

[First Reprint]

ASSEMBLY, No. 4559

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED AUGUST 24, 2020

Sponsored by:

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Co-Sponsored by:

Assemblywoman Vainieri Huttie and Assemblyman Benson

SYNOPSIS

Provides that certain civil immunities granted to for-profit healthcare facilities and healthcare systems during state of emergency and public health emergency are to expire.

CURRENT VERSION OF TEXT

As reported by the Assembly Health Committee on May 17, 2021, with amendments.



(Sponsorship Updated As Of: 8/27/2020)

1 AN ACT concerning certain immunities and amending P.L.2020,
2 c.18.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 1 of P.L.2020, c.18 is amended to read as follows:

8 1. a. The Legislature finds and declares:

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

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

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

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

30 b. As used in this section:

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

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

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 AHE committee amendments adopted May 17, 2021.

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

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

12 c. Notwithstanding the provisions of any law, rule, or
13 regulation to the contrary:

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

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

14 e. ¹【After August 31, 2020,】 Following either a 90 day period
15 after the effective date of this act, or following the end of the public
16 health emergency or state of emergency declared by the Governor
17 in response to COVID-19, whichever is sooner,¹ the provisions of
18 this section granting immunity shall no longer apply to any
19 healthcare facility or healthcare system that is operated for profit.

20 ¹(cf: P.L.2020, c.18, s.1)¹

21

22 2. This act shall take effect immediately.