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Alaska
MUNICIPAL
League

TELEPHONE
(907) 586-1325

217 SECOND ST., SUITE 200
JUNEAU, ALASKA 99801

MEMORANDUM

TO: Representative Dave Donley, Chair
Members of the House Labor & Commerce Committee

FROM: Scott A. Burgess, Executive Director 

DATE: April 10, 1989

SUBJECT: HB 115 - Civil Liability for Volunteers

Attached is a copy of Alaska Municipal League Resolution No. 89-56 in support of the concepts contained in HB 115.

Attachment

cc: Representative Ulmer ✓

Resolution of the Alaska Municipal League

Resolution No. 89-56

**A RESOLUTION RECOMMENDING ADOPTION OF AN ACT
RELATING TO CIVIL LIABILITY OF CERTAIN VOLUNTEERS**

WHEREAS, the Alaska Municipal League urges the State to exercise its responsibility to provide a broad spectrum of recreational opportunities for all Alaskans, and

WHEREAS, volunteerism is a deeply rooted American tradition, and

WHEREAS, co-sponsoring recreational activities with volunteer organizations enables states and municipalities to provide recreational services which they would not ordinarily be able to provide in view of shrinking tax dollars, and

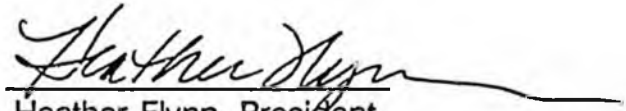
WHEREAS, volunteers lacking protections under the law for acts or omissions while acting in good faith within that voluntary function and duty put personal assets at risk due to that lack of protection, and

WHEREAS, certain recreational activities have an inherent risk, putting volunteers in a position of being liable for injuries that occur as a result of the nature of the risk, and

WHEREAS, the report of the President's Commission on Americans Outdoors recommends that "local officials, mayors, governors, and private sector managers support volunteering, develop incentives and remove barriers to encourage Americans to volunteer in outdoor recreation";

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Alaska State Legislature to adopt an act relating to the civil liability of certain volunteers for the purposes of protecting volunteers from undue liability.

Adopted this 18th day of November 1988 in Fairbanks, Alaska.


Heather Flynn, President

ATTEST:


Scott A. Burgess, Executive Director



ALASKA OUTDOOR COUNCIL, INC.

3780 McGINNIS DR. JUNEAU, AK 99801
(907) 789-3450

POSITION STATEMENT VOLUNTEER CIVIL LIABILITIES HB 115

April 12, 1989

The Alaska Outdoor Council has adopted a firm position on HB 115 dealing with civil liability of certain volunteers.

Many nonprofit organizations are having to seriously reevaluate the scope and extent of their public service programs--mainly because of the skyrocketing insurance costs. Some of the outdoor and sportsmen organizations have had to severely curtail or drop programs which entail any degree of risks such as maintenance and management of rifle ranges, community service programs, outdoor youth training programs, hunter safety programs and other similar volunteer activities.

As most of our affiliated clubs rely almost totally on volunteers, the loss of volunteer help results in a major decrease in public service programs. Unfortunately, in most cases, these services are not picked up by local governments.

HB 115 would help to some degree in providing civil liability protection for nonprofit volunteers who are acting in good faith to provide public services. We are afraid that without this type of general but limited protection, we can only expect the volunteer labor pool to rapidly disappear.

We certainly concur that the civil liability protection should not cover acts of gross negligence, recklessness or intentional misconduct.

The Alaska Outdoor Council would like to see similar protection provided to the nonprofit organization involved in these types of public services but at least this is a step in the right direction.

The Alaska Outdoor Council is an Alaskan sportsmen and outdoor organization consisting of 54 clubs with a membership of over 11,000 statewide.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 115
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
Title: An Act relating to civil liability for certain volunteers BRU: Insurance
Sponsor: Ulmer Components: Operations
Requester: House Labor and Commerce

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No impact on the division.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2507
Division: Insurance Date: 3-7-89

Approved by Commissioner: Larry Mercurieff Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 3/7/89

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page ____ of ____

3490D/030789a

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to civil liability for certain volunteers
 Sponsor: Ulmer
 Requestor: House Labor and Commerce
 Agency Affected: Commerce & Econ. Dev.
 BRU: Insurance
 Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) No fiscal impact in FY 90.

