

CHAPTER 143

COURTS

HOUSE BILL 06-1076

BY REPRESENTATIVE(S) Penry, Berens, Gardner, Harvey, Knoedler, Lundberg, McCluskey, Paccione, Plant, Schultheis, Todd, Witwer, Hall, Kerr J., and Massey;
 also SENATOR(S) Traylor, Brophy, Dyer, Isgar, Keller, Kester, Mitchell, Sandoval, Shaffer, Spence, Tapia, Taylor, Teck, Tochtrop, Wiens, and Williams.

AN ACT

CONCERNING IMMUNITY FROM CIVIL LIABILITY UNDER THE "VOLUNTEER SERVICE ACT".

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

SECTION 1. 13-21-115.5 (3) (c), (4) (a), and (4) (b), Colorado Revised Statutes, are amended to read:

13-21-115.5. Volunteer service act - immunity - exception for operation of motor vehicles. (3) As used in this section, unless the context otherwise requires:

(c) (I) "Volunteer" means a person performing services for a nonprofit organization, a nonprofit corporation, A GOVERNMENTAL ENTITY, or a hospital without compensation, other than reimbursement for actual expenses incurred. The term excludes a volunteer serving as a director, officer, or trustee who shall be protected from civil liability in accordance with the provisions of sections 13-21-116 and 13-21-115.7.

(II) ~~The term~~ "VOLUNTEER" includes:

(A) A licensed physician AND A LICENSED PHYSICIAN ASSISTANT GOVERNED BY THE PROVISIONS OF ARTICLE 36 OF TITLE 12, C.R.S., ~~performing medical services or providing medical care or treatment~~ THE PRACTICE OF MEDICINE, AS DEFINED IN SECTION 12-36-106, C.R.S., as a volunteer for a nonprofit organization, a nonprofit corporation, A GOVERNMENTAL ENTITY, or a hospital;

(B) A LICENSED CHIROPRACTOR GOVERNED BY THE PROVISIONS OF ARTICLE 33 OF TITLE 12, C.R.S., PERFORMING CHIROPRACTIC, AS DEFINED IN SECTION 12-33-102

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

(1), C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(C) A REGISTERED MIDWIFE GOVERNED BY THE PROVISIONS OF ARTICLE 37 OF TITLE 12, C.R.S., PERFORMING THE PRACTICE OF DIRECT-ENTRY MIDWIFERY, AS DEFINED IN SECTION 12-37-102 (2), C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(D) A LICENSED NURSE GOVERNED BY THE "NURSE PRACTICE ACT", ARTICLE 38 OF TITLE 12, C.R.S., PERFORMING THE PRACTICE OF PRACTICAL NURSING OR THE PRACTICE OF PROFESSIONAL NURSING, AS DEFINED IN SECTION 12-38-103 (9) AND (10), C.R.S., RESPECTIVELY, AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(E) A REGISTERED ADVANCE PRACTICE NURSE GOVERNED BY THE "NURSE PRACTICE ACT", ARTICLE 38 OF TITLE 12, C.R.S., PERFORMING NURSING TASKS WITHIN THE SCOPE OF THE PERSON'S NURSING LICENSE AND PERFORMING ADVANCED PRACTICE UNDER AUTHORITY GRANTED BY THE STATE BOARD OF NURSING PURSUANT TO SECTIONS 12-38-111.5 AND 12-38-111.6, C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(F) A LICENSED RETIRED VOLUNTEER NURSE GOVERNED BY THE PROVISIONS OF ARTICLE 38 OF TITLE 12, C.R.S., PERFORMING VOLUNTEER NURSING TASKS WITHIN THE SCOPE OF THE PERSON'S NURSING LICENSE, AS DESCRIBED IN SECTION 12-38-112.5, C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(G) A CERTIFIED NURSE AIDE GOVERNED BY THE PROVISIONS OF ARTICLE 38.1 OF TITLE 12, C.R.S., PERFORMING THE PRACTICE OF A NURSE AIDE, AS DEFINED IN SECTION 12-38.1-102 (5), C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(H) A LICENSED NURSING HOME ADMINISTRATOR AND REGISTERED NURSING HOME ADMINISTRATOR-IN-TRAINING GOVERNED BY THE PROVISIONS OF ARTICLE 39 OF TITLE 12, C.R.S., PERFORMING THE PRACTICE OF NURSING HOME ADMINISTRATION, AS DEFINED IN SECTION 12-39-102 (5), C.R.S., AND THE TRAINING OF AN ADMINISTRATOR-IN-TRAINING, AS DESCRIBED IN SECTION 12-39-107, C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(I) A LICENSED OPTOMETRIST GOVERNED BY THE PROVISIONS OF ARTICLE 40 OF TITLE 12, C.R.S., PERFORMING THE PRACTICE OF OPTOMETRY, AS DEFINED IN SECTION 12-40-102, C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(J) A LICENSED PHYSICAL THERAPIST GOVERNED BY THE "PHYSICAL THERAPY PRACTICE ACT", ARTICLE 41 OF TITLE 12, C.R.S., PERFORMING PHYSICAL THERAPY, AS DEFINED IN SECTION 12-41-103 (6), C.R.S., AS A VOLUNTEER FOR A NONPROFIT

ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(K) A LICENSED RESPIRATORY THERAPIST GOVERNED BY THE "RESPIRATORY THERAPY PRACTICE ACT", ARTICLE 41.5 OF TITLE 12, C.R.S., PERFORMING RESPIRATORY THERAPY, AS DEFINED IN SECTION 12-41.5-103 (6), C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(L) A LICENSED PSYCHIATRIC TECHNICIAN GOVERNED BY THE PROVISIONS OF ARTICLE 42 OF TITLE 12, C.R.S., PERFORMING THE PRACTICE AS A PSYCHIATRIC TECHNICIAN, AS DEFINED IN SECTION 12-42-102 (4), C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(M) A LICENSED PSYCHOLOGIST GOVERNED BY THE PROVISIONS OF ARTICLE 43 OF TITLE 12, C.R.S., PERFORMING THE PRACTICE OF PSYCHOLOGY, AS DEFINED IN SECTION 12-43-303, C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(N) A LICENSED SOCIAL WORKER AND LICENSED CLINICAL SOCIAL WORKER GOVERNED BY THE PROVISIONS OF ARTICLE 43 OF TITLE 12, C.R.S., PERFORMING SOCIAL WORK PRACTICE, AS DEFINED IN SECTION 12-43-403, C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(O) A LICENSED MARRIAGE AND FAMILY THERAPIST GOVERNED BY THE PROVISIONS OF ARTICLE 43 OF TITLE 12, C.R.S., PERFORMING MARRIAGE AND FAMILY THERAPY PRACTICE, AS DEFINED IN SECTION 12-43-503, C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(P) A LICENSED PROFESSIONAL COUNSELOR GOVERNED BY THE PROVISIONS OF ARTICLE 43 OF TITLE 12, C.R.S., PERFORMING PROFESSIONAL COUNSELING, AS DEFINED IN SECTION 12-43-601 (5), C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL;

(Q) A LICENSED PHARMACIST GOVERNED BY THE PROVISIONS OF ARTICLE 22 OF TITLE 12, C.R.S., PERFORMING THE PRACTICE OF PHARMACY, AS DEFINED IN SECTION 12-22-102 (26), C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL; AND

(R) A LICENSED DENTIST GOVERNED BY THE PROVISIONS OF ARTICLE 35 OF TITLE 12, C.R.S., PERFORMING THE PRACTICE OF DENTISTRY, AS DEFINED IN SECTION 12-35-103 (5), C.R.S., AND AS DESCRIBED IN SECTION 12-35-113, C.R.S., AS A VOLUNTEER FOR A NONPROFIT ORGANIZATION, A NONPROFIT CORPORATION, A GOVERNMENTAL ENTITY, OR A HOSPITAL.

(III) The nonprofit organization, nonprofit corporation, GOVERNMENTAL ENTITY, or hospital for which ~~the physician volunteers~~ A VOLUNTEER PERFORMS shall

annually verify that the ~~physician~~ VOLUNTEER holds an unrestricted Colorado license, REGISTRATION, OR CERTIFICATION to practice ~~medicine~~ HIS OR HER RESPECTIVE PROFESSION.

(4) (a) Any volunteer shall be immune from civil liability in any action on the basis of any act or omission of a volunteer resulting in damage or injury if:

(I) ~~The volunteer was acting in good faith and within the scope of such volunteer's official functions and duties for a nonprofit organization, a nonprofit corporation, or a hospital~~ IS IMMUNE FROM LIABILITY FOR THE ACT OR OMISSION UNDER THE FEDERAL "VOLUNTEER PROTECTION ACT", 42 U.S.C. SEC. 14501 ET SEQ.; AND

(II) The damage or injury was not caused by ~~willful and wanton~~ misconduct by OR OTHER CIRCUMSTANCES THAT WOULD PRECLUDE IMMUNITY FOR such volunteer UNDER THE FEDERAL LAW DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

(III) ~~The damage or injury was not caused by gross negligence or by willful and wanton misconduct by such volunteer if such volunteer is a licensed physician and the physician's volunteer status was declared before the medical procedure occurred and the patient receiving the volunteered medical care, or the patient's representative, agreed in writing beforehand to accept such volunteered care after disclosure that the patient's right to sue the volunteer physician will be subject to the limitations of this section.~~

(b) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), nothing in this section shall be construed to bar any cause of action against a nonprofit organization, nonprofit corporation, GOVERNMENTAL ENTITY, or hospital or change the liability otherwise provided by law of a nonprofit organization, nonprofit corporation, GOVERNMENTAL ENTITY, or hospital arising out of an act or omission of a volunteer exempt from liability for negligence under this section.

(II) A NONPROFIT ORGANIZATION, NONPROFIT CORPORATION, GOVERNMENTAL ENTITY, OR HOSPITAL THAT IS FORMED FOR THE SOLE PURPOSE OF FACILITATING THE VOLUNTEER PROVISION OF HEALTH CARE SHALL BE IMMUNE FROM LIABILITY ARISING OUT OF AN ACT OR OMISSION OF A VOLUNTEER THAT IS IMMUNE FROM LIABILITY UNDER THIS SUBSECTION (4).

SECTION 2. Effective date - applicability. This act shall take effect July 1, 2006, and shall apply to causes of action accruing on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 19, 2006