

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1766*
Judiciary I (Civil) Committee Substitute Adopted 5/29/08
House Committee Substitute Favorable 7/3/08

Short Title: Liability Protection for Private Entities. (Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIABILITY PROTECTION FOR PRIVATE ASSOCIATIONS, PRIVATE CORPORATIONS, AND PRIVATE NONPROFIT ENTITIES AND ORGANIZATIONS WHEN RESPONDING TO IN-STATE INCIDENTS, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON GOVERNMENTAL IMMUNITY AND THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-14 reads as rewritten:

"§ 166A-14. Immunity and exemption.

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management ~~worker-worker, firm, partnership, association, or corporation~~ complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(a1) The immunity provided to firms, partnerships, associations, or corporations, under subsection (a) of this section, is subject to all of the following conditions:

(1) The immunity applies only when the firm, partnership, association, or corporation is acting without compensation or with compensation limited to no more than actual expenses, and one of the following applies:

a. Emergency management services are provided at any place in this State during a state of disaster or state of emergency

1 declared by the Governor pursuant to this Article or
2 G.S. 14-288.15, and the services are provided under the
3 direction and control of the Secretary of the Department of
4 Crime Control and Public Safety pursuant to G.S. 166A-5,
5 166A-6, and 143B-476, or the Governor.

6 b. Emergency management services are provided during a local
7 state of emergency declared pursuant to Article 36A of Chapter
8 14 of the General Statutes, and the services are provided under
9 the direction and control of the governing body of any
10 municipality under G.S. 14-288.12 and G.S. 166A-8, the
11 governing body of any county under G.S. 14-288.13 and
12 G.S. 166A-8, or the chair of any board of county commissioners
13 under G.S. 14-288.14 and G.S. 166A-8.

14 c. The firm, partnership, association, or corporation is engaged in
15 planning, preparation, training, or exercises with the Division of
16 Emergency Management, the Division of Public Health, or the
17 governing body of each county or municipality under
18 G.S. 166A-7 and G.S. 166A-8 related to the performance of
19 emergency management services or measures.

20 (2) The immunity shall not apply to any firm, partnership, association, or
21 corporation, or to any employee or agent thereof, whose act or
22 omission caused in whole or in part the actual or imminent disaster or
23 emergency or whose act or omission necessitated emergency
24 management measures.

25 (3) To the extent that any firm, partnership, association, or corporation has
26 liability insurance, that firm, partnership, association, or corporation
27 shall be deemed to have waived the immunity to the extent of the
28 indemnification by insurance for its negligence. An insurer shall not
29 under a contract of insurance exclude from liability coverage the acts
30 or omissions of a firm, partnership, association, or corporation for
31 which the firm, partnership, association, or corporation would only be
32 liable to the extent indemnified by insurance as provided by this
33 subdivision.

34 (b) The rights of any person to receive benefits to which the person would
35 otherwise be entitled under this Article or under the Workers' Compensation Law or
36 under any pension law, and the right of any such person to receive any benefits or
37 compensation under any act of Congress shall not be affected by performance of
38 emergency management functions.

39 (c) Any requirement for a license to practice any professional, mechanical or
40 other skill shall not apply to any authorized emergency management worker who shall,
41 in the course of performing the worker's duties as such, practice such professional,
42 mechanical or other skill during a state of disaster.

43 (d) As used in this section, the term "emergency management worker" shall
44 include any full or part-time paid, volunteer or auxiliary employee of this State or other

1 states, territories, possessions or the District of Columbia, of the federal government or
2 any neighboring country or of any political subdivision thereof or of any agency or
3 organization performing emergency management services at any place in this State,
4 subject to the order or control of or pursuant to a request of the State government or any
5 political subdivision thereof. The term "emergency management worker" under this
6 section shall also include any health care worker performing health care services as a
7 member of a hospital-based or county-based State Medical Assistance Team designated
8 by the North Carolina Office of Emergency Medical Services and any person
9 performing emergency health care services under G.S. 90-12.2.

10 (e) Any emergency management worker, as defined in this section, performing
11 emergency management services at any place in this State pursuant to agreements,
12 compacts or arrangements for mutual aid and assistance to which the State or a political
13 subdivision thereof is a party, shall possess the same powers, duties, immunities and
14 privileges the person would ordinarily possess if performing duties in the State, or
15 political subdivision thereof in which normally employed or rendering services."

16 **SECTION 2.** This act is effective when it becomes law and applies to any
17 cause of action arising on or after that date and contract of insurance issued or renewed
18 on or after that date.