

An Act

(1ST EXTRAORDINARY SESSION)
ENROLLED SENATE
BILL NO. 11X

By: Bingman, Sykes, Jolley and
Shortey of the Senate

and

Shannon, Stiles, Wright and
Ritze of the House

An Act relating to volunteer liability; repealing Section 42, Chapter 228, O.S.L. 2009; amending 76 O.S. 2011, Section 31, which relates to volunteer, charitable organizations, and not-for-profit corporations; modifying definition; construing provisions; modifying applicability of act; amending 76 O.S. 2011, Section 31, as amended by Section 2 of this act, which relates to volunteer, charitable organizations, and not-for-profit corporations; modifying definition; construing provisions; and declaring an emergency.

SUBJECT: Volunteer liability

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. REPEALER Section 42, Chapter 228, O.S.L. 2009, is hereby repealed.

SECTION 2. AMENDATORY 76 O.S. 2011, Section 31, is amended to read as follows:

Section 31. A. Any volunteer shall be immune from liability in a civil action on the basis of any act or omission of the volunteer resulting in damage or injury if:

1. The volunteer was acting in good faith and within the scope of the volunteer's official functions and duties for a charitable organization or not-for-profit corporation; and

2. The damage or injury was not caused by gross negligence or willful and wanton misconduct by the volunteer.

B. In any civil action against a charitable organization or not-for-profit corporation for damages based upon the conduct of a volunteer, the doctrine of respondeat superior shall apply, notwithstanding the immunity granted to the volunteer in subsection A of this section.

C. Any person who, in good faith and without compensation, or expectation of compensation, donates or loans emergency service equipment to a volunteer shall not be liable for damages resulting from the use of such equipment by the volunteer, except when the donor of the equipment knew or should have known that the equipment was dangerous or faulty in a way which could result in bodily injury, death or damage to property.

D. Definitions.

1. For the purposes of this section, the term "volunteer" means a person who enters into a service or undertaking of the person's free will without compensation or expectation of compensation in money or other thing of value in order to provide a service, care, assistance, advice, or other benefit; ~~provided, being legally entitled to receive compensation for the service or undertaking performed shall not preclude a person from being considered a volunteer~~ where the person does not offer that type of service, care, assistance, advice or other benefit for sale to the public.

2. For the purposes of this section, the term "charitable organization" means any benevolent, philanthropic, patriotic, eleemosynary, educational, social, civic, recreational, religious group or association or any other person performing or purporting to perform acts beneficial to the public.

3. For the purposes of this section, the term "not-for-profit corporation" means a corporation formed for a purpose not involving pecuniary gain to its shareholders or members, paying no dividends

or other pecuniary remuneration, directly or indirectly, to its shareholders or members as such, and having no capital stock.

E. The provisions of this section shall not affect the liability that any person may have which arises from the operation of a motor vehicle, watercraft, or aircraft in rendering the service, care, assistance, advice or other benefit as a volunteer.

F. The immunity from civil liability provided for by this section shall extend only to the actions taken by a person rendering the service, care, assistance, advice, or other benefit as a volunteer, ~~where such actions are agreed upon in advance by all involved persons to be provided on a volunteer basis. This section shall not be construed to~~ and does not confer any immunity to any person for actions taken by the volunteer prior to or after the rendering of the service, care, assistance, advice, or other benefit as a volunteer.

G. This section shall apply to all civil actions filed after ~~August 25, 1995~~ the effective date of this act.

SECTION 3. AMENDATORY 76 O.S. 2011, Section 31, as amended by Section 2 of this act, is amended to read as follows:

Section 31. A. Any volunteer shall be immune from liability in a civil action on the basis of any act or omission of the volunteer resulting in damage or injury if:

1. The volunteer was acting in good faith and within the scope of the volunteer's official functions and duties for a charitable organization or not-for-profit corporation; and
2. The damage or injury was not caused by gross negligence or willful and wanton misconduct by the volunteer.

B. In any civil action against a charitable organization or not-for-profit corporation for damages based upon the conduct of a volunteer, the doctrine of respondeat superior shall apply, notwithstanding the immunity granted to the volunteer in subsection A of this section.

C. Any person who, in good faith and without compensation, or expectation of compensation, donates or loans emergency service equipment to a volunteer shall not be liable for damages resulting from the use of such equipment by the volunteer, except when the donor of the equipment knew or should have known that the equipment was dangerous or faulty in a way which could result in bodily injury, death or damage to property.

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2. For the purposes of this section, the term "charitable organization" means any benevolent, philanthropic, patriotic, eleemosynary, educational, social, civic, recreational, religious group or association or any other person performing or purporting to perform acts beneficial to the public.

3. For the purposes of this section, the term "not-for-profit corporation" means a corporation formed for a purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration, directly or indirectly, to its shareholders or members as such, and having no capital stock.

E. The provisions of this section shall not affect the liability that any person may have which arises from the operation of a motor vehicle, watercraft, or aircraft in rendering the service, care, assistance, advice or other benefit as a volunteer.

F. The immunity from civil liability provided for by this section shall extend only to the actions taken by a person rendering the service, care, assistance, advice, or other benefit as a volunteer, ~~and does not~~ where such actions are agreed upon in advance by all involved persons to be provided on a volunteer basis.

This section shall not be construed to confer any immunity to any person for actions taken by the volunteer prior to or after the rendering of the service, care, assistance, advice, or other benefit as a volunteer.

G. This section shall apply to all civil actions filed after ~~the effective date of this act~~ August 25, 1995.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 5th day of September, 2013.

Presiding Officer of the Senate

Passed the House of Representatives the 9th day of September,
2013.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____