

Discretionary Function (State Agent) Immunity

The State of Alabama maintains its sovereign immunity from a civil suit. As a function of sovereign immunity, under case law, employees, and by extension, volunteers who are called upon to make discretionary decisions may be able to assert immunity from suit known as discretionary function or state agent immunity. This immunity protects the decision making process. It does not protect against simple negligence. As a volunteer, there are other immunities that protect against liability for simple negligence.

Code of Ala. 1975, Section 31-9-16

Immunity of state, etc., from liability for torts resulting from emergency management activities; exemptions of emergency management workers from license requirements; powers, duties, etc., of emergency management workers.

- (a) All functions under this chapter and all other activities relating to emergency management are hereby declared to be governmental functions.
- (b) Neither the state nor any political subdivision thereof nor other agencies of the state or political subdivisions thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker, individual, partnership, association or corporation complying with or reasonably attempting to comply with this chapter or any order, rule or regulation promulgated pursuant to the provisions of this chapter or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter or under the Worker's Compensation Law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress.
- (c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing his duties as such, practice such professional, mechanical or other skill during an emergency management emergency.
- (d) As used in this section, the term "emergency management worker" shall include any full-or part-time paid, volunteer or auxiliary employee of this state, or other states, territories, possessions or the District of Columbia, of the federal government, of any neighboring county or of any political subdivision thereof, or of any agency or organization performing emergency management services at any place in this state subject to the order or control of, or pursuant to, a request of, the state government or any political subdivision thereof.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this state pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the state or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges he would ordinarily possess if performing his duties in the state, province or political subdivision thereof in which normally employed or rendering services.

(Acts 1955, No. 47, p. 267, §16.)