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Bill Analysis

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SUMMARY

Civil immunity for health care providers

- Expands the tort action immunity granted to certain health care providers and emergency medical technicians who provide health care or emergency services during a declared disaster as described below.
- Grants immunity for (1) actions taken during a declared emergency, (2) actions by additional health care providers, such as licensed practical nurses; respiratory care professionals; medical assistants and technicians; dental assistants; nurse aides; orderlies; home health agencies; hospice programs; and facilities, including their agents, employees, officers, board members, and volunteers, (3) decisions to withhold or withdraw health care services, and (4) compliance with an executive order or director's order.
- Extends the immunity to professional discipline and other civil actions.
- Modifies an exception to immunity for actions taken in reckless disregard of the consequences to instead exclude actions that constitute willful or wanton misconduct.
- Removes the current law exception for wrongful death actions.

Civil immunity for service providers

- Grants qualified civil immunity to a service provider of services (defined terms):
 - For illness or for injury, death, or loss to person or property arising from that provider's act or omission in providing the services in response to, or to assist persons to recover from, a disaster; or
 - For injury, death, or loss to person or property resulting from, or related to, the person's exposure to an illness through that provider's provision of services.

- Provides that the above immunities do not apply if there is clear and convincing evidence that the service provider's act or omission is intentional, willful, or wanton misconduct.
- Provides that the immunities apply to a cause of action against a service provider for contribution or indemnity for damages sustained by any person during the period of the disaster and not more than 180 days after the end of such period.
- Specifies that the bill does not create a new cause of action against any person nor affect civil immunities under another Revised Code section or available at common law to a provider providing those services.

Other

- Specifies that the bill's provisions apply retroactively to the date a disaster is declared.
- Declares an emergency.

DETAILED ANALYSIS

Qualified immunity for health care providers in a disaster

Overview

The bill expands the qualified immunity for health care providers providing health care services during a declared disaster. Under current law, a health care provider or emergency medical technician (EMT) who provides emergency medical services, first-aid treatment, or other emergency professional care, including providing any medication or medical product, as a result of a disaster is not liable in a tort action for injury, death, or loss to person or property arising from the provider's or EMT's act or omission.¹

The bill expands that immunity to include both of the following:

- Actions taken during or in response to a declared disaster or emergency (instead of as a result of a disaster).²
- Health care services rendered by a health care provider for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease, including providing medication, medical equipment, or other medical product (instead of emergency services).³

¹ R.C. 2305.2311(B) and (C)(5).

² R.C. 2305.2311(B) and (C); R.C. 5502.21(F), not in the bill.

³ R.C. 2305.2311(A)(11).

Covered providers

The bill expands the categories of health care providers that are granted immunity. Included under current law are advanced practice registered nurses, registered nurses, pharmacists, dentists, optometrists, physicians, physician assistants, hospitals, EMTs, and paramedics.⁴ The bill also grants immunity to the following individuals and entities:

- Licensed practical nurses;
- Respiratory care professionals;
- Home health agencies;
- Hospice care programs;
- Other health care workers who provide health-care related services to an individual under the direction of a health care professional with the authority to direct that worker's activities, including medical technicians, medical assistants, dental assistants, orderlies, and nurse aides;
- Facilities that provide health care services or are health care settings, including hospitals, inpatient, ambulatory, surgical, treatment, skilled nursing, nursing, residential care, residential treatment, or intermediate care facilities; developmental, diagnostic, laboratory, or imaging centers; rehabilitation or therapeutic health settings; or modular field treatment facilities or alternative care sites designated for temporary use to provide medical services during a disaster or emergency; and
- Agents, board members, committee members, employees, officers, or volunteers of a facility.⁵

Covered actions

In addition to actions or omissions in the provision of services by a health care provider, the bill extends immunity to the following:

- Withholding or withdrawing health care services, emergency medical services, first-aid treatment, or other emergency professional care;
- Any decision related to providing, withholding, or withdrawing those services;
- Compliance with an executive order or director's order issued during and in response to the disaster or emergency.⁶

⁴ R.C. 2305.2311(A)(4) to (8).

⁵ R.C. 2305.2311(A)(9) to (13).

⁶ R.C. 2305.2311(B)(1).

