

IMMUNITY FOR VOLUNTEERS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Craig L. Taylor

5	John P. Holmgren	Michael G. Waddoups	Pete Suazo
6	Nathan C. Tanner	Howard C. Nielson	Millie M. Peterson
7	L. Steven Poulton	Robert M. Muhlestein	Lane Beattie
8	Howard A. Stephenson	Lorin V. Jones	Leonard M. Blackham
9	Robert F. Montgomery	Joseph L. Hull	Scott N. Howell
10	David H. Steele	George Mantes	L. Alma Mansell
11	Craig A. Peterson	Alarik Myrin	Mike Dmitrich
12	LeRay McAllister		

13 AN ACT RELATING TO THE JUDICIAL CODE; PROVIDING FOR IMMUNITY FOR
 14 VOLUNTEERS UNDER CERTAIN CIRCUMSTANCES; PROVIDING INSURANCE
 15 LIMITS FOR NONPROFIT ORGANIZATIONS AND INDEPENDENT VOLUNTEERS;
 16 MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

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

18 AMENDS:

19 **4-34-1**, as enacted by Chapter 70, Laws of Utah 1981

20 **4-34-2**, as enacted by Chapter 70, Laws of Utah 1981

21 ENACTS:

22 **78-19-101**, Utah Code Annotated 1953

23 **78-19-102**, Utah Code Annotated 1953

24 **78-19-103**, Utah Code Annotated 1953

25 **78-19-104**, Utah Code Annotated 1953

26 **78-19-201**, Utah Code Annotated 1953

27 **78-19-202**, Utah Code Annotated 1953

28 **78-19-203**, Utah Code Annotated 1953

29 **78-19-301**, Utah Code Annotated 1953

- 1 **78-19-302**, Utah Code Annotated 1953
- 2 **78-19-401**, Utah Code Annotated 1953
- 3 **78-19-402**, Utah Code Annotated 1953
- 4 **78-19-403**, Utah Code Annotated 1953
- 5 **78-19-404**, Utah Code Annotated 1953
- 6 **78-19-405**, Utah Code Annotated 1953
- 7 **78-19-406**, Utah Code Annotated 1953
- 8 **78-19-407**, Utah Code Annotated 1953
- 9 **78-19-408**, Utah Code Annotated 1953
- 10 **78-19-409**, Utah Code Annotated 1953

11 REPEALS:

- 12 **4-34-5**, as enacted by Chapter 70, Laws of Utah 1981
- 13 **4-34-6**, as last amended by Chapter 157, Laws of Utah 1990
- 14 **78-11-22**, as last amended by Chapter 211, Laws of Utah 1987
- 15 **78-11-22.1**, as enacted by Chapter 106, Laws of Utah 1989
- 16 **78-19-1**, as enacted by Chapter 4, Laws of Utah 1990
- 17 **78-19-2**, as enacted by Chapter 4, Laws of Utah 1990
- 18 **78-19-3**, as enacted by Chapter 4, Laws of Utah 1990

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

20 Section 1. Section **4-34-1** is amended to read:

21 **4-34-1. Definitions.**

22 For purposes of this chapter:

23 (1) "Agricultural product" means any fowl, animal, fish, vegetable, or other product or
24 article, fresh or processed, which is customary food, or which is proper food for human
25 consumption.

26 [(3)] (2) "Gleaner" means a person who harvests, for free distribution, an agricultural crop
27 that has been donated by the owner.

28 [(2)] (3) "Nonprofit charitable organization" means any organization which [was] is
29 organized and [is] operating for charitable purposes and which meets the requirements of [the]
30 Section 501(c) of the Internal Revenue [Service of the U.S. Department of Treasury] Code that
31 [exempt] exempts the organization from income taxation [under the provisions of the Internal

1 Revenue Code].

2 Section 2. Section 4-34-2 is amended to read:

3 **4-34-2. Donation to charitable organization authorized.**

4 Any person engaged in the business of producing, processing, selling, or distributing any
5 agricultural product may donate, free of charge, any [such] agricultural product which is in a fit
6 condition for use as food for human consumption to a nonprofit charitable organization within the
7 state [of Utah].

