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108TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 108–680

# GOOD SAMARITAN VOLUNTEER FIREFIGHTER ASSISTANCE ACT OF 2004

SEPTEMBER 13, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

## R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 1787]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1787) to remove civil liability barriers that discourage the donation of fire equipment to volunteer fire companies, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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29–006

## THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Good Samaritan Volunteer Firefighter Assistance Act of 2004".

**SEC. 2. REMOVAL OF CIVIL LIABILITY BARRIERS THAT DISCOURAGE THE DONATION OF FIRE EQUIPMENT TO VOLUNTEER FIRE COMPANIES.**

(a) LIABILITY PROTECTION.—A person who donates fire control or fire rescue equipment to a volunteer fire company shall not be liable for civil damages under any State or Federal law for personal injuries, property damage or loss, or death proximately caused by the equipment after the donation.

(b) EXCEPTIONS.—Subsection (a) does not apply to a person if—

(1) the person's act or omission proximately causing the injury, damage, loss, or death constitutes gross negligence or intentional misconduct; or

(2) the person is the manufacturer of the fire control or fire rescue equipment.

(c) PREEMPTION.—This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that notwithstanding subsection (b) this Act shall not preempt any State law that provides additional protection from liability for a person who donates fire control or fire rescue equipment to a volunteer fire company.

(d) DEFINITIONS.—In this section:

(1) PERSON.—The term "person" includes any governmental or other entity.

(2) FIRE CONTROL OR RESCUE EQUIPMENT.—The term "fire control or fire rescue equipment" includes any fire vehicle, fire fighting tool, communications equipment, protective gear, fire hose, or breathing apparatus.

(3) STATE.—The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, any other territory or possession of the United States, and any political subdivision of any such State, territory, or possession.

(4) VOLUNTEER FIRE COMPANY.—The term "volunteer fire company" means an association of individuals who provide fire protection and other emergency services, where at least 30 percent of the individuals receive little or no compensation compared with an entry level full-time paid individual in that association or in the nearest such association with an entry level full-time paid individual.

(e) EFFECTIVE DATE.—This Act applies only to liability for injury, damage, loss, or death caused by equipment that, for purposes of subsection (a), is donated on or after the date that is 30 days after the date of the enactment of this Act.

**SEC. 3. STATE-BY-STATE REVIEW OF DONATION OF FIREFIGHTER EQUIPMENT.**

(a) IN GENERAL.—The Attorney General of the United States shall conduct a State-by-State review of the donation of firefighter equipment to volunteer firefighter companies during the 5-year period ending on the date of the enactment of this Act.

(b) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Attorney General of the United States shall publish and submit to the Congress a report on the results of the review conducted under subsection (a). The report shall include, for each State, the most effective way to fund firefighter companies, whether first responder funding is sufficient to respond to the Nation's needs, and the best method to ensure that the equipment donated to volunteer firefighter companies is in usable condition.

## PURPOSE AND SUMMARY

H.R. 1787, the "Good Samaritan Volunteer Firefighter Assistance Act of 2004" is intended to encourage increased donation of surplus firefighting equipment to volunteer firefighting departments by removing civil liability barriers that keep corporations, individuals, and professional firefighting entities from donating surplus equipment rather than destroying or "moth balling" it. The bill is designed to accomplish this by exempting a person who donates fire

control or fire rescue equipment to a volunteer fire company (defined as at least 30% of members receiving little or no compensation) from liability for civil damages for injuries, damages, or losses proximately caused by the donated equipment. The bill creates two exceptions from the general protection if the donor either manufactures the equipment or engages in gross negligence or intentional misconduct.

## BACKGROUND AND NEED FOR THE LEGISLATION

### VOLUNTEER ORGANIZATIONS AND THEIR LEGAL STATUS

#### *Volunteerism and the Advent of the "Lawsuit Culture"*

In the United States, a multitude of organizations exist solely for the purpose of helping their communities, both locally and nationally. These volunteer and nonprofit organizations make use of volunteers who selflessly give of their time and resources to benefit others. However, America's long tradition of volunteerism and generosity has been undermined by what has become a new American tradition: the lawsuit culture. In recent decades, actual lawsuits and fears of liability (both rational and irrational) have increasingly become a deterrent to people who might otherwise have given of their time or resources to better their community and country.

#### *Congressional Efforts to Assess and Address Legal Attacks on Volunteer Organizations*

The Judiciary Committee and Congress have previously recognized that the simple fear of liability, if left unchecked, would cause potential volunteers to stay home. The Committee has held hearings [1] in recent years about various aspects of this problem and has advanced several pieces of legislation [2] designed to limit liability for volunteers and volunteer, non-profit, or charitable organizations. Some of the evidence gathered during these hearings bears repeating. According to a report by the Independent Sector, a national coalition of 800 organizations, the percentage of Americans volunteering dropped from 54% in 1989 to 51% in 1991 and 48% in 1993.[3] Gallup polls have shown that 1 in 6 potential volunteers reported that they withheld their services due to fear of exposure to liability lawsuits.[4] The Committee's hearings also brought to light how the general fear of liability is borne out by anecdotal examples of the types of lawsuits that have been brought. One Little League organization chose to settle out of court rather than face possible excessive damage awards when it was sued by a woman who was hit by a ball her own daughter failed to catch.[5] When a youth suffered a paralyzing injury in a volunteer supervised Boy Scout game of touch football, he filed a multimillion dollar lawsuit

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[1] *See, e.g., State and Local Implementation of Existing Charitable Choice Programs,* 107th Cong. 13 (2001), *Volunteer Liability Legislation, Hearing on H.R. 911 and H.R. 1167 Before the House Committee on the Judiciary,* 105th Cong. 6 (1997), *Health Care Reform Issues: Antitrust, Medical Malpractice Liability, and Volunteer Liability, Hearing on H.R. 911, H.R. 2925, H.R. 2938 Before the House Committee on the Judiciary,* 104th Cong. 66 (1995).

