

1 **VOLUNTEER IMMUNITY ACT**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: L. Steven Poulton**

5 AN ACT RELATING TO VOLUNTEER IMMUNITY; GRANTING IMMUNITY FROM SUIT
6 TO CERTAIN VOLUNTEERS; DECLARING UTAH'S INTENT TO NOT APPLY AN
7 OPTIONAL FEDERAL LAW; AND PROVIDING AN EFFECTIVE DATE.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 ENACTS:

10 **78-19-101**, Utah Code Annotated 1953

11 **78-19-102**, Utah Code Annotated 1953

12 **78-19-201**, Utah Code Annotated 1953

13 **78-19-202**, Utah Code Annotated 1953

14 **78-19-301**, Utah Code Annotated 1953

15 **78-19-401**, Utah Code Annotated 1953

16 REPEALS:

17 **78-19-1**, as enacted by Chapter 4, Laws of Utah 1990

18 **78-19-2**, as enacted by Chapter 4, Laws of Utah 1990

19 **78-19-3**, as enacted by Chapter 4, Laws of Utah 1990

20 *Be it enacted by the Legislature of the state of Utah:*

21 Section 1. Section **78-19-101** is enacted to read:

22 **CHAPTER 19. UTAH VOLUNTEER PROTECTION ACT**

23 **Part 1. General Provisions**

24 **78-19-101. Title.**

25 This chapter is known as the "Utah Volunteer Protection Act."

26 Section 2. Section **78-19-102** is enacted to read:

27 **78-19-102. Definitions.**

28 As used in this chapter:

29 (1) "Damage" means physical injury to real or personal property.

30 (2) "Good faith" means that the purpose of the volunteer is to provide service directly as
31 an independent volunteer, or directly or indirectly through an organization and that the volunteer's
32 actions are not for the benefit of another person or entity except the person or entity being served.

33 (3) "Governmental entity" means:

34 (a) the state;

35 (b) any department, agency, institution, instrumentality, office, college, university,
36 authority, division, board, bureau, commission, council, or other agency of the state;

37 (c) any Olympic Winter Games organizing committee or instrumentality thereof, as
38 approved by the Utah Sports Authority;

39 (d) any county, city, town, school district, or special district; or

40 (e) any other political subdivision.

41 (4) "Gratuitous" or "gratuitously" means without actual or expected compensation or
42 payment for services in money or any other thing of value, whether per diem or otherwise, except
43 where the payment is solely for the purpose of reimbursing subsistence, travel, or other expense
44 reasonably incurred by the person performing those services.

45 (5) "Gross negligence" or "grossly negligent" means:

46 (a) the failure to observe even slight care; or

47 (b) recklessness to a degree that shows utter indifference to the consequences that may
48 result.

49 (6) "Injury" means any kind of harm to a person other than property damage.

50 (7) "Nonprofit organization" means:

51 (a) any organization that is described in Section 501(c) (3) of the Internal Revenue Code
52 of 1986 and is exempt from tax under Section 501 of the Internal Revenue Code; or

53 (b) any not-for-profit organization that is formed and conducted for public benefit and
54 operated primarily for humanitarian, charitable, civic, educational, religious, benevolent, welfare,
55 or health purposes, and that does not distribute its income or assets to its members, directors,
56 officers, or other participants, except as provided in this chapter.

57 (8) "Organization" means a firm, partnership, association, agency, entity, corporation,
58 company, or group of individuals acting together for a common purpose, whether public or private.

90 **78-19-401. Election of nonapplicability required by federal law.**
91 In accordance with Section 3(b) of Public Law 105-19, Utah declares its election that
92 Public Law 105-19 does not apply in any civil action in a state court against a volunteer in which
93 all parties are citizens of this state.
94 Section 7. **Repealer.**
95 This act repeals:
96 Section **78-19-1, Definitions.**
97 Section **78-19-2, Liability protection for volunteers -- Exceptions.**
98 Section **78-19-3, Liability protection for organizations.**
99 Section 8. **Effective date.**
100 This act takes effect on July 1, 2000.

Legislative Review Note
as of 1-5-00 9:49 AM

This legislation raises the following constitutional or statutory concerns:

Article I, Section 11 of the Utah Constitution, Utah's "open courts" provision, provides that all courts shall be open and every person shall have a remedy available for an injury. In interpreting this constitutional provision, the Utah Supreme Court has held that when the Legislature removes a remedy at law, it must either provide an effective and reasonable alternative by due course of law or the Legislature must establish that there is a clear social or economic evil to be eliminated and that the elimination of the remedy at law is not an arbitrary or unreasonable means for achieving that objective. *Berry v. Beech Aircraft Corp.* 717 P. 2d 670, 676 (Utah 1985). This legislation, by providing blanket immunity for volunteers, removes a remedy at law but does not provide any alternative remedy. Unless the Legislature affirmatively establishes the existence of a clear social and economic ill to be eliminated, and affirmatively establishes that this grant of immunity to volunteers is not an arbitrary or unreasonable means of removing that ill, this legislation will probably be declared unconstitutional.

Office of Legislative Research and General Counsel