

1                                   **LIMITATION ON LIABILITY OF**  
2                                   **NONPROFIT CORPORATION VOLUNTEERS**

3   1998 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Scott N. Howell**

6   Craig L. Taylor

7   AN ACT RELATING TO THE JUDICIAL CODE; PROVIDING INSURANCE LIMITS FOR  
8   LIABILITY PROTECTION FOR NONPROFIT ORGANIZATIONS AND THEIR  
9   VOLUNTEERS; AND MAKING TECHNICAL CORRECTIONS.

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

11   AMENDS:

12           **78-19-1**, as enacted by Chapter 4, Laws of Utah 1990

13           **78-19-2**, as enacted by Chapter 4, Laws of Utah 1990

14           **78-19-3**, as enacted by Chapter 4, Laws of Utah 1990

15   ENACTS:

16           **78-19-4**, Utah Code Annotated 1953

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

18           Section 1. Section **78-19-1** is amended to read:

19           **78-19-1. Definitions.**

20           As used in this chapter:

21           (1) "Damage or injury" includes physical, nonphysical, economic, and noneconomic  
22   damage.

23           (2) "Financially secure source of recovery" means that, at the time of the incident, a  
24   nonprofit organization:

25           (a) has an insurance policy in effect that covers the activities of the volunteer and has an  
26   insurance limit of not less than the limits established [~~under the Utah Governmental Immunity Act~~

1 in ~~Section 63-30-34]~~ in Section 78-19-4; or

2 (b) has established a qualified trust with a value [not less than the combined limits for  
3 property damage and single occurrence liability established under the Utah Governmental  
4 Immunity Act in ~~Section 63-30-34]~~ of \$65,000 or more.

5 (3) "Nonprofit organization" means any organization, other than a public entity, described  
6 in Section 501 (c) of the Internal Revenue Code of 1986 and exempt from tax under Section 501  
7 (a) of that code.

8 (4) "Public entity" has the same meaning as defined in Section 63-30b-1.

9 (5) "Qualified trust" means a trust held for the purpose of compensating claims for  
10 damages or injury in a trust company licensed to do business in this state under the provisions of  
11 Title 7, Chapter 5, Trust Business.

12 (6) "Reimbursements" means, with respect to each nonprofit organization:

13 (a) compensation or honoraria totaling less than \$300 per calendar year; and

14 (b) payment of expenses actually incurred.

15 (7) (a) "Volunteer" means an individual performing services for a nonprofit organization  
16 who does not receive anything of value from that nonprofit organization for those services except  
17 reimbursements.

18 (b) "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct service  
19 volunteer.

20 (c) "Volunteer" does not include an individual performing services for a public entity to  
21 the extent the services are within the scope of Title 63, Chapter 30b, Immunity for Persons  
22 Performing Voluntary Services or Title 67, Chapter 20, Volunteer Government Workers Act.

23 Section 2. Section **78-19-2** is amended to read:

24 **78-19-2. Liability protection for volunteers -- Findings -- Purpose -- Exceptions.**

25 (1) The Legislature finds and declares that:

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

28 (b) many nonprofit organizations have been, and are, negatively impacted by the  
29 withdrawal of volunteers from involvement in the organization out of fear and concern for liability  
30 exposure related to their volunteering;

31 (c) the significant contributions of nonprofit organizations to the community has been, and

1 is, diminished as a result of this withdrawal of volunteers because nonprofit organizations cannot  
2 fully realize their mission and purpose without volunteers;

3 (d) the government and people of Utah are greatly benefitted by services provided by  
4 nonprofit organization volunteers;

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

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

13 (g) due to high liability costs and unwarranted litigation costs, nonprofit organizations and  
14 their volunteers face higher costs in purchasing insurance to cover their activities;

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

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

20 (ii) the people of the state depend on and the state government expends funds for, and  
21 provides tax exemptions and other consideration to, numerous nonprofit organizations that depend  
22 on the services of volunteers; and

23 (iii) it is clearly and convincingly in the public interest for the state to encourage the  
24 continued operation of volunteer service organizations and contributions of volunteers because the  
25 state lacks the economic or administrative capacity to carry out the numerous services provided  
26 by the thousands of nonprofit organizations and significant number of nonprofit organization  
27 volunteers throughout the state; and

28 (i) there is a compelling governmental interest in having nonprofit organizations  
29 throughout the state utilize volunteers in the fulfillment of the purpose and mission of nonprofit  
30 organizations but without the unnecessary fear or deterrent of liability.

