



## **SIGNIFICANT ISSUES**

This bill as amended proposes new material relating to nonprofit organizations limiting the personal liability of volunteers performing services for a nonprofit organization. A “nonprofit organization” means an entity that is registered with the State of New Mexico as a nonprofit. This bill as amended provides immunity for a volunteer of nonprofit organizations from personal liability for any act or omission resulting in damage, or injury, to any person that receives a benefit from the volunteer’s approved service. This is based on the following conditions: 1) the volunteer acted with reasonable and ordinary care; 2) was properly licensed, certified or authorized by the state to engage in that activity of service at the time of damage or injury; and 3) damage or injury caused was not by reckless, intentional or malicious conduct of the volunteer.

This bill as amended clarifies that a board member or a person with a fiduciary responsibility to the nonprofit organization is not considered as a volunteer. Furthermore, there is no limit on the liability of a volunteer who is engaging in the activity for which that person may be licensed pursuant to either Business Licenses (Chapter 60 NMSA 1978); or a Professional or Occupational License (Chapter 61 NMSA 1978).

## **OTHER SUBSTANTIVE ISSUES**

House Bill 224/HSIVCS/aSJC is similar to the federal Volunteer Protection Act (Act) of 1997. The Act extends a degree of protection to the volunteer when an accident occurs from common negligence and does not outline protections for the nonprofit. New Mexico is one of roughly seven states that has not yet enacted legislation addressing volunteer immunity.

The Office of the Attorney General (OAG) has commented that “nonprofit” is a term for a type of corporation and is defined by the Nonprofit Corporation Act (Chapter 53-8-2(C) NMSA 1978). The 501(c)3 is a tax exempt status granted by the IRS to charitable organizations. Many nonprofit organizations do not have 501(c)3 status and some (albeit fewer) 501(c)3s are not nonprofit corporations.

The OAG has noted that the term “charitable organizations” is currently defined in the Charitable Solicitations Act (Chapter 57-22-3(A) NMSA 1978) and this section outlines the accountability for failure to perform such duties addressed under the Charitable Solicitations Act (Chapter 57-22-10 NMSA 1978). The OAG notes this is integral to the protection of charitable assets.

JMA/sb/jle