

An Analysis of Volunteer Protection Legislation

**Prepared
for
The American Association of Retired Persons
Office of Volunteer Coordination
and
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**by
Stephen H. McCurley
VM Systems
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Introduction

This paper was produced in September 1987 to provide an overview and analysis of state and federal efforts to protect volunteers from suit through the enactment of protective legislation. The paper examines the efforts of 36 states that passed legislation in 1986 and 1987 and examines proposed legislation at the federal level. Of necessity, this work must be regarded as a preliminary effort, since activity in this area is still on-going, and some of the factual material in this paper will become swiftly out-dated as new legislation is drafted and as existing legislation is interpreted.

The content of the paper is divided into three basic parts:

- 1. Background regarding the movement to enact legislation**
- 2. Analysis of enacted legislation**
- 3. Implications of the legislation**

In addition, a series of Appendices provide related factual materials and references to other sources of information on this topic.

Background/Overview

Volunteering in America

Volunteering has long been a pervasive part of American life. Studies conducted by the Gallup Poll organization for the Independent Sector during the 1980's indicate that approximately 50% of the American population regularly involves itself in volunteer activity during the year. During 1985 an estimated 90 million people volunteered almost 16.1 billion hours to non-profit groups and to governmental entities.

A significant proportion of these volunteers are seniors. Studies indicate that in 1985 43% of those between ages 65 and 74 engaged in volunteer work, and 25% of those over age 75. Seniors are increasingly becoming a prime target for volunteer recruitment efforts directed at both service and board volunteers. Seniors are sought for direct service work because of their ability as retirees to provide time during the usual working hours of the day, and are sought as board members due to their previous work experiences and contacts which are valuable to the agency.

In addition, seniors are one of the primary recipients for services delivered by voluntary agencies through volunteers. Examples of such programs include delivery of meals, congregate centers, home visitation programs, medical emergency call-in programs, etc.

The Liability Crisis

Lawsuits involving volunteers have always been extremely rare. The suits that have been filed tend to fall into 4 categories:

- 1. Suit against a direct service volunteer for negligence leading to injury of another (usually involving an automobile accident).**

2. Suit against a direct service volunteer for criminal action (usually involving child abuse or molestation).
3. Suit against a board member for mismanagement of the agency on which the volunteer serves.
4. Suit against a board member related to the programs or activities of the agency on which the volunteer serves.

(Appendix 1 provides examples and citations of some of the lawsuits which have been filed regarding both direct service and board volunteers.)

Beginning in approximately 1983 the explosion of lawsuits began to significantly affect the volunteer community. At that time over 13 million lawsuits were being filed each year, primarily involving claims of negligence. Although few of these lawsuits involved the social services community, and even fewer involved personal suits against volunteers, a tremor of fear struck the volunteer community.

This reaction was based upon two factors:

First, since previous experience had been that there was no reason to worry about lawsuits, the realization of exposure to risk of suit came as a massive and unpleasant shock to the volunteers. Despite the relative improbability of suit, the perception of risk was such that even one suit in a community could serve to damage or paralyze volunteer recruitment efforts. As public attention was focused upon the liability crisis, and as volunteer groups began to be cited as a possible target, the fear grew even in communities where no lawsuit had previously been filed.

Second, volunteer organizations began to receive tangible reminder of the potential of suit from the insurance industry. Many volunteer organizations either had been covering or sought to cover board volunteers with insurance that would provide protection in the event of suit. The premiums for this coverage began to escalate tremendously, with increases of 300% annually not being uncommon.¹ In addition, many volunteer-utilizing programs were simply denied insurance coverage and were told that they were too much of a risk to receive protection. This served both to reinforce the perception of risk and at the same time to instill a feeling of hopelessness and desperation among volunteers and volunteer organizations.

The Move to Legislative Protection

Legislative relief from suit has been provided in some other areas of social services. Parks and recreation programs in some states have been granted limited immunity from suits involving negligence,² and immunity has been sought for individuals working in child welfare³. Louisiana has had a provision since 1972 that limits suits against non-profit board members by recipients of the agency's services.

The move to exempt volunteers from suit began in New Jersey and in Pennsylvania with an attempt to provide protection for volunteers working in sports programs. Volunteer coaches and workers in programs such as Little League were one of the central focuses of fear of suits arising from an injury to a child through misuse of equipment or through improper coaching techniques. During legislative consideration, the original bills were expanded to include protection for board volunteers as well.

When news of the enacted legislation in Pennsylvania and New Jersey spread, other states began to rapidly follow suit. By the end of the 1986 legislative sessions, 20 states had enacted some form of protective legislation. By mid-1987 the number of

states with some form of protection had risen to 36, and proposed national legislation had been introduced. (See Appendix 6 for an analysis of the federal legislation.)

