

## Civil Liability Protections to Licensed Professional Engineers and Architects

The Act provides civil liability protections to licensed professional engineers and licensed architects who voluntarily provide professional services at the request of officials during or after a declared emergency, disaster, or catastrophe; establishes limitations to liability protection; requires the Division of Emergency Management to promulgate administrative regulations.

Submitted as:

Kentucky

[SB 74](#)

Status: Signed into law on April 25, 2014.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Disaster and emergency response.*]  
2 (1) Disaster and emergency response functions provided by a state or local emergency  
3 management agency, or any emergency management agency-supervised operating units or  
4 personnel officially affiliated with a local disaster and emergency services organization  
5 pursuant to [Insert citation], shall not, in itself, be deemed to be the making of a promise, or  
6 the undertaking of a special duty, towards any person for the services, or any particular level  
7 of, or manner of providing, the services; nor shall the provision of or failure to provide these  
8 services be deemed to create a special relationship or duty towards any person upon which an  
9 action in negligence or other tort might be founded. Specifically:  
10 (a) The failure to respond to a disaster or other emergency, or to undertake particular  
11 inspections or types of inspections, or to maintain any particular level of personnel,  
12 equipment, or facilities, shall not be a breach of any duty to persons affected by any  
13 disaster or other emergency.  
14 (b) When a state or local emergency management agency, or local emergency management  
15 agency-supervised operating unit officially affiliated with a local disaster and emergency  
16 services organization, does undertake to respond to a disaster or other emergency, the  
17 failure to provide the same level or manner of service, or equivalent availability or  
18 allocation of resources as may or could be provided, shall not be a breach of any duty to  
19 persons affected by that disaster or other emergency.  
20 (c) A state or local emergency management agency, or local emergency management  
21 agency-supervised operating unit officially affiliated with a local disaster and emergency  
22 services organization shall not have or assume any duty towards any person to adopt, use,  
23 or avoid any particular strategy or tactic in responding to a disaster or other emergency.  
24 (d) A state or local emergency management agency, or local emergency management  
25 agency-supervised operating unit officially affiliated with a local disaster and emergency  
26 services organization, in undertaking disaster and emergency preparedness or prevention  
27 activities including inspections, or in undertaking to respond to a disaster or other  
28 emergency, shall not have voluntarily assumed any special duty with respect to any risks

1 which were not created or caused by it, nor with respect to any risks which might have  
2 existed even in the absence of that activity or response, nor shall any person have a right  
3 to rely on such an assumption of duty.

4 (2) Neither the state nor any political subdivision of the state, nor the agents or representatives of  
5 the state or any of its political subdivisions, shall be liable for personal injury or property  
6 damage sustained by any person appointed or acting as a volunteer emergency management  
7 agency member, or disaster and emergency services member, or disaster and emergency  
8 response worker, or member of any agency engaged in any emergency management or  
9 disaster and emergency services or disaster and emergency response activity. The immunity  
10 provided by this subsection shall not apply to the extent that the state, a political subdivision  
11 of the state, or a person or organization maintains liability insurance or self-insurance for an  
12 act or omission covered by this subsection. To the extent that the state, a political subdivision  
13 of the state, or a person or an organization maintains liability insurance or self-insurance,  
14 sovereign immunity shall not be claimed with regard to an act or omission covered by this  
15 subsection. This immunity shall not affect the right of any person to receive benefits or  
16 compensation to which the person might otherwise be entitled under the Workers'  
17 Compensation Law, or this chapter, or any pension law, or any Act of Congress.

18 (3) Subject to subsection (6) of this section, neither the state nor any political subdivision of the  
19 state nor, except in cases of willful misconduct, gross negligence, or bad faith, the  
20 employees, agents, or representatives of the state or any of its political divisions, nor any  
21 volunteer or auxiliary emergency management agency or disaster and emergency services  
22 organization member or disaster and emergency response worker or member of any agency  
23 engaged in any emergency management or disaster and emergency services or disaster and  
24 emergency response activity, complying with or reasonably attempting to comply with this  
25 chapter or any order or administrative regulation promulgated pursuant to the provisions of  
26 this chapter, or other precautionary measures enacted by any city of the state, shall be liable  
27 for the death of or injury to persons, or for damage to property, as a result of that activity.  
28 The immunity provided by this subsection shall not apply to the extent that the state, a  
29 political subdivision of the state, or a person or organization maintains liability insurance or  
30 self-insurance for an act or omission covered by this subsection. To the extent that the state, a  
31 political subdivision of the state, or a person or an organization maintains liability insurance  
32 or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission  
33 covered by this subsection.

