
 4 legal counsel in a written opinion; or

5 (d)(e) By the shareholders by a majority vote of a
 6 quorum consisting of shareholders who were not parties to such
 7 action, suit, or proceeding or, if no such quorum is
 8 obtainable, by a majority vote of shareholders who were not
 9 parties to such proceeding.

10 (5) Evaluation of the reasonableness of expenses and
 11 authorization of indemnification shall be made in the same
 12 manner as the determination that indemnification is
 13 permissible. However, if the determination of permissibility
 14 is made by independent legal counsel, persons specified by
 15 paragraph (4)(c) shall evaluate the reasonableness of expenses
 16 and may authorize indemnification.

17 (6) Expenses incurred by an officer or director in
 18 defending a civil or criminal proceeding may be paid by the
 19 corporation in advance of the final disposition of such
 20 proceeding upon receipt of an undertaking by or on behalf of
 21 such director or officer to repay such amount if he is
 22 ultimately found not to be entitled to indemnification by the
 23 corporation pursuant to this section. Expenses incurred by
 24 other employees and agents may be paid in advance upon such
 25 terms or conditions that the board of directors deems
 26 appropriate.

27 ~~(5) Expenses, including attorneys' fees, incurred in~~
 28 ~~defending a civil or criminal action, suit, or proceeding may~~
 29 ~~be paid by the corporation in advance of the final disposition~~
 30 ~~of such action, suit, or proceeding upon a preliminary~~
 31 ~~determination following one of the procedures set forth in~~

1 ~~subsection (4) that the director, officer, employee, or agent~~
 2 ~~met the applicable standard of conduct set forth in subsection~~
 3 ~~(1) or subsection (2) or as authorized by the board of~~
 4 ~~directors in the specific case and, in either event, upon~~
 5 ~~receipt of an undertaking by or on behalf of the director,~~
 6 ~~officer, employee, or agent to repay such amount, unless it~~
 7 ~~shall ultimately be determined that he is entitled to be~~
 8 ~~indemnified by the corporation as authorized in this section;~~

9 (7)(6) The indemnification and advancement of expenses
 10 provided pursuant to this section are not exclusive, and a
 11 corporation may shall have the power to make any other or
 12 further indemnification or advancement of expenses of any of
 13 its directors, officers, employees, or agents, under any
 14 bylaw, agreement, vote of shareholders or disinterested
 15 directors, or otherwise, both as to action in his official
 16 capacity and as to action in another capacity while holding
 17 such office, except an indemnification against gross
 18 negligence or willful misconduct. However, indemnification or
 19 advancement of expenses shall not be made to or on behalf of
 20 any director, officer, employee, or agent if a judgment or
 21 other final adjudication establishes that his actions, or
 22 omissions to act, were material to the cause of action so
 23 adjudicated and constitute:

24 (a) A violation of the criminal law, unless the
 25 director, officer, employee, or agent had reasonable cause to
 26 believe his conduct was lawful or had no reasonable cause to
 27 believe his conduct was unlawful;

28 (b) A transaction from which the director, officer,
 29 employee, or agent derived an improper personal benefit;

1 (c) In the case of a director, a circumstance under
2 which the liability provisions of s. 607.144 are applicable;
3 or

4 (d) Willful misconduct or a conscious disregard for
5 the best interests of the corporation in a proceeding by or in
6 the right of the corporation to procure a judgment in its
7 favor or in a proceeding by or in the right of a shareholder.

8 ~~(8)~~ Indemnification and advancement of expenses as
9 provided in this section shall continue as, unless otherwise
10 provided when authorized or ratified to a person who has
11 ceased to be a director, officer, employee, or agent and shall
12 inure to the benefit of the heirs, executors, and
13 administrators of such a person, unless otherwise provided
14 when authorized or ratified.

15 (9) Unless the corporation's articles of incorporation
16 provide otherwise, notwithstanding the failure of a
17 corporation to provide indemnification, and despite any
18 contrary determination of the board or of the shareholders in
19 the specific case, a director, officer, employee, or agent of
20 the corporation who is or was a party to a proceeding may
21 apply for indemnification or advancement of expenses, or both,
22 to the court conducting the proceeding, to the circuit court,
23 or to another court of competent jurisdiction. On receipt of
24 an application, the court, after giving any notice that it
25 considers necessary, may order indemnification and advancement
26 of expenses, including expenses incurred in seeking court-
27 ordered indemnification or advancement of expenses, if it
28 determines that:

29 (a) The director, officer, employee, or agent is
30 entitled to mandatory indemnification under subsection (3), in
31 which case the court shall also order the corporation to pay

1 the director reasonable expenses incurred in obtaining court-
2 ordered indemnification or advancement of expenses;

3 (b) The director, officer, employee, or agent is
4 entitled to indemnification or advancement of expenses, or
5 both, by virtue of the exercise by the corporation of its
6 power pursuant to subsection (7); or

7 (c) The director, officer, employee, or agent is
8 fairly and reasonably entitled to indemnification or
9 advancement of expenses, or both, in view of all the relevant
10 circumstances, regardless of whether such person met the
11 standard of conduct set forth in subsection (1), subsection
12 (2), or subsection (7).

13 (10) For purposes of this section, the term
14 "corporation" includes, in addition to the resulting
15 corporation, any constituent corporation (including any
16 constituent of a constituent) absorbed in a consolidation or
17 merger, so that any person who is or was a director, officer,
18 employee, or agent of a constituent corporation, or is or was
19 servng at the request of a constituent corporation as a
20 director, officer, employee, or agent of another corporation,
21 partnership, joint venture, trust, or other enterprise, is in
22 the same position under this section with respect to the
23 resulting or surviving corporation as he would have with
24 respect to such constituent corporation if its separate
25 existence had continued.

26 (11) For purposes of this section, the term "other
27 enterprises" includes employee benefit plans; the term
28 "expenses" includes counsel fees, including those for appeal;
29 the term "liability" includes obligations to pay a judgment,
30 settlement, penalty, fine (including an excise tax assessed
31 with respect to any employee benefit plan), and expenses

1 actually and reasonably incurred with respect to a proceeding;
2 the term "proceeding" includes any threatened, pending, or
3 completed action, suit, or other type of proceeding, whether
4 civil, criminal, administrative, or investigative and whether
5 formal or informal; the term "agent" includes a volunteer; and
6 the term "serving at the request of the corporation" includes
7 any service as a director, officer, employee, or agent of the
8 corporation that imposes duties on such persons, including
9 duties relating to an employee benefit plan, its participants
10 or beneficiaries; and the term "not opposed to the best
11 interest of the corporation" describes the actions of a person
12 who acts in good faith and in a manner he reasonably believes
13 to be in the best interests of the participants and
14 beneficiaries of an employee benefit plan.

15 ~~(12)(8)~~ A corporation shall have power to purchase and
16 maintain insurance on behalf of any person who is or was a
17 director, officer, employee, or agent of the corporation or is
18 or was serving at the request of the corporation as a
19 director, officer, employee, or agent of another corporation,
20 partnership, joint venture, trust, or other enterprise against
21 any liability asserted against him and incurred by him in any
22 such capacity or arising out of his status as such, whether or
23 not the corporation would have the power to indemnify him
24 against such liability under the provisions of this section.

25 ~~(13)(9)~~ If any expenses or other amounts are paid by
26 way of indemnification otherwise than by court order or action
27 by the shareholders or by an insurance carrier pursuant to
28 insurance maintained by the corporation, the corporation
29 shall, not later than the time of delivery to shareholders of
30 written notice of the next annual meeting of shareholders,
31 unless such meeting is held within 3 months from the date of

1 such payment, and, in any event, within 15 months from the
2 date of such payment, deliver either personally or by mail to
3 each shareholder of record at the time entitled to vote for
4 the election of directors a statement specifying the persons
5 paid, the amounts paid, and the nature and status at the time
6 of such payment of the litigation or threatened litigation.

7 Section 2. Section 617.028, Florida Statutes, is
8 amended to read:

9 617.028 Indemnification and liability of officers,
10 directors, managers, trustees, employees, volunteers, and
11 agents.--The provisions of ss. s: 607.014, 607.1645, and
12 607.165 apply to corporations not for profit. Any reference
13 to "directors" in those sections ~~that-section~~ includes the
14 directors, managers, or trustees of a corporation not for
15 profit. Any reference to "shareholders" in those sections
16 includes members of a corporation not for profit.

17 Section 3. Section 607.1645, Florida Statutes, is
18 created to read:

19 607.1645 Liability of directors, officers, and
20 volunteers.--

21 (1) A director, officer, or volunteer is not
22 personally liable for monetary damages to the corporation or
23 any other person for any action taken as a director, officer,
24 or volunteer, or any failure to take any action, unless the
25 person asserting liability proves by clear and convincing
26 evidence that:

27 (a) The director, officer, or volunteer breached or
28 failed to perform his duties as a director, officer, or
29 volunteer; and

30 (b) The director's, officer's, or volunteer's breach
31 of, or failure to perform, those duties constitutes:

1 1. A violation of the criminal law, unless the
2 director, officer, or volunteer had reasonable cause to
3 believe his conduct was lawful or had no reasonable cause to
4 believe his conduct was unlawful. A judgment or other final
5 adjudication against a director, officer, or volunteer in any
6 criminal proceeding for a violation of the criminal law estops
7 that director, officer, or volunteer from contesting the fact
8 that his breach, or failure to perform, constitutes a
9 violation of the criminal law; but does not estop the
10 director, officer, or volunteer from establishing that he had
11 reasonable cause to believe that his conduct was lawful or had
12 no reasonable cause to believe that his conduct was unlawful;

13 2. A transaction from which the director, officer, or
14 volunteer derived an improper personal benefit;

15 3. A circumstance under which the liability provisions
16 of s. 607.144 are applicable;

17 4. In a proceeding by or in the right of the
18 corporation to procure a judgment in its favor or by or in the
19 right of a shareholder, conscious disregard for the best
20 interest of the corporation or willful misconduct; or

21 5. In a proceeding by or in the right of someone other
22 than the corporation or a shareholder, recklessness or willful
23 misconduct.

24 (2) For purposes of this section, the term:

25 (a) "Officer" means a corporation's president; any
26 vice president in charge of a principal business unit,
27 division, or function of the corporation; any other officer
28 who performs a policymaking function, or any other person who
29 performs similar policymaking functions, for the corporation;
30 and any other person made a party to a proceeding by virtue of
31 being a named officer of the corporation.

1 (b) "Recklessness" means the acting, or omission to
2 act, in conscious disregard of a risk:

3 1. Known, or so obvious that it should have been
4 known, to the director, officer, or volunteer; and

5 2. Known to the director, officer, or volunteer, or so
6 obvious that it should have been known, to be so great as to
7 make it highly probable that harm would follow from such
8 action or omission.

9 (c) "Volunteer" means an individual performing
10 services for a corporation who does not receive compensation
11 or any other remuneration for such services, other than
12 reimbursement for expenses actually incurred, and includes a
13 volunteer serving as a director, officer, trustee, or direct
14 service volunteer.

15 Section 4. Section 607.165, Florida Statutes, is
16 created to read:

17 607.165 Director, officer, or volunteer deemed not to
18 have derived improper personal benefit.--

19 (1) For purposes of ss. 607.014 and 607.1645, a
20 director, officer, or volunteer is deemed not to have derived
21 an improper personal benefit from any transaction if, without
22 limitation:

23 (a) The transaction and the nature of any personal
24 benefits derived by the director, officer, or volunteer of the
25 corporation are disclosed or known to the board of directors
26 or a committee of the board of directors and the transaction
27 was authorized, approved, or ratified by a majority of the
28 disinterested members of the board of directors or committee
29 by a vote or consent;

30 (b) The transaction and the nature of any personal
31 benefits derived by directors, officers, or volunteers are

1 disclosed or known to all directors voting on the matter, and
2 the transaction was authorized, approved, or ratified by at
3 least two directors who comprise a majority of the
4 disinterested directors (whether or not such disinterested
5 directors constitute a quorum);

6 (c) The transaction and personal benefit were
7 disclosed or known to the shareholders entitled to vote, and
8 the transaction was authorized, approved, or ratified by the
9 affirmative vote or written consent of such shareholders who
10 hold a majority of the shares, the voting of which is not
11 controlled by directors who derived a personal benefit from or
12 otherwise had a personal interest in the transaction; or

13 (d) The transaction was fair and reasonable to the
14 corporation at the time it was authorized by the board, a
15 committee, or the shareholders, notwithstanding that a
16 director, officer, or volunteer received a personal benefit.

17 (2) Common or interested directors may be counted in
18 determining the presence of a quorum at a meeting of the board
19 of directors or a committee thereof which authorizes,
20 approves, or ratifies such a transaction.

21 (3) The circumstances set forth in paragraphs (a),
22 (b), (c), and (d) of subsection (1) are not exclusive and do
23 not preclude the existence of other circumstances under which
24 a director, officer, or volunteer will be deemed not to have
25 derived an improper benefit.

26 Section 5. Liability of directors, officers, chief
27 operating officers, committee members, executive officers, and
28 volunteers of credit unions.--

29 (1) A director, officer, chief operating officer,
30 committee member, executive officer, or volunteer of a credit
31 union organized under chapter 657, Florida Statutes, is not

1 personally liable for monetary damages to the credit union,
2 its members, or any other persons for any action taken as a
3 director, officer, chief operating officer, committee member,
4 executive officer, or volunteer, or any failure to take any
5 action, unless the person asserting liability proves by clear
6 and convincing evidence that:

7 (a) The director, officer, chief operating officer,
8 committee member, executive officer, or volunteer breached or
9 failed to perform his duties as a director, officer, chief
10 operating officer, committee member, executive officer, or
11 volunteer; and

12 (b) The director's, officer's, chief operating
13 officer's, committee member's, executive officer's, or
14 volunteer's breach of, or failure to perform, constitutes:

15 1. A violation of the criminal law, unless the
16 director, officer, chief operating officer, committee member,
17 executive officer, or volunteer had reasonable cause to
18 believe his conduct was lawful or had no reasonable cause to
19 believe his conduct was unlawful. A judgment or other final
20 adjudication against a director, officer, chief operating
21 officer, committee member, executive officer, or volunteer in
22 any criminal proceeding for a violation of the criminal law
23 estops that director, officer, chief operating officer,
24 committee member, executive officer, or volunteer from
25 contesting the fact that his breach, or failure to perform,
26 constitutes a violation of the criminal law; but does not
27 estop the director, officer, chief operating officer,
28 committee member, executive officer, or volunteer from
29 establishing that he had reasonable cause to believe that his
30 conduct was lawful or had no reasonable cause to believe that
31 his conduct was unlawful;

1 2. A transaction from which the director, officer,
2 chief operating officer, committee member, executive officer,
3 or volunteer derived an improper personal benefit; or

4 3. Recklessness or willful misconduct.

5 (2) For purposes of this section, the term:

6 (a) "Recklessness" means the acting, or omission to
7 act, in conscious disregard of a risk:

8 1. Known, or so obvious that it should have been
9 known, to the director, officer, chief operating officer,
10 committee member, executive officer, or volunteer; and

11 2. Known to the director, officer, chief operating
12 officer, committee member, executive officer, or volunteer, or
13 so obvious that it should have been known, to be so great as
14 to make it highly probable that harm would follow from such
15 action or omission.

16 (b) "Volunteer" means an individual performing
17 services for a credit union who does not receive compensation
18 or any other remuneration for such services, other than
19 reimbursement for expenses actually incurred, and includes a
20 volunteer serving as a director, officer, chief operating
21 officer, committee member, executive officer, or direct
22 service volunteer.

23 Section 6. Liability of trustees, officers, and
24 volunteers of self-insurance trust fund.--

25 (1) A trustee, officer, or volunteer of any self-
26 insurance trust fund organized under the laws of this state is
27 not personally liable for monetary damages to any person for
28 any action taken as a trustee, officer, or volunteer, or any
29 failure to take any action, unless the person asserting
30 liability proves by clear and convincing evidence that:

1 (a) The trustee, officer, or volunteer breached or
2 failed to perform his duties as a trustee, officer, or
3 volunteer; and

4 (b) The trustee's, officer's, or volunteer's breach
5 of, or failure to perform, his duties constitutes:

6 1. A violation of the criminal law, unless the
7 trustee, officer, or volunteer had reasonable cause to believe
8 his conduct was lawful or had no reasonable cause to believe
9 his conduct was unlawful. A judgment or other final
10 adjudication against a trustee, officer, or volunteer in any
11 criminal proceeding for violation of the criminal law estops
12 that trustee, officer, or volunteer from contesting the fact
13 that his breach, or failure to perform, constitutes a
14 violation of the criminal law; but does not estop the trustee,
15 officer, or volunteer from establishing that he had reasonable
16 cause to believe that his conduct was lawful or had no
17 reasonable cause to believe that his conduct was unlawful;

18 2. A transaction from which the trustee, officer, or
19 volunteer derived an improper personal benefit; or

20 3. Recklessness or willful misconduct.

21 (2) For purposes of this section, the term:

22 (a) "Recklessness" means the acting, or omission to
23 act, in conscious disregard of a risk:

24 1. Known, or so obvious that it should have been
25 known, to the trustee, officer, or volunteer; and

26 2. Known to the trustee, officer, or volunteer, or so
27 obvious that it should have been known, to be so great as to
28 make it highly probable that harm would follow from such
29 action or omission.

30 (b) "Volunteer" means an individual performing
31 services for a self-insurance trust fund who does not receive

1 compensation or any other remuneration for such services,
2 other than reimbursement for expenses actually incurred, and
3 includes a volunteer serving as a trustee, officer, or direct
4 service volunteer.

5 Section 7. (1) A director, officer, trustee, member,
6 or volunteer of a nonprofit organization is not personally
7 liable for monetary damages to any person for any action taken
8 as a director, officer, trustee, member, or volunteer, or any
9 failure to take any action, unless the person asserting
10 liability proves by clear and convincing evidence that:

11 (a) The director, officer, trustee, member, or
12 volunteer breached or failed to perform his duties as a
13 director, officer, trustee, member, or volunteer; and

14 (b) The director's, officer's, trustee's, member's, or
15 volunteer's breach of, or failure to perform, those duties
16 constitutes:

17 1. A violation of the criminal law, unless the
18 director, officer, trustee, member, or volunteer had
19 reasonable cause to believe his conduct was lawful or had no
20 reasonable cause to believe his conduct was unlawful. A
21 judgment or other final adjudication against a director,
22 officer, trustee, member, or volunteer in any criminal
23 proceeding for a violation of the criminal law estops that
24 director, officer, trustee, member, or volunteer from
25 contesting the fact that his breach, or failure to perform,
26 constitutes a violation of the criminal law; but does not
27 estop the director, officer, trustee, member, or volunteer
28 from establishing that he had reasonable cause to believe that
29 his conduct was lawful or had no reasonable cause to believe
30 that his conduct was unlawful;

31

1 2. A transaction from which the director, officer,
2 trustee, member, or volunteer derived an improper personal
3 benefit; or

4 3. Recklessness or willful misconduct.

5 (2) For purposes of this section, the term:

6 (a) "Nonprofit organization" means an entity, other
7 than a corporation, recognized under section 501(c)(3),
8 section 501(c)(4), or section 501(c)(6) of the Internal
9 Revenue Code of 1986.

10 (b) "Recklessness" means the acting, or omission to
11 act, in conscious disregard of a risk:

12 1. Known, or so obvious that it should have been
13 known, to the director, officer, trustee, member, or
14 volunteer; and

15 2. Known to the director, officer, trustee, member, or
16 volunteer, or so obvious that it should have been known, to be
17 so great as to make it highly probable that harm would follow
18 from such action or omission.

19 (c) "Volunteer" means an individual performing
20 services for a nonprofit organization who does not receive
21 compensation or any other remuneration for such services,
22 other than reimbursement for expenses actually incurred, and
23 includes a volunteer serving as a director, officer, trustee,
24 or direct service volunteer.

25 Section 8. This act shall take effect July 1, 1987, or
26 upon becoming a law, whichever occurs later.

SENATE SUMMARY

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 2
 3 Authorizes corporations to indemnify officers, directors,
 4 employees, and agents against liability and against legal
 5 expenses, and to advance such persons certain expenses
 6 incurred in defense of the corporation in a legal
 7 proceeding. Provides for a procedure to evaluate and
 8 authorize payments against such indemnity. Excludes
 9 liability for most violations of the criminal law,
 10 improper personal gains, willful misconduct, and a
 11 conscious disregard for the best interest of the
 12 corporation from such indemnity. Authorizes a court to
 13 order a corporation to provide such indemnity under
 14 certain circumstances, unless the corporation's articles
 15 of incorporation provide otherwise. Provides directors,
 16 officers, employees, agents, and volunteers immunity from
 17 civil liability in most situations. Provides for the
 18 authorization and approval of improper benefits derived
 19 by directors and officers. Provides directors, officers,
 20 chief operating officers, committee members, executive
 21 officers, and volunteers of credit unions immunity from
 22 civil liability. Provides trustees, officers, or
 23 volunteers of a self-insurance trust fund immunity from
 24 civil liability. Provides trustees, directors, officers,
 25 members, or volunteers of a nonprofit organization
 26 immunity from civil liability.
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By Representatives Bloom, Sanjer, Orr, Grindie, Hawkins, Reddick, Messersmith, Hanson, Burnsed, Healey, Harris, Clark, Crotty, Sauto, Garcia, Jamerson, Arnold, Saunders, Bickman, Rochlin, Tobin, Goode, Rush, Gutman, Brown, Morse, Sansom, Kelly, Tobriassen, Trammell, Clements, Meffert, Hodges, Frog, Webster, Lawson, Wetherell, Gordon, Rehm, Liberty, Carlton, Young, D. L. Jones, Lombard, Casas, C. F. Jones, Mackenzie

1 A bill to be entitled
 2 An act relating to liability of nonprofit
 3 organizations; providing legislative findings;
 4 granting immunity from liability for civil
 5 damages with respect to certain actions of
 6 uncompensated directors and officers of
 7 nonprofit corporations and associations;
 8 providing exceptions; providing an effective
 9 date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. The Legislature finds and declares that the
 14 services of nonprofit corporation and association governing
 15 boards are critical to the efficient conduct and management of
 16 the public and charitable affairs of the citizens of this
 17 state. Members of such nonprofit boards must be permitted to
 18 operate without concern for the possibility of litigation
 19 arising from the discharge of their duties as policy makers.

20 Section 2. Officers and directors of corporations and
 21 associations not for profit; immunity from civil liability.--

22 (1) As used in this section, "officer or director"
 23 means a person who serves as a director, officer, or trustee
 24 of a nonprofit organization recognized under Section 501(c)(3)
 25 or Section 501(c)(6) of the Internal Revenue Code of 1954.

26 (2) Any act or omission by an uncompensated officer or
 27 director of a nonprofit organization described under this
 28 section shall be deemed to be an act of the organization for
 29 which no individual liability for civil damages shall exist,
 30 unless such act or omission was committed in bad faith or with

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1 | malicious purpose or in a manner exhibiting wanton and willful
2 | disregard of human rights, safety, or property. 1.19
3 | (3) For purposes of this section, a person shall not 1:1us
4 | be deemed to be compensated solely on the basis that such 1.21
5 | person received reimbursement for reasonable expenses actually
6 | incurred or to be incurred, or who receives per diem as 1.22
7 | provided in s. 112.061, Florida Statutes. 1.23
8 | Section 3. This act shall take effect upon becoming a 1.24
9 | law and shall apply to all causes of action accruing after the 1.25
10 | effective date of this act.

HOUSE SUMMARY

Provides immunity from civil liability for civil damages with respect to actions or omissions of uncompensated directors and officers of nonprofit corporations and associations unless such actions or omissions were committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

By Representatives Carpenter, Lippman, Bloom, Silver

This publication was produced at an average cost of 1.5 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

1 A bill to be entitled
 2 An act relating to liability of nonprofit
 3 organizations; providing legislative findings;
 4 granting immunity from liability for civil
 5 damages to uncompensated directors and officers
 6 of nonprofit religious, educational, and
 7 charitable organizations; providing
 8 definitions; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. (1) The Legislature finds that the service
 13 of qualified directors and officers of nonprofit religious,
 14 educational, or charitable organizations is critical to the
 15 efficient and effective conduct of such organizations in the
 16 provision of services and other benefits to the citizens of
 17 the state. The Legislature further finds that, within
 18 reasonable limits, persons volunteering their services as
 19 directors or officers of such nonprofit organizations should
 20 be permitted to perform without undue concern for the
 21 possibility of litigation arising from the discharge of their
 22 duties.

23 (2) Any act or omission by an uncompensated officer or
 24 director of a nonprofit religious, educational, or charitable
 25 organization shall be deemed to be an act of the organization
 26 for which no individual liability for civil damages shall
 27 exist, unless such act or omission was committed in bad faith
 28 or with malicious purpose or in a manner exhibiting wanton and
 29 willful disregard of human rights, safety, or property.

30 (3) As used in this section, the term "religious,
 31 educational, or charitable organization" shall include

1	<u>religious, educational, or charitable institutions as defined</u>	
2	<u>in, and which qualify for a tax exemption under,</u>	1.25
3	<u>s.212.08(7)(a), Florida Statutes.</u>	
4	<u>(4) For purposes of this section, a person shall not</u>	1.26
5	<u>be deemed to be compensated solely on the basis that such</u>	1.27
6	<u>person receives reimbursement for reasonable expenses actually</u>	
7	<u>incurred or to be incurred, or who receives per diem as</u>	1.28
8	<u>provided in s. 112.061, Florida Statutes.</u>	
9	Section 2. This act shall take effect upon becoming a	1.29
10	law and shall apply to all causes of action accruing after the	
11	effective date of this act.	1.30

HOUSE SUMMARY

Grants immunity from liability for civil damages to uncompensated officers and directors of nonprofit religious, educational, and charitable institutions.

By Representative Sanderson

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A bill to be entitled
An act relating to negligence; creating s.
768.1351, F.S.; exempting volunteers and
nonprofit associations involved in youth
athletic programs from certain civil liability;
providing exceptions; providing an effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 768.1351, Florida Statutes, is
created to read:

768.1351 Volunteers and nonprofit associations in
youth athletic programs; immunity from civil liability.--

(1) As used in this section:

(a) "Nonprofit association" means an entity which is
organized as a nonprofit corporation or nonprofit
unincorporated association under the laws of this state or the
United States or any entity which is authorized to do business
in this state as a nonprofit corporation or unincorporated
association under the laws of this state, including, but not
limited to, youth or athletic associations, volunteer fire,
ambulance, religious, charitable, fraternal, veteran, civic,
county fair, or agricultural associations, or any separately
chartered auxiliary of the foregoing, if organized and
operated on a nonprofit basis.

(b) "Youth athletic program" means any program
operated or conducted by a nonprofit association for the
recreational and athletic benefit of persons under 19 years of
age in any sport recognized as a sport by the Amateur Athletic
Union or the National Collegiate Athletic Association.

By Representatives Sansom and Gardner

1 A bill to be entitled
 2 An act relating to nonprofit organizations;
 3 creating s. 768.137, F.S.; exempting members of
 4 boards of directors and their nonpaid
 5 representatives, and officers and trustees of
 6 certain nonprofit organizations from civil
 7 liability; providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

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10
11 Section 1. Section 768.137, Florida Statutes, is
12 created to read:

13 768.137 Nonprofit organizations; civil immunity for
 14 directors, officers, and trustees.--Any person who serves on
 15 the board of directors, or any other nonpaid representative of
 16 the board acting on behalf of the board, or any person who
 17 serves as an officer or trustee of a nonprofit organization
 18 qualified as a tax-exempt organization under s. 501(c) of the
 19 Internal Revenue Code of 1954, as from time to time amended,
 20 and who is not compensated for such services on a salary or
 21 prorated equivalent basis, shall be immune from civil
 22 liability for any act or omission resulting in damage or
 23 injury occurring on or after the effective date of this act,
 24 if such person was acting in good faith and within the scope
 25 of his official functions and duties, unless such damage or
 26 injury was caused by the willful or wanton misconduct of such
 27 person.

28 Section 2. This act shall take effect October 1, 1987.

HOUSE SUMMARY

Exempts members of boards of directors and their nonpaid representatives, and officers and trustees of certain nonprofit organizations from civil liability for acts or omissions while acting in the scope of their official functions and duties.

By Representative Cosgrove

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A bill to be entitled
An act relating to civil liability; exempting
from liability for civil damages non-paid
directors of nonprofit corporations and
nonprofit organizations; providing an effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) Any non-paid director of any nonprofit corporation or nonprofit organization shall be exempt from liability for civil damages for any act or omission in the scope of his employment or function as a director, unless he acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of another.

(2) As used in this act:

(a) "Non-paid director" means a person who serves in the capacity of director without compensation except for reimbursement of reasonable expenses.

(b) "Nonprofit corporation" means any corporation no part of the income of which is distributable to its members, directors, or officers.

(c) "Nonprofit organization" means any unincorporated institution or association no part of the income of which is distributable to its members, directors, or officers.

Section 2. This act shall take effect upon becoming a law, and shall apply to claims filed in courts of original jurisdiction thereafter.

HOUSE SUMMARY

Exempts from liability for civil damages non-paid directors of nonprofit corporations and nonprofit organizations.

By Representatives Bloom and Hawkins

A bill to be entitled

An act relating to corporations; amending s. 607.014, F.S., providing clarifying language with respect to indemnification of corporate officers, directors, employees, and agents; amending s. 607.164, F.S., providing that the articles of incorporation may include a provision limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty; providing exceptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2) and (5) of section 607.014, Florida Statutes, are amended to read:

607.014 Indemnification of officers, directors, employees, and agents.--

(2) A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, including any appeal thereof, if he

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1	acted in good faith and in a manner he reasonably believed to	
2	be in, or not opposed to, the best interests of the	1.21
3	corporation, except that no indemnification shall be made in	1.2
4	respect of any claim, issue, or matter as to which such person	
5	shall have been adjudged to be liable for negligence or	1.23
6	misconduct in the performance of his duty to the corporation	1.24
7	unless, and only to the extent that, the court in which such	1.25
8	action or suit was brought shall determine upon application	
9	that, despite the adjudication of liability but in view of all	1.26
10	circumstances of the case, such person is fairly and	1.28
11	reasonably entitled to indemnity for such expenses which such	1.29
12	court shall deem proper.	
13	(5) Expenses, including attorneys' fees, incurred in	1.30
14	defending a civil or criminal action, suit, or proceeding may	1.31
15	be paid by the corporation in advance of the final disposition	1.32
16	of such action, suit, or proceeding upon a preliminary	
17	determination following one of the procedures set forth in	1.33
18	subsection (4) that the director, officer, employee, or agent	1.34
19	met the applicable standard of conduct set forth in subsection	1.35
20	(1) or subsection (2) or as authorized by the board of	1.36
21	directors in the specific case and , in either event, upon	
22	receipt of an undertaking by or on behalf of the director,	1.37
23	officer, employee, or agent to repay such amount, <u>if unless</u> it	1.38
24	shall ultimately be determined that he is <u>not</u> entitled to be	
25	indemnified by the corporation as authorized in this section.	1.40
26	Section 2. Subsections (3) and (4) of section 607.164,	1.41
27	Florida Statutes, are renumbered as subsections (4) and (5),	1.42
28	respectively, and a new subsection (3) is added to said	
29	section to read:	
30	607.164 Articles of incorporation; execution; content;	1.43
31	delivery and filing.--	1.44

By Representative Bass

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A bill to be entitled
An act relating to civil liability; amending s.
607.014, F.S.; authorizing corporations to
indemnify directors, officers, employees,
agents, and volunteers against liability and
related expenses, providing for a procedure to
pay such expenses, providing limitations on
such indemnity; amending s. 617 028, F S ;
providing civil immunity to such persons
associated with corporations not for profit;
providing limitations on such immunity,
providing for the approval and authorization of
certain transactions negotiated by such
persons; creating s 607.1645, F.S., providing
officers, directors, and volunteers of a
corporation immunity from civil liability;
providing limitations; creating s. 607.165,
F.S.; providing for the approval and
authorization of certain transactions
negotiated by an officer or director, the board
of directors, or shareholders of a corporation;
providing directors, officers, committee
members, chief operating officers, executive
officers and volunteers, of credit unions
immunity from civil liability; providing
limitations; providing trustees, officers, or
volunteers of a self-insurance trust fund
immunity from civil liability; providing
limitations, providing trustees, directors,
officers, members, or volunteers of a nonprofit
organization immunity from civil liability;

1	providing limitations; providing an effective	1.21
2	date	
3		
4	Be It Enacted by the Legislature of the State of Florida:	1.22
5		
6	Section 1. Section 607.014, Florida Statutes, is	1.22
7	amended to read:	
8	607.014 Indemnification of officers, directors,	1.23
9	employees, and agents.--	
10	(1) A corporation shall have power to indemnify any	1.25
11	person who was or is a party, or is threatened to be made a	1.26
12	party, to any threatened, pending, or completed action, suit,	1.27
13	or proceeding, whether civil, criminal, administrative, or	
14	investigative (other than an action by, or in the right of,	1.28
15	the corporation), by reason of the fact that he is or was a	1.29
16	director, officer, employee, or agent of the corporation or is	1.30
17	or was serving at the request of the corporation as a	
18	director, officer, employee, or agent of another corporation,	1.31
19	partnership, joint venture, trust, or other enterprise against	1.32
20	<u>liability expenses (including attorneys' fees); judgments;</u>	1.33
21	finer, and amounts paid in settlement actually and reasonably	1.34
22	incurred by him in connection with such action, suit, or	1.35
23	proceeding, including any appeal thereof, if he acted in good	1.37
24	faith and in a manner he reasonably believed to be in, or not	1.38
25	opposed to, the best interests of the corporation and, with	
26	respect to any criminal action or proceeding, had no	1.39
27	reasonable cause to believe his conduct was unlawful. The	1.41
28	termination of any action, suit, or proceeding by judgment,	
29	order, settlement, or conviction or upon a plea of nolo	1.42
30	contendere or its equivalent shall not, of itself, create a	1.43
31	presumption that the person did not act in good faith and in a	1.44

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 manner which he reasonably believed to be in, or not opposed
2 to, the best interests of the corporation or, with respect to 1.45
3 any criminal action or proceeding, had reasonable cause to 1.46
4 believe that his conduct was unlawful

5 (2) A corporation shall have power to indemnify any, 1.47
6 person who was or is a party, ~~or is threatened to be made a~~ 1.48
7 party, to any proceeding threatened, pending, or completed 1.50
8 action or suit by or in the right of the corporation to
9 procure a judgment in its favor by reason of the fact that he 1.51
10 is or was a director, officer, employee, or agent of the 1.52
11 corporation or is or was serving at the request of the 1.53
12 corporation as a director, officer, employee, or agent of
13 another corporation, partnership, joint venture, trust, or 1.54
14 other enterprise against expenses and amounts paid in
15 settlement not exceeding, in the judgment of the board of 1.55
16 directors, the estimated expense of litigating the proceeding 1.56
17 to conclusion, including attorneys' fees, actually and 1.57
18 reasonably incurred ~~by him~~ in connection with the defense or 1.58
19 settlement of such proceeding action or suit, including any 1.59
20 appeal thereof, if he acted in good faith and in a manner he 1.60
21 reasonably believed to be in, or not opposed to, the best
22 interests of the corporation, except that no indemnification
23 shall be made under this subsection in respect of any claim,
24 issue, or matter as to which such person shall have been 1.64
25 adjudged to be liable ~~for negligence or misconduct in the~~
26 performance of his duty to the corporation unless, and only to 1.65
27 the extent that, the court in which such action or suit was 1.66
28 brought, or any other court of competent jurisdiction, shall 1.67
29 determine upon application that, despite the adjudication of 1.68
30 liability but in view of all circumstances of the case, such 1.70
31

1	person is fairly and reasonably entitled to indemnity for such	
2	expenses which such court shall deem proper.	1.71
3	(3) To the extent that a director, officer, employee,	1.73
4	or agent of a corporation has been successful on the merits or	1.74
5	otherwise in defense of any action, suit, or proceeding	
6	referred to in subsection (1) or subsection (2), or in defense	1.75
7	of any claim, issue, or matter therein, he shall be	1.76
8	indemnified against expenses (including attorneys' fees)	
9	actually and reasonably incurred by him in connection	1.77
10	therewith.	
11	(4) Any indemnification under subsection (1) or	1.78
12	subsection (2), unless pursuant to a determination by a court,	1.79
13	shall be made by the corporation only as authorized in the	1.80
14	specific case upon a determination that indemnification of the	1.81
15	director, officer, employee, or agent is proper in the	
16	circumstances because he has met the applicable standard of	1.82
17	conduct set forth in subsection (1) or subsection (2). Such	1.84
18	determination shall be made	
19	(a) By the board of directors by a majority vote of a	2.3
20	quorum consisting of directors who were not parties to such	
21	action, suit, or proceeding,	2.4
22	(b) If such a quorum is not obtainable or, even if	2.5
23	obtainable, <u>by majority vote of a committee duly designated by</u>	2.6
24	<u>the board of directors (in which directors who are parties ma,</u>	2.7
25	<u>participate) consisting solely of two or more directors not at</u>	
26	<u>the time parties to the proceeding,</u>	2.8
27	(c) <u>By independent legal counsel:</u>	1:1us
28	<u>1. Selected by the board of directors prescribed in</u>	1:1us
29	<u>paragraph (a) or the committee prescribed in paragraph (b); or</u>	2:12
30	<u>2. If a quorum of the directors cannot be obtained for</u>	1:1us
31	<u>paragraph (a) and the committee cannot be designated under</u>	2.14

1 paragraph (b), selected by majority vote of the full board of
2 directors (in which directors who are parties may participate) 2.15
3 ~~a quorum of disinterested directors so directs, by independent~~ 2.16
4 ~~legal counsel in a written opinion; or~~ 2.17
5 (d) (e) By the shareholders by a majority vote of a 1 lus
6 quorum consisting of shareholders who were not parties to such 2.20
7 action, suit, or proceeding or, if no such quorum is 2.21
8 obtainable, by a majority vote of shareholders who were not 2.22
9 parties to such proceeding.
10 (5) Evaluation of the reasonableness of expenses and 1: lus
11 authorization of indemnification shall be made in the same 2.24
12 manner as the determination that indemnification is
13 permissible. However, if the determination of permissibility 2.26
14 is made by independent legal counsel, persons specified by 2.27
15 paragraph (4)(c) shall evaluate the reasonableness of expenses
16 and may authorize indemnification. 2.28
17 (6) Expenses incurred by an officer or director in 1 lus
18 defending a civil or criminal proceeding may be paid by the 2.30
19 corporation in advance of the final disposition of such
20 proceeding upon receipt of an undertaking by or on behalf of 2.31
21 such director or officer to repay such amount if he is 2.32
22 ultimately found not to be entitled to indemnification by the
23 corporation pursuant to this section. Expenses incurred by 2.34
24 other employees and agents may be paid in advance upon such
25 terms or conditions that the board of directors deems 2.36
26 appropriate.
27 ~~(5) -- Expenses, including attorneys' fees, incurred in~~ 2: lus
28 ~~defending a civil or criminal action, suit, or proceeding may~~ 2.38
29 ~~be paid by the corporation in advance of the final disposition~~ 2.39
30 ~~of such action, suit, or proceeding upon a preliminary~~
31 ~~determination following one of the procedures set forth in~~ 2.40

1	subsection (4) that the director, officer, employee, or agent	2.41
2	met the applicable standard of conduct set forth in subsection	2.42
3	(1) or subsection (2) or as authorized by the board of	2.43
4	directors in the specific case and, in either event, upon	
5	receipt of an undertaking by or on behalf of the director,	2.44
6	officer, employee, or agent to repay such amount, unless it	2.45
7	shall ultimately be determined that he is entitled to be	
8	indemnified by the corporation as authorized in this section.	2.46
9	<u>(7)(6) The indemnification and advancement of expenses</u>	2.47
10	<u>provided pursuant to this section are not exclusive, and a</u>	2.48
11	corporation <u>may</u> shall have the power to make any other or	2.49
12	further indemnification <u>or advancement of expenses</u> of any of	2.50
13	its directors, officers, employees, or agents, under any	2.51
14	bylaw, agreement, vote of shareholders or disinterested	2.53
15	directors, or otherwise, both as to action in his official	2.54
16	capacity and as to action in another capacity while holding	2.55
17	such office; except an indemnification against gross	2.56
18	negligence or willful misconduct <u>However, indemnification or</u>	2.57
19	<u>advancement of expenses shall not be made to or on behalf of</u>	
20	<u>any director, officer, employee, or agent if a judgment or</u>	2.58
21	<u>other final adjudication establishes that his actions, or</u>	2.59
22	<u>omissions to act, were material to the cause of action so</u>	
23	<u>adjudicated and constitute</u>	2.60
24	<u>(a) A violation of the criminal law, unless the</u>	2.61
25	<u>director, officer, employee, or agent had reasonable cause to</u>	2.62
26	<u>believe his conduct was lawful or had no reasonable cause to</u>	
27	<u>believe his conduct was unlawful;</u>	2.63
28	<u>(b) A transaction from which the director, officer,</u>	2.64
29	<u>employee, or agent derived an improper personal benefit;</u>	2.65
30		
31		

1 (c) In the case of a director, a circumstance under 1:1us
2 which the liability provisions of s 607.144 are applicable; 2:67
3 or
4 (d) Willful misconduct or a conscious disregard for 1:1us
5 the best interests of the corporation in a proceeding by or in 2:69
6 the right of the corporation to procure a judgment in its
7 favor or in a proceeding by or in the right of a shareholder. 2:70
8 (8)(7) Indemnification and advancement of expenses as 1:1us
9 provided in this section shall continue as, unless otherwise 2:74
10 provided when authorized or ratified to a person who has 2:75
11 ceased to be a director, officer, employee, or agent and shall 2:76
12 inure to the benefit of the heirs, executors, and
13 administrators of such a person, unless otherwise provided 2:77
14 when authorized or ratified.
15 (9) Unless the corporation's articles of incorporation 1:1us
16 provide otherwise, notwithstanding the failure of a 2:79
17 corporation to provide indemnification, and despite any
18 contrary determination of the board or of the shareholders in 2:80
19 the specific case, a director, officer, employee, or agent of 2:81
20 the corporation who is or was a party to a proceeding may
21 apply for indemnification or advancement of expenses, or both, 2:82
22 to the court conducting the proceeding, to the circuit court, 2:83
23 or to another court of competent jurisdiction. On receipt of 3:1
24 an application, the court, after giving any notice that it 3:2
25 considers necessary, may order indemnification and advance 3:4
26 of expenses, including expenses incurred in seeking court- 3:5
27 ordered indemnification or advancement of expenses, if it
28 determines that:
29 (a) The director, officer, employee, or agent is 1:1us
30 entitled to mandatory indemnification under subsection (3), in 3:8
31 which case the court shall also order the corporation to pay 3:9

1 the director reasonable expenses incurred in obtaining court-
2 ordered indemnification or advancement of expenses; 3.10
3 (b) The director, officer, employee, or agent is 3.11
4 entitled to indemnification or advancement of expenses, or 3.12
5 both, by virtue of the exercise by the corporation of its
6 power pursuant to subsection (7); or 3.13
7 (c) The director, officer, employee, or agent is 3.14
8 fairly and reasonably entitled to indemnification or 3.15
9 advancement of expenses, or both, in view of all the relevant
10 circumstances, regardless of whether such person met the 3.16
11 standard of conduct set forth in subsection (1), subsection 3.17
12 (2), or subsection (7).
13 (10) For purposes of this section, the term 3.18
14 "corporation" includes, in addition to the resulting 3.19
15 corporation, any constituent corporation (including any 3.20
16 constituent of a constituent) absorbed in a consolidation or 3.21
17 merger, so that any person who is or was a director, officer, 3.22
18 employee, or agent of a constituent corporation, or is or was
19 servng at the request of a constituent corporation as a 3.23
20 director, officer, employee, or agent of another corporation, 3.24
21 partnership, joint venture, trust, or other enterprise, is in
22 the same position under this section with respect to the 3.25
23 resulting or surviving corporation as he would have with
24 respect to such constituent corporation if its separate 3.26
25 existence had continued.
26 (11) For purposes of this section, the term "other 3.27
27 enterprises" includes employee benefit plans; the term 3.28
28 "expenses" includes counsel fees, including those for appeal, 3.29
29 the term "liability" includes obligations to pay a judgment, 3.30
30 settlement, penalty, fine (including an excise tax assessed
31 with respect to any employee benefit plan), and expenses 3.30

1 actually and reasonably incurred with respect to a proceeding;
2 the term "proceeding" includes any threatened, pending, or 1 49
3 completed action, suit, or other type of proceeding, whether 3 32
4 civil, criminal, administrative, or investigative and whether
5 formal or informal; the term "agent" includes a volunteer; and 3.33
6 the term "serving at the request of the corporation" includes 3 34
7 any service as a director, officer, employee, or agent of the 3 35
8 corporation that imposes duties on such persons, including 3 36
9 duties relating to an employee benefit plan, its participants
10 or beneficiaries; and the term "not opposed to the best 1 44
11 interest of the corporation" describes the actions of a person
12 who acts in good faith and in a manner he reasonably believes 3 39
13 to be in the best interests of the participants and 3 40
14 beneficiaries of an employee benefit plan.

