

PENNSYLVANIA ASSOCIATION FOR VOLUNTEERISM
June 29, 1987
LEGAL ISSUES OF VOLUNTEER INVOLVEMENT

© Donald W. Kramer¹
Montgomery, McCracken, Walker & Rhoads
Philadelphia, PA

I. INTRODUCTION

A. According to Independent Sector, a Washington-based group for nonprofit organizations, 48 percent of the population over 18 years old engages in volunteer work at some time. Of those surveyed, 62 percent said they gave an average of three or more hours of their time each week.

B. However, volunteers are increasingly being exposed to lawsuits, and although few successful suits have actually been brought, this has led many insurance companies to withdraw from the market.

1. A recent study by Peat, Marwick, Mitchell & Co. indicates that many volunteer groups are operating without liability insurance. For example, the firm's survey showed that only 45 percent of the museum directors and 54 percent of the orchestra executives in the country have liability coverage. This is in sharp contrast to their corporate counterparts. More than 90 percent of for-profit business officers are protected with liability coverage.

2. Nonprofit organizations that are covered by liability insurance have watched their premiums skyrocket. Of nonprofit groups with coverage, 58 percent of those surveyed said their most recent policy renewal meant a premium increase of one-half or more. The Junior League of Washington watched the premium for its liability insurance jump from \$400 in 1985 to \$4,000 in 1986.

¹Major assistance in the preparation of this outline was provided by Anne Walters, a law student at the University of Pittsburgh Law School.

C. The decrease in liability coverage and the increased probability of being involved in a lawsuit has led many people to think twice about becoming a volunteer.

II. ORGANIZATION'S TORT LIABILITY TO THIRD PARTIES

A. Generally, see, Kahn, Organizations' Liability for Torts of Volunteers, 133 University of Pennsylvania Law Review 1433 (1985).

B. The end of charitable immunity.

1. Under the doctrine of charitable immunity, most charitable organizations that utilized volunteers were immune from all tort liability. There is a clear trend toward the abolition of this doctrine, and most states have held charitable organizations liable for the torts of their volunteers.

2. One rationale for the abolition of charitable immunity has been the view that charitable organizations have control over the activities of their employees, and therefore can take precautions against any possible liability. Also, the increased solvency of many charitable organizations and the availability of insurance have also been suggested as rationales for the abolition of this doctrine.

3. Nolan v. Tifereth Israel Synagogue, 425 Pa. 106, 109, 227 A.2d 675, 675-676 (1967). Unequivocally eliminated doctrine of charitable immunity in Pennsylvania.

4. The abolition of the doctrine of charitable immunity has meant that tort victims no longer have to bear the cost of injuries caused by charitable organizations and their employees.

5. Courts apply traditional tort doctrines to assess liability in a suit against a charitable organization for an alleged injury caused by a volunteer.

C. "Respondeat Superior" - the master is liable for the torts committed by the servant, regardless of the fault of the master.

1. Three requirements must be met:
 - a. Injury caused by negligence of servant
 - b. a master-servant relationship must exist
 - c. servant must be acting within scope of his/her employment at the time of the injury (RESTATEMENT (SECOND) OF AGENCY §219 (1957))
 - i. One test for employment is how others view the relationship. "The person employed is a servant when, in the eyes of the community, he would be regarded as a part of the employer's own working staff, and not otherwise." (W. KEETON, D. DOBBS, R. KEETON & D. OWEN, PROSSER AND KEATON ON THE LAW OF TORTS 501-02 (5th ed. 1984)).

2. Cases which apply respondeat superior.

- a. Baxter v. Morningside, Inc., 10 Wash. App. 893, 521 P.2d 946 (1974). Plaintiff was injured in car accident which involved volunteer of defendant. Volunteer was acting within scope of employment. Defendant had right to control his actions. Volunteer's status as non-salaried volunteer does not preclude a finding that master-servant relationship exists.

