



WHY the NATIONAL SKI PATROL needs a NATIONAL ENHANCEMENT STATUTE

- ⊕ **Saving volunteerism.** Some volunteer members are becoming reluctant to help as “Good Samaritans,” both on and off the ski slope for fear of a lawsuit. Enhancement would encourage 23,669 trained, volunteer rescuers to continue their volunteer service not only on the slopes, but also on the streets and in their communities. This law would help a group of volunteers remain active without the cost of expensive insurance and more recently allow our work to continue where insurance companies decline insurance coverage at any cost.
- ⊕ **The NSP volunteer wants to do more.** Many NSP volunteers want to help in the Olympic Games when they occur in the United States, Medical Reserve Corps (MRC’s), Community Emergency Response Teams (CERT’s), Homeland Security, respond across state lines to help the injured or ill in disasters both natural and man-made, and support our military at bases or while on training exercises in the United States. Our history has been helping where and when our country needed us from cold weather research and development for the Army, recruitment for the 10th Mountain Division in World War II, search and rescue of downed pilots in the mountains, and working in the Olympics and helping the injured when a bomb was detonated at an Olympic event in Atlanta. Our first aid skills cross state boundaries when often EMS providers are constrained by state license limits so we are a valuable resource. We are willing to help, but fear of litigation is chilling this effort.
- ⊕ **Saving our training program.** The environment of ice and snow, performing rescues where EMS is not able to respond, is dangerous. Danger is inherent in the work and training. Volunteer instructors of the NSP should not have to act as an insurer of the student, nor give their time and never be certain a court will not hold them responsible for their student being injured in a very dangerous training environment. Our tradition has always been that we assume the risk of training on ice and snow or training in places EMS can’t go. To challenge a student to advance to the next level requires the student to be willing to assume the risk, and, by the nature of the assumption, suffer the consequence. Only the student, not the instructor, knows the mental, physical, and skill limitations of the student at any given time. To train in a dangerous field, the student must assume the risk, and, if injured, not be allowed to later shift the burden to an instructor unless the instructor is guilty of gross negligence or committing an intentional injury. Enhancement is needed for us to continue our training, which is dangerous but only undertaken by those willing.
- ⊕ **Saving the National Ski Patrol System, Incorporated.** Our charity does not operate any resorts, but does supply trained patrollers and technicians. The NSP should not have to shoulder the burden of insurance or liability for the for-profit resort, and we do not ask for that. Our enhancement would protect the volunteer and the volunteer organization so we may continue our charitable work. Also, when our patrollers venture forth as rescuers in the community, the NSP should again not have to shoulder the burden of insurance or liability for the volunteer “Good Samaritan.” The NSP would be free to continue to exist and provide the service the public expects from us.



PROPOSED NATIONAL SKI PATROL ENHANCEMENT BILL



The National Ski Patrol System, Incorporated (NSP), is a Colorado corporation and chartered by the United States Congress. Since March 1938, it has been an advocate for outdoor safety, educator of its members and the public in outdoor first aid, served as a recruitment office for the United States Army during World War II, provided trained ski patrollers to serve in the winter and summer Olympics hosted by the United States, and provided trained volunteers and paid staff for service in business and local communities across the country. Enhancement through sovereign enhancement is therefore requested to be granted in three areas in order to preserve the NSP and to protect it and volunteerism for the common good.

First, enhancement is granted to any volunteer member in good standing certified to render emergency care and who renders such care in good faith and without compensation to any injured or ill person at any Olympic event or trial, ski resort, natural or man-made disaster, any outdoor emergency rescue, or any other place where emergency care is needed or requested by an individual or agency of local, state, or federal government (civilian or military), including, but not limited to, the Department of Homeland Security, the Federal Emergency Management Agency (FEMA), the Medical Reserve Corps (MRC), or any Community Emergency Response Team (CERT), or while transporting any injured or ill person to a place accessible for transfer to any available civilian or military “emergency medical system unit,” commonly known as an air, water, or ground ambulance as licensed by any local, state, or federal agency or government. This enhancement shall result in the volunteer member not being liable for any civil or punitive costs or damages for acts or omissions resulting from the rendering of such care, rescue, treatment, transportation, or assistance, including, but not limited to, acts or omissions which involve violations of any local, state, or federal regulation (civilian or military), or any standard of the National Ski Patrol Systems, Inc. in the rendering of such act or omission, unless such act or omission was the result of gross negligence or willful misconduct.

