

VOLUNTEERISM -- A RISKY BUSINESS

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FOREWORD

This study was prepared in response to House Resolution No. 60, H.D. 1 (1995). The Resolution directed the Legislative Reference Bureau to study the laws and policies in other jurisdictions that address the problem of liability exposure of volunteers, nonprofit organizations and government agencies and their employees that rely on the services of volunteers. In addition, the Resolution requests the Bureau to obtain data relating to: liability issues regarding volunteers, nonprofit organizations and government agencies and their employees that rely on the services of volunteers, including the number, nature, and basis of lawsuits involving volunteers; and liability insurance, including the reasons for the increase in liability insurance premiums where volunteers or nonprofits are involved.

The Bureau wishes to extend its sincere appreciation to all who contributed to, and without whose cooperation, this study would not have been possible. In particular, the Bureau would like to thank the individuals responding to its surveys for their time in providing invaluable input.

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Chapter 1

INTRODUCTION

The effects of the insurance crisis of the 1980's are still being felt.¹ The widely reported instances of sky-rocketing premiums, unavailability of certain types of insurance coverage, the litigation explosion and excessive jury awards in damage cases have led to concern about volunteer liability that persists even today. This concern led to the adoption of House Resolution No. 60, H.D. 1, entitled "Requesting the Legislative Reference Bureau to Study the Problem of Liability Exposure of Volunteers, Nonprofit Organizations, and Government Agencies that rely on the Services of Volunteers", during the Regular Session of 1995. The text of the Resolution appears as Appendix A. The Resolution suggests that fear on the part of volunteers and would-be volunteers of being sued and held personally responsible has resulted in volunteer recruitment difficulties for a myriad of entities that depend upon volunteer assistance to carry out their functions and programs. Additionally, it posits that many such entities may be without liability insurance protection because of the high costs of premiums. Finally, it contends that Hawaii law, which affords protection only to uncompensated officers and directors of nonprofit organizations and volunteers with state agencies, is one of the most restrictive in the country.

Objective of the Study

The Resolution directs the Legislative Reference Bureau (hereafter the Bureau) to study the laws and policies in other jurisdictions that address the problem of liability exposure of volunteers, nonprofit organizations and government agencies and their employees that rely on the services of volunteers. In addition, the Resolution requests the Bureau to obtain data relating to: liability issues regarding volunteers, nonprofit organizations and government agencies and their employees that rely on the services of volunteers, including the number, nature, and basis of lawsuits involving volunteers; and liability insurance, including the reasons for the increase in liability insurance premiums where volunteers or nonprofits are involved.

Organization of the Report

This report consists of the following:

Chapter 1 presents introductory material.

Chapter 2 discusses the Model State Volunteer Service Act.

Chapter 3 provides a brief summary of the volunteer protection laws in each of the fifty states and the District of Columbia.

Chapter 4 summarizes survey responses from nonprofit entities and the state and counties concerning volunteer liability issues.

Chapter 5 presents survey responses of insurers providing liability insurance for nonprofit organizations that make use of volunteers.

Chapter 6 offers some observations and conclusions.

Endnotes

1. The cause of the insurance crisis is still being debated, but it appears three major factors contributed: insurers' practice of cash flow underwriting; excessive lawsuits and awards; and high administration and litigation costs.

Chapter 2

MODEL STATE VOLUNTEER SERVICE ACT

Concerned that volunteer efforts, such as the Points of Light Foundation, were being thwarted by individuals' fears of personal liability and difficulties in obtaining reasonably priced insurance to protect against liability, the Bush Administration, in the late 1980s, developed a comprehensive Model State Act to afford protection to volunteers working with certain nonprofit organizations and governmental entities that make use of volunteers in carrying out their official functions.¹ The Preamble of the Act justifies the need to protect volunteers and explains the intent of the Act. Similar justification is echoed in many state provisions. Accordingly, it may be worthwhile to quote the Preamble at length.

The legislature finds and declares that --

- (a) the willingness of volunteers to offer their services has been increasingly deterred by a perception that they put personal assets at risk in the event of tort actions seeking damages arising from their activities as volunteers;
- (b) the contributions of programs, activities and services to communities is diminished and worthwhile programs, activities and services are deterred by the unwillingness of volunteers to serve either as volunteers or as officers, directors or trustees of nonprofit public and private organizations;
- (c) it is in the public interest to strike a balance between the right of a person to seek redress for injury and the right of an individual to freely give of his time and energy without compensation as a volunteer in service to his community without fear of personal liability for acts undertaken in good faith absent willful or wanton conduct on the part of the volunteer; and
- (d) the provisions of the within Act are intended to encourage volunteers to contribute their services for the good of their communities and at the same time provide a reasonable basis for redress of claims which may arise relating to those services.²

The entire Model State Act is reproduced in Appendix B.

Under the Model Act, any volunteer is immune from civil liability in any action on the basis of any act or omission of the volunteer that results in damage or injury if: the volunteer was acting in good faith and within the scope of the volunteer's official functions and duties for a nonprofit organization, nonprofit corporation, hospital, or government entity; and the damage or injury was not caused by wilful or wanton misconduct of the volunteer.³ The Model Act contains a major exception to the immunity granted, in allowing a plaintiff to sue and recover civil damages from a volunteer on the basis of a negligent act or omission

involving the operation of a motor vehicle during a volunteer activity. However, the amount that may be recovered can not exceed the limits of any applicable insurance coverage maintained by or on behalf of the volunteer.⁴

The Model Act is intended to have broad applicability. Thus the term volunteer is defined to include a wide range of uncompensated volunteers. Specifically, "volunteer" under the Model Act means: a person performing services for a nonprofit organization, a nonprofit corporation, a hospital, or a government entity without compensation, other than reimbursement for actual expenses incurred, and includes a volunteer serving as a director, officer, trustee, or direct service volunteer. Other pertinent terms have the following meanings:

- (1) Nonprofit organization means any organization exempt from taxation pursuant to Section 501(c) of the Internal Revenue Code, 26 U.S.C. Section 501(c), as amended.
- (2) Nonprofit corporation means any corporation exempt from taxation pursuant to Section 501(a) of the Internal Revenue Code, 26 U.S.C. Section 501(a), as amended.
- (3) Government entity means any county, municipality, township, school district, chartered unit, or subdivision, governmental unit, other special district, similar entity, or any association, authority, board, commission, division, office, officer, task force, or other agency of any state.⁵

Despite its extensive applicability to individual volunteers, the Model Act does not shield the organization itself from liability for the negligent act or omission of its volunteer. Moreover, the Act specifies that, under the legal doctrine of respondeat superior, proof of the act or omission by the volunteer will be sufficient to establish the responsibility of the organization served by the volunteer.⁶

The final section of the Model Act offers two alternatives for an effective date. The first alternative provides that the Act shall be effective as to any civil suit commenced on or after 180 days from the date of enactment, regardless of whether the claim arose prior to its effective date. The second alternative would make the Act apply only to those claims accruing on or after 180 days from enactment.⁷

The Commentary that accompanies the Model Act notes that the intent is to "protect volunteers from civil liability in all instances in which they are acting pursuant to their voluntary undertaking in good faith regardless of whether their activity was negligent or amounts to 'gross negligence' or might be the basis for a strict liability claim."⁸ The Commentary also clarifies that, although entities are not immune from liability to the extent that state law otherwise permits suit against them, it is not the intent of the Act to subject entities to liability where liability would not otherwise exist.⁹ Finally, the Commentary explains the rationale behind the exception concerning motor vehicles, asserting that, because volunteers maintain automobile insurance policies based upon their own needs, the cost of such insurance "is not materially affected by the possibility that there might be claims arising from volunteer activities that are covered under these policies."¹⁰

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Endnotes

1. Council of State Governments, Suggested State Legislation Vol. 51 Lexington (1992) at 106.
2. See Section 2 "Model State Volunteer Service Act and Commentary (December 1990) as it appears in Appendix B.
3. Id. at §4.
4. Id. at §5.
5. See id. at §3.
6. Id. at §4(b).
7. Id. at §6.
8. Id. at Commentary to §4.
9. Id.
10. Id. at Commentary to §5.

Chapter 3

VOLUNTEER PROTECTION LAWS

Most states have adopted some type of volunteer protection law.* However, the diversity among the state statutes is extensive. No state has adopted the language of the Model Act in its entirety, and even those states that have patterned their statute after it, have modified the language with peculiarities and nuances that reflect their own experiences. One authority has observed that this diversity "reflects varying conclusions of state legislatures that weighted the competing equities inherent in volunteer protection. Reasonable people can differ over the choice of protecting a volunteer from personal liability or providing compensation to the innocent victim of the volunteer's negligence."¹

Comparison of state volunteer protection laws is further complicated by confusion over the scope of volunteers, entities, and acts encompassed under these laws. For example, under most states, but not all, only uncompensated volunteers are protected. However, determining who is an uncompensated volunteer is often problematic. Even the meaning of compensation varies from state to state. The term "compensation" generally excludes reimbursement or payment of actual expenses incurred. In addition, however, several states also exclude payment of a per diem, gifts up to a certain value, or an honorarium. The term "volunteer" in a number of jurisdictions includes directors, officers and sometimes trustees of nonprofit organizations, as well as direct service providers. In other jurisdictions, officers and directors are specifically excluded, although they may be addressed elsewhere. In about one-third of the states, the protection granted is limited to directors, officers and sometimes trustees of an entity, and volunteers in general are afforded no special protection.

Furthermore, in many instances, the type of volunteer protected is determined by the type of entity for which the volunteer provides services. The types of entities embraced under these laws cover the whole gamut of the spectrum. For example, jurisdictions may define applicable entities according to any one or more of the following criteria: nonprofit organizations exempt from federal and or state taxation; nonprofit organizations or corporations organized under state law and doing business within the state; nonprofit entities that provide a specified type of service or promote a specified interest. Some laws specify peculiar exceptions to the generally accepted notion of a nonprofit organization in order to meet a particular need. Finally, in addition to nonprofit organizations, volunteers of hospitals and governmental entities are sometimes included in the scope of protection. Accordingly, the actual scope of coverage under these laws may vary tremendously from state to state.

Adding to the difficulty in determining the exact scope of coverage is the fact that in some states the protection granted is fragmented; that is, parts of it are found in different sections of a state's statutes. As a result of this fragmentation, the wording of the various provisions of the same state's law is often different, especially with respect to definitions, and sometimes conflicting. In the usual case, fragmentation has occurred because the separate provisions deal with different types of volunteers. The most common of these are provisions that afford separate protection to directors and officers of certain types of organizations. Because of the piecemeal fashion in which legislation so often is enacted, even some

* For convenience, the term "state" will be used, although the discussion will include the fifty states and the District of Columbia.

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jurisdictions that include officers and directors in their protection of general volunteers have these separate provisions. In addition, a number of states have specific laws protecting volunteers involved in various sports activities. Some states include other activities under these sports volunteer provisions, such as sailing or safety programs or activities for young people in these provisions; and a few states limit protection in such instances to activities involving children under a certain age. Finally, some states afford protection to a limited segment of volunteers in narrowly drawn circumstances.²

In addition, there are varying situations under each state's statute in which the immunity granted does not apply. For example, the grant of immunity, in some states, is conditioned on the individual volunteer or the entity for whom the volunteer is providing services having liability insurance applicable to damages being claimed. Moreover, the exceptions are not always uniform for states that have fragmented immunity provisions.

The most commonly stated exception to immunity is for conduct that is willful and wanton. Many jurisdictions also exclude other categories of conduct, such as conduct that is grossly negligent, reckless, malicious, in bad faith, fraudulent, or intentionally tortious or that is a knowing violation of law. A few even included ordinary negligence, which arguable negates the protection afforded. A number of jurisdictions also exclude from immunity acts or omissions involving the operation of a motor vehicle. Some employ terms other than "motor vehicle" or specify other types of vehicles used for transport, such as boats, trains or airplanes. Some of the jurisdictions providing for such exclusion, limit damages to the amount of applicable insurance.

Furthermore, it has been pointed out that, in addition to the expressed exceptions, there are gaps in protection that have resulted from "ambiguity in much of the legislation passed hastily at the height of the insurance crunch. Some of these laws are confusingly worded, exceptionally complicated, designed for profit-making corporations, or otherwise problematic. Even the very best laws require careful analysis to determine which volunteers they cover and what exceptions they contain."³

Additionally, all jurisdictions exclude acts or omissions occurring prior to the effective date of the protection law. Some states specify that actions brought by the state attorney general or another state officer are excluded from protection. Finally, it should be noted that, even if not specified, federal claims, such as civil rights or employment violations, are not protected.

Many jurisdictions also include specific caveats in their statute. The most common one is a clarification that protection does not extend to the entity served by the volunteer whose acts or omissions are the subject of the suit. However, most do not include the Model Act language that extends the doctrine of respondent superior to the entity/volunteer relationship. Only Arizona exempts a nonprofit entity from liability, although several jurisdictions provide for a monetary cap on liability. In a few jurisdictions, the cap is available only if the entity maintains general liability insurance in an amount that, at minimum, exceeds the statutory cap on liability. Also many state provisions include statements to the effect that they create no new causes of action or substantive legal rights and do not affect any immunities from civil liability or defenses established by any other provision of state law or available at common law.

The remainder of this chapter discusses in more detail each state's principal provisions dealing with volunteer protection. The chapter is divided into three major parts.

The first part includes those states that afford protection to the broadest scope of volunteers. The second part includes states that limit protection to a more narrow group of volunteers. For the most part, these states focus protection on officers, directors or trustees of nonprofit organizations or other entities. The third briefly touches on additional immunity provisions for volunteers in some states, which are tailored to very narrowly drawn situations.

PART I: STATES PROTECTING THE BROADEST SCOPE OF VOLUNTEERS

Alabama

In 1991, the Alabama legislature enacted the "Volunteer Service Act,"⁴ with the intent to "encourage volunteers to contribute their services for the good of their communities and at the same time provide a reasonable basis for redress of claims" that might arise in connection with those services.⁵ The Alabama Act follows the Model Act, using identical language, with one major difference. It does not contain the Model Act's exception to immunity for negligent acts or omissions involving the operation of a motor vehicle. Thus it offers greater protection for a volunteer than the Model Act.⁶

Although the Alabama Volunteer Service Act, like the Model Act, includes officers, directors and trustees under the definition of volunteers,⁷ such individuals also are covered under a 1987 Alabama law. This law provides that certain uncompensated "officers"⁸ are immune from suit and not subject to civil liability arising from the conduct of the affairs of the qualified entity.⁹ However, for purposes of this statute, compensation does not include a per diem amount of not more than \$300 per day and actual, reasonable and necessary expenses.¹⁰ Immunity does not apply if the act or omission of the officer amounts to willful or wanton misconduct, fraud or gross negligence.¹¹ Also excluded is any claim or action brought against an officer for any personal injury to or death of another person or property damage arising out of an accident inflicted by that officer while acting within the line and scope of the officer's duties.¹²

Furthermore, the immunity does not, except as otherwise may be provided by law, extend to the qualified entity itself, a for-profit subsidiary of the qualified entity, or the officers of the subsidiary.¹³ A "qualified entity" under this statute includes: any not-for-profit corporation, association, or organization satisfying the criteria of Internal Revenue Code §501(c) or organized under one of several Alabama Code provisions; and certain state, county or municipal boards, authorities or commissions.¹⁴

Arizona

As with Alabama, Arizona's law with respect to volunteers is similar in some respects and different in others from the Model Act. It provides that a volunteer is immune from civil liability in any action based upon an act or omission of a volunteer resulting in damage or injury if: 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 government entity. The definitions of "volunteer,"¹⁵ "nonprofit corporation"¹⁶ and "nonprofit organization,"¹⁷ are identical to the Model Act. The definition of "government entity"¹⁸ is nearly identical except that it excludes the reference to "township" found in the Model Act. The term "hospital" is not defined in the Model Act. For purposes of the Arizona statute, it means a health care facility, regardless of whether for profit, that provides "medical services,

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nursing services, health screening services, or other health-related services or supervisory care services."¹⁹

The exceptions to immunity under the Arizona law are broader than the Model Act, and include "grossly negligent" as well as willful and wanton misconduct by the volunteer.²⁰ With respect to civil liability arising from the operation of a motor vehicle, the Arizona law does not exempt an individual from immunity like the Model Act. Instead, it has a unique provision which states that if the operator of a motor vehicle is acting as a volunteer for a nonprofit corporation or nonprofit organization, the coverage of any motor vehicle insurance policy²¹ applicable to the operator will extend to the corporation or organization.²²

The most significant difference between the Arizona law and the Model Act, however, is that immunity is granted to the entity itself. Under this provision, nonprofit organizations or nonprofit corporations²³ or governmental entities are immune from civil liability in any action based upon an act or omission of a volunteer resulting in damage or injury if: 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 or governmental entity; and the damage or injury was not caused by wilful, wanton or grossly negligent misconduct by the volunteer. However, the immunity provided to an entity does not extend to any liability arising out of the use of a motor vehicle by a volunteer acting within the scope of the volunteer's official duties.²⁴ In enacting this provision, the Arizona legislature repealed Model Act language that had provided that, in any suit against an entity for damages based upon 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 entity.²⁵

Arizona law also provides immunity from civil liability for a director or member of a board or council serving in an advisory capacity to a nonprofit corporation or its board of directors for any act or omission resulting in damage or injury if the person was acting in good faith and within the scope of the person's official capacity, unless the damage or injury was caused by the person's wilful and wanton or grossly negligent conduct.²⁶ Official capacity is defined as "any decision, act or event undertaken by the nonprofit corporation in furtherance of the purpose or purposes for which such organization is organized."²⁷

Arkansas

The Arkansas Volunteer Immunity Act offers another variation of limited liability for volunteers. The Act exempts a "qualified volunteer" from liability for damages for personal injury or property damage sustained by 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.²⁸ This immunity does not apply where the qualified volunteer:

- (1) Is covered by an insurance policy, in which case liability for ordinary negligence is limited to the amount of the coverage provided;
- (2) Acts in bad faith or is guilty of gross negligence;

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- (3) Operates negligently a motor vehicle, aircraft, boat, or other powered mode of conveyance (however, liability for ordinary negligence is limited to the amount of coverage of any applicable insurance); or
- (4) Performs negligently professional services which the qualified volunteer is licensed under state law to perform.²⁹

A qualified volunteer also is not vicariously liable for the negligence of another person in connection with or as a consequence of volunteer activities.³⁰ However, like the Model Act, a volunteer entity is not immune from civil liability for the actions of its volunteers.³¹

The definition of terms in the Arkansas Act differ substantially from the Model Act:

- (1) "Qualified volunteer" is defined as "any person who, of free will, provides goods or services without financial compensation to or through any volunteer agency in connection with a volunteer program."³²
- (2) "Volunteer agency" means "any volunteer program of all departments, institutions, and divisions of state government, community volunteer organization, or any not-for-profit corporation which has received a 501(c)(3) designation from the Internal Revenue Service, other than one established principally for the recreational benefit of its stockholders or members."³³
- (3) "Volunteer activity:" means "any activity within the scope of any project, program, effort, or other regular activity sponsored by a volunteer agency with the intent to effect a charitable purpose or confer other public benefit, including, but not limited to, enhancement of the cultural, civic, religious, educational, scientific, or economic resources of the community."³⁴

Like most other states, Arkansas law also contains specific protection for a certain class of officers and directors. Immunity from personal liability is granted to any member of any board, commission, agency, authority, or other governing body of any governmental entity or to any member of the board of directors of a nonprofit corporation that holds a valid federal income tax exemption issued by the Internal Revenue Service for damages resulting from any negligent act or omission of: an employee of the nonprofit corporation or governmental entity; or another director of the nonprofit corporation or member of the governing body of the governmental entity.³⁵ Excluded from this grant of immunity are: acts or omissions constituting ordinary or gross negligence personal to the director or member; intentional torts committed by a director or member; and acts or omissions of directors of nonprofit corporations licensed or permitted by the Arkansas Alcoholic Beverage Control to dispense alcoholic beverages, beer or wine.³⁶ There is, however, no limitation on the liability of any nonprofit corporation for damage resulting from negligent acts or omissions of an employee of the corporation.³⁷ Moreover, if a nonprofit corporation attempts to transfer assets to avoid claims against those assets, the immunity does not apply and any director to whom assets are transferred or any director of a corporation from which assets are transferred may be held personally liable.³⁸

Arkansas is one of a number of states that has a law dealing specifically with sports related volunteers. Under this provision, no athletic official, during the officiating of an interscholastic, intercollegiate, or any other amateur athletic contest being conducted under the auspices of a nonprofit or governmental entity, shall be held personally liable in any civil

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action for damages to a player, participant, or spectator as a result of acts of commission or omission arising out to the officiating duties and activities. Malicious, willful, wanton, or grossly negligent acts are excluded.³⁹

Colorado

Colorado adopted its Volunteer Service Act in 1992. The law is similar to the Model Act, except that governmental entities are not included and the term "volunteer" is defined to specifically exclude any volunteer serving as a director, officer or trustee.⁴⁰ The Act provides that 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: 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 or a hospital; and the damage or injury was not caused by willful or wanton misconduct by the volunteer.⁴¹ As with the Model Act, acts or omissions involving the operation of a motor vehicle are not protected; provided that the amount recovered from the volunteer is limited to the amount of applicable insurance coverage maintained by or on behalf of the volunteer.⁴² The Act is also similar to the Model Act in specifying that the immunity granted to volunteers does not shield the entity itself from liability for the negligence of a volunteer.⁴³

The definitions of nonprofit corporations and nonprofit organizations differ somewhat from the Model Act by including nonprofit corporations and nonprofit organizations that are listed as exempt organizations under sections 501(a) and 501(c) respectively of the Internal Revenue Code and including as a nonprofit organization home owners associations satisfying the criteria section 528 of the Internal Revenue Code.⁴⁴

Unlike the Model Act, directors, officers and trustees of nonprofit organizations and nonprofit corporations are not included under the Volunteer Service Act. They are, however, protected by two other provisions of law. The first provides that uncompensated⁴⁵ directors, officers and trustees of nonprofit organizations and nonprofit corporations shall be immune from civil liability for any act or omission that results in damage or injury if the person was acting within the scope of the person's official functions and duties as a director, officer or trustee and the act or omission was not willful or wanton.⁴⁶ Excluded is any act or omission resulting from the operation of any motor vehicle, airplane, or boat.⁴⁷

In addition to the foregoing, a second provision grants immunity to the members of boards of directors of nonprofit corporations or nonprofit organizations for actions taken or omissions made in the performance of duties as a board member, except for wanton and willful acts or omissions.⁴⁸

Finally, Colorado has a unique provision dealing with volunteers assisting organizations for "young persons". This statute provides, in pertinent part, that:

No person who performs a service or an act of assistance, without compensation or expectation of compensation as a leader, assistant, teacher, coach, or trainer for any program, organization, association, service, group, educational, social, or recreational group, or nonprofit corporation serving young persons or providing sporting programs or activities for young persons shall be held liable for actions taken or omissions made in the

performance of duties, except for wanton and wilful acts or omissions; except that such immunity from liability shall not extend to protect such persons from liability for acts or omissions which harm third persons.⁴⁹

Delaware

Delaware's law with respect to volunteers is patterned after the Model Act, but with some differences. It provides that no volunteer of an organization shall be subject to suit directly, derivatively or by way of contribution for any civil damages under state law resulting from any negligent act or omission performed during or in connection with an activity of the organization.⁵⁰ Excluded is any act or omission constituting willful and wanton or grossly negligent conduct.⁵¹ As with the Model Act, the protection granted to volunteers is not extended to the entity. The law provides that in any suit against an organization for civil damages based upon the act or omission of a volunteer, proof of the act or omission is sufficient to establish the liability of the organization under the doctrine of respondeat superior.⁵²

The definitional language of Delaware's statute is markedly different from the Model Act:

- (1) "Volunteer" is defined as "any trustee, ex officio trustee, director, officer, agent or worker who is engaged in an activity without compensation."⁵³
- (2) "Activity" is defined as "any decision, act or event undertaken by an organization in furtherance of the purpose or purposes for which such organization was organized and exempted from federal income tax, and in the case of a government entity ... , in furtherance of the exercise of any governmental function."⁵⁴
- (3) "Organization" includes: any nonprofit organization exempt from section 501(c) of the Internal Revenue Code; and any governmental entity, including the United States, the State of Delaware, and any board, commission, division, office, task force or other agency of the State, or the United States.⁵⁵

