



COVID-19 Civil Immunity Protections for Businesses



Presented By:

Christopher G. Smith

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Special Guest:

Ray Starling, General Counsel

NC Chamber

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This Program Will Discuss:

- COVID-19 Liability Protections
- Obligation to Provide Notice of Protective Measures Taken by a Business

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2019

SENATE BILL 704 RATIFIED BILL (May 2, 2020)

AN ACT TO PROVIDE AID TO NORTH CAROLINIANS IN RESPONSE TO THE
CORONAVIRUS DISEASE 2019 (COVID-19) CRISIS.

The General Assembly of North Carolina enacts:

Senate Bill 704

SECTION 4.14.(a) Chapter 66 of the General Statutes is amended by adding a new Article to read:

Article 48.

Limited Business Immunity.

§ 66-460. Essential businesses; emergency response entities; liability limitation.

- a) Notwithstanding any other provision of law and subject to G.S. 66-461, the following entities shall have immunity from civil liability:
 - 1) An essential business that provides goods or services in this State with respect to claims from any customer or employee for any injuries or death alleged to have been caused as a result of the customer or employee contracting COVID-19 while doing business with or while employed by the essential business.
 - 2) An emergency response entity with respect to claims from any customer, user, or consumer for any injuries or death alleged to have been caused as a result of the COVID-19 pandemic or while doing business with the emergency response entity.

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2019

HOUSE BILL 118
(introduced June 16, 2020;
ratified June 24, 2020;
signed by Governor Cooper, July 2, 2020)

AN ACT TO PROVIDE LIMITED IMMUNITY FROM LIABILITY FOR CLAIMS BASED ON TRANSMISSION OF CORONAVIRUS DISEASE 2019 (COVID-19).

House Bill 118

Article 8.

COVID-19 Limited Immunity.

§ 99E-70. Definitions.

The following definitions apply in this Article:

- 1) **COVID-19**. - The disease caused by the SARS-CoV-2 virus.
- 2) **Person**. - An **individual**; corporation; **nonprofit corporation**; business trust; estate; trust; partnership; limited liability company; sole proprietorship; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; **or any other legal entity**.

House Bill 118

§ 99E-71. Limited immunity.

a) In any claim for relief arising from any act or omission alleged to have resulted in the contraction of COVID-19, including any claim based on violation of subsection (b) of this section, no person shall be liable for any act or omission that does not amount to gross negligence, willful or wanton conduct, or intentional wrongdoing.

“Ordinary negligence” defined in NCPJI 102.11:

Every person is under a duty to use ordinary care to protect himself and others from [injury] [damage]. Ordinary care means that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect himself and others from [injury] [damage]. A person's failure to use ordinary care is negligence.

There are few occasions, if any, when a person is held to the most wise and highest choice of care. Negligence is the failure to exercise that degree of care that an ordinarily prudent person would exercise under the same or similar circumstances and when charged with like duty.

Williamson v. Clay, 243 N.C. 337, 345, 90 S.E.2d 727, 733 (1956)

House Bill 118

§ 99E-71. Limited immunity.

“Gross negligence” defined:

“[W]anton conduct done with conscious or reckless disregard for the rights and safety of others.” *Suarez ex rel. Nordan v. Am. Ramp Co.*, 831 S.E.2d 885, 893 (2019) (quotation omitted).

In English: Mistakes, bad mistakes vs. really, really bad mistakes, or worse.

House Bill 118

§ 99E-71. Limited immunity.

- b) Every person shall provide, with respect to any premises owned by the person or under the person's possession, custody, or control, reasonable notice of actions taken by the person for the purpose of reducing the risk of transmission of COVID-19 to individuals present on the premises. No person shall be liable for the failure of any individual to comply with rules, policies, or guidelines contained in the notice required by this subsection. This subsection shall not apply to premises owned by an individual, other than premises that are used in the operation of a sole proprietorship.
- c) This section does not apply to claims before the Industrial Commission seeking benefits payable under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes.

House Bill 118

99E-72. Applicability.

This Article applies to claims arising no later than 180 days after the expiration or rescission of Executive Order No. 116 issued March 10, 2020."

SECTION 2. Nothing in this act shall affect any immunity from liability provided under Session Law 2020-3.

SECTION 3. This act is effective when it becomes law and applies to claims arising on or after that date.

Questions?



Christopher G. Smith
919.821.6745
Email: csmith@Smithlaw.com

Chris Smith is co-chair of the firm's Business Litigation team and is a trial and appellate lawyer who counsels clients on business strategy matters. He manages large multi-party and multi-jurisdiction litigation projects and mission-critical projects for our clients. He both prosecutes and defends claims, and advises clients on business risk management in a variety of areas and is involved in development of public policy issues affecting businesses. He serves on the firm's Management Committee, on the Executive Committee of the NC Chamber and on the Board of the NC Chamber Legal Institute.



Ray Starling
919.836.1405
Email: rstarling@ncchamber.com

As general counsel of the NC Chamber and president of the NC Chamber Legal Institute, Ray sets strategy for litigation of the NC Chamber, the NC Chamber Legal Institute and its affiliated entities. He also serves as the lead for public policy development functions of the NC Chamber, assessing and advising on current and emerging laws, rulings, and regulations affecting the NC Chamber and business in North Carolina. Ray manages the public policy staff and works with NC Chamber leadership to devise and implement appropriate strategies to advance the interests of North Carolina business in the N.C. General Assembly and regulatory bodies.