VOLUNTEER GOVERNMENT WORKERS AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: ____________

LONG TITLE

General Description:

This bill amends provisions of the Volunteer Government Workers Act.

Highlighted Provisions:

This bill:

› defines terms;

› amends the definition of a volunteer to describe the education expenses, stipends, and items that may be provided to a volunteer; and

› modifies a provision relating to the approval of a volunteer.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-3-113, as enacted by Laws of Utah 2015, Chapter 433

63G-7-102, as last amended by Laws of Utah 2019, Chapter 280

67-20-2, as last amended by Laws of Utah 2013, Chapter 249

67-20-3, as last amended by Laws of Utah 2013, Chapter 249

67-20-4, as last amended by Laws of Utah 2014, Chapter 148
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 34A-3-113 is amended to read:

34A-3-113. Presumption of workers' compensation benefits for firefighters.

(1) As used in this section:

(a) (i) "Firefighter" means a member, including a volunteer member, as described in Subsection 67-20-2[(5)](7)(b)(ii), or a member paid on call, of a fire department or other organization that provides fire suppression and other fire-related service who is responsible for or is in a capacity that includes responsibility for the extinguishment of fires.

(ii) "Firefighter" does not include a person whose job description, duties, or responsibilities do not include direct involvement in fire suppression.

(b) "Presumptive cancer" means one or more of the following cancers:

(i) pharynx;

(ii) esophagus;

(iii) lung; and

(iv) mesothelioma.

(2) If a firefighter who contracts a presumptive cancer meets the requirements of Subsection (3), there is a rebuttable presumption that:

(a) the presumptive cancer was contracted arising out of and in the course of employment; and

(b) the presumptive cancer was not contracted by a willful act of the firefighter.

(3) To be entitled to the rebuttable presumption described in Subsection (2):

(a) during the time of employment as a firefighter, the firefighter undergoes annual physical examinations;

(b) the firefighter shall have been employed as a firefighter for eight years or more and regularly responded to firefighting or emergency calls within the eight-year period; and

(c) if a firefighter has used tobacco, the firefighter provides documentation from a physician that indicates that the firefighter has not used tobacco for the eight years preceding reporting the presumptive cancer to the employer or division.

(4) A presumption established under this section may be rebutted by a preponderance of the evidence.

(5) If a firefighter who contracts a presumptive cancer is employed as a firefighter by
more than one employer and qualifies for the presumption under Subsection (2), and that
presumption has not been rebutted, the employer and insurer at the time of the last substantial
exposure to risk of the presumptive cancer are liable under this chapter pursuant to Section
34A-3-105.

(6) A cause of action subject to the presumption under this section is considered to
arise on the date after May 12, 2015, that the employee:
(a) suffers disability from the occupational disease;
(b) knows, or in the exercise of reasonable diligence should have known, that the
occupational disease is caused by employment; and
(c) files a claim as provided in Section 34A-3-108.

Section 2. Section 63G-7-102 is amended to read:

63G-7-102. Definitions.

