

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: CS/CS/SB 1060

INTRODUCER: Regulated Industries Committee; Judiciary Committee and Senator Bradley

SUBJECT: Limitation of Liability for Voluntary Engineering or Architectural Services

DATE: March 17, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1060 creates immunity from civil liability for an engineer, architect, or structures specialist furnishing engineering or architectural services as a volunteer under the direction of, or in connection with, a community emergency response team, a local emergency management agency, the Division of Emergency Management, or the Federal Emergency Management Agency, in response to a declared federal, state, or local emergency. The liability protection does not apply to an act or omission that was done with gross negligence or willful misconduct.

The bill is effective July 1, 2021.

**II. Present Situation:**

The United States Army Corps of Engineers, through its Urban Search and Rescue Program, notes that urban search and rescue is a dangerous undertaking conducted in buildings that are fully or partially collapsed.<sup>1</sup> Typically, these structures are multi-storied and contain heavy debris with a high potential for additional collapse.<sup>2</sup> Rescue crews utilize trained professionals that assist them in moving or shoring up debris in order to rescue victims in and around the collapsed structure. Time is of the essence in these endeavors. The professionals must balance

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<sup>1</sup> See US Army Corps of Engineers, *Urban Search and Rescue Program, Fact Sheet (Feb. 2009)*, available at <https://www.swd.usace.army.mil/Portals/42/docs/emergencymgmt/USR2009%5B1%5D.pdf> (last visited Mar. 10, 2021).

<sup>2</sup> *Id.*

the safety of the rescuers with the need to find and retrieve trapped and injured civilians before they expire.

### **Professionals who Advise Urban Search and Rescue Teams**

#### ***Engineers***

An engineer is a professional practicing engineering. Engineering is:

any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services.<sup>3</sup>

Florida regulates engineers through the Department of Business and Professional Regulation.<sup>4</sup> Engineers are authorized to practice within a qualified business entity, such as a corporation.<sup>5</sup>

#### ***Architects***

An architect is a professional practicing architecture. Architecture is the provision of:

services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.<sup>6</sup>

Florida regulates architects through the Department of Business and Professional Regulation.<sup>7</sup> Architects are authorized to practice within a qualified business entity, such as a corporation.<sup>8</sup>

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<sup>3</sup> Section 471.005(7), F.S.

<sup>4</sup> *See generally*, ch. 471, F.S.

<sup>5</sup> Section 471.023, F.S.

<sup>6</sup> Section 481.203(2), F.S.

<sup>7</sup> *See generally*, ch. 481, F.S.

<sup>8</sup> Section 481.219, F.S.

### ***Structures Specialists***

Structures specialists are engineers who have been specially trained by the United States Army Corps of Engineers. Engineers trained as Structures Specialists can evaluate a damaged building or hazard in order to reduce the risks to rescue personnel and victims. Structures Specialists design shoring systems to stabilize structures for rescuers to gain safe access to the victims. The Structures Specialists are trained in Rescue Systems 1 (a basic rescue skills course). They also receive instruction in structural collapse patterns, hazard identification and building monitoring, rapid assessment of buildings, building triage and marking systems, advance shoring and shoring calculations.<sup>9</sup>

### **Tort Law - In General**

A tort is a civil legal action to recover damages for a loss, injury, or death due to the conduct of another. Some have characterized a tort as a civil wrong, other than a claim for breach of contract, in which a remedy is provided through damages.<sup>10</sup> When a plaintiff files a tort claim, he or she alleges that the defendant's "negligence" caused the injury. Negligence is defined as the failure to use reasonable care. It means the care that a reasonably careful person would use under similar circumstances. According to the Florida Standard Jury Instructions, negligence means "doing something that a reasonably careful person would not do" in a similar situation or "failing to do something that a reasonably careful person would do" in a similar situation.<sup>11</sup>

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury was caused by the defendant's negligence, the plaintiff bears the legal burden of proving that the defendant's alleged action was a breach of the duty that the defendant owed to the plaintiff.<sup>12</sup>

### ***Four Elements of a Negligence Claim***

To establish liability, the plaintiff must prove four elements:

- Duty – That the defendant owed a duty, or obligation, of care to the plaintiff;
- Breach – That the defendant breached that duty by not conforming to the standard required;
- Causation – That the breach of the duty was the legal cause of the plaintiff's injury; and
- Damages – That the plaintiff suffered actual harm or loss.

### ***Standards of Care and Degrees of Negligence***

Courts have developed general definitions for the degrees of negligence:

#### **Slight Negligence**

Slight negligence is generally defined to mean the failure to exercise a great amount of care.<sup>13</sup>

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<sup>9</sup> See US Army Corps of Engineers, *Urban Search and Rescue Program, Fact Sheet*, *supra* n. 1.