15 (12)† A corporation shall have power to purchase and 3.41
16 maintain insurance on behalf of any person who is or was a 3 42
17 director, officer, employee, or agent of the corporation or is 3 43
18 or was serving at the request of the corporation as a 3.44
19 director, officer, employee, or agent of another corporation,
20 partnership, joint venture, trust, or other enterprise against 3 45
21 any liability asserted against him and incurred by him in any 3 46
22 such capacity or arising out of his status as such, whether or 3 47
23 not the corporation would have the power to indemnify him
24 against such liability under the provisions of this section 3 48

25 (13)† If any expenses or other amounts are paid by 1 145
26 way of indemnification otherwise than by court order or action 3 51
27 by the shareholders or by an insurance carrier pursuant to 3.52
28 insurance maintained by the corporation, the corporation
29 shall, not later than the time of delivery to shareholders of 3 53
30 written notice of the next annual meeting of shareholders, 3 54
31 unless such meeting is held within 3 months from the date of 3 55

1	such payment, and, in any event, within 15 months from the	3.56
2	date of such payment, deliver either personally or by mail to	
3	each shareholder of record at the time entitled to vote for	3.57
4	the election of directors a statement specifying the persons	3.58
5	paid, the amounts paid, and the nature and status at the time	3.59
6	of such payment of the litigation or threatened litigation.	
7	Section 2. Section 617.028, Florida Statutes, is	3.60
8	amended to read:	
9	617.028 Indemnification <u>and liability</u> of officers,	3.61
10	directors, managers, trustees, employees, <u>volunteers</u> , and	3.64
11	agents.--The provisions of <u>ss. s. 607.014, 607.1645, and</u>	3.65
12	<u>607.165</u> apply to corporations not for profit. Any reference	3.67
13	to "directors" in <u>those sections</u> that section includes the	3.68
14	directors, managers, or trustees of a corporation not for	3.69
15	profit. <u>Any reference to "shareholders" in those sections</u>	3.71
16	<u>includes members of a corporation not for profit</u>	3.71
17	Section 3. Section 607.1645, Florida Statutes, is	3.72
18	created to read:	
19	<u>607.1645 Liability of directors, officers, and</u>	3.73
20	<u>volunteers.--</u>	
21	<u>(1) A director, officer, or volunteer is not</u>	3.74
22	<u>personally liable for monetary damages to the corporation or</u>	3.76
23	<u>any other person for any action taken as a director, officer,</u>	
24	<u>or volunteer, or any failure to take any action, unless the</u>	3.79
25	<u>person asserting liability proves by clear and convincing</u>	
26	<u>evidence that:</u>	
27	<u>(a) The director, officer, or volunteer breached or</u>	3.81
28	<u>failed to perform his duties as a director, officer, or</u>	3.81
29	<u>volunteer; and</u>	
30	<u>(b) The director's, officer's, or volunteer's breach</u>	3.83
31	<u>of, or failure to perform, those duties constitutes;</u>	3.83

1	<u>1. A violation of the criminal law, unless the</u>	1:1us
2	<u>director, officer, or volunteer had reasonable cause to</u>	4.1
3	<u>believe his conduct was lawful, or had no reasonable cause to</u>	
4	<u>believe his conduct was unlawful. A judgment or other final</u>	4.3
5	<u>adjudication against a director, officer, or volunteer in any</u>	
6	<u>criminal proceeding for a violation of the criminal law estops</u>	4.4
7	<u>that director, officer, or volunteer from contesting the fact</u>	4.5
8	<u>that his breach, or failure to perform, constitutes a</u>	
9	<u>violation of the criminal law, but does not estop the</u>	4.6
10	<u>director, officer, or volunteer from establishing that he had</u>	
11	<u>reasonable cause to believe that his conduct was lawful or had</u>	4.7
12	<u>no reasonable cause to believe that his conduct was unlawful;</u>	4.8
13	<u>2. A transaction from which the director, officer, or</u>	1:1us
14	<u>volunteer derived an improper personal benefit;</u>	4.10
15	<u>3. A circumstance under which the liability provisions</u>	1:1us
16	<u>of s. 607.144 are applicable;</u>	
17	<u>4. In a proceeding by or in the right of the</u>	1:1us
18	<u>corporation to procure a judgment in its favor or by or in the</u>	4.14
19	<u>right of a shareholder, conscious disregard for the best</u>	
20	<u>interest of the corporation or willful misconduct, or</u>	4.15
21	<u>5. in a proceeding by or in the right of someone other</u>	1:1us
22	<u>than the corporation or a shareholder, recklessness or willful</u>	4.17
23	<u>misconduct.</u>	
24	<u>(2) For purposes of this section, the term,</u>	1:1us
25	<u>(a) "Officer" means a corporation's president, any</u>	1:1us
26	<u>vice president in charge of a principal business unit,</u>	4.20
27	<u>division, or function of the corporation; any other officer</u>	
28	<u>who performs a policymaking function, or any other person who</u>	4.22
29	<u>performs similar policymaking functions, for the corporation,</u>	
30	<u>and any other person made a party to a proceeding by virtue of</u>	4.23
31	<u>being a named officer of the corporation.</u>	4.24

1	<u>(b) "Recklessness" means the acting, or omission to</u>	1:1us
2	<u>act, in conscious disregard of a risk:</u>	4.26
3	<u>1. Known, or so obvious that it should have been</u>	1:1us
4	<u>known, to the director, officer, or volunteer, and</u>	4.29
5	<u>2. Known to the director, officer, or volunteer, or so</u>	1:1us
6	<u>obvious that it should have been known, to be so great as to</u>	4.32
7	<u>make it highly probable that harm would follow from such</u>	
8	<u>action or omission.</u>	
9	<u>(c) "Volunteer" means an individual performing</u>	1:1us
10	<u>services for a corporation who does not receive compensation</u>	4.34
11	<u>or any other remuneration for such services, other than</u>	
12	<u>reimbursement for expenses actually incurred, and includes a</u>	4.35
13	<u>volunteer serving as a director, officer, trustee, or direct</u>	4.36
14	<u>service volunteer.</u>	
15	Section 4. Section 607.165, Florida Statutes, is	4.37
16	created to read:	
17	<u>607.165 Director, officer, or volunteer deemed not to</u>	1.1us
18	<u>have derived improper personal benefit.--</u>	4.39
19	<u>(1) For purposes of ss. 607.014 and 607.1645, a</u>	1.1us
20	<u>director, officer, or volunteer is deemed not to have derived</u>	4.42
21	<u>an improper personal benefit from any transaction if, without</u>	
22	<u>limitation:</u>	
23	<u>(a) The transaction and the nature of any personal</u>	1.1us
24	<u>benefits derived by the director, officer, or volunteer of the</u>	4.44
25	<u>corporation are disclosed or known to the board of directors</u>	
26	<u>or a committee of the board of directors and the transaction</u>	4.46
27	<u>was authorized, approved, or ratified by a majority of the</u>	
28	<u>disinterested members of the board of directors or committee</u>	4.47
29	<u>by a vote or consent;</u>	
30	<u>(b) The transaction and the nature of any personal</u>	1:1us
31	<u>benefits derived by directors, officers, or volunteers are</u>	4.49

1 disclosed or known to all directors voting on the matter, and
 2 the transaction was authorized, approved, or ratified by at 4.51
 3 least two directors who comprise a majority of the
 4 disinterested directors (whether or not such disinterested 4.52
 5 directors constitute a quorum);
 6 (c) The transaction and personal benefit were 1:1us
 7 disclosed or known to the shareholders entitled to vote, and 4.54
 8 the transaction was authorized, approved, or ratified by the
 9 affirmative vote or written consent of such shareholders who 4.55
 10 hold a majority of the shares, the voting of which is not 4.56
 11 controlled by directors who derived a personal benefit from or
 12 otherwise had a personal interest in the transaction, or 4.57
 13 (d) The transaction was fair and reasonable to the 1:1us
 14 corporation at the time it was authorized by the board, a 4.59
 15 committee, or the shareholders, notwithstanding that a
 16 director, officer, or volunteer received a personal benefit. 4.60
 17 (2) Common or interested directors may be counted in 1:1us
 18 determining the presence of a quorum at a meeting of the board 4.62
 19 of directors or a committee thereof which authorizes,
 20 approves, or ratifies such a transaction. 4.63
 21 (3) The circumstances set forth in paragraphs (a), 1:1us
 22 (b), (c), and (d) of subsection (1) are not exclusive and do 4.65
 23 not preclude the existence of other circumstances under which
 24 a director, officer, or volunteer will be deemed not to have 4.66
 25 derived an improper benefit.
 26 Section 5. Liability of directors, officers, chief 4.67
 27 operating officers, committee members, executive officers, and 4.69
 28 volunteers of credit unions.--
 29 (1) A director, officer, chief operating officer, 1:1us
 30 committee member, executive officer, or volunteer of a credit 4.71
 31 union organized under chapter 657, Florida Statutes, is not

1	<u>personally liable for monetary damages to the credit union,</u>	4.72
2	<u>its members, or any other persons for any action taken as a</u>	4.73
3	<u>director, officer, chief operating officer, committee member,</u>	
4	<u>executive officer, or volunteer, or any failure to take any</u>	4.74
5	<u>action, unless the person asserting liability proves by clear</u>	
6	<u>and convincing evidence that</u>	4.75
7	<u>(a) The director, officer, chief operating officer,</u>	4.76
8	<u>committee member, executive officer, or volunteer breached or</u>	4.77
9	<u>failed to perform his duties as a director, officer, chief</u>	
10	<u>operating officer, committee member, executive officer, or</u>	4.78
11	<u>volunteer; and</u>	
12	<u>(b) The director's, officer's, chief operating</u>	4.79
13	<u>officer's, committee member's, executive officer's, or</u>	4.80
14	<u>volunteer's breach of, or failure to perform, constitutes:</u>	
15	<u>1. A violation of the criminal law, unless the</u>	4.81
16	<u>director, officer, chief operating officer, committee member,</u>	4.82
17	<u>executive officer, or volunteer had reasonable cause to</u>	
18	<u>believe his conduct was lawful or had no reasonable cause to</u>	4.83
19	<u>believe his conduct was unlawful. A judgment or other final</u>	4.84
20	<u>adjudication against a director, officer, chief operating</u>	
21	<u>officer, committee member, executive officer, or volunteer in</u>	5.1
22	<u>any criminal proceeding for a violation of the criminal law</u>	5.2
23	<u>estops that director, officer, chief operating officer,</u>	
24	<u>committee member, executive officer, or volunteer from</u>	5.3
25	<u>contesting the fact that his breach, or failure to perform,</u>	
26	<u>constitutes a violation of the criminal law; but does not</u>	5.4
27	<u>estop the director, officer, chief operating officer,</u>	
28	<u>committee member, executive officer, or volunteer from</u>	5.5
29	<u>establishing that he had reasonable cause to believe that his</u>	5.6
30	<u>conduct was lawful or had no reasonable cause to believe that</u>	
31	<u>his conduct was unlawful;</u>	5.7

1	<u>2 A transaction from which the director, officer,</u>	1 lus
2	<u>chief operating officer, committee member, executive officer,</u>	5.9
3	<u>or volunteer derived an improper personal benefit; or</u>	
4	<u>3 Recklessness or willful misconduct.</u>	1 lus
5	<u>(2) For purposes of this section, the term:</u>	1 lus
6	<u>(a) "Recklessness" means the acting, or omission to</u>	1 lus
7	<u>act, in conscious disregard of a risk:</u>	5.13
8	<u>1 Known, or so obvious that it should have been</u>	1 lus
9	<u>known, to the director, officer, chief operating officer,</u>	5 15
10	<u>committee member, executive officer, or volunteer, and</u>	
11	<u>2 Known to the director, officer, chief operating</u>	1 lus
12	<u>officer, committee member, executive officer, or volunteer, or</u>	5 17
13	<u>so obvious that it should have been known to be so great as</u>	5 18
14	<u>to make it highly probable that harm would follow from such</u>	
15	<u>action or omission.</u>	5 19
16	<u>(b) "Volunteer" means an individual performing</u>	1 lus
17	<u>services for a credit union who does not receive compensation</u>	5 21
18	<u>or any other remuneration for such services, other than</u>	
19	<u>reimbursement for expenses actually incurred, and includes a</u>	5 22
20	<u>volunteer serving as a director, officer, chief operating</u>	5 23
21	<u>officer, committee member, executive officer, or direct</u>	5 24
22	<u>service volunteer.</u>	
23	<u>Section 6. Liability of trustees, officers, and</u>	5.25
24	<u>volunteers of self-insurance trust fund --</u>	5 27
25	<u>(1) A trustee, officer, or volunteer of any self-</u>	1 lus
26	<u>insurance trust fund organized under the laws of this state is</u>	5.30
27	<u>not personally liable for monetary damages to any person for</u>	
28	<u>any action taken as a trustee, officer, or volunteer, or any</u>	5 32
29	<u>failure to take any action, unless the person asserting</u>	
30	<u>liability proves by clear and convincing evidence that:</u>	5 34
31		

1	<u>(a) The trustee, officer, or volunteer breached or</u>	1:1us
2	<u>failed to perform his duties as a trustee, officer, or</u>	5.36
3	<u>volunteer; and</u>	
4	<u>(b) The trustee's, officer's, or volunteer's breach</u>	1:1us
5	<u>of, or failure to perform, his duties constitutes;</u>	5.38
6	<u>1. A violation of the criminal law, unless the</u>	1:1us
7	<u>trustee, officer, or volunteer had reasonable cause to believe</u>	5.40
8	<u>his conduct was lawful or had no reasonable cause to believe</u>	
9	<u>his conduct was unlawful. A judgment or other final</u>	5.42
10	<u>adjudication against a trustee, officer, or volunteer in any</u>	
11	<u>criminal proceeding for violation of the criminal law estops</u>	5.43
12	<u>that trustee, officer, or volunteer from contesting the fact</u>	5.44
13	<u>that his breach, or failure to perform, constitutes a</u>	
14	<u>violation of the criminal law; but does not estop the trustee,</u>	5.45
15	<u>officer, or volunteer from establishing that he had reasonable</u>	5.46
16	<u>cause to believe that his conduct was lawful or had no</u>	
17	<u>reasonable cause to believe that his conduct was unlawful;</u>	5.47
18	<u>2. A transaction from which the trustee, officer, or</u>	1:1us
19	<u>volunteer derived an improper personal benefit, or</u>	5.49
20	<u>3. Recklessness or willful misconduct.</u>	1:1us
21	<u>(2) For purposes of this section, the term:</u>	1:1us
22	<u>(a) "Recklessness" means the acting, or omission to</u>	1:1us
23	<u>act, in conscious disregard of a risk;</u>	5.53
24	<u>1. Known, or so obvious that it should have been</u>	1:1us
25	<u>known, to the trustee, officer, or volunteer; and</u>	5.56
26	<u>2. Known to the trustee, officer, or volunteer, or so</u>	1:1us
27	<u>obvious that it should have been known, to be so great as to</u>	5.58
28	<u>make it highly probable that harm would follow from such</u>	
29	<u>action or omission.</u>	5.59
30	<u>(b) "Volunteer" means an individual performing</u>	1:1us
31	<u>services for a self-insurance trust fund who does not receive</u>	5.6.

1	<u>compensation or any other remuneration for such services,</u>	
2	<u>other than reimbursement for expenses actually incurred, and</u>	5 62
3	<u>includes a volunteer serving as a trustee, officer, or direct</u>	5.63
4	<u>service volunteer.</u>	
5	Section 7. <u>(1) A director, officer, trustee, member,</u>	5.64
6	<u>or volunteer of a nonprofit organization is not personally</u>	5.66
7	<u>liable for monetary damages to any person for any action taken</u>	
8	<u>as a director, officer, trustee, member, or volunteer, or any</u>	5.67
9	<u>failure to take any action, unless the person asserting</u>	5 68
10	<u>liability proves by clear and convincing evidence that:</u>	
11	<u>(a) The director, officer, trustee, member, or</u>	1:lus
12	<u>volunteer breached or failed to perform his duties as a</u>	5.70
13	<u>director, officer, trustee, member, or volunteer; and</u>	
14	<u>(b) The director's, officer's, trustee's, member's, or</u>	1:lus
15	<u>volunteer's breach of, or failure to perform, those duties</u>	5.72
16	<u>constitutes:</u>	
17	<u>1. A violation of the criminal law, unless the</u>	1:lus
18	<u>director, officer, trustee, member, or volunteer had</u>	5.74
19	<u>reasonable cause to believe his conduct was lawful or had no</u>	
20	<u>reasonable cause to believe his conduct was unlawful. A</u>	5.76
21	<u>judgment or other final adjudication against a director,</u>	
22	<u>officer, trustee, member, or volunteer in any criminal</u>	5 77
23	<u>proceeding for a violation of the criminal law estops that</u>	
24	<u>director, officer, trustee, member, or volunteer from</u>	5 78
25	<u>contesting the fact that his breach, or failure to perform,</u>	
26	<u>constitutes a violation of the criminal law; but does not</u>	5 79
27	<u>estop the director, officer, trustee, member, or volunteer</u>	5.80
28	<u>from establishing that he had reasonable cause to believe that</u>	
29	<u>his conduct was lawful or had no reasonable cause to believe</u>	5.81
30	<u>that his conduct was unlawful.</u>	
31		

1	<u>2. A transaction from which the director, officer,</u>	1:1us
2	<u>trustee, member, or volunteer derived an improper personal</u>	5.83
3	<u>benefit; or</u>	
4	<u>3 Recklessness or willful misconduct.</u>	1:1us
5	<u>(2) For purposes of this section, the term:</u>	1:1us
6	<u>(a) "Nonprofit organization" means an entity, other</u>	1:1us
7	<u>than a corporation, recognized under section 501(c)(3),</u>	6.3
8	<u>section 501(c)(4), or section 501(c)(6) of the Internal</u>	
9	<u>Revenue Code of 1986.</u>	6.4
10	<u>(b) "Recklessness" means the acting, or omission to</u>	1:1us
11	<u>act, in conscious disregard of a risk:</u>	6 6
12	<u>1 Known, or so obvious that it should have been</u>	1:1us
13	<u>known, to the director, officer, trustee, member, or</u>	6.8
14	<u>volunteer; and</u>	
15	<u>2. Known to the director, officer, trustee, member, or</u>	1:1us
16	<u>volunteer, or so obvious that it should have been known, to be</u>	6.10
17	<u>so great as to make it highly probable that harm would follow</u>	
18	<u>from such action or omission.</u>	6 11
19	<u>(c) "Volunteer" means an individual performing</u>	1:1us
20	<u>services for a nonprofit organization who does not receive</u>	6 13
21	<u>compensation or any other remuneration for such services,</u>	
22	<u>other than reimbursement for expenses actually incurred, and</u>	6 14
23	<u>includes a volunteer serving as a director, officer, trustee,</u>	6.15
24	<u>or direct service volunteer.</u>	
25	Section 8. This act shall take effect July 1, 1987, or	6 16
26	upon becoming a law, whichever occurs later.	6 17
27		
28		
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1	*****	1:sbs
2	SENATE SUMMARY	1:sbs
3	Authorizes corporations to indemnify officers, directors,	6.18
4	employees, and agents against liability and against legal	6.19
5	expenses, and to advance such persons certain expenses	6.20
6	incurred in defense of the corporation in a legal	6.21
7	proceeding. Provides for a procedure to evaluate and	6.22
8	authorize payments against such indemnity. Excludes	6.23
9	liability for most violations of the criminal law,	6.24
10	improper personal gains, willful misconduct, and a	6.25
11	conscious disregard for the best interest of the	6.26
12	corporation from such indemnity. Authorizes a court to	6.28
13	order a corporation to provide such indemnity under	6.29
14	certain circumstances, unless the corporation's articles	6.31
15	of incorporation provide otherwise. Provides directors,	6.32
16	officers, employees, agents, and volunteers immunity from	6.34
17	civil liability in most situations. Provides for the	6.35
18	authorization and approval of improper benefits derived	
19	by directors and officers. Provides directors, officers,	
20	chief operating officers, committee members, executive	
21	officers, and volunteers of credit unions immunity from	
22	civil liability. Provides trustees, officers, or	
23	volunteers of a self-insurance trust fund immunity from	
24	civil liability. Provides trustees, directors, officers,	
25	members, or volunteers of a nonprofit organization	
26	immunity from civil liability.	
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By the Committee on Health & Rehabilitative Services and
Representatives Bloom, Davis, Hawkins, Jennings

This publication was produced at an average cost of 1.5 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public

1 A bill to be entitled
2 An act relating to liability of social service
3 organizations; creating s. 768.82, F.S.;
4 providing definitions; providing a limitation
5 on liability for certain organizations
6 providing social services; providing immunity
7 for employees, directors, and officers of such
8 organizations; providing condition precedent to
9 payment on certain contracts; providing
10 conditional operation of certain provisions of
11 the act; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida.

14
15 Section 1. Section 768.82, Florida Statutes, is
16 created to read:

17 768.82 Limitation of liability for social service
18 organizations.--

19 (1) As used in this section

20 (a) The term "social services" includes, but is not
21 limited to, programs or facilities meeting applicable state
22 and local licensing requirements and regulations, which
23 provide adoption placement, child care, health care, and
24 community care for the elderly.

25 (b) The term "health care" refers only to compensated
26 staff and volunteers of a social service agency which provides
27 health care as one of its services to clients. The term
28 "health care" does not include any care, treatment, or
29 diagnosis of any physical or psychological impairment provided
30 by practitioners licensed under chapters 458, 459, 460, 461,
31 or 462, or by facilities licensed under chapter 395.

1	<u>(2) The Legislature finds and declares that the need</u>	1.22
2	<u>for the providing of social services is greatly in excess of</u>	
3	<u>the quantity of such services which the state and its</u>	1.23
4	<u>subdivisions are economically and physically capable to</u>	
5	<u>provide; that the providing of such services by private</u>	1.24
6	<u>organizations and individuals is in the public interest, that</u>	1.25
7	<u>there now exists and will continue to exist, absent</u>	
8	<u>appropriate action by the Legislature, a substantial</u>	1.26
9	<u>probability that the providing of social services by private</u>	1.27
10	<u>persons will be curtailed as a result of the increasing number</u>	
11	<u>of liability suits which are brought against such private</u>	1.28
12	<u>persons as a result of their providing of social services;</u>	1.29
13	<u>that the expenditure of limited financial resources by private</u>	
14	<u>social service agencies and persons for the purpose of</u>	1.30
15	<u>responding in the civil courts of this state and in the</u>	
16	<u>payment of judgments or premiums for liability insurance is</u>	1.31
17	<u>against public policy; and that the rights of individuals to</u>	1.32
18	<u>seek redress for injuries against private social service</u>	
19	<u>agencies and persons must be balanced against the need to</u>	1.33
20	<u>provide social services.</u>	
21	<u>(3) No person who, pursuant to a contract with the</u>	1.34
22	<u>state, or with any agency, instrumentality, or subdivision</u>	1.35
23	<u>thereof, provides social services to the citizens of the state</u>	1.36
24	<u>within the state shall be liable in tort for any act or</u>	
25	<u>omission except to the extent provided in subsection (5).</u>	1.37
26	<u>(4) No director, officer, employee, or agent of any</u>	1.38
27	<u>person who provides social services in this state shall be</u>	
28	<u>held personally liable in tort or named as a party defendant</u>	1.39
29	<u>in any action for any injury or damage suffered as a result of</u>	1.40
30	<u>an act, event, or omission of action in the scope of his</u>	1.41
31	<u>employment or function, unless such director, officer,</u>	

1 employee, or agent failed to act as a reasonable, prudent 1.42
2 person would have acted in the same or similar circumstances.
3 The exclusive remedy for injury or damage suffered as a result 1.43
4 of an act, event, or omission of such director, officer, 1.44
5 employee, or agent who has acted within the scope of his
6 employment or function, and who failed to act as a reasonable, 1.45
7 prudent person would have acted in the same or similar 1.46
8 circumstances, shall be by action against the organization for 1.47
9 whom the person acts as a director, officer, or agent, or by
10 which he is employed. 1.48

11 (5) A person who provides social services in this 1:1us
12 state, pursuant to a contract with the state, or with any 1.50
13 agency, instrumentality, or subdivision thereof, shall not be 1.51
14 liable to pay a claim or judgment by any one person which
15 exceeds the sum of \$100,000, or any claim or judgment, or 1.52
16 portions thereof, which, when totaled with all other claims or 1.53
17 judgments paid by the person with whom the government has
18 contracted arising out of the same incident or occurrence, 1.54
19 exceeds the sum of \$200,000. However, a judgment or judgments 1.55
20 may be rendered in excess of these amounts, and may be settled
21 and paid pursuant to this act up to \$100,000 or \$200,000, as 1.56
22 the case may be. That portion of the judgment that exceeds 1.58
23 these amounts may be reported to the Legislature, but may be
24 paid in part or in whole only by further act of the 1.59
25 Legislature directing payment by the agency, instrumentality,
26 or subdivision with which the contract for social services was 1.61
27 made. Contracts between the state, or any agency, 1.63
28 instrumentality, or subdivision thereof, and the person who
29 provides social services shall contain a provision requiring 1.64
30 the reimbursement of such payment by the person.

1	<u>(6) A contract for social services entered into by the</u>	1.65
2	<u>state, or by an agency, instrumentality, or subdivision</u>	1.66
3	<u>thereof, shall require as a condition precedent to the payment</u>	1.67
4	<u>of any sums becoming due thereunder proof that the person with</u>	1.68
5	<u>whom the contract has been executed has in force a policy of</u>	1.68
6	<u>insurance providing for the payment of any judgment or claim</u>	1.69
7	<u>in an amount of \$100,000 per individual and \$200,000 per</u>	1.69
8	<u>occurrence, together with a policy naming the governmental</u>	1.70
9	<u>entity as a co-insured in the amount of at least \$1,000,000</u>	1.71
10	<u>for the purpose of paying any claim reported by the agency for</u>	1.71
11	<u>injuries or damages sustained by an individual as a result of</u>	1.72
12	<u>the performance of the contract by the person with whom the</u>	1.72
13	<u>governmental entity has contracted.</u>	1.73
14	Section 2. This act shall take effect October 1, 1987,	1.73
15	and shall apply to all causes of action accruing on or after	1.75
16	the effective date of this act, provided that as to any	1.76
17	contract executed prior to the effective date of this act, the	1.76
18	defenses provided under this act shall not be available to a	1.77
19	person, or to a director, officer, employee, or agent of such	1.78
20	person, if such person does not have in effect a policy or	1.78
21	policies of insurance sufficient to cover any award entered	1.79
22	against such person in compliance with the limitations of	1.79
23	subsection (5) of section 1 of this act.	1.80
24	HOUSE SUMMARY	
25	Provides that no person who, pursuant to a contract with	
26	the state, or with any agency, instrumentality, or	
27	subdivision thereof, provides social services to Florida	
28	citizens in Florida shall be liable in tort beyond	
29	\$100,000 per claim or judgment. Provides that no	
30	director, officer, employee, or agent of any person who	
31	provides social services in this state shall be held	
	personally liable in tort or named as a party defendant	
	in any action for injury or damage suffered as a result	
	of an act, event, or omission of action in the scope of	
	his employment or function, unless he failed to act as a	
	reasonable, prudent person would have acted in the same	
	or similar circumstances. Defines the terms "social	
	services" and "health care." See bill for details.	

By Senator Weinstock

This publication was produced at an average cost of 1.5 cents per page for the information of members of the legislature and the public.

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A bill to be entitled
An act relating to civil liability of
directors, officers, and trustees of not-for-
profit organizations, associations,
corporations, or trusts; providing immunity
from civil liability for certain uncompensated
directors, officers, and trustees of such
entities; providing exceptions; providing for
evidence; providing for application of act;
providing severability; providing an effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) For the purpose of this section, the
term "not-for-profit organization" means an organization,
association, corporation, or trust that has tax-exempt status
under paragraph (3), paragraph (4), or paragraph (6) of
subsection 501(c) of the Internal Revenue Code, as amended.

(2) Notwithstanding any other law, a director,
officer, or trustee of the governing body of any not-for-
profit organization who serves without compensation, other
than for per diem and reimbursement of actual expenses, is
immune from civil liability arising from the conduct of the
affairs of the not-for-profit organization, except when the
conduct amounts to gross negligence or willful or wanton
misconduct.

(3)(a) Presumptive evidence of the tax-exempt status
of an organization, association, corporation, or trust under
paragraph (3), paragraph (4), or paragraph (6) of subsection

1 501(c) of the Internal Revenue Code, as amended, may consist
2 of:

3 1. A letter from the United States Internal Revenue
4 Service to the organization, association, corporation, or
5 trust giving preliminary or final approval to its application
6 for tax-exempt status under one of those paragraphs; or

7 2. An official publication of the United States
8 Internal Revenue Service listing the organization,
9 association, corporation, or trust as having approved tax-
10 exempt status under one of those paragraphs.

11 (b) Presumptive evidence of the uncompensated status
12 of a defendant may consist of an affidavit of the chief
13 financial officer of the not-for-profit organization.

14 (c) On the motion of a defendant based upon this
15 subsection, the court shall determine whether that defendant
16 is entitled to the benefit of subsection (2). If the court
17 finds that that defendant is entitled to the benefit of
18 subsection (2) and does not find reasonable probability of
19 gross negligence or willful or wanton misconduct, it shall
20 dismiss the cause of action as to that defendant.

21 Section 2. This act does not apply to any cause of
22 action that accrued prior to the effective date of this act.

23 Section 3. If any provision of this act or the
24 application thereof to any person or circumstance is held
25 invalid, the invalidity shall not affect other provisions or
26 applications of the act which can be given effect without the
27 invalid provision or application; and to this end the
28 provisions of this act are declared severable.

29 Section 4. This act shall take effect upon becoming a
30 law.

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SENATE SUMMARY

Grants an uncompensated director, officer, or trustee of a not-for-profit organization, association, corporation, or trust that is tax-exempt under section 501(c)(3), (4), or (6) of the Internal Revenue Code, as amended, immunity from civil liability arising from the conduct of the entity's affairs except when the conduct amounts to gross negligence or willful or wanton misconduct.

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By Senators Marquis, W.D. Childers, Meek, Gordon, Grizzle, Ros-Lehtinen, Crawford, Hill, Lehtiner, Dudley, Stuart, Crenshaw, Kirkpatrick, Kiser, and Beard

This publication was produced at an average cost of 1.5 cents per page for the information of members of the Legislature and the public.

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A bill to be entitled

An act relating to liability of nonprofit organizations; providing legislative findings; granting immunity from liability for civil damages with respect to certain actions of uncompensated directors and officers of nonprofit corporations and associations; providing exceptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The Legislature finds and declares that the services of nonprofit corporation and association governing boards are critical to the efficient conduct and management of the public and charitable affairs of the citizens of this state. Members of such nonprofit boards must be permitted to operate without concern for the possibility of litigation arising from the discharge of their duties as policy makers.

Section 2. Officers and directors of corporations and associations not for profit; immunity from civil liability.--

(1) As used in this section, "officer or director" means a person who serves as a director, officer, or trustee of a nonprofit organization recognized under Section 501(c)(3) or Section 501(c)(6) of the Internal Revenue Code of 1954.

(2) Any act or omission by an uncompensated officer or director of a nonprofit organization described under this section shall be deemed to be an act of the organization for which no individual liability for civil damages shall exist, unless such act or omission was committed in bad faith or with

1 malicious purpose or in a manner exhibiting wanton and willful
2 disregard of human rights, safety, or property.

3 (3) For purposes of this section, a person shall not
4 be deemed to be compensated solely on the basis that such
5 person received reimbursement for reasonable expenses actually
6 incurred or to be incurred, or who receives per diem as
7 provided in s. 112.061, Florida Statutes.

8 Section 3. This act shall take effect upon becoming a
9 law and shall apply to all causes of action accruing after the
10 effective date of this act.

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15 HOUSE SUMMARY

16 Provides immunity from civil liability for civil damages
17 with respect to actions or omissions of uncompensated
18 directors and officers of nonprofit corporations and
19 associations unless such actions or omissions were
20 committed in bad faith or with malicious purpose or in a
21 manner exhibiting wanton and willful disregard of human
22 rights, safety, or property.
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By Senator Landley

This publication was produced at an estimated cost of 1.5 cents per page for the information of members of the Legislature and the public.

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A bill to be entitled

An act relating to negligence; creating s. 768.1351, F.S.; exempting volunteers and nonprofit associations involved in youth athletic programs from certain civil liability; providing exceptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 768.1351, Florida Statutes, is created to read:

768.1351 Volunteers and nonprofit associations in youth athletic programs; immunity from civil liability.--

(1) As used in this section:

(a) "Nonprofit association" means an entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this state or the United States or any entity which is authorized to do business in this state as a nonprofit corporation or unincorporated association under the laws of this state, including, but not limited to, youth or athletic associations, volunteer fire, ambulance, religious, charitable, fraternal, veteran, civic, county fair, or agricultural associations, or any separately chartered auxiliary of the foregoing, if organized and operated on a nonprofit basis.

(b) "Youth athletic program" means any program operated or conducted by a nonprofit association for the recreational and athletic benefit of persons under 19 years of age in any sport recognized as a sport by the Amateur Athletic Union or the National Collegiate Athletic Association.

1 (2) Any person who, without compensation, except
2 reimbursement for reasonable expenses actually incurred or to
3 be incurred, and as a volunteer, renders services in a youth
4 athletic program as a manager, coach, umpire, or referee, or
5 as an assistant manager or coach, and any nonprofit
6 association or any officer or employee thereof conducting a
7 youth athletic program, shall not be held liable to any person
8 for any civil damages as a result of any act or omission in
9 rendering such services or in conducting such program if such
10 act or omission occurs during the course of a game or other
11 athletic event or organized practice therefor. This
12 subsection shall not apply to any act or omission
13 intentionally designed to cause harm or to any grossly
14 negligent act or omission which causes harm to any person.

15 (3) This section shall not be construed to affect or
16 modify any existing legal basis for determining the liability
17 or defense from liability of any person not covered by
18 immunity conferred by this section.

19 Section 2. This act shall take effect October 1, 1987.

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HOUSE SUMMARY

Exempts certain volunteers servicing and certain
nonprofit associations conducting youth athletic programs
from civil liability for their acts or omissions.
Provides exceptions.

1 religious, educational, or charitable institution as defined
 2 in, and which qualifies for a tax exemption under, s.
 3 212.08(7)(a), Florida Statutes.

4 (4) For purposes of this section, a person shall not
 5 be deemed to be compensated solely on the basis that such
 6 person receives reimbursement for reasonable expenses actually
 7 incurred or to be incurred or receives per diem as provided in
 8 s. 112.061, Florida Statutes.

9 Section 2. This act shall take effect upon becoming a
 10 law and shall apply to all causes of action accruing after the
 11 effective date of this act.

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15 LEGISLATIVE SUMMARY

16 Grants immunity from liability for civil damages to
 17 uncompensated officers and directors of nonprofit
 18 religious, educational, and charitable institutions.

By Senator Thurman

This publication was produced at an average cost of 1.5 cents per page for the information of members of the legislature and the public.

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A bill to be entitled

An act relating to nonprofit organizations; creating s. 768.137, F.S.; exempting members of boards of directors and their nonpaid representatives, and officers and trustees of certain nonprofit organizations from civil liability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 768.137, Florida Statutes, is created to read:

768.137 Nonprofit organizations; civil immunity for directors, officers, and trustees.--Any person who serves on the board of directors, or any other nonpaid representative of the board acting on behalf of the board, or any person who serves as an officer or trustee of a nonprofit organization qualified as a tax-exempt organization under s. 501(c) of the Internal Revenue Code of 1954, as from time to time amended, and who is not compensated for such services on a salary or prorated equivalent basis, shall be immune from civil liability for any act or omission resulting in damage or injury occurring on or after the effective date of this act, if such person was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by the willful or wanton misconduct of such person.

Section 2. This act shall take effect October 1, 1987.

HOUSE SUMMARY

Exempts members of boards of directors and their nonpaid representatives, and officers and trustees of certain nonprofit organizations from civil liability for acts or omissions while acting in the scope of their official functions and duties.

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HOUSE SUMMARY

Exempts from liability for civil damages non-paid directors of nonprofit corporations and nonprofit organizations.

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FLORIDA LEGISLATURE

***History of Legislation
1987 Regular Session
1987 Special Session A***



prepared by:

Joint Legislative Management Committee

**Legislative Information Division
Capitol Building, Room 826 — 488-4371**

HISTORY OF SENATE BILLS

- S 1092 GENERAL BILL/CS by Personnel, Retirement and Collective Bargaining; Hill (Similar CS/ENG/H 116)**
Retirement/Special Risk Class, provides that special risk criteria for correctional officers shall include control & investigation of prisoners, clarifies procedure for designating special risk membership, provides for special risk membership retention for certain members, authorizes members of Regular & Special Risk Admin. Support Class to apply for & be admitted as Special Risk members, restores credit for certain periods of employment, etc Amends 121 0515 Effective Date 07/01/87
 04/14/87 SENATE Filed
 04/28/87 SENATE Introduced, referred to Personnel, Retirement and Collective Bargaining, Appropriations -SJ 200
 04/30/87 SENATE Extension of time granted Committee Personnel, Retirement and Collective Bargaining
 05/05/87 SENATE On Committee agenda—Personnel, Retirement and Collective Bargaining, 05/07/87, 9 00 am, Room-C
 05/07/87 SENATE Comm Report CS by Personnel, Retirement and Collective Bargaining -SJ 272
 05/08/87 SENATE CS read first time -SJ 278; Now in Appropriations -SJ 272
 05/21/87 SENATE Extension of time granted Committee Appropriations
 06/06/87 SENATE Died in Committee on Appropriations
- S 1093 GENERAL BILL by Hill (Compare ENG/H 775)**
Traffic Control/Child Restraint, defines term "motor vehicle" for purposes of state law governing child restraint requirements, provides exceptions Amends 316 613 Effective Date: 10/01/87
 04/14/87 SENATE Filed
 04/28/87 SENATE Introduced, referred to Transportation -SJ 200
 04/30/87 SENATE On Committee agenda—Transportation, 05/04/87, 2 00 pm, Room-C
 05/01/87 SENATE Extension of time granted Committee Transportation
 05/04/87 SENATE Comm Report Favorable with 2 amendment(s) by Transportation, placed on Calendar -SJ 254
 06/02/87 SENATE Placed on Special Order Calendar -SJ 571, Iden /Sim House Bill substituted -SJ 618, Laid on Table under Rule, Iden /Sim./Compare Bill passed, refer to HB 775 (Ch 87-200) -SJ 619
- S 1094 GENERAL BILL/CS by Education; D.C. Childers (Similar CS/ENG/H 282)**
Education/Remedial Programs, specifies content of remediation programs, requires district school board to notify parents of student receiving remedial education, requires certain reports to reflect student's participation & progress in such programs Amends 233 051 Effective Date Upon becoming law
 04/14/87 SENATE Filed
 04/28/87 SENATE Introduced, referred to Education -SJ 200
 05/01/87 SENATE Extension of time granted Committee Education
 05/15/87 SENATE Extension of time granted Committee Education
 05/19/87 SENATE On Committee agenda—Education, 05/21/87, 2:00 pm, Room-A
 05/21/87 SENATE Comm Report CS by Education, placed on Calendar -SJ 388
 05/25/87 SENATE CS read first time -SJ 391
 06/03/87 SENATE Placed on Consent Calendar -SJ 628, CS passed, YEAS 27 NAYS 2 -SJ 663
 06/03/87 HOUSE In Messages
 06/06/87 HOUSE Died in Messages, Iden /Sim /Compare Bill passed, refer to CS/HB 282 (Ch. 87-163)
- S 1095 GENERAL BILL by Jennings (Similar H 646)**
Banking Assessments, modifies assessments state credit unions must pay to Banking & Finance Dept., changes dates when such assessments must be paid, increases various application fees that state banks & state trust companies must pay dept., increases nonrefundable licensing fee paid by representative office of international banking corporation, etc Amends Ch 665, 663 12, 657 053, 658 73 Effective Date 10/01/87
 04/14/87 SENATE Filed
 04/28/87 SENATE Introduced, referred to Commerce, Finance, Taxation and Claims -SJ 200
 05/04/87 SENATE On Committee agenda—Commerce, 05/06/87, 2 00 pm, Room-A
 05/06/87 SENATE Comm Report Favorable by Commerce -SJ 271
 05/07/87 SENATE Now in Finance, Taxation and Claims -SJ 272
 05/19/87 SENATE Extension of time granted Committee Finance, Taxation and Claims
 05/20/87 SENATE On Committee agenda—Finance, Taxation and Claims, 05/22/87, 9 00 am, Room-1C
 05/22/87 SENATE Comm Report Favorable by Finance, Taxation and Claims, placed on Calendar -SJ 387
 05/28/87 SENATE Placed on Special Order Calendar -SJ 453
 05/29/87 SENATE Placed on Special Order Calendar -SJ 498 & -SJ 499, Iden /Sim House Bill substituted, Laid on Table under Rule, Iden /Sim /Compare Bill passed, refer to HB 646 (Ch 87-191) -SJ 530
- S 1096 GENERAL BILL/CS/ENG by Commerce; Jennings; Thurman; Plummer and others (Similar CS/H 254, Compare H 24, H 179, H 205,**
- S 1096 (CONTINUED)**
H 409, H 410, H 1024, H 1446, CS/S 278, CS/S 309, S 317, S 384, S 654, S 963)
Nonprofit Organizations/Liability, (THIS BILL COMBINES S 1096,963,654) provides limited civil immunity to directors & certain officers of certain nonprofit organizations, authorizes corporations to indemnify directors, officers, employees & agents against liability & related expenses, provides limitations, provides civil immunity to certain persons associated with corporations not for profit, etc Amends 607 014, 617.028, 627 915, creates 607.1645,.165, 627.9122 Effective Date 07/01/87
 04/14/87 SENATE Filed
 04/23/87 SENATE Introduced, referred to Commerce -SJ 157, On Committee agenda—Commerce, 04/27/87, 2 00 pm, Room-A
 04/27/87 SENATE CS combines this bill and 963 & 654, Comm Report. CS by Commerce -SJ 233
 04/28/87 SENATE CS read first time -SJ 242, Also referred to Judiciary-Civil -SJ 201
 04/29/87 SENATE Now in Judiciary-Civil -SJ 233
 05/01/87 SENATE Extension of time granted Committee Judiciary-Civil
 05/08/87 SENATE On Committee agenda—Judiciary-Civil, 05/12/87, 2 00 pm, Room-B
 05/12/87 SENATE Withdrawn from Judiciary-Civil -SJ 280, Placed on Calendar
 05/13/87 SENATE Placed on Special Order Calendar -SJ 280 & -SJ 293, CS passed as amended, YEAS 38 NAYS 1 -SJ 317
 05/19/87 SENATE Immediately certified -SJ 331
 05/19/87 HOUSE In Messages
 05/20/87 HOUSE Received, placed on Calendar -HJ 493
 05/21/87 HOUSE Placed on Special Order Calendar
 05/22/87 HOUSE Substituted for CS/HB 254, Read second time -HJ 560, Amendments adopted -HJ 564
 05/26/87 HOUSE Read third time, CS passed as amended; YEAS 111 NAYS 2 -HJ 574
 05/26/87 SENATE In Messages
 05/28/87 SENATE Message was taken up -SJ 456, Amendments to House amendments adopted, Concurred in House amendments as amended, Requested House to concur, CS passed as amended, YEAS 35 NAYS 1 -SJ 461
 05/28/87 HOUSE In Messages; Concurred, CS passed as further amended, YEAS 104 NAYS 3 -HJ 754
 05/28/87 Ordered engrossed, then enrolled -SJ 464
 06/16/87 Signed by Officers and presented to Governor
 06/30/87 Approved by Governor, Chapter No 87-245
- S 1097 GENERAL BILL by Woodson and others (Identical H 1183)**
Emergency Medical Services Grants, redefines term "emergency medical services" & defines term "prehospital care system" for purposes of "Florida Emergency Medical Services Grant Act of 1973", requires county commissioners to distribute funds received from Emergency Medical Services T F to agencies that operate prehospital care systems & to certain municipalities within county Amends 401 107, 113 Effective Date 10/01/87
 04/14/87 SENATE Filed
 04/28/87 SENATE Introduced, referred to Health and Rehabilitative Services -SJ 201
 05/01/87 SENATE Extension of time granted Committee Health and Rehabilitative Services
 05/14/87 SENATE Extension of time granted Committee Health and Rehabilitative Services
 05/29/87 SENATE Extension of time granted Committee Health and Rehabilitative Services
 06/06/87 SENATE Died in Committee on Health and Rehabilitative Services
- S 1098 GENERAL BILL/CS/ENG by Health and Rehabilitative Services; Myers; Jenne and others (Similar CS/ENG/H 286, Compare S 296)**
Trauma Centers/Hospitals, (THIS BILL COMBINES S1098,296) grants access to patient records, requires local & regional trauma agencies to develop trauma medical services system plan for review & approval by H R S., requires trauma centers to accept all trauma victims, provides for verification of hospital trauma centers, requires hospitals to furnish certain trauma registry data, etc Amends 119 07, 395 017, 031, creates 320 0801, 395 032 Appropriation \$1,203,373 Effective Date 08/05/87
 04/14/87 SENATE Filed
 04/28/87 SENATE Introduced, referred to Health and Rehabilitative Services, Finance, Taxation and Claims, Appropriations -SJ 201
 05/01/87 SENATE Extension of time granted Committee Health and Rehabilitative Services
 05/05/87 SENATE On Committee agenda—Health and Rehabilitative Services, 05/07/87, 9 00 am, Room-A
 05/07/87 SENATE CS combines this bill and 296, Comm Report CS by Health and Rehabilitative Services -SJ 273
 05/08/87 SENATE CS read first time -SJ 279, Now in Finance, Taxation and Claims -SJ 273
 05/13/87 SENATE On Committee agenda—Finance, Taxation and Claims, 05/14/87, 9 00 am, Room-1C -SJ 319
 05/14/87 SENATE Comm Report Favorable by Finance, Taxation and Claims -SJ 324

HISTORY OF HOUSE BILLS

H 253 (CONTINUED)

CS/CS/S 253, Similar H 1096, Compare H 363
Jack Hasler Self Defense Act, creates said act, authorizes State Dept rather than counties to issue licenses for carrying concealed weapons or firearms, provides criteria & procedures for issuance of license, provides for revocation in certain circumstances; provides grandfather provisions, provides for disposition of fees collected, repeals provision which provides penalties for carrying certain weapons without license, etc Amends 790 06, repeals 790 05 Effective Date 10/01/87

02/12/87 HOUSE Prefiled
 02/20/87 HOUSE Referred to Criminal Justice, Finance & Taxation, Appropriations

03/27/87 HOUSE Withdrawn from— Finance & Taxation
 04/03/87 HOUSE Subreferred to Subcommittee on Crimes, Penalties and Prosecutions

04/07/87 HOUSE Introduced, referred to Criminal Justice, Appropriations—HJ 27, Subreferred to Subcommittee on Crimes, Penalties and Prosecutions, On subcommittee agenda—Criminal Justice, 04/07/87, 1 15 pm, Morris Hall, Subcommittee Recommendation pending ratification by full Committee Favorable, with 2 amendments, On Committee agenda, pending subcommittee action—Criminal Justice, 04/08/87, 3 30 pm, Morris Hall

04/08/87 HOUSE Preliminary Committee Action by Criminal Justice Favorable, with 2 amendments
 04/09/87 HOUSE Comm Report, Favorable with 2 amendment(s) by Criminal Justice—HJ 104, Now in Appropriations—HJ 104; On Committee agenda—Appropriations, 04/09/87, 3 30 pm, 21 HOB
 04/13/87 HOUSE Comm Report CS by Appropriations, placed on Calendar—HJ 122, CS read first time—HJ 122
 04/21/87 HOUSE Placed on Special Order Calendar, Read second time, Amendments adopted—HJ 209
 04/22/87 HOUSE Read third time, Amendment adopted, CS passed as amended, YEAS 88 NAYS 30—HJ 214, Immediately certified—HJ 214
 04/22/87 SENATE In Messages
 04/30/87 SENATE Received, referred to Judiciary—Criminal, Finance, Taxation and Claims, Appropriations—SJ 245
 05/12/87 SENATE Withdrawn from Judiciary—Criminal, Finance, Taxation and Claims, Appropriations; Substituted for CS/CS/SB 253—SJ 290, CS passed, YEAS 29 NAYS 11—SJ 291, Immediately certified—SJ 291
 05/12/87 Ordered enrolled; Signed by Officers and presented to Governor—HJ 421, Approved by Governor, Chapter No 87-24—HJ 446

H 254 GENERAL BILL/CS by Judiciary; Carpenter, Bass, Bloom, Cosgrove; Sansom; Lippman; Silver; Logan; Sanderson; Gardner; Hawkins; Grindle, Reddick; Messersmith; Hanson, Burned; Healey; Harris; Clark; Crotty; Souto, Garcia; Jamerson; Arnold; Saunders, Glickman, Rochlin; Tobin; Goode; Rush; Gutman; Brown, Morse; Kelly; Tobiassen; Trammell; Clements; Meffert; Hodges; Figg, Webster; Lawson; Wetherell, Gordon; Rehm; Liberty; Carlton; Young, D L. Jones; Lombard, Casas; C.F. Jones; Mackenzie and others (Similar CS/ENG/S 1096, Compare H 179, H 205, H 409, H 419, H 1024, CS/S 278, CS/S 309, S 384, S 654, S 963)

Nonprofit Organizations/Liability; (THIS BILL COMBINES H 254,1024,179,205,419,409) provides limited civil immunity to directors of certain nonprofit organizations, authorizes corporations to indemnify directors, officers, employees, agents, & volunteers against liability & related expenses; provides civil immunity to certain persons associated with corporations not for profit, Amends 607 014, 617 028, 627 915, creates 607 1545, 165, 627 9122 Effective Date 07/01/87 or upon becoming law, whichever occurs later

02/12/87 HOUSE Prefiled
 02/20/87 HOUSE Referred to Judiciary
 04/07/87 HOUSE Introduced, referred to Judiciary—HJ 27
 04/24/87 HOUSE Subreferred to Subcommittee on Court Systems, Probate and Consumer Law, On subcommittee agenda—Judiciary, 04/28/87, 1 15 pm, 16 HOB

04/28/87 HOUSE On Committee agenda—Judiciary, 04/30/87, 8 00 am, 214C
 05/04/87 HOUSE CS combines this bill and 1024, 179, 205, 419 & 409, Combined CS additional reference(s) Appropriations, Comm. Report CS by Judiciary—HJ 348, CS read first time—HJ 346, Now in Appropriations—HJ 348
 05/07/87 HOUSE Withdrawn from Appropriations—HJ 394, Placed on Calendar
 05/13/87 HOUSE Placed on Special Order Calendar
 05/22/87 HOUSE Read second time—HJ 560, Iden /Sim Senate Bill substituted, Laid on Table under Rule, Iden /Sim /Compare Bill passed, refer to CS/SB 1096 (Ch 87-245)—HJ 560

H 255 GENERAL BILL by Long, Ascherl and others (Identical S 686, Compare CS/ENG/H 131)

Handicapped Parking Permit/Veterans, (THIS BILL COMBINED IN CS/H 131,255) provides that certain handicapped persons will not be required to apply for, display, or pay any fee for exemption entitlement parking permits Amends 320 0848 Effective Date: 07/01/87

H 255 (CONTINUED)

02/12/87 HOUSE Prefiled
 02/20/87 HOUSE Referred to Veterans, Military Affairs & Emergency Preparedness, Finance & Taxation, Appropriations

04/07/87 HOUSE Introduced, referred to Veterans, Military Affairs & Emergency Preparedness, Finance & Taxation, Appropriations—HJ 27, On Committee agenda—Veterans, Military Affairs & Emergency Preparedness, 04/08/87, 10 00 am, 214C, for ratification of subreferral, On subcommittee agenda—Veterans, Military Affairs & Emergency Preparedness, 04/09/87, 8 30 am, 214C

04/10/87 HOUSE On Committee agenda—Veterans, Military Affairs & Emergency Preparedness, 04/14/87, 1 30 pm, 214C
 04/14/87 HOUSE Preliminary Committee Action by Veterans, Military Affairs & Emergency Preparedness Favorable, as a Committee Substitute combined with HB 131
 04/22/87 HOUSE CS combines this bill and 131, Comm Report CS by Veterans, Military Affairs & Emergency Preparedness—HJ 225, Original bill laid on Table under Rule, refer to combined CS/ HB 131 (Died in Senate Committee on Transportation)—HJ 225

H 256 GENERAL BILL/CS by Transportation; Mitchell (Similar S 258)

Fractional License Tax/Trucks, provides for fractional license taxes re trucks of gross weight of 26,000 pounds or more or truck tractors used exclusively for hauling agricultural products & which are not required to be apportioned Amends 320.14, Effective Date 07/01/87

02/12/87 HOUSE Prefiled
 02/25/87 HOUSE Referred to Transportation, Finance & Taxation, Appropriations

04/02/87 HOUSE Subreferred to Subcommittee on Highway Safety and Motor Vehicles
 04/07/87 HOUSE Introduced, referred to Transportation, Finance & Taxation, Appropriations—HJ 27, Subreferred to Subcommittee on Highway Safety and Motor Vehicles, On subcommittee agenda—Transportation, 04/08/87, 3 30 pm, 214C
 04/08/87 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable, with 1 amendment
 04/10/87 HOUSE On Committee agenda—Transportation, 04/14/87, 8 30 am, 214C
 04/14/87 HOUSE Preliminary Committee Action by Transportation Favorable, as a Committee Substitute
 04/20/87 HOUSE Comm Report CS by Transportation—HJ 200, CS read first time—HJ 200, Now in Finance & Taxation—HJ 200
 05/05/87 HOUSE On Committee agenda—Finance & Taxation, 05/07/87, 1 30 pm, 21 HOB, for ratification of subreferral
 06/06/87 HOUSE Died in Committee on Finance & Taxation

H 257 GENERAL BILL by Mitchell, Harris; Mackey, Smith

Farm Vehicles/Liability Insurance; exempts certain vehicles used exclusively for farming purposes from proof of liability insurance requirements Amends 207 029 Effective Date Upon becoming law

02/12/87 HOUSE Prefiled
 02/25/87 HOUSE Referred to Transportation, Appropriations
 04/07/87 HOUSE Introduced, referred to Transportation, Appropriations—HJ 27

04/10/87 HOUSE On Committee agenda—Transportation, 04/14/87, 8 30 am, 214C, for subreferral
 04/14/87 HOUSE Subreferred to Subcommittee on Highway Safety and Motor Vehicles
 06/06/87 HOUSE Died in Committee on Transportation

H 258 GENERAL BILL by Carpenter (Identical H 111, Similar ENG/S 68)

Justice/Judge Retiree/Temporary Duty, prescribes qualifications for eligibility for justices & judges assigned to temporary judicial duty to receive compensation for such service Amends 25 073 Effective Date Upon becoming law

02/13/87 HOUSE Prefiled
 02/25/87 HOUSE Referred to Judiciary; Appropriations
 04/07/87 HOUSE Introduced, referred to Judiciary, Appropriations—HJ 27
 04/28/87 HOUSE Subreferred to Subcommittee on Court Systems, Probate and Consumer Law, On Committee agenda—Judiciary, 04/30/87, 8 00 am, 214C, for ratification of subreferral
 06/06/87 HOUSE Died in Committee on Judiciary

H 259 GENERAL BILL by Grindle (Similar ENG/S 233)

County Officers/Salary Increases, amends definition of "annual factor" for purposes of calculating annual salary increases for county officers Amends 145 19 Effective Date 07/01/87 or upon becoming law, whichever occurs later

02/13/87 HOUSE Prefiled
 02/25/87 HOUSE Referred to Community Affairs
 04/07/87 HOUSE Introduced, referred to Community Affairs—HJ 27, On Committee agenda—Community Affairs, 04/08/87, 8 30 am, 212 HOB, for ratification of subreferral
 04/08/87 HOUSE Subreferred to Subcommittee on Oversight, On subcommittee agenda—Community Affairs, 04/09/87, 10 00 am, 212 HOB

HISTORY OF HOUSE BILLS

H 1022 (CONTINUED)

04/20/87 HOUSE On Committee agenda—Education, K - 12, 04/22/87, 2 00 pm, 214C, for subreferral
 04/23/87 HOUSE On Committee agenda—Education, K - 12, 04/27/87, 4:30 pm, 214C, for subreferral
 04/27/87 HOUSE Subreferred to Subcommittee on Programs
 06/06/87 HOUSE Died in Committee on Education, K - 12

H 1023 GENERAL BILL by Simon (Compare CS/H 60)

