

## Appendix 2: State by State Table of Charitable Immunity in the United States

| Jurisdiction | Immunity | Authority for Immunity Status/Comments  |
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| Alabama      | Unclear. | <p><i>Tucker v Mobile Infirmary Ass’n</i> LRA 1915D, 1167, 191 Ala 572, 68 So 4 (1915) (Supreme Court of Alabama): early rejection of charitable immunity in the context of a paying patient. Gardner J: ‘unable to find a sound legal principle upon which exemption from liability may rest in a case as disclosed by this record’.</p> <p><i>Alabama Baptist Hospital Board v Carter</i> 226 Ala 109, 145 So 443 (1932) (Supreme Court of Alabama): charitable immunity is not applicable to third parties (non-beneficiaries). Brown J did not decide the issue of beneficiaries, noting only that ‘And the doctrine of waiver by acceptance of benefits is applicable only, if at all, to patients receiving benefits.’ This would appear to be the source of the view taken in the Restatement of Torts, Second.</p> <p><i>Autry v Roebuck Park Baptist Church</i> 285 Ala 76, 229 So2d 469 (1969) (Supreme Court of Alabama): question of charitable immunity was not decided by the Court.</p> <p>Restatement of Torts, Second, §895E (1979), Commentary, considers that there ‘probably’ is immunity for beneficiaries only. The authorities given are <i>Tucker</i>, and <i>Alabama Baptist Hospital</i>.</p> <p>Lisa Runquist, Jeannie Carmedelle Frey and Patricia Tauchert, ‘Treatment of Charitable Immunity by State’ in Lisa Runquist, Jeannie Carmedelle Frey and Patricia Tauchert, <i>Guide to Representing Religious Organizations</i> (ABA 2009), Appendix 7A,<sup>1</sup> consider that the status of charitable immunity is unclear.</p> |

<sup>1</sup> Available: <<http://apps.americanbar.org/buslaw/newsletter/0079/materials/pp7.pdf>> last accessed 22 April 2018.

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|         |                           | <p>Nonprofit Risk Management Center, ‘State Liability Laws for Charitable Organizations and Volunteers’ (NRMCA Leesburg VA, 2009),<sup>2</sup> states that immunity is present, but only for beneficiaries. However, the case law that it uses to support this proposition does not support this.</p> <p>Alabama Code §10-3B-7, Liability in Tort and Contract: implies that (at least in some cases) there is no immunity.</p> |
| Alaska  | No immunity. <sup>3</sup> | <p><i>Moats v Sisters of Charity of Providence, Shelley v Sisters of Charity of House of Providence</i> 13 Alaska 546, 1952 WL 989 (1952) (District Court, Territory of Alaska, Third Division).</p> <p><i>Tuengel v City of Sitka, Alaska</i> 14 Alaska 546, 118 FSupp 399 (1954) (District Court, Territory of Alaska, First Division).</p>   |
| Arizona | No immunity.              | <p><i>Ray v Tucson Medical Center</i> 72 Ariz 22, 230 P2d 220 (1951) (Supreme Court of Arizona). Changes in public policy necessitated overturning charitable immunity, Phelps J: ‘if public policy ever required that charitable institutions should be immune from liability for the torts of their servants, that public policy no longer exists.’</p>   |

<sup>2</sup> < <https://www.nonprofitrisk.org/app/uploads/2017/01/state-liability-laws.pdf> > last accessed 22 April 2019.

<sup>3</sup> Lisa Runquist, Jeannie Carmedelle Frey and Patricia Tauchert, ‘Treatment of Charitable Immunity by State’ in Lisa A Runquist, Jeannie Carmedelle Frey and Patricia A Tauchert, *Guide to Representing Religious Organizations* (ABA 2009) Appendix 7A, consider the status to be unclear since the highest state court has not ruled on this issue. However, the lower courts have – and it is clear from their judgments that charitable immunity does not operate in the State of Alaska. Commentary of the Restatement of Torts, Second, §895E takes the position that the doctrine does not apply in Alaska.

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|            |   | <i>Roman Catholic Church, Diocese of Tucson v Keenan</i> 74 Ariz 20, 243 P2d 455 (1952) (Supreme Court of Arizona).   |
| Arkansas   | Immunity Present.<br><br>Direct actions against insurers. | <p><i>Helton v Sisters of Mercy of St Joseph's Hospital</i> 234 Ark 76, 351 SW2d 129 (1961) (Supreme Court of Arkansas): refused to overrule/remove charitable immunity.</p> <p>Whilst charitable immunity remains, the approach taken in defining charity in this context is fairly narrow, see for instance: <i>Downing v Lawrence Hall Nursing Center</i> 2010 Ark 175, 369 SW3d 8 (2010) (Supreme Court of Arkansas).</p> <p><i>Roberts v Francis &amp; St Edward Mercy Medical Center</i> 128 F3d 647, 39 FedRServ3d 70 (1997) (US Court of Appeals, Eighth Circuit) (Heaney, Circuit Judge): 'Arkansas is one of the few American jurisdictions that still recognizes charitable immunity for hospitals... Notwithstanding, the Arkansas Supreme Court has given the term "charitable immunity" [a] rather narrow construction.'</p> <p>A direct action is, however, available against insurers: ACA §23-79-210 (2012).</p> |
| California | No immunity.  | <p><i>Malloy v Fong</i> 37 Cal2d 356, 232 P2d 241 (1951) (Supreme Court of California).</p> <p><i>Tunkl v The Regents of the University of California</i> 60 Cal2d 92, 383 P2d 441, 32 CalRptr 33, 6 ALR3d 693 (1963) (Supreme Court of California, in Bank): cites and follows <i>Malloy</i>.</p>  |

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| Colorado    | No immunity from tort, but charities immune from execution of judgment, unless insured. | <p>CRSA §7-123-105 (2012), Actions against non-profit corporations:</p> <p>‘Any other provision of law to the contrary notwithstanding, any civil action permitted under the law of this state may be brought against any nonprofit corporation, and the assets of any nonprofit corporation that would, but for articles 121 to 137 of this title, be immune from levy and execution on any judgment shall nonetheless be subject to levy and execution to the extent that such nonprofit corporation would be reimbursed by proceeds of liability insurance policies carried by it were judgment levied and executed against its assets.’</p> <p>The statute does not limit judgments against non-profits, simply their execution: <i>Wycoff and American Medical Security Life Insurance Company v Grace Community Church of the Assemblies of God</i> 251 P3d 1260 (2010) (Colorado Court of Appeals) (Judge Connelly): ‘the existence and amount of liability insurance provides no basis for limiting a judgment against a nonprofit or charitable defendant. Rather, the issue of liability insurance is relevant only when a plaintiff seeks to levy and execute on a judgment.’</p> |
| Connecticut | No immunity.  | ConnGSA §52-557d: ‘Defense of charitable immunity abolished. The common law defense of charitable immunity is abolished and shall not constitute a valid defense to any cause of action.’  |
| Delaware    | No immunity. <sup>4</sup>   | <i>Durney v St Francis Hospital Inc</i> 7 Terry 350, 46 Del 350, 83 A2d 753 (1951) (Superior Court of Delaware, New Castle County).  |

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<sup>4</sup> cf Runquist, Frey and Tauchert (n3), Appendix 7A, consider Delaware to be unclear since the Higher Courts have not yet spoken on this issue.

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| District of Columbia | No immunity.                                       | <i>Georgetown College v Hughes</i> 76 App DC 123, 130 F2d 810, DC Cir (1942) (US Court of Appeals for the District of Columbia).  |
| Florida              | No immunity.                                       | <i>Nicholson v Good Samaritan Hospital</i> 145 Fla 360, 199 So 344, 133 ALR 809 (1940) (Supreme Court of Florida).  |
| Georgia              | Immunity Present.<br><br>Limited insurance waiver. | <p>There is no liability for the negligence of employees or agents, except where the organisation itself has failed to exercise ordinary care in their selection and retention.</p> <p>There is no immunity for non-charitable assets when dealing with paying claimants. Trust funds are immune, unless non-charitable property (including insurance) is available to satisfy judgment. Immunity is waived to extent of insurance coverage.</p> <p><i>Cox v De Jarnette</i> 104 GaApp 664, 123 SE2d 16 (1961) (Court of Appeals of Georgia, Division No.1).</p> <p><i>Morehouse College v Russell</i> 219 Ga 717, 135 SE2d 432 (1964) (Supreme Court of Georgia). Head, Presiding Justice: ‘It thus appears that it is the rule in Georgia that the funds in trust for charitable purposes are subject to a judgment against a charitable institution for what the Court of Appeals terms “administrative negligence”, while only noncharitable assets are subject to a judgment for the negligence of a servant of the charitable institution under the doctrine of respondeat superior.’</p> <p>Special protection is available for free healthcare providers. Ga Code Ann, §51-1-29.1, provides for ‘Immunity from liability of certain health care providers which provide professional services without compensation or the expectation thereof.’ This is not</p> |

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|          |              | <p>waived by insurance.</p> <p>For evidence of the continued currency of charitable immunity, see <i>Stephens v Conyers Apostolic Church</i> 243 GaApp 170, 532 SE2d 728, 00 FCDR 1766 (2000) (Court of Appeals of Georgia), and <i>Wells v Rogers</i> 281 GaApp 473, 636 SE2d 171, 06 FCDR 2833 (2006) (Court of Appeals of Georgia).</p>   |
| Hawaii   | Unclear.     | <p><i>Luhi v Honolulu Lodge No.1 Modern Order of Phoenix, and Court Lunalilo No.6600, Ancient Order of Foresters Friendly Society</i> 31 Haw 740, 1931 WL 2812 (1931) (Supreme Court of the Territory of Hawaii): charitable institution is not immune from liability for torts not arising from charitable activities. Existence or not of a general charitable immunity was not decided.</p> |
| Idaho    | No immunity. | <p><i>Bell v The Presbytery of Boise</i> 91 Idaho 374, 421 P2d 745 (1966) (Supreme Court of Idaho).</p>  |
| Illinois | No immunity. | <p><i>Darling v Charleston Community Memorial Hospital</i> 33 Ill2d 326, 211 NE2d 253, 14 ALR3d 860 (1965) (Supreme Court of Illinois).</p> <p><i>Gubbe v Catholic Diocese of Rockford</i> 122 IllApp2d 71, 257 NE2d 239 (1970) (Appellate Court of Illinois, Second District).</p>  |
| Indiana  | No immunity. | <p><i>Harris v The Young Women's Christian Association of Terre Haute</i> 250 Ind 491, 237 NE2d 242 (1968) (Supreme Court of Indiana).</p>   |