[2] *See, e.g.* H.R. 911, 105th Cong. 6 (1997), H.R. 1167, 105th Cong. 6 (1997), H.R. 7, 107th Cong. 13 (2001).

[3] H. Rep. No. 105–101, Part 1 (1997).

[4] *Id.*

[5] *Volunteer Liability Legislation: Hearing on H.R. 911 and H.R. 1167 Before the House Committee on the Judiciary,* 105th Cong. 6, at 21 (1997).

against the adult supervisors and the Boy Scouts.[6] In California, a volunteer Mountain Rescue member helped paramedics aid a climber who had fallen and sustained injuries to his spine; his reward was a $12 million lawsuit for damages.[7]

In addition to causing potential volunteers to stay at home or refrain from certain needed activities, the Committee's hearings showed that the liability threat has had very real financial consequences. Many nonprofit organizations have encountered dramatically rising costs for liability insurance due to fears of litigation. The average reported increase for insurance premiums for nonprofits over the period of 1985–1988 was 155%.[8] The Executive Director of the Girl Scout Council of Washington, D.C. said in a February 1995 letter that "locally we must sell 87,000 boxes of . . . Girl Scout cookies each year to pay for [our] liability insurance."[9] Dr. Thomas Jones, Managing Director of the Washington, D.C. office of Habitat for Humanity, testified that "[t]here are Habitat affiliate boards for whom the largest single administrative cost is the perceived necessity of purchasing liability insurance to protect board members. These are funds which otherwise would be used to build more houses [for] more persons in need."[10] During the same hearing, John Graham, the CEO of the American Diabetes Association, added that "[i]t is no coincidence that the issue of protecting volunteers has followed massive increases in both the size of litigation claims and the cost of liability insurance."[11]

*Volunteer Protection Act*

Based on the evidence gathered in such hearings, the Committee and Congress took actions to remedy the growing problem of liability fears for volunteers. The most notable action in recent years was consideration and passage of Federal legislation during the 105th Congress that became known as the "Volunteer Protection Act" ("VPA").[12] The final legislation signed into law by President Clinton on June 18, 1997 was identical to H.R. 911 as reported by the House Committee on the Judiciary earlier that year. The Federal legislation setting a uniform national standard for limiting the liability of volunteers was preceded by a patchwork of State laws with similar purposes, which the VPA largely preempted as well as preempting relevant State tort laws. However, these earlier State efforts to limit liability for volunteers are noteworthy because they reflected a pre-existing national consensus that volunteers and volunteer organizations ought to be encouraged by reducing the fear of legal liability.

The common law of all fifty States allows individuals to collect monetary damages in tort for personal injury or property damage caused by another person's negligence or willful conduct. Almost all of these States, however, have limited the liability of volunteers and charitable organizations to some extent. New Jersey provides that charities and their volunteers are immune from liability for or-

[6] *Id.* at 26.
[7] *Id.* at 23.
[8] H. Rep. No. 105–101, Part 1 (1997).
[9] *Id.*
[10] *Volunteer Liability Legislation: Hearing on H.R. 911 and H.R. 1167,* supra, 105th Cong. at 56.
[11] *Id.* at 51.
[12] Pub. L. No. 105–19; codified at 42 U.S.C. § 14503 et. seq. (2003).

dinary negligence.[13] In Kansas, a volunteer or nonprofit organization is immune from liability for negligence if the organization carries general liability insurance coverage.[14] Ohio offers broad immunity for volunteers of charitable organizations.[15] Wisconsin State law limits the liability of volunteers of non-stock corporations organized under Chapter 181.[16] Georgia grants immunity for members, directors, officers, and trustees of charities from negligence claims asserted by beneficiaries of the charity.[17] Each of these States and others have recognized the need to encourage good works and protect volunteers and nonprofit organizations from tort liability for accidents that arise in the normal course of their dealings.

The VPA was intended to encourage people to do necessary volunteer work for nonprofit and governmental entities by offering immunization from liability under State tort law for ordinary negligence. The VPA only protects "volunteers"[18] for incidents that arise in the scope of their volunteer work, and it does not protect willful or criminal conduct and gross negligence. The VPA also limits punitive damages and non-economic damages for those individuals found liable. However, the VPA does not protect nonprofit organizations and government entities themselves from liability for negligence of their volunteers unless State law provides "charitable immunity" for such organizations. Hence, under the common law doctrine of *respondeat superior*, volunteer organizations and entities are still generally vicariously liable for the negligence of their employees and volunteers.

