

***In the House of Representatives, U. S.,***

*May 21, 1997.*

*Resolved*, That the bill from the Senate (S. 543) entitled “An Act to provide certain protections to volunteers, non-profit organizations, and governmental entities in lawsuits based on the activities of volunteers”, do pass with the following

**AMENDMENT:**

Strike all after the enacting clause and insert in lieu thereof the following:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Volunteer Protection Act*  
3 *of 1997”.*

4 ***SEC. 2. FINDINGS AND PURPOSE.***

5 *(a) FINDINGS.—The Congress finds and declares*  
6 *that—*

7 *(1) the willingness of volunteers to offer their*  
8 *services is deterred by the potential for liability ac-*  
9 *tions against them;*

10 *(2) as a result, many nonprofit public and pri-*  
11 *ivate organizations and governmental entities, includ-*  
12 *ing voluntary associations, social service agencies,*

1        *educational institutions, and other civic programs,*  
2        *have been adversely affected by the withdrawal of vol-*  
3        *unteers from boards of directors and service in other*  
4        *capacities;*

5            *(3) the contribution of these programs to their*  
6        *communities is thereby diminished, resulting in fewer*  
7        *and higher cost programs than would be obtainable if*  
8        *volunteers were participating;*

9            *(4) because Federal funds are expended on useful*  
10       *and cost-effective social service programs, many of*  
11       *which are national in scope, depend heavily on volun-*  
12       *teer participation, and represent some of the most*  
13       *successful public-private partnerships, protection of*  
14       *volunteerism through clarification and limitation of*  
15       *the personal liability risks assumed by the volunteer*  
16       *in connection with such participation is an appro-*  
17       *priate subject for Federal legislation;*

18           *(5) services and goods provided by volunteers*  
19       *and nonprofit organizations would often otherwise be*  
20       *provided by private entities that operate in interstate*  
21       *commerce;*

22           *(6) due to high liability costs and unwarranted*  
23       *litigation costs, volunteers and nonprofit organiza-*  
24       *tions face higher costs in purchasing insurance,*

1       *through interstate insurance markets, to cover their*  
2       *activities; and*

3               *(7) clarifying and limiting the liability risk as-*  
4       *sumed by volunteers is an appropriate subject for*  
5       *Federal legislation because—*

6               *(A) of the national scope of the problems*  
7       *created by the legitimate fears of volunteers*  
8       *about frivolous, arbitrary, or capricious law-*  
9       *suits;*

10              *(B) the citizens of the United States depend*  
11       *on, and the Federal Government expends funds*  
12       *on, and provides tax exemptions and other con-*  
13       *sideration to, numerous social programs that de-*  
14       *pend on the services of volunteers;*

15              *(C) it is in the interest of the Federal Gov-*  
16       *ernment to encourage the continued operation of*  
17       *volunteer service organizations and contributions*  
18       *of volunteers because the Federal Government*  
19       *lacks the capacity to carry out all of the services*  
20       *provided by such organizations and volunteers;*  
21       *and*

22              *(D)(i) liability reform for volunteers, will*  
23       *promote the free flow of goods and services, lessen*  
24       *burdens on interstate commerce and uphold con-*  
25       *stitutionally protected due process rights; and*



1 *zens of the State if such State enacts a statute in accordance*  
 2 *with State requirements for enacting legislation—*

3 *(1) citing the authority of this subsection;*

4 *(2) declaring the election of such State that this*  
 5 *Act shall not apply, as of a date certain, to such civil*  
 6 *action in the State; and*

7 *(3) containing no other provisions.*

8 **SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.**

9 *(a) LIABILITY PROTECTION FOR VOLUNTEERS.—Ex-*  
 10 *cept as provided in subsections (b) and (d), no volunteer*  
 11 *of a nonprofit organization or governmental entity shall be*  
 12 *liable for harm caused by an act or omission of the volun-*  
 13 *teer on behalf of the organization or entity if—*

14 *(1) the volunteer was acting within the scope of*  
 15 *the volunteer's responsibilities in the nonprofit orga-*  
 16 *nization or governmental entity at the time of the act*  
 17 *or omission;*

18 *(2) if appropriate or required, the volunteer was*  
 19 *properly licensed, certified, or authorized by the ap-*  
 20 *propriate authorities for the activities or practice in*  
 21 *the State in which the harm occurred, where the ac-*  
 22 *tivities were or practice was undertaken within the*  
 23 *scope of the volunteer's responsibilities in the non-*  
 24 *profit organization or governmental entity;*

1           (3) *the harm was not caused by willful or crimi-*  
 2           *nal misconduct, gross negligence, reckless misconduct,*  
 3           *or a conscious, flagrant indifference to the rights or*  
 4           *safety of the individual harmed by the volunteer; and*

5           (4) *the harm was not caused by the volunteer op-*  
 6           *erating a motor vehicle, vessel, aircraft, or other vehi-*  
 7           *cle for which the State requires the operator or the*  
 8           *owner of the vehicle, craft, or vessel to—*