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| Iowa     | No immunity. | <i>Sullivan v First Presbyterian Church</i> 260 Iowa 1373, 152 NW2d 628 (1967) (Supreme Court of Iowa).  |
| Kansas   | No immunity. | <p><i>Noel v Menninger Foundation</i> 175 Kan 751, 267 P2d 934 (1954) (Supreme Court of Kansas).</p> <p><i>McAtee v St Paul's Mission of Marysville</i> 190 Kan 518, 376 P2d 823 (1962) (Supreme Court of Kansas).</p> <p><i>Neely v St Francis Hospital &amp; School of Nursing, Inc</i> 192 Kan 716, 391 P2d 155 (1964) (Supreme Court of Kansas): statute enacted in response to <i>Noel</i> designed to confer immunity from process, was a violation of the State Bill of Rights.</p> |
| Kentucky | No immunity. | <p><i>Sheppard v Immanuel Baptist Church</i> 353 SW2d 212 (1961) (Court of Appeals of Kentucky).</p> <p><i>Mullikin v Jewish Hospital Association of Louisville</i> 348 SW2d 930 (1961) (Court of Appeals of Kentucky).</p> <p><i>Gillum v Good Samaritan Hospital</i> 348 SW2d 924 (1961) (Court of Appeals of Kentucky).</p> <p><i>Hillard v Good Samaritan Hospital</i> 348 SW2d 939 (1961) (Court of Appeals of Kentucky).</p>   |

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| Louisiana | No immunity.                               | <p><i>Garlington v Kingsley</i> 89 So2d 88 (1974) (Supreme Court of Louisiana).</p> <p><i>Jackson v Doe</i> 296 So2d 323 (1974) (Supreme Court of Louisiana).</p> <p><i>Connor v Methodist Hospital</i> 297 So2d 660 (1974) (Supreme Court of Louisiana).</p> <p><i>Whetstone v Dixon, Stewart, State Farm Insurance Company, Faith &amp; Truth Baptist Church and Preferred Mutual Insurance Company</i> 616 So2d 764 (1993) (Court of Appeal of Louisiana, First Circuit).</p>   |
| Maine     | Immunity Present.<br><br>Insurance Waiver. | <p><i>Rhoda v Aroostook General Hospital</i> 226 A2d 530 (1967) (Supreme Judicial Court of Maine): charitable immunity present, but immunity is waived where insurance is present, up to the insured limit.</p> <p><i>Thompson v Mercy Hospital</i> 483 A2d 706 (1984) (Supreme Judicial Court of Maine): the organisation must derive its funds mainly from public and private charity. Trust fund and public policy rationalisation.</p> <p><i>Coulombe v The Salvation Army</i> 790 A2d 593, 2002 ME 25 (2002) (Supreme Judicial Court of Maine): the organisation must have no capital stock and no provision for making dividends or profits.</p> <p><i>Picher v The Roman Catholic Bishop of Portland</i> 974 A2d 286, 2009 ME 67 (2009) (Supreme Judicial Court of Maine): charitable immunity does not apply to intentional torts.</p> |



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|          |  | <p>14 MRSA §158: Insurance waiver.</p> <p>‘A charitable organization shall be considered to have waived its immunity from liability for negligence or any other tort during the period a policy of insurance is effective covering the liability of the charitable organization for negligence or any other tort. Each policy issued to a charitable organization shall contain a provision to the effect that the insurer shall be estopped from asserting, as a defense to any claim covered by said policy, that such organization is immune from liability on the ground that it is a charitable organization. The amount of damages in any such case shall not exceed the limits of coverage specified in the policy, and the courts shall abate any verdict in any such action to the extent that it exceeds such policy limit.’</p> |
| Maryland | <p>Immunity Present, (not including charitable hospitals).</p> <p>Damages cap for charitable hospitals, (\$100,000).</p> | <p><i>Wood v Abell</i> 268 Md 214, 300 A2d 665 (1973) (Court of Appeals of Maryland): charitable immunity on a trust fund theory model.</p> <p><i>James v Prince George’s County, Dawson v Prince George’s County</i> 288 Md 315, 418 A2d 1173 (1980) (Court of Appeals of Maryland). (Judge Digges): ‘only when the assets of the charitable organization are held in trust, either expressly or by implication, and when the corporation has no liability insurance covering the complained of act ....does the charitable immunity doctrine apply.’</p> <p><i>Abramson v Reiss</i> 334 Md 193, 638 A2d 743 (1994) (Court of Appeals of Maryland): immune where uninsured and no non-trust assets.</p> <p><i>Howard v Bishop Byrne Council Home, Inc</i> 249 Md 233, 238 A2d 863 (1968) (Court of Appeals of Maryland).</p>              |

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|               |   | <p>Hospitals or related institutions do not benefit from charitable immunity, instead their liability is capped.</p> <p>Maryland Code, Courts and Judicial Proceedings, §5-632:</p> <p>‘(b) Except as provided in subsection (c) of this section, a hospital or related institution is not immune from liability for negligence or any other tort on the grounds that the hospital or related institution is a charitable institution.</p> <p>(c) A hospital or related institution that is a charitable institution and is insured against this liability in an amount of not less than \$100,000 is not liable for damages in excess of the limits of that insurance.’</p> <p><i>Montrose Christian School Corporation v Walsh, Montrose Christian School Corporation v Carver</i> 363 Md 565, 770 A2d 111 (2001) (Court of Appeals of Maryland): immunity can be removed by statute, for example a fair employment/discrimination statute.</p> |
| Massachusetts | <p>No immunity.<sup>5</sup></p> <p>Liability Cap, (\$20,000/100,000).</p> | <p>MGLA 231 §85K:</p> <p>‘provided, that if the tort was committed in the course of any activity carried on to accomplish directly the charitable purposes of such corporation, trust, or association, liability in any such cause of action shall not exceed the sum of twenty thousand dollars exclusive of interest and costs; and provided further, that in the context of medical malpractice claims against a nonprofit organization providing health care, such cause of action shall not exceed the sum of \$100,000, exclusive of interest and costs.’</p>   |

<sup>5</sup> Other provisions, such as MGLA 231 §85V, (non-profit sailing associations), even though referred to in the legislation as ‘immunities’ are standard of care rules, not true immunities.

