SB 609

THE STATE SENATE
Tuesday, February 27, 2001

Senate Bill No. 609

SENATE BILL NO. 609 - By: COFFEE of the Senate and VAUGHN of the House.

An Act relating to unincorporated nonprofit associations; creating the Uniform Unincorporated Nonprofit Association Act; providing short title; defining terms; declaring principles of law and equity to be supplementary; authorizing nonprofit association to acquire, hold, encumber, or transfer certain property with limitations; allowing nonprofit association to be legatee, devisee, or beneficiary of trust or contract; stating members are not owners of association property; providing for statements of authority to transfer estate or interest in real property and for amendments, cancellations, procedures, information, and fees; declaring recorded statement of authority to be conclusive for certain purposes; clarifying liability in tort and contract of certain persons; stating capacity and standing of association to take certain actions; stating judgment or order against association not to be against member; providing for disposition of personal property of inactive association; providing for appointment of agent to receive service of process; providing content of certain statement; declaring that claims for relief against association are not abated by certain change; stating venue of actions; providing for service of summons and complaint; requiring uniform interpretation; clarifying validity of transfer of certain property and interest and certain actions and proceedings prior to effective date of act; providing for exceptions to application of the act; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 871 of Title 18, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Uniform Unincorporated Nonprofit Association Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 872 of Title 18, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association;

2. "Nonprofit association" means an unincorporated organization consisting of two or more members joined by mutual consent for a common nonprofit purpose. However, joint tenancy, tenancy in common or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose;

3. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity; and

4. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 873 of Title 18, unless there is created a duplication in numbering, reads as follows:

Principles of law and equity supplement this act unless displaced by a particular provision of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 874 of Title 18, unless there is created a duplication in numbering, reads as follows:

Subject to the limitations of Section 1 of Article XXII of the Oklahoma Constitution, real and personal property in this state may be acquired, held, encumbered and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this state.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 875 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A nonprofit association in its name may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

B. A nonprofit association may be a legatee, devisee, or beneficiary of a trust or contract.

C. A member is not an owner of nonprofit association property and has no interest in nonprofit association property which can be transferred either voluntarily or involuntarily.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 876 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A nonprofit association shall execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association. Failure to record a statement of authority does not invalidate or in any manner limit the effectiveness of an otherwise authorized transfer of an estate or interest in real property in the name of the nonprofit association or impose liability on any member authorized to act and acting on behalf of the nonprofit association.

B. An estate or interest in real property in the name of a nonprofit association may be transferred by a person who is authorized by the nonprofit association in a statement of authority recorded in the office of the county clerk in the county in which a transfer of the property would be recorded.

C. A statement of authority must set forth:

1. The name of the nonprofit association and that it is a nonprofit association;

2. The address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state;

3. The name or title of a person authorized to transfer an estate or interest in the real property held in the name of the nonprofit association; and

4. The action, procedure, or vote of the nonprofit association which authorizes the person to transfer the estate or interest in the real property of the nonprofit association and which authorizes the person to execute the statement of authority.

D. A statement of authority must be executed and acknowledged in the same manner as a deed to be recorded by a person who is not the person authorized to transfer the estate or interest.

E. A county clerk may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property.

F. An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless canceled earlier, a recorded statement of authority or its most recent amendment is canceled by operation of law five (5) years after the date of the most recent recording.

G. If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the county clerk of the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 877 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties and liabilities in contract and tort.

B. A person is not liable for a breach of a nonprofit association's contract merely because the person:

1. Is a member of the nonprofit association;

2. Is authorized to participate in the management of the affairs of the nonprofit association; or

3. Is a person considered to be a member by the nonprofit association.

C. A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person:

1. Is a member of the nonprofit association;

2. Is authorized to participate in the management of the affairs of the nonprofit association; or

3. Is a person considered as a member by the nonprofit association.

D. A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person:

1. Is a member of the nonprofit association;

2. Is authorized to participate in the management of the affairs of the nonprofit association; or

3. Is a person considered as a member by the nonprofit association.

E. A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 878 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other

governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

B. A nonprofit association may assert a claim in its name on behalf of its members if:

1. One or more members of the nonprofit association have standing to assert a claim in their own right;

2. The interests the nonprofit association seeks to protect are germane to its purposes; and

3. Neither the claim asserted nor the relief requested requires the participation of a member.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 879 of Title 18, unless there is created a duplication in numbering, reads as follows:

A judgment or order against a nonprofit association is not, by itself, a judgment or order against a member.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 880 of Title 18, unless there is created a duplication in numbering, reads as follows:

Subject to the provisions of Sections 651 through 686 of Title 60 of the Oklahoma Statutes, if a nonprofit association has been inactive for three (3) years or longer, a person in possession or control of personal property of the nonprofit association may transfer the property if:

1. A document of a nonprofit association specifies a person to whom transfer is to be made under these circumstances, to that person; or

2. No person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes, or to a government or governmental subdivision, agency or instrumentality.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 881 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process.

B. A statement appointing an agent must set forth:

1. The name of the nonprofit association and that it is a nonprofit association;

2. The address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

3. The name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

C. A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed and acknowledged by the person's appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving notice to the nonprofit association.

D. A filing officer may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, or a resignation in the same amount charged for filing similar documents.

E. An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 882 of Title 18, unless there is created a duplication in numbering, reads as follows:

A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 883 of Title 18, unless there is created a duplication in numbering, reads as follows:

For purposes of venue, a nonprofit association is a resident of a county in which it has an office and of any county in which an estate or interest in real property owned in its name is situated.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 884 of Title 18, unless there is created a duplication in numbering, reads as follows:

In an action or proceeding against a nonprofit association, a summons and complaint must be served in compliance with Section 2004 of Title 12 of the Oklahoma Statutes.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 885 of Title 18, unless there is created a duplication in numbering, reads as follows:

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 886 of Title 18, unless there is created a duplication in numbering, reads as follows:

If, before the effective date of this act, an estate or interest in real or personal property was, by the terms of the transfer, purportedly transferred to a nonprofit association, but, under the law, the estate or interest was not vested in the association but instead in a fiduciary to hold the estate or interest for members of

the nonprofit association, on or after the effective date of this act, the fiduciary may transfer the estate or interest to the nonprofit association in its name or the nonprofit association by appropriate proceedings may require that the estate or interest be transferred to it in its name.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 887 of Title 18, unless there is created a duplication in numbering, reads as follows:

This act does not affect an action or proceeding commenced or right accrued before November 1, 2001.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 888 of Title 18, unless there is created a duplication in numbering, reads as follows:

The provisions of this act shall be applicable to every unincorporated nonprofit association, except to the extent special statutory provisions in this state concerning a nonprofit association conflict with the provisions of this act, in which case the special provisions shall govern.

SECTION 19. This act shall become effective November 1, 2001.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-13-01 - DO PASS, As Coauthored.