Analysis of Protective Legislation

The scope of the legislative attempts to protect volunteers has varied widely from state to state. (See Appendix 3 for a state-by-state breakdown of enacted legislation.) There are three major areas of consideration which must be examined in determining the extent of protection provided:

Extent of Organizational Coverage

Not all volunteers of all organizations receive coverage. One must volunteer for a 'qualified' organization under each state's definitions. Originally this meant a charitable organization, but as more bills were enacted this grew to include other types of agencies. The primary options now being considered include:

1. *Non-profit organizations*, with choices as to whether the group must be have some other tax-exempt status; and whether certain organizations such as hospitals or education institutions) ought to be excluded from coverage. (To see how complex this may be, see Appendix 2 for a listing of the possible variations in selection possible just among the tax-exempt groups.)
2. *Government entities*, with choices as to the extension of coverage among state and local levels of government, and to quasi-governmental entities.
3. *Individuals*, including both the volunteer who acts totally alone as the 'Good Samaritan' or with others in an unincorporated association.
4. *For-profit corporations*, such as those companies who engage in group projects involving volunteer employees.

The movement in legislation is clearly toward providing protection for governmental volunteers and for at least some types of volunteers for non-profit agencies.

Types of Volunteers Covered

There are three basic types of volunteers who are being covered under current legislation. These are:

1. Non-profit board volunteers;
2. Volunteers on advisory boards and committees; and
3. Direct service volunteers.

Only two states who have enacted legislation have failed to cover non-profit board volunteers, and both of these states have introduced legislation to attempt to do so. Sixteen states have covered direct service volunteers. Advisory board volunteers have primarily been covered into those states which provide protection to volunteers in governmental entities.

A more complicated question regarding volunteer coverage has arisen regarding the definition of what a "volunteer" is and is not. Most states define 'volunteer' as one who does not receive compensation, or one who serves of their own free will. This definition leaves in limbo some of the current types of "quasi-volunteers", including:

1. Individuals performing work as part of a community service restitution program or alternative sentencing program.

2. Individuals who receive a stipend, such as volunteers under the Foster Grandparents program of the ACTION agency.
3. Student interns who are receiving educational credits.
4. Corporate employees who receive a salary, but who are 'loaned' to a non-profit agency.
5. Board members who serve as official delegates to a board as a part of their work duties.

The creativity of the volunteer community in obtaining unpaid workers has apparently progressed beyond the creativity of legislative drafters.

Extent of Protection

The protection being provided in the legislation does not totally render a volunteer immune from suit. The legislation is limited to civil cases (with the exception of Wisconsin), and mostly restricted to cases involving negligence. Underlying almost all of the legislation is the explicit or implicit requirement that the volunteer be operating in good faith and within the scope of their volunteer duties in order to qualify for protection.

In addition, the protection provided to the volunteer may be limited in three areas:

A. Extent of wrong-doing allowed

Most legislation does not exempt a volunteer from all and any mis-conduct. Usually a limit is set beyond which the volunteer does not receive protection. The common limits are as follows:

1. "Knowledge/participation": the volunteer is liable if they were a direct participant in the wrong-doing.
2. "Wanton/gross misconduct": the volunteer is liable if their conduct is sufficiently grievous as to be seriously flawed, or such a level of mistake as to constitute much more than an inadvertent error on the part of the volunteer.
3. "Willful/intentional misconduct": the volunteer is liable if the misconduct is of a deliberate nature.

In essence, most legislation provides protection by raising the burden of proof on the plaintiff to demonstration of a higher level of wrong-doing.

B. Exempted plaintiffs

Some potential plaintiffs are exempted from the protections granted by the new laws. Examples of those are:

1. The agency itself, which could still file suit against one of its own volunteers for misconduct. This exemption is aimed at protecting agencies from wrongful actions of members of their boards.
2. The Attorney General of the state, who is commonly charged with supervision over non-profit agencies.
3. Third parties who do not receive services from the agency, in what is essentially a variation that has existed for years in the old charitable immunity doctrine.

Under these provisions, the exempted plaintiffs would presumably only have to show simple negligence as a burden of proof.

C. Variations/Exceptions

A wide range of variations have been enacted as well. Among some of the common variations that have arisen are:

1. Either requiring insurance as a prerequisite of protection or else only
2. Eliminating protection in cases involving a vehicle.
3. Excluding volunteers who are rendering professional services.
4. Excluding coverage of suits involving contractual obligations.
5. Excluding incidents which involve alcohol or drugs.

Some of the variations could have unusual consequences. A number of states, for example, in determining the extent of organizational coverage have defined a 'qualified' organization by referring to those organizations either receiving a charter under some section of the state corporation code or receiving a tax-exempt status under some section of the state taxation code. This would presumably exclude from coverage any organization incorporated in another state but operating across state boundaries or else with sub-units that were operating within the umbrella group's tax exempt status in another state. (See Appendix 4 for a listing of state variations.)

