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SENATE BILL NO. 841

Senate Amendments in [] — February 2, 2011

A *BILL to amend and reenact §§ 8.01-220.1:1, 13.1-870.1, and 13.1-870.2 of the Code of Virginia, relating to immunity of officers, etc. of nonprofits; dissolution.*

Patron Prior to Engrossment—Senator Petersen

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-220.1:1, 13.1-870.1, and 13.1-870.2 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-220.1:1. Civil immunity for officers, partners, members, managers, trustees and directors of certain tax exempt organizations.

A. Directors, partners, members, managers, trustees and officers of organizations exempt from income taxation under § 501 (c) or § 528 of the Internal Revenue Code who serve without compensation shall be immune from civil liability for acts taken in their capacities as officers, partners, members, managers, trustees or directors of such organizations.

B. In any proceeding against a director, partner, member, manager, trustee or officer of an organization exempt from income taxation under § 501 (c) or § 528 of the Internal Revenue Code who receives compensation, the damages assessed for acts taken in his capacity as an officer, partner, member, manager, trustee or director and arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer, partner, member, manager, trustee or director during the 12 months immediately preceding the act or omission for which liability was imposed. As used herein "compensation" shall mean payment for services over and above per diem and expenses.

C. The liability of an officer, partner, member, manager, trustee or director shall not be limited as provided in this section if the officer, partner, member, manager, trustee or director engaged in willful misconduct or a knowing violation of the criminal law or if liability derives from the operation of a motor vehicle, or from the violation of a fiduciary obligation imposed during the period of declarant control by § 55-79.74.

D. *The immunity provided by this section shall survive any [~~dissolution~~ termination, cancellation,] or other discontinuance of the organization.*

§ 13.1-870.1. Limitation on liability of officers and directors; exception.

A. In any proceeding brought by or in the right of a corporation or brought by or on behalf of members of the corporation, the damages assessed against an officer or director arising out of a single transaction, occurrence, or course of conduct shall not exceed the lesser of:

1. The monetary amount, including the elimination of liability, specified in the articles of incorporation or, if approved by the members, in the bylaws as a limitation on or elimination of the liability of the officer or director; or

2. The greater of (i) \$100,000, or (ii) the amount of the cash compensation received by the officer or director from the corporation during the 12 months immediately preceding the act or omission for which liability was imposed.

B. In any proceeding against an officer or director who receives compensation from a corporation exempt from income taxation under § 501 (c) of the Internal Revenue Code for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the corporation during the 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an exempt corporation without compensation for his services shall not be liable for damages in any such proceeding. *The immunity provided by this subsection shall survive any [~~dissolution~~ termination, cancellation,] or other discontinuance of the corporation.*

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

D. No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

E. 1. Notwithstanding the provisions of this section, in any proceeding against an officer or director who receives compensation from a community association for his services, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of

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60 compensation received by the officer or director from the association during the 12 months immediately
61 preceding the act or omission for which liability was imposed. An officer or director who serves such an
62 association without compensation for his services shall not be liable for damages in any such
63 proceeding.

64 2. The liability of an officer or director shall not be limited as provided in this subsection if the
65 officer or director engaged in willful misconduct or a knowing violation of the criminal law.

66 3. As used in this subsection, "community association" shall mean a corporation incorporated under
67 this Act that owns or has under its care, custody or control real estate subject to a recorded declaration
68 of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of
69 the incorporated association.

70 4. *The immunity provided by this subsection shall survive any [~~dissolution~~ termination, cancellation,*
71 *] or other discontinuance of the community association.*

72 § 13.1-870.2. Limitation on liability of officers and directors; additional exception.

73 A. As used in this section, "community association" shall mean an unincorporated association or
74 corporation which owns or has under its care, custody or control real estate subject to a recorded
75 declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a
76 member of the unincorporated association or corporation.

77 B. In any proceeding against an officer or director who receives compensation from a community
78 association for his services as such, the damages assessed arising out of a single transaction, occurrence
79 or course of conduct shall not exceed the amount of compensation received by the officer or director
80 from the association during the 12 months immediately preceding the act or omission for which liability
81 was imposed. An officer or director who serves such an association without compensation for his
82 services shall not be liable for damages in any such proceeding.

83 C. The liability of an officer or director shall not be limited as provided in this section if the officer
84 or director engaged in willful misconduct or a knowing violation of the criminal law.

85 *D. The immunity provided by this section shall survive any [~~dissolution~~ termination, cancellation,]*
86 *or other discontinuance of the community association.*