

109TH CONGRESS
1ST SESSION

S. 1747

To limit liability for volunteers and those providing goods and services for disaster relief, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2005

Mr. CORNYN (for himself, Mr. VITTER, Mrs. HUTCHISON, Mr. THUNE, Mr. LOTT, Mr. GRASSLEY, Mr. BROWNBACK, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To limit liability for volunteers and those providing goods and services for disaster relief, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Good Samaritan Li-
5 ability Improvement and Volunteer Encouragement Act of
6 2005” or the “GIVE Act of 2005”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

1 (1) It is in the national interest to encourage
2 individuals to volunteer, and particularly to assist
3 victims of national disasters.

4 (2) The willingness of volunteers to offer their
5 services is deterred by the potential for liability ac-
6 tions against them.

7 (3) The contribution of programs that use vol-
8 unteers to their communities is thereby diminished,
9 resulting in fewer and higher cost programs than
10 would be obtainable if volunteers were participating.

11 (4) The exposure of potential volunteers, their
12 employers, and those who would use the services of
13 volunteers under existing law to compensatory and
14 punitive damages for negligent acts discourages the
15 provision of these services.

16 (5) The availability of damages for actions that
17 constitute gross negligence creates uncertainty con-
18 cerning the actual conduct that might cause liability
19 to be imposed on volunteers.

20 (6) Potential liability for acts of volunteers dis-
21 courages the employers or business partners of po-
22 tential volunteers from permitting those potential
23 volunteers to provide disaster relief services.

1 (7) Potential liability for acts of volunteers dis-
2 discourages entities that might use the services pro-
3 vided by volunteers from doing so.

4 (8) Well-founded fear of liability under existing
5 law for providing goods, equipment, access to facili-
6 ties, and other in-kind contributions discourages
7 those who would donate them from doing so.

8 (9) Well-founded fear of liability under existing
9 law for providing goods discourages governmental
10 and intergovernmental entities from providing need-
11 ed disaster relief goods.

12 (10) Well-founded fear of liability for punitive
13 damages under existing law discourages govern-
14 mental and intergovernmental entities from pro-
15 viding needed disaster relief goods and discourages
16 potential volunteers from providing volunteer serv-
17 ices to disaster victims.

18 (11) Fear of compensatory and punitive dam-
19 ages for providing volunteer services deters potential
20 volunteers from States located outside the national
21 disaster area from providing volunteer services.

22 (12) Fear of compensatory and punitive dam-
23 ages for providing volunteer services deters potential
24 foreign volunteers from providing disaster relief
25 services.

1 (13) Any lessening of liability for volunteers
2 providing disaster relief services, their employers and
3 business partners, and entities utilizing their serv-
4 ices should maintain adequate incentives for each of
5 these classes of persons or entities to avoid causing
6 harm.

7 (14) Unwillingness to provide volunteer services
8 in the face of uncertain liability substantially affects,
9 burdens, and deters interstate commerce and travel.

10 (15) Unwillingness of employers and business
11 partners to allow their employees and business part-
12 ners to provide volunteer and disaster relief services
13 in the face of uncertain liability substantially affects,
14 burdens, and deters interstate commerce and travel.

15 (16) Unwillingness of persons, entities, or orga-
16 nizations to accept volunteer and disaster relief serv-
17 ices from volunteers in the face of uncertain liability
18 substantially affects, burdens, and deters interstate
19 commerce and travel.

20 (17) Unwillingness by foreigners to provide vol-
21 unteer and disaster relief services in the face of un-
22 certain liability substantially affects, burdens, and
23 deters foreign commerce and travel.

24 (18) Because Federal funds are expended on
25 useful and cost-effective social service programs,

1 many of which are national in scope, depend heavily
2 on volunteer participation, and represent some of the
3 most successful public-private partnerships, protec-
4 tion of volunteerism through clarification and limita-
5 tion of the personal liability risks assumed by the
6 volunteer in connection with such participation is an
7 appropriate subject for Federal legislation.

8 (19) Services and goods provided by volunteers
9 and nonprofit organizations would often otherwise be
10 provided by private entities that operate in interstate
11 commerce.

