

As Reported by the Senate Judiciary Committee

133rd General Assembly

Regular Session

2019-2020

Sub. S. B. No. 308

Senator Huffman, M.

**Cosponsors: Senators Huffman, S., Roegner, Hottinger, Hackett, Schuring,
Eklund, Coley, McColley**

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 for 3
health care providers during disasters, to 4
provide qualified civil immunity to service 5
providers providing services during and after a 6
government-declared disaster or emergency due to 7
COVID-19, and to declare an emergency. 8

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

Section 1. That section 2305.2311 be amended and section 9
2305.2312 of the Revised Code be enacted to read as follows: 10

Sec. 2305.2311. (A) As used in this section: 11

(1) "Advanced practice registered nurse" means an 12
individual who holds a current, valid license issued under 13
Chapter 4723. of the Revised Code to practice as an advanced 14
practice registered nurse. 15

(2) "Athletic trainer" means an individual licensed under 16
Chapter 4755. of the Revised Code to practice athletic training. 17

(3) "Audiologist" means an individual licensed under Chapter 4753. of the Revised Code to practice audiology. 18
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(4) "Behavioral health services" include alcohol and drug addiction services and mental health services. 20
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(5) "Behavioral health provider" means a provider of behavioral health services, including the following providers: 22
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(a) An independent chemical dependency counselor-clinical supervisor, independent chemical dependency counselor, chemical dependency counselor III, and chemical dependency counselor II, licensed under Chapter 4758. of the Revised Code, and a chemical dependency counselor assistant, prevention consultant, prevention specialist, prevention specialist assistant, and registered applicant, certified under that chapter; 24
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(b) A licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, independent marriage and family therapist, or marriage and family therapist who holds a current, valid license issued under Chapter 4757. of the Revised Code; 31
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(c) A psychologist. 36

(6) "Board of health" means the board of health of a city or general health district or the authority having the duties of a board of health under section 3709.05 of the Revised Code. 37
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(7) "Chiropractor" means an individual who is authorized under Chapter 4734. of the Revised Code to practice chiropractic. 40
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(8) "Dentist" has the same meaning as in section 2305.231 of the Revised Code. 43
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~~(3)-(9)~~ "Direct support professional" means an individual 45

employed by an agency to provide direct care to individuals with 46
developmental disabilities. 47

(10) "Disaster" means any occurrence of widespread 48
personal injury or loss of life that results from any natural or 49
technological phenomenon or act of a human, or an epidemic and 50
is declared to be a disaster by the federal government, the 51
state government, or a political subdivision of this state. 52

~~(4)~~ (11) "Emergency" has the same meaning as in section 53
5502.21 of the Revised Code. 54

(12) "Emergency medical technician" means an EMT-basic, an 55
EMT-I, or a paramedic. 56

~~(5)~~ (13) "EMT-basic" means an individual who holds a 57
current, valid certificate issued under section 4765.30 of the 58
Revised Code to practice as an emergency medical technician- 59
basic. 60

~~(6)~~ (14) "EMT-I" means an individual who holds a current, 61
valid certificate issued under section 4765.30 of the Revised 62
Code to practice as an emergency medical technician- 63
intermediate. 64

~~(7)~~ (15) "Facility" means an institution or setting where 65
health care services are provided, including, without 66
limitation, a hospital, emergency department, inpatient, 67
ambulatory, surgical, ambulatory surgical, urgent care, 68
treatment, laboratory, adult day-care, residential care, 69
residential treatment, long-term care, or intermediate care 70
facility, or a facility for individuals with developmental 71
disabilities; a developmental, diagnostic, or imaging center; a 72
rehabilitation or therapeutic health setting; a federally 73
qualified health center or federally qualified health center 74

look-alike; or any modular field treatment facility or 75
alternative care site designated for temporary use for the 76
purposes of providing health care services in response to a 77
disaster or emergency. 78

(16) "Facility for individuals with developmental 79
disabilities" means a facility that provides services to two or 80
more unrelated individuals with developmental disabilities in a 81
residential setting, such as an institution for mental disease 82
or a residential facility licensed under section 5123.19 of the 83
Revised Code. 84

(17) "Federally qualified health center" and "federally 85
qualified health center look-alike" have the same meanings as in 86
section 3701.047 of the Revised Code. 87

(18) "Gross negligence" means a lack of care so great that 88
it appears to be a conscious indifference to the rights of 89
others. 90