The VPA also allows States to declare affirmatively that the Act does not apply to suits in which all the parties to the action are citizens of the State. The VPA became effective on September 16, 1997, and did not apply retroactively to suits brought before that date. The VPA represents a great improvement by setting a comprehensive and consistent standard governing the tort liability of volunteers and thereby encouraging their good works. However, the fear of liability exposure still affects and hampers volunteer and non-profit organizations. Subsequent efforts in Congress since passage of the VPA have focused on some of the remaining gaps in liability protection for both volunteer organizations themselves and their donors. For example, in the 107th Congress H.R. 7, the "Charitable Choice Act of 2001" as passed by the House contained provisions limiting liability for persons or entities who donated equipment to charitable organizations.

## H.R. 1787, THE "GOOD SAMARITAN VOLUNTEER FIREFIGHTER ASSISTANCE ACT OF 2004"

H.R. 1787 is needed to remove the fear of liability exposure for potential donors of fire rescue or fire control equipment to volunteer fire departments. Donors are typically professional fire fighting entities, either those of private companies or better funded urban and suburban professional fire departments who when upgrading their own equipment are left with the replaced equipment

[13] N.J. Stat. Ann. §§ 2A: 53A–7 to 7.1 (West 1983).
[14] Kan. Stat. Ann. § 60–3601 (1987).
[15] Ohio. Rev. Code Ann. § 2305.38 (Anderson Supp. 1987).
[16] Wis. Stat. §§ 181.297, 180.0828.
[17] Ga. Code Ann. § 105–114 (Harrison 1984).
[18] "Volunteer" is defined in the VPA as a person who perfoms services for a non-profit and who receives no more than $500 per year for such services.

as surplus. Donors who are manufacturers of the donated equipment are not afforded any protection from liability by this legislation. Several States have recognized the problem of liability fears preempting donations to volunteer fire departments and have enacted similar laws to encourage and protect such donations, usually with similar exceptions.[19] Testimony received by the Committee on behalf of volunteer firefighters indicates that: Alabama, Arizona, Arkansas, California, Florida, Illinois, Indiana, Missouri, South Carolina, and Texas have all passed versions of liability relief laws for good Samaritan donations to volunteer fire departments. Since the Texas law was passed, donations in excess of $10 million have been distributed to volunteer fire departments. Nearly 75% of the nation's firefighters, and half of those killed in the line of duty each year are volunteer firefighters according to the National Fire Protection Association. These volunteer departments represent a cost savings estimated to be as much as $37 billion in taxpayer funds annually if the services they provide had to be replaced with full time, paid, professional firefighters. Many of these volunteer fire departments are in rural areas with fewer resources, and face a constant struggle to provide their members with adequate equipment to protect their communities. Such volunteer fire departments have traditionally benefitted from donations of surplus or used equipment when professional fire departments or firefighting units of private enterprises upgrade or replace their own equipment. Such equipment can include hoses, axes, protective clothing, communications equipment, breathing apparatus, and fire trucks. However, today some of this needed, usable, safe equipment is being destroyed by better equipped fire units upgrading their own equipment instead of donated to volunteer departments because of the fear of legal liability exposure if such equipment were ever to fail through no fault of the donating entity. The testimony also indicated that Federal legislation is necessary despite the advent of State laws in a handful of States because volunteer fire organizations do not have the resources to advance State level legislation in the 40 remaining States.

Opponents of the legislation have argued that the need for legislation could be obviated by the effective use of waiver agreements between prospective donor and donee. The Committee rejects this argument. Testimony given on behalf of the National Volunteer Fire Council stated that liability waivers may sometimes be effective and may occasionally be used today to offer some protection to donors, but these waiver agreements are often difficult to obtain and result in no donation occurring. The difficulty in obtaining waivers is not due to a general lack of willingness on the part of volunteer fire departments or potential donors to agree to such terms—but rather the requirement of legal paperwork and expertise alone is a significant deterrent to potential donors and recipient volunteer fire departments alike. Volunteer firefighters protect America's communities for free on a needed basis in addition to having regular paying careers. Those volunteers when they are found at a local fire station are usually busy either responding to a fire, returning from an emergency call, or performing service on their equipment. Seldom found in most local volunteer fire stations

[19] *See, e.g.,* Tex. Educ. Code Ann. § 88.106 (West 1997).

is a full time legal counsel ready at a desk and capable of drafting legal contracts. According to the testimony, potential donors (who are mostly professional firefighting entities upgrading their own equipment) merely wish to provide equipment free of charge to volunteer fire departments. The information received by the Committee suggests that potential donors typically do not want to go through their company's general counsel's office or the city attorney every time a donation of any size is made to a volunteer firefighting organization in order to draw up waiver agreements or assess liability exposure. Requiring volunteer fire companies to specifically waive all liability claims against donors of fire fighting equipment to enjoy the benefits of the legislation, as some opponents have proposed, will impose legal costs on volunteer organizations that will undermine their willingness to accept badly needed equipment. The information received by the Committee indicates that volunteer firefighters simply want to receive fire safety equipment that they know something about, not execute legal paperwork that they are ill-equipped to deal with. H.R. 1787 will allow both parties to a donation to make it easily.