12 (20) Due to high liability costs and unwar-
13 ranted litigation costs, volunteers and nonprofit or-
14 ganizations face higher costs in purchasing insur-
15 ance, through interstate insurance markets, to cover
16 their activities.

17 (21) Clarifying and limiting the liability risk as-
18 sumed by volunteers is an appropriate subject for
19 Federal legislation because—

20 (A) of the national scope of the problems
21 created by the legitimate fears of volunteers
22 about frivolous, arbitrary, or capricious law-
23 suits;

24 (B) the citizens of the United States de-
25 pend on, and the Federal Government expends

1 funds on and provides tax exemptions and other
2 consideration to, numerous social programs that
3 depend on the services of volunteers;

4 (C) it is in the interest of the Federal Gov-
5 ernment to encourage the continued operation
6 of volunteer service organizations and contribu-
7 tions of volunteers, as the Federal Government
8 lacks the capacity to carry out all of the serv-
9 ices provided by such organizations and volun-
10 teers; and

11 (D)(i) liability reform for volunteers, will
12 promote the free flow of goods and services,
13 lessen burdens on interstate commerce and up-
14 hold constitutionally protected due process
15 rights; and

16 (ii) therefore, liability reform is an appro-
17 priate use of the powers contained in article 1,
18 section 8, clause 3 of the Constitution of the
19 United States, and the fourteenth amendment
20 to the Constitution of the United States.

21 (22) Unless Congress provides uniform stand-
22 ards to address disasters that could occur in any
23 State or combination of States, potential volunteers
24 and others will not be certain which laws would gov-
25 ern their providing disaster relief services, which

1 would substantially affect, burden, and deter inter-
2 state and foreign commerce and travel in the event
3 of a national disaster.

4 **TITLE I—DISASTER RELIEF** 5 **VOLUNTEER PROTECTION**

6 **SEC. 101. DEFINITIONS.**

7 In this title—

8 (1) the term “compensation”—

9 (A) means monetary or other compensation
10 of any kind provided in exchange for an individ-
11 ual’s services; and

12 (B) does not include—

13 (i) reasonable reimbursement or allow-
14 ance for expenses actually incurred by such
15 individual;

16 (ii) provision of reasonable supplies,
17 lodging, or transportation to such an indi-
18 vidual; or

19 (iii) the ordinary salary or compensa-
20 tion paid to such an individual by the em-
21 ployer of the individual while the individual
22 is on leave from performing ordinary du-
23 ties for the employer of the individual in
24 order to provide disaster relief services;

25 (2) the term “declared disaster” means—

1 (A) a public health emergency declared by
2 the Secretary of Health and Human Services
3 under section 319 of the Public Health Services
4 Act (42 U.S.C. 247d);

5 (B) a public health emergency, or a risk of
6 such emergency, as determined by the Secretary
7 of Homeland Security in accordance with clause
8 (i) or (ii) of section 2811(b)(3)(A) of the Public
9 Health Services Act (42 U.S.C. 300hh-
10 11(b)(3)(A)), as transferred by section 503(5)
11 of the Homeland Security Act of 2002 (6
12 U.S.C. 313(5)); or

13 (C) an emergency or major disaster de-
14 clared by the President under section 401 or
15 501 of the Robert T. Stafford Disaster Relief
16 and Emergency Assistance Act (42 U.S.C.
17 5170, 5191);

18 (3) the term “disaster relief goods” means ei-
19 ther—

20 (A) those goods provided in preparation
21 for, response to, or recovery from a declared
22 disaster and reasonably necessary to such prep-
23 aration, response, or recovery; or

24 (B) those goods defined by a supplemental
25 declaration under this title;

1 (4) the term “disaster relief services” means
2 services or assistance provided in preparation for, re-
3 sponse to, or recovery from a declared disaster, in-
4 cluding but not limited to health, medical, fire-
5 fighting, rescue, reconstruction, and any other serv-
6 ices or assistance specified by a supplemental dec-
7 laration under this title as necessary or desirable to
8 prepare for, respond to, or recover from such de-
9 clared disaster;

