

I_133_2779-4

133rd General Assembly
Regular Session
2019-2020

Sub. S. B. No. 308

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, and 7
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



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<u>(3) "Behavioral health services" include alcohol and drug</u>	18
<u>addiction services and mental health services.</u>	19
<u>(4) "Behavioral health provider" means a provider of</u>	20
<u>behavioral health services, including the following providers:</u>	21
<u>(a) An independent chemical dependency counselor-clinical</u>	22
<u>supervisor, independent chemical dependency counselor, chemical</u>	23
<u>dependency counselor III, and chemical dependency counselor II,</u>	24
<u>licensed under Chapter 4758. of the Revised Code, and a chemical</u>	25
<u>dependency counselor assistant, prevention consultant,</u>	26
<u>prevention specialist, prevention specialist assistant, and</u>	27
<u>registered applicant, certified under that chapter;</u>	28
<u>(b) A licensed professional clinical counselor, licensed</u>	29
<u>professional counselor, independent social worker, social</u>	30
<u>worker, independent marriage and family therapist, or marriage</u>	31
<u>and family therapist who holds a current, valid license issued</u>	32
<u>under Chapter 4757. of the Revised Code;</u>	33
<u>(c) A psychologist.</u>	34
<u>(5) "Board of health" means the board of health of a city</u>	35
<u>or general health district or the authority having the duties of</u>	36
<u>a board of health under section 3709.05 of the Revised Code.</u>	37
<u>(6) "Chiropractor" means an individual who is authorized</u>	38
<u>under Chapter 4734. of the Revised Code to practice</u>	39
<u>chiropractic.</u>	40
<u>(7) "Dentist" has the same meaning as in section 2305.231</u>	41
<u>of the Revised Code.</u>	42
(3) <u>(8) "Direct support professional" means an individual</u>	43
<u>employed by an agency to provide direct care to individuals with</u>	44
<u>developmental disabilities.</u>	45

(9) "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.

~~(4)~~(10) "Emergency" has the same meaning as in section 5502.21 of the Revised Code.

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

~~(5)~~(12) "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.

~~(6)~~(13) "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.

~~(7)~~(14) "Facility" means an institution or setting where health care services are provided, including, without limitation, a hospital, emergency department, inpatient, ambulatory, surgical, ambulatory surgical, urgent care, treatment, laboratory, adult day-care, residential care, residential treatment, long-term care, or intermediate care facility, or a facility for individuals with developmental disabilities; a developmental, diagnostic, or imaging center; a rehabilitation or therapeutic health setting; a federally qualified health center or federally qualified health center look-alike; 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 75
disaster or emergency. 76

(15) "Facility for individuals with developmental 77
disabilities" means a facility that provides services to two or 78
more unrelated individuals with developmental disabilities in a 79
residential setting, such as an institution for mental disease 80
or a residential facility licensed under section 5123.19 of the 81
Revised Code. 82

(16) "Federally qualified health center" and "federally 83
qualified health center look-alike" have the same meanings as in 84
section 3701.047 of the Revised Code. 85

(17) "Health care ~~provider~~ professional" means an advanced 86
practice registered nurse, a registered nurse, a licensed 87
practical nurse, a pharmacist, a dentist, an optometrist, a 88
physician, a physician assistant, a chiropractor, a physical 89
therapist, an occupational therapist, an athletic trainer, a 90
speech-language pathologist, a laboratory worker, a massage 91
therapist, or a ~~hospital~~ respiratory care professional. 92

~~(8)~~ (18) "Health care provider" means a health care 93
professional, health care worker, direct support professional, 94
behavioral health provider, or emergency medical technician or a 95
home health agency, hospice care program, health care 96
professional's employer, physician practice, home and community- 97
based services provider under a medicaid waiver component, or 98
facility, including any agent, board member, committee member, 99
employee, employer, officer, or volunteer of the agency, 100
program, provider, practice, or facility acting in the course of 101
the agent's, board member's, committee member's, employee's, 102
employer's, officer's, or volunteer's service or employment. 103

