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TORTS

General Provisions: Provide Volunteers with Limited Tort Immunity During Declared Emergency

CODE SECTION: O.C.G.A. § 51-1-29.2 (new)
BILL NUMBER: HB 530
ACT NUMBER: 430
GEORGIA LAWS: 1995 Ga. Laws 954
SUMMARY: The Act provides natural persons with limited immunity from tort liability when they voluntarily render services that benefit any individual's property during the time of and in the place of an emergency declared by the Governor. This immunity applies only to individuals who act in good faith and neither expect nor receive compensation. Also, an individual loses this immunity if he or she causes injury or damage because of willful or wanton negligence or misconduct.
EFFECTIVE DATE: April 19, 1995¹

History

Representative Johnny Floyd sponsored this bill specifically to address situations like the 1994 floods in south Georgia.² The July flood damaged or destroyed approximately 20,000 homes from Macon to Albany.³ Volunteers from throughout the United States and Canada aided the fifty-five counties that were declared federal disaster areas.⁴ Further, the Mennonites from Macon County, Georgia, a Protestant church group, were major

1. The Act became effective upon approval by the Governor.

2. Telephone Interview with Rep. Johnny Floyd, House District No. 138 (Apr. 20, 1995) [hereinafter Floyd Interview].

3. Peter Scott, *Great Flood of '94: The Struggle to Recover Six Months Later, Victims Need Help, Donations*, ATLANTA CONST., Jan. 1, 1995, at E7.

4. *Id.*

long-term volunteers who significantly contributed to the cleanup in Montezuma, Georgia.⁵

Although Representative Floyd knew of no suits pending against volunteers for their efforts, he proposed the bill to give the flood volunteers recognition and hold them harmless for good faith efforts not covered by the current Good Samaritan law.⁶ Similar legislation was passed a few years ago to protect volunteer physicians at little league baseball and football games.⁷

Additionally, Representative Tommy Chambless, another sponsor of the bill, stated that the legislation was intended to encourage people to volunteer without the fear of liability.⁸ He described the bill as a broader version of the Good Samaritan law that would apply to unusual situations like the flood of 1994.⁹

HB 530

The Act adds Code section 51-1-29.2.¹⁰ The Act limits tort liability of good faith actors who "prevent, minimize, and repair injury and damage to property" caused by natural catastrophic events.¹¹ However, the Act authorizes this tort liability limitation only when the actor is a natural person.¹² Thus, corporations that render good faith assistance are not covered.¹³ While the Good Samaritan law¹⁴ does not apply to persons required by law to render aid, it is uncertain whether the Act applies to such persons.¹⁵

The Act provides that "[a]ny natural person who voluntarily and without the expectation or receipt of compensation provides services . . . for the benefit of any individual to prevent, minimize, and repair injury and damage to property" will be

5. Floyd Interview, *supra* note 2.

6. Floyd Interview, *supra* note 2.

7. Floyd Interview, *supra* note 2.

8. Telephone Interview with Rep. Tommy Chambless, House District No. 163 (May 10, 1995) [hereinafter Chambless Interview].

9. *Id.*; 1962 Ga. Laws 534 (codified at O.C.G.A. § 51-1-29 (1982)).

10. O.C.G.A. § 51-1-29.2 (Supp. 1995).

11. *Id.*

12. *Id.*

13. Chambless Interview, *supra* note 8.

14. 1962 Ga. Laws 534 (codified at O.C.G.A. § 51-1-29 (1982)).

15. See 1972 Op. Att'y Gen. U72-62 (Ga.).

shielded from liability.¹⁶ Further, the recipient's need for assistance must result from catastrophic acts of nature, which include "fire, flood, earthquake, wind, storm, or wave action."¹⁷ For example, the Mennonite teams who repaired homes in Albany and the retired architect who assessed foundation and structural damage¹⁸ caused by the flood of 1994 probably meet this criteria.¹⁹ Specifically, the Act shields from liability the flood volunteer who cuts through the wrong wall or hangs a door that later falls and causes injury.²⁰

However, the Act authorizes this limited liability only "during a time of emergency and in a place of emergency as declared by the Governor."²¹ The Georgia Emergency Management Act²² defines a "state of emergency" as "the condition declared by the Governor when, in his judgment, the threat or actual occurrence of a disaster, emergency, or energy emergency in any part of the state is of sufficient severity and magnitude to warrant extraordinary assistance by the state . . . in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby."²³ The Governor decides when to terminate the emergency, but "[n]o state of emergency or disaster may continue for longer than 30 days unless renewed by the Governor."²⁴ Also, the General Assembly has the power to terminate the state of emergency or disaster at any time.²⁵

The Act provides a good faith defense, but not an absolute immunity defense.²⁶ A person is liable if "the damage or injury was caused by willful or wanton negligence or misconduct."²⁷

16. *Id.*

17. *Id.*

18. Scott, *supra* note 3.

19. Scott, *supra* note 3.

20. Floyd Interview, *supra* note 2.

21. O.C.G.A. § 51-1-29.2 (Supp. 1995).

22. 1981 Ga. Laws 389 (codified at O.C.G.A. § 38-3-1 (1982)).

23. 1977 Ga. Laws 193, § 1, at 193 (codified at O.C.G.A. § 38-3-3(5) (1982)).

24. 1975 Ga. Laws 1551, § 1, at 1552 (codified at O.C.G.A. § 38-3-51(a) (Supp. 1994)).

25. *Id.*

26. O.C.G.A. § 51-1-29.2 (Supp. 1995).

27. *Id.*

Only one phrase of the Act differs from HB 530, as introduced.²⁸ Instead of shielding natural persons from liability “in an emergency,” the final version reduces the scope by limiting the “emergency” to a geographical area and time period as declared by the Governor.²⁹ House Judiciary Committee members were concerned about the unlimited scope of the version originally introduced and the sponsors approved of the amendment.³⁰

Mary E. Sharp

28. Compare *id.* with HB 530, as introduced, 1995 Ga. Gen. Assem.

29. O.C.G.A. § 51-1-29.2 (Supp. 1995).

30. Floyd Interview, *supra* note 2; Chambless Interview, *supra* note 8.