

[First Reprint]

ASSEMBLY, No. 3910

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED APRIL 9, 2020

Sponsored by:

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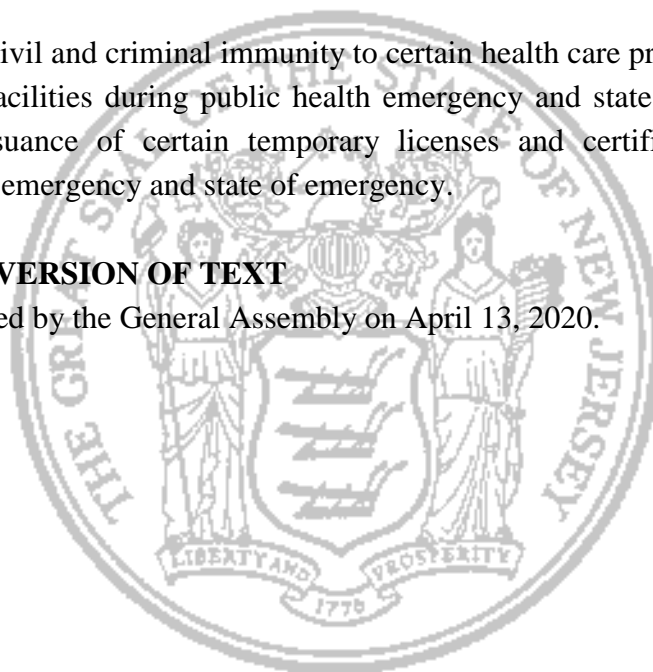
**Assemblywoman Pinkin, Assemblyman Tully, Assemblywoman Swain,
Assemblymen Space, Wirths and Assemblywoman DiMaso**

SYNOPSIS

Provides civil and criminal immunity to certain health care professionals and health care facilities during public health emergency and state of emergency; facilitates issuance of certain temporary licenses and certifications during public health emergency and state of emergency.

CURRENT VERSION OF TEXT

As amended by the General Assembly on April 13, 2020.



(Sponsorship Updated As Of: 4/13/2020)

1 AN ACT providing immunity from liability for certain claims
2 alleging injury or death during public health emergency and state
3 of emergency and facilitating issuance of temporary licenses and
4 certifications.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. a. ¹The Legislature finds and declares:

10 This statement of legislative intent is made to establish clearly our
11 intent because of the lack of committee hearings. This statement shall
12 be made an official part of the record in establishing this Legislature's
13 intent.

14 It has been reported that this bill would grant immunity to all
15 medical doctors and healthcare workers in New Jersey for all inpatient
16 or outpatient procedures or any medical treatment rendered during the
17 timeframe of the COVID-19 emergency. This is not an accurate
18 statement.

19 The enactment of this bill is to ensure that there are no
20 impediments to providing medical treatment related to the COVID-19
21 emergency and that all medical personnel supporting the COVID-19
22 response are granted immunity. However, medical care rendered in the
23 ordinary course of medical practice does not provide the granting of
24 immunity. For example, procedures performed by licensed medical
25 professionals in their ordinary course of business, including orthopedic
26 procedures, OB/GYN services, and necessary cardiological
27 procedures.

28 It is not the Legislature's intent to grant immunity for medical
29 services, treatment and procedures that are unrelated to the COVID-19
30 emergency.

31 b.¹ As used in this section:

32 "Health care facility" means any healthcare facility as defined in
33 section 2 of P.L.2005, c.222 (C.26:13-2), and any modular field
34 treatment facility and any other site designated by the
35 Commissioner of Health for temporary use for the purpose of
36 providing essential services in support of the State's response to the
37 outbreak of coronavirus disease during the public health emergency
38 and state of emergency declared by the Governor in Executive
39 Order 103 of 2020.

40 "Health care professional" means a physician, physician
41 assistant, advanced practice nurse, registered nurse, licensed
42 practical nurse, or other health care professional whose professional
43 practice is regulated pursuant to Title 45 of the Revised Statutes or
44 who is otherwise authorized to provide health care services in this
45 State, an emergency medical technician or mobile intensive care

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted April 13, 2020.

