

1 **VOLUNTEER GOVERNMENT WORKERS AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: Wayne A. Harper

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7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Volunteer Government Workers Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ amends the definition of a volunteer to describe the education expenses, stipends,  
14 and items that may be provided to a volunteer; and
- 15 ▶ modifies a provision relating to the approval of a volunteer.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **34A-3-113**, as enacted by Laws of Utah 2015, Chapter 433

23 **63G-7-102**, as last amended by Laws of Utah 2019, Chapter 280

24 **67-20-2**, as last amended by Laws of Utah 2013, Chapter 249

25 **67-20-3**, as last amended by Laws of Utah 2013, Chapter 249

26 **67-20-4**, as last amended by Laws of Utah 2014, Chapter 148



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

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

30 **34A-3-113. Presumption of workers' compensation benefits for firefighters.**

31 (1) As used in this section:

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

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

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

39 (i) pharynx;

40 (ii) esophagus;

41 (iii) lung; and

42 (iv) mesothelioma.

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

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

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

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

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

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

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

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

58 (5) If a firefighter who contracts a presumptive cancer is employed as a firefighter by

59 more than one employer and qualifies for the presumption under Subsection (2), and that  
60 presumption has not been rebutted, the employer and insurer at the time of the last substantial  
61 exposure to risk of the presumptive cancer are liable under this chapter pursuant to Section  
62 [34A-3-105](#).

63 (6) A cause of action subject to the presumption under this section is considered to  
64 arise on the date after May 12, 2015, that the employee:

65 (a) suffers disability from the occupational disease;

66 (b) knows, or in the exercise of reasonable diligence should have known, that the  
67 occupational disease is caused by employment; and

68 (c) files a claim as provided in Section [34A-3-108](#).

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

70 **63G-7-102. Definitions.**

71 As used in this chapter:

72 (1) "Arises out of or in connection with, or results from," when used to describe the  
73 relationship between conduct or a condition and an injury, means that:

74 (a) there is some causal relationship between the conduct or condition and the injury;

75 (b) the causal relationship is more than any causal connection but less than proximate  
76 cause; and

77 (c) the causal relationship is sufficient to conclude that the injury originates with, flows  
78 from, or is incident to the conduct or condition.

79 (2) "Claim" means any asserted demand for or cause of action for money or damages,  
80 whether arising under the common law, under state constitutional provisions, or under state  
81 statutes, against a governmental entity or against an employee in the employee's personal  
82 capacity.

83 (3) (a) "Employee" includes:

84 (i) a governmental entity's officers, employees, servants, trustees, or commissioners;

85 (ii) ~~[members]~~ a member of a governing body;

86 (iii) ~~[members]~~ a member of a government entity board;

87 (iv) ~~[members]~~ a member of a government entity commission;

88 (v) members of an advisory body, officers, and employees of a Children's Justice

89 Center created in accordance with Section [67-5b-102](#);

90 (vi) a student [~~teachers~~] holding a license issued by the State Board of Education;

91 (vii) an educational [~~aides~~] aide;

92 (viii) [~~students~~] a student engaged in [~~internships~~] an internship under Section  
93 53B-16-402 or 53G-7-902;

94 [~~(ix) volunteers as defined by Subsection 67-20-2(3); and~~]

95 [~~(x) tutors.~~]

96 (ix) a volunteer, as defined in Section 67-20-2; and

97 (x) a tutor.

98 (b) "Employee" includes all of the positions identified in Subsection (3)(a), whether or  
99 not the individual holding that position receives compensation.

100 (c) "Employee" does not include an independent contractor.

101 (4) "Governmental entity" means:

102 (a) the state and its political subdivisions; and

103 (b) a law enforcement agency, as defined in Section 53-1-102, that employs one or  
104 more law enforcement officers, as defined in Section 53-13-103.

105 (5) (a) "Governmental function" means each activity, undertaking, or operation of a  
106 governmental entity.

107 (b) "Governmental function" includes each activity, undertaking, or operation  
108 performed by a department, agency, employee, agent, or officer of a governmental entity.

109 (c) "Governmental function" includes a governmental entity's failure to act.

110 (6) "Injury" means death, injury to a person, damage to or loss of property, or any other  
111 injury that a person may suffer to the person or estate, that would be actionable if inflicted by a  
112 private person or the private person's agent.

113 (7) "Personal injury" means an injury of any kind other than property damage.

114 (8) "Political subdivision" means any county, city, town, school district, community  
115 reinvestment agency, special improvement or taxing district, local district, special service  
116 district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13,  
117 Interlocal Cooperation Act, or other governmental subdivision or public corporation.

118 (9) "Property damage" means injury to, or loss of, any right, title, estate, or interest in  
119 real or personal property.

120 (10) "State" means the state of Utah, and includes each office, department, division,

121 agency, authority, commission, board, institution, hospital, college, university, Children's  
122 Justice Center, or other instrumentality of the state.

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

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

127 **67-20-2. Definitions.**

128 As used in this chapter:

129 (1) "Agency" means:

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

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

133 (c) any other political subdivision.

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

136 (a) incarceration;

137 (b) plea;

138 (c) sentence;

139 (d) diversion;

140 (e) probation; or

141 (f) parole.

