

CHAPTER SEVEN

TORT LIABILITY OF RELIGIOUS ORGANIZATIONS

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Appendix 7A Treatment of Charitable Immunity by State

Jurisdiction	State of Charitable Immunity Exception	Relevant Case or Statute
Alabama	State of the exception is unclear	Alabama statutory law does not speak directly to the issue of charitable immunity, but Alabama Code § 10-3B-7 implies that charities may be held liable in tort. ("A person is not liable for a tortious act or omission for which a nonprofit Ass'nciation is liable merely because the person is a member") See also <i>Alabama Baptist Hosp. Bd. v. Carter</i> , 145 So. 443 (Ala. 1932) (rejecting evidence demonstrating that the hospital was a charitable institution because the theory that charitable hospitals cannot be liable for negligence was generally repudiated); <i>Autry v. Roebuck Park Baptist Church</i> , 229 So. 2d 469, 470 (Ala. 1969) (declining to decide whether charitable immunity was an appropriate ground for demurrer)
Alaska	State of the exception is unclear	Until 1959, the district courts of Alaska had local jurisdiction, and two such courts determined that Alaska did not recognize the charitable immunity doctrine, at least as applied to hospitals. <i>Moats v. Sisters of Charity of Providence</i> , 13 Alaska 546 (D. Alaska 1952); see also <i>Tuengel v. City of Sitka</i> , 118 F. Supp. 399, 401 (D. Alaska 1954). The state's highest court and the legislature have apparently remained silent on the issue.
Arizona	Abolished	<i>Ray v. Tucson Med. Ctr.</i> , 230 P.2d 220 (Ariz. 1951)
Arkansas	Charities retain full immunity from tort liability, but, by statute, tort victims may maintain a direct action against a charity's insurer	<i>Helton v. Sisters of Mercy of St. Joseph's Hosp.</i> , 351 S.W.2d 129, 132 (Ark. 1961) (declining to overrule the doctrine); Ark. Code. Ann. 23-79-210
California	Abolished	<i>Malloy v. Fong</i> , 232 P.2d 241 (Cal. 1951)
Colorado	Charities are not immune from suit, but their trust property is exempt from judgment	<i>O'Connor v. Boulder Colorado Sanitarium Ass'n</i> , 96 P. 2d 835 (Colo. 1939)
Connecticut	Abolished by statute	Conn. Gen. Stat. § 52-557d
Delaware	State of the exception is unclear	Only one court in Delaware has spoken on the issue of charitable immunity, and that court rejected the doctrine. <i>Durney v. St. Francis Hosp., Inc.</i> , 83 A.2d 753, 758 (Del. Super. Ct. 1951). Higher courts and the legislature have apparently remained silent on the issue.
District of Columbia	Abolished	<i>President and Dirs. Of Georgetown College v. Hughes</i> , 130 F.2d 810 (D.C. Cir. 1942)
Florida	Abolished	<i>Nicholson v. Good Samaritan Hosp.</i> , 199 So. 344 (Fla. 1940)

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Georgia	Charities not immune from suit, but are liable only to the extent of its insurance coverage; their trust property is exempt from judgment	Cox v. De Jarnette, 123 S.E.2d 16 (Ga. Ct. App. 1961)
Hawaii	State of the exception is unclear	Hawaii's courts have not spoken on the issue of charitable immunity, but the state legislature has carved out at least some exceptions to a charity's liability. Charities, religious groups, and nonprofit organizations distributing food, health care supplies, or medicines in good faith to the needy at no charge are exempt from civil or criminal liability as a result of the condition of the food or medicine, unless there is a showing of gross negligence or wanton acts or omissions. Haw. Rev. Stat. §§ 145D-2, 328C-2
Idaho	Abolished	Bell v. Presbytery of Boise, 421 P.2d 745, 747 (Idaho 1966)
Illinois	Abolished	Darling v. Charleston Community Mem'l Hos., 211 N.E.2d 253, 261 (Ill. 1965)
Indiana	Abolished	Harris v. YWCA, 237 N.E.2d 242 (Ind. 1968)
Iowa	Abolished	Haynes v. Presbyterian Hospital Ass'n, 45 N.W.2d 151, 154 (Iowa 1950); Sullivan v. First Presbyterian Church, 152 N.W.2d 628 (Iowa 1967)
Kansas	Abolished	Noel v. Menninger Foundation, 267 P.2d 934, 943 (Kan. 1954)
Kentucky	Abolished	Mullikin v. Jewish Hospital Ass'n., 348 S.W.2d 930, 936 (Ky. 1961)
Louisiana	Abolished	Garlington v. Kingsley, 289 So. 2d 88 (La. 1974); Jackson v. Doe, 296 So. 2d 323 (La. 1974)
Maine	Charities not immune from suit, but are liable only to the extent of its insurance coverage; their trust property is exempt from judgment	114 M.R.S.A. § 158; see also Rhoda v. Aroostook General Hosp., 226 A.2d 530 (Me. 1967)
Maryland	Charities are immune from tort liability except as to liability imposed by statute	Montrose Christian Sch. Corp. v. Walsh, 770 A.2d 111, 121 (Md. 2001)
Massachusetts	Abolished, but the amount recoverable is limited by statute	Mass. Gen. Laws Ann. ch. 231, § 85K