8 Section 3. Section 78-19-101 is enacted to read:

9 **CHAPTER 19. UTAH VOLUNTEER PROTECTION**

10 **Part 1. General**

11 **78-19-101. Title.**

12 This chapter shall be known as the "Utah Volunteer Protection Act."

13 Section 4. Section 78-19-102 is enacted to read:

14 **78-19-102. Findings -- Purpose.**

15 (1) The Legislature finds and declares that:

16 (a) the willingness of volunteers to offer their services is deterred by the potential for
17 liability claims and suits against them;

18 (b) many people of the state have been, and are, negatively impacted by the withdrawal
19 of volunteers from charitable organizations and from independent service activities out of fear and
20 concern for liability exposure related to their volunteering;

21 (c) the significant contributions of volunteers to the community have been diminished as
22 a result of this withdrawal of volunteers;

23 (d) the government and people of the state are greatly benefitted by services provided by
24 volunteers, both those working with nonprofit, charitable organizations and those working
25 independently;

26 (e) volunteerism represents and provides tremendous opportunities for individuals who
27 engage in volunteering, persons who receive goods and services from volunteers, organizations
28 which exist to provide charitable and other social benefits to the community, and the larger
29 community and governments which also benefit from charitable organizations and volunteers;

30 (f) state funds are expended on useful and cost-effective social and other charitable service
31 programs which depend heavily on volunteer participation and represent some of the most

1 successful public-private partnerships; and

2 (g) protection of volunteerism through clarification and limitation of liability risks
3 assumed by the volunteer in connection with his or her participation in volunteering, is an
4 appropriate subject for state legislation because:

5 (i) the statewide scope of the problems created by the legitimate fears of volunteers
6 concerning frivolous, arbitrary, or capricious lawsuits;

7 (ii) the citizens of the state depend on and the state government expends funds for, and
8 provides tax exemptions and other consideration to, numerous social and other charitable programs
9 that depend on the services of volunteers; and

10 (iii) it is clearly and convincingly in the public interest for the state to encourage the
11 continued operation of volunteer service organizations and contributions of volunteers because the
12 state lacks the economic capacity to carry out the services provided by the many organizations and
13 volunteers, whether associated with organizations or serving as independent volunteers.

14 (2) The purpose of this chapter is to promote volunteerism in the state, sustain the
15 availability of independent volunteer activities and programs, nonprofit organizations, and
16 governmental entities that depend upon volunteer contributions, by providing certain protections
17 from liability related to volunteering.

18 Section 5. Section **78-19-103** is enacted to read:

19 **78-19-103. Definitions.**

20 As used in this chapter:

21 (1) (a) "Compensation" means payment for services, whether per diem or otherwise,
22 except where the payment is solely for the purpose of reimbursing subsistence, travel, or other
23 expense reasonably incurred by the person performing those services.

24 (b) "Compensation" does not include acceptance of funds voluntarily offered by the
25 recipient of transportation services to replace fuel reasonably expended by the volunteer while
26 providing transportation services in his personal vehicle.

27 (2) "Damage or injury" means personal injury or property damage.

28 (3) "Good faith" means that the primary purpose of the volunteer is to assist those in need
29 directly as an independent volunteer, or directly or indirectly through an organization and that the
30 volunteer's actions are not for the benefit of another person or organization except the person or
31 organization being assisted.

1 (4) "Gratuitous" or "gratuitously" means without actual or expected compensation in
2 money or any other thing of value from any source whatsoever.

3 (5) "Gross negligence" or "grossly negligent" means the failure to observe even slight care,
4 or recklessness to a degree that shows utter indifference to the consequences that may result.

