

# SENATE, No. 2333

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

**Sponsored by:**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Morris, Somerset and Union)**

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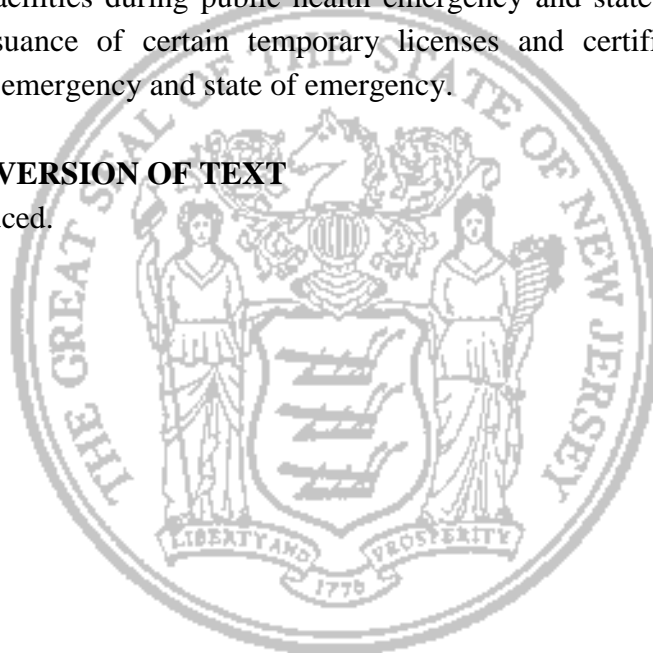
**Senators Addiego, Gopal, Cardinale, Holzapfel, Oroho, Pennacchio,  
Singer, Thompson and Sacco**

**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 introduced.



**(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. As used in this section:

10 “Health care facility” means any healthcare facility as defined in  
11 section 2 of P.L.2005, c.222 (C.26:13-2), and any modular field  
12 treatment facility and any other site designated by the  
13 Commissioner of Health for temporary use for the purpose of  
14 providing essential services in support of the State’s response to the  
15 outbreak of coronavirus disease during the public health emergency  
16 and state of emergency declared by the Governor in Executive  
17 Order 103 of 2020.

18 “Health care professional” means a physician, physician  
19 assistant, advanced practice nurse, registered nurse, licensed  
20 practical nurse, or other health care professional whose professional  
21 practice is regulated pursuant to Title 45 of the Revised Statutes or  
22 who is otherwise authorized to provide health care services in this  
23 State, an emergency medical technician or mobile intensive care  
24 paramedic certified by the Commissioner of Health pursuant to  
25 Title 26 of the Revised Statutes or who is otherwise authorized to  
26 provide health care services in this State, and a radiologic  
27 technologist regulated pursuant to Title 26 of the Revised Statutes  
28 or who is otherwise authorized to provide health care services in  
29 this State.

30 “Scarce critical resource allocation policy” means a policy,  
31 protocol or guidelines for the allocation by a health care facility, or  
32 a health care system that owns or operates more than one health  
33 care facility, of ventilators, intensive care unit beds, or other  
34 medical resources or supplies that may be in limited supply and  
35 high demand during a public health emergency.

36 b. Notwithstanding the provisions of any law, rule, or  
37 regulation to the contrary:

38 (1) a health care professional shall not be liable for civil  
39 damages for injury or death alleged to have been sustained as a  
40 result of an act or omission by the health care professional in the  
41 course of providing medical services in support of the State’s  
42 response to the outbreak of coronavirus disease during the public  
43 health emergency and state of emergency declared by the Governor  
44 in Executive Order 103 of 2020; and (2) a health care facility or a  
45 health care system that owns or operates more than one health care  
46 facility shall not be liable for civil damages for injury or death  
47 alleged to have been sustained as a result of an act or omission by  
48 one or more of its agents, officers, employees, servants,

1 representatives or volunteers, if, and to the extent, such agent,  
2 officer, employee, servant, representative or volunteer is immune  
3 from liability pursuant to paragraph (1) of this subsection.

4 Immunity shall also include any act or omission undertaken in  
5 good faith by a health care professional or healthcare facility or a  
6 health care system to support efforts to treat COVID-19 patients  
7 and to prevent the spread of COVID-19 during the public health  
8 emergency and state of emergency declared by the Governor in  
9 Executive Order 103 of 2020, including but not limited to engaging  
10 in telemedicine or telehealth, and diagnosing or treating patients  
11 outside the normal scope of the health care professional's license or  
12 practice. The immunity granted pursuant to this subsection shall not  
13 apply to acts or omissions constituting a crime, actual fraud, actual  
14 malice, gross negligence, recklessness, or willful misconduct, and  
15 shall be retroactive to March 9, 2020.

