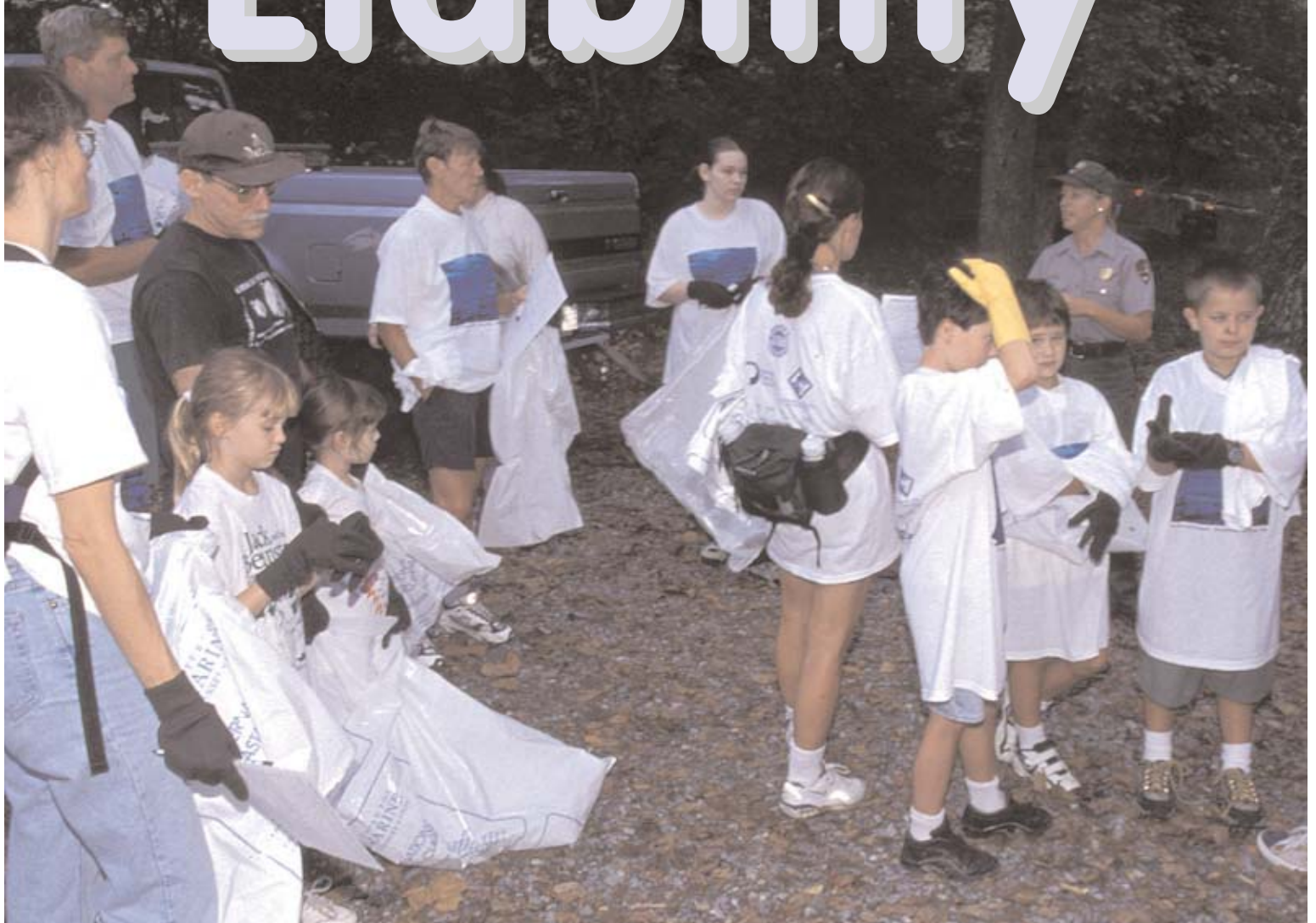


Volunteer Liability



Photograph (c) Wolcott Henry 2005/Marine Photobank
Volunteers gather to remove trash from a waterway.

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Introduction

Many volunteers and volunteer organizers enjoy participating in and organizing charitable events. Despite this, many volunteers and organizers fear the liability issues that go along with performing these tasks. Can volunteers be sued and held liable for a negligent act performed in the course of their volunteer duties? What about the nonprofits or other volunteer organizations: can they be held liable for a volunteer's negligent act?

In response to a request to compile liability information for organizers of beach clean-ups, the National Sea Grant Law Center conducted research on liability issues facing volunteers and volunteer organizers. The following document gives an overview of the federal and state volunteer liability laws, as well as additional issues and doctrines that may apply to volunteers and volunteer organizers. The document addresses volunteer, organizational, and corporate liability separately. Beginning on page 4, an Appendix includes state laws that address volunteer liability. The compilation of state laws does not include "Good Samaritan" laws or laws relating to specific groups such as hospice volunteers, fraternal benefit society volunteers, or volunteer firefighters-with an exception for volunteers for beach cleanup programs.

Volunteers clean up the wetlands and waterfront area around Fort McHenry in Baltimore Harbor. Local NOAA personnel turned out in force for this event. Photographer, Mary Hollinger, NODC biologist, NOAA. Photograph from NOAA's America's Coastlines Collection.



Volunteer Liability

Federal

The federal Volunteer Protection Act of 1997 (VPA) is the primary federal law providing individual volunteers with protection from liability. The purpose of the VPA is to promote volunteer activity by providing “certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.”¹ The VPA is intended to cover the individual volunteer and does not necessarily protect the nonprofit organization.

The VPA provides limited protection. It provides that nonprofit or government *volunteers* will not be liable for harm caused by an act or omission of the volunteer if certain requirements are met:

- The volunteer must have been acting within the scope of his responsibilities.
- The volunteer must be properly licensed, certified, or authorized for the activities, if appropriate.
- The harm may not be caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.²
- The harm may not be caused by harm due to: the use of a motor vehicle, vessel or aircraft or any vehicle for which a license or insurance is required; flagrant indifference to the rights or safety of the individual harmed; sexual misconduct, hate crimes, crimes of violence, and conduct while under the use of alcohol or drugs.

There are five exceptions to the immunity:

- crimes of violence,
- hate crimes,
- acts of sexual misconduct,
- acts involving misconduct for which defendant has been convicted, and
- in instances in which defendant was under the influence of intoxicating alcohol or drugs at the time of misconduct.³

The VPA expressly states that it does not prohibit actions brought against the volunteer by the nonprofit organization or governmental entity itself. Additionally, the VPA preempts state laws inconsistent with the VPA, unless the state law provides additional liability protection. States may elect not to comply with the VPA if they enact a law declaring that the VPA will not apply to the state.

State

The VPA provides a uniform law that preempts state laws inconsistent with the VPA, unless the state law provides additional protection. The VPA applies to all volunteers who meet the criteria in the Act, whether or not a state provides protection. For example, if a volunteer commits a tort in Alaska, where there is no state protection law, he or she would be covered by the VPA. If a volunteer commits a tort in Hawaii, where there is a state protection law, both the VPA and the Hawaii state law would apply as long as the Hawaii law was consistent with the VPA.

Of course, the VPA provides that states may elect not to comply with the VPA if they enact a law declaring that the VPA will not apply to the state. Please see appendix for state laws regarding volunteer liability.

Organizational Liability - Nonprofits or charitable organizations

Federal Laws

The VPA does not affect the liability of the organization or entity itself and no other federal laws offer liability protection for charitable organizations.

Charitable Immunity

The doctrine of charitable immunity gives charitable organizations immunity from liability for damages in tort. A majority of courts and legislatures in American jurisdictions have now abolished charitable immunity.⁴

Courts in the following states have held that the doctrine of charitable immunity has been totally abolished: Arizona, California, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, New York, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Washington, and Wisconsin.⁵ Additionally, Missouri, Nevada, and Wisconsin courts have held that the abolition of the immunity would apply prospectively from the dates of the decisions abrogating the immunity.⁶ However, courts in two states, Maryland and New Jersey, have upheld the doctrine of charitable immunity.⁷

Respondeat Superior

An American Law Reports (ALR) article suggests one way in which organizations may be held liable for the actions of its volunteers is the doctrine of respondeat superior.⁸ Traditionally, the doctrine holds an employer liable for an employee's acts committed within the scope of his or her employment. However, some jurisdictions have viewed volunteers as employees of charitable organizations and adopted the doctrine in cases involving charitable organizations. The following states have recognized the doctrine of respondeat superior is applicable to charitable organizations: Arizona, California, New York, and Washington.⁹ On the other hand, some jurisdictions find the doctrine inapplicable to charities, because the volunteer does not meet the traditional "master/servant" relationship in which the "servant's" activities profit the "master."¹⁰

In jurisdictions employing the doctrine of respondeat superior to charitable organizations, courts have focused on the control of the charitable organization over the activities of the volunteer.¹¹ For instance, a court would look at the organization's direction and supervision of the volunteer who committed the tort. A court would also look at the amount of contact between the volunteer and the organization, including whether the volunteer was a regular volunteer or acted as an employee of the organization.

To protect itself from liability for the actions of its volunteers under the doctrine of respondeat superior, an organization should take measures to ensure that it properly instructs and supervises its volunteers. The ALR article advises charitable organizations to:

- Properly supervise its volunteers. Lack of proper supervision by a paid employee could open the charity up to a negligence action, especially when the volunteer was placed in a situation inappropriate for his age, experience, and lack of training.
- Structure the charity in a way that the asset-holding portion of the charity is separate from the portion of the organization which deals directly with the public.
- Structure the role of volunteers to a role similar to independent contractors to minimize the connection or control of the organization over the volunteer; however, be careful not to delegate “nondelegable” tasks.¹²

Insurance

Charitable organizations may purchase several types of insurance coverage, including general liability insurance, directors and officers insurance, property and building insurance, and umbrella insurance. However, one legal scholar notes, “... the availability and cost of insurance is still prohibitive for many nonprofit entities. While there are nearly 1.4 million nonprofit organizations in the United States, very few of them purchase (or have the means to purchase) liability insurance.”¹³

Company Liability - Corporate Volunteer Programs

Worker’s Compensation

Each state has worker’s compensation laws to cover injuries sustained by employees in the course and scope of their employment. The laws may vary from state to state in applicability and scope.

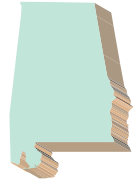
Employees injured during a company-sponsored volunteer activity may be covered by worker’s compensation insurance. However, the activity would have to be within the course and scope of the employee/volunteer’s employment. For instance, if Company A sponsored a beach clean-up during office hours and provided its employees with compensation, such as lunch and t-shirts, the activity could be considered within the scope of the employee/volunteer’s employment. If the employee is injured during the activity, he or she could be covered by Company A’s worker’s compensation insurance.

Respondeat Superior

The doctrine of *respondeat superior* holds an employer liable for an employee’s acts committed within the scope of his or her employment. If an employee or another person were injured during the course of a volunteer activity, the company could be liable if the activity is considered to be within the course and scope of the person’s employment. Whether the activity is within the scope of employment would depend on the amount of control that the employer exercised over the activity.

Appendix

Alabama



Code of Ala. § 6-5-336. *The Volunteer Service Act; Volunteers generally.*

(d) *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 or wanton misconduct by such volunteer.*

(e) *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 subsection (d).*

§ 10-3B-7. *Alabama Unincorporated Nonprofit Association Act; Contract and tort liability.*

(a) *A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.*

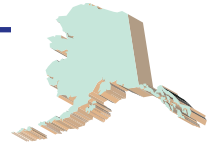
(b) *A person is not liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.*

(c) *A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.*

(d) *A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.*

(e) *A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.*

Alaska



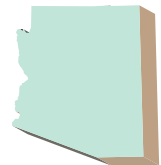
Alaska Stat. § 09.65.170. Limited liability of certain directors and officers.

