

# Volunteer Protection Act: What Does It Mean for You?

## What will change, what will stay the same, and what do you need to do?

BY JOHN W. MAHONEY

There has been an explosion of litigation in the U.S. over the past decade, and neither volunteers nor nonprofit organizations have been spared. Consider these cases:

- At the Stuart, Florida, Christmas Parade on December 6, 1996, Andrew Ingersoll, 12, fell under the back tire of the trailer carrying the Jensen Beach Elementary School float. The three volunteers who helped get the float on the road—the driver of the truck pulling the float, the truck owner, and the trailer owner—are being sued by an attorney for the family. The Martin County School Board's district insurance only covers volunteers working on school property, under the supervision of school officials. It doesn't cover volunteers if they're participating in school-sanctioned activities or if they're traveling in their own vehicles.
- Three parent volunteers and three school staffers did everything they could to help, performing the Heimlich maneuver and cardiopulmonary resuscitation. But despite their efforts, Ciara Santiago, an eight-year-old at East Harlem Public School, choked during her school lunch and died on February 29, 1996. A lawyer for the family filed a \$10 million lawsuit in the Manhattan Supreme Court against the Board of Education, Public School 109, and the Emergency Medical Service.

## Volunteering Declines

The costs of such litigation are taking their toll on nonprofit organizations in more ways than one. The percentage of Americans volunteering dropped from 54 percent to 48 percent between 1989 and 1993, a 1993 Independent Study report found.

This decrease in volunteerism can be partially attributed to the rise of litigation—a problem that many people consider an obstacle to becoming more involved. Quite plainly, volunteers are afraid of getting sued. According to a recent Gallup study, 10 percent of nonprofits reported that a volunteer had resigned because of liability concerns.

In addition, the costs of lawsuits have forced nonprofit organizations to put the time and money they've traditionally used for programs into defensive efforts. Resources and funds are now redirected and used to prevent or fight lawsuits.

# What's Being Done?

The issue has become a rather hot topic in Washington. The President's Summit for America's Future in April, 1997, raised awareness of volunteering. However, Summit leaders didn't address the outbreak of lawsuits facing nonprofit organizations, their employees, and their volunteers—and the potential risk volunteers add to the nonprofit organizations they're trying to help.

To protect nonprofit organizations and volunteers from excessive and frivolous litigation, Sen. Paul Coverdell (R-Ga.), and Reps. Bob Inglis (R-S.C.) and John Porter (R-Ill.), wrote the 1997 Volunteer Protection Act. The Act passed the U.S. Senate and the U.S. House of Representatives, and the President signed it into law soon after holding the President's Summit.

The Act protects volunteers from "liability for harm caused while properly engaged in volunteer work." The Act doesn't, however, protect volunteers who cause harm through "willful, malicious, criminal conduct or intent."

## Legislation Helps

On the surface, in helping protect volunteers, the Act safeguards the nonprofit organizations who coordinate and support volunteer efforts. Under the new legislation, punitive damages could be awarded against a volunteer or nonprofit group only if the volunteer exhibits intentional or criminal misconduct.

Additionally, the act should eventually save considerable money for nonprofits as the costs of lawsuits and the number of cases remain steady or even decrease. United Way estimates that, in the past, it has been sued three or four times a year. These lawsuits take money and resources away from its charitable programs.

Furthermore, the act will aid nonprofit organizations by increasing their staff power. The publicity surrounding the new law and the limited protection it offers should help increase the number of people willing to volunteer.

## Nonprofits Helping Themselves

Nonprofits must realize, however, that the Act won't be a cure-all. Despite the immunity it offers, nonprofit organizations and volunteers will still have litigation costs and other liability concerns. Insurance can often help pay these additional expenses and offer extended protection. You should consider specialized coverage, such as directors' and officers' liability insurance (D&O), which covers employment practices, mismanagement of funds, and other wrongful acts common to nonprofits but not included in general liability coverage.

To further protect your organization from the risk of litigation surrounding volunteers, you can take precautionary measures such as these:

- Ask the right questions of your insurance carrier. Under what circumstances does coverage apply? How far does coverage

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extend? In what instances will the policy not offer protection? How many volunteers does the policy include?

- Review state laws. Most states offer volunteers some protection through volunteer protection laws. However, these laws vary from state to state. New York and California, for example, extend this protection only to volunteer directors and officers; the volunteers who drive vans for Meals-on-Wheels or organize the annual walk-a-thon are excluded. In other cases, state law may actually provide better protection than the new act.
- Create a system of interviewing or screening volunteers, and establish guidelines for proper procedure and conduct while volunteering. Rules and safety that apply to your paid employees should also apply to your volunteers.

Clearly, the new act doesn't free you from the responsibility of controlling risks. While the act may ease volunteers' fears of lawsuits, it doesn't replace good risk management. You must understand the risks volunteers face and create policies and procedures to minimize those risks. You must use protective measures and educate yourself on volunteer legislation. It's still the best way to protect your organization and volunteers from costly litigation. ■

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\*Available from the Society for Nonprofit Organizations' *Resource Center Catalog*, included in this issue (see page 27) or call 800-424-7367.

\*\*Available from Coregis Insurance Company, Triumph Books, 644 South Clark Street, Chicago, Illinois 60605 (312-939-3330).



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