## HEARINGS

The full Committee on the Judiciary held a hearing on H.R. 1787 and two related bills, H.R. 3369, and H.R. 1084, on July 20, 2004. Testimony was received from Chief Philip Stittleburg, Chairman of the National Volunteer Fire Council and a local volunteer fire chief, who testified in favor of H.R. 1787. According to Chief Stittleburg's testimony volunteer fire departments have traditionally benefitted from donations of surplus equipment but many potential donors destroy or store needed equipment instead of donating it because of a fear of liability exposure. Chief Stittleburg testified that several State laws similar to H.R. 1787 have resulted in increased donations and that Federal legislation is needed to help volunteer fire departments in all 50 States obtain the equipment they need to safely fight fires and respond to emergencies by removing the fear of liability from potential donors. In his testimony and in response to questioning by Members, Chief Stittleburg also noted that: 1) although actual lawsuits are rare the potential donor's perceived vulnerability to liability becomes the reality and a donation does not occur because of this "chilling effect;" and 2) fire chiefs who receive donated equipment or purchased equipment alike have a duty to ensure the equipment is properly inspected and maintained before it is used by the volunteer firefighters under their command.

## COMMITTEE CONSIDERATION

On September 8, 2004, the full Committee on the Judiciary met in open session and ordered favorably reported the bill H.R. 1787, with an amendment by a voice vote, a quorum being present.

## VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee's consideration of H.R. 1787.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1787, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

SEPTEMBER 13, 2004.

Hon. F. JAMES SENSENBRENNER, Jr.,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1787, the Good Samaritan Volunteer Firefighter Assistance Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for federal costs) and Melissa Merrell (for the state and local impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN,
*Director.*

Enclosure.

*H.R. 1787—Good Samaritan Volunteer Firefighter Assistance Act of 2004*

H.R. 1787 would provide immunity to persons who donate fire control or fire rescue equipment to volunteer fire departments from liability in certain civil suits alleging harm from the use of the donated equipment.

CBO estimates that enacting the legislation would result in no costs to the federal government. H.R. 1787 would not affect direct spending or revenues.

H.R. 1787 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act, but CBO estimates that the costs, if any, would not be significant and would be well below the threshold established in that act ($60 million in 2004, adjusted annually for inflation). Specifically, the bill would exempt certain individuals who donate fire control or rescue equipment from liability under state tort laws for injuries and damages that equipment may cause. In addition, some state and local fire departments that donate used equipment would benefit from this liability exemption. The bill contains no new private-sector mandates.

The CBO staff contacts for this estimate are Lanette J. Walker (for federal costs) and Melissa Merrell (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1787 will encourage increased donation of surplus firefighting equipment to volunteer firefighting departments by removing civil liability barriers that keep corporations, individuals, and professional firefighting entities from donating such equipment.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, Congress finds the authority for this legislation in article I, § 8 of the Constitution.

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

*Section 1—Short Title*

Section 1 provides that H.R. 1787 may be cited as the "Good Samaritan Volunteer Firefighter Assistance Act of 2004."

*Section 2—Removal of Civil Liability Barriers that Discourage the Donation of Fire Equipment to Volunteer Fire Companies*

(a) LIABILITY PROTECTION.—Subsection 2(a) provides that any "person" who donates "fire control or fire rescue equipment" to a "volunteer fire company" shall NOT be liable for civil damages under any State or Federal law for personal injuries, property damage or loss, or death proximately caused by the donated equipment after the donation.

(b) EXCEPTIONS.—Subsection 2(b) creates two exceptions to the general liability protection for donors established in subsection 2(a):

(1) If the donating person's act or omission which proximately caused the injury, damage, loss or death constitutes "gross negligence" or "intentional misconduct;" OR

(2) If the donor is the manufacturer of the fire control or fire rescue equipment.

(c) PREEMPTION.—Subsection 2(c) provides that this Act preempts any inconsistent State laws, but NOT a State law that provides additional protection from liability for a person who donates fire control or fire rescue equipment to a volunteer fire company.

(d) DEFINITIONS.—Subsection 2(d) defines the following terms used in the bill:

(1) "Person" includes an individual person and any governmental or other entity.

(2) "Fire Control or Rescue Equipment" includes any fire vehicle, fire fighting tool, communications equipment, protective gear, fire hose, or breathing apparatus.

(3) "State" includes the 50 States, the District of Columbia and all other territories or possessions of the United States and

any political subdivision of any such State, territory or possession.

(4) Volunteer Fire Company—means an association of individuals who provide fire protection and other emergency services, where at least 30 percent of the individuals receive little or no compensation compared with an entry level full-time paid individual in that association or in the nearest such association with an entry level full time paid individual.

(e) EFFECTIVE DATE.—Subsection 2(e) provides that the Act applies only to liability for injury, damage, loss, or death caused by equipment that, for purposes of subsection (a) is donated on or after the effective date which is 30 days after the enactment of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee notes that H.R. 1787 makes no changes to existing law.

MARKUP TRANSCRIPT

## BUSINESS MEETING

### WEDNESDAY, SEPTEMBER 8, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., [Chairman of the Committee] Presiding.

[Intervening business.]

Chairman SENSENBRENNER. Pursuant to notice, I now call up the bill H.R. 1787, the "Good Samaritan Volunteer Fire Assistance Act of 2003" for purposes of markup and move its favorable recommendation to the House.

