

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH70411-LD-186 (04/10)

Short Title: Limit Liability for Emergency Room Care. (Public)

Sponsors: Representative England.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE PUBLIC GREATER ACCESS TO EMERGENCY
MEDICAL CARE BY PROVIDING LIMITED PROTECTION FROM LIABILITY
TO THOSE PROVIDING EMERGENCY MEDICAL CARE.

Whereas, the General Assembly recognizes that it is of vital importance that quality emergency medical care be provided to every person in North Carolina in need of such care; and

Whereas, the General Assembly recognizes that providing medical care is a critical element in providing health care to the public and in providing a safety net in local communities, the State of North Carolina, and the United States; and

Whereas, the General Assembly recognizes the importance of maintaining a viable system of providing for the emergency medical care of North Carolina's residents and visitors; and

Whereas, the General Assembly recognizes that the federal government under the Emergency Medical Treatment and Active Labor Act (EMTALA) has mandated that health care providers must provide necessary and appropriate emergency medical care to all persons seeking such care and that such care provides a vital role in the safety net; and

Whereas, the General Assembly recognizes that such governmental requirements have effectively imposed a mandatory and unilateral obligation for health care providers to provide emergency medical care to all persons seeking such care without regard to all of the following:

- (1) The ability of the person seeking care to pay or whether the person possesses medical insurance.
- (2) Whether the physician has the medical history or knowledge of any preexisting medical conditions or allergies, or has the medications history, of such persons seeking such care.

- 1 (3) The presence or lack of a preexisting relationship between the persons
2 seeking such care and the physician providing emergency medical
3 care.
4 (4) The circumstances surrounding the emergency at issue, including the
5 extent or serious nature of the prevailing circumstances.
6 (5) The circumstances surrounding the delivery of the emergency medical
7 care, including the lack of time or ability to obtain appropriate
8 consultation.
9 (6) The time constraints imposed by coexisting emergencies.

10 Whereas, the General Assembly is informed that there has been a decline in
11 access to on-call physicians in emergency departments of hospitals throughout North
12 Carolina and that many patients must be transported to another hospital to receive the
13 emergency medical care they need; and

14 Whereas, the General Assembly recognizes that the mandatory and unilateral
15 exposure to medical malpractice claims and the attendant increase in liability insurance
16 costs conspire to force physicians to resign from serving on hospital staffs or otherwise
17 decline to provide on-call coverage to hospital emergency departments; and

18 Whereas, the General Assembly acknowledges that the lack of on-call
19 coverage has significantly and substantially eroded the quality of emergency medical
20 care available to the residents and visitors of North Carolina; and

21 Whereas, it is the intent of the General Assembly to provide the public greater
22 access to emergency medical care by providing limited protection from liability for
23 those who provide emergency medical care; Now, therefore,
24 The General Assembly of North Carolina enacts:

25 **SECTION 1.** Article 1B of Chapter 90 of the General Statutes is amended
26 by adding a new section to read:

27 **"§ 90-21.19. Standard of proof in cases involving emergency medical care.**

28 (a) Definitions. – As used in this section, the following definitions apply:

29 (1) Emergency medical care. – Any medical services provided to
30 determine if an emergency exists, and any emergency medical services
31 provided, after the sudden onset of a medical or traumatic condition
32 manifesting itself by acute symptoms of sufficient severity, including
33 severe pain, such that the absence of immediate medical attention
34 could reasonably be expected to result in the person's health being
35 placed in serious jeopardy, serious impairment to bodily functions, or
36 serious dysfunction of any bodily organ or part.

37 (2) Health care provider. – Includes all of the following:

38 a. Any individual or entity licensed under Article 7 of Chapter
39 131E of the General Statutes.

40 b. Any individual or entity, including without limitation any
41 physician, person, partnership, professional association, limited
42 liability organization, corporation, facility, or institution duly
43 licensed in North Carolina to provide emergency medical care.

1 c. Any individual who provides emergency medical care,
2 including without limitation a physician or other person duly
3 licensed in North Carolina to provide medical care and who
4 provides emergency medical care.

5 (3) Health care liability claim. – A cause of action against a health care
6 provider arising from the provision of emergency medical care that
7 proximately results in the injury to, or death of, the claimant, whether
8 the claimant's claim or cause of action is based in tort, contract, or
9 otherwise.

10 (4) Willful and wanton negligence. – The conscious and intentional
11 disregard of, and indifference to, the rights and safety of others, which
12 the emergency medical care provider knows, or should know, is
13 reasonably likely to result in the injury to, or death of, the claimant.
14 Willful and wanton negligence includes gross negligence.

15 (b) In a health care liability claim asserted by a claimant against a health care
16 provider, the claimant may prove that the health care provider deviated from accepted
17 standards of medical care or statutory or regulatory requirements, only if the claimant
18 shows by a preponderance of the evidence that the health care provider, with willful and
19 wanton negligence, deviated from the degree of care and skill that is reasonably
20 expected of a reasonable, prudent health care provider in the same or similar
21 circumstances.

22 (c) Nothing in this section shall be construed to change, alter, override, or
23 otherwise impact or affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or
24 20-166."

25 **SECTION 2.** This act becomes effective October 1, 2007, and applies to
26 health care liability claims, as defined in G.S. 90-21.19, as enacted by Section 1 of this
27 act, that are filed on or after that date.