

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2751

By Delegate Foster

[Introduced January 18, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §31E-17-1, §31E-17-2, §31E-17-3, §31E-17-4, §31E-17-5, §31E-17-6 and
 3 §31E-17-7, all relating to creating the West Virginia Volunteer Immunity and Charitable
 4 Organization Liability Limit Act; providing a short title and declaration of intent; including
 5 definitions; providing for volunteer immunity from civil liability in certain circumstances;
 6 addressing limitations on organization liability; addressing exclusions and severability.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 17. WEST VIRGINIA VOLUNTEER IMMUNITY AND CHARITABLE
 ORGANIZATION LIABILITY ACT.**

§31E-17-1. Short Title.

1 This article is and may be cited as the "West Virginia Volunteer Immunity and Charitable
 2 Organization Liability Act".

§31E-17-2. Legislative Finding and Declaration of Intent.

1 The Legislature finds that charitable organizations within the state perform essential and
 2 needed services. It is the intent of the Legislature to encourage the formation of charitable
 3 organizations, to promote charitable organizations, to preserve the resources of charitable
 4 organizations, to encourage volunteerism, and to encourage volunteer and charitable
 5 organizations by limiting the liability of charitable organizations and volunteers.

§31E-17-3. Definitions.

1 For the purpose of this article:

2 "Charitable organization" means any organization exempt from federal income taxation
 3 by virtue of being described under Section 501(c)(3) of the Internal Revenue Code.

4 "Good faith" means the honest, conscientious pursuit of activities and purposes that
 5 the organization is organized and operated to provide.

6 "Health care" means any act performed or furnished by a health care provider for, to,

7 or on behalf of a patient pertaining to the diagnosis or treatment of any disease or disorder,
8 mental or physical, or any physical handicap, deformity, or injury.

9 "Health care provider" means any person, partnership, professional association,
10 corporation, facility, or institution licensed, certified, or accredited by the state to provide
11 health care, including but not limited to a physician, licensed practical nurse, registered nurse,
12 hospital, dentist, podiatrist, pharmacist, nursing home, or any of certain employee, or agent
13 thereof acting in the course and scope of their employment.

14 "Volunteer" means any person, including a director, officer, trustee, or direct service
15 volunteer, who renders service for a charitable organization, nonprofit corporation, a hospital, or a
16 government entity without compensation, other than reimbursement for actual expenses incurred.

17 "Government entity" means any county, municipality, township, school district, or
18 subdivision, governmental unit, other special district, similar entity, or any association, authority,
19 board, commission, division, officer, task force, or other agency of any state.

§31E-17-4. Volunteer liability

1 (a) Except as provided by subsection (b) of this section and §30-17-6 of this code, a
2 volunteer who is serving a charitable organization in any capacity is immune from civil liability for
3 any act or omission resulting in death, damage, or injury if the volunteer was acting in good faith
4 and in the course and scope of his duties or functions within the organization.

5 (b) A volunteer acting in good faith and in the course and scope of his duties or
6 functions within the charitable organization is not liable to a person for death, damage, or
7 injury to the person or his property proximately caused by an act or omission arising from
8 the operation or use of any motor-driven equipment, including an airplane, except to the
9 extent of any existing insurance coverage required by state law.

10 (c) The provisions of this section apply only to liability of volunteers and do not apply
11 to the liability of the organization for acts or omissions of volunteers.

§31E-17-5. Organization liability.

1 Except as provided in §30E-17-6 of this code, in any civil action brought against a
2 charitable organization based on an act or omission by the organization or its members, recovery
3 may be sought only in an action against the charitable organization for actual damages sustained
4 in an amount not exceeding \$300,000 for each person and \$1 million for each single occurrence of
5 bodily injury or death and \$100,000 for each single act of destruction of property and \$100,000 for
6 any other injury.

§31E-17-6. Applicability.

1 (a) This article does not apply to an act or omission by a volunteer or an organization
2 that constitutes intentional wrongdoing, or that is done with reckless disregard for the
3 safety of others.

4 (b) This article does not limit or modify the duties or liabilities of a member of the board
5 of directors or an officer to the organization or its members and shareholders.

6 (c) This article does not apply to organizations or employees that are health care
7 providers as defined in section three.

§31E-17-7. Severability.

1 If any provision of this article or its application is adjudged to be invalid by any court of
2 competent jurisdiction, the judgment may not affect, impair, or invalidate the remainder of the
3 article, but shall be confined in its operation to the provision directly involved in the controversy in
4 which the judgment was rendered, and the applicability of the provision to other circumstances
5 shall not be affected.

NOTE: The purpose of this bill is to promote the formation, financial stability, and healthy operation of charitable organizations and to encourage volunteerism by limiting the exposure of organizations and volunteers to civil liability arising from their charitable activities.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.