

As Introduced

133rd General Assembly

Regular Session

2019-2020

S. B. No. 308

Senator Huffman, M.

Cosponsors: Senators Huffman, S., Roegner, Hottinger, Hackett, Schuring

A BILL

To amend section 2305.2311 and to enact section 1
2305.2312 of the Revised Code to revise the law 2
governing immunity from civil liability and 3
professional discipline for health care 4
providers during disasters or emergencies, to 5
provide qualified civil immunity to service 6
providers providing services during and after a 7
government-declared disaster, and to declare an 8
emergency. 9

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2305.2311 be amended and section 10
2305.2312 of the Revised Code be enacted to read as follows: 11

Sec. 2305.2311. (A) As used in this section: 12

(1) "Advanced practice registered nurse" means an 13
individual who holds a current, valid license issued under 14
Chapter 4723. of the Revised Code to practice as an advanced 15
practice registered nurse. 16

(2) "Chief executive" and "emergency" have the same 17
meanings as in section 5502.21 of the Revised Code. 18

(3) "Dentist" has the same meaning as in section 2305.231
of the Revised Code. 19
20

~~(3)~~ (4) "Disaster" means any occurrence of widespread
personal injury or loss of life that results from any natural or
technological phenomenon or act of a human, or an epidemic and
is declared to be a disaster by the federal government, the
state government, or a political subdivision of this state. 21
22
23
24
25

~~(4)~~ (5) "Emergency medical technician" means an EMT-basic,
an EMT-I, or a paramedic. 26
27

~~(5)~~ (6) "EMT-basic" means an individual who holds a
current, valid certificate issued under section 4765.30 of the
Revised Code to practice as an emergency medical technician-
basic. 28
29
30
31

~~(6)~~ (7) "EMT-I" means an individual who holds a current,
valid certificate issued under section 4765.30 of the Revised
Code to practice as an emergency medical technician-
intermediate. 32
33
34
35

~~(7)~~ (8) "Facility" means an institution or setting where
health care services are provided, including a hospital,
inpatient, ambulatory, surgical, treatment, skilled nursing,
nursing, residential care, residential treatment, or
intermediate care facility; a developmental, diagnostic,
laboratory, or imaging center; a rehabilitation or therapeutic
health setting; or any modular field treatment facility or
alternative care site designated for temporary use for the
purposes of providing health care services in response to a
disaster or emergency. 36
37
38
39
40
41
42
43
44
45

(9) "Health care ~~provider~~ professional" means an advanced
practice registered nurse, a registered nurse, a licensed 46
47

practical nurse, a pharmacist, a dentist, an optometrist, a 48
physician, a physician assistant, or a ~~hospital~~respiratory care 49
professional. 50

~~(8)~~(10) "Health care provider" means a health care 51
professional, health care worker, or emergency medical 52
technician or a home health agency, hospice care program, or 53
facility, including any agent, board member, committee member, 54
employee, officer, or volunteer acting in the course of the 55
individual's service or employment. 56

(11) "Health care services" means services rendered by a 57
health care provider for the diagnosis, prevention, treatment, 58
cure, or relief of a health condition, illness, injury, or 59
disease, including the provision of any medication, medical 60
equipment, or other medical product. 61

(12) "Health care worker" means a person other than a 62
health care professional or emergency medical technician who 63
provides medical, dental, or other health care services under 64
the direction of a health care professional authorized to direct 65
the individual's activities. "Health care worker" includes a 66
medical technician, medical assistant, dental assistant, 67
orderly, nurse aide, and any other individual acting in a 68
similar capacity. 69

(13) "Hospice care program" has the same meaning as in 70
section 3712.01 of the Revised Code. 71

(14) "Hospital" and "medical claim" have the same meanings 72
as in section 2305.113 of the Revised Code. 73

~~(9)~~(15) "Home health agency" has the same meaning as in 74
section 3701.881 of the Revised Code. 75

(16) "Licensed practical nurse" means an individual who 76

holds a current, valid license issued under Chapter 4723. of the 77
Revised Code to practice as a licensed practical nurse. 78

