

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 34\*

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

(Public)

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Sponsors: Senators Cochrane, Carpenter, Dannelly, Martin of Pitt, Purcell; and Perdue.

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Referred to: Judiciary I.

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February 4, 1999

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE IMMUNITY FROM LIABILITY FOR CERTAIN LICENSED  
2 HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR  
3 SERVICES DURING DISASTERS AND EMERGENCIES.  
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5 The General Assembly of North Carolina enacts:

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

8 "**§ 131E-112. Limitation on liability for health care facilities that provide temporary**  
9 **shelter or temporary services during a disaster or emergency; waiver of**  
10 **rules.**

11 (a) Any health care facility or home care agency licensed under this Article that  
12 provides, with or without compensation, temporary shelter or temporary services to  
13 handicapped individuals during a disaster or emergency, declared under federal law or in  
14 accordance with Article 1 of Chapter 166A of the General Statutes or Article 36A of  
15 Chapter 14 of the General Statutes, at the request of an emergency management agency  
16 implementing an emergency management plan or program approved by the governmental  
17 entity having authority over the emergency management agency is not liable for any  
18 personal injury, wrongful death, property damage, or other loss caused by the facility's or  
19 home care agency's acts or omissions in the provision of shelter or services.

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

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

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

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

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

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

27 (e) As used in this section:

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

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

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

35 "**§ 131D-7. Limitation on liability for certain adult care homes providing shelter or**  
36 **services during disaster or emergency; waiver of rules.**

37 (a) An adult care home licensed under this Article that provides, with or without  
38 compensation, temporary shelter or temporary services to handicapped individuals during  
39 a disaster or emergency, declared under federal law or in accordance with Article 1 of  
40 Chapter 166A of the General Statutes or Article 36A of Chapter 14 of the General  
41 Statutes, at the request of an emergency management agency implementing an emergency  
42 management plan or program approved by the governmental entity having authority over  
43 the emergency management agency is not liable for any personal injury, wrongful death,

1 property damage, or other loss caused by the adult care home's acts or omissions in the  
2 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 adult care home is licensed to provide during its ordinary course of  
6 business.

7 (2) Provided in accordance with an agreement between the adult care home  
8 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 adult  
16 care home.

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

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