16 c. Notwithstanding the provisions of any law, rule, or  
17 regulation to the contrary, a health care facility or a health care  
18 system that owns or operates more than one health care facility  
19 shall not be criminally or civilly liable for damages for injury or  
20 death alleged to have been sustained as a result of an act or  
21 omission by the facility or system or one or more of the facility's or  
22 system's agents, officers, employees, servants, representatives or  
23 volunteers during the public health emergency and state of  
24 emergency declared by the Governor in Executive Order 103 of  
25 2020 in connection with the allocation of mechanical ventilators or  
26 other scarce medical resources, if the health care facility or system  
27 adopts and adheres to a scarce critical resource allocation policy  
28 that at a minimum incorporates the core principles identified by the  
29 Commissioner of Health in an executive directive or administrative  
30 order, and the health care facility's or system's agents, officers,  
31 employees, servants, representatives and volunteers shall not be  
32 civilly or criminally liable for an injury caused by any act or  
33 omission pursuant to this subsection during the public health  
34 emergency and state of emergency declared by the Governor in  
35 Executive Order 103 of 2020 pursuant to, and consistent with, such  
36 policy.

37  
38 2. During any state of emergency declared pursuant to  
39 P.L.1942, c.251 (C.App.A.:9-33 et seq.), or public health  
40 emergency declared pursuant to P.L.2005, c.222 (C.26:13-1 et seq.),  
41 the Director of the Division of Consumer Affairs within the  
42 Department of Law and Public Safety may issue an administrative  
43 order to suspend temporarily any provision of Title 45 of the  
44 Revised Statutes or suspend or modify temporarily any rule adopted  
45 pursuant to such authority concerning the practice of any profession  
46 or occupation for which licenses, certificates, registrations, or  
47 certifications are issued by the division or any board or other body  
48 in the division, or adopt or prescribe temporarily any rule

1 concerning the practice of any profession or occupation for which  
2 licenses, certificates, registrations, or certifications are issued by the  
3 division or any board or other body in the division, if the director  
4 determines, upon concurrence by the Attorney General, that such  
5 order is necessary to promote the public welfare and further such  
6 other purposes for which the state of emergency or public health  
7 emergency was declared. Any administrative order issued by the  
8 director pursuant to this section shall cease to apply upon the  
9 expiration of the state of emergency or public health emergency, or  
10 upon the rescission of the declaration of the state of emergency or  
11 public health emergency, and shall not be subject to the  
12 requirements of the Administrative Procedure Act, P.L.1968, c.410  
13 (C.52:14B-1 et seq.).  
14

15 3. a. Notwithstanding any other provision of law to the  
16 contrary, for the duration of the state of emergency or the public  
17 health emergency declared in response to the COVID-19 pandemic,  
18 whichever period of declared emergency is longer, the  
19 Commissioner of Health shall be authorized to:

20 (1) issue a provisional certification to any emergency medical  
21 technician whose professional certification has expired, regardless  
22 of whether the emergency medical technician has satisfied the  
23 requirements for reinstatement of an expired certification, provided  
24 that the emergency medical technician submits an application for  
25 provisional certification that includes such information or  
26 attestations as may be required by the commissioner, and the  
27 commissioner determines that the application should be granted.  
28 The commissioner may require additional showings, such as a  
29 demonstration of proficiency, prior to granting such application. A  
30 provisional certification issued under this paragraph shall be valid  
31 for six months from the date of issuance, unless otherwise  
32 determined by the commissioner;

33 (2) issue a provisional certification to any paramedic whose  
34 professional certification has expired within the last five years,  
35 regardless of whether the paramedic has satisfied the requirements  
36 for reinstatement of an expired certification, provided that the  
37 paramedic submits an application for provisional certification that  
38 includes such information or attestations as may be required by the  
39 commissioner, and the commissioner determines that the  
40 application should be granted. The commissioner may require  
41 additional showings, such as a demonstration of proficiency, prior  
42 to granting such application. A provisional certification issued  
43 under this paragraph shall be valid for six months from the date of  
44 issuance, unless otherwise determined by the commissioner;

45 (3) temporarily reactivate the certification of any paramedic  
46 whose certification is currently on inactive status, regardless of  
47 whether the paramedic has satisfied the requirements for  
48 reactivation of an inactive certification, provided that the paramedic

1 submits an application for reactivation that includes such  
2 information or attestations as may be required by the commissioner,  
3 and the commissioner determines that the application should be  
4 granted. The commissioner may require additional showings, such  
5 as a demonstration of proficiency, prior to granting such  
6 application. A temporary reactivation issued under this paragraph  
7 shall be valid for six months from the date of issuance, unless  
8 otherwise determined by the commissioner; and

