

Federal Volunteer Protection Act of 1997

On June 18, 1997, President Clinton signed into law S.543, the "Volunteer Protection Act of 1997." The legislation, which took effect 90 days from the date of enactment, was the culmination of over ten years' effort to enact a federal law to provide some protection from liability for volunteers. The Act provides civil liability protection for non-profit or government volunteers if:

- the volunteer was acting within the scope of his/her responsibility;
- the volunteer was properly licensed, certified or authorized to engage in the activity or practice (if required by the state in which the damage occurred) and those activities were within the scope of the volunteer's responsibility;
- the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct or a "conscious, flagrant indifference" to the rights or safety of the individual harmed by the volunteer; and
- the harm was not caused by the operation of a motor vehicle, aircraft, or other vehicle for which an operator's license or insurance is required by the state.

Pre-Emption and State Election of Nonapplicability

The federal Volunteer Protection Act pre-empts existing state laws except those (like New Jersey's) that provide broader volunteer protection than the federal law. However, the new law does allow states to enact their own legislation to make the federal law inapplicable in a particular state.

Exceptions

The federal statute allows states that have certain existing restrictions on volunteer immunity to retain those limitations without having to take the affirmative step to enact new legislation. These restrictions, which states may enact at a later date if they so choose, include:

- Requiring non-profits or governmental entities to adhere to risk management procedures, including mandatory training of volunteers;
- State laws that make the organization's liability for the acts of its volunteers consistent with its liability for the acts of its employees;
- Providing that volunteer immunity is inapplicable if the lawsuit is brought by an appropriate state or local officer to enforce a state or local law; or
- Requiring, as a condition of limited liability, organizations or governments to provide a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer. Acceptable sources of recovery could include an insurance policy with specified limits, comparable coverage from a risk pooling mechanism, equivalent assets or alternative arrangements that demonstrate that the organization could pay for losses up to a specified amount.

Additionally, liability limitations would not apply to violations of various federal statutes including civil rights laws, crimes of violence, terrorism or hate crimes, nor to misconduct committed under the influence of alcohol or other intoxicating drugs.