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SENATE BILL 17-100

BY SENATOR(S) Sonnenberg, Baumgardner, Coram, Crowder, Donovan, Jahn, Kefalas, Marble, Martinez Humenik, Moreno, Scott, Tate; also REPRESENTATIVE(S) Landgraf and Arndt, Mitsch Bush, Catlin, Valdez.

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

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

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

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

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

(1.6) "LAND STEWARDSHIP" MEANS THE DESIGN, ACQUISITION, CONSTRUCTION, EXPANSION, IMPROVEMENT, MAINTENANCE, OR OPERATION

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

OF:

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

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

(4.5) "NONPROFIT ORGANIZATION" MEANS AN ORGANIZATION THAT:

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

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

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

(8) "VEHICLE" MEANS:

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

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

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

(b) "VOLUNTEER" INCLUDES A PERSON WHO SERVES WITHOUT COMPENSATION AS A DIRECTOR, OFFICER, OR TRUSTEE OF A NONPROFIT ORGANIZATION. FOR PURPOSES OF THIS ARTICLE 11, A PERSON SERVING AS

A DIRECTOR, OFFICER, OR TRUSTEE SHALL NOT BE CONSIDERED COMPENSATED SOLELY BY REASON OF:

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

(II) THE RECEIPT OF MEALS AT MEETINGS; OR

(III) THE RECEIPT OF GIFTS UP TO A TOTAL VALUE OF ONE THOUSAND DOLLARS IN ANY TWELVE CONSECUTIVE MONTHS.

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

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

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

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

(b) A VOLUNTEER SERVING AS AN OFFICER, DIRECTOR, OR TRUSTEE OF A NONPROFIT ORGANIZATION PERFORMING LAND STEWARDSHIP SERVICES IN CONNECTION WITH A GRANT IS IMMUNE FROM CIVIL LIABILITY FOR ANY ACT OR OMISSION THAT RESULTS IN DAMAGE OR INJURY IF THE VOLUNTEER WAS ACTING WITHIN THE SCOPE OF HIS OR HER OFFICIAL FUNCTIONS AND

DUTIES AS A DIRECTOR, OFFICER, OR TRUSTEE UNLESS THE DAMAGE OR INJURY WAS CAUSED BY A WILLFUL AND WANTON ACT OR OMISSION OF THE DIRECTOR, OFFICER, OR TRUSTEE.

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

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

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

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

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

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

(II) NOTWITHSTANDING SUBSECTION (2)(a) OR (2)(b) OF THIS SECTION, A PLAINTIFF MAY SUE AND RECOVER CIVIL DAMAGES FROM A VOLUNTEER BASED UPON A NEGLIGENT ACT OR OMISSION INVOLVING THE

OPERATION OF A MOTOR VEHICLE DURING A LAND STEWARDSHIP ACTIVITY; EXCEPT THAT THE AMOUNT RECOVERED FROM THE VOLUNTEER SHALL NOT EXCEED THE LIMITS OF APPLICABLE INSURANCE COVERAGE MAINTAINED BY OR ON BEHALF OF THE VOLUNTEER WITH RESPECT TO THE NEGLIGENT OPERATION OF A MOTOR VEHICLE IN SUCH CIRCUMSTANCES. NOTHING IN THIS SUBSECTION (5)(a)(II) LIMITS THE RIGHT OF A PLAINTIFF TO RECOVER FROM A POLICY OF UNINSURED OR UNDERINSURED MOTORIST COVERAGE AVAILABLE TO THE PLAINTIFF AS A RESULT OF A MOTOR VEHICLE ACCIDENT.

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

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

and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO