



NC Grants Broad Immunity to Businesses for COVID-19 Related Illnesses

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North Carolina Governor Roy Cooper has signed into law **House Bill 118**, which creates qualified immunity from legal liability over claims arising from the transmission of COVID-19. In this article, we provide a brief summary of this new law.

This is similar to legislation approved in other jurisdictions and is intended to broadly limit lawsuits stemming from COVID-19. This law is broader than **SB 704**, enacted by the legislature in May, which provides immunity to essential businesses only. In addition, the immunity provision in HB 118 is not limited to claims from customers or employees, as is the case with SB 704. Here are the key points:

Who is covered? Anyone and everyone -- any individual, business, non-profit or other legal entity is covered under the law.

Where is this law applicable? Anywhere within the State of North Carolina.

When is it effective? The bill's immunity shield applies only to claims arising during the period of time from July 2 through 180 days after the expiration or rescission of **Executive Order 116**. That Executive Order declared a state of emergency due to COVID-19. Importantly, the law does not apply retroactively to any claims that arose prior to the execution of that Order. However, as noted above, the more narrowly drawn immunity provision in SB 704 applies to acts or omissions occurring on or after March 27, 2020.

What types of claims? The most likely claim subject to the bill's immunity would be a claim of negligence. Negligence claims generally arise on the date when the wrong causing the injury was committed, or on the initial date of injury. As an aside, neither HB 118 nor SB 704 applies to workers compensation claims.

In addition, House Bill 118 requires that businesses provide reasonable notice at their premises of the

actions taken to reduce the risk of transmission of COVID-19. However, the bill further provides that a business is not liable for the failure of any individual to comply with the policies and guidelines contained in the posted notice?thereby protecting businesses from being held liable for the actions of their customers.

Why was this law passed? In light of these uncertain and unprecedented times, the legislature wanted to limit opportunistic lawsuits that might be filed against businesses or individuals related to the spread of COVID-19. Without this law, if a patron of a restaurant contracted COVID-19 and became seriously ill, that individual could file a negligence lawsuit against the restaurant for failing to take appropriate measures to limit exposure to the virus. This will encourage businesses and industry to continue reopening?while following State guidelines?without fear that they could be subject to legal actions stemming from COVID-19.

Exceptions: There are three related exceptions to this law. The immunity does not apply to acts or omissions that constitute gross negligence, willful or wanton conduct, or intentional wrongdoing. ?Gross negligence? and ?willful and wanton conduct? are closely linked concepts that generally can be described as purposeful action taken without concern for others. Gross negligence involves a conscious, deliberate act that disregards the rights or safety of others. These legal standards come close to outright intentional wrongdoing. An example of conduct that could conceivably rise to these standard would be a business that knowingly and intentionally violates State orders aimed at limiting the spread of COVID-19.

Although the immunity is limited in time, it should not be forgotten after the state of emergency order is rescinded. The bill does not extend the three-year statute of limitations that applies to negligence claims, so that, in coming years, any claim based on COVID-19 should be carefully examined to determine if the business may be immune under this law.

Please note: This alert contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.

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