

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 *vate 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 (ii) therefore, liability reform is an appro-
 2 priate use of the powers contained in article 1,
 3 section 8, clause 3 of the United States Constitu-
 4 tion, and the fourteenth amendment to the Unit-
 5 ed States Constitution.

6 (b) *PURPOSE.*—The purpose of this Act is to promote
 7 the interests of social service program beneficiaries and tax-
 8 payers and to sustain the availability of programs, non-
 9 profit organizations, and governmental entities that depend
 10 on volunteer contributions by reforming the laws to provide
 11 certain protections from liability abuses related to volun-
 12 teers serving nonprofit organizations and governmental en-
 13 tities.

14 **SEC. 3. PREEMPTION AND ELECTION OF STATE NON-**
 15 **APPLICABILITY.**

16 (a) *PREEMPTION.*—This Act preempts the laws of any
 17 State to the extent that such laws are inconsistent with this
 18 Act, except that this Act shall not preempt any State law
 19 that provides additional protection from liability relating
 20 to volunteers or to any category of volunteers in the per-
 21 formance of services for a nonprofit organization or govern-
 22 mental entity.

23 (b) *ELECTION OF STATE REGARDING NONAPPLICABIL-*
 24 *ITY.*—This Act shall not apply to any civil action in a
 25 State court against a volunteer in which all parties are citi-

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 *pensation,*
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.

105TH CONGRESS
1ST SESSION

S. 543

AMENDMENT