

Part 5

Miscellaneous Provisions

78B-4-501 Good Samaritan Act.

- (1) A person who renders emergency care at or near the scene of, or during an emergency, gratuitously and in good faith, is not liable for any civil damages or penalties as a result of any act or omission by the person rendering the emergency care, unless the person is grossly negligent or caused the emergency. As used in this section, "emergency" means an unexpected occurrence involving injury, threat of injury, or illness to a person or the public, including motor vehicle accidents, disasters, actual or threatened discharges, removal, or disposal of hazardous materials, and other accidents or events of a similar nature. "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or attempt to mitigate the effects of an emergency.
- (2) A person who gratuitously, and in good faith, assists governmental agencies or political subdivisions in the activities described in Subsections (2)(a) through (c) is not liable for any civil damages or penalties as a result of any act or omission unless the person rendering assistance is grossly negligent in:
 - (a) implementing measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health, or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;
 - (b) investigating and controlling suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and
 - (c) responding to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.
- (3) The immunity in Subsection (2) is in addition to any immunity or protection in state or federal law that may apply.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-502 Donation of food -- Liability limits.

- (1) A person or entity who donates apparently wholesome food to a nonprofit organization for distribution to the needy is not subject to civil or criminal liability regarding the condition of the food unless an injury or death results from an act or omission of the donor that constitutes gross negligence, recklessness, or intentional misconduct.
- (2) A nonprofit organization that distributes either directly or indirectly apparently wholesome food to persons in need at no charge and substantially complies with applicable local, county, state, and federal laws and regulations regarding the storage and handling of food for public distribution is not subject to civil or criminal liability regarding the condition of the food unless an injury or death results from an act or omission of the organization that constitutes gross negligence, recklessness, or intentional misconduct.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-503 Immunity for transient shelters.

- (1) As used in this section, "transient shelter" means any person which provides shelter, food, clothing, or other products or services without consideration to indigent persons.

- (2) Except as provided in Subsection (3), all transient shelters, owners, operators, and employees of transient shelters, and persons who contribute products or services to transient shelters, are immune from suit for damages or injuries arising out of or related to the damaged or injured person's use of the products or services provided by the transient shelter.
- (3) This section does not prohibit an action against a person for damages or injury intentionally caused by that person or resulting from his gross negligence.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-504 Donation of nonschedule drugs or devices -- Liability limitation.

- (1) As used in this section:
 - (a) "Administer" is as defined in Section 58-17b-102.
 - (b) "Dispense" is as defined in Section 58-17b-102.
 - (c) "Distribute" is as defined in Section 58-17b-102.
 - (d) "Drug outlet" means:
 - (i) a pharmacy or pharmaceutical facility as defined in Section 58-17b-102; or
 - (ii) a person with the authority to engage in the dispensing, delivering, manufacturing, or wholesaling of prescription drugs or devices outside of the state under the law of the jurisdiction in which the person operates.
 - (e) "Health care provider" means:
 - (i) a person who is a health care provider, as defined in Section 78B-3-403, with the authority under Title 58, Occupations and Professions, to prescribe, dispense, or administer prescription drugs or devices; or
 - (ii) a person outside of the state with the authority to prescribe, dispense, or administer prescription drugs or devices under the law of the jurisdiction in which the person practices.
 - (f) "Nonschedule drug or device" means:
 - (i) a prescription drug or device, as defined in Section 58-17b-102, except that it does not include controlled substances, as defined in Section 58-37-2; or
 - (ii) a nonprescription drug, as defined in Section 58-17b-102.
 - (g) "Prescription drug or device" is as defined in Section 58-17b-102.
- (2) A drug outlet is not subject to civil liability for an injury or death resulting from the defective condition of a nonschedule drug or device that the drug outlet distributes at no charge, in good faith, and for a charitable purpose to a drug outlet or health care provider for ultimate use by a needy person, provided that:
 - (a) the drug outlet complies with applicable state and federal laws regarding the storage, handling, and distribution of the nonschedule drug or device; and
 - (b) the injury or death is not the result of any act or omission of the drug outlet that constitutes gross negligence, recklessness, or intentional misconduct.
- (3) A health care provider is not subject to civil liability for an injury or death resulting from the defective condition of a nonschedule drug or device that the health care provider distributes to a drug outlet or health care provider for ultimate use by a needy person or directly administers, dispenses, or distributes to a needy person, provided that:
 - (a) the health care provider complies with applicable state and federal laws regarding the storage, handling, distribution, dispensing, and administration of the nonschedule drug or device;
 - (b) the injury or death is not the result of any act or omission of the health care provider that constitutes gross negligence, recklessness, or intentional misconduct; and