10 (5) the term “disaster relief volunteer” means
11 an individual—

12 (A) who provides disaster relief services or
13 assistance in connection with a declared dis-
14 aster without expectation or receipt of com-
15 pensation in exchange for providing such serv-
16 ices or assistance; and

17 (B) who, to the extent required by the ap-
18 propriate authorities of a State (even if such
19 State is not the State in which the volunteer
20 provides services or assistance) or, if, and to
21 the extent, specified in a supplemental declara-
22 tion under this title, a foreign country, is li-
23 censed, certified, or authorized to provide the
24 relevant services or assistance;

1 (6) the term “non-economic loss” means losses
2 for physical and emotional pain, suffering, inconven-
3 ience, physical impairment, mental anguish, dis-
4 figurement, loss of enjoyment of life, loss of society
5 and companionship, loss of consortium (other than
6 loss of domestic service), hedonic damages, injury to
7 reputation, and all other non-pecuniary losses of any
8 kind or nature;

9 (7) the term “supplemental declaration” means
10 a declaration under section 108 regarding the scope
11 of a declared disaster; and

12 (8) the term “State” means each of the several
13 States of the United States, the District of Colum-
14 bia, the Commonwealth of Puerto Rico, the Virgin
15 Islands, Guam, American Samoa, the Common-
16 wealth of the Northern Mariana Islands, any other
17 territory or possession of the United States, and any
18 political subdivision of any such State, territory, or
19 possession.

20 **SEC. 102. LIABILITY OF DISASTER RELIEF VOLUNTEERS.**

21 Except as provided in section 109, a disaster relief
22 volunteer shall not be liable for harm caused by an act
23 or omission of the volunteer that is within the scope of
24 the activities of the volunteer to provide or facilitate the

1 provision of disaster relief services in connection with a
 2 declared disaster if—

3 (1) the harm was not caused by willful, know-
 4 ing, or reckless misconduct by the volunteer; and

5 (2) the harm was not caused by the volunteer
 6 operating a motor vehicle, vessel, aircraft, or other
 7 vehicle for which the State requires the operator or
 8 the owner of the vehicle, craft, or vessel to—

9 (A) possess an operator's license; or

10 (B) maintain insurance.

11 **SEC. 103. LIABILITY OF EMPLOYER OR PARTNER OF DIS-**
 12 **ASTER RELIEF VOLUNTEER.**

13 Except as provided in section 109, an employer or
 14 business partner of a disaster relief volunteer shall not be
 15 liable for any act or omission of such volunteer within the
 16 scope of the activities of the volunteer to provide or facili-
 17 tate the provision of disaster relief services in connection
 18 with a declared disaster.

19 **SEC. 104. LIABILITY OF HOST OR ENABLING PERSON, ENTI-**
 20 **TY, OR ORGANIZATION.**

21 Except as provided in section 109, a person, entity,
 22 or organization, including a governmental or intergovern-
 23 mental entity, that works with, accepts services from, or
 24 opens its facilities to a disaster relief volunteer to enable
 25 the volunteer to render disaster relief services in connec-

1 tion with a declared disaster shall not be liable for any
 2 act or omission of a disaster relief volunteer.

3 **SEC. 105. LIABILITY OF GOVERNMENTAL AND INTERGOV-**
 4 **ERNMENTAL ENTITIES FOR DONATIONS OF**
 5 **DISASTER RELIEF GOODS.**

6 Except as provided in section 109, a governmental
 7 or intergovernmental entity that donates disaster relief
 8 goods to an agency or instrumentality of the United States
 9 in connection with a declared disaster shall not be liable
 10 for harm caused by such donated goods if the harm was
 11 not caused by willful, knowing, or reckless misconduct by
 12 the governmental or intergovernmental entity.

