

HOUSE BILL REPORT

HB 1643

As Reported by House Committee On:
Judiciary

Title: An act relating to liability of volunteers.

Brief Description: Limiting liability of volunteers.

Sponsors: Representatives Lantz, Skinner, Fromhold, Ogden, Esser, Jarrett, McIntire, Rockefeller, Doumit, Keiser and Dunn.

Brief History:

Committee Activity:

Judiciary: 2/13/01, 2/22/01 [DPS].

Brief Summary of Substitute Bill

- Limits the personal liability of volunteers of nonprofit organizations or governmental entities.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Carrell, Republican Co-Chair; Lantz, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Boldt, Dickerson, Esser, Lovick and McDermott.

Minority Report: Without recommendation. Signed by 1 member: Representative Casada.

Staff: Edie Adams (786-7180).

Background:

A volunteer working on behalf of a nonprofit organization or government entity may be held personally liable to a person who is harmed by the volunteer's actions or omissions committed in the course of his or her volunteer duties.

In 1997 Congress passed the Volunteer Protection Act (VPA). The VPA limits the

liability of nonprofit or government volunteers. Under the VPA a volunteer may only be held liable for harm resulting from acts or omissions that constitute gross negligence, willful misconduct, or reckless misconduct. A volunteer is exempted from liability for simple negligence.

The VPA preempts any inconsistent state law except where state law provides additional protections for the volunteer. A state may choose to opt out of the VPA by enacting a statute declaring that the VPA does not apply. Washington has not opted out of the VPA.

Summary of Substitute Bill:

A volunteer of a nonprofit organization or governmental entity is not personally liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if:

- The volunteer was acting within the scope of his or her responsibilities at the time;
- The volunteer was properly licensed, certified, or authorized to engage in the activity;
- The harm was not caused by willful or criminal misconduct, gross negligence, recklessness, or a conscious, flagrant indifference to the rights or safety of others;
- The harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires an operator's license or insurance; and
- The nonprofit organization carries public liability insurance in specified amounts.

This limitation on the personal liability of volunteers does not affect the nonprofit organization's or governmental entity's direct or vicarious liability for the harm caused by the volunteer, nor does it affect the ability of the organization or entity to bring a cause of action against the volunteer.

"Volunteer" is defined as an individual performing services for a nonprofit organization or governmental entity who does not receive compensation, other than reasonable reimbursement for expenses actually incurred, or any other thing of value, over \$500 per year. "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

"Nonprofit organization" is defined as any 501(c)(3) or 501(c)(14)(A) organization under the Internal Revenue Code, as well as any not-for-profit organization that is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

Definitions of "harm," "economic loss," and "non-economic loss," are also included in the bill.

Substitute Bill Compared to Original Bill:

The substitute bill excludes from the act emergency workers or organizations under Chapter 38.52 RCW.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill parallels the federal statute which purports to preempt state law. We need this law because it is likely the federal law will not be upheld since this subject is a matter for state regulation. Most public benefit activities are conducted by volunteers. This bill would help protect volunteers from suits or threats of suits. There is a substantial cost of defending against even a frivolous suit. It is becoming more difficult to find volunteers because of their fear of lawsuits. The bill does not affect the liability of the organization, nor does it affect the volunteer's liability to the organization. There is similar legislation in 15 other states. This bill is important because it protects credit union volunteers, and the federal law does not. Volunteers are the backbone of credit unions.

Testimony Against: None.

Testified: Representative Lantz, prime sponsor; Robert Gruhn, Washington Museum Association; Don Larsen, Community Credit Union (Tacoma); Stacy Augustine, Washington Credit Union League; and Terri McKee, Industrial Credit Union (Bellingham).