9 (4) grant temporary reciprocity to any paramedic who is not  
10 certified to practice in New Jersey but is either provisionally  
11 certified as a paramedic by the National Registry of Emergency  
12 Medical Technicians or is certified as a paramedic in any other state  
13 or the District of Columbia, provided that the paramedic has not had  
14 a paramedic certification revoked by the Department of Health,  
15 does not currently have a paramedic certification under suspension  
16 by the Department of Health, and satisfies all other requirements as  
17 may be provided by the commissioner. A grant of temporary  
18 reciprocity issued under this paragraph shall be valid for six months  
19 from the date of issuance, unless otherwise determined by the  
20 commissioner.

21 b. To facilitate the provisional certification of emergency  
22 medical technicians and paramedics, the temporary reactivation of  
23 inactive paramedic certifications, and the grant of temporary  
24 reciprocity to out-of-State paramedics pursuant to subsection a. of  
25 this section, the commissioner is authorized to waive any fees,  
26 continuing education requirements, refresher course requirements,  
27 periods of provisional certification, required demonstrations of  
28 proficiency, endorsement requirements, clinical training  
29 requirements, examination requirements, and other requirements  
30 that would otherwise apply to recertification of an emergency  
31 medical technician or a paramedic whose certification has expired,  
32 reactivation of a paramedic certification that has been placed on  
33 inactive status, or a grant of reciprocity to an out-of-State  
34 paramedic. Waivers of regulations issued pursuant to this  
35 subsection shall be valid for six months from the date of issuance,  
36 unless otherwise determined by the commissioner.

37  
38 4. This act shall take effect immediately and section 1 shall be  
39 retroactive to March 9, 2020.

40  
41

42 STATEMENT

43

44 This bill would provide immunity from civil and criminal  
45 liability for certain malpractice claims alleging injury or death  
46 incurred during the public health emergency and state of emergency  
47 declared by the Governor's Executive Order 103 of 2020, issued on  
48 March 9, 2020. The bill would also authorize temporary

1 reinstatement and recertification of certain professional  
2 certifications.

3

4 IMMUNITY FOR HEALTH CARE PROFESSIONALS AND HEALTH CARE  
5 FACILITIES AND SYSTEMS

6 Under the bill, (1) a health care professional would not be liable  
7 for civil damages for injury or death alleged to have been sustained  
8 as a result of an act or omission by the health care professional in  
9 the course of providing medical services in support of the State's  
10 response to the outbreak of coronavirus disease during the public  
11 health emergency and state of emergency declared by the Governor  
12 in Executive Order 103 of 2020; and (2) a health care facility or a  
13 health care system that owns or operates more than one health care  
14 facility would not be liable for civil damages for injury or death  
15 alleged to have been sustained as a result of an act or omission by  
16 one or more of its agents, officers, employees, servants,  
17 representatives or volunteers, if, and to the extent, such agent,  
18 officer, employee, servant, representative or volunteer is immune  
19 from liability pursuant to the bill.

20 Immunity would also include any act or omission undertaken in  
21 good faith by a health care professional or healthcare facility or  
22 health care system to support efforts to treat COVID-19 patients  
23 and to prevent the spread of COVID-19 during the public health  
24 emergency and state of emergency declared by the Governor in  
25 Executive Order 103 of 2020, including but not limited to engaging  
26 in telemedicine or telehealth, and diagnosing or treating patients  
27 outside the normal scope of the health care professional's license or  
28 practice. The immunity granted pursuant to this provision would not  
29 apply to acts or omissions constituting a crime, actual fraud, actual  
30 malice, gross negligence, recklessness, or willful misconduct, and  
31 shall be retroactive to March 9, 2020.

32 The bill provides that a health care facility or a health care  
33 system that owns or operates more than one health care facility  
34 would not be criminally or civilly liable for damages for injury or  
35 death alleged to have been sustained as a result of an act or  
36 omission by the facility or system or one or more of the facility's or  
37 system's agents, officers, employees, servants, representatives or  
38 volunteers during the public health emergency and state of  
39 emergency declared by the Governor in Executive Order 103 of  
40 2020 in connection with the allocation of mechanical ventilators or  
41 other scarce medical resources, if the health care facility or system  
42 adopts and adheres to a scarce critical resource allocation policy  
43 that at a minimum incorporates the core principles identified by the  
44 Commissioner of Health in an executive directive or administrative  
45 order, and the health care facility's or system's agents, officers,  
46 employees, servants, representatives and volunteers would not be  
47 civilly or criminally liable for an injury caused by any act or  
48 omission pursuant to the bill during the public health emergency

1 and state of emergency declared by the Governor in Executive  
2 Order 103 of 2020 pursuant to, and consistent with, such policy.