(19) "Health care ~~provider~~professional" means an advanced 91
practice registered nurse, a registered nurse, a licensed 92
practical nurse, a pharmacist, a dentist, an optometrist, a 93
physician, a physician assistant, a chiropractor, a physical 94
therapist, an occupational therapist, an athletic trainer, a 95
speech-language pathologist, an audiologist, a laboratory 96
worker, a massage therapist, or a ~~hospital~~respiratory care 97
professional. 98

~~(8)~~ (20) "Health care provider" means a health care 99
professional, health care worker, direct support professional, 100
behavioral health provider, home medical equipment services 101
provider, or emergency medical technician or a home health 102
agency, hospice care program, health care professional's 103

employer, physician practice, home and community-based services 104
provider, or facility, including any agent, board member, 105
committee member, employee, employer, officer, or volunteer of 106
the agency, program, provider, practice, or facility acting in 107
the course of the agent's, board member's, committee member's, 108
employee's, employer's, officer's, or volunteer's service or 109
employment. 110

(21) "Health care services" means services rendered by a 111
health care provider for the diagnosis, prevention, treatment, 112
cure, or relief of a health condition, illness, injury, or 113
disease, including the provision of any medication, medical 114
equipment, or other medical product. "Health care services" 115
includes behavioral health services, personal care services, and 116
experimental treatments. 117

(22) "Health care worker" means a person other than a 118
health care professional or emergency medical technician who 119
provides medical, dental, or other health care services under 120
the direction of a health care professional authorized to direct 121
the individual's activities. "Health care worker" includes a 122
medical technician, medical assistant, dental assistant, 123
occupational therapist assistant, physical therapist assistant, 124
orderly, nurse aide, and any other individual acting in a 125
similar capacity. 126

(23) "Home and community-based services provider" means a 127
provider of services under a home and community-based services 128
medicaid waiver component. 129

(24) "Home health agency" has the same meaning as in 130
section 3701.881 of the Revised Code. 131

(25) "Home medical equipment services provider" means an 132

<u>individual licensed or certified under Chapter 4752. of the</u>	133
<u>Revised Code to offer home medical equipment services.</u>	134
<u>(26) "Hospice care program" has the same meaning as in</u>	135
<u>section 3712.01 of the Revised Code.</u>	136
<u>(27) "Hospital" and "medical claim" have the same meanings</u>	137
<u>as in section 2305.113 of the Revised Code.</u>	138
(9) <u>(28) "Licensed practical nurse" means an individual</u>	139
<u>who holds a current, valid license issued under Chapter 4723. of</u>	140
<u>the Revised Code to practice as a licensed practical nurse.</u>	141
<u>(29) "Long-term care facility" has the same meaning as in</u>	142
<u>section 3701.74 of the Revised Code.</u>	143
<u>(30) "Massage therapist" means an individual licensed</u>	144
<u>under section 4731.15 of the Revised Code to practice massage</u>	145
<u>therapy.</u>	146
<u>(31) "Medicaid waiver component" has the same meaning as</u>	147
<u>in section 5166.01 of the Revised Code.</u>	148
<u>(32) "Occupational therapist" means an individual who</u>	149
<u>holds a current license or limited certificate under Chapter</u>	150
<u>4755. of the Revised Code to practice occupational therapy.</u>	151
<u>(33) "Occupational therapy assistant" means an individual</u>	152
<u>who holds a license or limited permit under Chapter 4755. of the</u>	153
<u>Revised Code to practice as an occupational therapy assistant.</u>	154
<u>(34) "Optometrist" means a person who is licensed under</u>	155
<u>Chapter 4725. of the Revised Code to practice optometry.</u>	156
(10) <u>(35) "Paramedic" means an individual who holds a</u>	157
<u>current, valid certificate issued under section 4765.30 of the</u>	158
<u>Revised Code to practice as an emergency medical technician-</u>	159

