

# Volunteer Protection Act

## Reason for the Legislation

People who volunteer to assist nonprofit organizations or [government agencies](#) or programs<sup>[2]</sup> run the risk that their actions, while well-intentioned, may cause harm to another. If those actions are deemed [negligent](#), the volunteer may face [civil liability](#) for damages caused by the negligent conduct.<sup>[3]</sup>

For instance, suppose a volunteer—Vicki Volunteer, let us say—loves dogs and works for free in her local animal shelter, a community nonprofit organization. Unfortunately, Vicki unintentionally but negligently fails to properly secure a dog cage, resulting in the escape of a dangerous stray dog which then bites and seriously injures a child. A lawsuit is filed against both the shelter<sup>[4]</sup> (which has only a small amount of insurance<sup>[5]</sup> and no real assets) and Vicki (who is rich and has plenty of free time to volunteer).

Potential damages arising from such an incident can obviously be large, and the risks of such liabilities may inhibit volunteerism.<sup>[6]</sup> The VPA was motivated by such concerns.

## General Analysis

The Act generally eliminates<sup>[7]</sup> the liability of an individual volunteer for damage caused by his or her simple or ordinary negligence, so long as the individual was acting within the scope of his or her responsibility to the eligible organization<sup>[8]</sup> and was not grossly negligent or intentionally trying to cause harm.<sup>[9]</sup> The Act provides protection to the individual volunteer *only*; it does *not* immunize or otherwise limit or affect the liability of the nonprofit organization or government entity itself.<sup>[10]</sup>

However, as explained below in more detail, the Act's protection for volunteers does not extend to damage caused by acts involving motor vehicles, crimes of violence, hate crimes, sexual offenses, violations of Civil Rights, or misconduct involving intoxication or drugs.

The volunteer's protection under the VPA is not an [absolute immunity](#), but rather a [qualified immunity](#) against liability for certain tort claims. In particular, the Act only provides immunity against claims that the volunteer caused harm by his or her "simple" or "ordinary" negligence. Claims that the injury was caused by gross negligence, or by willful or criminal misconduct, or by a conscious and flagrant indifference to the victim's rights or safety, are not within the scope of the protection afforded to volunteers by the Act.

In some interesting provisions that evoke [cooperative federalism](#), the Act allows a state to impose [conditions](#) upon a volunteer's immunity under the Act. Specifically, a state might by legislation require that, as a condition of a volunteer's immunity under the Act, the nonprofit must provide a "financially secure source of recovery" for potential victims who are harmed by the nonprofit's volunteers. In such a state, only an adequately insured nonprofit would be able to offer the Act's immunities to its volunteers.<sup>[11]</sup>

The VPA's exclusions of liability should be distinguished from the doctrine of [charitable immunity](#), which provides an exclusion in some circumstances to charitable organizations, rather than specifically to the individual actors.<sup>[12]</sup>

The Act's exclusions are related to, but still different from, the limitations provided under [Good Samaritan laws](#), which are often available to individuals acting in medical emergencies and acting on their own<sup>[13]</sup> rather than on behalf of any organization.

## Footnotes

- <sup>^</sup> The Act (S.543) was signed by President Clinton on 18 June 1997 and became effective ninety days thereafter. It was Pub. L. 105-19, 111 Stat. 221, and is codified at [42 U.S.C. 14501-05](#).
- <sup>^</sup> The statutory term is a "government entity," but this term is not defined in the Act.
- <sup>^</sup> See generally *Prosser and Keeton on Torts*, 5th Edition (West Group 1984) [ISBN 0314092560](#) (*Prosser & Keeton*); *Prosser, Wade, and Schwartz's Torts: Cases and Materials*, 10th Edition (Foundation Press 2000) [ISBN 1566629551](#) (*Prosser & Wade*); *Restatement of the Law, Second, Torts 2d*, Revised Edition (American Law Institute 1965)(*Restatement*); *Harper, James and Gray on Torts*, Third Edition (Aspen Publishers 1995)(*Harper & James*); *Exploring Tort Law*, M. Stuart Madden (Cambridge University Press, 2005) ISBN 052185136.
- <sup>^</sup> Under the principle of [respondeat superior](#), an employer is generally responsible for torts committed by its employee if the employee is acting within the scope of his or her employment. The same rule of [vicarious liability](#) generally applies to volunteers. See generally *Prosser & Keeton, Prosser & Wade, Harper & James, op. cit.*
- <sup>^</sup> A [general liability insurance policy](#) would provide protection to the shelter against both [property damage](#) claims and [personal injury](#) claims. However, not all such policies extend to liability created vicariously by the acts of volunteers, although a [rider](#) can usually be purchased to cover such volunteer acts. Furthermore, it is not unusual for small nonprofits to be uninsured, *i.e.* they lack liability coverage all together. See *Commercial General Liability Insurance*, Heather A. Sanderson *et al.* (Butterworths 2000) [ISBN 0433409916](#).
- <sup>^</sup> See [Senator Coverdell's Statement introducing VPA into Senate](#), as well as Section 14501 of the Act (reciting background).
- <sup>^</sup> The VPA, a complicated statute, (a) *eliminates* all types of damages in some circumstances; (b) *limits or excludes* some types of damages in other circumstances, while *permitting* other types of damages to be imposed in those circumstances; and (c) *permits* the ordinary assessment of damages, according to the normal legal regime, in still other circumstances. This tripartite division is explained in the remainder of the Article.
- <sup>^</sup> This organization must generally be a qualified nonprofit organization or a government entity; the exact parameters for an eligible entity are discussed below.
- <sup>^</sup> The precise conditions for the immunity are defined in this Article; this section simply provides a general overview.
- <sup>^</sup> This feature allows for the possibility of the "roundabout" conundrum, discussed below.
- <sup>^</sup> An even more interesting provision allows a state, by specific and targeted legislation which expressly identifies the federal Act, to opt-out entirely of the VPA, so that the Act has no effect on any state court litigation where all parties reside within the State.

- <sup>^</sup> Charitable immunity, once widespread, has been considerably contracted by state legislation in the U.S. which removes the immunity. *See* discussion of [Charitable immunity laws](#)
- <sup>^</sup> Such as a physician in the audience who acts to assist a person suffering a heart attack at the theater.