- b. Trinity Lutheran Church, Inc. of Evansville, Indiana v. Miller, 451 N.E. 2d (Inc. App. 1983). Suit to recover injuries sustained when automobile driven by volunteer church member struck plaintiff's motorcycle. Church member subjected himself to Church's control and was acting within scope of employment when injury occurred. Duty of agent acting gratuitously is same as any other agent. Right of control is determinative of master-servant relation, and not merely exercise of that control.

- c. Leno v. Young Men's Christian Assn., 17 Cal. App. 3d 651, 95 Cal. Rptr. 96 (1971). Plaintiffs sued YMCA for damages for wrongful death of their son, who drowned during a scuba diving lesson given by a volunteer instructor. Volunteer was agent of YMCA, and even

if viewed as an independent contractor, YMCA could be held liable under rule that person who retains such a contractor to perform extremely dangerous work may be held liable for failure to take extra precautions.

d. Vind v. Asamblea Apostolica, Christo Jesus, 148 Cal. 2d 597, 307 P.2d 85 (1957). Volunteer minister who injured another party while driving to a church meeting was acting within the scope of employment when the tort occurred.

e. Garcia v. Herald Tribune Fresh Air Fund, 51 App. Div. 2d 897, 380 N.Y.S. 2d 676 (1976). Doctrine of respondeat superior was properly applied to situation where volunteer who agreed to take children from city into a rural home setting was negligent in allowing a child in her care to drown. Principal-agent relation existed because principal retained a degree of direction and control over servant. Charity gave directions as to general safety to volunteer, and specifically indicated legal defense and insurance would be provided by charity if any accident occurred.

f. Malloy v. Fong, 37 Cal. 2d 356, 232 P.2d 241 (1951). Volunteer minister who caused automobile accident was agent of the charitable organization, making the charity liable under respondeat superior.

g. Riker v. Boy Scouts of America, Saratoga Co. Council, 8 App. Div. 2d 565, 183 N.Y.S. 2d 484 (1959). Action against Boy Scouts for injuries sustained when flag exhibit set up by cub scout troop was jostled by photographer and fell on plaintiff. Boy Scouts of America were held liable for negligence of volunteer cub scout Master who set up the exhibit.

h. Manor v. Hanson, 120 Wis. 2d 582, 356 N.W. 2d 925 (1984). Volunteer driver for senior citizen transportation program caused accident involving plaintiff's husband. Charity which established program held liable under respondeat superior.

3. Cases which have refused to apply respondeat superior.

a. Scottsdale Jaycees v. Superior Court of Maricopa Co., 17 Ariz. App. 571, 499 P.2d 185 (1972). Member of organization had volunteered to attend state board meeting of organization in another city, and was designated a delegate. Plaintiffs sued organization and member for death and injuries sustained by passengers in accident involving member's automobile. Court held that where organization had no right of control over member until he arrived at other city, member would not become servant of organization until he arrived in other city and therefore, no master-servant relationship existed.

b. Davis v. Shelton, 33 App. Div. 2d 707 304 N. 45 2d 722 (1969), appeal dismissed, 26 N.Y. 2d 829, 309 N.Y.S. 2d 358, 257 N.E.2d 902 (1970). Court found no liability on behalf of Boy Scout council or sponsoring church for torts of scoutmaster and assistant. Scout was injured in a fall from a tree. Court said council was simply a conduit which forwarded troop charter applications to national council exercising no supervision over troop. Church's primary function was to provide spiritual guidance to the troop, and had nothing to do with its operations.

C. Other areas of liability, e.g. libel or slander, illegal discrimination, interference with contractual rights, anti-trust.

III. VOLUNTEER TORT LIABILITY TO THIRD PARTIES.

A. Volunteers are usually liable for their own negligence.

B. Since few have insurance, plaintiffs usually sue organizations.

IV. ORGANIZATION'S LIABILITY TO THE VOLUNTEER.

A. These cases do not seem to be reported as frequently as do cases which involve injuries to third parties.

B. Typically involve "on the job" injuries to volunteers.

C. Cases apply general negligence principles.

1. Marcus v. Frankford Hospital, 445 Pa. 206, 283 A.2d 69 (1971). Suit brought against hospital and head of hospital nursing services for injuries sustained by volunteer "candystriper." Hospital was negligent under theory that a master owes a duty not to subject a servant to unreasonable risks of harm, and plaintiff did not receive sufficient training for task which she was asked to perform.

