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MEMORANDUM

Hurricane Katrina Response

Massachusetts Hurricane Katrina Appropriations Act - Mass. Session Laws Ch. 81

On September 6, 2005, the Massachusetts legislature passed a law providing for the appropriation of funds to assist victims of Hurricane Katrina. *See* 2005 Mass. Acts. Ch. 81, *available at* <http://www.mass.gov/legis/laws/seslaw05/sl050081.htm>. The Act also provides that the Commonwealth's secretary for administration and finance "*may indemnify, exonerate, defend and hold harmless any and all commonwealth employees and other persons, from all personal financial loss and expenses, including legal fees and costs, arising out of or relating to actions taken by these employees or other persons under the authority of th[e] act.*"

This language presents some broad indemnification protections for emergency responders in Massachusetts responding to Hurricane Katrina. As contrasted with legislative immunity protections (which shield persons or entities from civil liability for their actions), indemnification provisions provide reimbursement of persons or entities found civilly liable. Though comprehensive, the language of the Massachusetts Act is limited as pertains to volunteers and medical practitioners acting under its authority in the following ways:

- Indemnification is not automatic or guaranteed under this provision. The provision permits indemnification, but does not require it. For there to be any legal protection available to volunteers and medical practitioners, the Massachusetts secretary of administration and finance must extend indemnification pursuant to an adopted rule.
- Indemnification is conceptually limited. Unlike immunity protections, it does not prevent successful causes of actions against individuals. Rather, it simply provides that the Commonwealth will provide for their legal representation and pay any judgments against these individuals. Thus, anyone entitled to coverage under the act may still be sued for any tortious conduct and found liable for damages.
- A broad interpretation of the Act would extend indemnification protections to all individuals providing assistance to the victims of Hurricane Katrina. However, because the Act focuses primarily on the appropriation of funding for purposes of providing assistance to victims of Hurricane Katrina, volunteers who provide services to hurricane victims that are not directly

associated with the appropriation of this funding may not be entitled to indemnification under a narrower construction of the Act.

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