34 (4) Decisions of the director, his subordinates or employees, a local emergency management  
35 director, or the local director's subordinates or employees, a rescue chief or the chief's  
36 subordinates, concerning the allocation and assignment of personnel and equipment, and the  
37 strategies and tactics used, shall be the exercise of a discretionary, policy function for which  
38 neither the officer nor the state, county, urban-county, charter county, or city, or local  
39 emergency management agency-supervised operating unit formally affiliated with a local  
40 disaster and emergency services organization, shall be held liable in the absence of malice or  
41 bad faith, even when those decisions are made rapidly in response to the exigencies of an  
42 emergency.

43 (5) Any person owning or controlling real estate or other premises who voluntarily and without  
44 compensation grants a license or privilege, or otherwise permits the designation or use of the  
45 whole or any part of the real estate or premises for the purpose of sheltering persons during  
46 an actual, impending, mock, or practice disaster or emergency, together with his or her

1 successors in interest, shall not be civilly liable for negligently causing the death of, or injury  
2 to, any person on or about the real estate or premises for loss of, or damage to, the property  
3 of that person. The immunity provided by this subsection shall not apply to the extent that the  
4 state, a political subdivision of the state, or a person or organization maintains liability  
5 insurance or self-insurance for an act or omission covered by this subsection. To the extent  
6 that the state, a political subdivision of the state, or a person or organization maintains  
7 liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to  
8 an act or omission covered by this subsection.

9 (6) Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and emergency  
10 response worker only if the volunteer or worker is enrolled or registered with a local disaster  
11 and emergency services organization or with the division in accordance with the division's  
12 administrative regulations.

13 (7) While engaged in disaster and emergency response activity, volunteers and auxiliary disaster  
14 and emergency response workers enrolled or registered with a local disaster and emergency  
15 service organization or with the division in accordance with subsection (6) of this section  
16 shall have the same degree of responsibility for their actions and enjoy the same immunities  
17 as officers and employees of the state and its political subdivisions performing similar work,  
18 allowing the Attorney General to provide defense of any civil action brought against a  
19 volunteer enrolled or registered with a local disaster or emergency service organization or  
20 with the division due to an act or omission made in the scope and course of a disaster and  
21 emergency response activity.

22 (8)  
23 (a) Notwithstanding subsections (3) and (6) of this section, a licensed professional engineer  
24 as defined in [Insert citation] or an architect licensed under [Insert citation], who  
25 voluntarily and without compensation provides architectural, structural, electrical,  
26 mechanical, or other professional services at the scene of a declared emergency, disaster,  
27 or catastrophe, shall not be liable for any personal injury, wrongful death, property  
28 damage, or other loss of any nature related to the licensed professional engineer's or  
29 licensed architect's acts, errors, or omissions in the performance of the services carried  
30 out:

- 31 1. At the request of or with the approval of a federal, state, or local:
  - 32 a. Emergency management agency official with executive responsibility in  
33 the jurisdiction to coordinate disaster and emergency response activity;
  - 34 b. Fire chief or his or her designee; or
  - 35 c. Building inspection official; who the licensed professional engineer or  
36 licensed architect believes to be acting in an official capacity;
- 37 2. Within ninety (90) days following the end of the period for the declared  
38 emergency, disaster, or catastrophe, unless extended by the Governor under  
39 [Insert citation.]; and
- 40 3. If the professional services arose out of the declared emergency, disaster, or  
41 catastrophe and if the licensed professional engineer or licensed architect acted as  
42 an ordinary reasonably prudent member of the profession would have acted under  
43 the same or similar circumstances.

44 (b) Nothing in this subsection shall provide immunity for wanton, willful, or intentional  
45 misconduct.