No impact on the division.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
 Division: Insurance Date: 2/5/90
 Approved by Commissioner: Larry Merculieff Date: 5/8
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act relating to civil liability of certain volunteers BRU: Division of Risk Management
 Sponsor: Ulmer Components: Risk Management
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

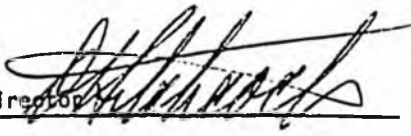
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

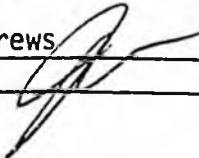
POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

While this bill will provide protection for the individual volunteer, it does not affect the liability of the State with respect to injuries caused to persons or property. We therefore do not anticipate any fiscal impact if enacted.

Prepared By: Don Hitchcock, Director  Phone: 465- 2180
 Division: Risk Management Date: _____

Approved by Commissioner: John M. Andrews  Date: 3/16/89
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Alaska State Legislature

Representative Fran Ulmer

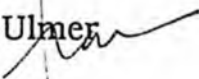


P. O. Box V
Juneau, Alaska 99811
(907) 465-4947

HOUSE OF REPRESENTATIVES

MEMORANDUM

TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Rep. Fran Ulmer 

DATE: January 25, 1989

RE: Scheduling HB 115, relating to civil liability of certain
volunteers

I would ask that you schedule HB115, relating to civil liabilities, for a hearing in your committee as soon as possible. As you know, a similar bill was passed out of the Labor and Commerce committee last year.

Thank you for your consideration of my request.

Alaska State Legislature

Representative Fran Ulmer



P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

HOUSE OF REPRESENTATIVES

MEMORANDUM

TO: Rep. Dave Donley, Chairman
Members, House Labor and Commerce Committee

FROM: Rep. Fran Ulmer

DATE: March 8, 1989

RE: HB 115

HB 115, an act relating to civil liability of certain volunteers, would protect volunteers working for the State, local governments, or nonprofits from civil liability except in cases of gross negligence, recklessness, or intentional misconduct.

Volunteers play an important role in Alaska by donating their time to support many organizations and services. From Little League to Pioneer Homes, from ski rescues to park volunteers and museum guides..., Alaskan volunteers make a difference in the quality of life that we enjoy. For these reasons I have introduced HB 115.

This bill is modeled after federal legislation, cited as the Volunteer Protection Act, which is making its way through Congress. The bill is supported by state agencies, municipalities, recreation groups and the American Association of Retired Persons.

option 1

"in this paragraph "organization" means a non-governmental entity incorporated under AS 10.20.005 or exempt from taxation under US 26.501.(c) (3) and (4), excluding hospitals.

An Analysis of Volunteer Protection Legislation

Prepared
for
The American Association of Retired Persons
Office of Volunteer Coordination
and
Public Policy Institute