Summary of Coverage

What began as a simple attempt to protect volunteers has emerged as an increasingly complicated task. It is likely that the original initiators of the legislation had no idea how complex the volunteer community has become. Those states which quickly enacted 'simple' versions of legislation are already beginning the amendment process, either to correct drafting errors or to widen coverage. Minnesota, for example, quickly enacted a '25-words-or-less' version of protection for non-profit board members in 1986 and in 1987 enacted a replacement bill which gave somewhat better guidance of legislative intent after no one was able to decipher the original legislation.

Implications and Impact

The implications of the this legislation must be evaluated in six major areas:

I. Impact on Lawsuits

Quantitative information on lawsuits involving volunteers has always been sparse. Kahn, in a 1984 survey of volunteer programs determined that 45 out of 343 respondents reported some previous involvement in a legal action or lawsuit,⁴ but how many of these involved suits against a volunteer is unknown. Qualitative data on the causes of action involved is equally rare, so it is impossible to accurately predict the impact of this protection legislation in any sort of numerical fashion.

In the short run, there will be an extensive period of testing and defining the new legislation in the courts. Many of the elements and situations covered by the new legislation have little or no previous legal history, and will only be established as individual cases are decided. How, for example, will the wording in Pennsylvania's legislation that volunteers operate according to "generally practiced standards" be interpreted? What determinations will be made about the coverage extended to the "quasi-volunteers" discussed above?

What is obvious is that the legislation does provide some additional protection to volunteers. While the protection is not universal, at least in the area of negligence suits it will clearly be more difficult for plaintiffs to meet the heightened burden of proof required under most of the new legislation. This should ultimately reduce the incidence of suit through discouraging potential plaintiffs.

In addition, some types of lawsuits will be more significantly affected. One type of suit, for example, which caused considerable unrest among non-profit board members, was the suit which arose over a program or activity conducted by the non-profit, during which someone was injured. In addition to suing the non-profit agency, many plaintiffs were also filing against individual board members (many of whom had considerably more assets than the non-profit agency). The requirements in the new legislation for demonstration of active participation or involvement in the actual wrong-doing should substantially reduce this type of suit.

2. Impact on Insurance

Impact of the legislation on insurance is much harder to predict, and depends on whether one thinks that the pricing of insurance premiums is directly related to risks. The period since enactment of the new legislation has been too short for empirical demonstration of any reduction in rates. On an inferential basis, a few more companies are now advertising the availability of Directors and Officers insurance coverage for board volunteers.

One negative result in the area of insurance has been a tendency toward over-reaction in the volunteer community in estimating the amount of protection provided in the new legislation. This has led to some agencies deciding that they could safely cancel or fail to renew insurance policies. Such an action is clearly not justifiable solely as a result of the legislation, both because of its lack of universal coverage and because of the benefit of insurance in providing assistance in defending against even frivolous suits.

3. Impact on Volunteering

Quantitative statistics are also lacking on the potential impact of the legislation on volunteering. Since no data exists on any present deterrent effect that litigation has had on volunteer involvement, it is difficult to predict to what extent this remedy may alleviate fear among potential volunteers. Inferential data exists concerning non-profit board volunteers: a study conducted in 1986 by the National Association of Corporate Directors found that only 36% of those responding said they would serve on not-for-profit boards that did not have insurance protection.⁵ A study by the Opinion Research Center for Peat, Marwick found that 6% of the survey respondents reported having a person resign from their board because of concern over potential liability and 8% reported having had a potential board member refuse to join the board.⁶

The most significant quantitative impact that the legislation may have on volunteering may well occur on a sectoral basis. Under current patterns of state legislation there is wide diversity in which organizations are covered, and within a given state large areas of the volunteer community are often outside the protection offered by the legislation. This opens a potential scenario in which those organizations that are within the protective purview of the new legislation may utilize that protection to gain a competitive advantage in recruiting both service volunteers and board members. While the actual increase in safety generated by the new legislation may be small in terms of absolute probabilities, a targeted marketing campaign could certainly make use of the new legislation to remind volunteers that they do not need to face even a

slight risk of suit. Particularly among more affluent board volunteers, this additional safeguard could make a substantial difference.

4. Impact on Volunteer Management

A final area in which the new legislation should have an immediate impact is on organizational practices regarding volunteer management. These should be significantly influenced by two requirements within the legislation.

One primary area of legal concern in the new legislation lies in the determination of when the protection given by the statutes will vest. The question to be decided here is how one determines what lies within the "scope of employment" and "duties" of each volunteer.

The second area of concern will be the establishment of indicators that in the performance of those duties a volunteer demonstrated sufficient care to avoid a labeling of "wanton" or "willful."

