SENATE BILL 709

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

LEONARD LEE RAWSON

AN ACT

RELATING TO VOLUNTEER LIABILITY PROTECTION; ENACTING THE VOLUNTEER SERVICE ACT; PROVIDING CIVIL LIABILITY PROTECTION FOR CERTAIN ACTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Volunteer Service Act".

Section 2. FINDINGS AND DECLARATION.--The legislature finds and declares that:

A. the willingness of volunteers to offer their services has been increasingly deterred by a perception that they put personal assets at risk in the event of tort actions seeking damages arising from their activities as volunteers;

B. the contributions of programs, activities and services to communities is diminished and worthwhile programs,

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1   activities and services are deterred by the unwillingness of

2   volunteers to serve either as volunteers or as officers,

3   directors or trustees of nonprofit public and private

4   organizations;

5   C.   it is in the public interest to strike a balance

6   between the right of a person to seek redress for injury and the

7   right of the individual to freely give of his time and energy

8   without compensation as a volunteer in service to his community

9   without fear of personal liability for acts undertaken in good

10 faith absent willful or wanton conduct on the part of the

11 volunteer; and

12   D.   the provisions of the Volunteer Service Act are

13 intended to encourage volunteers to contribute their services

14 for the good of their communities and at the same time provide a

15 reasonable basis for redress of claims that may arise relating

16 to those services.

17   Section 3.   DEFINITIONS.--As used in the Volunteer Service

18 Act:

19   A.   "governmental entity" means any county,

20 municipality, school district, special district or similar

21 entity or any association, authority, board, commission,

22 division, office, officer, task force or other agency of the

23 state;

24   B.   "nonprofit corporation" means any corporation

25 that is exempt from taxation pursuant to Section 501(a) of the

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1   Internal Revenue Code of 1986, as amended;

2   C.   "nonprofit organization" means any organization

3   that is exempt from taxation pursuant to Section 501(c) of the

4   Internal Revenue Code of 1986, as amended; and

5   D.   "volunteer" means a person performing services

6   for a nonprofit organization, nonprofit corporation, hospital or

7   governmental entity without compensation, other than

8   reimbursement for actual expenses incurred and includes a

9   volunteer serving as a director, officer, trustee or direct

10   service volunteer.

11   Section 4.   SCOPE OF IMMUNITY.--

12   A.   A volunteer shall be immune from civil liability

13   in any action on the basis of any act or omission of a volunteer

14   resulting in damage or injury if:

15   (1)   the volunteer was acting in good faith and

16   within the scope of the volunteer's authorized official

17   functions and duties for a nonprofit organization, nonprofit

18   corporation, hospital or governmental entity; and

19   (2)   the damage or injury was not caused by

20   willful and wanton misconduct by the volunteer.

21   B.   In a suit against a nonprofit organization,

22   nonprofit corporation or hospital for civil damages based upon

23   the negligent act or omission of a volunteer, proof of the act

24   or omission is sufficient to establish the responsibility of the

25   organization for the act or omission under the doctrine of

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1 respondent superior, notwithstanding the immunity granted to the

2 volunteer with respect to an act or omission included under

3 Subsection A of this section.

4   Section 5.   APPLICABILITY.--The Volunteer Service Act shall

5 be effective as to any civil suit for damages commenced on or

6 after one hundred eighty days from the effective date of this

7 act regardless of whether the claim arose prior to that

8 effective date.

9   Section 6.   EFFECTIVE DATE.--The effective date of the

10 provisions of this act is July 1, 1997.

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