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133rd General Assembly
Regular Session
2019-2020

Sub. S. B. No. 308

A BILL

To amend section 2305.2311 and to enact sections 1
2305.2312 and 4112.025 of the Revised Code to 2
revise the law governing immunity from civil 3
liability for health care providers during 4
disasters, to provide qualified civil immunity 5
to service providers providing services during 6
and after a government-declared disaster, to 7
exempt entities from discrimination liability 8
for taking certain actions to comply with a 9
government order or during a disaster, and to 10
declare an emergency. 11

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

Section 1. That section 2305.2311 be amended and sections 12
2305.2312 and 4112.025 of the Revised Code be enacted to read as 13
follows: 14

Sec. 2305.2311. (A) As used in this section: 15

(1) "Advanced practice registered nurse" means an 16
individual who holds a current, valid license issued under 17



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Chapter 4723. of the Revised Code to practice as an advanced
practice registered nurse. 18
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(2) "Athletic trainer" means an individual licensed under
Chapter 4755. of the Revised Code to practice athletic training. 20
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(3) "Chiropractor" means an individual who is authorized
under Chapter 4734. of the Revised Code to practice
chiropractic. 22
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(4) "Dentist" has the same meaning as in section 2305.231
of the Revised Code. 25
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~~(3)~~-(5) "Direct support professional" means an individual
employed by an agency to provide direct care to individuals with
developmental disabilities. 27
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(6) "Disaster" means any occurrence of widespread personal
injury or loss of life that results from any natural or 30
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technological phenomenon or act of a human, or an epidemic and 32
is declared to be a disaster by the federal government, the 33
state government, or a political subdivision of this state. 34

~~(4)~~-(7) "Emergency" has the same meaning as in section
5502.21 of the Revised Code. 35
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(8) "Emergency medical technician" means an EMT-basic, an
EMT-I, or a paramedic. 37
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~~(5)~~-(9) "EMT-basic" means an individual who holds a
current, valid certificate issued under section 4765.30 of the 39
40
Revised Code to practice as an emergency medical technician- 41
basic. 42

~~(6)~~-(10) "EMT-I" means an individual who holds a current,
valid certificate issued under section 4765.30 of the Revised 43
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Code to practice as an emergency medical technician- 45

intermediate.

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~~(7)~~ (11) "Facility" means an institution or setting where health care services are provided, including, without limitation, a hospital, inpatient, ambulatory, surgical, emergency care, urgent care, treatment, skilled nursing, nursing, residential care, residential treatment, or intermediate care facility; a physician's office; 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.

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(12) "Health care ~~provider~~ professional" means an advanced practice registered nurse, a registered nurse, a licensed practical nurse, a pharmacist, a dentist, an optometrist, a physician, a physician assistant, a chiropractor, a physical therapist, an occupational therapist, an athletic trainer, a laboratory worker, or a ~~hospital~~ respiratory care professional.

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~~(8)~~ (13) "Health care provider" means a health care professional, health care worker, direct support professional, or emergency medical technician or a home health agency, hospice care program, provider under a Medicaid waiver component, or facility, including any agent, board member, committee member, employee, employer, officer, or volunteer of the agency, program, provider, or facility acting in the course of the agent's, board member's, committee member's, employee's, employer's, officer's, or volunteer's service or employment.

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(14) "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

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disease, including the provision of any medication, medical 76
equipment, or other medical product. Health care services 77
includes experimental treatments. 78

(15) "Health care worker" means a person other than a 79
health care professional or emergency medical technician who 80
provides medical, dental, or other health care services under 81
the direction of a health care professional authorized to direct 82
the individual's activities. "Health care worker" includes a 83
medical technician, medical assistant, dental assistant, 84
orderly, nurse aide, and any other individual acting in a 85
similar capacity. 86

(16) "Hospice care program" has the same meaning as in 87
section 3712.01 of the Revised Code. 88

(17) "Hospital" and "medical claim" have the same meanings 89
as in section 2305.113 of the Revised Code. 90

~~(9)~~ (18) "Home health agency" has the same meaning as in 91
section 3701.881 of the Revised Code. 92

(19) "Licensed practical nurse" means an individual who 93
holds a current, valid license issued under Chapter 4723. of the 94
Revised Code to practice as a licensed practical nurse. 95