by
Stephen H. McCurley
VM Systems
September 1987

An Analysis of Volunteer Protection Legislation

Introduction

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

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

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

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

Background/Overview

Volunteering in America

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

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

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

The Liability Crisis

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

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

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

Analysis of Protective Legislation

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

Extent of Organizational Coverage

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

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

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

Types of Volunteers Covered

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

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

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

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

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

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

C. Variations/Exceptions

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

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

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

Summary of Coverage

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

Implications and Impact

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

I. Impact on Lawsuits

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

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

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

4. Impact on Volunteer Management

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

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

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

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

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

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

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

Appendix 1 Case Citations

Direct Service Volunteers

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

Board Volunteers

1. Mountain Top Youth Camp Inc v. Lyon 20 N.C. App. 694, 202 S.E. 2d 498 (1974)
(corporate director sued for self-dealing and waste)
2. Stern v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries, 381 F. Supp. 1003 (1974)
(hospital board sued for breach of fiduciary duty - "Sibley" hospital case)
3. Jackson v. Staller Foundation 496 F. 2d 62? (1974), cert. denied, 420 U.S. 927 (1975)
(foundation board charged with discrimination in granting of funding)
4. Golding v. Salter 107 So. 2d 348 (1958)
(hospital board sued for failure to protect property by not having adequate insurance and not collecting debts to organization)
5. Warren v. Reid 331 S.W. 2d 847 (1960)
(board sued regarding conflict of interest in granting of laundry services contract)
6. Franzblau v. Monardo 166 Cal. Rptr. 610 (1980)
(board member sued for conflict of interest through service on multiple hospital boards)

Appendix 2
IRC Classification of Tax Exempt Organizations

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

Appendix 4
State Legislation: Variations in Coverage

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

Appendix 6
Federal Legislation: Analysis of HR911

Background:

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

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

Coverage:

The essential elements of the Porter bill are as follows:

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

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

Legislative Prospects:

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

Resistance to the bill comes on two grounds:

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

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

30. Doug Johnston and C. Miller Sigmon, Can You Really Be Sued? A Liability Audit for Nonprofit Boards (Division of Archives & History, North Carolina Department of Cultural Resources) 1986.
31. Robert Cowden, "Directors and Officers of Charitable Corporations: Duties, Personal Liability, Indemnity and Insurance," Memorandum (Boston: Casner, Edwards, and Roseman) May 1985.
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STATE VOLUNTEER LIABILITY LEGISLATION

Stephen McCurley

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STATE	REFERENCE Bold = Enacted	ORG COVERAGE	VOL COVERAGE	PROTECTION X = Exception
AK	§09.17.050 86	NP corp; public or NP hospital; school Bd; municipal Bds (NP corp = 501c3 or c4)	Board, commission	Xgross negligence Xto corporation
AZ	ARS 10-005 86	Profit & NP Corp	Board	None, can indemnify, self-insure
	§36-919 86	Ch & NP Corp involved in food distribution	Officer; Volunteer; Organization	Xgross, reckless, intent
	Ch129 §10-1017 87	NP Corp	Board	Xwillful, gross; Org must amend Articles of Incorporation to qualify; Xto corporation and members
AR	Act 390 of 87	St/local govt; com vol org, or 501(c)(3)	"any person who provides goods or services w/o finan- cial compensation"	Not vicariously liable; Not liable acts/omission Xto extent of insurance for ordinary neg; Xbad faith, gross negligence; Xoperation of motor vehicle, boat, etc; Xprof licensed services; Protection limited to beneficiary of vol's services
	HB1077 87	Govt entity; NP corp w/IRS ta. exemption	Board, commission	Xordinary, gross negligence; intent
CA	Ch 720, §5231.5 86	NP public benefit corp	Board	Act in good faith, best interests, prudent care
CO	CRS13-21-116 86	NP corp	Board	Xwanton or willful act
	CRS13-21-116 (2)(a) 86	Ind; corp; assoc; partnership	All acting for benefit of another or to pro- tect health or safety	Act in good faith
CT	PL86-338(10) 86	501(c)	Board	Act in good faith, within scope; Xwillful, wanton
DE	Ch81, title 10 §8133 86	501(c)	"trustee, director, officer, agent, worker"	No civil damages for any negligence Xmotor vehicle to extent of insurance