Burglary/Fire & Explosive Damage, provides that a burglary which involves damages by fire or explosives shall be punishable as first degree felony Amends 810 02 Effective Date 10/01/87
 04/07/87 HOUSE Filed
 04/13/87 HOUSE Introduced, referred to Criminal Justice, Appropriations -HJ 121
 04/30/87 HOUSE Subreferred to Subcommittee on Crimes, Penalties and Prosecutions
 05/04/87 HOUSE On Committee agenda—Criminal Justice, 05/06/87, 3 30 pm, Morris Hall, for ratification of subreferral
 06/06/87 HOUSE Died in Committee on Criminal Justice

H 1024 GENERAL BILL by Bass; Bloom; Logan; Sanderson and others (Compare H 179, H 206, CS/H 254, H 409, H 419, CS/S 278, CS/S 309, S 384, S 654, S 963, CS/ENG/S 1096)

Civil Liability/Corporation Officers, (THIS BILL COMBINED IN CS/H 254,1024,179,205,419,409) authorizes corporations to indemnify directors, officers, employees, agents & volunteers against liability & related expenses, provides procedure to pay such expenses, provides limitations on such indemnity, provides civil immunity to such persons associated with corporations not for profit, etc Amends 607 014, 617 028, creates 607 1645, 165 Effective Date 07/01/87 or upon becoming law, whichever occurs later
 04/07/87 HOUSE Filed
 04/13/87 HOUSE Introduced, referred to Judiciary, Appropriations -HJ 121
 04/24/87 HOUSE Subreferred to Subcommittee on Court Systems, Probate and Consumer Law, On subcommittee agenda—Judiciary, 04/28/87, 1.15 pm, 16 HOB
 04/28/87 HOUSE On Committee agenda—Judiciary, 04/30/87, 8 00 am, 214C
 05/04/87 HOUSE CS combines this bill and 254, 179, 205, 419 & 409, Comm Report CS by Judiciary -HJ 348, Original bill laid on Table under Rule, refer to combined CS/HB 254 (Laid on Table); refer to CS/SB 1096 (Ch. 87-245) -HJ 348

H 1025 GENERAL BILL by Sansom and others (Compare H 1194, ENG/H 1339, CS/S 767, CS/ENG/S 799, CS/S 1287)

Schools/Instructional Materials; requires appropriation of sufficient funds annually to ensure certain textbook requirements, requires school districts to spend certain amount of their instructional materials budget on state adopted materials, repeals provision which provides for instructional staff to offer written comments to school principals concerning such materials, etc Amends 233 09, repeals 233 25(3)(b), 46(2). Effective Date Upon becoming law
 04/07/87 HOUSE Filed
 04/13/87 HOUSE Introduced, referred to Education, K - 12; Appropriations -HJ 121
 04/20/87 HOUSE On Committee agenda—Education, K - 12, 04/22/87, 2 00 pm, 214C, for subreferral
 04/23/87 HOUSE On Committee agenda—Education, K - 12, 04/27/87, 4 30 pm, 214C, for subreferral
 04/27/87 HOUSE Subreferred to Subcommittee on Administration and Finance
 06/06/87 HOUSE Died in Committee on Education, K - 12, Iden/Sim/ Compare bill passed, refer to CS/SB 799 (Ch 87-329)

H 1026 GENERAL BILL by Gluckman (Similar S 2490, Compare H 1156)

Subcontractors/Payments, prescribes when payments must be made to subcontractor under certain circumstances, limits amounts that may be withheld by prime contractor from such payments as retainage under certain circumstances; provides for disciplinary actions by licensing boards against contractors that fail to comply with such payment requirements, provides for applicability of act. Amends 489.129, 533 Effective Date 01/01/88
 04/07/87 HOUSE Filed
 04/13/87 HOUSE Introduced, referred to Regulatory Reform, Appropriations -HJ 122
 04/14/87 HOUSE On Committee agenda—Regulatory Reform, 04/16/87, 3 30 pm, Morris Hall, for subreferral—Meeting cancelled
 04/21/87 HOUSE On Committee agenda—Regulatory Reform, 04/23/87, 10 00 am, Morris Hall; for subreferral
 06/06/87 HOUSE Died in Committee on Regulatory Reform

H 1027 GENERAL BILL/CS by Regulatory Reform; C.F. Jones (Compare CS/ENG/S 750)

State Minimum Building Codes, provides for review of state agency interpretations of such codes & for issuance of certain binding opinions by State Board of Building Codes & Standards, limits review of certain interpretations made by State Education Board or State Fire Marshal Amends 553 77 Effective Date Upon becoming law
 04/07/87 HOUSE Filed

H 1027 (CONTINUED)

04/13/87 HOUSE Introduced, referred to Regulatory Reform -HJ 122, Subreferred to Subcommittee on Business Regulation, On subcommittee agenda—Regulatory Reform, 04/15/87, 1 15 pm, 16 HOB—Temporarily passed
 04/14/87 HOUSE On Committee agenda, pending subcommittee action—Regulatory Reform, 04/16/87, 3 30 pm, Morris Hall—Meeting cancelled
 04/20/87 HOUSE On subcommittee agenda—Regulatory Reform, 04/22/87, 8 00 am, 24 HOB
 04/22/87 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable, with 2 amendments, On Committee agenda, pending subcommittee action—Regulatory Reform, 04/23/87, 10 00 am, Morris Hall
 04/23/87 HOUSE Preliminary Committee Action by Regulatory Reform Favorable, as a Committee Substitute, to Calendar
 04/30/87 HOUSE Comm Report, CS by Regulatory Reform, placed on Calendar -HJ 330, CS read first time -HJ 329
 06/06/87 HOUSE Died on Calendar

H 1028 GENERAL BILL by C.F. Jones (Similar S 1027)

Lien/Vehicle Title, provides that when vehicle is sold to satisfy lien for towing & storage, purchaser takes title free of encumbrances Amends 713.78 Effective Date 10/01/87
 04/07/87 HOUSE Filed
 04/14/87 HOUSE Introduced, referred to Judiciary -HJ 124
 04/28/87 HOUSE Subreferred to Subcommittee on Court Systems, Probate and Consumer Law, On Committee agenda—Judiciary, 04/30/87, 8 00 am, 214C, for ratification of subreferral
 06/06/87 HOUSE Died in Committee on Judiciary

H 1029 GENERAL BILL/ENG by C.F. Jones (Similar CS/S 829)

Uninsured Motorist Ins/Policies, provides that insurers may offer policies providing uninsured motorist coverage which contain particular policy provisions under certain circumstances, requires notice of coverage options to be attached to the notice of premium & specifies that receipt thereof does not constitute waiver of coverage Amends 627 727. Effective Date 10/01/87
 04/07/87 HOUSE Filed
 04/14/87 HOUSE Introduced, referred to Insurance, Appropriations -HJ 124
 04/17/87 HOUSE Subreferred to Subcommittee on Property and Casualty Insurance
 04/21/87 HOUSE On subcommittee agenda—Insurance, 04/21/87, 3 30 pm, 317C, Subcommittee Recommendation pending ratification by full Committee. Favorable, On Committee agenda, pending subcommittee action—Insurance, 04/22/87, 3 30 pm, 317C
 04/22/87 HOUSE Preliminary Committee Action by Insurance Favorable
 04/23/87 HOUSE Comm Report Favorable by Insurance -HJ 268, Now in Appropriations -HJ 268
 04/29/87 HOUSE Withdrawn from Appropriations -HJ 315, Placed on Calendar
 05/27/87 HOUSE Placed on Special Order Calendar, Read second time -HJ 679; Amendments adopted, Read third time, Passed as amended; YEAS 115 NAYS 2 -HJ 681
 05/28/87 SENATE In Messages
 06/01/87 SENATE Received, referred to Commerce -SJ 543
 06/04/87 SENATE Withdrawn from Commerce, Substituted for CS/SB 829, Read second time -SJ 786
 06/05/87 SENATE Placed on Special Order Calendar -SJ 787, Passed, YEAS 38 NAYS 0 -SJ 811
 06/05/87 Ordered enrolled
 06/16/87 Signed by Officers and presented to Governor
 06/30/87 Approved by Governor, Chapter No 87-213

H 1030 GENERAL BILL/CS by Transportation; C.F. Jones; Garcia (Similar S 1026)

Motor Vehicles/Abandoned, defines term "abandoned vehicle" for purposes of removal of such vehicles Amends 715 05 Effective Date 10/01/87
 04/07/87 HOUSE Filed
 04/14/87 HOUSE Introduced, referred to Transportation -HJ 124
 04/17/87 HOUSE On Committee agenda—Transportation, 04/21/87, 3 30 pm, 214C, for subreferral
 04/21/87 HOUSE Subreferred to Subcommittee on Highway Safety and Motor Vehicles
 04/23/87 HOUSE On subcommittee agenda—Transportation, 04/27/87, 1 15 pm, 217 HOB
 04/27/87 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable, with 1 amendment, On Committee agenda, pending subcommittee action—Transportation, 04/29/87, 1 15 pm, 214C
 04/30/87 HOUSE Preliminary Committee Action by Transportation Favorable, as a Committee Substitute, to Calendar
 05/04/87 HOUSE Comm Report, CS by Transportation, placed on Calendar -HJ 348, CS read first time -HJ 347
 06/06/87 HOUSE Died on Calendar

H 1031 GENERAL BILL by Kelly, Tobin; Lippman (Similar H 396, CS/S 250)

a The security fund shall pay that amount of each covered claim which is determined to be payable in accordance with the constitution and bylaws and is in excess of \$100 and less than \$300,000, except that the fund shall not be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent underwriting member under the policy from which the claim arises

b The security fund shall have no obligation and shall make no payment of any obligation arising under any such contract or with respect to any contract of reinsurance written or renewed on or after the effective date of this act to the extent the payment or payments exceed, either individually or in the aggregate, 10 percent of the insolvent underwriting member's surplus as to policyholders as reflected on the most recent sworn annual statement of the insolvent underwriting member filed with the department prior to issuance of such contract

c For the purposes of this subparagraph 2, each reinsurance treaty and each contract of insurance insuring to the benefit of multiple parties shall constitute only one contract and covered claims includes unpaid claims, including claims of unearned premiums, which arise out of and are within the coverage and are not in excess of the applicable limits of an insurance policy issued by an insolvent underwriting member through the facilities of the exchange

Amendment 2—In title, on page 1, lines 7-8, strike "the elimination of reinsurance risk for guaranty" and insert. restrictions on security

On motion by Senator Jennings, by two-thirds vote CS for SB 1130 as amended was read the third time by title, passed, ordered engrossed and then certified to the House The vote on passage was:

Yeas—38

Mr President	Frank	Kirkpatrick	Ros-Lehtinen
Barron	Girardeau	Kiser	Scott
Beard	Grant	Langley	Stuart
Brown	Grizzle	Lehtinen	Thomas
Childers, D	Hair	Malchon	Thurman
Childers, W. D.	Hill	McPherson	Weinstein
Crawford	Hollingsworth	Meek	Weinstock
Crenshaw	Jenne	Myers	Woodson
Deratany	Jennings	Peterson	
Dudley	Johnson	Plummer	

Nays—None

Vote after roll call

Yea—Gordon

CS for SB 906—A bill to be entitled An act relating to insurance, amending s. 631 011, F.S., defining the term "affiliate"; amending s. 631.263, F.S., providing conforming cross-reference; amending s. 631 361, F.S., deleting a time limit on the duration of certain ex parte orders in delinquency proceedings against insurers; amending s. 631 52, F.S., providing exceptions to the scope of part II of ch 631, F.S., amending s. 631 57, F.S.; increasing assessments levied against any insurer, creating s. 631 71, F.S., providing for certain premium or income tax credits for assessments paid by member insurers, amending s. 631 713, providing when coverage will apply to certain insurance policies, amending s. 651.071, F.S., conforming cross-reference, repealing s. 631 575, F.S., relating to assessments against domestic insurers and income tax credits for assessments, providing for review and repeal; providing an effective date

—was read the second time by title On motion by Senator Hair, by two-thirds vote CS for SB 906 was read the third time by title, passed and certified to the House The vote on passage was.

Yeas—37

Mr. President	Crenshaw	Grant	Jennings
Barron	Deratany	Grizzle	Johnson
Beard	Dudley	Hair	Kirkpatrick
Childers, D.	Frank	Hill	Kiser
Childers, W. D	Girardeau	Hollingsworth	Langley
Crawford	Gordon	Jenne	Lehtinen

Malchon	Myers	Thomas	Woodson
Margolis	Peterson	Thurman	
McPherson	Ros-Lehtinen	Weinstein	
Meek	Scott	Weinstock	

Nays—None

CS for SB 908—A bill to be entitled An act relating to insurance fraud, amending s. 626 989, F.S., defining the term "fraudulent insurance act"; providing that persons who furnish certain information to the Division of Insurance Fraud are protected from civil liability, providing the Commissioner of Insurance and employees of the Department of Insurance with protection from civil liability for certain official activities, providing for information or reports to the division of suspected fraudulent insurance acts, providing an effective date.

—was read the second time by title. On motion by Senator Hair, by two-thirds vote CS for SB 908 was read the third time by title, passed and certified to the House. The vote on passage was.

Yeas—37

Mr. President	Frank	Kirkpatrick	Plummer
Barron	Girardeau	Kiser	Scott
Beard	Gordon	Langley	Stuart
Brown	Grant	Lehtinen	Thurman
Childers, D	Grizzle	Malchon	Weinstein
Childers, W D	Hair	Margolis	Weinstock
Crawford	Hollingsworth	McPherson	Woodson
Crenshaw	Jenne	Meek	
Deratany	Jennings	Myers	
Dudley	Johnson	Peterson	

Nays—None

Vote after roll call.

Yea—Ros-Lehtinen

On motions by Senator Beard, by two-thirds vote HB 493 was withdrawn from the Committees on Agriculture and Governmental Operations

On motion by Senator Beard—

HB 493—A bill to be entitled An act relating to milk and milk products, amending s. 502 222, F.S., providing for the confidentiality of information relating to trade secrets, providing duties of the Department of Agriculture and Consumer Services; providing an effective date.

—a companion measure, was substituted for SB 696 and read the second time by title. On motion by Senator Beard, by two-thirds vote HB 493 was read the third time by title, passed and certified to the House The vote on passage was:

Yeas—39

Mr. President	Frank	Johnson	Plummer
Barron	Girardeau	Kirkpatrick	Ros-Lehtinen
Beard	Gordon	Kiser	Scott
Brown	Grant	Lehtinen	Stuart
Childers, D	Grizzle	Malchon	Thomas
Childers, W D	Hair	Margolis	Thurman
Crawford	Hill	McPherson	Weinstein
Crenshaw	Hollingsworth	Meek	Weinstock
Deratany	Jenne	Myers	Woodson
Dudley	Jennings	Peterson	

Nays—None

SB 696 was laid on the table.

CS for SB's 1096, 983 and 654—A bill to be entitled An act relating to civil liability; amending s. 607.014, F.S.; authorizing corporations to indemnify directors, officers, employees, agents, and volunteers against liability and related expenses, providing for a procedure to pay such expenses; providing limitations on such indemnity; amending s. 617028, F.S.; providing civil immunity to such persons associated with corporations not for profit, providing limitations on such immunity; providing for the approval and authorization of certain transactions negotiated by such persons; creating s. 607 1645, F.S., providing officers, directors, and volunteers of a corporation immunity from civil liability; providing limitations, creating s. 607 165, F.S., providing for the approval

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JOURNAL CITES TO SB 1096 (1987 REGULAR SESSION)

S 1096 GENERAL BILL/CS/ENG by Commerce; Jennings; Thurman; Plummer and others (Similar CS/M 0254, Compare M 0179, H 0205, H 0409, H 0419, H 1024, CS/S 0270, CS/S 0309, S 0304, S 0454, S 0963) NONPROFIT ORGANIZATIONS/LIABILITY (THIS BILL COMBINES S 1096, 003, 054) provides limited civil immunity to directors & certain officers of certain nonprofit organizations; authorizes corporations to indemnify directors, officers, employees & agents against liability & related expenses; provides limitations, provides civil immunity to certain persons associated with corporations not for profit, etc. Amends 607 016, 617, 020, 627, 915; creates 607 1645, 165, 627, 9122. Effective Date: 07/01/87 or upon becoming law, whichever occurs later

04/16/87 SENATE Filed
 04/23/87 SENATE Introduced, referred to Commerce -SJ 00157. On Committee agenda-- Commerce, 04/27/87, 2.00 pm. Room-A

04/27/87 SENATE CS combines this bill and 963 & 054; Com. Reports; CS by Commerce -SJ 00233

04/28/87 SENATE CS read first time -SJ 00242; Also referred to Judiciary-Civil -SJ 00201

04/29/87 SENATE Now in Judiciary-Civil -SJ 00233

05/01/87 SENATE Extension of time granted Committee Judiciary-Civil

05/04/87 SENATE On Committee agenda-- Judiciary-Civil, 05/12/87, 2.00 pm. Room-B

05/12/87 SENATE Withdrawn from Judiciary-Civil -SJ 00240, Placed on Calendar

① 05/13/87 SENATE Placed on Special Order Calendar -SJ 240 & -SJ 00243, CS passed as amended; YEAS 34 NAYS 1 -J 00317

05/19/87 SENATE Immediately certified -SJ 00331

05/19/87 HOUSE In Messages

05/20/87 HOUSE Receiver, placed on Calendar -HJ 00493

05/21/87 HOUSE Placed on Special Order Calendar

② 05/22/87 HOUSE Substituted for CS/MB 254; Read second time -HJ 00568; Amendments adopted -HJ 00564

③ 05/26/87 HOUSE Read third time, CS passed as amended; YEAS 111 NAYS 2 -HJ 00574

④ 05/26/87 SENATE In Messages

05/26/87 SENATE Message was taken up -SJ 00456; Amendments to House amendments adopted; Concurred in House amendments as amended, Requested House to concur CS passed as amended; YEAS 35 NAYS 1 -SJ 00461

⑤ 05/28/87 HOUSE In Messages, Concurred, CS passed as further amended; YEAS 104 NAYS 3 -HJ 00754

05/28/87 Ordered engrossed, then enrolled -SJ 00464

Representative Davis offered the following amendment

Amendment 4—On page 8, line 4, after the period, insert

Section 7 Subsection (14) is added to section 228 0617, Florida Statutes, 1986 Supplement, to read:

228 0617 School-age child care incentives program —

(14) *The Department of Education shall establish two demonstration projects which would create partnership programs between school districts and local park and recreation departments to provide after school programs for pre-teenagers (and renumber the subsequent sections)*

Rep Davis moved the adoption of the amendment, which was adopted without objection

Representative Davis offered the following title amendment:

Amendment 5—On page 1, line 25, after the semicolon, insert amending s 228 0617, F.S., directing the Department of Education to establish two demonstration projects,

Rep Davis moved the adoption of the amendment, which was adopted without objection

Representative Mortham offered the following amendment

Amendment 6—On page 3, line 7, insert after "students", class scheduling for students;

Rep Mortham moved the adoption of the amendment, which was adopted without objection Under Rule 8 19, the bill was referred to the Engrossing Clerk

CS/HBs 254, 1024, 179, 205, 419 & 409—A bill to be entitled An act relating to civil liability, providing legislative findings; providing limited civil immunity to directors of certain nonprofit organizations, amending s. 607.014, F.S.; authorizing corporations to indemnify directors, officers, employees, agents, and volunteers against liability and related expenses; providing for a procedure to pay such expenses, providing limitations on such indemnity, amending s 617 028, F.S.; providing civil immunity to certain persons associated with corporations not for profit; providing limitations on such immunity; creating s 607 1645, F.S., providing directors of a corporation immunity from civil liability; providing limitations, creating s 607 165, F.S.; providing for the approval and authorization of certain transactions negotiated by a director; providing directors and members of supervisory committees of credit unions immunity from civil liability, providing limitations; providing trustees of a self-insurance trust fund immunity from civil liability, providing limitations; creating s 627 9122, F.S., requiring insurers to report additional information regarding officers' and directors' liability claims; amending s 627 915, F.S., requiring insurers to separately report certain information for officers' and directors' liability insurance, providing an effective date.

—was read the second time by title On motions by Rep Carpenter, the rules were waived by two-thirds vote and—

CS for SBs 1096, 963 and 654—A bill to be entitled An act relating to civil liability, amending s 607 014, F.S.; authorizing corporations to indemnify directors, officers, employees, agents, and volunteers against liability and related expenses, providing for a procedure to pay such expenses, providing limitations on such indemnity, amending s. 617 028, F.S., providing civil immunity to such persons associated with corporations not for profit and rural electric cooperatives, providing limitations on such immunity; providing for the approval and authorization of certain transactions negotiated by such persons; creating s. 607 1645, F.S.; providing officers, directors, and volunteers of a corporation immunity from civil liability, providing limitations, creating s 607 165, F.S., providing for the approval and authorization of certain transactions negotiated by an officer or director, the board of directors, or shareholders of a corporation, providing directors, officers, committee members, chief operating officers, executive officers and volunteers, of credit unions immunity from civil liability; providing limitations, providing trustees, officers, or volunteers of a self-insurance trust fund immunity from civil liability, providing limitations, providing trustees; directors, officers, members, or volunteers of a

nonprofit organization immunity from civil liability; providing limitations, providing an effective date.

—a similar or companion measure, was substituted and taken up in lieu of CS/HBs 254, 1024, 179, 205, 419 & 409 and read the second time by title Under the rules, the House bill was laid on the table

Representatives Bass, Bloom, Carpenter and Hawkins offered the following amendment

Amendment 1—On page 2, line 6, through page 19, line 21, strike everything after the enacting clause and insert

Section 1 (1) *The Legislature finds that the service of qualified persons on the governing boards of nonprofit corporations and associations is critical to the efficient and effective conduct of such organizations in the provision of services and other benefits to the citizens of the state The Legislature further finds that, within reasonable limits, persons offering their services as directors of such nonprofit organizations should be permitted to perform without undue concern for the possibility of litigation arising from the discharge of their duties as policy makers*

(2) *The Legislature further finds that the service of qualified persons on the governing boards of corporations, credit unions, and self-insurance trust funds is in the public interest and that within reasonable limitations, such persons should be permitted to perform without undue concern for the possibility of litigation arising from the discharge of their duties as policy makers The Legislature further finds that the case law of the state does not adequately delineate the liability of those serving on governing boards, and that such delineation through the clarification of the appropriate standard of care due an individual and a corporation by a member of a governing board is essential in encouraging the continued service of qualified persons on such governing boards*

Section 2 *Officers and directors of certain corporations and associations not for profit, immunity from civil liability —*

(1) *An officer or director of a nonprofit organization recognized under section 501(c)(3) or section 501(c)(4) or section 501(c)(6), or of an agricultural or a horticultural organization recognized under section 501(c)(5), of the Internal Revenue Code of 1986, as amended, is not personally liable for monetary damages to any person for any action, statement, vote, decision, or failure to take an action, regarding corporate management or policy by an officer or director, unless*

(a) *The officer or director breached or failed to perform his duties as an officer or director; and*

(b) *The officer's or director's breach, or failure to perform, his duties constitutes:*

1 *A violation of the criminal law, unless the trustee had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful A judgment or other final adjudication against a trustee in any criminal proceeding for violation of the criminal law estops that trustee from contesting the fact that his breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the trustee from establishing that he had reasonable cause to believe that his conduct was lawful or had no reasonable cause to believe that his conduct was unlawful,*

2 *A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly, or*

3 *Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property*

(2) *For the purposes of this section, the term.*

(a) *"Recklessness" means acting or failing to act, in disregard of a risk*

1 *Known, or so obvious that they should have been known, to be so great as to make it highly probable that harm would follow from such action or omission*

2 *The consequences of which are known to the officer or director, or so obvious that they should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.*

and authorization of certain transactions negotiated by an officer or director, the board of directors, or shareholders of a corporation, providing directors, officers, committee members, chief operating officers, executive officers and volunteers, of credit unions immunity from civil liability; providing limitations; providing trustees, officers, or volunteers of a self-insurance trust fund immunity from civil liability; providing limitations; providing trustees, directors, officers, members, or volunteers of a nonprofit organization immunity from civil liability; providing limitations, providing an effective date.

—was read the second time by title

Senator Jennings moved the following amendments which were adopted

Amendment 1—On page 10, strike all of lines 12-16 and insert 607 165 apply to corporations not for profit or rural electric cooperatives organized under chapter 425 Any reference to "directors" in those sections that section includes the directors, managers, or trustees of a corporation not for profit, including rural electric cooperatives organized under chapter 425. Any reference to "shareholders" in those sections includes members of a corporation not for profit or a rural electric cooperative organized under chapter 425

Amendment 2—On page 12, between lines 14 and 15, insert.

(3) Notwithstanding subsection (1), nothing in this section shall affect or modify the liability of such persons for acts or omissions arising out of the operation of a motor vehicle

Amendment 3—On page 15, between lines 22 and 23, insert:

(3) Notwithstanding subsection (1), nothing in this section shall affect or modify the liability of such persons for acts or omissions arising out of the operation of a motor vehicle.

Amendment 4—On page 17, between lines 4 and 5, insert:

(3) Notwithstanding subsection (1), nothing in this section shall affect or modify the liability of such persons for acts or omissions arising out of the operation of a motor vehicle.

Amendment 5—On page 18, between lines 24 and 25, insert:

(3) Notwithstanding subsection (1), nothing in this section shall affect or modify the liability of such persons for acts or omissions arising out of the operation of a motor vehicle

Amendment 6—On page 10, strike all of lines 23 and 24 and insert: any other person for any action taken in his official capacity as a director or officer or in the performance of his officially designated duties as a volunteer, or any failure to take such action, unless the

Amendment 7—On page 12, strike all of lines 23-29 and renumber subsequent paragraphs.

Amendment 8—On page 13, line 19, strike "or a committee thereof"

Amendment 9—On page 13, line 31, strike "chapter 657, Florida Statutes" and insert: state or federal law

Amendment 10—On page 14, strike all of lines 2-4 and insert its members, and any other persons for any action taken in his official capacity as a director, officer, chief operating officer, committee member, or executive officer, or in the performance of his officially designated duties as a volunteer, or any failure to take such

Amendment 11—On page 15, strike all of lines 28 and 29 and insert. any action taken in his official capacity as a trustee or officer or in the performance of his officially designated duties as a volunteer, or any failure to take such action, unless the person asserting

Amendment 12—On page 17, strike all of lines 8 and 9 and insert in his official capacity as a director, officer, trustee, or member, or in the performance of his officially designated duties as a volunteer, or any failure to take such action, unless the person asserting

Amendment 13—On page 18, line 26, before the period (.) insert. and shall apply to all causes of action accruing on or after the effective date of this act Nothing in this act shall affect the validity of any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise pursuant to s. 607 014, F S, before the effective date of this act

Amendment 14—In title, on page 1, line 10, before the semicolon (,) insert and rural electric cooperatives

On motion by Senator Jennings, by two-thirds vote CS for SB's 1096, 963 and 654 as amended was read the third time by title, passed, ordered engrossed and then certified to the House The vote on passage was:

Yeas—38

Mr President	Girardeau	Kirkpatrick	Ros-Lehtinen
Barron	Gordon	Kiser	Scott
Beard	Grant	Langley	Stuart
Brown	Grizzle	Lehtinen	Thomas
Childers, D	Hair	Malchon	Thurman
Childers, W. D.	Hill	Margolis	Weinstein
Crawford	Hollingsworth	Meek	Weinstock
Crenshaw	Jenne	Myers	Woodson
Deratany	Jennings	Peterson	
Dudley	Johnson	Plummer	

Nays—1

Frank

Vote after roll call

Yea—McPherson

Motion

On motion by Senator Barron, the rules were waived and time of adjournment was extended until final action on CS for SB 720 and Motions Relating to Committee Reference

CS for SB 720—A bill to be entitled An act relating to the misuse of funds paid for contracting services, creating s. 713.345, F.S., providing first-degree misdemeanor penalties for misuse of funds received on account of improving real property, amending s 713 34, F S, deleting provisions which make misapplication of such funds embezzlement; amending s 489.129, F S, listing circumstances which constitute financial mismanagement or misconduct by a contractor, providing an effective date.

—was read the second time by title

Senator Dudley moved the following amendments which were adopted

Amendment 1—On page 2, lines 5-31, and on page 3, lines 1-27, strike all of said lines and insert

Section 2. Subsection (5) of section 713 02, Florida Statutes, is amended to read

713 02 Types of liens and exemptions —

(5) Any improvement for which the direct contract price is \$2,500 or less shall be exempt from all other provisions of this part I except the provisions of s 713.05

Section 3 Subsection (2) of section 713 06, Florida Statutes, is amended to read:

713 06 Liens of persons not in privity, proper payments.—

(2)(a) All liens under this section, except laborers, as a prerequisite to perfecting a lien under this chapter and recording a claim of lien, shall be required to serve a notice on the owner setting forth the lienor's name and address, a description sufficient for identification of the real property, and the nature of the services or materials furnished or to be furnished A sub-subcontractor or a materialman to a subcontractor shall serve a copy of the notice on the contractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. A materialman to a sub-subcontractor shall serve a copy of the notice to owner on the contractor and subcontractor of the sub-subcontractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. The notice must be served before commencing, or not later than 45 days from commencing, to furnish his services or materials, but, in any event, before the date of the owner's disbursement of the final payment after the contractor has furnished the affidavit under subparagraph (3)(d)1. or abandonment, whichever shall occur first The notice must be served regardless of the method of payments by the owner, whether proper or improper, and shall not give to the lienor serving the notice any priority over other lienors in the same category, and the failure to serve the

(8)(7) Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified

(9) Unless the corporation's articles of incorporation provide otherwise, notwithstanding the failure of a corporation to provide indemnification, and despite any contrary determination of the board or of the shareholders in the specific case, a director, officer, employee, or agent of the corporation who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that

(a) The director, officer, employee, or agent is entitled to mandatory indemnification under subsection (3), in which case the court shall also order the corporation to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses,

(b) The director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the corporation of its power pursuant to subsection (7), or

(c) The director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in subsection (1), subsection (2), or subsection (7).

(10) For purposes of this section, the term "corporation" includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, officer, employee, or agent of a constituent corporation, or is or was serving at the request of a constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, is in the same position under this section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued

(11) For purposes of this section, the term "other enterprises" includes employee benefit plans, the term "expenses" includes counsel fees, including those for appeal, the term "liability" includes obligations to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to any employee benefit plan), and expenses actually and reasonably incurred with respect to a proceeding, the term "proceeding" includes any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, the term "agent" includes a volunteer, and the term "serving at the request of the corporation" includes any service as a director, officer, employee, or agent of the corporation that imposes duties on such persons, including duties relating to an employee benefit plan and its participants or beneficiaries, and the term "not opposed to the best interest of the corporation" describes the actions of a person who acts in good faith and in a manner he reasonably believes to be in the best interests of the participants and beneficiaries of an employee benefit plan.

(12)(8) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(13)(9) If any expenses or other amounts are paid by way of indemnification otherwise than by court order or action by the shareholders or by an insurance carrier pursuant to insurance

maintained by the corporation, the corporation shall, not later than the time of delivery to shareholders of written notice of the next annual meeting of shareholders, unless such meeting is held within 3 months from the date of such payment, and, in any event, within 15 months from the date of such payment, deliver either personally or by mail to each shareholder of record at the time entitled to vote for the election of directors a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation.

Section 4 Section 617.028, Florida Statutes, is amended to read

617.028 Indemnification and liability of officers, directors, managers, trustees, employees, and agents—The provisions of ss 607.014, 607.1646, and 607.165 apply to corporations not for profit and rural electric cooperatives organized under chapter 425. Any reference to "directors" in those sections that section includes the directors, managers, or trustees of a corporation not for profit or of a rural electric cooperative organized under chapter 425, provided that the term "director" as used in s 607.1645 shall not include a director appointed by the developer to the board of directors of a condominium association under chapter 718 or a cooperative association under chapter 719. Any reference to "shareholders" in those sections includes members of a corporation not for profit and members of a rural electric cooperative organized under chapter 425.

Section 5 Section 607.1645, Florida Statutes, is created to read.

607.1645 Liability of directors—

(1) A director is not personally liable for monetary damages to the corporation or any other person for any statement, vote, decision, or failure to act, regarding corporate management or policy, by a director, unless:

(a) The director breached or failed to perform his duties as a director; and

(b) The director's breach of, or failure to perform, those duties constitutes

1. A violation of the criminal law, unless the director had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful. A judgment or other final adjudication against a director in any criminal proceeding for a violation of the criminal law estops that director from contesting the fact that his breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the director from establishing that he had reasonable cause to believe that his conduct was lawful or had no reasonable cause to believe that his conduct was unlawful,

2. A transaction from which the director derived an improper personal benefit, either directly or indirectly;

3. A circumstance under which the liability provisions of s 607.144 are applicable;

4. In a proceeding by or in the right of the corporation to procure a judgment in its favor or by or in the right of a shareholder, conscious disregard for the best interest of the corporation, or willful misconduct, or

5. In a proceeding by or in the right of someone other than the corporation or a shareholder, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property

(2) For the purposes of this section, the term "recklessness" means acting, or failing to act, in disregard of a risk

1. Known, or so obvious that it should have been known, to the director; and

2. The consequences of which are known to the director, or so obvious that they should have been known, to be so great as to make it highly probable that harm would follow from such action or omission

Section 6. Section 607.165, Florida Statutes, is created to read

607.165 Director deemed not to have derived improper personal benefit—

(b) "Director" means a person who serves as a director, trustee, or member of the governing board of an organization

(c) "Officer" means a person who serves as an officer without compensation except reimbursement for actual expenses incurred or to be incurred.

Section 3 Section 607 014, Florida Statutes, is amended to read

607 014 Indemnification of officers, directors, employees, and agents.—

(1) A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by, or in the right of, the corporation), by reason of the fact that he is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against liability expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful

(2) A corporation shall have power to indemnify any person, who was or is a party, or is threatened to be made a party, to any proceeding threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such proceeding action or suit, including any appeal thereof. Such indemnification shall be authorized if such person, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless, and only to the extent that, the court in which such proceeding action or suit was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper

(3) To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsection (1) or subsection (2), or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(4) Any indemnification under subsection (1) or subsection (2), unless pursuant to a determination by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection (1) or subsection (2). Such determination shall be made:

(a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding;

(b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a committee duly designated by the board of directors (in which directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding,

(c) By independent legal counsel.

1 Selected by the board of directors prescribed in paragraph (a) or the committee prescribed in paragraph (b); or

2 If a quorum of the directors cannot be obtained for paragraph (a) and the committee cannot be designated under paragraph (b), selected by majority vote of the full board of directors (in which directors who are parties may participate) a quorum of disinterested directors or directed by independent legal counsel in a written opinion, or

(d)(e) By the shareholders by a majority vote of a quorum consisting of shareholders who were not parties to such action, suit, or proceeding or, if no such quorum is obtainable, by a majority vote of shareholders who were not parties to such proceeding

(5) Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by paragraph (4)(c) shall evaluate the reasonableness of expenses and may authorize indemnification

(6) Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the corporation pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the board of directors deems appropriate

(6) Expenses, including attorneys' fees, incurred in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of such action, suit, or proceeding upon a preliminary determination following one of the procedures set forth in subsection (4) that the director, officer, employee, or agent met the applicable standard of conduct set forth in subsection (1) or subsection (2) or as authorized by the board of directors in the specific case and; in either event, upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

(7)(6) The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and a corporation may shall have the power to make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, except an indemnification against gross negligence or willful misconduct. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute

(a) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful

(b) A transaction from which the director, officer employee, or agent derived an improper personal benefit,

(c) In the case of a director, a circumstance under which the liability provisions of s 607 144 are applicable; or

(d) Willful misconduct or a conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder

(i) In the case of a settlement, such information as the department may require with regard to the claimant's anticipated future losses

(j) The loss adjustment expense paid to defense counsel, and all other allocated loss adjustment expenses paid.

(k) The date and reason for final disposition, if no judgment or settlement.

(l) A summary of the occurrence which created the claim, which shall include

1 Whether the injuries claimed were the result of physical damage to the claimant, or were the result of damage to the reputation of the claimant, or were based on self-dealing by the defendant, or were in the nature of a shareholder dispute.

2 A description of the type of activity which caused the injury

3 The steps taken by the officers or directors to assure that similar occurrences are less likely in the future

(m) Any other information required by the department to analyze and evaluate the nature, causes, costs, and damages involved in officers' and directors' liability cases

3 The department shall include a summary of this information in its annual report

Section 10 Subsection (2) of section 627.915, Florida Statutes, 1986 Supplement, is amended to read.

627.915 Insurer experience reporting —

(2) Each insurer transacting fire, homeowner's multiple peril, commercial multiple peril, medical malpractice, products liability, workers' compensation, private passenger automobile liability, commercial automobile liability, private passenger automobile physical damage, commercial automobile physical damage, officers' and directors' liability insurance, or other liability insurance shall report, for each such line of insurance, the information specified in this subsection to the department. The information shall be reported for direct Florida business only and shall be reported on a calendar-year basis annually by April 1 for the preceding calendar year:

(a) Direct premiums written

(b) Direct premiums earned

(c) Loss reserves for all known claims:

1. At beginning of the year

2. At end of the year

(d) Reserves for losses incurred but not reported

1. At beginning of the year

2. At end of the year.

(e) Allocated loss adjustment expense.

1. Reserve at beginning of the year

2. Reserve at end of the year.

3 Paid during the year

(f) Unallocated loss adjustment expense.

1. Reserve at beginning of the year.

2. Reserve at end of the year.

3. Paid during the year

(g) Direct losses paid.

(h) Underwriting income or loss.

(i) Commissions and brokerage fees

(j) Taxes, licenses, and fees

(k) Other acquisition costs.

(l) General expenses.

(m) Policyholder dividends

(n) Net investment gain or loss and other income gain or loss allocated pro rata by earned premium to Florida business utilizing the investment allocation formula contained in the National Association of Insurance Commissioner's Profitability Report by line by state

Section 11. Nothing in this act shall be construed as increasing or decreasing the liability of any person not herein specifically delineated

Section 12 This act shall take effect July 1, 1987, or upon becoming a law, whichever occurs later.

Rep Bass moved the adoption of the amendment

Representative Drage offered the following amendment to the amendment

Amendment 1 to Amendment 1—On page 14, line 7, strike "The" and insert *In an action other than a derivative suit regarding a decision by the director to approve, reject, or otherwise affect the outcome of an offer to purchase the stock of, or to effect a merger of, the corporation, the*

Rep Drage moved the adoption of the amendment to the amendment, which was adopted without objection

The question recurred on the adoption of the amendment as amended, which was adopted without objection.

Representative Bass offered the following title amendment.

Amendment 2—On page 1, line 1, through page 2, line 2, strike everything before the enacting clause and insert:

A bill to be entitled An act relating to civil liability; providing legislative findings; providing limited civil immunity to directors and certain officers of certain nonprofit organizations, amending s 607.014, F.S., authorizing corporations to indemnify directors officers, employees, agents, and volunteers against liability and related expenses; providing for a procedure to pay such expenses, providing limitations on such indemnity, amending s 617.028, F.S., providing civil immunity to certain persons associated with corporations not for profit, providing limitations on such immunity, creating s 607.1645 F.S., providing directors of a corporation immunity from civil liability providing limitations, creating s. 607.165, F.S., providing for the approval and authorization of certain transactions negotiated by a director; providing directors and members of supervisory committees or credit unions immunity from civil liability, providing limitations; providing trustees of a self-insurance trust fund immunity from civil liability, providing limitations; creating s 627.9122, F.S., requiring insurers to report additional information regarding officers' and directors' liability claims, amending s. 627.915, F.S., requiring insurers to separately report certain information for officers' and director liability insurance, providing an effective date

Rep Bass moved the adoption of the amendment, which was adopted without objection.

Representatives Sanderson, Troxler, Starks, Shelley, Clement Rochlin, Nergard and Mortham offered the following amendment.

Amendment 3—On page 19, line 14, after the period insert

Section 7. Section 768.1351, Florida Statutes, is created to read.

768.1351 *Volunteers and nonprofit associations in youth athletic programs, immunity from civil liability —*

(1) *As used in this section:*

(a) "Nonprofit association" means an entity which is organized as nonprofit corporation or nonprofit unincorporated association under the laws of this state or the United States or any entity which is authorized to do business in this state as a nonprofit corporation or unincorporated association under the laws of this state, including, but not limited to youth or athletic associations, volunteer fire, ambulance, religious, charitable, fraternal, veteran, civic, county fairs, or agricultural associations, or any separately chartered auxiliary of the foregoing, if organized and operated on a nonprofit basis

(b) "Youth athletic program" means any program operated conducted by a nonprofit association for the recreational and athletic benefit of persons under 19 years of age in any sport recognized as

(1) For purposes of ss. 607 014 and 607 1645, a director is deemed not to have derived an improper personal benefit from any transaction if the transaction and nature of any personal benefit derived by the director is not prohibited by state or federal law or regulation and, without further limitation:

(a) The transaction and the nature of any personal benefits derived by a director are disclosed or known to all directors voting on the matter, and the transaction was authorized, approved, or ratified by at least two directors who comprise a majority of the disinterested directors (whether or not such disinterested directors constitute a quorum),

(b) The transaction and the nature of any personal benefits derived by a director are disclosed or known to the shareholders entitled to vote, and the transaction was authorized, approved, or ratified by the affirmative vote or written consent of such shareholders who hold a majority of the shares, the voting of which is not controlled by directors who derived a personal benefit from or otherwise had a personal interest in the transaction, or

(c) The transaction was fair and reasonable to the corporation at the time it was authorized by the board, a committee, or the shareholders, notwithstanding that a director received a personal benefit

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors which authorizes, approves, or ratifies such a transaction

(3) The circumstances set forth in subsection (1) are not exclusive and do not preclude the existence of other circumstances under which a director will be deemed not to have derived an improper benefit

Section 7 Liability of directors or supervisory committee members of credit unions.—

(1) A director of a credit union organized under state or federal law, or a member of the supervisory committee of such credit union, is not personally liable for monetary damages to the credit union, its members, or any other persons for any statement, vote, decision, or failure to act, regarding corporate management or policy, by a director, unless

(a) The director or the member of the supervisory committee, breached or failed to perform his duties as a director or as a member of the supervisory committee; and

(b) The breach or failure to perform by the director or the member of the supervisory committee constitutes.

1 A violation of the criminal law, unless the director or the member of the supervisory committee had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful. A judgment or other final adjudication against a director or a member of a supervisory committee in any criminal proceeding for a violation of the criminal law estops that director or member from contesting the fact that his breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the director or member of the supervisory committee from establishing that he had reasonable cause to believe that his conduct was lawful or had no reasonable cause to believe that his conduct was unlawful,

2 A transaction from which the director or the member of the supervisory committee derived an improper personal benefit, either directly or indirectly; or

3 Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property

(2) For the purposes of this section, the term "recklessness" means acting, or failing to act, in disregard of a risk:

1 Known, or so obvious that it should have been known, to the director or member of the supervisory committee; and

2 The consequences of which are known to the director or the member of the supervisory committee, or so obvious that they should have been known, to be so great as to make it highly probable that harm would follow from such action or omission

Section 8. Liability of trustees of self-insurance trust fund —

(1) A trustee of any self-insurance trust fund organized under the laws of this state is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to act, regarding the management or policy of the fund, by a trustee, unless.

(a) The trustee breached or failed to perform his duties as a trustee, and

(b) The trustee's breach of, or failure to perform, his duties constitutes

1 A violation of the criminal law, unless the trustee had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful. A judgment or other final adjudication against a trustee in any criminal proceeding for violation of the criminal law estops that trustee from contesting the fact that his breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the trustee from establishing that he had reasonable cause to believe that his conduct was lawful or had no reasonable cause to believe that his conduct was unlawful;

2 A transaction from which the trustee derived an improper personal benefit, either directly or indirectly; or

3 Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property

(2) For the purposes of this section, the term "recklessness" means acting or failing to act, in disregard of a risk

(a) Known, or so obvious that it should have been known, to the trustee, and

(b) The consequences of which are known to the trustee, or so obvious that they should have been known, to be so great as to make it highly probable that harm would follow from such action or omission

Section 9 Section 627.9122, Florida Statutes, is created to read:

627 9122 Officers' and directors' liability claims; reports by insurers —

(1) Each insurer providing coverage for officers' and directors' liability coverage shall report to the Department of Insurance any claim or action for damages claimed to have been caused by error, omission, or negligence in the performance of the officer's or director's services, if the claim resulted in:

(a) A final judgment in any amount

(b) A settlement in any amount

(c) A final disposition not resulting in payment on behalf of the insured.

Reports shall be filed with the department no later than 60 days following the occurrence of any event listed in paragraphs (a), (b), or (c)

(2) The reports required by subsection (1) shall contain:

(a) The name, address, and position held by the insured, and the type of corporation or organization, including classifications as provided in section 501 (c) of the Internal Revenue Code of 1954, as amended

(b) The insured's policy number

(c) The date of the occurrence which created the claim.

(d) The date the claim was reported to the insurer

(e) The name of the injured person. This information shall be privileged and confidential and shall not be disclosed by the department without the consent of the injured person. This information may be used by the department for purposes of identifying multiple or duplicate claims arising out of the same occurrence.

(f) The date of suit, if filed.

(g) The total number and names of all defendants involved in the claim

(h) The date and amount of judgment or settlement, together with a copy of the settlement or judgment

Yeas—114

The Chair	Frishe	Langton	Renke
Abrams	Gaffney	Lawson	Rochlin
Arnold	Garcia	Lewis	Rudd
Ascherl	Gardner	Liberti	Ruah
Bainter	Glickman	Lippman	Sample
Banjamin	Goode	Locke	Sanderson
Bankhead	Gordon	Logan	Sansom
Bass	Grindle	Lombard	Saunders
Bell	Guber	Long	Shelley
Bloom	Gustafson	Mackenzie	Simon
Bronson	Hanson	Mackey	Simone
Brown	Harden	Martin	Smith
Burnsed	Hargrett	Martinez	Souto
Canady	Harris	McEwan	Starks
Carlton	Hawkins	Meffert	Stone
Carpenter	Healey	Messersmith	Thomas
Casas	Hill	Metcalf	Titone
Clark	Hodges	Mitchell	Tobiasen
Clements	Holland	Morse	Tobin
Cosgrove	Ireland	Mortham	Trammell
Crotty	Irvine	Nergard	Troxler
Dantzler	Jamerson	Ogden	Upchurch
Davis	Jennings	Ostrau	Wallace
Deutsch	Johnson, B. L.	Patchett	Webster
Diaz-Balart	Johnson, R. C.	Peeples	Wetherell
Drage	Jones, C. F.	Press	Woodruff
Dunbar	Jones, D. L.	Reaves	Young
Figg	Kelly	Reddick	
Friedman	King	Rehm	

Nays—None

Votes after roll call:

Yeas—Gonzalez-Quevedo, Frankel

So the bill passed, as amended, and was immediately certified to the Senate

Without objection, consideration of HB 1338 was temporarily deferred.

CS/HB 1237—A bill to be entitled An act relating to education, amending s 228.041, F.S.; revising the definition of "dropout", amending s 230.2313, F.S.; requiring each school district to implement a plan for providing student services; expanding guidance services and providing duties of counselors, providing for a district-level tracking system; amending s. 232.245, F.S., relating to the pupil progression program, requiring provisions for assisting students to achieve required grade point average, amending s 232.246, F.S., amending effective date, requiring school district policies designed to assist students in meeting the grade point requirement, providing for the award of a certificate of completion when grade point requirements are not met; creating s. 232.2463, F.S., providing for a standardized grading system in public high schools; amending s. 232.301, F.S., requiring the Department of Education to disseminate findings of model dropout prevention programs; requiring the department to conduct a study relating to certificates of completion and dropout prevention; amending s. 228.0617, F.S., directing the Department of Education to establish two demonstration projects, providing an effective date

—was read the third time by title

The Committee on Rules & Calendar offered the following amendment:

Amendment 7—On page 3, line 7, strike "class scheduling for students," and insert: *class scheduling for students.*

Rep B L Johnson moved the adoption of the amendment, which was adopted without objection.

The question recurred on passage of CS/HB 1237 The vote was

Yeas—110

The Chair	Friedman	Langton	Renke
Abrams	Frishe	Lawson	Rochlin
Ascherl	Gaffney	Lewis	Rudd
Bainter	Garcia	Liberti	Ruah
Banjamin	Gardner	Lippman	Sample
Bankhead	Glickman	Locke	Sanderson
Bass	Goode	Logan	Sansom
Bell	Gordon	Lombard	Saunders
Bloom	Grindle	Mackenzie	Shelley
Bronson	Guber	Mackey	Simon
Brown	Gustafson	Martin	Smith
Burke	Hanson	Martinez	Souto
Burnsed	Harden	McEwan	Starks
Canady	Hargrett	Meffert	Stone
Carlton	Harris	Messersmith	Thomas
Casas	Hawkins	Metcalf	Titone
Clark	Healey	Mitchell	Tobiasen
Clements	Hodges	Morse	Tobin
Cosgrove	Ireland	Mortham	Trammell
Crotty	Irvine	Nergard	Troxler
Dantzler	Jamerson	Ogden	Upchurch
Davis	Jennings	Ostrau	Wallace
Deutsch	Johnson, B. L.	Patchett	Webster
Diaz-Balart	Johnson, R. C.	Peeples	Wetherell
Drage	Jones, C. F.	Press	Woodruff
Dunbar	Jones, D. L.	Reaves	Young
Figg	Kelly	Reddick	
Frankel	King	Rehm	

Nays—5

Arnold	Hill	Holland	Simone
Carpenter			

Votes after roll call:

Yeas—Gonzalez-Quevedo

So the bill passed, as amended, and was immediately certified to the Senate after engrossment.

CS for SBs 1096, 963 and 654—A bill to be entitled An act relating to civil liability, amending s 607.014, F.S., authorizing corporations to indemnify directors, officers, employees, agents, and volunteers against liability and related expenses, providing for a procedure to pay such expenses, providing limitations on such indemnity; amending s. 617.028, F.S., providing civil immunity to such persons associated with corporations not for profit and rural electric cooperatives, providing limitations on such immunity; providing for the approval and authorization of certain transactions negotiated by such persons; creating s. 607.1645, F.S., providing officers, directors, and volunteers of a corporation immunity from civil liability, providing limitations, creating s 607.165, F.S., providing for the approval and authorization of certain transactions negotiated by an officer or director, the board of directors, or shareholders of a corporation; providing directors, officers, committee members, chief operating officers, executive officers and volunteers, of credit unions immunity from civil liability, providing limitations, providing trustees, officers, or volunteers of a self-insurance trust fund immunity from civil liability; providing limitations; providing trustees, directors, officers, members, or volunteers of a nonprofit organization immunity from civil liability; providing limitations, providing an effective date.