Without objection, the bill will be considered as read and open for amendment at any point.

The Chair recognizes himself for 5 minutes to explain the bill.

[The bill, H.R. 1787, follows:]

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108TH CONGRESS
1ST SESSION

# H. R. 1787

To remove civil liability barriers that discourage the donation of fire equipment to volunteer fire companies.

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IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2003

Mr. CASTLE (for himself, Mr. KENNEDY of Minnesota, Mr. PASCRELL, Mr. WILSON of South Carolina, Mr. MCNULTY, Ms. HARMAN, Mr. SMITH of Michigan, Mr. GOODE, Mr. COLE, Mr. FOSSELLA, Mr. MCHUGH, Mr. DUNCAN, Mr. BRADY of Texas, Mr. BEREUTER, Mr. KING of New York, Mr. WALSH, Mr. GILCHREST, Mr. DOYLE, Mr. NEY, Mr. SHIMKUS, Mr. EMANUEL, Mr. EHLERS, Mr. DAVIS of Tennessee, Mr. REYNOLDS, Mr. MCGOVERN, and Ms. GINNY BROWN-WAITE of Florida) introduced the following bill; which was referred to the Committee on the Judiciary

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# A BILL

To remove civil liability barriers that discourage the donation of fire equipment to volunteer fire companies.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Good Samaritan Volunteer Firefighter Assistance Act of 2003".

**SEC. 2. REMOVAL OF CIVIL LIABILITY BARRIERS THAT DISCOURAGE THE DONATION OF FIRE EQUIPMENT TO VOLUNTEER FIRE COMPANIES.**

(a) LIABILITY PROTECTION.—A person who donates fire control or fire rescue equipment to a volunteer fire company shall not be liable for civil damages under any State or Federal law for personal injuries, property damage or loss, or death proximately caused by the equipment after the donation.

(b) EXCEPTIONS.—Subsection (a) does not apply to a person if—

(1) the person's act or omission proximately causing the injury, damage, loss, or death constitutes gross negligence or intentional misconduct; or

(2) the person is the manufacturer of the fire control or fire rescue equipment.

(c) PREEMPTION.—This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that notwithstanding subsection (b) this Act shall not preempt any State law that provides additional protection from liability for a person who donates fire control or fire rescue equipment to a volunteer fire company.

(d) DEFINITIONS.—In this section:

(1) PERSON.—The term "person" includes any governmental or other entity.

(2) FIRE CONTROL OR RESCUE EQUIPMENT.—The term "fire control or fire rescue equipment" includes any fire vehicle, fire fighting tool, protective gear, fire hose, or breathing apparatus.

(3) GROSS NEGLIGENCE.—The term "gross negligence" means voluntary and conscious conduct harmful to the health or well-being of another person by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or well-being of another person.

(4) INTENTIONAL MISCONDUCT.—The term "intentional misconduct" means voluntary and conscious conduct harmful to the health or well-being of another person by a person who, at the time of the conduct, knew that the conduct was harmful to the health or well-being of another person.

(5) STATE.—The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, any other territory or possession of the United States, and any political subdivision of any such State, territory, or possession.

(6) VOLUNTEER FIRE COMPANY.—The term "volunteer fire company" means an association of individuals who provide fire protection and other emergency services, where at least 30 percent of the individuals receive little or no compensation compared with an entry level full-time paid individual in that association or in the nearest such association with an entry level full-time paid individual.

(e) EFFECTIVE DATE.—This Act applies only to liability for injury, damage, loss, or death caused by equipment that, for purposes of subsection (a), is donated on or after the date that is 30 days after the date of the enactment of this Act.

○

Chairman SENSENBRENNER. I urge my colleagues to join me in favor of reporting this bill. I would like to thank the sponsor of the bill, Mr. Castle of Delaware for bringing attention to this important issue.

This straightforward and narrowly-tailored legislation deserves our support, as do the volunteer firefighters who stand to benefit from its passage. The purpose of the bill is simple and clear to encourage the increased donation of surplus fire-fighting units to volunteer units by removing civil liability barriers that currently cause some corporations, individuals and professional firefighting entities to destroy or mothball surplus or used equipment, rather, than to donate it.

The Committee had a hearing on the bill and other legislation on July 20, at which Chief Philip Stittleburg of the National Volunteer Fire Council testified in favor of the bill. His testimony explained that volunteer departments have traditionally benefited from donations of surplus used equipment when professional departments or private enterprise upgrade or replace their own equipment.

Surplus equipment may range from hoses to oxygen masks to protective clothing or even fire trucks. However, today, some of this needed usable or safe equipment is being destroyed or put into storage by better equipped fire units instead of donated to volunteer fire departments. Many times the donations never occur because of the fear of legal liability exposure if such equipment were to fail, even through no fault of the donor. The legislation before us will remove both the fear and the reality of such liability for potential donors.

The bill before us is a good idea but not an entirely original one. Ten States have already passed versions of this legislation at the State level. What the bill does is simply provide that a person or entity who donates fire control or rescue equipment through a volunteer department will not be liable for civil damage or damage or loss proximately caused by the equipment after donation. What the bill does not do is protect the manufacturer of such equipment, and it does not protect any donor whose act or omission constitutes gross negligence or intentional misconduct.

