Volunteer Protection Act –

111 STAT. 218 PUBLIC LAW 105–19—JUNE 18, 1997

Public Law 105–19 105th Congress

An Act To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. This Act may be cited as the ''Volunteer Protection Act of 1997''.

SEC. 2. FINDINGS AND PURPOSE. (a) FINDINGS.—The Congress finds and declares that— (1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them; (2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities; (3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating; (4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation; (5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce; (6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and (7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because— (A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits;

15

111 STAT. 219 PUBLIC LAW 105–19—JUNE 18, 1997

(B) the citizens of the United States depend on, andthe Federal Government expends funds on, and provides tax exemptions and other consideration to, numerous social programs that depend on the services of volunteers; (C) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and (D)(i) liability reform for volunteers, will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights; and (ii) therefore, liability reform is an appropriate use of the powers contained in article 1, section 8, clause

3 of the United States Constitution, and the fourteenth amendment to the United States Constitution. (b) PURPOSE.—The purpose of this Act is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities. SEC. 3. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY. (a) PREEMPTION.—This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity. (b) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This Act shall not apply to any civil action in a State court against a volunteer in which all parties are citizens of the State if such State enacts a statute in accordance with State requirements for enacting legislation— (1) citing the authority of this subsection; (2) declaring the election of such State that this Act shall not apply, as of a date certain, to such civil action in the State; and (3) containing no other provisions.

SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS. (a) LIABILITY PROTECTION FOR VOLUNTEERS.—Except as provided in subsections (b) and (d), no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if— (1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission; (2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;

(3) 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 (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to— (A) possess an operator's license; or (B) maintain insurance. (b) CONCERNING RESPONSIBILITY OF VOLUNTEERS TO ORGANIZATIONS AND ENTITIES.— Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity. (c) NO EFFECT ON LIABILITY OF ORGANIZATION OR ENTITY.— Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person. (d) EXCEPTIONS TO VOLUNTEER LIABILITY PROTECTION.—If the laws of a State limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section: (1) A State law that requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers. (2) A State law that makes the organization or entity 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. (3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law. (4) A State law that makes a limitation of liability applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the organization or entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified. (e) LIMITATION ON PUNITIVE DAMAGES BASED ON THE ACTIONS OF VOLUNTEERS.— (1) GENERAL RULE.—Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

(2) CONSTRUCTION.— Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages. (f) EXCEPTIONS TO LIMITATIONS ON LIABILITY.— (1) IN GENERAL.— The limitations on the liability of a volunteer under this Act shall not apply to any misconduct that— (A) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court; (B) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note)); (C) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court; (D) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or (E) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct. (2) RULE OF CONSTRUCTION.— Nothing in this subsection shall be construed to effect subsection (a)(3) or (e).

SEC. 5. LIABILITY FOR NON-ECONOMIC LOSS. (a) GENERAL RULE.—In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity, the liability of the volunteer for non-economic loss shall be determined in accordance with subsection (b). (b) AMOUNT OF LIABILITY.— (1) IN GENERAL.— Each defendant who is a volunteer, shall be liable only for the amount of non-economic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount determined

pursuant to the preceding sentence. (2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant who is a volunteer under this section, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant's harm.

SEC. 6. DEFINITIONS. For purposes of this Act: (1) ECONOMIC LOSS.— The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law. (2) HARM.—The term ''harm'' includes physical, nonphysical, economic, and non-economic losses.

(3) NON-ECONOMIC LOSSES.— The term ''non-economic losses'' means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other non-pecuniary losses of any kind or nature. (4) NONPROFIT ORGANIZATION.— The term ''nonprofit organization'' means— (A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note); or (B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (5) STATE.— The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession. (6) VOLUNTEER.— The term ''volunteer'' means 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, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

111 STAT. 223 PUBLIC LAW 105–19—JUNE 18, 1997 LEGISLATIVE HISTORY—S. 543 (H.R. 911): HOUSE REPORTS: No. 105–101, Pt. 1 (Comm. on the Judiciary) accompanying H.R. 911. CONGRESSIONAL RECORD, Vol. 143 (1997): May 1, considered and passed Senate. May 21, considered and passed House, amended, in lieu of H.R. 911. Senate concurred in House amendment. ®

SEC. 7. EFFECTIVE DATE. (a) IN GENERAL.—This Act shall take effect 90 days after the date of enactment of this Act. (b) APPLICATION.—This Act applies to any claim for harm caused by an act or omission of a volunteer where that claim is filed on or after the effective date of this Act but only if the harm that is the subject of the claim or the conduct that caused such harm occurred after such effective