3

4 LICENSES AND CERTIFICATES FOR PRACTICE OF PROFESSIONS AND  
5 OCCUPATIONS

6 Under the bill, during any state of emergency or public health  
7 emergency declared pursuant to applicable law, the Director of the  
8 Division of Consumer Affairs within the Department of Law and  
9 Public Safety may issue an administrative order to suspend  
10 temporarily any provision of Title 45 of the Revised Statutes or  
11 suspend or modify temporarily any rule adopted pursuant to such  
12 authority concerning the practice of any profession or occupation  
13 for which licenses, certificates, registrations, or certifications are  
14 issued by the division or any board or other body in the division, or  
15 adopt or prescribe temporarily any rule concerning the practice of  
16 any profession or occupation for which licenses, certificates,  
17 registrations, or certifications are issued by the division or any  
18 board or other body in the division, if the director determines, upon  
19 concurrence by the Attorney General, that such order is necessary to  
20 promote the public welfare and further such other purposes for  
21 which the state of emergency or public health emergency was  
22 declared. Any administrative order issued by the director would  
23 cease to apply upon the expiration of the state of emergency or  
24 public health emergency, or upon the rescission of the declaration  
25 of the state of emergency or public health emergency, and not be  
26 subject to the requirements of the Administrative Procedure Act,  
27 P.L.1968, c.410 (C.52:14B-1 et seq.).

28

29 TEMPORARY REINSTATEMENT AND REACTIVATION OF EMT AND  
30 PARAMEDIC CERTIFICATIONS; TEMPORARY RECIPROCITY.

31 In addition, the bill authorizes the Commissioner of Health, for  
32 the duration of the state of emergency or public health emergency  
33 declared in response to the coronavirus disease 2019 (COVID-19)  
34 pandemic, to issue a provisional certification to any emergency  
35 medical technician (EMT) whose certification has expired, issue a  
36 provisional certification to any paramedic whose professional  
37 certification expired within the past five years, temporarily  
38 reactivate the certification of a paramedic that was placed on  
39 inactive status within the past five years, and grant temporary  
40 reciprocity to certain paramedics licensed in another state or the  
41 District of Columbia or who hold a provisional certification issued  
42 by the National Registry of Emergency Medical Technicians. The  
43 grant of provisional certification, temporary reactivation, or  
44 temporary reciprocity will be approved regardless of whether the  
45 EMT or paramedic has met the requirements for reinstatement or  
46 reactivation of a lapsed professional certificate or a grant of  
47 reciprocity.

1 For an EMT or paramedic to qualify for a provisional  
2 certification and for a paramedic to qualify for temporary  
3 reactivation of an inactive certificate, the EMT or paramedic will be  
4 required to submit an application that includes information and  
5 attestations as may be required by the commissioner; the  
6 commissioner will then determine whether the application should be  
7 granted. The EMT or paramedic may be required to make  
8 additional showings, including a demonstration of proficiency, as  
9 are required by the commissioner. For an out-of-State paramedic  
10 to qualify for reciprocity, the bill requires that the paramedic: (1)  
11 not have had a paramedic certificate revoked by the Department of  
12 Health; (2) not have a paramedic certification currently under  
13 suspension by the Department of Health; and (3) satisfy all other  
14 requirements as may be provided by the commissioner.

15 To facilitate the provisional certification of EMTs and  
16 paramedics, temporary reactivation of inactive paramedic  
17 certifications, and grants of temporary reciprocity to out-of-State  
18 paramedics under the bill, the commissioner will be authorized to  
19 waive, for the duration of the COVID-19 emergency, any fees,  
20 continuing education requirements, refresher course requirements,  
21 periods of provisional certification, required demonstrations of  
22 proficiency, endorsement requirements, clinical training  
23 requirements, examination requirements, and other requirements  
24 that would otherwise apply to recertification of an emergency  
25 medical technician or a paramedic whose certification has expired,  
26 reactivation of a paramedic certification that has been placed on  
27 inactive status, or a grant of reciprocity to an out-of-State  
28 paramedic.

29 A provisional certification, temporary reactivation, or grant of  
30 reciprocity issued under the bill will be valid for six months unless  
31 otherwise determined by the commissioner. Similarly, waivers  
32 issued by the commissioner under the bill will be valid for six  
33 months unless otherwise determined by the commissioner.

34

35 EFFECTIVE DATE

36 The bill would take effect immediately, and the immunity  
37 provisions of the bill set out in section 1 would be retroactive to  
38 March 9, 2020.