—was read the third time by title On passage, the vote was:

Yeas—111

The Chair	Bell	Casas	Diaz-Balart
Abrams	Bloom	Clark	Drage
Arnold	Bronson	Clements	Dunbar
Ascherl	Brown	Cosgrove	Figg
Bainter	Burke	Crotty	Frankel
Banjamin	Burnsed	Dantzler	Friedman
Bankhead	Canady	Davis	Frishe
Bass	Carpenter	Deutsch	Gaffney

5

sport by the Amateur Athletic Union or the National Collegiate Athletic Association

(2) Any person who, without compensation, except reimbursement for reasonable expenses actually incurred or to be incurred, and as a volunteer, renders services in a youth athletic program as a manager, coach, umpire, or referee, or as an assistant manager or coach, and any nonprofit association or any officer or employee thereof conducting a youth athletic program, shall not be held liable to any person for any civil damages as a result of any act or omission in rendering such services or in conducting such program if such act or omission occurs during the course of a game or other athletic event or organized practice therefor. This subsection shall not apply to any act or omission intentionally designed to cause harm or to any grossly negligent act or omission which causes harm to any person

(3) This section shall not be construed to affect or modify any existing legal basis for determining the liability or defense from liability of any person not covered by immunity conferred by this section

Rep Sanderson moved the adoption of the amendment

Representatives Bass and Upchurch offered the following substitute amendment:

Substitute Amendment 3—On page 19, between lines 14 and 15, insert a new section *The Legislature of the State of Florida believes that the public policy of this State shall be to encourage the provision of services by volunteers and recognizes that in serving the public, volunteers may be submitting themselves to the possibility of suit by those served. The Legislature further finds that it would be in the public interest to remove unnecessary deterrents to service and that within the constraints of the state and federal constitutions, the Legislature should consider modifications in the tort, indemnity, and insurance laws of this State. The Legislature, having established the Academic Task Force for Review of the Insurance and Tort Systems, and having directed the task force to review and to recommend changes to the tort and insurance laws of this state, does hereby direct that the review of said task force shall be expanded, as necessary, to include a consideration of the effect, and the extent of the effect, of tort and insurance laws on the provision of volunteer services in this State, and to include its findings and recommendations resulting from its consideration of these issues in its report to the Legislature to be reported no later than March 1, 1988 (renumber subsequent sections)*

Rep Upchurch moved the adoption of the substitute amendment, which was adopted.

Representative Upchurch offered the following title amendment

Amendment 4—On page 2, line 1, after "limitations," insert directing the Academic Task Force for the Review of the Insurance and Tort Systems to make certain recommendations,

Rep. Upchurch moved the adoption of the amendment, which was adopted without objection.

Representatives Sanderson, Troxler, Starks, Shelley, Clements, Rochlin, Nergard and Mortham offered the following amendment

Amendment 5—On page 21, line 9, after the period insert

Section 11, Section 768 1351, Florida Statutes, is created to read
768 1351 *Volunteers and nonprofit associations in youth athletic programs; immunity from civil liability—*

(1) *As used in this section.*

(a) *"Nonprofit association" means an entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this state or the United States or any entity which is authorized to do business in this state as a nonprofit corporation or unincorporated association under the laws of this state, including, but not limited to, youth or athletic associations, volunteer fire, ambulance, religious, charitable, fraternal, veteran, civic, county fair, or agricultural associations, or any separately chartered auxiliary of the foregoing, if organized and operated on a nonprofit basis*

(b) *"Youth athletic program" means any program operated or conducted by a nonprofit association for the recreational and athletic*

benefit of persons under 19 years of age in any sport recognized as a sport by the Amateur Athletic Union or the National Collegiate Athletic Association

(2) Any person who, without compensation, except reimbursement for reasonable expenses actually incurred or to be incurred, and as a volunteer, renders services in a youth athletic program as a manager, coach, umpire, or referee, or as an assistant manager or coach, and any nonprofit association or any officer or employee thereof conducting a youth athletic program, shall not be held liable to any person for any civil damages as a result of any act or omission in rendering such services or in conducting such program if such act or omission occurs during the course of a game or other athletic event or organized practice therefor. This subsection shall not apply to any act or omission intentionally designed to cause harm or to any grossly negligent act or omission which causes harm to any person

(3) This section shall not be construed to affect or modify any existing legal basis for determining the liability or defense from liability of any person not covered by immunity conferred by this section. (renumber subsequent sections)

Rep Sanderson moved the adoption of the amendment, which failed of adoption. Under Rule 8.19, the bill was referred to the Engrossing Clerk.

HB 1415—A bill to be entitled An act relating to the boundaries of Santa Rosa County and Escambia County; amending ss 7 17 and 7 55, F S, redefining the boundaries of Escambia and Santa Rosa Counties; providing that Navarre Beach shall be included in the boundary of Santa Rosa County, providing an effective date.

—was read the second time by title

The Committee on Judiciary offered the following amendment

Amendment 1—On page 3, lines 20 and 21, strike all of said lines and insert Section 3. This act shall take effect only upon approval by an affirmative vote of a majority of individuals holding a sublease of property located in Navarre Beach, described as "Fractional Sections 28 to 33, inclusive in Township 2 South, Range 26 West, and Fractional Section 36 in Township 2 South, Range 27 West, containing in the aggregate 600 acres more or less," voting in a referendum to be held by the Board of County Commissioners of Santa Rosa County in conjunction with the next presidential preference primary, regular primary or general election, in accordance with the provisions of law relating to elections currently in force, except that this section shall take effect upon becoming a law

Rep B L. Johnson moved the adoption of the amendment, which was adopted without objection

Representatives Tobiasen and Banjanin offered the following amendment

Amendment 2—On page 3, lines 20 and 21 strike all of said lines and insert

Section 3 This act shall take effect only upon its approval by a majority vote of those qualified electors of Escambia County and a majority vote of those qualified electors of Santa Rosa County voting in a referendum to be held by the Escambia County Board of County Commissioners and the Santa Rosa Board of County Commissioners in conjunction with the presidential preference election on Tuesday, March 8, 1988

Rep Banjanin moved the adoption of the amendment.

Representative Simon offered the following substitute amendment:

Substitute Amendment 2—On page 3, lines 20 & 21 strike all of said lines and insert

Section 3 *The Board of County Commissioners of Escambia County shall call a referendum of the qualified electors of the County in conjunction with the next presidential preference primary, regular primary or general election in accordance with the provisions of law relating to elections currently in force on the question of whether Florida should cede Escambia County to Alabama. Upon the affirmative vote of a majority of voters voting in the referendum, the Escambia County*

(c) "Unsolicited consumer telephone call" means a consumer telephone call other than a call made:

- 1 In response to an express request of the person called,
2. Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call; or
3. To any person with whom the telephone solicitor has an existing business relationship.

(d) "Commission" means the Florida Public Service Commission.

(e) "Telephone solicitor" means any natural person, firm, organization, partnership, association, or corporation who makes or causes to be made a consumer telephone call, including, but not limited to, calls made by use of automated dialing or recorded message devices

(f) "Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services.

(2) Any telephone solicitor who makes an unsolicited consumer telephone call to a residential telephone number shall

(a) Identify himself or herself and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation; and

(b) Within 30 seconds after beginning the conversation, inquire whether the person being solicited is interested in listening to a sales presentation and immediately discontinue the solicitation if the person being solicited gives a negative response.

(3) Any residential telephone subscriber desiring a directory listing indicating that the subscriber does not wish to receive unsolicited consumer telephone calls may notify the serving local exchange company and order an extra line listing effective with the next telephone directory issue. Such extra line listing shall appear directly beneath the primary listing and shall read "No Sales Solicitation Calls." The charge for such extra line listings shall be the tariffed rates as approved by the commission for additional or extra line listings.

(4) No telephone solicitor shall make or cause to be made any unsolicited consumer telephone call to any residential telephone number if the number for that telephone appears in the then-current directory published by the telephone company and such listing indicates that the subscriber does not wish to receive unsolicited consumer telephone calls

(5) No telephone solicitor shall attempt to contact by telephone any person whose residential telephone number is not included in the most recently published telephone directory as the result of a request for an unpublished telephone number, unless the person making such solicitation has had previous business experience with the person solicited.

(6) The division shall investigate any complaints received concerning violations of this section. If, after investigating any complaint, the division finds that there has been a violation of this section, it may bring an action to impose a civil penalty and to seek such other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall not exceed \$10,000 per violation and shall be deposited in the General Revenue Fund, unallocated

(7) Telephone companies shall not be responsible for the enforcement of the provisions of this section, and shall not be liable for any error or omission in the listings made pursuant hereto

Section 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared severable.

(and renumber subsequent sections.)

Amendment 2—On page 1 in the title, line 8, after the semi-colon (;) insert: creating s. 501.059, F.S.; providing definitions; providing restrictions upon unsolicited consumer telephone calls to residences; prohibiting the making of unsolicited consumer telephone calls to certain subscribers; authorizing the Division of Consumer Services of the Department of Agriculture and Consumer Services to investigate complaints of violations and institute civil proceedings; providing severability;

Amendment 3—On page 2, lines 12 and 13, strike all of said lines and insert: criminal or administrative action directly arising out of such cutting, rerouting or diversion of telephone lines.

On motions by Senator Kiser, the Senate refused to concur in the House amendments and the House was requested to recede. The action of the Senate was certified to the House.

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has passed with amendment SB 312 and requests the concurrence of the Senate

John B. Phelps, Clerk

SB 312—A bill to be entitled An act relating to state lands; amending s. 253.025, F.S.; providing that purchase negotiations for certain lands be initiated within 6 months of the approval of appraisals; authorizing the waiver of evidence of marketability for certain acquisitions of property; adding s. 253.03(15), F.S.; providing for procedures to establish a price for the disposition of state lands; providing for rulemaking; providing an effective date.

Amendment 1—On page 2, line 19 strike: July 1, 1987 and insert: upon becoming law

On motion by Senator Brown, the Senate concurred in the House amendment.

SB 312 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was.

Yeas—38

Mr. President	Gordon	Kiser	Roe-Lehtinen
Beard	Grant	Langley	Scott
Brown	Grizzle	Lehtinen	Stuart
Childers, D	Hair	Malchon	Thomas
Childers, W. D.	Hill	Margolis	Thurman
Crawford	Hollingsworth	McPherson	Weinstein
Crenshaw	Jenne	Meek	Weinstock
Deratany	Jennings	Myers	Woodson
Dudley	Johnson	Peterson	
Frank	Kirkpatrick	Plummer	

Nays—None

Vote after roll call:

Yea—Girardeau

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB's 1096, 963 and 654 and requests the concurrence of the Senate.

④

John B. Phelps, Clerk

CS for SB's 1096, 963 and 654—A bill to be entitled An act relating to civil liability; amending s. 607.014, F.S.; authorizing corporations to indemnify directors, officers, employees, agents, and volunteers against liability and related expenses; providing for a procedure to pay such expenses; providing limitations on such indemnity; amending s. 617.028, F.S.; providing civil immunity to such persons associated with corporations not for profit and rural electric cooperatives; providing limitations on such immunity; providing for the approval and authorization of certain transactions negotiated by such persons; creating s. 607.1645, F.S., providing officers, directors, and volunteers of a corporation immunity from civil liability; providing limitations; creating s. 607.165, F.S.; providing for the approval and authorization of certain transactions negotiated by an officer or director, the board of directors, or shareholders of a corporation; providing directors, officers, committee members, chief operating officers, executive officers and volunteers, of credit unions immunity from civil liability; providing limitations; providing trustees, officers, or volunteers of a self-insurance trust fund immunity from civil liability; providing limitations; providing trustees, directors, officers, members, or volunteers of a nonprofit organization immunity from civil liability; providing limitations; providing an effective date.

Garcia	Johnson, B L	Meassersmith	Saunders
Gardner	Johnson, R C.	Metcalf	Shelley
Glickman	Jones, C. F.	Mitchell	Simon
Goode	Jones, D L	Morse	Simone
Gordon	Kelly	Mortham	Smith
Grindle	King	Nergard	Souto
Guber	Langton	Ogden	Starks
Gustafson	Lawson	Ostrau	Stone
Hanson	Lewis	Patchett	Thomas
Harden	Liberti	Peeples	Titone
Hargrett	Lippman	Press	Tobiasen
Harris	Locke	Reaves	Tobin
Hawkins	Logan	Reddick	Trammell
Healey	Lombard	Rehm	Troxler
Hill	Long	Renke	Upchurch
Hodges	Mackenzie	Rochlin	Wallace
Ireland	Mackey	Rudd	Webster
Irvine	Martin	Rush	Wetherell
Jamerson	McEwan	Sample	Young
Jennings	Meffert	Sansom	

Nays—2

Martinez Woodruff

Votes after roll call:

Yeas—Gonzalez-Quevedo, Sanderson

So the bill passed, as amended, and was immediately certified to the Senate

HB 1415—A bill to be entitled An act relating to the boundaries of Santa Rosa County and Escambia County, amending ss 7.17 and 7.55, F S, redefining the boundaries of Escambia and Santa Rosa Counties, providing that Navarre Beach shall be included in the boundary of Santa Rosa County; providing an effective date

—was read the third time by title. On passage, the vote was

Yeas—69

The Chair	Deutsch	Johnson, R. C	Reaves
Abrams	Figg	Kelly	Reddick
Arnold	Frankel	Langton	Rochlin
Ascherl	Friedman	Liberti	Rudd
Bass	Gaffney	Lippman	Rush
Bell	Garcia	Locke	Saunders
Bloom	Gardner	Logan	Simon
Brown	Glickman	Long	Smith
Burke	Goode	Mackenzie	Titone
Burnsed	Gordon	Martin	Tobin
Canady	Guber	Martinez	Trammell
Cariton	Gustafson	Meffert	Upchurch
Carpenter	Hargrett	Metcalf	Wallace
Clark	Harris	Mitchell	Wetherell
Clements	Healey	Ogden	Young
Congrove	Hodges	Ostrau	
Dantzler	Jamerson	Peeples	
Davis	Johnson, B L	Press	

Nays—46

Bainter	Grindle	Lombard	Sansom
Banjamin	Hanson	Mackey	Shelley
Bankhead	Harden	McEwan	Simone
Bronson	Hill	Meassersmith	Souto
Casas	Holland	Morse	Starks
Crotty	Ireland	Mortham	Stone
Diaz-Balart	Irvine	Nergard	Thomas
Drage	Jennings	Patchett	Tobiasen
Dunbar	Jones, D. L.	Rehm	Troxler
Frishe	King	Renke	Webster
Gonzalez-Quevedo	Lawson	Sample	Woodruff
	Lewis	Sanderson	

So the bill passed, as amended, and was immediately certified to the Senate

Motions Relating to Committee References

On point of order by Rep. Gardner, Chairman, that they do not affect appropriations, the following bills were withdrawn from the Committee on Finance & Taxation and placed on the Calendar: HBs 831 and 1414. On further point by Rep. Gardner, HBs 606 and 319 were withdrawn from the Committee on Finance & Taxation and remain referred to the Committee on Appropriations.

On motion by Rep. Burnsed, Chairman, without objection, SB 266 was withdrawn from the Committee on Transportation and placed on the Calendar

On motion by Rep. Stone, without objection, HB 662 was withdrawn from further consideration of the House

On motion by Rep. Martin, Chairman, without objection, HB 833 was withdrawn from the Committee on Natural Resources and remains referred to the Committee on Appropriations

On motion by Rep. Abrams, Chairman, without objection, HB 894 was withdrawn from the Committee on Health Care and placed on the Calendar

On motion by Rep. Reddick, Chairman, without objection, HR 1493 was withdrawn from the Committee on Youth and placed on the Calendar

Matters on Reconsideration

SB 539—A bill to be entitled An act relating to contraband forfeitures; amending s 932.704, F S.; allowing proceeds from contraband forfeiture sales to be expended for drug abuse education and treatment purposes, providing an effective date

—was taken up, pending on motion by Rep. Peeples to reconsider the vote by which the bill passed. The question recurred on the motion to reconsider, which was agreed to.

On further motion by Rep. Peeples, the House reconsidered votes by which Amendments 1 and 2 were adopted. Without objection, the amendments were withdrawn.

Representative Peeples offered the following amendment

Amendment 3—On pages 1-3, strike everything after the enacting clause and insert.

Section 1 Paragraph (a) of subsection (3) and subsection (5) of section 932.704, Florida Statutes, are amended to read.

932.704 Forfeiture proceedings.—

(3)(a) Whenever the head of the law enforcement agency effecting the forfeiture deems it necessary or expedient to sell the property forfeited rather than to retain it for the use of the law enforcement agency, or if the property is subject to a lien which has been preserved by the court, he shall cause a notice of the sale to be made by publication as provided by law and thereafter shall dispose of the property at public auction to the highest bidder for cash without appraisal. In lieu of the sale of the property, the head of the law enforcement agency, whenever he deems it necessary or expedient, may salvage the property or transfer the property to any public or nonprofit organization, provided such property is not subject to a lien preserved by the court as provided in s. 932.703(3). The proceeds of sale shall be applied first, to payment of the balance due on any lien preserved by the court in the forfeiture proceedings; second, to payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property, third, to payment of court costs incurred in the forfeiture proceeding. The remaining proceeds shall be deposited in a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality and such proceeds and interest earned therefrom shall be used for school resource officer, crime prevention, or drug education programs or for other law enforcement purposes only. These funds may be expended only upon request by the sheriff to the board of county commissioners or by the chief of police to the governing body of the municipality, accompanied by a written certification that the request complies with the provisions of this

Amendment 1—On page 2, line 6, through page 19, line 21, strike everything after the enacting clause and insert:

Section 1 (1) *The Legislature finds that the service of qualified persons on the governing boards of nonprofit corporations and associations is critical to the efficient and effective conduct of such organizations in the provision of services and other benefits to the citizens of the state. The Legislature further finds that, within reasonable limits, persons offering their services as directors of such nonprofit organizations should be permitted to perform without undue concern for the possibility of litigation arising from the discharge of their duties as policy makers.*

(2) *The Legislature further finds that the service of qualified persons on the governing boards of corporations, credit unions, and self-insurance trust funds is in the public interest and that within reasonable limitations, such persons should be permitted to perform without undue concern for the possibility of litigation arising from the discharge of their duties as policy makers. The Legislature further finds that the case law of the state does not adequately delineate the liability of those serving on governing boards, and that such delineation through the clarification of the appropriate standard of care due an individual and a corporation by a member of a governing board is essential in encouraging the continued service of qualified persons on such governing boards.*

Section 2 *Officers and directors of certain corporations and associations not for profit, immunity from civil liability —*

(1) *An officer or director of a nonprofit organization recognized under section 501(c)(3) or section 501(c)(4) or section 501(c)(6), or of an agricultural or a horticultural organization recognized under section 501(c)(5), of the Internal Revenue Code of 1986, as amended, is not personally liable for monetary damages to any person for any action statement, vote, decision, or failure to take an action, regarding corporate management or policy by an officer or director, unless*

(a) *The officer or director breached or failed to perform his duties as an officer or director, and*

(b) *The officer's or director's breach, or failure to perform, his duties constitutes*

1 *A violation of the criminal law, unless the trustee had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful. A judgment or other final adjudication against a trustee in any criminal proceeding for violation of the criminal law estops that trustee from contesting the fact that his breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the trustee from establishing that he had reasonable cause to believe that his conduct was lawful or had no reasonable cause to believe that his conduct was unlawful;*

2 *A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly, or*

3 *Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property*

(2) *For the purposes of this section, the term*

(a) *"Recklessness" means acting or failing to act, in disregard of a risk.*

1. *Known, or so obvious that they should have been known, to be so great as to make it highly probable that harm would follow from such action or omission*

2. *The consequences of which are known to the officer or director, or so obvious that they should have been known, to be so great as to make it highly probable that harm would follow from such action or omission*

(b) *"Director" means a person who serves as a director, trustee, or member of the governing board of an organization*

(c) *"Officer" means a person who serves as an officer without compensation except reimbursement for actual expenses incurred or to be incurred*

Section 3. Section 607.014, Florida Statutes, is amended to read:

607.014 Indemnification of officers, directors, employees, and agents.—

(1) ~~A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by, or in the right of, the corporation), by reason of the fact that he is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against liability expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.~~

(2) ~~A corporation shall have power to indemnify any person, who was or is a party, or is threatened to be made a party, to any proceeding threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such proceeding action or suit, including any appeal thereof. Such indemnification shall be authorized if such person, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless, and only to the extent that, the court in which such proceeding action or suit was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.~~

(3) ~~To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsection (1) or subsection (2), or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.~~

(4) ~~Any indemnification under subsection (1) or subsection (2), unless pursuant to a determination by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection (1) or subsection (2). Such determination shall be made~~

(a) ~~By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding;~~

(b) ~~If such a quorum is not obtainable or, even if obtainable, by majority vote of a committee duly designated by the board of directors (in which directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding,~~

(c) ~~By independent legal counsel.~~

1 ~~Selected by the board of directors prescribed in paragraph (a) or the committee prescribed in paragraph (b), or~~

2 ~~If a quorum of the directors cannot be obtained for paragraph (a) and the committee cannot be designated under paragraph (b), selected by majority vote of the full board of directors (in which directors who are parties may participate) a quorum of disinterested directors or directors, by independent legal counsel in a written opinion; or~~

(d)(e) By the shareholders by a majority vote of a quorum consisting of shareholders who were not parties to such action, suit, or proceeding or, if no such quorum is obtainable, by a majority vote of shareholders who were not parties to such proceeding.

(5) Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by paragraph (4)(c) shall evaluate the reasonableness of expenses and may authorize indemnification.

(6) Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the corporation pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the board of directors deems appropriate.

~~(5) Expenses, including attorneys' fees, incurred in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of such action, suit, or proceeding upon a preliminary determination following one of the procedures set forth in subsection (4) that the director, officer, employee, or agent met the applicable standard of conduct set forth in subsection (1) or subsection (2) or as authorized by the board of directors in the specific case and, in either event, upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.~~

(7)(6) The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and a corporation may ~~have the power to~~ make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, ~~except an indemnification against gross negligence or willful misconduct.~~ However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

(a) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful,

(b) A transaction from which the director, officer, employee, or agent derived an improper personal benefit;

(c) In the case of a director, a circumstance under which the liability provisions of s. 607.144 are applicable, or

(d) Willful misconduct or a conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder.

(8)(7) Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.

(9) Unless the corporation's articles of incorporation provide otherwise, notwithstanding the failure of a corporation to provide indemnification, and despite any contrary determination of the board or of the shareholders in the specific case, a director, officer, employee, or agent of the corporation who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that

(a) The director, officer, employee, or agent is entitled to mandatory indemnification under subsection (3), in which case the court shall also order the corporation to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;

(b) The director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the corporation of its power pursuant to subsection (7), or

(c) The director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in subsection (1), subsection (2), or subsection (7).

(10) For purposes of this section, the term "corporation" includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, officer, employee, or agent of a constituent corporation, or is or was serving at the request of a constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, is in the same position under this section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(11) For purposes of this section, the term "other enterprises" includes employee benefit plans; the term "expenses" includes counsel fees, including those for appeal, the term "liability" includes obligations to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to any employee benefit plan), and expenses actually and reasonably incurred with respect to a proceeding, the term "proceeding" includes any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, the term "agent" includes a volunteer; and the term "serving at the request of the corporation" includes any service as a director, officer, employee, or agent of the corporation that imposes duties on such persons, including duties relating to an employee benefit plan and its participants or beneficiaries, and the term "not opposed to the best interest of the corporation" describes the actions of a person who acts in good faith and in a manner he reasonably believes to be in the best interests of the participants and beneficiaries of an employee benefit plan.

(12)(8) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(13)(9) If any expenses or other amounts are paid by way of indemnification otherwise than by court order or action by the shareholders or by an insurance carrier pursuant to insurance maintained by the corporation, the corporation shall, not later than the time of delivery to shareholders of written notice of the next annual meeting of shareholders, unless such meeting is held within 3 months from the date of such payment, and, in any event, within 15 months from the date of such payment, deliver either personally or by mail to each shareholder of record at the time entitled to vote for the election of directors a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation.

Section 4. Section 617.028, Florida Statutes, is amended to read:

617.028 Indemnification and liability of officers, directors, managers, trustees, employees, and agents.—The provisions of ss. 607.014, 607.1645, and 607.165 apply to corporations not for profit and rural electric cooperatives organized under chapter 425. Any reference to "directors" in those sections ~~that section~~ includes the directors, managers, or trustees of a corporation not for profit or of a rural electric cooperative organized under chapter 425, provided that the term "director" as used in s. 607.1645 shall not include a director appointed by the developer to the board of directors of a condominium association under chapter 718 or a cooperative association under chapter 719. Any reference to "shareholders" in those sections includes members of a corporation not for profit and members of a rural electric cooperative organized under chapter 425.

Section 5. Section 607.1645, Florida Statutes, is created to read:

607.1645 *Liability of directors.*—

(1) A director is not personally liable for monetary damages to the corporation or any other person for any statement, vote, decision, or failure to act, regarding corporate management or policy, by a director, unless

(a) The director breached or failed to perform his duties as a director, and

(b) The director's breach of, or failure to perform, those duties constitutes

1 A violation of the criminal law, unless the director had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful. A judgment or other final adjudication against a director in any criminal proceeding for a violation of the criminal law estops that director from contesting the fact that his breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the director from establishing that he had reasonable cause to believe that his conduct was lawful or had no reasonable cause to believe that his conduct was unlawful;

2 A transaction from which the director derived an improper personal benefit, either directly or indirectly;

3 A circumstance under which the liability provisions of s. 607.144 are applicable;

4 In a proceeding by or in the right of the corporation to procure a judgment in its favor or by or in the right of a shareholder, conscious disregard for the best interest of the corporation, or willful misconduct, or

5 In a proceeding by or in the right of someone other than the corporation or a shareholder, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property

(2) For the purposes of this section, the term "recklessness" means acting, or failing to act, in disregard of a risk:

1 Known, or so obvious that it should have been known, to the director; and

2 The consequences of which are known to the director, or so obvious that they should have been known, to be so great as to make it highly probable that harm would follow from such action or omission

Section 6. Section 607.165, Florida Statutes, is created to read:

607.165 *Director deemed not to have derived improper personal benefit*—

(1) For purposes of ss. 607.014 and 607.1645, a director is deemed not to have derived an improper personal benefit from any transaction if the transaction and nature of any personal benefit derived by the director is not prohibited by state or federal law or regulation and, without further limitation:

(a) In an action other than a derivative suit regarding a decision by the director to approve, reject, or otherwise affect the outcome of an offer to purchase the stock of, or to effect a merger of, the corporation, the transaction and the nature of any personal benefits derived by a director are disclosed or known to all directors voting on the matter, and the transaction was authorized, approved, or ratified by at least two directors who comprise a majority of the disinterested directors (whether or not such disinterested directors constitute a quorum);

(b) The transaction and the nature of any personal benefits derived by a director are disclosed or known to the shareholders entitled to vote, and the transaction was authorized, approved, or ratified by the affirmative vote or written consent of such shareholders who hold a majority of the shares, the voting of which is not controlled by directors who derived a personal benefit from or otherwise had a personal interest in the transaction; or

(c) The transaction was fair and reasonable to the corporation at the time it was authorized by the board, a committee, or the shareholders, notwithstanding that a director received a personal benefit.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors which authorizes, approves, or ratifies such a transaction

(3) The circumstances set forth in subsection (1) are not exclusive and do not preclude the existence of other circumstances under which a director will be deemed not to have derived an improper benefit.

Section 7. *Liability of directors or supervisory committee members of credit unions.*—

(1) A director of a credit union organized under state or federal law, or a member of the supervisory committee of such credit union, is not personally liable for monetary damages to the credit union, its members, or any other persons for any statement, vote, decision, or failure to act, regarding corporate management or policy, by a director, unless

(a) The director or the member of the supervisory committee, breached or failed to perform his duties as a director or as a member of the supervisory committee; and

(b) The breach or failure to perform by the director or the member of the supervisory committee constitutes

1 A violation of the criminal law, unless the director or the member of the supervisory committee had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful. A judgment or other final adjudication against a director or a member of a supervisory committee in any criminal proceeding for a violation of the criminal law estops that director or member from contesting the fact that his breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the director or member of the supervisory committee from establishing that he had reasonable cause to believe that his conduct was lawful or had no reasonable cause to believe that his conduct was unlawful,

2 A transaction from which the director or the member of the supervisory committee derived an improper personal benefit, either directly or indirectly, or

3 Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property

(2) For the purposes of this section, the term "recklessness" means acting, or failing to act, in disregard of a risk.

1. Known, or so obvious that it should have been known, to the director or member of the supervisory committee; and

2. The consequences of which are known to the director or the member of the supervisory committee, or so obvious that they should have been known, to be so great as to make it highly probable that harm would follow from such action or omission

Section 8. *Liability of trustees of self-insurance trust fund*—

(1) A trustee of any self-insurance trust fund organized under the laws of this state is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to act, regarding the management or policy of the fund, by a trustee, unless

(a) The trustee breached or failed to perform his duties as a trustee; and

(b) The trustee's breach of, or failure to perform, his duties constitutes

1. A violation of the criminal law, unless the trustee had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful. A judgment or other final adjudication against a trustee in any criminal proceeding for violation of the criminal law estops that trustee from contesting the fact that his breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the trustee from establishing that he had reasonable cause to believe that his conduct was lawful or had no reasonable cause to believe that his conduct was unlawful,

2. A transaction from which the trustee derived an improper personal benefit, either directly or indirectly, or

3. Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property

(2) For the purposes of this section, the term "recklessness" means acting or failing to act, in disregard of a risk:

(a) Known, or so obvious that it should have been known, to the trustee; and

(b) The consequences of which are known to the trustee, or so obvious that they should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

Section 9. Section 627.9122, Florida Statutes, is created to read:

627.9122 Officers' and directors' liability claims, reports by insurers —

(1) Each insurer providing coverage for officers' and directors' liability coverage shall report to the Department of Insurance any claim or action for damages claimed to have been caused by error, omission, or negligence in the performance of the officer's or director's services, if the claim resulted in:

(a) A final judgment in any amount

(b) A settlement in any amount.

(c) A final disposition not resulting in payment on behalf of the insured.

Reports shall be filed with the department no later than 60 days following the occurrence of any event listed in paragraphs (a), (b), or (c).

(2) The reports required by subsection (1) shall contain:

(a) The name, address, and position held by the insured, and the type of corporation or organization, including classifications as provided in section 501 (c) of the Internal Revenue Code of 1954, as amended.

(b) The insured's policy number.

(c) The date of the occurrence which created the claim.

(d) The date the claim was reported to the insurer.

(e) The name of the injured person. This information shall be privileged and confidential and shall not be disclosed by the department without the consent of the injured person. This information may be used by the department for purposes of identifying multiple or duplicate claims arising out of the same occurrence.

(f) The date of suit, if filed.

(g) The total number and names of all defendants involved in the claim.

(h) The date and amount of judgment or settlement, together with a copy of the settlement or judgment.

(i) In the case of a settlement, such information as the department may require with regard to the claimant's anticipated future losses.

(j) The loss adjustment expense paid to defense counsel, and all other allocated loss adjustment expenses paid.

(k) The date and reason for final disposition, if no judgment or settlement.

(l) A summary of the occurrence which created the claim, which shall include

1. Whether the injuries claimed were the result of physical damage to the claimant, or were the result of damage to the reputation of the claimant, or were based on self-dealing by the defendant, or were in the nature of a shareholder dispute.

2. A description of the type of activity which caused the injury.

3. The steps taken by the officers or directors to assure that similar occurrences are less likely in the future.

(m) Any other information required by the department to analyze and evaluate the nature, causes, costs, and damages involved in officers' and directors' liability cases.

(3) The department shall include a summary of this information in its annual report.

Section 10. Subsection (2) of section 627.915, Florida Statutes, 1986 Supplement, is amended to read:

627.915 Insurer experience reporting.—

(2) Each insurer transacting fire, homeowner's multiple peril, commercial multiple peril, medical malpractice, products liability, workers' compensation, private passenger automobile liability, commercial automobile liability, private passenger automobile physical damage, commercial automobile physical damage, officers' and directors' liability insurance, or other liability insurance shall report, for each such line of insurance, the information specified in this subsection to the department. The information shall be reported for direct Florida business only and shall be reported on a calendar-year basis annually by April 1 for the preceding calendar year:

(a) Direct premiums written.

(b) Direct premiums earned.

(c) Loss reserves for all known claims:

1. At beginning of the year.

2. At end of the year.

(d) Reserves for losses incurred but not reported:

1. At beginning of the year.

2. At end of the year.

(e) Allocated loss adjustment expense:

1. Reserve at beginning of the year.

2. Reserve at end of the year.

3. Paid during the year.

(f) Unallocated loss adjustment expense:

1. Reserve at beginning of the year.

2. Reserve at end of the year.

3. Paid during the year.

(g) Direct losses paid.

(h) Underwriting income or loss.

(i) Commissions and brokerage fees.

(j) Taxes, licenses, and fees.

(k) Other acquisition costs.

(l) General expenses.

(m) Policyholder dividends.

(n) Net investment gain or loss and other income gain or loss allocated pro rata by earned premium to Florida business utilizing the investment allocation formula contained in the National Association of Insurance Commissioner's Profitability Report by line by state.

Section 11. Nothing in this act shall be construed as increasing or decreasing the liability of any person not herein specifically delineated.

Section 12. The Legislature of the State of Florida believes that the public policy of this State shall be to encourage the provision of services by volunteers and recognizes that in serving the public, volunteers may be submitting themselves to the possibility of suit by those served. The Legislature further finds that it would be in the public interest to remove unnecessary deterrents to service and that within the constraints of the state and federal constitutions, the Legislature should consider modifications in the tort, indemnity, and insurance laws of this State. The Legislature, having established the Academic Task Force for Review of the Insurance and Tort Systems, and having directed the task force to review and to recommend changes to the tort and insurance laws of this state, does hereby direct that the review of said task force shall be expanded, as necessary, to include a consideration of the effect, and the extent of the effect, of tort and insurance laws on the provision of volunteer services in this State, and to include its findings and recommendations resulting from its consideration of these issues in its report to the Legislature to be reported no later than March 1, 1988.

Section 13 This act shall take effect July 1, 1987, or upon becoming a law, whichever occurs later

Amendment 2—On page 1, line 1, in the title, through page 2, line 2, strike everything before the enacting clause and insert: A bill to be entitled An act relating to civil liability; providing legislative findings; providing limited civil immunity to directors and certain officers of certain nonprofit organizations; amending s. 607.014, F.S.; authorizing corporations to indemnify directors, officers, employees, agents, and volunteers against liability and related expenses; providing for a procedure to pay such expenses; providing limitations on such indemnity; amending s. 617.028, F.S.; providing civil immunity to certain persons associated with corporations not for profit; providing limitations on such immunity, creating s. 607.1645, F.S.; providing directors of a corporation immunity from civil liability; providing limitations; creating s. 607.165, F.S.; providing for the approval and authorization of certain transactions negotiated by a director, providing directors and members of supervisory committees of credit unions immunity from civil liability; providing limitations, providing trustees of a self-insurance trust fund immunity from civil liability; providing limitations; creating s. 627.9122, F.S., requiring insurers to report additional information regarding officers' and directors' liability claims; amending s. 627.915, F.S.; requiring insurers to separately report certain information for officers' and directors' liability insurance; directing the Academic Task Force for the Review of the Insurance and Tort Systems to make certain recommendations; providing an effective date.

Senator Jennings moved the following amendments to House Amendment 1 which were adopted:

Amendment 1—On page 2, line 15, strike "action"

Amendment 2—On page 2, line 17, strike "corporate" and insert: *organizational*

Amendment 3—On page 2, lines 23, 26, 28, and 30, strike "trustee" and insert: *officer or director*

Amendment 4—On page 3, strike all of lines 11-19 and insert:

(a) *"Recklessness" means the acting, or omission to act, in conscious disregard of a risk*

1. *Known, or so obvious that it should have been known, to the officer or director, and*

2. *Known to the officer or director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission*

Amendment 5—On page 11, line 31, before "The" insert: *Except as provided in section 2 of this act,*

Amendment 6—On page 13, strike all of lines 19-26 and insert: *"recklessness" means the action, or omission to act, in conscious disregard of a risk:*

Known, or so obvious that it should have been known, to the director, and

2 *Known to the director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.*

Amendment 7—On page 15, between lines 6 and 7, insert:

(4) *The provisions of this section shall also apply to officers of nonprofit organizations as provided in section 2 of this act*

Amendment 8—On page 15, strike line 14 and insert: *regarding the management or policy of the credit union, by a director or member of the supervisory committee,*

Amendment 9—On page 15, line 28, after "member" insert: *of the supervisory committee*

Amendment 10—On page 16, strike all of lines 11-20 and insert.

"recklessness" means the acting, or omission to act, in conscious disregard of a risk

1. *Known, or so obvious that it should have been known, to the director or member of the supervisory committee, and*

2. *Known to the director or member of the supervisory committee, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission*

Amendment 11—On page 17, strike all of lines 19-26 and insert: *"recklessness" means the acting, or omission to act, in conscious disregard of a risk*

1. *Known, or so obvious that it should have been known, to the trustee; and*

2. *Known to the trustee, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.*

Amendment 12—On page 18, line 20, strike "1964" and insert: 1986

Amendment 13—On page 22, line 4, before the period (.) insert: and shall apply to all causes of action accruing on or after the effective date of this act. Nothing in this act shall affect the validity of any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise pursuant to s. 607.014, F.S., before the effective date of this act

Senator Jennings moved the following amendment to House Amendment 2 which was adopted:

Amendment 1—In title, on page 1, lines 15-31, and on page 2, lines 1-17, strike all of said lines and insert: A bill to be entitled An act relating to civil liability; providing legislative findings; providing limited civil immunity to directors and certain officers of certain nonprofit organizations; amending s. 607.014, F.S.; authorizing corporations to indemnify directors, officers, employees, and agents against liability and related expenses; providing for a procedure to pay such expenses; providing limitations on such indemnity; amending s. 617.028, F.S.; providing civil immunity to certain persons associated with corporations not for profit; providing limitations on such immunity; creating s. 607.1645, F.S.; providing directors of a corporation immunity from civil liability; providing limitations; creating s. 607.165, F.S.; providing for the approval and authorization of certain transactions negotiated by certain directors and officers; providing directors and members of supervisory committees of credit unions immunity from civil liability; providing limitations, providing trustees of a self-insurance trust fund immunity from civil liability; providing limitations; creating s. 627.9122, F.S.; requiring insurers to report additional information regarding officers' and directors' liability claims, amending s. 627.915, F.S.; requiring insurers to separately report certain information for officers' and directors' liability insurance; expanding the review of the Academic Task Force for Review of the Insurance and Tort Systems; providing an effective date.

On motions by Senator Jennings, the Senate concurred in the House amendments as amended.

CS for SB's 1096, 963 and 654 passed as amended and was ordered engrossed and then enrolled. The action of the Senate was certified to the House. The vote on passage was:

Yeas—35

Mr. President	Grant	Langley	Roe-Lehtinen
Beard	Grizzle	Lehtinen	Scott
Brown	Hair	Malchon	Stuart
Childers, D	Hill	Margolis	Thomas
Childers, W. D.	Jenne	McPherson	Thurman
Crenshaw	Jennings	Meek	Weinstein
Deratany	Johnson	Myers	Weinstock
Dudley	Kirkpatrick	Peterson	Woodson
Gordon	Kiser	Plummer	

Nays—1

Frank

Vote after roll call.

Yea—Girardeau, Hollingsworth

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has passed with amendment SB 18 and requests the concurrence of the Senate.

John B. Phelps, Clerk

F.S.; providing a continuing education requirement for license renewal; providing an effective date.

—was read the first time by title and placed on the Calendar without reference.

By Senator Kirkpatrick—

SB 1155—A bill to be entitled An act relating to the Board of Professional Engineers; creating s 471.008, F.S., providing rulemaking authority; amending s. 471.003, F.S., amending the registration requirement for certified full-time engineering faculty; providing an effective date

—was read the first time by title and placed on the Calendar without reference

By the Committee on Transportation and Senator Deratany—

CS for SB 165—A bill to be entitled An act relating to state uniform traffic control; amending ss 316 003, 316 640, F.S., providing that traffic laws apply and authorizing certain officers and agencies to enforce traffic laws within mobile home park recreation districts; creating s. 316.1951, F.S.; prohibiting parking for certain purposes, providing for removal of an unlawfully parked motor vehicle, providing penalties, creating s. 316.252, F.S.; prohibiting the operation of certain motor vehicles unless equipped with fenders, wheel covers, or other splash and spray suppressant devices, a penalty for which is provided by law, providing an effective date

—was read the first time by title and referred to the Committee on Transportation.

The Honorable Jon Mills, Speaker

I am directed to inform the House of Representatives that the Senate has passed HB 162, with amendment, and requests the concurrence of the House

Joe Brown, Secretary

HB 162—A bill to be entitled An act relating to consumer protection; creating s. 501.059, F.S., providing definitions, providing restrictions upon unsolicited consumer telephone calls to residences; prohibiting the making of unsolicited consumer telephone calls to certain subscribers; authorizing the Division of Consumer Services of the Department of Agriculture and Consumer Services to investigate complaints of violations and institute civil proceedings; providing severability; providing an effective date.

Senate Amendment 1—On page 2, between lines 13 & 14, insert 4 By a newspaper publisher or his agent or employee in connection with his business.

On motion by Rep Carpenter, the House concurred in the Senate amendment The question recurred on the passage of HB 162 The vote was

Yeas—114

- | | | | |
|-----------|------------------|----------------|---------------|
| The Chair | Crady | Gordon | Johnson, R. C |
| Abrams | Crotty | Grindle | Jones, C. F |
| Arnold | Dantzler | Guber | Jones, D. L. |
| Ascherl | Davis | Gustafson | Kelly |
| Bainter | Deutsch | Gutman | King |
| Banjanin | Diaz-Balart | Hanson | Langton |
| Bankhead | Drage | Harden | Lawson |
| Bass | Dunbar | Hargrett | Lewis |
| Bloom | Figg | Harris | Liberti |
| Bronson | Frankel | Hawkins | Lippman |
| Brown | Friedman | Healey | Logan |
| Burnsed | Frishe | Hill | Lombard |
| Canady | Gaffney | Hodges | Mackenzie |
| Carlton | Garcia | Holland | Mackey |
| Carpenter | Gardner | Ireland | Martin |
| Casas | Glickman | Irvine | Martinez |
| Clark | Gonzalez-Quevedo | Jamerson | McEwan |
| Clements | Goode | Jennings | Meffert |
| Cosgrove | | Johnson, B. L. | Messersmith |

- | | | | |
|----------|-----------|----------|----------|
| Meitcalf | Reaves | Saunders | Titone |
| Mitchell | Reddick | Shelley | Tobiasen |
| Morse | Rehm | Silver | Tobin |
| Mortham | Renke | Simon | Trammell |
| Nergard | Rochlin | Simone | Troxler |
| Ogden | Rudd | Smith | Upchurch |
| Ostrau | Rush | Souto | Wallace |
| Patchett | Sample | Starks | Webster |
| Peebles | Sanderson | Stone | Young |
| Press | Sansom | Thomas | |

Nays—1

Woodruff

Votes after roll call

- Yeas—Locke
- Yeas to Nays—Grindle
- Nays to Yeas—Woodruff

So the bill passed, as amended by the Senate amendment The action was certified to the Senate and the bill was ordered enrolled after engrossment

The Honorable Jon Mills, Speaker

I am directed to inform the House of Representatives that the Senate has amended House Amendments 1 and 2, concurred in same as amended and passed CS/SBs 1096, 963 and 654 as further amended, and requests the concurrence of the House

Joe Brown, Secretary

5

CS for SBs 1096, 963 and 654—A bill to be entitled An act relating to civil liability; amending s 607 014, F.S ; authorizing corporations to indemnify directors, officers, employees, agents, and volunteers against liability and related expenses; providing for a procedure to pay such expenses, providing limitations on such indemnity; amending s 617 028, F.S ; providing civil immunity to such persons associated with corporations not for profit and rural electric cooperatives, providing limitations on such immunity; providing for the approval and authorization of certain transactions negotiated by such persons, creating s. 607 1645, F.S , providing officers, directors, and volunteers of a corporation immunity from civil liability, providing limitations, creating s. 607 1645, F.S , providing officers, directors, and volunteers of a corporation immunity from civil liability, providing limitations, creating s 607.165, F.S.; providing for the approval and authorization of certain transactions negotiated by an officer or director, the board of directors, or shareholders of a corporation; providing directors, officers, committee members, chief operating officers, executive officers and volunteers, of credit unions immunity from civil liability; providing limitations, providing trustees, officers, or volunteers of a self-insurance trust fund immunity from civil liability, providing limitations, providing trustees, directors, officers, members, or volunteers of a nonprofit organization immunity from civil liability, providing limitations, providing an effective date.

(House Amendments 1 and 2 attached to original bill)

Senate Amendment 1 to House Amendment 1—On page 2, line 15, strike "action"

Senate Amendment 2 to House Amendment 1—On page 2, line 17, strike "corporate" and insert. organizational

Senate Amendment 3 to House Amendment 1—On page 2, lines 23, 26, 28, and 30, strike "trustee" and insert officer or director

Senate Amendment 4 to House Amendment 1—On page 3, lines 11-19, strike all of said lines and insert (a) "Recklessness" means the acting, or omission to act, in conscious disregard of a risk

1 Known, or so obvious that it should have been known, to the officer or director, and

2 Known to the officer or director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission

Senate Amendment 5 to House Amendment 1—On page 11, line 31, before "The" insert *Except as provided in section 2 of this act,*

Senate Amendment 6 to House Amendment 1—On page 13, lines 19-26, strike all of said lines and insert: *"recklessness" means the action, or omission to act, in conscious disregard of a risk:*

1 *Known, or so obvious that it should have been known, to the director, and*

2 *Known to the director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission*

Senate Amendment 7 to House Amendment 1—On page 15, between lines 6 and 7, insert (4) *The provisions of this section shall also apply to officers of nonprofit organizations as provided in section 2 of this act*

Senate Amendment 8 to House Amendment 1—On page 15, line 14, strike all of said lines and insert: *regarding the management or policy of the credit union, by a director or member of the supervisory committee,*

Senate Amendment 9 to House Amendment 1—On page 15, line 28, after "member" insert: *of the supervisory committee*

Senate Amendment 10 to House Amendment 1—On page 16, lines 11-20, strike all of said lines and insert: *"recklessness" means the acting, or omission to act, in conscious disregard of a risk*

1 *Known, or so obvious that it should have been known, to the director or member of the supervisory committee, and*

2. *Known to the director or member of the supervisory committee, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission*

Senate Amendment 11 to House Amendment 1—On page 17, lines 19-26, strike all of said lines and insert: *"recklessness" means the acting, or omission to act, in conscious disregard of a risk:*

1 *Known, or so obvious that it should have been known, to the trustee; and*

2. *Known to the trustee, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission*

Senate Amendment 12 to House Amendment 1—On page 18, line 20, strike "1954" and insert. 1986

Senate Amendment 13 to House Amendment 1—On page 22, line 4, before the period, insert: and shall apply to all causes of action accruing on or after the effective date of this act. Nothing in this act shall affect the validity of any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise pursuant to s 607 014, F.S., before the effective date of this act

Senate Amendment 1 to House Amendment 2—In title, on page 1, lines 15-31 and on page 2, lines 1-17, strike all of said lines and insert: A bill to be entitled An act relating to civil liability; providing legislative findings, providing limited civil immunity to directors and certain officers of certain nonprofit organizations; amending s 607 014, F.S., authorizing corporations to indemnify directors, officers, employees, and agents against liability and related expenses, providing for a procedure to pay such expenses; providing limitations on such indemnity, amending s. 617 028, F.S., providing civil immunity to certain persons associated with corporations not for profit; providing limitations on such immunity; creating s. 607 1645, F.S.; providing directors of a corporation immunity from civil liability; providing limitations, creating s. 607 165, F.S., providing for the approval and authorization of certain transactions negotiated by certain directors and officers; providing directors and members of supervisory committees of credit unions immunity from civil liability, providing limitations; providing trustees of a self-insurance trust fund immunity from civil liability; providing limitations, creating s. 627 9122, F.S., requiring insurers to report additional information regarding officers' and directors' liability claims; amending s. 627 915, F.S.; requiring insurers to separately report certain information for officers' and directors' liability insurance; expanding the review of the

Academic Task Force for Review of the Insurance and Tort Systems, providing an effective date.

On motions by Rep Upchurch, the House concurred in the Senate amendments to the House amendments. The question recurred on the passage of CS/SBs 1096, 963 and 654. The vote was

Yeas—104

The Chair	Frankel	Jones, D. L.	Rochlin
Abrams	Friedman	Kelly	Rudd
Arnold	Frishe	King	Rush
Ascherl	Gaffney	Langton	Sample
Bainter	Garcia	Lawson	Sanderson
Banjanin	Gardner	Lewis	Sansom
Bankhead	Glickman	Lippman	Saunders
Bass	Gonzalez-	Logan	Shelley
Bell	Quevedo	Lombard	Simon
Bloom	Gordon	Long	Simone
Bronson	Grindle	Mackenzie	Smith
Brown	Guber	Mackey	Starks
Burnsed	Gutman	McEwan	Stone
Canady	Hanson	Meffert	Thomas
Carlton	Harden	Messersmith	Titone
Carpenter	Harris	Metcalf	Tobiassen
Casas	Hawkins	Mitchell	Tobin
Clark	Healey	Morse	Trammell
Clements	Hill	Mortham	Troxler
Cosgrove	Hodges	Nergard	Upchurch
Crady	Holland	Ostrau	Wallace
Crotty	Ireland	Patchett	Webster
Davis	Irvine	Peeples	Wetherell
Diaz-Balart	Jamerson	Press	Young
Drage	Jennings	Reaves	
Dunbar	Johnson, B. L.	Reddick	
Figg	Jones, C. F.	Rehm	

Nays—3

Martinez	Renke	Woodruff
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Votes after roll call

Yeas—Deutsch

So the bill passed, as further amended. The action, together with the bill and amendments thereto, was immediately certified to the Senate

The Honorable Jon Mills, Speaker

I am directed to inform the House of Representatives that the Senate has passed SBs 840 and 1334 and requests the concurrence of the House.

Joe Brown, Secretary

By Senator Girardeau and others—

SB 840—A bill to be entitled An act relating to the University of North Florida, naming the student life center at the university the Andrew A. Robinson Student Life Center; directing the university to erect suitable markers; providing an effective date

—was read the first time by title. On motions by Rep Brown, the rules were waived by two-thirds vote and SB 840 was read the second time by title and the third time by title. On passage, the vote was

Yeas—116

The Chair	Brown	Crotty	Garcia
Abrams	Burke	Davis	Glickman
Arnold	Burnsed	Deutsch	Gonzalez-
Ascherl	Canady	Diaz-Balart	Quevedo
Bainter	Carlton	Drage	Goode
Banjanin	Carpenter	Dunbar	Gordon
Bankhead	Casas	Figg	Grindle
Bass	Clark	Frankel	Guber
Bell	Clements	Friedman	Gustafson
Bloom	Cosgrove	Frishe	Gutman
Bronson	Crady	Gaffney	Hanson

Date: May 4, 1987

Revised: _____

Final: _____

AS REPORTED TO CLERK

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

19 1601
118 254

BILL #: CS/HB 254, 1024, 179, 205, 419 & 409

RELATING TO: Liability of corporate directors

SPONSOR(S): Committee on Judiciary, Representatives Carpenter, Lippman, Bloom, Silver, Bass, Logan, Cosgrove, Sansom, Gardner, and others

EFFECTIVE DATE: July 1, 1987

COMPANION BILL(S): Compare SB 278, SB 309, SB 384, SB 654, SB 963, SB 1096

OTHER COMMITTEES OF REFERENCE: (1) _____

(2) _____

I. SUMMARY:

A. Present Situation:

Pursuant to Section 607.014, Florida Statutes, corporations are authorized to indemnify their directors, officers, employees, and agents when the person is a party, or is threatened to be made a party to litigation arising out of the person's service to the corporation. Indemnity must be provided where the person prevails in an action. It may be provided in other circumstances in which it is determined that he acted in good faith and "in a manner he reasonably believed to be in, or not opposed to the best interests of the corporation," or if a criminal act is involved, that he "had no reasonable cause to believe his conduct was unlawful." These determinations may either be made by the board of directors or by the shareholders. Further indemnification may be provided through corporate bylaws or agreements or by shareholders or disinterested directors.