The combination of these two factors will make it extremely important that the organization establish a system of volunteer management and administration that ensures that these two concerns are met. Key elements of this system would include:

1. *A clear volunteer tracking system that establishes when volunteering starts and stops.* This will be especially important in those instances where collaborative programs are being undertaken (such as a joint project between a government program and a non-profit agency) in which one of the participating agencies is not covered by the protective legislation. In this instance, to whom does the volunteer "belong"? If an agency loans or refers its membership to other groups for short-time volunteer jobs, for whom is the volunteering taking place? This will be of particular significance to the new corporate volunteer programs that have been established in the 1980s. Memos of agreement and record-keeping systems will prove essential in quickly establishing organizational connection.
2. *Clear and up-to-date volunteer job descriptions.* One method for helping in the above situation and in clearly defining a volunteer's "scope of employment" will lie in maintaining job descriptions that accurately match and describe the functions that the volunteer is undertaking for the agency.
3. *Better training for volunteers and staff.* Efforts to demonstrate that the behavior of the volunteers was not too extreme to warrant protection will be enhanced by a training program that establishes 'proper procedures' and prepares volunteers for anticipated tasks.
4. *Rewards to Agencies that Practice Risk Management.* Equally important to agencies will be upgrading of risk management practices designed to identify those areas of potential danger in the provision of volunteer services and to create management and training systems to prepare volunteers for anticipated dangers.

The most long-standing impact of the new legislation may well lie in the fact that in an indirect manner it will significantly reward those groups with the best management practices. Those groups who operate volunteer programs without an organized system are the most likely to meet difficulties in defending against suit under the new legislation. Some states have attempted to encourage volunteer-utilizing agencies in a more direct fashion. Early drafts of the Arkansas liability protection legislation

contained requirements on agencies for the provision of written volunteer job descriptions, training programs, and personnel to manage and supervise volunteers. This language was removed in the legislative deliberations, but the intent of the language will certainly be re-created as court cases outline the need for good volunteer management.

5. Impact on Service Recipients

Two potential areas of impact on service recipients may be affected by the new legislation. The first involves the additional possibility that some types of volunteer work will continue to be done. The areas of volunteering most affected by fear of litigation have been those involving volunteer driving and those involving primarily physical activity (home repair, coaching, etc.). The new protective legislation may make it much easier to continue to recruit volunteers for programs in these areas. The exception, of course, will lie in those states which have exempted from protection suits involving vehicles, as 8 states have already done (see Appendix 3).

The second area of potential impact on service recipients lies in the claim voiced during legislative deliberation of the legislation that removal of the fear of lawsuit will diminish the quality of service provided to clients because it removes an incentive for the volunteers to perform at high standards. Several states have attempted to deal with this problem by enacting legislation that still allows for the volunteer-utilizing organization itself to bring suit against the volunteer, an act which presumably could be initiated in the event that the volunteer was involved in unsatisfactory performance of his duties.

6. Impact on Social Service Agencies

Overall, given the factors discussed above, the liability protection legislation should have a small, but significant, impact on social service agencies. If nothing else, the legislation counter-balances the hysteria over lawsuits that has stifled the development of volunteer programs in some agencies. It removes a disincentive for volunteering that has been growing steadily, particularly among board volunteers. And it opens the door for re-negotiation over insurance rates and coverage. The only 'negative' impacts of the legislation lie in the imposition of requirements of better management of volunteers, something which the agencies probably should have been doing already and which the agencies will certainly benefit from in more ways than simply acquiring liability protection.

Conclusion

Three final conclusions can be made about the new protective legislation:

1. It is probably here to stay and will probably spread to all states within a short period of time. The degree of legislative enthusiasm which resulted in 36 states enacting legislation in 16 months without any coordinated national campaign (and occasionally no organized local campaign) is not likely to quickly diminish.
2. It cannot be ignored. Ultimately the legislation could have a major impact on the volunteer management practices of almost all organizations.
3. Its final impact will probably be positive. The legislation will probably result in benefits to volunteer-utilizing organizations in the areas of insurance, volunteer recruitment, improved retention of volunteers, and ability to better provide assistance to service recipients.

What is equally clear, however, is that in the next five years the overall situation created by the new legislation will be extremely confusing as each state faces a period of legislative amendment and interpretation of the legislation within the courts, and as each organization faces a re-consideration of its volunteer management techniques. In a very real way, despite the fact that 36 states have already acted, the true effort for gaining protection from suit for volunteers is just beginning.

Footnotes

1. Opinion Research Corporation, Directors and Officers Liability: A Crisis in the Making (Washington: Peat Marwick) 1987, p. 6.
2. See Kozlowski, "No Ordinary Negligence Liability Under Recreational Immunity Statutes," 21 Parks and Recreation 20 (January 1986).
3. See Besharov, "Child Welfare Liability: The Need for Immunity Legislation," Child Today (September/October 1986).
4. Kahn, "Legal Issues in Volunteerism: Preliminary Survey Results," Journal of Volunteer Administration (Winter 1984-85).
5. Opinion Research Corporation, p. 12.
6. Opinion Research Corporation, p. 7.

