

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 798
Committee Substitute Favorable 5/2/23
Committee Substitute #2 Favorable 5/3/23

Short Title: NC Accountability/Safety Net.

(Public)

Sponsors:

Referred to:

April 19, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT LIABILITY FOR NONGOVERNMENTAL ORGANIZATIONS AND
3 NONGOVERNMENTAL INDEPENDENT CONTRACTORS WORKING WITH AND
4 FOR CERTAIN PUBLIC AGENCIES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 31 of Chapter 143 of the General Statutes is amended by adding
7 a new section to read:

8 "**§ 143-300.1B. Limited liability for nongovernmental organizations with agencies.**

9 (a) The following definitions apply in this section:

10 (1) Health, human, and welfare services. – All services provided by the
11 Department of Health and Human Services and its various divisions, in
12 conjunction with or through nongovernmental organizations.

13 (2) Nongovernmental organization. – Any corporation, organization, or
14 association, incorporated or otherwise, that is organized or operating in the
15 State.

16 (3) Public agency. – The Department of Health and Human Services and any
17 county or local agency affiliated with the Department.

18 (b) Notwithstanding any provision of law to the contrary, any nongovernmental
19 organization that contracts with the public agency for the provision of health, human, and welfare
20 services may be held liable for injury or damage caused by the negligence of the
21 nongovernmental organization, but shall not be held liable for the injury or damage caused by
22 the public agency, including any officer, employee, involuntary servant, volunteer, or agent of
23 the public agency acting within the scope of their employment or contract.

24 (c) The nongovernmental organization and the public agency shall each bear the costs of
25 defending itself against their respective acts and omissions and claims arising from those acts
26 and omissions.

27 (d) Notwithstanding any provision of law to the contrary, this section shall not be waived
28 or suspended by any court of competent jurisdiction. Any contract provision between parties
29 which purports to impose on a nongovernmental organization any liability in tort for injury or
30 damage, including bodily injury, mental anguish, property, economic, or noneconomic damages
31 or loss caused by or resulting from a public agency's negligence, in whole or in part, shall be void
32 and unenforceable. This section does not limit or affect the immunity provided by other State or
33 federal law that would otherwise be an available defense to either party."

34 **SECTION 2.** Article 31 of Chapter 143 of the General Statutes is amended by adding
35 a new section to read:



1 **"§ 143-300.1C. Limited liability for contractors with agencies.**

2 (a) The following definitions apply in this section:

3 (1) Health, human, and welfare services. – All services provided by the
4 Department of Health and Human Services and its various divisions, in
5 conjunction with or through nongovernmental independent contractors.

6 (2) Nongovernmental independent contractor. – An organization or individual
7 that exercises an independent employment and contracting to do certain work
8 according to its own judgment and method, without being subject to its
9 employer, except as to the result of the work.

10 (3) Public agency. – The Department of Health and Human Services and any
11 county or local agency affiliated with the Department.

12 (b) Notwithstanding any provision of law to the contrary, liability in tort shall be limited
13 and shall be only under this Article for any nongovernmental independent contractor that
14 contracts with the public agency for the provision of health, human, and welfare services, while
15 the nongovernmental independent contractor is performing or providing health, human, and
16 welfare services within the scope of the contract or agreement.

17 (c) In performance of health, human, and welfare services, the nongovernmental
18 independent contractor is deemed to be the functional equivalent of the public agency and, to the
19 extent that the nongovernmental independent contractor is performing or providing those services
20 in the stead of the public agency, the nongovernmental independent contractor is fulfilling a
21 public purpose authorized to be performed by the public agency.

22 (d) In performance of health, human, and welfare services, the nongovernmental
23 independent contractor shall be subject to the monetary limits provided in G.S. 143-299.2,
24 equivalent to those limits for the public agency. Any claim against the nongovernmental
25 independent contractor arising from the nongovernmental independent contractor's provision of
26 health, human, and welfare services shall be filed with a court of competent jurisdiction, and not
27 before the Industrial Commission.

28 (e) If any civil action is commenced against a nongovernmental independent contractor
29 alleging death, bodily injury, or other injury to the claimant arising out of any action or omission
30 within the scope of the nongovernmental independent contractor's performance or provision of
31 health, human, and welfare services, the State shall indemnify the nongovernmental independent
32 contractor for any damages incurred in excess of the monetary limits in G.S. 143-299.2 as applied
33 in subsection (d) of this section.

34 (f) Damages, court costs, litigation expenses, and other costs of indemnification,
35 including attorney's fees, whether by settlement or by judgment, shall be presented by the
36 claimant to the Industrial Commission.

37 (g) Upon entry of a final judgment in excess of the monetary limits in G.S. 143-299.2 as
38 applied in subsection (d) of this section against the nongovernmental independent contractor, or
39 upon the settlement of a claim in excess of those limits, the claimant or his or her representative
40 shall file a copy of that judgment or settlement within 60 days after the effective date of that
41 settlement or judgment with the Industrial Commission."

42 **SECTION 3.** This act becomes effective October 1, 2023, and applies to claims
43 arising from acts or omissions occurring on or after that date and contracts entered into or
44 renewed on or after that date.