Florida case law has yet to define the parameters of liability of a director of a corporation or similar organization in this state. Presumably, under a theory of negligence, a director could be held personally liable where he failed to take all reasonable and necessary precautions to ensure that any action he took in his role as a director would not result in damage to another. However, it is unlikely that a causal connection could be established where a decision of a director inadvertently resulted in damage and it would be equally unlikely that it could

be proven that the consequences of the action were reasonably foreseeable by the director. There appear to be no decisions in this state which have held a director personally liable for simple negligence.

B. Effect of Proposed Changes:

Sections 1 and 2 of this bill establish legislative intent, finding that the service of qualified directors is in the public interest and finding a need for the specific delineation of director liability.

Section 3 of the bill establishes limited immunity for the directors of certain nonprofit organizations. Under this section, such directors would be immune from civil liability unless their actions constituted bad faith, were malicious, or exhibited wanton and willful disregard of the rights of others. This standard is somewhat higher than would be provided in this legislation for other corporate directors.

Section 4 of this bill revises current law regarding a corporation's ability to indemnify its directors, officers, employees, and agents. These revisions seek to broaden the corporation's ability to indemnify and to clarify the circumstances under which indemnification can be provided.

The bill expands the right of permissive indemnification in derivative suits to include amounts paid in settlement, which in the judgment of the board of directors, do not exceed the estimated expense of litigating the proceeding to its conclusion. Currently, the law allows the court in which the action is brought to determine that the individual is entitled to indemnification even if liability is imposed. The bill allows not only the court in which the action is brought, but any other court of competent jurisdiction to make the determination.

Revised procedures are included for when a corporation may authorize indemnification. In addition to the current method in which the board may vote by a quorum of non-party directors, the board has the option, whether or not a quorum can be obtained, to authorize a committee, consisting of at least two directors who are not at the time parties to the proceeding, to approve indemnification. The option of obtaining a majority vote of non-party shareholders is still allowed, as is the option of obtaining independent legal counsel. The procedure for selecting independent legal counsel is revised to reflect the addition of the disinterested board committee. Independent legal counsel is only authorized to determine whether the applicable standards of conduct for indemnification have been met. Counsel cannot authorize indemnification.

The bill allows a corporation to provide a director or officer, in advance of the final disposition, expenses automatically upon

receipt of an undertaking by or on behalf of the director or officer that he will repay the amount if it is ultimately determined that he is not entitled to be indemnified. Current law allows a corporation to advance expenses upon a promise by the director or officer to repay unless it shall ultimately be determined that he is entitled to be indemnified. The bill provides that where advances are made to an employee or agent, the corporation may set such other terms or conditions as it deems appropriate.

In addition to the permissive and mandatory indemnification allowed by current law, a corporation is also empowered to make any other or further indemnification for its directors, officers, employees or agents pursuant to a bylaw, agreement, vote of shareholders or disinterested directors, or otherwise. However, no indemnification is allowed against gross negligence or willful misconduct. The bill clarifies that it provides a broader right to the corporation to indemnify than is explicitly provided for in the statute. The bill also expands the non-exclusivity provisions to include advancement of expenses as well as indemnification. The limitation on indemnification and advancement of expenses is changed to reflect the limitations on liability of directors and officers provided for in the bill.

Advancement of expenses is provided in addition to indemnification where it would inure to the benefit of the heirs of a director or officer. Additionally, the bill allows the corporation at the time of authorization or ratification to limit the extent of indemnification and advancement of expenses for a person who is no longer a director or for his heirs.

The bill gives an individual the right to apply to a court for indemnification or advancement of expenses. The provision allows for application to be made to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction.

Sections 5-9 of the bill provide limited immunity for directors of corporations, credit unions, and self insurance trust funds. This immunity is limited to statements, decisions or votes regarding corporate management or policy made at a duly called meeting of the governing board.

Section 5 of the bill amends Section 617.028, Florida Statutes, to extend application of the limitations on liability and ratification procedures created by sections 3 and 4 of the bill to corporations not for profit. (See explanation of sections 3 and 4 below).

Section 6 of the bill establishes a threshold of personal liability of directors of a for-profit corporation organized under Chapter 607, F. S. The bill provides that such persons are not liable for monetary damages to the corporation or any other person unless the person asserting liability proves that (a) the director failed to perform his duties as a director, and (b) the

breach, or failure to perform those duties constitutes one of several specified conditions. These are: (a) a violation of the criminal law, unless the director had reasonable cause to believe his conduct was lawful, or had no reasonable cause to believe his conduct was unlawful; (b) a transaction from which the director derived an improper personal benefit; (c) a circumstance under which the liability provisions of section 607.144, F. S., are applicable (regarding the payment of an unlawful dividend or an unlawful purchase by the corporation of its own stock); (d) in a derivative or shareholder suit, conscious disregard for the best interest of the corporation or willful misconduct; or (e) in a third-party suit, recklessness or willful misconduct. The term "recklessness" is specifically defined.

Section 7 clarifies the specific circumstances under which a director will not be found to have derived an improper personal benefit. However, absence of the circumstances specified does not necessarily mean that a benefit derived by a director was improper.

Section 8 established a threshold of liability for directors and supervisory committee members of credit unions organized under state or federal law. Such persons are not personally liable for monetary damages to any person unless the director or supervisory committee member breached or failed to perform his duties as a director or supervisory committee member, and the breach, or failure to perform, constitutes: (a) a violation of the criminal law, unless such person had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful; (b) a transaction from which such persons derived an improper personal benefit, or (c) recklessness or willful misconduct.

Section 9 establishes a threshold of liability for trustees of any self-insurance trust fund organized under the laws of this state. Such persons are not personally liable for monetary damages to any person unless they meet the same conditions for liability imposed by Section 8 for directors of credit unions.

Section 10 of the bill establishes specific reporting requirements for insurers issuing officers' and directors' liability policies. This information should permit the Department of Insurance to better comprehend the extent of liability being imposed in Florida on officers and directors. The information would be included in the department's annual report.

Section 11 of the bill amends Section 627.915, Florida Statutes, to require insurers issuing officers' and directors' liability insurance to file the same information presently required concerning loss experience and other experience in the lines of products liability, commercial automobile liability, and similar liability lines.

Section 12 of the bill clarifies that this legislation is not intended to increase or decrease the present liability of persons other than those covered by the bill.

II. ECONOMIC IMPACT:

A. Public:

This legislation would require certain insurers to provide further reporting information to the Department of Insurance. To the extent that premiums may be exorbitant, these requirements could result in lower premiums to certain corporations.

B. Government:

This legislation could result in minimal additional expenditures by the Department of Insurance in printing its annual report.

III. STATE COMPREHENSIVE PLAN IMPACT:

This bill appears to be consistent with promoting economic development. Section 187.201, (21), Florida Statutes.

IV. COMMENTS:

None.

V. AMENDMENTS:

None

VI. PREPARED BY: Thomas R. Tedcastle

VII. STAFF DIRECTOR: Richard Hixson

19 160)
HB 254

Alaska

SB 377 (Part of the 1986 Tort Reform Bill).

Sec. 09.17.050. LIMITED LIABILITY OF CERTAIN DIRECTORS AND OFFICERS. (a) Unless the act or omission constituted gross negligence, a person may not recover tort damages for personal injury, death, or damage to property for an act or omission to act in the course and scope of official duties, from one of the following:

(1) a member of the board of directors or an officer of a nonprofit corporation;

(2) a member of the board of directors of a public or nonprofit hospital, or a member of a citizens' advisory board of any hospital;

(3) a member of a school board of a school district;

(4) a member of the governing body, a commission, or a citizens' advisory committee of a municipality of the state.

(b) Notwithstanding (a) of this section, the duties and liabilities of a director or officer of a nonprofit corporation to the corporation or the corporation's shareholders may not be limited or modified.

(c) In this section "nonprofit corporation" means a corporation that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code).

California

SB 2154 [Chapter 720].

Provides for immunity from liability for nonpaid directors and nonpaid officers who are officers of nonprofit public benefit corporations for any alleged failure relating to their fiduciary responsibilities so long as the duties are performed in good faith.

Colorado

SB 76 (1986 Tort Reform Package).

The act provides immunity for acts or omissions performed in good faith when a person performs a service or an act of assistance without compensation or expectation of compensation, or adopts or enforces a policy or regulation to protect a person's health or safety. The act also states that board members of non-profit corporations

shall not be liable for actions or omissions in the performance of their duties except for wanton or willful acts or omissions.

Connecticut

Public Act 86-338, Tort Reform Section 10.

Unpaid officers, directors or trustees of 501(c) non-profit organizations are immune from civil liability for negligent acts if acting in good faith within the scope of their official duties. Immunity would not be granted if the injury or damage were caused by the person's willful or wanton misconduct.

Delaware

HB 601.

Provides for immunity from civil damages resulting from negligence of volunteers of 501(c) corporations. Volunteers are defined as trustees, directors, officers, agents or workers who are not compensated.

SB 533.

Provides for the elimination or limitation of personal liability of a director to the corporation or its stockholders for breach of fiduciary duty.

Hawaii

1986 Law. SB 1550 (Tort Reform Package).

Protects officers and board members of nonprofit corporations from civil liabilities that may result from their work on behalf of their corporations. The immunity extends to all officers and board members who serve without payment but does not cover wanton acts or gross negligence.

Illinois

1986 law. SB 1200 (Part of Tort Reform Package).

Grants immunity from liability for directors and officers of 501(c) corporations who serve without compensation except in cases of willful and wanton misconduct.

Municipal immunity. Grants immunity to public hospitals from negligence in operation of ambulances; grants exemption from punitive damages.

Indiana

1986 law. HEA 1284 (Tort Reform Package).

Provides that directors of not-for-profit corporations, members of state or local government boards or commissions and members of boards of trade organizations are immune from civil liability or the negligent performance

of their duties if there is no insurance policy providing coverage.

Maryland

SB 600. Charitable Organizations-Agent Immunity from Liability (Chapter 643).

With the exception of malpractice suits, SB 600 exempts agents of charitable organizations from personal liability for damages if:

- o the organization maintains insurance covering liability incurred by the organization or its agents, as the result of its agents' acts or omissions in providing services or performing duties on behalf of the charitable organization;
- o the terms of the insurance policy under which the insurance is maintained to cover the act or omission which is the subject of a suit and no meritorious basis exists for denial of coverage by the insurance carrier; and,
- o the insurance has a coverage limit of not less than \$200,000 per individual claim and \$500,000 per total claim arising from same occurrence and, if the insurance has a deductible, the amount is less than \$10,000 per occurrence, or if there is coinsurance, a rate not greater than 20%.

An agent of a charitable organization is liable for damages in any suit in which the agent is found to have acted with malice or gross negligence. Agent is liable for any damages exceeding the liability limits. The provisions of this section do not apply to suits brought by the Attorney General upon referral by the Secretary of State and which involve willful violations of Article 41, Section 103 A-L of the Annotated Code.

Minnesota

Chapter 455 (Part of Medical Malpractice Bill).

Provides that directors or trustees of nonprofit corporations who are not paid for services to the corporation are not individually liable for damages occasioned solely by reason or membership or participation in board activities.

This provision is expected to have a limited impact only on the liability exposure of directors and trustees.

New Hampshire

HB 513 [Chapter 227] (Part of Tort Reform Package).

Limits the liability of directors and officers of charitable organizations including nonprofit hospitals.

New York

1986 statute. Chapter 220 (S 9351).
Exempts uncompensated directors and officers of charitable institutions from liability in third party claims except where gross negligence or intentional infliction of harm is proven.

Oklahoma

1986 law. HB 1895.
Limits the liability of board members who serve as trustees of 501(c) tax exempt nonprofit organizations. Effective November 1, 1986.

South Carolina

H 2266. Act No. 463.
Limits liability of governmental agencies, which includes government hospitals, to \$250,000 per person and \$500,000 per occurrence. Effective July 1, 1986.

Tennessee

1986 law. HB 1940.
Provides for immunity from suit for directors of nonprofit organizations (exempt from federal taxation). SB 1702. Public Chapter No. 726.
All members of boards, commissions, agencies, authorities, and other governing bodies of any government entity, created by public or private act, whether compensated or not, shall be immune from suit arising from activities of the entity unless conduct amounts to willful, wanton or gross negligence.

Washington

1986 law. ESSB 4630 Liability Reform.
Limits liability of directors and officers of nonprofit corporations unless they are grossly negligent. Limits the individual liability of members of boards of directors of hospitals unless a decision to grant privileges to provide health care constitutes gross negligence.

Wyoming

1986 law. HB 39.
Grants any officers, commissioners or board members of government and nonprofit entities immunity from liability for any action, omission or inaction of the respective government or corporate body.

Date: April 27, 1987
Revised: _____
Final: _____

G. J.

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

*19 160/
170 254*

BILL #: PCS/HB 254, 1024, 179, 205, 419 & 409

RELATING TO: Liability of corporate directors

SPONSOR(S): Committee on Judiciary, Representatives Carpenter, Lippman, Bloom, Silver, Bass, Logan, Cosgrove, Sansom, Gardner, and others

EFFECTIVE DATE: July 1, 1987

COMPANION BILL(S): Compare SB 278, SB 309, SB 384, SB 654, SB 963, SB 1096

OTHER COMMITTEES OF REFERENCE: (1) _____

(2) _____

I. SUMMARY:

A. Present Situation:

Pursuant to Section 607.014, Florida Statutes, corporations are authorized to indemnify their directors, officers, employees, and agents when the person is a party, or is threatened to be made a party to litigation arising out of the person's service to the corporation. Indemnity must be provided where the person prevails in an action. It may be provided in other circumstances in which it is determined that he acted in good faith and "in a manner he reasonably believed to be in, or not opposed to the best interests of the corporation," or if a criminal act is involved, that he "had no reasonable cause to believe his conduct was unlawful." These determinations may either be made by the board of directors or by the shareholders. Further indemnification may be provided through corporate bylaws or agreements or by shareholders or disinterested directors.

Florida case law has yet to define the parameters of liability of a director of a corporation or similar organization in this state. Presumably, under a theory of negligence, a director could be held personally liable where he failed to take all reasonable and necessary precautions to ensure that any action he took in his role as a director would not result in damage to another. However, it is unlikely that a causal connection could be established where a decision of a director inadvertently resulted in damage and it would be equally unlikely that it could

be proven that the consequences of the action were reasonably foreseeable by the director. There appear to be no decisions in this state which have held a director personally liable for simple negligence.

B. Effect of Proposed Changes:

Sections 1 and 2 of this bill establish legislative intent, finding that the service of qualified directors is in the public interest and finding a need for the specific delineation of director liability.

Section 3 of the bill establishes limited immunity for the directors of certain nonprofit organizations. Under this section, such directors would be immune from civil liability unless their actions constituted bad faith, were malicious, or exhibited wanton and willful disregard of the rights of others. This standard is somewhat higher than would be provided in this legislation for other corporate directors.

Section 4 of this bill revises current law regarding a corporation's ability to indemnify its directors, officers, employees, and agents. These revisions seek to broaden the corporation's ability to indemnify and to clarify the circumstances under which indemnification can be provided.

The bill expands the right of permissive indemnification in derivative suits to include amounts paid in settlement, which in the judgment of the board of directors, do not exceed the estimated expense of litigating the proceeding to its conclusion. Currently, the law allows the court in which the action is brought to determine that the individual is entitled to indemnification even if liability is imposed. The bill allows not only the court in which the action is brought, but any other court of competent jurisdiction to make the determination.

Revised procedures are included for when a corporation may authorize indemnification. In addition to the current method in which the board may vote by a quorum of non-party directors, the board has the option, whether or not a quorum can be obtained, to authorize a committee, consisting of at least two directors who are not at the time parties to the proceeding, to approve indemnification. The option of obtaining a majority vote of non-party shareholders is still allowed, as is the option of obtaining independent legal counsel. The procedure for selecting independent legal counsel is revised to reflect the addition of the disinterested board committee. Independent legal counsel is only authorized to determine whether the applicable standards of conduct for indemnification have been met. Counsel cannot authorize indemnification.

The bill allows a corporation to provide a director or officer, in advance of the final disposition, expenses automatically upon

receipt of an undertaking by or on behalf of the director or officer that he will repay the amount if it is ultimately determined that he is not entitled to be indemnified. Current law allows a corporation to advance expenses upon a promise by the director or officer to repay unless it shall ultimately be determined that he is entitled to be indemnified. The bill provides that where advances are made to an employee or agent, the corporation may set such other terms or conditions as it deems appropriate.

In addition to the permissive and mandatory indemnification allowed by current law, a corporation is also empowered to make any other or further indemnification for its directors, officers, employees or agents pursuant to a bylaw, agreement, vote of shareholders or disinterested directors, or otherwise. However, no indemnification is allowed against gross negligence or willful misconduct. The bill clarifies that it provides a broader right to the corporation to indemnify than is explicitly provided for in the statute. The bill also expands the non-exclusivity provisions to include advancement of expenses as well as indemnification. The limitation on indemnification and advancement of expenses is changed to reflect the limitations on liability of directors and officers provided for in the bill.

Advancement of expenses is provided in addition to indemnification where it would inure to the benefit of the heirs of a director or officer. Additionally, the bill allows the corporation at the time of authorization or ratification to limit the extent of indemnification and advancement of expenses for a person who is no longer a director or for his heirs.

The bill gives an individual the right to apply to a court for indemnification or advancement of expenses. The provision allows for application to be made to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction.

Sections 5-9 of the bill provide limited immunity for directors of corporations, credit unions, and self insurance trust funds.

Section 5 of the bill amends Section 617.028, Florida Statutes, to extend application of the limitations on liability and ratification procedures created by sections 3 and 4 of the bill to corporations not for profit. (See explanation of sections 3 and 4 below).

Section 6 of the bill establishes a threshold of personal liability of directors of a for-profit corporation organized under Chapter 607, F. S. The bill provides that such persons are not liable for monetary damages to the corporation or any other person unless the person asserting liability proves that (a) the director failed to perform his duties as a director, and (b) the breach, or failure to perform those duties constitutes one of

several specified conditions. These are: (a) a violation of the criminal law, unless the director had reasonable cause to believe his conduct was lawful, or had no reasonable cause to believe his conduct was unlawful; (b) a transaction from which the director derived an improper personal benefit; (c) a circumstance under which the liability provisions of section 607.144, F. S., are applicable (regarding the payment of an unlawful dividend or an unlawful purchase by the corporation of its own stock); (d) in a derivative or shareholder suit, conscious disregard for the best interest of the corporation or willful misconduct; or (e) in a third-party suit, recklessness or willful misconduct. The term "recklessness" is specifically defined.

Section 7 provides a safe harbor for transactions from which the director derived an improper personal benefit and is not intended to be exclusive.

Section 8 established a threshold of liability for directors and supervisory committee members of credit unions organized under state or federal law. Such persons are not personally liable for monetary damages to any person unless the director or supervisory committee member breached or failed to perform his duties as a director or supervisory committee member, and the breach, or failure to perform, constitutes: (a) a violation of the criminal law, unless such person had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful; (b) a transaction from which such persons derived an improper personal benefit, or (c) recklessness or willful misconduct.

Section 9 establishes a threshold of liability for trustees of any self-insurance trust fund organized under the laws of this state. Such persons are not personally liable for monetary damages to any person unless they meet the same conditions for liability imposed by Section 8 for directors of credit unions.

Section 10 of the bill establishes specific reporting requirements for insurers issuing officers' and directors' liability policies. This information should permit the Department of Insurance to better comprehend the extent of liability being imposed in Florida on officers and directors. The information would be included in the department's annual report.

Section 11 of the bill amends Section 627.915, Florida Statutes, to require insurers issuing officers' and directors' liability insurance to file the same information presently required concerning loss experience and other experience in the lines of products liability, commercial automobile liability, and similar liability lines.

Section 12 of the bill clarifies that this legislation is not intended to increase or decrease the present liability of persons other than those covered by the bill.

II. ECONOMIC IMPACT:

A. Public:

This legislation would require certain insurers to provide further reporting information to the Department of Insurance. To the extent that premiums may be exorbitant, these requirements could result in lower premiums to certain corporations.

B. Government:

This legislation could result in minimal additional expenditures by the Department of Insurance in printing its annual report.

III. STATE COMPREHENSIVE PLAN IMPACT:

This bill appears to be consistent with promoting economic development. Section 187.201, (21), Florida Statutes.

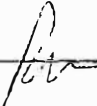
IV. COMMENTS:

None.

V. AMENDMENTS:

None

VI. PREPARED BY: Thomas R. Tedcastle 

VII. STAFF DIRECTOR: Richard Hixson 

Date: April 26, 1987

Revised: _____

Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

19 1601

BILL #: HB 419

RELATING TO: Corporate directors

SPONSOR(S): Representative Bloom

EFFECTIVE DATE: July 1, 1987

COMPANION BILL(S): Compare HB 1024, SB 1096

OTHER COMMITTEES OF REFERENCE: (1) _____

(2) _____

I. SUMMARY:

A. Present Situation:

Pursuant to Section 607.014, Florida Statutes, corporations are authorized to indemnify their directors, officers, employees, and agents when the person is a party, or is threatened to be made a party to litigation arising out of the person's service to the corporation. Indemnity must be provided where the person prevails in an action. It may be provided in other circumstances in which it is determined that he acted in good faith and "in a manner he reasonably believed to be in, or not opposed to the best interests of the corporation," or if a criminal act is involved, that he "had no reasonable cause to believe his conduct was unlawful." These determinations may either be made by the board of directors or by the shareholders. Further indemnification may be provided through corporate bylaws or agreements or by shareholders or disinterested directors.

Liability of a director, officer, employee, or agent to the corporation or its shareholders may not be limited in the corporate articles.

B. Effect of Proposed Changes:

This bill would delete the ability of a board of directors to pay the expenses, including attorneys' fees, prior to the completion of litigation for a director, officer, employee, or agent unless he has been determined to have acted in good faith and, if in a criminal case, to have had no reason to believe that his actions were unlawful.

The bill also provides for a method of limiting the liability of a director to the corporation and its stockholders. The limitation would have to be provided in the articles of incorporation. Immunity could not be provided for breach of a duty of loyalty, acts not in good faith, intentional misconduct, knowing violations of law, violations of certain corporate laws, or for transactions in which the director received an improper personal benefit.

II. ECONOMIC IMPACT:

A. Public:

This bill could result in a decrease in the liability of certain corporate directors, and limit recoveries by corporations and shareholders.

B. Government:

To the extent liability is limited, a decrease in litigation and the expenses of the judicial system incident to litigation could result. However, no significant savings is anticipated.

III. STATE COMPREHENSIVE PLAN IMPACT:

This bill appears to be consistent with promoting economic development. Section 187.201, (21), Florida Statutes.

IV. COMMENTS:

None.

V. AMENDMENTS:

None

VI. PREPARED BY: Thomas R. Tedcastle *TR*

VII. STAFF DIRECTOR: Richard Hixson *RH*

1 A bill to be entitled
 2 An act relating to civil liability; providing
 3 legislative findings; providing limited civil
 4 immunity to directors and certain officers of
 5 certain nonprofit organizations; amending s.
 6 607.014, F.S.; authorizing corporations to
 7 indemnify directors, officers, employees, and
 8 agents against liability and related expenses;
 9 providing for a procedure to pay such expenses;
 10 providing limitations on such indemnity;
 11 amending s. 617.020, F.S.; providing civil
 12 immunity to certain persons associated with
 13 corporations not for profit; providing
 14 limitations on such immunity; creating s.
 15 607.1645, F.S.; providing directors of a
 16 corporation immunity from civil liability;
 17 providing limitations; creating s. 607.165,
 18 F.S.; providing for the approval and
 19 authorization of certain transactions
 20 negotiated by certain directors and officers;
 21 providing directors and members of supervisory
 22 committees of credit unions immunity from civil
 23 liability; providing limitations; providing
 24 trustees of a self-insurance trust fund
 25 immunity from civil liability; providing
 26 limitations; creating s. 627.9122, F.S.;
 27 requiring insurers to report additional
 28 information regarding officers' and directors'
 29 liability claims; amending s. 627.915, F.S.;
 30 requiring insurers to separately report certain
 31 information for officers' and directors'

1 liability insurance; expanding the review of
 2 the Academic Task Force for Review of the
 3 Insurance and Tort Systems; providing an
 4 effective date.
 5
 6 Be It Enacted by the Legislature of the State of Florida:
 7
 8 Section 1. (1) The Legislature finds that the service
 9 of qualified persons on the governing boards of nonprofit
 10 corporations and associations is critical to the efficient and
 11 effective conduct of such organizations in the provision of
 12 services and other benefits to the citizens of the state. The
 13 Legislature further finds that, within reasonable limits,
 14 persons offering their services as directors of such nonprofit
 15 organizations should be permitted to perform without undue
 16 concern for the possibility of litigation arising from the
 17 discharge of their duties as policy makers.
 18 (2) The Legislature further finds that the service of
 19 qualified persons on the governing boards of corporations,
 20 credit unions, and self-insurance trust funds is in the public
 21 interest and that within reasonable limitations, such persons
 22 should be permitted to perform without undue concern for the
 23 possibility of litigation arising from the discharge of their
 24 duties as policy makers. The Legislature further finds that
 25 the case law of the state does not adequately delineate the
 26 liability of those serving on governing boards, and that such
 27 delineation through the clarification of the appropriate
 28 standard of care due an individual and a corporation by a
 29 member of a governing board is essential in encouraging the
 30 continued service of qualified persons on such governing
 31 boards.

1 Section 2. Officers and directors of certain
 2 corporations and associations not for profit; immunity from
 3 civil liability.--
 4 (1) An officer or director of a nonprofit organization
 5 recognized under section 501(c)(3) or section 501(c)(4) or
 6 section 501(c)(6), or of an agricultural or a horticultural
 7 organization recognized under section 501(c)(3), of the
 8 Internal Revenue Code of 1986, as amended, is not personally
 9 liable for monetary damages to any person for any statement,
 10 vote, decision, or failure to take an action, regarding
 11 organizational management or policy by an officer or director,
 12 unless:
 13 (a) The officer or director breached or failed to
 14 perform his duties as an officer or director; and
 15 (b) The officer's or director's breach, or failure to
 16 perform, his duties constitutes:
 17 1. A violation of the criminal law, unless the officer
 18 or director had reasonable cause to believe his conduct was
 19 lawful or had no reasonable cause to believe his conduct was
 20 unlawful. A judgment or other final adjudication against a
 21 officer or director in any criminal proceeding for violation
 22 of the criminal law estops that officer or director from
 23 contesting the fact that his breach, or failure to perform,
 24 constitutes a violation of the criminal law; but does not
 25 estop the officer or director from establishing that he had
 26 reasonable cause to believe that his conduct was lawful or had
 27 no reasonable cause to believe that his conduct was unlawful;
 28 2. A transaction from which the officer or director
 29 derived an improper personal benefit, either directly or
 30 indirectly; or
 31

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1 3. Recklessness or an act or omission which was
 2 committed in bad faith or with malicious purpose or in a
 3 manner exhibiting wanton and willful disregard of human
 4 rights, safety, or property.
 5 (2) For the purposes of this section, the term:
 6 (a) "Recklessness" means the acting, or omission to
 7 act, in conscious disregard of a risk:
 8 1. Known, or so obvious that it should have been
 9 known, to the officer or director; and
 10 2. Known to the officer or director, or so obvious
 11 that it should have been known, to be so great as to make it
 12 highly probable that harm would follow from such action or
 13 omission.
 14 (b) "Director" means a person who serves as a
 15 director, trustee, or member of the governing board of an
 16 organization.
 17 (c) "Officer" means a person who serves as an officer
 18 without compensation except reimbursement for actual expenses
 19 incurred or to be incurred.
 20 Section 3. Section 607.014, Florida Statutes, is
 21 amended to read:
 22 607.014 Indemnification of officers, directors,
 23 employees, and agents.--
 24 (1) A corporation shall have power to indemnify any
 25 person who was or is a party, or is threatened to be made a
 26 party to any threatened, pending, or completed action, suit,
 27 or proceeding, whether civil, criminal, administrative, or
 28 investigative (other than an action by, or in the right of,
 29 the corporation), by reason of the fact that he is or was a
 30 director, officer, employee, or agent of the corporation or is
 31 or was serving at the request of the corporation as a

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1 director, officer, employee, or agent of another corporation,
 2 partnership, joint venture, trust, or other enterprise against
 3 liability expenses (including attorneys' fees), judgments,
 4 finer, and amounts paid in settlement actually and reasonably
 5 incurred by him in connection with such action, suit, or
 6 proceeding, including any appeal thereof, if he acted in good
 7 faith and in a manner he reasonably believed to be in, or not
 8 opposed to, the best interests of the corporation and, with
 9 respect to any criminal action or proceeding, had no
 10 reasonable cause to believe his conduct was unlawful. The
 11 termination of any action, suit, or proceeding by judgment,
 12 order, settlement, or conviction or upon a plea of nolo
 13 contendere or its equivalent shall not, of itself, create a
 14 presumption that the person did not act in good faith and in a
 15 manner which he reasonably believed to be in, or not opposed
 16 to, the best interests of the corporation or, with respect to
 17 any criminal action or proceeding, had reasonable cause to
 18 believe that his conduct was unlawful.

19 (2) A corporation shall have power to indemnify any
 20 person, who was or is a party, or is threatened to be made a
 21 party, to any proceeding threatened, pending, or completed
 22 action or suit by or in the right of the corporation to
 23 procure a judgment in its favor by reason of the fact that he
 24 is or was a director, officer, employee, or agent of the
 25 corporation or is or was serving at the request of the
 26 corporation as a director, officer, employee, or agent of
 27 another corporation, partnership, joint venture, trust, or
 28 other enterprise, against expenses and amounts paid in
 29 settlement not exceeding, in the judgment of the board of
 30 directors, the estimated expense of litigating the proceeding
 31 to conclusion, including attorneys' fees, actually and

1 reasonably incurred by him in connection with the defense or
 2 settlement of such proceeding action or suit, including any
 3 appeal thereof, such indemnification shall be authorized if
 4 such person if he acted in good faith and in a manner he
 5 reasonably believed to be in, or not opposed to, the best
 6 interests of the corporation, except that no indemnification
 7 shall be made under this subsection in respect of any claim,
 8 issue, or matter as to which such person shall have been
 9 adjudged to be liable for negligence or misconduct in the
 10 performance of his duty to the corporation unless, and only to
 11 the extent that, the court in which such proceeding action or
 12 suit was brought, or any other court of competent
 13 jurisdiction, shall determine upon application that, despite
 14 the adjudication of liability but in view of all circumstances
 15 of the case, such person is fairly and reasonably entitled to
 16 indemnity for such expenses which such court shall deem
 17 proper.

18 (3) To the extent that a director, officer, employee,
 19 or agent of a corporation has been successful on the merits or
 20 otherwise in defense of any action, suit, or proceeding
 21 referred to in subsection (1) or subsection (2), or in defense
 22 of any claim, issue, or matter therein, he shall be
 23 indemnified against expenses (including attorneys' fees)
 24 actually and reasonably incurred by him in connection
 25 therewith.

26 (4) Any indemnification under subsection (1) or
 27 subsection (2), unless pursuant to a determination by a court,
 28 shall be made by the corporation only as authorized in the
 29 specific case upon a determination that indemnification of the
 30 director, officer, employee, or agent is proper in the
 31 circumstances because he has met the applicable standard of

1 conduct set forth in subsection (1) or subsection (2). Such
 2 determination shall be made:

3 (a) By the board of directors by a majority vote of a
 4 quorum consisting of directors who were not parties to such
 5 action, suit, or proceeding;

6 (b) If such a quorum is not obtainable or, even if
 7 obtainable, by majority vote of a committee duly designated by
 8 the board of directors (in which directors who are parties may
 9 participate) consisting solely of two or more directors not at
 10 the time parties to the proceeding;

11 (c) By independent legal counsel:

12 1. Selected by the board of directors prescribed in
 13 paragraph (a) or the committee prescribed in paragraph (b); or
 14 2. If a quorum of the directors cannot be obtained for
 15 paragraph (a) and the committee cannot be designated under
 16 paragraph (b), selected by majority vote of the full board of
 17 directors (in which directors who are parties may participate)
 18 a quorum of disinterested directors or directors, by independent
 19 legal counsel in a written opinion; or

20 (d) By the shareholders by a majority vote of a
 21 quorum consisting of shareholders who were not parties to such
 22 action, suit, or proceeding or, if no such quorum is
 23 obtainable, by a majority vote of shareholders who were not
 24 parties to such proceeding.

25 (5) Evaluation of the reasonableness of expenses and
 26 authorization of indemnification shall be made in the same
 27 manner as the determination that indemnification is
 28 permissible. However, if the determination of permissibility
 29 is made by independent legal counsel, persons specified by
 30 paragraph (4)(c) shall evaluate the reasonableness of expenses
 31 and may authorize indemnification.

1 (6) Expenses incurred by an officer or director in
 2 defending a civil or criminal proceeding may be paid by the
 3 corporation in advance of the final disposition of such
 4 proceeding upon receipt of an undertaking by or on behalf of
 5 such director or officer to repay such amount if he is
 6 ultimately found not to be entitled to indemnification by the
 7 corporation pursuant to this section. Expenses incurred by
 8 other employees and agents may be paid in advance upon such
 9 terms or conditions that the board of directors deems
 10 appropriate.

11 (5) Expenses, including attorneys' fees, incurred in
 12 defending a civil or criminal action, suit, or proceeding may
 13 be paid by the corporation in advance of the final disposition
 14 of such action, suit, or proceeding upon a preliminary
 15 determination following one of the procedures set forth in
 16 subsection (4) that the director, officer, employee, or agent
 17 met the applicable standard of conduct set forth in subsection
 18 (1) or subsection (2) or as authorized by the board of
 19 directors in the specific case and, in either event, upon
 20 receipt of an undertaking by or on behalf of the director,
 21 officer, employee, or agent to repay such amount, unless it
 22 shall ultimately be determined that he is entitled to be
 23 indemnified by the corporation as authorized in this section.

24 (7)(6) The indemnification and advancement of expenses
 25 provided pursuant to this section are not exclusive, and a
 26 corporation may have the power to make any other or
 27 further indemnification or advancement of expenses of any of
 28 its directors, officers, employees, or agents, under any
 29 bylaw, agreement, vote of shareholders or disinterested
 30 directors, or otherwise, both as to action in his official
 31 capacity and as to action in another capacity while holding

1 ~~such officer, except an indemnification against gross~~
 2 ~~negligence or willful misconduct. However, indemnification or~~
 3 ~~advancement of expenses shall not be made to or on behalf of~~
 4 ~~any director, officer, employee, or agent if a judgment or~~
 5 ~~other final adjudication establishes that his actions, or~~
 6 ~~omissions to act, were material to the cause of action so~~
 7 ~~adjudicated and constitute:~~

8 (a) A violation of the criminal law, unless the
 9 director, officer, employee, or agent had reasonable cause to
 10 believe his conduct was lawful or had no reasonable cause to
 11 believe his conduct was unlawful;

12 (b) A transaction from which the director, officer,
 13 employee, or agent derived an improper personal benefit;

14 (c) In the case of a director, a circumstance under
 15 which the liability provisions of s. 607.144 are applicable;

16 or

17 (d) Willful misconduct or a conscious disregard for
 18 the best interests of the corporation in a proceeding by or in
 19 the right of the corporation to procure a judgment in its
 20 favor or in a proceeding by or in the right of a shareholder.

21 (8)(f) Indemnification and advancement of expenses as
 22 provided in this section shall continue as, unless otherwise
 23 provided when authorized or ratified, to a person who has
 24 ceased to be a director, officer, employee, or agent and shall
 25 inure to the benefit of the heirs, executors, and
 26 administrators of such a person, unless otherwise provided
 27 when authorized or ratified.

28 (9) Unless the corporation's articles of incorporation
 29 provide otherwise, notwithstanding the failure of a
 30 corporation to provide indemnification, and despite any
 31 contrary determination of the board or of the shareholders in

1 the specific case, a director, officer, employee, or agent of
 2 the corporation who is or was a party to a proceeding may
 3 apply for indemnification or advancement of expenses, or both,
 4 to the court conducting the proceeding, to the circuit court,
 5 or to another court of competent jurisdiction. On receipt of
 6 an application, the court, after giving any notice that it
 7 considers necessary, may order indemnification and advancement
 8 of expenses, including expenses incurred in seeking court-
 9 ordered indemnification or advancement of expenses, if it
 10 determines that:

11 (a) The director, officer, employee, or agent is
 12 entitled to mandatory indemnification under subsection (3), in
 13 which case the court shall also order the corporation to pay
 14 the director reasonable expenses incurred in obtaining court-
 15 ordered indemnification or advancement of expenses;

16 (b) The director, officer, employee, or agent is
 17 entitled to indemnification or advancement of expenses, or
 18 both, by virtue of the exercise by the corporation of its
 19 power pursuant to subsection (7); or

20 (c) The director, officer, employee, or agent is
 21 fairly and reasonably entitled to indemnification or
 22 advancement of expenses, or both, in view of all the relevant
 23 circumstances, regardless of whether such person met the
 24 standard of conduct set forth in subsection (1), subsection
 25 (2), or subsection (7).

26 (10) For purposes of this section, the term
 27 "corporation" includes, in addition to the resulting
 28 corporation, any constituent corporation (including any
 29 constituent of a constituent) absorbed in a consolidation or
 30 merger, so that any person who is or was a director, officer,
 31 employee, or agent of a constituent corporation, or is or was

1 serving at the request of a constituent corporation as a
 2 director, officer, employee, or agent of another corporation,
 3 partnership, joint venture, trust, or other enterprise, is in
 4 the same position under this section with respect to the
 5 resulting or surviving corporation as he would have with
 6 respect to such constituent corporation if its separate
 7 existence had continued.

8 (11) For purpose of this section, the term "other
 9 enterprises" includes employee benefit plans; the term
 10 "expenses" includes counsel fees, including those for appeal;
 11 the term "liability" includes obligations to pay a judgment,
 12 settlement, penalty, fine (including an excise tax assessed
 13 with respect to any employee benefit plan), and expenses
 14 actually and reasonably incurred with respect to a proceeding;
 15 the term "proceeding" includes any threatened, pending, or
 16 completed action, suit, or other type of proceeding, whether
 17 civil, criminal, administrative, or investigative and whether
 18 formal or informal; the term "agent" includes a volunteer; and
 19 the term "serving at the request of the corporation" includes
 20 any service as a director, officer, employee, or agent of the
 21 corporation that imposes duties on such persons, including
 22 duties relating to an employee benefit plan and its
 23 participants or beneficiaries; and the term "not opposed to
 24 the best interest of the corporation" describes the actions of
 25 a person who acts in good faith and in a manner he reasonably
 26 believes to be in the best interests of the participants and
 27 beneficiaries of an employee benefit plan.

28 (12)†† A corporation shall have power to purchase and
 29 maintain insurance on behalf of any person who is or was a
 30 director, officer, employee, or agent of the corporation or is
 31 or was serving at the request of the corporation as a

1 director, officer, employee, or agent of another corporation,
 2 partnership, joint venture, trust, or other enterprise against
 3 any liability asserted against him and incurred by him in any
 4 such capacity or arising out of his status as such, whether or
 5 not the corporation would have the power to indemnify him
 6 against such liability under the provisions of this section.

7 (13)†† If any expenses or other amounts are paid by
 8 way of indemnification otherwise than by court order or action
 9 by the shareholders or by an insurance carrier pursuant to
 10 insurance maintained by the corporation, the corporation
 11 shall, not later than the time of delivery to shareholders of
 12 written notice of the next annual meeting of shareholders,
 13 unless such meeting is held within 3 months from the date of
 14 such payment, and, in any event, within 15 months from the
 15 date of such payment, deliver either personally or by mail to
 16 each shareholder of record at the time entitled to vote for
 17 the election of directors a statement specifying the persons
 18 paid, the amounts paid, and the nature and status at the time
 19 of such payment of the litigation or threatened litigation

20 Section 4. Section 617.020, Florida Statutes, is
 21 amended to read:

22 617.020 Indemnification and liability of officers,
 23 directors, managers, trustees, employees, and agents.--Except
 24 as provided in section 2 of this act, the provisions of ss. or
 25 607.014, 607.1645, and 607.165 apply to corporations not for
 26 profit and rural electric cooperatives organized under chapter
 27 425. Any reference to "directors" in those sections that
 28 section includes the directors, managers, or trustees of a
 29 corporation not for profit or of a rural electric cooperative
 30 organized under chapter 425, provided that the term "director"
 31 as used in s. 607.1645 shall not include a director appointed

1 by the developer to the board of directors of a condominium
 2 association under chapter 710 or a cooperative association
 3 under chapter 719. Any reference to "shareholders" in those
 4 sections includes members of a corporation not for profit and
 5 members of a rural electric cooperative organized under
 6 chapter 425.

7 Section 5. Section 607.1645, Florida Statutes, is
 8 created to read:

9 607.1645 Liability of directors.--

10 (1) A director is not personally liable for monetary
 11 damages to the corporation or any other person for any
 12 statement, vote, decision, or failure to act, regarding
 13 corporate management or policy, by a director, unless:

14 (a) The director breached or failed to perform his
 15 duties as a director; and

16 (b) The director's breach of, or failure to perform,
 17 those duties constitutes:

18 1. A violation of the criminal law, unless the
 19 director had reasonable cause to believe his conduct was
 20 lawful or had no reasonable cause to believe his conduct was
 21 unlawful. A judgment or other final adjudication against a
 22 director in any criminal proceeding for a violation of the
 23 criminal law estops that director from contesting the fact
 24 that his breach, or failure to perform, constitutes a
 25 violation of the criminal law; but does not estop the director
 26 from establishing that he had reasonable cause to believe that
 27 his conduct was lawful or had no reasonable cause to believe
 28 that his conduct was unlawful;

29 2. A transaction from which the director derived an
 30 improper personal benefit, either directly or indirectly;

1 3. A circumstance under which the liability provisions
 2 of s. 607.144 are applicable;

3 4. In a proceeding by or in the right of the
 4 corporation to procure a judgment in its favor or by or in the
 5 right of a shareholder, conscious disregard for the best
 6 interest of the corporation, or willful misconduct; or

7 5. In a proceeding by or in the right of someone other
 8 than the corporation or a shareholder, recklessness or an act
 9 or omission which was committed in bad faith or with malicious
 10 purpose or in a manner exhibiting wanton and willful disregard
 11 of human rights, safety, or property.

12 (2) For the purposes of this section, the term
 13 "recklessness" means the action, or omission to act, in
 14 conscious disregard of a risk:

15 1. Known, or so obvious that it should have been
 16 known, to the director; and

17 2. Known to the director, or so obvious that it should
 18 have been known, to be so great as to make it highly probable
 19 that harm would follow from such action or omission.

20 Section 6. Section 607.165, Florida Statutes, is
 21 created to read:

22 607.165 Director deemed not to have derived improper
 23 personal benefit.--

24 (1) For purposes of ss. 607.014 and 607.1645, a
 25 director is deemed not to have derived an improper personal
 26 benefit from any transaction if the transaction and nature of
 27 any personal benefit derived by the director is not prohibited
 28 by state or federal law or regulation and, without further
 29 limitation:

30 (a) In an action other than a derivative suit
 31 regarding a decision by the director to approve, reject, or

1 otherwise affect the outcome of an offer to purchase the stock
 2 of, or to effect a merger of, the corporation, the transaction
 3 and the nature of any personal benefits derived by a director
 4 are disclosed or known to all directors voting on the matter,
 5 and the transaction was authorized, approved, or ratified by
 6 at least two directors who comprise a majority of the
 7 disinterested directors (whether or not such disinterested
 8 directors constitute a quorum);

9 (b) The transaction and the nature of any personal
 10 benefits derived by a director are disclosed or known to the
 11 shareholders entitled to vote, and the transaction was
 12 authorized, approved, or ratified by the affirmative vote or
 13 written consent of such shareholders who held a majority of
 14 the shares, the voting of which is not controlled by directors
 15 who derived a personal benefit from or otherwise had a
 16 personal interest in the transaction; or

17 (c) The transaction was fair and reasonable to the
 18 corporation at the time it was authorized by the board, a
 19 committee, or the shareholders, notwithstanding that a
 20 director received a personal benefit.

21 (2) Compensated or interested directors may be counted in
 22 determining the presence of a quorum at a meeting of the board
 23 of directors which authorizes, approves, or ratifies such a
 24 transaction.

25 (3) The circumstances set forth in subsection (1) are
 26 not exclusive and do not preclude the existence of other
 27 circumstances under which a director will be deemed not to
 28 have derived an improper benefit.

29 (4) The provisions of this section shall also apply to
 30 officers of nonprofit organizations as provided in section 2
 31 of this act.

1 Section 7. Liability of directors or supervisory
 2 committee members of credit unions --

3 (1) A director of a credit union organized under state
 4 or federal law, or a member of the supervisory committee of
 5 such credit union, is not personally liable for monetary
 6 damages to the credit union, its members, or any other persons
 7 for any statement, vote, decision, or failure to act,
 8 regarding the management or policy of the credit union, by a
 9 director or member of the supervisory committee, unless:

10 (a) The director or the member of the supervisory
 11 committee, breached or failed to perform his duties as a
 12 director or as a member of the supervisory committee; and

13 (b) The breach or failure to perform by the director
 14 or the member of the supervisory committee constitutes:

15 1. A violation of the criminal law, unless the
 16 director or the member of the supervisory committee had
 17 reasonable cause to believe his conduct was lawful or had no
 18 reasonable cause to believe his conduct was unlawful. A
 19 judgment or other final adjudication against a director or a
 20 member of a supervisory committee in any criminal proceeding
 21 for a violation of the criminal law estops that director or
 22 member of the supervisory committee from contesting the fact
 23 that his breach, or failure to perform, constitutes a
 24 violation of the criminal law; but does not estop the director
 25 or member of the supervisory committee from establishing that
 26 he had reasonable cause to believe that his conduct was lawful
 27 or had no reasonable cause to believe that his conduct was
 28 unlawful;

29 2. A transaction from which the director or the member
 30 of the supervisory committee derived an improper personal
 31 benefit, either directly or indirectly; or

1 3. Recklessness or an act or omission which was
 2 committed in bad faith or with malicious purpose or in a
 3 manner exhibiting wanton and willful disregard of human
 4 rights, safety, or property.
 5 (2) For the purposes of this section, the term
 6 "recklessness" means the acting, or omission to act, in
 7 conscious disregard of a risk:
 8 1. Known, or so obvious that it should have been
 9 known, to the director or member of the supervisory committee;
 10 and
 11 2. Known to the director or member of the supervisory
 12 committee, or so obvious that it should have been known, to be
 13 so great as to make it highly probable that harm would follow
 14 from such action or omission.
 15 Section 8. Liability of trustees of self-insurance
 16 trust fund.--
 17 (1) A trustee of any self-insurance trust fund
 18 organized under the laws of this state is not personally
 19 liable for monetary damages to any person for any statement,
 20 vote, decision, or failure to act, regarding the management or
 21 policy of the fund, by a trustee, unless:
 22 (a) The trustee breached or failed to perform his
 23 duties as a trustee; and
 24 (b) The trustee's breach of, or failure to perform,
 25 his duties constitutes:
 26 1. A violation of the criminal law, unless the trustee
 27 had reasonable cause to believe his conduct was lawful or had
 28 no reasonable cause to believe his conduct was unlawful. A
 29 judgment or other final adjudication against a trustee in any
 30 criminal proceeding for violation of the criminal law estops
 31 that trustee from contesting the fact that his breach, or

1 failure to perform, constitutes a violation of the criminal
 2 law, but does not estop the trustee from establishing that he
 3 had reasonable cause to believe that his conduct was lawful or
 4 had no reasonable cause to believe that his conduct was
 5 unlawful;
 6 2. A transaction from which the trustee derived an
 7 improper personal benefit, either directly or indirectly; or
 8 3. Recklessness or an act or omission which was
 9 committed in bad faith or with malicious purpose or in a
 10 manner exhibiting wanton and willful disregard of human
 11 rights, safety, or property.
 12 (2) For the purposes of this section, the term
 13 "recklessness" means the acting, or omission to act, in
 14 conscious disregard of a risk:
 15 1. Known, or so obvious that it should have been
 16 known, to the trustee; and
 17 2. Known to the trustee, or so obvious that it should
 18 have been known, to be so great as to make it highly probable
 19 that harm would follow from such action or omission.
 20 Section 9. Section 627.9122, Florida Statutes, is
 21 created to read:
 22 627.9122 Officers' and directors' liability claims;
 23 reports by insurers.--
 24 (1) Each insurer providing coverage for officers' and
 25 directors' liability coverage shall report to the Department
 26 of Insurance any claim or action for damages claimed to have
 27 been caused by error, omission, or negligence in the
 28 performance of the officer's or director's services, if the
 29 claim resulted in:
 30 (a) A final judgment in any amount;
 31 (b) A settlement in any amount;

1 (c) A final disposition not resulting in payment on
 2 behalf of the insured.
 3
 4 Reports shall be filed with the department no later than 60
 5 days following the occurrence of any event listed in
 6 paragraphs (a), (b), or (c).
 7 (2) The reports required by subsection (1) shall
 8 contain:
 9 (a) The name, address, and position held by the
 10 insured, and the type of corporation or organization,
 11 including classifications as provided in section 501 (c) of
 12 the Internal Revenue Code of 1986, as amended.
 13 (b) The insured's policy number.
 14 (c) The date of the occurrence which created the
 15 claim.
 16 (d) The date the claim was reported to the insurer.
 17 (e) The name of the injured person. This information
 18 shall be privileged and confidential and shall not be
 19 disclosed by the department without the consent of the injured
 20 person. This information may be used by the department for
 21 purposes of identifying multiple or duplicate claims arising
 22 out of the same occurrence.
 23 (f) The date of suit, if filed.
 24 (g) The total number and names of all defendants
 25 involved in the claim.
 26 (h) The date and amount of judgment or settlement,
 27 together with a copy of the settlement or judgment.
 28 (i) In the case of a settlement, such information as
 29 the department may require with regard to the claimant's
 30 anticipated future losses.
 31

1 (j) The loss adjustment expense paid to defense
 2 counsel, and all other allocated loss adjustment expenses
 3 paid.
 4 (k) The date and reason for final disposition, if no
 5 judgment or settlement.
 6 (l) A summary of the occurrence which created the
 7 claim, which shall include:
 8 1. Whether the injuries claimed were the result of
 9 physical damage to the claimant, or were the result of damage
 10 to the reputation of the claimant, or were based on self-
 11 dealing by the defendant, or were in the nature of a
 12 shareholder dispute.
 13 2. A description of the type of activity which caused
 14 the injury.
 15 3. The steps taken by the officers or directors to
 16 assure that similar occurrences are less likely in the future.
 17 (m) Any other information required by the department
 18 to analyze and evaluate the nature, causes, costs, and damages
 19 involved in officers' and directors' liability cases.
 20 (3) The department shall include a summary of this
 21 information in its annual report.
 22 Section 10. Subsection (2) of section 627.915, Florida
 23 Statutes, 1986 Supplement, is amended to read:
 24 627.915 Insurer experience reporting.--
 25 (2) Each insurer transacting fire, homeowner's
 26 multiple peril, commercial multiple peril, medical
 27 malpractice, products liability, workers' compensation,
 28 private passenger automobile liability, commercial automobile
 29 liability, private passenger automobile physical damage,
 30 commercial automobile physical damage, officers' and
 31 directors' liability insurance, or other liability insurance

1 shall report, for each such line of insurance, the information
 2 specified in this subsection to the department. The
 3 information shall be reported for direct Florida business only
 4 and shall be reported on a calendar-year basis annually by
 5 April 1 for the preceding calendar year:

- 6 (a) Direct premiums written.
- 7 (b) Direct premiums earned.
- 8 (c) Loss reserves for all known claims:
 - 9 1. At beginning of the year.
 - 10 2. At end of the year.
- 11 (d) Reserves for losses incurred but not reported:
 - 12 1. At beginning of the year.
 - 13 2. At end of the year.
- 14 (e) Allocated loss adjustment expense:
 - 15 1. Reserve at beginning of the year.
 - 16 2. Reserve at end of the year.
 - 17 3. Paid during the year.
- 18 (f) Unallocated loss adjustment expense:
 - 19 1. Reserve at beginning of the year.
 - 20 2. Reserve at end of the year.
 - 21 3. Paid during the year.
- 22 (g) Direct losses paid.
- 23 (h) Underwriting income or loss.
- 24 (i) Commissions and brokerage fees.
- 25 (j) Taxes, licenses, and fees.
- 26 (k) Other acquisition costs.
- 27 (l) General expenses.
- 28 (m) Policyholder dividends.
- 29 (n) Net investment gain or loss and other income gain
 30 or loss allocated pro rata by earned premium to Florida
 31 business utilizing the investment allocation formula contained

1 in the National Association of Insurance Commissioner's
 2 Profitability Report by line by state

3 Section 11. Nothing in this act shall be construed as
 4 increasing or decreasing the liability of any person not
 5 herein specifically delineated.