2. Sokolow v. City of Hope, 41 Cal.2d 668, 262 P.2d 841 (1953). Action brought against charitable corporation for injuries sustained by volunteer waitress who fell while serving food for benefit of the corporation.

D. Are volunteers covered by Worker's Compensation protection?

1. Marcus v. Frankford Hospital, 445 Pa. 206, 283 A.2d 69 (1971). Court held that plaintiff was not an employee of hospital within meaning of Section 22 of Workmen's Compensation Act (77 P.S. §22). The term "employee" as used in the act is one "who performs services for another for a valuable consideration." The defendant argued that plaintiff was entitled to receive free meals during her shift, and that this constituted valuable consideration. The court did not agree.

2. Schreckenpost v. Gospel Tabernacle, 188 Pa. Super. 652, 149 A.2d 542 (1959). Minister of church asked for volunteers to aid in construction of new church and said this labor could be applied toward payment of church pledges. Church member was injured, and court held that he was an employee within meaning of the Act; his death was compensable.

V. FIDUCIARY DUTY OF DIRECTORS AND OFFICERS.

A. Duty of Care.

1. Directors shall perform their duties in

the best interests of the corporation, in good faith and with the diligence, care and skill which ordinary persons would exercise under similar circumstances.

B. Duty of Loyalty.

1. See, In re Pew Memorial Trust No. 1, 5 D.&C. 3d 627,664 (1977). Partially modified by Directors' Liability Act. Act 1986-145.

VI. ORGANIZATIONAL INDEMNIFICATION OF VOLUNTEERS.

A. Pennsylvania Nonprofit Corporation Law requires indemnification of any representative of nonprofit corporation who is "successful on the merits or otherwise" in defense of action brought against him/her as a result of his/her activities on behalf of the corporation. 15 Pa. C.S. §7743.

B. Corporation has power to indemnify representative against any claim, even valid claim, except in cases of willful misconduct or recklessness. Directors' Liability Act. Act 1986-145. 42 Pa. C.S. §8365.

VII. LEGISLATIVE LIMITS ON LIABILITY

A. Volunteer Tort Liability to Third Parties.

1. Pennsylvania Sports Bill. 42 Pa. C.S. §8332.1.

2. "Substantial Negligence" test for uncompensated officers or directors of Pennsylvania charitable organizations. 42 Pa. C.S. §8332.2.

3. New Jersey sports legislation. §2A:62A-7. See Nonprofit Monitor articles attached.

4. New Jersey volunteer immunity. §2A:53A-7.1. Attached.

B. Officer and Director Liability for Fiduciary Duty.

1. Pennsylvania Directors' Liability Act.
Act 1986-145. Does not cover officers. See Memorandum attached.

2. New Jersey volunteer immunity. §2A:53A-7.1.
Attached.

C. At least 24 other states have passed laws with some limitations on liability.

VIII. PROPOSED FEDERAL LEGISLATION

A. Volunteer Protection Act - Senate Bill 929 sponsored by John Melcher (Montana) currently has five cosponsors. Both Pennsylvania senators said they were not interested in cosponsoring.

House Resolution 911 sponsored by John Porter (Illinois) is identical. (See copy attached.) Currently has 110 cosponsors.

1. Bill sets standard to protect individual volunteers who are acting in good faith and within the scope of their duties as volunteer, as long as damage or injury is not caused by willful and wanton misconduct.

2. Does not affect civil action brought by nonprofit organization or governmental entity against any volunteer of such organization.

3. Does not affect liability of organization with respect to injury caused by any person.

4. Does not preempt state law governing tort liability.

5. If any state does not pass legislation imposing similar standard by beginning of Fiscal Year 1989, this bill would reduce its social service block grant by 1 percent. (Pa.'s block grant for 1986 was \$130,630,236.)

6. According to Senator Melcher's office, the Act has no significance in reducing liability on its own. It merely sets a standard for states to follow.

