

SENATE, No. 2549

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 8, 2020

Sponsored by:
Senator THOMAS H. KEAN, JR.
District 21 (Morris, Somerset and Union)

SYNOPSIS

Provides certain civil and criminal immunities to diagnostic laboratories, and persons providing laboratory services, for diagnosis and testing performed in response to COVID-19 outbreak during public health emergency and state of emergency declared in Governor's Executive Order 103 of 2020.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain immunities for diagnostic laboratories
2 and personnel and amending P.L.2020, 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), any clinical laboratory
33 certified under the federal Clinical Laboratory Improvement
34 Amendments ("CLIA") in section 353 of the Public Health Service
35 Act (42 U.S.C. s.263a), and any modular field treatment facility and
36 any other site designated by the Commissioner of Health for
37 temporary use for the purpose of providing essential services in
38 support of the State's response to the outbreak of coronavirus
39 disease during the public health emergency and state of emergency
40 declared by the Governor in Executive Order 103 of 2020.

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

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.

1 State, an emergency medical technician or mobile intensive care
2 paramedic certified by the Commissioner of Health pursuant to
3 Title 26 of the Revised Statutes or who is otherwise authorized to
4 provide health care services in this State, **【and】** a radiologic
5 technologist regulated pursuant to Title 26 of the Revised Statutes
6 or who is otherwise authorized to provide health care services in
7 this State, and any agent, officer, employee, servant, representative,
8 or volunteer providing services associated with COVID-19 testing
9 performed by a CLIA-licensed diagnostic laboratory.

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

17 c. Notwithstanding the provisions of any law, rule, or
18 regulation to the contrary:

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

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

46 d. Notwithstanding the provisions of any law, rule, or
47 regulation to the contrary, a health care facility or a health care
48 system that owns or operates more than one health care facility

1 shall not be criminally or civilly liable for damages for injury or
2 death alleged to have been sustained as a result of an act or
3 omission by the facility or system or one or more of the facility's or
4 system's agents, officers, employees, servants, representatives or
5 volunteers during the public health emergency and state of
6 emergency declared by the Governor in Executive Order 103 of
7 2020 in connection with the allocation of mechanical ventilators or
8 other scarce medical, diagnostic, laboratory, or testing resources, if
9 the health care facility or system adopts and adheres to a scarce
10 critical resource allocation policy that at a minimum incorporates
11 the core principles identified by the Commissioner of Health in an
12 executive directive or administrative order, and the health care
13 facility's or system's agents, officers, employees, servants,
14 representatives and volunteers shall not be civilly or criminally
15 liable for an injury caused by any act or omission pursuant to this
16 subsection during the public health emergency and state of
17 emergency declared by the Governor in Executive Order 103 of
18 2020 pursuant to, and consistent with, such policy.

19 (cf: P.L.2020, c.18, s.1)

20
21 2. This act shall take effect immediately and shall be
22 retroactive to March 9, 2020.

23 24 25 STATEMENT

26
27 P.L.2020, c.18, enacted April 14, 2020, provides immunity from
28 civil and criminal liability for certain claims alleging injury or death
29 incurred during the public health emergency and state of emergency
30 declared by the Governor's Executive Order 103 of 2020, issued on
31 March 9, 2020. This bill would add clinical laboratories and persons
32 performing services for such laboratories to the group of persons
33 and entities granted such immunity.

34 P.L.2020, c.18:

35 Under the enactment, (1) a health care professional is not liable
36 for civil damages for injury or death alleged to have been sustained
37 as a result of an act or omission by the health care professional in
38 the course of providing medical services in support of the State's
39 response to the outbreak of coronavirus disease during the public
40 health emergency and state of emergency declared by the Governor
41 in Executive Order 103 of 2020; and (2) a health care facility or a
42 health care system that owns or operates more than one health care
43 facility is not liable for civil damages for injury or death alleged to
44 have been sustained as a result of an act or omission by one or more
45 of its agents, officers, employees, servants, representatives or
46 volunteers, if, and to the extent, such agent, officer, employee,
47 servant, representative or volunteer is immune from liability
48 pursuant to the bill.

1 Immunity under P.L.2020, c.18 also includes any act or omission
2 undertaken in good faith by a health care professional or healthcare
3 facility or health care system to support efforts to treat COVID-19
4 patients and to prevent the spread of COVID-19, including but not
5 limited to engaging in telemedicine or telehealth, and diagnosing or
6 treating patients outside the normal scope of the health care
7 professional's license or practice. The immunity does not apply to
8 acts or omissions constituting a crime, actual fraud, actual malice,
9 gross negligence, recklessness, or willful misconduct. The
10 enactment is retroactive to March 9, 2020, the date the Governor
11 issued Executive Order 103 of 2020.

12 This bill:

13 Under this bill, the definition of "health care facility" in
14 P.L.2020, c.18 would be expanded to include any clinical laboratory
15 certified under the federal Clinical Laboratory Improvement
16 Amendments ("CLIA") in section 353 of the Public Health Service
17 Act (42 U.S.C. s.263a), and the definition of "health care
18 professional" would be expanded to include any agent, officer,
19 employee, servant, representative, or volunteer providing services
20 associated with COVID-19 testing performed by a CLIA-licensed
21 diagnostic laboratory.

22 In addition, the bill expands the term "medical resources or
23 supplies" in the enactment to "medical, *diagnostic, laboratory, or*
24 *testing* resources or supplies"; expands the term "medical services"
25 to "medical, *diagnostic, laboratory, or testing* services"; and
26 expands the term "treat" or "treating" to include *diagnosis and*
27 *testing*.

28 The bill would take effect immediately and, like P.L.2020, c.18,
29 be retroactive to March 9, 2020.