Delaware also has a unique law protecting volunteers involved in nonprofit sports activities by providing a cap on damages linked to insurance coverage. Specifically, the law provides that neither any person sponsoring or operating a nonprofit sports program nor any person rendering services without compensation as a member of the qualified staff of a nonprofit sports program shall be liable for civil damages resulting from any negligent act or omission of the qualified staff member to the extent that damages exceed either: the existing liability insurance coverage applicable to the act or omission; or the minimum liability insurance coverage required by law if no applicable coverage exists.⁵⁶ Excluded are reckless acts or omissions and grossly negligent acts or omissions.⁵⁷

The term "member of the qualified staff" means any person who: is, or is an assistant to, a manager, coach, umpire or referee; prepares any playing field for any practice session or any formal game; or is an officer or ride leader of a formally organized bicycle club.⁵⁸ "Nonprofit sports program" means any program, regardless of whether registered with or recognized by the State or any of its political subdivisions:

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- (1) That is a competitive sport, formally recognized as a sport (on the date the cause of action arises) by the Amateur Athletic Union or the National Collegiate Athletic Association, or is a formally organized noncompetitive recreational bicycle club, regardless of whether recognized by the Amateur Athletic Union or the National Collegiate Athletic Association;
- (2) That is organized for recreational purposes and whose activities are substantially for such purposes; and
- (3) No part of whose earnings inures to the benefit of any private person.⁵⁹

Finally, volunteers may have some protection under Delaware's sovereign immunity provisions, which define "employee" as any person acting on behalf of a governmental entity in any official capacity, whether permanent or temporary, and whether with or without compensation, including elected or appointed officials, volunteer firefighters, and members of rescue squads that receive financial support from the state or a political subdivision, but excludes independent contractors.⁶⁰ Such individuals are immune from suit on tort claims seeking recovery of damages, except that an "employee" may be personally liable for acts or omissions not within the scope of employment or performed with wanton or willful and malicious intent.⁶¹

District of Columbia

The District of Columbia provides limited protection for volunteers under the District of Columbia Nonprofit Corporation Amendment Act of 1992.⁶² The Act exempts from civil liability a volunteer of a nonprofit corporation that either: 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; or has annual total functional expenses, exclusive of grants and allocations, of less than \$100,000, and is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code of the United States."⁶³ The exception does not apply to situations where the injury or damage is the result of:

- (1) Willful misconduct;
- (2) A crime, unless the volunteer had reasonable cause to believe that the act was lawful;
- (3) A transaction resulting in an improper personal benefit of money, property, or service to the volunteer;
- (4) An act or omission occurring prior to the Act's effective date; or
- (5) An act or omission not in good faith and beyond the scope of the lawful authority of the corporation.⁶⁴

Furthermore, although the corporation itself is not exempt from liability for the conduct of its volunteers, the liability of a corporation is limited under the Act to the amount of the applicable insurance coverage the corporation maintains.⁶⁵ The term "volunteer" is defined broadly, as in the Model Act, to mean an officer, director, trustee or other person who performs services for the corporation without compensation, other than reimbursement.⁶⁶

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In addition to the protection given to volunteers, the Act also amended a related provision of the D.C. Code to impose a cap on the liability of employees of a nonprofit corporation. Employees are exempt from personal liability for damages for any acts or omissions in providing services or performing duties on behalf of the corporation "in an amount greater than the amount of total compensation, other than reimbursement of expenses, received from the corporation for performing those services or duties during the 12 months immediately preceding the act or omission for which liability was imposed."⁶⁷ An "employee" is defined as "a person regularly employed to perform a service for a salary or wages."⁶⁸ This limitation on liability does not apply to "any licensed professional employee operating in his or her professional capacity."⁶⁹

As with the protection for volunteers, excepted from the limitation on liability are situations in which the injury or damage is the result of:

- (1) Willful misconduct;
- (2) A crime, unless the volunteer or employee had reasonable cause to believe that the act was lawful;
- (3) A transaction resulting in an improper personal benefit of money, property or service to the volunteer or employee;
- (4) An act or omission occurring prior March 17, 1993; or
- (5) An act or omission not in good faith and beyond the scope of the lawful authority of the corporation.⁷⁰

The liability of the corporation under this section also is limited to the amount of the applicable insurance coverage it maintains.⁷¹

Florida

Florida law provides protection to volunteers generally, but imposes a reasonably prudent person standard. The Florida Volunteer Protection Act states, in pertinent part, that:

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 official duties performed under such volunteer services and such person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and

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- (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."⁷²

Under the Act, nonprofit organization means any organization exempt from taxation pursuant to 26 U.S.C. §501, or any federal, state, or local governmental entity.⁷³ Similar to the Model Act, this liability limitation for volunteers has no effect upon the liability of the nonprofit organization for which the volunteer was performing services.⁷⁴

In addition to this Act, Florida law protects an officer or director of a nonprofit organization recognized under §501(c)(3), (4), or (6) of the Internal Revenue Code of 1986, as amended, or an agricultural or horticultural organization recognized under §501(c)(5) of the Internal Revenue Code.⁷⁵ An officer or director is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action regarding organizational management or policy by an officer or director, unless the person breached or failed to perform duties as an officer or director and the breach of or failure to perform the duties constitutes either:

- (1) A violation of law, unless the officer or director had reasonable cause to believe the conduct was lawful or had no reasonable cause to believe it was unlawful;
- (2) A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or
- (3) Recklessness or an act or omission committed in bad faith or "with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property."⁷⁶

Georgia

The scope of immunity granted to volunteers under Georgia law is quite broad. The law extends to persons "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"⁷⁷ Immunity is granted from civil liability for any act or omission arising out of the person's service; provided that the person was acting in good faith within the scope of the person's official actions and duties and the damage or injury was not caused by the person's willful or wanton misconduct.⁷⁸ Unlike the Model Act, there are no other limitations on the immunity granted.

Georgia also provides considerable protection for those volunteers involved in sports or safety programs. The law shields any volunteer for a sports program or safety program of a nonprofit association or any employee or officer of such association conducting or sponsoring such program from liability to any person as a result of any act or omission in rendering services or conducting or sponsoring such program if the person was acting in good faith within the scope of assigned duties. Conduct that amounts to willful and wanton misconduct or gross negligence is excluded from this immunity.⁷⁹ Furthermore, the defense of immunity is waived as to actions for which liability insurance protection has been provided, but only to the extent of the available liability insurance.⁸⁰ The law makes explicit that the

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immunity provision is not to be construed as affecting or modifying the liability of any person or entity for acts or omissions relating to the:

- (1) Transportation of participants in a sports program or safety program to or from a game, training session, event or practice; or
- (2) Care and maintenance of real estate unrelated to the practice, training or playing areas owned, possessed or controlled by such person or entity.⁸¹

For purposes of this provision, a nonprofit association is broadly defined to mean "any entity which is organized as a nonprofit corporation or a nonprofit unincorporated association under the laws of this state including, but not limited to, youth or sports associations, volunteer fire associations, or religious, charitable, fraternal, veterans, civic, county fair, or agricultural associations, or any separately chartered auxiliary of the foregoing, if organized and operated on a nonprofit basis."⁸² The scope of immunity is also broadened by the unusual inclusion of safety programs. The statute defines "safety program" as "a program designed for education and training with respect to safety and accident prevention as related to the home, vehicle maintenance and operation, boating, hunting, firearms, self-protection, fire hazards, or other activity which may involve exposures to personal injury or property damage."⁸³ "Sports program" is defined as "any program or organized activity:

- (A) Which conducts any competitive sport which is formally recognized as a sport, on the date on which any cause of action arises to which this Code section is applicable, by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978, Public Law 95-606, 36 U.S.C. Section 371 et. seq., the Amateur Athletic Union, or the National Collegiate Athletic Association; and
- (B) Which is organized for recreational purposes and related training and education and the activities of which are substantially for such purpose."⁸⁴

A volunteer is defined as "any person rendering services as a manager, coach, instructor, umpire, or referee, or assistant to such person, who performs such services without compensation."⁸⁵

Idaho

Idaho has one of the more lucid statutes limiting the liability of volunteers. Officers, directors and volunteers of nonprofits are covered under a single provision. Section 6-1605 of the Idaho Code provides that officers, directors and volunteers who serve nonprofit corporations or organizations⁸⁶ without compensation shall be personally immune from civil liability arising out of their conduct as an officer, director or volunteer, if the conduct is within the course and scope of the duties and functions of the individual and at the direction of the corporation or organization.⁸⁷ However, the law excepts from the immunity provision any conduct to the extent it is covered under a policy of liability insurance, regardless of whether the policy is purchased by the entity, the individual or a some third party.⁸⁸ The following are also excluded:

- (1) Conduct that is willful, wanton, or involves fraud, knowing violations of law;

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- (2) Certain intentional breaches of fiduciary duty or duty of loyalty;
- (3) Acts or omissions not in good faith or that involve intentional misconduct;
- (4) Transactions from which the individual derives an improper personal benefit; and
- (5) Damages resulting from the operation of a motor vehicle.⁸⁹

Illinois

Illinois law grants immunity from civil suit for three distinct categories of nonprofit corporate volunteers. Any person who renders service without compensation to or for any corporation organized under the Illinois Nonprofit Corporations Act and satisfying the criteria of section 501(c)(3) of the Internal Revenue Code shall not be liable, and no cause of action may be brought, for damages resulting from an act or omission in rendering services, unless the act or omission involved willful or wanton conduct. Also, directors or officers, serving without compensation, of any corporation organized under the Illinois Nonprofit Corporations Act and satisfying the criteria of Internal Revenue Code §501(c) are not liable for any damages resulting from the exercise of judgment or discretion in connection with the director's or officer's duties or responsibilities, unless the act or omission involved willful or wanton conduct.⁹⁰ Another provision grants identical protection to directors, earning no more than \$5,000 annually for such duties, of any corporation satisfying the criteria of section 501(c) of the Internal Revenue Code and organized under the Illinois Nonprofit Corporations Act for the purposes of: agricultural; professional, commercial, industrial, or trade association; electrification on a cooperative basis; or telephone service on a mutual or cooperative basis.⁹¹ Also immune is any person who renders service without compensation to or for any corporation, organized under the Illinois Nonprofit Corporations Act and satisfying the criteria of Internal Revenue Code section 501(c)(3), for damages resulting from an act or omission in rendering services, unless the act or omission involved willful or wanton conduct.⁹²

Illinois law also provides limited protection for an uncompensated⁹³ volunteer who renders services as a manager, coach, instructor, umpire or referee or who assists a manager, coach, instructor, umpire or referee in a sports program of a nonprofit association. The law provides in pertinent part that no such person:

Shall be liable to any person for any civil damages as a result of any acts or omissions in rendering such services or conducting or sponsoring such sports program, unless the conduct of such person falls substantially below the standards generally practiced and accepted in like circumstances by similar persons rendering such services or conducting or sponsoring such sports programs, 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.⁹⁴

The law cautions that a showing that conduct fell below ordinary standards of care is insufficient to impose liability. Furthermore, the law makes explicit that the immunity provision is not to be construed as affecting or modifying the liability of any person or nonprofit association for acts or omissions relating to the:

- (1) Transportation of participants in a sports program or safety program to or from a game, training session, event or practice; or
- (2) Care and maintenance of real estate unrelated to the practice, training or playing areas owned, possessed or controlled by such person or entity.⁹⁵

For purposes of this provision, a nonprofit association is defined similar to the Georgia statute to mean any entity that is organized or authorized to do business as a nonprofit corporation or a nonprofit unincorporated association under state law, including, but not limited to, "youth or athletic associations, volunteer fire, ambulance, religious, charitable, fraternal, veterans, civic, county fair, or agricultural associations, or any separately chartered auxiliary of the foregoing, if organized and operated on a nonprofit basis."⁹⁶ Sports program means:

[B]aseball (including softball), football, basketball, soccer and any other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978, the Amateur Athletic Union or the National Collegiate Athletic Association. The term shall be limited to a program or that portion of a program that is organized for recreational purposes and whose activities are substantially for such purposes and which is primarily for participants who are 18 years of age or younger whose 19th birthday occurs during the year of participation or the competitive season, whichever is longer. There shall, however, be no age limitation for programs operated for the physically handicapped or mentally retarded.⁹⁷

Indiana

Protection under Indiana law for general volunteers is limited to those involved in sports or leisure activities. However, qualified directors serving, without compensation, a wide range of entities, including board and commission members of the state or a political subdivision or officers or directors of: traditional charities; homeowners associations; certain advocacy groups; national, regional or local fraternities or sororities; the Special Olympics, or the Pan America Games, are immune from civil liability for negligence in setting policy and controlling or overseeing the activities or functional responsibilities of the entity.⁹⁸

Indiana's provision dealing with sports volunteers is quite different from that of other states. Protection is limited to uncompensated volunteers involved in sports or leisure activities, such as baseball, basketball, football, soccer, hockey, volleyball, or cheerleading, involving children under the age of sixteen.⁹⁹ Such persons are not liable for civil damages proximately caused by a negligent act or omission in the personal services provided by the volunteer or another person selected, trained, supervised or otherwise under the control of the volunteer in the course of a sports or leisure activity. For purposes of this provision,

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compensation does not include: any award, meal or other gift not exceeding \$100 in value if given as a token of appreciation or recognition; any per diem payment not exceeding \$50 for personal services as a referee, umpire, judge or assistant to a referee, umpire or judge; or reimbursement or payment of reasonable expenses incurred.¹⁰⁰ The grant of immunity does not apply to behavior that is intentional, willful, wanton or reckless or to damages caused by the negligent operation of a motor vehicle. The provision also does not apply to individuals who are registered, certified or licensed under state law. Furthermore, the provision affords immunity to a government entity and its employees and agents for civil damages proximately caused by:

- (1) The negligent selection, training, or supervision of a volunteer providing personal services in the course of a sports or leisure activity; or
- (2) A negligent act or omission in the personal services provided by either the volunteer or another person selected, trained, supervised or otherwise under the control of the volunteer.¹⁰¹

Iowa

Iowa law provides broad immunity to directors, officers, employees, members, trustees and volunteer of nonprofit organization.¹⁰² Such persons are not liable on the debts or obligations of the nonprofit organization nor are they personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties. Excluded from protection are acts or omissions that involve intentional misconduct or a knowing violation of law or a transaction from which the person derives an improper personal benefit. The term nonprofit organization is defined quite broadly to include an unincorporated club, association, or other similar entity, if no part of its income or profit is distributed to members, directors or officers.

Another provision of the Iowa Code provides similar protection for directors, officers, employees or members of nonprofit corporations.¹⁰³ However, in addition to the exclusions noted previously, breaches of the duty of loyalty to the corporation and acts or omissions not in good faith are exempted from protection. Interestingly, unlike most other states' laws, there is no requirement under Iowa law that these individuals be uncompensated.

Two other provisions of law protect uncompensated state volunteers¹⁰⁴ and municipal volunteers¹⁰⁵ from personal liability for claims based upon acts or omissions performed within the person's duties, except for acts or omissions involving intentional misconduct or knowing violation of law or transactions from which the person derives an improper personal benefit.

Kansas

Kansas law also provides broad protection for volunteers, but only if there is an existing general liability insurance policy applicable. The provision provides that if a nonprofit organization¹⁰⁶ carries general liability insurance coverage, a volunteer of the organization shall not be liable for damages in a civil action for acts or omissions of the volunteer unless: the "conduct constitutes willful or wanton misconduct or intentionally tortious conduct; or [the] 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."¹⁰⁷

In addition, a volunteer is not vicariously liable for the actions or omissions of any of the officers, directors, trustees, employees or other volunteers of the nonprofit organization under the same conditions, unless 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.¹⁰⁸ The statute specifically states that the grant of immunity does not affect the liability of the nonprofit organization itself for the negligent or wrongful act or omission of its volunteer, which shall be imputed to the nonprofit organization for the purpose of apportioning liability for damages to a third party.¹⁰⁹ The term volunteer under this provision includes an officer, director, trustee or other uncompensated person performing services, but specifically excludes a person who delivers health care services to patients in a medical care facilities.¹¹⁰

Unlike many states that undertake to protect volunteers involved in sports activities, Kansas's "sports law" is extremely narrow, granting immunity from damages in a civil action only to certain "athletic officials" who administer the rules of a game or sport.¹¹¹ Athletic officials are not liable for ordinary negligence for actions or omissions arising out of or in the course of officiating at an interscholastic, intercollegiate or any other amateur athletic contest being conducted by a nonprofit organization, educational institution or governmental entity. Excluded from this immunity are damages caused by willful or wanton misconduct or intentionally tortious conduct. This provision also contains similar language with respect to the liability of the entity and imputing actions or omissions to the entity for purposes of apportioning liability for damages to a third party as discussed previously.

Kentucky

Kentucky has a liberal immunity provision for volunteers. Any person who serves, uncompensated, as a director, officer, trustee or volunteer of a nonprofit organization, qualified as tax-exempt under section 501(c) of the Internal Revenue Code, is immune from civil liability for any act or omission resulting in damage or injury if the person was acting in good faith and within the scope of the person's official functions and duties for a nonprofit organization, a nonprofit corporation, hospital, or a government entity, unless the damage or injury was caused by wilful or wanton misconduct of the person.¹¹² No other limitations or immunity are expressed. The Kentucky attorney general reportedly has questioned the constitutionality of this provision.¹¹³

In addition to the foregoing, two other provisions grant protection to officers¹¹⁴ and directors¹¹⁵ of nonprofit corporations. These provide that no action or failure to act by such individuals shall be the basis for monetary damages or injunctive relief, absent a breach or failure to perform duties in compliance with state law or, in the case of monetary damages, unless the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety or property. Furthermore, these provisions require the plaintiff to meet a clear and convincing standard of proof.

Louisiana

Louisiana offers protection to volunteers under a number of different provisions of law. The language of these provisions is fairly unique and, in some cases, is not restricted to uncompensated individuals. The first states that a volunteer, officer, director or trustee serving, with or without compensation, any nonprofit organization (specifically including any

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organization that sponsors fairs or festivals or any nonprofit historical organization organized for a civic or historical purpose) shall not be individually liable for any act or omission resulting in damage or injury, arising out of the exercise of judgment in the formation and implementation of policy or arising out of the management of the affairs of that organization. This immunity does not apply if the acts are not in good faith or constitute willful or wanton misconduct.¹¹⁶ Another provision states that a person serving, with or without compensation, as a member, officer, director or trustee of any public, charitable or nonprofit hospital, institution, or organization is not individually liable to any person, firm, or entity, public or private, receiving benefits from the hospital, institution, or organization for any act or omission to act by any employee or other officer of the hospital, institution, or organization.¹¹⁷

A third provision states that an uncompensated officer, director or trustee of a nonprofit organization, qualified as tax-exempt under section 501(c) of the Internal Revenue Code, shall not be individually liable for any act or omission resulting in damage or injury, arising out of the exercise of judgment in the formation and implementation of policy while acting as a director, officer or trustee of that organization or arising out of the management of the affairs of that organization; provided that the officer, director or trustee was acting in good faith and within the scope of official functions and duties. The immunity granted herein does not apply if the damage or injury was caused by willful or wanton misconduct.¹¹⁸ Identical protection also is provided to members of boards, commissions, or authorities of political subdivisions.¹¹⁹

Finally, Louisiana grants immunity from suit for any volunteer athletic coach, manager, athletic trainer, team volunteer health care provider, or sports team official for any loss or damage caused by an act or omission to act directly related to the person's responsibilities while actively conducting, directing, or participating in the sporting activities or in the practice thereof, unless the loss or damage was caused by the gross negligence of the coach, manager, athletic trainer, team volunteer health care provider, or sports team official.¹²⁰ This protection does not apply to any volunteer who has not participated in a safety orientation and training skills program, unless the requirement is waived by the applicable league or team upon submission of appropriate documented evidence of the person's proficiency in first aid and safety.

Maine

Maine also has a liberal provision protecting volunteers. It provides that an uncompensated "director, officer or volunteer is immune from civil liability for personal injury, death or property damage, including 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."¹²¹

The term charitable organization is broadly defined to mean any nonprofit organization: satisfying the criteria of Internal Revenue Code §501(c)(3), (4), (6)(chambers of commerce

only), (10), (13), or (14) or that would qualify under (3), but for engaging in legislative activities; or organized either under various categories of the Maine Nonprofit Corporation Act or as a rural electrification cooperative.¹²²

Maryland

Maryland has a number of provisions that shield volunteers from liability. The Maryland Volunteer Service Act is somewhat similar to Kansas law, in that protection is dependant upon the existence of an applicable liability insurance policy. Under the Maryland Act, a volunteer is not liable in damages, beyond the limits of any personal insurance, in any suit arising from the volunteer's act or omission in connection with any service provided or duty performed on behalf of an organization or association, unless the act or omission of the volunteer constitutes gross negligence, reckless, willful or wanton misconduct or intentionally tortious conduct.¹²³ Furthermore, a volunteer is not liable in damages, beyond the limits of any personal insurance, in any suit arising from the act or omission of a director, officer, employee, trustee or another volunteer of the entity unless the volunteer:

- (1) Knew or should have known of an act or omission of a particular officer, director, trustee, employee, or another volunteer and the volunteer authorizes, approves, ratifies or otherwise actively participates in the act or omission; or
- (2) After the commission of the act or omission and with full knowledge of it, ratifies it.¹²⁴

For purposes of the Volunteer Service Act, the term volunteer means a director, officer, trustee or other person who performs duties for an association or organization without receiving compensation, but excludes a provider of health care services or an employee who performs duties on behalf of a charitable organization, as such persons are covered under another provision.¹²⁵ The term association or organization means a: business league; charitable organization; civic league; club; labor, agricultural, or horticultural organization; or local association of employees.¹²⁶

Protection under the Maryland Associations, Organizations, and Agents Act is also dependent upon the existence of adequate liability insurance coverage. The Act provides that an agent of an organization or association is not personally liable for damages in any suit if:

- (1) The organization or association maintains insurance covering liability incurred by the organization or association or its agents, or both, as a result of acts or omissions of its agents in providing services or performing duties on its behalf;
- (2) The terms of the insurance policy provide coverage for the particular act or omission and no meritorious basis exists for denial of coverage; and
- (3) The insurance has: a limit of coverage of not less than \$200,000 per individual claim and \$500,000 per total claims arising from the same occurrence or of \$750,000 per policy year and \$500,000 per total claims arising from the same occurrence; and a deductible (if present) in an amount not greater than \$10,000 per occurrence or a rate of coinsurance (if present) not greater than twenty percent.¹²⁷

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Under this Act, a plaintiff's damages are limited to the extent of the applicable limit of insurance coverage, including any amount for which the organization or association is responsible as a result of any deductible or coinsurance provision.¹²⁸ However, if it is found that the agent acted with malice or gross negligence, the agent is liable for damages to the extent the judgment exceeds this limit.¹²⁹

For purposes of this Act, the term agent of an organization or association means a director, officer, trustee, employee or volunteer of an organization or association who provides services or performs duties on its behalf, but does not include an independent contractor.¹³⁰ Organization or association means a: charitable organization; civic league or organization; athletic club; cooperative housing corporation; council of unit owners of a condominium; or homeowners' association.¹³¹

Finally, Maryland law provides protection to community recreation program volunteers and athletic officials.¹³² A community recreation program volunteer is not personally liable for damages in any civil action brought against the volunteer by virtue of the volunteer's act or omission in providing services or performing duties on the program's behalf, unless it is found that the damages were the result of the volunteer's:

- (1) Negligent operation of a motor vehicle;
- (2) Willful, wanton or grossly negligent act or omission; or
- (3) Negligence in permitting an unsupervised competition, practice or activity.

In addition, an athletic official is not personally liable for damages in any civil action brought against the athletic official by a player, participant or spectator by virtue of the athletic official's act or omission in providing services or performing duties while acting in the capacity of athletic official, unless it is found that the damages were the result of the athletic official's willful, wanton or grossly negligent act or omission.

