

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 34*

Judiciary I Committee Substitute Adopted 4/22/99

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

(Public)

Sponsors:

Referred to:

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES AND 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) In addition to the applicable limits on liability under G.S. 166A-15, any health care facility or home care agency licensed under this Article that provides, with or without compensation, temporary shelter or temporary services to individuals during a disaster or emergency declared in accordance with Article 1 of Chapter 166A 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 personal injury, wrongful death, property damage, or other loss caused by the facility's or home care

1 agency's acts or omissions in the provision of shelter or services in accordance with this
2 subsection.

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) The Division of Facility Services may temporarily waive, during disasters or
18 emergencies declared in accordance with Article 1 of Chapter 166A of the General
19 Statutes, any rules of the Commission pertaining to facilities or home care agencies to the
20 extent necessary to allow the facility or home care agency to provide the temporary
21 shelter and temporary services requested by the emergency management agency as
22 authorized by this section. The Division may identify in advance of a declared disaster or
23 emergency rules that may be waived, and the extent the rules may be waived, upon a
24 disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the
25 General Statutes. The Division may also waive rules under this subsection during a
26 declared disaster or emergency upon the request of an emergency management agency
27 and may rescind the waiver if, after investigation, the Division determines the waiver
28 poses an unreasonable risk to the health, safety, or welfare of any of the persons
29 occupying the facility. The emergency management agency requesting temporary shelter
30 or temporary services under this section shall notify the Division within 72 hours of the
31 time the preapproved waivers are deemed by the emergency management agency to
32 apply.

33 (e) As used in this section, 'emergency management agency' is as defined in G.S.
34 166A-4(2)."

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) In addition to the applicable limits on liability under G.S. 166A-15, an adult
40 care home licensed under this Article that provides, with or without compensation,
41 temporary shelter or temporary services to individuals during a disaster or emergency
42 declared in accordance with Article 1 of Chapter 166A of the General Statutes, at the
43 request of an emergency management agency implementing an emergency management

1 plan or program approved by the governmental entity having authority over the
2 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 in accordance with this subsection.

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) The Division of Facility Services may temporarily waive, during disasters or
20 emergencies declared in accordance with Article 1 of Chapter 166A of the General
21 Statutes, any rules of the Commission pertaining to adult care homes to the extent
22 necessary to allow the adult care home to provide the temporary shelter and temporary
23 services requested by the emergency management agency as authorized by this section.
24 The Division may identify in advance of a declared disaster or emergency rules that may
25 be waived, and the extent the rules may be waived, upon a disaster or emergency being
26 declared in accordance with Article 1 of Chapter 166A of the General Statutes. The
27 Division may also waive rules under this subsection during a declared disaster or
28 emergency upon the request of an emergency management agency and may rescind the
29 waiver if, after investigation, the Division determines the waiver poses an unreasonable
30 risk to the health, safety, or welfare of any of the persons occupying the adult care home.
31 The emergency management agency requesting temporary shelter or temporary services
32 under this section shall notify the Division within 72 hours of the time the preapproved
33 waivers are deemed by the emergency management agency to apply.

34 (e) As used in this section, 'emergency management agency' is as defined in G.S.
35 166A-4(2)."

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