



OLR RESEARCH REPORT

September 19, 2012

2012-R-0439

LIABILITY PROTECTIONS FOR NON-STOCK CORPORATIONS, VOLUNTEERS, AND CHARITIES

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You asked about liability protections for Connecticut domestic non-stock corporation members and people who volunteer for these corporations. You also asked if other states protect charities from liability. Our office is not authorized to give legal opinions and this report should not be considered one.

SUMMARY

Under Connecticut law, a member of a non-stock corporation is not liable to the corporation or its creditors except for any fines, penalties, dues, or assessments imposed by the corporation. A member who receives a distribution of income or assets from the corporation knowing it is improper is liable for the amount to creditors and the corporation (CGS § [33-1058](#)).

The law includes more extensive provisions regarding non-stock corporation members who serve as directors. Two statutes protect directors of the board of a non-stock corporation from liability under certain circumstances: one applies to any director and another applies only to uncompensated directors of a tax-exempt nonprofit organization. In addition to the protection afforded by the immunity statutes, the law also protects directors by requiring the corporation to indemnify them in connection with legal actions against them in their capacity as directors.

Indemnification provides formal financial protection for directors against expenses and liabilities they incur in connection with proceedings based on an alleged breach of some duty in their service to or on behalf of the corporation.

Connecticut law protects volunteers from liability only under limited circumstances. For example, volunteer firefighters are immune from certain types of suits, such as trespass actions when they enter property to extinguish or investigate fires (CGS § [7-308](#)). The law also requires municipalities to indemnify volunteer firefighters under certain circumstances. Other laws provide protection from liability for volunteers but they do not appear to apply to situations where people volunteer for non-stock corporations.

The federal Volunteer Protection Act provides broader protection for people who perform volunteer work for nonprofit organizations or government entities. It gives these volunteers immunity from civil liability for injuries they cause by their negligence while volunteering (14 USC § 42-14501 et seq.). States can opt out of the law by passing an act explicitly doing so. Connecticut has not opted out; thus, the law applies here.

Historically, the common law (court-developed law) recognized “charitable immunity,” which protected nonprofit, charitable organizations from lawsuits in certain circumstances. In general, common law rules apply unless changed by a later court ruling or legislation. Most states have abolished charitable immunity either through court rulings or legislation. Connecticut did so by legislation in 1967 (CGS § [52-557d](#)). While Connecticut abolished charitable immunity, at least one statute gives charities immunity in limited circumstances: a nonprofit organization or corporation that collects donated food and distributes it to other nonprofit organizations or corporations for free or a nominal fee is not liable for civil damages or criminal penalties resulting from the condition or packaging of the food unless the organization knew at the time of distribution that the food was contaminated or unfit for human consumption (CGS § [52-557l](#)).

A small number of states still recognize charitable immunity, either through the common law or statutes. To provide examples, we looked at the statutes in Colorado, Maine, Massachusetts, New Jersey, South Carolina, Texas, and Utah. The laws in these states vary in the types of suits they address and whether they make the charity immune from the suits or limit their liability to a certain amount.

While state laws can grant people and entities immunity from suit in many circumstances, they cannot provide immunity for violating federal statutes, such as the Americans with Disabilities Act or the Civil Rights laws.

CONNECTICUT LAW—DIRECTORS' IMMUNITY

All Non-Stock Corporation Directors

The law protects a non-stock corporation director from liability for any actions taken or not taken if he or she acts in good faith, with the care an ordinarily prudent person in a like position would exercise, and in a manner he or she reasonably believes is in the corporation's best interests (CGS § [33-1104](#)). Similar provisions apply to corporate officers (CGS § [33-1111](#)). But a director can be liable for:

1. voting for or assenting to an unlawful distribution in violation of his or her legal obligations (CGS § [33-1105](#));
2. voting for or assenting to a loan to a corporate officer or director which is not (a) in the usual course of corporate affairs or (b) primarily for a legitimate corporate purpose (officers participating in making the loan are also liable)(CGS § [33-1106](#)); and
3. a conflicting interest transaction (CGS § [33-1127](#) et seq.).

