

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-0779.01 Duane Gall x4335

SENATE BILL 17-100

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

Landgraf and Arndt,

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING QUALIFIED IMMUNITY FOR PERSONS PERFORMING LAND**
102 **STEWARDSHIP ACTIVITIES ON PUBLIC LANDS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill strengthens existing legal protections under the federal "Volunteer Protection Act of 1997" and Colorado's "Volunteer Service Act" for individual volunteers and nonprofit entities who build or maintain recreational trails and related facilities pursuant to grants received under Colorado's "Recreational Trails System Act of 1971". Specifically, the bill:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
February 13, 2017

- ! Establishes either gross negligence or willful and wanton conduct as the minimum basis for liability, depending on whether the subject is an individual volunteer, a nonprofit entity, or a director, officer, or trustee of a nonprofit entity;
- ! Prohibits a grant agreement or procurement contract from requiring a nonprofit entity or volunteer to obtain insurance coverage for liability arising from completed operations; and
- ! Extends qualified immunity to a volunteer who operates a motor vehicle, including an off-highway vehicle or snowmobile, as part of a land stewardship activity.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 33-11-103, **amend**
 3 the introductory portion; and **add** (1.4), (1.6), (4.5), (8), and (9) as
 4 follows:

5 **33-11-103. Definitions.** As used in this ~~article~~ ARTICLE 11, unless
 6 the context otherwise requires:

7 (1.4) "GRANT" MEANS AN AWARD OF MONEY FROM ANY PUBLIC OR
 8 PRIVATE SOURCE, ALLOCATED IN ACCORDANCE WITH THE "PROCUREMENT
 9 CODE", ARTICLES 101 TO 112 OF TITLE 24, TO FURTHER ONE OR MORE OF
 10 THE PURPOSES ENUMERATED IN SECTION 33-11-102.

11 (1.6) "LAND STEWARDSHIP" MEANS THE DESIGN, ACQUISITION,
 12 CONSTRUCTION, EXPANSION, IMPROVEMENT, MAINTENANCE, OR
 13 OPERATION OF:

14 (a) A RECREATIONAL TRAIL, RECREATIONAL ROUTE, OR TRAIL
 15 CORRIDOR; OR

16 (b) ANY STRUCTURE OR FACILITY THAT IS PART OF, OR ASSOCIATED
 17 WITH THE PUBLIC USE AND ENJOYMENT OF, A RECREATIONAL TRAIL OR
 18 TRAIL CORRIDOR.

19 (4.5) "NONPROFIT ORGANIZATION" MEANS AN ORGANIZATION

1 THAT:

2 (a) HAS FILED ARTICLES OF INCORPORATION IN COLORADO AS A
3 NONPROFIT CORPORATION AND IS CURRENTLY IN GOOD STANDING, AS
4 EVIDENCED BY RECORDS OF THE COLORADO SECRETARY OF STATE;

5 (b) IS ORGANIZED AND CONDUCTED FOR PUBLIC BENEFIT AND
6 OPERATED _____ FOR CHARITABLE, CIVIC, EDUCATIONAL, RELIGIOUS,
7 WELFARE, OR HEALTH PURPOSES AND DOES NOT PRACTICE ANY ACTION
8 THAT CONSTITUTES A HATE CRIME UNDER STATE OR FEDERAL LAW; AND

9 (c) PERFORMS LAND STEWARDSHIP AS A RECIPIENT OF A GRANT.

10 (8) "VEHICLE" MEANS:

11 (a) A MOTORCYCLE, TRAILER, UTILITY TRAILER, OR MULTIPURPOSE
12 TRAILER, ALL AS DEFINED IN SECTION 42-1-102; AND

13 (b) ANY SELF-PROPELLED VEHICLE THAT IS DESIGNED TO TRAVEL
14 ON WHEELS OR TRACKS IN CONTACT WITH THE GROUND, THAT IS DESIGNED
15 PRIMARILY FOR USE OFF OF THE PUBLIC HIGHWAYS, AND THAT IS
16 GENERALLY AND COMMONLY USED TO TRANSPORT PERSONS FOR
17 RECREATIONAL PURPOSES.

18 (9)(a) "VOLUNTEER" MEANS A PERSON PERFORMING SERVICES FOR
19 A NONPROFIT ORGANIZATION WITHOUT COMPENSATION OTHER THAN
20 REIMBURSEMENT FOR ACTUAL EXPENSES INCURRED.