Appendix 1 Case Citations

Direct Service Volunteers

1. *Scottsdale Jaycees v. Superior Court* 17 Ariz. App. 571, 499 P.2d 185 (1972)
(volunteer involved in automobile accident en route to convention)
2. *Sokolow v. City of Hope* 41 Cal. 2d 668, 262 P. 2d 841 (1953)
(hospital auxilian in accident at fundraiser)
3. *Malloy v. Fong* 37 Cal. 2d 356, 231 P. 2d 241 (1951)
(volunteer divinity student causes automobile accident)
4. *Leno v. YMCA* 17 Cal. App. 3d 651, 95 Cal. Rptr 96 (1971)
(volunteer scuba instrutor involved in drowning of student)
5. *Trinity Lutheran Church v. Miller* 451 NE 2d 1099 (1983)
(volunteer driver injures motorcyclist while delivering holiday gifts)
6. *Garcia v. Herald Tribune Fresh Air Fund* 51 A.D. 2d 897, 380 N.Y.S. 2d 676 (1976)
(volunteer host family involved in drowning of child)
7. *Davis v. Shelton* 33 A.D. 2d 707, 304 N.Y.S. 2d 722 (1969), appeal dismissed 26 N.Y. 2d 829, 257 N.E. 2d 902 (1970)
(Boy Scout volunteer involved in accident where scout falls out of tree)
8. *Ricker v. Boy Scouts of America* 8 A.D. 2d 565, 183 N.Y.S. 2d 484 (1959)
(injury caused by volunteer scout master at scouting event)
9. *Baxter v. Morningside* 10 Wash. App. 893, 521 P. 2d 946 (1974)
(volunteer driver involved in accident while delivering package)
10. *Manor v. Hanson* 120 Wis. 2d 582, 356 N.W. 2d 925, (Ct. App. 1984)
(volunteer driver for senior transportation program involved in accident)

Board Volunteers

1. *Mountain Top Youth Camp Inc v. Lyon* 20 N.C. App. 694, 202 S.E. 2d 498 (1974)
(corporate director sued for self-dealing and waste)
2. *Stern v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries*, 381 F. Supp. 1003 (1974)
(hospital board sued for breach of fiduciary duty - "Sibley" hospital case)
3. *Jackson v. Statler Foundation* 496 F. 2d 623 (1974), cert. denied, 420 U.S. 927 (1975)
(foundation board charged with discrimination in granting of funding)
4. *Golding v. Salter* 107 So. 2d 348 (1958)
(hospital board sued for failure to protect property by not having adequate insurance and not collecting debts to organization)
5. *Warren v. Reid* 331 S.W. 2d 847 (1960)
(board sued regarding conflict of interest in granting of laundry services contract)
6. *Franzblau v. Monardo* 166 Cal. Rptr. 610 (1980)
(board member sued for conflict of interest through service on multiple hospital boards)

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7. **Harris et al v. Attorney General** 31 Conn. Supp. 93, 324 A 2d 279 (1974)
(board sued regarding maintenance of prudent level of insurance)
 8. **Newman v. Forward Lands, Inc** 430 F. Supp. 1320 (1977)
(board sued for improper placement of funds)
 9. **Tillman v. Wheaton-Haven Recreation Association, Inc** 517 F. 2d 1141 (1975)
(directors held liable for violation of Civil Rights Act)
 10. **Lefkowitz v. Museum of the American Indian (Heye Foundation)** No. 41461 - 75 (Sup. Ct., N.Y. Co. 1975)
(board sued for mismanagement, granting false tax evaluations of donations)

Appendix 2
IRC Classification of Tax Exempt Organizations

IRC Section	Type of Organization
401(a)	Qualified pension and/or profit sharing plans
501(c)(1)	Corporations organized under Act of Congress
501(c)(2)	Title holding corporation for exempt organizations
501(c)(3)	Religious, educational, charitable, scientific, literary, testing for public safety, or prevention of cruelty to children or animals organization
501(c)(4)	Civic leagues, social welfare organizations, local associations of employees
501(c)(5)	Labor, agricultural and horticultural organizations
501(c)(6)	Business leagues, Chambers of Commerce, real estate boards
501(c)(7)	Social and recreation clubs
501(c)(8)	Fraternal beneficiary societies and associations
501(c)(9)	Voluntary Employee's Beneficiary Associations
501(c)(10)	Domestic fraternal societies and associations
501(c)(11)	Teachers' retirement fund associations
501(c)(12)	Benevolent life insurance associations, mutual ditch or irrigation companies, mutual or cooperative telephone companies
501(c)(13)	Cemetery companies
501(c)(14)	State chartered credit unions, mutual reserve funds
501(c)(15)	Mutual insurance companies or associations
501(c)(16)	Cooperative organizations to finance crop operations
501(c)(17)	Supplemental employment benefit trusts
501(c)(18)	Employee funded pension trust
501(c)(19)	Post or organization of war veterans
501(c)(20)	Group legal services plan organization
501(c)(21)	Black lung benefits trust
501(c)(22)	Withdrawal liability payment fund
501(c)(23)	Veterans Organization
501(d)	Religious and apostolic associations
501(e)	Cooperative hospital service organizations
501(f)	Cooperative service organizations of educational organizations
521(a)	Farmer's cooperative associations