Uncompensated Directors of Non-profits

Another law applies to any person serving without a salary or prorated equivalent basis as a director of a nonprofit organization qualified as a tax-exempt organization under the Internal Revenue Code. The law makes these directors immune from civil liability for damage or injury resulting from any act, error, or omission made in the exercise of the person's policy or decision-making responsibilities, if he or she was acting in good faith and within the scope of his or her official functions and duties (CGS § [52-557m](#)). This also applies to officers. Tax-exempt organizations can include nonprofit corporations organized and operated exclusively for religious, literary, or educational purposes; to foster amateur sports; or to prevent cruelty to children or animals. They can also include fraternal beneficiary societies, orders, or associations.

The immunity does not apply if the damage or injury was caused by reckless, willful, or wanton misconduct (CGS § [52-557m](#)). Thus the immunity is limited to acts of negligence.

CONNECTICUT LAW—INDEMNIFICATION OF DIRECTORS

Connecticut law specifies when a non-stock corporation can indemnify or advance expenses to a director. Similar provisions also apply to corporate officers, employees, and agents (CGS § [33-1122](#)).

The law requires a non-stock corporation to indemnify a director who is wholly successful in a proceeding in which he or she is a party because he or she is a director. The corporation must pay the director's reasonable expenses incurred in the proceeding (CGS § [33-1118](#)).

The statutes also specify circumstances where a corporation can indemnify a director.

1. A corporation can indemnify a director against liability when he or she is a party to a proceeding because he or she is a director if he or she (a) acted in good faith; (b) reasonably believed that, in a case involving official conduct, the conduct was in the corporation's best interest or, in other cases, the conduct was not opposed to the corporation's best interest; and (c) in a criminal case, had no reasonable cause to believe the conduct was unlawful (CGS § [33-1117](#)).
2. A corporation can also permit or require indemnification in more circumstances if it includes a provision in its certificate of incorporation. Such a provision can permit or require the corporation to indemnify directors except for when the liability involves (a) a knowing and culpable violation of law; (b) the director or an associate receiving an improper personal gain; (c) a lack of good faith and conscious disregard for duty to the corporation when he or she was aware that the conduct or omission created unjustifiable risk of serious injury to the corporation; or (d) a sustained and unexcused pattern of inattention amounting to an abdication of duty to the corporation (CGS §§ [33-1026\(b\)\(5\)](#) and - [1117](#)).

In situations where indemnification is not mandatory, the corporation must determine that the standard of care is met before it can indemnify a director (CGS § [33-1121](#)).

A corporation can advance funds to a director for reasonable expenses under certain circumstances (CGS § [33-1119](#)). A corporation can also obligate itself to provide indemnification or advances before an act or omission is taken that gives rise to a legal proceeding. The corporation can do so through a provision in its certificate, bylaws, or resolutions or by a contract approved by the board or members (CGS § [1124\(a\)](#)).

A director can ask the court to order indemnification or an advance under certain circumstances (CGS § [33-1120](#)).

A corporation can only provide indemnification or advances of expenses to a director as permitted by the statutes. But the corporation's certificate of incorporation can limit any of these rights (CGS §§ [33-1124\(c\)](#) and [33-1125](#)).

CONNECTICUT LAW—VOLUNTEER IMMUNITY

Connecticut law protects volunteers from liability only under limited circumstances. For example, volunteer firefighters are immune from certain types of suits, such as trespass actions when they enter property to extinguish or investigate fires (CGS § [7-308](#)). The law also requires municipalities to indemnify volunteer firefighters under certain circumstances (CGS §§ [7-308](#) and [7-101a](#)). For more information on liability protections for volunteer firefighters, see OLR Report [2011-R-0460](#).