(19) "Health care services" means services rendered by a health care provider for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease, including the provision of any medication, medical equipment, or other medical product. "Health care services" includes behavioral health services, personal care services, and experimental treatments. 104
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(20) "Health care worker" means a person other than a health care professional or emergency medical technician who provides medical, dental, or other health care services under the direction of a health care professional authorized to direct the individual's activities. "Health care worker" includes a medical technician, medical assistant, dental assistant, occupational therapist assistant, physical therapist assistant, orderly, nurse aide, and any other individual acting in a similar capacity. 111
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(21) "Home and community-based services provider" means a provider of services under a home and community-based services medicaid waiver component. 120
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(22) "Home health agency" has the same meaning as in section 3701.881 of the Revised Code. 123
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(23) "Hospice care program" has the same meaning as in section 3712.01 of the Revised Code. 125
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(24) "Hospital" and "medical claim" have the same meanings as in section 2305.113 of the Revised Code. 127
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~~(9)~~ (25) "Licensed practical nurse" means an individual who holds a current, valid license issued under Chapter 4723. of the Revised Code to practice as a licensed practical nurse. 129
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(26) "Long-term care facility" has the same meaning as in 132

<u>section 3701.74 of the Revised Code.</u>	133
<u>(27) "Massage therapist" means an individual licensed</u>	134
<u>under section 4731.15 of the Revised Code to practice massage</u>	135
<u>therapy.</u>	136
<u>(28) "Medicaid waiver component" has the same meaning as</u>	137
<u>in section 5166.01 of the Revised Code.</u>	138
<u>(29) "Occupational therapist" means an individual who</u>	139
<u>holds a current license or limited certificate under Chapter</u>	140
<u>4755. of the Revised Code to practice occupational therapy.</u>	141
<u>(30) "Occupational therapy assistant" means an individual</u>	142
<u>who holds a license or limited permit under Chapter 4755. of the</u>	143
<u>Revised Code to practice as an occupational therapy assistant.</u>	144
<u>(31) "Optometrist" means a person who is licensed under</u>	145
<u>Chapter 4725. of the Revised Code to practice optometry.</u>	146
(10) <u>(32) "Paramedic" means an individual who holds a</u>	147
<u>current, valid certificate issued under section 4765.30 of the</u>	148
<u>Revised Code to practice as an emergency medical technician-</u>	149
<u>paramedic.</u>	150
(11) <u>(33) "Personal care services" has the same meaning as</u>	151
<u>in section 3721.01 of the Revised Code.</u>	152
<u>(34) "Pharmacist" means an individual who holds a current,</u>	153
<u>valid license issued under Chapter 4729. of the Revised Code to</u>	154
<u>practice as a pharmacist.</u>	155
(12) <u>(35) "Physical therapist" means an individual</u>	156
<u>licensed under Chapter 4755. of the Revised Code to practice</u>	157
<u>physical therapy.</u>	158
<u>(36) "Physical therapist assistant" means an individual</u>	159

licensed under Chapter 4755. of the Revised Code to practice as 160
a physical therapist assistant. 161

(37) "Physician" means an individual who is authorized 162
under Chapter 4731. of the Revised Code to practice medicine and 163
surgery, osteopathic medicine and surgery, or podiatric medicine 164
and surgery. 165

~~(13)~~ (38) "Physician assistant" means an individual who is 166
authorized under Chapter 4730. of the Revised Code to practice 167
as a physician assistant. 168

~~(14)~~ "Reckless disregard" as it applies to a given health- 169
care provider or emergency medical technician rendering 170
emergency medical services, first-aid treatment, or other 171
emergency professional care, including the provision of any 172
medication or other medical product, means conduct that a health 173
care provider or emergency medical technician knew or should 174
have known, at the time those services or that treatment or care 175
were rendered, created an unreasonable risk of injury, death, or 176
loss to person or property so as to affect the life or health of 177
another and that risk was substantially greater than that which 178
is necessary to make the conduct negligent. 179

~~(15)~~ (39) "Psychologist" means an individual who is 180
licensed as a psychologist or school psychologist under Chapter 181
4732. of the Revised Code. 182

(40) "Registered nurse" means an individual who holds a 183
current, valid license issued under Chapter 4723. of the Revised 184
Code to practice as a registered nurse. 185

~~(16)~~ (41) "Residential treatment facility" has the same 186
meaning as in section 5166.01 of the Revised Code. 187

(42) "Respiratory care professional" has the same meaning 188

as in section 4761.01 of the Revised Code. 189

(43) "Speech-language pathologist" means an individual 190
licensed under Chapter 4753. of the Revised Code to practice 191
speech-language pathology. 192

(44) "Tort action" means a civil action for damages for 193
injury, death, or loss to person or property ~~other than a civil-~~ 194
~~action for damages for a breach of contract or another agreement~~ 195
~~between persons or governmental entities and includes claims~~ 196
arising under resident or patient bills of rights and 197
contractual claims arising out of statutory or regulatory 198
requirements applicable to health care providers. "Tort action" 199
includes an action on a medical claim. 200