(a) Unless the act or omission constituted gross negligence, a person may not recover tort damages for personal injury, death, or damage to property for an act or omission to act in the course and scope of official duties, from one of the following:

- (1) a member of the board of directors or an officer of a nonprofit corporation;*
- (2) a member of the board of directors of a public or nonprofit hospital, or a member of a citizen's advisory board of any hospital;*
- (3) a member of a school board of a school district;*
- (4) a member of the governing body, a commission, or a citizen's advisory committee of a municipality of the state;*
- (5) a member of the board of directors, an officer, or an employee of a regional development organization.*

(b) Notwithstanding (a) of this section, the duties and liabilities of a director or officer of a nonprofit corporation to the corporation or the corporation's shareholders may not be limited or modified.

Arizona



A.R. S. § 12-982. Actions Againsts Volunteers; Qualified immunity; insurance coverage.

A. A volunteer is immune from civil liability in any action based on an act or omission of a volunteer resulting in damage or injury if:

- 1. The volunteer acted in good faith and within the scope of the volunteer's official functions and duties for a nonprofit corporation or nonprofit organization, hospital or governmental entity.*
- 2. The damage or injury was not caused by wilful, wanton or grossly negligent misconduct by the volunteer.*

B. Notwithstanding subsection A of this section, in any suit against a nonprofit corporation or nonprofit organization, hospital or governmental entity for civil damages based on the negligent act or omission of a volunteer, proof that the act or omission was within the scope of the volunteer's official functions and duties is sufficient to establish the vicarious liability, if any, of the organization.

C. A motor vehicle liability policy, as defined in section 28-4001, which provides coverage to the operator of a motor vehicle is subject to the following provisions which need not be contained in the policy. The liability of the insurance carrier with respect to the insured and any other person using the vehicle with the express or implied permission of the insured shall extend to provide excess coverage for a nonprofit corporation or nonprofit organization for the acts of the operator in operating a motor vehicle at all times when the operator is acting as a volunteer for that nonprofit corporation or nonprofit organization.

Arkansas



A.C.A. § 16-6-104. Arkansas Volunteer Immunity Act; Volunteer not vicariously liable - Construction of subchapter.

- (a) A qualified volunteer shall not be held vicariously liable for the negligence of another in connection with or as a consequence of his or her volunteer activities.*
- (b) Nothing in this subchapter shall be construed to limit the liability of a person acting outside the scope of the volunteer program.*
- (c) Nothing in this subchapter shall be construed to limit the liability of any volunteer agency.*

A.C.A. § 16-6-105. Nonliability for damages - Exceptions.

A qualified volunteer shall not be liable in damages for personal injury or property damage sustained by one who is a participant in, or a recipient, consumer, or user of, the services or benefits of a volunteer by reason of any act or omission of a qualified volunteer in connection with the volunteer except as follows:

- (1) Where the qualified volunteer is covered by a policy of insurance, in which case liability for ordinary negligence is limited to the amount of coverage provided;*
- (2) Where the qualified volunteer acts in bad faith or is guilty of gross negligence;*
- (3) (A) Where the qualified volunteer negligently operates a motor vehicle, aircraft, boat, or other powered mode of conveyance.*
 - (B) If the actionable conduct of the qualified volunteer is covered by a policy of liability insurance, his liability for ordinary negligence shall be limited to the amount of the coverage provided;*
- (4) (A) Where the qualified volunteer negligently performs professional services extended to an individual, which the qualified volunteer is licensed under state law to perform, including, but not limited to, legal, engineering, and accounting services.*

(B) (i) If the volunteer agency either provides or requires its professional volunteers to carry professional liability insurance in an amount customarily carried by a member of the profession involved, liability for ordinary negligence in rendering professional service shall be limited to the amount of coverage available or the amount required by the agency, whichever is larger.

(ii) This exception does not apply to nurses or similar health care providers rendering health care services or other professionals rendering professional services to a government entity, business, or volunteer agency.

A.C.A. § 21-13-108. State and Local Government Volunteers Act; Liability insurance - Sovereign immunity.

(a) Liability insurance may be provided by the department utilizing volunteer services, both to regular-service and occasional-service volunteers, to the same extent as may be provided by the department to its paid staff.

(b) Volunteers in state service shall enjoy the protection of the state's sovereign immunity to the same extent as paid staff.

California



Cal Corp Code § 5239. Personal liability of volunteer director or volunteer executive officer.

(a) There shall be no personal liability to a third party for monetary damages on the part of a volunteer director or volunteer executive officer of a nonprofit corporation subject to this part, caused by the director's or officer's negligent act or omission in the performance of that person's duties as a director or officer, if all of the following conditions are met:

(1) The act or omission was within the scope of the director's or executive officer's duties.

(2) The act or omission was performed in good faith.

(3) The act or omission was not reckless, wanton, intentional, or grossly negligent.

(4) Damages caused by the act or omission are covered pursuant to a liability insurance policy issued to the corporation, either in the form of a general liability policy or a director's and officer's liability policy, or personally to the director or executive officer. In the event that the damages are not covered by a liability insurance policy, the volunteer director or volunteer executive officer shall not be personally liable for the damages if the board of directors of the corporation and the person had made all reasonable efforts in good faith to obtain available liability insurance.

(b) "Volunteer" means the rendering of services without compensation. "Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or executive officer does not affect that person's status as a volunteer within the meaning of this section.

(c) "Executive officer" means the president, vice president, secretary, or treasurer of a corporation, or such other individual who serves in like capacity, who assists in establishing the policy of the corporation.

(d) Nothing in this section shall limit the liability of the corporation for any damages caused by acts or omissions of the volunteer director or volunteer executive officer.

(e) This section does not eliminate or limit the liability of a director or officer for any of the following:

(1) As provided in Section 5233 or 5237.

(2) In any action or proceeding brought by the Attorney General.

(f) Nothing in this section creates a duty of care or basis of liability for damage or injury caused by the acts or omissions of a director or officer.

(g) This section is only applicable to causes of action based upon acts or omissions occurring on or after January 1, 1988.

(h) As used in this section as applied to nonprofit public benefit corporations which have an annual budget of less than twenty-five thousand dollars (\$25,000) and that are exempt from federal income taxation under Section 501(c) (3) of the Internal Revenue Code, the condition of making "all reasonable efforts in good faith to obtain available liability insurance" shall be satisfied by the corporation if it makes at least one inquiry per year to purchase a general liability insurance policy and that insurance was not available at a cost of less than 5 percent of the previous year's annual budget of the corporation. If the corporation is in its first year of operation, this subdivision shall apply for as long as the budget of the corporation does not exceed twenty-five thousand dollars (\$25,000) in its first year of operation.

An inquiry pursuant to this subdivision shall obtain premium costs for a general liability policy with an amount of coverage of at least five hundred thousand dollars (\$500,000).

Coastline photograph from ©Nova Development Corp.





Colorado

C.R.S. 13-21-115.5 . Volunteer Service Act.

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

(I) The volunteer is immune from liability for the act or omission under the federal "Volunteer Protection Act of 1997", as from time to time may be amended, codified at 42 U.S.C. sec. 14501 et seq.; and

(II) The damage or injury was not caused by misconduct or other circumstances that would preclude immunity for such volunteer under the federal law described in subparagraph (I) of this paragraph (a).

(III)(Deleted by amendment, L. 2006, p. 531, § 1, effective July 1, 2006.)

(b) (I) *Except as otherwise provided in subparagraph (II) of this paragraph (b), nothing in this section shall be construed to bar any cause of action against a nonprofit organization, nonprofit corporation, governmental entity, or hospital or change the liability otherwise provided by law of a nonprofit organization, nonprofit corporation, governmental entity, or hospital arising out of an act or omission of a volunteer exempt from liability for negligence under this section.*

(II) A nonprofit organization, nonprofit corporation, governmental entity, or hospital that is formed for the sole purpose of facilitating the volunteer provision of health care shall be immune from liability arising out of an act or omission of a volunteer who is immune from liability under this subsection (4).

(5) *Notwithstanding the provisions of subsection (4) of this section, 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; except 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. However, nothing in this section shall be construed to limit the right of a plaintiff to recover from a policy of uninsured or underinsured motorist coverage available to the plaintiff as a result of a motor vehicle accident.*

C.R.S. 7-30-106. Uniform Unincorporated Nonprofit Association Act; Liability in contract and tort.

(1) *A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.*

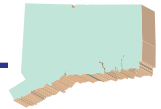
(2) *A person is not liable for a breach of a nonprofit association's contract merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.*

(3) A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(4) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(5) A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

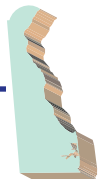
Connecticut



Conn. Gen. Stat. § 52-557(m). Immunity from liability of directors, officers and trustees of nonprofit tax-exempt organizations.

Any person who serves as a director, officer or trustee of a nonprofit organization qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, and who is not compensated for such services on a salary or prorated equivalent basis, shall be immune from civil liability for damage or injury occurring on or after October 1, 1987, resulting from any act, error or omission made in the exercise of such person's policy or decision-making responsibilities if such person was acting in good faith and within the scope of such person's official functions and duties, unless such damage or injury was caused by the reckless, wilful or wanton misconduct of such person.

Delaware



10 Del. C. § 8133. Limitation from civil liability for certain nonprofit organization volunteers.

(b) No volunteer of an organization shall be subject to suit directly, derivatively or by way of contribution for any civil damages under the laws of Delaware resulting from any negligent act or omission performed during or in connection with an activity of such organization.

(c) Notwithstanding subsection (b) of this section, 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.

(d) *The immunity granted in subsection (b) of this section shall not extend to any act or omission constituting willful and wanton or grossly negligent conduct*

(e) *In any suit against an organization 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 liability of the organization therefor under the doctrine of respondeat superior, notwithstanding the immunity granted to the volunteer with respect to such negligent act or omission under subsection (b) of this section.*

Florida



Fla. Stat. § 768.1355. Florida Volunteer Protection Act.

(1) *Any person who volunteers to perform any service for any nonprofit organization, including an officer or director of such organization, without compensation, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services. Such person shall incur no civil liability for any act or omission by such person which results in personal injury or property damage if:*

(a) *Such person was acting in good faith within the scope of any official duties performed under such volunteer service and such person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and*

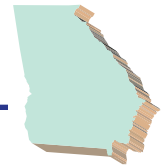
(b) *The injury or damage was not caused by any wanton or willful misconduct on the part of such person in the performance of such duties.*

1. *For purposes of this act, the term “nonprofit organization” means any organization which is exempt from taxation pursuant to 26 U.S.C. s. 501, or any federal, state, or local governmental entity.*

2. *For purposes of this act, the term “compensation” does not include a stipend as provided by the Domestic Service Volunteer Act of 1973, as amended (Pub. L. No. 93-113), or other financial assistance, valued at less than two-thirds of the federal hourly minimum wage standard, paid to a person who would otherwise be financially unable to provide the volunteer service,*

(2) *Except as otherwise provided by law, if a volunteer is determined to be not liable pursuant to subsection (1), the nonprofit organization for which the volunteer was performing services when the damages were caused shall be liable for such damages to the same extent as the nonprofit organization would have been liable if the liability limitation pursuant to subsection (1) had not been provided.*

(3) *Members of elected or appointed boards, councils, and commissions of the state, counties, municipalities, authorities, and special districts shall incur no civil liability and shall have immunity from suit as provided in s. 768.28 for acts or omissions by members relating to members' conduct of their official duties. It is the intent of the Legislature to encourage our best and brightest people to serve on elected and appointed boards, councils, and commissions.*



Georgia

O.C.G.A. § 51-1-20. Liability of persons serving charitable organizations and public entities while acting in good faith .