**Appendix 3
State Legislation: Breakdown By State**

	Organizational Coverage					Volunteer Coverage				Extent of Protection										
	Unincorporated Volunteer Groups	Non-Profit Corporation	State Government	Local Government	For Profit Corporation	Board of Directors	Advisory Committee	Direct Service	Sports Volunteers	Approves, Participates	Gross, Wanton	Willful, Intentional	X to Corporation	X to 3rd Parties	X to All General	Health, Hospital Exclusion	Professional Services Exclusion	Vehicles Exclusion	Insurance Limitations	Criminal Violation Inclusion
Alaska		X		X		X	X				X		X							
Arizona		X	X			X					X	X	X				X	X	X	
Arkansas	X	X	X							X	X			X						
Colorado	X	X			X	X		X												
Connecticut		X				X					X	X								
Delaware		X				X		X	X											
Florida		X				X														
Hawaii		X				X					X									
Illinois		X		X		X	X	X			X	X								
Indiana		X	X	X		X	X												X	
Kansas		X				X		X		X	X				X				X	
Louisiana		X				X							X							
Maryland		X				X		X			X	X		X	X	X			X	
Mass.		X				X					X									
Michigan			X	X		X	X	X			X				X					
Minnesota		X				X		X			X	X	X		X					
Nebraska		X				X						X	X					X		
Nevada	X	X				X						X								
N. Hampshire	X	X				X														
New Jersey		X				X		X	X											
New York		X				X					X	X	X							
No. Carolina		X						X			X	X					X	X		
North Dakota		X				X		X			X							X		
Ohio		X				X		X		X	X	X			X					
Oklahoma		X				X				X		X								
Pennsylvania	X	X				X			X									X		
South Dakota		X	X	X		X	X	X			X	X						X	X	
Tennessee		X	X	X		X					X	X								
Texas		X				X		X			X	X	X		X			X	X	
Vermont		X				X					X	X								
Virginia		X				X						X								
Washington		X				X					X		X							
Wisconsin		X				X		X									X	X		X
Wyoming		X	X	X		X	X													

This table is intended only to provide a quick reference summary. For any serious analysis, please refer directly to the legislation in each individual state.

State Legislation: Variations in Coverage

1. **Must carry insurance to qualify**
Kansas, Maryland
2. **Liabe only to extent of insurance**
Arkansas, Indiana, Kansas, South Dakota, North Dakota, Texas
3. **Liabe If incident Involves motor vehicle**
Arkansas, Nebraska, North Carolina, North Dakota, South Dakota, Texas, Wisconsin
4. **Liabe If professional services**
Arkansas, Maryland, North Carolina, Wisconsin
5. **Liabe If healthcare or hospital related**
Kansas, Maryland, Michigan, Ohio, Texas
6. **Liabe If based on contractual obligations**
Minnesota
7. **Liabe If alcohol related**
Nebraska
8. **Liabe If based on federal cause of action**
Minnesota
9. **Limit placed on amount permissible for reimbursement of expenses**
North Dakota
10. **Recovery limited to amount of compensation**
Virginia
11. **Liability remains to 3rd parties**
Arkansas, Louisiana
12. **Liabe In action brought by governmental entity**
Minnesota
13. **Liabe If trustee in action brought by beneficiary of trust**
New York
14. **Immunity granted for some criminal violations**
Wisconsin
15. **Liabe If below generally practiced standards**
Pennsylvania
16. **Must participate in training program**
North Dakota, New Jersey
17. **Coverage If "Nonprofit Corporation"**
Arizona, California, Colorado, Florida, Hawaii, Indiana, Louisiana, Minnesota, Nevada, Ohio, Washington, Wyoming
18. **Coverage If 501(c)**
Connecticut, Delaware, Illinois, Kansas, South Dakota, Tennessee, Virginia
19. **Coverage If 501(c)(3)**
Alaska, Arizona, Arkansas, Maryland, New York, North Carolina, Pennsylvania, Texas, Vermont
20. **Coverage If 501(c)(4)**
Alaska, Texas
21. **Coverage If 501(c)(6)**
Indiana, Tennessee
22. **Coverage If 501(c)(assorted other categories)**
Missouri, North Dakota, Oklahoma
23. **Coverage If "Member"**
Louisiana, Minnesota

