



**Model State  
Volunteer Service  
Act and  
Commentary**

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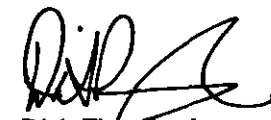
*"From now on in America, any definition of a  
successful life must include serving others."*

President George Bush  
June 22, 1989

President Bush has announced a new initiative directed at providing volunteer liability protection to all Americans who give of themselves to help others. This initiative recognizes the chilling effect felt by many volunteers throughout the nation who fear they could be sued as a result of their volunteer efforts.

In keeping with the principles of Federalism, the President urges the lifting of this fear by adoption by the States of the following Model State Volunteer Service Act. This Act provides a fair balance between the right of a person to seek redress for injury and the right of an individual to volunteer without undue fear of litigation.

The Department of Justice is proud of its role in supporting the President in this vital initiative to assist those who assist others.



Dick Thornburgh  
Attorney General of the  
United States

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# **Model State Volunteer Service Act**

## **Title**

Section 1. This statute is entitled "The Volunteer Service Act."

## **Preamble**

Section 2. The legislature finds and declares that --

- (a) the willingness of volunteers to offer their services has been increasingly deterred by a perception that they put personal assets at risk in the event of tort actions seeking damages arising from their activities as volunteers;
- (b) the contributions of programs, activities and services to communities is diminished and worthwhile programs, activities and services are deterred by the unwillingness of volunteers to serve either as volunteers or as officers, directors or trustees of nonprofit public and private organizations;
- (c) it is in the public interest to strike a balance between the right of a person to seek redress for injury and the right of an individual to freely give of his time and energy without compensation as a volunteer in service to his community without fear of personal liability for acts undertaken in good faith absent willful or wanton conduct on the part of the volunteer; and
- (d) the provisions of the within Act are intended to encourage volunteers to contribute their services for the good of their communities and at the same time

provide a reasonable basis for redress of claims which may arise relating to those services.

## Definitions

Section 3. For the purposes of this Act, the meaning of the terms specified shall be as follows:

"Volunteer" is a person performing services for a nonprofit organization, a nonprofit corporation, a hospital, or a governmental entity without compensation, other than reimbursement for actual expenses incurred. The term includes a volunteer serving as a director, officer, trustee or direct service volunteer;

"Nonprofit organization" is any organization which is exempt from taxation pursuant to section 501(c) of the Internal Revenue Code, 26 U.S.C. section 501(c), as amended;

"Nonprofit corporation" is any corporation which is exempt from taxation pursuant to section 501(a) of the Internal Revenue Code, 26 U.S.C. section 501(a);

"Governmental entity" is any county, municipality, township, school district, chartered unit or subdivision, governmental unit, other special district, similar entity, or any association, authority, board, commission, division, office, officer, task force or other agency of any State.

## Scope of Immunity

Section 4. (a) Any volunteer shall be immune from civil liability in any action on the basis of any act or omission of a volunteer resulting in damage or injury if:

- (1) The volunteer was acting in good faith and within the scope of such volunteer's official functions and

duties for a nonprofit organization, a nonprofit corporation, hospital or a governmental entity; and

- (2) The damage or injury was not caused by willful and wanton misconduct by such volunteer.

- (b) In any suit against a nonprofit organization, nonprofit corporation or a hospital for civil damages based upon the negligent act or omission of a volunteer, proof of such act or omission shall be sufficient to establish the responsibility of the organization therefor under the doctrine of *respondeat superior*, notwithstanding the immunity granted to the volunteer with respect to any act or omission included under the subsection (a) of this section.

## Exception

Section 5. Notwithstanding section 4 of this Act, a plaintiff may sue and recover civil damages from a volunteer based upon a negligent act or omission involving the operation of a motor vehicle during an activity; provided, that the amount recovered from such volunteer shall not exceed the limits of applicable insurance coverage maintained by or on behalf of such volunteer with respect to the negligent operation of a motor vehicle in such circumstances.

## Effective Date

Section 6. This Act shall be effective as to any civil suit for damages commenced on or after 180 days from the date of enactment of the Act regardless of whether the claim arose prior to the date of enactment.

(Alternative version: This Act shall be effective as to any claim that accrues on or after 180 days from the date of enactment of the Act.)

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# Commentary on Model State Volunteer Service Act

- Section 1. The title of the Act should conform to state practice.
- Section 2. The preamble is intended to be a guide to construction of the Act in accordance with its purpose to protect volunteers and governmental entities from civil damage liability arising from volunteer activities.
- Section 3. The term "hospital" is intended to have the same meaning otherwise commonly given the term under state law.
- Section 4. Section 4 is the heart of the Act. It is intended to protect volunteers from civil liability in all instances in which they are acting pursuant to their voluntary undertaking in good faith regardless of whether their activity was negligent or amounts to "gross negligence" or might be the basis for a strict liability claim. Subsection (b) has been added to make it clear that volunteer entities are not immune from liability to the extent that state law otherwise permits suit against such organizations. However, the intent of the Act is not to subject such organizations to liability where liability otherwise would not exist.
- Section 5. Section 5 modifies the immunity enacted by section 4 by providing that an individual volunteer may be sued for a negligent act or

omission involving the operation of a motor vehicle to the extent the volunteer possesses insurance coverage.

Volunteers maintain automobile insurance policies, and in some instances are required by law to do so, based upon their own needs. The cost of this kind of insurance for volunteers is not materially affected by the possibility that there might be claims arising from volunteer activities that are covered under these policies.

- Section 6. Section 6 enacts an effective date which will permit persons who possess claims to bring suit under the present legal standards for a reasonable period. The effective date is made applicable only after 180 days elapse in order to permit the entities involved to assess their reasonable insurance coverage with the expectation that reasonable insurance coverage would be purchased on or before the effective date of the Act.

Section 6 does not affect applicable limitations statutes.