21 (b) "VOLUNTEER" INCLUDES A PERSON WHO SERVES WITHOUT
22 COMPENSATION AS A DIRECTOR, OFFICER, OR TRUSTEE OF A NONPROFIT
23 ORGANIZATION. FOR PURPOSES OF THIS ARTICLE 11, A PERSON SERVING AS
24 A DIRECTOR, OFFICER, OR TRUSTEE SHALL NOT BE CONSIDERED
25 COMPENSATED SOLELY BY REASON OF:

26 (I) THE PAYMENT OF THE PERSON'S ACTUAL EXPENSES INCURRED
27 IN ATTENDING MEETINGS OR IN EXECUTING THE DUTIES OF THE OFFICE;

- 1 (II) THE RECEIPT OF MEALS AT MEETINGS; OR
- 2 (III) THE RECEIPT OF GIFTS UP TO A TOTAL VALUE OF ONE
- 3 THOUSAND DOLLARS IN ANY TWELVE CONSECUTIVE MONTHS.

4 **SECTION 2.** In Colorado Revised Statutes, **add** 33-11-113 as
5 follows:

6 **33-11-113. Volunteer activities - qualified immunity - grant**
7 **agreements for land stewardship activities - terms - insurance**
8 **coverage - legislative declaration - scope of section.** (1) (a) THE
9 GENERAL ASSEMBLY DECLARES THAT THE PURPOSE OF THIS SECTION IS TO
10 PROVIDE ADDITIONAL PROTECTION, IN ACCORDANCE WITH 42 U.S.C. SEC.
11 14502 (a), TO VOLUNTEERS AND NONPROFIT ORGANIZATIONS PROVIDING
12 LAND STEWARDSHIP SERVICES UNDER THIS ARTICLE 11. IN CASE OF ANY
13 CONFLICT BETWEEN THIS SECTION AND SECTION 13-21-115.5 OR
14 13-21-115.7, OR BETWEEN THIS SECTION AND THE FEDERAL "VOLUNTEER
15 PROTECTION ACT OF 1997", 42 U.S.C. SEC. 14501 ET SEQ., THIS SECTION
16 CONTROLS.

17 (b) THIS SECTION DOES NOT APPLY TO LAND STEWARDSHIP
18 ACTIVITIES OCCURRING ON STATE LANDS.

19 (2) (a) A VOLUNTEER PERFORMING LAND STEWARDSHIP SERVICES
20 IN CONNECTION WITH A GRANT IS IMMUNE FROM CIVIL LIABILITY FOR ANY
21 ACT OR OMISSION THAT RESULTS IN DAMAGE OR INJURY IF THE VOLUNTEER
22 WAS ACTING WITHIN THE SCOPE OF HIS OR HER DESIGNATED DUTIES
23 UNLESS THE DAMAGE OR INJURY WAS CAUSED BY THE VOLUNTEER'S GROSS
24 NEGLIGENCE OR WILLFUL AND WANTON ACT OR OMISSION.

25 (b) A VOLUNTEER SERVING AS AN OFFICER, DIRECTOR, OR TRUSTEE
26 OF A NONPROFIT ORGANIZATION PERFORMING LAND STEWARDSHIP
27 SERVICES IN CONNECTION WITH A GRANT IS IMMUNE FROM CIVIL LIABILITY

1 FOR ANY ACT OR OMISSION THAT RESULTS IN DAMAGE OR INJURY IF THE
2 VOLUNTEER WAS ACTING WITHIN THE SCOPE OF HIS OR HER OFFICIAL
3 FUNCTIONS AND DUTIES AS A DIRECTOR, OFFICER, OR TRUSTEE UNLESS THE
4 DAMAGE OR INJURY WAS CAUSED BY A WILLFUL AND WANTON ACT OR
5 OMISSION OF THE DIRECTOR, OFFICER, OR TRUSTEE.

6 (c) A NONPROFIT ORGANIZATION PERFORMING LAND STEWARDSHIP
7 SERVICES IN CONNECTION WITH A GRANT IS IMMUNE FROM CIVIL LIABILITY
8 FOR ANY ACT OR OMISSION THAT RESULTS IN DAMAGE OR INJURY UNLESS
9 THE DAMAGE OR INJURY WAS CAUSED BY THE NONPROFIT ORGANIZATION'S
10 WILLFUL AND WANTON ACT OR OMISSION.

11 (3) NOTHING IN THIS SECTION ESTABLISHES, DIMINISHES, OR
12 ABROGATES ANY DUTY THAT A DIRECTOR, OFFICER, OR TRUSTEE OF A
13 NONPROFIT ORGANIZATION HAS TO THE NONPROFIT ORGANIZATION FOR
14 WHICH THE DIRECTOR, OFFICER, OR TRUSTEE SERVES.