IX. ONE INSURANCE BROKER'S RESPONSE TO LEGISLATION

"With respects to the comments regarding the new directors and officers liability law in Pennsylvania and New Jersey and the setting of rates, please be advised that we have checked with various carriers in the past pertaining to this new law and their comment is one of "wait and see". The fact that the legislatures of the two states involved have passed the law has no bearing whatsoever as far as the insurance company is concerned. Their attitude is they want to see if these laws hold up in courts of laws, since as of this time they have not been tried and tested. If at some future point they are tried and tested and are found to be valid and do hold up in our courts, then the insurance companies will of course adjust their thinking and pricing accordingly. Until such time as this happens, the laws as far as the insurance companies are concerned, are totally worthless." Letter to client, June 11, 1987.

LEGISLATURES REDUCE LIABILITY FOR NONPROFIT VOLUNTEERS

Both Pennsylvania and New Jersey Legislatures have recently moved to protect volunteers who participate in nonprofit "little league" sports programs from the dangers of personal injury suits. But the Pennsylvania Assembly has gone significantly further to reduce the potential liability of officers, directors and trustees of all charities.

The bills, each signed by the Governor, were introduced after a much publicized case involving a young ball player who was hurt when he failed to catch a fly ball. His parents sued the coach on the ground that the child was negligently allowed to play in a different position from the one in which he had previously played. Although the suit was settled out of court, it caused a significant ripple of fear among sports volunteers. Some quit entirely because of the risks. The difficulty in obtaining liability insurance at reasonable rates undoubtedly fueled their fears.

THE NEW JERSEY SPORTS BILL

The New Jersey Bill, Senate Bill No. 1678, enacted May 12, 1986 (now N.J. §. 2A: 62A-6), provides that no volunteer coach, manager, or official for a sports team organized pursuant to a nonprofit or similar charter shall be liable in any civil action for damages to a player or a participant arising out of an accident in sports competition, practice or instruction.

The Bill contains five exceptions from the immunity: (1) willful, wanton or gross negligence; (2) any person who has not participated in a safety orientation and training program established by the league or team; (3) negligent operation of a motor vehicle; (4) a person permitting competition or practice without supervision; and (5) a person who serves as a part of a public or private educational institution's athletic program.

THE PENNSYLVANIA SPORTS BILL

The Pennsylvania Bill, H.B. 1625, Act 57 of May 12, 1986, provides that individuals who, without compensation, render services as a manager, coach, umpire, or referee, or who, without compensation, assist a manager, coach, umpire or referee in a sports program of a nonprofit association are not liable to any person for civil damages as a result of any act or omission in rendering such services, unless: (1) the conduct of such individual falls substantially below the standards generally practiced and accepted in like circumstances by similar individuals in similar situations; and (2) the individual did an act or omitted doing an act which that individual was under a duty to do, knowing or having reason to know that such act or omission created a substantial risk of actual harm to the person or property of another. (Now 42 Pa.C.S. § 8332.1)

The Act also sets forth the same standard for nonprofit associations, their officers, and employees conducting sports programs.

The Act specifically provides that it does not reduce the standard of care in cases involving transportation to or from events, or relating to care and maintenance of real estate unrelated to the playing area.

Although the original version of the Bill permitted imposition of liability only for gross negligence, it was amended to create a new "substantial negligence" standard, which seems to fall somewhere between ordinary negligence and gross negligence.

Ordinary negligence is defined as the omission of care which a person of ordinary prudence would take for the protection of others against an unreasonable risk of harm. Gross negligence is defined as conduct which is in reckless disregard of the consequences of a person's act or omission where the person is aware that the act or omission will probably result in injury to another. The new standard falls somewhere in between.

A BROADER DEFENSE FOR DIRECTORS

The more broadly significant part of the Pennsylvania Bill was added as an amendment on the floor of the House. The second section of H.B. 1625 (now 42 Pa.C.S. § 8332.2) provides that no person who serves, without compensation, as an officer, director or trustee "of any nonprofit organization under Section 501(c)(3) of the Internal Revenue Code" shall be liable for any civil damages as a result of any act or omission unless the individual's conduct falls below the same new substantial negligence standard.