For purposes of this provision, volunteer means a person who provides services or performs duties without receiving compensation as an athletic coach, manager, official, program leader, or assistant for a community recreation program. A community recreation program means an athletic, fitness or recreation activity: organized for pleasure, recreation or other nonprofit purposes; that has substantially all of its activities conducted for pleasure, recreation or other nonprofit purposes; and that does not have any part of the net earnings benefiting any private shareholder, but does not include a public or private educational institution's athletic program. An athletic official means an individual who officiates, referees or umpires an interscholastic, intercollegiate or any other amateur athletic contest conducted by a nonprofit or governmental body.¹³³

Massachusetts

Protection of volunteers under Massachusetts law is somewhat limited. Except for in relation to sports programs, the protection provided does not include volunteers generally, but focuses on officers, directors and trustees. Immunity is given to persons serving without compensation, other than reimbursement of actual expenses, as "an officer, director or trustee of any nonprofit charitable organization including those corporations qualified under 26 U.S.C. section 501(c)(3)" for civil damages as a result of any acts or omissions relating solely

to the performance of duties.¹³⁴ Excluded are acts or omissions intentionally designed to harm and grossly negligent acts or omissions that result in harm to the person.¹³⁵ Immunity does not extend to "acts or omissions committed in the course of activities primarily commercial in nature even though carried on to obtain revenue to be used for charitable purposes" or for any cause of action arising out to the person's operation of an "automobile."¹³⁶

A separate provision provides that an uncompensated director, officer or trustee of an educational institution that is a charitable organization, qualified as a tax-exempt organization under 26 U.S.C. section 501(c)(3), shall not be liable solely by reason of service as a director, officer or trustee for any act or omission resulting in damage or injury to another, if the person was acting in good faith and within the scope of official duties and functions, unless the damage or injury was caused by willful or wanton misconduct. Excluded from this limitation on liability is any action arising out to the person's operation of a "motor vehicle."¹³⁷ This section also puts a cap of \$20,000 (exclusive of interest and costs) on the liability of charitable organizations if a tort is committed "in the course of any activity carried on to accomplish directly the charitable purposes of [the] corporation, trust, or association"¹³⁸ The limitations on liability provided in this section do not apply 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 purpose."¹³⁹

Finally, another section provides immunity for volunteer officials in nonprofit sports or sailing programs. The section provides that no:

- (1) Uncompensated volunteer rendering services as a manager, coach, umpire or referee, or as an assistant to a manager or coach, in a sports program of a nonprofit association or rendering services to a sailing program of a nonprofit association;
- (2) Nonprofit association conducting a sports or a sailing program; or
- (3) Officer, director, trustee or member thereof, serving without compensation,

shall be liable to any person for any action in tort as a result of any acts or failures to act in rendering the services or in conducting the sports program.¹⁴⁰ Excluded are acts or failures to act that intentionally are designed to harm and grossly negligent acts or failures to act that result in harm to the person.¹⁴¹ A caveat also states that this section is not intended to affect or modify the liability of a person or nonprofit association for acts or failures to act:

- (1) Committed in the course of primarily commercial activities, even though carried on to obtain revenue for maintaining the sports program or revenue used for other charitable purposes;
- (2) Relating to the transportation of participants on a sports program or others to or from a game, event or practice; or
- (3) Relating to the care and maintenance of real estate that the person or nonprofit association owns, possess or controls and that is used in connection with a sports program or other nonprofit association activity.¹⁴²

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For purposes of this section, nonprofit association means an entity organized as a nonprofit corporation or nonprofit unincorporated association under state or federal law or any entity authorized to do business in the state as a nonprofit corporation or unincorporated association. The term sports program has nearly the identical definition as found in the Illinois Statute.¹⁴³

Michigan

Under Michigan law, nonprofit corporations are permitted to amend their articles of incorporation to limit the liability of certain types of volunteers.¹⁴⁴ A nonprofit corporation may include a provision that it assumes liability for all acts or omissions of a nondirector volunteer, occurring on or after the effective date of the provision, provided that:

- (1) The volunteer was acting, or reasonably believed the volunteer was acting, within the scope of authority;
- (2) The volunteer was acting in good faith;
- (3) The volunteer's conduct did not amount to gross negligence, willful and wanton misconduct or an intentional tort; and
- (4) The volunteer's conduct was not a tort arising out of the ownership, maintenance or use of a motor vehicle for which tort liability may be imposed under the state insurance code.¹⁴⁵

Furthermore, a tax exempt corporation, under section 501(c)(3) of the Internal Revenue Code, may include a provision that the corporation assumes all liability to any person, other than the corporation, its shareholders, or its members, for all acts or omissions of a volunteer director incurred in the performance of the volunteer director's duties.¹⁴⁶

Minnesota

Minnesota law provides that:

[A] person who serves without compensation as a director, officer, trustee, member, or agent of an organization exempt from state income taxation ... , or who serves without compensation as a fire chief of a nonprofit firefighting 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.¹⁴⁷

A 1994 amendment extended the application of immunity to an economic development authority or to a nonprofit corporation exercising the powers of an economic development authority.¹⁴⁸

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The immunity is not applicable to actions brought by the attorney general for a breach of fiduciary duty as a director, contract actions, federal claims, or actions based upon a breach of public pension plan fiduciary responsibility. This provision also 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; or the liability of a municipality arising out of the performance of firefighting or related activities.¹⁴⁹ For purposes of this provision, "compensation" excludes reimbursement for actual expenses incurred, a per diem in an amount not more than that authorized for state advisory councils and committees, and payment of insurance premiums or employee benefit plan against liability.¹⁵⁰

In 1994, Minnesota adopted a separate provision that addresses volunteers in sports programs.¹⁵¹ Covered under this provision are:

- (1) Any individuals who provide services or assistance without compensation either as an athletic coach, manager, official, physician, or certified athletic trainer for a sports team that is organized or performing under a nonprofit charter or as a physician or certified athletic trainer for a sports team or athletic event sponsored by a public or private educational institution; and
- (2) Any community-based, voluntary nonprofit athletic association or any volunteer of such nonprofit athletic association.¹⁵²

Such individual or association is not liable for money damages to a player, participant or spectator as a result of an individual's acts or omissions in the providing of service or assistance either at the scene or, in the case of a physician or athletic trainer, while the player, participant or spectator is being transported to a hospital, physician's office or other medical facility.¹⁵³ This section is applicable to organized sports competitions and practice and instruction in the sport.¹⁵⁴

There are, however, a number of exceptions to the immunity provided. Acts or omissions that are covered under an insurance policy issued to the entity for whom the coach, manager, official, physician, or certified trainer serves are excluded from immunity, but only to the extent of the liability stated in the insurance policy.¹⁵⁵ The grant of immunity also does not apply to:

- (1) An athletic coach, manager or official who provides services or assistance as part of a public or private educational institution's athletic program;
- (2) A public or private educational institution for which a physician or certified athletic trainer provides services;
- (3) Individuals acting in a willful and wanton or reckless manner in providing services or assistance;
- (4) Acts or omissions arising out of the operation, maintenance or use of a motor vehicle; and
- (5) Acts violating federal, state or local law.¹⁵⁶

Mississippi

The language of Mississippi's law protecting volunteers is somewhat similar to Arkansas's, except that it lacks the provision exempting acts covered under a liability insurance policy and negligent performance of licensed professional services and includes an exemption from immunity for misconduct that is intentional, willful, wanton, or reckless.¹⁵⁷ Under Mississippi law, a qualified volunteer is exempt from civil damages for personal injury or property damage sustained by a participant in, or a recipient, consumer, or user of, the services or benefits of a volunteer activity as a result of any act or omission of a qualified volunteer committed in good faith, except where the qualified volunteer: engages in acts or omissions that are intentional, willful, wanton, reckless or grossly negligent; or operates negligently a motor vehicle, aircraft, boat, or other powered mode of conveyance.¹⁵⁸ Also, a qualified volunteer is not vicariously liable for the negligence of another person in connection with or as a consequence of volunteer activities.¹⁵⁹

The definitions of the terms "qualified volunteer," "volunteer agency," and "volunteer activity" are almost identical to those in the Arkansas law except that:

- (1) Providing use of real or personal property or equipment is included in the definition of qualified volunteer;
- (2) Reference to a division of state government does not appear in the definition of volunteer agency; and
- (3) Fire protection and rescue services and equine activity are included in the definition of volunteer activity.¹⁶⁰

Finally, the Mississippi law makes clear that, for purposes of its application, the following are not considered "monetary compensation": reimbursement of actual expenses, including travel expense necessarily incurred in the discharge of duties; insurance coverage; and worker compensation coverage of volunteers.¹⁶¹

Mississippi's protection for sports officials is fairly liberal. Sports officials who officiate athletic contests at any level of competition in the state are not liable to any person or entity in any civil action for injuries or damages claimed to have arisen by virtue of actions or inactions related in any manner to officiating duties within the confines of the athletic facility at which the athletic contest is played, unless the actions or inactions are intentional, willful, wanton, reckless, malicious or grossly negligent.¹⁶² Sports officials mean "those individuals who serve as referees, umpires, linesmen and those who serve in similar capacities but may be known by other titles and are duly registered or members of a local, state, regional or national organization which is engaged in part in providing education and training to sports officials."¹⁶³

Finally, under Mississippi's Nonprofit Corporation Act, directors and officers are not liable for actions taken within the scope of their duties and in accordance with the good faith belief they are acting in the best interest of the corporation.¹⁶⁴

Missouri

Missouri's protection of volunteers is similar to the Model Act, but with three main differences: the definition of volunteer limits it to an individual performing services for a nonprofit organization or government entity; the exceptions to immunity are limited to intentional or malicious conduct or negligence; and there is no similar provision exempting conduct with respect to motor vehicles.¹⁶⁵ In addition, a separate provision of Missouri law grants immunity to uncompensated officers and members of governing bodies of entities, meeting the standards of Internal Revenue Code §501(c), from personal liability for civil damages arising from actions within official capacity but for which "the person would not otherwise be liable, but for [the person's] affiliation with [the] entity."¹⁶⁶ Intentional, willful or wanton conduct or gross negligence is excluded.

Montana

Montana's law protecting volunteers is quite simple compared to that of most states. The law states that a director, officer or volunteer of a nonprofit corporation is not individually liable for any act or omission made in the course and scope of the person's official capacity on behalf of the corporation.¹⁶⁷ Excluded from this immunity is willful or wanton misconduct.

Nevada

Nevada's law protecting volunteers states that a volunteer of a charitable organization¹⁶⁸ is immune from liability for civil damages as a result of an act or omission:

- (1) Of an agent of the organization; or
- (2) Concerning services the volunteer performs for the organization that are "not supervisory in nature and not part of any duties or responsibilities [the volunteer] may have as an officer, director or trustee" of the organization, unless the act is intentional, willful, wanton, or malicious.¹⁶⁹

The term agent means an officer, director, trustee, or employee, regardless of whether compensated, or a volunteer. A volunteer means a director, officer, trustee, or other person who performs services without compensation for or on behalf of the organization.

Nevada law also grants immunity to sports officials. The language of the provision is similar to that of Mississippi's, although the exclusionary language refers only to gross negligence.¹⁷⁰ Finally, Nevada law prohibits an action against a director, officer, trustee, or "other possessor of the corporate powers" of certain nonprofit entities based upon any act or omission arising from failure in an official capacity to exercise due care regarding the management or operation of the entity, unless the act or omission involves intentional misconduct, fraud or a knowing violation of law.¹⁷¹

New Hampshire

New Hampshire's law providing protection for volunteers has far-reaching application. It applies to any government entity or nonprofit entity, including but not limited to nonprofit corporations, organizations, community chests, funds or foundations:

- (1) Organized and operated exclusively for religious, cultural, charitable, scientific, recreations, literacy, agricultural, or educational purposes or to foster amateur competition in a sport formally recognized by the National Collegiate Athletic Association;
- (2) Exempt under Internal Revenue Code §501(c); or
- (3) Incorporated in the state or having a principal place of business in the state.¹⁷²

It grants immunity to volunteers who are acting in good faith and with prior written approval from the entity to act on its behalf.¹⁷³ The protection excludes willful, wanton or grossly negligent misconduct or activity related either to transportation or to the care of the entity's premises. Furthermore, in actions brought against an entity alleging negligence on the part of one of its volunteers, the law limits liability for damages or injury to \$250,000 for any one person in a single incident or occurrence and to \$1,000,000 for injury or damage sustained by any number of persons in a single incident or occurrence.¹⁷⁴

Another Nevada provision grants immunity to uncompensated directors and officers of any charitable organization or society organized or incorporated in the state, or having its principal place of business in the state, for damages for bodily injury or personal injury or property damages, unless actions are not in good faith or constitute willful or wanton negligence.¹⁷⁵

New Jersey

New Jersey's volunteer immunity law is patterned after the Model Act, except that grossly negligent acts are not protected and the language defining the scope of entities to which the law applies differs substantially.¹⁷⁶

New Jersey also provides immunity to certain volunteer athletic coaches, managers and officials for a nonprofit sports team, or member team of a league organized or affiliated with a county or municipal recreation department, for damages to a player, participant or spectator arising during a sports competition, practice or instruction.¹⁷⁷ Excluded from protection is damage caused by: willful, wanton or grossly negligent acts or omissions; the negligent operation of a motor vehicle; or the volunteer permitting the competition or practice to be conducted without supervision. The protection also does not apply to a volunteer who has not participated in a safety orientation and training skills program that includes injury prevention, first aid procedures and general coaching concepts.¹⁷⁸

New Mexico

New Mexico does not protect volunteers generally, except those involved with an athletic association. Any person or entity who volunteers services without compensation as a manager, coach, athletic instructor, umpire, referee or other league official in a formally organized nonprofit sports association for persons under the age of eighteen, is not liable, except to the extent covered by insurance, to any person for civil damages as a result of acts or omissions in rendering services or in conducting or sponsoring sports programs, unless: the conduct falls substantially below the standards generally accepted or practiced in the sport in like circumstances by similar persons or nonprofit associations; it was foreseeable that the conduct would create substantial risk of injury or death to the person or property of another; and the harm complained of was not part of the ordinary give and take common to the particular sport.¹⁷⁹

New Mexico's Nonprofit Corporation Act also provides protection for directors of nonprofit corporations. They shall not be held personally liable for any damages resulting from:

- (1) Any negligent act or omission of an employee of the corporation;
- (2) Any negligent act or omission of another director of the corporation; or
- (3) Any action taken, or failure to take any action, as a director unless the director breached or failed to perform the duties of office and the breach or failure constitutes willful misconduct or recklessness.¹⁸⁰

North Carolina

North Carolina has yet another variation of the Model Act. The provision applies only to direct service provider volunteers of a charitable organization, which is defined as "an organization that has humane and philanthropic objectives, whose activities benefit humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward" and is exempt from taxation under state law or section 501(c)(3) of the Internal Revenue Code.¹⁸¹ Such volunteers are protected from liability for injury, death or loss to person or property if:

- (1) The volunteer was "acting in good faith and the services rendered were reasonable under the circumstances";
- (2) The acts or omissions do not amount to gross negligence, wanton conduct or intentional wrongdoing; and
- (3) The acts or omissions did not occur while the volunteer "was operating or responsible for the operation of a motor vehicle."¹⁸²

Directors and officers are protected under North Carolina's Nonprofit Corporation Act, which provides that they are 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 their service, except where the person:

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- (1) Is compensated for services beyond reimbursement of expenses;
- (2) Was not acting within the scope of official duties;
- (3) Was not acting in good faith;
- (4) Committed gross negligence or willful or wanton misconduct that resulted in damage or injury;
- (5) Derived an improper person financial benefit from the transaction;
- (6) Incurred liability from the operation of a motor vehicle; or
- (7) Is a defendant in an action relating to certain improper uses of corporate assets.¹⁸³

North Dakota

North Dakota's grant of immunity to volunteers who provide services or perform duties on behalf of a nonprofit organization is simply stated. A volunteer is immune from civil liability for any act or omission if: the volunteer "was acting in good faith, in the exercise of reasonable and ordinary care, and in the scope of [the volunteer's] duties" for the organization; the act or omission did not constitute willful misconduct or gross negligence; and the damage was not caused by the negligent operation of a motor vehicle.¹⁸⁴

North Dakota also provides immunity to volunteer athletic coaches and other officials. This provision is very similar to New Jersey's except that North Dakota requires that: the volunteer be "acting in good faith, in the exercise of reasonable and ordinary care, and in the scope of the person's duties for the sports team"; and that the act or omission not constitute willful misconduct or gross negligence.¹⁸⁵

In addition, North Dakota provides protection to directors, officers or trustees of nonprofit organizations that meet the criteria of section 501(c)(3), (4), (5), (6), (7), (10) and (19) of the Internal Revenue Code. Any such person is immune from civil liability for damages resulting from an act or omission if: the person was acting in good faith and within the scope of official duties; the act or omission did not constitute willful misconduct or gross negligence; and the person did not receive or expect to receive reimbursement for or payment of expenses in excess of \$2,000 per year for expenses actually incurred for services and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services.¹⁸⁶

In distinct contrast with other states' statutes, the North Dakota provisions contain no definitions of terms used.

Ohio

The scope of Ohio's volunteer protection law is expanded by the definitions contained therein. For example: "volunteer" means an officer, trustee or other person performing uncompensated services for a charitable organization. "Charitable organization" means any

charitable nonprofit organization pursuant to Chapter 1702 or any charitable association, group, institution, or society that is not organized and not operated for profit and includes entities "organized and operated for education-related purposes."¹⁸⁷ The Ohio statute provides protection in three instances. First, reminiscent of Maryland's law, it provides for vicarious liability only for actions that the volunteer approved, authorized, participated in or ratified.¹⁸⁸ Second, a volunteer is not liable in a civil action for damages for injury, death or loss to persons or property as a result of the volunteer's own actions or omissions in connection with any supervisory or corporate services performed for the charitable organization, unless: the volunteer approved, authorized, participated in or ratified the act or omission of another; or an act or omission of the volunteer constituted negligence, willful or wanton misconduct or intentionally tortious conduct.¹⁸⁹ Finally, with respect to nonsupervisory or noncorporate services performed for the charitable organization, a volunteer is not liable unless: the volunteer approved, authorized, participated in or ratified; or the act or omission constitutes willful or wanton misconduct or intentionally tortious conduct.¹⁹⁰

Pennsylvania

Pennsylvania law establishes a negligence standard to determine liability of volunteers. The language is similar to that of Illinois's and New Mexico's provisions relating to sports programs. The law provides that any person who serves, without compensation, as a volunteer for any nonprofit organization under section 501(c)(3) or (4) of the Internal Revenue Code, or for a Commonwealth or local government agency conducting or sponsoring a public service program or project, is not liable for civil damages as a result of acts or omissions in rendering services unless: the person's conduct falls substantially below the standards generally accepted or practiced in like circumstances by similar persons rendering such service; and it is shown that the person committed or omitted an act that the person was under a recognized duty to another to do, knowing or having reason to know that the conduct created a substantial risk of actual harm to the person or property of another. Under this standard, proof that the conduct fell below the ordinary standard of care is insufficient to impose liability.¹⁹¹ This protection is inapplicable to conduct relating to the transportation of participants in a public service program or project.

Other provisions apply this standard for determining liability to: uncompensated directors, officers or trustees of nonprofit organization under section 501(c)(3) of the Internal Revenue Code;¹⁹² and any person voluntarily serving as a manager, coach, athletic instructor, umpire or referee in a sports program of a nonprofit association or a nonprofit association, or any officer or employee thereof, conducting or sponsoring a sports program.¹⁹³

The latter provision relating to sports programs specifically excludes conduct relating to: the transportation of participants in a sports program or others to or from a game, event or practice; or the care and maintenance of real estate unrelated to the practice or playing areas that is owned, possessed or controlled by the person or nonprofit association. Furthermore, for purposes of this provision, nonprofit association is broadly defined to mean any entity that is organized, or authorized to do business, as a nonprofit corporation or a nonprofit unincorporated association under the state law, including but not limited to youth or athletic associations, volunteer fire, ambulance, religious, charitable, fraternal, veterans, civic, county fair, or agricultural associations, or any separately chartered auxiliary of the foregoing, if

organized and operated on a nonprofit basis.¹⁹⁴ The definition of sports program is the same as that found in the Massachusetts statute.¹⁹⁵

Rhode Island

Like Montana's volunteer protection law, Rhode Island's is fairly succinct. It provides that an uncompensated director, officer, trustee or volunteer of a nonprofit corporation, an unincorporated nonprofit organization or an unincorporated public charitable institution qualified as tax exempt under section 501(c) of the Internal Revenue Code is not liable to any person based solely on conduct in the execution of office or duty, unless the conduct, with respect to the person asserting liability, constituted malicious, willful or wanton misconduct or involved ownership or operation of a motor vehicle.¹⁹⁶ For this purpose, 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. Interestingly, the section also includes a unique provision that directors, officers, agents, servants, employees and volunteers of a corporation shall not be 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 the person has signed a written waiver of liability of the corporation and acknowledgement of assumption of risk.

Rhode Island law also grants immunity from civil damages to:

- (1) Persons rendering service as, or assisting, a manager, coach, instructor, umpire, referee or official in certain interscholastic or intramural sports programs;
- (2) Any uncompensated person voluntarily serving as or assisting a manager, coach, instructor, umpire, referee or official in a youth sports program organized and conducted by or under the auspices of a nonprofit corporation; or
- (3) Directors, officers, trustees or employees of any nonprofit organization, authorized to do business in the state, that organizes, conducts or sponsors a youth sports program.¹⁹⁷

This provision excludes damages caused as the result of negligent operation of a motor vehicle or acts or omissions committed in willful, wanton or reckless disregard for the safety of the participants in the program.

South Dakota

The protection provided to volunteers by South Dakota's law is similar in scope to the Model Act, except that immunity is deemed waived and may not be raised as an affirmative defense to the extent of any liability insurance coverage or participation in a risk sharing pool.¹⁹⁸ This waiver provision does not apply to a volunteer serving as a director, officer or trustee.¹⁹⁹ Another provision grants immunity to a director, officer or trustee serving without compensation for damages resulting from the exercise of judgment or discretion while in official capacity, unless willful or wanton misconduct is involved.²⁰⁰

Texas

The Texas Charitable Immunity and Liability Act offers several different levels of protection for charitable organizations, their volunteers and employees.²⁰¹ The term volunteer is defined to mean a person rendering service for or on behalf of a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred and includes a person serving as a director, officer, trustee or direct service volunteer.²⁰² A direct service volunteer of a charitable organization is immune from civil liability in any action on the basis of any act or omission of the volunteer resulting in death, damage or injury, if the volunteer was acting in good faith and within the course and scope of the volunteer's functions and duties within the organization.²⁰³ There is no similar good faith requirement for a volunteer serving as a director, officer or trustee of a charitable organization. Such a volunteer is immune from civil liability in any action on the basis of any act or omission resulting in death, damage or injury, if the volunteer was acting within the course and scope of the volunteer's functions and duties as a director, officer or trustee.²⁰⁴ A volunteer under this Act is liable for death, damage or injury to a person or property proximately caused by any act or omission involving the operation or use of any motor-driven equipment, including an airplane, to the extent insurance is required under state law and to the extent of any existing, applicable insurance coverage.²⁰⁵

The Act also imposes a limit on money damages in any civil action brought against a nonhospital charitable organization²⁰⁶ or an employee thereof,²⁰⁷ 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 or destruction of property. These limits apply, however, only if the charitable organization has applicable liability insurance coverage in at least the maximum amount recoverable under the Act.²⁰⁸

There are a number of instances in which the Texas Act is inapplicable. For example, the Act does not:

- (1) Apply to acts or omissions that are intentional, willfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others;
- (2) Limit or modify the duties or liabilities of a director or officer to the organization or its members and shareholders;
- (3) Limit the liability of an organization or its employees or volunteers if the organization was formed substantially to limit its liability; or
- (4) Apply to governmental units, private primary or secondary schools, alumni associations or other related on-campus organizations, and organizations formed to dispose, remove or store hazardous waste, radio active waste, solid waste, garbage or sludge.²⁰⁹

The definition of a charitable organization under the Texas Act is extremely broad. It means:

- (1) Any nonprofit corporation, foundation, community chest, or fund satisfying criteria of section 501(c)(3) or (4) of the Internal Revenue Code and organized and operated exclusively for charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational or educational

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purposes, or for the promotion of social welfare, by being primarily engaged in promoting the common good and general welfare of the people in the community;

- (2) Any bona fide organization that: is organized and operated exclusively for, and dedicates its assets to achieving, one of the foregoing purposes; receives annually more than one-third of its support from private or public gifts, grants, contributions or membership fees; does not engage in activities that are not in furtherance of its stated purpose or, directly or indirectly, in political activities; and does not allow any part of its net assets, on dissolution of the organization, to inure to the benefit of any group, shareholder or individual; or
- (3) A homeowners' association as defined in section 528 of the Internal Revenue Code.²¹⁰

Utah

Utah's law granting liability protection for volunteers presents yet another variation. A volunteer providing services for a nonprofit organization is immune from legal liability and incurs no 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 such services if: the volunteer was acting in good faith and reasonably believed the volunteer was acting within the scope of the volunteer's official functions and duties; and the damage or injury was not caused by an intentional or knowing act by the volunteer that constitutes illegal, wilful or wanton misconduct.²¹¹

The Utah law is particularly distinct in denying protection in situations in which the nonprofit organization has failed 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.²¹² A financially secure source of recovery means that, at the time of the incident, a nonprofit organization: has an insurance policy in effect that covers the activities of the volunteer and has a limit of not less than the limits established under the Utah Governmental Immunity Act; or has established a qualified trust with a value not less than the combined limits for property damage and single occurrence liability established under the Utah Governmental Immunity Act.²¹³ Other instances in which immunity does not apply include: when injuries are the result of a volunteer's operation of a motor vehicle, vessel, aircraft or other vehicle for which a pilot or operator's license is required; or when suit is brought by an authorized state or local official to enforce a federal, state or local law.²¹⁴

For purposes of the foregoing provisions, the term volunteer means an individual, including a director, officer, trustee or direct service volunteer, who: performs services for any organization, other than a public entity, described in section 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code; and does not receive anything of value from the organization for those services, except payment of expenses actually incurred or compensation or honoraria totaling less than \$300 per calendar year.²¹⁵ The phrase damage or injury specifically includes physical, nonphysical, economic and noneconomic damage.²¹⁶

Utah law also protects volunteers who perform services under the supervision of, or on behalf of, public entities and who are uncompensated, except for payment solely for

subsistence, travel, or other expenses incurred in performance of service.²¹⁷ Such persons are immune from liability with respect to any decisions or actions, other than in connection with the operation of a motor vehicle, taken during the course of those services. Excluded are actions or decisions that are grossly negligent, not made in good faith or made maliciously.²¹⁸

Finally, Utah law protects a trustee or officer of a nonprofit corporation from personal liability to the corporation or its members for civil claims arising from acts or omissions made in the performance of official duties, unless the acts or omissions are the result of intentional misconduct.²¹⁹

Wisconsin

The language under Wisconsin's volunteer protection law is also distinct. 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 act or omission constitutes:

- (1) A violation of law, unless the volunteer had reasonable cause to believe the conduct was lawful or had no reasonable cause to believe it was unlawful;
- (2) Willful misconduct;
- (3) An act or omission from which the volunteer received compensation or anything of substantial value in lieu of compensation; or
- (4) An act or omission within the scope of the volunteer's duties, if the volunteer is a director or officer of the corporation.²²⁰

This provision does not apply in a number of instances, including any of the following:

- (1) Civil or criminal proceedings brought by or on behalf of any governmental unit, authority or agency;
- (2) Proceedings brought by any person for a violation of state or federal law pursuant to statutory private right of action;
- (3) Claims arising from the negligent operation by the volunteer of an automobile, truck, train, airplane, or other vehicle;
- (4) Proceedings against a volunteer who is licensed, certified, permitted or registered under state law and is based upon an act or omission within the volunteer's scope of practice thereunder; or
- (5) Proceedings based upon a cause of action for which the volunteer is otherwise immune under state law.²²¹

The term volunteer means any natural person, other than an employee, who provides services without compensation to or on behalf of a nonstock corporation.

