

**Senator Craig L. Taylor** proposes to substitute the following bill:

**IMMUNITY FOR VOLUNTEERS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Craig L. Taylor**

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

AN ACT RELATING TO THE JUDICIAL CODE; PROVIDING FOR IMMUNITY FOR VOLUNTEERS UNDER CERTAIN CIRCUMSTANCES; CREATING THE VOLUNTEER INSURANCE ASSISTANCE PROGRAM; CREATING A RESTRICTED ACCOUNT; PROVIDING FOR THE INSURANCE COMMISSIONER TO CONTRACT FOR VOLUNTEER INSURANCE THROUGH A MARKET ASSISTANCE PROGRAM; PROVIDING INSURANCE LIMITS FOR NONPROFIT ORGANIZATIONS AND INDEPENDENT VOLUNTEERS; MAKING TECHNICAL CHANGES; APPROPRIATING \$500,000; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

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

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

ENACTS:

**31A-35-101**, Utah Code Annotated 1953

**31A-35-102**, Utah Code Annotated 1953

**\*SB0054S2\***

1       **31A-35-103**, Utah Code Annotated 1953  
2       **31A-35-104**, Utah Code Annotated 1953  
3       **78-19-101**, Utah Code Annotated 1953  
4       **78-19-102**, Utah Code Annotated 1953  
5       **78-19-103**, Utah Code Annotated 1953  
6       **78-19-104**, Utah Code Annotated 1953  
7       **78-19-201**, Utah Code Annotated 1953  
8       **78-19-202**, Utah Code Annotated 1953  
9       **78-19-203**, Utah Code Annotated 1953  
10       **78-19-301**, Utah Code Annotated 1953  
11       **78-19-302**, Utah Code Annotated 1953  
12       **78-19-401**, Utah Code Annotated 1953  
13       **78-19-402**, Utah Code Annotated 1953  
14       **78-19-403**, Utah Code Annotated 1953  
15       **78-19-404**, Utah Code Annotated 1953  
16       **78-19-405**, Utah Code Annotated 1953  
17       **78-19-406**, Utah Code Annotated 1953

18   REPEALS:

19       **4-34-5**, as enacted by Chapter 70, Laws of Utah 1981  
20       **4-34-6**, as last amended by Chapter 157, Laws of Utah 1990  
21       **78-11-22**, as last amended by Chapter 211, Laws of Utah 1987  
22       **78-11-22.1**, as enacted by Chapter 106, Laws of Utah 1989  
23       **78-19-1**, as enacted by Chapter 4, Laws of Utah 1990  
24       **78-19-2**, as enacted by Chapter 4, Laws of Utah 1990  
25       **78-19-3**, as enacted by Chapter 4, Laws of Utah 1990

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

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

28       **4-34-1. Definitions.**

29       For purposes of this chapter:

30       (1) "Agricultural product" means any fowl, animal, fish, vegetable, or other product or  
31   article, fresh or processed, which is customary food, or which is proper food for human

1 consumption.

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

4 [(2)] (3) "Nonprofit charitable organization" means any organization which [was] is  
5 organized and [is] operating for charitable purposes and which meets the requirements of [the]  
6 Section 501(c) of the Internal Revenue [Service of the U.S. Department of Treasury] Code that  
7 [exempt] exempts the organization from income taxation [under the provisions of the Internal  
8 Revenue Code].

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

10 **4-34-2. Donation to charitable organization authorized.**

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

15 Section 3. Section **31A-35-101** is enacted to read:

16 **31A-35-101. Title.**

17 This part is known as the "Volunteer Insurance Assistance Program."

18 Section 4. Section **31A-35-102** is enacted to read:

19 **31A-35-102. Definitions.**

20 As used in this part:

21 (1) "Account" means the Volunteer Assistance Restricted Account created in Section  
22 31A-35-104.

23 (2) "Contract provider" means the third party the department contracts with under Section  
24 31A-35-103.

25 (3) "Department" means the Insurance Department.

26 (4) "Program" means the Volunteer Insurance Assistance Program created in Section  
27 31A-35-103.

28 Section 5. Section **31A-35-103** is enacted to read:

29 **31A-35-103. Program creation -- Administration -- Selection of contract provider --**  
30 **Duties -- Rulemaking.**

31 (1) There is created the Volunteer Insurance Assistance Program to provide a last resort

1 source of recovery for the payment of claims against independent volunteers.

2 (2) The program shall be administered by the contract provider with the assistance of the  
3 department.

