

1 **H. B. 2751**

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3 (By Delegates Givens, Jones and Ennis)
4 [Introduced January 21, 2011; referred to the
5 Committee on the Judiciary.]
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10 A BILL to amend and reenact §29-12A-3 of the Code of West Virginia,
11 1931, as amended, relating to clarifying that fire chiefs and
12 their duly appointed officers working with paid and volunteer
13 fire departments are employees that are provided immunity
14 under the Governmental Tort Claims and Insurance Reform Act.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §29-12A-3 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

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

19 **§29-12A-3. Definitions.**

20 As used in this article:

21 (a) "Employee" means an officer, agent, employee, or servant,
22 whether compensated or not, whether full-time or not, who is
23 authorized to act and is acting with the scope of his or her
24 employment for a political subdivision. "Employee" includes, but is

1 not limited to, any elected or appointed official of a political
2 subdivision and fire chiefs working with paid or volunteer fire
3 departments and their duly appointed officers. "Employee" does not
4 include an independent contractor of a political subdivision.

5 (b) "Municipality" means any incorporated city, town or
6 village and all institutions, agencies or instrumentalities of a
7 municipality.

8 (c) "Political subdivision" means any county commission,
9 municipality and county board of education; any separate
10 corporation or instrumentality established by one or more counties
11 or municipalities, as permitted by law; any instrumentality
12 supported in most part by municipalities; any public body charged
13 by law with the performance of a government function and whose
14 jurisdiction is coextensive with one or more counties, cities or
15 towns; a combined city-county health department created pursuant to
16 article two, chapter sixteen of this code; public service
17 districts; and other instrumentalities including, but not limited
18 to, volunteer fire departments and emergency service organizations
19 as recognized by an appropriate public body and authorized by law
20 to perform a government function: *Provided*, That hospitals of a
21 political subdivision and their employees are expressly excluded
22 from the provisions of this article.

23 (d) "Scope of employment" means performance by an employee
24 acting in good faith within the duties of his or her office or
25 employment or tasks lawfully assigned by a competent authority but

1 does not include corruption or fraud.

2 (e) "State" means the State of West Virginia, including, but
3 not limited to, the Legislature, the Supreme Court of Appeals, the
4 offices of all elected state officers, and all departments, boards,
5 offices, commissions, agencies, colleges, and universities,
6 institutions, and other instrumentalities of the State of West
7 Virginia. "State" does not include political subdivisions.

NOTE: The purpose of this bill is to clarify that fire chiefs and their duly appointed officers working with paid and volunteer fire departments are employees that are provided immunity under the Governmental Tort Claims and Insurance Reform Act.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.