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Michigan	Abolished	Parker v. Port Huron Hosp., 105 N.W.2d 1 (Mich. 1960) (abolishing immunity as to hospitals); see Guardiola v. Oakwood Hosp., 504 N.W.2d 701, 704 (Mich. Ct. App. 1993) (stating that Parker abolished charitable immunity in Michigan, but not specifying whether abolition was as to hospitals alone or all charities); Everett v. County of Saginaw, 333 N.W.2d 301, 303 (Mich. Ct. App. 1983) (same)
Minnesota	Abolished	High v. Supreme Lodge of World, 7 N.W.2d 675, 679 (Minn. 1943); Swigerd v. Ortonville, 75 N.W.2d 217 (Minn. 1956)
Mississippi	Abolished, at least as to hospitals and charitable distributions of food	Mississippi Baptist Hospital v. Holmes, 55 So. 2d 142, 156 (Miss. 1951) (abolishing charitable immunity as applied to charitable hospitals); Miss. Code. Ann. §§ 95-7-5, 95-7-9 (charities and nonprofits distributing food in good faith to the needy at no charge not liable in tort for damages resulting from the condition of the food)
Missouri	Abolished, except as provided by statute that health services corporations are immune from tort liability arising out of health care services provided to the corporation's members and beneficiaries	Abernathy v. Sisters of St. Mary's, 446 S.W.2d 599 (Mo. 1969); Mo. Ann. Stat. § 354.125
Montana	State of the exception is unclear	In the absence of state case law on the subject, a federal court in Montana held that charities were not immune from tort liability. Howard v. Sisters of Charity, 193 F. Supp. 191 (D. Mont. 1961). The legislature has not spoken directly on the issue, but in light of § 27-1-701 of the Montana Code, which states that "except as otherwise provided by law, everyone" is liable for the results of both their willful and negligent acts, the exception is likely not recognized in Montana.
Nebraska	Abolished, at least as to hospitals	Myers v. Drozda, 141 N.W.2d 852, 854 (Neb. 1966)
Nevada	Abolished by statute	Nev. Rev. Stat. Ann. § 41.480
New Hampshire	Abolished, at least as to hospitals	Welch v. Frisbie Mem'l Hosp., 9 A.2d 761, 764 (N.H. 1939)
New Jersey	Charities are immune from tort liability except as to strangers injured by the charity's (or the charity's servants) negligence	N.J. Stat. Ann. § 2A:53A-7

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New Mexico	State of the exception is unclear, but appears to be abolished.	New Mexico courts have apparently not spoken on the issue of charitable immunity. In 1954, the question of the immunity of a charitable medical provider came before the state supreme court, but the court declined to decide the issue because the question had not been raised at trial. <i>Los Alamos Medical Ctr. v. Coe</i> , 275 P.2d 175, 180-181 (N.M. 1954). The state legislature has established tort immunity only for governmental entities. N.M. Stat. Ann. § 41-13-3; see generally New Mexico's Tort Claims Act, N.M. Stat. Ann. Sections 41-4-1 through 41-4-27. It is clear that charities who distribute good in good faith and at no charge are exempt from liability arising out of the condition of the food, unless there is a showing of gross negligence, recklessness, or intentional acts. N.M. Stat. § 41-10-3(B).
New York	Abolished, at least as to hospitals	<i>Bing v. Thunig</i> , 143 N.E.2d 3 (N.Y. 1957)
North Carolina	Abolished	N.C. Gen. Stat. § 1-539.9
North Dakota	Abolished, at least as to hospitals	<i>Granger v. Deaconess Hosp.</i> , 138 N.W.2d 443, 453 (N.D. 1965)
Ohio	Abolished	<i>Albritton v. Neighborhood Ctrs. Ass'n for Child Dev.</i> , 466 N.E.2d 867 Ohio (1984)
Oklahoma	Abolished, except for a statutory exception	<i>Gable v. Salvation Army</i> , 100 P.2d 244 (Okla. 1940) (abolishing charitable immunity); Okla. Stat. tit. 18, § 594 (establishing that charitable organizations incorporated for the purpose of providing volunteer or full-time fire department service are exempt from liability for the torts of its agents)
Oregon	Abolished	<i>Hungerford v. Portland Sanitarium & Benevolent Ass'n.</i> , 384 P.2d 1009 (Or. 1963)
Pennsylvania	Abolished, at least as to hospitals	<i>Flagiello v. Pennsylvania Hosp.</i> , 208 A.2d 193, 208 (Pa. 1965)
Rhode Island	Abolished	<i>Glavin v. Rhode Island Hosp.</i> , 12 R.I. 411 (R.I. 1879); <i>Brown v. Church of The Holy Name of Jesus</i> , 252 A.2d 176, 180 (R.I. 1969)
South Carolina	Abolished by the state supreme court, but the legislature later established limits on the amount of recovery	<i>Fitzer v. Greater Greenville YMCA</i> , 277 S.C. 1, 282 S.E.2d 230 (1981); see also S.C. Code Ann. §§ 33-55-200 through 33-55-230.