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Another Wisconsin provision grants additional protection to directors or officers of nonstock corporations. A director or officer is not liable to the corporation, its members or creditors or any person asserting rights on behalf thereof, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from the person's status as a director or officer, unless the breach or failure to perform constitutes: a willful failure to deal fairly with the corporation or its members in connection with a matter in which the director or officer has a material conflict of interest; a violation of criminal law, unless the officer or director had reasonable cause to believe the conduct was lawful or had no reasonable cause to believe it was unlawful; a transaction from which the officer or director derived an improper personal benefit; or willful misconduct.²²²

The protection under this provision does not apply to a director who votes in favor of making a loan to an officer or director or to either: a civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency; or a proceeding brought by any person for a violation of state or federal law pursuant to a statutory private right of action, unless the proceeding is brought by or on behalf of a governmental unit, authority or agency in its capacity as a private party or contractor.

Wyoming

The immunity provided to volunteers under Wyoming law is patterned after the model Act, with some exceptions.²²³ The primary differences are that: there is no good faith requirement; gross negligence is included as a basis for exclusion; damages caused as a result of the negligent operation of a motor vehicle is not limited to the amount of insurance coverage; compensation excludes any "incidental personal privileges" received by volunteers for their services, as well as reimbursement of actual and necessary expenses; and the scope is limited to volunteers of nonprofit organizations exempt from federal income taxation pursuant to section 501(c) of the Internal Revenue Code.

In addition, members of any governmental board, agency, council, commission, or governing body are not individually liable for official actions. This provision excludes intentional torts or illegal acts.²²⁴

PART II: STATES THAT LIMIT PROTECTION TO A NARROW GROUP OF VOLUNTEERS

As noted previously, some states limit the protection of volunteers to a narrow group. For the most part, these states afford protection only to directors, officers and, in some cases, trustees of certain types of entities. These states' laws are discussed below.

Alaska

Alaska law provides for limited liability for a variety of directors, officers, committee and commission members and, in limited instances, employees. 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 any of the following:

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- (1) A director or officer of a nonprofit corporation meeting the criteria of section 501 (c)(3) or (4) of the Internal Revenue Code;
- (2) A director of a public or nonprofit hospital;
- (3) A member of a citizen's advisory board of any hospital;
- (4) A member of a school board;
- (5) A member of the governing body, a commission, or citizen's advisory committee of a municipality of the state; or
- (6) A director, officer or employee of a regional development organization.²²⁵

The limitation on liability does not apply if the act or omission constitutes gross negligence. The statute stipulates, however, that the duties and liabilities of a director or officer to the corporation itself or to its shareholders may not be limited or modified.²²⁶

California

California law provides immunity under three distinct provisions to officers and directors of various types of entities. The first provision protects uncompensated directors and officers of nonprofit corporations satisfying the criteria of section 501(c)(3) of the Internal Revenue Code or organized to provide religious, charitable, literary, educational, scientific, social, or other forms of public service.²²⁷ This provision disallows a cause of action for monetary damages based upon any negligent act or omission occurring within the scope of the director's or officer's duties, in good faith, in a manner believed to be in the best interest of the corporation, and in the exercise of policymaking judgment.²²⁸ The following are excluded from protection:

- (1) Intentional, wanton or reckless acts;
- (2) Gross negligence;
- (3) Actions based upon fraud, oppression or malice;
- (4) Certain self-dealing transactions;
- (5) Certain conflicts of interest;
- (6) Certain improper uses of corporate assets;
- (7) Actions by a beneficiary of a charitable trust against a trustee;
- (8) Proceedings initiated by the attorney general; and
- (9) Certain illegal restraints on competition.

Furthermore, if the claim against the director or officer also may be made directly against the nonprofit corporation, the immunity provided in this section applies only if: a. general liability

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policy is in force both at the time of injury and at the time the claim is made against the corporation, and the coverage is in an amount of at least \$500,000 if the corporation's annual budget is less than \$50,000 and in amount of at least \$1,000,000 if the corporation's annual budget equals or exceeds \$50,000.²²⁹

Two other provisions of California law afford similar protection to volunteer directors and volunteer executive officers of nonprofit public benefit corporations²³⁰ and of nonprofit religious corporations²³¹ against third parties for monetary damages. These provisions apply only if damages caused by an act or omission are covered pursuant to a liability insurance policy (in the form of either general liability, director's or officer's liability, or personal policy), or if the board of directors and the individual director or officer made reasonable good faith efforts to obtain available liability insurance.²³² For purposes of these latter two sections, "compensation" does not include payment of per diem, mileage, or other reimbursement expenses.²³³

Connecticut

Connecticut provides no immunity for volunteers generally, but does grant immunity to persons serving as uncompensated directors, officers or trustees of nonprofit organizations, qualified as a tax-exempt organization under section 501(c) of the Internal Revenue Code, from civil liability for damage or injury resulting from any act, error or omission made in the exercise of the person's policy or decision-making responsibilities, if the person was acting in good faith and within the scope of the person's official functions and duties. Damage or injury caused by reckless, willful or wanton misconduct is excepted.²³⁴ Similar protections apply to any person serving in an uncompensated capacity as a member of any board, commission, committee or agency of a municipality; provided the person was acting in good faith, within the scope of the person's official functions and duties, and was not acting in violation of any state, municipal or professional code of ethics regulating conduct or in violation of provisions dealing with preparation of explanatory texts of local proposals and questions or with access to public records and meetings.²³⁵

Hawaii

The exception to liability for officers and directors under Hawaii's law is straightforward. The law provides that any director or officer who serves without remuneration, or without expectation of remuneration, shall not be liable for damage, injury, or loss caused by the person's performance of, or failure to perform, duties of the position to which the person was appointed, unless the person was grossly negligent in the performance or failure to perform the duties.²³⁶

In addition, Hawaii law provides limited immunity to another very narrow segment of volunteers--those who serve as volunteers for state agencies. Volunteers of state agencies are deemed employees of the State for purposes of the State Tort Liability Act, when acting for an agency in their capacity as volunteers.²³⁷ Accordingly, the State may be liable for the negligent acts of its volunteers and judgment against the State would bar any action against an employee. Intentional torts are excepted. This protection does not extend to volunteers for county agencies.

Nebraska

Nebraska law provides immunity from civil liability to any person serving as a director, officer or trustee of a not-for-profit organization and who is not compensated for such services, on a salary or a prorated equivalent basis, for any act or omission that results in damage or injury if the person was acting within the scope of official functions and duties as a director, officer or trustee, unless the damage or injury was caused by the willful or wanton act or omission of the person.²³⁸ Excluded from the grant of immunity are any acts or omissions of a director, officer or trustee resulting in damage or injury caused by the director, officer or trustee either: during the operation of any motor vehicle, airplane, or boat; or while impaired by alcohol or any controlled substance under state law.²³⁹ The immunity granted has no effect upon the duties that a director, officer or trustee of a not-for-profit organization has to that organization.²⁴⁰

For purposes of this provision, compensation does not include payment of actual expenses incurred in attending meetings or in executing office, receipt of meals at meetings, or receipt of gifts not exceeding a total value of \$100 in any twelve consecutive months.²⁴¹ A not-for-profit organization is defined as any not-for-profit entity exempt from federal income taxation pursuant to section 501(a) of the Internal Revenue Code and listed as an exempt organization in section 501(c)(2) through (8), (11), or (19) of the Internal Revenue Code and engaged in one or more activities within the state in furtherance of a purpose for which it is organized.²⁴²

New York

In a similar vein, New York law provides that no person serving without compensation as a director, officer or trustee of a corporation, association, organization, or trust described in section 501(c)(3) of the Internal Revenue Code shall be liable to any person, other than the organization, based solely on the person's conduct in the execution of office, unless the conduct, with respect to the person asserting liability, constituted gross negligence or was intended to cause the harm that resulted.²⁴³

Oklahoma

Oklahoma law has two provisions offering protection to directors of nonprofit corporations holding a valid exemption from federal taxation pursuant to section 501(a) of the Internal Revenue Code and listed as an exempt organization in section 501(c). The first states that no director shall be held personally liable for damages resulting from any negligent act or omission of an employee or another director of the corporation. This provision does not apply: to intentional torts or grossly negligent acts or omissions personal to the director; or if the corporation transfers assets to avoid judgment.²⁴⁴ The second grants a director immunity from personal liability to the corporation or its members for monetary damages for breach of fiduciary duty as a director, but not for: breach of duty of loyalty; acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; or any transaction from which the director derives an improper personal benefit.²⁴⁵

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Oregon

Oregon's law limiting liability of officers and director is simply put. It provides that the civil liability of a qualified director for the performance or nonperformance of the director's duties is limited to gross negligence or intentional misconduct.²⁴⁶ The statute applies to a wide range of persons serving without compensation, except reimbursement for expenses or a stipend to compensate for "average expenses," as an officer, director or member of an executive board for the purpose of setting policy and controlling or otherwise overseeing the activities or functional responsibilities of any of the following:

- (1) A governmental board or commission;
- (2) A nonprofit corporation, unincorporated association or nonprofit cooperative corporation that has as its primary purpose religion, charity, benevolence, providing free goods and services to the general public, education, scientific activity, medical or hospital service at reduced costs, or engaging in activities listed in section 501 of the Internal Revenue Code;
- (3) An organization that acts as an advocate for a particular trade or industry or members of the business community in a particular municipality or area of the state; or
- (4) Certain nonprofit homeowners' associations.²⁴⁷

South Carolina

South Carolina law states simply that directors, trustees or members of governing bodies of nonprofit organizations exempt from taxation under section 501(c)(3), (6) or (12) of the Internal Revenue Code or of certain electric cooperatives organized under state law are immune from suit arising from the conduct of the affairs of the organization, unless conduct amounts to willful, wanton or gross negligence.²⁴⁸

Tennessee

Tennessee law provides that directors, trustees or members of governing bodies, regardless of whether compensated, of certain nonprofit organizations exempt from taxation under section 115 or section 501(c)(3), (4), (5), (6) or (13) of the Internal Revenue Code, public broadcast stations or telephone or electric cooperatives are immune from suit arising from the conduct of the affairs of the organization, unless the conduct amounts to willful, wanton or gross negligence.²⁴⁹ Similar immunity is granted to all members of boards, commissions, agencies, authorities, and other governing bodies of any governmental entity, created by public or private act, and regardless of whether compensated.²⁵⁰

Tennessee also offers protection to sports officials similar to Nevada, although the definition of sports official is more nearly identical to Mississippi's.²⁵¹

Vermont

Vermont law states that an uncompensated director, officer or trustee of a nonprofit organization qualified as tax-exempt under section 501(c) of the Internal Revenue Code shall not be held personally liable for damages resulting from any act or omission:

- (1) Within the scope of the person's official functions or duties that is done in good faith, unless the act or omission constitutes an intentional tort or gross negligence or the damages result from the operation of a motor vehicle;
- (2) Of an employee of the nonprofit organization; or
- (3) Of another director, officer or trustee.²⁵²

Virginia

Under Virginia law, an uncompensated officer or director who serves a corporation exempt from taxation under section 501(c) of the Internal Revenue Code shall not be liable for any damages, unless the officer or director engaged in willful misconduct or a knowing violation of criminal law.²⁵³ In addition, a separate provision grants immunity to uncompensated officers, directors or trustees of organizations exempt from income taxation under section 501(c) or 528 of the Internal Revenue Code from civil liability for acts taken in their official capacities. Immunity does not apply if the officer, director or trustee engaged in willful misconduct or a knowing violation of criminal law or if liability derives from the operation of a motor vehicle or from the violation of a fiduciary obligation imposed on developers relating to control of condominium associations.²⁵⁴ For purposes of this section, compensation excludes payment for per diem and expenses.

Washington

The liability protection provided under Washington law is succinct. Members of the board of directors or an officer of any nonprofit corporation are not individually liable for any discretionary decision or failure to make a discretionary decision within the person's official capacity as a director or officer unless the decision or failure to decide constitutes gross negligence.²⁵⁵ The duties or liabilities of a director or officer of a corporation to the corporation or its members are in no way limited or modified by this limited grant of immunity.²⁵⁶

West Virginia

West Virginia law states that a qualified director shall not be 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, unless the director: is found to be grossly negligent in the performance of duties; or causes damage or injury to another person through the operation of a motor vehicle.²⁵⁷

This provision has fairly wide application, applying to any person serving without compensation, (except for reimbursement for expenses, incidental meals, lodging or other

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accommodations or payment of statutory per diem), as an officer or member or director of a board, commission, committee, agency or other nonprofit organization that is a volunteer organization or entity.²⁵⁸ Likewise, the definition of "volunteer organization or entity" is all-encompassing. It is defined to mean:

- (1) The state or any political subdivisions;
- (2) Nonprofit corporations defined by statute or other nonprofit organizations that provide or promote religion, charity, music, art or other literary or cultural activities, benevolence, child placement or child care, indigent or elderly care, education, scientific activity, community or economic development, recreation, maintenance and repair of community owned real property or of real property maintained by a homeowners' association, legal services for the indigent, conservation of natural resources or animal habitat, or firefighting and other public safety services; and
- (3) Any organization that acts as an advocate for its members who are members of a particular trade or industry, the business community or armed services veterans associations.²⁵⁹

A separate provision provides immunity from liability for an employee, including an officer, agent, servant, elected or appointed official, regardless of whether compensated and whether full-time, of a political subdivision. Immunity does not apply if liability is expressly imposed by statute upon the employee or if the employee's acts or omissions are: manifestly outside the scope of employment or official responsibilities; with a malicious purpose; in bad faith; or in a wanton or reckless manner.²⁶⁰

In addition to the outright grant of immunity by statute for officers and directors a number of states, also have a provision that allows nonprofit corporations to include in their articles of incorporation a provision eliminating or limiting the personal liability of officers and directors to the corporation or its members for monetary damages for breach of fiduciary duty as an officer or director, notwithstanding any law imposing such liability. Typically, the provision states that liability may not be limited or eliminated for any of the following: breach of duty of loyalty; for acts or omissions not in good faith; intentional misconduct or a knowing violation of law; any transaction from which the officer or director derives an improper personal benefit; or any act occurring prior to the section's effective date.²⁶¹

PART III: OTHER LIMITATIONS ON LIABILITY

A number of states have specific laws in addition to those discussed in Parts I and II, affording immunity from liability in narrowly drawn situations. Although an extended discussion of these specific immunity laws are beyond the general scope of this study, a few examples are offered as illustration of the undoubtedly multitude of others that exist to encourage uncompensated individuals to engage in activities deemed worthy and desired. For example, most states have some type of good samaritan law that covers such situations as medical personnel providing emergency assistance and donation of food to the poor or indigent. Another example is a provision of the Maryland Code that deals with volunteer health care providers and physicians who render health care services voluntarily and without compensation to persons seeking health care at a charitable organization or through a charitable organization chartered to provide health care services to the homeless or indigent.

Such persons are not liable for damages in excess of any applicable limit of insurance coverage, unless the act or omission giving rise to suit constitutes willful or wanton misconduct, gross negligence, or intentionally tortious conduct.²⁶²

Although these laws are rather common, there are others that are more unusual. A few states protect volunteers involved with rodeos or equine activities.²⁶³ Indiana offers immunity for negligent acts or omissions to volunteers contributing personal time to the Special Olympics.²⁶⁴ Louisiana provides protection to approved volunteers working in elementary or secondary schools.²⁶⁵ New Hampshire law grants immunity to those volunteers who assist the police standard and training council in its training program.²⁶⁶ New Jersey affords immunity to trustees of free public or regional libraries or the county library commissions.²⁶⁷ Oregon protects providers of volunteer transportation services for the disabled or elderly.²⁶⁸ Wisconsin offers immunity, identical that for volunteers generally, to volunteers who provide services, without compensation, to or on behalf of the Roman Catholic Church.²⁶⁹

Endnotes

1. Nonprofit Risk Management Center, State Liability Laws for Charitable Organizations and Volunteers (Washington, D.C.: 1995) at 1 (hereinafter cited as State Liability Laws).
2. See Part III for discussion of some of the more unusual provisions.
3. Id.
4. Ala. Code §6-5-336.
5. Id. at Ala. Code §6-5-336(a).
6. See Chapter 2 and Appendix B.
7. Id. at §6-5-336(c)(4).
8. Includes officers, directors, trustees, or members, of the governing body of a qualified entity. Id. at §10-11-2.
9. Id. at §10-11-3.
10. Id. at §10-11-2.
11. Id. at §10-11-3.
12. Id. at §10-11-4.
13. Id. at §10-11-3.
14. Id. at §10-11-2. Officers and directors of any board, authority or commission dealing with pari-mutuel betting, gambling or games of chance are specifically excluded from this provision.
15. Ariz. Rev. Stat. Ann. §12-981(6).

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16. Id. at §12-981(4) (Means a corporation exempt from taxation pursuant to §501(a) of the Internal Revenue Code).
17. Id. at §12-981(5) (Means an organization exempt from taxation pursuant to §501(c) of the Internal Revenue Code).
18. Id. at §12-981(1) (Defined as "a county, municipality, school district, chartered unit or subdivision, a governmental unit or other special district or similar entity or any association, authority, board, commission, division, office, officer, task force or other agency of {the} state).
19. Id. at §12-981(3).
20. Id. at §12-982(A). Gross negligence is defined as "a knowing or reckless indifference to the health or safety of others." Id. at §12-981(2).
21. As defined in Ariz. Rev. Stat. Ann. §28-1170
22. Id. at §12-982(b).
23. As prescribed by §501(c)(3) of the Internal Revenue Code and §43-1201 of the Ariz. Rev. Stat. Ann.
24. Ariz. Rev. Stat. Ann. at §12-983. The Arizona legislature extended the immunity from civil liability to entities during its 1994 legislative session.
25. See the 1993 version of Ariz. Rev. Stat. Ann. §12-982(B).
26. Id. at §10-1017(D).
27. Id. at §10-1017(D).
28. Ark. Stat. Ann. §16-6-105.
29. These include, but are not limited to legal, medical, engineering, and accounting services. See id. at §16-6-105(4) for other special rules relating to professional services.
30. Id. at §16-6-104(a).
31. Id. at §16-6-104.
32. Id. at §16-6-103(1).
33. Id. at §16-6-103(2).
34. Id. at §16-6-103(3).
35. Id. at §16-120-102(a).
36. Id. at §16-120-103(a) & (b).
37. Id. at §16-120-103(c).

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38. Id. at §16-120-104.
39. Id. at §16-120-102(b).
40. Colo. Rev. Stat. Ann. §13-21-115.5(3). These individuals are protected from civil liability under under Colo. Rev. Stat. Ann. §§ 13-21-115.7 and 13-21-116. See notes 45-48 infra and accompanying text.
41. Id. at §13-21-115.5(4)(a).
42. Id. at §13-21-115.5(5). This provision does not limited the right of a plaintiff to recover from a policy of uninsured or underinsurance motorist coverage available to the plaintiff.
43. Id. at Ann. §13-21-115.5(4)(b).
44. Id. at §13-21-115.5(3).
45. The following are not considered compensation: payment of actual expenses incurred in attending meetings or in carrying out official duties; receipt of meals at meetings; or receipt of gifts up to but not exceeding a total value of \$1,000 in any 12 consecutive months. Id. at §13-21-115.7(4).
46. Id. at §13-21-115.7(2).
47. Id. at §13-21-115.7(5).
48. Id. at §13-21-116(2)(b) (specifically includes the board of directors of a public hospital certified as required by state law).
49. Id. at §13-21-116(2.5)(a). "Young persons" means persons 18 years of age or younger. Id. at §13-21-116(2.5)(b). "Person" means an individual, corporation, partnership, or association. Id. at §13-21-116(4).
50. Id. at tit. 10, §8133(b).
51. Id. at tit. 10, §8133(d).
52. Id. at tit. 10, §8133(e).
53. Del. Code Ann. tit. 10, §8133(a)(1).
54. Id. at tit. 10, §8133(a)(2).
55. Id. at tit. 10, §8133(a)(5).
56. Id. at tit. 16, §6836.
57. Id. at tit. 16, §6835(3).
58. Id. at tit. 16, §6835(2).
59. Id. at tit. 16, §6835(4).
60. Id. at tit. 10, §4010(1).

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61. Id. at tit. 11, §4011.
62. D.C. Code Ann. §29-599.15 (notes).
63. Id. at §29-599.15(c).
64. Id. at §29-599.15(b).
65. Id. at §29-599.15(d).
66. Id. at §29-599.15(a).
67. Id. at §29-599.16(b).
68. Id. at §29-599.16(a).
69. Id. at §29-599.16(d).
70. Id. at 29-599.16(c).
71. Id. at §29-599.16(e).
72. Fla. Stat. Ann. §768.1355(1).
73. Id. at §768.1355(1).
74. Id. at §768.1355(2).
75. Id. at §617.0834(1). Director means "a person who serves as a director, trustee or member of the governing board of an organization." Id. at §617.0834(2)(b). Officer means "a person who serves as an officer without compensation except reimbursement for actual expenses incurred or to be incurred." Id. at §617.0834(2)(c).
76. Id. at §617.0834(1). For purposes of this provision, the term recklessness means "the acting, or omission to act, in conscious disregard of a risk:
 1. Known, or so obvious that it should have been known, to the officer or director; and
 2. Known to the officer or director, or so obvious it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission." Id. at §617.0834(2)(a).
77. Ga. Code Ann. §51-1-20(a) (compensation does not include reimbursement for "reasonable expenses").
78. Id. at §51-1-20(a). The immunity granted herein is supplemental to any existing immunity. Id. at §51-1-20(c).
79. Id. at §51-1-20.1(b). Applies to any cause of action arising on or after July 1, 1988. Id. at §51-1-20.1(d).
80. Id. at §51-1-20.1(b).