(B) (1) Subject to division (C) (3) of this section, a 201
health care provider ~~or emergency medical technician~~ that 202
provides health care services, emergency medical services, 203
first-aid treatment, or other emergency professional care, 204
including the provision of any medication or other medical 205
equipment or product, as a result of or in response to a 206
disaster or emergency is not subject to professional 207
disciplinary action and is not liable in damages to any person 208
or government agency in a tort action for injury, death, or loss 209
to person or property that allegedly arises from ~~an~~ any of the 210
following: 211

(a) An act or omission of the health care provider ~~or~~ 212
~~emergency medical technician~~ in the health care provider's ~~or~~ 213
~~emergency medical technician's~~ provision, withholding, or 214
withdrawal of those services ~~or that treatment or care;~~ 215

(b) Any decision related to the provision, withholding, or 216
withdrawal of those services; 217

<u>(c) Compliance with an executive order or director's order</u>	218
<u>issued during and in response to the disaster or emergency.</u>	219
<u>(2) Division (B)(1) of this section does not apply if that</u>	220
<u>act or omission does not constitute reckless disregard for the</u>	221
<u>consequences so as to affect the life or health of the patient,</u>	222
<u>omission, decision, or compliance constitutes willful or wanton</u>	223
<u>misconduct.</u>	224
<u>(3) A health care provider is not subject to professional</u>	225
<u>disciplinary action and is not liable in damages to any person</u>	226
<u>or government agency in a tort action for injury, death, or loss</u>	227
<u>to person or property that allegedly arises because the provider</u>	228
<u>was prohibited from treating, diagnosing, or testing the person</u>	229
<u>for any illness, disease, or condition, including performing any</u>	230
<u>elective procedure, by an executive or director's order or an</u>	231
<u>order of a board of health of a city or general health district</u>	232
<u>issued in relation to an epidemic or pandemic disease or other</u>	233
<u>public health emergency.</u>	234
(C) (1) This section does not create a new cause of action	235
or substantive legal right against a health care provider or	236
emergency medical technician.	237
(2) This section does not affect any immunities from civil	238
liability or defenses established by another section of the	239
Revised Code or available at common law to which a health care	240
provider or emergency medical technician may be entitled in	241
connection with the provision of <u>health care services,</u> emergency	242
medical services, first-aid treatment, or other emergency	243
professional care, including the provision of medication, <u></u>	244
<u>medical equipment,</u> or other medical product.	245
(3) This section does not grant an immunity from tort or	246

other civil liability or a professional disciplinary action to a 247
health care provider ~~or emergency medical technician~~ for actions 248
that are outside the ~~scope of authority~~ skills, education, and 249
training of the health care provider ~~or emergency medical~~ 250
~~technician~~, unless the health care provider undertakes the 251
action in good faith and in response to a lack of resources 252
caused by a disaster or emergency. 253

(4) This section does not affect any legal responsibility 254
of a health care provider ~~or emergency medical technician~~ to 255
comply with any applicable law of this state or rule of an 256
agency of this state. 257

(5) ~~This Division (B) of this section~~ applies only to the 258
provision, withholding, or withdrawal of health care services, 259
emergency medical services, first-aid treatment, or other 260
emergency professional care, including the provision of any 261
medication or other medical equipment or product, decisions 262
related to such services or care, or compliance with an 263
executive order or director's order by a health care provider ~~or~~ 264
~~emergency medical technician~~ as a result of or in response to a 265
disaster or emergency and through the duration of the disaster_ 266
or emergency. 267

(D) ~~This section does not apply to a tort action alleging~~ 268
~~wrongful death against a health care provider or emergency~~ 269
~~medical technician that provides emergency medical services,~~ 270
~~first-aid treatment, or other emergency professional care,~~ 271
~~including the provision of any medication or other medical~~ 272
~~product, that allegedly arises from an act or omission of the~~ 273
~~health care provider or emergency medical technician in the~~ 274
~~health care provider's or emergency medical technician's~~ 275
~~provision of those services or that treatment or care as a~~ 276

result of a disaster. If the immunity described in division (B) 277
of this section does not apply, no class action shall be brought 278
against any health care provider alleging liability for damages 279
for injury, death, or loss to person or property on a cause of 280
action specified in that division. 281