9                     (A) *possess an operator’s license; or*

10                    (B) *maintain insurance.*

11           (b) *CONCERNING RESPONSIBILITY OF VOLUNTEERS TO*  
 12           *ORGANIZATIONS AND ENTITIES.—Nothing in this section*  
 13           *shall be construed to affect any civil action brought by any*  
 14           *nonprofit organization or any governmental entity against*  
 15           *any volunteer of such organization or entity.*

16           (c) *NO EFFECT ON LIABILITY OF ORGANIZATION OR*  
 17           *ENTITY.—Nothing in this section shall be construed to affect*  
 18           *the liability of any nonprofit organization or governmental*  
 19           *entity with respect to harm caused to any person.*

20           (d) *EXCEPTIONS TO VOLUNTEER LIABILITY PROTEC-*  
 21           *TION.—If the laws of a State limit volunteer liability sub-*  
 22           *ject to one or more of the following conditions, such condi-*  
 23           *tions shall not be construed as inconsistent with this section:*

24                     (1) *A State law that requires a nonprofit organi-*  
 25           *zation or governmental entity to adhere to risk man-*

1        *agement procedures, including mandatory training of*  
 2        *volunteers.*

3            *(2) A State law that makes the organization or*  
 4        *entity liable for the acts or omissions of its volunteers*  
 5        *to the same extent as an employer is liable for the*  
 6        *acts or omissions of its employees.*

7            *(3) A State law that makes a limitation of li-*  
 8        *ability inapplicable if the civil action was brought by*  
 9        *an officer of a State or local government pursuant to*  
 10       *State or local law.*

11           *(4) A State law that makes a limitation of li-*  
 12        *ability applicable only if the nonprofit organization*  
 13        *or governmental entity provides a financially secure*  
 14        *source of recovery for individuals who suffer harm as*  
 15        *a result of actions taken by a volunteer on behalf of*  
 16        *the organization or entity. A financially secure source*  
 17        *of recovery may be an insurance policy within speci-*  
 18        *fied limits, comparable coverage from a risk pooling*  
 19        *mechanism, equivalent assets, or alternative arrange-*  
 20        *ments that satisfy the State that the organization or*  
 21        *entity will be able to pay for losses up to a specified*  
 22        *amount. Separate standards for different types of li-*  
 23        *ability exposure may be specified.*

24        *(e) LIMITATION ON PUNITIVE DAMAGES BASED ON*  
 25        *THE ACTIONS OF VOLUNTEERS.—*

1           (1) *GENERAL RULE.*—*Punitive damages may not*  
2           *be awarded against a volunteer in an action brought*  
3           *for harm based on the action of a volunteer acting*  
4           *within the scope of the volunteer’s responsibilities to*  
5           *a nonprofit organization or governmental entity un-*  
6           *less the claimant establishes by clear and convincing*  
7           *evidence that the harm was proximately caused by an*  
8           *action of such volunteer which constitutes willful or*  
9           *criminal misconduct, or a conscious, flagrant indif-*  
10          *ference to the rights or safety of the individual*  
11          *harmed.*

12          (2) *CONSTRUCTION.*—*Paragraph (1) does not*  
13          *create a cause of action for punitive damages and*  
14          *does not preempt or supersede any Federal or State*  
15          *law to the extent that such law would further limit*  
16          *the award of punitive damages.*

17          (f) *EXCEPTIONS TO LIMITATIONS ON LIABILITY.*—

18               (1) *IN GENERAL.*—*The limitations on the liabil-*  
19               *ity of a volunteer under this Act shall not apply to*  
20               *any misconduct that—*

21                       (A) *constitutes a crime of violence (as that*  
22                       *term is defined in section 16 of title 18, United*  
23                       *States Code) or act of international terrorism (as*  
24                       *that term is defined in section 2331 of title 18)*

1           *for which the defendant has been convicted in*  
2           *any court;*

3           *(B) constitutes a hate crime (as that term*  
4           *is used in the Hate Crime Statistics Act (28*  
5           *U.S.C. 534 note));*

6           *(C) involves a sexual offense, as defined by*  
7           *applicable State law, for which the defendant has*  
8           *been convicted in any court;*

9           *(D) involves misconduct for which the de-*  
10          *fendant has been found to have violated a Fed-*  
11          *eral or State civil rights law; or*

12          *(E) where the defendant was under the in-*  
13          *fluence (as determined pursuant to applicable*  
14          *State law) of intoxicating alcohol or any drug at*  
15          *the time of the misconduct.*

16          (2) *RULE OF CONSTRUCTION.*—*Nothing in this*  
17          *subsection shall be construed to effect subsection (a)(3)*  
18          *or (e).*

