

**Calendar No. 38**

105<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session  
**S. 543**

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**A BILL**

To provide certain protections to volunteers, non-profit organizations, and governmental entities in lawsuits based on the activities of volunteers.

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APRIL 10, 1997

Read the second time and placed on the calendar

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**IN THE SENATE OF THE UNITED STATES**

APRIL 9, 1997

Mr. COVERDELL (for himself, Mr. McCONNELL, Mr. ABRAHAM, Mr. SANTORUM, and Mr. ASHCROFT introduced the following bill; which was read the first time

APRIL 10, 1997

Read the second time and placed on the calendar

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**A BILL**

To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

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 1997”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 The Congress finds and declares that—

3 (1) the willingness of volunteers to offer their  
4 services is deterred by the potential for liability ac-  
5 tions against them and the organizations they serve;

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

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

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



1 State law that provides additional protection from liability  
 2 relating to—

3 (1) volunteers or to any category of volunteers  
 4 in the performance of services for a nonprofit orga-  
 5 nization or governmental entity; and

6 (2) nonprofit organizations or governmental en-  
 7 tities.

8 (b) ELECTION OF STATE REGARDING NON-  
 9 APPLICABILITY.—This Act shall not apply to any civil ac-  
 10 tion in a State court against a volunteer, nonprofit organi-  
 11 zation, or governmental entity in which all parties are citi-  
 12 zens of the State if such State enacts a statute—

13 (1) citing the authority of this subsection;

14 (2) declaring the election of such State that this  
 15 Act shall not apply to such civil action in the State;  
 16 and

17 (3) containing no other provisions.

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

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

24 (1) the volunteer was acting within the scope of  
 25 the volunteer’s responsibilities in the nonprofit orga-

1 nization or governmental entity at the time of the  
2 act or omission;

3 (2) if appropriate or required, the volunteer was  
4 properly licensed, certified, or authorized by the ap-  
5 propriate authorities for the activities or practice in  
6 the State in which the harm occurred, where the ac-  
7 tivities were or practice was undertaken within the  
8 scope of the volunteer's responsibilities in the non-  
9 profit organization or governmental entity; and

10 (3) the harm was not caused by willful or crimi-  
11 nal misconduct, gross negligence, reckless mis-  
12 conduct, or a conscious, flagrant indifference to the  
13 rights or safety of the individual harmed by the vol-  
14 unteer.

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

20 (c) NO EFFECT ON LIABILITY OF ORGANIZATION OR  
21 ENTITY.—Except as provided under subsection (e), noth-  
22 ing in this section shall be construed to affect the liability  
23 of any nonprofit organization or governmental entity with  
24 respect to harm caused to any person.

1 (d) EXCEPTIONS TO VOLUNTEER LIABILITY PRO-  
2 TECTION.—If the laws of a State limit volunteer liability  
3 subject to one or more of the following conditions, such  
4 conditions shall not be construed as inconsistent with this  
5 section:

6 (1) A State law that requires a nonprofit orga-  
7 nization or governmental entity to adhere to risk  
8 management procedures, including mandatory train-  
9 ing of volunteers.

10 (2) A State law that makes the organization or  
11 entity liable for the acts or omissions of its volun-  
12 teers to the same extent as an employer is liable for  
13 the acts or omissions of its employees.

14 (3) A State law that makes a limitation of li-  
15 ability inapplicable if the volunteer was operating a  
16 motor vehicle, vessel, aircraft, or other vehicle for  
17 which the State requires the operator or vehicle  
18 owner to possess an operator's license or to maintain  
19 insurance.

20 (4) A State law that makes a limitation of li-  
21 ability inapplicable if the civil action was brought by  
22 an officer of a State or local government pursuant  
23 to State or local law.

24 (5) A State law that makes a limitation of li-  
25 ability applicable only if the nonprofit organization

1 or governmental entity provides a financially secure  
2 source of recovery for individuals who suffer harm  
3 as a result of actions taken by a volunteer on behalf  
4 of the organization or entity. A financially secure  
5 source of recovery may be an insurance policy within  
6 specified limits, comparable coverage from a risk  
7 pooling mechanism, equivalent assets, or alternative  
8 arrangements that satisfy the State that the organi-  
9 zation or entity will be able to pay for losses up to  
10 a specified amount. Separate standards for different  
11 types of liability exposure may be specified.

12 (e) LIMITATION ON PUNITIVE DAMAGES OF VOLUN-  
13 TEERS, NONPROFIT ORGANIZATIONS, AND GOVERN-  
14 MENTAL ENTITIES.—

15 (1) GENERAL RULE.—Punitive damages may  
16 not be awarded against a volunteer, nonprofit orga-  
17 nization, or governmental entity in an action  
18 brought for harm because of the action of a volun-  
19 teer acting within the scope of the volunteer's re-  
20 sponsibilities to a nonprofit organization or govern-  
21 mental entity unless the claimant establishes by  
22 clear and convincing evidence that the harm was  
23 proximately caused by an action of such volunteer  
24 which constitutes willful or criminal misconduct, or

1 a conscious, flagrant indifference to the rights or  
2 safety of the individual harmed.

3 (2) CONSTRUCTION.—Paragraph (1) does not  
4 create a cause of action for punitive damages and  
5 does not preempt or supersede any State law to the  
6 extent that such law would further limit the award  
7 of punitive damages.

