

2005 DRAFTING REQUEST

Bill

Received: 10/10/2005

Received By: rnelson2

Wanted: As time permits

Identical to LRB:

For: Steve Wieckert (608) 266-3070

By/Representing: Scott

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - immunity liability

Extra Copies:

Submit via email: YES

Requester's email: Rep.Wieckert@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Liability immunity for contractors providing services during an emergency

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rnelson2 11/07/2005	jdyer 11/18/2005	pgreensl 11/18/2005	_____	lemery 11/18/2005		
/P2	rnelson2 11/22/2005 rnelson2 12/13/2005	jdyer 11/28/2005 kfollett 12/13/2005	rschluet 11/28/2005	_____ _____ _____	mbarman 11/28/2005		
/1			pgreensl	_____	lnorthro	lnorthro	

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			12/13/2005 _____		12/13/2005	12/29/2005	
			pgreensl _____		lemery		
			12/13/2005 _____		12/13/2005		

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none needed

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FE Sent For:

1/2 11/28 jld
[Signature]
11/28/05 <END>

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/?	rnelson2	A 1/8 jw	1/8 DG	1/8 DG			

FE Sent For:

<END>

Nelson, Robert P.

From: Kuesel, Jeffery
Sent: Monday, October 10, 2005 8:50 AM
To: Nelson, Robert P.
Subject: FW: Disaster Bill
Attachments: Reichert Contractor Liability Final Draft.pdf

From: Becher, Scott
Sent: Friday, October 07, 2005 2:05 PM
To: Kuesel, Jeffery
Subject: FW: Disaster Bill

From: Jim Boullion [mailto:jboullion@agcwi.org]
Sent: Monday, October 03, 2005 2:16 PM
To: Becher, Scott
Subject: Disaster Bill

Scott,

Here is the federal bill draft.

Thanks for your interest!

Jim Boullion
Director of Government Affairs
AGC of Wisconsin
jboullion@agcwi.org
(608) 221-3821

.....
(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

To provide construction contractors with qualified immunity from liability for negligence when providing services or equipment on a volunteer basis in response to a declared emergency or disaster.

IN THE HOUSE OF REPRESENTATIVES

Mr. REICHERT introduced the following bill; which was referred to the Committee on _____

A BILL

To provide construction contractors with qualified immunity from liability for negligence when providing services or equipment on a volunteer basis in response to a declared emergency or disaster.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Good Samaritan Pro-
5 tection for Construction Volunteers Act".



1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The construction industry provides a valu-
4 able service in times of disasters and emergencies.

5 (2) The construction industry answered the call
6 on September 11, 2001 and the days afterwards to
7 assist in the search, recovery, and cleanup efforts in
8 New York City and Arlington, Virginia.

9 (3) The expertise and equipment brought forth
10 for the search and recovery efforts greatly advanced
11 and improved the efficiency of these efforts.

12 (4) Such efforts by the construction industry
13 make it safer for police, firefighters, and other res-
14 cue workers to work on search and recovery efforts.

15 (5) The services provided by the construction
16 industry improve the safety of the public by the con-
17 tainment/mitigation of conditions that threaten life
18 and property.

19 (6) Construction companies were faced with law
20 suits as a result of their voluntary efforts on behalf
21 of their fellow citizens in New York City.

22 (7) Providing construction contractors qualified
23 immunity from liability when providing services in
24 this type of volunteer activity helps to ensure that
25 such services will be available in the future in times
26 of need.



1 **SEC. 3. PROVISION OF QUALIFIED IMMUNITY FROM LIABIL-**
2 **ITY FOR NEGLIGENCE TO CONSTRUCTION**
3 **ENTITIES WHEN PROVIDING SERVICES OR**
4 **EQUIPMENT ON A VOLUNTEER BASIS IN RE-**
5 **SPONSE TO A DECLARED EMERGENCY OR**
6 **DISASTER.**

7 (a) LIABILITY PROTECTION.—When a construction
8 ^{business} entity provides emergency construction assistance on a
9 voluntary basis, in good faith, and without expectation of
10 compensation, and the entity or an employee of such entity
11 negligently causes harm, the entity and the employee, if
12 applicable, are not jointly, severally, or individually liable
13 in damages for that harm. Nothing in this section shall
14 be construed as providing immunity for gross negligence
15 or willful misconduct.

