

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

S

D

SENATE DRS75198-LR-58 (03/10)

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

Sponsors: Senator Brunstetter.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THE PUBLIC GREATER ACCESS TO EMERGENCY MEDICAL
3 CARE BY PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE
4 PROVIDING EMERGENCY MEDICAL CARE.

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

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

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

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

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

- 22 (1) The ability of the person seeking care to pay or whether the person possesses
23 medical insurance.
- 24 (2) Whether the physician has the medical history or knowledge of any
25 preexisting medical conditions or allergies, or has the medications history, of
26 such persons seeking such care.
- 27 (3) The presence or lack of a preexisting relationship between the persons
28 seeking such care and the physician providing emergency medical care.
- 29 (4) The circumstances surrounding the emergency at issue, including the extent
30 or serious nature of the prevailing circumstances.
- 31 (5) The circumstances surrounding the delivery of the emergency medical care,
32 including the lack of time or ability to obtain appropriate consultation.
- 33 (6) The time constraints imposed by coexisting emergencies.

34 Whereas, the General Assembly is informed that there has been a decline in access
35 to on-call physicians in emergency departments of hospitals throughout North Carolina and that



1 many patients must be transported to another hospital to receive the emergency medical care
2 they need; and

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

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

10 Whereas, it is the intent of the General Assembly to provide the public greater
11 access to emergency medical care by providing limited protection from liability for those who
12 provide emergency medical care; Now, therefore,

13 The General Assembly of North Carolina enacts:

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

16 **"§ 90-21.19. Standard of proof in cases involving emergency medical care.**

17 (a) Definitions. – The following definitions apply in this section:

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

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

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

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

32 c. Any individual who provides emergency medical care, including
33 without limitation a physician or other person duly licensed in North
34 Carolina to provide medical care and who provides emergency
35 medical care.

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

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

45 (b) In a health care liability claim asserted by a claimant against a health care provider,
46 the claimant may prove that the health care provider deviated from accepted standards of
47 medical care or statutory or regulatory requirements, only if the claimant shows by a
48 preponderance of the evidence that the health care provider, with willful and wanton
49 negligence, deviated from the degree of care and skill that is reasonably expected of a
50 reasonable, prudent health care provider in the same or similar circumstances.

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

3 **SECTION 2.** This act becomes effective October 1, 2009, and applies to health
4 care liability claims, as defined in G.S. 90-21.19, as enacted by Section 1 of this act, that are
5 filed on or after that date.