This provision applies only to officers, directors and trustees, and does not, unlike the "little league" section, apply to the association itself. It also applies only to persons who serve without compensation other than reimbursement for actual expenses.

The second section applies to officers and directors of organizations under Section 501(c)(3), which presumably includes charitable trusts as well as nonprofit corporations. The "little league" section applies only to what the statute calls nonprofit associations, which it defines as "a nonprofit corporation or nonprofit unincorporated association."

The extent of the new coverage is unclear. The floor debates apparently dealt only with situations in which individuals had allegedly failed in their duties to third parties who suffered personal injury or property damage. It is not clear whether the section is also intended to cover claims other than physical injury, such as interference with contract rights or negligent damage to reputation.

Nor is it clear that it covers duties of officers and directors toward their own organization. Directors have both a "duty of care" and a "duty of loyalty" toward their organization. The duty of care generally deals with the judgment they are expected to render. The duty of loyalty restricts a person from self-dealing and limits action where there is a potential conflict of interest.

Because the Act sets forth a negligence standard, it seems to address only the duty of care, although the literal language of the Act does not limit its application. The debate included no discussion of bad judgment in financial matters or other situations in which damage might be done to the organization itself, although negligence in that respect would seem to be covered by the Act. Nor was there discussion of the duty of loyalty, and it may be harder to expand the coverage of the Act to apply to this duty.

The Act makes no reference to duties imposed on directors and trustees under the Pennsylvania Nonprofit Corporation Law or the Probate, Estates and Fiduciaries Code.

Until case law is developed in this area, the scope of this Act and its effect on the liability of officers and directors is uncertain. Meanwhile the Act presents an interesting and potentially successful defense to lawsuits involving officers and directors of nonprofits.

It would not be wise to count on it, however.

P. L. 1987, CHAPTER 87, *approved April 6, 1987*

1986 Senate No. 2705

AN ACT exempting volunteers of certain organizations from liability for damages under certain conditions and supplementing P. L. 1959, c. 90 (C. 2A:53A-7 et seq.).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. a. Notwithstanding any other provision of law to the contrary,
2 no person serving without compensation, other than reimbursement
3 for actual expenses, as a trustee, director, officer or voluntary
4 member of any board, council or governing body of any nonprofit
5 corporation, society or association as provided in P. L. 1959, c. 90
6 (C. 2A:53A-7 to 2A:53A-11), or nonprofit federation council or
7 affiliated group composed of these organizations or a voluntary
8 association as provided by P. L. 1979, c. 172 (C. 18A:11-3) or to a
9 conference under the jurisdiction of such a voluntary association,
10 shall be liable for damages resulting from the exercise of judg-
11 ment or discretion in connection with the duties of his office unless
12 the actions evidence a reckless disregard for the duties imposed
13 by the position.

14 b. Notwithstanding any provisions of law to the contrary, no
15 person who provides volunteer service or assistance for any non-
16 profit corporation, society or association as provided in P. L.
17 1959, c. 90 (C. 2A:53A-7 to 2A:53A-11), or nonprofit federation
18 council or affiliated group composed of these organizations or a
19 voluntary association as provided by P. L. 1979, c. 172 (C.
20 18A:11-3) or to a conference under the jurisdiction of such a
21 voluntary association shall be liable in any action for damages as a

C 87-2

22 result of his acts of commission or omission arising out of and in
23 the course of his rendering the volunteer service or assistance.

24 Nothing in this subsection shall be deemed to grant immunity to
25 any person causing damage by his willful, wanton or grossly
26 negligent act of commission or omission.

27 Nothing in this subsection shall be deemed to grant immunity to
28 any person causing damage as the result of his negligent operation
29 of a motor vehicle.

1 2. This act shall take effect immediately and shall apply to any
2 cause of action arising on or after that date.

