

PROTECTING YOUR VOLUNTEERS

For the second time, WMA-initiated legislation has been passed by the Washington State Legislature. The first was *an act relating to unclaimed property in museums and historical societies*@ RCW Chapter 63.26 adopted in 1988. In the 2001 session, just ended, the legislature *adopted an act limiting the liability of volunteers*@ (Substitute House Bill 1643). This law was signed by the Governor on May 7th and will become effective on July 22, 2001 (90 days after the regular legislative session ended on April 22, 2001). Both acts passed both the House and the Senate without a dissenting vote.

It should be remembered that volunteers are the same as employees for all purposes except pay and benefits. If a volunteer causes harm to others while acting within the scope of his or her employment the museum will be liable for damages to the person harmed. The volunteer (or employee) may also be personally liable. This new law gives substantial protection to volunteers who cause harm to others while acting within the scope of their duties.

Under this new law a volunteer in a nonprofit organization or governmental entity is not personally liable for harm caused to others by any act or omission of the volunteer, provided:

- a. The volunteer was acting within the scope of his or her duties as a volunteer.
- b. If appropriate, or required, the volunteer was properly licensed for the activities to be carried on within the scope of his or her duties.
- c. The harm was not caused by (i) willful or criminal misconduct, (ii) gross negligence, (iii) reckless misconduct, or (iv) a conscious, flagrant indifference to the rights or safety of the person harmed.
- d. 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 either an operator's license or to maintain insurance.
- e. The nonprofit organization carries public liability insurance covering the organization's liability for harm caused to others for which it is directly or vicariously* liable in not less than the following amounts:
 - (1) *For organizations with gross revenues of less than \$25,000 annually*: at least \$25,000 for the injury or death of one person and at least \$100,000 for the injury or death to two or more persons.
 - (2) *For organizations with gross revenues of more than \$25,000 but less than \$100,000*: limits of not less than \$100,000 and \$200,000.
 - (3) *For organizations with gross revenues of more than \$100,000*: limits of not less than \$500,000 for injury or death to one or more persons.

The insurance requirements apply only to nonprofit organizations and not to governmental entities.

This statute does not affect any civil action brought by the nonprofit organization or governmental entity against any volunteer.

* Liability of the organization for harm caused to others by acts of employees or volunteers even though the organization itself did not cause the harm.

"Nonprofit organization" means: (i) any organization described in section 501(c)(3) of the Internal Revenue Code and exempt from federal tax under section 501(a) of the Code; (ii) any nonprofit organization organized for the public benefit and operated primarily for charitable, civic, educational, religious, welfare or health purposes; or (iii) any organization described in section 501 (c) (14) of the Code.

"Volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive compensation, other than reasonable reimbursement or allowances for expenses actually incurred or any other thing of value in excess of \$500 per year. "Volunteer" includes a volunteer serving as an officer, director, trustee, or a direct service volunteer (i.e., someone who actually does the work).

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