

4034

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

Com. Sub. for

HOUSE BILL No. 4034

(By ~~ME~~ *Delegates Phillips & Pitrolo*)



Passed *March 12,* 1988

In Effect *July 1, 1988* ~~Passage~~

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4034

(By DELEGATES PHILLIPS and PITROLO)

[Passed March 12, 1988; in effect July 1, 1988.]

AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seven-c, relating to actions and suits; providing immunity from civil liability for qualified directors negligently performing managerial functions on behalf of certain governmental and nonprofit entities defined as volunteer organizations or entities; setting forth legislative findings and a declaration of public purpose; defining certain terms; and providing for the applicability of provisions.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article seven-c, to read as follows:

ARTICLE 7C. IMMUNITY FROM CIVIL LIABILITY FOR QUALIFIED DIRECTORS OF CERTAIN GOVERNMENTAL AND NONPROFIT ENTITIES.

§55-7C-1. Findings and declaration of public purpose.

1 The Legislature hereby finds and declares that the
2 citizens of this state have been and should continue to

3 be well served by those serving without compensation
4 on various boards, commissions, committees, agencies
5 and other organizations of the state, and its political
6 subdivisions, of nonprofit corporations and other
7 organizations engaged in religious, charitable, cultural,
8 benevolent, educational and scientific endeavors, child
9 placement or child care, or indigent or elderly care, and
10 of organizations that advocate the interests of their
11 members with respect to the trades, industries and
12 businesses of the state; that in recent years, the cost of
13 insurance coverage for such persons has risen dramati-
14 cally while the nature and extent of coverage has
15 diminished; that in order to enable persons to willingly
16 serve as qualified directors, as hereinafter defined, the
17 Legislature must provide those qualified directors with
18 limited immunity from civil liability; and that the
19 enactment of this article serves a necessary public
20 purpose. This article is enacted in view of these findings
21 and shall be liberally construed in the light thereof.

§55-7C-2. Definitions.

1 For purposes of this article, unless a different
2 meaning plainly is required:

3 (1) "Managerial function" means the act or acts of a
4 qualified director, whereby such qualified director,
5 through direction, regulation or administration, exer-
6 cises government, control, or superintendence of the
7 affairs of a volunteer organization or entity. Managerial
8 functions shall include ministerial acts and acts involv-
9 ing the exercise of discretion and judgment, but shall
10 not include the physical or manual handling or use of
11 tangible property, including, but not limited to, motor
12 vehicles, or the direct guidance or supervision of
13 persons.

14 (2) "Nonprofit hospital" means a nonprofit organiza-
15 tion, the principal purpose or function of which is the
16 providing of medical or hospital care, and includes
17 general, tuberculosis, and other types of hospitals, and
18 related facilities, such as laboratories, outpatient
19 departments, nurses' home facilities, extended care
20 facilities, facilities related to programs for home health

21 services, self-care units, and central service facilities,
22 operated in connection with hospitals, and also includes
23 education or training facilities for health professional
24 personnel operated as an integral part of a hospital and
25 medical research organizations directly engaged in the
26 continuous active conduct of medical research in
27 conjunction with a hospital, but does not include any
28 hospital furnishing primarily domiciliary care.

29 (3) "Qualified director" means an individual who
30 serves without compensation for personal services as an
31 officer, member or director of a board, commission,
32 committee, agency or other nonprofit organization
33 which is a volunteer organization or entity. For purposes
34 of this article, "compensation" does not include reimbur-
35 sement for expenses, incidental meals, lodging or other
36 accommodations, and does not include per diem compen-
37 sation fixed by statute.

38 (4) "Volunteer organization or entity" means:

39 (A) The state or any political subdivision or subdivi-
40 sions thereof;

41 (B) Nonprofit corporations as defined in section six,
42 article one, chapter thirty-one of this code, and other
43 nonprofit organizations, which such corporations or
44 organizations provide or promote:

45 (i) Religion;

46 (ii) Charity;

47 (iii) Music, art or other literary or cultural activities;

48 (iv) Benevolence;

49 (v) Child placement or child care;

50 (vi) Indigent or elderly care;

51 (vii) Education;

52 (viii) Scientific activity;

53 (ix) Community or economic development;

54 (x) Recreation;

55 (xi) Maintenance and repair of community owned real

56 property or of real property maintained by a ho-
57 meowners' association;

58 (xii) Legal services for the indigent;

59 (xiii) Conservation of natural resources or animal
60 habitat; or

61 (xiv) fire-fighting services and other public safety
62 services.

63 (C) Any organization that acts as an advocate for its
64 members and that has as its members individuals or
65 organizations that are:

66 (i) Members of a particular trade or industry; or

67 (ii) Members of the business community; or

68 (iii) Members of armed services veteran associations.

69 "Volunteer organization or entity" shall not include a
70 nonprofit hospital which maintains one hundred fifty or
71 more beds for hospitalization of the sick or injured.

§55-7C-3. Limited civil liability of qualified directors.

1 Notwithstanding any other provision of this code, a
2 qualified director shall not be held personally liable for
3 negligence, either through act or omission, or whether
4 actual or imputed, in the performance of managerial
5 functions performed on behalf of a volunteer organiza-
6 tion or entity: *Provided*, That this section shall not
7 exempt a qualified director from liability when he or
8 she is found to be grossly negligent in the performance
9 of his or her duties. Nothing herein shall relieve a
10 volunteer organization or entity from imputed liability
11 for the negligent acts of a qualified director committed
12 within the scope of the qualified director's duties.
13 Nothing in this article shall be construed as a grant of
14 immunity to any person who, through his or her
15 operation of a motor vehicle, causes any injury or
16 damage to another person.

§55-7C-4. Applicability of provisions.

1 The provisions of this article shall not apply to any
2 cause of action arising before the first day of July, one

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3 thousand nine hundred eighty-eight.

Handwritten signature
J. W. ...

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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Gene O. Allison
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect July 1, 1988.

Jedd C. Withers
Clerk of the Senate

Donald J. Kopp
Clerk of the House of Delegates

Don Tashumil
President of the Senate

Robert H. Lamb
Speaker of the House of Delegates

The within *approved* this the *30th*
March day of _____, 1988.

Arthur R. Shaffer Jr.
Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/88

Time 3:41 p.m.

RECEIVED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE