

SENATE, No. 657

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator SAMUEL D. THOMPSON

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Provides immunity from liability for certain recreational activities and from injuries caused by acts of God.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning liability for natural events, amending
2 N.J.S.59:4-8, supplementing Title 59 of the New Jersey Statutes,
3 and supplementing P.L.1968, c.73 (C.2A:42A-2 et seq.).
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. N.J.S.59:4-8 is amended to read as follows:

9 59:4-8. Condition of unimproved public property--immunity.

10 Neither a public entity nor a public employee is liable for an
11 injury caused by a condition of any unimproved public property,
12 including but not limited to any natural condition of any lake,
13 stream, bay, river or beach, regardless of whether a jetty, pier, or
14 other similar structure has been constructed on or near the beach or
15 whether a beach replenishment project has been conducted at or
16 near the beach.

17 (cf: P.L.1972, c.45, s.59:4-8)
18

19 2. (New section) Neither a public entity nor a public employee
20 is liable for an injury arising out of any act of commission or
21 omission by a person serving as a lifeguard on unimproved public
22 property in the course of rendering lifeguard services.
23

24 3. (New section) a. Notwithstanding any provisions of law to
25 the contrary a person, corporation or public entity shall not be liable
26 in any civil action for damages resulting from an act of God.

27 b. Notwithstanding any provisions of law to the contrary a
28 person, corporation or public entity shall not be liable in any civil
29 action for damages allegedly caused by negligent acts of
30 commission or omission in implementation of procedures or the
31 operation of equipment designed to detect or warn of the occurrence
32 of an act of God or to mitigate the effects of an act of God. Acts
33 covered by this paragraph include but are not limited to the
34 stationing of lifeguards at pools, the posting of warning signs, and
35 the installation of lightning warning devices.

36 c. As used in this section:

37 (1) "Act of God" means an act, event, happening or occurrence
38 due to natural causes and includes, but is not limited to, weather
39 conditions such as lightning, hurricanes, tornadoes, ocean surf,
40 squalls of wind, freezing temperatures and drought; and

41 (2) "Public entity" means a public entity as defined in
42 N.J.S.59:1-3.
43

44 4. This act shall take effect immediately.
45

46 STATEMENT

47 This bill would restore the immunity of public entities and public
48 employees for injuries that occur on public beaches. The "New

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 Jersey Tort Claims Act," N.J.S.59:1-1 et seq. provides immunity
2 from injury caused by a condition of any unimproved public
3 property, including any natural condition of a beach. The act also
4 provides that a public entity or public employee is not liable for
5 failing to provide supervision of a public recreational facility,
6 although liability would attach for negligent supervision. The act
7 and New Jersey Supreme Court decisions have held that when an
8 immunity provision and a liability provision exist, the immunity
9 provision "trumps" the liability. Despite this language, a recent
10 court decision for the first time found that a claim could be brought
11 against a municipality when a swimmer was injured by the strong
12 surf at a beach if a lifeguard was present. In Fleuhr v. City of Cape
13 May, (App. Div. July, 1997) the Appellate Division ruled that a
14 person injured solely due to surf conditions had no cause of action
15 against a public entity. The court also held that there is no
16 requirement that a municipality provide lifeguards at beaches or to
17 post signs informing bathers of water conditions. However, if
18 lifeguards are provided, the court ruled that a municipality may be
19 sued on the grounds that the lifeguards acted in a negligently
20 manner. Thus, a municipality would have less exposure to liability
21 if it did not post lifeguards at the beach than if a lifeguard were
22 present. This bill would clarify and strengthen the act by providing
23 that public employees and public entities are immune from liability
24 for any injury that occurs that arises out of an act of omission or
25 commission by a person serving as a lifeguard on unimproved
26 public property. This bill would thus remove legal disincentives for
27 municipalities to provide lifeguards at the public beaches.

28 The bill would also provide immunity to a person, corporation or
29 public entity for damages resulting from an act of god, or for
30 damages caused by negligent acts in the implementation of
31 procedures or the operation of equipment designed to warn or detect
32 an act of god. In Van Maussner v. Atlantic City Country Club, 299
33 N.J. Super. 535 (1997), a golfer sued a county club for injuries
34 caused by lightning. The Appellate Division ruled in Van Maussner
35 that while a golf club had no obligation to establish procedures for
36 warning golfers of impending lightning strikes, if the club
37 established such procedures and those procedures were not followed
38 properly, the club could be held liable.

39 The Fleuhr and Van Maussner decisions discourage both public
40 and private entities from acting in a responsible manner by
41 imposing liability only in circumstances when the entity has taken
42 steps (provided lifeguards, instituted lightning warning procedures)
43 to try to protect the public from injuries caused by natural
44 conditions.

45 In order to address these concerns, section 3 of the bill would
46 provide civil immunity to both public and private entities for
47 injuries caused by acts of God. The bill defines "act of God" to
48 include weather conditions such as lightning, hurricanes, tornadoes,

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1 ocean surf, squalls of wind, freezing temperatures and drought. The
2 bill would also provide that a public or private entity could not be
3 held civilly liable for damages allegedly caused by negligent acts in
4 the implementation of procedures or the operation of equipment
5 designed to warn of the occurrence of an act of God or to mitigate
6 the effects of an act of God. Activities covered by this provision
7 would include the stationing of lifeguards at pools and the
8 installation of lightning warning devices. Thus, the bill would
9 encourage persons to take steps to safeguard persons from acts of
10 God.