

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1125

To reform liability for certain charitable contributions and services.

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IN THE SENATE OF THE UNITED STATES

MAY 25, 2005

Mr. SANTORUM introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To reform liability for certain charitable contributions and services.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Expanding Charitable  
5       and Volunteer Opportunities Act”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

8               (1) AIRCRAFT.—The term “aircraft” has the  
9       meaning provided that term in section 40102(6) of  
10       title 49, United States Code.

1           (2) BUSINESS ENTITY.—The term “business  
2           entity” means a firm, corporation, association, part-  
3           nership, consortium, joint venture, or other form of  
4           enterprise.

5           (3) EQUIPMENT.—The term “Equipment” in-  
6           cludes mechanical equipment, electronic equipment,  
7           and office equipment.

8           (4) FACILITY.—The term “facility” means any  
9           real property, including any building, improvement,  
10          or appurtenance.

11          (5) FIRE CONTROL OR FIRE RESCUE EQUIP-  
12          MENT.—The term “fire control or fire rescue equip-  
13          ment” includes any fire vehicle, fire fighting tool,  
14          communications equipment, protective gear, fire  
15          hose, or breathing apparatus.

16          (6) GROSS NEGLIGENCE.—The term “gross  
17          negligence” means voluntary and conscious conduct  
18          by a person with knowledge (at the time of the con-  
19          duct) that the conduct is likely to be harmful to the  
20          health or well-being of another person.

21          (7) INTENTIONAL MISCONDUCT.—The term  
22          “intentional misconduct” means conduct by a person  
23          with knowledge (at the time of the conduct) that the  
24          conduct is harmful to the health or well-being of an-  
25          other person.

1           (8) MOTOR VEHICLE.—The term “motor vehi-  
2           cle” has the meaning provided that term in section  
3           30102(6) of title 49, United States Code.

4           (9) NONPROFIT ORGANIZATION.—The term  
5           “nonprofit organization” means—

6                   (A) any organization described in section  
7                   501(c)(3) of the Internal Revenue Code of 1986  
8                   and exempt from tax under section 501(a) of  
9                   such Code; or

10                   (B) any not-for-profit organization orga-  
11                   nized and conducted for public benefit and op-  
12                   erated primarily for charitable, civic, edu-  
13                   cational, religious, welfare, or health purposes.

14           (10) PERSON.—The term “person” includes  
15           any governmental or other entity.

16           (11) VOLUNTEER FIRE COMPANY.—The term  
17           “volunteer fire company” means an association of  
18           individuals who provide fire protection and other  
19           emergency services, where at least 30 percent of the  
20           individuals receive little or no compensation com-  
21           pared with an entry level full-time paid individual in  
22           that association or in the nearest such association  
23           with an entry level full-time paid individual.

24           (12) STATE.—The term “State” means each of  
25           the several States, the District of Columbia, the

1 Commonwealth of Puerto Rico, the Virgin Islands,  
 2 Guam, American Samoa, the Commonwealth of the  
 3 Northern Mariana Islands, any other territory or  
 4 possession of the United States, or any political sub-  
 5 division of any such State, territory, or possession.

6 **SEC. 3. CHARITABLE DONATIONS LIABILITY REFORM FOR**  
 7 **IN-KIND CORPORATE CONTRIBUTIONS.**

8 (a) IN GENERAL.—

9 (1) LIABILITY OF BUSINESS ENTITIES THAT  
 10 DONATE EQUIPMENT TO NONPROFIT ORGANIZA-  
 11 TIONS.—

12 (A) IN GENERAL.—Subject to subsection  
 13 (b), a business entity shall not be subject to  
 14 civil liability relating to any injury or death that  
 15 results from the use of equipment donated by  
 16 such business entity to a nonprofit organiza-  
 17 tion.

18 (B) APPLICATION.—This paragraph shall  
 19 apply with respect to civil liability under Fed-  
 20 eral and State law.

21 (2) LIABILITY OF BUSINESS ENTITIES PRO-  
 22 VIDING USE OF FACILITIES TO NONPROFIT ORGANI-  
 23 ZATIONS.—

24 (A) IN GENERAL.—Subject to subsection  
 25 (b), a business entity shall not be subject to

1 civil liability relating to any injury or death oc-  
2 ccurring at a facility of the business entity in  
3 connection with a use of such facility by a non-  
4 profit organization, if—

5 (i) the use occurs outside of the scope  
6 of business of the business entity;

7 (ii) such injury or death occurs during  
8 a period that such facility is used by the  
9 nonprofit organization; and

10 (iii) the business entity authorized the  
11 use of such facility by the nonprofit orga-  
12 nization.

13 (B) APPLICATION.—This paragraph shall  
14 apply—

15 (i) with respect to civil liability under  
16 Federal and State law; and

17 (ii) regardless of whether a nonprofit  
18 organization pays for the use of a facility.

19 (3) LIABILITY OF BUSINESS ENTITIES PRO-  
20 VIDING USE OF A MOTOR VEHICLE OR AIRCRAFT.—

21 (A) IN GENERAL.—Subject to subsection  
22 (b), a business entity shall not be subject to  
23 civil liability relating to any injury or death oc-  
24 ccurring as a result of the operation of an air-  
25 craft or a motor vehicle of the business entity

1           loaned to a nonprofit organization for use out-  
2           side of the scope of business of the business en-  
3           tity, if—

4                   (i) such injury or death occurs during  
5                   a period that such motor vehicle or aircraft  
6                   is used by a nonprofit organization; and

7                   (ii) the business entity authorized the  
8                   use by the nonprofit organization of motor  
9                   vehicle or aircraft that resulted in the in-  
10                  jury or death.