MEMORANDUM

RE: Pennsylvania Directors' Liability Act
(Act No. 1986-145)

The Pennsylvania Directors' Liability Act (the "DLA") became effective on January 27, 1987. The DLA was enacted as a legislative response to the restricted availability and increased cost of directors and officers liability insurance and the resultant difficulty some corporations have encountered in obtaining the services of qualified directors. The DLA applies to both nonprofit and business corporations.

In general, the DLA is composed of three major aspects.

The first is an articulation of the standard of conduct applicable to directors and trustees in their fiduciary capacity and the elimination of a statutory standard for the conduct of officers, as such. These provisions are automatic and require no implementing action by directors and trustees.

The second part authorizes the members of nonprofit corporations to limit the personal monetary exposure of directors and trustees (but not officers) and essentially reduces the standard of care for which they are liable as fiduciaries. This requires an amendment to the by-laws.

The third expands the indemnification which may be granted to directors or trustees, officers and employees. This portion of the DLA may be best implemented by adoption of by-law amendments.

Statutory Standard of Conduct of Directors and Trustees

The DLA provides that directors and trustees shall perform their duties in the best interests of the corporation, in good faith and with the diligence, care and skill which ordinary persons would exercise under similar circumstances. In doing so directors and trustees may consider the effects

of any action upon employees, suppliers, customers and communities in which facilities are located. Directors and trustees are entitled to rely in good faith on information, reports and financial data prepared by officers and employees, professional advisors acting within the scope of their expertise, and board committees on which a director or trustee does not serve, unless, in each case, the director or trustee has knowledge which makes such reliance unwarranted. This probably does not materially change existing law, except to the extent that it makes clear that directors and trustees can consider the effect on others in their determinations.

The DLA dropped the application of the statutory standard to officers of the corporation, relying on the fact that they are agents of the corporation. This removes a statutory provision originally incorporated in Pennsylvania law in 1933 and follows the pattern of Delaware corporate law. Presumably, officers are governed by case law standards, which one would not expect to be substantially different.

Limitation on Liability

The DLA permits by-law amendments providing that a director or trustee shall not be liable for monetary damages for action taken, or failure to take action, unless (a) the director or trustee has breached or failed to perform the statutory standard and (b) the breach or failure constitutes self-dealing, willful misconduct or recklessness. Criminal liability and tax liability are excluded from this provision.

Although the language is broad, it appears to apply only in cases of breach of fiduciary duty (to the corporation or its members) and is not a general exculpation of liability to third parties. The DLA specifically preserves the provisions of Act 1986-57, which reduced the standard of care applicable in negligence cases against uncompensated directors and trustees of charitable corporations.

Since the DLA permits a major reduction in the fiduciary standard applicable to directors and trustees, the members must decide whether they want to reduce the standard of care required by those who serve on the board.

Again, it is significant to note that the new reduced standard cannot be applied to officers.

Indemnification

The DLA also expands the right of the corporation to indemnify directors or trustees, officers, employees and other representatives beyond the current provisions of law (including indemnification in derivative actions) and permits the corporation to advance expenses to indemnitees pursuant to general arrangements set forth in the by-laws. Broad indemnification is specifically declared to be consistent with the public policy of The Commonwealth.

Proposed By-Law Amendments

Attached hereto are proposed by-law amendments implementing the DLA. The DLA is not effective as to suits commenced or actions taken, or omitted to be taken, prior to January 27, 1987. There is nothing in the DLA which suggests that the by-laws may not be effective retroactively to January 27, 1987.

The DLA requires that the by-law amendment reducing the standard of care and limiting directors' liability be adopted by the members of a nonprofit corporation where there are members. Neither the DLA nor the existing Nonprofit Corporation Law requires that the indemnification provisions be adopted by members, but where there are members, it may be more appropriate to do so. Where there are no members, the by-laws may be adopted by the Directors.

The draft by-law amendments attached provide the option to indemnify employees or other representatives of the corporation who are not officers or directors. The law permits such indemnification, either through the general by-law provision or on an ad hoc basis. The members may want to limit the mandatory indemnification to officers and directors [by striking the language in brackets] and provide indemnification to others only if it appears to be appropriate at the time.