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|           |              | <p>‘Notwithstanding any other provision of this section, the liability of charitable corporations, the trustees of charitable trusts, and the members of charitable associations shall not be subject to the limitations set forth in this section if the tort was committed in the course of activities primarily commercial in character even though carried on to obtain revenue to be used for charitable purposes.’</p>  |
| Michigan  | No immunity. | <p><i>Parker v Port Huron Hospital</i> 361 Mich 1, 105 NW2d 1 (1960) (Supreme Court of Michigan).</p> <p><i>Browning v Paddock and Doctors Hospital</i> 364 Mich 293, 111 NW2d 45 (1961) (Supreme Court of Michigan).</p>   |
| Minnesota | No immunity. | <p><i>Mulliner v Evangelischer Diakonniessenverein of Minnesota Dist. of German Evangelicals</i> 144 Minn 392, 175 NW 699 (1920) (Supreme Court of Minnesota).</p> <p><i>Geiger v Simpson Methodist-Episcopal Church of Minneapolis</i> 174 Minn 389, 219 NW 463, 62 ALR 716 (1928) (Supreme Court of Minnesota) (Olsen C): ‘[i]t is almost contradictory to hold that an institution organized to dispense charity shall be charitable and extend aid to others, but shall not compensate or aid those injured by it in carrying on its activities.’</p> <p><i>Miller v Macalester College</i> 262 Minn 418, 115 NW2d 666 (1962) (Supreme Court of Minnesota).</p> |

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| Mississippi | No immunity.   | <i>Mississippi Baptist Hospital v Holmes</i> 214 Miss 906, 55 So2d 142, 25 ALR2d 12 (1951) (Supreme Court of Mississippi, in Banc).  |
| Missouri    | No general immunity.<br><br>Immunity for Health Service Corporations (HSCs). | <p><i>Abernathy v Sisters of St Mary's</i> 446 SW2d 607 (1969) (Supreme Court of Missouri, En Banc). No charitable immunity post <i>Abernathy</i> (prospective overruling).</p> <p><i>Garnier v St Andrew Presbyterian Church of St Louis</i> 446 SW2d 607 (1969) (Supreme Court of Missouri, En Banc).</p> <p>Statutory immunity has however been introduced for Health Services Corporations (the non-profit counterpart to the ubiquitous (in the US) Health Maintenance Organisation), via Mo Rev Stat §354.125: 'A health services corporation shall not be liable for injuries resulting from neglect, misfeasance, malfeasance or malpractice on the part of any person, organization, agency or corporation rendering health services to the health services corporation's members and beneficiaries.'</p> <p><i>Harrell v Total Health Care, Inc</i> 781 SW2d 58 (1989) (Supreme Court of Missouri, En Banc). Applying the HSC immunity and rejecting a constitutional challenge, based on the Missouri Constitution, to the legislative provision.</p> |
| Montana     | No immunity.   | <i>Howard v Sisters of Charity of Leavenworth</i> 193 FSupp 191, DCMont (1961) (US District Court D Montana Butte Division) (Jameson, District Judge): '[i]n the absence of any decision of the Montana court, I consider it proper to follow the trend of the modern decisions, particularly as reflected by the change in the Restatement of the Law of Trusts.'   |

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|          |              | <p><i>Davis v The Church of Jesus Christ of Latter Day Saints</i> 258 Mont 286, 852 P2d 640 (1993) (Supreme Court of Montana).</p> <p><i>Gliko v Permann</i> 331 Mont 112, 130 P3d 155 (2006) (Supreme Court of Montana). Partly overruling <i>Davis</i>. Fiduciary aspect of <i>Davis</i> overruled, but not the charitable immunity aspect.</p>  |
| Nebraska | No immunity. | <p><i>Myers v Drozda</i> 180 Neb 183, 141 NW2d 852 (1966) (Supreme Court of Nebraska).</p> <p>The commentary to §895E of the Restatement of Torts, Second, claims that this case abolished the immunity of charitable hospitals only to the extent that they have insurance. This is an error. In this case, the doctrine of charitable immunity was prospectively overruled (even if no insurance was present), but the removal of immunity only operated retrospectively where the entity was insured. As stated by Smith J: ‘[i]n conclusion the new rule applies to all causes of action arising after April 22, 1966, the filing date of this opinion. In respect to other causes of action the new rule applies if, but only if, the nonprofit charitable hospital was insured against liability on the claim of the patient, and then only to the extent of the maximum applicable amount of its insurance coverage.’</p> <p>Whilst the case occurred in the context of a hospital, it is difficult to see how the decision can only be confined to hospitals when it erodes the basis and justification of <u>all</u> charitable immunities.</p> |