13 **SEC. 106. LIMITATION ON PUNITIVE AND NON-ECONOMIC**
 14 **DAMAGES BASED ON ACTIONS OF DISASTER**
 15 **RELIEF VOLUNTEERS AND GOVERNMENTAL**
 16 **OR INTERGOVERNMENTAL DONORS.**

17 (a) PUNITIVE DAMAGES.—Except as provided in sec-
 18 tion 109, punitive damages may not be awarded in any
 19 civil action against a disaster relief volunteer or govern-
 20 mental or intergovernmental entity unless a claimant es-
 21 tablishes by clear and convincing evidence that the dam-
 22 ages to the claimant were proximately caused by willful,
 23 knowing, or reckless misconduct by either—

24 (1) a disaster relief volunteer in an action
 25 brought for harm caused by the activities of the vol-

1 unteer to provide or facilitate the provision of dis-
2 aster relief services in connection with a declared
3 disaster; or

4 (2) a governmental or intergovernmental entity
5 for harm caused by disaster relief goods donated by
6 such governmental or intergovernmental entity in
7 connection with a declared disaster.

8 (b) NON-ECONOMIC DAMAGES.—

9 (1) IN GENERAL.—Except as provided in sec-
10 tion 109, liability for non-economic loss in any civil
11 action brought against either a disaster relief volun-
12 teer for harm caused the activities of the volunteer
13 to provide or facilitate the provision of disaster relief
14 services in connection with a declared disaster, or a
15 governmental or intergovernmental entity for harm
16 caused by disaster relief goods donated by such gov-
17 ernmental or intergovernmental entity in connection
18 with a declared disaster, if permitted under section
19 102 or section 105, shall be determined in accord-
20 ance with paragraph (2).

21 (2) AMOUNT OF LIABILITY.—

22 (A) IN GENERAL.—The amount of dam-
23 ages for non-economic loss allocated to a dis-
24 aster relief volunteer or governmental or inter-
25 governmental entity defendant shall be in direct

1 proportion to the percentage of responsibility of
2 that defendant, determined in accordance with
3 subparagraph (B), for the harm to the claimant
4 with respect to which that defendant is liable.

5 (B) PERCENTAGE.—In a civil action de-
6 scribed in paragraph (1), for purposes of deter-
7 mining the amount of non-economic loss, the
8 trier of fact shall determine the percentage of
9 responsibility of each defendant found liable for
10 harm to the claimant.

11 (C) SEPARATE JUDGMENTS.—The court
12 shall render a separate judgment against each
13 defendant for any non-economic loss.

14 **SEC. 107. JUDICIAL REVIEW OF ALLEGATIONS.**

15 (a) IN GENERAL.—A claimant in a civil action for
16 an act or omission subject to the limitations of liability
17 under this title shall attach 1 or more sworn affidavits
18 or documents containing admissible evidence of an act or
19 omission outside the limitations of section 102, 103, 104,
20 or 105.

21 (b) INITIAL REVIEW.—Before allowing a civil action
22 described in subsection (a) to proceed into discovery, the
23 trial judge shall determine whether, as a matter of law,
24 the evidence submitted is sufficient to raise a genuine
25 issue of material fact.

1 **SEC. 108. SUPPLEMENTAL DECLARATION.**

2 (a) IN GENERAL.—In the event of a declared dis-
 3 aster, the President, the Secretary of Health and Human
 4 Services, or the Secretary of Homeland Security may issue
 5 a supplemental declaration.

6 (b) TEMPORAL EFFECT.—A supplemental declara-
 7 tion may provide that, for purposes of this title, such de-
 8 clared disaster shall have such temporal effect as the
 9 President or the Secretary may deem necessary or appro-
 10 priate to further the public interest, including providing
 11 that such declared disaster shall have an effective date
 12 earlier than the date of the declaration or determination
 13 of such declared disaster.

14 (c) GEOGRAPHIC AND OTHER CONDITIONS.—A sup-
 15 plemental declaration may provide that, for purposes of
 16 this title, such declared disaster shall have such geo-
 17 graphic or other conditions as the President or the rel-
 18 evant Secretary may deem necessary or appropriate to fur-
 19 ther the public interest.

20 **SEC. 109. ELECTION OF STATE REGARDING NONAPPLICA-**
 21 **BILITY.**

22 A provision of this title shall not apply to any civil
 23 action in a State court against a person in which all par-
 24 ties are citizens of the State if such State enacts a stat-
 25 ute—

26 (1) citing the authority of this title;

1 (2) declaring the election of such State that
2 such provision shall not apply to such civil action in
3 the State; and

4 (3) containing no other provisions.