Regarding this enhancement, the term “compensation” shall not be construed to include food, lodging, transportation, complimentary lift tickets, or other gifts provided as a gratuity to volunteer members by any resort, group, association, or business entity or any government agency or unit, whether local, state, or federal (civilian or military).

Second, enhancement is granted to any instructor (volunteer or paid) of the NSP, because the training is inherently dangerous. The trainee must be willing to accept this inherent training risk of injury, illness, or death during training or avoid the risk by declining training. Safety shall be a first priority, and all risks minimized by both instructor and trainee, but to achieve expertise in this field of emergency rescue in a hostile outdoor environment or place of disaster, it is necessary to challenge personal skills and train in actual terrain. The best way to avoid minor or serious injury, illness, or death during such training is for the trainee to have control over the training and to accept or refuse any training, exercise, or test, based upon personal knowledge of his or her mental, physical, or emotional health and personal capabilities. Since the choice to train or refuse can and should only be made by the trainee, and the only alternative is a guess by the instructor based upon facts reported or withheld by the trainee, the trainee shall be given the final decision, but must accept the consequences. This is the foundation of volunteerism. Therefore, the trainee shall assume the risk and the instructor shall have enhancement and not be liable to any trainee for any civil or punitive costs or damages for acts or



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omissions resulting from training unless such act or omission was the result of gross negligence or willful misconduct by the instructor.

Once trained and deployed, the instructor can't foresee or predict the outcome of any particular rescue by the person trained and therefore the instructor shall have enhancement and shall not be liable for any civil or punitive costs or damages for acts or omissions to any person subsequently rescued or treated by a person trained by that instructor, unless such act or omission was the direct result of gross negligence or willful misconduct by the instructor in the training and it caused the loss or injury to the person rescued.**

Third, the NSP serves the public through education and safety programs for the outdoor community and by training individuals as instructors and rescuers. It does not operate recreational projects, nor participate in the operation of resorts for which it supplies trained personnel. During the past several years, it has on several occasions had litigation filed against it which alleged it should be liable for acts or omissions over which it had no control and which should have more properly been filed against the operational entity involved. Since the costs of litigation alone are sufficient to damage the financial health of this charitable organization, the NSP, its officers (volunteer or paid), members of its board of directors, medical advisers of the NSP and its sub-units, legal advisers of the NSP and its sub-units, or its staff (volunteer or paid), shall not be liable for any civil or punitive costs or damages for acts or omissions resulting from its charitable pursuits in education, safety, publishing books and manuals, providing trained personnel or instructors or any other act allowed under its Charter from the United States Congress or its Articles of Incorporation, unless such act or omission was the result of gross negligence or willful misconduct.

Upon the termination or dismissal of any suit filed, which result is based in whole or in part upon this enhancement, the party or parties filing said suit shall be required by the court to pay the actual costs, expenses and attorney fees for the defendant or defendants protected by this enhancement.

The NSP has trained members who have patrolled across many of the states in the United States for over 70 years. Portability of our training and first aid care across state lines has been fundamental to the NSP, the public, and the partners we serve. To protect our continued service nationwide, it is critical for our organization to be national in scope and have one standard for our members, not many standards. This bill would therefore provide for a national, basic, non-EMS, first aid standard as set forth by the board of directors of the National Ski Patrol System, Inc. and the National Ski Patrol Medical Adviser or Advisers. This standard is to be published in the current Outdoor Emergency Care edition of the NSP, shall be a single national standard, and no state or local government shall be permitted to regulate, control or require licensure.

**Note – liability still exists for accidents in training when a third party or innocent bystander gets injured. Enhancement covers the instructor from suit by the student, not a third party. We can train on closed slopes or insure against the risk.