4 (3) (a) The department shall contract in accordance with Title 63, Chapter 56, Utah  
5 Procurement Code, with a third party to manage an insurance fund for the payment of claims made  
6 pursuant to Title 78, Chapter 19, Utah Volunteer Protection Act for injuries sustained due to  
7 independent volunteer activity.

8 (b) The contract may not obligate the department to pay the third party more monies than  
9 are available in the account.

10 (c) The contract shall require an annual accounting of claims made and paid against the  
11 program.

12 (4) (a) The third party under contract under this section is the department's designated  
13 agent, and shall develop and maintain the program as directed by the commissioner.

14 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
15 department shall make rules regarding the creation of a market assistance plan under Section  
16 31A-2-214 for a volunteer insurance assistance program.

17 Section 6. Section **31A-35-104** is enacted to read:

18 **31A-35-104. Restricted Account -- Creation -- Funding -- Interest -- Purposes.**

19 (1) There is created within the General Fund a restricted account known as the "Volunteer  
20 Assistance Restricted Account."

21 (2) The account consists of monies designated to it by legislative appropriation.

22 (3) (a) The account shall earn interest.

23 (b) All interest earned on account monies shall be deposited into the account.

24 (4) Monies shall be appropriated from the account by the Legislature to the department  
25 to fund the contract with the contract provider.

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

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

28 **Part 1. General**

29 **78-19-101. Title.**

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

31 Section 9. Section **78-19-102** is enacted to read:

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

(1) The Legislature finds and declares that:

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

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

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

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

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

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

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

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

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

(iii) there is a compelling public interest for the state to encourage the continued operation of volunteer service organizations and contributions of volunteers because the state lacks the economic capacity to carry out the services provided by the many organizations and volunteers, whether associated with organizations or serving as independent volunteers; and

1       (h) there is no existing insurance program currently available through which volunteers  
2 may obtain insurance to cover their volunteer activities, thereby exposing them to liability from  
3 which they cannot protect themselves.

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

8       Section 10. Section **78-19-103** is enacted to read:

9       **78-19-103. Definitions.**

10      As used in this chapter:

11      (1) "Bodily injury" or "injury" means physical harm to a person, but does not include  
12 emotional or mental distress.

13      (2) (a) "Compensation" means any payment for services, whether per diem or otherwise,  
14 except where the payment is solely for the purpose of reimbursing subsistence, travel, or other  
15 expense reasonably incurred by the person performing those services.

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

19      (3) "Damage or injury" means bodily injury or property damage.

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

24      (5) "Gratuitous" or "gratuitously" means without actual or expected compensation in  
25 money or any other thing of value from any source whatsoever.

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

28      (7) "Nonprofit organization" means:

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

31      (b) any not-for-profit organization which is formed and conducted for public benefit and

operated primarily for charitable, civic, educational, religious, benevolent, welfare, or health purposes, which does not distribute any of its income or assets to its members, directors, officers, or other participants.

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

(9) "Person" means an individual.

(10) "Property damage" or "damage" means physical injury to real or personal property.

Section 11. Section 78-19-104 is enacted to read:

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

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

Section 12. Section 78-19-201 is enacted to read:

**Part 2. Good Samaritan Act**

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

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

Section 13. Section 78-19-202 is enacted to read:

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

As used in this part:

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

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

Section 14. Section 78-19-203 is enacted to read:

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

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

Section 15. Section 78-19-301 is enacted to read:

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

2 **78-19-301. Definitions.**

3 As used in this part:

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

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

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

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

17 Section 16. Section **78-19-302** is enacted to read:

18 **78-19-302. Donation of food and grocery products -- Liability limits.**

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

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

30 Section 17. Section **78-19-401** is enacted to read:

31 **Part 4. Volunteers**



1       **78-19-401. Definitions.**

2       As used in this part:

3       (1) "Governmental entity" means:

4       (a) the state;

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

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

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

10       (e) any other political subdivision.

11       (2) (a) "Volunteer" means a person performing services for a nonprofit organization or  
12 governmental entity who does not receive compensation, or any other thing of value in lieu of  
13 compensation.

14       (b) "Volunteer" includes a person serving as a director, officer, or trustee, who,  
15 notwithstanding the provisions of Subsection (2)(a), receives a stipend not in excess of \$500 per  
16 year from the nonprofit organization or governmental entity.