6 Section 12. The Legislature of the State of Florida
 7 believes that the public policy of this State shall be to
 8 encourage the provision of services by volunteers and
 9 recognizes that in serving the public, volunteers may be
 10 submitting themselves to the possibility of suit by those
 11 served. The Legislature further finds that it would be in the
 12 public interest to remove unnecessary deterrents to service
 13 and that within the constraints of the state and federal
 14 constitutions, the Legislature should consider modifications
 15 in the tort, indemnity, and insurance laws of this State. The
 16 Legislature, having established the Academic Task Force for
 17 Review of the Insurance and Tort Systems, and having directed
 18 the task force to review and to recommend changes to the tort
 19 and insurance laws of this state, does hereby direct that the
 20 review of said task force shall be expanded, as necessary, to
 21 include a consideration of the effect, and the extent of the
 22 effect, of tort and insurance laws on the provision of
 23 volunteer services in this State, and to include its findings
 24 and recommendations resulting from its consideration of these
 25 issues in its report to the Legislature to be reported no
 26 later than March 1, 1988.

27 Section 13. This act shall take effect July 1, 1987,
 28 or upon becoming a law, whichever occurs later and shall apply
 29 to all causes of action accruing on or after the effective
 30 date of this act. Nothing in this act shall affect the
 31 validity of any bylaw, agreement, vote of shareholders or

1 disinterested directors, or otherwise pursuant to s. 607.014,
2 P.S., before the effective date of this act.

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NOTICE of COMMITTEE MEETING
House of Representatives

JUDICIARY

Full Committee

April 30 8:00-10:00 a.m. 214 C

1. PCS/HB's 0254, 1024, 0409, 0419, 0179 & 0205 by Carpenter, Bass, Bloom, Cosgrove, Sansom & others--Civil liability/corporate directors
2. HB 0012 by Dunbar & others--Mobile home park eviction
3. HB 0074 by Drage--Mobile home parks/requirements
4. PCB JUD 87-15--Child support enforcement
5. HB 0826 by Bankhead--Damages/apportionment exception
6. HB 0808 by Wallace--Pension benefits/debt exemptions
7. HB 0442 by Arnold--State lands/marketability
8. HB 0615 by R.C. Johnson & others--Judgments/lien period
9. HB 0817 by Dunbar--Joint personal representatives
10. HB 0402 by Upchurch--Business organizations/registered
11. HB 0571 by Titone--Real property deeds/validity
12. HB 0746 by McEwan--Group health ins./attorney fee award
13. HB 0847 by Gardner--Jurors & witnesses/compensation
14. HB 0219 by Bronson--Judge-9th Circuit/Osceola resident
15. HB 0460 by Harris--Judge/Highlands Co. resident
16. HB 0482 by Peeples--Public guardian/nonprofit corp.
17. HB 0693 by Drage--Real property/adverse possession
18. HB 0319 by Dunbar & others--Condominiums & cooperatives
19. HB 0379 by Davis & others--Mediation & arbitration
20. HB 0505 by Rush--Limitations of actions/time tolling
21. HB 0516 by Rush--Abandoned Prop./unclaimed evidence
22. HB 0568 by Metcalf--Mentally ill persons/terminology

23. HB 0321 by Rush--Civil cases/settlements
24. HB 0187 by Liberty & others--Landlords & tenants
25. HB 0244 by Sample & others--Condos & co-ops/escalation clauses
26. HB 0558 by Young--Cooperatives/escalation clauses
27. HB 0033 by Hawkins--Tax deed suits/attorney's fees
28. HB 0152 by Bainter--Liens/veterinarian services
29. HB 0858 by Irvine--Additional Circuit Judge/4th Circuit
30. HB 0520 by Rudd--Adoption/grandparents' priority

Ratification of referral to subcommittees of the following bills:

Court Systems, Probate & Consumer Law: HB's 24, 75, 76, 106, 111, 130, 150, 254, 258, 313, 342, 353, 390, 395, 409, 419, 431, 470, 504, 544, 567, 569, 570, 585, 586, 593, 608, 622, 623, 647, 711, 801, 810, 816, 822, 826, 837, 851, 852, 875, 881, 898, 966, 969, 977, 979, 980, 1011, 1024, 1028, 1051, 1082, 1091, 1092, 1141, 1190, 1269, 1274

Real Property & Family Law: HB's 12, 50, 74, 169, 193, 229, 244, 336, 421, 482, 558, 620, 693, 714, 777, 786, 862, 927, 981, 1032, 1048, 1305

Hamilton Upchurch
Chairman

Received in the Office of
the Sergeant at Arms on

April 28 19 87

at 4:30 PM (time).

Cecilia Blankenship
Sergeant at Arms

Filed by me with the Sergeant
at Arms and the Clerk on

April 28 19 87

in compliance with Rule 6.

Linda L. Jacobeth
Committee Secretary

Chairman

Received in the Office of
the Sergeant at Arms on

April 28 19 87

at 4:30 PM (time).

Cecilia Blankenship
Sergeant at Arms

Filed by me with the Sergeant
at Arms and the Clerk on

April 28 19 87

in compliance with Rule 6.

Committee Secretary

Date: April 24, 1987

Revised: _____

Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

BILL #: HB 0409 19 1601

RELATING TO: non-profit corporations

SPONSOR(S): Representatives Bloom & others

EFFECTIVE DATE: Upon becoming law

COMPANION BILL(S): _____

OTHER COMMITTEES OF REFERENCE: (1) _____

(2) _____

I. SUMMARY:

A. Present Situation:

Florida case law has yet to define the parameters of liability of a director of a not-for-profit corporation in this state. Presumably, under a theory of negligence, a director could be held personally liable where he failed to take all reasonable and necessary precautions to ensure that any action he took in his role as a director would not result in damage to another. However, it is unlikely that a causal connection could be established where a decision of a director inadvertantly resulted in damage and it would be equally unlikely that it could be proven that the consequences of the action were reasonably foreseeable by the director. There appear to be no decisions which have held a director of a not-for-profit corporation personally liable for his actions where the actions constituted simple negligence.

B. Effect of Proposed Changes:

In light of the absence of case law, the extent of any change from present law is unclear. It appears that the primary purpose of the bill would be to delineate what appears to be the current status of the law in this state.

The bill provides that any uncompensated director of a non-profit corporation qualifying under s. 501 (c)(3) or 501 (c)(6) of the Internal Revenue Code is immune from suit for actions or omissions taken in the course of his duties as a director, unless the act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

II. ECONOMIC IMPACT:

A. Public:

None apparent.

B. Government:

None apparent.

III. STATE COMPREHENSIVE PLAN IMPACT:

None.

IV. COMMENTS:

None.

V. AMENDMENTS:

None

VI. PREPARED BY: Thomas R. Tedcastle *TRT*

VII. STAFF DIRECTOR: Richard Hixson *RH*

Date: April 24, 1987
Revised: _____
Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

19 1601

BILL #: HB 0205
RELATING TO: non-profit corporations
SPONSOR(S): Representatives Sansom & Gardner
EFFECTIVE DATE: October 1, 1987
COMPANION BILL(S): SB 963
OTHER COMMITTEES OF REFERENCE: (1) _____
(2) _____

I. SUMMARY:

A. Present Situation:

Florida case law has yet to define the parameters of liability of a director of a not-for-profit corporation in this state. Presumably, under a theory of negligence, a director could be held personally liable where he failed to take all reasonable and necessary precautions to ensure that any action he took in his role as a director would not result in damage to another. However, it is unlikely that a causal connection could be established where a decision of a director inadvertantly resulted in damage and it would be equally unlikely that it could be proven that the consequences of the action were reasonably foreseeable by the director. There appear to be no decisions which have held a director of a not-for-profit corporation personally liable for his actions where the actions constituted simple negligence.

B. Effect of Proposed Changes:

In light of the absence of case law, the extent of any change from present law is unclear. It appears that the primary purpose of the bill would be to delineate what appears to be the current status of the law in this state.

The bill provides that any uncompensated director of a non-profit corporation qualifying under s. 501(c) of the Internal Revenue Code is immune from suit for actions or omissions taken in the course of his duties as a director, if he acted in good faith and within the scope of his official functions and duties unless the damage or injury was caused by the willful or wanton misconduct of the director.

II. ECONOMIC IMPACT:

A. Public:

None apparent.

B. Government:

None apparent.

III. STATE COMPREHENSIVE PLAN IMPACT:

None.

IV. COMMENTS:

None.

V. AMENDMENTS:

None

VI. PREPARED BY: Thomas R. Tedcastle TRT

VII. STAFF DIRECTOR: Richard Hixson r-h

Date: April 24, 1987

Revised: _____

Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

19 1601

BILL #: HB 0179

RELATING TO: non-profit corporations

SPONSOR(S): Representative Cosgrove

EFFECTIVE DATE: Upon becoming law

COMPANION BILL(S): SB 654

OTHER COMMITTEES OF REFERENCE: (1) _____

(2) _____

I. SUMMARY:

A. Present Situation:

Florida case law has yet to define the parameters of liability of a director of a not-for-profit corporation in this state. Presumably, under a theory of negligence, a director could be held personally liable where he failed to take all reasonable and necessary precautions to ensure that any action he took in his role as a director would not result in damage to another. However, it is unlikely that a causal connection could be established where a decision of a director inadvertently resulted in damage and it would be equally unlikely that it could be proven that the consequences of the action were reasonably foreseeable by the director. There appear to be no decisions which have held a director of a not-for-profit corporation personally liable for his actions where the actions constituted simple negligence.

B. Effect of Proposed Changes:

In light of the absence of case law, the extent of any change from present law is unclear. It appears that the primary purpose of the bill would be to delineate what appears to be the current status of the law in this state.

The bill provides that any uncompensated director of a non-profit corporation is immune from suit for actions or omissions taken in the course of his duties as a director unless he acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of another.

A. Public:

None apparent.

B. Government:

None apparent.

III. STATE COMPREHENSIVE PLAN IMPACT:

None.

IV. COMMENTS:

None.

V. AMENDMENTS:

None

VI. PREPARED BY: Thomas R. Tedcastle *TRT*

VII. STAFF DIRECTOR: Richard Hixson *RH*

STORAGE NAME: 87 SS HB 1024

Date: April 26, 1987

Revised: _____

Final: _____

19/500

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

BILL #: HB 1024

RELATING TO: Liability of officers, directors, and others

SPONSOR(S): Representatives Bass, Bloom, Logan, and others

EFFECTIVE DATE: July 1, 1987

COMPANION BILL(S): SB 1096; Compare HB 179, HB 205, HB 254, HB 409,
HB 419, SB 278, SB 309, SB 384, SB 654, SB 963

OTHER COMMITTEES OF REFERENCE: (1) _____

(2) _____

I. SUMMARY:

A. Present Situation:

Pursuant to Section 607.014, Florida Statutes, corporations are authorized to indemnify their directors, officers, employees, and agents when the person is a party, or is threatened to be made a party to litigation arising out of the person's service to the corporation. Indemnity must be provided where the person prevails in an action. It may be provided in other circumstances in which it is determined that he acted in good faith and "in a manner he reasonably believed to be in, or not opposed to the best interests of the corporation," or if a criminal act is involved, that he "had no reasonable cause to believe his conduct was unlawful." These determinations may either be made by the board of directors or by the shareholders. Further indemnification may be provided through corporate bylaws or agreements or by shareholders or disinterested directors.

Florida case law has yet to define the parameters of liability of a director of a not-for-profit corporation in this state. Presumably, under a theory of negligence, a director could be held personally liable where he failed to take all reasonable and necessary precautions to ensure that any action he took in his role as a director would not result in damage to another. However, it is unlikely that a causal connection could be established where a decision of a director inadvertently resulted in damage and it would be equally unlikely that it could be proven that the consequences of the action were reasonably foreseeable by the director. There appear to be no decisions which have held a director of a not-for-profit corporation

personally liable for his actions where the actions constituted simple negligence.

B. Effect of Proposed Changes:

Section 1 of this bill revises current law regarding a corporation's ability to indemnify its directors, officers, employees, and agents. These revisions seek to broaden the corporation's ability to indemnify and to clarify the circumstances under which indemnification can be provided.

The bill expands the right of permissive indemnification in derivative suits to include amounts paid in settlement, which in the judgment of the board of directors, do not exceed the estimated expense of litigating the proceeding to its conclusion. Currently, the law allows the court in which the action is brought to determine that the individual is entitled to indemnification even if liability is imposed. The bill allows not only the court in which the action is brought, but any other court of competent jurisdiction to make the determination.

Revised procedures are included for when a corporation may authorize indemnification. In addition to the current method in which the board may vote by a quorum of non-party directors, the board has the option, whether or not a quorum can be obtained, to authorize a committee, consisting of at least two directors who are not at the time parties to the proceeding, to approve indemnification. The option of obtaining a majority vote of non-party shareholders is still allowed, as is the option of obtaining independent legal counsel. The procedure for selecting independent legal counsel is revised to reflect the addition of the disinterested board committee. Independent legal counsel is only authorized to determine whether the applicable standards of conduct for indemnification have been met. Counsel cannot authorize indemnification.

The bill allows a corporation to provide a director or officer, in advance of the final disposition, expenses automatically upon receipt of an undertaking by or on behalf of the director or officer that he will repay the amount if it is ultimately determined that he is not entitled to be indemnified. Current law allows a corporation to advance expenses upon a promise by the director or officer to repay unless it shall ultimately be determined that he is entitled to be indemnified. The bill provides that where advances are made to an employee or agent, the corporation may set such other terms or conditions as it deems appropriate.

In addition to the permissive and mandatory indemnification allowed by current law, a corporation is also empowered to make any other or further indemnification for its directors, officers, employees or agents pursuant to a bylaw, agreement, vote of shareholders or disinterested directors, or otherwise. However, no indemnification is allowed against gross negligence or willful misconduct. The bill clarifies that it provides a broader right

to the corporation to indemnify than is explicitly provided for in the statute. The bill also expands the non-exclusivity provisions to include advancement of expenses as well as indemnification. The limitation on indemnification and advancement of expenses is changed to reflect the limitations on liability of directors and officers provided for in the bill.

Advancement of expenses is provided in addition to indemnification where it would inure to the benefit of the heirs of a director or officer. Additionally, the bill allows the corporation at the time of authorization or ratification to limit the extent of indemnification and advancement of expenses for a person who is no longer a director or for his heirs.

The bill gives an individual the right to apply to a court for indemnification or advancement of expenses. The provision allows for application to be made to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction.

Sections 2-7 of the bill provide limited immunity for directors, officers, volunteers and certain other specified individuals performing services for corporations, credit unions, self insurance trust funds, and nonprofit organizations.

Section 2 of the bill amends Section 617.028, Florida Statutes, to extend application of the limitations on liability and ratification procedures created by sections 3 and 4 of the bill to corporations not for profit. (See explanation of sections 3 and 4 below).

Section 3 of the bill establishes a threshold of personal liability of directors, officers, and volunteers of a for-profit corporation organized under Chapter 607, F. S. The bill provides that such persons are not liable for monetary damages to the corporation or any other person unless the person asserting liability proves by clear and convincing evidence that (a) the director, officer, or volunteer breached or failed to perform his duties as a director, officer, or volunteer, and (b) the breach, or failure to perform those duties constitutes one of several specified conditions. These are: (a) a violation of the criminal law, unless the director, officer, or volunteer had reasonable cause to believe his conduct was lawful, or had no reasonable cause to believe his conduct was unlawful; (b) a transaction from which the director, officer, or volunteer derived an improper personal benefit; (c) a circumstance under which the liability provisions of section 607.144, F. S., are applicable (regarding the payment of an unlawful dividend or an unlawful purchase by the corporation of its own stock); (d) in a derivative or shareholder suit, conscious disregard for the best interest of the corporation or willful misconduct; or (e) in a third-party suit, recklessness or willful misconduct. "Officer," "recklessness," and "volunteer" are defined.

Section 4 provides a safe harbor for transactions from which the director, officer, or volunteer derived an improper personal benefit and is not intended to be exclusive.

Section 5 established a threshold of liability for directors, officers, chief operating officers, committee members, executive officers, or volunteers of credit unions organized under Chapter 657, F. S. Such persons are not personally liable for monetary damages to any person unless that person proves by clear and convincing evidence that the director, officer, chief operating officer, committee member, executive officer, or volunteer breached or failed to perform his duties as a director, officer, chief operating officer, committee member, executive officer, or volunteer, and the breach, or failure to perform, constitutes: (a) a violation of the criminal law, unless such person had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful; (b) a transaction from which such persons derived an improper personal benefit, or (c) recklessness or willful misconduct.

Section 6 establishes a threshold of liability for trustees, officers, or volunteers of any self-insurance trust fund organized under the laws of this state. Section 7 establishes a threshold of liability for directors, officers, trustees, members, and volunteers of nonprofit organizations defined as any organizations, other than a corporation, that is recognized as a tax-exempt organization under sections 501(c)(3), (c)(4), and (c)(6) of the Internal Revenue Code of 1986. Such persons are not personally liable for monetary damages to any person unless they meet the same conditions for liability imposed by Section 5 for directors, officers, chief operating officers, committee members, executive officers, and volunteers of credit unions.

II. ECONOMIC IMPACT:

A. Public:

This legislation could result in substantial limitations on present liability in relation to officers and volunteers of corporations, both for-profit and not-for-profit, and would shift the burden of compensating an injured person from the officer or volunteer to the corporation. To the extent that the corporation is financially unable to respond for the negligent acts of its officers or volunteers, injured persons would receive no or less compensation than they are entitled to under present law.

B. Government:

None apparent.

III. STATE COMPREHENSIVE PLAN IMPACT:

This bill appears to be consistent with promoting economic development. Section 187.201, (21), Florida Statutes.

Page 5
Bill # HB 1024
Date: April 26, 1987

IV. COMMENTS:

None.

V. AMENDMENTS:

None

VI. PREPARED BY: Thomas R. Tedcastle *TR*

VII. STAFF DIRECTOR: Richard Hixson *rh*

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

18 1681

	<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1.	Wilkes <u>SW</u>	Fort <u>PHB</u>	1. <u>COM</u>	_____
2.	_____	_____	2. <u>JCI</u>	_____
3.	_____	_____	3. _____	_____
4.	_____	_____	4. _____	_____

SUBJECT:

Nonprofit Organizations/
Liability

BILL NO. AND SPONSOR:

SB 384 by
Senator Margolis

I. SUMMARY:

A. Present Situation:

Not for profit corporations in Florida are organized under ch. 617, F.S. The provisions of ch. 607, F.S., apply to all corporations not for profit, except to the extent that any provision of ch. 607, F.S., conflicts with any provision of ch. 617, F.S., (s. 617.002, F.S.). Specifically, the indemnification provisions of s. 607.014, F.S., apply to corporations not for profit (s. 617.028, F.S.).

Section 607.111(4), F.S., provides that a director "shall perform his duties as a director, including his duties as member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interest of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances." This standard of conduct for directors is common to the corporate laws of many states. Other subsections of s. 607.111, F.S., specify circumstances under which a director is entitled to rely on information, opinions, reports, or statements provided by other persons. Section 607.111(7), F.S., provides that a person who performs his duties in compliance with s. 607.111, F.S., has no liability by reason of being or having been a director of the corporation.

There are few Florida judicial decisions addressing s. 607.111, F.S., or otherwise addressing when a director may be personally liable for failing to comply with the standards specified in this section. Generally, judicial decisions that are available indicate that directors are considered agents or fiduciaries of their corporation and that directors will be liable for damages to the corporation which result from a breach of the director's fiduciary trust (Orlando Orange Groves Co. v. Hale, 107 Fla. 304, 144 So. 674 (1932)). Directors may be shielded from liability as fiduciaries by the business judgment rule. Generally, the business judgment rule means that the decision of a board of directors is presumed to have been made on the basis of sound business judgment, if a rational business purpose for the decision can be shown. The protection of the business judgment rule requires that, in making a business decision, the directors of the corporation must have acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interest of the corporation. Florida courts have rarely addressed the business judgment rule, and consequently there is little judicial guidance in Florida concerning the limits to a director's discretion. What precedent exists strongly supports the discretion of the board in management decisions. Courts in Florida have given wide discretion to directors in the exercise of business judgment in the performance of their duties (Yarnell Warehouse and Transfer, Inc. v. Three Ivory Brothers Moving Co., (Fla. 2d DCA 1969)). However, it is unclear, for example, whether a

director may be personally liable for mere negligence, or whether the business judgment rule protects a director's conduct so long as the director's actions are taken in an absence of bad faith or fraud. In any event, there seems to be little consistency among the present statute and various reported decisions.

Section 501(a) of the Internal Revenue Code provides that certain organizations are exempt from federal income taxation. A list of those exempt organizations is contained in s. 501(c), I.R.C. Section 501(c)(3), I.R.C., exempts corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster certain national or international amateur sports competition, or for the prevention of cruelty to children or animals. Section 501(c)(6), I.R.C., exempts not for profit business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues, of which no part of the net earnings may inure to the benefit of any private shareholder or individual.

B. Effect of Proposed Changes:

This bill provides an immunity from liability for civil damages to uncompensated directors, officers, and trustees of tax-exempt nonprofit organizations under sections 501(c)(3) and 501(c)(6) of the I.R.C. An exception to such immunity is provided for acts or omissions committed in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The tight insurance market for directors and officers (D&O) liability insurance is contributing to the change in the composition of boards of directors. Directors and officers liability insurance premiums increased nationwide an average of 506 percent in 1986, according to a survey of 256 chairmen of Fortune 1,000 companies by Heidrick & Struggles, a Chicago-based executive search firm.

The tight market situation has also resulted in the curtailment of many non-profit programs vitally important to many communities. Failure to resolve the availability and affordability problems in D&O coverage could result in the demise of small non-profit organizations that are unable to attract or keep qualified directors and officers.

B. Government:

None.

III. COMMENTS:

IV. AMENDMENTS:

None.

Orig

Date: April 24, 1987
Revised: _____
Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

19 160

BILL #: HB 0254

RELATING TO: non-profit corporations

SPONSOR(S): Representatives Carpenter, Lippman, Bloom & Silver

EFFECTIVE DATE: Upon becoming law

COMPANION BILL(S): _____

OTHER COMMITTEES OF REFERENCE: (1) _____

(2) _____

I. SUMMARY:

A. Present Situation:

Florida case law has yet to define the parameters of liability of a director of a not-for-profit corporation in this state. Presumably, under a theory of negligence, a director could be held personally liable where he failed to take all reasonable and necessary precautions to ensure that any action he took in his role as a director would not result in damage to another. However, it is unlikely that a causal connection could be established where a decision of a director inadvertantly resulted in damage and it would be equally unlikely that it could be proven that the consequences of the action were reasonably foreseeable by the director. There appear to be no decisions which have held a director of a not-for-profit corporation personally liable for his actions where the actions constituted simple negligence.

B. Effect of Proposed Changes:

In light of the absence of case law, the extent of any change from present law is unclear. It appears that the primary purpose of the bill would be to delineate what appears to be the current status of the law in this state.

The bill provides that any uncompensated director of a non-profit corporation qualifying under s. 212.08(7), Florida Statutes (exemption from sales tax of certain corporations) is immune from suit for actions or omissions taken in the course of his duties as a director, unless the act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

II. ECONOMIC IMPACT:

A. Public:

None apparent.

B. Government:

None apparent.

III. STATE COMPREHENSIVE PLAN IMPACT:

None.

IV. COMMENTS:

None.

V. AMENDMENTS:

None

VI. PREPARED BY: Thomas R. Tedcastle TRT

VII. STAFF DIRECTOR: Richard Hixson RH

BILL	NON-PROFIT	FOR PROFIT	DIRECTORS	OFFICERS	VOLUNTEERS	STANDARD
HB 179	Yes	No	Uncompensated	No	No	Bad faith or malice or willful and wanton disregard for rights
HB 205	501(c)	No	Uncompensated	Uncompensated	No	Bad faith, willful or wanton misconduct
HB 254	s.212.08 (7) (a), F.S.	No	Uncompensated	Uncompensated	No	Bad faith or malice or willful and wanton disregard
HB 409	501(c) (3); 501 (c) (6)	No	Uncompensated	Uncompensated	No	Bad faith or malice or willful and wanton disregard
HB 419	No	When included in articles of incorporation	Yes	No	No	Duty of loyalty; bad faith or intentional misconduct or knowing violation of law; improper personal benefit; violation of certain corporate laws
HB 1024	Yes	Yes	Yes	Yes	Yes	Knowing criminal violation; improper personal benefit; violation of certain corporate laws; conscious disregard of corporation or willful misconduct, reckless or willful misconduct

19 1601
HB 254

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1.	Wilkes <i>SW</i>	Fort <i>FB</i>	1. COM	_____
2.	_____	_____	2. _____	_____
3.	_____	_____	3. _____	_____
4.	_____	_____	4. _____	_____

18 1613

SUBJECT:

Directors, Officers, and
Volunteers/Civil Liability

BILL NO. AND SPONSOR:

SB 1096 by
Senator Jennings

I. SUMMARY:

A. Present Situation:

Chapter 607, F.S., the Florida General Corporation Act, provides the general regulatory and organizational scheme for corporations doing business in Florida.

The indemnification provisions of the Florida General Corporation Act are contained in section 607.014, F.S. This section was revised in 1976, with subsequent minor changes, and is substantially similar to the indemnification provisions of section 5 of the 1969 version of the Model Business Corporation Act (as amended in 1980). Section 607.014, F.S., provides for permissive and mandatory indemnification by a corporation on behalf of its directors, officers, employees, or agents, as well as for individuals who were serving at the request of the corporation as a director, officer, employee, or agent of another entity. These individuals can be indemnified against expenses (including attorneys' fee), judgments, fines, and amounts paid in settlement for third party actions, and against expenses in derivative suits. The section provides for a procedure by which the corporation may authorize indemnification. The section also contains a provision which allows a corporation to advance expenses pursuant to a prescribed procedure prior to final disposition of an action. Mandatory indemnification of expenses is authorized by this section if the individual is successful, on the merits or otherwise, in defense of an action, or a claim which is part of an action.

The section sets forth a minimum standard of care which must be met before permissive indemnification can be authorized. A corporation may only indemnify an individual in connection with a third party action if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation. With respect to a criminal action, the individual must have had no reasonable cause to believe his conduct was unlawful. A corporation may indemnify a person for expenses incurred in defense of a suit by or in the right of the corporation if that person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation, except that the corporation may not provide indemnification for a person who has been adjudged to be liable for negligence or misconduct in the performance of his duties to the corporation. Notwithstanding this limitation, a court may order indemnification where it determines that in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity.

The section also empowers a corporation to make other or further indemnification for its directors, officers, employees, or agents pursuant to a bylaw, agreement, vote of shareholders

or disinterested directors, or otherwise. This non-exclusivity provision is subject to a limitation which provides that no indemnification shall be made against gross negligence or willful misconduct.

Florida's indemnification section has been more or less the same for the past decade. Practical problems encountered in implementation of the provisions were often ameliorated by the availability of adequate director and officer liability insurance coverage. A corporation is empowered to purchase and maintain insurance on behalf of its directors, officers, employees and agents as well as for individuals serving at the request of the corporation as director, officer, employee, or agent of another entity against liability arising out of such capacity, whether or not it would have the power to indemnify such individuals (s. 607.014(8), F.S.). Since the section permits insurance coverage in areas not clearly indemnifiable by the corporation, directors and others were able to arrange with an insurance carrier for the funding of legal fees associated with the defense of a claim without having a preliminary determination by independent legal counsel or by other procedures defined in the statute.

One consequence of the proliferation of litigation aimed at directors and officers, particularly in connection with hostile acquisitions, has been a limitation by insurance carriers on what matters will be included under insurance coverage. This proliferation and the high cost of defending against these actions has also led to higher premiums and deductibles coupled with reduced coverage. A number of carriers have withdrawn from the director and officer insurance market. Many companies cannot replace their insurance coverage because of this withdrawal, and others cannot replace or obtain coverage because the cost is prohibitive and the coverage circumscribed. These problems resulted in what many have called a crisis in the area of director and officer liability. Corporations are having difficulty in attracting and retaining talented and responsible directors and officers. Those who serve on boards are fearful that without coverage and without assurances of adequate indemnification, their service will result in personal liability.

Section 607.111(4), F.S., provides that a director "shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interest of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances." This standard of conduct for directors is common to the corporate laws of many states. Other subsections of s. 607.111, F.S., specify circumstances under which a director is entitled to rely on information, opinions, reports, or statements provided by other persons. Section 607.111(7), F.S., provides that a person who performs his duties in compliance with s. 607.111, F.S., has no liability by reason of being or having been a director of the corporation.

There are few Florida judicial decisions addressing s. 607.111, F.S., or otherwise addressing when a director may be personally liable for failing to comply with the standards specified in this section. Generally, judicial decisions that are available indicate that directors are considered agents or fiduciaries of their corporation and that directors will be liable for damages to the corporation which result from a breach of the director's fiduciary trust (Orlando Orange Groves Co. v. Hale, 107 Fla. 304, 144 So. 674 (1932)). Directors may be shielded from liability as fiduciaries by the business judgment rule. Generally, the business judgment rule means that the decision of a board of directors is presumed to have been made on the basis of sound business judgment, if a rational business purpose for the decision can be shown. The protection of the

business judgment rule requires that, in making a business decision, the directors of the corporation must have acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interest of the corporation. Florida courts have rarely addressed the business judgment rule, and consequently there is little judicial guidance in Florida concerning the limits to a director's discretion. What precedent exists strongly supports the discretion of the board in management decisions. Courts in Florida have given wide discretion to directors in the exercise of business judgment in the performance of their duties (Yarnell Warehouse and Transfer, Inc. v. Three Ivory Brothers Moving Co., (Fla. 2d DCA 1969)). However, it is unclear, for example, whether a director can be personally liable for mere negligence, or whether the business judgment rule protects a director's conduct so long as the director's actions are taken in an absence of bad faith or fraud. In any event, there seems to be little consistency among the present statute and various reported decisions.

Not for profit corporations in Florida are organized under ch. 617, F.S. The provisions of ch. 607, F.S., apply to all corporations not for profit, except to the extent that any provision of ch. 607, F.S., conflicts with any provision of ch. 617, F.S. (s. 617.002, F.S.). Specifically, the indemnification provisions of s. 607.014, F.S., apply to corporations not for profit (s. 617.028, F.S.).

Chapter 657, F.S., the Florida Credit Union Act, contains provisions for the organization of a credit union in this state. A credit union is a cooperative, nonprofit association (s. 657.003, F.S.). A credit union may purchase and maintain insurance on behalf of its directors, officers, employees, or agents or individuals serving at the request of the credit union as a director, officer, employee or agent of another entity against liability arising out of such capacity, whether or not it would have the power to indemnify such individuals (s. 657.041(2), F.S.).

Florida law provides for participation by several groups in a group self-insurance trust fund. The list of groups who are authorized to participate in a self-insurance trust fund was significantly expanded by the Tort Reform and Insurance Act of 1986 (ch. 86-160, L.O.F.).

Section 501(a) of the Internal Revenue Code provides that certain organizations are exempt from federal income taxation. A list of those exempt organizations are contained in s. 501(c), I.R.C. Section 501(c)(3), I.R.C., exempts corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster certain national or international amateur sports competition, or for the prevention of cruelty to children or animals. Section 501(c)(4), I.R.C., exempts civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or certain local associations of employees whose net earnings are devoted exclusively to charitable, education, or recreational purposes. Section 501(c)(6), I.R.C., exempts not for profit business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues, of which no part of the net earnings may inure to the benefit of any private shareholder or individual.

B. Effect of Proposed Changes:

Section 1 of the bill revises current law in s. 607.014, F.S., regarding a corporation's ability to indemnify its directors, officers, employees, and agents. These revisions seek to

broaden the corporation's ability to indemnify and to clarify the circumstances under which indemnification can be provided.

Subsection (1) does not contain any substantive changes. The only changes contained in this provision are the use of terms defined in subsections (10) and (11).

Subsection (2) permits a corporation to indemnify an individual in a derivative context against amounts paid in settlement which, in the judgment of the board of directors, does not exceed the estimated expense of litigating the proceeding to conclusion. Because current law only permits corporations to indemnify an individual in a derivative suit for expenses, and not for amounts paid in settlement, a director is not encouraged to settle a claim against him, since, if he is ultimately successful indemnification of all expenses is mandatory. Subsection (2) also contains technical definitional changes.

Another addition to subsection (2) expands an existing avenue for obtaining indemnification. Section 607.014, F.S., presently allows the court in which the action is brought to determine whether the individual is entitled to indemnification even if liability is imposed. Since it may not always be practical or possible to have this matter reviewed by such court, the revision would permit any other court of competent jurisdiction to make the determination to award indemnification. The language, "under this subsection", has been added to the limitation language in the provision as a matter of clarification.

Finally, subsection (2) would prohibit indemnification (unless ordered by a court under subsection (2)) for any action for which the individual is held liable, not just for negligence or misconduct.

Subsection (3) contains no substantive changes, but reflects the use of defined terms.

Subsection (4) offers a revised procedure by which a corporation may authorize indemnification. In addition to the option presently available in s. 607.014, F.S., of having the board vote by a quorum of non-party directors, the board has the option, whether a quorum can be obtained or not, to authorize a committee, consisting of at least two directors who are not at the time parties to the proceeding, to approve indemnification. The option of obtaining independent legal counsel is still available as is the option of obtaining a majority vote of a quorum of non-party shareholders. The bill allows a majority vote of non-party shareholders to approve indemnification if a quorum is not obtainable. The procedure for selecting independent legal counsel has been revised to reflect the addition of the disinterested board committee.

The revision would address, among other things, those circumstances where directors constituting a quorum are each named in a lawsuit (such as is the case in many hostile acquisitions), and it is impractical, for reasons of cost and time, to convene a shareholder meeting. A committee of at least two directors, not parties to the proceedings, would be competent to determine that the applicable standards of conduct had been met, and to authorize indemnification.

Subsection (5) makes it clear that independent legal counsel can only determine whether the applicable standards of conduct have been met. Counsel cannot authorize indemnification.

Subsection (6) allows a corporation flexibility to provide to an officer or director, in advance of the final disposition, expenses automatically upon receipt of an undertaking by or on behalf of the individual seeking the funds that he will repay

the amount if it is ultimately determined that he is not entitled to be indemnified. Where advances are made to an employee or agent, the corporation may set such other requirements as it deems appropriate.

The revision changes the form of the director's or officer's undertaking from a promise to repay "unless it shall ultimately be determined that he is entitled to be indemnified" to a promise to repay "if it shall ultimately be determined that he is not entitled to be indemnified." This change shifts the burden to obtain the required finding as to entitlement to indemnification from the claimant to the corporation. This change is essentially symbolic as the section continues to require, pursuant to subsection (4), that indemnification be authorized only after a finding that the individual has met the statutory standard. Consequently, the corporation, through one of the mechanisms set forth in subsection (4), must still ultimately decide whether indemnification is warranted in each case.

Subsection (7) makes significant substantive changes to the non-exclusivity section found presently in s. 607.014(6), F.S. First, the addition of new introductory language clarifies that this section is indeed one which provides a broader indemnification right to a corporation than is granted explicitly in s. 607.014, F.S. Further, there is clarification that this subsection also applies to any advancement of expenses. Second, the limitation which appears at the end of the provision has been altered. Section 607.014, F.S., presently provides that no indemnification can be made against gross negligence or willful misconduct. The bill provides a limit against indemnification for acts which constitute a violation of criminal law (with certain exceptions), for transactions from which the director, officer, employee, or agent derived an improper personal benefit, for circumstances where a director would be liable under s. 607.144, F.S., and for willful misconduct or a conscious disregard for the best interests of the corporation (in derivative suits).

Subsection (8) is essentially the same as present law in s. 607.014(7), F.S., authorizing indemnification payments to continue even after the person ceases to be a director, except that the new provision makes clear that it applies to advancement of expenses as well as indemnification. Additionally, the new language indicates that the corporation has the ability at the time of authorization or ratification to limit the extent of indemnification and advancement of expenses for a person who is no longer a director or for his heirs.

Subsection (9) authorizes an individual to apply to a court for indemnification or advancement of expenses. It allows for application to be made to the court conducting the proceeding, to the circuit court or to another court of competent jurisdiction. The provision also sets forth the different standards which the court is to apply in determining the individual's right of indemnification.

Subsection (10) and (11) contain definitions. Subsection (10) deals primarily with the definition of a corporation. This subsection clarifies that any reference to a corporation in the statute relates to constituent corporations and succeeding corporations. Subsection (11) provides the definitions for terms such as "other enterprises" which makes it clear that employee benefit plans are included.

Subsections (12) and (13) merely renumber present law contained in s. 607.014(8) and (9), F.S., with no changes made.

Sections 2-7 of the bill provide limited immunity for directors, officers, volunteers and certain other specified individuals performing services for corporations, credit

unions, self-insurance trust funds, and nonprofit organizations.

Current law provides in s. 617.028, F.S., that the indemnification provisions of section 1 of the bill apply to corporations not for profit. Section 2 of the bill revises this section to also include the application of the limitations on liability and ratification procedures created by sections 3 and 4 of the bill. (See explanation of sections 3 and 4 below.)

Section 3 of the bill establishes a threshold of personal liability of directors, officers, and volunteers of a for-profit corporation organized under ch. 607, F.S. The bill provides that such persons are not liable for monetary damages to the corporation or any other person unless the person asserting liability proves by clear and convincing evidence (under current law, the burden of proof would be by "a preponderance of the evidence") that (a) the director, officer, or volunteer breached or failed to perform his duties as a director, officer, or volunteer, and (b) the breach, or failure to perform those duties constitutes one of several specified conditions. These are: (a) a violation of the criminal law, unless the director, officer, or volunteer had reasonable cause to believe his conduct was lawful; (b) a transaction from which the director, officer, or volunteer derived an improper personal benefit; (c) a circumstance under which the liability provisions of s. 607.144, F.S., are applicable (regarding the payment of an unlawful dividend or an unlawful purchase by the corporation of its own stock); (d) in a derivative or shareholder suit, conscious disregard for the best interest of the corporation or willful misconduct; or (e) in a third-party suit, recklessness or willful misconduct.

"Officer" is defined to include persons who are policymakers, and is similar to the definition of "executive officer" contained in the Securities and Exchange Act of 1934.

"Volunteer" is defined as persons performing services for the corporation who do not receive compensation and includes volunteer officers, directors, trustees, and direct service volunteers.

"Recklessness" is defined as the acting, or omission to act, in conscious disregard of a risk:

1. Known, or so obvious that it should have been known, to the director, officer, or volunteer; and
2. Known to the director, officer, or volunteer, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

Section 4 provides a safe harbor for transactions from which the director, officer, or volunteer derived an improper personal benefit and is not intended to be exclusive.

Directors, officers, and volunteers are deemed not to have derived an improper personal benefit if certain directors or shareholders knowingly ratify or approve the transaction, or the transaction was fair and reasonable to the corporation at the time it was authorized by directors or shareholders, notwithstanding that a director, officer, or volunteer received a personal benefit.

Section 5 establishes a threshold of liability for directors, officers, chief operating officers, committee members, executive officers, or volunteers of credit unions organized under chapter 657, F.S. Such persons are not personally liable for monetary damages to any person unless that person proves by

clear and convincing evidence that (a) the director, officer, chief operating officer, committee member, executive officer, or volunteer breached or failed to perform his duties as a director, officer, chief operating officer, committee member, executive officer, or volunteer, and the breach, of failure to perform, constitutes: (a) a violation of the criminal law, unless such person had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful; (b) a transaction from which such persons derived an improper personal benefit; or (c) recklessness or willful misconduct.

Section 6 establishes a threshold of liability for trustees, officers, or volunteers of any self-insurance trust fund organized under the laws of this state. Such persons are not personally liable for monetary damages to any person unless they meet the same conditions for liability imposed by section 5 for directors, officers, chief operating officers, committee members, executive officers, and volunteers of credit unions.

Section 7 establishes a threshold of liability for directors, officers, trustees, members, and volunteers of nonprofit organizations defined as any organization, other than a corporation, that is recognized as a tax-exempt organization under sections 501(c)(3), (c)(4), and (c)(6) of the I.R.C. of 1986. Liability is imposed upon such individuals under the same conditions specified in sections 5 and 6 of this bill.

Section 8 provides an effective date.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Expanded indemnification will be an incentive to directors, officers, employees, agents, and volunteers to continue providing their services to these organizations as it provides one source of reimbursement for them against liability. The public will also derive benefit in that Florida will continue to be an attractive place for corporations to incorporate, reincorporate, and operate. Similarly, the public will benefit because Florida corporations will operate more efficiently and effectively, since directors, particularly outside directors, will find serving on the boards of Florida corporations more attractive and viable.

The tight insurance market for directors and officers (D&O) liability insurance is contributing to the change in the composition of boards of directors. Directors and officers liability insurance premiums increased nationwide an average of 506 percent in 1986, according to a survey of 256 chairmen of Fortune 1,000 companies by Heidrick & Struggles, a Chicago-based executive search firm.

Fewer executives are willing to serve on boards especially at business organizations with inadequate D&O liability coverage. The Heidrick & Struggles study found that corporate officers now account for 33.8 percent of membership of corporate boards, the remaining 8.7 percent is composed of company-affiliated non-management members.

The tight market situation has also resulted in the curtailment of many non-profit programs vitally important to many communities. Failure to resolve the availability and affordability problems in D&O coverage could result in the demise of small non-profit organizations that are unable to attract or keep qualified directors and officers.

The Department of Insurance identifies nine companies who have rate filings with the department for D&O. Of these companies,

at least two had no writings in Florida in 1986, and others were very selective in their underwriting.

This legislation would likely result in a decrease of "corporate flight" that may occur in Florida as corporations choose to reincorporate in other states who have already amended their laws to provide more protection to directors, officers, and volunteers. The Division of Corporations of the Department of State estimates that there are 90,000 new incorporations in the state of Florida each year, and an estimated fee of incorporation would be \$100 for each corporation (the actual amount depends upon the size of capitalization). Costs to the state would be significantly increased if, along with their legal status, corporations also chose to move their corporate offices outside of Florida.

This legislation would likely result in reduced costs and greater availability of directors and officers liability insurance coverage to the extent that the maximum exposure of such persons is reduced.

B. Government:

None.

III. COMMENTS:

At least 18 states have enacted legislation addressing the crisis in director liability and bills have been introduced in more than 15 others. In June, 1986, Delaware, a trend-setter in the area of corporate legislation and the legal home of a great many corporations, was the first state to offer shareholders the opportunity to amend their corporate charters to limit or eliminate a director's personal liability to the corporation or its shareholders for money damages (Del. Code Ann. tit. 8, sec. 102(b)(7) (Supp. 1986)). Since that time, many corporations, including at least one Florida corporation, have reincorporated in Delaware or have announced their intention to seek shareholder approval to do so.

The Delaware legislation was in response to Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985), a case in which the board of directors of Trans Union Corporation were held personally liable for \$23 million, only \$10 million of which was covered by insurance. Heretofore, directors had been shielded from personal liability for damages by the business judgment rule, as courts were unwilling to insert themselves into corporate decision-making. Practitioners in Florida often turn to Delaware case law for guidance in advising clients, because of the relatively few judicial decisions in Florida concerning director liability.

This fear of enormous personal liability, coupled with the reality that directors of public issue companies have a one-in-five chance of being sued, has prompted many outside directors to reevaluate their decisions to serve on boards, and many have resigned from or declined appointment to boards of corporations that do not have adequate liability insurance protection for their directors. In a recent survey of 370 corporate directors by the National Association of Corporate Directors, about one in seven would refuse to serve on any board, be it profit or not for profit, without insurance protection, and approximately 4 percent had already resigned from boards without D&O coverage. Nearly half know colleagues who had refused directorships for lack of D&O coverage.

In a recent study commissioned by Peat Marwick on this issue, nearly 8,000 chief executives and directors in the corporate and not-for-profit sectors were polled, including CEO's of the largest 2,000 U. S. corporations; chairpersons of hospital boards; municipal officials, heads of museums, symphony orchestras, and national voluntary organizations; and university chairpersons and presidents. Overall, nine out of ten respondents believed that

problems in this area are damaging the quality of organizational governance in the United States -- six in ten reported the D&O liability problem was having an impact on the way they manage their organization. Forty-three percent of CEO's indicated that the situation is already of crisis proportions, compared with only 28 percent in the not-for-profit group.

About three-fourths of the sample were companies that carry D&O insurance. Ninety percent of the for-profit companies and 70 percent of the nonprofit sector carry the coverage. About one-third of the sample had seen their own insurance premiums rise over 300 percent on the most recent renewal and most expect more premium increases over the next five years. Only six percent had seen no change in their rates.

Legislation is currently pending in the U.S. Congress to encourage states to enact legislation protecting volunteers of nonprofit organizations from personal liability if the volunteer acts in good faith and in the scope of his duties as a volunteer (S. 929 and H.R. 911, 100th Cong. 1986). According to the bills in Congress, "within certain states, the willingness of volunteers to offer their services has been increasingly deterred by a perception that they thereby put personal assets at risk in the event of liability actions against the organization they serve. Many nonprofit public and private organizations . . . have been adversely affected through the withdrawal of volunteers from boards of directors and service in other capacities."

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Wilkes <i>EW</i>	Fort <i>FF</i>	1. COM	Fav/CS
2. _____	_____	2. JCI	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Directors, Officers, and
Volunteers/Civil Liability

BILL NO. AND SPONSOR:

CS/SB's 1096, 963, & 654
by Commerce and Senator Jennings

I. SUMMARY:

A. Present Situation:

Chapter 607, F.S., the Florida General Corporation Act, provides the general regulatory and organizational scheme for corporations doing business in Florida.

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business judgment rule requires that, in making a business decision, the directors of the corporation must have acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interest of the corporation. Florida courts have rarely addressed the business judgment rule, and consequently there is little judicial guidance in Florida concerning the limits to a director's discretion. What precedent exists strongly supports the discretion of the board in management decisions. Courts in Florida have given wide discretion to directors in the exercise of business judgment in the performance of their duties (Yarnell Warehouse and Transfer, Inc. v. Three Ivory Brothers Moving Co., (Fla. 2d DCA 1969)). However, it is unclear, for example, whether a director may be personally liable for mere negligence, or whether the business judgment rule protects a director's conduct so long as the director's actions are taken in an absence of bad faith or fraud. In any event, there seems to be little consistency among the present statute and various reported decisions.

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B. Effect of Proposed Changes:

Section 1 of the bill revises current law in s. 607.014, F.S., regarding a corporation's ability to indemnify its directors, officers, employees, and agents. These revisions seek to

broaden the corporation's ability to indemnify and to clarify the circumstances under which indemnification can be provided.

Subsection (1) does not contain any substantive changes. The only changes contained in this provision are the use of terms defined in subsections (10) and (11).

Subsection (2) permits a corporation to indemnify an individual in a derivative context against amounts paid in settlement which, in the judgment of the board of directors, does not exceed the estimated expense of litigating the proceeding to conclusion. Because current law only permits corporations to indemnify an individual in a derivative suit for expenses, and not for amounts paid in settlement, a director is not encouraged to settle a claim against him, since, if he is ultimately successful indemnification of all expenses is mandatory. Subsection (2) also contains technical definitional changes.

Another addition to subsection (2) expands an existing avenue for obtaining indemnification. Section 607.014, F.S., presently allows the court in which the action is brought to determine whether the individual is entitled to indemnification even if liability is imposed. Since it may not always be practical or possible to have this matter reviewed by such court, the revision would permit any other court of competent jurisdiction to make the determination to award indemnification. The language, "under this subsection", has been added to the limitation language in the provision as a matter of clarification.

Finally, subsection (2) would prohibit indemnification (unless ordered by a court under subsection (2)) for any action for which the individual is held liable, not just for negligence or misconduct.

Subsection (3) contains no substantive changes, but reflects the use of defined terms.

Subsection (4) offers a revised procedure by which a corporation may authorize indemnification. In addition to the option presently available in s. 607.014, F.S., of having the board vote by a quorum of non-party directors, the board has the option, whether a quorum can be obtained or not, to authorize a committee, consisting of at least two directors who are not at the time parties to the proceeding, to approve indemnification. The option of obtaining independent legal counsel is still available as is the option of obtaining a majority vote of a quorum of non-party shareholders. The bill allows a majority vote of non-party shareholders to approve indemnification if a quorum is not obtainable. The procedure for selecting independent legal counsel has been revised to reflect the addition of the disinterested board committee.

