



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. S.B. 86

128th General Assembly

(As Reported by S. Judiciary - Civil Justice)

**Sens.** Buehrer, Coughlin, Faber, Gibbs, Goodman, Husted, Schaffer, Schuler, Schuring, Stewart, Turner, Widener

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## BILL SUMMARY

- Grants qualified civil immunity to a physician, physician assistant, dentist, or optometrist who provides emergency medical services, first-aid treatment, or other emergency professional care in compliance with the federal Emergency Medical Treatment and Active Labor Act or as a result of a disaster.
- Grants qualified civil immunity to a certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse who provides emergency services, first-aid treatment, or other emergency professional care as a result of a disaster.
- Provides that the bill does not create a new cause of action or substantive legal right against a physician, physician assistant, dentist, or optometrist, certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse.
- Provides that the bill does not affect any immunities from civil liability or defenses to which a physician, physician assistant, dentist, or optometrist may be entitled in connection with the provision of emergency medical services, first-aid treatment, or other emergency professional care.
- Provides that the bill does not grant an immunity from tort or other civil liability to a physician, physician assistant, dentist, or optometrist for actions that are outside the scope of authority of the physician, physician assistant, dentist, or optometrist.
- Provides that the bill does not affect any immunities from civil liability or defenses to which a certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse may be entitled in connection with the provision of emergency services, first-aid treatment, or other emergency professional care.

- Provides that the bill does not grant immunity from tort or other civil liability to a certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse for actions that are outside the scope of authority of the certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse.
- Provides that the bill does not affect any legal responsibility of a physician, physician assistant, dentist, or optometrist, certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse to comply with any applicable law of Ohio or rule of an agency of Ohio.
- Provides that the bill does not apply to a tort action alleging wrongful death against a physician, physician assistant, dentist, optometrist, certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse who provides emergency medical services, first-aid treatment, or other emergency medical or professional care as a result of a disaster.

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## **CONTENT AND OPERATION**

### **Qualified immunity for emergency physicians**

The bill generally provides that a physician, physician assistant, dentist, or optometrist who provides emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical product, in compliance with the "Emergency Medical Treatment and Active Labor Act" (see **COMMENT**), is not liable in damages to any person in a tort action for injury, death, or loss to person or property that allegedly arises from an act or omission of the physician, physician assistant, dentist, or optometrist in the physician's, physician assistant's, dentist's, or optometrist's provision of those services or that treatment or care if that act or omission does not constitute a reckless disregard for the consequences so as to affect the life or health of the patient (R.C. 2305.2310(B)(1)).

The bill also provides that, generally speaking, a physician, physician assistant, dentist, or optometrist who provides emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical product, as a result of a disaster is not liable in damages to any person in a tort action for injury, death, or loss to person or property that allegedly arises from an act or omission of the physician, physician assistant, dentist, or optometrist in the physician's, physician assistant's, dentist's, or optometrist's provision of those services or that treatment or care if that act or omission does not constitute willful or wanton misconduct (R.C. 2305.2310(B)(2)).

## Qualified immunity for nurses

Under the bill, generally a certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse who provides emergency services, first-aid treatment, or other emergency professional care, including the administration or provision of any medication or other medical product, as a result of a disaster is not liable in damages to any person in a tort action for injury, death, or loss to person or property that allegedly arises from an act or omission of the certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse in the provision of those services or that treatment or care if that act or omission does not constitute willful or wanton misconduct (R.C. 2305.2310(B)(3)).

## Exceptions

The bill provides the following exceptions (R.C. 2305.2310(C)):

(1) The bill does not create a new cause of action or substantive legal right against a physician, physician assistant, dentist, or optometrist, certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse.<sup>1</sup>

(2) The bill does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a physician, physician assistant, dentist, or optometrist may be entitled in connection with the provision of emergency medical services, first-aid treatment, or other emergency professional care. The bill does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse may be entitled in connection with the provision of emergency services, first-aid treatment, or other emergency professional care.

(3) The bill does not grant an immunity from tort liability or other civil liability to a physician, physician assistant, dentist, or optometrist for actions that are outside the scope of authority of the physician, physician assistant, dentist, or optometrist. The bill does not grant an immunity from tort or other civil liability to a certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse for actions that are outside the scope of authority of the certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse.

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<sup>1</sup> In the preparation of the substitute bill for the committee report of the Senate Judiciary - Civil Justice Committee, a typo resulted in an extra "or" and the omission of a comma in this list of professionals.

(4) The bill does not affect any legal responsibility of a physician, physician assistant, dentist, or optometrist, certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse to comply with any applicable law of Ohio or rule of any agency of Ohio.