5 (6) "Nonprofit organization" means:

6 (a) an incorporated or unincorporated organization or association whether formally
7 incorporated or otherwise established and operating for religious, charitable, or educational
8 purposes which does not distribute any of its income or assets to its members, directors, officers,
9 or other participants;

10 (b) any organization which is described in Section 501(c) (3) of the Internal Revenue Code
11 of 1986 and is exempt from tax under Section 501 of the Internal Revenue Code; or

12 (c) any not-for-profit organization which is formed and conducted for public benefit and
13 operated primarily for charitable, civic, educational, religious, benevolent, welfare, or health
14 purposes.

15 (7) "Organization" means a firm, partnership, association, corporation, company, group
16 of individuals acting together for a common purpose, or agency, whether public or private.

17 (8) "Person" means an individual.

18 (9) "Personal injury" or "injury" means harm to a person of any kind other than property
19 damage.

20 (10) "Property damage" or "damage" means harm to, or loss of, any right, title, estate, or
21 interest in real or personal property.

22 Section 6. Section **78-19-104** is enacted to read:

23 **78-19-104. Applicability.**

24 This chapter applies to any claim for damage or injury caused by an act or omission of a
25 volunteer occurring after May 1, 1998.

26 Section 7. Section **78-19-201** is enacted to read:

27 **Part 2. Good Samaritan Act**

28 **78-19-201. Title.**

29 This part shall be known as the "Good Samaritan Act."

30 Section 8. Section **78-19-202** is enacted to read:

31 **78-19-202. Definitions.**

1 As used in this part:

2 (1) "Emergency" means an unexpected occurrence involving injury, threat of injury, or
3 illness to a person or the public, including a motor vehicle accident, a natural or man-made
4 disaster, an actual or threatened discharge, removal, or disposal of hazardous materials, and any
5 other accidents or events of a similar nature.

6 (2) "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or
7 attempt to mitigate the effects of an emergency.

8 Section 9. Section **78-19-203** is enacted to read:

9 **78-19-203. Person who renders emergency care not liable.**

10 Any person who renders emergency care at or near the scene of, or during an emergency,
11 gratuitously and in good faith, is not subject to any civil liability or penalties as a result of any act
12 or omission by the person rendering the emergency care, unless the person is grossly negligent or
13 caused the emergency.

14 Section 10. Section **78-19-301** is enacted to read:

15 **Part 3. Donors of Food and Grocery Products**

16 **78-19-301. Definitions.**

17 As used in this part:

18 (1) "Donate" means to give or distribute without requiring anything of monetary or other
19 value from the final recipient or consumer. A processing fee may be exchanged between
20 organizations for any food or grocery products, provided the final consumer receives them free of
21 charge.

22 (2) "Food" means items for human consumption and includes agricultural products,
23 commercially processed and prepared items, as well as perishable items. Food may include fresh
24 and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shells, and
25 fresh fruits and vegetables which may be packaged, refrigerated, or frozen.

26 (3) "Glean" means to harvest, for free distribution, an agricultural crop that has been
27 donated by the owner.

28 (4) "Grocery products" means nonfood items normally sold in food stores, including
29 disposable paper and plastic products, household cleaning products, bottled water, laundry
30 detergents, and miscellaneous household items.

31 Section 11. Section **78-19-302** is enacted to read:

78-19-302. Donation of food and grocery products -- Liability limits.

(1) A person or organization who, in good faith, donates or distributes apparently wholesome food or apparently serviceable and safe grocery products either directly to the needy or to a nonprofit organization for distribution directly or indirectly to the needy is not subject to civil liability or criminal prosecution regarding the condition of the food and grocery products unless injury results from an act or omission of the person or organization which was grossly negligent.

(2) A nonprofit organization and any employee or volunteer of the organization who, in good faith, gleans or receives and distributes food or grocery products which are apparently fit for human consumption or use at the time they are distributed without charge to the needy, is not subject to civil liability or criminal prosecution for the condition of the food or grocery products unless injury results from an act or omission which was grossly negligent.

Section 12. Section **78-19-401** is enacted to read:

Part 4. Volunteers

78-19-401. Definitions.

As used in this part:

(1) "Governmental entity" means:

(a) the state;

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

(c) any county, city, town, school district, or special improvement or taxing district;

(d) any Olympic Winter Games organizing committee, as approved by the Utah Sports Authority; or

(e) any other political subdivision.