5 **SEC. 110. CONSTRUCTION.**

6 Nothing in this title shall be construed to abrogate
7 or limit any protection that a volunteer, as defined in sec-
8 tion 6(6) of the Volunteer Protection Act (42 U.S.C.
9 14505(6)), may be entitled to under that Act. Neither
10 shall anything in this title be construed to confer any pri-
11 vate right of action or to abrogate or limit any protection
12 with respect to either liability or damages that any person
13 may be entitled to under any other provision of law.

14 **TITLE II—VOLUNTEER**
15 **PROTECTION IMPROVEMENTS**

16 **SEC. 201. DEFINITIONS.**

17 In this title—

18 (1) the term “aircraft” has the meaning given
19 that term in section 40102(6) of title 49, United
20 States Code;

21 (2) the term “equipment” includes mechanical
22 equipment, electronic equipment, and office equip-
23 ment;

1 (3) the term “facility” means any real property,
2 including any building, improvement, or appur-
3 tenance;

4 (4) the term “motor vehicle” has the meaning
5 given that term in section 30102(6) of title 49,
6 United States Code;

7 (5) the term “nonprofit organization” means—

8 (A) any organization described in section
9 501(c)(3) of the Internal Revenue Code of 1986
10 and exempt from tax under section 501(a) of
11 such Code; or

12 (B) any not-for-profit organization orga-
13 nized and conducted for public benefit and op-
14 erated primarily for charitable, civic, edu-
15 cational, religious, welfare, or health purposes;

16 (6) the term “person” includes any govern-
17 mental or other entity; and

18 (7) the term “State” means each of the several
19 States, the District of Columbia, the Commonwealth
20 of Puerto Rico, the Virgin Islands, Guam, American
21 Samoa, the Commonwealth of the Northern Mariana
22 Islands, any other territory or possession of the
23 United States, or any political subdivision of any
24 such State, territory, or possession.

1 **SEC. 202. LIABILITY PROTECTION FOR ACTIONS OF VOLUN-**
 2 **TEERS GENERALLY.**

3 Section 4 of the Volunteer Protection Act of 1997
 4 (42 U.S.C. 14503) is amended—

5 (1) in subsection (a)(3), by striking “willful or
 6 criminal misconduct, gross negligence, reckless mis-
 7 conduct” and inserting the following: “willful, know-
 8 ing, or reckless misconduct”;

9 (2) by striking subsection (c) and inserting the
 10 following:

11 “(c) **EFFECT ON LIABILITY OF NONPROFIT ORGANI-**
 12 **ZATIONS.**—No nonprofit organization shall be liable for
 13 the acts or omissions of a volunteer with respect to harm
 14 caused to any person unless—

15 “(1) the acts or omissions of the volunteer are
 16 not subject to the limitations on liability under sub-
 17 section (a); and

18 “(2) the nonprofit organization has willfully dis-
 19 regarded or been recklessly indifferent to the reason-
 20 able expectations or safety of the individual harmed
 21 by the volunteer.”; and

22 (3) by adding at the end the following:

23 “(g) **JUDICIAL REVIEW OF ALLEGATIONS.**—

24 “(1) **IN GENERAL.**—A claimant in a civil action
 25 for an act or omission subject to the limitations of
 26 liability under this Act shall attach 1 or more sworn

1 affidavits or documents containing admissible evi-
 2 dence of an act or omission outside the limitations
 3 of subsection (a), (c), (e)(1), or (f)(1).

4 “(2) INITIAL REVIEW.—Before allowing a civil
 5 action described in paragraph (1) to proceed into
 6 discovery, the trial judge shall determine whether, as
 7 a matter of law, the evidence submitted is sufficient
 8 to raise a genuine issue of material fact.”.

9 **SEC. 203. CHARITABLE DONATIONS LIABILITY REFORM**
 10 **FOR IN-KIND CONTRIBUTIONS.**

11 (a) IN GENERAL.—

12 (1) LIABILITY FOR DONATIONS OF EQUIPMENT
 13 TO NONPROFIT ORGANIZATIONS.—

14 (A) IN GENERAL.—Except as provided in
 15 subsection (b), a person shall not be subject to
 16 civil liability relating to any injury or death that
 17 results from the use of equipment donated by
 18 such person to a nonprofit organization.

