

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/CS/SB 930

INTRODUCER: Children, Families, and Elder Affairs Committee, Judiciary Committee, and Senators Lynn and Rich

SUBJECT: Protection of Volunteers

DATE: March 22, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Maclure	JU	Fav/CS
2.	Daniell	Walsh	CF	Fav/CS
3.			GO	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill amends the Florida Volunteer Protection Act (Act) to specify that, as long as a volunteer is not being compensated by the nonprofit organization for whom he or she is volunteering, liability for the volunteer's acts still may be shifted to the nonprofit organization, provided the other criteria of the Act are satisfied. In addition, if the volunteer is being compensated by another source, both the liability of the volunteer and any liability imputed to the source of the compensation may be shifted to the nonprofit organization if the volunteer is not an agent of the source of the compensation.

Specifically, under the bill, any person who volunteers for any nonprofit organization, including an officer or director of such organization, without compensation *from the nonprofit organization, regardless of whether the person is receiving compensation from another source*, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services.

The bill also provides that the volunteer and *the source that provides compensation, if the volunteer is not acting as an agent of the source*, may not incur any civil liability for any act or omission by the volunteer which results in personal injury or property damage if other specified criteria in the Act are also met.

This bill amends section 768.1355, Florida Statutes.

## II. Present Situation:

The “Florida Volunteer Protection Act” (Act) provides that any person who volunteers to perform any service for any nonprofit organization, including an officer or director of such organization, without compensation, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under the volunteer services.<sup>1</sup> Such person may not incur civil liability for any act or omission by the person which results in personal injury or property damage under specified circumstances. The volunteer is immune from civil liability for acts or omissions he or she performed without compensation and that were performed within his or her official duties for any nonprofit organization which result in personal injury or property damage if:

- The volunteer was acting in good faith within the scope of any official duties performed under such volunteer service and the volunteer was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct on the part of the volunteer in the performance of such duties.

For purposes of the Act, “nonprofit organization” means any organization that is exempt from federal taxation under federal law<sup>2</sup> or any federal, state, or local governmental entity.<sup>3</sup>

“Compensation,” for purposes of the act, does not include a stipend as provided by the Domestic Service Volunteer Act of 1973 or other financial assistance, valued at less than two-thirds of the federal hourly minimum wage standard, paid to a person who would otherwise be financially unable to provide the volunteer service.<sup>4</sup>

The intent of the Act is not to immunize volunteers from liability but to shift liability from the volunteer to the nonprofit organization only in circumstances where the volunteer is *exercising ordinary reasonable prudent care and meets the other criteria* specified in s. 768.1355, F.S.<sup>5</sup> The Act is written in the conjunctive, not disjunctive, so that each requirement in the statute must be present for the volunteer to be afforded immunity.<sup>6</sup>

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<sup>1</sup> Section 768.1355, F.S.

<sup>2</sup> 26 U.S.C. s. 501.

<sup>3</sup> Section 768.1355(1)(b)1., F.S.

<sup>4</sup> Section 768.1355(1)(b)2., F.S.

<sup>5</sup> *Campbell v. Kessler as Personal Representative of the Estate of Reuben D. Berger*, 848 So. 2d 369, 371-72 (Fla. 4th DCA 2003).

<sup>6</sup> *Id.*

### III. Effect of Proposed Changes:

The bill revises the statutory criteria under the Florida Volunteer Protection Act (Act) applicable to compensation that a volunteer receives and the source of the volunteer's compensation in order to shift liability from the volunteer, and under certain circumstances, any liability imputed to the source that provides compensation to volunteer under the bill, to the nonprofit organization.

Under the bill, any person who volunteers any service for any nonprofit organization, including an officer or director of such organization, without compensation *from the nonprofit organization, regardless of whether the person is receiving compensation from another source*, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services.

The bill also provides that the volunteer and *the source that provides compensation, if the volunteer is not acting as an agent of the source*, may not incur any civil liability for any act or omission by the volunteer which results in personal injury or property damage if other specified criteria in Act are also met.

The bill provides an effective date of July 1, 2011, and applies to causes of action accruing on or after that date.

#### Other Potential Implications:

In some situations, a volunteer who receives compensation from another may create an agency relationship between the source of the compensation and the volunteer so that source of the compensation may be held vicariously liable, or liable under some other theory, for imputed negligence for the acts of the volunteer. "Vicarious liability" allows an injured party to seek redress from another who is not the party primarily responsible.<sup>7</sup>

The factors required to establish an agency relationship are: (1) acknowledgement by the principal that the agent will act for the principal; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent.<sup>8</sup> If an agency relationship is created between the volunteer and the source that provides the compensation, on a case-by-case basis, it may be unclear, for purposes of the Florida Volunteer Protection Act, whether the volunteer will be acting as agent of the nonprofit organization or the source that provides the compensation.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>7</sup> See *American Home Assurance Co. v. National Railroad Passenger Corp.*, 908 So. 2d 459 (Fla. 2005).

<sup>8</sup> See *Goldschmidt v. Holman*, 571 So. 2d 422 (Fla. 1990).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A volunteer who receives compensation from another source, and the “source that provides compensation, if the volunteer is not acting as an agent of the source,” may shift liability from the volunteer and any liability imputed to the source of the compensation received by the volunteer to the nonprofit organization, if the volunteer otherwise meets the statutory criteria for immunity under the Florida Volunteer Protection Act.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Children, Families, and Elder Affairs on March 22, 2011:**

The committee substitute changes the effective date to clarify that the act only applies to causes of action accruing on or after July 1, 2011.

**CS by Judiciary on March 14, 2011:**

The committee substitute provides that the source of the compensation for the volunteer of a nonprofit organization will not incur any civil liability if the volunteer is not acting as an agent of the source and other specified criteria in the Florida Volunteer Protection Act are satisfied. The criteria are applicable to the volunteer’s conduct when performing official duties for the nonprofit organization.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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