paramedic.	160
(11) (36) <u>"Personal care services" has the same meaning as</u>	161
<u>in section 3721.01 of the Revised Code.</u>	162
<u>(37) "Pharmacist" means an individual who holds a current,</u>	163
<u>valid license issued under Chapter 4729. of the Revised Code to</u>	164
<u>practice as a pharmacist.</u>	165
(12) (38) <u>"Physical therapist" means an individual</u>	166
<u>licensed under Chapter 4755. of the Revised Code to practice</u>	167
<u>physical therapy.</u>	168
<u>(39) "Physical therapist assistant" means an individual</u>	169
<u>licensed under Chapter 4755. of the Revised Code to practice as</u>	170
<u>a physical therapist assistant.</u>	171
<u>(40) "Physician" means an individual who is authorized</u>	172
<u>under Chapter 4731. of the Revised Code to practice medicine and</u>	173
<u>surgery, osteopathic medicine and surgery, or podiatric medicine</u>	174
<u>and surgery.</u>	175
(13) (41) <u>"Physician assistant" means an individual who is</u>	176
<u>authorized under Chapter 4730. of the Revised Code to practice</u>	177
<u>as a physician assistant.</u>	178
(14) (42) <u>"Reckless disregard" means, as it applies to a</u>	179
<u>given health care provider or emergency medical technician</u>	180
<u>rendering health care services, emergency medical services,</u>	181
<u>first-aid treatment, or other emergency professional care,</u>	182
<u>including the provision of any medication or other medical</u>	183
<u>product, means conduct that a health care provider or emergency</u>	184
<u>medical technician knew or should have known, conduct by which,</u>	185
<u>with heedless indifference to the consequences, the health care</u>	186
<u>provider disregards a substantial and unjustifiable risk that</u>	187
<u>the health care provider's conduct is likely to cause, at the</u>	188

time those services or that treatment or care were rendered, 189
~~created an unreasonable risk of injury, death, or loss to person~~ 190
~~or property so as to affect the life or health of another and~~ 191
~~that risk was substantially greater than that which is necessary~~ 192
~~to make the conduct negligent.~~ 193

~~(15)~~ (43) "Psychologist" means an individual who is 194
licensed as a psychologist or school psychologist under Chapter 195
4732. of the Revised Code. 196

(44) "Registered nurse" means an individual who holds a 197
current, valid license issued under Chapter 4723. of the Revised 198
Code to practice as a registered nurse. 199

~~(16)~~ (45) "Residential treatment facility" has the same 200
meaning as in section 5166.01 of the Revised Code. 201

(46) "Respiratory care professional" has the same meaning 202
as in section 4761.01 of the Revised Code. 203

(47) "Speech-language pathologist" means an individual 204
licensed under Chapter 4753. of the Revised Code to practice 205
speech-language pathology. 206

(48) "Tort action" means a civil action for damages for 207
injury, death, or loss to person or property ~~other than a civil-~~ 208
~~action for damages for a breach of contract or another agreement-~~ 209
~~between persons or governmental entities and includes claims~~ 210
~~arising under resident or patient bills of rights and~~ 211
~~contractual claims arising out of statutory or regulatory~~ 212
~~requirements applicable to health care providers.~~ "Tort action" 213
includes an action on a medical claim. 214

(B) (1) Subject to division (C) (3) of this section, a 215
health care provider ~~or emergency medical technician~~ that 216
provides health care services, emergency medical services, 217

first-aid treatment, or other emergency professional care, 218
including the provision of any medication or other medical 219
equipment or product, as a result of or in response to a 220
disaster or emergency is not subject to professional 221
disciplinary action and is not liable in damages to any person 222
or government agency in a tort action for injury, death, or loss 223
to person or property that allegedly arises from ~~an~~ any of the 224
following: 225

(a) An act or omission of the health care provider ~~or~~ 226
~~emergency medical technician in the health care provider's or~~ 227
~~emergency medical technician's provision, withholding, or~~ 228
~~withdrawal of those services or that treatment or care;~~ 229

(b) Any decision related to the provision, withholding, or 230
withdrawal of those services; 231

(c) Compliance with an executive order or director's order 232
issued during and in response to the disaster or emergency. 233

(2) Division (B) (1) of this section does not apply in a 234
tort action if that act or omission does not constitute the 235
health care provider's action, omission, decision, or compliance 236
constitutes a reckless disregard for the consequences so as to 237
affect the life or health of the patient or willful or wanton 238
misconduct. 239

(3) Division (B) (1) of this section does not apply in a 240
professional disciplinary action if the health care provider's 241
action, omission, decision, or compliance constitutes gross 242
negligence. 243

(4) A health care provider is not subject to professional 244
disciplinary action and is not liable in damages to any person 245
or government agency in a tort action for injury, death, or loss 246

to person or property that allegedly arises because the provider 247
was prohibited from treating, diagnosing, or testing the person 248
for any illness, disease, or condition, including performing any 249
elective procedure, by an executive or director's order or an 250
order of a board of health of a city or general health district 251
issued in relation to an epidemic or pandemic disease or other 252
public health emergency. 253