(20) "Medicaid waiver component" has the same meaning as 96
in section 5166.01 of the Revised Code. 97

(21) "Occupational therapist" means an individual who 98
holds a current license or limited certificate under Chapter 99
4755. of the Revised Code to practice occupational therapy. 100

(22) "Optometrist" means a person who is licensed under 101
Chapter 4725. of the Revised Code to practice optometry. 102

~~(10)~~ (23) "Paramedic" means an individual who holds a 103

current, valid certificate issued under section 4765.30 of the 104
Revised Code to practice as an emergency medical technician- 105
paramedic. 106

~~(11)~~ (24) "Pharmacist" means an individual who holds a 107
current, valid license issued under Chapter 4729. of the Revised 108
Code to practice as a pharmacist. 109

~~(12)~~ (25) "Physical therapist" means an individual 110
licensed under Chapter 4755. of the Revised Code to practice 111
physical therapy. 112

(26) "Physician" means an individual who is authorized 113
under Chapter 4731. of the Revised Code to practice medicine and 114
surgery, osteopathic medicine and surgery, or podiatric medicine 115
and surgery. 116

~~(13)~~ (27) "Physician assistant" means an individual who is 117
authorized under Chapter 4730. of the Revised Code to practice 118
as a physician assistant. 119

~~(14)~~ ~~"Reckless disregard" as it applies to a given health-~~ 120
~~care provider or emergency medical technician rendering-~~ 121
~~emergency medical services, first aid treatment, or other-~~ 122
~~emergency professional care, including the provision of any-~~ 123
~~medication or other medical product, means conduct that a health~~ 124
~~care provider or emergency medical technician knew or should-~~ 125
~~have known, at the time those services or that treatment or care~~ 126
~~were rendered, created an unreasonable risk of injury, death, or~~ 127
~~loss to person or property so as to affect the life or health of~~ 128
~~another and that risk was substantially greater than that which-~~ 129
~~is necessary to make the conduct negligent.~~ 130

~~(15)~~ (28) "Registered nurse" means an individual who holds 131
a current, valid license issued under Chapter 4723. of the 132

Revised Code to practice as a registered nurse.	133
(16) <u>(29) "Respiratory care professional" has the same</u>	134
<u>meaning as in section 4761.01 of the Revised Code.</u>	135
<u>(30) "Serious physical injury" has the same meaning as in</u>	136
<u>division (D) (2) of section 2305.2312 of the Revised Code.</u>	137
<u>(31) "Tort action" means a civil action for damages for</u>	138
<u>injury, death, or loss to person or property other than a civil</u>	139
<u>action for damages for a breach of contract or another agreement</u>	140
<u>between persons or governmental entities. "Tort action" includes</u>	141
<u>an action on a medical claim.</u>	142
<u>(B) (1) Subject to division (C) (3) of this section, a</u>	143
<u>health care provider or emergency medical technician that</u>	144
<u>provides <u>health care services, emergency medical services,</u></u>	145
<u>first-aid treatment, or other emergency professional care,</u>	146
<u>including the provision of any medication or other medical</u>	147
<u>equipment or product, as a result of <u>or in response to a</u></u>	148
<u>disaster <u>or emergency</u> is not <u>subject to professional</u></u>	149
<u>disciplinary action and is not liable in damages to any person</u>	150
<u>or government agency in a tort <u>or other civil</u> action for injury,</u>	151
<u>death, or loss to person or property that allegedly arises from</u>	152
<u>an <u>any of the following:</u></u>	153
<u>(a) An act or omission of the health care provider or</u>	154
<u>emergency medical technician in the health care provider's or</u>	155
<u>emergency medical technician's provision, <u>withholding, or</u></u>	156
<u><u>withdrawal</u> of those services or that treatment or care;</u>	157
<u>(b) Any decision related to the provision, withholding, or</u>	158
<u>withdrawal of those services;</u>	159
<u>(c) Compliance with an executive order or director's order</u>	160
<u>issued during and in response to the disaster or emergency.</u>	161