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81. Id. at §51-1-20.1(c).
82. Id. at §51-1-20.1(a)(2).
83. Id. at §51-1-20.1(a)(3).
84. Id. at §51-1-20.1(a)(4).
85. Id. at §51-1-20.1(a)(5). "Compensation does not include any gift, any reimbursement for any reasonable expense incurred for the benefit of a nonprofit athletic program, or, in the case of an umpire or referee, a modest honorarium." Id. at §51-1-20.1(a)(1).
86. As these terms are defined in Idaho Code §6-1601(6).
87. Id. at §6-1605(1).
88. Id. at §6-1605(1)(b).
89. See id. at §6-1605(1)(a) & (c) - (g).
90. Ill. Ann. Stat. ch. 805, §105/108.70(a) (excludes reimbursement of actual expenses).
91. Id. at ch. 805, §105/108.70(b).
92. Id. at ch. 805, §105/108.70(c).
93. Excludes any reimbursement for any reasonable expense incurred or, solely in the case of an umpire or referee, a modest honorarium." Id. at §80.1.2(d).
94. Id. at §80.1.1(a).
95. Id. at §80.1.1(b).
96. Id. at §80.1.2(d).
97. Id.
98. In. Code Ann. §§34-4-11.5-1 to -3. Also see note 264 infra and accompanying text.
99. See id. at §34-4-11.8-1 to -7.
100. Id. at §34-4-11.8-1.
101. Id. at §34-4-11.8-7.
102. Iowa Code Ann. §613.19.
103. Id. at §504.101.
104. Id. at §669.24

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105. Id. at §670.2.
106. Defined as exempt from federal income taxation pursuant to Internal Revenue Code §501(c). Kan. Stat. Ann. §60-3601(a)(1).
107. Id. at §60-3601(b).
108. Id. at §60-3601(c).
109. Id. at §60-3601(d).
110. Id. at §60-3601(b).
111. Id. at §60-3606.
112. Kent. Rev. Stat. §411.200.
113. State Liability Laws, supra note 1, at 23, citing Kentucky OAG 91-89.
114. Kent. Rev. Stat. at §273.229.
115. Id. at §273.215.
116. La. Rev. Stat. Ann. §9:2792.3.
117. Id. at §2792.
118. Id. at §2792.1
119. Id. at §2792.4.
120. Id. at §2798 (allows receipt of small stipend or incidental expenses for volunteer services).
121. Maine Rev. Stat. §158-A.2.
122. Id. at §158-A.1A.
123. Md. Cts. & Jud. Pro. Code Ann. at §5-314(c).
124. Id. at §5-314(b).
125. Id. at §5-314(a)(11).
126. Id. at §5-314(a)(2).
127. Id. at §5-312(b).
128. Id. at §5-312(c).
129. Id. at §5-312(d).

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130. Id. at §5-312(a)(2)&(3).
131. Id. at §5-312(a)(3).
132. See id. at §5-313.
133. Id. at §5-313(a).
134. Mass. Ann. Laws ch. 231, §85W.
135. Id.
136. Id. Most statutes containing this exception use the broader term "motor vehicle" and some include other modes of transportation as well. Interestingly, a similar provision elsewhere in the Massachusetts statutes uses the term motor vehicle. See note 137 infra & accompanying text.
137. Id. at §85K.
138. Id.
139. Id.
140. Id. at §85V. Compensation excludes reimbursement for reasonable expense actually incurred or, in the case of umpires or referees, a modest honorarium.
141. Id.
142. Id.
143. [B]aseball, softball, football, basketball, soccer and other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act ... , the Amateur Athletic Union or the National Collegiate Athletic Association. It shall be limited to a program or that portion of a program that is organized for recreational purposes and whose activities are substantially for such purposes and which is primarily for participants who are eighteen years of age or younger whose nineteenth birthday occurs during the year of participation or the competitive season, whichever is longer; provided, however, that there shall be no age limitation for program operated for the physically handicapped or mentally retarded. Id.
144. See also discussion at note 261 infra & accompanying text.
145. Mich. Comp. Laws Ann. at §450.2209(e).
146. Id. at §450.2209(d). Applies to acts or omissions occurring on or after January 1, 1988.
147. Minn. Stat. Ann. §317A.257, subd. 1.
148. Laws of Minnesota 1994, Ch. 623, Art. 5, subd. 3.
149. Minn. Stat. Ann. at §317A.257, subd. 2.
150. Id. at §317A.257, subd. 3.

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151. 1994 Minn. Laws Chapter 623, Art. 3, Sec.2. In adopting the new provision, the Minnesota legislature repealed an earlier statute that excluded coverage for a physician or certified athletic trainer for a sports team or athletic event sponsored by a public or private educational institution. See id. at Art. 5, Sec.3.
152. Minn. Stat. Ann. at §604A.11, subd. 1(a); see 1994 Minn. Laws Chapter 623, Art. 3, Sec.2.
153. Id.
154. Minn. Stat. Ann. at §604A.11, subd. 1(c).
155. Id. at §604A.11, subd. 2.
156. Id.
157. See notes 28-34 supra & accompany text.
158. Miss. Code Ann. §95-9-1(3).
159. Id. at §§95-9-1(2).
160. Id. at §§95-9-1(1).
161. Id. Compensation is undefined in the Arkansas statute.
162. Id. at §95-9-3.
163. Id.
164. See id. at §§79-11-267 (director) & 70-11275 (officer).
165. See Mo. Ann. Stat. §537.118; see discussion in Chapter 2.
166. Id. at §537.117.
167. Mont. Code Ann. 27-1-732.
168. Defined to means a "nonprofit corporation, association or organization, or a licensed medical facility or facility for the dependent, but does not include a fire department, law enforcement agency or auxiliary thereof." Nev. Rev. Stat. §41.485(3)(b).
169. Id. at §41.485(1).
170. Id. at §41.630.
171. See id. at §§41.480 & 82.221.
172. See N.H. Rev. Stat. Ann. §508.17.
173. Id. The statute contains specified language which, if used, constitutes prima facie evidence of approval.
174. Id.

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175. Id. at §508.16.
176. See N.J. Stat. Ann. §2A:53A-7.1 (includes entity operating or maintaining a cemetery or place of burial or organized for the purpose of encouraging economic development in a municipality or county).
177. Id. at §2A:62A-6. Sports officials who are accredited by and serve a voluntary association, a conference under the jurisdiction of that association or a public entity are covered under §2A:62A-6.1 and sponsors of nonprofit sports teams are covered under §2A:62A-6.2
178. Id.
179. N.M. Stat. Ann. §41-12-1.
180. Id. at §53-8-25.3. Immunity is limited to action taken at official meetings or actions taken outside meetings if pursuant to §53-8-97(requiring written consent of all director or those entitled to vote).
181. N.C. Gen. Stat. 1-539.11.
182. Id. at 1-539.10. Does not affect standard of care requirement or liability of persons rendering professional services.
183. Id. at §55A-8-60.
184. N.D. Cent. Code §32-03-45. Specifically excludes volunteers with athletic programs who are covered under §32-03-46.
185. Id. at §32-03-46.
186. Id. at §32-03-44.
187. See Ohio Rev. Code Ann. §2305.38(A).
188. Id. at §2305.38(B). See note 124 supra & accompanying text.
189. Id. at §2305.38(C).
190. Id. at §2305.38(D).
191. Pa. Cons. Stat. Ann. §8332.4. (section has no effect on doctrine of assumption of risk or contributory fault).
192. Id. at §8332.2.
193. Id. at §8332.1.
194. Id.
195. See note 143 supra & accompanying text.
196. R.I. Gen. Laws §7-6-9.
197. Id. at §9-1-48 (modest honorarium allowed for umpires, referees or other game officials).

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198. S.D. Codified Laws Ann. §§47-23-28 to -32.
199. Id. at 47-23-32.
200. Id. at §47-23-2.1.
201. Tex. Civ. Prac. & Rem. Code Ann. §§84.0001 to .008.
202. Id. at §84.0003(2).
203. Id. at §84.004(b).
204. Id.
205. Id. at §84.004(c).
206. Id. at §84.006 (applies to acts or omissions by the entity or its employees or volunteers).
207. Id. at §84.005 (applies to acts or omissions by employee within course and scope of employment).
208. Id. at §84.007(9).
209. Id. at §84.007.
210. See id. at §§84.003 & 84.007(d).
211. Utah Code Ann. §78-19-2.
212. Id. Provision is not to be construed as placing a duty upon the organization to provide a financially secure source of recovery.
213. Id. at §78-19-1(2) (no bar to action by volunteer against an organization, its officers or others who intentionally or knowingly misrepresent that a financially secure source of recovery does or will exist when source does not or will not exist); see also §63-30-34.
214. Id. at §78-19-1(2).
215. See id. at §78-19-1(3) & (7).
216. Id. at §78-19-1(1).
217. See id. at §63-30b-1(2).
218. Id. at §63-30b-2.
219. Id. at §16-6-107(1).
220. Wis. Stat. Ann. §181.297.(2)
221. Id. at §181.297.(3) (exception not applicable to paragraphs 1 & 2 if proceeding brought by or on behalf of a governmental unit, authority or agency in its capacity as a contractor).

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- 222. Id. at §181.287.
- 223. Wyo. Stat. §1-23-107.
- 224. Id. at §1-23-107.
- 225. Alaska Stat. §09.65.170.
- 226. Alaska Stat. §09.65.170(b). Nevertheless, Alaska Stat. §10.20.151(d) allows the articles of incorporation to eliminate or limit the personal liability of a director to the corporation for monetary damages for the breach of fiduciary duty as a director. See note 261 infra and accompanying text.
- 227. Cal. Corp. Code §5047.5(d). Section does not apply if the corporation unlawfully discriminates. Id. at §5047.5(h).
- 228. Id. at §5047.5(b).
- 229. Id. at §5047.5(e). However, no cause of action shall be maintained against officer or director if a general liability policy is found to cover the damages.
- 230. Id. at §5239.
- 231. Id. at §9247.
- 232. See notes 230 & 231 supra.
- 233. Id.
- 234. Conn. Gen. Stat. Ann. §52-557m.
- 235. Id. at §52-557n(c).
- 236. Haw. Rev. Stat. §415B-158.5.
- 237. Id. at §90-4(4). See also id. at §§662-2 and 662-3.
- 238. Neb. Rev. Stat. §25-21, 191(1).
- 239. Id. at §25-21, 192.
- 240. Id. at §25-21, 191(2).
- 241. Id. at §25-21, 191(3).
- 242. Id. at §25-21, 190.
- 243. N.Y. Not-For-Profit Corp. Law §720(a). Excludes actions brought by the attorney general and, in the case of charitable trusts, an action brought against a trustee by a beneficiary of the trust.
- 244. Okla. Stat. Ann. tit. 18, §866.

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- 245. Id. at §867.
- 246. Or. Rev. Stat. §65.369.
- 247. Id.
- 248. S.C. Code Ann. §33-31-180 (does not appear to apply to religious corporation if doctrine governing its affairs are inconsistent).
- 249. Tenn. Code Ann. §48-58-601. Applies to cemetery corporations only upon maintenance of liability insurance.
- 250. Id. at §29-20-201.
- 251. Id. at §62-50-201 to 203.
- 252. Vt. Stat. Ann. tit. 12, §5781.
- 253. Va. Code Ann. §13.1-870.1 (includes an officer or director of a community association). This section also imposes limits on the liability of compensated officers or directors in proceedings against them for damages and in proceedings by or in the right of a corporation or brought by or on behalf of its members.
- 254. Id. at §8.01-220.1:1. This section also imposes limits on the liability of compensated officers, directors or trustees.
- 255. Wash. Rev. Code Ann. §4.24.264(1).
- 256. Id. at §4.24.264(2).
- 257. W. Va. Code §55-7C-3.
- 258. Id. at §55-7C-2(3).
- 259. Id. at §55-7C-2(4).
- 260. Id. at §29-12A-5(b).
- 261. See e.g., Alaska Stat. §10.20.151(d); Ariz. Rev. Stat. Ann. §10-1029(A)(8); Ky. Rev. Stat. Ann. §273.248 (conflicts of interests); Mass. Ann. Laws ch. 180, §3; Mich. Comp. Laws Ann. §450.2209(c) (includes gross negligence and certain improper uses of corporate assets); Mont. Code Ann §35-2-213 (includes unlawful distribution, loans to directors, and conflicts of interests); N.C. Gen. Stat. §55A-2-02; Or. Rev. Stat. §65.047 (includes unlawful distribution); 15 Pa. Cons. Stat. Ann. §5713 (provided for in bylaws); Wash. Rev. Code Ann. §24.03.025(4)(c).
- 262. Md. Cts. & Jud. Proc. Code §5-309.3. Accord, Del. Code Ann. tit. 10, §8135.
- 263. See e.g., Ala. Code §6-5-337; Mont. Code Ann. §21-1-733 (immunity for nonprofit organizations and employees for injuries suffered in rodeo and similar events).
- 264. See In. Code Ann. §34-4-11.6-1 to -4 (excludes damages relating the negligent operation of a motor vehicle).

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- 265. La Rev. Stat. Ann. §9:27298.2
- 266. N.H. Stats. §188-F:32C.
- 267. N.J. Stat. Ann. §2A:53A-7.3.
- 268. Or. Rev. Stat. §30.480.
- 269. Wis. Stat. Ann. §187.33. See notes 220 & 221 supra & accompanying text.

Chapter 4

VOLUNTEER LIABILITY ISSUES

In an attempt to obtain data relating to liability issues regarding volunteers, nonprofit organizations and government agencies and their employees that rely on the services of volunteers, the Bureau sent out separate surveys to nonprofit organizations that use volunteers and to the Attorney General and to the respective county attorney or corporations counsel. Part I of this chapter discusses the responses from the nonprofit organizations. Part II presents the responses from the State and counties.

PART I: SURVEY RESULTS OF NONPROFIT ORGANIZATIONS

A total of forty nonprofit organizations in Hawaii were identified for the Bureau's survey. A copy of the survey sent to these nonprofit organizations appears as Appendix C. An attempt was made to select a variety of nonprofit organizations, such as those focusing on health, the indigent, children, education, social services, social, civic activities, and sports. However, emphasis for the most part was on the larger or well-known nonprofit organizations to ensure sufficient reliance on volunteers. Twenty-seven of the nonprofit organizations contacted responded to the Bureau's survey. Of these, two indicated they do not use volunteers in any capacity. A summary of the responses of the remaining twenty-five nonprofit organizations follows. One caveat should be made. In some cases, the number of responses for a particular question do not add up to twenty-five because some questions were inapplicable to or were otherwise left unanswered by a respondent.

- (1) The number of employees per nonprofit organization broke down as follows:

<u>No. of Respondents</u>	<u>No. of Employees</u>
1	no response
1	none
2	between 1 and 10
5	between 11 and 20
4	between 21 and 30
2	between 31 and 40
1	between 41 and 50
4	between 50 and 100
2	between 100 and 200
2	between 200 and 300
1	between 3,000 and 4,000

- (2) The number of volunteers per nonprofit organization broke down as follows:

<u>No. of Respondents</u>	<u>No. of Volunteers</u>
2	one
3	between 5 and 20
1	up to 50
1	between 50 and 100

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<u>No. of Respondents</u>	<u>No. of Volunteers</u>
4	between 100 and 200
3	between 200 and 300
2	between 300 and 400
1	between 400 and 500
2	between 700 and 800
1	approximately 900
1	between 1,000 and 2,000
3	between 2,000 and 3,000
1	between 5,000 and 6,000

- (3) The nature and scope of activities performed by volunteers included the following: fundraising; serving as an officer or member of a board of directors; policy making; program planning; administrative duties, including developing and implementing policy and procedures; clerical duties, including copying and bulk mailings; telephoning; newsletter production, including editing and layout; sorting, stocking and distribution of donations; food services; hotline educators; special projects or special events; teaching skills or classes; one to one mentoring; contributing skills or sharing specific services; child care; financial assistance; driving or delivery; theater production and live theater activities, including box office and ushering; assistance to elderly; light patient care or respite; companionship; animal care and adoption counseling; animal-assisted therapy; general household chores, cleaning, and maintenance; staffing information desks, gift shops, book carts, libraries, classrooms; guest relations; staffing thrift-type shop and storeroom work; working with children and young people.
- (4) Volunteers are supervised by a variety of individuals, including: director of volunteers or a volunteer coordinator; department head or manager; director of operations; area supervisor; business manager; program coordinator, manager or director; paid or professional staff member; board member; committee chairperson; or other volunteers. In addition, several respondents, particularly those affiliated with a national organization, noted that they have written policies, procedures or guidelines in place to help train and guide volunteers. A few respondents noted that volunteers are not directly supervised, but are expected to operate independently within established or written guidelines.
- (5) Thirteen nonprofit organizations reported having a risk prevention or safety program in place; ten indicated they have no such program in effect.
- (6) Twenty-two nonprofit organizations responded that they have never been sued or threatened with suit because of an action of a volunteer. Three answered in the affirmative.
- (7) These three indicated the nature of the suit and outcome as follows:
 - (a) "Dealing with children"
 - (b) Plaintiff injured by elevator door while being pushed in wheelchair by volunteer. Ended in settlement.

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- (c) Plaintiff injured while setting-up for a special event. Still pending.
- (8) Twenty-three nonprofit organizations indicated they know of no organization in Hawaii that has been sued or threatened with suit because of the action of a volunteer. Two did not answer the question.
- (9) Eighteen nonprofit organizations replied they have liability insurance that applies to the actions of their volunteers. Seven reported they do not have liability insurance applicable to their volunteers; however, of these, four are self-insured. One organization that has neither liability coverage for volunteers nor is self insured reported that "we can no longer afford to carry it; we used to have it but with current cuts in budgets we dropped it out of necessity." Another organization indicated coverage was not necessary because the organization relied upon only one volunteer and has no employees. (This organization was the only one to indicate, in response to a later question that, for three same reasons, it carries no liability insurance whatsoever.)
- (10) Fourteen nonprofit organizations responded that their liability policy covers injuries to a volunteer, as distinct from actions by a volunteer. Seven responded that injuries to volunteers are not covered under their liability policy; but four of these indicated that such injuries are covered under a separate accident policy, workers' compensation policy, or the volunteers' personal policy.
- (11) Twelve nonprofit organizations replied that there are no major exclusions to their liability policy. Of the ten nonprofit organizations that answered in the affirmative, they reported the following exclusions: employment related and workers' compensation claims; professional services; non-owned auto; limited contractual liability; off-site accidents; fire; medical payments; products liability/completed operations.
- (12) Seven of the nonprofit organizations indicated that all, most or some of these exclusions are covered under another type of insurance policy in effect for the organization.
- (13) Twenty-two nonprofit organizations replied that they have directors and officers liability coverage. Of the two that confirmed they did not, one indicated it is not needed and the other stated that it is not necessary in view of the expense.
- (14) Although several organizations responded that they had experienced a large increase in insurance premiums during the last five years, only two were referring to a significant increase in general liability premiums. One of these reported that premiums for both general liability and workers' compensation had increased 25 percent. While the other did not indicate the amount of increase, its concern was obviously, as evidenced by its comments. "[W]e pay approximately \$14,000 a year for the privilege [of having liability insurance] and another \$12,000 for workmens compensation.... [M]ost of us realize that the State could if they got their act together do something about it." Two respondents indicated they were unsure whether the organization had experienced any significant increase in the cost of premiums. Judging from their comments, a number of nonprofit organizations were clearly concerned

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with the high cost of insurance, especially for workers' compensation coverage, and seven reported a large increase in workers' compensation premiums. In addition, two indicated they had experienced an increase only in property insurance premiums (one stated the increase was a result of Hurricane Iniki); one reported an increase for a special event cancellation policy (this also was attributed to Hurricane Iniki); and one indicated an increase for directors and officers liability insurance. Ten nonprofit organizations answered that they had experienced no significant increase in the cost of liability insurance.

- (15) Twenty nonprofit organizations responded that they have never had their insurer refuse to renew a policy. Of the three that replied yes to this question, the reasons given for the refusal to renew were as follows: one said the insurer was "going under"; one cited the financial instability of the nonprofit organization four years ago; and one explained that their insurer discontinued carrying workers' compensation policies.
- (16) Only one nonprofit organization reported that an insurer had reduced coverage, in this case by excluding "wind coverage." Twenty-three responded no to this question.
- (17) Twenty-one nonprofit organizations indicated that they have never had an insurance claim filed because of the action of a volunteer. Two responded that they have each had one claim filed. In both cases, the nature of the claim was personal injury; and one indicated the claim was for medical costs only and was for a "small amount."
- (18) Only two indicated they are members of a risk retention group; one of these was referring to a workers' compensation high risk pool.
- (19) Only seven nonprofit organizations responded that they are familiar with the concept of a risk retention group. Of these, five reported that they have not considered joining such a group for one of the following reasons: no risk retention group exists in Hawaii under which the organization would fit; funds not available; insufficient number of nonprofits in Hawaii to make it worthwhile, especially given that insurance policies are available; have not sufficiently investigated the possibility; organization is self-insured and prefers commercial carriers for excess coverage needed.
- (20) Eight nonprofit organizations responded that they are self-insured for liability purposes.
- (21) In response to the question whether the organization has ever been unable to obtain insurance coverage, one nonprofit organization indicated it had to look for a new carrier when its insurer "bailed out of the market," but was eventually able to find another carrier. Twenty-four nonprofit organizations answered no.

PART II: RESPONSES FROM THE ATTORNEY GENERAL AND THE COUNTIES

Copies of the questionnaires sent to the Attorney General and to the county attorney or corporations counsel appear as Appendices D and E, respectively. Only the Attorney General, the Corporation Counsel for Hawaii County and the County Attorney for Kauai County provided written responses to the Bureau's questionnaires. Their responses are summarized in the remainder of this part.

The Attorney General reported that state agencies routinely comply with the requirement to report the number of volunteers that are working for the agency. Kauai County has a similar reporting requirement; Hawaii County does not.

According to the Governor's Office of State Volunteer Services latest report, which covers fiscal year 1993-1994, a total of 255,638 volunteers provided services to various state agencies. See Appendix F. Kauai County reported one volunteer in the Prosecuting Attorney's Office. Hawaii County had no information available on the number of volunteers used by county agencies.

Both the State and Kauai County have a risk prevention or safety program that includes minimizing risk with volunteers. Hawaii County has a risk prevention or safety program, but no part of the program is designed to minimize risk with volunteers.

Both the State and Kauai County have written requirements or guidelines concerning supervision of agency volunteers. These are contained in Appendices C and H.

The Kauai County Attorney reported the following limits on the nature and scope of activities performed by volunteers: "Volunteers cannot be used to supplement regular workers. Volunteers can be used only in departments/agencies where no vacant positions exist under the County's volunteer utilization program."

The Attorney General replied that, although she is aware of no instance in which a state agency has ever been sued or threatened with suit because of an action of a volunteer, a volunteer has sued the State for an injury incurred when the volunteer fell from a tower maintained by the University of Hawaii.¹

The Hawaii County Corporation Counsel reported that a claim recently has been filed because of the alleged action of volunteers at a Halloween event run by the Parks department. It is alleged that the volunteers became intoxicated and harassed minors present at the event. A lawsuit is anticipated and potential liability is projected at \$10,000.

The Attorney General reported that a deputy attorney general has had occasion to advise a seminar audience of the state policy concerning use by state agencies of volunteers, including that departments should have a register of volunteers, should train them, and should supervise them just as closely as employees. The Kauai County Attorney responded that county agencies have been advised concerning the limits on the use of volunteers noted previously. The Hawaii County Corporation Counsel indicated that agencies have been advised concerning use of volunteers, but that it would be "too time-consuming to look for opinions" and that the "attorney-client privilege may bar disclosure anyway."

Finally, the Attorney General noted the following concern over the use of volunteers by state agencies: "State departments may not be registering, training, and supervising

volunteers as well as they should be." The Hawaii County Corporation Counsel also acknowledged concern over the use of volunteers by county agencies, including whether the County would "owe them County-provided counsel if they are sued."

Endnotes

1. See Zheng v. Hawaii.

Chapter 5

INSURERS' SURVEY

In an effort to obtain information on liability insurance for nonprofits that rely upon volunteers, the Bureau surveyed twenty insurance companies that purportedly conduct the most business in Hawaii, in terms of volume of general liability insurance policies sold. A copy of this questionnaire is found in Appendix I. The response rate was disappointingly small. Only seven companies responded to the Bureau's inquiry. Of these, four reported that they do not insure any nonprofit organizations in the State. Two of the these companies are subsidiaries of the same parent company, which responded that they are no longer licensed to conduct business in Hawaii. A third insurer responded that the company does not provide general liability insurance to any nonprofit entities in Hawaii only because it has not been asked to by any of their agents.

Only the fourth insurer's response provides any evidence that insurers may be reluctant to insure Hawaii's nonprofits. This insurer stated that it does not provide general liability insurance to any nonprofit entities in Hawaii for the following reasons: small premium size relative to exposures; no financial stability; volunteer workers; and difficulty in underwriting hazard involved.