16 (b) DEFINITIONS.—In this section:

17 (1) The term “construction entity” means a
18 person, sole proprietorship, partnership, limited li-
19 ability company, or corporation ^{who} in the regular ^{course of} busi-
20 ness ^{provides} of providing construction assistance.

21 (2) The term “construction assistance” means
22 materials, labor, equipment, or services for construc-
23 tion-related activities, including construction, demoli-
24 tion, repair, clean-up, alteration, and remediation.

25 (3) The term “emergency construction assist-
26 ance” means construction assistance provided—



1 (A) at the direction of a public official act-
2 ing in an official capacity; and

3 (B) in response to or arising out of a de-
4 clared Federal, State, or local emergency or dis-
5 aster, whether the assistance is provided before
6 or after the formal declaration of emergency or
7 disaster.

8 (c) RELATIONSHIP TO STATE LAW.—

9 (1) PREEMPTION.—This section preempts the
10 laws of any State to the extent that such laws are
11 inconsistent with this section, except that it does not
12 preclude a State from providing a higher amount of
13 protection from liability, or from providing reim-
14 bursement for costs or expenses as authorized by
15 State or local law.

16 (2) WORKERS COMPENSATION.—This section
17 does not apply to liability under workers compensa-
18 tion laws.





jud

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-N

Gen

1 AN ACT ...; relating to: civil liability exemption for assistance provided as the
2 result of an emergency. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 166.03 (10) of the statutes is amended to read:

4 166.03 (10) EXEMPTION FROM LIABILITY. No person who provides equipment or
5 services under the direction of the governor, the adjutant general, the head of
6 emergency management services in any county, town, municipality or federally
7 recognized American Indian tribe or band in this state, the department of health and
8 family services if that department is designated by the governor under s. 166.03 (1)
9 (b) 1., or a local health department acting under s. 251.05 (3) (e) during a state of
10 emergency declared by the governor is liable for the death of or injury to any person

SECTION 1

1 or damage to any property caused by his or her actions, except where the trier of fact
 2 finds that the person acted intentionally or with gross negligence. This section
 3 applies to persons who, without the expectation of receiving compensation, provide
 4 materials, equipment, labor, or services to clean up, demolish, reconstruct, or repair
 5 any damage resulting from the enemy action or disaster or from a federally declared
 6 disaster. This subsection does not affect the right of any person to receive benefits
 7 to which he or she would otherwise be entitled under the worker's compensation law
 8 or under any pension law, nor does it affect entitlement to any other benefits or
 9 compensation authorized by state or federal law.

History: 1971 c. 211 s. 126; 1975 c. 147 s. 54; 1975 c. 199; 1977 c. 1; 1977 c. 397; 1979 c. 361 ss. 51, 55, 112, 113; 1981 c. 20, 211; 1983 a. 27; 1985 a. 29, 31; 1987 a. 27; 1989 a. 31; 1991 a. 39; 1993 a. 213, 251; 1995 a. 27 s. 9126 (19); 1995 a. 201, 227, 247, 467; 1997 a. 27, 35, 237; 1999 a. 150 s. 672; 2001 a. 109; 2003 a. 33, 186.

SECTION 2. Initial applicability.

11 (1) This act first applies to acts or omissions that occur on the effective date of
 12 this subsection.

(END)

d-note
 ↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3825/P1dn

RPN:.....

↑
JLD

I did not follow the federal proposed law because we already had a similar law in Wisconsin. Instead, I amended our law to add the language from the federal proposal that I thought would meet your intent. OK?

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3825/P1dn
RPN;jld:pg

November 18, 2005

I did not follow the federal proposed law because we already had a similar law in Wisconsin. Instead, I amended our law to add the language from the federal proposal that I thought would meet your intent. OK?

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

Nelson, Robert P.

From: Becher, Scott
Sent: Monday, November 21, 2005 5:52 PM
To: Nelson, Robert P.
Subject: FW: Exemption from Liability

Bob-

Here are some questions regarding LRB 3825. I am looking for any insight that you can give on the situation.