Sec. 2305.2312. (A) As used in this section: 282

(1) "Board of health" means the board of health of a city 283
or general health district or the authority having the duties of 284
a board of health under section 3709.05 of the Revised Code. 285

(2) "Disaster" has the same meaning as in section 286
2305.2311 of the Revised Code. 287

(3) "Government order" means an order issued in response 288
to a disaster by the governor, the department of health, a 289
political subdivision, or a board of health. 290

(4) "Emergency" means any period during which the congress 291
of the United States or a chief executive has declared or 292
proclaimed that an emergency exists. 293

(5) "Person" has the same meaning as in section 1.59 of 294
the Revised Code and includes a for-profit, nonprofit, or 295
religious entity. 296

(6) "Services" means any activity that is part of or 297
outside of a service provider's normal course of business 298
conducted during the period of a declared disaster or emergency 299
and not more than one hundred eighty days after the end of the 300
period of the declared disaster or emergency. 301

(7) "Service provider" means any person providing the 302
services described in division (A) (6) of this section, including 303
that person's owner, officer, director, employee, or agent. 304

(B) Except as provided in division (D) of this section, no 305
service provider shall be liable in damages to any person in a 306
civil action for illness or for injury, death, or loss to person 307
or property, allegedly arising directly or indirectly from the 308
service provider's act or omission in providing or performing 309
the service provider's services as a result of or in response to 310
a disaster or emergency or that are intended to assist persons 311
to recover from a disaster or emergency or otherwise sustain 312
themselves during the period of the declared disaster or 313
emergency and not more than one hundred eighty days after the 314
end of the period of the declared disaster or emergency. 315

(C) Except as provided in division (D) of this section, no 316
service provider shall be liable in damages to any person in a 317
civil action for injury, death, or loss to person or property 318
resulting from, or related to, the person's actual or alleged 319
exposure to an illness in the course of or through that service 320
provider's provision of services during the period of the 321
declared disaster or emergency and not more than one hundred 322
eighty days after the end of the period of the declared disaster 323
or emergency. 324

(D) The immunity granted to a service provider in division 325
(B) or (C) of this section does not apply if it is established 326
that the service provider's act or omission is reckless or 327
intentional conduct or willful or wanton misconduct. 328

(E) If the immunity described in division (B) or (C) of 329
this section does not apply, no class action shall be brought 330
against any service provider alleging liability for damages for 331
injury, death, or loss to person or property on a cause of 332
action specified in either division. 333

(F) This section does not do either of the following: 334

(1) Create a new cause of action or substantive legal 335
right against any person; 336

(2) Affect any immunities from civil liability or defenses 337
established by another section of the Revised Code or available 338
at common law to a service provider that provides services under 339
this section. 340

(G) The immunity conferred in this section shall also 341
apply to any cause of action against a service provider for 342
contribution or indemnity for damages sustained by any person 343
during the period of the declared disaster or emergency and not 344
more than one hundred eighty days after the end of the period of 345
the declared disaster or emergency. 346

(H) A government order shall not create nor shall be 347
construed as creating a duty of care upon any person that may be 348
enforced in a cause of action or create a new cause of action or 349
substantive legal right against any person with respect to the 350
matters contained in the government order. A presumption exists 351
that any such government order is not admissible as evidence 352
that a duty of care or substantive legal right has been 353
established. 354

Section 2. That existing section 2305.2311 of the Revised 355
Code is hereby repealed. 356

Section 3. Section 2305.2312 of the Revised Code, as 357
enacted by this act, is intended to apply broadly to all sectors 358
of the economy that own property, operate a business, engage in 359
a nonprofit or religious activity, or otherwise engage with the 360
public. The General Assembly declares its intent in enacting 361
section 2305.2312 of the Revised Code that the use of the terms 362
"services" and "service provider" in that section be broadly 363

construed in an effort to promote commerce, recovery from 364
disasters or emergencies, and to alleviate suffering throughout 365
this state. 366

Section 4. This act applies from the date of the 367
Governor's Executive Order 2020-01D, issued on March 9, 2020, 368
declaring a state of emergency due to COVID-19. 369

Section 5. This act is hereby declared to be an emergency 370
measure necessary for the immediate preservation of the public 371
peace, health, and safety. The reason for such necessity is that 372
it is crucial to provide immunity in response to a disaster or 373
emergency declared by the federal government, state government, 374
or political subdivision of the state. Therefore, this act shall 375
go into immediate effect. 376