State Legislation Citations

Alaska	09.17.050	1986
Arizona	Ch 129 §10-1017	1987
Arkansas	Act 390	1987
Colorado	CRS 13-21-116	1986
Connecticut	PL86-338(10)	1986
Delaware	Ch 81, Title 10, §8133	1986
Florida	FS 607.1645	1987
Georgia	14-3-113.1	1987
Hawaii	HRS 416	1986
Illinois	PL84-1431 Arts 1 & 7	1986
Indiana	IC 34-4-11.5-1	1986
Iowa	25A.24	1987
	613A.2	1987
	613.19	1987
Kansas	SB 28	1987
Louisiana	LRS 9.2792	1972
Maryland	Ch 643 §5-312	1986
Massachusetts	Ch 156B §13	1986
Michigan	MCL 691.1401	1986
Minnesota	Ch 455 §317.201	1987
Nebraska	LB 67	1987
Nevada	NRS 411.480	1987
New Hampshire	RSA 508.16	1986
New Jersey	SB 678	1986
New York	NYL 375 §11-13	1986
North Carolina	Art 43-B §1-539.10	1987
North Dakota	§10-24-05	1987
	HB 1080	1987
Ohio	ORC 2305.38	1986
Oklahoma	Title 18 §865	1986
Pennsylvania	Title 42 §832.2	1986
South Dakota	SB 1317	1987
Tennessee	28-3-301	1986
	29-20-201	1986
Texas	Title 4, Ch 84, §84.001	1987
Vermont	S 37	1987
Virginia	§13.2-870.1	1987
Washington	RCW 4.24	1986
Wisconsin	Act 13	1987
Wyoming	WS 1-23-107	1986

Background:

HR911, the Volunteer Protection Act of 1987, was introduced on Feb. 2, 1987 by Rep. John Porter (R - IL). Identical legislation has been introduced in the Senate (S.929, Melcher, D - MT). An earlier version of the legislation had been introduced by Rep Porter during the 99th Congress.

In the House the legislation has been referred to the Judiciary Committee, and has approximately 145 co-sponsors.

Coverage:

The essential elements of the Porter bill are as follows:

1. *Organizational Coverage:* Protection is extended to non-profit organizations and governmental entities. A non-profit is described as a 501(c) tax exempt organization.
2. *Volunteer Coverage:* Board and direct service volunteers, with a \$300 limit on compensation received.
3. *Limits on Protection:* The volunteer must act in good faith and within the scope of duty, and must not have demonstrated wilful or wanton misconduct. The volunteer is still liable to the volunteer organization and to any governmental entity. Protection is extended as immunity in civil liability for "damage or injury".

Overall, the Porter bill is a quite standard version of much of the current state legislation.

Legislative Prospects:

The Porter bill is intended to provide a 'model' for state legislation and to encourage states to enact some type of legislation. To encourage states, the bill has an 'incentive' clause through which states which fail to enact legislation would lose 1% of their Title XX Social Services Block Grant allotment during each year in which they lacked legislation. To meet the requirements of the bill, a state must certify to the Secretary of Health and Human Services that it has enacted legislation which "substantially complies" with the types of protection in the Porter bill. The bill is being supported by a variety of national voluntary organizations and coalitions.

Resistance to the bill comes on two grounds:

1. *Deference to state legislative prerogative.* Few Congressmen are enthusiastic about pressuring their State legislatures to enact legislation. They are particularly not enthusiastic regarding legislation which would force their state legislatures to re-draft bills which they have already passed. On balance, although 34 states have passed some type of volunteer legislation, the vast majority probably could not demonstrate "substantial compliance" with the Porter bill. The major areas of obvious differences would lie in extension of protection to direct service volunteers (which only 15 states currently do) and extension of protection to governmental entities (done in only 7 states).
2. *Resistance to the enforcement mechanism.* Those states not complying with the Porter bill are penalized by loss of Social Service Block Grant funding. There is opposition both among the Congress and among many social service voluntary organizations to this approach. The opposition finds it quite inappropriate to encourage protection by threatening funding to the very programs for which the volunteers are serving.

It is in fact likely that the Porter bill could pass much more quickly if it were simply introduced as an optional model for protective legislation that was receiving the endorsement and support of the U.S. Congress. Such an alteration in approach would still be of assistance to state efforts to draft sensible legislation and would avoid both areas of opposition cited above.