15 (4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A GRANT
16 AGREEMENT, PROCUREMENT CONTRACT, OR OTHER AGREEMENT
17 GOVERNING THE CONDUCT OF LAND STEWARDSHIP ACTIVITIES BY A
18 NONPROFIT ORGANIZATION OR VOLUNTEER IN CONNECTION WITH A GRANT
19 MUST NOT:

20 (a) DIFFERENTIATE BETWEEN "CONSTRUCTION" AND
21 "MAINTENANCE", OR WORDS OF SIMILAR IMPORT, FOR LIABILITY PURPOSES;
22 OR

23 (b) REQUIRE THE NONPROFIT ORGANIZATION OR ANY VOLUNTEER
24 TO PURCHASE OR MAINTAIN WHAT IS OR WAS, AS OF JANUARY 1, 2017,
25 COMMONLY KNOWN AS COMPLETED OPERATIONS LIABILITY COVERAGE OR
26 THE SUBSTANTIAL EQUIVALENT OF COMPLETED OPERATIONS LIABILITY
27 COVERAGE, HOWEVER DESIGNATED.

1 (5) (a) (I) THE IMMUNITY GRANTED BY SUBSECTIONS (2)(a) AND
2 (2)(b) OF THIS SECTION DOES NOT EXTEND TO ANY ACT OR OMISSION BY A
3 VOLUNTEER WHILE OPERATING A VEHICLE UNLESS THE OPERATION OF THE
4 VEHICLE IS AN INTEGRAL PART OF, AND PHYSICALLY PROXIMATE TO, A
5 LAND STEWARDSHIP ACTIVITY AND WITHIN THE SCOPE OF THE
6 VOLUNTEER'S DESIGNATED DUTIES IN CONNECTION WITH THAT ACTIVITY.

7 (II) NOTWITHSTANDING SUBSECTION (2)(a) OR (2)(b) OF THIS
8 SECTION, A PLAINTIFF MAY SUE AND RECOVER CIVIL DAMAGES FROM A
9 VOLUNTEER BASED UPON A NEGLIGENT ACT OR OMISSION INVOLVING THE
10 OPERATION OF A MOTOR VEHICLE DURING A LAND STEWARDSHIP ACTIVITY;
11 EXCEPT THAT THE AMOUNT RECOVERED FROM THE VOLUNTEER SHALL NOT
12 EXCEED THE LIMITS OF APPLICABLE INSURANCE COVERAGE MAINTAINED
13 BY OR ON BEHALF OF THE VOLUNTEER WITH RESPECT TO THE NEGLIGENT
14 OPERATION OF A MOTOR VEHICLE IN SUCH CIRCUMSTANCES. NOTHING IN
15 THIS SUBSECTION (5)(a)(II) LIMITS THE RIGHT OF A PLAINTIFF TO RECOVER
16 FROM A POLICY OF UNINSURED OR UNDERINSURED MOTORIST COVERAGE
17 AVAILABLE TO THE PLAINTIFF AS A RESULT OF A MOTOR VEHICLE
18 ACCIDENT.

19 (b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A GRANT
20 AGREEMENT, PROCUREMENT CONTRACT, OR OTHER AGREEMENT
21 GOVERNING THE CONDUCT OF LAND STEWARDSHIP ACTIVITIES BY A
22 NONPROFIT ORGANIZATION OR VOLUNTEER IN CONNECTION WITH A GRANT
23 MUST NOT REQUIRE THE NONPROFIT ORGANIZATION OR ANY VOLUNTEER
24 TO PURCHASE OR MAINTAIN LIABILITY COVERAGE FOR OPERATION OF A
25 VEHICLE OTHER THAN A COMPLYING POLICY OF INSURANCE AS REQUIRED
26 BY COLORADO LAW, OTHER THAN THIS ARTICLE 11, FOR LAWFUL
27 OPERATION OF THE VEHICLE IN COLORADO.

1 **SECTION 3. Act subject to petition - effective date.** This act
2 takes effect at 12:01 a.m. on the day following the expiration of the
3 ninety-day period after final adjournment of the general assembly (August
4 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
5 referendum petition is filed pursuant to section 1 (3) of article V of the
6 state constitution against this act or an item, section, or part of this act
7 within such period, then the act, item, section, or part will not take effect
8 unless approved by the people at the general election to be held in
9 November 2018 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.