They should be aware that the corporation is required under existing law to indemnify any representative of the corporation who is successful on the merits in defense of an action brought against such person because of his or her representation of the corporation. The corporation is not required to indemnify where there is a settlement or a determination of liability.

It is a significant policy decision for the members of the board to determine the scope of mandatory indemnification.

H. R. 911

encourage the States to enact legislation to grant immunity from personal civil liability under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1987

REPORTERS: BIRNELL, Mr. FURSELL, Mr. EDWARDS of Oklahoma, Mr. DENNY SMITH, Mr. LAGOMARINO, Mr. TOWNS, Mr. MURPHY, Mr. FEIGHAN, Mr. WORTLEY, Mr. BRAZER, Mr. PENNY, Mr. ECKART, Mr. SUNIA, Mrs. JOHNSON of Connecticut, Mr. PACKARD, Mrs. BENTLEY, Mrs. VUCANOVICH, Mr. ATKINS, Mrs. COLLINS, Mr. ESPY, Mr. ROBINSON, Mr. PASHAYAN, Mr. DARDEN, Mr. MYERS of Indiana, Mr. BEVILL, Mr. WELDON, and Mr. DANFELD introduced the following bill; which was referred jointly to the Committees on the Judiciary and Ways and Means

MAY 27, 1987

REPORTERS: Mr. HENRY, Mr. MARTINEZ, Mr. QUILLER, Mr. EVANS, Mr. BILIRAKIS, Mr. GREEN, Mr. BIAGGI, Mr. DAVIS of Illinois, Mr. SAXTON, Mr. KIDDER, Mr. HILFER, Mr. SHUMWAY, Mr. INHOFF, Mrs. ROYCEMA, Mr. CRANE, Mr. RICHARDSON, Mr. GOODLING, Mr. MARLENEE, Mr. DAVIS of Michigan, Mr. BARTLETT, Mr. CHANDLER, Mr. HOLLOWAY, Mr. STUMP, Mrs. MOFFETTA, Mr. CLINGER, Mr. GALLO, Mr. LUJAN, Mr. PEPPER, Mr. CARROLL, Mr. SENNENBRENNER, Mr. KOLBE, Mr. SMITH of New Jersey, Mr. YALOW, Mr. BOLDEN, Mr. HYDE, Mr. UPTON, Mr. SCHULZE, Mr. MCCLOSKEY, Mr. LATTI, Mr. BILEY, Mr. BADDHAM, Mr. RAYBENEL, Mr. MCKINNEY, Mr. STALLINGS, Mr. JACOBS, Mr. EMERSON, Mr. BOFFER, Mr. GRAY of Illinois, Mr. BURTON of Indiana, Mr. FUSTER, Mrs. MARTIN of Illinois, Mr. SINDQUIST, Mr. HASTERT, Mr. ROE, Mr. PETRI, Mr. ROWLAND of Connecticut, Mr. HOLDEN, Mr. LOWERY of California, Mr. SOLARZ, Mr. GRANDY, Mr. LAWELL, Mr. CLARK, Mr. MILLER of Washington, Mr. BELLER, Mr. BUNNING, Mr. MCCOLEM, Mrs. MEYERS of Kansas, Mr. LEFINSKI, Mr. KOHLER, Mr. MACKAY, Mr. SCHIFFLE, Mr. BUCHNER, Mr. DONNELLY, Mr. LEWIS of Georgia, Mr. YATES, and Mrs. SMITH of Nevada

A BILL

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Volunteer Protection Act of 1987".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) 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;

(2) as a result of this perception, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, local governments, foundations, and other civic programs, have been adversely affected through the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer

and higher cost programs than would be obtainable if volunteers were participating;

(4) the unpredictability of liability awards and doctrines has added to the high cost of liability insurance by making it difficult for insurers and self-insurers to project their liability with any degree of confidence and has adversely affected the ability of nonprofit organizations to obtain liability insurance coverage for volunteer directors and officers with respect to their personal capacities; and

(5) because Federal funds are expended on useful and cost-effective social service programs which depend heavily on volunteer participation, protection of voluntarism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal encouragement of State reform.