(a) A person serving with or without compensation as a member, director, or trustee, or as an officer of the board without compensation, of any nonprofit hospital or association or of any nonprofit, charitable, or eleemosynary institution or organization or of any local governmental agency, board, authority, or entity shall be immune from civil liability for any act or any omission to act arising out of such service if such person was acting in good faith within the scope of his or her official actions and duties and unless the damage or injury was caused by the willful or wanton misconduct of such person.

(b) As used in this Code section, the term “compensation” shall not include reimbursement for reasonable expenses related to said services.

(c) This Code section shall not affect any immunity of any person arising from any source, whether or not such person may additionally be subject to and possess an immunity provided by this Code section. The immunity provided by this Code section shall be supplemental to any such existing immunity.

Hawaii



HRS § 662D-2. Volunteer service; immunity; scope of immunity.

(a) A 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 the volunteer's official functions and duties for a nonprofit organization, a nonprofit corporation, a hospital, or a governmental entity;

(2) The damage or injury was caused by the volunteer's negligent conduct; and

(3) With respect to a nonprofit organization, nonprofit corporation, or hospital, the entity for which the volunteer was acting either:

(A) *Has a general liability policy in force, both at the time of injury and at the time the claim is made against the entity, and the minimum coverage is in an amount of not less than: \$200,000 per occurrence and \$500,000 aggregate; or*

(B) *Has total assets, exclusive of grants and allocations, of less than \$50,000.*

(b) *In any suit against a nonprofit organization, a nonprofit corporation, a hospital, or a governmental entity for civil damages based upon the negligent act or omission of a volunteer, proof of the act or omission shall be sufficient to establish the responsibility of the entity therefor under the doctrine of respondeat superior, notwithstanding the immunity granted to the volunteer with respect to any act or omission included under subsection (a).* HRS § 90-4. *Volunteer benefits.*

Volunteer benefits shall be provided within the limits of an agency's budget as follows:

(1) *Meals may be furnished without charge or the cost thereof may be reimbursed to volunteers serving the agency.*

(2) *Lodging may be furnished temporarily without charge or the cost thereof may be reimbursed to volunteers.*

(3) *Transportation reimbursement including parking fees, bus and taxi fares may be furnished to volunteers. Mileage reimbursement when provided for shall be furnished at a rate comparable to that of permanent employees performing similar duties. Volunteers may be authorized to use state vehicles in the performance of official state duties.*

(4) *Solely for the purposes of chapter 662, volunteers are hereby deemed "employees of the State," when acting for an agency in their capacity as volunteers.*

(5) *Out-service training and conference reimbursement may be furnished for volunteers.*

(6) *Personal liability insurance coverage may be furnished for volunteers.*

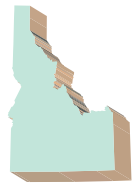
(7) *Reasonable expenses incurred by volunteers in connection with their assignments may be reimbursed.*

(8) *Recognition of volunteer service may include a recognition ceremony, certificates, and awards to be determined by the agency.*



Photograph of volunteer trying to save stranded pilot whales from NOAA's Naatona Marine Fisheries.

Idaho



Idaho Code § 6-1605. Limitation on liability of volunteers, officers and directors of nonprofit corporations and organizations.

(1) In any nonprofit corporation or organization as defined in section 6-1601(6), Idaho Code, officers, directors, and volunteers who serve the nonprofit corporation or organization without compensation shall be personally immune from civil liability arising out of their conduct as an officer, director, or volunteer, if such conduct is within the course and scope of the duties and functions of the individual officer, director or volunteer and at the direction of the corporation or organization. The provisions of this section shall not eliminate or limit, and no immunity is hereby granted for the liability of an officer, director or volunteer:

(a) For conduct which is willful, wanton, or which involves fraud or knowing violation of the law;

(b) To the extent of coverage for such conduct under a policy of liability insurance, whether the policy is purchased by the corporation or organization, the individual officer, director, volunteer or some third party;

(c) For any intentional breach of a fiduciary duty or duty of loyalty owed by the officer, director or volunteer to the corporation, organization or the members thereof;

(d) For acts or omissions not in good faith or which involve intentional misconduct, fraud or a knowing violation of law;

(e) For any transaction from which the officer, director or volunteer derived an improper personal benefit;

(f) For any violation of the provisions of section 30-3-82, Idaho Code; or

(g) For damages which result from the operation of a motor vehicle.

(2) Reimbursement of an officer, director or volunteer of a nonprofit corporation or organization for costs and expenses actually incurred shall not be considered compensation.

§ 53-706. Liability in contract and tort.

(1) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.

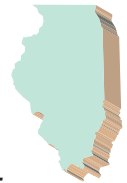
(2) A person is not liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered to be a member by the nonprofit association.

(3) A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered to be a member by the nonprofit association.

(4) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered to be a member by the nonprofit association.

(5) A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

Illinois



805 ILCS 105/108.70. General Not for Profit Corporation Act of 1986; Limited liability of directors, officers and persons who serve without compensation

(a) No director or officer serving without compensation, other than reimbursement for actual expenses, of a corporation organized under this Act or any predecessor Act and exempt, or qualified for exemption, from taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986 [26 U.S.C. § 501(c)], as amended, shall be liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director or officer unless the act or omission involved willful or wanton conduct.

(b) No director of a corporation organized under this Act or any predecessor Act for the purposes identified in items (14), (19), (21) and (22) of subsection (a) of Section 103.05 of this Act [805 ILCS 105/103.05(a)(14), (a)(19), (a)(21) and (a)(22)], and exempt or qualified for exemption from taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986 [26 U.S.C. § 501(c)], as amended, shall be liable, and no cause of action may be brought for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director, unless: (1) such director earns in excess of \$ 5,000 per year from his duties as director, other than reimbursement for actual expenses; or (2) the act or omission involved willful or wanton conduct.

(b-5) Except for willful and wanton conduct, no volunteer board member serving without compensation, other than reimbursement for actual expenses, of a corporation organized under this Act or any predecessor Act and exempt, or qualified for exemption, from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. § 501], as amended, shall be liable, and no action may be brought, for damages resulting from any action of the executive director concerning the false reporting of or inten-

tional tampering with financial records of the organization, where the actions of the executive director result in legal action.

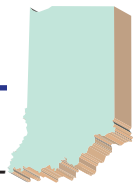
This subsection (b-5) shall not apply to any action taken by the Attorney General (i) in the exercise of his or her common law or statutory power and duty to protect charitable assets or (ii) in the exercise of his or her authority to enforce the laws of this State that apply to trustees of a charity, as that term is defined in the Charitable Trust Act [760 ILCS 55/1 et seq.] and the Solicitation for Charity Act [225 ILCS 460/0.01 et seq.].

(c) No person who, without compensation other than reimbursement for actual expenses, renders service to or for a corporation organized under this Act or any predecessor Act and exempt or qualified for exemption from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. § 501(c)(3)], as amended, shall be liable, and no cause of action may be brought, for damages resulting from an act or omission in rendering such services, unless the act or omission involved willful or wanton conduct.

(d) (Blank).

(e) Nothing in this Section is intended to bar any cause of action against the corporation or change the liability of the corporation arising out of an act or omission of any director, officer or person exempt from liability for negligence under this Section.

Indiana



Burns Ind. Code Ann. § 34-30-4-1. Immunity of qualified directors -- Negligent performance of duties.

Notwithstanding any other law, a qualified director is immune from civil liability arising from the negligent performance of the director's duties.

Burns Ind. Code Ann. § 34-30-4-2 Immunity of volunteer directors -- Exercise of reasonable care.

(a) This section does not apply to a health care provider (as defined in IC 34-18-2-14).

(b) An individual who:

(1) serves as a volunteer or volunteer director of:

(A) a nonprofit corporation operating under IC 12-29-3-6;

(B) an agency providing services under IC 12-12-3; or

(C) a nonprofit organization that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code; and

(2) exercises reasonable care in the performance of the individual's duties as a volunteer or a volunteer director of an entity described in subdivision (1);

is immune from civil liability arising out of the performance of those duties.

Iowa



Iowa Code § 501A.101. Limitation of liability of directors, officers, employees, members, and volunteers.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the cooperative is not liable for the cooperative's debts or obligations, and a director, officer, member, or other volunteer is not personally liable in that capacity for a claim based upon any action taken, or any failure to take action in the discharge of the person's duties, except for the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm to the cooperative or its members or patrons, or an intentional violation of criminal law.

Iowa Code § 613.19. Personal liability.

A director, officer, employee, member, trustee, or volunteer, of a nonprofit organization is not liable on the debts or obligations of the nonprofit organization and a director, officer, employee, member, trustee, or volunteer is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, "nonprofit organization" includes an unincorporated club, association, or other similar entity, however named, if no part of its income or profit is distributed to its members, directors, or officers.

Kansas



K.S.A. § 60-3601. Immunity from liability for volunteers of certain non-profit organizations, limitations.

(b) If a nonprofit organization carries general liability insurance coverage, a volunteer of such organization shall not be liable for damages in a civil action for acts or omissions as such volunteer unless:

(1) *Such conduct constitutes willful or wanton misconduct or intentionally tortious conduct; or*

(2) *such volunteer is required to be insured by law or is otherwise insured against such acts or omissions but, in such case, liability shall be only to the extent of the insurance coverage.*

(c) *If a nonprofit organization carries general liability insurance coverage, a volunteer of such organization shall not be liable for damages in a civil action for the actions or omissions of any of the officers, directors, trustees, employees or other volunteers of the nonprofit organization unless:*

(1) *The volunteer authorizes, approves, ratifies or otherwise actively participates in the action or omission and the action or omission constitutes willful or wanton misconduct or intentionally tortious conduct; or*

(2) *such volunteer is required to be insured by law or is otherwise insured against such acts or omissions but, in such case, liability shall be only to the extent of the insurance coverage.*

(d) *Nothing in this section shall be construed to affect the liability of a nonprofit organization for damages caused by the negligent or wrongful act or omission of its volunteer and a volunteer's negligence or wrongful act or omission, when acting as a volunteer, shall be imputed to the nonprofit organization for the purpose of apportioning liability for damages to a third party pursuant to K.S.A. 60-258a and amendments thereto.*

(e) *The provisions of this act shall apply only to causes of action accruing on or after July 1, 1987.*

Kentucky



KRS § 411.200. Immunity from civil liability of officer, director or trustee of nonprofit organization.

Any person who serves as a director, officer, volunteer or trustee of a nonprofit organization qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code of 1986, as from time to time amended, and who is not compensated for such services on a salary or prorated equivalent basis, shall be immune from civil liability for any act or omission resulting in damage or injury occurring on or after July 15, 1988, if such person was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by the willful or wanton misconduct of such person.

Louisiana



La. R.S. 9:2792.3. Limitation of liability of director, officer, trustee, or volunteer worker for incorporated and unincorporated nonprofit organizations; civic or historical purpose.

A person who serves as a director, officer, trustee or volunteer worker for any nonprofit organization, whether incorporated or unincorporated, including but not limited to an organization whether incorporated or not, which sponsors a fair or festival, or any nonprofit historical organization, whether incorporated or not, which is organized for civic or historical purposes, whether he serves with or without compensation for such services shall not be individually liable for any act or omission resulting in damage or injury arising out of the exercise of his judgment in the formation and implementation of policy, or arising out of the management of affairs, while acting as a director, officer, trustee or volunteer worker of that organization, provided he was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by his willful or wanton misconduct.