1 paramedic certified by the Commissioner of Health pursuant to
2 Title 26 of the Revised Statutes or who is otherwise authorized to
3 provide health care services in this State, and a radiologic
4 technologist regulated pursuant to Title 26 of the Revised Statutes
5 or who is otherwise authorized to provide health care services in
6 this State.

7 “Scarce critical resource allocation policy” means a policy,
8 protocol or guidelines for the allocation by a health care facility, or
9 a health care system that owns or operates more than one health
10 care facility, of ventilators, intensive care unit beds, or other
11 medical resources or supplies that may be in limited supply and
12 high demand during a public health emergency.

13 ¹**[b.] c.**¹ Notwithstanding the provisions of any law, rule, or
14 regulation to the contrary:

15 (1) a health care professional shall not be liable for civil
16 damages for injury or death alleged to have been sustained as a
17 result of an act or omission by the health care professional in the
18 course of providing medical services in support of the State’s
19 response to the outbreak of coronavirus disease during the public
20 health emergency and state of emergency declared by the Governor
21 in Executive Order 103 of 2020; and (2) a health care facility or a
22 health care system that owns or operates more than one health care
23 facility shall not be liable for civil damages for injury or death
24 alleged to have been sustained as a result of an act or omission by
25 one or more of its agents, officers, employees, servants,
26 representatives or volunteers, if, and to the extent, such agent,
27 officer, employee, servant, representative or volunteer is immune
28 from liability pursuant to paragraph (1) of this subsection.

29 Immunity shall also include any act or omission undertaken in
30 good faith by a health care professional or healthcare facility or a
31 health care system to support efforts to treat COVID-19 patients
32 and to prevent the spread of COVID-19 during the public health
33 emergency and state of emergency declared by the Governor in
34 Executive Order 103 of 2020, including but not limited to engaging
35 in telemedicine or telehealth, and diagnosing or treating patients
36 outside the normal scope of the health care professional’s license or
37 practice. The immunity granted pursuant to this subsection shall not
38 apply to acts or omissions constituting a crime, actual fraud, actual
39 malice, gross negligence, recklessness, or willful misconduct, and
40 shall be retroactive to March 9, 2020.

41 ¹**[c.] d.**¹ Notwithstanding the provisions of any law, rule, or
42 regulation to the contrary, a health care facility or a health care
43 system that owns or operates more than one health care facility
44 shall not be criminally or civilly liable for damages for injury or
45 death alleged to have been sustained as a result of an act or
46 omission by the facility or system or one or more of the facility’s
47 system’s agents, officers, employees, servants, representatives or
48 volunteers during the public health emergency and state of

1 emergency declared by the Governor in Executive Order 103 of
2 2020 in connection with the allocation of mechanical ventilators or
3 other scarce medical resources, if the health care facility or system
4 adopts and adheres to a scarce critical resource allocation policy
5 that at a minimum incorporates the core principles identified by the
6 Commissioner of Health in an executive directive or administrative
7 order, and the health care facility's or system's agents, officers,
8 employees, servants, representatives and volunteers shall not be
9 civilly or criminally liable for an injury caused by any act or
10 omission pursuant to this subsection during the public health
11 emergency and state of emergency declared by the Governor in
12 Executive Order 103 of 2020 pursuant to, and consistent with, such
13 policy.

14

15 2. During ¹~~any~~ the¹ state of emergency declared ¹by the
16 Governor in Executive Order 103 of 2020¹ pursuant to P.L.1942,
17 c.251 (C.App.A.:9-33 et seq.), ¹~~or~~ and the¹ public health
18 emergency declared ¹by the Governor in Executive Order 103 of
19 2020¹ pursuant to P.L.2005, c.222 (C.26:13-1 et seq.), the Director
20 of the Division of Consumer Affairs within the Department of Law
21 and Public Safety may issue an administrative order to suspend
22 temporarily any provision of Title 45 of the Revised Statutes or
23 suspend or modify temporarily any rule adopted pursuant to such
24 authority concerning the practice of any profession or occupation
25 for which licenses, certificates, registrations, or certifications are
26 issued by the division or any board or other body in the division, or
27 adopt or prescribe temporarily any rule concerning the practice of
28 any profession or occupation for which licenses, certificates,
29 registrations, or certifications are issued by the division or any
30 board or other body in the division, if the director determines, upon
31 concurrence by the Attorney General, that such order is necessary to
32 promote the public welfare and further such other purposes for
33 which the state of emergency ¹~~or~~ and¹ public health emergency
34 was declared ¹by the Governor in Executive Order 103 of 2020¹.
35 Any administrative order issued by the director pursuant to this
36 section shall cease to apply upon the expiration of the state of
37 emergency or public health emergency ¹declared by the Governor in
38 Executive Order 103 of 2020¹, or upon the rescission of the
39 declaration of the state of emergency or public health emergency
40 ¹declared by the Governor in Executive Order 103 of 2020¹, and
41 shall not be subject to the requirements of the Administrative
42 Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.).