Furthermore, the bill does not endanger the safety of firefighters. As Chief Stittleburg testified at the Committee's hearing, fire chiefs are responsible for inspecting donated and purchased equipment alike, and no chief would allow their firefighters to use equipment that was not properly inspected and deemed fit for use. Given a choice between no equipment and the donated equipment that they inspect before using, volunteer departments are entirely in favor of the latter, and given a choice between believing the testimony of trial lawyers versus volunteer firefighters, about the need for use and safety of donated equipment, I will choose the latter.

I will be offering a manager's amendment to correct some drafting errors one by insuring the communications equipment is covered under the type of fire and rescue equipment that may be donated to changing 2003 to 2004 in the bill's title and three, eliminating two unnecessary and repetitive definitions of gross negligence and intentional misconduct, which are well established legal consequences that require no unique definition in the bill.

We have an opportunity to provide some limited common sense relief to good Samaritan donors of this equipment to your own local

volunteer fire departments and to the community that rely upon volunteer firefighters.

I urge my colleagues to join me in reporting H.R. 1787 with this amendment.

Who wishes to give the Democratic opening statement?

I yield back the balance of my time.

Without objection, all opening statements will appear in the record at this time, and the Chair recognizes himself for purposes of offering a manager's amendment, which the clerk will report.

The CLERK. Amendment to H.R. 1787 offered by Mr. Sensenbrenner of Wisconsin. Page 1, line 5 strike "2003"——

[The amendment follows:]

H.L.C.

## AMENDMENT TO H.R. 1787

## OFFERED BY MR. SENSENBRENNER OF WISCONSIN

Page 1, line 5, strike "2003" and insert "2004".

Page 3, line 5, after "tool," insert "communications equipment,".

Page 3, strike lines 7 through 18 (and make such technical and conforming changes as may be necessary).

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

The Chair recognizes himself for 5 seconds in support of the amendment. The amendment simply does what I described in my opening statement, so I would urge support for it.

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman from North Carolina is recognized for 5 minutes.

Mr. WATT. I won't take the 5 minutes. I am hoping to find out the impact of the language dealing with properly licensed and indi-

vidually insured. Would that provide any insurance to somebody who was injured?

Chairman SENSENBRENNER. Will the gentleman yield? You are looking at the wrong amendment. This is just a technical amendment.

Mr. WATT. No, I am looking at the bill.

Chairman SENSENBRENNER. Oh.

Mr. WATT. You used the language on lines 18 and 19 and again on page 2, lines 9 and 10. That is not the right bill.

Chairman SENSENBRENNER. No, it is not the right bill.

Mr. WATT. Okay. Thank you.

Chairman SENSENBRENNER. Will the gentleman yield back?

Mr. WATT. No, not yet, until I figure out——

Okay. I yield back. Sorry.

Chairman SENSENBRENNER. Without objection, the manager's amendment is agreed to.

Are there further amendments?

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 1787 offered by Mr. Scott. At the end of the bill add the following: Section 3. State-by-State review of donation of firefighter equipment. A, in general. The attorney general of the United States shall conduct a State——

[The amendment follows:]

**AMENDMENT TO H.R. 1787**

**OFFERED BY MR. SCOTT**

At the end of the bill, add the following:

1 **SEC. 3. STATE-BY-STATE REVIEW OF DONATION OF FIRE-**
2 **FIGHTER EQUIPMENT.**

3 (a) IN GENERAL.—The Attorney General of the
4 United States shall conduct a State-by-State review of the
5 donation of firefighter equipment to volunteer firefighter
6 companies during the 5-year period ending on the date
7 of the enactment of this Act.

8 (b) REPORT.—Not later than 6 months after the date
9 of the enactment of this Act, the Attorney General of the
10 United States shall publish and submit to the Congress
11 a report on the results of the review conducted under sub-
12 section (a). The report shall include, for each State, the
13 most effective way to fund firefighter companies, whether
14 first responder funding is sufficient to respond to the Na-
15 tion's needs, and the best method to ensure that the equip-
16 ment donated to volunteer firefighter companies is in usa-
17 ble condition.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

The gentleman is recognized for 5 minutes.

Will the gentleman yield to allow me to accept this amendment?

Mr. SCOTT. Yes.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. Question is on the Scott amendment.

Those in favor say aye. Aye. Opposed no. The ayes appear to have it.

Are there further amendments.

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I have another amendment.

Chairman SENSENBRENNER. The clerk will report the amendment. This amendment will be somewhat controversial. I believe this would be the time to break.

[The amendment follows:]

H.L.C.

**AMENDMENT TO H.R. 1787**

**OFFERED BY MR. SCOTT**

Page 2, line 9, insert before the period at the end the following: "if the volunteer fire company waives all liability claims against the donor with respect to that equipment".

Chairman SENSENBRENNER. The Committee is in recess until 1:00 p.m. and please be prompt. Because we have an ambitious schedule which I hope to conclude. The Committee is in recess until 1:00 p.m.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order. The working quorum is present. Pending the motion to report favorably bill H.R. 1787. By unanimous consent the bill was considered as read and open for amendment at any point.