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| Nevada        | No immunity.   | <p>NRS 41.480, 'Imposition of liability; conditions and limitations on actions based on acts and omissions of officers or directors:</p> <p>1. A nonprofit corporation, association or organization formed under the laws of this State is not immune from liability for the injury or damage caused any person, firm or corporation as a result of the negligent or wrongful act of the nonprofit corporation, association or organization, or its agents, employees or servants acting within the scope of their agency or employment.</p> <p>2. No action may be brought against an officer, trustee, director or other possessor of the corporate powers of a nonprofit association or trust formed under the laws of this State based on any act or omission arising from failure in his or her official capacity to exercise due care regarding the management or operation of the entity unless the act or omission involves intentional misconduct, fraud or a knowing violation of the law.'</p> |
| New Hampshire | <p>Generally no immunity.</p> <p>Immunity for limited categories.</p> <p>Liability cap for injuries caused by the negligence of a volunteer.</p> | <p><i>Welch v Frisbie Memorial Hospital</i> 90 NH 337, 9 A2d 761 (1939) (Supreme Court of New Hampshire). Charitable immunity abolished for hospitals.</p> <p><i>Wheeler v Monadnock Community Hospital</i> 103 NH 306, 171 A2d 23 (1961) (Supreme Court of New Hampshire). No charitable immunity. Kenison CJ: 'In this jurisdiction it is established doctrine that hospitals and charitable institutions enjoy no immunity from liability for negligence.'</p> <p><i>Dowd v Portsmouth Hospital</i> 105 NH 53, 193 A2d 788, 95 ALR2d 986 (1963) (Supreme Court of New Hampshire). No charitable immunity, (non-immunity broader than hospitals).</p>   |

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|  |  | <p>Immunity for landowners (broader than non-profits), for non-intentional torts when allowing people on their land for recreational purposes for no charge.</p> <p>NHRevStatAnn 508:14, Landowner Liability Limited:</p> <p>‘I. An owner, occupant, or lessee of land, including the state or any political subdivision, who without charge permits any person to use land for recreational purposes or as a spectator of recreational activity, shall not be liable for personal injury or property damage in the absence of intentionally caused injury or damage.’</p> <p>For an application see: <i>Reed v National Council of the Boy Scouts of America, Inc and Boston Minuteman Council, Inc</i> 706 FSupp2d 180, 2010 DNH 018 (2010) (US District Court, D New Hampshire).</p> <p>Liability cap for non-profits where injury is caused by a volunteer’s negligence.</p> <p>NHRevStatAnn 508:17 Volunteers; Nonprofit Organizations; Liability Limited:</p> <p>‘II. Liability of a nonprofit organization for damage or injury sustained by any one person in actions brought against the organization alleging negligence on the part of an organization volunteer is limited to \$250,000. Such limit applies in the aggregate to any and all actions to recover for damage or injury sustained by one person in a single incident or occurrence. Liability of a nonprofit organization for damage or injury sustained by any number of persons in a single incident or occurrence involving negligence on the part of an organization volunteer is limited to \$1,000,000.’</p> |
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| New Jersey | <p>No immunity.</p> <p>Statutory immunity against beneficiary claims modified by judicial decision into a standard of care rule.</p> | <p>New Jersey Charitable Immunity Act NJ Stat Ann §2A:53A-7. On the face of the statute the immunity applies in relation to negligence, and by a strict interpretation not to intentional torts. This is still an immunity regime.</p> <p><i>Hardwicke v American Boychoir School</i> 188 NJ 69, 902 A2d 900 (2006) (Supreme Court of New Jersey) re-interpreted this provision, changing it from a true immunity into a modification in the standard of care provision; the protection not applying to ‘malice or fraud, or intentional, reckless and wanton, or even grossly negligent behavior.’ Although New Jersey still conceptualises this as a true immunity: ‘the CIA immunizes simple negligence only’, and is thus properly categorised as a variation in standard of care rule rather than an immunity.</p> <p>PL 2005, c 264, Limitation on ‘immunity’ in abuse cases.</p> <p>C2A:53A-7.4, Inapplicability of civil immunity granted to certain charitable entities:</p> <p>‘1. The immunity from civil liability granted to a nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes pursuant to the provisions of P.L.1959, c.90 (C.2A:53A-7 to 2A:53A-11) shall not apply to a claim in any civil action that the negligent hiring, supervision or retention of any employee, agent or servant resulted in a sexual offense being committed against a person under the age of 18 who was a beneficiary of the nonprofit organization. As used in this supplementary act, P.L.2005, c.264 (C.2A:53A-7.4 et seq.), “sexual offense” means any actions that would constitute any crime set forth in chapter 14 of Title 2C of the New Jersey Statutes or set forth in paragraph (3) or (4) of subsection b. of N.J.S.2C:24-4.’</p> |
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| New Mexico | Probably no immunity. | <p>No case law.</p> <p>Not mentioned in Restatement of Torts, Second, §895E (1979), Commentary.</p> <p>Lisa Runquist, Jeannie Carmedelle Frey and Patricia Tauchert, ‘Treatment of Charitable Immunity by State’ in Lisa Runquist, Jeannie Carmedelle Frey and Patricia Tauchert, <i>Guide to Representing Religious Organizations</i> (ABA 2009) Appendix 7A,<sup>6</sup> consider whilst the status is unclear, immunity appears to have been abolished.</p> <p>Given that there is a statute (NM Stat §41-10-3) which removes liability for negligence, but not gross negligence, recklessness, or intentional conduct, for charities and non-profits, for damages ‘resulting from the condition of the food’ where that entity in ‘good faith receives food, apparently fit for human consumption, and distributes it at no charge’; this would imply that they are otherwise not immune.</p> |
| New York   | No immunity.          | <p><i>Bing v Thunig and St. John’s Episcopal Hospital</i> 2 NY2d 656, 143 NE2d 3, 163 NYS2d 3 (1957) (Court of Appeals of New York). Abolishes immunity for charitable hospitals.</p> <p><i>Rakaric v Croatian Cultural Club “Cardinal Stepinac Organization”</i> 76 AD2d 619, 430 NYS2d 829 (1980) (Supreme Court, Appellate Division, Second Department, New York). Demonstrates that <i>Bing</i> extends beyond charitable hospitals, and has been taken more broadly to have abolished charitable immunity in New York.</p>   |

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<sup>6</sup> Runquist, Frey and Tauchert (n3).