Maine

14 M.R.S. § 158-A. Immunity for charitable directors, officers, and volunteers.

2. IMMUNITY. A director, officer or volunteer is immune from civil liability for personal injury, death or property damage, including any monetary loss:

A. When the cause of action sounds in negligence and arises from an act or omission by the director, officer or volunteer which occurs within the course and scope of the activities of the charitable organization in which the director, officer or volunteer serves; or

B. Arising from any act or omission, not personal to the director, officer or volunteer, which occurs within the course and scope of the activities of the charitable organization in which the director, officer or volunteer serves.

3. LIMITED WAIVER OF IMMUNITY WHILE OPERATING VEHICLES, VESSELS OR AIRCRAFT. Notwithstanding any immunity granted in subsection 2, a director, officer or volunteer is considered to have waived immunity from liability when the cause of action arises out of the director's, officer's or volunteer's operation of a motor vehicle, vessel, aircraft or

Maine coastline photograph provided by Waurene Roberson.



other vehicle for which the operator or the owner of the vehicle, vessel or craft is required to possess an operator's license or maintain insurance. The amount of damages in an action authorized by this section may not exceed the combined limits of coverage of any applicable insurance policies other than umbrella insurance coverage and the courts shall abate a verdict in an action to the extent that it exceeds such limits. A provision in a policy of insurance that attempts to exclude coverage for claims that are authorized by this section is void as contrary to public policy.

Maryland



Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 5-407.

(b) Liability of volunteers. — A volunteer is not liable in damages beyond the limits of any personal insurance the volunteer may have in any suit that arises from an act or omission of an officer, director, employee, trustee, or another volunteer of the association or organization for which the volunteer performs services, unless:

(1) The volunteer knew or should have known of an act or omission of a particular officer, director, employee, trustee, or another volunteer, and the volunteer authorizes, approves, or otherwise actively participates in that act or omission; or

(2) After an act or omission of a particular officer, director, employee, trustee, or another volunteer, the volunteer, with full knowledge of that act or omission, ratifies it.

(c) When volunteer liable. — A volunteer is not liable in damages beyond the limits of any personal insurance the volunteer may have in any suit that arises from the volunteer's act or omission in connection with any services provided or duties performed by the volunteer on behalf of the association or organization, unless an act or omission of the volunteer constitutes gross negligence, reckless, willful, or wanton misconduct, or intentionally tortious conduct.

(d) New cause of action not created. —

(1) This section does not create, and may not be construed as creating, a new cause of action or substantive legal right against a volunteer.

(2) This section does not affect, and may not be construed as affecting, any immunities from civil liability or defenses established by any other provision of the Code or available at common law, to which a volunteer may be entitled.

(e) Applicability of section. — The provisions of this section do not apply to suits brought by the Attorney General upon referral by the Secretary of State in which willful violations of Title 6, Subtitles 3, 4, 5, and 6 of the Business Regulation Article are alleged and proven.

Massachusetts

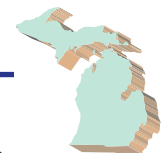


Mass. Ann. 231 § 85K. Tort Liability of Charitable Organizations, etc.

It shall not constitute a defense to any cause of action based on tort brought against a corporation, trustees of a trust, or members of an association that said corporation, trust, or association is or at the time the cause of action arose was a charity; provided, that if the tort was committed in the course of any activity carried on to accomplish directly the charitable purposes of such corporation, trust, or association, liability in any such cause of action shall not exceed the sum of twenty thousand dollars exclusive of interest and costs. Notwithstanding any other provision of this section, the liability of charitable corporations, the trustees of charitable trusts, and the members of charitable associations shall not be subject to the limitations set forth in this section if the tort was committed in the course of activities primarily commercial in character even though carried on to obtain revenue to be used for charitable purposes.

No person who serves as a director, officer or trustee of an educational institution which is, or at the time the cause of action arose was, a charitable organization, qualified as a tax-exempt organization under 26 USC 501(c)(3) and who is not compensated for such services, except for reimbursement of out of pocket expenses, shall be liable solely by reason of such services as a director, officer or trustee for any act or omission resulting in damage or injury to another, if such person was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by willful or wanton misconduct. The limitations on liability provided by this section shall not apply to any cause or action arising out of said person's operation of a motor vehicle. 1971, 785, § 1; 1987, 238.

Michigan



MCLS § 691.1407. Governmental Liability for Negligence; Immunity from tort liability; intentional torts; immunity of judge, legislator, official, and guardian ad litem; definitions.

Sec. 7.

(2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

(a) *The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.*

(b) *The governmental agency is engaged in the exercise or discharge of a governmental function.*

(c) *The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.*

(3) *Subsection (2) does not alter the law of intentional torts as it existed before July 7, 1986.*

Minnesota



Minn. Stat. § 317A.257. Nonprofit Corporation Board; UNPAID DIRECTORS; LIABILITY FOR DAMAGES.

Subdivision 1. Generally

Except as provided in subdivision 2, a person who serves without compensation as a director, officer, trustee, member, or agent of an organization exempt from state income taxation under section 290.05, subdivision 2, or who serves without compensation as a fire chief of a nonprofit fire-fighting corporation or municipal volunteer fire department, or of a public corporation established by law but not considered a municipality, is not civilly liable for an act or omission by that person if the act or omission was in good faith, was within the scope of the person's responsibilities as a director, officer, trustee, member, agent, or fire chief of the organization, and did not constitute willful or reckless misconduct.

Subd. 2. Exceptions.

(a) *Subdivision 1 does not apply to:*

(1) *an action or proceeding brought by the attorney general for a breach of a fiduciary duty as a director;*

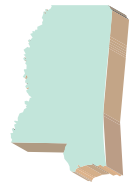
(2) *a cause of action to the extent it is based on federal law;*

(3) *a cause of action based on the person's express contractual obligation; or*

(4) *an action or proceeding based on a breach of public pension plan fiduciary responsibility.*

(b) *Subdivision 1 does not limit an individual's liability for physical injury to the person of another or for wrongful death that is personally and directly caused by the individual, nor the liability of a municipality arising out of the performance of fire-fighting or related activities.*

Mississippi



Miss. Code Ann. § 95-9-1. Liability exemption for volunteers and sports officials; liability exemption for volunteers; exceptions.

(2) A qualified volunteer shall not be held vicariously liable for the negligence of another in connection with or as a consequence of his volunteer activities.

(3) A qualified volunteer who renders assistance to a participant in, or a recipient, consumer or user of the services or benefits of a volunteer activity shall not be liable for any civil damages for any personal injury or property damage caused to a person as a result of any acts or omissions committed in good faith except:

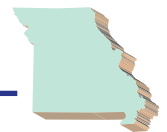
(a) Where the qualified volunteer engages in acts or omissions which are intentional, willful, wanton, reckless or grossly negligent; or

(b) Where the qualified volunteer negligently operates a motor vehicle, aircraft, boat or other powered mode of conveyance.

§ 95-9-5. Application of chapter.

Nothing in this chapter shall be construed to limit the liability of a person acting outside the scope of the volunteer activity, or as limiting a person's right of recovery under provisions required to be contained in an automobile liability insurance policy or contract pursuant to Sections 83-11-101 through 83-11-111, Mississippi Code of 1972, and the liability of the owner or operator of an uninsured motor vehicle shall not be limited as provided in this subsection for purpose of recovery under such a provision

Missouri



§ 537.118 R.S.Mo. Volunteers, limited personal liability, certain organizations and government entities, exceptions.

2. Any volunteer of a nonprofit organization or governmental entity shall be immune from personal liability for any act or omission resulting in damage or injury to any person intended to receive benefit from such volunteer's service if:

(1) The volunteer acted in good faith and within the scope of his official functions and duties with the organization or entity; and

(2) The damage or injury was not caused by the intentional or malicious conduct or by the negligence of such volunteer.

3. *Nothing in this section shall be construed to create or abolish an immunity in favor of a nonprofit organization or a governmental entity.*
4. *The provisions of this section shall apply to all causes of action accruing after August 28, 1989.*

Montana



Mont. Code Anno., 27-1-732 Immunity of nonprofit corporation officers, directors, and volunteers.

(1) An officer, director, or volunteer of a nonprofit corporation is not individually liable for any action or omission made in the course and scope of the officer's, director's, or volunteer's official capacity on behalf of the nonprofit corporation. This section does not apply to liability for willful or wanton misconduct. The immunity granted by this section does not apply to the liability of a nonprofit corporation.

(2) For purposes of this section, "nonprofit corporation" means:

(a) an organization exempt from taxation under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended;

(b) a corporation or organization that is eligible for or has been granted tax-exempt status by the department of revenue under the provisions of 15-31-102; or

(c) the comprehensive health association created by 33-22-1503.

Nebraska



R.R.S. Neb. § 81-1568. Volunteer; limitation on liability.

Any volunteer or any person who provides assistance or advice in attempting to mitigate or in mitigating the effects of an actual or threatened discharge of hazardous materials or who attempts to prevent, dispose of, or clean up or prevents, disposes of, or cleans up any such discharge shall not be subject to any civil liability or penalty, except that the person whose act or omission, in whole or in part, caused such actual or threatened discharge shall be liable for any negligence of such volunteer or other person.

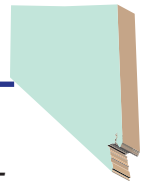
R.R.S. Neb. § 25-21, 191. Not-for-profit organization; director, officer, or trustee; immunity from civil liability.

(1) On or after August 30, 1987, any person who serves as a director, officer, or trustee of a not-for-profit organization and who is not compensated for his or her services as a director, officer, or trustee on a salary or a prorated equivalent basis shall be immune from civil liability for any act or omission which results in damage or injury if such person was acting within the scope of his or her official functions and duties as a director, officer, or trustee unless such damage or injury was caused by the willful or wanton act or omission of such director, officer, or trustee.

(2) Nothing in this section shall be construed to establish, diminish, or abrogate any duties that a director, officer, or trustee of a not-for-profit organization has to the not-for-profit organization for which the director, officer, or trustee serves.

(3) For purposes of this section, a director, officer, or trustee shall not be considered compensated solely by reason of the payment of his or her actual expenses incurred in attending meetings or in executing such office, the receipt of meals at meetings, or the receipt of gifts not exceeding a total value of one hundred dollars in any twelve consecutive months.

Nevada



Nev. Rev. Stat. § 41.485. Conditions and limitations on actions: Acts and omissions of volunteers of charitable organizations.

1. Except as otherwise provided in subsection 2, a volunteer of a charitable organization is immune from liability for civil damages as a result of an act or omission:

(a) Of an agent of the charitable organization; or

(b) Concerning services he performs for the charitable organization that are not supervisory in nature and are not part of any duties or responsibilities he may have as an officer, director or trustee of the charitable organization, unless his act is intentional, willful, wanton or malicious.

2. This section does not restrict the liability of a charitable organization for the acts or omissions of a volunteer performing services on its behalf.

Nev. Rev. Stat. § 695A.475. Liability of directors, officers, employees, members and volunteers; indemnification and reimbursement of directors, officers, employees and agents.

1. The officers and members of the supreme governing body or any subordinate body of a society are not personally liable for payment of any benefits provided by the society.

2. A person may be indemnified and reimbursed by a society for expenses reasonably incurred by, and liabilities imposed upon, him in connection with or arising out of any

action, suit or proceeding, whether civil, criminal, administrative or investigative, or threat thereof, in which the person may be involved because he is or was a director, officer, employee or agent of the society or of any firm, corporation or organization which he served in any capacity at the request of the society.

