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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/11/11  
 LAST UPDATED 03/14/11    **HB** 372/a HCPAC

SPONSOR Lewis

SHORT TITLE Immunity to Persons Who Rescue Another    **SB** \_\_\_\_\_

ANALYST Graeser

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 Homeland Security and Emergency Management Department (HSEMD)  
 Department of Health (DoH)  
 Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of HCPAC amendment

House Consumer and Public Affairs Committee amendment to House Bill 372 restores the traditional tort liability standard for emergency health care services providers working within the normal scope of practice in an emergency. The relief from liability (except for actions of gross negligence) would still apply, even if compensation is provided or promised. Agency comments are unchanged.

#### Synopsis of Bill

House Bill 372 proposes expansion of tort immunity to persons who come to the aid or rescue of another person. Immunity, except for actions of gross negligence, would now extend to anyone, regardless of whether compensation is provided, expected, or promised in return for care or assistance or whether the person rendering aid or rescue was at the scene of the accident or emergency because that person was soliciting business or performing or seeking to perform a service in return for remuneration. It also adds to the definition of emergency -- an event giving rise to a proclamation declaring an emergency pursuant to the All Hazard Emergency Management Act.

## **FISCAL IMPLICATIONS**

No fiscal implications of this bill, except possibly in the case of an emergency room in a hospital directly operated by a government entity.

## **SIGNIFICANT ISSUES**

HSEMD is concerned that this bill could result in the inability of emergency response agencies to control “volunteers” who may self dispatch to disaster scenes. “Currently volunteers receive limited liability protection as public employees acting on behalf of or in service of a governmental entity in any official capacity, whether with or without compensation under the Tort Claims Act. This acts as an incentive for volunteers to act through governmental agencies in times of need and therefore provide emergency service department’s better ability to control disaster scenes and personnel. Passage of this bill would do away with this incentive.”

HSEMD also points out that the bill “would provide greater protection from liability to paid emergency care responders than is currently provided to public employees as it provides for liability for grossly negligent acts where public employees can be found liable for negligent acts.” [LFC note: pursuant to the HCPAC amendment, emergency health care services providers working with their normal scope of practice would be held to the current negligence standard, not the gross negligence standard of this bill.]

DoH echos AGO and HSEMD concerns:

The ... bill appears to provide protection to civilians or “off-duty” healthcare providers that provide aid in randomly encountered and unexpected “emergencies”. This bill also offers this same level of protection to individuals such as nurses, physicians, emergency medical service caregivers and other healthcare providers in situations where they have a duty to act; are providing care in situations in which they are expected to respond and provide care, and are responding in a professional capacity. [LFC note: pursuant to the HCPAC amendment, these professional emergency health care services providers would be held to the current negligence standard.]

HB372 could result in a lack of regulation of spontaneous volunteers who appear at or near the scene of an emergency. Appropriate state agencies directing an emergency situation may find it difficult to determine the status or skills of such volunteers.

## **SIGNIFICANT LEGAL ISSUES**

The AGO has significant concerns about this bill:

The bill, as drafted, would immunize first-responder professionals who are traditionally held to a higher standard of care. That is to say, if a doctor or paramedic, performing emergency care in the ordinary course of his or her duties, is negligent, under this bill, the paramedic or doctor would not be liable for damages suffered as a result of that negligence. Worse still, the bill arguably immunizes intentional torts if committed in the course of providing emergency care. [LFC note: the HCPAC amendment addresses the AGO’s concern.]

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Long established immunities and procedures for orderly dealing with small- and large-scale emergency situations would be overturned. Unintended consequences of this change would be avoided.

LG/mew:bym