

AMENDED IN SENATE APRIL 23, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1374

Introduced by ~~Senator~~ *Senators Harman and Correa*
(~~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 order, ruling, approval, interpretation, 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 order, ruling, approval, interpretation, or enforcement policy~~ *had sought an applicable written order, ruling, approval, interpretation, or enforcement policy from the state agency charged with interpreting that area of law, and relied upon and conformed to that order, ruling, approval, interpretation, 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. *Additionally, the bill would state that it would not require a state agency to issue an order, ruling, approval, interpretation, or enforcement policy.*

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 order, ruling,
 4 approval, interpretation, or enforcement policy of a state agency
 5 shall not be liable or subject to punishment for a violation of a
 6 civil statute or regulation in a judicial or administrative proceeding
 7 if the person pleads and proves to the trier of fact that, at the time
 8 the alleged act or omission occurred, the person ~~was acting in good~~
 9 ~~faith and in conformity with, and in reliance on, an applicable state~~
 10 ~~agency's written order, ruling, approval, interpretation, or~~
 11 ~~enforcement policy.~~ *did both of the following:*
 12 *(1) Sought an applicable written order, ruling, approval,*
 13 *interpretation, or enforcement policy from the state agency charged*
 14 *with interpreting that particular area of law.*
 15 *(2) Relied upon and conformed to the applicable written order,*
 16 *ruling, approval, interpretation, or enforcement policy.*
 17 (b) (1) The affirmative defense provided in subdivision (a) shall
 18 apply even if, after the alleged act or omission occurred, the order,
 19 ruling, approval, interpretation, or enforcement policy upon which
 20 the person relied is modified, rescinded, or determined by judicial
 21 authority to be invalid or of no legal effect.

1 (2) The affirmative defense provided in subdivision (a) shall
2 not apply if the alleged act or omission occurred after the order,
3 ruling, approval, interpretation, or enforcement policy upon which
4 the person relied is modified, rescinded, or determined by judicial
5 authority to be invalid or of no legal effect.

6 (c) This section applies to all actions and proceedings that have
7 not resulted in a final judgment on or after January 1, 2013,
8 regardless of whether the action or proceeding was commenced,
9 or based upon, an alleged act or omission that occurred before, on,
10 or after January 1, 2013.

11 (d) Nothing in this section shall be construed to give any greater
12 legal weight to an order, ruling, approval, interpretation, or
13 enforcement policy than it would otherwise have in the absence
14 of this section.

15 (e) *Nothing in this section shall be construed to require a state*
16 *agency to issue an order, ruling, approval, interpretation, or*
17 *enforcement policy.*

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