

1 **IMMUNITY OF VOLUNTEERS**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: John L. Valentine**

5 AN ACT RELATING TO THE JUDICIAL CODE; PROVIDING FOR IMMUNITY FOR
6 VOLUNTEERS FOR NONPROFIT, CHARITABLE ORGANIZATIONS, ENACTING A FOOD
7 DONOR IMMUNITY ACT; AND MAKING TECHNICAL CHANGES.

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 **78-19-302**, Utah Code Annotated 1953

16 RENUMBERS AND AMENDS:

17 **78-19-103**, (Renumbered from 78-19-1, as enacted by Chapter 4, Laws of Utah 1990)

18 **78-19-203**, (Renumbered from 78-11-22, as last amended by Chapter 211, Laws of Utah
19 1987)

20 **78-19-401**, (Renumbered from 78-19-2, as enacted by Chapter 4, Laws of Utah 1990)

21 **78-19-402**, (Renumbered from 78-19-3, as enacted by Chapter 4, Laws of Utah 1990)

22 REPEALS:

23 **78-11-22.1**, as enacted by Chapter 106, Laws of Utah 1989

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

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

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

27 **Part 1. General Provisions**

28 **78-19-101. Title.**

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

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

31 **78-19-102. Findings -- Purpose.**

32 (1) The Legislature finds and declares that:

33 (a) the government and people of Utah are greatly benefitted by services provided by
34 volunteers working with nonprofit charitable organizations;

35 (b) the willingness of volunteers to offer their services may be deterred by the potential
36 for liability claims and suits against them;

37 (c) those who receive volunteer services and who may become the victims of wrongful
38 volunteer conduct should have a remedy at law for injuries and damages suffered as a result of the
39 wrongful conduct; and

40 (d) protection of volunteerism and of the potential victims of volunteerism through
41 clarification and limitation of liability risks and responsibilities is an appropriate subject for state
42 legislation.

43 (2) The purpose of this chapter is to promote volunteerism in the state and sustain the
44 availability of nonprofit organizations, that depend upon volunteer contributions by providing
45 certain protections from liability related to volunteering, while at the same time recognizing the
46 rights of the recipients of volunteer services to have remedies for injuries and damages that they
47 may suffer as a result of wrongful conduct on the part of volunteers.

48 Section 3. Section **78-19-103**, which is renumbered from Section 78-19-1 is renumbered
49 and amended to read:

50 **[78-19-1]. 78-19-103. Definitions.**

51 As used in this chapter:

52 (1) "Bodily injury" or "injury" means physical, nonphysical, economic, and noneconomic
53 harm to a person.

54 [(1)] (2) "Damage or injury" [includes physical, nonphysical, economic, and noneconomic
55 damage] means bodily injury or property damage.

56 [(2)] (3) "Financially secure source of recovery" means that, at the time of the incident, a
57 nonprofit organization:

58 (a) has an insurance policy in effect that covers the activities of the volunteer and has an

59 insurance limit of not less than the limits established under the Utah Governmental Immunity Act
60 in Section 63-30-34; or

61 (b) has established a qualified trust with a value not less than the combined limits for
62 property damage and single occurrence liability established under the Utah Governmental
63 Immunity Act in Section 63-30-34.

64 ~~[(3)]~~ (4) "Nonprofit organization" means any organization, other than a public entity,
65 described in Section 501 (c) of the Internal Revenue Code of 1986 and exempt from tax under
66 Section 501 (a) of that code.

67 (5) "Person" means an individual.

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

69 ~~[(4)]~~ (7) "Public entity" has the same meaning as defined in Section 63-30b-1.

70 ~~[(5)]~~ (8) "Qualified trust" means a trust held for the purpose of compensating claims for
71 ~~[damages or]~~ bodily injury or property damage in a trust company licensed to do business in this
72 state under the provisions of Title 7, Chapter 5, Trust Business.

73 ~~[(6)]~~ (9) "Reimbursements" means, with respect to each nonprofit organization~~[-(a)-~~
74 ~~compensation or honoraria totaling less than \$300 per calendar year; and (b)]~~, payment of expenses
75 actually incurred.