8 (f) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—  
9 The limitations on the liability of a volunteer, nonprofit  
10 organization, or governmental entity under this section  
11 shall not apply to any misconduct that—

12 (1) constitutes a crime of violence (as that term  
13 is defined in section 16 of title 18, United States  
14 Code) or act of international terrorism (as that term  
15 is defined in section 2331 of title 18) for which the  
16 defendant has been convicted in any court;

17 (2) constitutes a hate crime (as that term is  
18 used in the Hate Crime Statistics Act (28 U.S.C.  
19 534 note));

20 (3) involves a sexual offense, as defined by ap-  
21 plicable State law, for which the defendant has been  
22 convicted in any court;

23 (4) involves misconduct for which the defendant  
24 has been found to have violated a Federal or State  
25 civil rights law; or

1           (5) where the defendant was under the influ-  
2           ence (as determined pursuant to applicable State  
3           law) of intoxicating alcohol or any drug at the time  
4           of the misconduct.

5 **SEC. 5. LIABILITY FOR NONECONOMIC LOSS.**

6           (a) **GENERAL RULE.**—In any civil action against a  
7           volunteer, nonprofit organization, or governmental entity  
8           based on an action of a volunteer acting within the scope  
9           of the volunteer’s responsibilities to a nonprofit organiza-  
10          tion or governmental entity, the liability of each defendant  
11          who is a volunteer, nonprofit organization, or govern-  
12          mental entity for noneconomic loss shall be determined in  
13          accordance with subsection (b).

14          (b) **AMOUNT OF LIABILITY.**—

15               (1) **IN GENERAL.**—Each defendant shall be lia-  
16               ble only for the amount of noneconomic loss allo-  
17               cated to the defendant in direct proportion to the  
18               percentage of responsibility of the defendant (deter-  
19               mined in accordance with paragraph (2)) for the  
20               harm to the claimant with respect to which the de-  
21               fendant is liable. The court shall render a separate  
22               judgment against each defendant in an amount de-  
23               termined pursuant to the preceding sentence.

24               (2) **PERCENTAGE OF RESPONSIBILITY.**—For  
25               purposes of determining the amount of noneconomic

1 loss allocated to a defendant under this section, the  
2 trier of fact shall determine the percentage of re-  
3 sponsibility of each person responsible for the claim-  
4 ant's harm, whether or not such person is a party  
5 to the action.

6 **SEC. 6. DEFINITIONS.**

7 For purposes of this Act:

8 (1) **ECONOMIC LOSS.**—The term “economic  
9 loss” means any pecuniary loss resulting from harm  
10 (including the loss of earnings or other benefits re-  
11 lated to employment, medical expense loss, replace-  
12 ment services loss, loss due to death, burial costs,  
13 and loss of business or employment opportunities) to  
14 the extent recovery for such loss is allowed under ap-  
15 plicable State law.

16 (2) **HARM.**—The term “harm” includes phys-  
17 ical, nonphysical, economic, and noneconomic losses.

18 (3) **NONECONOMIC LOSSES.**—The term “non-  
19 economic losses” means losses for physical and emo-  
20 tional pain, suffering, inconvenience, physical im-  
21 pairment, mental anguish, disfigurement, loss of en-  
22 joyment of life, loss of society and companionship,  
23 loss of consortium (other than loss of domestic serv-  
24 ice), hedonic damages, injury to reputation and all  
25 other nonpecuniary losses of any kind or nature.

1           (4) NONPROFIT ORGANIZATION.—The term  
2 “nonprofit organization” means—

3           (A) any organization described in section  
4 501(c)(3) of the Internal Revenue Code of 1986  
5 and exempt from tax under section 501(a) of  
6 such Code; or

7           (B) any not-for-profit organization orga-  
8 nized and conducted for public benefit and op-  
9 erated primarily for charitable, civic, edu-  
10 cational, religious, welfare, or health purposes.

11          (5) STATE.—The term “State” means each of  
12 the several States, the District of Columbia, the  
13 Commonwealth of Puerto Rico, the Virgin Islands,  
14 Guam, American Samoa, the Northern Mariana Is-  
15 lands, any other territory or possession of the Unit-  
16 ed States, or any political subdivision of any such  
17 State, territory, or possession.

18          (6) VOLUNTEER.—The term “volunteer” means  
19 an individual performing services for a nonprofit or-  
20 ganization or a governmental entity who does not re-  
21 ceive—

22           (A) compensation (other than reimburse-  
23 ment or allowance for expenses actually in-  
24 curred); or

1                   (B) any other thing of value in lieu of com-  
2                   pensation,  
3                   in excess of \$500 per year, and such term includes  
4                   a volunteer serving as a director, officer, trustee, or  
5                   direct service volunteer.

6 **SEC. 7. EFFECTIVE DATE.**

7           (a) IN GENERAL.—This Act shall take effect 90 days  
8           after the date of enactment of this Act.

9           (b) APPLICATION.—This Act applies to any claim for  
10          harm caused by an act or omission of a volunteer where  
11          that claim is filed on or after the effective date of this  
12          Act, without regard to whether the harm that is the sub-  
13          ject of the claim or the conduct that caused the harm oc-  
14          curred before such effective date.