Thus, only three insurers completed and returned the Bureau's questionnaire. Of these, one only underwrites umbrella and excess liability insurance, not primary commercial general liability and automobile insurance. Moreover, it indicated that only one of its insureds in Hawaii is a nonprofit organization. However, echoing the comments of another insurer mentioned previously, it noted that: "We have no underwriting or rating standards which preclude us providing insurance for nonprofit organizations. We would certainly consider issuing policies for them, but we either have not been offered applications or our proposals have not been accepted by non-profits." The remainder of this chapter presents the responses of the three insurers, who are devoted for simplicity as (a) through (c).

To the best of your knowledge, how many Hawaii nonprofit entities do you insure?

- (a) - 1
- (b) - 40
- (c) - 52

What percentage of your business in Hawaii does this figure represent?

- (a) - .037
- (b) - 13.6%
- (c) - Unknown

In the past 12 months, what was the dollar amount of earned premiums for nonprofit entities in Hawaii?

- (a) - \$21,000
- (b) - \$273,334
- (c) - \$130,419

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In the past 24 months, how many claims by Hawaii non-profit entities have been incurred?

- (a) - None
- (b) - 9
- (c) - 42

Representing how much in claims in Hawaii? ____%

- (a) - N.A.
- (b) - 4%
- (c) - Unknown

In the past 24 months, have you had to increase rates for property-casualty coverage for non-profits in Hawaii?

- (a) - No
- (b) - No
- (c) - Yes, By 6.4% Reason given: Rate increase across the board to include the Hawaii hurricane relief fund assessment charge.

During the past 24 months, have you refused to renew a policy that was in force to any non-profit entity in Hawaii?

- (a) - No
- (b) - No
- (c) - No

Has your reinsurer limited the kinds of coverage you can offer to Hawaii non-profit entities?

- (a) - No
- (b) - No
- (c) - No

Has your reinsurer limited the amount of coverage you can offer to Hawaii non-profit entities?

- (a) - No
- (b) - No
- (c) - No

During the past 24 months, have you experienced an increase in the amount you must pay for reinsurance for Hawaii non-profit entities?

- (a) - No
- (b) - No
- (c) - No

INSURERS' SURVEY

In response to the question what the insurer would expect insurance premiums and reinsurance rates to do if large numbers of Hawaii non-profit entities formed a risk purchasing group, assuming all other factors remained the same, the responses were as follows:

- (a) - Don't know
- (b) - No answer
- (c) - Expect rates and reinsurance costs to remain the same or possibly go down, depending upon the type of nonprofit in the group.

Chapter 6

SUMMARY AND CONCLUSIONS

Although there exists a Model State Volunteer Service Act, discussed in Chapter 2, no state has enacted it in its entirety. Indeed, as seen in Chapter 3, there is extensive diversity among state volunteer protection laws. No one state has exactly the same protection and coverage as another. The exact scope of protection under a particular statute depends, in part, on the definitions used, especially for terms such as volunteer, nonprofit organization and compensation. Some states have a number of protection laws each of which focus on a different type of volunteer. The provisions of such laws are rarely uniform even within a state. For example, the definition of the same term may differ between statutes or excluded conduct may be different under different statutes. Some states grant protection only to specific types of volunteers, such as uncompensated officers and directors; other states protect a broader range of volunteers.

As noted in Chapter 3, protected volunteers are often defined according to the entity for whom they provide services. States that attempt to protect a broader range of volunteers usually focus on volunteers of nonprofit entities. Some state statutes limit protection to volunteers of nonprofit organizations that are exempt from federal or state taxation; other states employ a more traditional meaning of nonprofit in the sense of charitable; and still others take a broader, and in some cases unusual, view of what constitutes nonprofit organizations. This latter approach may be taken to ensure inclusion of volunteers of a particular entity that would not otherwise be considered nonprofit. In addition to covering volunteers of nonprofits, some states include volunteers of governmental entities or hospitals.

Although Arizona extends protection to a nonprofit entity for whom the volunteer provides services, other states protect only the individual volunteer and not the entity itself. Indeed, a few states condition protection of the volunteer on the entity or, in the alternative, the individual volunteer having applicable liability insurance coverage in a certain minimal amount to ensure injured individuals have adequate compensation. Some other states, while not immunizing an entity, impose a cap, equal to the statutory minimum amount of liability insurance coverage required, on the amount of damages that may be recovered against an entity. Accordingly, an entity that has an applicable insurance policy in effect may be liable in an amount only up to the statutory minimum.

All states impose some restrictions on the protection granted to volunteers. For example, certain types of conduct are usually excluded, ranging from conduct that is wanton and willful, fraudulent, reckless, in bad faith, intentionally tortious, illegal, or grossly negligent; and in a few cases, even ordinary negligence may exclude protection. In a number of states, conduct involving the operation of a motor vehicle is excluded. Several states have broadened the exclusion to include operation of other types of vehicles as well, such as airplanes, boats, etc. Sometimes the exclusion is limited to the amount of applicable insurance coverage. The effect of such a provision is to limit any damages to the amount of any insurance recoverable and protects an individual volunteer from liability beyond the limits of insurance coverage. In addition, federal claims and acts or omissions that occurred prior to the effective date of the immunity provisions are excluded. Many states also exclude actions brought by the state attorney general or another state officer.

SUMMARY AND CONCLUSIONS

One primary assumption in H.R. 60, H.D. 1, was that Hawaii has one of the most restrictive volunteer protection laws in the nation. After comparing Hawaii's laws, which afford protection only to uncompensated officers and directors of nonprofit corporations and volunteers providing services to state agencies, with those of other states, one must conclude that Hawaii indeed has one of the more limited volunteer protection provisions. If the Legislature is inclined to broaden the scope of protection, it would need to consider a number of issues including, but not limited to, the following: which volunteers would be covered and how would they be identified (e.g., volunteers of nonprofit organizations, volunteers of hospitals or other for profit entities; sports volunteers, or volunteers of county agencies); would protection be limited to uncompensated individuals and how would "compensation" be defined?; if volunteers of nonprofit organizations are included, how would nonprofit organizations be defined?; would protection of a volunteer be conditioned upon the volunteer or the entity for whom the volunteer provides services having liability insurance coverage; would entities be protected also or, if not, would there be a cap on their liability?; what conduct would be excluded from protection? would conduct involving a motor vehicle be excluded and, if so, would the exclusion from immunity be limited to the amount of applicable insurance coverage?

Chapter 4 summarized the responses of nonprofit organizations, the State and the counties that were surveyed in an attempt to obtain information on liability issues surrounding the use of volunteers. The survey of the nonprofit organizations revealed that, not surprisingly, volunteers contribute substantially to the invaluable work of many nonprofit organizations. Indeed, some organizations clearly could not continue to operate without volunteer services. Moreover, given the current state of Hawaii's economy, the efforts of volunteers undoubtedly will become even more critical to an organization's operations. Nevertheless, organizations appear aware that use of volunteers may increase their exposure to liability. Over half of the nonprofit organizations responding to the Bureau's questionnaire indicated they have a risk prevention or safety program in effect that covers their volunteers. Also, most indicated they have either formal supervision over volunteers or at least written guidelines in place for volunteers.

Although a perception lingers that use of volunteers increases the threat of lawsuits demanding astronomical damages, this does not appear to be the reality experienced by Hawaii's nonprofits. Only three of the nonprofit organizations responding to the Bureau's questionnaire indicated that any suit involving a volunteer had been filed or threatened; and one of these involved an injury to a volunteer, as opposed to an injury caused as a result of a volunteer's acts or omissions. Moreover, none of the twenty-five responding organizations reported knowing of any other nonprofit organization that had been sued or threatened with suit. Finally, only two respondents reported having had an insurance claim filed relating to a volunteer. Of these, one indicated the claim was for medical only and was "small."

Another assumption in H.R. 60, H.D. 1 was that nonprofit organizations relying upon volunteers find it difficult or expensive to obtain liability insurance as a result of this reliance. The nonprofit organizations' responses do not appear to give great support to this assumption. Of those nonprofit organizations responding to the Bureau's questionnaire, only three indicated they are neither self-insured nor have liability insurance that covers volunteers. Of these: one relies upon the individual volunteers having personal insurance to cover their actions; one indicated they used to carry liability coverage for volunteers, but had to drop it because of budget cuts; and one responded it has no liability insurance at all because the organization has only one volunteer and no employees. Two-thirds of the respondents reported having liability insurance coverage for volunteers. The others indicated

they are self-insured. In addition, many have coverage for injuries to a volunteer. Also, most have directors and officers liability coverage. Moreover, all but one nonprofit indicated they had never had a problem obtaining insurance coverage. The one reporting a problem attributed it to the insurance market and eventually found another carrier. Three respondents reported an insurer's failure to renew, but only one was related to the nonprofit organization's financial condition. The other two explained that the insurer dropped that type of coverage for all its insureds. Only one respondent reported a reduction in coverage as a result of Hurricane Iniki. Although the responses did reflect some concern over insurance costs, most of the comments did not relate to liability coverage. Furthermore, cost increases appear to be the result of other factors in the insurance market unrelated to the use of volunteers.

Only the State and Hawaii and Kauai counties responded to the Bureau's questionnaire concerning use of volunteers by government agencies. Similar to the nonprofit organizations, the State and counties indicated an awareness that using volunteers could potentially increase their exposure to liability. To address and reduce the potential risk posed by volunteers, both the State and Kauai County have instituted risk prevention or safety programs and have imposed certain reporting requirements. Furthermore, although Hawaii County reported a claim pending because of the alleged actions of several volunteers and the Attorney General reported a prior suit against the State involving an injury incurred by a volunteer, it would appear, at least based upon the responses received, that neither the State nor Kauai or Hawaii county has experienced substantial liability because of the actions of volunteers.

Although somewhat peripheral, one significant point concerning the access to confidential records by volunteers of government agencies has come to light that bears mentioning. This concern was raised by the Honolulu Corporation Counsel in a memorandum opinion, in which it opined that, by permitting volunteers access to confidential information, a county agency and its employees may be liable for disclosing confidential information to the general public, in violation of state and county law.¹ In addition, the Honolulu Corporation Counsel contended that state and county laws restricting employees from disclosing confidential information to third parties do not apply to volunteers because they are not considered "employees" of the city and county.² Thus, the Corporation Counsel concluded that there are no restrictions on and concomittant penalties to discourage such disclosure by volunteers.³

It is not clear whether the State Office of Information Practices or the State Attorney General would take this same view with respect to volunteers of state agencies who, unlike county volunteers, are treated as employees of the State for purposes of state tort liability under chapter 662 of the Hawaii Revised Statutes.⁴ Likewise, volunteers of Kauai county are considered county employees for purposes of section 8.04 of the Kauai county charter, dealing with the powers and duties of the county attorney to represent all officers and employees of the county in all matters relating to their official duties.⁵ Furthermore, it would appear that at least "good faith" disclosures are protected under section 92F-16, Hawaii Revised Statutes. Nevertheless, to ensure adequate protection of confidential government records and volunteers who may have access to them, chapter 90 of the Hawaii Revised Statutes, (dealing with state volunteers) could be amended to clarify that volunteers are considered employees for purposes of chapter 92F (Uniform Information Practices Act). Because county volunteers are not covered under chapter 90, the counties may need to adopt a similar provision to ensure protection of their own volunteers and agencies, with respect to disclosure of confidential information, or chapter 90 could be amended to apply to the counties as well as the State.

SUMMARY AND CONCLUSIONS

The meager response rate to the Bureau's survey of insurers, discussed in Chapter 5, precludes any meaningful conclusions. Nevertheless, the responses, such as they are, tend to corroborate those of the nonprofit organizations that they have experienced neither a substantial increase in liability insurance costs nor difficulty in obtaining liability insurance coverage because of their reliance on volunteers. Only one insurer reported an increase in property-casualty rates, but the 6.4 percent increase was attributed to the Hawaii hurricane relief fund assessment charge. Furthermore, all three insurers completing the questionnaire were unanimous in their responses that: they have not refused to renew a nonprofit insured's policy; their reinsurer has not limited either the amounts or kinds of coverage they can offer to nonprofits; and they have not experienced an increase in the amount they must pay for reinsurance for nonprofits.

It should be noted that one insurer, who did not complete the Bureau's questionnaire, confirmed a reluctance to insure nonprofits for reasons that, while including the use of volunteers, have more to do with the nature of nonprofit entities. Nevertheless, two other insurers who have either no nonprofit insureds or only one such insured indicated the reason behind these low numbers is not a reluctance to insure nonprofits but stems from the fact that either nonprofits have not applied to them for insurance or nonprofits have rejected their proposals.

With respect to the number of claims filed against nonprofits during the past twenty-four months, two of the insurers reported a total of fifty-one claims filed. This number appears to contrast sharply with the report of one claim each by two nonprofit organizations. However, the nonprofits were reporting only claims involving a volunteer; whereas the insurers were reporting all claims against nonprofits.

In summary, although the situation for Hawaii volunteers and nonprofit entities does not appear to be as dismal as it may have been at the height of the insurance crisis, Hawaii nevertheless lags behind most other states in providing protection to volunteers and the entities they serve. Given the current state of the economy and the concomitant need to rely increasingly upon volunteer services, the State would be wise to take measures to limit the liability of volunteers in order to ease their concerns regarding personal liability associated with volunteer work and to maximize this vital human resource. As a starting point for consideration, if the intent is to put Hawaii in the mainstream with respect to volunteer services protection laws, the following elements could be included:

- (1) A volunteer is defined as a person performing services for a nonprofit organization, a nonprofit corporation, or hospital without any compensation, other than reimbursement of actual expenses incurred. The term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.
- (2) A nonprofit organization is defined as any organization that is exempt from taxation pursuant to section 501(c) of the Internal Revenue Code, 26 U.S.C. section 501(c), as amended.
- (3) A nonprofit corporation is defined as any corporation that is exempt from taxation pursuant to section 501(a) of the Internal Revenue Code, 26 U.S.C. section 501(a), as amended.
- (4) The scope of immunity provides that a volunteer is immune from civil liability in any action on the basis of any act or omission resulting in damage or injury if

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the volunteer was acting in good faith and within the scope of the volunteer's official functions and duties and the damage or injury was not caused by willful or wanton misconduct on the part of the volunteer.

- (5) Excluded from immunity are any acts or omissions involving the negligent operation of a motor vehicle; provided that the amount recoverable against a volunteer is limited to the amount of applicable insurance coverage maintained by or on behalf of the volunteer.
- (6) The immunity provided does not extend to the entity for whom the volunteer provides services.

Endnotes

- 1. Hon. Corp. Counsel Ops. No. 95-7, at 2-3 (hereinafter Counsel Ops.), citing Haw. Rev. Stat. §92F-13 and R.C.H. §11-102.
- 2. Id. at 3, citing Haw. Rev. Stat. §92F-17. See also R.C.H. §2-27.5(c) (volunteers are not deemed employees when acting for county agency in official capacity).
- 3. Counsel Ops., at 3.
- 4. See Haw. Rev. Stat. §90-4(4). The counties are specifically excluded from the definition of "agency" under Haw. Rev. Stat. §90-1.
- 5. See Volunteer Utilization Program Guidelines, County of Kauai, at 5-6, found in Appendix H.

HOUSE OF REPRESENTATIVES
EIGHTEENTH LEGISLATURE, 1995
STATE OF HAWAII

H.R. NO.

60
H.D. 1

HOUSE RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO STUDY THE PROBLEM
OF LIABILITY EXPOSURE OF VOLUNTEERS, NONPROFIT
ORGANIZATIONS, AND GOVERNMENT AGENCIES THAT RELY ON THE
SERVICES OF VOLUNTEERS.

1 WHEREAS, from the very beginnings of this nation,
2 millions of Americans have volunteered their time and energy to
3 help others through churches, hospitals, little leagues,
4 community associations, and myriad similar organizations; and
5

6 WHEREAS, not only is society enriched by these
7 activities, but the opportunity to help others is a source of
8 deep satisfaction for the volunteers themselves; and
9

10 WHEREAS, throughout most of this nation's history,
11 charitable organizations were held to have immunity from
12 liability, but over the last three decades challenges to the
13 common law have resulted in judicial decisions and statutory
14 changes effectively abolishing this immunity in every state but
15 one; and
16

17 WHEREAS, these changes in the law exposed not only
18 institutions but the people who work and volunteer for them to
19 liability for their actions, but until the mid-1980s only a
20 handful of suits against individual volunteers had been filed;
21 and
22

23 WHEREAS, in our increasingly litigious society, a number
24 of suits against volunteers were filed in the mid-1980s and
25 many of these received national media attention; and
26

27 WHEREAS, the possibility of being sued and being held
28 personally liable created fear in the minds of many volunteers,
29 and studies conducted in the mid 1980s show many organizations
30 suffered board resignations and volunteer recruitment
31 difficulties due to this concern; and
32

33 WHEREAS, because of this change in the legal climate,
34 liability insurance for non-profit organizations and their
35 directors soared, leaving many groups without protection; and

1 WHEREAS, because of this crisis across the country,
2 legislators began to address the problem of limiting liability
3 both for individual volunteers and the directors and officers
4 of the organizations which they serve; and
5

6 WHEREAS, in 1990 the Nonprofits' Risk Management and
7 Insurance Institute of the National Council of Nonprofit
8 Associations was formed to monitor state action in this area;
9 and
10

11 WHEREAS, according to the Institute, since 1987 thirty-
12 three states have passed legislation to protect individual
13 volunteers and all states have passed some kind of legislation
14 to protect officers and directors of non-profit organizations;
15 and
16

17 WHEREAS, over the last few years, many bills have been
18 introduced in the Hawaii Senate and House of Representatives
19 that deal with limited aspects of this problem, but Hawaii has
20 never addressed the question of general protection for
21 volunteers and has passed the most restrictive legislation of
22 all fifty states to protect officers and directors of non-
23 profit organizations; now, therefore,
24

25 BE IT RESOLVED by the House of Representatives of the
26 Eighteenth Legislature of the State of Hawaii, Regular Session
27 of 1995, that the Legislative Reference Bureau is requested to
28 study the laws and policies in other jurisdictions that address
29 the problem of liability exposure of volunteers, non-profit
30 organizations, and government agencies and their employees that
31 rely on the services of volunteers; and
32

33 BE IT FURTHER RESOLVED that the Legislative Reference
34 Bureau is requested to study and obtain data relating to
35 liability issues regarding volunteers, non-profit
36 organizations, and government agencies and their employees that
37 rely on the services of volunteers, including the number,
38 nature, and basis of lawsuits in the State of Hawaii against
39 volunteers, non-profit organizations where volunteers are used,
40 and officers and directors of non-profit organizations, as well
41 as liability insurance aspects of the issue including the
42 reasons for the increase in liability insurance premiums where
43 volunteers or non-profit organizations are involved; and
44

45 BE IT FURTHER RESOLVED that the Legislative Reference
46 Bureau is requested to report its findings and conclusions to
47 the Legislature no later than twenty days before the convening
48 of the Regular Session of 1996; and

1 BE IT FURTHER RESOLVED that a certified copy of this
2 Resolution be transmitted to the Director of the Legislative
3 Reference Bureau.



**Model State
Volunteer Service
Act and
Commentary**

December 1990



Office of the Attorney General
Washington, D.C. 20530

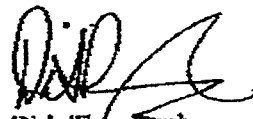
*"From now on in America, any definition of a
successful life must include serving others."*

President George Bush
June 22, 1989

President Bush has announced a new initiative directed at providing volunteer liability protection to all Americans who give of themselves to help others. This initiative recognizes the chilling effect felt by many volunteers throughout the nation who fear they could be sued as a result of their volunteer efforts.

In keeping with the principles of Federalism, the President urges the lifting of this fear by adoption by the States of the following Model State Volunteer Service Act. This Act provides a fair balance between the right of a person to seek redress for injury and the right of an individual to volunteer without undue fear of litigation.

The Department of Justice is proud of its role in supporting the President in this vital initiative to assist those who assist others.



Dick Thornburgh
Attorney General of the
United States

Model State Volunteer Service Act

Title

Section 1. This statute is entitled "The Volunteer Service Act."

Preamble

Section 2. The legislature finds and declares that --

- (a) the willingness of volunteers to offer their services has been increasingly deterred by a perception that they put personal assets at risk in the event of tort actions seeking damages arising from their activities as volunteers;
- (b) the contributions of programs, activities and services to communities is diminished and worthwhile programs, activities and services are deterred by the unwillingness of volunteers to serve either as volunteers or as officers, directors or trustees of nonprofit public and private organizations;
- (c) it is in the public interest to strike a balance between the right of a person to seek redress for injury and the right of an individual to freely give of his time and energy without compensation as a volunteer in service to his community without fear of personal liability for acts undertaken in good faith absent willful or wanton conduct on the part of the volunteer; and
- (d) the provisions of the within Act are intended to encourage volunteers to contribute their services for the good of their communities and at the same time

provide a reasonable basis for redress of claims which may arise relating to those services.

Definitions

Section 3. For the purposes of this Act, the meaning of the terms specified shall be as follows:

"Volunteer" is a person performing services for a non-profit organization, a nonprofit corporation, a hospital, or a governmental entity without compensation, other than reimbursement for actual expenses incurred. The term includes a volunteer serving as a director, officer, trustee or direct service volunteer;

"Nonprofit organization" is any organization which is exempt from taxation pursuant to section 501(c) of the Internal Revenue Code, 26 U.S.C. section 501(c), as amended;

"Nonprofit corporation" is any corporation which is exempt from taxation pursuant to section 501(a) of the Internal Revenue Code, 26 U.S.C. section 501(a);

"Governmental entity" is any county, municipality, township, school district, chartered unit or subdivision, governmental unit, other special district, similar entity, or any association, authority, board, commission, division, office, officer, task force or other agency of any State.

Scope of Immunity

Section 4. (a) 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 willfull and wanton misconduct by such volunteer.

(b) 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 the subsection (a) of this section.

Exception

Section 5. Notwithstanding section 4 of this Act, 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.

Effective Date

Section 6. This Act shall be effective as to any civil suit for damages commenced on or after 180 days from the date of enactment of the Act regardless of whether the claim arose prior to the date of enactment.

(Alternative version: This Act shall be effective as to any claim that accrues on or after 180 days from the date of enactment of the Act.)

Commentary on Model State Volunteer Service Act

- Section 1.** The title of the Act should conform to state practice.
- Section 2.** The preamble is intended to be a guide to construction of the Act in accordance with its purpose to protect volunteers and governmental entities from civil damage liability arising from volunteer activities.
- Section 3.** The term "hospital" is intended to have the same meaning otherwise commonly given the term under state law.
- Section 4.** Section 4 is the heart of the Act. It is intended to protect volunteers from civil liability in all instances in which they are acting pursuant to their voluntary undertaking in good faith regardless of whether their activity was negligent or amount to "gross negligence" or might be the basis for a strict liability claim. Subsection (b) has been added to make it clear that volunteer entities are not immune from liability to the extent that state law otherwise permits suit against such organizations. However, the intent of the Act is not to subject such organizations to liability where liability otherwise would not exist.
- Section 5.** Section 5 modifies the immunity enacted by section 4 by providing that an individual volunteer may be sued for a negligent act or

omission involving the operation of a motor vehicle to the extent the volunteer possesses insurance coverage.

Volunteers maintain automobile insurance policies, and in some instances are required by law to do so, based upon their own needs. The cost of this kind of insurance for volunteers is not materially affected by the possibility that there might be claims arising from volunteer activities that are covered under these policies.

Section 6. Section 6 enacts an effective date which will permit persons who possess claims to bring suit under the present legal standards for a reasonable period. The effective date is made applicable only after 180 days elapse in order to permit the entities involved to assess their reasonable insurance coverage with the expectation that reasonable insurance coverage would be purchased on or before the effective date of the Act.

Section 6 does not affect applicable limitations statutes.

Appendix C

SURVEY NON PROFIT ORGANIZATION

Organization Name:

Address:

Person Completing Form: _____

Title: _____

Telephone: _____

1. How many paid employees does your organization have?
2. Does your organization rely on volunteers? Yes No

If so, approximately how many?
3. What is the nature and scope of activities performed by volunteers?
4. How are volunteers supervised?

5. Does your organization have a risk prevention or safety program to minimize risk with volunteers? Yes No

6. Has your organization ever been sued or threatened with suit because of an action of a volunteer? Yes No

7. If so, what was the nature of the alleged action? What was the outcome? What was the amount of liability incurred, if any?

8. Do you know of any organization in Hawaii that has been sued or threatened suit because of the action of a volunteer? Yes No

If so, please specify the organization.