76 ~~[(7)]~~ (10) (a) "Volunteer" means an individual performing services for a nonprofit
77 organization who does not receive anything of value from that nonprofit organization for those
78 services except reimbursements.

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

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

84 Section 4. Section **78-19-201** is enacted to read:

Part 2. Good Samaritan Act

85 **78-19-201. Title.**

86 This part is known as the "Good Samaritan Act."

87 Section 5. Section **78-19-202** is enacted to read:

88 **78-19-202. Definitions.**

89

90 As used in this part:

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

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

97 Section 6. Section **78-19-203**, which is renumbered from Section 78-11-22 is renumbered
98 and amended to read:

99 **[78-11-22]. 78-19-203. Good Samaritan Act.**

100 A person who renders emergency care at or near the scene of, or during an emergency,
101 gratuitously and in good faith, is not liable for any civil damages or penalties as a result of any act
102 or omission by the person rendering the emergency care, unless the person is grossly negligent,
103 acted willfully and maliciously, or caused the emergency. [As used in this section, "emergency"
104 ~~means an unexpected occurrence involving injury, threat of injury, or illness to a person or the~~
105 ~~public, including motor vehicle accidents, disasters, actual or threatened discharges, removal, or~~
106 ~~disposal of hazardous materials, and other accidents or events of a similar nature. "Emergency~~
107 ~~care" includes actual assistance or advice offered to avoid, mitigate, or attempt to mitigate the~~
108 ~~effects of an emergency.;~~]

109 Section 7. Section **78-19-301** is enacted to read:

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

111 **78-19-301. Definitions.**

112 As used in this part:

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

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

121 (3) "Grocery products" means nonfood items normally sold in food stores, including
122 disposable paper and plastic products, household cleaning products, bottled water, laundry
123 detergents, and miscellaneous household items.

124 Section 8. Section **78-19-302** is enacted to read:

125 **78-19-302. Donation of food and grocery products -- Liability limits.**

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

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

137 Section 9. Section **78-19-401**, which is renumbered from Section 78-19-2 is renumbered
138 and amended to read:

139 **Part 4. Volunteers**

140 **[78-19-2]. 78-19-401. Liability protection for volunteers -- Exceptions.**

141 (1) Except as provided in Subsection (2), [no] a volunteer providing services for a
142 nonprofit organization [incurs] may not incur any legal liability for any act or omission of the
143 volunteer while providing services for the nonprofit organization and [no] a volunteer [incurs] may
144 not incur any personal financial liability for any tort claim or other action seeking damage for an
145 injury arising from any act or omission of the volunteer while providing services for the nonprofit
146 organization if:

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

149 (b) the damage or injury was not caused by an intentional or knowing act by the volunteer
150 which constitutes illegal, willful, or wanton misconduct.

151 (2) The protection against volunteer liability provided by this section does not apply:

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

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

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

159 (3) Nothing in this section shall bar an action by a volunteer against an organization, its
160 officers, or other persons who intentionally or knowingly misrepresent that a financially secure
161 source of recovery does or will exist during a period when such a source does not or will not in fact
162 exist.

163 (4) Nothing in this section shall be construed to place a duty upon a nonprofit organization
164 to provide a financially secure source of recovery.

165 (5) The granting of immunity from liability to a volunteer under this section shall have no
166 effect on the liability of the nonprofit organization providing the financially secure source of
167 recovery.

168 Section 10. Section **78-19-402**, which is renumbered from Section 78-19-3 is renumbered
169 and amended to read:

170 **[78-19-3]. 78-19-402. Liability protection for organizations.**

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

173 (1) the acts of its volunteers are not as described in Subsection ~~[78-19-2]~~ 78-19-401(1)
174 unless the nonprofit organization had, or reasonably should have had, reasonable notice of the
175 volunteer's unfitness to provide services to the nonprofit organization under circumstances that
176 make the nonprofit organization's use of the volunteer reckless or wanton in light of that notice;
177 or

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

180 Section 11. **Repealer.**

181 This act repeals:

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

Legislative Review Note
as of 2-2-99 1:46 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel