

Model Anti-Drug Volunteer Protection Act

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Model Anti-Drug Volunteer Protection Act Policy Statement

Anti-drug volunteer efforts have been critical in holding the line against the social disintegration that has accompanied the explosion in drug-related criminal activities. Such volunteer efforts have been struggling heroically to re-stitch the social fabric that has, in many communities, largely unraveled.

Nonetheless, many anti-drug volunteers are hesitant to offer their services, deterred by an increasingly widespread perception that their personal assets may be placed at risk if someone is inadvertently harmed as a result of their volunteer activities. This fear must not be permitted to stand in the way of their critical contributions to the community. This Act attempts to strike a balance between the right of an individual who has been harmed to seek compensation and the right of the individual to freely give time and energy without compensation as an anti-drug volunteer without fear of personal liability for good faith, non-malicious conduct. The interest of the community in benefitting from that individual's volunteer activity must also be weighed in the balance.

This Act is similar in legal effect to other Good Samaritan laws that have been passed, for groups as disparate as medical emergency personnel and Little League baseball coaches. It is intended to encourage volunteers to join the struggle to reduce drug use in their communities.

The Act's limitation of liability of anti-drug volunteers resembles existing volunteer protection laws in nearly every state. While the state laws vary, all rest upon the premise that certain categories of volunteers should not be subjected to full personal liability. Several of the laws, including those of Maryland and Kansas, permit recovery against an insured volunteer up to the limits of the policy. Other states have long limited recovery against charitable organizations to the amount of insurance, if any.

This Act fairly balances the competing interests of anti-drug volunteers and would-be plaintiffs. More importantly, the Act recognizes that the country's general social welfare hangs in the balance when liability fears dampen volunteer initiative.

The United States Supreme Court and the judiciary in most states give legislatures wide latitude to modify tort rules. (See *Constitutionality of the Charitable Redress System*, Charles Tremper, Esq. 76 *Cornell Law Review* 466 (Jan. 1991)) A rational basis generally suffices for permitting recovery against some defendants and disallowing it against others or limiting the amount of recovery.

Highlights of the Model Anti-Drug Volunteer Protection Act

- Provides immunity for civil liability if the anti-drug volunteer was:
 1. acting in good faith; and
 2. acting within the scope of the volunteer's role with the anti-drug volunteer organization; and
 3. not engaging in willful or wanton misconduct; and
 4. acting legally.
- Defines anti-drug volunteer organization broadly to include any non-profit organization (need not be certified as Section 501(c) organization, so long as meets Section 501(c) description), corporate volunteer program, medical facility, or substance abuse treatment program.
- Limits liability of anti-drug volunteer organizations to economic damages, eliminating liability for non-economic damages such as pain and suffering.

Model Anti-Drug Volunteer Protection Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the “Model Anti-Drug Volunteer Protection Act.”

Section 2. Legislative Findings and Purpose

(a) The willingness of anti-drug volunteers to offer their services has been increasingly deterred by a perception that they put personal assets at risk in the event of tort actions seeking damages arising from their activities as volunteers.

(b) The contributions of anti-drug programs, activities and services to communities are diminished by the resulting unwillingness of individuals to serve either as volunteers or as officers, directors and trustees of nonprofit public and private organizations.

(c) It is in the public interest to strike a balance between the right of a person to seek redress for injury and the right of an individual to freely give time and energy without compensation as a volunteer working to reduce drug use in the community, without fear of personal liability for acts undertaken in good faith, absent willful or wanton conduct on the part of the volunteer

(d) The provisions of the [Act] are intended to encourage volunteers to contribute their services to reduce the drug use in their communities and at the same time provide a reasonable basis for redress of claims which may arise relating to those services.

Section 3. Definitions.

As used in this [Act]:

(a) “Anti-drug volunteer” is any person performing services for an anti-drug volunteer organization or governmental organization without compensation, other than reimbursement for actual expenses incurred. The term includes a volunteer serving as a director, officer, trustee or direct service volunteer.

(b) “Anti-drug volunteer organization” is any nonprofit organization, corporate volunteer program, medical facility, or substance abuse treatment program, that uses volunteers to reduce drug use in the community.