(2) Division (B)(1) of this section does not apply if that 162
act or omission does not constitute reckless disregard for the 163
consequences so as to affect the life or health of the 164
patient~~the professional disciplinary action or tort or other~~ 165
civil action is based on serious physical injury or death and it 166
is established by clear and convincing evidence that the health 167
care provider's action, omission, decision, or compliance 168
constitutes willful or wanton misconduct. 169

(C) (1) This section does not create a new cause of action 170
or substantive legal right against a health care provider ~~or~~ 171
~~emergency medical technician.~~ 172

(2) This section does not affect any immunities from civil 173
liability or defenses established by another section of the 174
Revised Code or available at common law to which a health care 175
provider ~~or emergency medical technician~~ may be entitled in 176
connection with the provision of health care services, emergency 177
medical services, first-aid treatment, or other emergency 178
professional care, including the provision of medication, 179
medical equipment, or other medical product. 180

(3) This section does not grant an immunity from tort or 181
other civil liability or a professional disciplinary action to a 182
health care provider ~~or emergency medical technician~~ for actions 183
that are outside the ~~scope of authority~~ skills, education, and 184
training of the health care provider ~~or emergency medical~~ 185
~~technician,~~ unless the health care provider undertakes the 186
action in good faith and in response to a lack of resources 187
caused by a disaster or emergency. 188

(4) This section does not affect any legal responsibility 189
of a health care provider ~~or emergency medical technician~~ to 190
comply with any applicable law of this state or rule of an 191

agency of this state. 192

(5) ~~This Division (B) of this section applies only to the~~ 193
~~provision, withholding, or withdrawal of health care services,~~ 194
~~emergency medical services, first-aid treatment, or other~~ 195
~~emergency professional care, including the provision of any~~ 196
~~medication or other medical equipment or product, decisions~~ 197
~~related to such services or care, or compliance with an~~ 198
~~executive order or director's order by a health care provider or~~ 199
~~emergency medical technician as a result of or in response to a~~ 200
~~disaster or emergency and through the duration of the disaster,~~ 201
~~or emergency.~~ 202

(D) ~~This section does not apply to a tort action alleging~~ 203
~~wrongful death against a health care provider or emergency~~ 204
~~medical technician that provides emergency medical services,~~ 205
~~first-aid treatment, or other emergency professional care,~~ 206
~~including the provision of any medication or other medical~~ 207
~~product, that allegedly arises from an act or omission of the~~ 208
~~health care provider or emergency medical technician in the~~ 209
~~health care provider's or emergency medical technician's~~ 210
~~provision of those services or that treatment or care as a~~ 211
~~result of a disaster.~~ If the immunity described in division (B) 212
of this section does not apply, no class action shall be brought 213
against any health care provider alleging liability for damages 214
for injury, death, or loss to person or property on a cause of 215
action specified in that division. 216

Sec. 2305.2312. (A) As used in this section: 217

(1) "Board of health" means the board of health of a city 218
or general health district or the authority having the duties of 219
a board of health under section 3709.05 of the Revised Code. 220

<u>(2) "Disaster" has the same meaning as in section</u>	221
<u>2305.2311 of the Revised Code.</u>	222
<u>(3) "Government order" means an order issued in response</u>	223
<u>to a disaster by the governor, the department of health, a</u>	224
<u>political subdivision, or a board of health.</u>	225
<u>(4) "Emergency" means any period during which the congress</u>	226
<u>of the United States or a chief executive has declared or</u>	227
<u>proclaimed that an emergency exists.</u>	228
<u>(5) "Person" has the same meaning as in section 1.59 of</u>	229
<u>the Revised Code and includes a for-profit, nonprofit, or</u>	230
<u>religious entity.</u>	231
<u>(6) "Services" means any activity that is part of or</u>	232
<u>outside of a service provider's normal course of business</u>	233
<u>conducted during the period of a declared disaster or emergency</u>	234
<u>and not more than one hundred eighty days after the end of the</u>	235
<u>period of the declared disaster or emergency.</u>	236
<u>(7) "Service provider" means any person providing the</u>	237
<u>services described in division (A) (6) of this section, including</u>	238
<u>that person's owner, officer, director, employee, or agent.</u>	239
<u>(B) Except as provided in division (D) of this section, no</u>	240
<u>service provider shall be liable in damages to any person in a</u>	241
<u>civil action for illness or for injury, death, or loss to person</u>	242
<u>or property, allegedly arising directly or indirectly from the</u>	243
<u>service provider's act or omission in providing or performing</u>	244
<u>the service provider's services that are in response or related</u>	245
<u>to a disaster or emergency or are intended to assist persons to</u>	246
<u>recover from a disaster or emergency or otherwise sustain</u>	247
<u>themselves during the period of the declared disaster or</u>	248
<u>emergency and not more than one hundred eighty days after the</u>	249