The gentleman from Virginia, Mr. Scott, had offered an amendment to the bill which had been read, but the gentleman had not been recognized in support of his amendment.

The Chair now recognizes the gentleman from Virginia for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, some of us wonder what the problem is that we are addressing. This amendment would simply solve the problem that the fire department waives all responsibilities with respect to the equipment, they can do that. We shouldn't force them to do that as a condition of receiving the donation, which this bill does. If they agree to waive their liability, they ought to be able to do it, I suppose. But you shouldn't mandate that.

This amendment simply inserts that the waiver of liability will apply if the volunteer fire company waives all liability with respect to the claims of the donor of that equipment. If they don't waive, I suppose the donor may not give it, but that is a decision they can make by themselves, I don't see a need to waive that claim.

The definition of volunteer fire company—the definition includes one where at least 30 percent of individuals receive little or no compensation compared to an entry level full-time paid position, which means that 70 percent of the people involved could be, in fact, regular paid firefighters who may be subjected to dangerous equipment without their knowledge. They might not want to waive the liability claims, and they shouldn't. I just think if they ought to do it, they ought to. If they don't, she shouldn't be forced to waive liability.

I would hope you would—we would accept the amendment.

Chairman SENSENBRENNER. Would the gentleman yield back?

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. The Chair recognizes himself for opposition to the amendment.

The amendment seeks to impose new legal hurdle to donations to volunteer fire departments and a bill designed to reduce those hurdles. In fact, the gentleman should know this because Chief Stittleburg of the National Volunteer Fire Council specifically testified on this point at the Committee's July 20 hearing at H.R. 1787.

Chief Stittleburg stated that liability waivers may sometimes be effective and may occasionally be used to date to offer some protection to donors, but these waiver agreements are often difficult to obtain and result in no donation occurring.

The difficulty in obtaining waivers is not due a general lack of willingness on the part of volunteer fire departments or potential donors to agree to such terms, but rather, the requirement of legal paperwork and expertise alone is a significant deterrent to potential donors and recipient volunteer departments alike.

Volunteer firefighters protect our small communities for free on a needed basis, in addition to having regular full-time jobs. When you find them at your local fire stations, they are usually either responding to a fire, returning from an emergency call or performing service and maintenance on their equipment. One thing the gentleman from Virginia won't find in most volunteer fire stations is a full-time legal counsel sitting at a desk waiting to draft legal contracts.

These are volunteer fire departments that raise money to meet their communities' emergency needs by holding bingo games, raffles, chicken dinners and in Wisconsin, brat fries to buy a needed pumper truck or to pay for training.

The gentleman's amendment would now require them to hold separate fundraisers in order to pay their attorneys' fees. According to Chief Stittleburg, potential donors who are mostly professional firefighting entity upgrading their own equipment merely wish to provide equipment free of charge to volunteer fire departments.

They don't want to have to go through their company's general counsel office or the city attorney every time a donation of any size is made to the volunteer fire organizations. Requiring volunteer fire companies to specifically waive all liability claims against donors of fire fighting equipment will impose legal costs on volunteer organizations that will undermine their willingness to accept the badly-needed equipment.

Volunteer firefighters simply want to receive free fire safety equipment that they know something about, not execute legal paperwork that they are ill equipped to deal with. The underlying bill will allow both parties to a donation to make it easily.

The gentleman's amendment imposing a mandatory waiver agreement requirement in the considerable time and legal expense associated with this demand will make the donations harder and subvert the purpose this legislation seeks to advance. I urge opposition to the amendment judgment.

The question is on the amendment offered by the gentleman from Virginia, Mr. Scott.

Those in favor will say aye.

Aye.

Opposed, no.

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

A reporting quorum is not present. Without objection, the previous question is ordered on the motion to report favorably the bill H.R. 1787 as amended. The vote will take place when a reporting quorum appears.

[Intervening business.]

The question now recurs on the unfinished business, which is the motion to report favorably the bill H.R. 1787, the "Good Samaritan Volunteer Firefighter Assistance Act of 2003" as amended.

All those in favor will say aye.

Aye. Opposed, no.

The ayes appear to have it. The ayes have it. The motion to report favorably is agreed to, a reporting quorum being present.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today. Without objection, the Chairman is authorized to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by the House rules in which to submit additional dissenting supplemental or minority views.

## DISSENTING VIEWS

We strongly oppose H.R. 1787. the "Good Samaritan Volunteer Firefighter Assistance Act of 2003."

We oppose this bill for several reasons. First, while it is maintained that this legislation would encourage the donation of firefighter equipment by eliminating civil liability barriers, there have been no reported cases of businesses refusing to donate equipment nor cases of volunteer firefighting companies suing donors. Second, companies receiving the benefits of their donations should not be immune from the responsibility of problems with the equipment. Third, there are no measures in the bill that require certification of the safety of the equipment. Volunteer fire fighters should not be expected to preform their duties with equipment that may or may not be safe. Fourth, this problem could be solved without congressional action. Volunteer fire fighters could simply waive the liability of the donors for negligence resulting from donating firefighting equipment. For these and the reasons set forth herein, we cannot support this legislation.

