

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 27*

Short Title: Emer. Shelter/Health Facil. Immunity.

(Public)

Sponsors: Representatives Clary; Alexander, Allen, Bowie, Cansler, Cole, Culp, Cunningham, Earle, Easterling, Gardner, Gillespie, Hurley, Justus, Kiser, McComas, Morris, Mosely, Owens, Preston, Rayfield, Russell, Smith, Teague, Walend, Warner, C. Wilson, and G. Wilson.

Referred to: Rules, Calendar and Operations of the House.

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE IMMUNITY FROM LIABILITY FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR SERVICES DURING DISASTERS AND EMERGENCIES.

The General Assembly of North Carolina enacts:

Section 1. Part A of Article 6 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"§ 131E-112. Limitation on liability for health care facilities that provide temporary shelter or temporary services during a disaster or emergency; waiver of rules.

(a) Any health care facility or home care agency licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to handicapped individuals during a disaster or emergency, declared under federal law or in accordance with Article 1 of Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General Statutes, at the request of an emergency management agency implementing an emergency management plan or program approved by the governmental entity having authority over the emergency management agency is not liable for any

1 personal injury, wrongful death, property damage, or other loss caused by the facility's or
2 home care agency's acts or omissions in the provision of shelter or services.

3 (b) The immunity provided in subsection (a) of this section applies only to shelter
4 or services:

5 (1) The facility or home care agency is licensed to provide during its
6 ordinary course of business.

7 (2) Provided in accordance with an agreement between the health care
8 facility or home care agency and the emergency management agency.

9 (3) Provided for not more than 45 days after the declaration of the
10 emergency or disaster, unless the 45-day immunity period is extended
11 by an executive order issued by the Governor under the Governor's
12 emergency executive powers.

13 (c) The immunity provided in subsection (a) of this section does not apply if it is
14 determined that the personal injury, wrongful death, property damage, or other loss was
15 caused by the gross negligence, wanton conduct, or intentional wrongdoing of the health
16 care facility or home care agency.

17 (d) Commission rules pertaining to facilities or home care agencies shall be
18 waived to the extent necessary to allow the facility or home care agency to provide the
19 temporary shelter and temporary services requested by the emergency management
20 agency as authorized by this section, unless the Division determines that the placement or
21 services would pose an unreasonable risk to the health, safety, or welfare of any of the
22 persons occupying the facility. In the event the Division determines that placement or
23 services would pose an unreasonable risk, then the Division shall work with the
24 emergency management agency to assist in identifying ways of removing or reducing the
25 risk or in securing alternative temporary shelter or temporary services during the disaster
26 or emergency. The emergency management agency requesting temporary shelter or
27 temporary services under this section shall notify the Division within 72 hours of
28 placement of one or more individuals in a facility.

29 (e) As used in this section:

30 (1) 'Emergency management agency' means a State or local governmental
31 agency charged with coordination of all emergency management
32 activities for its jurisdiction.

33 (2) 'Handicapped individual' means an individual who has a physical or
34 mental disability or an infirmity."

35 Section 2. Article 1 of Chapter 131D of the General Statutes is amended by
36 adding the following new section to read:

37 **"§ 131D-7. Limitation on liability for certain adult care homes providing shelter or**
38 **services during disaster or emergency; waiver of rules.**

39 (a) An adult care home licensed under this Article that provides, with or without
40 compensation, temporary shelter or temporary services to handicapped individuals during
41 a disaster or emergency, declared under federal law or in accordance with Article 1 of
42 Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General
43 Statutes, at the request of an emergency management agency implementing an emergency

1 management plan or program approved by the governmental entity having authority over
2 the emergency management agency is not liable for any personal injury, wrongful death,
3 property damage, or other loss caused by the adult care home's acts or omissions in the
4 provision of shelter or services.

5 (b) The immunity provided in subsection (a) of this section applies only to shelter
6 or services:

7 (1) The adult care home is licensed to provide during its ordinary course of
8 business.

9 (2) Provided in accordance with an agreement between the adult care home
10 and the emergency management agency.

11 (3) Provided for not more than 45 days after the declaration of the
12 emergency or disaster, unless the 45-day immunity period is extended
13 by an executive order issued by the Governor under the Governor's
14 emergency executive powers.

15 (c) The immunity provided in subsection (a) of this section does not apply if it is
16 determined that the personal injury, wrongful death, property damage, or other loss was
17 caused by the gross negligence, wanton conduct, or intentional wrongdoing of the adult
18 care home.

19 (d) Commission rules including pertaining to adult care homes shall be waived to
20 the extent necessary to allow the adult care home to provide the temporary shelter and
21 temporary services requested by the emergency management agency as authorized by this
22 section, unless the Division determines that the placement or services would pose an
23 unreasonable risk to the health, safety, or welfare of any of the persons occupying the
24 adult care home. In the event the Division determines that placement or services would
25 pose an unreasonable risk, then the Division shall work with the emergency management
26 agency to assist in identifying ways of removing or reducing the risk or in securing
27 alternative temporary shelter or temporary services during the disaster or emergency. The
28 emergency management agency requesting temporary shelter or temporary services under
29 this section shall notify the Division within 72 hours of placement of one or more
30 individuals in an adult care home.

31 (e) As used in this section:

32 (1) 'Emergency management agency' means a State or local governmental
33 agency charged with coordination of all emergency management
34 activities for its jurisdiction.

35 (2) 'Handicapped individual' means an individual who has a physical or
36 mental disability or an infirmity."

37 Section 3. This act becomes effective July 1, 1999, and applies to shelter or
38 services provided on and after that date.