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| North Carolina | No immunity. | NC Gen Stat §1-539.9. ‘Defense abolished as to actions arising after September 1, 1967.’ ‘The common-law defense of charitable immunity is abolished and shall not constitute a valid defense to any action or cause of action arising subsequent to September 1, 1967. (1967, c. 856.)’   |
| North Dakota   | No immunity. | <p><i>Granger v Deaconess Hospital of Grand Forks</i> 138 NW2d 443 (1965) (Supreme Court of North Dakota). Abolishes charitable immunity for hospitals, although the dicta seems to be wider.</p> <p>Removal of immunity interpreted more broadly than hospitals:</p> <p><i>Johnson and Hassett v Hassett</i> 217 NW2d 771 (1974) (Supreme Court of North Dakota) 773 (Judge Vogel): ‘we do not permit charitable hospitals or other charities to claim immunity from suit.’</p> <p><i>Shermoen v Lindsay</i> 163 NW2d 738 (1968) (Supreme Court of North Dakota).</p> |
| Ohio           | No immunity. | <p><i>Albritton v Neighborhood Centers Association for Child Development</i> 12 OhioSt3d 210, 466 NE2d 867, 12 OBR 295 (1992) (Supreme Court of Ohio).</p> <p><i>Cooper v Grace Baptist Church of Columbus, Ohio, Inc</i> 81 OhioApp3d 728, 612 NE2d 357 (1992) (Court of Appeals of Ohio, Tenth District, Franklin County).</p>   |

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| Oklahoma     | <p>Generally no immunity.</p> <p>Immunity for volunteer/full time fire department charities – made organs of the state.</p> | <p><i>Gable v Salvation Army</i> 186 Okla 687, 100 P2d 244, 1940 OK 8 (1940) (Supreme Court of Oklahoma).</p> <p>Oklahoma Statute §18-594. ‘Fire departments for unincorporated areas - Status as state agency - Nonliability for tort’:</p> <p>‘Any charitable corporation formed in an unincorporated area for the purpose of providing either a volunteer or a full-time fire department, such as is mentioned in Section 592 of this title, shall be considered an agency of the State of Oklahoma while actually performing the function of providing fire protective services either within or without the unincorporated area wherein it is situated, and while so engaged such corporation shall not be liable in tort for the acts of its members or its firemen.’</p> |
| Oregon       | No immunity.  | <p><i>Hungerford v Portland Sanitarium &amp; Benevolent Association</i> 235 Or 412, 384 P2d 1009 (1963) (Supreme Court of Oregon, En Banc).</p> <p><i>Wicklander v Salem Memorial Hospital</i> 235 Or 488, 385 P2d 617 (1963) (Supreme Court of Oregon).</p>  |
| Pennsylvania | No immunity.  | <p><i>Flagiello v The Pennsylvania Hospital</i> 417 Pa 486, 208 A2d 193 (1965) (Supreme Court of Pennsylvania).</p> <p><i>Nolan v Tifereth Israel Synagogue of Mount Carmel, PA Inc</i> 425 Pa 106, 227 A2d 675 (1967) (Supreme Court of Pennsylvania). Charitable immunity no longer exists.</p>   |

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| Rhode Island   | No immunity.                              | <p><i>Glavin v The Rhode Island Hospital</i> 12 RI 411, 1879 WL 3553 (RI) 34 AmRep 675, (1879) (Supreme Court of Rhode Island), rejected charitable immunity.</p> <p>In 1896 the Rhode Island legislature introduced limited charitable immunity for hospitals (§7-1-22), this was repealed in 1968 (PL 1968, Chap 43).</p> <p><i>Hodge v Osteopathic General Hospital of Rhode Island</i> 107 RI 135, 265 A2d 733, (1970) (Supreme Court of Rhode Island).</p>   |
| South Carolina | <p>No immunity.</p> <p>Liability Cap.</p> | <p>Complex history – which exemplifies the battle surrounding charitable immunity:</p> <p>SC Code 1976 §44-7-50: abrogates charitable immunity in relation to hospitals and provides a damages cap of \$100,000 for actions brought against charitable hospitals.</p> <p><i>Fitzer v Greater Greenville South Carolina YMCA</i>, 277 SC 1, 282 SE2d 230, 25 ALR4th 513 (1981) (Supreme Court of South Carolina). Charitable immunity abolished.</p> <p><i>Hasell v The Medical Society of South Carolina, Inc</i> 288 SC 318, 342 SE2d 594 (1986) (Supreme Court of South Carolina) – <i>Fitzer</i> abolished charitable immunity and overruled any contradictory legislation including the \$100,000 cap in SC Code 1976 §44-7-50.</p> <p>SC General Assembly enacted §33-55-200 - 33-55-230. §33-55-210 limits liability of any charitable organization to \$200,000; §33-55-230 by re-enactment, retained the \$100,000 limit of liability for charitable and governmental hospitals.</p> <p><i>Hanvey v Oconee Memorial Hospital</i> 308 SC 1, 416 SE2d 623 (1992) (Supreme Court of South Carolina). The court does not have the power to overrule legislation which is not constitutionally infirm, <i>Hassel</i>, overruled. However, the \$100,000 cap violated equal</p> |