(17) "Optometrist" means a person who is licensed under 79
Chapter 4725. of the Revised Code to practice optometry. 80

~~(10)~~(18) "Paramedic" means an individual who holds a 81
current, valid certificate issued under section 4765.30 of the 82
Revised Code to practice as an emergency medical technician- 83
paramedic. 84

~~(11)~~(19) "Pharmacist" means an individual who holds a 85
current, valid license issued under Chapter 4729. of the Revised 86
Code to practice as a pharmacist. 87

~~(12)~~(20) "Physician" means an individual who is 88
authorized under Chapter 4731. of the Revised Code to practice 89
medicine and surgery, osteopathic medicine and surgery, or 90
podiatric medicine and surgery. 91

~~(13)~~(21) "Physician assistant" means an individual who is 92
authorized under Chapter 4730. of the Revised Code to practice 93
as a physician assistant. 94

~~(14)~~ "Reckless disregard" as it applies to a given health- 95
care provider or emergency medical technician rendering 96
emergency medical services, first aid treatment, or other 97
emergency professional care, including the provision of any 98
medication or other medical product, means conduct that a health 99
care provider or emergency medical technician knew or should 100
have known, at the time those services or that treatment or care 101
were rendered, created an unreasonable risk of injury, death, or 102
loss to person or property so as to affect the life or health of 103
another and that risk was substantially greater than that which 104
is necessary to make the conduct negligent. 105

~~(15)~~ (22) "Registered nurse" means an individual who holds 106
a current, valid license issued under Chapter 4723. of the 107
Revised Code to practice as a registered nurse. 108

~~(16)~~ (23) "Respiratory care professional" has the same 109
meaning as in section 4761.01 of the Revised Code. 110

(24) "Tort action" means a civil action for damages for 111
injury, death, or loss to person or property other than a civil 112
action for damages for a breach of contract or another agreement 113
between persons or governmental entities. "Tort action" includes 114
an action on a medical claim. 115

(B) (1) Subject to division (C) (3) of this section, a 116
health care provider ~~or emergency medical technician~~ that 117
provides health care services, emergency medical services, 118
first-aid treatment, or other emergency professional care, 119
including the provision of any medication or other medical 120
equipment or product, as a result of during or in response to a 121
disaster or emergency is not subject to professional 122
disciplinary action and is not liable in damages to any person 123
or government agency in a tort or other civil action for injury, 124
death, or loss to person or property that allegedly arises from 125
~~an~~ any of the following: 126

(a) An act or omission of the health care provider ~~or~~ 127
~~emergency medical technician~~ in the health care provider's ~~or~~ 128
~~emergency medical technician's~~ provision, withholding, or 129
withdrawal of those services ~~or that treatment or care;~~ 130

(b) Any decision related to the provision, withholding, or 131
withdrawal of those services; 132

(c) Compliance with an executive order or director's order 133
issued during and in response to the disaster or emergency. 134

(2) Division (B) (1) does not apply if that act or, 135
omission does not constitute reckless disregard for the 136
consequences so as to affect the life or health of the patient, 137
decision, or compliance constitutes willful or wanton 138
misconduct. 139

(C) (1) This section does not create a new cause of action 140
or substantive legal right against a health care provider ~~or~~ 141
~~emergency medical technician.~~ 142

(2) This section does not affect any immunities from civil 143
liability or defenses established by another section of the 144
Revised Code or available at common law to which a health care 145
provider ~~or emergency medical technician~~ may be entitled in 146
connection with the provision of health care services, emergency 147
medical services, first-aid treatment, or other emergency 148
professional care, including the provision of medication, 149
medical equipment, or other medical product. 150

(3) This section does not grant an immunity from tort or 151
other civil liability or a professional disciplinary action to a 152
health care provider ~~or emergency medical technician~~ for actions 153
that are outside the ~~scope of authority~~ skills, education, and 154
training of the health care provider ~~or emergency medical~~ 155
~~technician.~~ 156

