

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1374

Introduced by Senator Harman
(Coauthor: Senator Correa)
(Coauthor: Assembly Member Wagner)

February 24, 2012

An act to add Section 1713.5 to the Civil Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

SB 1374, as amended, Harman. Liability: good faith reliance on administrative regulation.

Existing law provides that every person is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.

Existing law governs the tort liability and immunity of, and claims and actions against, public entities and their officers and employees. Existing law provides that a public employee who acts in good faith, without malice, and under the apparent authority of an enactment that is unconstitutional, invalid, or inapplicable, is not liable for an injury caused thereby, except to the extent that he or she would have been liable had the enactment been constitutional, valid, and applicable.

This bill would provide that any person who relies upon a written ~~administrative regulation~~, order, ruling, approval, interpretation, ~~practice~~, or enforcement policy of a state agency shall not be liable or subject to punishment for a violation of a civil statute or regulation in a judicial or administrative proceeding if the person pleads and proves to the trier of fact that, at the time the alleged act or omission occurred, the person

was acting in good faith and in conformity with, and in reliance on, an applicable state agency’s written ~~administrative regulation~~, order, ruling, approval, interpretation, ~~practice~~, or enforcement policy. The bill would provide that these provisions apply to all actions and proceedings that have not resulted in a final judgment on or after January 1, 2013, regardless of whether the action or proceeding was commenced, or based upon, an alleged act or omission that occurred before, on, or after January 1, 2013.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1713.5 is added to the Civil Code, to
2 read:

3 1713.5. (a) Any person who relies upon a written
4 ~~administrative regulation~~, order, ruling, approval, interpretation,
5 ~~practice~~, or enforcement policy of a state agency shall not be liable
6 or subject to punishment for a violation of a civil statute or
7 regulation in a judicial or administrative proceeding if the person
8 pleads and proves to the trier of fact that, at the time the alleged
9 act or omission occurred, the person was acting in good faith and
10 in conformity with, and in reliance on, an applicable state agency’s
11 written ~~administrative regulation~~, order, ruling, approval,
12 interpretation, ~~practice~~, or enforcement policy.

13 (b) (1) The affirmative defense provided in subdivision (a) shall
14 apply even if, after the alleged act or omission occurred, the
15 ~~administrative regulation~~, order, ruling, approval, interpretation,
16 ~~practice~~, or enforcement policy upon which the person relied is
17 modified, rescinded, or determined by judicial authority to be
18 invalid or of no legal effect.

19 (2) The affirmative defense provided in subdivision (a) shall
20 not apply if the alleged act or omission occurred after the
21 ~~administrative regulation~~, order, ruling, approval, interpretation,
22 ~~practice~~, or enforcement policy upon which the person relied is
23 modified, rescinded, or determined by judicial authority to be
24 invalid or of no legal effect.

25 (c) This section applies to all actions and proceedings that have
26 not resulted in a final judgment on or after January 1, 2013,
27 regardless of whether the action or proceeding was commenced,

1 or based upon, an alleged act or omission that occurred before, on,
2 or after January 1, 2013.
3 (d) Nothing in this section shall be construed to give any greater
4 legal weight to an ~~administrative regulation~~, order, ruling, approval,
5 interpretation, ~~practice~~, or enforcement policy than it would
6 otherwise have in the absence of this section.

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