end of the period of the declared disaster or emergency. 250

(C) Except as provided in division (D) of this section, no 251
service provider shall be liable in damages to any person in a 252
civil action for injury, death, or loss to person or property 253
resulting from, or related to, the person's actual or alleged 254
exposure to an illness in the course of or through that service 255
provider's provision of services during the period of the 256
declared disaster or emergency and not more than one hundred 257
eighty days after the end of the period of the declared disaster 258
or emergency. 259

(D) (1) The immunity granted to a service provider in 260
division (B) or (C) of this section does not apply if the cause 261
of action is based on serious physical injury or death and it is 262
established by clear and convincing evidence that the service 263
provider's act or omission is intentional, willful, or wanton 264
misconduct. 265

(2) As used in division (D) (1) of this section, "serious 266
physical injury" means any permanent impairment of the health of 267
an individual or any health-related condition of an individual 268
that requires medical intervention to prevent that permanent 269
impairment. 270

(E) If the immunity described in division (B) or (C) of 271
this section does not apply, no class action shall be brought 272
against any service provider alleging liability for damages for 273
injury, death, or loss to person or property on a cause of 274
action specified in either division. 275

(F) This section does not do either of the following: 276

(1) Create a new cause of action or substantive legal 277
right against any person; 278

(2) Affect any immunities from civil liability or defenses 279
established by another section of the Revised Code or available 280
at common law to a service provider that provides services under 281
this section. 282

(G) The immunity conferred in this section shall also 283
apply to any cause of action against a service provider for 284
contribution or indemnity for damages sustained by any person 285
during the period of the declared disaster or emergency and not 286
more than one hundred eighty days after the end of the period of 287
the declared disaster or emergency. 288

(H) A government order shall not create nor shall be 289
construed as creating a duty of care upon any person that may be 290
enforced in a cause of action or create a new cause of action or 291
substantive legal right against any person with respect to the 292
matters contained in the government order. A presumption exists 293
that any such government order is not admissible as evidence 294
that a duty of care or substantive legal right has been 295
established. 296

Sec. 4112.025. Notwithstanding any provision of section 297
4112.02 of the Revised Code to the contrary, it shall not be an 298
unlawful discriminatory practice for any person, employer, 299
employment agency, personnel placement service, or labor 300
organization to do either of the following: 301

(A) Implement policies in accordance with an order issued 302
by any agency of the United States, the state, or a political 303
subdivision of the state; 304

(B) Take action to protect the health and safety of 305
employees or customers by preventing the transmission of an 306
illness during a disaster as defined in section 2305.2311 of the 307

Revised Code or for a period of one hundred eighty days after 308
the disaster ends. 309

Section 2. That existing section 2305.2311 of the Revised 310
Code is hereby repealed. 311

Section 3. Section 2305.2312 of the Revised Code, as 312
enacted by this act, is intended to apply broadly to all sectors 313
of the economy that own property, operate a business, engage in 314
a nonprofit or religious activity, or otherwise engage with the 315
public. The General Assembly declares its intent in enacting 316
section 2305.2312 of the Revised Code that the use of the terms 317
"services" and "service provider" in that section be broadly 318
construed in an effort to promote commerce, recovery from 319
disasters or emergencies, and to alleviate suffering throughout 320
this state. 321

Section 4. This act applies retroactively to December 1, 322
2019. 323

Section 5. This act is hereby declared to be an emergency 324
measure necessary for the immediate preservation of the public 325
peace, health, and safety. The reason for such necessity is that 326
it is crucial to provide immunity in response to a disaster or 327
emergency declared by the federal government, state government, 328
or political subdivision of the state. Therefore, this act shall 329
go into immediate effect. 330