The revision would address, among other things, those circumstances where directors constituting a quorum are each named in a lawsuit (such as is the case in many hostile acquisitions), and it is impractical, for reasons of cost and time, to convene a shareholder meeting. A committee of at least two directors, not parties to the proceedings, would be competent to determine that the applicable standards of conduct had been met, and to authorize indemnification.

Subsection (5) makes it clear that independent legal counsel can only determine whether the applicable standards of conduct have been met. Counsel cannot authorize indemnification.

Subsection (6) allows a corporation flexibility to provide to an officer or director, in advance of the final disposition, expenses automatically upon receipt of an undertaking by or on behalf of the individual seeking the funds that he will repay

the amount if it is ultimately determined that he is not entitled to be indemnified. Where advances are made to an employee or agent, the corporation may set such other requirements as it deems appropriate.

The revision changes the form of the director's or officer's undertaking from a promise to repay "unless it shall ultimately be determined that he is entitled to be indemnified" to a promise to repay "if it shall ultimately be determined that he is not entitled to be indemnified." This change shifts the burden to obtain the required finding as to entitlement to indemnification from the claimant to the corporation. This change is essentially symbolic as the section continues to require, pursuant to subsection (4), that indemnification be authorized only after a finding that the individual has met the statutory standard. Consequently, the corporation, through one of the mechanisms set forth in subsection (4), must still ultimately decide whether indemnification is warranted in each case.

Subsection (7) makes significant substantive changes to the non-exclusivity section found presently in s. 607.014(6), F.S. First, the addition of new introductory language clarifies that this section is indeed one which provides a broader indemnification right to a corporation than is granted explicitly in s. 607.014, F.S. Further, there is clarification that this subsection also applies to any advancement of expenses. Second, the limitation which appears at the end of the provision has been altered. Section 607.014, F.S., presently provides that no indemnification can be made against gross negligence or willful misconduct. The bill provides a limit against indemnification for acts which constitute a violation of criminal law (with certain exceptions), for transactions from which the director, officer, employee, or agent derived an improper personal benefit, for circumstances where a director would be liable under s. 607.144, F.S., and for willful misconduct or a conscious disregard for the best interests of the corporation (in derivative suits).

Subsection (8) is essentially the same as present law in s. 607.014(7), F.S., authorizing indemnification payments to continue even after the person ceases to be a director, except that the new provision makes clear that it applies to advancement of expenses as well as indemnification. Additionally, the new language indicates that the corporation has the ability at the time of authorization or ratification to limit the extent of indemnification and advancement of expenses for a person who is no longer a director or for his heirs.

Subsection (9) authorizes an individual to apply to a court for indemnification or advancement of expenses. It allows for application to be made to the court conducting the proceeding, to the circuit court or to another court of competent jurisdiction. The provision also sets forth the different standards which the court is to apply in determining the individual's right of indemnification.

Subsection (10) and (11) contain definitions. Subsection (10) deals primarily with the definition of a corporation. This subsection clarifies that any reference to a corporation in the statute relates to constituent corporations and succeeding corporations. Subsection (11) provides the definitions for terms such as "other enterprises" which makes it clear that employee benefit plans are included.

Subsections (12) and (13) merely renumber present law contained in s. 607.014(8) and (9), F.S., with no changes made.

Sections 2-7 of the bill provide limited immunity for directors, officers, volunteers and certain other specified individuals performing services for corporations, credit

unions, self-insurance trust funds, and nonprofit organizations.

Current law provides in s. 617.028, F.S., that the indemnification provisions of section 1 of the bill apply to corporations not for profit. Section 2 of the bill revises this section to also include the application of the limitations on liability and ratification procedures created by sections 3 and 4 of the bill. (See explanation of sections 3 and 4 below.)

Section 3 of the bill establishes a threshold of personal liability of directors, officers, and volunteers of a for-profit corporation organized under ch. 607, F.S. The bill provides that such persons are not liable for monetary damages to the corporation or any other person unless the person asserting liability proves by clear and convincing evidence (under current law, the burden of proof would be by "a preponderance of the evidence") that (a) the director, officer, or volunteer breached or failed to perform his duties as a director, officer, or volunteer, and (b) the breach, or failure to perform those duties constitutes one of several specified conditions. These are: (a) a violation of the criminal law, unless the director, officer, or volunteer had reasonable cause to believe his conduct was lawful; (b) a transaction from which the director, officer, or volunteer derived an improper personal benefit; (c) a circumstance under which the liability provisions of s. 607.144, F.S., are applicable (regarding the payment of an unlawful dividend or an unlawful purchase by the corporation of its own stock); (d) in a derivative or shareholder suit, conscious disregard for the best interest of the corporation or willful misconduct; or (e) in a third-party suit, recklessness or willful misconduct.

"Officer" is defined to include persons who are policymakers, and is similar to the definition of "executive officer" contained in the Securities and Exchange Act of 1934.

"Volunteer" is defined as persons performing services for the corporation who do not receive compensation and includes volunteer officers, directors, trustees, and direct service volunteers.

"Recklessness" is defined as the acting, or omission to act, in conscious disregard of a risk:

1. Known, or so obvious that it should have been known, to the director, officer, or volunteer; and
2. Known to the director, officer, or volunteer, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

Section 4 provides a safe harbor for transactions from which the director, officer, or volunteer derived an improper personal benefit and is not intended to be exclusive.

Directors, officers, and volunteers are deemed not to have derived an improper personal benefit if certain directors or shareholders knowingly ratify or approve the transaction, or the transaction was fair and reasonable to the corporation at the time it was authorized by directors or shareholders, notwithstanding that a director, officer, or volunteer received a personal benefit.

Section 5 establishes a threshold of liability for directors, officers, chief operating officers, committee members, executive officers, or volunteers of credit unions organized under chapter 657, F.S. Such persons are not personally liable for monetary damages to any person unless that person proves by

clear and convincing evidence that (a) the director, officer, chief operating officer, committee member, executive officer, or volunteer breached or failed to perform his duties as a director, officer, chief operating officer, committee member, executive officer, or volunteer, and the breach, of failure to perform, constitutes: (a) a violation of the criminal law, unless such person had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful; (b) a transaction from which such persons derived an improper personal benefit; or (c) recklessness or willful misconduct.

Section 6 establishes a threshold of liability for trustees, officers, or volunteers of any self-insurance trust fund organized under the laws of this state. Such persons are not personally liable for monetary damages to any person unless they meet the same conditions for liability imposed by section 5 for directors, officers, chief operating officers, committee members, executive officers, and volunteers of credit unions.

Section 7 establishes a threshold of liability for directors, officers, trustees, members, and volunteers of nonprofit organizations defined as any organization, other than a corporation, that is recognized as a tax-exempt organization under sections 501(c)(3), (c)(4), and (c)(6) of the I.R.C. of 1986. Liability is imposed upon such individuals under the same conditions specified in sections 5 and 6 of this bill.

Section 8 provides an effective date.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Expanded indemnification will be an incentive to directors, officers, employees, agents, and volunteers to continue providing their services to these organizations as it provides one source of reimbursement for them against liability. The public will also derive benefit in that Florida will continue to be an attractive place for corporations to incorporate, reincorporate, and operate. Similarly, the public will benefit because Florida corporations will operate more efficiently and effectively, since directors, particularly outside directors, will find serving on the boards of Florida corporations more attractive and viable.

The tight insurance market for directors and officers (D&O) liability insurance is contributing to the change in the composition of boards of directors. Directors and officers liability insurance premiums increased nationwide an average of 506 percent in 1986, according to a survey of 256 chairmen of Fortune 1,000 companies by Heidrick & Struggles, a Chicago-based executive search firm.

Fewer executives are willing to serve on boards especially at business organizations with inadequate D&O liability coverage. The Heidrick & Struggles study found that corporate officers now account for 33.8 percent of membership of corporate boards, the remaining 8.7 percent is composed of company-affiliated non-management members.

The tight market situation has also resulted in the curtailment of many non-profit programs vitally important to many communities. Failure to resolve the availability and affordability problems in D&O coverage could result in the demise of small non-profit organizations that are unable to attract or keep qualified directors and officers.

The Department of Insurance identifies nine companies who have rate filings with the department for D&O. Of these companies,

at least two had no writings in Florida in 1986, and others were very selective in their underwriting.

This legislation would likely result in a decrease of "corporate flight" that may occur in Florida as corporations choose to reincorporate in other states who have already amended their laws to provide more protection to directors, officers, and volunteers. The Division of Corporations of the Department of State estimates that there are 90,000 new incorporations in the state of Florida each year, and an estimated fee of incorporation would be \$100 for each corporation (the actual amount depends upon the size of capitalization). Costs to the state would be significantly increased if, along with their legal status, corporations also chose to move their corporate offices outside of Florida.

This legislation would likely result in reduced costs and greater availability of directors and officers liability insurance coverage to the extent that the maximum exposure of such persons is reduced.

B. Government:

None.

III. COMMENTS:

At least 18 states have enacted legislation addressing the crisis in director liability and bills have been introduced in more than 15 others. In June, 1986, Delaware, a trend-setter in the area of corporate legislation and the legal home of a great many corporations, was the first state to offer shareholders the opportunity to amend their corporate charters to limit or eliminate a director's personal liability to the corporation or its shareholders for money damages (Del. Code Ann. tit. 8, sec. 102(b)(7) (Supp. 1986)). Since that time, many corporations, including at least one Florida corporation, have reincorporated in Delaware or have announced their intention to seek shareholder approval to do so.

The Delaware legislation was in response to Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985), a case in which the board of directors of Trans Union Corporation were held personally liable for \$23 million, only \$10 million of which was covered by insurance. Heretofore, directors had been shielded from personal liability for damages by the business judgment rule, as courts were unwilling to insert themselves into corporate decision-making. Practitioners in Florida often turn to Delaware case law for guidance in advising clients, because of the relatively few judicial decisions in Florida concerning director liability.

This fear of enormous personal liability, coupled with the reality that directors of public issue companies have a one-in-five chance of being sued, has prompted many outside directors to reevaluate their decisions to serve on boards, and many have resigned from or declined appointment to boards of corporations that do not have adequate liability insurance protection for their directors. In a recent survey of 370 corporate directors by the National Association of Corporate Directors, about one in seven would refuse to serve on any board, be it profit or not for profit, without insurance protection, and approximately 4 percent had already resigned from boards without D&O coverage. Nearly half know colleagues who had refused directorships for lack of D&O coverage.

In a recent study commissioned by Peat Marwick on this issue, nearly 8,000 chief executives and directors in the corporate and not-for-profit sectors were polled, including CEO's of the largest 2,000 U. S. corporations; chairpersons of hospital boards; municipal officials, heads of museums, symphony orchestras, and national voluntary organizations; and university chairpersons and presidents. Overall, nine out of ten respondents believed that

problems in this area are damaging the quality of organizational governance in the United States -- six in ten reported the D&O liability problem was having an impact on the way they manage their organization. Forty-three percent of CEO's indicated that the situation is already of crisis proportions, compared with only 28 percent in the not-for-profit group.

About three-fourths of the sample were companies that carry D&O insurance. Ninety percent of the for-profit companies and 70 percent of the nonprofit sector carry the coverage. About one-third of the sample had seen their own insurance premiums rise over 300 percent on the most recent renewal and most expect more premium increases over the next five years. Only six percent had seen no change in their rates.

Legislation is currently pending in the U.S. Congress to encourage states to enact legislation protecting volunteers of nonprofit organizations from personal liability if the volunteer acts in good faith and in the scope of his duties as a volunteer (S. 929 and H.R. 911, 100th Cong. 1986). According to the bills in Congress, "within certain states, the willingness of volunteers to offer their services has been increasingly deterred by a perception that they thereby put personal assets at risk in the event of liability actions against the organization they serve. Many nonprofit public and private organizations . . . have been adversely affected through the withdrawal of volunteers from boards of directors and service in other capacities."

IV. AMENDMENTS:

None.

As passed by the
Legislature

SB 1096, 963, and 654

Committee Substitute for Senate Bills 1096, 963, and 654 contains measures designed to address the directors' and officers' (D&O) liability insurance crisis. The reforms are intended to ensure the continued service of qualified persons on the governing boards of corporations, associations, credit unions, and self-insurance trust funds.

Section 607.014, P.S., is amended regarding a corporation's ability to indemnify its directors, officers, employees, and agents. The right of permissive indemnification in derivative suits is expanded to include amounts paid in settlement, which in the judgment of the board of directors, do not exceed the estimated expense of litigating the proceeding to its conclusion. The determination of entitlement to indemnification is broadened to include any court of competent jurisdiction. Revised procedures are included for when a corporation may authorize indemnification. In addition to the method whereby a board may vote by a quorum of non-party directors, the board has the option, whether or not a quorum can be obtained, to authorize a committee, consisting of at least two directors who are not at the time parties to the proceeding, to approve indemnification. A corporation may provide a director or officer, in advance of the final disposition, expenses automatically upon receipt of an undertaking by or on behalf of an officer or director that he will repay the amount if it is ultimately determined that he is not entitled to be indemnified. Where advances are made to an employee or agent, the corporation may set other terms or conditions as it deems appropriate. The provisions providing a broader right of indemnification pursuant to bylaw, agreement, vote of shareholders or disinterested

directors or otherwise, is broadened to include advancement of expenses as well as indemnification.

Advancement of expenses is provided in addition to indemnification where it would inure to the benefit of the heirs of a director or officer. A corporation, at the time of authorization or ratification, may limit the extent of indemnification and advancement of expenses for a person who is no longer a director or for his heirs. An individual may apply to a court for indemnification or advancement of expenses.

The legislation establishes a threshold of personal liability of directors of corporations, nonprofit organizations, credit unions (also includes a member of the supervisory committee), self-insurance trust funds, and uncompensated officers of nonprofit organizations recognized under 501(c)(3), (c)(4), (c)(6), and agricultural and horticultural organizations in 501(c)(5), Internal Revenue Code. Such persons are not personally liable to the corporation or any other person for any statement, vote, or decision regarding management or policy of the organization unless they breached their duty as a director or officer (or member of the supervisory committee of a credit union), and the breach constitutes one of several specified conditions. These are: (a) a violation of the criminal law, unless the individual had reasonable cause to believe his conduct was lawful, or had no reasonable cause to believe his conduct was unlawful; (b) a transaction from which the individual derived an improper personal benefit (in certain transactions, individuals are deemed not to have derived an improper personal benefit if the transaction was ratified or approved by certain specified measures); (c) a circumstance under which the liability provisions of s. 607.144, F.S., are applicable (regarding the payment of an unlawful

dividend or an unlawful purchase by the corporation of its own stock); (d) in a derivative or shareholder suit, recklessness or willful misconduct; or (e) in a third-party suit, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The Academic Task Force for the Review of the Insurance and Tort Systems shall study the issue of volunteer services in the state, and shall present a recommendation in its report to the Legislature due no later than March 1, 1988.

Insurers providing coverage for directors' and officers' liability coverage are required to report to the Department of Insurance any claim or action for damages claimed to have been caused by error, omission, or negligence in the performance of the officer's or director's services, if the claim resulted in a final judgment in any amount, a settlement in any amount, and a final disposition not resulting in payment on behalf of the insured. Directors' and officers' liability insurance is added to the lines of insurance which require insurer experience reporting to the Department of Insurance.

Date: May 22, 1987
Revised:
Final: June 16, 1987

Final

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

BILL #: CS/SB 1096 et al. 19 1601
RELATING TO: Liability of corporate directors HB 254
SPONSOR(S): Committee on Commerce, Senator Jennings, and others
EFFECTIVE DATE: July 1, 1987
COMPANION BILL(S): Similar CS/HB 254 et al.
OTHER COMMITTEES OF REFERENCE: (1) _____
(2) _____

I. SUMMARY:

A. Present Situation:

Pursuant to Section 607.014, Florida Statutes, corporations are authorized to indemnify their directors, officers, employees, and agents when the person is a party, or is threatened to be made a party to litigation arising out of the person's service to the corporation. Indemnity must be provided where the person prevails in an action. It may be provided in other circumstances in which it is determined that he acted in good faith and "in a manner he reasonably believed to be in, or not opposed to the best interests of the corporation," or if a criminal act is involved, that he "had no reasonable cause to believe his conduct was unlawful." These determinations may either be made by the board of directors or by the shareholders. Further indemnification may be provided through corporate bylaws or agreements or by shareholders or disinterested directors.

Florida case law has yet to define the parameters of liability of a director of a corporation or similar organization in this state. Presumably, under a theory of negligence, a director could be held personally liable where he failed to take all reasonable and necessary precautions to ensure that any action he took in his role as a director would not result in damage to another. However, it is unlikely that a causal connection could be established where a decision of a director inadvertently resulted in damage and it would be equally unlikely that it could be proven that the consequences of the action were reasonably foreseeable by the director. There appear to be no decisions in this state which have held a director personally liable for simple negligence.

B. Effect of Proposed Changes:

Section 1 of this bill establishes legislative intent, finding that the service of qualified directors is in the public interest and finding a need for the specific delineation of director liability.

Section 2 of the bill establishes limited immunity for the directors of certain nonprofit organizations. Under this section, such directors would be immune from civil liability unless they acted in a reckless manner. The same immunity is also provided for uncompensated officer of the same organizations, since these officers generally have the same duties as directors.

Section 3 of this bill revises current law regarding a corporation's ability to indemnify its directors, officers, employees, and agents. These revisions seek to broaden the corporation's ability to indemnify and to clarify the circumstances under which indemnification can be provided.

The bill expands the right of permissive indemnification in derivative suits to include amounts paid in settlement, which in the judgment of the board of directors, do not exceed the estimated expense of litigating the proceeding to its conclusion. Currently, the law allows the court in which the action is brought to determine that the individual is entitled to indemnification even if liability is imposed. The bill allows not only the court in which the action is brought, but any other court of competent jurisdiction to make the determination.

Revised procedures are included for when a corporation may authorize indemnification. In addition to the current method in which the board may vote by a quorum of non-party directors, the board has the option, whether or not a quorum can be obtained, to authorize a committee, consisting of at least two directors who are not at the time parties to the proceeding, to approve indemnification. The option of obtaining a majority vote of non-party shareholders is still allowed, as is the option of obtaining independent legal counsel. The procedure for selecting independent legal counsel is revised to reflect the addition of the disinterested board committee. Independent legal counsel is only authorized to determine whether the applicable standards of conduct for indemnification have been met. Counsel cannot authorize indemnification.

The bill allows a corporation to automatically provide expenses in defending an action relating to his service as a director or officer to the director or officer, upon receipt of an agreement by, or on behalf of, the director or officer that he will repay the amount if it is ultimately determined that he is not entitled to be indemnified, his expenses in defending an action relating to his service as a director or officer. Current law allows a corporation on a case-by-case analysis to advance expenses upon a promise by the director or officer to repay unless it shall

ultimately be determined that he is entitled to be indemnified. The bill provides that where advances are made to an employee or agent, the corporation may set such other terms or conditions as it deems appropriate.

In addition to the permissive and mandatory indemnification allowed by current law, a corporation is also empowered to make any other or further indemnification for its directors, officers, employees or agents pursuant to a bylaw, agreement, or by a vote of shareholders or disinterested directors. However, no indemnification is allowed against gross negligence or willful misconduct. The bill clarifies that it provides a broader right to the corporation to indemnify than is explicitly provided for in the statute. The bill also expands the non-exclusivity provisions to include advancement of expenses as well as indemnification. The limitation on indemnification and advancement of expenses is changed to reflect the limitations on liability of directors and officers provided in other sections of the bill.

Advancement of expenses is provided in addition to indemnification where it would inure to the benefit of the heirs of a director or officer. Additionally, the bill allows the corporation at the time of authorization or ratification to limit the extent of indemnification and advancement of expenses for a person who is no longer a director or for his heirs.

The bill gives an individual the right to apply to a court for indemnification or advancement of expenses. The provision allows for application to be made to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction.

Sections 4-8 of the bill provide limited immunity for directors of corporations, credit unions, and self insurance trust funds. This immunity is limited to statements, decisions or votes regarding corporate management or policy made at a duly called meeting of the governing board.

Section 4 of the bill amends Section 617.028, Florida Statutes, to extend application of the limitations on liability and ratification procedures created by sections 3 and 5 of the bill to corporations not for profit. Section 5 of the bill would not be extended to the directors of certain corporations appointed by developers, and thus the present law regulating those directors would govern. (See explanation of sections 3 and 5 herein).

Section 5 of the bill establishes a threshold of personal liability of directors of a for-profit corporation organized under Chapter 607, F. S. The bill provides that such persons are not liable for monetary damages to the corporation or any other person unless the person asserting liability proves that (a) the director failed to perform his duties as a director, and (b) the breach, or failure to perform those duties constitutes one of several specified conditions. These are: (a) a violation of the

criminal law, unless the director had reasonable cause to believe his conduct was lawful, or had no reasonable cause to believe his conduct was unlawful; (b) a transaction from which the director derived an improper personal benefit; (c) a circumstance under which the liability provisions of section 607.144, F. S., are applicable (regarding the payment of an unlawful dividend or an unlawful purchase by the corporation of its own stock); (d) in a derivative or shareholder suit, conscious disregard for the best interest of the corporation or willful misconduct; or (e) in a third-party suit, recklessness or willful misconduct. The term "recklessness" is specifically defined.

Section 6 clarifies the specific circumstances under which a director will not be found to have derived an improper personal benefit. However, absence of the circumstances specified does not necessarily mean that a benefit derived by a director was improper.

Section 7 established a threshold of liability for directors and supervisory committee members of credit unions organized under state or federal law. Such persons are not personally liable for monetary damages to any person unless the director or supervisory committee member breached or failed to perform his duties as a director or supervisory committee member, and the breach, or failure to perform, constitutes: (a) a violation of the criminal law, unless such person had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful; (b) a transaction from which such persons derived an improper personal benefit, or (c) recklessness or willful misconduct.

Section 8 establishes a threshold of liability for trustees of any self-insurance trust fund organized under the laws of this state. Such persons are not personally liable for monetary damages to any person unless they meet the same conditions for liability imposed by Section 8 for directors of credit unions.

Section 9 of the bill establishes specific reporting requirements for insurers issuing officers' and directors' liability policies. This information should permit the Department of Insurance to better comprehend the extent of liability being imposed in Florida on officers and directors. The information would be included in the department's annual report.

Section 10 of the bill amends Section 627.915, Florida Statutes, to require insurers issuing officers' and directors' liability insurance to file the same information presently required concerning loss experience and other experience in the lines of products liability, commercial automobile liability, and similar liability lines.

Section 11 of the bill clarifies that this legislation is not intended to increase or decrease the present liability of persons other than those covered by the bill. Thus, the liability provisions are not to be interpreted as altering the present

standards for liability of officers (other than uncompensated officers covered under Section 2 of the bill), employees, agents, or volunteers, except to the extent such persons are sued for actions taken in their capacity as directors.

Section 12 of the bill directs the Academic Task Force for the Review of Tort and Insurance Systems created in the Insurance and Tort Reform Act last year to study the issue of liability of volunteers and to report to the Legislature on any manner in which the liability of those volunteers might be constitutionally limited or insurance laws be changed to provide relief to volunteers.

II. ECONOMIC IMPACT:

A. Public:

This legislation would require certain insurers to provide further reporting information to the Department of Insurance. To the extent that premiums may be excessive, these requirements could result in lower premiums to certain corporations.

B. Government:

This legislation could result in minimal additional expenditures by the Department of Insurance in printing its annual report.

III. STATE COMPREHENSIVE PLAN IMPACT:


This bill appears to be consistent with promoting economic development. Section 187.201, (21), Florida Statutes.

IV. COMMENTS:

None.

V. AMENDMENTS:

None

VI. PREPARED BY: Thomas R. Tedcastle 

VII. STAFF DIRECTOR: Richard Hixson 

Samuel R. Young, Jr.
Boca Raton, Florida
April 2, 1987

19 1601
HB 254

GOVERNING WITH CARE

Corporate governance has become a subject of widespread interest and of considerable debate. [1] Board composition, particularly the merits of including outsiders, was discussed throughout the 1970's and continues to attract attention. [2] The greatest interest of late, however, has been focused on the directors' duty of care. [3] The attention given the subject in the press is manifest in reports with headlines such as "Director Insurance Drying Up" or "The Job Nobody wants". [4]

The news, of course, is that knowledgeable outside (i.e. non-management) directors have resigned from or declined appointments to the boards of companies that fail to secure adequate liability insurance protection for their directors. [5] Articles in business publications, which with few exceptions have not been critical of the directors' decision to resign, have attempted to explain the problem by pointing out that directors of public issue companies have a one-in-five chance of being sued [6] and, frequently, by reciting the results of *Smith v. Van Gorkom*. [7] Not wishing to appear total cowards, the resigning directors often suggest, parenthetically, that directorships have become more time consuming than in the past and are taking too much time away from their own businesses.

HOW WELL DO WE UNDERSTAND THE PROBLEM?

Service on the board of a company with a history of shareholder hostility and nearing bankruptcy may carry an unacceptable level of risk, regardless of the availability of D&O insurance protection. The explanation for a director's decision to resign or to decline an appointment may have nothing to do, however, with the company, its shareholders, or the quality of its board. The director's reasoning might go something like this: "If an insurer will not provide directors' and officers' liability insurance or will provide the coverage only under substandard conditions, the company's board is at risk; and a company whose directors accept so miserable a risk has fools for directors."

Considering the reported increases in directors' and officers' liability insurance premiums[8], a company's failure to secure liability insurance protection for its directors could be simply the product of an informed business decision by a majority of the board of directors. After weighing the facts, a board might well have determined that the company's circumstances do not justify its paying what the board considers excessive policy premiums, or the board might have concluded that the liability insurance offered (at a higher premium) does not provide the protection needed, particularly if the policy includes new limitations and important exclusions. The board may have considered also the possibility that the policy would be terminated by the insurer just when its protection is most needed.[9]

A company's inability to obtain directors' liability insurance, on the other hand, could stem from factors entirely beyond its control, such as a lack of underwriting capacity or an affirmative decision by insurers to make no further commitments in the company's trading area or its industry segment. Finally, insurance companies are no less infallible in their underwriting decisions than some directors feel courts are in reaching their determinations of director due care.[10]

IT IS UNLIKELY THAT A DIRECTOR WILL BE HELD IN VIOLATION OF HIS DUTY OF CARE.

It can be argued, persuasively, that a competently organized, well-informed board is extremely unlikely to be found in breach of its duty of care. The directors may need to take advice from counsel, the independent auditor, investment bankers, and experts in other fields, and they may wisely engage in some task oriented planning and establish protocols for handling their most sensitive matters, but they should be able to survive attack.[*] History supports that conclusion: "Since the turn of the century there have been only thirty or so cases reflected in appellate opinions - almost invariably involving egregious facts - where directors or officers have been found to violate duty of care obligations." [12]

SO, WHY HAVEN'T INFORMED DIRECTORS AND INSURERS BEEN PERSUADED?

The obvious answer is that the defense of shareholder derivative actions is an expensive, time consuming matter. And the dearth of litigated judgments against directors has not tempered the zeal of hostile shareholders and their

[*] The directors would wish to have available, however, adequate financial resources (e.g., corporate expense advancement) to defend against any suit brought against them. [11]

counsel. [13] The potential for enormous money judgments in shareholder derivative suits, notwithstanding the odds, serves as a leverage in the hands of the complaining party to negotiate a favorable settlement in what may be a non-meritorious cases. [14]

A specific contributor to the directors' perception of unacceptable risk and the D&O insurers' reluctance to write agreeable and affordable liability policies is the problem that boards have had in dealing with hostile takeover contests. Directors confront potentially staggering personal liability, and liability insurers expect to bear claims at policy limits. [15] Insurers, moreover, understandably lack confidence in their ability to rate takeover risks. Even Ivan Boesky needed help. And it may be even more difficult for insurers to predict how the board of directors will respond in a hostile takeover situation, particularly since it remains somewhat unsettled just how the board's response will be evaluated. [16]

A number of directors who have resigned from boards or declined appointments have stated, as indicated earlier, that board service has become more work (that is, more time consuming) than in the past. [17] The increased time commitment is required, in part, by the demands of the rapidly changing commercial and financial environment in which today's boards labor. It should surprise no one, however, that directors are also devoting some extraordinary attention to detail, form, and process (which may not be the most productive utilization of their time and skills) with the hope of avoiding personal liability. [18]

THE DIRECTORS' LAMENT.

Shareholders are entitled to complain, certainly, if the board or an individual director improperly enriches himself. The miscreant directors should be required to make restitution and, in some instances, suffer punitively. It is not so obvious, however, that an elected shareholder representative should be held to unlimited personal liability for the quality of care, or lack thereof, taken in his business decisions.

A director may be thrown out of office by those dissatisfied with his performance and, if appropriate, held up for ridicule. But he should not be held personally accountable for "honest" mistakes or asked to guarantee the correctness of his decisions if someone else concludes that he did not exercise the requisite care -- unless that is the contract upon which he has accepted his position.

Many directors have belatedly recognized that in accepting their positions they have, indeed, entered into just such a contract. The loss of directors' liability insurance has, in any event, reminded them that the potential liability is staggering.

Directors, particularly independent outsiders, are saying now that they no longer wish to enter into such a contract. Whatever the standard by which their actions will be judged, courts are not infallible (nor are directors), and the directors who do not depend upon the corporations on whose boards they serve for their livelihoods do not wish to become embroiled in a controversy concerning their performance, much less one regarding the requisite standard of care.

WHO NEEDS THE SWORD.

There are other more important influences on a director's exercise of due care than the threat of personal liability. In the first instance, shareholders can replace a director who does not meet their expectations. If he is not doing his job or the job they want him to do, they do not need to re-elect him. And if he is doing a truly miserable job, shareholders should not wait for the next annual meeting to do something about the problem.

In the case of the truly miserable director, the Sword of Damocles -- i.e., unlimited personal liability for the director's failure to exercise due care -- is probably meaningless. Action should be taken immediately, as the Sword will not fall without exhaustive judicial process. The court in such cases must determine as a matter of fact that the director failed to exercise the requisite care and, further, that it was the director's failure that was the proximate cause of the corporation's loss.[19]

A director selected for his business acumen and a record of success in his chosen field can be expected to guard carefully his reputation. The most significant deterrent to poor performance for such individuals is peer pressure, for their failure would be held up to ridicule. An individual prepared to disregard such censure callously is unlikely to be a good director, and he would not be suffered long by a competent board.

Those who do not feel that peer pressure is enough to motivate directors to perform their duties with care might consider a more conventional method of motivating business performance -- compensation. One possible compensation arrangement, stock options, provides an added incentive for directors to look after the affairs of the corporation and, further, fosters a greater mutuality of interest between shareholders and their directors. Many shareholder activists have emphasized that substantial stakeholders (owners) make the best directors, particularly if such directors are not also managers or otherwise benefiting from corporate activity except in respect to their shareholdings.

If all else fails, the market for corporate control disciplines directors. Within that market, poor performance will be noted, and a change of control will take place. The

new owners can be expected to replace the board and, generally, a substantial number of managers.

State law, finally, is only part of the regime holding a director's "feet to the fire". If a director acts intentionally, knowingly, or recklessly in a manner that injures others in connection with a securities transaction, for example, he risks liability under the federal securities laws.

STATE CORPORATION LAWS PROVIDE LITTLE PRACTICAL GUIDANCE TO DIRECTORS.

State corporation statutes are largely enabling laws rather than substantive or regulatory. They set forth the fundamental aspects of the contract among shareholders and their corporation and permit considerable flexibility in such matters as purpose, capital structure, and internal organization (including board organization, policy, and procedure). And it is unlikely that state legislatures could satisfactorily do much more. Specific, mandatory provisions often do not produce the intended effect or survive the test of time, and restrictive provisions are easily avoided by a corporation's moving to a more friendly domicile. [20]

Apart from assigning the board of directors several tasks such as electing officers, declaring dividends, and approving mergers, state corporation statutes say very little about the duties of the directors. It is clear, however, that there is a fundamental role for the board that arises independent of the enumerated tasks reserved to it. [21] The Corporate Director's Guidebook suggests that the fundamental role of directors is to

- review and confirm basic corporate objectives
- select competent senior executives and monitor personnel policies and procedures ...
- review the performance of the senior managers ... and of the enterprise. [22]

Florida Statutes Section 607.111(4), adopted in 1975 from Section 35 of the Model Business Corporation Act, sets forth the standard of care by which Florida directors are supposed to discharge their duties. There it is stated that a director should perform his duties

- in good faith,
- in a manner he reasonably believes to be in the best interest of the corporation, and
- with such care as an ordinary prudent person in a like position would use under similar circumstances.

A director can take some comfort in the knowledge that if he satisfies that standard of conduct he will have no liability by reason of his serving as a director. Florida Statutes Section 607.111(7). It is left to the discretion of the directors, however, to determine just how they will satisfy the standard.

What is not often considered in this context is that the corporation (or the board) itself can impose additional obligations on directors, [23] and that the functions and obligations of the board and individual directors may change over time to reflect new commercial or internal circumstances. [24] Fear of increasing the risk of personal liability, accordingly, could cause directors to avoid such corporately imposed obligations; the directors might intentionally limit their role to that expressly required by statute and applicable case law authority. The shareholders, as well as employees and other constituencies, would be the losers.

A NOTEWORTHY SOLUTION.

Delaware passed legislation, effective July 1, 1986, [25] that permits its corporations, subject to shareholder approval, to limit or eliminate the personal liability of directors for monetary damages should they breach their duty of care. The law does not shield directors, however, from liability for breaches of the duty of loyalty, for bad faith, intentional misconduct or knowing violation of the law, for obtaining improper personal benefit, or for approving an unlawful payment of dividend or stock repurchase. No damage has been done, moreover, to the availability of equitable remedies, such as an injunction or rescission.

The Delaware response to the boardroom exodus is noteworthy, if for no other reason, because 40% of the companies listed on the New York Stock Exchange and about half of the Fortune 500 companies are incorporated in Delaware. Approximately 36% of the publicly held, non-financial corporations based in Florida, moreover, are incorporated in Delaware. [26]

A number of corporations had submitted charter amendments to shareholders implementing the change in the Delaware corporation law by Fall, 1986. Shareholders gave their approval, in some instances, by substantial margins. It is anticipated that many more Delaware corporations will submit charter amendments to their shareholders in 1987. Companies not incorporated in Delaware, moreover, are considering re-incorporating in that state (or, perhaps, in one of the several other states whose legislatures have amended their corporation laws to provide even more protection to directors.) [27]

The purpose of the new Delaware legislation is to assist companies incorporated in that state in attracting and retaining highly-qualified individuals to serve on their boards of directors. And, quite clearly, the new law is a legislative response to changes in the market for directors' liability insurance. [28]

There are a number of other benefits that may obtain for those companies whose shareholders approve duty of care amendments either limiting (i.e., placing a ceiling) or eliminating directors' liability for money damages:

1. The leverage a plaintiff may sometimes have to negotiate a favorable settlement in an otherwise non-meritorious case because of the defendant directors' extremely high potential liability is eliminated.

2. The cost of liability insurance should be reduced to the extent that the maximum exposure of the defendant directors is reduced.

3. The standard of care may be more evenly and appropriately implemented by courts when the potential penalties are not perceived as Draconian.

4. Since most liability insurance policies exclude liability based on self-dealing, there are indications that the parties to a derivative action may sometimes agree to characterize a settlement as based on a duty of care theory in order to have recourse to the insurance policy. A limit on the liability for duty of care violations would remove the incentive for such fictions.

5. Directors free of the threat of extremely high personal liability will avoid excessively risk-averse decisionmaking, benefiting both shareholders and the corporation. [29]

Some objections to the Delaware remedy should be considered. [30]

First, the alternatives to the Sword of Damocles (i.e., shareholder vote, peer pressure, conventional performance motivation techniques, and the market for corporate control) do not satisfy all those who feel that directors free of personal liability may ignore their duty of care responsibilities or are more likely to do so. The answer to those individuals, if any is to be found, is to amend the measure of damages, lifting the chilling effect of unlimited liability and in its place instituting a measure of potential liability more commensurate with the benefit received by the directors for board service. The Delaware statute, of course, permits shareholders to limit the liability as an alternative to eliminating the liability entirely.

A formula that has been considered for limiting monetary damages is one that would hold directors personally liable for no more than the amount of annual compensation (or a multiple thereof) that they receive from the corporation. Without further restrictions, such a formula would hold inside (management) directors liable for greater monetary damages than outside directors. And inasmuch as inside directors commit more

time to the affairs of the business and may be expected to be better (or, certainly, more broadly) informed about the business, their greater exposure to monetary damages may be acceptable to them and may be reasonable from a policy perspective. The measure of damages could be skewed, however, to influence board composition; that is an approach that is not encouraged by this writer. ?

The principle justification for limiting the liability of corporate directors is to make it possible for corporations to attract and retain highly-qualified outside directors, as opposed to directors generally. That appears to be implicit in many discussions of the matter, and insiders do appear to be more willing to accept the risk of personal liability. Matters other than relative risk-aversion, however, should determine board composition. Without remedial action, boards of directors will increasingly be composed of insiders. Remedial action, if taken, on the other hand, should not chill insider participation on boards if that participation is in the best interest of the corporation as determined by shareholder vote. [31]

A second objection is that once implemented the shareholders will be stuck for all time with a charter amendment that they never understood in the first place. That objection could be remedied by requiring shareholders to reaffirm annually their desire to release directors from personal liability for duty of care violations.

The composition of the board is left to the voters -- that is, to the shareholders of the corporation. They can elect virtually anyone they choose. It is an election, however, in which they should (be able to) exercise the same degree of care that they expect the directors to exercise on their behalf.

A shareholder who does not exercise care in the selection of directors or is otherwise indifferent about the board and its role deserves what he gets. He should not be entitled, in any event, to the Sword of Damocles.

Shareholders who are denied the opportunity to exercise care in the selection of the corporation's directors, on the other hand, just might be entitled to the Sword. Any limitation of directors' liability for the breach of the duty of care, accordingly, might be conditioned upon the (complaining) shareholder's having been able to exercise due care in the selection of directors. For example, any amendment to the charter limiting or eliminating the personal liability of directors for breach of their duty of care might be conditioned upon approval by a majority of each class of shareholders, particularly in those instances which equity is held by non-voting stockholders.

The third objection is that the remedy does not solve the problem, i.e., a short term crisis in the liability insurance

market does not warrant eliminating personal liability for breaches of the duty of care. That the inability of corporations to secure satisfactory liability insurance coverage for their directors has caused considerable turmoil seems incontrovertible.[32] The long-term effect of the problem is less clear,[33] but the potential for a serious deterioration in the quality of corporate governance is a real, practical concern. It has been the intention of this writer demonstrate that -- whatever the state of the liability insurance market -- there are sound policy justifications for limiting or eliminating monetary damages for breaches of the duty of care that are not contingent on the status of that market.

GOVERNING WITH CARE

FOOTNOTES

1

The scrutiny began, perhaps, with the collapse of Perini Central in the early 1970's. See M. Eisenberg, *The Modernization of Corporate Law: An Essay for Bill Cary*, 37 U. Mia. L.R. 187, 209 et seq. (January 1983).

The spirit of the debate quickened considerably when the American Law Institute (ALI) began its review of corporate governance in 1978 and, certainly, following its first published drafts in 1981 of what is now call Principles of Corporate Governance: Analysis and Recommendation, referred to hereinafter as "Principles".

2

In the case of corporations whose securities are traded on the New York and American Stock Exchanges, the issue is moot. The exchanges require listed companies to have at least two directors on their boards who are neither present nor former employees and free of any relationship that would interfere with the exercise of independent judgment. It is anticipated, moreover, that companies whose shares are traded in the NASDAQ - National Market System will soon be required to satisfy a similar requirement.

3

"The duty-of-care area, long dormant, has come dramatically alive during the last several years," citing *Francis v. United Jersey Bank*, 87 N.J. 15, 432 A. 2d 814 (Supr. Ct. 1981), and *Joy v. North*, 692 F.2d 880 (2d Cir. 1982), cert. denied *Citytrust v. Joy*, ___ U.S. ___, 103 S. Ct. 1498 (1983). Cary and Eisenberg, *Cases and Materials on Corporations*, 1984 Supplement, p. 45. The subject has drawn even more attention following *Smith v. Van Gorkom*, discussed at Note 7 below.

The *Corporate Director's Guidebook*, 33 Bus. Law. 1591, at 1599-1600 (1978), distinguishes between the duty of care and the duty of loyalty as follows:

"I. Duty of Loyalty

By assuming his office, the corporate director commits allegiance to the enterprise and acknowledges that the best interests of the corporation and its shareholders must prevail over any individual interest of his own. The basic principle to be observed is that the director should not use his corporate position to make a personal profit or gain other personal advantage....

II. Duty of Care

In addition to owing a duty of loyalty to the corporation, the corporate director also assumes a duty to act carefully in fulfilling the important tasks of monitoring and directing the activities of corporate management."

4

"The Job Nobody Wants", Business Week, September 8, 1986, p. 56; "Director Insurance Drying Up", New York Times, March 7, 1986, p. D-1; E. Andrews, "Keeping Directors Aboard", Venture, June 1986;

5

Of 370 respondents to a recent National Association of Corporate Directors survey, representing 1,223 board seats, only 89 (24% of respondents) were willing to serve on boards without D&O liability insurance coverage; 170 (46% of respondents) reported that they were acquainted with colleagues who had refused directorships for the lack of D&O liability insurance, and 58 (16% of respondents) had similarly refused to serve; 13 (4% of respondents) stated that they had resigned from boards with no D&O coverage. Report of the NACD Blue Ribbon Panel on the Directors and Officers Liability Crisis, October 20, 1986; referred to hereinafter as "NACD Survey".

6

Baum, "The Job Nobody Wants," Business Week, Sept. 8, 1986, at 56.

7

The board of directors of Trans Union Corp. were found personally liable for their rather hasty approval of the acquisition of their corporation by the Pritzker's Marmon Group. They were held personally liable for \$23 million, only \$10 million of which was covered by insurance.

The case, *Smith v. Van Gorkom*, 488 A. 2d. 858 (Del. Supr. 1985), has been criticized by commentators, but any director familiar with the case who has not re-evaluated his role, regardless of how diligently he has performed in the past, has nerves of steel.

The ten Trans Union directors were experienced businessmen who had served on the board of Trans Union, collectively, for 121 years. Four of the five outside directors, moreover, were chief executive officers of companies as large as Trans Union, and the fifth outsider was a prominent business professor and mathematician. What they did was approve a cash-out merger that gave shareholders a substantial premium (of approximately \$17 per share, or 40%, based upon the highest price at which the

shares had traded over the preceeding nine months) without locking behind the proposal, relying instead upon the sketchy oral presentation made by the chairman, Van Gorkom. The transaction was not hostile, but the acquirer demanded that the board reach a decision quickly.

The Supreme Court of Delaware, applying a gross negligence standard, held that the directors "breached their fiduciary duty to their shareholders ... by their failure to inform themselves of all information reasonably available to them and relevant to their decision to recommend the Pritzker merger [to shareholders]." 488 A. 2d at _____. There were no allegations of fraud, bad faith, or self-dealing.

The Trans Union directors, as portrayed in Van Gorkom, rubber-stamped the chairman's program and were not as qualified and well informed as the defense averred and Justice McNeilly, dissenting, perceived.

"Directors of this caliber," Justice McNeilly wrote, "are not ordinarily taken in by a 'fast shuffle'. I submit they were not taken into this multi-million dollar corporate transaction without being fully informed and aware of the state of the art as it pertained to the entire corporate panorama of Trans Union. *** These men knew Trans Union like the back of their hands and were more than well qualified to make on the spot informed business judgments concerning the affairs of Trans Union including a 100% sale of the corporation. *** " 488 A. 2d at _____.

8

John B. Foley, Chairman of the NACD Blue Ribbon Panel on the Directors and Officers Liability Crisis, in remarks before the NACD Annual Meeting, October 20, 1986, stated that "companies can expect to see near term increases in D&O premiums of 10%-20% on top of last year's increases of 500% to 1,000%."

9

In the recent NACD Survey, 109 respondents (29% of the total) reported that their D&O insurance had been cancelled or not renewed within the past twelve months, and 166 (45%) said that additional exclusions had been incorporated into their policies. Of 70 respondents who had submitted claims to insurers, 23 reported that after submission of claims, insurers attempted to cancel coverage or add exclusions for the coverage on which the claims were based.

In *Unocal Corp. v. Harbor Insurance Co.*, No. C-550-393 (Calif. Superior Court, Los Angeles Cty, filed June 4, 1985), Unocal's directors and officers sued their D&O carrier for cancellation of their coverage after T. Boone Pickens announced (in a 13-D filing) that his Mesa Partners had acquired 7.9% of Unocal's shares.

10

It is instructive to note that D&O liability insurers have begun looking more closely at board composition and, specifically, at the outside directors. Boards or individual directors that meet standards established by insurers (e.g., not prone to litigation) may be offered better premium terms or policies with fewer exceptions and exclusions. If that is true, it suggests that insurers believe a competently organized board can be expected to conduct its affairs without violating the duty of care or, perhaps, in a manner that is less likely to draw the directors into court. See "A Plague of Lawyers, Being Sued Is Still Corporate Directors' No. 1 Worry", *Barron's*, November 17, 1986.

I spoke recently to a knowledgeable insurance executive who confirmed that data is being accumulated that is meant to identify directors most prone to litigation, but he cautioned that the ability of insurers to underwrite on the basis of such information would not help the vast number of smaller corporations or lesser known directors on whom it would be prohibitively expensive to gather such information.

11

Apparently irritated by the lament of directors unable to obtain adequate liability insurance protection and, perhaps, frustrated from grappling with the insurance industry, at least one commentator has suggested that we would do well to eliminate directors' liability insurance as we know it today and to insure directors against only the cost of defending frivolous suits, i.e., those that directors successfully defend. In such a regime, it is argued, there would be no cash settlements - as they would have to be paid by directors personally, and, further, this would tend to discourage all but the most ardent plaintiffs. And directors would win those suits unless they were "grossly negligent." The tag line is that directors should be willing to bear the risk of losing. Commentary by Christopher Farrell, *Business Week*, September 8, 1986, at 61.

"Gross negligence" was the liability threshold applied by the Supreme Court of Delaware in *Smith v. Van Gorkom*, Note 7 above, for determining whether a business judgment reached by the board was an informed one.

12

Principles, Tentative Draft No. 4 (April, 1985), Comment "h" to Section 4.01(a), p.28. A similar conclusion was reached by Bishop, "Sitting Ducks and Decoy Ducks: New Trends in Indemnification of Corporate Directors and Officers," 77 *Yale L.J.* 1078, at 1093 (1968):

" The search for cases in which directors of industrial

corporations have been held liable in derivative suits for negligence uncomplicated by self-dealing is a search for a very small number of needles in a very large haystack. Few are the cases in which stockholders do not allege conflict of interest, still fewer those among them which achieve even such partial success as denial of the defendants' motion to dismiss the complaint. Still, it cannot be denied that there is a small number of relatively recent cases which do seem to lend a modicum of substance to the fears of directors of industrial or mercantile corporations that they may be stuck for what they like to call 'mere' or 'honest' negligence."
(footnotes omitted)

13

The perception of unacceptable risk persists and will not pass quickly. As compared with five years ago, 183 (49%) of the respondents to the NACD Survey felt it was far more likely that they would become involved in a suit in today's business environment. Thirty percent of the respondents reported that they currently serve on boards that have been involved in suits against directors; 65 (18%) reported having been named as defendants.

14

"[T]he potential damages are often likely to be higher in due care cases than in cases of a willful breach of the duty of loyalty, where defendants generally only have to make restitution." Principles, Discussion Draft No. 6 (October, 1986), Comment "c" to Section 7.17, at 225. The measure of damages (i.e., the full corporate loss and injury to the corporation) for the breach of the duty of care, moreover, bears no relation to the compensation that the directors receive for board service. See H. Henn and J. Alexander, *The Laws of Corporations and Other Business Entities*, Section 373, p. 1096 (3rd Ed. 1983).

15

The average claim submitted to insurers by the 70 director/respondants to the NACD Survey who reported submitting claims was \$4.8 million; perhaps not coincidentally, the average policy limit was also \$4.8 million.

16

There are countless recent articles on the subject of hostile takeover bids in both business and legal journals. See ABA Committee on Corporate Laws, Guidelines for Directors: Planning for and Responding to Unsolicited Tender Offers, 41 Bus. Law. 209 (November, 1985), as revised and approved (41 Bus. Law. 1341, August 1986).

17

See B. Smith, *Corporate Governance: A Director's View*, 37 U. Mia. L. R. 273, 278-279 (Jan. 1983).

18

In its most recent proxy statement, Citicorp advised its shareholders that their approving an amendment to the charter eliminating directors' liability for due care violation (per the new Delaware statute, discussed at Note 25 below) would allow the "directors to continue to spend their time, efforts and talents on directing and managing the business of the Corporation for the benefit of its shareholders rather than having to act defensively out of concern over the cost of potential personal litigation." Citicorp, Notice of 1987 Annual Meeting of Stockholders and Proxy Statement, at p. 30.

19

Francis v. United Jersey Bank, 432 A.2d 814, 829 (N.J. 1981).

20

See R. Garrett, The Limited Role of Corporate Statutes in Commentaries on Corporate Structure and Governance, 95 (D. Schwartz ed. 1979).

21

See Principles, Tentative Draft No. 2 (April, 1984), Section 3.02; M. Eisenberg, The Modernization of Corporate Law: An Essay for Bill Cary, 37 U. Mia. L. R. 187, 204-205 (January, 1983).

22

Corporate Director's Guidebook, 33 Bus. Law. 1591, (April, 1978).

23

See N. Latin, The Law of Corporations, Section 78 at 279-80 (2d ed. 1971) and cases cited therein for authority.

24

See Principles; Tentative Draft No. 4 (April 1985), Reporter's Note 8 to Section 4.01(a) for authority.

25

Amending Sections 102 and 145, Title 8, Delaware General Corporation Law.

26

That approximation is based upon a personal review of 95 Florida-based, non-financial public companies.

27

This writer is aware of several Delaware corporations based in Florida that have amended their charters and of at least one former Florida corporation that has reincorporated in Delaware.

28

Legislative history to recent Delaware legislation.

29

Excerpted from Principles, Discussion Draft No. 1 (June, 1985), comment "h" to Section 7.16, especially at p. 204. The enumerated benefits should inure also to the corporations of other states, such as Indiana, that have restricted due care liability.

30

See Director's Monthly, October, 1986, p. 13.

31

Factors peculiar to the corporation that influence board composition include special shareholder interests and the production, marketing, and financial requirements of the business. The participation of independent outsiders on the board should satisfy some of those needs. Their participation is thought also to foster investor confidence, to lend added credibility to the actions of the board, and to enhance the ethical perspective of the corporation.

32

Business Week in the article cited at Note 4 above, for example, reported ten instances of mass resignations of outside directors from boards since 1984 because of the respective corporations' inability to secure liability coverage.

