

# HOUSE BILL REPORT

## SSB 6216

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to liability of nonprofit and charitable corporations.

**Brief Description:** Providing immunity for nonprofit and charitable corporations that provide used eyeglasses for charitable purposes.

**Sponsors:** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Padden, Regala, Hargrove, Baumgartner, Kohl-Welles and Roach).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 2/16/12, 2/20/12 [DPA].

#### **Brief Summary of Substitute Bill (As Amended by Committee)**

- Limits the liability of charitable organizations that provide previously owned eyeglasses or hearing instruments.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Hansen, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

**Staff:** Omeara Harrington (786-7136).

#### **Background:**

Various state and federal laws provide immunity from liability to individual actors rendering assistance or services without payment. Generally, these immunity provisions do not apply to acts or omissions that constitute gross negligence.

The Good Samaritan Act provides immunity from liability for individuals who provide emergency care at the scene of an emergency without expectation of compensation. The

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Good Samaritan Act has been amended to include immunity provisions for physicians and other health care providers volunteering health care services with nonprofit organizations or with for-profit organizations that regularly provide services to the public or uninsured. Services must be given without payment or expectation of payment in order for the immunity to apply.

The federal Volunteer Protection Act provides immunity from liability for individuals providing volunteer services for government or nonprofit entities. Under Washington law, volunteers for a nonprofit entity only receive the immunity protection when the entity maintains a prescribed amount of liability insurance relative to its revenues.

Alaska, Oregon, and Arizona have all passed laws specifically to shield charitable organizations from liability for facilitating donations of used eyeglasses.

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### **Summary of Amended Bill:**

Charitable organizations are not liable for damages arising out of acts or omissions associated with providing people with previously-owned eyeglasses or hearing instruments. The organization is still subject to liability for damages arising out of acts or omissions that constitute gross negligence or willful or wanton misconduct.

The immunity only applies if certain criteria are met. The person to whom the organization provides eyeglasses or hearing instruments must be at least 14 years of age and no compensation may be expected or collected. The eyeglasses or hearing devices must be provided by a medical professional who has either personally examined the recipient or who has personally consulted with the medical professional who issued the prescription for eyeglasses or examined the recipient of hearing instruments.

The organization must qualify as a charitable organization in order for the immunity to apply. Charitable organizations are those that regularly engage in, or provide financial support for, a benevolent or charitable activity that benefits nonmembers. Also, a charitable organization's income cannot be distributable to its members, directors, or officers, and none of those actors or any other employee or agent may be paid an amount beyond a fixed, reasonable, and approved level of compensation.

### **Amended Bill Compared to Substitute Bill:**

The section expanding the Eye Care for the Homeless Program to include services for the poor and uninsured is removed.

The following changes are made to the section regarding immunity:

- Immunity is granted to charitable organizations, as defined in the bill, rather than nonprofit corporations and charitable corporations.
- The scope of immunity is narrowed. Liability will not be limited for acts or omissions that constitute gross negligence or willful or wanton misconduct.

- Charitable organizations are given immunity for facilitating donations of hearing instruments in addition to eyeglasses.
  - The list of potential providers of eyeglasses is expanded to include licensed physicians.
  - A prescription is required in order for the charitable organization to be immune from liability for providing eyeglasses.
  - Dispensing opticians must be licensed in order for the immunity to apply.
  - In certain circumstances, immunity may be granted even when the provider did not personally examine the recipient. Such exception only applies when the provider has personally consulted with the provider who examined the recipient, and, if provision of eyeglasses is made, issued a prescription.
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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Immunity for groups facilitating donations of previously-owned eyeglasses is important because provision of eyeglasses was eliminated under Medicaid. Union Gospel Mission and the Lions Club have long been distributing eyeglasses to the poor, and the main concern this bill addresses is allowing those groups to continue these programs. Last year, the Board of Optometry put out a ruling requiring a prescription for these activities. All providers would have malpractice insurance under the current budget.

(Opposed) None.

**Persons Testifying:** Senator Padden, prime sponsor.

**Persons Signed In To Testify But Not Testifying:** None.