- (c) in the event that the health care provider directly administers, distributes, or dispenses the nonschedule drug or device to the needy person, the health care provider has retained a consent form signed by the needy person that explains the provisions of this section which extend liability protection for charitable donations of nonschedule drugs and devices.
- (4) Nothing in this section may be construed as:
 - (a) permitting a person who is not authorized under Title 58, Occupations and Professions, to operate as a drug outlet or practice as a health care provider within the state; or
 - (b) extending liability protection to any person who acts outside of the scope of authority granted to that person under the laws of this state or the jurisdiction in which the person operates or practices.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-505 Liability of reprocessor of single-use medical devices.

- (1) For purposes of this section:
 - (a) "Critical single-use medical device" means a medical device that:
 - (i) is marked as a single-use device by the original manufacturer; and
 - (ii) is intended to directly contact normally sterile tissue or body spaces during use, or is physically connected to a device intended to contact normally sterile tissue or body spaces during use.
 - (b) "Original manufacturer" means any person or entity who designs, manufactures, fabricates, assembles, or processes a critical single-use medical device which is new and has not been used in a previous medical procedure.
 - (c) "Reprocessor" includes a person or entity who performs the functions of contract sterilization, installation, relabeling, remanufacturing, repacking, or specification development of a reprocessed critical single-use medical device.
 - (d) "Reconditioned or reprocessed critical single-use medical device" means a critical single use medical device that:
 - (i) has previously been used on a patient and has been subject to additional processing and manufacturing for the purpose of additional use on a different patient;
 - (ii) includes a device that meets the definition under Subsection (1)(a), but has been labeled by the reprocessor as "recycled," "refurbished," or "reused"; and
 - (iii) does not include a disposable or critical single-use medical device that has been opened but not used on an individual.
- (2) A reprocessor who reconditions or reprocesses a critical single-use medical device assumes the liability:
 - (a) of the original manufacturer of the critical single-use medical device; and
 - (b) for the safety and effectiveness of the reconditioned or reprocessed critical single-use medical device.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-506 Limited immunity for architects and engineers inspecting earthquake damage.

- (1) A professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, or an architect licensed under Title 58, Chapter 3a, Architects Licensing Act, who provides structural inspection services at the scene of a declared national, state, or local emergency caused by a major earthquake is not liable for any personal injury, wrongful death, or property damage caused by the good faith inspection for structural

integrity or nonstructural elements affecting health and safety of a structure used for human habitation or owned by a public entity if the inspection is performed:

- (a) voluntarily, without compensation or the expectation of compensation;
 - (b) at the request of a public official or city or county building inspector acting in an official capacity; and
 - (c) within 30 days of the earthquake.
- (2) The immunity provided for in Subsection (1) does not apply to gross negligence or willful misconduct.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-507 Amusement park rides -- Park responsibilities -- Rider responsibilities.

(1) As used in this section:

- (a)
 - (i) "Amusement park" means any permanent indoor or outdoor facility or park where amusement rides are available for use by the general public.
 - (ii) "Amusement park" does not include a ski resort, a traveling show, carnival, or fair.
 - (b) "Amusement ride" means a device or attraction at an amusement park which carries or conveys passengers along, around, or over a fixed or restricted route or course or allows the passenger to steer or guide it within an established area for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. "Amusement ride" includes:
 - (i) any water-based recreational attraction, including all water slides, wave pools, and water parks; and
 - (ii) typical rides, including roller coasters, whips, ferris wheels, and merry-go-rounds.
 - (c) "Intoxicated" means a person is under the influence of alcohol, a controlled substance, or any substance having the property of releasing toxic vapors, to a degree that the person may endanger himself or another, in a public place or in a private place where he unreasonably disturbs other persons.
 - (d) "Operator" means any person, firm, or corporation that owns, leases, manages, or operates an amusement park or amusement ride and all employees and agents of the amusement park.
 - (e) "Rider" means any person who is:
 - (i) waiting in the immediate vicinity of an amusement ride in order to get on the ride;
 - (ii) in the process of leaving the ride but remains in its immediate vicinity; or
 - (iii) a passenger or participant on an amusement ride.
- (2) An amusement park shall inform riders in writing, where appropriate, of the nature of the ride, including factors which would assist riders in determining whether they should participate in the ride activity and the rules concerning conduct on each ride. Information concerning the rules of conduct may be given verbally at the beginning of each ride segment or posted in writing conspicuously at the entrance to each ride.
- (3) Riders are responsible for obeying the posted rules and verbal instructions of the amusement ride operator.
- (4) A rider may not:
- (a) board or dismount from an amusement ride except at a designated area;
 - (b) board an amusement ride if he has a physical condition that may be aggravated by participation on the ride;

