

The Volunteer Protection Act of 1997

by Robert O. Dawson

Professor of Law

University of Texas School of Law

Secretary/Treasurer AAHS

[reprinted from *Caution: Horses*, Vol. 2, No. 4, Fall 1997]

Volunteerism is very important to America. Many of our most worthy social services depend extensively on citizens freely giving their time and talents. In the world of horses, such organizations as the United States Pony Clubs, 4-H Horse Clubs, state and county fairs, and a wide variety of youth equine programs all depend extensively on the labors of volunteers and could not exist without them. The same is true of many non-profit summer camps and therapeutic riding programs.

One obstacle to recruiting and keeping volunteers for such worthy programs is their fear of legal liability. In our litigious society, there is often a concern on the part of a prospective volunteer that his or her participation as a volunteer could lead to being sued if someone is harmed. While often such fears are unwarranted in the sense that the likelihood of being sued is genuinely remote, the fears are nevertheless real and do, therefore, deter people from volunteering for worthy causes.

The New Federal Law. On June 18, 1997, the President signed into law the Volunteer Protection Act of 1997. The purpose of this law is to assist non-profits and governmental entities in their efforts to recruit and retain volunteers for their activities. It does so by providing immunity from and limitations on liability for harms caused by volunteers in the course of their volunteer activities.

“Immunity” means that the volunteer who harms another by conduct engaged in as a volunteer for a nonprofit organization or governmental entity is not liable for and cannot be successfully sued for the harm inflicted. The organization or entity can be sued, but not the volunteer personally.

This new law applies to any harm caused on or after September 10, 1997, the effective date of the legislation.

Of course, the new law applies to any non-profit organization or governmental entity, not just to those that are particularly worthy because they focus on horse activities.

Who is a Volunteer? The federal law defines volunteer very broadly. It is defined to mean “an individual performing services for a nonprofit organization or a

governmental entity who does not receive -- (A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred) or (B) any other thing of value in lieu of compensation, in excess of \$500 per year.” The statute protects a volunteer serving as a “director, officer, trustee, or direct service volunteer.”

What Qualifications Must the Organizations Have? To qualify as an organization whose volunteers are entitled to the protections of the federal statute, the organization must be (1) a 501(c)(3) organization, or (2) any non-for-profit organization which is organized and conducted “for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes” even if it has not applied for 501(c)(3) status. In addition to non-profits, all governmental entities meet the qualifications of the federal statute.

It is important to note that this statute does not prevent the non-profit organization or governmental entity from being sued and held liable for a harm caused by a volunteer. This law affects only the liability of the volunteer. Also, nothing in this law prevents the non-profit or governmental entity from suing the volunteer.

Setting a Federal Minimum Standard. Many states have laws that provide for immunity from liability for the conduct of volunteers. Unfortunately, there is no uniformity from state to state, which makes it difficult for a non-profit operating across state lines because you are never sure what standards apply.

The new federal legislation deals with this problem by establishing a fresh start with a federal minimum standard, which is called preempting state law. All state laws that provide less protection for volunteers than provided by the federal statute are made invalid by the federal law. Only a state law that provides more protection for the volunteer remains in force. There is a provision that permits a state to elect to go its own way, but to do so it must enact a statute declaring the law not applicable and must do so after the effective date of the federal law. Of course, all states are covered initially and only if a state elects non-applicability will it not be covered. So far, none has done so because none has had the opportunity to do so.

State Requirements That Remain Valid. Certain state law requirements are explicitly saved from the pre-emption and fresh start provisions. These state laws must be followed in order for the volunteer to claim the protection of the federal law.

(1) Risk Management Laws. A state law requiring an organization or entity to adhere to risk management procedures, including mandatory training of volunteers is saved.

(2) Organizational Liability Laws. A state law providing that a non-profit or governmental entity is liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees is saved.

(3) Suits Brought by the Government. A state law that makes a limitation of liability

inapplicable if the civil action is brought by an officer of state or local government pursuant to state or local law is saved.

(4) Insurance Requirement Laws. A state law that requires a nonprofit or governmental entity to maintain an insurance policy that covers volunteers or to have some other source of recovery available is saved.

Requirements and Limitations. The federal law has several requirements and limitations.

(1) Scope. The harm must have been inflicted by the volunteer acting within the scope of the volunteer's responsibilities in the organization.

(2) Licensure. If the harm-inflicting activity required a license, certification or authorization, the volunteer had the appropriate credentials.

(3) Not Criminal or Gross Conduct. 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."

(4) Not Motor Vehicle. The harm was not caused by operation of a motor vehicle, vessel, aircraft or other vehicle for which the state requires the operator to be licensed.

(5) Not Specified Criminal Acts. The harm was not caused by conduct that is a crime of violence or an act of international terrorism for which the volunteer has been convicted, a hate crime, a sexual offense for which the volunteer has been convicted, misconduct for which the volunteer has been found to have violated a federal or state civil rights law, or conduct engaged in while the volunteer was under the influence of alcohol or any drug.

Tell Your Volunteers and Prospective Volunteers. This new federal law will do no good to anyone unless its benefits are communicated to volunteers and prospective volunteers because its purpose is to encourage volunteerism. You might consider communicating with them by letter, newsletter or handout sheet something like the following:

Volunteers Protected from Legal Liability

Under a new federal law, people who volunteer for non-profit organizations or governmental entities cannot be held liable for any harm (except for a harm caused by operation of a motor vehicle or a harm caused by criminal conduct or gross or reckless misconduct) that they may cause while engaged in volunteer activity. This organization [or entity] qualifies under federal law, so if you volunteer, you can do so secure in the knowledge that by volunteering so you are not exposing yourself to additional legal liability.