(C) (1) This section does not create a new cause of action 254
or substantive legal right against a health care provider ~~or~~ 255
~~emergency medical technician.~~ 256

(2) This section does not affect any immunities from civil 257
liability or defenses established by another section of the 258
Revised Code or available at common law to which a health care 259
provider ~~or emergency medical technician~~ may be entitled in 260
connection with the provision of health care services, emergency 261
medical services, first-aid treatment, or other emergency 262
professional care, including the provision of medication, 263
medical equipment, or other medical product. 264

(3) This section does not grant an immunity from tort or 265
other civil liability or a professional disciplinary action to a 266
health care provider ~~or emergency medical technician~~ for actions 267
that are outside the ~~scope of authority~~ skills, education, and 268
training of the health care provider ~~or emergency medical~~ 269
~~technician,~~ unless the health care provider undertakes the 270
action in good faith and in response to a lack of resources 271
caused by a disaster or emergency. 272

(4) This section does not affect any legal responsibility 273
of a health care provider ~~or emergency medical technician~~ to 274
comply with any applicable law of this state or rule of an 275
agency of this state. 276

(5) ~~This Division (B) of this section applies only to the~~ 277
~~provision, withholding, or withdrawal of health care services,~~ 278
~~emergency medical services, first-aid treatment, or other~~ 279
~~emergency professional care, including the provision of any~~ 280
~~medication or other medical equipment or product, decisions~~ 281
~~related to such services or care, or compliance with an~~ 282
~~executive order or director's order by a health care provider or~~ 283
~~emergency medical technician as a result of or in response to a~~ 284
~~disaster or emergency and through the duration of the disaster~~ 285
~~or emergency.~~ 286

(D) This section does not apply to a tort action alleging 287
wrongful death against a health care provider ~~or emergency~~ 288
~~medical technician~~ that provides health care services, emergency 289
medical services, first-aid treatment, or other emergency 290
professional care, ~~including the provision of any medication or~~ 291
~~other medical product,~~ that allegedly arises from an act or 292
omission of the health care provider ~~or emergency medical~~ 293
~~technician~~ in the health care provider's ~~or emergency medical~~ 294
~~technician's~~ provision of those services or that treatment or 295
care as a result of during or in response to a disaster or 296
emergency. 297

(E) If the immunity described in division (B) of this 298
section does not apply, no class action shall be brought against 299
any health care provider alleging liability for damages for 300
injury, death, or loss to person or property on a cause of 301
action specified in that division. 302

Sec. 2305.2312. (A) As used in this section: 303

(1) "Board of health" means the board of health of a city 304
or general health district or the authority having the duties of 305
a board of health under section 3709.05 of the Revised Code. 306

<u>(2) "Disaster" has the same meaning as in section</u>	307
<u>2305.2311 of the Revised Code.</u>	308
<u>(3) "Government order" means an order, recommendation, or</u>	309
<u>guideline issued in response to a disaster or emergency due to</u>	310
<u>COVID-19 by a federal official or agency, a state official or</u>	311
<u>agency, a political subdivision, or a board of health.</u>	312
<u>(4) "Emergency" means any period during which the congress</u>	313
<u>of the United States or a chief executive has declared or</u>	314
<u>proclaimed that an emergency exists due to COVID-19.</u>	315
<u>(5) "Person" has the same meaning as in section 1.59 of</u>	316
<u>the Revised Code and includes a school, a for-profit, nonprofit,</u>	317
<u>religious, or governmental entity, or a state institution of</u>	318
<u>higher education.</u>	319
<u>(6) "Services" means any activity, including</u>	320
<u>manufacturing, that is part of or outside of a service</u>	321
<u>provider's normal course of business conducted during the period</u>	322
<u>of a disaster or emergency declared due to COVID-19 and ending</u>	323
<u>on April 1, 2021.</u>	324
<u>(7) "Service provider" means any person providing the</u>	325
<u>services described in division (A) (6) of this section, including</u>	326
<u>that person's owner, officer, director, employee, or agent.</u>	327
<u>(8) "State institution of higher education" has the same</u>	328
<u>meaning as in section 3345.011 of the Revised Code.</u>	329
<u>(B) Except as provided in division (D) of this section, no</u>	330
<u>service provider shall be liable in damages to any person in a</u>	331
<u>civil action for illness or for injury, death, or loss to person</u>	332
<u>or property, allegedly arising directly or indirectly from the</u>	333
<u>service provider's act or omission in providing or performing</u>	334
<u>the service provider's services as a result of or in response to</u>	335

a disaster or emergency declared due to COVID-19 or that are 336
intended to assist persons to recover from such a disaster or 337
emergency or otherwise sustain themselves during the period of 338
that declared disaster or emergency and ending on April 1, 2021. 339