### **Wrongful death actions**

The bill does not apply to a tort action alleging wrongful death against a physician, physician assistant, dentist, or optometrist who provides emergency medical services, first-aid treatment, or other emergency medical care, including the provision of any medication or other medical product that allegedly arises from an act or omission in the physician's, physician assistant's, dentist's, or optometrist's provision of those services or that treatment or care or as a result of a disaster or against a certified nurse-midwife, certified nurse practitioner, clinical nurse specialist, or registered nurse who provides emergency services, first-aid treatment, or other emergency professional care, including the administration or provision of any medication or other medical product, as a result of a disaster (R.C. 2305.2310(D)).

### **Definitions**

The bill provides definitions for the following terms as used in the bill (R.C. 2305.2310(A)):

(1) "Dentist" means a person who is licensed under R.C. Chapter 4715. to practice dentistry.

(2) "Disaster" means any imminent threat or actual occurrence of widespread or severe damage to or loss of property, personal hardship or injury, or loss of life that results from any natural phenomenon or act of a human.

(3) "Medical claim" has the same meaning as in R.C. 2305.113 (any claim that is asserted in any civil action against a physician, podiatrist, hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care, or treatment of any person.)

(4) "Optometrist" means a person who is licensed under R.C. Chapter 4725. to practice optometry.

(5) "Physician" means an individual authorized under R.C. Chapter 4731. (licensing of physicians) to practice medicine and surgery or osteopathic medicine and surgery.

(6) "Reckless disregard" as it applies to a given physician, physician assistant, dentist, or optometrist rendering emergency medical services means conduct that a physician, physician assistant, dentist, or optometrist knew or should have known, at the time those services were rendered, created an unreasonable risk of injury, death, or loss to person or property so as to affect the life or health of another and that risk was substantially greater than that which is necessary to make the conduct negligent.

(7) "Registered nurse" means an individual who holds a current, valid license issued under R.C. Chapter 4723. that authorizes the practice of nursing as a registered nurse.

(8) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or other agreement between persons or governmental entities. "Tort action" includes an action on a medical claim.

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## COMMENT

The Emergency Medical Treatment and Active Labor Act ("EMTALA") requires that, in the case of a hospital that has a hospital emergency department, if any individual comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department to determine whether or not an emergency medical condition exists (42 U.S.C. 1395dd(a)). If any individual comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either (a) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or (b) for transfer of the individual to another medical facility in accordance with other provisions under EMTALA (42 U.S.C. 1395dd(b)(1)). A hospital is deemed to meet the requirement in (a) with respect to an individual if the hospital offers the individual further medical examination and treatment and informs the individual (or person acting on the individual's behalf) of the risks and benefits to the individual of such examination and treatment, but the individual (or person acting on the individual's behalf) refuses to consent to the examination and treatment. The hospital

must take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment. (42 U.S.C. 1395dd(b)(2).)

A hospital is deemed to meet the requirement in (a) and (b) above with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with the rule described in the next paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer, but the individual (or person acting on the individual's behalf) refuses to consent to the transfer. The hospital must take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer. (42 U.S.C. 1395dd(b)(3).)

If an individual at a hospital has an emergency medical condition that has not been stabilized, the hospital may not transfer the individual unless (a)(i) the individual (or a legally responsible person acting on the individual's behalf) after being informed of the hospital's obligations under EMTALA and of the risk of transfer, in writing requests transfer to another medical facility, (ii) a physician has signed a certification that based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child from effecting the transfer, or (iii) if a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person has signed a certification described in (ii) above after a physician, in consultation with the person, has made the determination described in (ii) above, and subsequently countersigns the certification, and (b) the transfer is an appropriate transfer to that facility. A certification described in (ii) or (iii) above must include a summary of the risks and benefits upon which the certification is based. (42 U.S.C. 1395dd(c)(1).)

An appropriate transfer to a medical facility is a transfer (a) in which the transferring hospital provides the medical treatment within its capacity that minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child, (b) in which the receiving facility has available space and qualified personnel for the treatment of the individual, and has agreed to accept transfer of the individual and to provide appropriate medical treatment, (c) in which the transferring hospital sends to the receiving facility all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided, and the name and address of any on-call physician who has refused or failed to appear

within a reasonable time to provide necessary stabilizing treatment, (d) in which the transfer is effected through qualified personnel and transportation equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer, and (e) which meets such other requirements as the Secretary of Health and Human Services may find necessary in the interest of the health and safety of individuals transferred. (42 U.S.C. 1395dd(c)(2).)

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## HISTORY

ACTION	DATE
Introduced	03-25-09
Reported, S. Judiciary - Civil Justice	05-13-10

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