19 (B) APPLICATION.—This paragraph shall
 20 apply with respect to civil liability under Fed-
 21 eral and State law.

22 (2) LIABILITY FOR PROVIDING USE OF FACILI-
 23 TIES TO NONPROFIT ORGANIZATIONS.—

24 (A) IN GENERAL.—Except as provided in
 25 subsection (b), a person shall not be subject to

1 civil liability relating to any injury or death oc-
 2 ccurring at a facility owned or operated by the
 3 person in connection with a use of such facility
 4 by a nonprofit organization, if—

5 (i) the use occurs outside of the nor-
 6 mal use of the facility by the person;

7 (ii) such injury or death occurs during
 8 a period that such facility is used by the
 9 nonprofit organization; and

10 (iii) the person authorized the use of
 11 such facility by the nonprofit organization.

12 (B) APPLICATION.—This paragraph shall
 13 apply—

14 (i) with respect to civil liability under
 15 Federal and State law; and

16 (ii) regardless of whether a nonprofit
 17 organization pays for the use of a facility.

18 (3) LIABILITY FOR PROVIDING USE OF A
 19 MOTOR VEHICLE OR AIRCRAFT.—

20 (A) IN GENERAL.—Except as provided in
 21 subsection (b), a person shall not be subject to
 22 civil liability relating to any injury or death oc-
 23 ccurring as a result of the operation of an air-
 24 craft or a motor vehicle the person loaned to a
 25 nonprofit organization, if—

1 (i) the use occurs outside of the nor-
2 mal use of the aircraft or motor vehicle by
3 the person;

4 (ii) such injury or death occurs during
5 a period that such motor vehicle or aircraft
6 is used by a nonprofit organization; and

7 (iii) the person authorized the use by
8 the nonprofit organization of motor vehicle
9 or aircraft that resulted in the injury or
10 death.

11 (B) APPLICATION.—This paragraph shall
12 apply—

13 (i) with respect to civil liability under
14 Federal and State law; and

15 (ii) regardless of whether a nonprofit
16 organization pays for the use of the air-
17 craft or motor vehicle.

18 (b) EXCEPTIONS.—Subsection (a) shall not apply to
19 an injury or death that results from an act or omission
20 of a person that constitutes willful, knowing, or reckless
21 misconduct.

22 (c) JUDICIAL REVIEW OF ALLEGATIONS.—

23 (1) IN GENERAL.—A claimant in a civil action
24 for an act or omission subject to the limitations of
25 liability under this section shall attach 1 or more

1 sworn affidavits or documents containing admissible
2 evidence of an act or omission outside the limitations
3 of subsection (a).

4 (2) INITIAL REVIEW.—Before allowing a civil
5 action described in paragraph (1) to proceed into
6 discovery, the trial judge shall determine whether, as
7 a matter of law, the evidence submitted is sufficient
8 to raise a genuine issue of material fact.

9 (d) SUPERSEDING PROVISION.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2) and subsection (e), this section preempts
12 the laws of any State to the extent that such laws
13 are inconsistent with this section, except that this
14 section shall not preempt any State law that pro-
15 vides additional protection for a person for an injury
16 or death described in paragraph (1), (2), or (3) of
17 subsection (a) with respect to which the conditions
18 specified in such paragraph apply.

19 (2) LIMITATION.—Nothing in this section shall
20 be construed to supersede any Federal or State
21 health or safety law.

22 (e) ELECTION OF STATE REGARDING NONAPPLICA-
23 BILITY.—A provision of this section shall not apply to any
24 civil action in a State court against a person in which all

1 parties are citizens of the State if such State enacts a stat-
2 ute—

3 (1) citing the authority of this section;

4 (2) declaring the election of such State that
5 such provision shall not apply to such civil action in
6 the State; and

7 (3) containing no other provisions.

8 (f) EFFECTIVE DATE.—This section shall apply to li-
9 ability for injury or death caused by equipment donated,
10 facilities used, or aircraft or motor vehicles loaned on or
11 after the date of the enactment of this Act.

○