11               (B) APPLICATION.—This paragraph shall  
12               apply—

13                   (i) with respect to civil liability under  
14                   Federal and State law; and

15                   (ii) regardless of whether a nonprofit  
16                   organization pays for the use of the air-  
17                   craft or motor vehicle.

18               (b) EXCEPTIONS.—Subsection (a) shall not apply to  
19               an injury or death that results from an act or omission  
20               of a business entity that constitutes gross negligence or  
21               intentional misconduct.

22               (c) SUPERSEDING PROVISION.—

23                   (1) IN GENERAL.—Subject to paragraph (2)  
24                   and subsection (d), this section preempts the laws of  
25                   any State to the extent that such laws are incon-

1       sistent with this section, except that this section  
2       shall not preempt any State law that provides addi-  
3       tional protection for a business entity for an injury  
4       or death described in a paragraph of subsection (a)  
5       with respect to which the conditions specified in  
6       such paragraph apply.

7               (2) LIMITATION.—Nothing in this section shall  
8       be construed to supersede any Federal or State  
9       health or safety law.

10       (d) ELECTION OF STATE REGARDING NONAPPLICA-  
11       BILITY.—A provision of this section shall not apply to any  
12       civil action in a State court against a business entity in  
13       which all parties are citizens of the State if such State  
14       enacts a statute—

15               (1) citing the authority of this section;

16               (2) declaring the election of such State that  
17       such provision shall not apply to such civil action in  
18       the State; and

19               (3) containing no other provisions.

20       (e) EFFECTIVE DATE.—This section shall apply to  
21       liability for injury or death caused by equipment donated,  
22       facilities used, or aircraft or motor vehicles loaned on or  
23       after the date of the enactment of this Act.

1 **SEC. 4. REMOVAL OF CIVIL LIABILITY BARRIERS THAT DIS-**  
2 **COURAGE THE DONATION OF FIRE EQUIP-**  
3 **MENT TO VOLUNTEER FIRE COMPANIES.**

4 (a) **LIABILITY PROTECTION.**—A person who donates  
5 fire control or fire rescue equipment to a volunteer fire  
6 company shall not be liable for civil damages under any  
7 State or Federal law for personal injuries, property dam-  
8 age or loss, or death caused by the equipment after the  
9 donation.

10 (b) **EXCEPTIONS.**—Subsection (a) does not apply to  
11 a person if—

12 (1) the person's act or omission causing the in-  
13 jury, damage, loss, or death constitutes gross neg-  
14 ligence or intentional misconduct; or

15 (2) the person is the manufacturer of the fire  
16 control or fire rescue equipment.

17 (c) **PREEMPTION.**—This section preempts the laws of  
18 any State to the extent that such laws are inconsistent  
19 with this section, except that notwithstanding subsection  
20 (b) this section shall not preempt any State law that pro-  
21 vides additional protection from liability for a person who  
22 donates fire control or fire rescue equipment to a volunteer  
23 fire company.

24 (d) **EFFECTIVE DATE.**—This section shall apply to  
25 liability for injury, damage, loss, or death caused by fire



1 control or fire rescue equipment donated on or after the  
2 date of the enactment of this Act.

3 **SEC. 5. HEALTH CENTERS UNDER PUBLIC HEALTH SERV-**  
4 **ICE ACT; LIABILITY PROTECTIONS FOR VOL-**  
5 **UNTEER PRACTITIONERS.**

6 (a) LIABILITY PROTECTION.—Section 224 of the  
7 Public Health Service Act (42 U.S.C. 233) is amended—

8 (1) in subsection (g)(1)(A)—

9 (A) in the first sentence, by striking “or  
10 employee” and inserting “employee, or (subject  
11 to subsection (k)(4)) volunteer practitioner”;  
12 and

13 (B) in the second sentence, by inserting  
14 “and subsection (k)(4)” after “subject to para-  
15 graph (5)”; and

16 (2) in each of subsections (g), (i), (j), (k), (l),  
17 and (m), by striking “employee, or contractor” each  
18 place such term appears and inserting “employee,  
19 volunteer practitioner, or contractor”.

20 (b) APPLICABILITY; DEFINITION.—Section 224(k) of  
21 the Public Health Service Act (42 U.S.C. 233(k)) is  
22 amended by adding at the end the following paragraph:

23 “(4)(A) Subsections (g) through (m) apply with re-  
24 spect to volunteer practitioners beginning with the first  
25 fiscal year for which an appropriations Act provides that

1 amounts in the fund under paragraph (2) are available  
2 with respect to such practitioners.

3 “(B) For purposes of subsections (g) through (m),  
4 the term ‘volunteer practitioner’ means a practitioner who,  
5 with respect to an entity described in subsection (g)(4),  
6 meets the following conditions:

7 “(i) The practitioner is a licensed physician or  
8 a licensed clinical psychologist.

9 “(ii) At the request of such entity, the practi-  
10 tioner provides services to patients of the entity, at  
11 a site at which the entity operates or at a site des-  
12 ignated by the entity. The weekly number of hours  
13 of services provided to the patients by the practi-  
14 tioner is not a factor with respect to meeting condi-  
15 tions under this subparagraph.

16 “(iii) The practitioner does not for the provision  
17 of such services receive any compensation from such  
18 patients, from the entity, or from third-party payors  
19 (including reimbursement under any insurance pol-  
20 icy or health plan, or under any Federal or State  
21 health benefits program).”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall take effect on the date of the enactment  
24 of this Act.

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