

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Originating

Senate Bill 396

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LINDSAY, MAYNARD, PHILLIPS, ROMANO, SMITH, STOVER,
WELD, WOODRUM, AND TRUMP

[Originating in the Committee on the Judiciary;
reported on February 22, 2021]

1 A BILL to amend and reenact §29-12A-5 of the Code of West Virginia, 1931, as amended, relating
2 to providing limitations on nuisance actions against fire department or emergency medical
3 services fixed sirens.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12A. GOVERNMENTAL TORT CLAIMS AND INSURANCE REFORM ACT.

§29-12A-5. Immunities from liability.

1 (a) A political subdivision is immune from liability, including nuisance claims, if a loss or
2 claim results from:

3 (1) Legislative or quasi-legislative functions;

4 (2) Judicial, quasi-judicial, or prosecutorial functions;

5 (3) Execution or enforcement of the lawful orders of any court;

6 (4) Adoption or failure to adopt a law, including, but not limited to, any statute, charter
7 provision, ordinance, resolution, rule, regulation, or written policy;

8 (5) Civil disobedience, riot, insurrection, or rebellion, or the failure to provide, or the method
9 of providing, police, law enforcement, or fire protection, including, but not limited to, the use of
10 fixed sirens for purposes of fire protection or emergency medical services;

11 (6) Snow or ice conditions or temporary or natural conditions on any public way or other
12 public place due to weather conditions, unless the condition is affirmatively caused by the
13 negligent act of a political subdivision;

14 (7) Natural conditions of unimproved property of the political subdivision;

15 (8) Assessment or collection of taxes lawfully imposed or special assessments, license or
16 registration fees, or other fees or charges imposed by law;

17 (9) Licensing powers or functions including, but not limited to, the issuance, denial,
18 suspension, or revocation of or failure or refusal to issue, deny, suspend, or revoke any permit,
19 license, certificate, approval, order, or similar authority;

20 (10) Inspection powers or functions, including failure to make an inspection, or making an
21 inadequate inspection, of any property, real or personal, to determine whether the property
22 complies with or violates any law or contains a hazard to health or safety;

23 (11) Any claim covered by any workers' compensation law or any employers' liability law;

24 (12) Misrepresentation, if unintentional;

25 (13) Any court-ordered or administratively approved work release or treatment or
26 rehabilitation program;

27 (14) Provision, equipping, lawful operation, or maintenance of any prison, jail, or
28 correctional facility, or injuries resulting from the parole or escape of a prisoner;

29 (15) Any claim or action based on the theory of manufacturer's products liability or breach
30 of warranty or merchantability or fitness for a specific purpose, either expressed or implied;

31 (16) The operation of dumps, sanitary landfills, and facilities where conducted directly by
32 a political subdivision; or

33 (17) The issuance of revenue bonds or the refusal to issue revenue bonds.

34 (b) An employee of a political subdivision is immune from liability unless one of the
35 following applies:

36 (1) His or her acts or omissions were manifestly outside the scope of employment or official
37 responsibilities;

38 (2) His or her acts or omissions were with malicious purpose, in bad faith, or in a wanton
39 or reckless manner; or

40 (3) Liability is expressly imposed upon the employee by a provision of this code.

41 (c) The immunity conferred upon an employee by subsection (b) of this section does not
42 affect or limit any liability of a political subdivision for an act or omission of the employee.