3. A person may not be so indemnified or reimbursed as to any matter in an action, suit or proceeding, or threat thereof, in which he is finally adjudged to be guilty of a breach of a duty as a director, officer, employee or agent of the society, or which is made the subject of a compromise settlement, unless:

(a) He acted in good faith for a purpose he reasonably believed to be in the best interests of the society; and

(b) If a criminal action, he had no reasonable cause to believe that his conduct was unlawful.

4. The determination of whether the conduct of a person meets the standard required for indemnification and reimbursement may only be made by:

(a) The supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, suit or proceeding; or

(b) A court of competent jurisdiction.

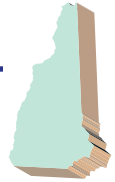
5. The termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere, does not create a conclusive presumption that the person does not meet the standard of conduct required for indemnification and reimbursement.

6. The right of indemnification and reimbursement does not exclude other rights to which the person may be entitled as a matter of law, and inures to the benefit of his heirs, executors and administrators.

7. A society may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the society, or who is serving or has served at the request of the society as a director, officer, employee or agent of any other firm, corporation or organization, against any liability asserted against and incurred by him in that capacity or arising out of his status as such, whether or not the society may indemnify the person against liability pursuant to this section.

8. A director, officer, employee, member or volunteer of a society who serves without compensation is not liable, and no cause of action may be brought for damages resulting from his exercise of judgment or discretion in carrying out his duties or responsibilities on behalf of the society, unless the act or omission involved willful or wanton misconduct.

New Hampshire



508:17. Volunteers; Nonprofit Organizations; Liability Limited.

I. Any person who is a volunteer of a nonprofit organization or government entity shall be immune from civil liability in any action brought on the basis of any act or omission resulting in damage or injury to any person if:

(a) The nonprofit organization or government entity has a record indicating that the person claiming to be a volunteer is a volunteer for such organization or entity; and

(b) The volunteer was acting in good faith and within the scope of his official functions and duties with the organization; an

(c) The damage or injury was not caused by willful, wanton, or grossly negligent misconduct by the volunteer

I-a. [Repealed.]

II. Liability of a nonprofit organization for damage or injury sustained by any one person in actions brought against the organization alleging negligence on the part of an organization volunteer is limited to \$250,000. Such limit applies in the aggregate to any and all actions to recover for damage or injury sustained by one person in a single incident or occurrence. Liability of a nonprofit organization for damage or injury sustained by any number of persons in a single incident or occurrence involving negligence on the part of an organization volunteer is limited to \$1,000,000.

III. Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization against any volunteer of such organization.

IV. Volunteer activity related to transportation or to care of the organization's premises shall be excepted from the provisions of paragraph I of this section.

New Jersey



N.J. Stat. § 2A:53A-7. Immunity from liability for negligence.

a. No nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes or its trustees, directors, officers, employees, agents, servants or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a beneficiary,

to whatever degree, of the works of such nonprofit corporation, society or association; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association.

Nothing in this subsection shall be deemed to grant immunity to any health care provider, in the practice of his profession, who is a compensated employee, agent or servant of any nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes.

b. No nonprofit corporation, society or association organized exclusively for hospital purposes or its trustees, directors, officers or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association; but nothing herein contained shall be deemed to exempt the agent, employee or servant individually from their liability for any such negligence.

c. Nothing in this section shall be deemed to grant immunity to:

(1) any trustee, director, officer, employee, agent, servant or volunteer causing damage by a willful, wanton or grossly negligent act of commission or omission, including sexual assault and other crimes of a sexual nature;

(2) any trustee, director, officer, employee, agent, servant or volunteer causing damage as the result of the negligent operation of a motor vehicle; or

(3) an independent contractor of a nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes.

§ 2A:53A-7.1. Volunteers of certain organizations exempt from liability, damages.

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

office unless the actions evidence a reckless disregard for the duties imposed by the position.

b. Notwithstanding any provisions of law to the contrary, no person who provides volunteer service or assistance for any nonprofit corporation, society or association as provided in P.L. 1959, c.90 (C.2A:53A-7 to 2A:53A-11), or nonprofit federation council or affiliated group composed of these organizations or a voluntary association as provided by P.L. 1979, c.172 (C.18A:11-3) or to a conference under the jurisdiction of such a voluntary association shall be liable in any action for damages as a result of his acts of commission or omission arising out of and in the course of his rendering the volunteer service or assistance.

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

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

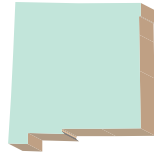
c. Nothing in this section shall be deemed to supersede or modify any provision of P.L. 1986, c.13 (C.2A:62A-6) dealing with the civil liability of persons involved with nonprofit sports teams.

d. (1) Notwithstanding any other provision of law to the contrary, the provisions of subsection a. of this section shall be applicable to any person serving without compensation, other than reimbursement for actual expenses, as a trustee, director, officer or voluntary member of the board or governing body of any nonprofit corporation, society or association which is organized pursuant to the laws of the State of New Jersey for the purpose of operating or maintaining a cemetery or place of burial.

(2) Notwithstanding any other provision of law to the contrary, the provisions of subsection b. of this section shall be applicable to any person who provides volunteer service or assistance to any nonprofit corporation, society or association organized pursuant to the laws of the State of New Jersey for the purpose of operating or maintaining a cemetery or place of burial.

e. Notwithstanding any other provision of law to the contrary, the provisions of subsection a. of this section shall be applicable to any person serving without compensation, other than reimbursement for actual expenses, as a trustee, director, officer or voluntary member of the board or governing body of any nonprofit corporation which is organized pursuant to the provisions of Title 15A of the New Jersey Statutes and whose purpose is the encouragement of economic development in a municipality or a county.

New Mexico



N.M. Stat. Ann. §53-8-25.3. Nonprofit corporations; boards of directors; liability; immunity.

A. Except as otherwise provided in this section, no member of a board of directors of a nonprofit corporation as defined in the Nonprofit Corporation Act [53-8-1 NMSA 1978] shall be held personally liable for any damages resulting from:

- (1) any negligent act or omission of an employee of that nonprofit corporation;*
- (2) any negligent act or omission of another director of that nonprofit corporation; or*
- (3) any action taken as a director or any failure to take any action as a director unless:*
 - (a) the director has breached or failed to perform the duties of the director's office; and*
 - (b) the breach or failure to perform constitutes willful misconduct or recklessness.*

B. The immunity provided in Subsection A of this section shall not extend to acts or omissions of directors of nonprofit corporations that constitute willful misconduct or recklessness personal to the director. The immunity is limited to actions taken as a director at meetings of the board of directors or a committee of the board of directors or by action of the directors without 4 meeting pursuant to Section 53-8-97 NMSA 1978.

C. A nonprofit corporation shall not transfer assets in order to avoid claims against corporate assets resulting from a judgment against the corporation. If a director votes to do so, the immunity provided by this section shall have no force or effect as to that director.

North Carolina



N.C. Gen. Stat. § 1-539.10. Immunity from civil liability for volunteers.

(a) A volunteer who performs services for a charitable organization or a volunteer engaged in providing emergency services is not liable in civil damages for any acts or omissions resulting in any injury, death, or loss to person or property arising from the volunteer services rendered if:

- (1) The volunteer was acting in good faith and the services rendered were reasonable under the circumstances; and*

(2) *The acts or omissions do not amount to gross negligence, wanton conduct, or intentional wrongdoing.*

(3) *The acts or omissions did not occur while the volunteer was operating or responsible for the operation of a motor vehicle.*

(b) *To the extent that any charitable organization or volunteer has liability insurance, that charitable organization or volunteer shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance for the negligence by any volunteer.*

(c) *Nothing herein shall be construed to alter the standard of care requirement or liability of persons rendering professional services.*

N.C. Gen. Stat. § 55A-8-60. Immunity.

(a) *In addition to the immunity that is authorized in G.S. 55A-2-02(b)(4), a person serving as a director or officer of a nonprofit corporation shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:*

(1) *Is compensated for his services beyond reimbursement for expenses;*

(2) *Was not acting within the scope of his official duties;*

(3) *Was not acting in good faith;*

(4) *Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury;*

(5) *Derived an improper personal financial benefit from the transaction;*

(6) *Incurred the liability from the operation of a motor vehicle; or*

(7) *Is a defendant in an action brought under G.S. 55A-8-33.*

The immunity in this subsection may be limited or eliminated by a provision in the articles of incorporation, but only with respect to acts or omissions occurring on or after the effective date of such provision.

(b) *The immunity in subsection (a) of this section is personal to the directors and officers, and does not immunize the corporation against liability for the acts or omissions of the directors or officers.*

(c) *Without diminishing the applicability of any other provisions of this Chapter, "nonprofit corporation" as referred to in this section shall include any credit union chartered under the laws of this State, the laws of any other state, or under the laws of the United States.*

N.C. Gen. Stat. § 59B-7. Liability of members or other persons

- (a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities.*
- (b) A person is not liable for the contract, tort, or other obligations of a nonprofit association merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a “member” by the nonprofit association.*
- (c) Reserved for future codification purposes.*
- (d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a “member” by the nonprofit association.*
- (e) A member of, or a person referred to as a “member” by, a nonprofit association may assert a claim against or on behalf of the nonprofit association. A nonprofit association may assert a claim against a member or a person referred to as a “member” by the nonprofit association.*

N.C. Gen. Stat. § 143-215.104, § 143-215.104. Limited liability for volunteers in hazardous material abatement.

Any person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of any such discharge, when the reasonably apparent circumstances indicate the need for prompt decisions and action, shall not be subject to civil liabilities of any type, unless:

- (1) Prior to providing assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge or in preventing, cleaning up, or disposal of or in attempting to prevent cleanup or disposal of any such discharge, he had incurred liability for the actual or threatened discharge;*
 - (2) He receives compensation other than reimbursement for out-of-pocket expenses for his services in rendering assistance or advice, except that an individual receiving compensation for employment from his regular employer for services performed in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of a discharge shall not be deemed to have received compensation if his employer is entitled to the protection afforded by this Part; or*
 - (3) His act or omission led to damages resulting from his gross negligence, or from his reckless, wanton, or intentional misconduct.*
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The limited immunity provided herein shall not be applicable to any act or omission or occurrence involving the operation of a motor vehicle. The limited immunity provided herein is waived to the extent of any indemnification by insurance for damages caused by such volunteer.

North Dakota



N.D. Cent. Code 10-33-48. Immunity of volunteers.

1. Any person who, on a volunteer basis, provides services or performs duties on behalf of a corporation is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

a. The person who caused the damage or injury was acting in good faith and in the scope of that person's duties as a volunteer for the corporation.

b. The act or omission did not constitute willful misconduct or gross negligence.

2. This section does not grant immunity to any person causing damage as the result of the negligent operation of a motor vehicle.

N.D. Cent. Code § 32-03-45. Non-profit volunteers; Immunity of volunteers providing services for nonprofit organizations.

Except as provided in section 32-03-46, any person who, on a volunteer basis, provides services or performs duties on behalf of a nonprofit organization is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The person who caused the damage or injury was acting in good faith and in the scope of that person's duties as a volunteer for the nonprofit organization.

2. The act or omission did not constitute willful misconduct or gross negligence.

This section does not grant immunity to any person causing damage as the result of the negligent operation of a motor vehicle.

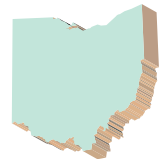
N.D. Cent. Code § 32-03-44. Immunity of officers, directors, and trustees of nonprofit organizations.

