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MEMO



Senate of Pennsylvania

December 7, 2010

TO: ALL SENATORS

FROM: Stewart J. Greenleaf

Stewart

SUBJECT: Cosponsorship – **Uniform Unincorporated Nonprofit Association Act**

I am reintroducing **Senate Bill 944**, the Pennsylvania Uniform Unincorporated Nonprofit Association Law. The legislation amends the Associations Code, Title 15 of the Pennsylvania Consolidated Statutes, by adding a new Chapter 91, governing all unincorporated nonprofit associations that are formed or operate in Pennsylvania.

An unincorporated nonprofit association is a nonprofit organization that is not a charitable trust or a nonprofit corporation or any other type of association organized under statutory law that is authorized to engage in nonprofit activities. There are thousands of unincorporated nonprofit associations in the United States. They range from local neighborhood associations to national associations with large memberships. Their members may be individuals, corporations, other legal entities or a mix. They are all associations that for one reason or another cannot or have not chosen to become a nonprofit corporation.

Under the traditional common law aggregate theory, these associations are not viewed as legal entities but merely as an aggregate of individuals. In the United States, unincorporated nonprofit associations are governed by a hodgepodge of common law principles and statutes governing some of their legal aspects. In an effort to address some of the legal problems that arose under the common law's treatment of such associations, the Uniform Law Commission has promulgated the Uniform Unincorporated Nonprofit Association Act (UUNAA). The original version of the act was promulgated by the Uniform Law Commission in 1996 and was expanded and revised by the Uniform Law Commission in 2008. The legislation I am introducing proposes the new 2008 version for adoption in Pennsylvania.

The UUNAA addresses the following important issues:

- Relationship to other existing laws. Examples of other laws that apply to unincorporated nonprofit associations are general principles of contract, agency, fraud, estoppel, the priority of written provisions of an agreement over prior inconsistent oral provisions or subsequent oral amendments (and any exceptions), civil and criminal procedural rules, and rules for enforcing judgments. The UUNAA will supplement existing Pennsylvania law and if a conflict exists between the UUNAA and the existing law, the existing law will apply.
- Entity status. The UUNAA recognizes unincorporated nonprofit associations as legal entities separate from their members and managers. Consistent with that view, the UUNAA makes clear that an unincorporated nonprofit association may own and dispose of property, and sue and be sued, in its own name. Under the UUNAA, an unincorporated nonprofit association has the same powers as an individual to do all of the things necessary or convenient to carry on its purposes, and may engage in profit-making activities with restrictions on how those profits are used.

- Contract and tort liability. Consistent with the view that an unincorporated nonprofit association is a separate legal entity, the UUNAA makes clear that a debt, obligation or other liability of an unincorporated nonprofit association whether arising from a contract or tort is solely that of the association and does not become that of its members or managers.
- Fiduciary duties and agency authority. Under the UUNAA, members of an unincorporated nonprofit association do not have fiduciary duties to the unincorporated nonprofit association or other members by virtue of their status as members. They do, however, have an obligation of good faith and fair dealing. Only individuals exercising managerial duties in an unincorporated nonprofit association have fiduciary duties. The UUNAA makes clear that a person's status as a member does not by itself make that person an agent of the unincorporated nonprofit association.
- Dissolution. The UUNAA provides default rules for dissolution of an unincorporated nonprofit association by a majority vote of either the members or the managers, and also sets out rules for distribution of assets after the affairs of the unincorporated nonprofit association have been wound up.
- Fees. Normally an unincorporated nonprofit association would have no need to register with the corporation bureau. However, the UUNAA contemplates that there may be a few unincorporated nonprofit associations that would register for the purpose of appointing an agent to receive service of process. For that limited purpose, the legislation contains fees that are comparable to similar fees paid by other business entities.

The UUNAA will benefit the citizens of Pennsylvania who aggregate into the hundreds of unincorporated nonprofit associations that channel the efforts of those citizens into a myriad of useful volunteer activities. It will make voluntary action by citizens in their communities more secure and happier.

The Senate Judiciary Committee reported this legislation from committee last session.

If you would like to cosponsor this legislation, please contact Pat Snively of my office by e-mailing her at psnively@pasen.gov.