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## FISCAL IMPACT REPORT

SPONSOR Komadina DATE TYPED 02/23/05 HB \_\_\_\_\_

SHORT TITLE Volunteer & Charitable Organization Liability SB 584

ANALYST Ford

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General (AGO)

Energy, Minerals and Natural Resources Department (EMNRD)

Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

Senate Bill 584 enacts the Volunteer Immunity and Charitable Organization Liability Limit Act, providing immunity from civil liability for any act or omission resulting in death, damage or injury for a volunteer acting in good faith and in the course and scope of the volunteer's duties or functions for a charitable organization.

In civil suits brought against charitable organizations based on an act or omission by the organization or its members, recovery is limited to actual damages not to exceed \$300 thousand for each person and \$1 million for each single occurrence of bodily injury or death, and \$100 thousand for each single act of destruction of property and \$100 thousand for any other injury.

The immunity does not apply to an act or omission that constitutes intentional wrongdoing or is done with reckless disregard for the safety of others. It does not apply to health care providers. The Act does not affect the powers and duties of the attorney general with regard to charitable organizations and their directors and officers.

Significant Issues

The definition of volunteer includes a person who provides service for a “charitable organization, nonprofit corporation, a hospital, or a government entity.” However, the provisions of the bill refer only to charitable organizations, which is limited to those organizations that have federal tax status of 501 (c)(3). Thus, the bill is unclear as to whether it applies just to charitable organizations or to other nonprofit corporations, hospitals and government entities.

The AGO raises another possible concern with the bill:

New Mexico Courts have considered the constitutionality of certain damage caps, and have held that in certain cases they deny equal access to the courts and are therefore unconstitutional. *Richardson v. Carnegie Library Restaurant, Inc.*, 107 N.M. 688, 763 P.2d 1153 (1988); *Trujillo v. City of Albuquerque*, 110 N.M. 621, 798 P.2d 571 (1990). In *Richardson*, the Supreme Court considered the “Dram Shop Act” which limited liability of bar owners. The Court said: “*Even though we agree that the legislature most often is better suited to make such policy determinations, a heightened scrutiny of legislation that infringes substantial and important individual interests, such as we have here, compels us to the conviction that the liability cap works a manifest injustice on innocent tort victims and lacks any of the redeeming features entitling it to constitutional validity.*”

**TECHNICAL ISSUES**

The AGO raises two possible technical issues. First, the definitions related to health care providers are confusing. In Section 3E, the term is defined to include persons which presumably does not include corporations. Section 7C refers to charitable organizations or employees that are health care providers. The terms should be consistent.

Second, the bill references a “charitable organization or its members and shareholders.” Non-profit 501 (c)(3) corporations cannot issue shares.

**EF/yr**