Any person who serves as a director, officer, or trustee of a nonprofit organization that is, or would qualify as a nonprofit organization that is, described in paragraphs 3, 4, 5, 6,

7, 10, and 19 of section 501(c) of the Internal Revenue Code of 1954 as amended [26 U.S.C. 501(c)(3), (4), (5), (6), (7), (10), and (19)], is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The officer, director, or trustee was acting in good faith and in the scope of that person's official duties as a director, officer, or trustee of the nonprofit organization.
2. The act or omission did not constitute willful misconduct or gross negligence on the part of the officer, director, or trustee.
3. The officer, director, or trustee did not receive or expect to receive reimbursement for or payment of expenses in excess of two thousand dollars per year for expenses actually incurred as a result of providing services as a director, officer, or trustee of the nonprofit organization and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services provided as a director, officer, or trustee of the nonprofit organization.

Ohio



ORC Ann. 2305.38. Civil immunity of uncompensated volunteers at nonprofit charitable organizations.

(B) A volunteer is not liable in damages in a civil action for injury, death, or loss to person or property that arises from the actions or omissions of any of the officers, employees, trustees, or other volunteers of the charitable organization for which the volunteer performs services, unless either of the following applies:

(1) With prior knowledge of an action or omission of a particular officer, employee, trustee, or other volunteer, the volunteer authorizes, approves, or otherwise actively participates in that action or omission.

(2) After an action or omission of a particular officer, employee, trustee, or other volunteer, the volunteer, with full knowledge of that action or omission, ratifies it.

(C) A volunteer is not liable in damages in a civil action for injury, death, or loss to person or property that arises from the volunteer's actions or omissions in connection with any supervisory or corporate services that the volunteer performs for the charitable organization, unless either of the following applies:

(1) An action or omission of the volunteer involves conduct as described in division (B)(1) or (2) of this section;

(2) *An action or omission of the volunteer constitutes willful or wanton misconduct or intentionally tortious conduct.*

(D) *A volunteer is not liable in damages in a civil action for injury, death, or loss to person or property that arises from the volunteer's actions or omissions in connection with any nonsupervisory or noncorporate services that the volunteer performs for the charitable organization, unless either of the following applies:*

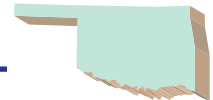
(1) *An action or omission of the volunteer involves conduct as described in division (B)(1) or (2) of this section;*

(2) *An action or omission of the volunteer constitutes negligence, willful or wanton misconduct, or intentionally tortious conduct.*

(E) (1) *This section does not create a new cause of action or substantive legal right against a volunteer.*

(2) *This section does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law, to which a volunteer may be entitled under circumstances not covered by this section. This section does not diminish in any respect the immunities provided in section 2305.251 [2305.25.1] of the Revised Code. The immunities conferred upon volunteers in this section are not intended to affect the liability of a charitable organization in a civil action for injury, death, or loss to person or property.*

Oklahoma



76 OKL. St. § 31. *Volunteers, charitable organizations, and not-for-profit corporations Immunity from civil liability—Limitations.*

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

1. *The volunteer was acting in good faith and within the scope of the volunteer's official functions and duties for a charitable organization or not-for-profit corporation; and*

2. *The damage or injury was not caused by gross negligence or willful and wanton misconduct by the volunteer.*

B. *In any civil action against a charitable organization or not-for-profit corporation for damages based upon the conduct of a volunteer, the doctrine of respondeat superior shall apply, notwithstanding the immunity granted to the volunteer in subsection A of this section.*

C. Any person who, in good faith and without compensation, or expectation of compensation, donates or loans emergency service equipment to a volunteer shall not be liable for damages resulting from the use of such equipment by the volunteer, except when the donor of the equipment knew or should have known that the equipment was dangerous or faulty in a way which could result in bodily injury, death or damage to property.

Oregon



ORS. § 30. 492. Limitation on liability of volunteer providing assistance or advice related to mitigation or cleanup of discharge of hazardous material.

(1) Except as provided in ORS 30.495 and 30.497, no person may maintain an action for damages against a person for voluntarily providing assistance or advice directly related to:

(a) Mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous material; or

(b) Preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of any discharge of hazardous material.

(2) Except as provided in ORS 30.495 and 30.497, no state or local agency may assess a civil or criminal penalty against a person for voluntarily providing assistance or advice directly related to:

(a) Mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous material; or

(b) Preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of any discharge of hazardous material.

ORS § 30.495. Exceptions to limitation.

The immunity provided in ORS 30.492 shall not apply to any person:

(1) Whose act or omission caused in whole or in part the actual or threatened discharge and who would otherwise be liable for the damages; or

(2) Who receives compensation other than reimbursement for expenses for the person's service in rendering such assistance or advice.

ORS § 30.497, When limitation on liability not applicable.

Nothing in ORS 30.492 shall be construed to limit or otherwise affect the liability of any person for damages resulting from the person's gross negligence or from the person's reckless, wanton or intentional misconduct.

Pennsylvania



42 P.S. § 8332.2. Officer, director or trustee of nonprofit organization negligence standard.

(a) GENERAL RULE.-- Except as provided otherwise in this section, no person who serves without compensation, other than reimbursement for actual expenses, as an officer, director or trustee of any nonprofit organization under section 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 501(c)(3)) shall be liable for any civil damages as a result of any acts or omissions relating solely to the performance of his duties as an officer, director or trustee, unless the conduct of the person falls substantially below the standards generally practiced and accepted in like circumstances by similar persons performing the same or similar duties, and unless it is shown that the person did an act or omitted the doing of an act which the person was under a recognized duty to another to do, knowing or having reason to know that the act or omission created a substantial risk of actual harm to the person or property of another. It shall be insufficient to impose liability to establish only that the conduct of the person fell below ordinary standards of care.

(b) EXCEPTION.-- Nothing in this section shall be construed as affecting or modifying any existing legal basis for determining the liability, or any defense thereto, of any nonprofit association.

§ 8332.4. Volunteer-in-public-service negligence standard.

(a) SERVICES COVERED.—

(1) Except as provided otherwise in this section, no person who, without compensation and as a volunteer, renders public services for a nonprofit organization under section 501(c)(3), (4) or (6) of the Internal Revenue Code of 1986 (68A Stat. 3, 26 U.S.C. § 501(c)(3), (4) or (6)) or for a Commonwealth or local government agency conducting or sponsoring a public service program or project shall be liable to any person for any civil damages as a result of any acts or omissions in rendering such services unless the conduct of such person falls substantially below the standards generally practiced and accepted in like circumstances by similar persons rendering such services and unless it is shown that such person did an act or omitted the doing of an act which such person was under a recognized duty to another 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. It shall be insufficient to impose liability to establish only that the conduct of such person fell below ordinary standards of care.

(2) *Except as provided otherwise in this section, no design professional who, without compensation and as a volunteer, provides professional services related to a declared national, State or local emergency caused by a major earthquake, hurricane, tornado, explosion, collapse or other similar disaster or catastrophic event at the request of or with the approval of a Federal, State or local public official, law enforcement official, public safety official or building inspection official acting in an official capacity shall be liable to any person for any civil damages as a result of any acts or omissions in rendering such services unless the conduct of such design professional falls substantially below the standards generally practiced and accepted in like circumstances by similar persons rendering such professional services and unless it is shown that such design professional did an act or omitted the doing of an act which such design professional was under a recognized duty to another 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. It shall be insufficient to impose liability to establish only that the conduct of such design professional fell below ordinary standards of care.*

(b) *EXCEPTIONS.—*

(1) *Nothing in this section shall be construed as affecting or modifying the liability of such person for acts or omissions relating to the transportation of participants in a public service program or project or others to or from a public service program or project.*

(2) *Nothing in this section shall be construed as affecting or modifying any existing legal basis for determining the liability, or any defense thereto, of any person not covered by the standard of negligence established by this section.*

(c) *ASSUMPTION OF RISK OR CONTRIBUTORY FAULT.— Nothing in this section shall be construed as affecting or modifying the doctrine of assumption of risk or contributory fault on the part of the participant.*

(d) *CONSTRUCTION.— The negligence standard created by this section shall not be deemed to abrogate or lessen any immunity or other protection against liability granted by statute or court decision.*

Rhode Island

R.I. Gen. Laws § 7-6-9. Exemption from liability.

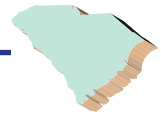
Notwithstanding any other provisions of this chapter:

(a) *No person serving without compensation as a volunteer, director, officer, or trustee of a nonprofit corporation, including a corporation qualified as a tax exempt corporation under §*

501(c) of the United States Internal Revenue Code, 26 U.S.C. § 501(c), or of an unincorporated nonprofit organization or an unincorporated public charitable institution qualified as a tax exempt organization under § 501(c) of the United States Internal Revenue Code, is liable to any person based solely on his or her conduct in the execution of the office or duty unless the conduct of the director, officer, trustee, or volunteer regarding the person asserting the liability constituted malicious, willful, or wanton misconduct. As used in this section, "compensation" does not include a per diem or per meeting allowance, health insurance benefits, or reimbursement for out of pocket costs and expenses incurred in the service. Nothing in these provisions is construed to exempt a volunteer from liability based upon his or her ownership and/or operation of a motor vehicle.

(b) Officers, directors, agents, servants, volunteers, and employees of a corporation are not liable for bodily injury to any person incurred while the person is practicing for, or participating in, any contest or exhibition of an athletic or sports nature sponsored by the corporation; provided, that the person has, or in the case of a minor, a parent or guardian of the minor has, signed a written waiver of liability of the corporation and acknowledgment of assumption of risk regarding the practicing for, or participating in, any contest or exhibition of an athletic or sports nature sponsored by the corporation.

South Carolina



S.C. Code Ann. § 33-56-180. Limitation of liability for injury or death caused by employee of charitable organization.

(A) A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15. An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, willful, or grossly negligent manner, and the employee must be joined properly as a party defendant. A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner. If the charitable organization for which the employee was acting cannot be determined at the time the action is instituted, the plaintiff may name as a party defendant the employee, and the entity for which the employee was acting must be added or substituted as party defendant when it reasonably can be determined.

(B) If the actual damages from the injury or death giving rise to the action arose from the use or operation of a motor vehicle and exceed two hundred fifty thousand dollars, this

section does not prevent the injured person from recovering benefits pursuant to Section 38-77-160 but in an amount not to exceed the limits of the uninsured or underinsured coverage.

South Dakota



S.D. Codified Laws § 47-23-2.1. Immunity of director, trustee, committee member or officer serving without compensation.

No director, trustee, committee member, or officer serving without compensation, other than reimbursement for actual expenses, of any corporation organized under this chapter or under similar laws of another state, and which is exempt from taxation pursuant to Section 501(a) of the Internal Revenue Code, 26 U.S.C. Section 501(a) and is listed as an exempt organization in Section 501(c) of the Internal Revenue Code, 26 U.S.C. Section 501(c), or any hospital organized pursuant to chapter 34-8, 34-9, or 34-10 is liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director, trustee, committee member, or officer while acting in an official capacity as such director, trustee, committee member, or officer, unless the act or omission involved willful or wanton misconduct. The immunity provided by this section applies to any member of an advisory board, serving without compensation, other than reimbursement for actual expenses, of any corporation described by this section.

S.D. Codified Laws § 47-23-29. Nonprofit Corporations - Members, Directors, Officers and Agents.

Any volunteer of a nonprofit organization, a nonprofit corporation, a free clinic, any hospital organized pursuant to chapters 34-8, 34-9 or 34-10, or a governmental entity shall be immune from civil liability in any action brought in any court in this state on the basis of any act or omission resulting in damage or injury if:

- (1) The individual was acting in good faith and within the scope of such individual's official functions and duties for the nonprofit organization, the nonprofit corporation, the free clinic, a hospital organized pursuant to chapters 34-8, 34-9 or 34-10, or a governmental entity; and*
 - (2) The damage or injury was not caused by gross negligence or willful and wanton misconduct by such individual.*
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Tennessee



Tenn. Code Ann. § 48-58-601. Limitation of and immunity from actions for breach of fiduciary duty.