### DESCRIPTION OF LEGISLATION

H.R. 1787 would ensure that an individual or entity that donates fire control or fire rescue equipment to a volunteer fire company is not liable for State or Federal civil damages for personal injuries, property damage or loss, or death caused by the equipment after the donation. Such protection is waived if the donor's act or omission constitutes gross negligence or intentional misconduct; or the donor is the manufacturer of such equipment. The Act preempts the laws of any State to the extent that the laws are inconsistent with the legislation. However, the bill will not preempt any State law that provides any additional protection from liability for the donor.

### *A. H.R. 1787 is a solution in search of a problem*

The need for protection from liability is a non-issue for those donating fire fighting equipment. Indeed, there have been no reported cases of volunteer firefighting companies suing donors over defective equipment nor any record of claims paid as a result of donated equipment. In fact, during the hearing before the Judiciary Committee on this legislation when Representative Scott asked Chief Stittleburg if he was aware of any claims paid resulting from suits related to donated equipment, Chief Stittleburg replied that he was not aware of any paid claims.[1] Furthermore, there is no record that companies have refused to donate used fire equipment to volunteer

[1] Legislative Hearing on H.R. 1787, "The Good Samaritan Volunteer Firefighter Assistance Act of 2003": Hearing before the House Comm. On the Judiciary 108th Cong. 49(2004)[hereinafter Hearings](testimony of Chief Philip C. Stittleburg, Chairman of the National Volunteer Fire Council).

companies. This legislation is trying to correct a problem that does not exist.

As Professor Andrew Popper observed in his testimony before the Committee:

> I am hard pressed to see why a federal bill that preempts state law is needed in this field * * * I am unaware of meaningful case law imposing liability on donors of equipment used in firefighting. I have no information regarding a shift in willingness to make donations and could not identify a single comprehensive study or professionally documented article, or other form of "evidence" * * * to justify a federal law that would destroy the right of an injured party to pursue a tort claim.[2]

*B. Companies should not be granted immunity for unsafe equipment*

While we applaud an efforts of charity and donations, if a company donates unsafe equipment they should be held responsible for the consequences. Certain equipment, like protective gear and breathing apparatuses, can deteriorate with use over time and may not be suitable for reuse. And the testing of equipment fire fighters done on a periodic basis is not enough to ensure the safety of the tools.[3] Even county and city fire departments (paid firefighters) do not donate their used equipment due to safety concerns. According to Sherman George, Commissioner of the St. Louis Fire Department, "If we're to give away used equipment that we say that's not proper for our firefighters and something should happen to a firefighter that we give it to, then people might want to hold the city of St. Louis liable for that equipment failure."[4] If paid firefighters believe that they should be held responsible for problems with donated equipment, then corporations should also absorb the responsibility.

*C. H.R. contains no safeguards to ensure the safety of the donated equipment*

H.R. 1787 requires no inspection or certification procedures before the equipment is donated. Before immunity is allowed, adequate safeguards must be in place to protect both firefighters and citizens. This is the only way to ensure that firefighters are using the safest equipment. In fact, ten states already have additional safety protections for firefighters, not found in this legislation.[5] If firefighters work to protect and keep citizens safe, certainly they should have protective equipment that has been inspected and certified.

*D. This matter could be resolved without congressional action*

The issue highlighted by H.R. 1787 may be dealt with without congressional action. Volunteer fire companies could simply sign a

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[2] Hearing, supra note 1, (written testimony of Andrew Popper, Professor of Law, American University, Washington College of Law) at 5.

[3] Hearing, supra note 1, at 15 (testimony of Chief Stittleburg).

[4] NPR: All Things Considered (July 11, 2001).

[5] The states are as follows: Alabama, California, Indiana, Kansas, Missouri, New York, South Carolina, Tennessee, Texas, and West Virginia.

contract waiving the liability of the donors for negligence resulting from donated firefighting equipment. This tactic would ensure that the fire companies are informed and have consented to the immunity of the donor. Even Chief Stittleburg stated, in a response to a question at the hearing, that, "In my view, sir, it can be effective."[6] If the waiver is an effective method, then that should be the manner to grant immunity and not this one-way exemption. Informed consent is a more prudent approach than blanket immunity.

Indeed, Representative Scott proposed such a solution when he offered a common sense amendment that would specify that immunity would apply to the extent the volunteer firefighter company agreed itself to waive liability claims stemming from donated equipment. Yet this amendment was rejected by the Majority. Another alternative for dealing with this issue would be by enhancing federal grants for permit the acquisition of the needed equipment. Unfortunately, the rules of germaneness did not permit us to pursue this approach.

## CONCLUSION

Taking away a harmed individual's right to his or her day in court is a serious matter. Before this Committee takes such drastic action, and goes so far as to preempt state law, there should be some evidence that a problem of frivolous litigation actually exists. Here we have not even been presented with a single lawsuit that has justified this legislation. In this context, we cannot support the approach of denying compensation to harmed and innocent victims.

JOHN CONYERS, Jr.
BOBBY SCOTT.
MAXINE WATERS.
TAMMY BALDWIN.
HOWARD L. BERMAN.
JERROLD NADLER.
SHEILA JACKSON LEE.
ROBERT WEXLER.
LINDA T. SÁNCHEZ.

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[6] Hearing, supra note 1, at 48 (testimony of Chief Stittleburg).