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South Dakota	State of the exception is unclear, but it appears that, whenever a charitable organization purchases liability insurance, it waives any immunity defense that might otherwise have been available to it	Under South Dakota law, any charitable or non-profit institution, or volunteer thereof, participating in pool liability insurance or purchasing liability insurance waives any claim to immunity under § 47-23-2. S.D. Codified Laws § 47-23-32; see also S.D. Codified Laws § 58-23-3 (liability insurance policies covering tort claims against charities must contain a provision that the insurer is estopped from asserting charitable immunity as a defense). However, the immunity provided for in § 47-23-2 covers only volunteers, not the institutions themselves; therefore, it is unclear whether a charitable institution without insurance would be immune from tort claims or not.
Tennessee	Charities are not immune from suit, but their trust property is exempt from judgment	O'Quin v. Baptist Mem'l Hosp., 201 S.W.2d 694, 696 (Tenn. 1947); McLeod v. St. Thomas Hosp., 95 S.W.2d 917, 919 (Tenn. 1935)
Texas	Abolished	Howle v. Camp Amon Carter, 470 S.W.2d 629 (Tex. 1971)
Utah	Abolished	Brigham Young University v. Lillywhite, 118 F.2d 836, 842-843 (10th Cir. 1941) (construing Utah law). However, nonprofits are exempt from liability for harm resulting from their distribution of food to the needy, unless the harm was caused by the entity's "gross negligence, recklessness, or intentional conduct," Utah Code Ann. § 78-11-22.1, and are not liable for the acts of its volunteers, absent applicability of either of the statutory exceptions. Utah Code Ann. § 78-19-3.
Vermont	Abolished	Foster v. Roman Catholic Diocese, 70 A.2d 230, 238 (Vt. 1950)
Virginia	Charities have only limited liability for torts committed against beneficiaries of the charity, so long as the charity exercised due care in hiring supervising its employees, agents, and volunteers.	Moore v. Warren, 463 S.E.2d 459 (Va. 1995); see also Shull v. Caroline Furnace Lutheran Camp & Retreat Ctr., Inc., 64 Va. Cir. 472 (Va. Cir. Ct. 2004)
Washington	Abolished	Pierce v. Yakima Valley Mem'l Hosp. Ass'n, 260 P.2d 765, 775 (Wash. 1953) (rejecting doctrine as to hospitals); Friend v. Cove Methodist Church, 396 P.2d 546, 550 (Wash. 1964) (expanding Pierce to all charities)
West Virginia	Abolished	Adkins v. St. Francis Hosp., 143 S.E.2d 154, 162 (W. Va. 1965)
Wisconsin	Abolished, at least as to hospitals	Kojis v. Doctors Hosp., 107 N.W.2d 292, 294 (Wis. 1961)

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Wyoming	Abolished	Lutheran Hosps. & Homes Soc'y of Am. v. Yepsen, 469 P.2d 409, 412 (Wyo. 1970) (holding that a 1916 case allowing for charitable immunity in the absence of evidence that the institution negligently hired or supervised its employees was no longer controlling and that "[t]he district court was justified in holding that defendant cannot claim charitable immunity.") See also Wyo. Stat. Ann. § 17-22-106 (for the purposes of determining liability in tort, non-profit entities are separate legal entities from their members). However, nonprofits are exempt from liability for harm resulting from their distribution of food to the needy, unless the harm was caused by the entity's "willful, wanton or reckless act." Wyo. Stat. Ann. § 35-7-1301.