As used in this chapter:
(1) "Arises out of or in connection with, or results from," when used to describe the
relationship between conduct or a condition and an injury, means that:
(a) there is some causal relationship between the conduct or condition and the injury;
(b) the causal relationship is more than any causal connection but less than proximate
cause; and
(c) the causal relationship is sufficient to conclude that the injury originates with, flows
from, or is incident to the conduct or condition.
(2) "Claim" means any asserted demand for or cause of action for money or damages,
whether arising under the common law, under state constitutional provisions, or under state
statutes, against a governmental entity or against an employee in the employee's personal
capacity.
(3) (a) "Employee" includes:
(i) a governmental entity's officers, employees, servants, trustees, or commissioners;
(ii) [members] a member of a governing body;
(iii) [members] a member of a government entity board;
(iv) [members] a member of a government entity commission;
(v) members of an advisory body, officers, and employees of a Children's Justice
Center created in accordance with Section 67-5b-102;
(vi) a student [teachers] holding a license issued by the State Board of Education;
(vii) an educational [aides] aide;
(viii) [students] a student engaged in [internships] an internship under Section 53B-16-402 or 53G-7-902;
(ix) volunteers as defined by Subsection 67-20-2(3); and
(x) tutors:
(ix) a volunteer, as defined in Section 67-20-2; and
(x) a tutor.
(b) "Employee" includes all of the positions identified in Subsection (3)(a), whether or not the individual holding that position receives compensation.
(c) "Employee" does not include an independent contractor.
(4) "Governmental entity" means:
(a) the state and its political subdivisions; and
(b) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103.
(5) (a) "Governmental function" means each activity, undertaking, or operation of a governmental entity.
(b) "Governmental function" includes each activity, undertaking, or operation performed by a department, agency, employee, agent, or officer of a governmental entity.
(c) "Governmental function" includes a governmental entity's failure to act.
(6) "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to the person or estate, that would be actionable if inflicted by a private person or the private person's agent.
(7) "Personal injury" means an injury of any kind other than property damage.
(8) "Political subdivision" means any county, city, town, school district, community reinvestment agency, special improvement or taxing district, local district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.
(9) "Property damage" means injury to, or loss of, any right, title, estate, or interest in real or personal property.
(10) "State" means the state of Utah, and includes each office, department, division,
agency, authority, commission, board, institution, hospital, college, university, Children's Justice Center, or other instrumentality of the state.

(11) "Willful misconduct" means the intentional doing of a wrongful act, or the wrongful failure to act, without just cause or excuse, where the actor is aware that the actor's conduct will probably result in injury.

Section 3. Section 67-20-2 is amended to read:


As used in this chapter:

(1) "Agency" means:

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

(b) a county, city, town, school district, or special improvement or taxing district; or

(c) any other political subdivision.

(2) "Compensatory service worker" means a person who performs a public service with or without compensation for an agency as a condition or part of the person's:

(a) incarceration;

(b) plea;

(c) sentence;

(d) diversion;

(e) probation; or

(f) parole.

(3) "Emergency medical service volunteer" means an individual who:

(a) provides services as a volunteer under the supervision of a supervising agency or government officer; and

(b) at the time the individual provides the services described in Subsection (3)(a), is:

(i) an emergency medical technician volunteer, a paramedic volunteer, an ambulance volunteer, a volunteer fire fighter, or another volunteer provider of emergency medical services; and

(ii) acting in the capacity of a volunteer described in Subsection (3)(b)(i).

(4) "IRS aggregate amount" means the fixed or determinable income aggregate amount described in 26 C.F.R. Sec. 1.6041-1(a)(1)(i)(A).
152 [(3)(5)(a)] "Volunteer" means a person who donates service without pay or other compensation except expenses actually and reasonably incurred the following, as approved by the supervising agency:;
153 (i) expenses actually and reasonably incurred;
154 (ii) a stipend for future higher education expenses, awarded from the National Service Trust under 45 C.F.R Secs. 2526.10 and 2527.10;
155 (iii) a stipend, below the IRS aggregate amount, for:
156 (A) emergency volunteers, including emergency medical service volunteers, volunteer safety officers, and volunteer search and rescue team members; or
157 (B) non-emergency volunteers, including senior program volunteers and community event volunteers;
158 (iv) health benefits provided through the supervising agency;
159 (v) passthrough stipends or other compensation provided to volunteers through a federal or state program, including Americorp Seniors volunteers, consistent with 42 U.S.C. Sec. 5058;
160 (vi) stipends or other compensation, below the IRS aggregate amount, provided to volunteers from any person;
161 (vii) uniforms, identification, personal protective equipment, or safety equipment used by a volunteer only while volunteering for the supervising entity;
162 (viii) a nonpecuniary item not exceeding $50 in value;
163 (ix) nonpecuniary items, below the IRS aggregate amount, donated to the supervising agency with the express intent of benefitting a volunteer; or
164 (x) meals or gifts, not exceeding $50 in value, provided as part of a volunteers appreciation event by the volunteering agency.
165 [(b)] "Volunteer" does not include:
166 (i) a person participating in human subjects research to the extent that the participation is governed by federal law or regulation inconsistent with this chapter; or
167 (ii) a compensatory service worker.
168 [(c)] "Volunteer" includes a juror or potential juror appearing in response to a summons for a trial jury or grand jury.
individuals who have a relationship with the business or nonprofit organization, such as membership or employment, provides volunteers to an agency or facilitates volunteers volunteering with an agency.