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

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

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

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

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

150 (4) "IRS aggregate amount" means the fixed or determinable income aggregate amount  
151 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  
153 compensation except ~~[expenses actually and reasonably incurred]~~ the following, as approved  
154 by the supervising agency~~[-]~~:

155           (i) expenses actually and reasonably incurred;

156           (ii) a stipend for future higher education expenses, awarded from the National Service  
157 Trust under 45 C.F.R Secs. 2526.10 and 2527.10;

158           (iii) a stipend, below the IRS aggregate amount, for:

159           (A) emergency volunteers, including emergency medical service volunteers, volunteer  
160 safety officers, and volunteer search and rescue team members; or

161           (B) non-emergency volunteers, including senior program volunteers and community  
162 event volunteers;

163           (iv) health benefits provided through the supervising agency;

164           (v) passthrough stipends or other compensation provided to volunteers through a  
165 federal or state program, including Americorp Seniors volunteers, consistent with 42 U.S.C.  
166 Sec. 5058;

167           (vi) stipends or other compensation, below the IRS aggregate amount, provided to  
168 volunteers from any person;

169           (vii) uniforms, identification, personal protective equipment, or safety equipment used  
170 by a volunteer only while volunteering for the supervising entity;

171           (viii) a nonpecuniary item not exceeding \$50 in value;

172           (ix) nonpecuniary items, below the IRS aggregate amount, donated to the supervising  
173 agency with the express intent of benefitting a volunteer; or

174           (x) meals or gifts, not exceeding \$50 in value, provided as part of a volunteers  
175 appreciation event by the volunteering agency.

176           (b) "Volunteer" does not include:

177           (i) a person participating in human subjects research to the extent that the participation  
178 is governed by federal law or regulation inconsistent with this chapter; or

179           (ii) a compensatory service worker.

180           (c) "Volunteer" includes a juror or potential juror appearing in response to a summons  
181 for a trial jury or grand jury.

182           ~~[(4)]~~ (6) "Volunteer facilitator" means a business or nonprofit organization that, from

183 individuals who have a relationship with the business or nonprofit organization, such as  
184 membership or employment, provides volunteers to an agency or facilitates volunteers  
185 volunteering with an agency.

186 [~~5~~] (7) "Volunteer safety officer" means an individual who:

- 187 (a) provides services as a volunteer under the supervision of an agency; and
- 188 (b) at the time the individual provides the services to the supervising agency described  
189 in Subsection [~~5~~] (7)(a), the individual is:

- 190 (i) exercising peace officer authority as provided in Section 53-13-102; or
- 191 (ii) if the supervising agency described in Subsection [~~5~~] (7)(a) is a fire department:
  - 192 (A) on the rolls of the supervising agency as a firefighter;
  - 193 (B) not regularly employed as a firefighter by the supervising agency; and
  - 194 (C) acting in a capacity that includes the responsibility for the extinguishment of fire.

195 [~~6~~] (8) "Volunteer search and rescue team member" means an individual who:

- 196 (a) provides services as a volunteer under the supervision of a county sheriff; and
- 197 (b) at the time the individual provides the services to the county sheriff described in  
198 Subsection [~~6~~] (8)(a), is:

- 199 (i) certified as a member of the county sheriff's search and rescue team; and
- 200 (ii) acting in the capacity of a member of the search and rescue team of the supervising  
201 county sheriff.

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

203 **67-20-3. Purposes for which a volunteer is considered a government employee --**  
204 **Limitations of liability for volunteer facilitators.**

205 (1) Except as provided in Subsection (2) or (3), a volunteer is considered a government  
206 employee for purposes of:

207 (a) receiving workers' compensation medical benefits, which shall be the exclusive  
208 remedy for all injuries and occupational diseases as provided under Title 34A, Chapter 2,  
209 Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act;

210 (b) the operation of a motor vehicle or equipment if the volunteer is properly licensed  
211 and authorized to do so; and

212 (c) liability protection and indemnification normally afforded a paid [a] government  
213 employee.

214 (2) (a) A supervising agency shall provide workers' compensation benefits for a  
215 volunteer safety officer as provided in Section 67-20-7.

216 (b) A volunteer safety officer is considered an employee of the supervising agency of  
217 the volunteer safety officer for purposes of Subsections (1)(b) and (c).

218 (3) (a) The county of a county sheriff that certifies and supervises a volunteer search  
219 and rescue team member shall provide workers' compensation benefits for the volunteer search  
220 and rescue team member as provided in Section 67-20-7.5.

221 (b) For purposes of Subsections (1)(b) and (c), a volunteer search and rescue team  
222 member is considered an employee of the county of the county sheriff that certifies and  
223 supervises the volunteer search and rescue team member.

224 (4) A volunteer facilitator is immune from liability for damages or injuries arising out  
225 of or related to the volunteer service of a volunteer provided by the volunteer facilitator to an  
226 agency, unless:

227 (a) an action or omission of the volunteer facilitator is grossly negligent, not made in  
228 good faith, or made maliciously, and causes harm to a person or property; or

229 (b) the volunteer facilitator fails to exercise due diligence in determining the fitness of  
230 a volunteer to provide voluntary service to the agency under circumstances that make the  
231 volunteer facilitator's failure to exercise due diligence grossly negligent, not in good faith, or  
232 malicious.

233 Section 5. Section 67-20-4 is amended to read:

234 **67-20-4. Approval of volunteer.**

235 (1) Except as approval is provided under Subsection (2), a volunteer may not donate  
236 any service to an agency unless the volunteer's services are approved by~~[(a)]~~ the chief  
237 executive of that agency or ~~[the]~~ an authorized agency representative~~[- and]~~.

238 ~~[(b) the office of personnel having jurisdiction over that agency.]~~

239 (2) When the county sheriff determines that a search and rescue emergency situation  
240 exists that requires law enforcement action, the county sheriff may approve a volunteer who  
241 offers to donate a service for any law enforcement related activity conducted in response to the  
242 emergency situation.