(4) This section does not affect any legal responsibility 157
of a health care provider ~~or emergency medical technician~~ to 158
comply with any applicable law of this state or rule of an 159
agency of this state. 160

(5) ~~This Division (B) of this section~~ applies only to the 161
provision, withholding, or withdrawal of health care services, 162
emergency medical services, first-aid treatment, or other 163

emergency professional care, including the provision of any 164
medication or other medical equipment or product, decisions 165
related to such services or care, or compliance with an 166
executive order or director's order by a health care provider ~~or~~ 167
~~emergency medical technician as a result of~~ during and in 168
response to a disaster or emergency and through the duration of 169
the disaster or emergency. 170

~~(D) This section does not apply to a tort action alleging~~ 171
~~wrongful death against a health care provider or emergency~~ 172
~~medical technician that provides emergency medical services,~~ 173
~~first aid treatment, or other emergency professional care,~~ 174
~~including the provision of any medication or other medical~~ 175
~~product, that allegedly arises from an act or omission of the~~ 176
~~health care provider or emergency medical technician in the~~ 177
~~health care provider's or emergency medical technician's~~ 178
~~provision of those services or that treatment or care as a~~ 179
~~result of a disaster.~~ 180

Sec. 2305.2312. (A) As used in this section: 181

(1) "Disaster" has the same meaning as in section 182
2305.2311 of the Revised Code. 183

(2) "Person" has the same meaning as in section 1.59 of 184
the Revised Code. 185

(3) "Product" has the same meaning as in section 2307.71 186
of the Revised Code. 187

(4) "Services" means providing lodging, sheltering, 188
groceries, pharmaceutical products, fuel products, other 189
products, retail merchandise, manufacturing, care, religious or 190
nonprofit services, or other acts that are part of or outside 191
the normal scope of a person's business or nonprofit activities 192

during the period of a declared disaster and not more than one 193
hundred eighty days after the end of the period of the declared 194
disaster. 195

(5) "Service provider" means any person providing the 196
services described in division (A) (4) of this section, including 197
that person's owner, officer, director, employee, or agent. 198

(B) Except as provided in division (D) of this section, no 199
service provider shall be liable in damages to any person in a 200
civil action for illness or for injury, death, or loss to person 201
or property, allegedly arising from the service provider's act 202
or omission in providing or performing the service provider's 203
services that are in response to a disaster or are intended to 204
assist persons to recover from a disaster or otherwise sustain 205
themselves during the period of the declared disaster and not 206
more than one hundred eighty days after the end of the period of 207
the declared disaster. 208

(C) Except as provided in division (D) of this section, no 209
service provider shall be liable in damages to any person in a 210
civil action for injury, death, or loss to person or property 211
resulting from, or related to, the person's actual or alleged 212
exposure to an illness in the course of or through that service 213
provider's provision of services. 214

(D) The immunity granted to a service provider in division 215
(B) or (C) of this section does not apply if it is established 216
by clear and convincing evidence that the service provider's act 217
or omission is intentional, willful, or wanton misconduct. 218

(E) This section does not do either of the following: 219

(1) Create a new cause of action or substantive legal 220
right against any person; 221

(2) Affect any immunities from civil liability or defenses 222
established by another section of the Revised Code or available 223
at common law to a service provider that provides services under 224
this section. 225

(F) The immunity conferred in this section shall also 226
apply to any cause of action against a service provider for 227
contribution or indemnity for damages sustained by any person 228
during the period of the disaster and not more than one hundred 229
eighty days after the end of the period of the disaster. 230

Section 2. That existing section 2305.2311 of the Revised 231
Code is hereby repealed. 232

Section 3. This act is hereby declared to be an emergency 233
measure necessary for the immediate preservation of the public 234
peace, health, and safety. The reason for such necessity is that 235
it is crucial to provide immunity in response to a disaster 236
declared by the federal government, state government, or 237
political subdivision of the state. Therefore, this act shall go 238
into immediate effect. 239

Section 4. This act applies retroactively to the date a 240
disaster is declared by the federal government, state 241
government, or political subdivision of the state. 242