(a) Any action alleging breach of fiduciary duties by directors or officers, including alleged violations of the standards established in § 48-58-301, § 48-58-302 or § 48-58-403, must be brought within one (1) year from the date of such breach or violation. In the event the alleged breach or violation is not discovered nor reasonably should have been discovered within that one-year period, the period of limitation shall be one (1) year from the date such was discovered or reasonably should have been discovered. In no event shall any such action be brought more than three (3) years after the date on which the breach or violation occurred, except where there is fraudulent concealment on the part of the defendant, in which case the action shall be commenced within one (1) year after the alleged breach or violation is, or should have been, discovered.

(b) The general assembly finds and declares that the services of nonprofit boards are critical to the efficient conduct and management of the public and charitable affairs of the citizens of this state. Members of such nonprofit boards must be permitted to operate without concern for the possibility of litigation arising from the discharge of their duties as policy makers.

(c) All directors, trustees or members of the governing bodies of nonprofit cooperatives, corporations, clubs, associations and organizations described in subsection (d), whether compensated or not, shall be immune from suit arising from the conduct of the affairs of such cooperatives, corporations, clubs, associations or organizations. Such immunity from suit shall be removed when such conduct amounts to willful, wanton or gross negligence. Notwithstanding other provisions of this subsection to the contrary, all directors, trustees or members of the governing bodies of nonprofit cemetery corporations, associations and organizations referred to in subdivision (d)(6) shall be immune from personal liability only if such cemetery corporations, associations or organizations carry liability insurance coverage in an amount to be determined by the department of commerce and insurance; provided, that such requirement shall not apply in any county having a population of not less than six thousand (6,000) nor more than six thousand one hundred twenty-five (6,125) according to the 1980 federal census or any subsequent federal census. Nothing in chapters 51-68 of this title shall be construed to grant immunity to the nonprofit cooperative, corporation, association or organization.

(d) Subsection (c) shall apply to the following:

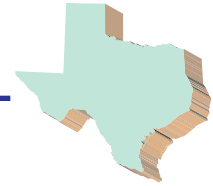
(1) Electric membership corporations organized under title 65, chapter 24 [repealed];

(2) Electric cooperatives organized under title 65, chapter 25, part 2;

- (3) *Nonprofit corporations, associations and organizations which are exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)), as amended;*
- (4) *Not-for-profit civic leagues or organizations which are exempt from federal income taxation under § 501(c)(4) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)(4)), as amended;*
- (5) *Nonprofit corporations, associations and organizations which are exempt from federal income taxation under § 501(c)(6) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(6)), as amended;*
- (6) *Not-for-profit cemetery corporations, associations and organizations which are exempt from federal income taxation under § 501(c)(13) of the Internal Revenue Code (26 U.S.C. § 501(c)(13)), as amended;*
- (7) *Not-for-profit agricultural or horticultural organizations which are exempt from federal income taxation under § 501(c)(5) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(5)), as amended;*
- (8) *Nonprofit corporations, associations and organizations that are exempt from federal income taxation under § 115 of the Internal Revenue Code of 1986 (26 U.S.C. § 115), as amended;*
- (9) *Telephone cooperatives organized or, by virtue of conversion or otherwise, operating under title 65, chapter 29;*
- (10) *"Public broadcast stations," as defined in 47 U.S.C. § 397(6);*
- (11) *Workers' compensation self-insurers pools established in compliance with § 50-6-405(c), by ten (10) or more employers of the same trade or professional association if such trade or professional association is exempt from federal taxation under § 501(c)(6) of the Internal Revenue Code (26 U.S.C., § 501(c)(6));*
- (12) *Not-for-profit corporations or associations which are exempt from federal income taxation under Internal Revenue Code of 1954, § 501(c)(7), (26 U.S.C. § 501(c)(7)), as amended, but only if general liability insurance in a reasonable amount is carried by or on behalf of any such club; and*
- (13) *Workers' compensation self-insurance pooling arrangements between municipal electric systems and rural electric cooperatives established in compliance with title 50, chapter 6, part 7.*
- (e) *In order for the immunity granted by subsection (c) to apply to workers' compensation self-insurers, such insurers must notify in writing each participating employer and applicant for membership in such self-insurance pool of the immunity from liability grant-*
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ed by the provisions of this section to the directors, trustees or members of the governing bodies of such nonprofit organization. Notification of such immunity shall be given each time an employer makes application for membership in the pool.

Texas



Tex. Civ. Prac. Rem. Code § 84.004. Volunteer Liability.

(a) Except as provided by Subsection (d) and Section 84.007, a volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's duties or functions, including as an officer, director, or trustee within the organization.

(b) [Repealed by Acts 2003, 78th Leg., ch. 204, § 18.03(2).]

(c) Except as provided by Subsection (d) and Section 84.007, a volunteer health care provider who is serving as a direct service volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient if:

(1) the volunteer commits the act or omission in the course of providing health care services to the patient;

(2) the services provided are within the scope of the license of the volunteer; and

(3) before the volunteer provides health care services, the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient signs a written statement that acknowledges:

(A) that the volunteer is providing care that is not administered for or in expectation of compensation; and

(B) the limitations on the recovery of damages from the volunteer in exchange for receiving the health care services.

(d) A volunteer of a charitable organization is liable to a person for death, damage, or injury to the person or his property proximately caused by any act or omission arising from the operation or use of any motor-driven equipment, including an airplane, to the extent insurance coverage is required by Chapter 601, Transportation Code, and to the extent of any existing insurance coverage applicable to the act or omission.

(e) The provisions of this section apply only to the liability of volunteers and do not apply to the liability of the organization for acts or omissions of volunteers.

(f) *Subsection (c) applies even if:*

(1) *the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection; or*

(2) *the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.*

§ 84.006. *Organization Liability*

Except as provided in Section 84.007 of this Act, in any civil action brought against a non-hospital charitable organization for damages based on an act or omission by the organization or its employees or volunteers, the liability of the organization is limited to money damages in a maximum amount of \$ 500,000 for each person and \$ 1,000,000 for each single occurrence of bodily injury or death and \$ 100,000 for each single occurrence for injury to or destruction of property.

§ 84.007. *Applicability.*

(a) *This chapter does not apply to an act or omission that is intentional, wilfully negligent, or done with conscious indifference or reckless disregard for the safety of others.*

(b) *This chapter does not limit or modify the duties or liabilities of a member of the board of directors or an officer to the organization or its members and shareholders.*

(c) *This chapter does not limit the liability of an organization or its employees or volunteers if the organization was formed substantially to limit its liability under this chapter.*

(d) *This chapter does not apply to organizations formed to dispose, remove, or store hazardous waste, industrial solid waste, radioactive waste, municipal solid waste, garbage, or sludge as those terms are defined under applicable state and federal law. This subsection shall be liberally construed to effectuate its purpose.*

(e) *Sections 84.005 and 84.006 of this chapter do not apply to a health care provider as defined in Section 74.001, unless the provider is a federally funded migrant or community health center under the Public Health Service Act (42 U.S.C.A. Sections 254b and 254c) or is a nonprofit health maintenance organization created and operated by a community center under Section 534.101, Health and Safety Code, or unless the provider usually provides discounted services at or below costs based on the ability of the beneficiary to pay. Acceptance of Medicare or Medicaid payments will not disqualify a health care provider under this section. In no event shall Sections 84.005 and 84.006 of this chapter apply to a general hospital or special hospital as defined in Chapter 241, Health and Safety Code, or a facility or institution licensed under Subtitle C, Title 7, Health and Safety Code, or Chapter 242, Health and Safety Code, or to any health maintenance organization created*

and operating under Chapter 843, Insurance Code, except for a nonprofit health maintenance organization created under Section 534.101, Health and Safety Code.

(f) This chapter does not apply to a governmental unit or employee of a governmental unit as defined in the Texas Tort Claims Act (Subchapter A, Chapter 101, Civil Practice and Remedies Code).

(g) Sections 84.005 and 84.006 of this Act do not apply to any charitable organization that does not have liability insurance coverage in effect on any act or omission to which this chapter applies. The coverage shall apply to the acts or omissions of the organization and its employees and volunteers and be in the amount of at least \$ 500,000 for each person and \$ 1,000,000 for each single occurrence for death or bodily injury and \$ 100,000 for each single occurrence for injury to or destruction of property. The coverage may be provided under a contract of insurance or other plan of insurance authorized by statute and may be satisfied by the purchase of a \$ 1,000,000 bodily injury and property damage combined single limit policy. Nothing in this chapter shall limit liability of any insurer or insurance plan in an action under Chapter 21, Insurance Code, or in an action for bad faith conduct, breach of fiduciary duty, or negligent failure to settle a claim.

(h) This chapter does not apply to:

- (1) a statewide trade association that represents local chambers of commerce; or
- (2) a cosponsor of an event or activity with a local chamber of commerce unless the cosponsor is a charitable organization under this chapter.

Utah

Utah Code Ann. § 78-19-2. Liability protection for volunteers — Exceptions

(1) Except as provided in Subsection (2), no volunteer providing services for a nonprofit organization incurs any legal liability for any act or omission of the volunteer while providing services for the nonprofit organization and no volunteer incurs any personal financial liability for any tort claim or other action seeking damage for an injury arising from any act or omission of the volunteer while providing services for the nonprofit organization if:

- (a) the individual was acting in good faith and reasonably believed he was acting within the scope of his official functions and duties with the nonprofit organization; and
 - (b) the damage or injury was not caused by an intentional or knowing act by the volunteer which constitutes illegal, willful, or wanton misconduct.
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- (2) *The protection against volunteer liability provided by this section does not apply*
- (a) *to injuries resulting from a volunteer's operation of a motor vehicle, a vessel, aircraft or other vehicle for which a pilot or operator's license is required;*
 - (b) *when a suit is brought by an authorized officer of a state or local government to enforce a federal, state, or local law; or*
 - (c) *where the nonprofit organization for which the volunteer is working fails to provide a financially secure source of recovery for individuals who suffer injuries as a result of actions taken by the volunteer on behalf of the nonprofit organization.*
- (3) *Nothing in this section shall bar an action by a volunteer against an organization, its officers, or other persons who intentionally or knowingly misrepresent that a financially secure source of recovery does or will exist during a period when such a source does not or will not in fact exist.*
- (4) *Nothing in this section shall be construed to place a duty upon a nonprofit organization to provide a financially secure source of recovery.*
- (5) *The granting of immunity from liability to a volunteer under this section shall have no effect on the liability of the nonprofit organization providing the financially secure source of recovery.*

Utah Code Ann. § 78-19-2

§ 78-19-3. Liability protection for organizations

A nonprofit organization is not liable for the acts or omissions of its volunteers in any circumstance where:

- (1) *the acts of its volunteers are not as described in Subsection 78-19-2(1) unless the nonprofit organization had, or reasonably should have had, reasonable notice of the volunteer's unfitness to provide services to the nonprofit organization under circumstances that make the nonprofit organization's use of the volunteer reckless or wanton in light of that notice; or*
- (2) *a business employer would not be liable under the laws of this state if the act or omission were the act or omission of one of its employees.*

Utah Code Ann. § 78-19-3

Vermont

12 V.S.A. § 5781. *Nonprofit organizations.*

A person who serves without compensation as a director, officer or trustee of a nonprofit organization qualified as tax-exempt under section 501(c) of the Internal Revenue Code of 1986, as from time to time amended, shall not be held personally liable for damages resulting from:

- (1) any act or omission within the scope of the person's official functions or duties which is done in good faith, unless it constitutes gross negligence or an intentional tort; however, this subsection shall not protect a person from liability for damages which result from the operation of a motor vehicle;*
- (2) any act or omission of an employee of the nonprofit organization; or*
- (3) any act or omission of another director, officer or trustee.*

Virginia



Va. Code Ann. § 13.1-870.1. *Limitation on liability of officers and directors; exception*

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

- 1. The monetary amount, including the elimination of liability, specified in the articles of incorporation or, if approved by the members, in the bylaws as a limitation on or elimination of the liability of the officer or director; or*
- 2. The greater of (i) \$ 100,000, or (ii) the amount of the cash compensation received by the officer or director from the corporation during the 12 months immediately preceding the act or omission for which liability was imposed.*

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

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

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

E. 1. *Notwithstanding the provisions of this section, in any proceeding against an officer or director who receives compensation from a community association for his services, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an association without compensation for his services shall not be liable for damages in any such proceeding.*

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

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

Washington



Rev. Code Wash. (ARCW) § 4.24.670. Liability of volunteers of nonprofit or governmental entities.