Thanks..
Scott Becher

From: Jim Boullion [mailto:jboullion@agcwi.org]
Sent: Monday, November 21, 2005 4:14 PM
To: Becher, Scott
Subject: FW: Exemption from Liability

Hi Scott,

Thanks for getting the bill draft to me. Below are some questions our attorney asked about the draft.

Most importantly, we would like the bill to cover any "disaster" in which contractors are requested to volunteer by any State or local government body in charge of the disaster, and not have to wait for the Governor to declare a "state of emergency". That is apparently what the bill would do in its current form. Are we reading that right?

Can you check with the drafter to see if there is a problem with changing the language in our bill draft to fix this?

Thanks!

Jim Boullion
Director of Government Affairs
AGC of Wisconsin
Phone: (608) 221-3821
jboullion@agcwi.org

-----Original Message-----

From: David Bohl
Sent: Monday, November 21, 2005 3:54 PM
To: Jim Boullion
Cc: Bob Barker
Subject: Exemption from Liability

Jim -

The following is not clear regarding the proposed amendment to WI Stat. Section 166.03(10):

- 1) In its current form, the statute exempts a person from liability only if the equipment or services were provided "during a state of emergency declared by the governor." The amendment language applies s. 166.03(10) in the case of "enemy action or disaster or from a federally declared disaster." If one of the

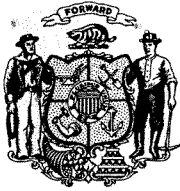
11/22/2005

three contingencies (enemy action or disaster or from a federally declared disaster) occurs, must there still be a state of emergency declared by the governor for the s. 166.03(10) to apply?

- 2) The amendment language states that the person must act "without expectation of receiving compensation." Is this an additional requirement to gain exemption or does this only apply when the person is acting after an "enemy action or disaster or from a federally declared disaster"?

Thank you,

David A. Bohl
General Counsel
AGC of Wisconsin, Inc.
4814 E. Broadway
Madison, WI 53716
Phone: (608) 221-3821
Fax: (608) 221-4446
dbohl@agcwi.org



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT *to amend* 166.03 (10) of the statutes; **relating to:** civil liability
2 exemption for assistance provided as the result of an emergency.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 166.03 (10) of the statutes is amended to read:
4 166.03 (10) EXEMPTION FROM LIABILITY. No person who provides equipment or
5 services under the direction of the governor, the adjutant general, the head of
6 emergency management services in any county, town, municipality or federally
7 recognized American Indian tribe or band in this state, the department of health and
8 family services if that department is designated by the governor under s. 166.03 (1)
9 (b) 1., or a local health department acting under s. 251.05 (3) (e) during a state of
10 emergency declared by the governor is liable for the death of or injury to any person

1 or damage to any property caused by his or her actions, except where the trier of fact
2 finds that the person acted intentionally or with gross negligence. This section
3 applies to persons who, without the expectation of receiving compensation, provide
4 materials, equipment, labor, or services to clean up, demolish, reconstruct, or repair
5 any damage resulting from the enemy action or disaster or from a federally declared
6 disaster. This subsection does not affect the right of any person to receive benefits
7 to which he or she would otherwise be entitled under the worker's compensation law
8 or under any pension law, nor does it affect entitlement to any other benefits or
9 compensation authorized by state or federal law.

10 **SECTION 2. Initial applicability.**

11 (1) This act first applies to acts or omissions that occur on the effective date of
12 this subsection.

13 (END)

Insert
2-9

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3825/P2ins
RPN:jld:pg

1 insert 2-9:

2 SECTION ~~1.~~^X 166.23 (4) and (5) of the statutes are created to read:

3 166.23 (4) No person is liable for the death of or injury to any person or damage
4 to any property caused by his or her actions if all of the following conditions are met:

5 (a) The governing body, chief executive officer, or acting chief executive officer
6 of a city, village, or town declared a state of emergency under this section.

7 (b) The person, without the expectation of receiving compensation, provides
8 materials, equipment, labor, or services to clean up, demolish, reconstruct, or repair
9 any damage caused by the event that resulted in the declaration of ^{the} state of
10 emergency.