(c) “Corporate volunteer program” means a program administered by any entity other than a nonprofit organization or governmental entity that enlists primarily its own employees, retirees, partners, or professional affiliates in a volunteer capacity to achieve objectives that would qualify as charitable under section 501(c) of the United States Internal Revenue Code.

(d) “Governmental entity” means any county, municipality, township, school district, chartered unit or subdivision, governmental unit, other special district, similar entity, or any association, authority, board commission, division office, officer, task force or other agency of any state, county or municipality.

(e) “Nonprofit organization” means any organization which is described in section 501(c) of the United States Internal Revenue Code, 26 U.S.C. 501(c), whether or not it has been certified by the United States Internal Revenue Service.

(f) “Willful and wanton misconduct” means conduct which is committed with an intentional or reckless disregard for the safety of others or with an intentional disregard of a duty necessary to the safety of another’s property.

COMMENT

Because the following section applies the protections afforded under this [Act] to “anti-drug volunteers”, the definitions of “anti-drug volunteers” and “anti-drug volunteer organization” effectively defines the scope of who receives limited immunity. The [Act’s] protections do not apply to compensated individuals; they are entitled to the same protections and subject to the same liabilities of compensated individuals in other occupations. The [Act] is intended to reflect the Commission’s sense that those who already are sacrificing their time and effort *without* pay to reduce drug use in their com-

munities should not be held under the law to be putting their property at risk by virtue of their contributions to the community.

Additionally, the required purpose of an anti-drug volunteer organization, “to reduce drug use in the community,” should be broadly interpreted. A wide range of community programs is envisioned, such as those that provide beneficial alternatives to drug use.

The definitions in this section depend one upon the other. Specifically, an “anti-drug volunteer” is defined as one who works for an “anti-drug volunteer organization,” which in turn is defined to include certain “non-profit organizations” and “corporate volunteer programs,” which terms are also defined. Thus, subsequent references to “anti-drug volunteers” incorporate five of the six definitions in this section.

Section 4. Scope of Immunity for Anti-Drug Volunteers.

Any anti-drug volunteer shall be immune from civil liability if:

- (a) the volunteer was acting in good faith and within the scope of such volunteer’s role with an anti-drug volunteer organization or governmental entity; and
- (b) the damage or injury was not caused by willful and wanton misconduct or illegal conduct by such volunteer.

COMMENT

This section sets forth the heart of the [Act]. The liability protections are not absolute. It is designed to carefully contour the [Act’s] protections to protect only that conduct which is to be encouraged. It cannot be used to protect “bad” actions; nor can it be used as a shield to protect actions that truly are not within the scope of the volunteer’s role with an anti-drug volunteer organization or governmental entity.

Section 5. Limitation of Liability for Anti-Drug Volunteer Organizations.

With respect to claims arising from any activity undertaken for the primary purpose of reducing drug use in the community, an anti-drug volunteer organization shall not be liable for non-economic damages, including but not limited to pain and suffering and loss of consortium.

COMMENT

Anti-drug volunteer *organizations*, retain a limited liability which the individuals in the organizations do not have under this [Act]. This provision represents a compromise between two legitimate interests: 1) the interest of the injured individual to have the actual resulting costs paid by the entity (the anti-drug volunteer organization) who wrongfully caused the individual’s injury; and 2) society’s interest in preserving the assets of such organizations to carry on their anti-drug activities. The compromise is that the injured individual may be able to collect their actual *economic* losses, such as medical expenses, property damage and lost wages. However, the resources of anti-drug volunteer organizations will *not* be available to pay non-economic damages, such as compensation for loss of consortium, or pain and suffering.

It is intended that Section 5 not obviate the protection against *personal* liability which Section 4 provides. Thus, a plaintiff subject suing an anti-drug volunteer organization would not be able to reach beyond the organization to obtain damages from board members or other individuals associated with the organization, except to the extent that such individuals’ injurious conduct actually falls outside the scope of immunity set forth in Section 4.

Section 6. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 7. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date][reference to specific date].