- (c) disconnect, disable, or attempt to disconnect or disable, any safety device, seat belt, harness, or other restraining device before, during, or after movement of the amusement ride has started except at the express instruction of the operator;
 - (d) throw or expel any object from an amusement ride;
 - (e) act in any manner contrary to posted or oral rules while boarding, riding, or dismounting from an amusement ride; or
 - (f) engage in any reckless act or activity which may injure himself or others.
- (5) A rider may not board or attempt to board any amusement ride if he is intoxicated.
- (a) An operator of an amusement park ride may prevent a rider who is perceptibly or apparently intoxicated from boarding an amusement ride.
 - (b) An operator who prevents a rider from boarding an amusement ride under this section, is not criminally or civilly liable if the operator reasonably believes that the rider is intoxicated.
- (6) An amusement park shall post signs and notices in conspicuous locations throughout the park informing riders of the importance of reporting all injuries sustained on amusement park premises. The signs shall contain the location where any injuries may be reported.
- (7) A rider, or the parent or guardian of a minor rider on the minor's behalf, may report in writing to the amusement facility or its designated agent any injuries sustained on an amusement ride before leaving the amusement facility premises, unless the rider, or parent or guardian of a minor rider, is unable to file a report because of the severity of the injuries to the rider. The report shall be filed as soon as reasonably possible and include:
- (a) the name, address, and phone number of the injured person;
 - (b) if the injured person is a minor, the name, address, and phone number of the parent or guardian filing the report;
 - (c) a brief description of the incident causing the injury, including the location, date, and time of the injury;
 - (d) a description of the injury, including the cause, if known; and
 - (e) the name, address, and phone number of any known witnesses to the incident.
- (8) The actions of any rider of sufficient age and knowledge to assume the inherent risks of an amusement ride who violates the provisions of Subsection (3), (4), or (5) may be considered by the court in a civil action brought by a rider against the amusement park operator for injuries sustained while at the amusement park for the purpose of allocating fault between the parties.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-508 Limitation on liability of hockey facilities.

- (1) As used in this section, "hockey facility" means a facility where hockey is customarily played or practiced and the general public is charged an admission fee to attend.
- (2) The owner or operator of a hockey facility is not liable for any injury to the person or property of any person as a result of that person being hit by a hockey puck or stick unless:
 - (a) the person is situated completely behind a board, glass, or similar barrier and the board, glass, or barrier is defective; or
 - (b) the injury is caused by negligent or willful and wanton conduct in connection with the game of hockey by the owner or operator or any hockey player, coach, or manager employed by the owner or operator.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-509 Inherent risks of certain recreational activities -- Claim barred against county or municipality -- No effect on duty or liability of person participating in recreational activity or other person.