17       Section 18. Section **78-19-402** is enacted to read:

18       **78-19-402. Liability protection for certain volunteers.**

19       Except as provided in Section 78-19-405, a volunteer for a nonprofit organization or  
20 governmental entity shall not be liable for damage or injury caused by an act or omission of the  
21 volunteer on behalf of the organization or entity if:

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

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

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

27       (4) the nonprofit organization has in effect an insurance policy which covers the activities  
28 of the volunteer with limits equal to or higher than:

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

30       (b) subject to the limit for one person in Subsection (4)(a), \$50,000 for bodily injury to  
31 two or more persons arising out of one incident; and

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

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

3 **78-19-403. Liability protection for independent volunteers.**

4 (1) As used in this section and in Section 78-19-404, "independent volunteer" means a  
5 person who, acting in good faith, renders service gratuitously to an individual or a group of  
6 individuals in need, or in connection with, a humanitarian concern, a civic concern, a religious  
7 organization, or any other charitable concern.

8 (2) Except as provided in Section 78-19-404 or 78-19-405, an independent volunteer shall  
9 not be liable for damage or injury caused by an act or omission of the independent volunteer while  
10 providing volunteer services, if:

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

12 (b) the damage or injury was not caused by the gross negligence of the independent  
13 volunteer.

14 (3) For the purposes of this part, an employee of any organization which provides the  
15 employee's services as a volunteer under either Section 78-19-402 or 78-19-403, is still considered  
16 a volunteer even though he continues to receive his wages or salary from the organization during  
17 the time he is performing volunteer services.

18 Section 20. Section **78-19-404** is enacted to read:

19 **78-19-404. Recovery provisions for injured persons -- Claims under Volunteer**  
20 **Assistance Program.**

21 (1) A person injured by an independent volunteer may recover for the damage or injury  
22 if the damage or injury caused by the volunteer is covered under any policy of insurance carried  
23 by the volunteer; provided however that:

24 (a) the amount recovered shall not exceed the recovery limit of the volunteer's insurance  
25 coverage; and

26 (b) the volunteer's insurance recovery limits meet or exceed the amounts in Subsection (2).

27 (2) The insurance program created in Section 31A-5-103 to protect independent volunteers  
28 while engaging in volunteer activity shall:

29 (a) be the last resort source of recovery;

30 (b) apply only if there is no other source of recovery that meets or exceeds the limits  
31 provided in Subsection (2)(c); and

1 (c) shall limit a claimant's recovery to:

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

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

5 (iii) \$7,500 for injury to property of others.

6 (3) An insurer may not insert a clause in any contract for insurance that voids or refuses  
7 to pay a claim on the policy if the refusal is based solely upon the fact that the claim arose from  
8 the volunteer activity of the insured.

9 Section 21. Section **78-19-405** is enacted to read:

10 **78-19-405. Exceptions to immunity -- Motor vehicles, vessels, or aircraft operation**  
11 **-- License and insurance required -- Other types of insurance -- Criminal activity.**

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

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

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

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

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

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

22 (d) was under the influence of alcohol in accordance with the standard set forth in Section  
23 41-6-44; or

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

26 Section 22. Section **78-19-406** is enacted to read:

27 **78-19-406. Election of nonapplicability required by federal law.**

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

31 Section 23. **Repealer.**

1 This act repeals:

2 Section **4-34-5, Limitation of liability of donor, charitable organization and county.**

3 Section **4-34-6, Sale or use of donations by employee of public agency or charity**  
4 **prohibited.**

5 Section **78-11-22, Good Samaritan Act.**

6 Section **78-11-22.1, Donation of food -- Liability limits.**

7 Section **78-19-1, Definitions.**

8 Section **78-19-2, Liability protection for volunteers -- Exceptions.**

9 Section **78-19-3, Liability protection for organizations.**

10 Section 24. **Appropriation.**

11 There is appropriated \$500,000 from the General Fund for fiscal year 1998-99 to the  
12 Department of Insurance for deposit in the fund created in Section 31A-35-104. It is the intent of  
13 the Legislature that \$300,000 of the appropriation be ongoing.

14 Section 25. **Effective date.**

15 This act takes effect on July 1, 1998.

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## **Legislative Review Note**

**as of 2-19-98 10:39 AM**

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 a reasonable alternative remedy available to the injured party or a compelling public interest which is of greater importance than the abrogation of the right to sue in any given case. While this legislation attempts to provide an alternative remedy through insurance, whether this is sufficient to satisfy the Utah Supreme Court's standard or whether the Court would find the societal need for volunteers a compelling public interest is uncertain.

**Office of Legislative Research and General Counsel**