

Senator Howard C. Nielson proposes to substitute the following bill:

**LIMITATION ON LIABILITY OF
NONPROFIT CORPORATION VOLUNTEERS**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott N. Howell

Craig L. Taylor

AN ACT RELATING TO THE JUDICIAL CODE; PROVIDING INSURANCE LIMITS FOR LIABILITY PROTECTION FOR NONPROFIT ORGANIZATIONS AND THEIR VOLUNTEERS; REPEALING AND REENACTING THE FOOD DONOR STATUTE; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

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

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

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

ENACTS:

78-19-4, Utah Code Annotated 1953

78-11-22.2, Utah Code Annotated 1953

REPEALS AND REENACTS:

78-11-22.1, as enacted by Chapter 106, Laws of Utah 1989

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

Section 1. Section **78-11-22.1** is repealed and reenacted to read:

78-11-22.1. Definitions.

As used in this part:

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

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

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

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

14 Section 2. Section **78-11-22.2** is enacted to read:

15 **78-11-22.2. Donation of food and grocery products -- Liability limits.**

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

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

27 Section 3. Section **78-19-1** is amended to read:

28 **78-19-1. Definitions.**

29 As used in this chapter:

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

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

3 (a) has an insurance policy in effect that covers the activities of the volunteer and has an
4 insurance limit of not less than the limits established [~~under the Utah Governmental Immunity Act~~
5 ~~in Section 63-30-34]~~ in Section 78-19-4; or

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

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

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

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

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

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

18 (b) payment of expenses actually incurred.

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

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

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

27 Section 4. Section **78-19-2** is amended to read:

28 **78-19-2. Liability protection for volunteers -- Findings -- Purpose -- Exceptions.**

29 (1) The Legislature finds and declares that:

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

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

4 (c) the significant contributions of nonprofit organizations to the community has been, and
5 is, diminished as a result of this withdrawal of volunteers because nonprofit organizations cannot
6 fully realize their mission and purpose without volunteers;

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

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

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

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

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

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

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

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

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

4 (2) The purpose of this provision is to promote volunteerism in the state, and to sustain
5 nonprofit organizations, the nonprofit sector, and the nonprofit economy by providing certain
6 protections from liability to persons and organizations related to the use of volunteers, and to
7 encourage nonprofit organizations to utilize volunteers in the fulfillment of the organization's
8 mission and purpose.

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

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

17 (b) the damage or injury was not caused by an [~~intentional or knowing~~] act by the
18 volunteer which constitutes gross negligence or illegal[~~, willful, or wanton~~] or intentional
19 misconduct.

20 [(2)] (4) The protection against volunteer liability provided by this section does not apply:

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

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

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

28 [(3)] (5) Nothing in this section shall bar an action by a volunteer against an organization,
29 its officers, or other persons who intentionally or knowingly misrepresent that a financially secure
30 source of recovery does or will exist during a period when such a source does not or will not in fact
31 exist.

1 [(4)] (6) Nothing in this section shall be construed to place a duty upon a nonprofit
2 organization to provide a financially secure source of recovery.

3 [(5)] (7) The granting of immunity from liability to a volunteer under this section shall
4 have no effect on the liability of the nonprofit organization providing the financially secure source
5 of recovery.

6 Section 5. Section **78-19-3** is amended to read:

7 **78-19-3. Liability protection for organizations.**

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

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

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

17 Section 6. Section **78-19-4** is enacted to read:

18 **78-19-4. Financial responsibility requirements.**

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

21 (1) \$25,000 for bodily injury to or death of one person arising out of a single incident;

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

24 (3) \$15,000 for injury to, or destruction of, property of others arising out of a single
25 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