

## Volunteer Protection Act of 1997

*In 1997, President Clinton signed into law the Volunteer Protection Act of 1997 (Act) that, generally speaking, provides immunity from tort claims that might be filed against the volunteers of nonprofit organizations. NPCC's Government Relations Committee is considering supporting legislation that would make such protection contingent on the organization carrying general liability insurance at adequate levels. The Act raises some serious questions that are briefly outlined here.*

When an individual performs volunteer services for a nonprofit he exposes himself to the risk of having a claim filed against him by someone who believes he has been hurt by the volunteer. The most significant kind of nonprofit liability involves bodily injury--people being physically hurt. Bodily injury claims are particularly troublesome since they can involve demands for large amounts of money. Recoveries for pain and suffering can be huge and such claims can be financially devastating for those against whom they are filed. It should be kept in mind that when an employee or volunteer carelessly hurts someone, not only will he be liable, but the organization for whom he works will also be liable for the reason that principals are liable for the acts of their agents.

It is to protect against such exposures that nonprofits carry general liability insurance. A general liability insurance policy protects an organization against bodily injury and property damage claims. Board members are covered and frequently employees are also covered. However, most general liability policies do not cover volunteers. Special insurance can be purchased fairly inexpensively to cover its volunteers' potential liability, but many nonprofits are neither aware of its availability nor have sufficiently considered the liability exposures of their volunteers. It should be noted that a fair number of nonprofits do not carry any sort of general liability insurance.

The Volunteer Protection Act provides immunity from lawsuits filed against a nonprofit's volunteer where the claim is that he carelessly injured another in the course of helping the nonprofit. The Act does not provide immunity to the organization itself. Prior to the adoption of the Act, under the law of most states, a volunteer who negligently hurt someone would be personally liable. Now the Act preempts all such laws and the volunteer is immune from suit. The new law only applies to uncompensated volunteers who help 501(c)(3) and 501(c)(4) nonprofits. The immunity is a qualified immunity and protects the volunteer only against claims of negligence and not against claims of gross negligence, willful or criminal misconduct, reckless misconduct, or conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer. The difference between negligence and gross negligence is one of degree: gross negligence involves a greater degree of carelessness than negligence. Some wonder whether the Act provides real protection, since all anyone wishing to sue a volunteer (who they believe has carelessly hurt them) needs to do to keep the volunteer from raising the Act as a shield is to allege gross negligence rather than negligence in their complaint.

Nonetheless it is likely that the Act does provide some protection to volunteers and thus may encourage volunteerism. However, we believe that the Act has a downside. Providing immunity to a volunteer who has injured someone as a consequence of his carelessness would seem to clash with the charitable goal of helping others. Many might believe, for instance, that those who volunteer for a nonprofit should be held to the same standard of care as the rest of us. In cases where a nonprofit has no assets to speak of, a party injured as a result of the carelessness of a volunteer may well have

no recourse against anyone and will not be compensated for her injuries. Because it lacks assets, the nonprofit will not be worth suing and because of the Act's protection, the volunteer will be immune from suit. One may fairly wonder whether it is in the long-term interest of a nonprofit's reputation to let someone go uncompensated in these circumstances.

It should be kept in mind that the chance of someone being hurt by an agent of a nonprofit without being reimbursed for her injuries would not exist if all nonprofits carried adequate general liability insurance. Indeed, we believe it is desirable for a nonprofit to carry general liability for at least two reasons. First, to avoid being devastated in the event of someone successfully prosecuting a negligence claim against the nonprofit that results in a judgment requiring it to pay large sums of money in damages. Second, to be able to adequately compensate someone who has been hurt as the result of the negligence of one of its agents. Related to this second reason, we believe that when, in carrying out its mission of helping others, a charitable nonprofit injures someone as the result of the carelessness of one of its agents -- an occurrence that can be protected against but which nonetheless happens -- the nonprofit should be in a position to make whole those whom they have hurt.

There is a provision of the Act which, if taken advantage of, would assure that innocent third parties hurt by the carelessness of nonprofits' volunteers would be adequately compensated for their injuries while, at the same time, providing personal immunity to such volunteers. This part of the Act allows a state to require that a charitable organization must "provide[s] a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer in behalf of the organization," before its volunteers gain immunity under the Act. (A general liability policy with adequate limits would be considered a financially secure source of recovery.) Thus, if New York passed such a law, for charitable nonprofits to avail their volunteers of the protection of the Act they would have to purchase general liability insurance (or provide some other means of financial security), and should organizations choose not to do so, its volunteers would then be liable if they carelessly injure someone. We therefore believe that the nonprofit community ought to consider seriously whether it is in its long-term interest to promote the passage of such a law by New York.

Some may point out that the money needed to purchase general liability insurance would be better spent in carrying out the nonprofit's mission. We do not find this argument persuasive. First, we do not believe that the expenditure of a relatively small amount of money for general liability insurance will cause a significant diminution in the level of service provided by the nonprofit. For this small amount, it should be remembered that general liability insurance will provide recoveries not only to those hurt by a nonprofit's volunteers but also at the hands of their employees. Second, there is also the possibility that when the public learns of an innocent third party not being compensated for injuries caused by the careless acts of a nonprofit volunteer, the damage done to the reputation of the entire sector will cost more than the loss in services resulting by having to spend a little extra money for liability insurance. Finally, we believe it does not lie well in the mouths of representatives from the charitable sector to make this kind of calculating argument.

NPCC's Government Relations Committee welcomes comments and suggestions from members on this topic. Contact Jon Small at NPCC at 212/502-4191, extension 23 or [email](#). Copyright 1998-90  
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