

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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February 2, 2009

Congressional Research Service

Report RS21933

*Good Samaritan Tort Reform: Three House Bills*

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October 1, 2004

**Abstract.** On September 8, 2004, the House Committee on the Judiciary ordered to be reported three 108th Congress tort reform bills: the Volunteer Pilot Organization Protection Act (H.R. 1084), the Good Samaritan Firefighter Assistance Act of 2003 (H.R. 1787), and the Nonprofit Athletic Organization Protection Act of 2003 (H.R. 3369). On September 14, the House passed H.R. 1084 and H.R. 1787, but failed to pass H.R. 3369. Tort law is primarily state law, and federal tort reform bills such as these are generally designed to limit liability under state tort law.

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# CRS Report for Congress

Received through the CRS Web

## “Good Samaritan” Tort Reform: Three House Bills

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### Summary

On September 8, 2004, the House Committee on the Judiciary ordered to be reported three 108th Congress tort reform bills: the Volunteer Pilot Organization Protection Act (H.R. 1084), the Good Samaritan Firefighter Assistance Act of 2003 (H.R. 1787), and the Nonprofit Athletic Organization Protection Act of 2003 (H.R. 3369). On September 14, the House passed H.R. 1084 and H.R. 1787, but failed to pass H.R. 3369. Tort law is primarily state law, and federal tort reform bills such as these are generally designed to limit liability under state tort law.

### H.R. 1084

The Volunteer Pilot Organization Protection Act (H.R. 1084) would amend the Volunteer Protection Act of 1997.<sup>1</sup> The VPA provides immunity for ordinary negligence to volunteers of nonprofit organizations or governmental entities acting within the scope of their responsibilities, provided that, “if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities.” The immunity does not apply to “willful or criminal conduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.” It also does not apply to harm “caused by a volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle craft, or vessel to — (A) possess an operator’s license; or (B) maintain insurance.”

H.R. 1084 would create an exception to this “aircraft” exception. It would make the VPA apply if “the harm was caused by a volunteer of a nonprofit volunteer pilot organization that flies for public benefit, while the volunteer was flying in furtherance of the purpose of the organization and was operating an aircraft for which the volunteer was properly licensed and individually insured.”

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<sup>1</sup> 42 U.S.C. §§ 14501-14505. For additional information on the VPA, see CRS Report 97-490.

The VPA also does not apply to nonprofit organizations or governmental entities themselves; they may be held vicariously liable for the negligence of their volunteers, even if volunteers are immune. H.R. 1084 would create an exception to this provision too. It would provide that “a nonprofit volunteer pilot organization that flies for public benefit, and the staff, mission coordinators, officers, and directors (whether volunteers or otherwise) of such organization or referring agency of such organization, shall not be liable with respect to harm caused to any person by a volunteer of such organization, while the volunteer is flying in furtherance of the purpose of the organization and was operating an aircraft for which the volunteer was properly licensed and has certified to such organization that such volunteer has in force individually insurance for operating such aircraft.”

The VPA also eliminates joint and several liability for noneconomic damages with respect to volunteers’ work for nonprofit organizations and governmental entities, and allows punitive damages only where the plaintiff establishes “by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.”<sup>2</sup> These provisions would not be amended by H.R. 1084, and thus would benefit the volunteer pilots and organizations (and their staffs, etc.) to which the bill would extend the VPA’s protection.

The VPA does not prevent states from granting volunteers additional protection from liability, and it allows any state to enact a statute declaring the VPA inapplicable in the state.

The reported version of H.R. 1084, which the House passed, would direct the Attorney General to study the availability of insurance for nonprofit volunteer pilot organizations.<sup>3</sup>

## **H.R. 1787**

The Good Samaritan Firefighter Assistance Act of 2003 (H.R. 1787) would not amend any existing federal law, but would provide simply that “[a] person who donates fire control or fire rescue equipment to a volunteer fire company shall not be liable for civil damages under any State or Federal law for personal injuries, property damage or loss, or death proximately caused by the equipment after the donation.” This immunity would not apply if a donor exercised gross negligence or intentional misconduct, and would not apply if the donor is the manufacturer of the equipment.

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<sup>2</sup> Eliminating joint and several liability means that, if more than one defendant is found liable, then each is liable only in proportion to its percentage of responsibility for the harm. The VPA eliminates joint and several liability only for noneconomic damages, which refer to pain and suffering and other nonpecuniary losses. Thus, the VPA does not change state law to the extent that state law allows joint and several liability for economic damages, such as medical costs, lost wages, etc. With joint and several liability, each defendant who is found responsible is liable for 100 percent of the damages, though the plaintiff may not recover more than once.

<sup>3</sup> H.Rept. 108-679, 108th Cong., 2d Sess. (Sept. 13, 2004).

H.R. 1787 would not prevent states from granting donors additional protection from liability.

The reported version of H.R. 1787, which the House passed, would direct the Attorney General to conduct a state-by-state review of the donation of firefighter equipment to volunteer firefighter companies during the five-year period ending on the date of enactment of the bill. The study shall include, for each state, the most effective way to fund firefighter companies.<sup>4</sup>

## H.R. 3369

The Nonprofit Athletic Organization Protection Act of 2003 (H.R. 3369) would also not amend any existing federal law. It would provide that a nonprofit athletic organization would not be liable for harm caused in the adoption of rules for sanctioned or approved athletic competitions or practices if the nonprofit athletic organization (1) was acting within the scope of its duties and (2) was, if required, properly licensed, certified, or authorized for the competition or practice in the state in which the harm occurred or where the competition or practice was undertaken. This immunity would not apply, however, if “the harm was caused by willful or criminal misconduct, gross negligence, or reckless misconduct on the part of the nonprofit athletic association.”

H.R. 3369 would not preempt state laws that (1) require a nonprofit athletic organization to adhere to risk management procedures, including mandatory training of its employees, agents, or volunteers, (2) make a nonprofit athletic organization liable for the acts or omissions of its employees, agents, and volunteers to the same extent as an employer is liable for the acts or omissions of its employees, or (3) make a limitation of liability inapplicable if a civil action was brought by an officer of a state or local government pursuant to state or local law.

H.R. 3369 would not prevent states from granting nonprofit athletic organizations additional protection from liability.

The reported version of H.R. 3369 contained no amendments.<sup>5</sup>

## Pros and Cons

Supporters of the three House bills have reportedly said that the bills are needed to ensure that people are willing to volunteer for the activities that the bills cover. They also claim that nonprofit volunteer pilot organizations are operating without insurance coverage because of rising premiums.<sup>6</sup>

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<sup>4</sup> H.Rept. 108-680, 108th Cong., 2d Sess. (Sept. 13, 2004).

<sup>5</sup> H.Rept. 108-681, 108th Cong., 2d Sess. (Sept. 13, 2004).

<sup>6</sup> *CQ Today* (Sept. 9, 2004), p. 10.

Others, however, have questioned whether there is a need for action. They also reportedly expressed concern that H.R. 3369 might shield nonprofit athletic groups from lawsuits on issues such as civil rights and insurance disputes.<sup>7</sup>

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<sup>7</sup> *Id.*