

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 1754

INTRODUCER: Judiciary Committee and Senator Book

SUBJECT: Limitation of Actions Against Crisis Shelters

DATE: February 20, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1754 grants immunity from civil liability to “crisis shelters,” such as emergency shelters, homeless shelters, and domestic violence shelters for variety of acts or omissions in providing temporary housing or support services.

The grant of immunity will protect crisis shelters from civil liability for:

- Acts or omissions of providing or failing to provide temporary housing or support services.
- Acts or omissions of another nonprofit or third party to which a shelter makes referrals.
- Acts and omissions of an individual availing themselves to the services provided by the shelter.
- Criminal activity caused by another nonprofit or a third party.

The bill grants immunity only to nonprofit shelters that provide services without requiring payment.

## II. Present Situation:

### Premises Liability

“Premises liability” is a theory of negligence that establishes the duty owed to someone injured on a landowner’s premises as a result of conditions or activities on the land.<sup>1</sup>

In Florida, “[a]ll premises owners owe a duty to their invitees to exercise reasonable care to maintain their premises in a safe condition.”<sup>2</sup> An invitee is a visitor on the premises by invitation, either express or reasonably implied, of the owner.<sup>3</sup> An “invitation” means that “the visitor entering the premises has an objectively reasonable belief that he or she has been invited or is otherwise welcome on that portion of the real property where injury occurs.”<sup>4</sup>

A premises owner has a legal duty to ascertain that the premises are reasonably safe for invitees.<sup>5</sup> This duty equates into a legal duty to use reasonable care to learn of (i.e., to acquire actual knowledge as to) the existence of any dangerous conditions on the premises.<sup>6</sup> Secondly, the premises possessor has a second, entirely different, legal duty to use reasonable care to protect invitees from dangerous conditions of which the possessor has actual knowledge.<sup>7</sup> This second duty is usually breached when the possessor fails to take reasonable care (a) to eliminate the known danger, (b) to protect invitees from the known danger by excluding them from the area of danger, (by fences, gates, walls, door, barricades, etc.), or by providing protective devices (safety glasses, ear muffs, breathing devices, hard hats, guardrails, covers on machinery, etc.), (c) to provide warnings as to the danger, or (d) to take some combination of these protective actions.<sup>8</sup>

Where a homeless shelter does not have the right or ability to control its residents, the shelter is not liable damages caused by the attack of one resident against another.<sup>9</sup> Similarly, other states have declined to extend any specialized duty of care to a homeless shelter.<sup>10</sup>

<sup>1</sup> 62 Am. Jur. 2d Premises Liability § 1 (citing *Double Quick, Inc. v. Moore*, 73 So. 3d 1162 (Miss. 2011)).

<sup>2</sup> *Owens v. Publix Supermarkets, Inc.*, 802 So. 2d 315, 320 (Fla. 2001) (citing *Everett v. Restaurant & Catering Corp.*, 738 So. 2d 1015, 1016 (Fla. 2d DCA 1999)).

<sup>3</sup> *Arp v. Waterway East Assn., Inc.*, 217 So. 3d 117, 120 (Fla. 4th DCA 2017) (citing *Wood v. Camp*, 284 So. 2d 691, 695 (Fla. 1973)).

<sup>4</sup> Section 768.075(3)(a)1., F.S.

<sup>5</sup> *Winn-Dixie Stores, Inc. v. Marcotte*, 553 So. 2d 213, 214 (Fla. 5th DCA 1989).

<sup>6</sup> See *Springer v. Morris*, 74 So. 2d 781, 785 (Fla.1954); *Hall v. Holland*, 47 So. 2d 889 (Fla.1950).

<sup>7</sup> See *Ashcroft v. Calder Race Course, Inc.*, 492 So. 2d 1309, 1311 (Fla.1986); *Burdine’s v. McConnell*, 146 Fla. 512, 1 So. 2d 462 (1941); see also Restatement (Second) of Torts § 343A (1965).

<sup>8</sup> *Winn-Dixie*, 553 So. 2d at 214.

<sup>9</sup> See *Metropolitan Dade Cty. v. Dubon*, 780 So. 2d 328, 330 (Fla. 3d DCA 2001) (“Here, both the plaintiff and the defendant were absolutely free to come and go as they chose. [The homeless shelter] provided valuable services to its homeless residents. It did not have a common law duty to maintain a vigil over those who sought shelter”); see also *Akinwande v. City of New York*, 260 A.D.2d 586, 688 N.Y.S.2d 651 (N.Y.App.Div.1999) (holding that City owed no special duty to plaintiff for alleged failure to provide adequate security to prevent attacks by third parties at homeless shelter where incident occurred); *Abraham v. Wayside Cross Rescue Mission*, 289 Ill.App.3d 1048, 225 (2nd Dist. 1997) (holding that defendant halfway house did not exert sufficient control over assailant so as to create a common law duty where facility “did not have disciplinary discretion, it did not have armed guards, it could not be locked down, the residents could not be restrained, and the residents could leave the facility at any time”).

<sup>10</sup> See, e.g., *Pickens v. Tulsa Metropolitan Ministry*, 951 P.2d 1079, 1086 (Okla. 1997) (holding that a person availing themselves to the services of a homeless shelter is “[a]t most ... an invitee” and is not owed the same heightened duty of care owed to patients of a hospital or inmates of a prison or jail).

## Vicarious Liability

“A person whose liability is imputed based on the tortious acts of another is liable for the entire share of comparative responsibility assigned to the other.”<sup>11</sup> “[T]he vicariously liable party is liable for the entire share of the fault assigned to the active tortfeasor.”<sup>12</sup> In sum, the doctrine of vicarious liability takes a party that is free of legal fault and visits upon that party the negligence of another.<sup>13</sup>

“The theory of vicarious liability holds ‘employers liable for the negligence of their employees for wrongful acts committed within the course and scope of their employment.’”<sup>14</sup> An employee’s conduct is within the scope of his employment, where (1) the conduct is of the kind he was employed to perform, (2) the conduct occurs substantially within the time and space limits authorized or required by the work to be performed, and (3) the conduct is activated at least in part by a purpose to serve the master.<sup>15</sup>

## Licensure of Social Workers, Therapists, and Mental Health Counselors under Chapter 491

The Department of Health issues clinical social work licenses to applicants who have received a doctoral degree in social work from an accredited school, who have 2 years’ experience in clinical social work, who have passed a theory and practice examination administered by the Department of Health, and who have demonstrated knowledge of the rules and laws governing the practice of clinical social work, marriage and family therapy, and mental health counseling.<sup>16</sup> Similarly, the Department of Health issues marriage and family therapy licenses to applicants who have a master’s degree with a major emphasis in marriage and family therapy or a closely related field, with certain coursework requirements.<sup>17</sup> The Department of Health also issues mental health counseling licenses to applicants who have a master’s degree in mental health counseling from an accredited school, with certain coursework requirements.<sup>18</sup>

Per s. 491.003(7), F.S., clinical social work is the utilization of “scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior, based on the person-in-situation perspective of psychosocial development, normal and abnormal behavior, psychopathology, unconscious motivation, interpersonal relationships, environmental stress, differential assessment, differential planning, and data gathering.”

Similarly, s. 491.003(8), F.S., defines marriage and family therapy as:

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<sup>11</sup> *American Home Assur. Co. v. Nat’l Railroad Passenger Corp.*, 908 So. 2d 459, 467 (Fla. 2005) (quoting Restatement (Third) of Torts: Apportionment of Liability § 13 (2000)).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* (citing 38 Fla. Jur.2d *Negligence* § 101 (1998)).

<sup>14</sup> *Payas v. Adventist Health System/Sunbelt, Inc.*, 238 So. 3d 887, 891 (Fla. 2d DCA 2018).

<sup>15</sup> *Sussman v. Florida E. Coast Props., Inc.*, 557 So. 2d 74, 75–76 (Fla. 3d DCA 1990).

<sup>16</sup> Section 491.005(1), F.S.

<sup>17</sup> Section 491.005(3), F.S.

<sup>18</sup> Section 491.005(4), F.S.

the use of scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family systems, including the context of marital formation and dissolution, and is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and techniques.

Likewise, s. 491.003(9), F.S., defines mental health counseling as:

the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and enhancing mental health and human development and is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation.

### **III. Effect of Proposed Changes:**

The bill states that a nonprofit organization operating a “crisis shelter” that provides temporary housing or support services with requiring payment from users thereof is not liable for:

- Acts or omissions of providing or failing to provide temporary housing or support services.
- Acts or omissions of another nonprofit or third party to which the shelter made referrals.
- Acts and omissions of an individual availing themselves to the services provided by the shelter.
- Criminal activity caused by another nonprofit or a third party.

The bill defines a crisis shelter as a facility providing temporary housing for the homeless or those at risk of becoming homeless. These shelters include emergency shelters, hurricane evacuation shelters, homeless shelters, domestic violence shelters, and runaway shelters. A nonprofit means any organization exempt from taxation under 26 U.S.C. s. 501, and includes agents of the organization.

The bill states that shelters are not liable for acts or omissions in performing services such as assisting individuals in obtaining bedding, sustenance, clothing, mental care, financial assistance, medications, counseling, and other supports, goods, activities, services, or resources of any kind.

The bill relieves shelter operators of the duty of reasonable care to maintain premises imposed at common law. The bill also removes the common law vicarious liability of shelter operators for actions performed by their agents in the course of their work. The provision removing the liability of shelter owners for actions of user of the shelter is essentially a codification of the common law rule. Because the bill states that the immunity from liability applies to acts or omissions “of providing temporary housing or support services,” shelters likely would still be liable for torts committed outside the scope of services described in the bill.

The bill does not supersede any licensing requirements for clinical social workers, marriage and family counselors, or mental health counselors under chapter 491, F.S.

The bill takes effect July 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Where a right to access of the courts exists at common law, the Legislature may not abolish such a right “without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.”<sup>19</sup> But legislation that alters the duty of care of a premises owner without establishing an absolute immunity “is not prohibited by the constitution,” as “legislative action that alters standards of care need only be reasonable to be upheld.”<sup>20</sup> As the bill alters the standard of care for shelter operators but does not provide them immunity from actions performed outside the scope of the provision of shelter services, the bill likely does not violate Article I, section 21 of the Florida Constitution.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

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<sup>19</sup> *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973).

<sup>20</sup> *Abdin v. Fischer*, 374 So. 2d 1379, 1381 (Fla. 1979).

**B. Private Sector Impact:**

The bill removes liability for certain nonprofit organizations providing temporary housing and support services. This may have a positive financial impact on the private sector.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 95.39, Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on February 19, 2020:**

The committee substitute changes the underlying bill by:

- Changing “traditional shelters” to “transitional shelters” in the list of entities relieved of immunity.
- Stating that a crisis shelter is not liable for the acts or omissions of third parties referred by the shelter, regardless of whether the third party provides services with or without remuneration.

**B. Amendments:**

None.