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|  |  | <p>protection and did not survive (state) constitutional challenge. The \$200,000 cap would apply.</p> <p>In 1994, the Legislature repealed §33–55–210 and enacted SCCode Ann §33–56–180 (Supp2003), which limits a claimant’s recovery from a charitable organization to the same limits as contained in South Carolina Tort Claims Act.</p> <p>Amended/replaced by §33-56-180 (see <i>James v Lister</i> 331 SC 277, 500 SE2d 198 (1998) (Court of Appeals of South Carolina)).</p> <p>§33-56-180. Provides for limitation of liability for injury or death caused by an employee of a charitable organization, where the employee is acting within the scope of his employment. In this case only the actual damage may be recovered, further this sum may not exceed the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15. This is rather clumsily drafted since this provision (The South Carolina Torts Claims Act) is the provision which provides protection to organs of the state, and the language is drafted with this in mind. It provides for a cap on liability (§15-78-120). A \$300,000 cap, for loss arising from a single occurrence, with £1,200,000 being the cap for claims caused by the torts of licensed physicians or dentists. The total sum recovered not to exceed \$600,000, unless caused by the torts of licensed physicians or dentists, in which case it is capped at \$1,200,000. No award for damages to include punitive or exemplary damages or interest prior to judgment.</p> <p>§33-56-180, Motor vehicles are treated differently - if the actual damages arose from the operation of a motor vehicle and exceed \$250,000, the injured person may recover benefits pursuant to §38-77-160. The amount may not exceed the limits of the uninsured or underinsured coverage.</p> |
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| South Dakota | <p>Status unclear.</p> <p>Insurers cannot assert charitable immunity.</p> | <p>Not mentioned in Restatement (Second) of Torts §895E (1979), Commentary.</p> <p>Lisa Runquist, Jeannie Carmedelle Frey and Patricia Tauchert, ‘Treatment of Charitable Immunity by State’ in Lisa Runquist, Jeannie Carmedelle Frey and Patricia Tauchert, <i>Guide to Representing Religious Organizations</i> (ABA 2009) Appendix 7A,<sup>7</sup> state that there is no clear authority, and that the absence of case law on charitable immunity suggests that the doctrine is not recognised.</p> <p>Insurers are not allowed to assert charitable immunity, SD Codified Laws §58-23-3:</p> <p>‘Tort liability of charitable institution -- Insurer estopped from asserting charitable immunity defense. Each policy issued to cover the liability of any charitable institution for negligence or any other tort shall contain a provision to the effect that the insurer shall be estopped from asserting, as a defense to any claim covered by said policy, that such institution is immune from liability on the ground that it is a charitable institution.’</p> <p>That the status of charitable immunity is unclear demonstrates the fact that these cases are invariably defended by insurers.</p> |
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<sup>7</sup> Runquist, Frey and Tauchert (n3).

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| Tennessee | <p>No immunity.</p> <p>Charitable funds immune from execution of judgment.</p>                               | <p><i>Hammond Post No.3, Inc, American Legion v Willis</i> 15 Beeler 226, 179 Tenn 226, 165 SW2d 78 (1942) (Supreme Court of Tennessee).</p> <p><i>O'Quin v Baptist Memorial Hospital</i> 20 Beeler 570, 184 Tenn 570, 201 SW2d 694 (1947) (Supreme Court of Tennessee).</p> <p><i>Spivey v St Thomas Hospital</i> 31 TennApp 12, 211 SW2d 450 (1948) (Court of Appeals of Tennessee, Middle Section): '[t]he only immunity allowed the latter is that such of its property as is used exclusively for charitable purposes is exempt from execution under a judgment for tort.'</p>  |
| Texas     | <p>No immunity.</p> <p>Liability Cap.</p> <p>Restrictive approach to defining a charitable organisation.</p> | <p><i>Howle v Campamon Carter</i> 470 SW2d 629 (1971) (Supreme Court of Texas). No charitable immunity for events occurring after 9 March 1966.</p> <p><i>Sprague v Memorial Baptist Hospital System</i> 580 SW2d 1 (1979) (Court of Civil Appeals of Texas, Houston (1st Dist)).</p> <p>§84.006. Organization Liability: liability cap for non-hospital charitable organisation limited to \$500,000 for each person and \$1,000,000 for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property. But only where liability insurance is held covering these amounts (§84.007 (g)).</p> <p>§84.0065. Organization Liability of Hospitals: liability cap of \$500,000 for any act or omission resulting in death, damage, or injury to a patient if the patient or (person responsible for the patient) signs a written statement acknowledging, that the hospital is providing care that is not administered for or in expectation of compensation; and the</p> |

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|          |   | <p>limitation on recovery is in exchange for receiving the health care services. This need for a signature is waived under (b), where the patient is incapacitated, or the person responsible for the patient is not reasonably available.</p> <p>Both limitations do not apply to acts or omissions that are intentional, wilfully negligent, or done with conscious indifference or reckless disregard for the safety of others. (§84.007).</p> <p>A restrictive approach is taken to defining a charitable organisation for §84.006: the organisation must normally receive more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees (§84.003(1)(B)(vi)).</p> |
| Utah     | No immunity.  | <p><i>Brigham Young University v Lillywhite</i> 118 F2d 836, 137 ALR 598 (1941) (Circuit Court of Appeals, Tenth Circuit). A Federal court applying the law of Utah.</p> <p>Utah has protective legislation for non-profits, however, they are not true immunities, they are instead, significant variations to the standard of care applicable, (Utah Code §78B-4-102/103).</p>   |
| Vermont  | No immunity.  | <p><i>Foster v Roman Catholic Diocese of Vermont</i> 116 Vt 124, 70 A2d 230, 25 ALR2d 1 (1950) (Supreme Court of Vermont).</p>   |
| Virginia | Doctrine of ‘limited immunity’ - now a standard of care rule. | <p>Virginia has a doctrine based on public policy entitled ‘limited immunity’. Whilst it is still locally conceived of as an immunity, <i>Cowan</i> has changed it into a standard of care rule, rather than a true immunity. However, it is strictly applied.</p>   |