	HF141 87	NP org exempt under MS249.05	"Director, officer, trustee, member or agent"	Good faith, within scope, Xwillfull, reckless, Xto govt entity, Xto org, Xcause based on federal law, Xbased on contractual obligation (amends §317.201)
	87bill HF278/SF230	NP org	Sports vols; corp	?
	HF467/SF404 87 (in HF141)	NP corp	Vol fire chief	Not liable to firefighters or others for performance of firefighting or related activities
MO	RSMo537.037 86	Any person	Emergency care	If trained in first aid, Xgross negligence, willful, wanton acts
NB	LB 67 of 87	501 (c)(2,3,4,5,7,8,11 or 19)	Board	Act within scope; Xwillful, wanton; Xto corporation; Xvehicle or alcohol related
	87bill LB123	NP sports program	Sports vol	Xreckless
NC	HB152 87 Art43-B §1-539.10	501(c)(3)	Direct service vol	good faith & reasonable; Xgross, wanton, intent; Xmotor vehicle; Xprof services above extent of insurance
	87 bill, HB713	?	Clean-up vols	?
ND	§10-24-05 subsection 87	501(c) (3,4,5,6,7,10,19)	Board	Act in good faith, scope; Xwillful, gross; Xreimbursement of expenses above \$2000; Xreceipt of compensation
	HB1080 87	NP orgs NP orgs	Volunteer Sports vols	Act in scope; Xwillful, gross; Xvehicle Act within scope; participated in training and safety program; Xwillful, gross; Xvehicle; Xexercising supervision; Xpart of educational institution
NH	RSA216-A: 3-h 86	Govt	Parks volunteers under supervision	Covered by state tort claims protection
	RSA 508.16 86	Ch orgs & societies	Board	Good faith, Xwillful, wanton

	8/bill 5150	NP corp; town Corporation	Board; commission Officers, agents, employees	if "occasioned by membership or participation" Not liable to those in sponsored sports event; if minor, must have parental waiver
SD	§23A-28-11 86	Any recipient of community service defendants	Organizations	Xgross negligence, willful, wanton; and only to extent of insurance
	§47-22-65 86	NP corp	Board	None, can indemnify
	Ch 47-23 87	501(c); hosp	Board	Xwillful, wanton
	HB1317 87	501(a), 501(c), hospital, govt entity	Board, service vol, Commission	Act in good faith & within scope, Xwillful, wanton, Xmotor vehicle, Xto extent of insurance (Xfor Board)
TN	28-3-301 86	501(c)(3), (c)(6), electric cooperatives	Board	Xwillful, wanton, gross
	29-20-201 86	Govt boards, commissions	Board	Xwillful, wanton, gross
TX	87bill HB24	NP corp	Board	Xgross negligence; Xcorporation, shareholders
	87bill HB104	NP corp	Volunteer	Must be under supervision of director or paid employee
	87bill HB201	Any person	Court-apptd volunteer	Xwillful, gross
	87bill HB202	501(a),(c)(3) Nonhosp NP	Bd; volunteer Organization	Must act in good faith and within scope of duties; Xwillful, wanton intentional; Xto corp Limit placed on monetary damages
	87bill SB201	State govt; Bd of higher education institution	Bd; volunteer; court-ordrd service	Not personally liable if within scope of duties
	87bill SB287/ HB564	NP Corps	Board	Xintent; Xto Corp.
	Title 4 Ch 84 §84.001 87	501(c)(3,4), except health-care provider	Board; volunteer	Act in good faith & within scope of duties; Xmotor vehicle (to extent of insurance)

				Xintent, willful, wanton XBd member liability to organization and its members
UT	SB2:4 86 (Gov veto)	NP corp	Board	
VA	§13.2-870.1 87	Corp	Board	Liabe only to amount of compensation; Xwill- ful, knowing violation
VT	S37 87	501(c)(3)	Board	Good faith, Xwillful, wanton
WA	RCW4.24 sec 86	NP corp	Board	Xgross negligence, Xto corporation
	RCW7.70 86	Public or private hospital	Board	Not responsible for care by health care provider Xgross negligence in granting privilege
WI	Act 13 of 87	NP corp; credit union; fraternal benefit insurance	Board; vols	Bd: Xconflict of interest; criminal viola- tion Xreason to believe conduct unlawful; Wilful misconduct. Vol: criminal violation Xreason to believe conduct unlawful; Xvehicle related; Xprofessional services
	87bill SB65	NP org	Organization	Limits liability of org assigned children under sup'vised wo:k program to \$25,000
WV	87bill #?	State +local govt; NP corp; other similar corps; business trade assoc	Board	Xto extent of insurance; if no insurance, then immune
WY	WS1-23-107 86	NP corp; government	Board, commission	Xintentional tort or illegal acts

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