<sup>10</sup> BLACK'S LAW DICTIONARY (11th ed. 2019).

<sup>11</sup> Fla. Std. Jury Instr. Civil 401.3, *Negligence*.

<sup>12</sup> Florida is a comparative negligence jurisdiction as provided in s. 768.81(2), F.S. In lay terms, if a plaintiff and defendant are both at fault, a plaintiff may still recover damages, but those damages are reduced proportionately by the degree that the plaintiff's negligence caused the injury.

<sup>13</sup> Sawaya, Thomas, 6 Fla. Prac., *Personal Injury & Practice With Wrongful Death Actions* § 1:2 – *Degrees of Negligence* (2020-2021 ed.).

**Ordinary Negligence**

Ordinary negligence, which is also referred to as simple negligence, is the standard of care applied to the vast majority of negligence cases. It is characterized as the conduct that a reasonable and prudent person would know could possibly cause injury to a person or property.<sup>14</sup>

**Gross Negligence and Intentional Misconduct**

Gross negligence means the failure of a person to exercise slight care. Florida courts have defined gross negligence as the type of conduct that a “reasonably prudent person knows will probably and most likely result in injury to another” person.<sup>15</sup> In order for a plaintiff to succeed on a claim involving gross negligence, he or she must prove:

- Circumstances, which, when taken together, create a clear and present danger;
- Awareness that the danger exists; and
- A conscious, voluntary act or omission to act, that will likely result in an injury.<sup>16</sup>

Intentional misconduct means that the defendant had actual knowledge of the wrongfulness of the conduct, that there was a high probability of injury or damage to the claimant and, despite that knowledge, the defendant intentionally pursued that course of conduct, resulting in injury or damage.<sup>17</sup>

**Current Law Regarding Tort Liability for Emergency Action**

Current law addresses some of the tort liability addressed in this bill. A licensed professional providing professional services during a declared emergency, where such services are related to the emergency, is not liable for professional malpractice so long as the professional acted as an ordinary reasonably prudent member of that profession would have acted under the same or similar circumstances.<sup>18</sup>

**III. Effect of Proposed Changes:**

The bill creates s. 768.30, F.S., to provide that an engineer, architect, or structures specialist is not liable for personal injury, wrongful death, property damages, or economic loss resulting from acts or omissions related to certain engineering or architectural services rendered on a volunteer basis during a state of emergency.

The bill gives tort immunity to a person who is one of the following:

- A Florida engineer, defined by reference to the definition of engineer in the state licensing law.
- An engineer licensed or registered outside of Florida “as a member of a mobile support unit of another state.” The term “mobile support unit” is not defined in the bill. As related to this bill, the term generally refers to units or teams, sometimes affiliated with a state National

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* Culpable negligence is a fourth degree of negligence but is not discussed in this analysis.

<sup>17</sup> Fla. Std. Jury Instr. 503.1, *Punitive Damages - Bifurcated Procedure*.

<sup>18</sup> Section 768.1345, F.S.

Guard, that travel to disaster sites as needed, including travel to other states, to aid in disaster response.<sup>19</sup>

- A Florida architect, defined by reference to the definition of architect in the state licensing law.
- An architect licensed or registered outside of Florida as a member of a mobile support unit of another state.
- A structures specialist, defined as a person who has been trained by and holds a current certification as a structures specialist from the United States Army Corps of Engineers.

The limitation on liability provided by the bill applies to an act or omission of an engineer, architect, or structures specialist in the performance of his or her services on a volunteer basis, when performed while under the direction of, or in connection with, a community emergency response team, a local emergency management agency, the Division of Emergency Management, or the Federal Emergency Management Agency. However, the limitation on liability does not apply to an act or omission constituting gross negligence or willful misconduct. The limitation on liability only applies during a declared national, state, or local emergency, or within 90 days after the end of such emergency.

The effective date of the bill is July 1, 2021.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None.

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<sup>19</sup> See generally, Connecticut ch. 517, s. 28-6; Indiana IC 10-14-3-19; Kansas s. 48-911; Nevada s. 414.037.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 768.38 of the Florida Statutes.

**IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Regulated Industries on March 16, 2021:**

The committee substitute narrows the liability protection granted to licensed engineers and architects who participate in emergency response activities and who provide professional services while under the direction of, or in connection with, a community emergency response team, a local emergency management agency, the Division of Emergency Management, or the Federal Emergency Management Agency.

**CS by Judiciary on March 2, 2021:**

The committee substitute clarifies that architectural services are also covered by the liability protections in the bill, and clarifies the language regarding tort liability to remove unnecessary language.

## B. Amendments:

None.