[(5)] (7) "Volunteer safety officer" means an individual who:
(a) provides services as a volunteer under the supervision of an agency; and
(b) at the time the individual provides the services to the supervising agency described in Subsection [(5)] (7)(a), the individual is:
(i) exercising peace officer authority as provided in Section 53-13-102; or
(ii) if the supervising agency described in Subsection [(5)] (7)(a) is a fire department:
(A) on the rolls of the supervising agency as a firefighter;
(B) not regularly employed as a firefighter by the supervising agency; and
(C) acting in a capacity that includes the responsibility for the extinguishment of fire.

[(6)] (8) "Volunteer search and rescue team member" means an individual who:
(a) provides services as a volunteer under the supervision of a county sheriff; and
(b) at the time the individual provides the services to the county sheriff described in Subsection [(6)] (8)(a), is:
(i) certified as a member of the county sheriff's search and rescue team; and
(ii) acting in the capacity of a member of the search and rescue team of the supervising county sheriff.

Section 4. Section 67-20-3 is amended to read:

67-20-3. Purposes for which a volunteer is considered a government employee -- Limitations of liability for volunteer facilitators.

(1) Except as provided in Subsection (2) or (3), a volunteer is considered a government employee for purposes of:
(a) receiving workers' compensation medical benefits, which shall be the exclusive remedy for all injuries and occupational diseases as provided under Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act;
(b) the operation of a motor vehicle or equipment if the volunteer is properly licensed and authorized to do so; and
(c) liability protection and indemnification normally afforded a paid [a] government employee.
(2) (a) A supervising agency shall provide workers' compensation benefits for a
volunteer safety officer as provided in Section 67-20-7.
(b) A volunteer safety officer is considered an employee of the supervising agency of
the volunteer safety officer for purposes of Subsections (1)(b) and (c).
(3) (a) The county of a county sheriff that certifies and supervises a volunteer search
and rescue team member shall provide workers' compensation benefits for the volunteer search
and rescue team member as provided in Section 67-20-7.5.
(b) For purposes of Subsections (1)(b) and (c), a volunteer search and rescue team
member is considered an employee of the county of the county sheriff that certifies and
supervises the volunteer search and rescue team member.
(4) A volunteer facilitator is immune from liability for damages or injuries arising out
of or related to the volunteer service of a volunteer provided by the volunteer facilitator to an
agency, unless:
   (a) an action or omission of the volunteer facilitator is grossly negligent, not made in
good faith, or made maliciously, and causes harm to a person or property; or
   (b) the volunteer facilitator fails to exercise due diligence in determining the fitness of
a volunteer to provide voluntary service to the agency under circumstances that make the
volunteer facilitator's failure to exercise due diligence grossly negligent, not in good faith, or
malicious.
Section 5. Section 67-20-4 is amended to read:

(1) Except as approval is provided under Subsection (2), a volunteer may not donate
any service to an agency unless the volunteer's services are approved by the chief
executive of that agency or an authorized agency representative.
[(b) the office of personnel having jurisdiction over that agency.]
(2) When the county sheriff determines that a search and rescue emergency situation
exists that requires law enforcement action, the county sheriff may approve a volunteer who
offers to donate a service for any law enforcement related activity conducted in response to the
emergency situation.