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Senate Bill 09-013

Extension of Civil Immunity to Persons Engaged in Emergency Response Activities

(Sen. Gibbs & Schwartz; Rep. Levy & S. King)

Senate Bill 09-013 is a product of the Interim Committee on Wildfire Issues in Wildland-Urban Interface Areas and, as introduced, sought to provide civil immunity protection for fire departments and other entities that donate surplus fire equipment; for volunteer firefighters, and for incident management teams.

Civil Immunity Protection for Fire Departments that Donate Surplus Fire Equipment to Other Fire Departments

The first part of the bill (Page 2, lines 4-25 and page 3, lines 1-11) of the reengrossed bill addresses the donation of firefighting equipment.

Many volunteer fire departments struggle financially to provide their members with the equipment they need to protect their communities. Every year quality fire equipment, including hoses, fire trucks, protective clothing, and breathing apparatus, with an estimated worth in the millions of dollars, is destroyed, discarded, or donated outside of the country by larger fire departments instead of being donated to small fire departments because of the fear of litigation.

Under this bill, a fire department that donates firefighting or rescue equipment to another fire department will not be held liable for damages resulting from the nature, age, condition, or packaging of such equipment. The bill does not protect those persons who act with gross negligence, or the willful, wanton, or reckless acts of donors.

Efforts to address this on the national level, in both the 108th and 109th Congress, proved unsuccessful. However, several States have recognized the problem of liability fears preempting donations to volunteer fire departments and have enacted similar laws to encourage and protect such donations. Testimony received by the Committee on the Judiciary of the U.S. House of Representatives on H.R. 1787 (July 20, 2004) indicated that ten states: Alabama, Arizona, Arkansas, California, Florida, Illinois, Indiana, Missouri, South Carolina, and Texas have all passed versions of liability relief laws for good Samaritan donations to volunteer fire departments. Since the Texas law was passed, donations in excess of \$10 million have been distributed to volunteer fire departments.

Civil Immunity Protection for Volunteer Fire Departments

The second part of the bill (Page 3, lines 12-27 and page 4, lines 1-2) of the reengrossed bill addresses immunity protection for volunteer firefighters.

This new Section 13-21-113.7 is needed because many volunteer firefighters are likely not covered under Section 13-21-115.5, C.R.S. "Volunteer Service Act". In order to be covered under the Colorado Volunteer

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Service Act, the volunteer must be immune from liability under the federal Volunteer Protection Act of 1997. [See, C.R.S 13-21-115.5(4)(a)(I)].

To qualify as a volunteer under the federal law, the individual must not receive—

- (a) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or
- (b) any other thing of value in lieu of compensation, in excess of \$500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

Based upon the foregoing definition, it would appear that any volunteer firefighter who receives a stipend (nominal fees) would not qualify as a volunteer under the federal act, and as a consequence also would not be covered under the state act.

It was intended that this Section would also apply to volunteer firefighters of not-for-profit nongovernmental entities. As drafted, however, the definition of a volunteer firefighter is tied to 31-3-1102, which defines a volunteer firefighter as a “firefighter who renders service to a fire department in a MUNICIPALITY, COUNTY, OR DISTRICT . . .” [Emphasis added]. An amendment is being proposed to correct this.

Civil Immunity Protection for Incident Management Teams

Page 3, Line 27 and page 4, lines 1-15 of SB09-013 (as introduced), was intended to address immunity protection for incident management teams.

Incident Management Teams (IMTs) are typically standing team of trained personnel from different departments, organizations, agencies, and jurisdictions activated to manage the logistical, fiscal, planning, operational, safety and community issues related to an incident, emergency or disaster.

An incident such as a wildland fire is initially managed by local fire departments, but if the fire becomes complex additional resources are called in to address the emergency, and higher levels of management training and capability are required. Incident Management Teams provide the command and control infrastructure that is required to manage these complex incidents. However, the fear of litigation, as a result of civil liability lawsuits in other States, is having a “chilling affect” on the willingness of persons to serve as Incident Commanders and other IMT positions.

This section was amended out of the bill in the Senate. It was argued that incident management teams and their members were already protected by government immunity.

However, our research indicates that in many cases IMTs would not be covered by the Colorado Governmental Immunity Act (CGIA). The CGIA only covers "authorized volunteers", who are defined as "a person who performs an act for the benefit of a public entity at the request of and subject to the control of such public entity..." [CRS 24-10-103(4)(a)]. While some IMTs may be specifically organized through a governmental entity and perform under that entity's control, far more IMTs are standing teams of trained personnel from different departments, organizations, agencies, and jurisdictions that act independent of the public entity, but usually under a formal delegation of authority. Further, these IMTs may or may not be volunteering their services to the public entity.

An amendment is being proposed to add limited civil immunity protection for Incident Management Teams back into SB09-013.