(2) "Volunteer" means a person performing services for a nonprofit organization or governmental entity who does not receive compensation, or any other thing of value in lieu of compensation, in excess of \$500 per year from the nonprofit organization or governmental entity. Volunteer includes a person serving as a director, officer, trustee, or direct service volunteer.

Section 13. Section **78-19-402** is enacted to read:

78-19-402. Liability protection for certain volunteers.

Except as provided in Section 78-19-405, a volunteer for a nonprofit organization or

1 governmental entity shall not be liable for damage or injury caused by an act or omission of the
2 volunteer on behalf of the organization or entity if:

3 (1) the volunteer was acting within the scope of the volunteer's responsibilities in the
4 nonprofit organization or governmental entity at the time of the act or omission;

5 (2) the volunteer was properly licensed, certified, or authorized to perform the activity if
6 a license, certification, or authorization was required to perform the activity;

7 (3) the damage or injury was not caused by the gross negligence of the volunteer; and

8 (4) the nonprofit organization has a financially secure source of recovery as described in
9 Section 78-19-407.

10 Section 14. Section **78-19-403** is enacted to read:

11 **78-19-403. Liability protection for independent volunteers.**

12 (1) As used in this section, "independent volunteer" means a person who renders service
13 gratuitously in good faith to an individual or a group of individuals in need, or in connection with,
14 a humanitarian concern, a civic concern, a religious organization, or any other charitable concern.

15 (2) Except as provided in Section 78-19-405 or 78-19-406, an independent volunteer shall
16 not be liable for damage or injury caused by an act or omission of the independent volunteer while
17 providing volunteer services, if:

18 (a) the volunteer was acting gratuitously and in good faith;

19 (b) the damage or injury was not caused by the gross negligence of the independent
20 volunteer; and

21 (c) the volunteer has a policy of insurance that meets or exceeds the limits set in Section
22 78-19-406.

23 Section 15. Section **78-19-404** is enacted to read:

24 **78-19-404. Liability protection for volunteer providers.**

25 (1) Any organization, whether corporate, nonprofit, private, or public, which invites,
26 directs, releases from duties, or otherwise provides the volunteer services of persons employed by,
27 working part time for, or in any other way associated with the organization, shall not be liable for
28 damages for any act or omission of the organization or of the person while the person is
29 volunteering, unless the organization was grossly negligent in providing the person as a volunteer.

30 (2) For the purposes of this part, an employee of any organization which provides the
31 employee's services as a volunteer under either Section 78-19-402 or 78-19-403, is still considered

1 a volunteer even though he continues to receive his wages or salary from the organization during
2 the time he is performing volunteer services.

3 Section 16. Section **78-19-405** is enacted to read:

4 **78-19-405. Exceptions to immunity -- Motor vehicles, vessels, or aircraft operation**
5 **-- License and insurance required -- Other types of insurance -- Criminal activity.**

6 (1) As used in this section, "volunteer" includes an independent volunteer as defined in
7 Section 78-19-403.

8 (2) The protection against liability in this chapter does not apply if the damage or injury
9 was caused by the volunteer while operating a motor vehicle, vessel, aircraft, or other vehicle for
10 which a pilot or operator's license or liability coverage is required.

11 (3) The protection against liability in Sections 78-19-302, 78-19-402, and 78-19-403 does
12 not apply if, at the time the damage or injury occurred, the volunteer causing the damage or injury:

13 (a) was engaged in misconduct that constitutes a felony under state or federal law;

14 (b) was engaged in misconduct that constitutes a sexual offense;

15 (c) was under the influence of a controlled substance;

16 (d) was under the influence of alcohol in accordance with the standard set forth in Section
17 41-6-44; or

18 (e) was engaged in conduct that includes any degree of culpability in excess of gross
19 negligence, including willful or malicious conduct or intent to cause injury or damage.