19   **SEC. 5. LIABILITY FOR NONECONOMIC LOSS.**

20          (a) *GENERAL RULE.*—*In any civil action against a*  
21          *volunteer, based on an action of a volunteer acting within*  
22          *the scope of the volunteer's responsibilities to a nonprofit*  
23          *organization or governmental entity, the liability of the vol-*  
24          *unteer for noneconomic loss shall be determined in accord-*  
25          *ance with subsection (b).*

1       **(b) AMOUNT OF LIABILITY.—**

2               **(1) IN GENERAL.—***Each defendant who is a vol-*  
 3 *unteer, shall be liable only for the amount of non-*  
 4 *economic loss allocated to that defendant in direct*  
 5 *proportion to the percentage of responsibility of that*  
 6 *defendant (determined in accordance with paragraph*  
 7 *(2)) for the harm to the claimant with respect to*  
 8 *which that defendant is liable. The court shall render*  
 9 *a separate judgment against each defendant in an*  
 10 *amount determined pursuant to the preceding sen-*  
 11 *tence.*

12               **(2) PERCENTAGE OF RESPONSIBILITY.—***For pur-*  
 13 *poses of determining the amount of noneconomic loss*  
 14 *allocated to a defendant who is a volunteer under this*  
 15 *section, the trier of fact shall determine the percentage*  
 16 *of responsibility of that defendant for the claimant’s*  
 17 *harm.*

18 **SEC. 6. DEFINITIONS.**

19       *For purposes of this Act:*

20               **(1) ECONOMIC LOSS.—***The term “economic loss”*  
 21 *means any pecuniary loss resulting from harm (in-*  
 22 *cluding the loss of earnings or other benefits related*  
 23 *to employment, medical expense loss, replacement*  
 24 *services loss, loss due to death, burial costs, and loss*  
 25 *of business or employment opportunities) to the extent*

1       *recovery for such loss is allowed under applicable*  
2       *State law.*

3           (2) *HARM.*—*The term “harm” includes physical,*  
4       *nonphysical, economic, and noneconomic losses.*

5           (3) *NONECONOMIC LOSSES.*—*The term “non-*  
6       *economic losses” means losses for physical and emo-*  
7       *tional pain, suffering, inconvenience, physical im-*  
8       *pairment, mental anguish, disfigurement, loss of en-*  
9       *joyment of life, loss of society and companionship,*  
10       *loss of consortium (other than loss of domestic serv-*  
11       *ice), hedonic damages, injury to reputation and all*  
12       *other nonpecuniary losses of any kind or nature.*

13           (4) *NONPROFIT ORGANIZATION.*—*The term “non-*  
14       *profit organization” means—*

15           (A) *any organization which is described in*  
16       *section 501(c)(3) of the Internal Revenue Code of*  
17       *1986 and exempt from tax under section 501(a)*  
18       *of such Code and which does not practice any ac-*  
19       *tion which constitutes a hate crime referred to in*  
20       *subsection (b)(1) of the first section of the Hate*  
21       *Crime Statistics Act (28 U.S.C. 534 note); or*

22           (B) *any not-for-profit organization which is*  
23       *organized and conducted for public benefit and*  
24       *operated primarily for charitable, civic, edu-*  
25       *cational, religious, welfare, or health purposes*

1           *and which does not practice any action which*  
2           *constitutes a hate crime referred to in subsection*  
3           *(b)(1) of the first section of the Hate Crime Sta-*  
4           *tistics Act (28 U.S.C. 534 note).*

5           (5) *STATE.*—*The term “State” means each of the*  
6           *several States, the District of Columbia, the Common-*  
7           *wealth of Puerto Rico, the Virgin Islands, Guam,*  
8           *American Samoa, the Northern Mariana Islands, any*  
9           *other territory or possession of the United States, or*  
10          *any political subdivision of any such State, territory,*  
11          *or possession.*

12          (6) *VOLUNTEER.*—*The term “volunteer” means*  
13          *an individual performing services for a nonprofit or-*  
14          *ganization or a governmental entity who does not re-*  
15          *ceive—*

16                 (A) *compensation (other than reasonable re-*  
17                 *imbursement or allowance for expenses actually*  
18                 *incurred); or*

19                 (B) *any other thing of value in lieu of com-*  
20                 *ensation,*

21                 *in excess of \$500 per year, and such term includes a*  
22                 *volunteer serving as a director, officer, trustee, or di-*  
23                 *rect service volunteer.*

1 **SEC. 7. EFFECTIVE DATE.**

2       (a) *IN GENERAL.*—*This Act shall take effect 90 days*  
3 *after the date of enactment of this Act.*

4       (b) *APPLICATION.*—*This Act applies to any claim for*  
5 *harm caused by an act or omission of a volunteer where*  
6 *that claim is filed on or after the effective date of this Act*  
7 *but only if the harm that is the subject of the claim or the*  
8 *conduct that caused such harm occurred after such effective*  
9 *date.*

Attest:

*Clerk.*

105<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**S. 543**

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**AMENDMENT**