9. Does your organization have liability insurance that covers the actions of your volunteers? Yes No

10. Does this policy cover injuries to a volunteer? Yes No

If not, are they covered under another insurance policy? Yes No

If so, please specify.

11. Are there major exclusions to the liability insurance policy, such as employment-related claims, professional services, non-owned auto accidents, or accidents occurring off-site? Yes No

If so, please specify.

12. Are these exclusions covered under another type of insurance policy? Yes No

If so, please specify.

13. Does your organization have directors and officers liability coverage? Yes No

If not, why not?

14. Has your organization experienced a large increase in insurance premiums during the last five years? Yes No

If so, what was the reason given for the increase?

15. Has an insurer ever refused to renew a policy for your organization while it was in force? Yes No

If so, why?

If so, what did your organization do as a result?

16. Has your insurer ever reduced your coverage? Yes No

If so, in what way?

17. Has your organization ever had an insurance claim filed because of the action of a volunteer? Yes No

If so, please specify the nature and the amount of the claim.

18. Is your organization a member of a risk retention group? Yes No

If so, please identify.

19. If not, do you know what a risk retention group is? Yes No

If so, has your organization ever considered joining one? Yes No

Why or why not?

20. Is your organization self-insured? Yes No

21. If your organization has no liability insurance protection, why not?

22. Has your organization ever been unable to obtain insurance coverage? Yes No

If so, why?

Appendix D

QUESTIONNAIRE

1. Are you aware of whether state agencies comply with the requirement to report the number of volunteers that are working for the agency?

Yes, comply No, do not comply Don't Know

Based upon information available to you, can you estimate approximately how many volunteers there are on the state level?

2. Does the state have a risk prevention or safety program? Yes No

If yes, is any part of the program designed to minimize risk with volunteers?
Yes No

3. Are there any written requirements or guidelines concerning supervision of state volunteers (other than those contained in chapter 90, H.R.S.)? Yes No

If so, please include copies of relevant documents.

4. Are you aware of whether there are any limits on the nature and scope of activities performed by volunteers (other than those contained in chapter 90, H.R.S.)?
Yes No

If so, please explain.

5. Are you aware of whether a state agency has ever been sued or threatened with suit because of an action of a volunteer? Yes No

6. If so, what was the nature of the alleged action?

What was the outcome?

What was the amount of liability incurred, if any?

7. Have you had occasion to advise state agencies concerning the use of volunteers? Yes No

If so, what did you advise?

8. Do you have any concerns over the use of volunteers by state agencies? Yes No

If so, please explain.

Appendix E

QUESTIONNAIRE

[County]

1. Are you aware of whether there is any requirement of county agencies to report the number of volunteers that are working for the agency? Yes No

If so, can you estimate approximately how many volunteers there are on the county level?

2. Does the county have a risk prevention or safety program? Yes No

If yes, is any part of the program designed to minimize risk with volunteers?
Yes No

3. Are there any written requirements or guidelines concerning supervision of county volunteers? Yes No

If so, please include copies of relevant documents.

4. Are you aware of whether there are any limits on the nature and scope of activities performed by volunteers? Yes No

If so, please explain.

5. Are you aware of whether a county agency has ever been sued or threatened with suit because of an action of a volunteer? Yes No

6. If so, what was the nature of the alleged action?

What was the outcome?

What was the amount of liability incurred, if any?

7. Have you had occasion to advise county agencies concerning the use of volunteers? Yes No

If so, what did you advise?

8. Do you have any concerns over the use of volunteers by <county> agencies? Yes No

If so, please explain.

ANNUAL ASSESSMENT REPORT

On the Use Of Volunteers

In State Government

for Fiscal Year 1993-1994

**Governor's Office of State Volunteer Services
and Special Projects
January 1995**

**ANNUAL ASSESSMENT RESULTS ON THE USE OF VOLUNTEERS
IN STATE GOVERNMENT
FY 1993 - 1994**

Department	Volunteers Utilized	Hours Expended	In-Kind / Monetary Contributions
Agriculture	62	1,050	\$0
Accounting and General Services	6,442	121,305	\$25,010
Attorney General	76	1,990	\$7,558
Budget & Finance	74	1,522	\$325
Business, Economic Dvlpmnt and Tourism	83	6,289	\$0
Commerce and Consumer Affairs	964	6,158	\$0
Defense	0	0	\$0
Education	65,564	647,861	\$1,444,719
Governor, Office of the	921	10,001	\$3,500
Hawaiian Affairs, Office of	292	11,287	\$4,250
Hawaiian Home Lands	129	4,675	\$40,150
Health	146,973	462,111	\$1,897,252
Human Resources Development	359	2,661	\$1,500
Human Services	1,057	225,193	\$210,707
Judiciary	3,391	349,434	\$138,870
Labor and Industrial Relations	473	5,628	\$8,446
Land and Natural Resources	4,610	69,277	\$660,975
Lieutenant Governor	5	60	\$0
Personnel Services	0	0	\$0
Public Safety	1,067	39,272	\$1,669
Taxation	65	809	\$0
Transportation	6,015	24,060	\$0
University of Hawaii	17,016	361,871	\$4,435,592
TOTALS	255,638	2,352,510	\$8,880,523

Wage Value of Supplemental Government Services = \$11,174,422

In-Kind / Cash Contribution = \$8,880,523

Dollar Value of Supplemental Government Services = \$20,054,945

TO BE REVISED



A GUIDE TO CHAPTER 90

State Policy on Volunteer Services

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PREFACE

Purpose of this Guide

The intent of this guide is to help the reader understand Chapter 90 entitled "State Policy on Volunteer Services." This guide includes the actual text of the law with explanations. Explanations of the law follow the actual text and are boxed. Sample forms and reference supplements are available by calling Statewide Volunteer Services at 587-2860.

Background on Chapter 90

Chapter 90, Hawaii Revised Statutes, was passed by the Hawaii State Legislature as Senate Bill 1799, House Draft 1, on March 28, 1978, and signed into law as Act 10 on April 7, 1978.

The purpose of Chapter 90 is to foster the continuing development of volunteer programs in state government. Chapter 90 was the result of a growing movement among state agencies to engage the services of volunteers, and authorizes state agencies to recruit, train, and accept the services of volunteers as well as to reimburse volunteers for expenses.

Background on Statewide Volunteer Services

The office of Statewide Volunteer Services (SVS) serves as a central agency to coordinate and supplement volunteer programs statewide in the public and private sectors. Some of the services SVS provides are: information and technical assistance to volunteer programs, volunteer recognition, and public awareness and education of voluntarism. The office also serves as a vehicle for innovative volunteer involvement, projects, and legislation of policies and guidelines related to voluntarism.

SVS was established in May 1976, the result of a proposal citing a need for volunteer coordination and advocacy. Initial funding was provided from a three-year federal grant from ACTION, the federal domestic volunteer agency, with subsequent funding from the Progressive Neighborhoods Program. SVS is currently a state funded program within the Office of the Governor.

For more information, please contact:

OFFICE OF STATE VOLUNTEER SERVICES
AND SPECIAL PROJECTS

Office of the Governor

State Capitol

Honolulu, Hawaii 96813

Ph (808) 586-7200 • FAX (808) 586-0072

CHAPTER 90

HAWAII REVISED STATUTES

STATE POLICY CONCERNING THE UTILIZATION OF VOLUNTEER SERVICES

Section 90-1. **Definitions.** As used in this chapter, unless the context requires otherwise:

The term “agency” means any state agency within the executive, legislative, and judicial branches and the office of Hawaiian affairs but excludes the several counties.

“Material donor” means any person who of the person’s own free will provides funds or materials to an agency.

Individuals, clubs, organizations, and private businesses which donate money or materials, such as food, flowers, or supplies to a state volunteer program. Donations of money or other property (i.e., personal computers, furniture) made to a state agency may qualify as charitable contributions for purposes of the Internal Revenue Code.

“Occasional-service volunteer” means any person who offers to provide a one-time, on call or single task service to an agency without receipt of any compensation, except as provided in this chapter.

One time, on call, or single task volunteers may help in seasonal projects (i.e., Christmas caroling), or specific research requiring only one task. Other occasional-service volunteers may also assist agencies with recognition programs for volunteers (i.e., First Lady’s Outstanding Volunteer Awards).

The term “person” means any individual or organization.

“Regular-service volunteer” means any person engaged in specific voluntary service activities on an on-going or continuous basis to an agency without receipt of any compensation, except as provided in this chapter.

Regular service volunteers participate on a regular basis throughout the year (i.e., members of Advisory Boards and Commissions), or volunteers who with appropriate training, become an integral part of the agency operations (i.e., case aides, recreation aides).

“Stipended volunteer” means any person who by receiving a support allowance is then able to provide voluntary service to an agency. The allowance may be for food, lodging, or other personal living expenses and does not reflect compensation for work performed.

Volunteers with the Foster Grandparent program and Senior Companion program receive a stipend to enable full-time volunteer service to agencies. College interns and VISTA volunteers may also fall into this category. Further information on these programs may be obtained from:

***ACTION State Office
Prince Kuhio Federal Building,
Room 6326
Honolulu, Hawaii 96813
Phone: (808) 541-2832***

The term “volunteer” means any person who of the person’s own free will provides goods or services to an agency with no monetary or material gain and includes material donors, occasional-service, regular-service, and stipended volunteers.

Section 90-2. Scope of chapter; status of volunteers.

- (a) An agency may recruit, train, and accept the services of volunteers.

All state agencies may recruit, train, and appropriately utilize volunteers. Several state departments have assigned volunteer directors to assist in the effective management of volunteers.

- (b) No person shall on the basis of sex, age, race, color, ancestry, religion, national origin, marital status, physical or mental handicap, or political grounds, be excluded from participation in, or be denied the benefits of, any volunteer program or volunteer activity.
- (c) Volunteers recruited, trained, or accepted by an agency shall be excluded from any provision of law relating to state employment, from any collective bargaining agreement between the State and any employees’ association or union, from any law relating to hours of work, rates of compensation, leaves, and employee benefits, and from any other provision of title 7, except those consistent with this chapter.
- (d) An agency may reimburse volunteers for expenses, consistent with the provisions of section 90-4, as deemed necessary to assist volunteers in performing their services.

Agencies may choose to budget incidental reimbursement expenses (i.e., mileage).

- (e) An agency may designate a person or establish a position to coordinate and administer the volunteer activities of that agency.

Section 90-3. Rights, responsibilities, and expectations in volunteer relationships.

- (a) Every person regardless of his present economic condition, race, color, ancestry, political affiliation, religious affiliation, sex, age, physical or mental handicap, or marital status has the right to volunteer his services to an agency. An agency has the right to decline any voluntary offer of services, or if accepted, to release subsequently the volunteer who is no longer needed or who is found to be unacceptable.

It is important to stress the fundamental premise of Chapter 90, which is that while individuals have the right to volunteer, agencies also have the right to select or release a volunteer or to decline the services of a volunteer.

- (b) A volunteer providing services to an agency may expect:

- (1) That he will be assigned a job that is worthwhile and challenging, and which permits him the freedom to use existing skills or develop new ones.

Agency staff are encouraged to interview a potential volunteer for a specific job, thus matching the volunteer's skills to the agency's needs. Samples of volunteer forms are available from SVS.

- (2) That he will be trusted with information that will help him carry out the assignment.

In confidential job areas (i.e., case aides), a written agreement between the agency and the volunteer should be considered.

- (3) That he will be kept informed about what is going on in the specific volunteer areas.

Volunteers may be kept informed through newsletters, notices on bulletin boards, volunteer/staff meetings, or informal meetings over coffee.

- (4) That he will be provided orientation, training, and supervision for the job he accepts so he will know why he is being asked to do a particular task.

Volunteers should be provided an introduction to the work or office environment, staff, mission of the agency, and any procedures necessary for the volunteer's understanding of the agency and its clients.

- (5) That his time will not be wasted by lack of planning, coordination, and cooperation within the organization.

Agencies are encouraged to prepare materials, space, and arrange for supervision before recruiting volunteers.

- (6) That he will receive feed-back as to whether this work is effective and how it can be improved.

An agency may request that a volunteer complete a probation period, which includes a pre-established training period, before he/she is fully accepted as a volunteer. Informal conversation and/or periodic evaluation forms (i.e., supervisor's evaluation of volunteer, volunteer's feed-back on the program and staff) may alleviate problems and misinformation.

- (7) That he will be reimbursed for out-of-pocket costs if it is the only way he can volunteer.

See Section 90-4, Volunteer Benefits.

- (8) That he will receive letters of recommendation and reference from his supervisor upon request.

Volunteer service is recognized by a growing number of educational institutions and private corporations as creditable experience and as relevant job training. Employers and universities will often offer credits for volunteer services. The agency may choose to give either a letter of recommendation or an end-of-service evaluation form to the volunteer for his services.

- (9) That he will be given appropriate recognition for his volunteer services.

In addition an agency may want to nominate an exceptional volunteer to various recognition events in the community (i.e., First Lady's Outstanding Volunteer Awards, J.C. Penney's Golden Rule Award, etc.)

- (10) That he will be provided a designated supervisor.

That designated supervisor could be a state employee whom the state agency feels most appropriate to train and supervise the volunteer.

- (c) A volunteer providing services to an agency has the responsibility to:

- (1) Accept assignments given to him.
- (2) Fulfill his commitment or notify the designated person of his change of plans.
- (3) Follow guidelines and policies established by the agency.
- (4) Respect the values and beliefs of others.
- (5) Use time wisely and not interfere with the job performance of others.
- (6) Provide feed-back, suggestions, and recommendations to his supervisor regarding the program.
- (7) Be considerate, respect competencies, and work as a member of a team with staff and other volunteers.

- (d) The agency utilizing the services of volunteers may expect:

- (1) That the volunteer will fulfill his assignment as agreed upon or will notify staff sufficiently in advance if he cannot complete it.

- (2) That the volunteer will not go beyond his competencies and authority.
 - (3) That the volunteer will submit feed-back, suggestions, and recommendations about the program to his supervisor.
 - (4) That the volunteer will maintain confidentiality and will respect and treat the recipients of volunteer services with dignity.
- (e) The agency utilizing the services of volunteers has the responsibility to:
- (1) Use volunteers to extend services without displacing paid employees.
 - (2) Provide each volunteer with a designated supervisor.
 - (3) Provide staff orientation and training in the use and supervision of volunteers.

Opportunities for training in the management of volunteers include workshops presented by local volunteer agencies, and local and national conferences. Call SVS for more information.

- (4) Define volunteer jobs that are meaningful to the volunteer and commensurate with his abilities.
- (5) Be alert to assignments for handicapped or disabled volunteers.
- (6) Make it possible for a volunteer to serve on a trial or probationary basis for a specified period.
- (7) Provide orientation and training to improve the volunteer's skills.
- (8) Provide volunteers with clear instructions and an adequate work space.
- (9) Accept the volunteer as part of the team, including him in training and staff meetings that pertain to his work.
- (10) Establish and communicate clearly defined lines of supervision so that the volunteer knows to whom he is responsible.
- (11) Provide appropriate recognition and appreciation to the volunteer.
- (12) Provide written guidelines governing the recruitment, screening, utilization, and supervision of volunteers.

- (13) Recognize an applicant's prior volunteer service in evaluating fulfillment of training and experience requirements for state employment department of personnel services, the judiciary, and the board of regents of the University of Hawaii.

The Hawaii State Department of Personnel Services recognizes past volunteer work, if applicable, as relevant experience, with credit given after prorating the hours served. Prorating will be based on a 40-hour work week. Thus, it is very important that a volunteer keeps track of the hours he or she has served.

- (14) Provide funds for volunteer benefits as specified in section 90-4.
- (15) Provide recognition of paid staff for support and supervision of volunteers.

Agencies are encouraged to recognize and/or give credit to staff who display exceptional skills in the delegation and supervision of volunteers.

Section 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.

- (a) *State facilities (i.e., schools, hospitals) with food service which provide meals to volunteers who work a minimum number of hours and/or volunteer positions which extend over or into a meal period;*
- (b) *Reimbursement of meals incurred while participating in a conference or training session;*
- (c) *Lunch monies provided to participants of the Retired Senior's Volunteer Program (RSVP) who volunteer a minimum of four hours which extend over a lunch period.*

In response to an inquiry from Statewide Volunteer Services regarding volunteer meals for schools, the State Comptroller declared in a memorandum of March 12, 1984:

"... to the extent that the furnishing of a meal is considered necessary by a school in assisting a volunteer to perform his or her services, and to the extent that cost thereof is within the limits of the Department of Education's budget, the Department of Education is allowed by statute to pay for the meal."

In other words, the most important points to consider in furnishing meals for volunteers are:

- (a) Is the meal necessary in order to assist the volunteer to perform his or her services?***
- (b) Is the cost within the agency's budget?***

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

- (a) State facilities lodging for volunteer fire and police personnel during an emergency; and***
- (b) Lodging required for off-island training for which a volunteer (i.e., Advisory Board Commission member) may attend representing the agency.***

- (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.**

Reimbursements for transportation costs are dependent upon the types of volunteer positions (i.e., need to drive) within the agency. Mileage reimbursements are to be made at a rate comparable to permanent employees.

- (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.

Section 662-2, Hawaii Revised Statutes, the State tort liability act, states:

"The State hereby waives its immunity for liability for the torts of its employees and shall be liable in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages."

Put simply, this means that the State may be liable for the negligent acts of its employees.

Generally, 'negligence' means the failure to exercise reasonable care when it is foreseeable that the failure to exercise care will cause injury to another.

If a volunteer commits a tort against a third party while acting in his assigned role as a volunteer with a state agency, the State may be liable for the volunteer's actions.

Relevant points of the State tort liability act are:

- (1) Intentional torts are not covered, (i.e., assault, battery, false imprisonment, libel, slander, misrepresentation).***
- (2) Judgment (formal decision of the court) against the State bars or prohibits any lawsuits against the employee.***

(3) The decision to represent the volunteer sued personally for damages is left to the discretion of the Attorney General, who will investigate to determine, among other things, the following:

- (a) Whether the volunteer program was duly authorized by a state agency;**
- (b) Whether the volunteer's services had been properly accepted by a state agency; and**
- (c) Whether the volunteer was acting on behalf of the State; that is, under the direction and control of a state agency and performing a task for the state agency.**
- (d) Whether any conflict may exist in representing the interests of the State, the volunteer and any other party.**

If representation is declined, the volunteer must retain his own attorney.

Section 386-171, Hawaii Revised Statutes, the worker's compensation law, states:

"Any person who is injured in performing service for the State or any county in any voluntary or unpaid capacity under the authorized direction of a public officer or employee, and who has not secured payment of the person's hospital and medical expenses from the State or county under any other provision of law and has not secured payment thereof from any third person, shall be paid the person's reasonable hospital and medical expenses under this chapter."

In order for a volunteer to fall within this statutory provision, it must be established that:

- (1) The injury suffered was job-related or suffered in the course of performing the volunteer service;***
- (2) The program was duly authorized by an appropriate agency, public official, or employee;***
- (3) The volunteer was approved by such agency or official to participate in the program;***
- (4) The volunteer performed such volunteer service under the direction and control of such agency or official.***

It is emphasized that coverage for volunteers is limited to reasonable hospital and medical expenses. This means that volunteers who are injured will not receive disability payments under sections 386-31 and 386-32, Hawaii Revised Statutes or death benefits under section 386-41, Hawaii Revised Statutes.

Additionally, when a volunteer secures payment for his medical expenses from a third party, (i.e., HMSA, Blue Cross, Blue Shield, etc.), the State is relieved of paying for the same expenses.

However, if a volunteer's medical coverage does not cover the total expenses incurred, the State is responsible for the difference.

Authorization of volunteers. For obvious reasons of liability and worker's compensation, as well as effective management of volunteers within a state agency, the following areas should be addressed by the agency (taken from chapter 662, Hawaii Revised Statutes):

- (1) "The service/program is duly authorized by a state agency."***

State agencies should develop their own policy statement regarding volunteer services, as well as the types of volunteer jobs and activities within their individual agencies.

- (2) "The volunteer is acting on behalf of the State in an official capacity under direction and control of that state agency."**

Program components should include:

- (a) A clear, written volunteer job description, which specifies location, time of activity, length of involvement, and activities to be accomplished.**
- (b) A method of registration of each volunteer (i.e., application form including emergency information);**
- (c) A selection process for volunteers, including the interview and placement of volunteers with a supervisor;**

- (d) A record keeping system that tracks the hours and activities of each volunteer for the benefit of the individual volunteer as well as to evaluate the overall program;**

- (e) A process of periodic evaluation of the performance and status of each volunteer which may substantiate any necessary action (i.e., promotion, termination).**

- (3) "The volunteer is acting within the scope of the service/program authorized by the state agency."**

Again, the components mentioned above will address the authorized scope of the program, along with the articulated policies of the agency.

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

A state agency, based on its own budget allowances, may choose to reimburse volunteers for authorized training pertinent to their volunteer task (i.e., cardiopulmonary resuscitation classes for hospital volunteers), or may ask the volunteer to represent the agency at a conference (i.e., Advisory Board members).

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

A state agency, because of specific characteristics of the environment of the volunteer activity or of the actual activities of the volunteer jobs, may select to purchase extra personal liability coverage for their volunteers. Volunteer Insurance Service through the Corporate Insurance Management Association (CIMA) provides accidental liability, personal liability, and excess auto liability to organizations for its volunteers. For further information on this source, contact:

CIMA
216 South Peyton Street
Alexandria, Virginia 22314
Telephone: (800) 468-4200

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

Each volunteer program should define "allowable expenses" and "reasonable amounts" other than reimbursements already designated in this Chapter. This enables budget allocations for special activities or events (i.e., providing for a weekly allowance to a volunteer with an assigned agency client).

Certain expenses incurred by volunteers may be deducted for tax purposes. For questions on tax deductions, contact the following agencies:

**1) State Department of Taxation:
587-1510**

**2) Internal Revenue Service:
541-1040**

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

Section 90-5. Agency reports, required information. An agency as part of its annual report to the governor, the legislature, or the chief justice shall include estimates of:

- (1) The total number of volunteers and the total number of hours of service broken down into categories of regular-service volunteers, occasional volunteers, stipended volunteers, and material donors.**
- (2) A list of volunteer job titles used by the agency.**

Since Fiscal Year 1980-81, Statewide Volunteer Services has been conducting an annual assessment of the utilization of volunteers in state agencies. The survey collects information required by Section 90-5, Hawaii Revised Statutes. Information on the Annual Assessment can be obtained by contacting Statewide Volunteer Services.

SUMMARY OF LIABILITY

- 1) The State may be liable for the negligent acts of its employees if the volunteer, in failing to exercise reasonable care, caused injury to another.
- 2) Intentional torts are not covered, (i.e., assault, battery, false imprisonment, libel, slander, misrepresentation.)
- 3) Judgement against the State prohibits any lawsuits against employee.
- 4) The Attorney General decides whether to represent the volunteer based on the following criteria:
 - a) whether the volunteer participated in a program authorized by the State.
 - b) whether the volunteer's services had been properly accepted and if the volunteer was performing under the direction and control of the State agency.
 - c) whether any conflict may exist in representing the interests of the State, the volunteer and any other party.
- 5) If representation is declined, the volunteer must retain his own attorney.

APPENDIX

The following is the actual text of Act 10, 1978 session Laws of Hawaii, codified as Chapter 90, Hawaii Revised Statutes:

Section 1, Findings and Purpose, expresses the legislative intent of the law and is not written as part of Chapter 90.

ENACTED BY THE NINTH LEGISLATURE OF THE STATE OF HAWAII

SECTION 1. Findings and Purpose. The Legislature finds that a continuing need and growing movement is the increasing utilization of volunteer services by state agencies to supplement, strengthen, and support their ability to accomplish their missions. The spirit of citizens volunteering their time and energy has been a fundamental ingredient to the birth of the democratic government. Presently, organized (formal) volunteer programs with the Department of Education which has vast numbers of volunteers who traditionally volunteer in the public school and library systems, demonstrate the vital role in which volunteers assist and augment the services of the State.

The 1974 census estimates that one out of every four Americans over the age of 13 is a volunteer. Volunteers can contribute even more to ameliorating our social, environmental, economic, and human problems. Statutory provisions governing volunteer services and a philosophy for the use of volunteers, would support effective and full use of volunteers.