20 Section 17. Section **78-19-406** is enacted to read:

21 **78-19-406. Insurance provisions for independent volunteers.**

22 (1) An independent volunteer may be liable for damage or injury if the damage or injury
23 caused by the volunteer is covered under any policy of insurance carried by the volunteer.

24 (2) An independent volunteer who purchases a policy of insurance covering damage or
25 injury caused specifically in the course of his volunteer activity may be liable for any damage or
26 injury caused while volunteering; provided however that the liability shall not exceed the
27 combined limits of his insurance coverage from all sources.

28 (3) Insurance policies designed to specifically protect independent volunteers while
29 engaging in volunteer activity shall be the last resort source of recovery and may not limit the
30 insurer's liability to less than:

31 (a) \$10,000 for bodily injury to one person in a single incident;

1 (b) subject to the limit for one person in Subsection (3)(a), \$20,000 for bodily injury to
2 two or more persons in a single incident; and

3 (c) \$7,500 for injury to property of others.

4 (4) An insurer may not insert a clause in any contract for insurance that voids or refuses
5 to pay a claim on the policy if the claim arises from the volunteer activity of the insured.

6 Section 18. Section **78-19-407** is enacted to read:

7 **78-19-407. Financial responsibility requirements for nonprofit organizations.**

8 (1) "Financially secure source of recovery" means that a nonprofit organization:

9 (a) has an insurance policy in effect that covers the activities of the volunteer with limits
10 equal to or higher than the limits established under Subsection (2); or

11 (b) has established a qualified trust with a value of \$65,000 or more.

12 (2) Policies insuring organizations who utilize volunteers may not limit the insurer's
13 liability to less than:

14 (a) \$25,000 for bodily injury to or death of one person arising out of one incident;

15 (b) subject to the limit for one person in Subsection (2)(a), \$50,000 for bodily injury to or
16 death of two or more persons arising out of one incident; and

17 (c) \$15,000 for injury to, or destruction of, property of others arising out of one incident.

18 Section 19. Section **78-19-408** is enacted to read:

19 **78-19-408. Actions by or against nonprofit organization or governmental entity.**

20 (1) Nothing in this chapter may be construed to affect any civil action brought by a
21 nonprofit organization or governmental entity against a volunteer of the organization or entity.

22 (2) Nothing in this chapter may be construed to affect the liability of any nonprofit
23 organization or governmental entity with respect to damage or injury caused to any person, by the
24 gross negligence of the nonprofit organization or governmental entity.

25 Section 20. Section **78-19-409** is enacted to read:

26 **78-19-409. Election of nonapplicability required by federal law.**

27 In accordance with Section 3(b) of Public Law 105-19, Utah declares its election that
28 Public Law 105-19 shall not apply in any civil action in a state court against a volunteer in which
29 all parties are citizens of this state.

30 Section 21. **Repealer.**

31 This act repeals:

- 1 Section 4-34-5, **Limitation of liability of donor, charitable organization and county.**
- 2 Section 4-34-6, **Sale or use of donations by employee of public agency or charity**
- 3 **prohibited.**
- 4 Section 78-11-22, **Good Samaritan Act.**
- 5 Section 78-11-22.1, **Donation of food -- Liability limits.**
- 6 Section 78-19-1, **Definitions.**
- 7 Section 78-19-2, **Liability protection for volunteers -- Exceptions.**
- 8 Section 78-19-3, **Liability protection for organizations.**
- 9 Section 22. **Effective date.**
- 10 This act takes effect on May 1, 1998.

Legislative Review Note
as of 2-2-98 4:37 PM

This bill raises the following constitutional or statutory concerns:

Article I, Section 11 of the Utah Constitution provides that all courts shall be open and every person shall have a remedy available for an injury. This legislation, by providing immunity for volunteers, limits a person's access to the courts for harm suffered when the action causing the harm does not amount to gross negligence. The Utah Supreme Court, in looking at this constitutional provision, has made it clear that there should be an alternative remedy available to the injured party. While this legislation attempts to provide an alternative remedy through insurance, whether this is sufficient to satisfy the Utah Supreme Court's standard is uncertain.

Office of Legislative Research and General Counsel