- (1) As used in this section:
 - (a) "Inherent risks" means those dangers, conditions, and potentials for personal injury or property damage that are an integral and natural part of participating in a recreational activity.
 - (b) "Municipality" has the meaning as defined in Section 10-1-104.
 - (c) "Person" includes an individual, regardless of age, maturity, ability, capability, or experience, and a corporation, partnership, limited liability company, or any other form of business enterprise.
 - (d) "Recreational activity" includes a rodeo, an equestrian activity, skateboarding, skydiving, para gliding, hang gliding, roller skating, ice skating, fishing, hiking, walking, running, jogging, bike riding, or in-line skating on property:
 - (i) owned, leased, or rented by, or otherwise made available to:
 - (A) with respect to a claim against a county, the county; and
 - (B) with respect to a claim against a municipality, the municipality; and
 - (ii) intended for the specific use in question.
- (2) Notwithstanding anything in Sections 78B-5-817 through 78B-5-823 to the contrary, no person may make a claim against or recover from any of the following entities for personal injury or property damage resulting from any of the inherent risks of participating in a recreational activity:
 - (a) a county, municipality, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act; or
 - (b) the owner of property that is leased, rented, or otherwise made available to a county, municipality, local district, or special service district for the purpose of providing or operating a recreational activity.
- (3)
 - (a) Nothing in this section may be construed to relieve a person participating in a recreational activity from an obligation that the person would have in the absence of this section to exercise due care or from the legal consequences of a failure to exercise due care.
 - (b) Nothing in this section may be construed to relieve any other person from an obligation that the person would have in the absence of this section to exercise due care or from the legal consequences of a failure to exercise due care.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 360, 2008 General Session

78B-4-510 Affirmative defense for liquified petroleum gas industry.

- (1) In any action for damages for personal injury, death, or property damage in which a seller, supplier, installer, handler, or transporter of liquified petroleum gas is named as a defendant, it shall be an affirmative defense to liability that:
 - (a) the equipment or appliance which caused the damage was altered or modified without the consent or knowledge of the seller, supplier, installer, handler, or transporter; or
 - (b) the equipment or appliance was used in a manner or for a purpose other than that for which it was intended.
- (2) There is a rebuttable presumption that a seller, supplier, installer, handler, or transporter of liquified petroleum gas and the necessary equipment and appliances, licensed in accordance

with Title 53, Chapter 7, Part 3, Liquefied Petroleum Gas Act, has followed all applicable standards and procedures established by the Liquefied Petroleum Gas Board.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-511 Regulation of firearms reserved to state -- Lawsuits prohibited.

- (1) As prescribed by Section 76-10-500, all authority to regulate firearms is reserved to the state through the Legislature.
- (2) A person who lawfully designs, manufactures, markets, advertises, transports, or sells firearms or ammunition to the public may not be sued by the state or any of its political subdivisions for the subsequent use, whether lawfully or unlawfully, of the firearm or ammunition, unless the suit is based on the breach of a contract or warranty for a firearm or ammunition purchased by the state or political subdivision.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-4-512 Definitions -- Participation in an agricultural tourism activity -- Limitations on civil liability.

- (1) As used in this section:
 - (a) "Agricultural tourism activity" means an educational or recreational activity that:
 - (i) takes place on a farm or ranch or other commercial agricultural, aquacultural, horticultural, or forestry operation; and
 - (ii) allows an individual to tour, explore, observe, learn about, participate in, or be entertained by an aspect of agricultural operations.
 - (b) "Agritourism" means the travel or visit by the general public to a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation for the enjoyment of, education about, or participation in the activities of the farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation.
 - (c) "Inherent risk" means a danger, hazard, or condition which is an integral part of an agricultural tourism activity and that cannot be eliminated by the exercise of reasonable care, including:
 - (i) natural surface and subsurface conditions of land, vegetation, and water on the property;
 - (ii) unpredictable behavior of domesticated or farm animals on the property; or
 - (iii) reasonable dangers of structures or equipment ordinarily used where agricultural or horticultural crops are grown or farm animals or farmed fish are raised.
 - (d) "Operator" means:
 - (i) a person who operates, provides, or demonstrates an agricultural tourism activity; or
 - (ii) an employee of a person described in Subsection (1)(d)(i).
 - (e)
 - (i) "Participant" means an individual, other than a provider or operator, who observes or participates in an agricultural tourism activity, regardless of whether the individual paid to observe or participate in an agricultural tourism activity.
 - (ii) "Participant" does not mean an individual who is paid to participate in an agricultural tourism activity.
 - (f) "Property" means the real property where an agricultural tourism activity takes place and the buildings, structures, and improvements on that real property.
- (2) A participant in an agricultural tourism activity may not make any claim against, or recover damages from, any operator for injury primarily resulting from:
 - (a) an inherent risk of agritourism; or

