



House  
Legislative  
Analysis  
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## LIABILITY OF VOLUNTEERS

House Bill 4533 as enrolled  
Second Analysis (2-8-94)

Sponsor: Rep. Lyn Bankes  
House Committee: Judiciary  
Senate Committee: Commerce

### ***THE APPARENT PROBLEM:***

In these litigious times, possible exposure to lawsuits is of increasing concern to people who do volunteer work and to the organizations that rely on them. For example, someone who might once have been willing to look after someone else's children on a canoe trip may now decline to accept the responsibility. Without some sort of protection for volunteers, nonprofits fear growing problems in finding willing helpers. Legislation to provide protection has been proposed.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Nonprofit Corporation Act to allow a nonprofit corporation to, via its articles of incorporation, assume liability for all acts and omissions of a nondirector volunteer occurring on or after the effective date of the provision in the articles of incorporation, if certain conditions were met. The volunteer would have to have been acting in good faith and within what he or she believed was the scope of his or her authority; the volunteer's conduct could not have amounted to gross negligence or willful and wanton misconduct; the volunteer's conduct could not have been an intentional tort; and, the volunteer's conduct could not have been a tort involving a motor vehicle for which liability could be imposed under the no-fault provisions of the Insurance Code.

If a nonprofit assumed liability for nondirector volunteers as described above, a claim for monetary damages could not be brought against a volunteer, but would have to instead be brought against the corporation.

Various provisions on indemnification of directors and employees, and on the purchase of liability insurance for directors and employees, would be extended to apply to nondirector volunteers, as well.

The bill also would amend provisions on liability protection for volunteer directors. At present, a nonprofit corporation's articles of incorporation may include a provision limiting the liability of a volunteer director, although the articles may not limit a director's personal liability for any of several listed things, including an act or omission occurring before January 1, 1988. The bill would instead forbid the assumption of liability for an act or omission occurring before the provision's effective date.

MCL 450.2108 et al.

### ***FISCAL IMPLICATIONS:***

The Senate Fiscal Agency has reported that the bill would not affect the regulatory workload of the Corporations and Securities Bureau in the Department of Commerce, or have a fiscal impact on local governmental units. (6-24-93)

### ***ARGUMENTS:***

#### ***For:***

By allowing a nonprofit corporation to assume liability for its volunteers, the bill should ease volunteers' fears about potential lawsuits, and counter any related reluctance to offer volunteer services. Many organizations, such as the Red Cross and the United Way, rely heavily on people who donate their time and energy, and could be seriously hampered if these unpaid workers were no longer available. The bill would help both volunteers and the organizations that rely on them.

#### ***Against:***

Volunteers sometimes accept an enormous amount of responsibility, when performing duties involving children or invalids, and the law should not absolve them of accountability for their actions. Each factual situation is different and the judicial system

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provides the proper forum in which to determine the extent of an individual's culpability. Furthermore, there reportedly is little evidence to suggest that volunteers actually are being sued or that insurance coverage for them is unavailable. If a problem does exist, however, the bill simply should allow a nonprofit corporation to indemnify its volunteers, instead of giving them blanket immunity.

***Response:***

Indemnification alone would not protect volunteers from the negative exposure and inconvenience of a lawsuit, and the mere perception of a litigious environment could be enough to discourage people from volunteering. Moreover, the proposed immunity is far from absolute: volunteers would be subject to a good faith standard of care, and would not be immune from liability for gross negligence, willful and wanton misconduct, an intentional tort, or conduct that would create tort liability under the automobile no-fault law. Finally, a nonprofit corporation would remain liable for the actions or omissions of its volunteers.