31 (2) The purpose of this provision is to promote volunteerism in the state, and to sustain

1 nonprofit organizations, the nonprofit sector, and the nonprofit economy by providing certain  
2 protections from liability to persons and organizations related to the use of volunteers, and to  
3 encourage nonprofit organizations to utilize volunteers in the fulfillment of the organization's  
4 mission and purpose.

5 [(1)] (3) Except as provided in Subsection [(2)](4), [no] a volunteer providing services for  
6 a nonprofit organization [incurs] does not incur any legal liability for any act or omission of the  
7 volunteer while providing services for the nonprofit organization and [no] a volunteer [incurs] does  
8 not incur any personal financial liability for any tort claim or other action seeking damage for an  
9 injury arising from any act or omission of the volunteer while providing services for the nonprofit  
10 organization if:

11 (a) the individual was acting in good faith and reasonably believed he was acting within  
12 the scope of his official functions and duties with the nonprofit organization; and

13 (b) the damage or injury was not caused by an [intentional or knowing] act by the  
14 volunteer which constitutes gross negligence or illegal[- willful, or wanton] or intentional  
15 misconduct.

16 [(2)] (4) The protection against volunteer liability provided by this section does not apply:

17 (a) to injuries resulting from a volunteer's operation of a motor vehicle, a vessel, aircraft,  
18 or other vehicle for which a pilot or operator's license is required;

19 (b) when a suit is brought by an authorized officer of a state or local government to enforce  
20 a federal, state, or local law; or

21 (c) where the nonprofit organization for which the volunteer is working fails to provide  
22 a financially secure source of recovery for individuals who suffer injuries as a result of actions  
23 taken by the volunteer on behalf of the nonprofit organization.

24 [(3)] (5) Nothing in this section shall bar an action by a volunteer against an organization,  
25 its officers, or other persons who intentionally or knowingly misrepresent that a financially secure  
26 source of recovery does or will exist during a period when such a source does not or will not in fact  
27 exist.

28 [(4)] (6) Nothing in this section shall be construed to place a duty upon a nonprofit  
29 organization to provide a financially secure source of recovery.

30 [(5)] (7) The granting of immunity from liability to a volunteer under this section shall  
31 have no effect on the liability of the nonprofit organization providing the financially secure source

1 of recovery.

2 Section 3. Section **78-19-3** is amended to read:

3 **78-19-3. Liability protection for organizations.**

4 A nonprofit organization is not liable for the acts or omissions of its volunteers in any  
5 circumstance where:

6 (1) the acts of its volunteers are not as described in Subsection 78-19-2~~[(1)]~~(3) unless the  
7 nonprofit organization had, or reasonably should have had, reasonable notice of the volunteer's  
8 unfitness to provide services to the nonprofit organization under circumstances that make the  
9 nonprofit organization's use of the volunteer ~~[reckless or wanton]~~ grossly negligent in light of that  
10 notice; or

11 (2) a business employer would not be liable under the laws of this state if the act or  
12 omission were the act or omission of one of its employees.

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

14 **78-19-4. Financial responsibility requirements.**

15 Any policy insuring a nonprofit organization may not limit the insurer's liability to less  
16 than:

17 (1) \$25,000 for bodily injury to or death of one person arising out of a single incident;

18 (2) subject to the limit for one person in Subsection (1), \$50,000 for bodily injury to or  
19 death of two or more persons arising out of a single incident; and

20 (3) \$15,000 for injury to, or destruction of, property of others arising out of a single  
21 incident.

**Legislative Review Note**  
**as of 1-30-98 3:11 PM**

This bill raises the following constitutional or statutory concerns:

Article 1, Section 11 of the Utah Constitution provides that all courts shall be open and every person shall have a remedy for an injury. This legislation could violate this provision because it lowers the cap on the current requirements for nonprofit organizations who wish to provide a financially secure source of recovery and, therefore, provide immunity from liability for their volunteers. The Utah Supreme Court in *Condemarin v. University Hospital (1989)* held the cap in the Governmental Immunity Act unconstitutional, however, the cap in this legislation applies to a different class of people which may justify a different result.

**Office of Legislative Research and General Counsel**