

104TH CONGRESS
1ST SESSION

S. 1435

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 1995

Mr. McCONNELL (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Volunteer Protection
5 Act of 1995”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

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

1 (1) the willingness of volunteers to offer their
2 services is deterred by potential for liability actions
3 against them and the organizations they serve;

4 (2) as a result, many nonprofit public and pri-
5 vate organizations and governmental entities, includ-
6 ing voluntary associations, social service agencies,
7 educational institutions, and other civic programs,
8 have been adversely affected by the withdrawal of
9 volunteers from boards of directors and service in
10 other capacities;

11 (3) the contribution of these programs to their
12 communities is thereby diminished, resulting in
13 fewer and higher cost programs than would be ob-
14 tainable if volunteers were participating; and

15 (4) because Federal funds are expended on use-
16 ful and cost-effective social service programs, many
17 of which are national in scope, depend heavily on
18 volunteer participation, and represent some of the
19 most successful public-private partnerships, protec-
20 tion of volunteerism through clarification and limita-
21 tion of the personal liability risks assumed by the
22 volunteer in connection with such participation is an
23 appropriate subject for Federal legislation.

24 (b) PURPOSE.—The purpose of this Act is to promote
25 the interests of social service program beneficiaries and

1 taxpayers and to sustain the availability of programs, non-
2 profit organizations, and governmental entities that de-
3 pend on volunteer contributions by reforming the laws to
4 provide protection from personal financial liability to vol-
5 unteers serving nonprofit organizations and governmental
6 entities for actions undertaken in good faith on behalf of
7 such organizations.

8 **SEC. 3. PREEMPTION.**

9 This Act preempts the laws of any State to the extent
10 that such laws are inconsistent with this Act, except that
11 this Act shall not preempt any State law that provides
12 additional incentives or protections to volunteers, or cat-
13 egory of volunteers.

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

15 (a) LIABILITY PROTECTION FOR VOLUNTEERS.—Ex-
16 cept as provided in subsections (b) and (d), no volunteer
17 of a nonprofit organization or governmental entity shall
18 be liable for harm caused by an act or omission of the
19 volunteer on behalf of the organization or entity if—

20 (1) the volunteer was acting within the scope of
21 his or her responsibilities in the nonprofit organiza-
22 tion or governmental entity at the time of the act or
23 omission;

24 (2) if appropriate or required, the volunteer was
25 properly licensed, certified, or authorized by the ap-

1 appropriate authorities for the activities or practice in
2 the State undertaken within the scope of his or her
3 responsibilities in the nonprofit organization or gov-
4 ernmental entity; and

5 (3) the harm was not caused by willful and
6 wanton misconduct by the volunteer.

7 (b) CONCERNING RESPONSIBILITY OF VOLUNTEERS
8 WITH RESPECT TO ORGANIZATIONS.—Nothing in this
9 section shall be construed to affect any civil action brought
10 by any nonprofit organization or any governmental entity
11 against any volunteer of such organization or entity.

12 (c) NO EFFECT ON LIABILITY OF ORGANIZATION.—
13 Nothing in this section shall be construed to affect the
14 liability of any nonprofit organization or governmental en-
15 tity with respect to harm caused to any person.

16 (d) EXCEPTIONS TO VOLUNTEER LIABILITY PRO-
17 TECTION.—If the laws of a State limit volunteer liability
18 subject to one or more of the following conditions, such
19 conditions shall not be construed as inconsistent with this
20 Act:

21 (1) A State law that requires the organization
22 or entity to adhere to risk management procedures,
23 including mandatory training of volunteers.

24 (2) A State law that makes the organization or
25 entity liable for the acts or omissions of its volun-

1 teers to the same extent as an employer is liable for
2 the acts or omissions of its employees.

3 (3) A State law that the limitation of liability
4 does not apply if the volunteer was operating a
5 motor vehicle, vessel, aircraft, or other vehicle for
6 which the State requires the operator or vehicle
7 owner to possess an operator's license or to maintain
8 insurance.

9 (4) A State law that the limitation of liability
10 does not apply if the civil action was brought by an
11 officer of a State or local government pursuant to
12 State or local law.

13 (5) A State law that the limitation of liability
14 shall apply only if the nonprofit organization or gov-
15 ernmental entity provides a financially secure source
16 of recovery for individuals who suffer harm as a re-
17 sult of actions taken by a volunteer on behalf of the
18 organization or entity. A financially secure source of
19 recovery may be an insurance policy within specified
20 limits, comparable coverage from a risk pooling
21 mechanism, equivalent assets, or alternative arrange-
22 ments that satisfy the State that the entity will be
23 able to pay for losses up to a specified amount. Sep-
24 arate standards for different types of liability expo-
25 sure may be specified.

1 **SEC. 5. DEFINITIONS.**

2 For purposes of this Act—

3 (1) the term “economic losses” means objec-
4 tively verifiable monetary losses, including past and
5 future medical expenses, loss of past and future
6 earnings, cost of obtaining replacement services in
7 the home (including child care, transportation, food
8 preparation, and household care), cost of making
9 reasonable accommodations to a personal residence,
10 loss of employment, and loss of business or employ-
11 ment opportunities;

12 (2) the term “harm” includes physical,
13 nonphysical, economic, and noneconomic losses;

14 (3) the term “noneconomic losses” means losses
15 for physical and emotional pain, suffering, inconven-
16 ience, physical impairment, mental anguish, dis-
17 figurement, loss of enjoyment of life, loss of society
18 and companionship, loss of consortium (other than
19 loss of domestic service), hedonic damages, injury to
20 reputation and all other nonpecuniary losses of any
21 kind or nature;

22 (4) the term “nonprofit organization” means
23 any organization described in section 501(c) of the
24 Internal Revenue Code of 1986 and exempt from tax
25 under section 501(a) of such Code;

1 (5) the term “State” means each of the several
 2 States, the District of Columbia, the Commonwealth
 3 of Puerto Rico, the Virgin Islands, Guam, American
 4 Samoa, the Northern Mariana Islands, any other
 5 territory or possession of the United States, or any
 6 political subdivision of any such State, territory, or
 7 possession; and

8 (6) the term “volunteer” means an individual
 9 performing services for a nonprofit organization or
 10 a governmental entity who does not receive—

11 (A) compensation (other than reimburse-
 12 ment or allowance for expenses actually in-
 13 curred); or

14 (B) any other thing of value in lieu of com-
 15 pensation,

16 in excess of \$300 per year, and such term includes
 17 a volunteer serving as a director, officer, trustee, or
 18 direct service volunteer.

19 **SEC. 6. EFFECTIVE DATE.**

20 This Act applies to any claim for harm caused by an
 21 act or omission of a volunteer filed on or after the date
 22 of enactment of this Act, without regard to whether the
 23 harm that is the subject of the claim or the conduct that
 24 caused the harm occurred before such date of enactment.

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