Volunteer Liability Bibliography

1. Edith Merila, Liability Insurance: The Purchasers Guide, (Madison: Center for Public Representation) 1986.
2. Jeffrey Kahn, "Organizations' Liability for Torts of Volunteers," 133 University of Pennsylvania Law Review 1433 (July 1985).
3. Michelle Warman, "The Quality of Mercy: 'Charitable Torts' and Their Continuing Immunity," 100 Harvard Law Review 1382 (April 1987).
4. Barbara Davis, Nonprofit Organizations and Liability Insurance: Problems, Options, Prospects (Los Angeles: California Community Foundation) 1986.
5. Legal Handbook for Non-Profit Organizations, (Columbus: Columbus Bar Association) February 1987.
6. Young Lawyers Section, State Bar of Georgia, Legal Rights and Obligations of Volunteers and Volunteer Agencies (Atlanta: Govs).
7. Opinion Research Corporation and Research Strategies Corporation, Directors and Officer's Liability: A Crisis in the Making (Washington: Peat, Marwick and Mitchell) 1987.
8. "Municipal Liability for Torts Committed by Volunteer Anticrime Groups," 10 Fordham Urban Law Journal 595 (1981-82).
9. Jeri Carver, "Immunity for Nonprofit Corporations," 23 Willamete Law Review 321 (Winter 1987).
10. Lizbeth Moody, "State Statutes Governing Directors of Charitable Corporations," 18 University of San Francisco Law Review 749 (Summer 1984).
11. Bennet Harvey, "The Public Spirited Defendant and Others: Liability of Directors and Officers of Not for Profit Corporations," 17 John Marshall Law Review 655 (Summer 1984).
12. Allan Bromberger, "Liability of Nonprofit Directors," 197 New York Law Journal I (March 5, 1987).
13. Terence Centner, "Georgia Business and Nonprofit Corporations - Directors' Duties of Care", 19 Georgia State Bar Journal 164 (May 1983).
14. Christine Chute, "Personal Liability for Directors of Nonprofit Corporations in Wyoming," 18 Land and Water Law Review 273 (Winter 1983).
15. Gordon Marsh, "Governance of Non-Profit Organizations: An Appropriate Standard of Conduct for Trustees and Directors of Museums and Other Cultural Institutions," 13 Journal of Arts Management and the Law 32 (Fall 1983).
16. William Jarvis, "The Nonprofit Directors Fiduciary Duty: Toward a New Theory of the Nonprofit Sector," 77 Northwestern University Law Review 34 (March 1982).
17. E.A. Longfellow, "Volunteers and Liability," 74 Minnesota Cities 6 (December 1986).
18. Maralynn Troutman (Ed.), Volunteers and Insurance: An Arkansas Guide (Little Rock: Arkansas Office of Volunteerism) April 1985.
19. Stan Pope and Wanda Bielak, Insurance for Volunteers and Voluntary Organizations (Hamilton, ON Voluntary Action Centre) July 1983.
20. Terry Chapman, Mary Lai, and Elmer Steinbock, Am I Covered For? A Guide to Insurance for Non-Profits (Philadelphia: Insurance Company of North America) 1984.
21. Rick Williams, A Primer on Insurance for Volunteers (Newton, MA: The Korda Project) March 1977.
22. Heather Olson, Volunteers and the Law (Edmonton, AB: Volunteer Action Centre) 1982.
23. Association of Governing Boards of Universities and Colleges, Trustee Liability Insurance (Washington: AGBUC) 1982).
24. "Using Auxiliary Policemen Can Be Risky for Cities," 10 Current Municipal Problems 432 (1984).

for Nonprofit Boards, (Division of Archives & History, North Carolina Department of Cultural Resources) 1986.

31. Robert Cowden, "Directors and Officers of Charitable Corporations: Duties, Personal Liability, Indemnity and Insurance," Memorandum (Boston: Casner, Edwards, and Roseman) May 1985.
32. Vance Opperman, New Developments in Legal Responsibilities of the Board of Directors (Minneapolis: Opperman & Paquin) 1984.
33. Tamar Lewin, "Board Liability in Delaware," New York Times, D2 (January 13, 1987).
34. Craig Stoltz, "The Search for Liability Insurance," 38 Association Management 65 (February 1986).
35. Judy Haberek, "The Volunteer Protection Act of 1987: Getting HR911 Passed," Voluntary Action Leadership 15 (Spring/Summer 1987).
36. Steve McCurley, "Protecting Volunteers from Suit: A Look at State Legislation," Voluntary Action Leadership 17 (Spring/Summer 1987).
37. "Serving on a Charity: It's Getting Safer," Business Week p. 120 (July 13, 1987).
38. Douglas Besharov, "Child Welfare Liability: The Need for Immunity Legislation," Children Today p.17 (Sept/Oct 1986).
39. James Kozlowski, "No Ordinary Negligence Liability Under Recreational Immunity Statutes," 21 Parks & Recreation 20 (January 1986).
40. Don Dyke, "New Law Protecting Corporate Directors and Officers and Nonprofit Corporation Volunteers," Information Memorandum 87-2 (Madison: Wisconsin Legislative Council Staff) June 24, 1987.
41. Jeffrey Kahn, "Legal Issues in Volunteerism: Preliminary Survey Results," 3 Journal of Volunteer Administration 31 (Winter 1984-85).
42. Public Risk and Insurance Management Association, Risk Management: A Guide for Nonprofits, (Alexandria: United Way of America) 1987.
43. Brenda Tolin, "Legislatures Awaken to Nonprofits Hit by Liability Insurance Crisis," 6 Preventive Law Reporter 12 (June 1987)
44. James Fishman, "Standards of Conduct for Directors of Nonprofit Corporations," 7 Pace Law Review 389 (Winter 1987)
45. F. Anne Ross, "Tort Reform and the Liability of Officers and Directors of Non-profit Corporations," 28 New Hampshire Bar Journal 137 (Winter 1987).
46. Kristin Linsley, "Statutory Limitations on Directors' Liability in Delaware: A New Look at Conflicts of Interest and the Business Judgment Rule," 24 Harvard Journal of Legislation 527 (Summer 1987).