(C) Except as provided in division (D) of this section, no 340
service provider shall be liable in damages to any person in a 341
civil action for injury, death, or loss to person or property 342
resulting directly or indirectly from, or related to, any 343
person's actual or alleged exposure to an illness in the course 344
of or through that service provider's provision of services 345
during the period of the disaster or emergency declared due to 346
COVID-19 and ending on April 1, 2021. 347

(D) (1) The immunity granted to a service provider in 348
division (B) or (C) of this section does not apply if it is 349
established that the service provider's act or omission is 350
reckless or intentional conduct or willful or wanton misconduct. 351

(2) As used in division (D) (1) of this section, "reckless 352
conduct" means conduct by which, with heedless indifference to 353
the consequences, the person disregards a substantial and 354
unjustifiable risk that the person's conduct is likely to cause 355
an illness or an injury, death, or loss to person or property as 356
described in division (B) or (C) of this section, whichever is 357
applicable, or is likely to be of a nature that results in such 358
an illness or an injury, death, or loss to person or property. A 359
person is reckless with respect to circumstances in relation to 360
causing an illness or an injury, death, or loss to person or 361
property as described in division (B) or (C) of this section, 362
whichever is applicable, when, with heedless indifference to the 363
consequences, the person disregards a substantial and 364
unjustifiable risk that such circumstances are likely to exist. 365

(E) If the immunity described in division (B) or (C) of this section does not apply, no class action shall be brought against any service provider alleging liability for damages for injury, death, or loss to person or property on a cause of action specified in either division. 366
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(F) This section does not do either of the following: 371

(1) Create a new cause of action, a third-party claim, or a substantive legal right against any person; 372
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(2) Affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to a service provider that provides services under this section. 374
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(G) The immunity conferred in this section shall also apply to any cause of action against a service provider for contribution or indemnity for damages sustained by any person during the period of the disaster or emergency declared due to COVID-19 and ending on April 1, 2021. 378
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(H) A government order shall not create nor shall be construed as creating a duty of care upon any person that may be enforced in a cause of action or create a new cause of action or substantive legal right against any person with respect to the matters contained in the government order. A presumption exists that any such government order is not admissible as evidence that a duty of care or substantive legal right has been established. 383
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Section 2. That existing section 2305.2311 of the Revised Code is hereby repealed. 391
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Section 3. Section 2305.2312 of the Revised Code, as enacted by this act, is intended to apply broadly to all sectors 393
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of the economy that own property, operate a business, engage in 395
a nonprofit or religious activity, or otherwise engage with the 396
public. The General Assembly declares its intent in enacting 397
section 2305.2312 of the Revised Code that the use of the terms 398
"services" and "service provider" in that section be broadly 399
construed in an effort to promote commerce, recovery from 400
disasters or emergencies, and to alleviate suffering throughout 401
this state. 402

Section 4. The General Assembly declares its intent that 403
orders and recommendations from the Executive Branch, from 404
counties and local municipalities, from boards of health and 405
other agencies, and from any federal government agency, do not 406
create any new legal duties for purposes of tort liability. Any 407
such orders and recommendations are presumed to be irrelevant to 408
the issue of the existence of a duty or breach of a duty. 409
Furthermore, any such orders and recommendations are presumed to 410
be inadmissible at trial to establish proof of a duty or breach 411
of a duty in tort actions. 412

Section 5. This act applies from the date of the 413
Governor's Executive Order 2020-01D, issued on March 9, 2020, 414
declaring a state of emergency due to COVID-19. 415

Section 6. This act is hereby declared to be an emergency 416
measure necessary for the immediate preservation of the public 417
peace, health, and safety. The reason for such necessity is that 418
it is crucial to provide immunity in response to a disaster or 419
emergency declared by the federal government, state government, 420
or political subdivision of the state. Therefore, this act shall 421
go into immediate effect. 422