43

44 3. a. Notwithstanding any other provision of law to the
45 contrary, for the duration of the state of emergency or the public
46 health emergency declared in response to the COVID-19 pandemic,

1 whichever period of declared emergency is longer, the
2 Commissioner of Health shall be authorized to:

3 (1) issue a provisional certification to any emergency medical
4 technician whose professional certification has expired, regardless
5 of whether the emergency medical technician has satisfied the
6 requirements for reinstatement of an expired certification, provided
7 that the emergency medical technician submits an application for
8 provisional certification that includes such information or
9 attestations as may be required by the commissioner, and the
10 commissioner determines that the application should be granted.
11 The commissioner may require additional showings, such as a
12 demonstration of proficiency, prior to granting such application. A
13 provisional certification issued under this paragraph shall be valid
14 for six months from the date of issuance, unless otherwise
15 determined by the commissioner;

16 (2) issue a provisional certification to any paramedic whose
17 professional certification has expired within the last five years,
18 regardless of whether the paramedic has satisfied the requirements
19 for reinstatement of an expired certification, provided that the
20 paramedic submits an application for provisional certification that
21 includes such information or attestations as may be required by the
22 commissioner, and the commissioner determines that the
23 application should be granted. The commissioner may require
24 additional showings, such as a demonstration of proficiency, prior
25 to granting such application. A provisional certification issued
26 under this paragraph shall be valid for six months from the date of
27 issuance, unless otherwise determined by the commissioner;

28 (3) temporarily reactivate the certification of any paramedic
29 whose certification is currently on inactive status, regardless of
30 whether the paramedic has satisfied the requirements for
31 reactivation of an inactive certification, provided that the paramedic
32 submits an application for reactivation that includes such
33 information or attestations as may be required by the commissioner,
34 and the commissioner determines that the application should be
35 granted. The commissioner may require additional showings, such
36 as a demonstration of proficiency, prior to granting such
37 application. A temporary reactivation issued under this paragraph
38 shall be valid for six months from the date of issuance, unless
39 otherwise determined by the commissioner; and

40 (4) grant temporary reciprocity to any paramedic who is not
41 certified to practice in New Jersey but is either provisionally
42 certified as a paramedic by the National Registry of Emergency
43 Medical Technicians or is certified as a paramedic in any other state
44 or the District of Columbia, provided that the paramedic has not had
45 a paramedic certification revoked by the Department of Health,
46 does not currently have a paramedic certification under suspension
47 by the Department of Health, and satisfies all other requirements as
48 may be provided by the commissioner. A grant of temporary

1 reciprocity issued under this paragraph shall be valid for six months
2 from the date of issuance, unless otherwise determined by the
3 commissioner.

4 b. To facilitate the provisional certification of emergency
5 medical technicians and paramedics, the temporary reactivation of
6 inactive paramedic certifications, and the grant of temporary
7 reciprocity to out-of-State paramedics pursuant to subsection a. of
8 this section, the commissioner is authorized to waive any fees,
9 continuing education requirements, refresher course requirements,
10 periods of provisional certification, required demonstrations of
11 proficiency, endorsement requirements, clinical training
12 requirements, examination requirements, and other requirements
13 that would otherwise apply to recertification of an emergency
14 medical technician or a paramedic whose certification has expired,
15 reactivation of a paramedic certification that has been placed on
16 inactive status, or a grant of reciprocity to an out-of-State
17 paramedic. Waivers of regulations issued pursuant to this
18 subsection shall be valid for six months from the date of issuance,
19 unless otherwise determined by the commissioner.

20

21 4. This act shall take effect immediately and section 1 shall be
22 retroactive to March 9, 2020.