Other laws provide protection from liability for volunteers but they do not appear to apply to situations where people volunteer for non-stock corporations. These include the following:

1. The Good Samaritan law provides immunity from civil damages for acts of ordinary negligence in connection with the rendering of emergency medical service by specified individuals under certain circumstances (CGS § [52-557b](#)). The law applies to medical professionals, those who have completed a first aid course offered by the American Red Cross or other specified organization, and those who operate an automatic external defibrillator (AED) in providing emergency or medical assistance to a person.

2. Food donors are protected from lawsuits by someone injured by the donated food or its packaging. The law also protects the donor from criminal liability. The protection only extends to those donating food to nonprofit organizations. It does not protect those who either knew or had reasonable grounds to believe that the food was contaminated or was unfit for human consumption (CGS § [52-557l](#)).
3. The law grants immunity to landowners who allow the public to harvest fruit or vegetables without charge on behalf of a nonprofit organization or corporation for the entity's use or distribution to another nonprofit organization or corporation, unless the injury is caused by the owner's failure to warn of a dangerous, hidden hazard actually known to the owner (CGS § [52-557k](#)). This law also applies to landowners who allow the public to harvest firewood with or without charge.

FEDERAL VOLUNTEER PROTECTION ACT

Federal law provides certain protections for certain volunteers. The federal Volunteer Protection Act grants people who perform volunteer work for nonprofit organizations or government entities immunity from civil liability for injuries they cause by their negligence while volunteering (14 USC § 42-14501 *et seq.*). States can opt out of the law by passing an act explicitly doing so. Connecticut has not opted out; thus, the law applies here.

Scope of Limitation on Liability

Under the act, volunteers of a nonprofit organization or government entity are not liable for harm caused by their act or omission if:

1. they were acting within the scope of their responsibilities when they performed or failed to perform the act;
2. they were properly licensed, certified, or authorized by the appropriate authorities in the state where the harm occurred;
3. the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the person who suffered harm; and

4. the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or owner to possess a license or maintain insurance.

The act does not affect (1) civil actions brought by the nonprofit organization or government entity against the volunteer or (2) the liability of any nonprofit organization or government entity with respect to harm caused by a volunteer (42 USC § 14503(b) and (c)).

The act preempts inconsistent state laws, but not laws that provide additional liability protection. The act also specifies that a state law is not inconsistent with the federal act because it:

1. requires the organization or entity to adhere to risk management procedures, including mandatory training of volunteers;
2. makes the organization or entity liable for the volunteer's acts or omissions to the same extent as an employer is liable for its employees' acts or omissions;
3. makes a limitation of liability inapplicable if the civil action was brought by a state or local government officer under state or local law; or
4. makes a liability limitation apply only if the organization or entity provides a financially secure source of recovery such as an insurance policy for those harmed by the volunteer (42 USC § 14503(d)).

Exemptions to Immunity

The act does not apply to misconduct that:

1. constitutes a crime or act of international terrorism as defined by federal law for which the volunteer has been convicted,
2. constitutes a hate crime as defined by federal law,
3. involves a sexual offense as defined by state law for which the volunteer has been convicted,
4. involves misconduct for which the volunteer has been found to have violated a federal or state civil rights law, or

5. occurred when the volunteer was under the influence of intoxicating liquor or any drug.

Limits on Punitive Damages

The act prohibits the award of punitive damages against a volunteer unless the person harmed establishes by clear and convincing evidence that the harm was proximately caused by the volunteer's actions that constituted willful or criminal misconduct, or a conscious, flagrant indifference to the injured person's rights or safety (42 USC § 14503(e)).

Liability for Noneconomic Loss

Under the act, a volunteer may be liable for noneconomic loss allocated to him or her in direct proportion to the percentage of his or her responsibility for the harm. The act requires the jury (or judge in a nonjury trial) to determine the volunteer's percentage of responsibility for the harm (42 USC § 14504).