- (b) the participant's failure to:
 - (i) follow instructions given by the operator; or
 - (ii) exercise reasonable caution while engaged in an agricultural tourism activity.
- (3) An operator shall post and maintain, in a clearly visible location at each entrance to the property where an agricultural tourism activity takes place or at the location of each agricultural tourism activity, a sign describing:
 - (a) the inherent risks of the activity; and
 - (b) the limitations on liability of the operators.
- (4) In any action for damages for personal injury, death, or property damage in which an owner or operator of an agritourism activity is named as a defendant, the court shall undergo a comparative negligence analysis and consider whether:
 - (a) the injured person deliberately disregarded conspicuously posted signs, verbal instructions, or other warnings regarding safety measures during the activity; or
 - (b) any equipment, animals, or appliance used by the injured person during the activity were used in a manner or for a purpose other than that for which a reasonable person should have known they were intended.

Amended by Chapter 63, 2015 General Session

78B-4-513 Cause of action for defective construction.

- (1) Except as provided in Subsection (2), an action for defective design or construction is limited to breach of the contract, whether written or otherwise, including both express and implied warranties.
- (2) An action for defective design or construction may include damage to other property or physical personal injury if the damage or injury is caused by the defective design or construction.
- (3) For purposes of Subsection (2), property damage does not include:
 - (a) the failure of construction to function as designed; or
 - (b) diminution of the value of the constructed property because of the defective design or construction.
- (4) Except as provided in Subsections (2) and (6), an action for defective design or construction may be brought only by a person in privity of contract with the original contractor, architect, engineer, or the real estate developer.
- (5) If a person in privity of contract sues for defective design or construction under this section, nothing in this section precludes the person from bringing, in the same suit, another cause of action to which the person is entitled based on an intentional or willful breach of a duty existing in law.
- (6) Nothing in this section precludes a person from assigning a right under a contract to another person, including to a subsequent owner or a homeowners association.

Enacted by Chapter 280, 2008 General Session

78B-4-514 Definitions -- Immunity for architects and engineers during emergencies.

- (1) As used in this section:
 - (a) "Architect" means a person licensed in accordance with Title 58, Chapter 3a, Architects Licensing Act.
 - (b) "Declared state of emergency" means a state of emergency declared by the governor of this state or by the chief executive officer of a political subdivision, in accordance with Title 53, Chapter 2a, Emergency Management Act.

- (c) "Professional engineer" means a person licensed in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.
 - (d) "Public official" means an appointed or elected federal, state, or local official, including building inspectors and police and fire chiefs, acting within the scope and jurisdiction of the official's authority during a declared emergency.
- (2) An architect or professional engineer, acting in good faith and within the scope of his or her respective license, is not liable for:
- (a) any acts, errors, or omissions; or
 - (b) personal injury, wrongful death, property damage, or any other loss arising from architectural or engineering services provided by the architect or engineer:
 - (i) as a non-paid volunteer at the request of a public official; and
 - (ii) during, or for 90 days following, a declared state of emergency.
- (3) Nothing in Subsection (2) shall be construed to provide immunity to an architect or engineer for architectural or engineering services that are not within the scope of licensure.

Amended by Chapter 258, 2015 General Session

78B-4-515 Limitation on liability for greenhouse gases.

- (1) "Greenhouse gas" means water vapor, carbon dioxide, methane, nitrous oxide, ozone, and chlorofluorocarbons.
- (2) A person residing or doing business in this state may not be held liable for damage or injury to another arising out of any actual or potential effect on climate caused by contributions to emissions of greenhouse gases unless it can be proved by clear and convincing evidence that the person has:
- (a) violated an enforceable statutory limitation or restriction against emissions of a specific greenhouse gas originating within this state; or
 - (b) violated the express terms of a valid, enforceable operating, air, or other permit issued by a state or federal regulatory agency that has jurisdiction over the greenhouse gas emissions of the person or business.
- (3) The person bringing the action shall:
- (a) specify each greenhouse gas emitted by the defendant which is asserted to give rise to the cause of action; and
 - (b) show by clear and convincing evidence that unavoidable and identifiable damage or injury has resulted or will result as a direct cause of the defendant's violation of statutory and permitting limits.

Amended by Chapter 340, 2011 General Session