11 (c) The person acted under the direction of the governing body, chief executive
12 officer, or acting chief executive officer of the city, village, or town.

13 (5) The immunity under sub. (4) does not apply if the death, injury, or damage
14 was caused by reckless, wanton, or intentional misconduct.

Barman, Mike

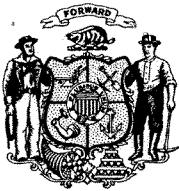
From: Barman, Mike
Sent: Tuesday, December 13, 2005 3:31 PM
To: Rep.Wieckert; Field, Adam
Subject: LRB 05-3825/P2 (attached - requested by Adam)

Attachments: 05-3825/P2



05-3825P2.pdf (16
KB)

Mike Barman (Senior Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
1 East Main Street, Suite 200
Madison, WI 53703
(608) 266-3561 / mike.barman@legis.state.wi.us



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3825/P2

RPN:jld:rs

NJW

EJF

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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2 relating to: civil liability exemption for assistance provided as the result of an
3 emergency.

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ins and



The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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10 (b) 1., or a local health department acting under s. 251.05 (3) (e) during a state of

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5 materials, equipment, labor, or services to clean up, demolish, reconstruct, or repair
6 any damage resulting from the enemy action or disaster or from a federally declared
7 disaster. This subsection does not affect the right of any person to receive benefits
8 to which he or she would otherwise be entitled under the worker's compensation law
9 or under any pension law, nor does it affect entitlement to any other benefits or
10 compensation authorized by state or federal law.

11 **SECTION 2.** 166.23 (4) and (5) of the statutes are created to read:

12 166.23 (4) No person is liable for the death of or injury to any person or damage
13 to any property caused by his or her actions if all of the following conditions are met:

14 (a) The governing body, chief executive officer, or acting chief executive officer
15 of a city, village, or town declared a state of emergency under this section.

16 (b) The person, without the expectation of receiving compensation, provides
17 materials, equipment, labor, or services to clean up, demolish, reconstruct, or repair
18 any damage caused by the event that resulted in the declaration of the state of
19 emergency.

20 (c) The person acted under the direction of the governing body, chief executive
21 officer, or acting chief executive officer of the city, village, or town.

22 (5) The immunity under sub. (4) does not apply if the death, injury, or damage
23 was caused by reckless, wanton, or intentional misconduct.

24 **SECTION 3. Initial applicability.**

1 (1) This act first applies to acts or omissions that occur on the effective date of
2 this subsection.

3 (END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3825/P2ins
RPN:jld:rs

insert anl:

immunity
immunity

Under current law, if the governor declares a state of emergency, any person who provides equipment or services under the direction of the governor, adjutant general, the head of a local or tribal emergency management service, or the state or local department of health, is immune from liability for death or injury while providing that service. This immunity does not apply if the person who caused the death or injury acted intentionally or with gross negligence. This bill adds to those ~~not liable~~ persons who provide materials, equipment, labor or services, without expectation compensation, to clean up, demolish, reconstruct, or repair damage resulting from a disaster or enemy action.

expecting

The bill also provides the same immunity for those persons who provide materials, equipment, labor or services, without expectation compensation, to clean up, demolish, reconstruct, or repair damage resulting from a disaster if the person acted at the direction of a specified local official and in response to a locally-declared state of emergency.

expecting

X

De

Basford, Sarah

From: Basford, Sarah
Sent: Wednesday, December 14, 2005 12:51 PM
To: Field, Adam
Subject: LRB -3825/1 (attached)

Attachments: 05-3825/1



05-38251.pdf (17
KB)

Sarah Basford
Program Assistant
State of Wisconsin
Legislative Reference Bureau
PH: (608) 266-3561/FAX: (608) 264-6948
sarah.basford@legis.state.wi.us

Northrop, Lori

From: Field, Adam
Sent: Thursday, December 29, 2005 12:01 PM
To: LRB.Legal
Subject: LRB 3825

Attachments: 05-38251.pdf

Please jacket LRB 3825. Thanks.



05-38251.pdf (17
KB)

Adam Field

Rep. Steve Wieckert Office
Wisconsin State Assembly
(608) 266-3070