

HB 149-FN - AS INTRODUCED

2021 SESSION

21-0129

05/04

HOUSE BILL ***149-FN***

AN ACT extending certain civil immunity to public and private entities during major public health emergencies.

SPONSORS: Rep. Stapleton, Sull. 5; Rep. Marsh, Carr. 8; Rep. M. Pearson, Rock. 34; Rep. Ulery, Hills. 37; Rep. Rollins, Sull. 6; Rep. Steven Smith, Sull. 11; Rep. Baldasaro, Rock. 5

COMMITTEE: Judiciary

ANALYSIS

This bill establishes immunity from civil liability for public and private entities during a declared state of emergency due to a public health risk if the entity was acting in good faith and in accordance with public health and safety directives.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT extending certain civil immunity to public and private entities during major public health emergencies.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Statement of Findings. The general court finds that, during a declared state of emergency due
2 to a public health risk, such as the COVID-19 pandemic, individuals should be aware that the use of
3 certain facilities, goods, and services may present a risk of exposure and infection, and as a matter of
4 personal responsibility, individuals should take such precautions for their own protection as they
5 deem necessary and should act in compliance with such government directives and health safety
6 protocols as may be in effect to ensure their own safety.

7 2 New Section; Limited Immunity from Civil Liability During Declared State of Emergency.
8 Amend RSA 508 by inserting after section 22 the following new section:

9 508:23 Limited Immunity During Declared State of Emergency Due to Public Health Risk.

10 I. A person shall be immune from civil liability for actual or alleged injury, disability, or
11 death arising out of exposure to or infection from a declared public health risk during a state of
12 emergency under RSA 4:45 if the person acted in good faith and in accordance with any applicable
13 executive order, public health safety protocol, or other government guidance to make their goods,
14 services, or property safe for the procurement, use, or presence of and by the public; provided that
15 such immunity shall not apply in the case of willful negligence, wanton disregard, or malicious or
16 intentional misconduct.

17 II. In this section:

18 (a) "Government guidance" means the emergency orders of the governor of the state of
19 New Hampshire, and any applicable written guidelines or health safety protocols issued by the
20 Centers for Disease Control and Prevention (CDC), the department of health and human services,
21 division of public health, and the department of safety, division of homeland security and emergency
22 management.

23 (b) "Person" means an individual and any public or private entity, including, but not
24 limited to, businesses and sole proprietorships, industries, schools, municipalities, healthcare
25 providers, charitable and religious entities, state and local government agencies, and social and
26 political organizations.

27 3 Severability. If any provision of RSA 508:23 or the application thereof to any person or
28 circumstances is held invalid, such invalidity shall not affect other provisions or applications of RSA
29 508:23 which can be given effect without the invalid provision or application, and to this end, such
30 provisions are declared to be severable.

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1 4 Effective Date. This act shall take effect upon its passage.

HB 149-FN- FISCAL NOTE
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FISCAL IMPACT: ☒ **State** ☐ **County** ☐ **Local** ☐ **None**

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

METHODOLOGY:

This bill establishes immunity from civil liability for public and private entities during a declared state of emergency due to a public health risk if the entity was acting in good faith and in accordance with public health and safety directives.

The Department of Justice defends legal claims against the State and its agencies. This bill would provide a defense the Department could raise in lawsuits claiming injury caused by the State or its agencies arising in the wake of a public health emergency. It would likely spare the Department of Justice litigation costs and the State the cost of financial damages. The Department cannot anticipate how many claims may be brought against the State or its agencies in the wake of public health emergencies. Therefore, the Department indicates fiscal impact cannot be determined.

The Judicial Branch assumes this bill if enacted into law would not have a significant effect on the number of civil cases brought in either the Superior Court or the Circuit Court. The Branch

does not expect any significant effect on its operations or the number of filed cases as a result of this proposed legislation.

It is assumed the fiscal impact of this bill will not occur until FY 2022.

AGENCIES CONTACTED:

Department of Justice and Judicial Branch