(b) PURPOSE.—It is the purpose of this Act to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs and nonprofit organizations and governmental entities which depend on volunteer contributions by encouraging reform of State laws to provide immunity from civil liability to volunteers serving with nonprofit organizations and government-

1 tal entities for actions undertaken in good faith on behalf of
2 such organizations.

3 **SEC. 3. NO PREEMPTION OF STATE TORT LAW.**

4 Nothing in this Act shall be construed to preempt the
5 laws of any State governing tort liability actions.

6 **SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.**

7 (a) **IMMUNITY FOR VOLUNTEERS.**—Except as provided
8 in subsection (b), any volunteer of a nonprofit organization or
9 governmental entity shall be immune from civil liability in
10 any action brought in any court on the basis of any act or
11 omission resulting in damage or injury to any person if—

12 (1) such individual was acting in good faith and
13 within the scope of such individual's official functions
14 and duties with the organization or entity; and

15 (2) such damage or injury was not caused by will-
16 ful and wanton misconduct by such individual.

17 (b) **CONCERNING RESPONSIBILITY OF VOLUNTEERS**
18 **WITH RESPECT TO ORGANIZATIONS.**—Nothing in this sec-
19 tion shall be construed to affect any civil action brought by
20 any nonprofit organization or any governmental entity
21 against any volunteer of such organization or entity.

22 (c) **NO EFFECT ON LIABILITY OF ORGANIZATION.**—
23 Nothing in this section shall be construed to affect the liabil-
24 ity of any nonprofit organization or governmental entity with
25 respect to injury caused to any person.

1 **SEC. 5. CERTIFICATION REQUIREMENT AND REDUCTION OF**
2 **SOCIAL SERVICES BLOCK GRANT ALLOTMENTS.**

3 (a) **CERTIFICATION.**—(1) Subject to paragraph (2),
4 before the beginning of each fiscal year, commencing with
5 fiscal year 1989, each State shall certify to the Secretary of
6 Health and Human Services that it has enacted, adopted, or
7 otherwise has in effect State law which substantially com-
8 plies with section 4(a).

9 (2) In the case of a State whose legislature does not
10 meet in regular session between the date of the enactment of
11 this Act and before the beginning of fiscal year 1989, such
12 State shall provide the certification referred to in paragraph
13 (1) before the beginning of each fiscal year commencing after
14 fiscal year 1989.

15 (b) **REDUCTION OF ALLOTMENT.**—If a State fails to
16 provide certification as required under subsection (a), the
17 Secretary shall reduce by 1 percent the fiscal year allotment
18 which would otherwise be made to such State to carry out
19 the Social Services Block Grant Program under title XX of
20 the Social Security Act.

21 (c) **REALLOTMENT TO CERTIFYING STATES.**—With
22 respect to any reduction made under subsection (a), the Sec-
23 retary shall allot such funds among States which provide cer-
24 tification referred to in subsection (a) in proportion to the
25 amount otherwise allotted to such States.

1 **SEC. 6. DEFINITIONS.**

2 For purposes of this Act—

3 (1) the term "volunteer" means an individual per-
4 forming services for a nonprofit organization or a gov-
5 ernmental entity who does not receive compensation,
6 or any other thing of value in lieu of compensation, for
7 such services (other than reimbursement for expenses
8 actually incurred or honoraria not to exceed \$300 per
9 year for government service), and such term includes a
10 volunteer serving as a director, officer, trustee, or
11 direct service volunteer;

12 (2) the term "nonprofit organization" means any
13 organization exempt from taxation under section 501(c)
14 of the Internal Revenue Code of 1954;

15 (3) the term "damage or injury" includes physical,
16 nonphysical, economic, and noneconomic damage; and

17 (4) the term "State" means each of the several
18 States, the District of Columbia, the Commonwealth of
19 Puerto Rico, the Virgin Islands, Guam, American
20 Samoa, the Northern Mariana Islands, any other terri-
21 tory or possession of the United States, or any political
22 subdivision of any such State, territory, or possession