33

So far as I know, no company has lost its NYSE listing as a result of its inability to secure the services of independent directors. An American Stock Exchange company that had reportedly lost all of its outside directors (i.e., Seisoom Delta Inc., reported in the Wall Street Journal, June 2, 1986) has been dropped from the exchange, but according to an exchange official with whom I spoke on December 12, 1986, the company's listing was canceled because of other problems.

Directors & Officers Insurance

THE PROBLEM = Unavailability and unaffordability of D & O insurance.

19

(100)
11/13/84

WHY THE PROBLEM EXISTS = Insurers are reluctant to offer coverage because the current negligence standard, which is vague and subject to broad (and unreasonable) interpretation, does not permit them to accurately identify their potential risks, and thereby subjects them to unanticipated losses.

THE RESULTS OF THE PROBLEM = For-profit and not-for-profit corporations and organizations are finding it increasingly difficult to retain and recruit top-quality officers, directors, and volunteers. As a result, the ability of Florida businesses to maintain their competitive edge and the ability of Florida non-profit organizations to maintain their efficient operations are being jeopardized.

THE SOLUTION = Legislation which delineates the parameters of appropriate conduct by officers, directors, and volunteers will induce insurers to return to the market because they will be better able to determine their risk of loss.

LEGISLATION

A. WHAT IT DOES:

In a nutshell, the proposed legislation provides that a director, officer, or volunteer of a for-profit or not-for-profit corporation or organization is liable to an injured person only if that injured person proves by clear and convincing evidence that the officer, director, or volunteer failed to perform his or her duties as an officer, director or volunteer and:

- a) (in shareholder suits) acted in conscious disregard of the best interest of the corporation or acted with willful misconduct; or
- b) (in third party suits) acted recklessly or with willful misconduct; or
- c) was convicted of a criminal offense; or
- d) derived an improper personal benefit; or
- e) made an improper distribution of assets or dividends under s. 607.144, F.S.

B. WHAT IT DOES NOT DO:

The proposed legislation does not limit the right or ability of any injured person to sue the corporation, to sue the officers, directors or volunteers for equitable or injunctive relief, or to sue the officers, directors, or volunteers for willful, reckless, or criminal wrongdoing.

Directors & Officers Insurance

The commercial liability insurance market has been extremely tight during the last several years. While this market appears to be loosening, with rates somewhat stabilizing and availability increasing, one line of commercial liability insurance remains a problem: directors and officers liability insurance.* Below are identified the issues surrounding proposed legislation addressing the "crisis."

1. Unavailability and Unaffordability of D & O Insurance.

A nationwide poll of 41,000 companies with annual sales ranging from \$250,000 to \$60 million conducted by Growth Resources, Inc. in late 1986 revealed that:

a) only 31% of small companies provided liability coverage for their directors and officers, down from 41% in 1985;

b) 2/3 of the companies that bought D & O insurance in 1986 reported cost increases averaging 400%;

This unavailability and unaffordability of D & O coverage forced 20% more outside directors to resign from U.S. corporate boards in 1985 than in 1984. (Business Insurance, 1/27/86, p. 62).

2. Why the D & O Situation Exists

There are a number of factors that have contributed to cause the D & O crisis, including reluctance by reinsurers to underwrite D & O coverage, the dramatically increasing number of complex corporate mergers, restructurings, and takeovers, the tight commercial liability insurance market generally, the D & O insurance long tail (average 6.6 years to resolve a D & O claim), expanding concepts of negligence which form the basis for D & O suits, previous cash flow underwriting by commercial insurers, the perception of the director or officer as another "deep pocket" for recovery, the 1985 U.S. Supreme Court case allowing RICO treble damages against legitimate business, and an escalating number of lawsuits.

A number of commentators lay the major blame for the crisis on the last factor cited, the escalating number of lawsuits. Statements of these individuals can be provided.

* This white-paper addresses only directors and officers of for-profit and not-for-profit corporations and organizations. Also addressed in _____ are volunteers, who are experiencing many of the same problems as directors and officers. The situation as it applies to volunteers will be addressed in a subsequent white-paper.

3. What problems is the D & O crisis causing the corporate community?

The vitality of our business community is largely due to the quality of corporate directors and officers who set policy and goals intended to make our businesses the most competitive in their respective markets. The D & O crisis is diminishing the ability of businesses large and small to recruit and retain quality officers and directors. Without the experience, wisdom, and insight that these quality people can provide, the ability of our businesses to successfully compete with other state and international businesses is itself diminished.

- a) In a poll conducted by Touche Ross, 1,100 directors (3/4 of whom sit on the boards of companies with sales and assets exceeding \$1 billion), 93% of the respondents believed that increased liability will continue to lead to problems in recruiting talented, experienced people to serve on boards in the future.
- b) A study of 600 major corporations by Korn/Ferry International in 1986 showed that:
 - 62% of the CEOs said they are reducing the number of boards on which they sit;
 - 96% indicated they will reduce the number of directorships they will accept in the future.
- c) For the first time since 1979, the percentage of outside directors on boards of the nations largest industrial and non-industrial organizations decreased, from 63.2% in 1985 to 57.7% in 1986 (Director's Monthly, 2/87, p. 14).

4. What can be done to solve the D & O crisis?

Corporations are diligently attempting to ameliorate this situation by self-insuring, engaging "advisory committees" to counsel their boards on corporate issues, more closely scrutinizing management performance, improving the depth and delivery of management information to the board, adding new board members with specific expertise or experience, bringing in outside experts to render advise on specific issues, and formulating conflict of interest policies.

In addition, the Florida Legislature took definitive action broadly addressing commercial liability insurance, in general, in 1986. The legislation (Ch. 86-160, Laws of Florida) appears to be having, at least on a preliminary basis, a positive impact on commercial liability insurance rates.

While all of these "solutions" are working together to (hopefully) reduce insurance rates, there is one additional solution that will have the greatest positive impact: legislation.

5. Why is legislation needed?

That the crisis exists is almost indisputable. Its roots can be found in the factors identified above. However, the most important factor is one not yet mentioned, the vague standard by which officers and directors must conduct their actions. The two statutes specifying the standard of conduct for corporate directors (there are no such statutory standards for officers) are ss. 607.111 and 607.144, Florida Statutes (copies attached). Section 607.111 is the primary statute. It basically applies a negligence standard to directors actions. Herein lies the main reason for the D & O crisis.

What is negligence? No one really knows. It is a concept that has served our civil justice system well, but which has been broadly expanded beyond what many observers deem reasonable in the context of liability for actions taken by directors and officers.

The doctrine of "negligence" is subject to broad interpretation, covering actions never intended to be covered by insurers. As a result, insurers have either stopped writing D & O coverage or are charging premiums for such coverage which are based upon the fact that "negligence" is an open-ended concept. Legislation to more accurately identify the responsibilities of officers and directors will remove the "open-endedness" of the current system and thereby influence insurers to begin offering D & O coverage at affordable rates. Basically, expressly spelling-out this standard of care will enable insurers to more definitively determine their risk of loss and to accurately set their premiums, thereby resulting in more affordable and available insurance.

6. What does this proposed legislation do?

This proposed legislation does 3 things. It:

- 1) streamlines the indemnification provisions, and makes them consistent with the new liability provisions;
- 2) raises the burden of proof in suits against officers and directors, primarily to discourage the bringing of frivolous claims; and
- 3) spells-out the standard of conduct applicable to officers and directors.

This proposed legislation does not in any way limit the rights of injured persons to sue the officer or director, to sue the corporation, or to obtain injunctive or equitable relief from a court.

In a nutshell, the proposed legislation provides that a director, officer, or volunteer of a for-profit or not-for-profit corporation or organization is liable to an injured person only if that injured person proves by clear and convincing evidence that the officer, director, or volunteer failed to perform his or her duties as an officer, director, or volunteer and:

- a) (in shareholder suits) acted in conscious disregard of the best interest of the corporation or acted with willful misconduct; or
- b) (in third party suits) acted recklessly or with willful misconduct; or
- c) was convicted of a criminal offense; or
- d) derived an improper personal benefit; or
- e) made an improper distribution of assets or dividends under s. 607.144 F.S.

7. The For-Profit vs. Not-For-Profit myth explored.

Legislation has been filed, and many argue rightfully so, which attempts to address only the insurance problems being faced by uncompensated officers and directors of non-profit corporations and organizations. Proponents of this type of legislation basically contend three things:

Contention #1 - The problems facing directors and officers of not-for-profit corporations are far more extreme than the problems faced by for-profit corporations.

This is false, and a number of studies prove it:

- in a NACD survey of 370 directors sitting on 1223 for-profit and not-for-profit boards, 137 said they would serve on a non-profit board not covered by D & O insurance while only 89 said they would serve on a for-profit board without such insurance;
- 55 of the directors surveyed in this NACD study had outright refused to serve on a non-profit board without insurance while 58 had refused to sit on for-profit boards without coverage;
- a recent survey of nearly 8,000 CEOs, board members, executives and professionals from business, government, education, and not-for-profit organizations conducted by Peat, Marwick, Mitchell & Co. reported that the perception of the seriousness of the D & O liability situation is stronger among corporate chief executive officers than among those in not-for-profit organizations. While 43 percent of the

CEOs surveyed indicated that the situation is already of crisis proportions, only 28 percent in the not-for-profit groups said that they believe the problem is that severe.

- the same Peat, Marwick study showed that over 50% of the for-profit organizations had experienced premium increases of 300% or more at their last renewal, while only 24% of not-for-profits had experienced increases of this magnitude.

Contention #2 - Not-for-profit organizations serve important social functions and therefore their situation should be addressed separately.

This contention is partially correct. Few would argue that not-for-profit organizations do not, on the whole, serve important social functions. But should their problems be separately addressed? No.

First, the problems faced by non-profits and for-profits are identical; i.e, unavailability and unaffordability of D & O insurance.

Second, this identical problem, as a matter of common sense and efficiency, dictates a singular solution.

Third, simply because non-profits serve important social functions does not mean that for-profits serve no purpose. On the contrary, the continued vitality of our business community ensures continued availability of goods and services at affordable prices, lower unemployment and inflation rates, and significantly increased tax revenues which, in part, are used to fund a multitude of social services. Consequently, it appears to be just as important, if not moreso, to address for-profit problems too.

Contention #3 - The compensation received by most for-profit directors offsets any liability to which they are subject and, conversely, because not-for-profit directors typically receive no compensation their situation is more deserving of a legislative remedy.

Many Americans have been led to believe that corporate board members receive exorbitant compensation for sitting on boards. The overwhelming majority do not.

A recent study of 95 publicly held corporations based in Florida (not including commercial banks, thrifts, and insurance companies) shows that:

directors and officers do not usually hold a controlling interest in the companies on which boards they sit. As a group, officers and directors reported holding a controlling interest (more than 50%) in 26% of their companies. They controlled 43% of small

(sales less than \$20 million per year), 29% of medium (sales between \$20 million and \$99 million), and 11% of large (sales between \$100 million and \$500 million) companies.

- 88% of these corporations pay their directors less than \$15,000 per year and 60% pay them less than \$10,000 per year. 51% of small businesses pay their directors less than \$5,000 per year, and no small or medium businesses surveyed pay their directors more than \$15,000 per year.

Certainly, given their potential liability, the amount of compensation being received by these directors does not approach being sufficient to offset their risk of liability.

7. Conclusion - We believe the proposed legislation:

- a) is appropriate and necessary;
- b) addresses the identical problems being encountered by for-profit and not-for-profit organizations
- c) narrowly focuses on the types of lawsuits which are causing the problems, and does not affect other legal remedies.

Directors & Officers Insurance

1. Unavailability and Unaffordability of D & O Insurance.

- only 31% of small companies provided liability coverage for their directors and officers, down from 41% in 1985;
- 2/3 of the companies that bought D & O insurance in 1986 reported cost increases averaging 400%;
- 20% more outside directors resigned from U.S. corporate boards in 1985 than in 1984.

2. What problems is the D & O crisis causing the corporate community?

- diminishing the ability of businesses large and small to recruit and retain quality officers and directors;
- 62% of the CEOs interviewed said they are reducing the number of boards on which they sit;
- 96% of CEOs interviewed indicated they will reduce the number of directorships they will accept in the future.
- For the first time since 1979, the percentage of outside directors on boards of the nations largest industrial and non-industrial organizations decreased, from 63.2% in 1985 to 57.7% in 1986.

3. Why is legislation needed?

- The doctrine of negligence, which applies in suits against officers and directors, is overly broad. Because it is so broad, it can be interpreted to include actions which insurers never intended to cover. The only way to quickly eliminate this problem is by enacting legislation which clearly defines the standard of conduct for directors and officers.

4. What does this proposed legislation do?

This proposed legislation does 3 things. It:

- 1) streamlines the indemnification provisions, and makes them consistent with the new liability provisions;
- 2) raises the burden of proof in suits against officers and directors, primarily to discourage the bringing of frivolous claims; and
- 3) spells-out the standard of conduct applicable to officers and directors.

In a nutshell, the proposed legislation provides that a director, officer, or volunteer of a for-profit or not-for-profit corporations or organization is liable to an injured person only if that injured person proves by clear and convincing evidence that the officer, director, or volunteer failed to perform his or her duties as an officer, director, or volunteer and:

- a) (in shareholder suits) acted in conscious disregard of the best interest of the corporation or acted with willful misconduct; or
- b) (in third party suits) acted recklessly or with willful misconduct; or
- c) was convicted of a criminal offense; or
- d) derived on improper personal benefit; or
- e) made an improper distribution of assets or dividends under s. 607.144, F.S.

5. The For-Profit vs. Not-For-Profit myth explored.

A. False Contention #1 - The problems facing directors and officers of not-for-profit corporations are far more extreme than the problems faced by for-profit corporations.

- polls show that if D & O coverage is not available, directors are more willing to serve on non-profit boards than for-profit boards;
- polls show that directors more often refuse to sit on for-profit boards than on non-profit boards;
- for-profit directors perceive the D & O insurance situation as being far worse than to non-profit directors;
- D & O rates for non-profits have not increased as dramatically as the same rates for for-profits.

B. False Contention #2 - Only not-for-profit organizations serve important social functions and therefore their situation should be addressed separately.

- the problems faced by non-profits and for-profits are identical; i.e., unavailability and unaffordability of D & O insurance; and
- this identical problem, as a matter of common sense and efficiency, dictates a singular solution; and
- for-profit organizations serve important social functions too.

C. False Contention #3 - The compensation received by most for-profit directors offsets any liability to which they are subject and, conversely, because not-for-profit directors typically receive no compensation their situation is more deserving of a legislative remedy.

- the overwhelming majority of for-profit directors are either uncompensated or minimally compensated.

6. Conclusion - We believe the proposed legislation:

a) is appropriate and necessary;

b) addresses the identical problems being encountered by for-profit and not-for-profit organizations; and

c) narrowly focuses on the types of lawsuits which are causing the problems by not affecting other legal remedies.

D&O

19 160
174 41

Directors' and Officers'
Liability:

A Crisis in the Making

*An Examination of the Scope of the
Problem and Its Impact on the Quality of
Governance of American Institutions*

*A National Survey Conducted by
Opinion Research Corporation and
Research Strategies Corporation*

The Liability Problem: *A Survey of Those Directly Affected*

For well over a year, there has been growing concern in America's boardrooms about the unprecedented liability exposure now faced by directors and officers of both corporations and not-for-profit organizations. A sharp rise in the number of liability suits and spiraling insurance costs have made it increasingly difficult for officers and directors to protect themselves.

As auditors and business advisers, Peat Marwick is particularly concerned about the effect of the liability situation on the quality of governance of American institutions and on the ability of those organizations to attract independent directors to their boards.

For these reasons, steps have been taken to address the problem. In 1986 we helped create the CEO/Peat Marwick Panel on Directors' and Officers' Liability with several other national organizations:

- National Association of Corporate Directors (NACD)
- American Association of Museums
- American Symphony Orchestra League
- Association of Governing Boards of Universities and Colleges
- Independent Sector (comprising of the directors of leading charitable organizations)
- Public Risk and Insurance Management Association

To gauge the dimensions of the problem and to aid in formulating a clear, reasoned approach to its solution, Opinion Research Corporation was engaged to conduct an independent survey of those directly affected by the growing liability risk. The study, carried out in consultation with Research Strategies Corporation, surveyed

chief executive officers, board members, executives, and professionals from business, government, education, and not-for-profit organizations.

This is a landmark study. It is the most comprehensive study ever undertaken on this issue. In all, a total of nearly 8,000 persons were surveyed—a sample size larger than that usually employed in national opinion polls. The response rate of over 32 percent in the aggregate was greater than normally anticipated in research of this type—a clear indication of the timeliness of this study and the heightened interest that the directors' and officers' (D&O) liability problem has engendered.

This booklet summarizes the responses of the entire sample to 13 key questions. The principal findings of the study point to widespread conviction that a crisis situation is brewing, if it is not already here, and also underscore the fact that trustees and directors in the not-for-profit sector have been slower to feel the effects of the problem than have their counterparts in the corporate and governmental sectors.

We publish this booklet with our thanks to those who took their valuable time to participate in the survey and with the hope that these findings will prove useful in the next stage of the process—achieving reform to restore fairness to a system now out of balance.



Larry D. Horner
Chairman and Chief Executive
Peat Marwick

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About the Research

Even casual followers of the business news during the last few years have noted the growing concern over the skyrocketing costs of directors' and officers' liability insurance coverage.

Many organizations have been priced out of the market completely and face day-to-day concern over ruinous liability suits. Others have seen premium costs escalate to levels that were unheard of in earlier years. And there has been plenty of finger-pointing as to who is to blame—the legal system, which has awarded high payments; lawyers seeking to gain massive settlements for their clients, or insurance companies, which have watched their premium income disappear in a sea of red ink.

But just how far has concern gone? Whom do the directors of the nation's businesses, governmental organizations, and not-for-profit institutions really blame for the current state of affairs? How serious, fundamentally, is the problem, and what should be done about it? Definitive findings of how key leaders answer such questions have been unavailable in the detail and depth that could be relied upon as solid indications of what solutions are emerging.

To assess overall perception of the directors' and officers' liability problem as well as to determine how various profit and not-for-profit organizations are dealing with this problem, a survey was jointly undertaken by Research Strategies Corporation and Opinion Research Corporation.

Research Strategies Corporation designed the project and is undertaking its analysis, and Opinion Research Corporation was responsible for receiving and tabulating the returns. In conjunction with the cosponsors of the survey, Peat Marwick performed the sampling and handled the mailing of the questionnaires.

A total of 2,532 persons participated in the survey, all using self-administered mail questionnaires. Interviewing was conducted between September and December 1986. The returns included:

- 569 chief executive officers (a 30 percent return rate) of the nation's largest companies
- 678 museum directors (a 36 percent return rate)
- 121 orchestra/symphony executives (a 52 percent return rate)
- 153 executives in the Independent Sector (a 46 percent return rate)
- 70 Association of Governing Boards chairpersons (a 32 percent return rate)
- 367 Association of Governing Boards university presidents (a 42 percent return rate)
- 350 hospital executives (a 24 percent return rate)
- 224 public/municipal officials (a 22 percent return rate)

The return rates in this series of interrelated surveys are more than adequate for the purposes of this project—namely, to compare the views of key constituencies and to view them in the aggregate. More details on sampling, weighting of results, and similar matters are available.

The Crisis and Its Roots

Is There a D&O Liability Crisis?

Across the board, there was a very strong consensus—92 percent of all those surveyed—that there is an incipient D&O liability crisis. Six in ten survey participants indicated that a problem exists that may grow into a crisis, and about one-third of participants responded that the problem is of crisis dimensions right now. Only 6 percent said that the issue is overblown and that no crisis exists.

may grow into a crisis or that the situation is now a crisis, roughly 13 percent expressed a belief that there is no crisis and that the situation is overblown. Those who took the gravest view of the problem among the not-for-profit executives were public officials, university presidents, and chairpersons of voluntary boards.

Is the D&O Liability Situation Damaging the Quality of Organizational Governance?

As in their evaluation of the extent of the crisis, those surveyed were united in their assessment of the extent to which the D&O liability situation is damaging the quality of governance in American organizations. Nearly 90 percent of all survey participants indicated that D&O issues were having some negative effect on governance. This figure includes 38 percent who feel the negative effect is “definitely getting worse” and 10 percent who feel that damage has already been done.

Among the not-for-profit participants, 78 percent of public officials felt that liability questions were having at least some negative effect on governance, and 9 percent said that either a considerable amount or a great deal of damage had already been

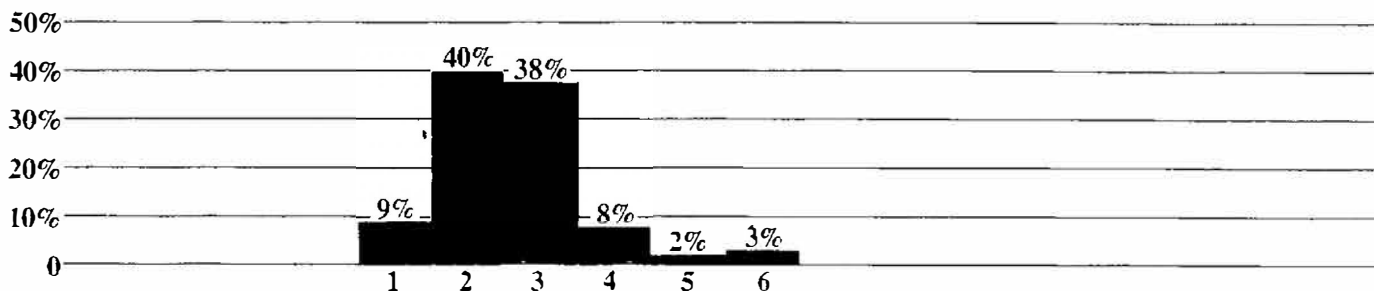
Some people have said that the D&O liability problem is damaging the quality of governance in American organizations. How do you react to this?

- 1 Not true, no negative effect of consequence
- 2 Having some negative effect
- 3 Having some negative effect and definitely getting worse
- 4 Considerable damage has already been done
- 5 A great deal of damage has already been done
6. No opinion

The findings show that perception of the seriousness of the D&O liability situation is stronger among corporate chief executive officers than among those in not-for-profit organizations. While 43 percent of the CEOs surveyed indicated that the situation is already of crisis proportions, only 28 percent in the not-for-profit groups said that they believe the problem is that severe.

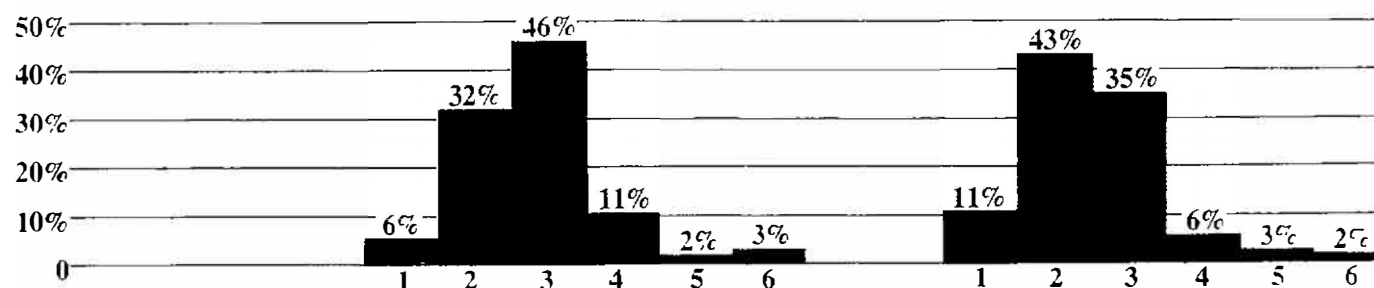
Among the not-for-profit participants, executives of museums and orchestras demonstrated the least alarm about D&O liability issues. While a substantial majority—about 85 percent of both groups—thought either that there is a problem that

Total



Profit

Not-for-Profit



done. On the other hand, 16 percent of the orchestra executives and 20 percent of the college and university board chairpersons said that there has been no negative effect of consequence.

What Are the Sources of the Problem?

The survey asked, "Regardless of how serious you judge the D&O liability problem, who or what do you think is mainly responsible for it?" Seven specific answers—along with an open-ended "other" response—were offered, and participants were invited to choose as many answers as they believed to be important.

Who or what do you think is mainly responsible for the D&O liability problem?

- 1. Judges
- 2. Juries granting high awards
- 3. Lawyers
- 4. The insurance industry
- 5. Inadequate legislation
- 6. The joint and several liability concept
- 7. Heavy publicity of big settlements
- 8. All other answers

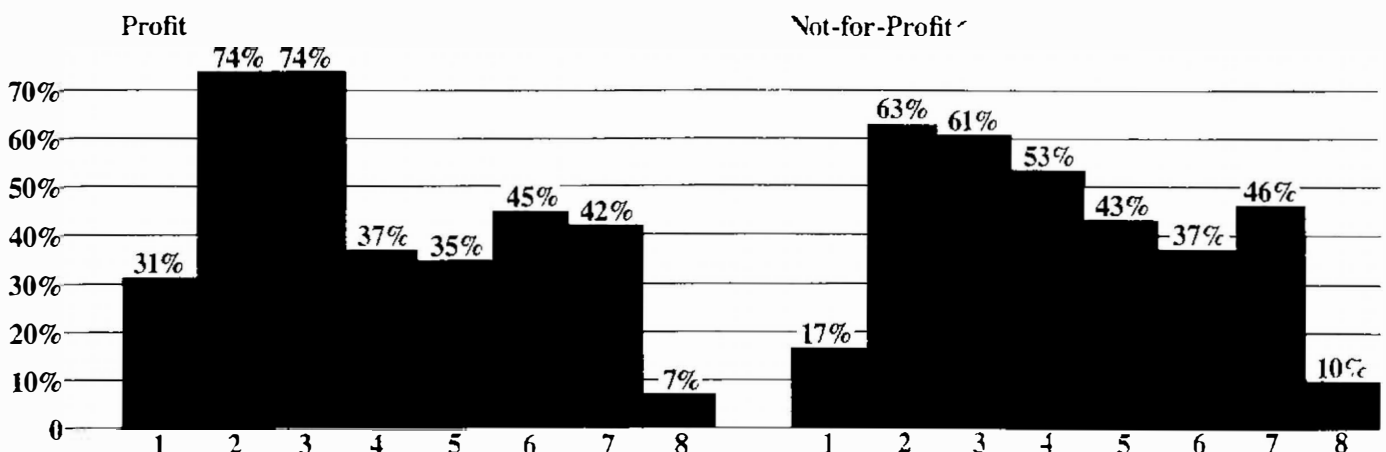
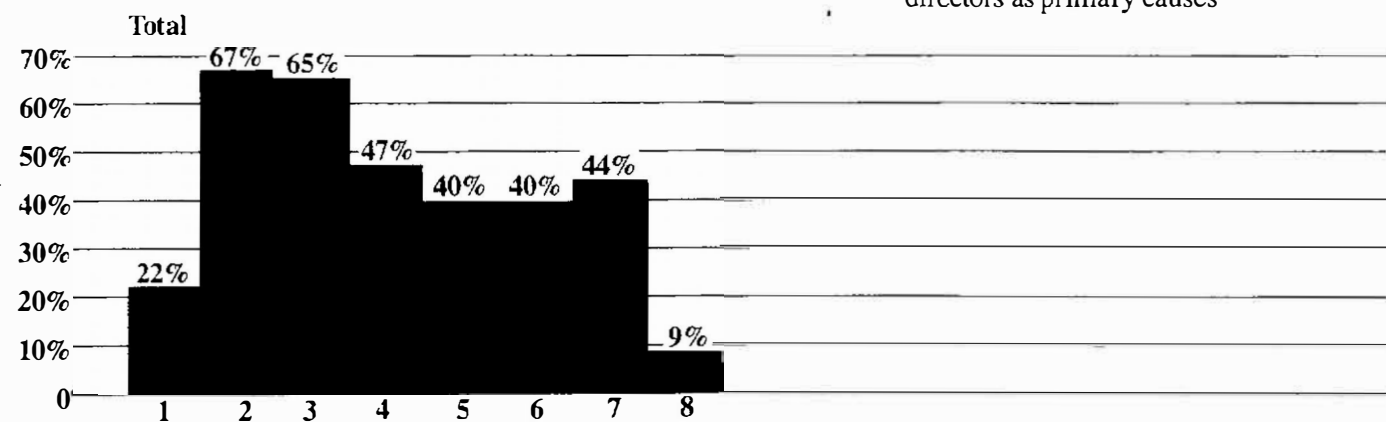
Nearly two-thirds of the respondents indicated that they believed lawyers and juries granting large awards were important causes of the situation. Other aspects of the legal system cited were the heavy publicity attendant upon big settlements (44 percent), the concept of joint and several liability (40 percent), and judges (22 percent). Nearly half blamed the insurance industry,

and four in ten respondents listed inadequate legislation.

Among corporate executives, about three-quarters named jury awards (as did 74 percent of the college and university board chairpersons) and lawyers, and 31 percent said that judges are a primary cause.

The most significant divergence of opinion concerned the role played by the insurance industry. While only 37 percent of the corporate chief executives surveyed named insurers as a cause, slightly more than half of the not-for-profit group and about 60 percent of the independent sector executives and university presidents laid the blame on the insurance industry. In addition, half of the hospital executives listed inadequate legislation as an important cause.

Overall, only 1 percent of the total sample pointed to either mergers and takeovers or the poor performance of some officers and directors as primary causes.



*Base = all but municipalities

Measuring the Impact of the D&O Liability Crisis

The survey attempted to assess the impact of the D&O liability crisis on three specific areas: liability insurance coverage, reluctance to join boards, and the way the organizations of those surveyed are managed.

Liability Insurance Coverage

Slightly more than three-quarters of the entire survey group belong to organizations that carry D&O liability insurance. In all, 90 percent of those in the for-profit sector had insurance protection, compared with 71 percent among those in the not-for-profit group.

Of the not-for-profit organizations, hospitals (86 percent) and municipal officials (83 percent) had the highest frequency of coverage, while museum directors (45 percent) and orchestra executives (54 percent) were at the low end of the scale.

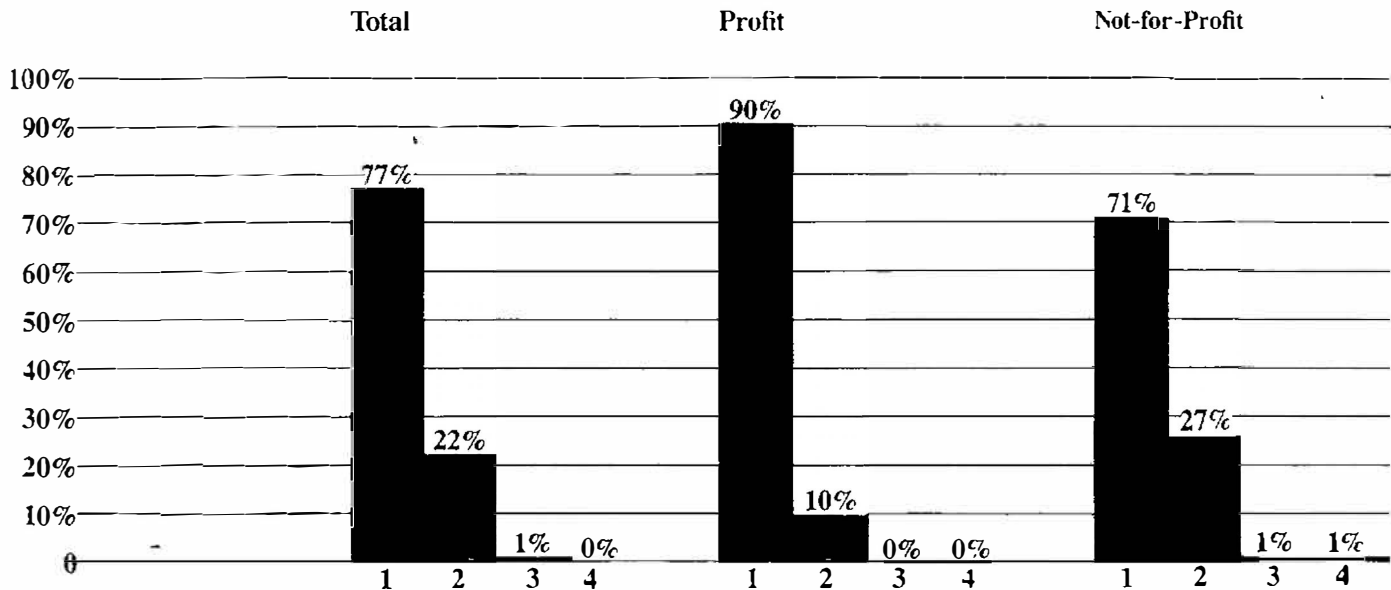
Most participants report increases in insurance premiums and expect premium increases over the next five years. Approximately one-third of the entire sample group reported that premiums had risen

more than 300 percent at the last renewal of their organizations' D&O liability coverage, and another 46 percent indicated that rates had risen up to 300 percent. Only 6 percent reported that rates were unchanged. Half of the CEOs and one-quarter of the not-for-profit group reported increases in excess of 300 percent while 36 percent of the corporate executives and about half of those from the not-for-profit sector said that rates had risen up to 300 percent.

Asked about increases in deductibles, 16 percent of the entire sample had seen deductibles go up 300 percent, about one-quarter had experienced increases up to 300 percent, about one-third said deductibles did not change. Slightly more than one-third reported that coverage levels at last renewal had remained the same, 37 percent said that coverage had been reduced, and 7 percent said that coverage had broadened.

Does your organization carry D&O liability insurance for members of your board?

- 1 Yes
- 2 No
- 3 Covered by a state Indemnification Program
- 4 No opinion



About six survey participants in ten predicted premium increases over the next five years, while 4 percent expected premiums to remain the same and 11 percent foresee rate reductions. It is interesting that executives from the not-for-profit sector were more pessimistic than corporate CEOs about premium increases. Sixty-five percent of the not-for-profit respondents predicted rate hikes, compared with 54 percent of the CEOs, but another 21 percent of the corporate executives said that they expected rates to decline.

Forecasting trends in deductibles and coverage over five years, 43 percent of the full survey group predicted increases in premiums, 23 percent believed premiums would remain the same, and 7 percent predicted reductions. The group was split more evenly on the question of coverage: 20 percent predicted an expansion of coverage, 19 percent predicted a reduction, and 27 percent estimated that coverage levels would remain the same.

Impact on Organizational Management

All participants except CEOs were asked, "Overall, how great an effect is the D&O liability problem having on the way you manage your organization?" About six in ten reported an impact, while 38 percent said there was no effect. About half reported some effect, 10 percent reported a considerable effect, and 2 percent reported a great deal of effect.

Nearly 90 percent of the public officials surveyed indicated some degree of impact, and one-third said that there was considerable or a great deal of effect. Those organizations least affected were orchestras and independent sector groups.

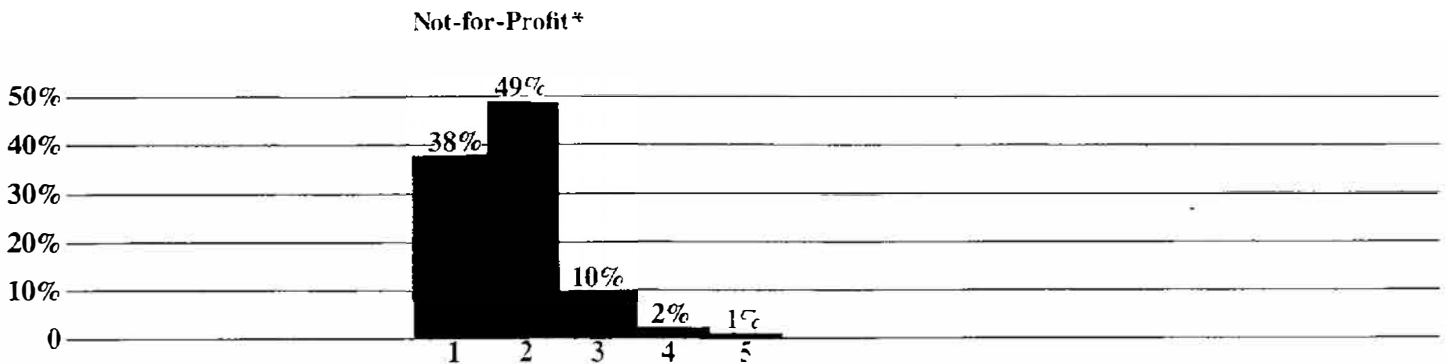
The Effect on the Recruitment of Directors

The survey findings show a very clear-cut division between the perception of D&O liability as a problem that could grow into a crisis and the effect that it is having as a deterrent to attracting outside directors. For example, only 6 percent of the survey participants reported having a person resign from their boards because of concern over personal liability exposure, and 8 percent reported having had a board candidate decline membership for the same reason.

These results, however, must be viewed in context—they represent responses from the nation's largest and oldest institutions, where the chill of D&O liability should be felt least. This trend is even more pronounced in a survey by the NACD (see "Parallel Study"), which included a number of smaller and emerging companies among its sample group.

Overall, how great an effect is the D&O liability problem having on the way you manage your organization?

- 1. Has had no effect
- 2. Some effect
- 3. Considerable effect
- 4. A great deal of effect
- 5. No opinion



*Base = all but CEOs

What happened to the last renewal of your organization's D&O liability insurance?

	Percentage Base	Up 300% and Over	Up 100% to 299%	Up 50% to 99%	Up 1% to 49%	Stayed the Same	Reduced 1% to 24%	Not Applicable New Policy	All Other Answers
1. Premium									
Total	100%	34%	21%	12%	13%	6%	1%	4%	9%
Profit	100%	50%	21%	9%	6%	4%	0%	3%	7%
Not-for-Profit (All Others)	100%	24%	21%	13%	17%	7%	1%	4%	13%
2. Deductible									
Total	100%	16%	12%	8%	6%	32%	1%	4%	21%
Profit (CEOs)	100%	27%	16%	9%	6%	22%	1%	4%	15%
Not-for-Profit (All Others)	100%	10%	11%	6%	6%	37%	1%	5%	24%
3. Maximum amount of coverage available									
Total	100%	1%	2%	1%	3%	34%	4%	4%	51%
Profit (CEOs)	100%	2%	2%	2%	3%	28%	6%	3%	54%
Not-for-Profit (All Others)	100%	1%	2%	1%	2%	38%	2%	4%	50%

Some Potential Remedies

The survey examined participants' attitudes toward suggested state and federal legislative measures that would either offer varying degrees of protection to directors or in some way curtail the rising tide of lawsuits. Also sought were views on actions that an organization might undertake to ease the risk of litigation to its officers, trustees, or directors

Attitudes Toward Legislation Protecting Not-for-Profit Trustees and Directors

Nearly nine in ten respondents said that they would be strongly or somewhat in favor of their home states' enacting legislation akin to a Connecticut statute that specifically addresses the liability concerns of trustees and directors of not-for-profit organizations. Under the Connecticut statute, a director, officer, or trustee of a not-for-profit group shall be immune from civil liability if he or she serves without compensation, acts in good faith, and is not found guilty of "willful or wanton misconduct."

How would you feel about legislation being adopted in your own state that specifically addresses the problems of trustees and directors of not-for-profit organizations?

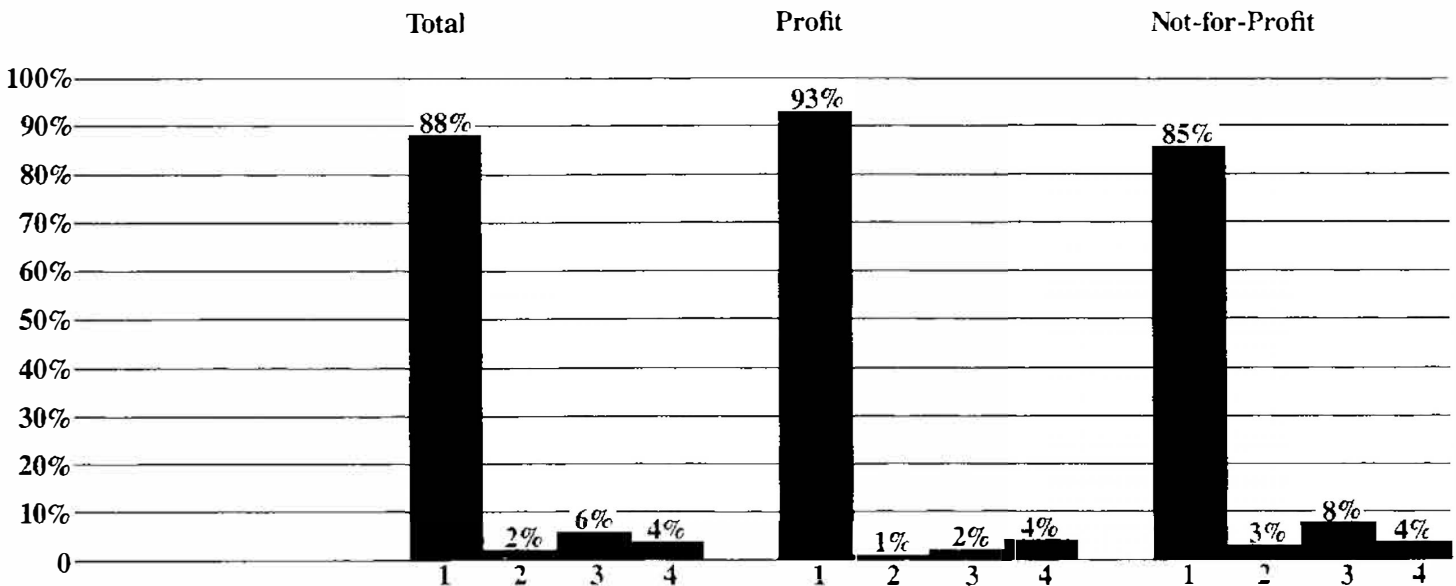
1. Strongly/somewhat favor or approve
2. Somewhat/strongly against or disapprove
3. Legislation already exists
4. No opinion

Specific Legislative Proposals

The study sought opinions on five legislative actions suggested by various groups interested in offering increased liability protection to directors and trustees.

- **Eliminating joint and several liability.** Across the board, nearly seven in ten corporate and not-for-profit respondents indicated that they would strongly favor eliminating joint and several liability, and approximately another 20 percent reported that they would somewhat favor elimination. Only about 6 percent were either somewhat or strongly opposed.

- **A cap on attorneys' contingency fees.** Of the total group polled, 91 percent said that they were in favor of limiting attorneys' contingency fees, only 4 percent registered opposition.



Indicate how favorable your reaction is to each one of the following legislative proposals that have been offered to resolve the current debate on the D&O liability problem.

		Percentage Base	Strongly Favor	Favor Somewhat	Somewhat Against	Strongly Against	No Response
1. Eliminating joint and several liability	Total	100%	69%	18%	4%	2%	7%
	Profit (CEOs)	100%	69%	22%	3%	0%	6%
	Not-for-Profit (All Others)	100%	69%	16%	4%	3%	8%
2. Putting a cap on attorneys' contingency fees	Total	100%	75%	16%	3%	1%	5%
	Profit (CEOs)	100%	80%	14%	2%	1%	3%
	Not-for-Profit (All Others)	100%	73%	16%	4%	1%	5%
3. Limiting the amount of punitive damages that could be awarded	Total	100%	72%	19%	3%	1%	5%
	Profit (CEOs)	100%	76%	16%	4%	1%	3%
	Not-for-Profit (All Others)	100%	70%	19%	3%	2%	6%
4. Allowing a defendant to sue a plaintiff for the cost of his or her defense where the defendant prevails	Total	100%	59%	26%	6%	3%	6%
	Profit (CEOs)	100%	69%	23%	4%	0%	4%
	Not-for-Profit (All Others)	100%	55%	27%	7%	3%	5%
5. Limiting strict liability (i.e., limiting the concept that allows recovery even if the party is not at fault)*	Not-for-Profit (All Others)	100%	62%	19%	4%	3%	2%

* Not asked of CEOs or public officials

- **Limits on punitive damages.** Asked whether they would favor restricting the amount of money that could be awarded as punitive damages in a lawsuit, over 90 percent replied that they were in favor of such a limitation. The strongest response came from hospital executives, 80 percent of whom strongly favored limiting punitive damages.

- **Recovery of legal fees.** Of the total sample, 85 percent said that they advocated allowing a defendant to sue a plaintiff for the cost of his or her defense in lawsuits where the defendant prevails. This proposal was strongly favored by nearly 70 percent of the CEO group, but by only about half of those from universities, museums, orchestras, and independent organizations.

- **Limiting strict liability.** All participants except CEOs and public officials were asked their views on limiting the concept that allows recovery even if the party sued is not at fault. About 62 percent were strongly in favor of such a measure—72 percent, in the case of hospital executives—and 19 percent indicated that they were somewhat in favor.

Self-protective Measures

Some boards have been or are considering taking steps to reduce the potential for liability litigation and to generally improve their oversight of management performance. Survey participants were asked to indicate which of several possible courses of action, if any, their boards had undertaken and to indicate whether others merited thought and consideration.

- **Expand information systems.** Roughly 55 percent of the entire sample and nearly 70 percent of the CEOs reported that their boards had already improved the depth and delivery of management information to the board. Another 19 percent said they were considering the idea or had concrete plans to do so.

- **Review governance procedures.** About four in ten replied that they had undertaken a fundamental review of governance procedures. In addition, 14 percent said they had plans to undertake a governance review, and 19 percent said it was a worthwhile idea. Fifty-four percent said they had formulated a conflict-of-interest policy, 6 percent indicated they had plans to formulate such a policy, and 19 percent called it an idea worth looking into.

- **Alter board structure.** Survey participants were asked about several courses of action involving the basic composition or structure of the board.

- 17 percent said they had formed new board committees, 6 percent said they had plans to do so, and 14 percent felt the idea had merit.

- Almost one-quarter of respondents (24 percent) said they had recruited new members to add specific expertise or experience to the board, another 10 percent indicated plans to do so, and 16 percent labeled it a good idea.

- **Bring in outside experts.** Close to two in ten (17 percent) replied that they had brought in outside experts to counsel the board on legal liability. While only 7 percent said they had plans to bring in outside experts, another 36 percent said it was an idea worth looking into.

A Parallel Study by the NACD

In a parallel study conducted in 1986, the NACD polled 2,800 corporate directors and 50 state insurance and commerce commissioners to determine the scope and severity of the D&O situation. Findings showed increasing insurance costs, more restrictive policies, a growing reluctance to accept directorships without liability protection, and an increase in resignations from boards.

- **Insurance coverage.** About 80 percent of the 370 directors who responded to the survey serve on boards covered by D&O insurance. Of that number, about two-thirds reported that renewal terms of D&O policies had been reduced or made more restrictive over the last two years, and nearly three in ten said that their policies had been canceled or gone unrenewed in the last 12 months. About 45 percent indicated that additional exclusions were incorporated into renewal policies, and of the 70

who submitted D&O claims, about one-third had carriers attempt to either cancel coverage or add exclusions on which the claims were based.

These findings were corroborated by the 35 state officials, who reported a significant increase in the cost of D&O insurance coverage, accompanied by a drastic reduction in its availability. In the policies that remain available, state commissioners noted significant changes limiting the breadth of coverage.

- **Reluctance to serve.** About 36 percent of the directors polled said that they would be willing to serve on not-for-profit boards without D&O coverage, and about one-quarter said that they would serve without

Indicate which of the following steps your own board has taken for plans to take to reduce the potential or liability litigation, and any that you think merit thought and consideration.

		Percentage Base	Have Already Done	Plan to Do	An Idea Worth Looking Into	No Response
1. Expand the range/depth/speed of management information provided to board members	Total	100%	56%	5%	14%	25%
	Profit (CEOs)	100%	67%	3%	6%	24%
	Not-for-Profit (All Others)	100%	50%	6%	18%	26%
2. Formulate a conflict-of-interest policy	Total	100%	54%	6%	19%	21%
	Profit (CEOs)	100%	69%	3%	8%	20%
	Not-for-Profit (All Others)	100%	48%	7%	24%	21%
3. Undertake fundamental review of governance procedures	Total	100%	41%	14%	19%	26%
	Profit (CEOs)	100%	37%	8%	21%	34%
	Not-for-Profit (All Others)	100%	43%	17%	18%	22%

D&O coverage on corporate boards
About one in seven would refuse to serve on any board without protection, and approximately 4 percent had already resigned from boards without D&O coverage. Nearly half know colleagues who had refused directorships for lack of D&O insurance.

• **Litigation.** About half of the directors felt that it was “far more likely” that they would become involved in litigation today than five years ago. Thirty percent were currently serving on boards that had been involved in suits against directors, and about 18 percent had personally been named as defendants.

• **Remedies.** Of the 35 state officials surveyed, only 11 reported current or proposed initiatives to bring relief to the D&O situation. However, none of the state commissioners rated these initiatives as politically feasible.

Several state commissioners favored limiting directors’ liability to no more than one or two years of directors’ fees (compensation) plus the value of any stock options given to directors. Less favored were awards that penalize directors for amounts between \$100 thousand and \$1 million. No states favored imposing penalties on directors in excess of \$1 million in punitive damages.

Over 90 percent of the board members called for state legislation penalizing frivolous suits against directors, and nearly three-quarters favored a state or federal cap on directors’ liability.

		Percentage Base	Have Already Done	Plan to Do	An Idea Worth Looking Into	No Response
4. Bring in outside experts to counsel the board specifically on D&O liability	Total	100%	17%	7%	36%	40%
	Profit (CEOs)	100%	20%	5%	27%	48%
	Not-for-Profit (All Others)	100%	16%	8%	40%	36%
5. Form new board committees	Total	100%	17%	6%	14%	63%
	Profit (CEOs)	100%	21%	2%	8%	69%
	Not-for-Profit (All Others)	100%	16%	7%	17%	60%
6. Recruit new members to add specific expertise and experience to the board	Total	100%	24%	10%	16%	50%
	Profit (CEOs)	100%	18%	10%	8%	64%
	Not-for-Profit (All Others)	100%	27%	10%	19%	44%

About the Sample

People participating in this series of interrelated surveys were selected from the most authoritative lists available of such individuals or organizations. In the case of not-for-profit organizations, rosters of principal professional associations were used

The “total” data, shown throughout this summary booklet, represent a combination of the types of individuals involved. However, because of the different universe sizes and numbers of respondents in each group, the data should be viewed as a guide rather than as a definitive picture. To arrive at the total figures, some weighting was done to bring each group into what, in our judgment, was its proper proportion in the total sample.

Any survey or series of surveys is subject to sampling error—that is, the extent to which the actual results obtained might differ from the results had everyone in each universe participated. The following table provides an approximation of the sampling error applicable to each group surveyed. For example, if 65 percent of business CEOs give a certain response, it can be expected that the corresponding result would have been between 61 and 69 percent had *all* such corporate officers participated.

	<u>Sampling Error (Plus or Minus)</u>
Corporate CEOs	4 %
Orchestra executives	8 %
Museum directors	4 %
Independent Sector executives	7 %
University presidents	5 %
Board chairpersons	9 %
Hospital executives	5 %
Public officials	6 %