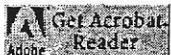
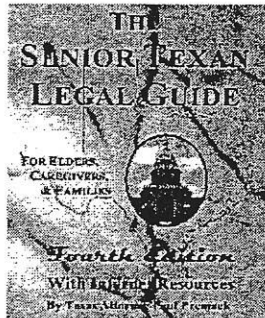


Volunteer Liability

Paul Premack, JD
CELA
Counselor at Law
8031 Broadway
San Antonio, TX 78209
210-826-1122



TEXAS CHARITABLE IMMUNITY AND LIABILITY ACT

Analysis and Information

© 1989-2004, Paul Premack, Attorney

Read the [Full Text](#) of the Statute: [Chapter 84 of the Texas Civil Practice and Remedies Code](#)

The Texas Charitable Immunity and Liability Act was passed by the Texas Legislature and signed into law in 1987. As justification for the Act, the legislature pronounced that a problem existed which the Act was meant to cure. That problem was:

"that the willingness of volunteers to offer their services to 'robust, active, bona fide and well-supported charitable organizations' was being deterred by the perception that volunteers would suffer personal liability; that because of the fear of

personal liability, volunteers were withdrawing from providing services, and that this withdrawal diminished the quantity and quality of services available because of higher cost or fewer programs remaining in existence.

The Act is not universal in offering immunity. To qualify under the act, an organization must either be: a homeowner's association; or a registered tax-exempt organization under the applicable provisions of the Internal Revenue Code, or an organization that provides charitable or religious services, prevents cruelty to animals or children, provides youth sports or recreation, provides educational services, or (more generally) provides for the social welfare and common good of the people in a community.

However, an alumni association or any type of related on-campus organization is not qualified (hence it's volunteers are exposed to liability).

An Officer or Director, oddly enough, does not have to be acting "in good faith" to be immune from liability.

If the mishap occurs while the volunteer is operating a vehicle (car, boat, plane) the volunteer is liable but just up to the level covered by existing insurance provided by the individual or organization. The "Texas Motor Vehicle Act" requires all vehicle operators to have in force liability insurance with the following limits:

\$20,000 for injury or death of one person;

\$40,000 for injury or death of two people;

\$15,000 for property damage arising out of any one accident.

If an "Employee" causes damages while on the job, then both the Employee and the Organization are liable for the damages, but only to the extent of \$1,000,000 for injuries or death to any single person and \$100,000 for property damage. The Organization should, therefore, purchase liability coverage with a \$1,000,000 limit for personal injury and \$100,000 for property damage so that the employee and organization will be covered (which is actually a requirement of law -- see below).

Even though the Act is meant to limit liability, it does not limit liability at all in the following cases:

Any organization that fits the list in must additionally:

- . refrain from activities that are not charitable;
- . refrain from participation in political campaigns;
- . dedicate its assets to charitable purposes and, if the organization is disbanded in the future must distribute its assets only to other charitable organizations; and
- . receive more than 1/3 of its funds from private or public gifts, grants, contributions, or membership fees.

The Act limits liability differently for three different groups. They are:

1. Volunteers: someone who works for the organization without being paid. Even so, the volunteer can be

reimbursed for expenses;

2. Employees: any person who is paid for regularly provided services to the organization; and
3. The "Organization" itself.

A Volunteer (including an unpaid Director or Officer) is immune from civil liability for any act or omission, even if it results in someone's death, or injury, or property damage if the mishap occurred while the volunteer was "acting in the course and scope" of his/her duties for the organization. An ordinary volunteer must be acting "in good faith" in order to be immune from liability. Good Faith means the honest and conscientious pursuit of the activities which the organization was created to provide.

. If the Organization is not "qualified" (see above);

- . If the injury is from an intentional, willful, or wantonly negligent act;
- . If the injury is from an act done with conscious disregard for the safety of others;
- . If the act is performed by one of the Directors and the act injures the Organization itself;
- . If the Organization was set up simply to take advantage of this law (and doesn't have a real charitable purpose);
- . If the purpose of the Organization is to deal in hazardous wastes;
- . If the Organization is licensed by Texas to provide Health

Care Services. However, liability is limited if the Health Care Provider is a federally funded migrant or community health care center or if the Health Care is provided at or below cost because the recipients are not able to pay.

. Finally, the Act does not limit liability for any Organization unless it has liability insurance that covers \$1,000,000 for personal injury and \$100,000 for property damage.