The purpose of this Act is to foster the continuing development of volunteer programs in state government based on the following premises:

- (1) That every citizen, regardless of his present economic condition, race, color, ancestry, political affiliation, sex, age, physical or mental handicap, or marital status has the right to volunteer;**
- (2) That volunteers supplement but do not compete with nor supplant paid jobs;**
- (3) That volunteers provide an extra source of caring that cannot be evaluated in monetary or material terms;**
- (4) That volunteering provides citizens with an opportunity to be responsive to and supportive of the state government.**

Appendix H

MARYANNE W. KUSAKA
MAYOR



ALLAN I. TANIGAWA
DIRECTOR OF PERSONNEL SERVICES

AN EQUAL OPPORTUNITY EMPLOYER

COUNTY OF KAUAI

DEPARTMENT OF PERSONNEL SERVICES
4280 RICE STREET
LIHUE, KAUAI, HAWAII 96766
June 19, 1995

TO: ALL DEPARTMENTS HEADS, COUNTY OF KAUAI

FROM: ALLAN I. TANIGAWA, DIRECTOR OF PERSONNEL SERVICES

SUBJECT: VOLUNTEER UTILIZATION PROGRAM GUIDELINES

In order to make the best use of our resources in this very slow economy, Mayor Maryanne W. Kusaka has asked that we implement a program whereby the County will benefit from the services of volunteers from the community. We have developed the program using HRS Chapter 90 as a guide. We also consulted with representatives in the Judiciary and the City and County of Honolulu which have programs already in place as well as all of the Unions for their input.

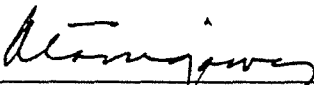
This program allows individual department directors to recruit and use volunteers to meet operational needs. The one caveat is that volunteers cannot be used in departments where vacancies exist. Departments with vacancies in classes in which we are experiencing difficulty in recruitment, however, will be allowed to use volunteers under this program. This is our way of assuring the Unions that this program is not intended to supplement regular employees with volunteers.

Attached please find the Volunteer Utilization Program FACT SHEET and GUIDELINES. In a nut shell, departments will run their respective volunteer programs by recruiting, placing, and evaluating volunteers by advising the Department of Personnel Services of recruitment efforts so that referrals can be made upon inquiry and by including in their annual reports information showing savings, types of volunteers used and other data as required under the guidelines.

The success and longevity of this program will depend on departmental responsiveness and the integrity under which volunteers are utilized. Using volunteers to supplant regular employees is not condoned under this program and could severely jeopardize its existence.

All Department/Agency Heads
Page 2
June 19, 1995

Your immediate attention and responsible oversight as to your department's activities as it relates to this program are sincerely appreciated.



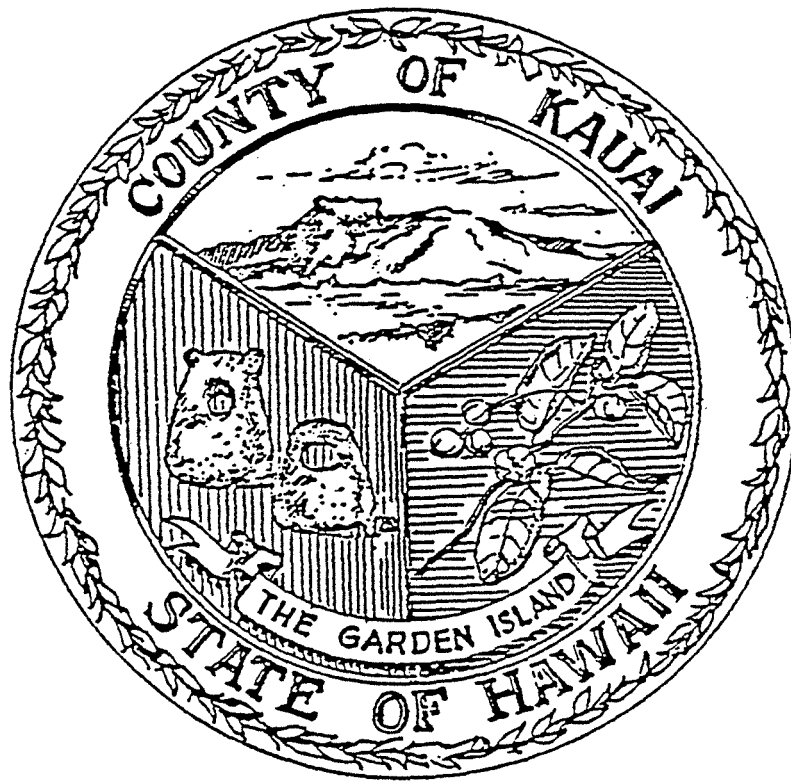
Director of Personnel Services

vb

att.

*VOLUNTEER
UTILIZATION
PROGRAM*

GUIDELINES



COUNTY OF KAUAI

COUNTY OF KAUAI
VOLUNTEER UTILIZATION PROGRAM

FACT SHEET

What is this program all about?

The Volunteer Utilization Program is a volunteer services program initiated by Mayor Maryanne W. Kusaka to increase government efficiency through the use of volunteers. The goals of the program are to:

1. involve retirees, students and others in meaningful work at the County government level in departments where there are no vacant positions or where departments can show that other extenuating circumstances exist.
2. use the County's limited financial resources more effectively by using volunteers to perform in various capacities throughout the County without displacing regularly paid employees.
3. bring more people and groups into County government to build support for the County's efforts and programs.
4. foster a better understanding of how the County government works.

Each County department will be responsible for its volunteer program assuring that the goals and objectives, guidelines and established procedures of the program are met. The County Department of Personnel Services will be available to volunteers and departmental personnel for advice and assistance.

Who can apply?

Any person over the age of sixteen (16) may apply to become a volunteer.

How to apply?

Individual departments are responsible to conduct recruitment and placement activities of volunteers. Departments must inform the Department of Personnel Services whenever recruitment of volunteers is occurring/closed.

Applications may be obtained at the respective departments or at the Department of Personnel Services. All applications should be submitted to the recruiting agency where they will be reviewed and evaluated. The final decision regarding any volunteer applicant will be made by the department head.

COUNTY OF KAUAI
DEPARTMENT OF PERSONNEL SERVICES

GUIDELINES ON UTILIZATION OF VOLUNTEER SERVICES

PURPOSE

The purpose of the Volunteer Utilization Program guidelines is to establish consistent departmental coordination and implementation of this program throughout the County of Kauai. The intent of this program is to better serve the public at a significant cost savings.

DEFINITIONS

"Department" means any County agency within the executive or legislative branches within the County of Kauai.

"Material Donor" means any person who of the person's own free will provides funds or materials to an agency.

"Occasional Service Volunteer" means any person who offers to provide a one-time, on call or single task service to any agency without receipt of any compensation, except as provided in this guideline.

"Person" means any individual or organization.

"Regular Service Volunteer" means any person engaged in a specific voluntary service activities on an on-going or continuous basis to a department without receipt of any compensation except as provided in this guideline.

"Stipend Volunteer" means any person who by receiving a support allowance is then able to provide voluntary service to a department. The allowance may be for food, lodging or other personal living expenses and does not reflect compensation for work performed.

"Volunteer" means any person who of the person's own free will provides goods or services to an agency with no monetary or material gain and includes material donors, occasional service, regular service and stipend volunteers.

STATUS OF VOLUNTEERS

- A. A department may recruit, train, and accept the services of volunteers as it deems appropriate. Except for material donors, volunteers under this program may not be utilized in any department in which a vacancy exists in any civil service position for which funds have been budgeted therefor; unless the department can show that such vacancy exists because of extenuating circumstances such as, but not limited to, recruitment difficulties.

VOLUNTEER UTILIZATION PROGRAM -2-

- B. Department Heads or a designated representative shall oversee all recruitment efforts conducted within a department. Each Department Head shall inform the Department of Personnel Services of any recruitment activities which shall be to the extent deemed appropriate by the Department Head.
- C. Recruitment of volunteers shall be for specific job function (i.e. "Clerical: typing, filing, xeroxing, etc.;" "Engineering: review construction plans, conduct field surveys, etc.;" Accounting: creating and maintaining inventory records, entering accounts receivables and payables, etc.") and not by job titles (i.e. "Clerk-Typist;" "Civil Engineer I;" "Accountant I").
- D. No person shall on the basis of sex, age, race, color ancestry, religion, national origin, marital status, physical or mental disability, or political grounds be excluded from participation in or be denied the benefits of any volunteer program or volunteer activity.
- E. Volunteers recruited, trained or accepted by a department shall be excluded from any provision of law relating to County employment, from any collective bargaining agreement, from any law relating to hours of work, rates of compensation, leaves, and employee benefits and from any other provision of Title 7, HRS, except those consistent with this guideline.
- F. Any department may reimburse volunteers for expenses, consistent with the provisions of "VOLUNTEER BENEFITS" contained herein, as deemed necessary to assist volunteers in performing their services.
- G. Any department head may designate a person to coordinate and administer the volunteer activities of that department.
- H. Departments shall maintain a volunteer file for each participant of this program. The attached Volunteer Application Form shall be retained in the file.

RIGHTS, RESPONSIBILITIES, AND EXPECTATIONS

- A. Every person regardless of his present economic condition, race, color, ancestry, political affiliation, religious affiliation, sex, age, physical or mental disability or marital status has the right to volunteer his services to a department. The department has the uncontested right to decline any voluntary offer of services, or if accepted, to

release subsequently the volunteer who is no longer needed or who is found to be unacceptable.

B. Volunteer Expectations:

1. Work assigned will permit the volunteer the freedom to use existing skills or develop new ones.
2. Volunteer will be provided the necessary information which will assist in the completion of the assignment.
3. Volunteer will be kept informed of any developments in the area of responsibility.
4. Volunteer will be provided information, training, and supervision for the job.
5. Work time will be utilized efficiently through planning, coordination, and cooperation within the organization.
6. Appropriate feedback on work performance as to effectiveness and areas needed to be improved communicated to volunteer.
7. Upon request, appropriate letters of recommendation and references prepared by his supervisor or departmental official.
8. Volunteer will receive recognition for the services provided as deemed appropriate by the department receiving such services.

C. Volunteer Responsibility

1. Volunteer shall accept assigned work.
2. Volunteer shall fulfill commitment or notify the designated person of any change of plans.
3. Volunteer shall follow all guidelines and policies established by the department.
4. Volunteer shall respect the values and beliefs of others.
5. Volunteer shall not interfere with the work of others and shall use work time effectively.

6. Volunteers may provide feedback, suggestions, and recommendations to supervisory personnel regarding the work activity.
7. Volunteers shall promote a harmonious working environment by being considerate and respecting competencies of others, and working as a member of a team with staff and other volunteers.

D. Department Expectations

1. Volunteer will fulfill assignments in a timely manner or will inform staff sufficiently in advance if assignment cannot be completed.
2. Volunteer will not exceed personal competencies and delegated authority, if any.
3. Volunteer may submit feedback, suggestions, and recommendations about the work to supervisory personnel.
4. Volunteer will not divulge confidential information to the public on any matter which is not public information.

E. Department Responsibility

1. Volunteers to be used are to provide services without displacing paid employees.
2. Department shall provide volunteers with adequate supervision.
3. Department shall provide appropriate staff orientation and training on the use and supervision of volunteers.
4. Department shall be aware of work assignments for volunteers with disabilities.
5. Department shall inform volunteers that service can be terminated at any time when the need for such service is no longer present and if the work performed is unacceptable. The decision of the department is final.
6. Department shall provide orientation, which may include training, to improve volunteers' skills to perform the work more effectively.

VOLUNTEER UTILIZATION PROGRAM -5-

7. Department shall provide volunteers with adequate work space, equipment and clear instructions to accomplish the work.
8. Department shall accept the volunteer as part of the team, including them in training and staff meetings that pertain to the volunteer's work.
9. Department shall establish and inform volunteer of the supervisory personnel to whom the volunteer is responsible.
10. Department shall provide appropriate recognition and appreciation to the volunteer.
11. Department shall provide funds for appropriate volunteer benefits as specified below.
12. Department shall provide recognition of regular staff for support and supervision of volunteers.
13. Before formally accepting and expending funds and/or materials, the Department shall comply with established County procedures relative to such matters.

VOLUNTEER BENEFITS

Volunteer benefits shall be provided within the limits of a department's budget as deemed appropriate by the appointing authority as follows:

1. Meals may be furnished without charge or the cost thereof may be reimbursed to volunteer serving the department in the same manner as regular employees similarly situated.
2. Per diem allowance; reimbursement for parking fees; bus and taxi fares and mileage reimbursement for the use of personal vehicles may be provided as determined by the appointing authority. When these allowances or reimbursements are made, they shall be furnished at rates comparable to those received by regular employees.
3. Use of County vehicles in the performance of official duties.
4. Solely for the purposes of Section 8.04 of the Kauai County Charter, volunteers under this program are deemed "employees of the County" when acting for a

department within their delegated authority in their capacity as volunteers.

5. Training and conference reimbursements may be furnished for volunteers.
6. Personal liability insurance may be furnished for volunteers.
7. Reasonable expenses incurred by volunteers in connection with their assignments may be reimbursed.
8. Coverage under Part V., Section B., of Chapter 386, Workers' Compensation.
9. Recognition of volunteer service which may include a recognition ceremony, certificates and awards to be determined by the department.

DEPARTMENT REPORTS, REQUIRED INFORMATION

Each department, as part of its annual report, shall include the following:

- A. The total number of volunteers and the total number of hours of service broken down into categories of regular service volunteers, occasional volunteers, stipend volunteers, and material donors.
- B. A listing of volunteer job titles used by the agency.
- C. The cost to the County for volunteer benefits.
- D. The overall savings to the County.
- E. A listing of materials and the estimated costs thereof, and amount of funds received from material donors, and a summary statement(s) as to how these items were utilized by the County.

VOLUNTEER UTILIZATION PROGRAM PROCEDURES

Screening, Selection and Placement

The volunteer should be selected with the same care with which a regular employee is chosen. Screening volunteer applicants requires an art and skill. It requires using adequate interviewing techniques to sort out information you have obtained to make a decision whether or not to utilize the applicant. This process involves the following steps:

- a. Review the application and arrange for a personal interview.
- b. Plan for an unhurried conference with time to sit down and get acquainted. General, but appropriate, questions can usually obtain pertinent information from the applicant. Some of the relevant questions asked should be:
 1. Why is volunteer service important to you?
 2. Have you had previous volunteer experience?
 3. What preferences do you have in volunteer service?
 4. Do you have special training or interests?
- c. The responses to these questions will enable you to discover the volunteer's interests and skills.
- d. Discuss the area of special interest to this volunteer. This may include age groups, time schedules, etc.
- e. When the candidate is not suitable for the job, it is important to be honest in the interview that the applicant's service cannot be used at this time. When the person is not suitable, you should direct the individual to other opportunities which might be suited to the applicant's skills and interests.
- f. The Supervisor has the responsibility to pave the way for the volunteer. The group should be told about the volunteer and introduced to the group.
- g. If and when the applicant has been placed, there should be an allowed time for the volunteer to change jobs if it is not what the volunteer expected. A volunteer should be allowed to express satisfactions, dissatisfactions and other opinions to help improve service to the public.

Orientation, Training and Supervision

- a. Orientation should provide the volunteer with a clear understanding of the agency, its services and policies, including familiarity with the physical setting of the agency; philosophy and brief history of the agency; relationship of the agency to other agencies in the County; and reading material or printed information pertaining to the agency.
- b. Training should be geared specifically to the volunteer's job performance. It should tell the volunteer what is expected by the agency, how the activity should be performed and identifies the agency's program. An occasional seminar or group meeting can enhance and maintain an active program.
- c. Good Supervision must be provided. The volunteer needs to know to whom to report for assignments, instructions and overall direction. A good supervisor should:
 1. be empathetic and understanding of the volunteer's needs as good relationships are the key to effectiveness.
 2. drop in from time to time to see how things are going and schedule time to discuss concerns. One of the best ways to lose a volunteer is to let the volunteer flounder around in a difficult situation without help or encouragement.
 3. give a word of encouragement and appreciation to volunteers every time they come. They deserve a real sense of importance for the contribution they are making to the program.
 4. be a team player and flexible to the needs and abilities of the volunteer.

Evaluation and Assessment

- a. A "probationary" time provides a chance for both the volunteer and the coordinator to assess and evaluate whether or not the needs of both the volunteer and the County are being met.
- b. Evaluation is an on-going process to insure a program's vitality, related to the agency's goals and objectives, and should involve both staff and volunteers. What the job is, how it is to be done, its effectiveness and how it can be improved are included in this process and provides time to examine weaknesses and strengths, and

need for modifications.

- c. Termination of a volunteer is a difficult job with no simple solution. The supervisor must be honest and concerned about the volunteer's personal growth and development, as well as the needs of the County. When there is a need to terminate a volunteer, alternatives should be explored which may help the volunteer to accept the decision with a positive attitude. The supervisor's decision to terminate should be reviewed by the Department Head when it is questioned by the volunteer. However, the decision of the Department Head is final.
- d. Recognition and appreciation of a job well done creates the climate for further endeavor. Regular gestures and expressions of appreciation go a long way in motivating the volunteer to remain with the agency. Departments should also consider honoring volunteers annually with a special luncheon, letters of commendation, certificates and special awards for outstanding volunteers.

Records and Filing System

Paperwork and records are valuable and necessary for assessing the success of a volunteer program. A system of recordkeeping on all volunteers should be developed. Each volunteer should have a file including application, annual reports and evaluation and some kind of description of the job being performed.

Adequate records of volunteers add to the efficiency and effectiveness of the volunteer program. Minimum records give the following information about the individual: name; address; telephone number(s); emergency contact(s); etc.

Maintain a record of volunteer accomplishments. Keep the forms short and simple. The primary interest should be in the volunteer's services and not in filling out forms. Attached are forms which we have developed for the Volunteer Utilization Program.

att.

VOLUNTEER AGREEMENT

A volunteer has the responsibility to:

1. Maintain confidentiality of all assignments and agency matters.
2. Fulfill the given assignments or notify the supervisor of any change of plans.
3. Observe the guidelines established by the agency.
4. Utilize time wisely.
5. Provide feedback, suggestions and recommendations to the supervisor regarding the program.
6. Cooperate as a team member with staff and other volunteers.
7. Respect the supervisor and have consideration for the recipients of the volunteer services.

The agency has the responsibility to:

1. Utilize volunteers without displacing paid employees.
2. Provide volunteers with a designated supervisor.
3. Provide staff with orientation and training in the use and supervision of volunteers.
4. Provide orientation and training for the volunteers.
5. Be sensitive to the needs of disabled volunteers when given an assignment.
6. Provide volunteers with clear instructions and adequate work space.
7. Welcome the volunteer as part of the team, include them in staff meetings and other training pertaining to their work.
8. Provide written guidelines covering recruitment, screening, utilization and supervision of volunteers.

Indemnification In Favor of the Volunteer:

Except as provided here and below, the County agrees to indemnify and hold harmless the volunteer from any and all suits, claims actions or damages of every kind which may be brought for or on account of the negligence of the County, its officers, agents and employees.

The County agrees to defend the volunteer from all suits and claims actions or damages of every kind which may be brought for or on account of the negligence of the County, its officers, agents and employees.

Indemnification In Favor of the County:

The Volunteer agrees to indemnify and hold harmless the County and its employees against any and all suits, claims, actions or damages of every nature and kind which may be brought for or on account of the Volunteer's gross negligence, or intentional or willful misconduct in performing volunteer assignments.

The Volunteer agrees to defend the County from all suits and claims which may result solely from the gross negligence or intentional or willful misconduct of the volunteer.

VOLUNTEER'S SIGNATURE

DEPARTMENT HEAD'S SIGNATURE

DATE

DATE

RELEASE OF THE COUNTY OF KAUAI BY VOLUNTEER
FROM PROSPECTIVE INJURIES WHILE PARTICIPATING IN
THE VOLUNTEER UTILIZATION PROGRAM

RELEASE OF ALL CLAIMS

In consideration of permission granted to me,
_____[Volunteer name], by
the County of Kauai to participate for our mutual benefit as a
VOLUNTEER in the Volunteer Utilization Program, except as
provided by Hawaii Revised Statutes Sections 386-171 and 386-172,
I hereby release and discharge the County of Kauai, its agents,
employees, and officers from all actions, causes of action,
damages, claims, or demands which the undersigned ever had or now
has, or may have, or which the undersigned's heirs, executors,
administrators, or assigns may have, or claim to have against the
County of Kauai and other above-described parties for all
personal injuries, known or unknown, which
_____[Volunteer name] has or may
incur by participating in the above-described activity including
such injuries as may be the result of negligence of the County of
Kauai, its employees, agents, or officers.

I understand, have read this release and understand all its
terms, execute it voluntarily and with full knowledge of its
significance.

In witness whereof, I have executed this release at
_____[Location where form being
filled] on this _____ day of _____ 19____.

Signature of Volunteer

RELEASE OF COUNTY OF KAUAI BY PARENT
OF VOLUNTEER FOR ANY AND ALL PROSPECTIVE INJURIES
FROM PARTICIPATING IN THE VOLUNTEER UTILIZATION PROGRAM

RELEASE OF ALL CLAIMS

Release made on _____, 19____, [today's date] by
_____ [name of parent or
guardian] of _____ [address],
County of Kauai, State of Hawaii, as _____
[mother, father, or guardian] of _____
_____ [name of minor child] of
_____ [address] County of Kauai,
State of Hawaii.

In consideration of permission granted my child or ward,
_____ [name of minor child or
ward] by the County of Kauai to participate for our mutual
benefit as a VOLUNTEER in the Volunteer Utilization Program, I
hereby release and discharge, except as provided by Hawaii
Revised Statutes Sections 386-171 and 386-172, the County of
Kauai, its agents, employees and officers from all action, causes
of actions, damages, claims, or demands which the undersigned
ever had, or now has, or may have, or which the undersigned's
heirs, executors, administrators, or assigns may have, or claim
to have against the County of Kauai and other above-described
parties for all personal injuries, known or unknown, which
_____ [name of minor child or
ward] has or may incur by participating in the above-described
activity including such injuries as may be the result of
negligence of the County of Kauai, its employees, agents, or
officers.

I, the undersigned, have read this release and understand all its
terms, execute it voluntarily and with full knowledge of its
significance.

In witness whereof, I have executed this release at
_____ [location where form
is being filled] on the day and year first written above.

Signature of Parent or Guardian

Appendix I

QUESTIONNAIRE

Organization Name: _____

Address: _____

Person Completing Form: _____

Title: _____

Telephone: _____

1. Do you provide general liability insurance to any nonprofit entities in Hawaii?
Yes No

If, so, please fill out the remainder of this questionnaire. If not, why not? (Please explain)

2. To the best of your knowledge, how many Hawaii nonprofit entities do you insure?
3. What percentage of your business in Hawaii does this figure represent?
4. In the past 12 months, what was the dollar amount of earned premiums for nonprofit entities in Hawaii?

5. In the past 24 months, how many claims by Hawaii non-profit entities have been incurred?

Representing how much in claims in Hawaii? ____%

6. In the past 24 months, have you had to increase rates for property-casualty coverage for non-profits in Hawaii? Yes No

If so, by how much? ____%

If so, what were your reasons? (Please check all that apply)

- ☐ Unavailability of reinsurance
- ☐ Increase in cost of reinsurance
- ☐ Increase of perceived risk
- ☐ To provide more coverage
- ☐ Other (please specify)

7. During the past 24 months, have you refused to renew a policy that was in force to any non-profit entity in Hawaii? Yes No

If so, how many?

If so, what were your reasons? (Please check all that apply)

- ☐ Cancellation of reinsurance
- ☐ Increase in cost of reinsurance
- ☐ Increase of perceived risk
- ☐ Don't insure in this line anymore
- ☐ Other (please specify)

8. Has your reinsurer limited the kinds of coverage you can offer to Hawaii non-profit entities? Yes No

If so, please explain.

9. Has your reinsurer limited the amount of coverage you can offer to Hawaii non-profit entities? Yes No

If so, please explain.

10. During the past 24 months, have you experienced an increase in the amount you must pay for reinsurance for Hawaii non-profit entities? Yes No

If so, by what percentage? ____%

If so, how did you deal with the higher reinsurance cost? (Please check all that apply)

- ☐ () Dropped unpredictable lines of coverage
- ☐ () Dropped frequent claimants
- ☐ () Raised premiums
- ☐ () Lowered coverage limits
- ☐ () Raised deductibles
- ☐ () Cut back staff
- ☐ () Other (please specify)

11. If large numbers of Hawaii non-profit entities formed a risk purchasing group, assuming all other factors remained the same:

(a) Would you expect premiums to:

☐ Go up ☐ Stay the same ☐ Go down ☐ Don't know

(b) Would you expect reinsurance rates to:

☐ Go up ☐ Stay the same ☐ Go down ☐ Don't know

12. Please add any comments or additional information that you think would be helpful to this study.