(1) *Except as provided in subsection (2) of this section, a volunteer of a nonprofit organization or governmental entity shall not be personally liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if:*

(a) *The volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;*

(b) *If appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;*

(c) *The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer;*

(d) *The harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to either possess an operator's license or maintain insurance; and*

(e) *The nonprofit organization carries public liability insurance covering the organization's liability for harm caused to others for which it is directly or vicariously liable of not less than the following amounts:*

(i) *For organizations with gross revenues of less than twenty-five thousand dollars, at least fifty thousand dollars due to the bodily injury or death of one person or at least one hundred thousand dollars due to the bodily injury or death of two or more persons;*

(ii) *For organizations with gross revenues of twenty-five thousand dollars or more but less than one hundred thousand dollars, at least one hundred thousand dollars due to the bodily injury or death of one person or at least two hundred thousand dollars due to the bodily injury or death of two or more persons;*

(iii) *For organizations with gross revenues of one hundred thousand dollars or more, at least five hundred thousand dollars due to bodily injury or death.*

(2) *Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of the organization or entity.*

(3) *Nothing in this section shall be construed to affect the liability, or vicarious liability, of any nonprofit organization or governmental entity with respect to harm caused to any person, including harm caused by the negligence of a volunteer.*

(4) *Nothing in this section shall be construed to apply to the emergency workers registered in accordance with chapter 38.52 RCW nor to the related volunteer organizations to which they may belong.*

Washington D.C.

§ 29-301.113. *Immunity from civil liability for a volunteer of the corporation [Formerly § 29-599.15]*

(a) *For the purposes of this section, the term "volunteer" means an officer, director,*

trustee, or other person who performs services for the corporation and who does not receive compensation other than reimbursement of expenses for those services.

(b) Any person who serves as a volunteer of the corporation shall be immune from civil liability except where the injury or damage was a result of:

(1) The wilful misconduct of the volunteer;

(2) A crime, unless the volunteer had reasonable cause to believe that the act was lawful;

(3) A transaction that resulted in an improper personal benefit of money, property, or service to the volunteer;

(4) An act or omission that occurred prior to March 17, 1993; or

(5) An act or omission that is not in good faith and is beyond the scope of authority of the corporation pursuant to this subchapter or the corporate charter.

(c) This section shall apply only if the corporation maintains liability insurance with a limit of coverage of not less than \$ 200,000 per individual claim and \$ 500,000 per total claims that arise from the same occurrence. This subsection shall not apply to any corporation having annual total functional expenses, exclusive of grants and allocations, of less than \$ 100,000, and which is exempt from federal taxation under § 501(c)(3) of the Internal Revenue Code of the United States.

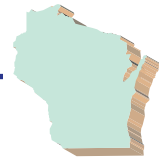
(d) This section shall not be deemed to exempt the corporation from liability for the conduct of the volunteer, but the corporation shall be liable only to the extent of the applicable limit of insurance coverage it maintains.

West Virginia



W. Va. Code § 55-7C-3. Limited civil liability of qualified directors.

Notwithstanding any other provision of this code, a qualified director shall not be held personally liable for negligence, either through act or omission, or whether actual or imputed, in the performance of managerial functions performed on behalf of a volunteer organization or entity: Provided, That this section shall not exempt a qualified director from liability when he or she is found to be grossly negligent in the performance of his or her duties. Nothing herein shall relieve a volunteer organization or entity from imputed liability for the negligent acts of a qualified director committed within the scope of the qualified director's duties. Nothing in this article shall be construed as a grant of immunity to any person who, through his or her operation of a motor vehicle, causes any injury or damage to another person.



Wisconsin

Wis. Stat. § 184.06. Liability in tort and contract.

(1) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties and liabilities in contract and tort.

(2) A person is not liable for a breach of a nonprofit associations contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(3) A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(4) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(5) A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

Wis. Stat. § 181.0670. Limited liability of volunteers.

(1) DEFINITION.

In this section, "volunteer" means an individual, other than an employee of the corporation, who provides services to or on behalf of the corporation without compensation.

(2) LIMITED LIABILITY.

Except as provided in sub. (3), a volunteer is not liable to any person for damages, settlements, fees, fines, penalties or other monetary liabilities arising from any act or omission as a volunteer, unless the person asserting liability proves that the act or omission constitutes any of the following:

(a) A violation of criminal law, unless the volunteer had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful.

(b) Willful misconduct.

(c) *If the volunteer is a director or officer of the corporation, an act or omission within the scope of the volunteers duties as a director or officer.*

(d) *An act or omission for which the volunteer received compensation or any thing of substantial value instead of compensation.*

(e) *Negligence in the practice of a profession, trade or occupation that requires a credential, as defined in s. 440.01 (2) (a), or other license, registration, certification, permit or approval, if the volunteer did not have the required credential, license, registration, certificate, permit or approval at the time of the negligent act or omission.*

(3) APPLICABILITY.

(a) *Except as provided in par. (b), this section does not apply to any of the following:*

- 1. A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.*
- 2. A proceeding brought by any person for a violation of state or federal law if the proceeding is brought under an express private right of action created by state or federal statute.*
- 3. Claims arising from the negligent operation by a volunteer of an automobile, truck, train, airplane or other vehicle for which an operators permit, license or insurance is required.*

(b) *Paragraph (a) 1. and 2. does not apply to a proceeding brought by or on behalf of a governmental unit, authority or agency in its capacity as a contractor.*

Wyoming



Wyo. Stat. § 17-19-830. *Directors' standards and liabilities.*

(a) *A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.*

(b) *Members of a board of any nonprofit corporation organized under this act are not individually liable for any actions, inactions or omissions by the nonprofit corporation. This subsection does not affect individual liability for intentional torts or illegal acts. This subsection also does not prevent removal of a board member by court order pursuant to W.S. 17-19-810.*

Wyo. Stat. § 17-19-830

(b) Except as provided in subsection (c) of this section, a volunteer who provides services or performs duties on behalf of a nonprofit organization or a volunteer fire department is personally immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission:

(i) The person was acting within the scope of his duties as a volunteer for the nonprofit organization or volunteer fire department; and

(ii) The act or omission did not constitute willful or wanton misconduct or gross negligence.

(c) This section does not grant immunity to any person causing damage as a result of the negligent operation of a motor vehicle.

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

Wyo. Stat. § 1-1-125

TWO STATES LIMIT LIABILITY FOR ADOPT-A-BEACH PROGRAMS

New Jersey

N.J. Stat. § 13:19-29. Immunity; waiver; volunteers not considered public employees

a. No department, agency, bureau, board, commission, authority, or other entity of the State, or of any county or municipality, and no employee thereof, shall be liable to any person for any injury or damages that may be caused or sustained by a program volunteer during an "Adopt a Beach" event or activity.

As a condition of participating in the program, a prospective program volunteer shall sign a waiver releasing the department, the State, and any other appropriate governmental entity, and all employees thereof, from liability for any injury or damages that may be caused or sustained by that volunteer during an "Adopt a Beach" event or activity.

b. A program volunteer shall not be considered a "public employee" or "State employee" for purposes of the "New Jersey Tort Claims Act," N.J.S. 59:1-1 et seq., or otherwise be accorded any of the protections set forth therein.



New York

NY CLS ECL § 3-0313. *Adopt-a-beach stewardship program.*

1. *The commissioner may enter into stewardship agreements with any person or persons for the purposes of preserving, maintaining, or enhancing a state-owned beach, shoreline area or portion thereof in accordance with the policies of this chapter.*
 2. *The stewardship agreement shall provide that the beach or shoreline area be preserved and maintained in its natural state or managed to enhance or restore the natural values it provides, consistent with the provisions of this chapter. Activities may include: remediating vandalism and storm damage, picking up litter and trash, establishing or maintaining access or nature trails, providing interpretive services for school groups and other citizens, and otherwise providing positive benefits to the beach or shoreline area.*
 3. *Stewardship agreement with any person or persons may provide for assistance of personnel, facilities and supplies of the department for the purposes of supporting appropriate activities under such stewardship agreement, in accordance with the provisions of this chapter.*
 4. *The department shall establish procedures by which a person or persons may apply for a stewardship agreement, and shall be responsible for working with such persons to identify specific sections of a state-owned beach or shoreline area and specific activities deemed appropriate for such stewardship agreement. The department may consider factors such as safety, environmental sensitivity, need, cost and other factors deemed relevant in determining which beach or shoreline areas or activities may be eligible or appropriate for a stewardship agreement.*
 5. *The department shall provide recognition of the stewardship activities by appropriate signage on or near the adopted beach or shoreline area, and may provide recognition by such other measures as it may determine to be appropriate, including but not limited to press releases, certificates, and newsletters.*
 6. *The stewardship agreement may be modified in scope or altered in any other manner at the sole discretion of the department, not inconsistent with the provisions of this section. The person or persons shall have the option of renewing the agreement subject to the approval of the department and the continuation by the department of the adopt-a-beach stewardship program. The department may immediately remove the signs and it may terminate the agreement upon thirty days notice, if in its sole judgment it finds and determines that the person or persons are not meeting the terms and conditions of the agreement.*
 7. *Notwithstanding any inconsistent provision of law, the state and its employees shall not be liable for damages suffered by any person resulting from the actions or activities of such volunteers.*
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Endnotes:

1. 42 U.S.C.A. § 15401 (b). The VPA applies to volunteers of nonprofit organizations including 501(c)(3) organizations and governmental entities.
 2. Additionally, punitive damages may not be awarded against a volunteer unless the plaintiff can show by clear and convincing evidence that the harm was proximately caused by the volunteer's willful or criminal misconduct
 3. *Id.* at (f)(1).
 4. Carl Tobias, *Reassessing Charitable Immunity in Virginia*, 41 U. Rich. L. Rev. 9, 11 (2006).
 5. Janet Fairchild, Annotation, Tort Immunity of Nongovernmental Charities – Modern Status, 25 A.L.R. 517 (1983).
 6. *Id.*
 7. *Id.*
 8. Allan Manley, Annotation, *Liability of Charitable Organization under Respondeat Superior Doctrine for Tort of Unpaid Volunteer*, 82 A.L.R. 1213 (1978).
 9. *Id.*
 10. *Id.*
 11. *Id.*
 12. *Id.*
 13. Rebecca Mowrey and Adam Epstein, *The Little Act That Could: The Volunteer Protection Act of 1997*, 13 J. Legal Aspects Of Sport 289, 294 (2003).
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