

# Volunteer Protection Act



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## The Volunteer Protection Act: How the Law Will Affect Associations

The federal Volunteer Protection Act of 1997 grants immunity from personal liability to those who **volunteer for nonprofit organizations**. It is intended to encourage volunteerism and facilitate volunteer organization recruiting by reducing the legal liability risks to individuals who choose to serve. The law preempts inconsistent state laws, standardizing protection that now varies greatly from state to state.

The law is complex. It contains numerous conditions, qualifications and limitations. Many questions are raised regarding its practical ramifications. Since no federal agency is authorized to interpret the law, clarification will likely have to await court determination on a case-by-case basis where claimants attempt to hold volunteers personally liable and the law is raised as a defense on behalf of the volunteers.

Here are some practical considerations regarding the impact of the act on associations:

### What is the law all about?

The law preempts state law to provide that volunteers would not be liable for harm if (1) they were acting in the scope of the volunteer activity; (2) they were properly licensed (if necessary); (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the claimant; and (4) the harm was not caused by the volunteer operating a vehicle, vessel, or aircraft.

The law does not allow punitive damages to be awarded against a volunteer unless the harm was caused by willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the claimant. In a suit against a volunteer, the volunteer's liability for "noneconomic damages" (pain and suffering, mental anguish, etc.) would be "several" but not "joint" (each volunteer would be responsible for a proportionate share).

The law allows states to opt out of coverage under certain circumstances. It also specifies conditions and restrictions that a state could impose without being inconsistent with the law. It further exempts from coverage any misconduct that constitutes a crime, a sexual offense, a violation of civil rights, or where the volunteer was under the influence of alcohol.

The law was effective 90 days after enactment. It applies to any claim filed on or after the effective date if the harm that is the subject of the claim or the conduct that caused the harm occurred after the effective date.

### Does the law apply to volunteers for all trade associations, professional societies, and other nonprofit organizations?

The law defines a volunteer as someone who provides service for a non-profit and is not compensated, other than being reimbursed for expenses or anything of value under \$500 a year. The act defines non-profits as 501(c)(3)s under the 1986 Internal Revenue Service Code, and any not-for-profit organization geared for public benefit and operated for charitable, educational, religious, welfare or health purposes.

Volunteers for organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code are clearly covered by the law. In addition, volunteers of "any non-for-profit organization, which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare or health purposes, "are also clearly covered.

The legislative history indicates that coverage would "include trade and professional associations and other business leagues which are exempt from taxation under Section 501(c)(6)" apparently Congress does not expect that 501(c)(6) organizations would have to meet the "public benefit" and "operating primarily" tests.

Beyond 501 (c) (3) and 501 (c) (6) organizations and for non-tax-exempt nonprofit organizations, the law covers "organizations which are not tax exempt but which meet the 'public benefit' and 'operating primarily' tests. For exempt

organizations other than 501(c)(3) and 501(c)(6) organizations, including such membership associations as "interest organizations" exempt under Section 501(c)(4) and agricultural organizations under Section 501(c)(5) as well as nonprofit organizations that do not have federal income tax exemption, coverage by the law will depend on whether each organization is found to meet the "public benefit" and "operating primarily" tests.

#### **Does an association have to take any action to ensure that its volunteers are protected under the new law?**

No. The law automatically provides a bar to liability in suits brought against association volunteers in circumstances covered by the law. When there may be some uncertainty about the applicability of the law to volunteers for associations other than 501 (c) (3) organizations, which are mentioned in the law, and 501 (c) (6)s which are mentioned in its legislative history, those associations need to consult with legal counsel; modifications in governing documents to meet the "public benefit" and "operating primarily" tests may be warranted.

#### **Are lawsuits against association volunteers now prohibited?**

No. The new federal law will provide a strong defense when liability suits are brought against volunteers in circumstances where the law applies, likely often leading to dismissal of the suits against the volunteers; but the law does not bar claimants from naming volunteers in lawsuits. It may, however, assist in deterring or discouraging potential claimants from bringing such suits in the first place.

#### **Do nonprofit organizations as entities or the paid employees of these organizations derive any immunity from the law?**

Clearly not. The law grants immunity from personal, individual liability only for volunteers of nonprofit organizations, **not for the organizations themselves or for the employees of the organizations, such as typical paid association executive members.**

#### **Can a state government increase or decrease the protection afforded volunteers under the new law?**

The law preempts all inconsistent state laws, including the greatly varying volunteer protection laws that now exist in all 50 states. Each individual state is given the prerogative to increase protection from liability for volunteers beyond that provided in the federal law. There is also a narrow exemption that permits an individual state to avoid preemption with respect to suits brought in state court and involving only citizens of the state if the state does so via a stand-alone law.

#### **Does the new federal law render liability insurance no longer necessary for associations?**

No. Insurance is still very important and very useful. Many liability risks for associations and their volunteers are not eliminated by the new law. For example, claims against associations themselves, as well as against association employees, are not affected; claims against volunteers that either pre-date the law or involve conduct pre-dating are not affected; even many potential claims against association volunteers - such as for employment discrimination - are not covered by the law. All of these are ordinarily covered by typical association liability insurance policies. Moreover, generally an association volunteer will not learn whether the new law applies to an individual situation until the court makes its determination on applicability; liability insurance indemnifies against legal expenses incurred in reaching that determination.

Effective risk management for associations involves several layers of protection, just as with automobile safety or fire safety. Training and education of employees volunteers, indemnification of individuals by the association, and association liability insurance can all be excellent, if in some respects overlapping precautions.

The federal Volunteer Protection Act of 1997 increases and enhances association risk management, but it does not replace other risk management techniques, such as insurance.

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