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|               |              | <p><i>Ola v YMCA of South Hampton Roads, Inc</i> 270 Va 550, 621 SE2d 70 (2005) (Supreme Court of Virginia). Limited form of charitable immunity. Immunity for negligence arising from acts of servants/agents, provided due care has been exercised in their selection and retention. This immunity does not extend to non-beneficiaries.</p> <p><i>Egerton v RE Lee Memorial Church</i> 395 F2d 381 (1968) (US Court of Appeals Fourth Circuit). Broad approach is taken to beneficiaries – eg a tourist viewing stained glass windows in a church.</p> <p><i>Cowan v Hospice Support Care, Inc</i> 268 Va 482, 603 SE2d 916 (2004) (Supreme Court of Virginia). ‘Immunity’ applies to simple negligence, but not gross negligence or wilful and wanton negligence. These categories are narrowly defined. (Acknowledged in <i>Ola</i>).</p> |
| Washington    | No immunity. | <p><i>Pierce v Yakima Valley Memorial Hospital Ass’n</i> 43 Wash2d 162, 260 P2d 765 (1953) (Supreme Court of Washington, en Banc).</p> <p><i>Friend v Cove Methodist Church, Inc</i> 65 Wash2d 174, 396 P2d 546 (1964) (Supreme Court of Washington, En Banc).</p>   |
| West Virginia | No immunity. | <p><i>Adkins v St Francis Hospital of Charleston, West Virginia</i> 149 WVa 705, 143 SE2d 154 (1965) (Supreme Court of Appeals of West Virginia).</p>  |

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| Wisconsin | No immunity. | <p><i>Kojis v Doctors Hospital</i> 12 Wis2d 367, 107 NW2d 131 (1961) (Supreme Court of Wisconsin).</p> <p><i>Widell v Holy Trinity Catholic Church</i> 19 Wis2d 648, 121 NW2d 249 (1963) (Supreme Court of Wisconsin).</p> <p><i>Doe &amp; Gillespie v Archdiocese of Milwaukee</i> 284 Wis2d 307, 700 NW2d 180, 2005 WI 123 (2005) (Supreme Court of Wisconsin). (Dicta in <i>Kojis</i> is not restricted to hospital cases).</p>   |
| Wyoming   | Unclear      | <p>Restatement of Torts, Second, §895E (1979) claims that Wyoming has abolished immunity for charitable hospitals, but that it remains for other charitable institutions, this was not correct in 1979, nor is it correct now.</p> <p><i>Bishop Randall Hospital v Hartley</i> 24 Wyo 408, 160 P 385, AmAnnCas 1918E, 1172 (1916) (Supreme Court of Wyoming). Establishes charitable immunity (in the context of a charitable hospital).</p> <p><i>Lutheran Hospitals and Homes Society of America v Yepsen</i> 469 P2d 409 (1979) (Supreme Court of Wyoming). Where charges are made, or compensation received, or where Government funds are received for the activity, then the entity cannot rely on charitable immunity. Whilst occurring in the context of a charitable hospital, the case is not so limited, and does not abolish charitable immunity for hospitals not within this category.</p> <p>John Burman, ‘Wyoming’s New Comparative Fault Statute’ 31 Land&amp;WaterLRev 509, fn96 ‘The Wyoming Supreme Court has not abrogated the doctrine of charitable</p> |

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|  |  | <p>immunity, although it is seldom used as a defense.’</p> <p>However, Wyoming legislation envisages actions against non-profits.</p> <p>WY Stat §17-22-106, Liability in tort and contract: ‘(a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties and liabilities in contract and tort.’... ‘(c) A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered as a member by the nonprofit association.’</p> <p>In providing for volunteer protection Wyoming legislation envisages actions against non-profits.</p> <p>WY Stat §1-1-125, Immunity for volunteers; volunteer firefighters. ‘(d) In any suit against a nonprofit organization or a volunteer fire department for civil damages based upon the negligent act or omission of a volunteer, proof of the act or omission shall be sufficient to establish the responsibility of the organization or department under the doctrine of respondeat superior, notwithstanding the immunity granted to the volunteer with respect to any act or omission included under subsection (b) of this section.’</p> <p>These actions may still be concerned with non-profits which charge for services, or receive government funding, so the existence of these provisions cannot by themselves be taken to undermine the existence of charitable immunity. However, in legislation concerning the gratuitous distribution of donated food by a non-profit, where no charge is made, whilst protection is provided for non-profits, liability is also envisaged in some circumstances.</p> <p>WY Stat §35-7-1301, Donation of food; exemption from civil liability. ‘(b) Any nonprofit organization, which serves or provides food to persons for their consumption as</p> |
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|  |  | described in subsection (a) of this section, is liable for any injury resulting from the ingesting of the donated food received, accepted, gathered or removed by that organization, only if that injury is caused by a willful, wanton or reckless act of the organization.' |
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