Covered legal actions

Current law provides immunity from damages to any person in a medical claim action (tort action), but does not include actions for damages for a breach of an agreement between parties or governmental entities. The bill also provides immunity from professional disciplinary action or other civil actions, and specifies that an individual is not liable to a government agency.⁷

Reckless disregard

The immunity granted under the bill does not apply to actions, omissions, decisions, or compliance that constitute willful or wanton misconduct. This replaces the current law provision under which immunity applies only to acts or omissions that do not constitute reckless disregard for the consequences so as to affect the life or health of a patient.⁸

Immunity exceptions

The bill modifies two current law immunity exceptions as follows:

1. Excludes from immunity actions that are outside the skills, education, and training of the provider, instead of actions that are outside the scope of authority of the provider;⁹
2. Eliminates an exception for wrongful death actions against a health care provider who provides emergency medical services, first-aid treatment, or other emergency professional care as a result of a disaster.¹⁰

Civil immunity for service providers

The bill provides that with the exceptions described below under “**Exceptions**,” a “service provider” is not liable in damages to any “person” as follows (see “**Definitions**” for the definitions of the terms in quotation marks):¹¹

- In a civil action for illness or for injury, death, or loss to person or property, allegedly arising from the service provider’s act or omission in providing or performing that provider’s “services” that are in response to, or are intended to assist persons to recover from, a “disaster” or otherwise to sustain themselves during the period of the declared disaster and not more than 180 days after the end of such period;
- In a civil action for injury, death, or loss to person or property resulting from, or related to, the person’s actual or alleged exposure to an illness in the course of or through that provider’s provision of services.

⁷ R.C. 2305.2311(A)(24) and (B)(1).

⁸ R.C. 2305.2311(B)(2) and (A)(14).

⁹ R.C. 2305.2311(C)(3).

¹⁰ R.C. 2305.2311(D).

¹¹ R.C. 2305.2312(B) and (C).

Exceptions

Under the bill, the above immunities do not apply if there is clear and convincing evidence that the service provider's act or omission is intentional, willful, or wanton misconduct.¹²

Immunity for contribution or indemnity

The bill provides that the immunities described above apply to a cause of action against a service provider for contribution or indemnity for damages sustained by any person during the period of the disaster and not more than 180 days after the end of such period.¹³

Other provisions

The bill specifies that its provisions do not: (a) create a new cause of action or substantive legal right against any person, or (b) affect any immunities from civil liability or defenses established by another Revised Code section or available at common law to a service provider that provides services under the bill.¹⁴

Definitions

The bill defines the following terms for purposes of civil liability for service providers:¹⁵

"Disaster" means any occurrence of widespread personal injury or loss of life resulting 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.¹⁶

"Person" includes an individual, corporation, business trust, estate, trust, partnership, and association.¹⁷

"Product" means generally any object, substance, mixture, or raw material that constitutes tangible personal property and that satisfies all of the following: (a) it is capable of delivery itself, or as an assembled whole in a mixed or combined state, or as a component or ingredient, (b) it is produced, manufactured, or supplied for introduction into trade or commerce, and (c) it is intended for sale or lease to persons for commercial or personal use. **"Product"** does not include human tissue, blood, or organs.¹⁸

¹² R.C. 2305.2312(D).

¹³ R.C. 2305.2312(F).

¹⁴ R.C. 2305.2312(E).

¹⁵ R.C. 2305.2312(A).

¹⁶ By reference to R.C. 2305.2311.

¹⁷ By reference to R.C. 1.59, not in the bill.

¹⁸ By reference to R.C. 2307.71, not in the bill.

“**Services**” means providing lodging, sheltering, groceries, pharmaceutical products, fuel products, other products, retail merchandise, manufacturing, care, religious or other nonprofit services, or other acts that are part of or outside the normal scope of a person’s business or nonprofit activities during the period of the declared disaster and not more than 180 days after the end of such period.

“**Service provider**” means any person that provides the above services, including that person’s owner, officer, director, employee, or agent.

Application to existing disasters

The bill applies retroactively to the date a disaster is declared by the federal government, state government, or a political subdivision of the state (See **COMMENT** below).¹⁹

Emergency clause

The bill takes immediate effect as an emergency measure necessary because it is crucial to provide immunity in response to a disaster declared by the federal government, state government, or political subdivision of the state.²⁰

COMMENT

The bill specifies that its provisions apply retroactively to the date a disaster is declared. Generally, under Article II Section 28 of the Ohio Constitution, the General Assembly is prohibited from retroactively applying laws that affect substantive rights.²¹ If challenged, only a court can determine if the bill’s retroactive application of its provisions to the date a disaster is declared violates that constitutional provision.²²

HISTORY

Action	Date
Introduced	05-05-20

S0308-I-133/ts

¹⁹ Section 4.

²⁰ Section 3.

²¹ *Vogel v. Wells*, 57 Ohio St.3d 91 (1991).

²² Ohio Constitution, Article II, Section 28.