OTHER STATES—CHARITABLE IMMUNITY

A small number of states still recognize some form of charitable immunity, either through statutes or court rulings. To provide examples, we looked at statutes in Colorado, Maine, Massachusetts, New Jersey, South Carolina, Texas, and Utah. These statutes vary in the types of suits they address and whether they make the charity immune from the suits or limit their liability to a certain amount. A few other states still recognize common law charitable immunity. For example, Maryland's courts continue to recognize common law charitable immunity except where liability has been imposed by statutes (*Montrose Christian School Corp. v. Walsh*, 770 A.2d 111 (Md. 2001)).

Colorado

Colorado law does not protect a nonprofit corporation from liability but limits the assets that are subject to execution when a party seeks to collect on a judgment. The law limits execution to the amount the corporation will be reimbursed by proceeds from liability insurance policies (Colo. Rev. Stat. § 7-123-105).

Maine

In Maine, a charitable organization is liable for negligence or other torts up to the amount of its insurance coverage. A charitable organization or other approved entity is not liable for claims arising from

a person's death or injury or damage to property caused by someone participating in a supervised work or service program, performing community service, or providing restitution (these programs are available to certain criminal offenders).

A director, officer, or volunteer is immune from civil liability for acts or omissions occurring within the course or scope of the organization's activities (a different rule applies when the person is operating a vehicle)(14 MRSA § 158 et seq).

Massachusetts

In Massachusetts, the tort liability of a charity that is a corporation, trust, or association is limited to \$20,000 for activities that are (1) carried on to directly accomplish a charitable purpose and (2) not primarily commercial in character, even if done to obtain revenue to be used for charitable purposes. This law also applies to trustees of charitable trusts and members of charitable associations (Mass. Gen. Laws ch. 231, §85K).

New Jersey

In New Jersey, a nonprofit corporation, society, or association organized exclusively for religious, charitable, or educational purposes is not liable to a person who is a beneficiary of the organization's work for an agent's or a servant's negligence. This law also protects trustees, directors, officers, employees, agents, servants, and volunteers unless they act with willful, wanton, or gross negligence or negligently operate a motor vehicle. The law does not apply to health care providers (N.J. Stat. 2A: 53A-7).

South Carolina

In South Carolina, a charity's liability for a person's injury or death caused by an employee acting within the scope of employment is limited to actual damages of up to (1) \$300,000 in a claim for a loss from a single occurrence and (2) \$600,000 total from a single occurrence regardless of the number of claims. When someone brings an action against the charity, the law bars a claim against the employee but the employee may be joined in the claim if he or she acted recklessly, willfully, or with gross negligence. If damages result from the use of a motor vehicle and they exceed \$250,000, the injured party can recover an additional amount on uninsured or underinsured motorist coverage (S.C. Laws § 33-56-180).

Texas

Texas law limits a nonhospital charitable organization's liability for damages based on an employee's or a volunteer's act or omission to (1) \$500,000 for injury to each person, (2) \$1,000,000 for each single occurrence of bodily injury or death, and (3) \$100,000 for each single occurrence of property damage. This does not apply to intentional acts or acts committed with willful negligence, conscious indifference, or reckless disregard for the safety of others. For the liability limits to apply, the organization must carry liability insurance coverage in the amounts listed above. Different provisions apply to hospitals and religious charitable organizations that provide transportation services to certain welfare recipients (Tex. Civ. Pro. and Rem. Code § 84.001 et seq.). Similar liability protections apply to employees.

Utah

In Utah, a nonprofit organization is not liable for a volunteer's acts or omission if:

1. (a) the volunteer acts in good faith; (b) the volunteer reasonably believes he or she acts within the scope of duty; (c) the damage is not from an intentional or knowing act that is illegal, willful, or wanton misconduct; (d) the organization did not and reasonably could not have had notice of the volunteer's unfitness to provide services; and (e) the organization's use of the volunteer was not reckless or wanton or
2. a business employer would not be liable for such an act by an employee (Utah Code §§ 78B-4-102 and -103).

Similar protections apply to volunteers.

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