1	VOLUNTEER IMMUNITY ACT
2	2000 GENERAL SESSION
3	STATE OF UTAH
4	Sponsor: L. Steven Poulton
5	AN ACT RELATING TO VOLUNTEER IMMUNITY; GRANTING IMMUNITY FROM SUIT
6	TO CERTAIN VOLUNTEERS; DECLARING UTAH'S INTENT TO NOT APPLY AN
7	OPTIONAL FEDERAL LAW; AND PROVIDING AN EFFECTIVE DATE.
8	This act affects sections of Utah Code Annotated 1953 as follows:
9	ENACTS:
10	<b>78-19-101</b> , Utah Code Annotated 1953
11	<b>78-19-102</b> , Utah Code Annotated 1953
12	<b>78-19-201</b> , Utah Code Annotated 1953
13	<b>78-19-202</b> , Utah Code Annotated 1953
14	<b>78-19-301</b> , Utah Code Annotated 1953
15	<b>78-19-401</b> , Utah Code Annotated 1953
16	REPEALS:
17	<b>78-19-1</b> , as enacted by Chapter 4, Laws of Utah 1990
18	78-19-2, as enacted by Chapter 4, Laws of Utah 1990
19	78-19-3, as enacted by Chapter 4, Laws of Utah 1990
20	Be it enacted by the Legislature of the state of Utah:
21	Section 1. Section <b>78-19-101</b> is enacted to read:
22	CHAPTER 19. UTAH VOLUNTEER PROTECTION ACT
23	Part 1. General Provisions
24	<u>78-19-101.</u> Title.
25	This chapter is known as the "Utah Volunteer Protection Act."
26	Section 2. Section <b>78-19-102</b> is enacted to read:
27	78-19-102. Definitions.

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28	As used in this chapter:
29	(1) "Damage" means physical injury to real or personal property.
30	(2) "Good faith" means that the purpose of the volunteer is to provide service directly as
31	an independent volunteer, or directly or indirectly through an organization and that the volunteer's
32	actions are not for the benefit of another person or entity except the person or entity being served.
33	(3) "Governmental entity" means:
34	(a) the state;
35	(b) any department, agency, institution, instrumentality, office, college, university,
36	authority, division, board, bureau, commission, council, or other agency of the state;
37	(c) any Olympic Winter Games organizing committee or instrumentality thereof, as
38	approved by the Utah Sports Authority;
39	(d) any county, city, town, school district, or special district; or
40	(e) any other political subdivision.
41	(4) "Gratuitous" or "gratuitously" means without actual or expected compensation or
42	payment for services in money or any other thing of value, whether per diem or otherwise, except
43	where the payment is solely for the purpose of reimbursing subsistence, travel, or other expense
44	reasonably incurred by the person performing those services.
45	(5) "Gross negligence" or "grossly negligent" means:
46	(a) the failure to observe even slight care; or
47	(b) recklessness to a degree that shows utter indifference to the consequences that may
48	<u>result.</u>
49	(6) "Injury" means any kind of harm to a person other than property damage.
50	(7) "Nonprofit organization" means:
51	(a) any organization that is described in Section 501(c) (3) of the Internal Revenue Code
52	of 1986 and is exempt from tax under Section 501 of the Internal Revenue Code; or
53	(b) any not-for-profit organization that is formed and conducted for public benefit and
54	operated primarily for humanitarian, charitable, civic, educational, religious, benevolent, welfare,
55	or health purposes, and that does not distribute its income or assets to its members, directors,
56	officers, or other participants, except as provided in this chapter.
57	(8) "Organization" means a firm, partnership, association, agency, entity, corporation,
58	company, or group of individuals acting together for a common purpose, whether public or private.

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59	(9) (a) "Volunteer" means an individual who gratuitously performs services for an
60	individual, a nonprofit organization, or a governmental entity.
61	(b) "Volunteer" includes a director, officer, or trustee of a nonprofit organization or
62	governmental entity who receives a stipend of not more than \$500 per year from the organization
63	or entity.
64	(c) "Volunteer" includes an employee of any organization that provides the employee's
65	services as a volunteer even though the volunteer continues to receive wages or salary from the
66	organization while the services are being performed.
67	Section 3. Section 78-19-201 is enacted to read:
68	Part 2. Volunteer Immunity
69	78-19-201. Liability protection for volunteers.
70	Except as provided in Section 78-19-202, a volunteer is not liable for damage or injury
71	caused by an act or omission of the volunteer while providing volunteer services if:
72	(1) the volunteer was acting in good faith; and
73	(2) the damage or injury was not the result of the volunteer's gross negligence, intention,
74	or purpose.
75	Section 4. Section <b>78-19-202</b> is enacted to read:
76	78-19-202. Exceptions to immunity.
77	The protection against liability in this chapter does not apply if, at the time the damage or
78	injury occurred, the volunteer causing the damage or injury:
79	(1) was engaged in misconduct that constitutes a crime under state or federal law;
80	(2) was under the influence of a controlled substance; or
81	(3) was under the influence of alcohol in accordance with the standard set forth in Section
82	<u>41-6-44.</u>
83	Section 5. Section <b>78-19-301</b> is enacted to read:
84	Part 3. Applicability
85	<u>78-19-301.</u> Applicability.
86	This chapter applies to any claim for damage or injury caused by an act or omission of a
87	volunteer occurring after July 1, 2000.
88	Section 6. Section <b>78-19-401</b> is enacted to read:
89	Part 4. Coordination with Federal Law

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90	78-19-401. Election of nonapplicability required by federal law.
91	In accordance with Section 3(b) of Public Law 105-19, Utah declares its election that
92	Public Law 105-19 does not apply in any civil action in a state court against a volunteer in which
93	all parties are citizens of this state.
94	Section 7. Repealer.
95	This act repeals:
96	Section 78-19-1, Definitions.
97	Section 78-19-2, Liability protection for volunteers Exceptions.
98	Section 78-19-3, Liability protection for organizations.
99	Section 8. Effective date.
100	This act takes effect on July 1, 2000.

## Legislative Review Note as of 1-5-00 9:49 AM

This legislation raises the following constitutional or statutory concerns:

Article I, Section 11 of the Utah Constitution, Utah's "open courts" provision, provides that all courts shall be open and every person shall have a remedy available for an injury. In interpreting this constitutional provision, the Utah Supreme Court has held that when the Legislature removes a remedy at law, it must either provide an effective and reasonable alternative by due course of law or the Legislature must establish that there is a clear social or economic evil to be eliminated and that the elimination of the remedy at law is not an arbitrary or unreasonable means for achieving that objective. Berry v. Beech Aircraft Corp. 717 P. 2d 670, 676 (Utah 1985). This legislation, by providing blanket immunity for volunteers, removes a remedy at law but does not provide any alternative remedy. Unless the Legislature affirmatively establishes the existence of a clear social and economic ill to be eliminated, and affirmatively establishes that this grant of immunity to volunteers is not an arbitrary or unreasonable means of removing that ill, this legislation will probably be declared unconstitutional.

Office of Legislative Research and General Counsel

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