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.)

Section 1. [Disaster and emergency response.]

1. (1) Disaster and emergency response functions provided by a state or local emergency management agency, or any emergency management agency-supervised operating units or personnel officially affiliated with a local disaster and emergency services organization pursuant to [Insert citation], shall not, in itself, be deemed to be the making of a promise, or the undertaking of a special duty, towards any person for the services, or any particular level of, or manner of providing, the services; nor shall the provision of or failure to provide these services be deemed to create a special relationship or duty towards any person upon which an action in negligence or other tort might be founded. Specifically:

(a) The failure to respond to a disaster or other emergency, or to undertake particular inspections or types of inspections, or to maintain any particular level of personnel, equipment, or facilities, shall not be a breach of any duty to persons affected by any disaster or other emergency.

(b) When a state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, does undertake to respond to a disaster or other emergency, the failure to provide the same level or manner of service, or equivalent availability or allocation of resources as may or could be provided, shall not be a breach of any duty to persons affected by that disaster or other emergency.

(c) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization shall not have or assume any duty towards any person to adopt, use, or avoid any particular strategy or tactic in responding to a disaster or other emergency.

(d) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, in undertaking disaster and emergency preparedness or prevention activities including inspections, or in undertaking to respond to a disaster or other emergency, shall not have voluntarily assumed any special duty with respect to any risks...
which were not created or caused by it, nor with respect to any risks which might have
existed even in the absence of that activity or response, nor shall any person have a right
to rely on such an assumption of duty.

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

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

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

(5) Any person owning or controlling real estate or other premises who voluntarily and without
compensation grants a license or privilege, or otherwise permits the designation or use of the
whole or any part of the real estate or premises for the purpose of sheltering persons during
an actual, impending, mock, or practice disaster or emergency, together with his or her
successors in interest, shall not be civilly liable for negligently causing the death of, or injury
to, any person on or about the real estate or premises for loss of, or damage to, the property
of that person. The immunity provided by this subsection shall not apply to the extent that the
state, a political subdivision of the state, or a person or organization maintains liability
insurance or self-insurance for an act or omission covered by this subsection. To the extent
that the state, a political subdivision of the state, or a person or organization maintains
liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to
an act or omission covered by this subsection.

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

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

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

1. At the request of or with the approval of a federal, state, or local:
   a. Emergency management agency official with executive responsibility in
      the jurisdiction to coordinate disaster and emergency response activity;
   b. Fire chief or his or her designee; or
   c. Building inspection official; who the licensed professional engineer or
      licensed architect believes to be acting in an official capacity;

2. Within ninety (90) days following the end of the period for the declared
   emergency, disaster, or catastrophe, unless extended by the Governor under
   [Insert citation.]; and

3. If the professional services arose out of the declared emergency, disaster, or
   catastrophe and if the licensed professional engineer or licensed architect acted as
   an ordinary reasonably prudent member of the profession would have acted under
   the same or similar circumstances.

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