

SENATE No. 2640

The Commonwealth of Massachusetts

—
In the One Hundred and Ninety-First General Court
(2019-2020)
—

SENATE, April 16, 2020.

The committee on Senate Ways and Means to whom was referred the Senate Bill to provide liability protections for health care workers and facilities during the COVID-19 Pandemic (Senate, No. 2635), - reported, in part, a "Bill to Provide Liability Protections for Health Care Workers and Facilities During the COVID-19 Pandemic." (Senate, No. 2640).

For the committee,
Michael J. Rodrigues

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**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to provide liability protections for health care workers and facilities during the COVID-19 Pandemic..

Whereas, The deferred operation of this act would tend to defeat its purposes, which are to make certain changes in law in response to a public health emergency, each of which is immediately necessary to carry out to accomplish important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. As used in this act, the following terms shall have the following meanings
2 unless the context clearly indicates otherwise:

3 “COVID-19 emergency”, the state of emergency concerning the novel coronavirus
4 disease outbreak declared by the governor on March 10, 2020 pursuant to executive order 591.

5 “COVID-19 emergency rule”, an executive order, order of the commissioner of public
6 health, declaration, directive or other state or federal authorization, policy, statement, guidance,
7 rule-making or regulation that waives, suspends or modifies otherwise applicable state or federal
8 law, regulations or standards regarding either: (i) scope of practice or conditions of licensure,
9 including modifications authorizing health care professionals licensed in another state to practice

10 in the commonwealth; or (ii) the delivery of care, including those regarding the standard of care,
11 the site at which care is delivered or the equipment used to deliver care, during the COVID-19
12 emergency.

13 “Health care services”, services provided by a health care facility or health care
14 professional, regardless of location, that involve the: (i) treatment, diagnosis, prevention or
15 mitigation of COVID-19; (ii) assessment or care of an individual with a confirmed or suspected
16 case of COVID-19; or (iii) care of any other individual who presents at a health care facility or to
17 a health care professional during the period of the COVID-19 emergency.

18 “Damages”, injury or loss of property or personal injury or death, including economic or
19 non-economic losses.

20 “Good faith”, shall, without limitation, include acts or omissions undertaken consistent
21 with the guidelines for crisis standards of care for the COVID-19 pandemic issued by the
22 department of public health, and exclude, without limitation, acts or omissions based on race,
23 ethnicity, national origin, religion, disability, sexual orientation or gender identity, and deceptive
24 acts or practices, and fraud.

25 “Health care facility”, (i) hospitals, including acute and chronic disease rehabilitation
26 hospitals, as licensed under section 51 of chapter 111 of the General Laws; (ii) state hospitals,
27 mental health centers and other mental health facilities under the control of the department of
28 mental health pursuant to section 7 of chapter 19 of the General Laws; (iii) hospitals operated by
29 the department of public health pursuant to section 62I of chapter 111 the General Laws, section
30 69E of said chapter 111 and chapter 122 of the General Laws; (iv) psychiatric hospitals, as
31 licensed under section 19 of said chapter 19; (v) skilled nursing facilities, as licensed under

32 section 71 of said chapter 111; (vi) assisted living residences, as defined in section 1 of chapter
33 19D of the General Laws; (vii) rest homes, as referenced in said section 71 of said chapter 111;
34 (viii) community health centers, as defined in 130 CMR 405.000 and mental health centers, as
35 defined in 130 CMR 429.000; (ix) home health agencies that participate in Medicare; (x) clinics,
36 as licensed under said section 51 of said chapter 111; or (xi) sites designated by the
37 commissioner of public health to provide COVID-19 health care services, including, but not
38 limited to, step-down skilled nursing facilities, field hospitals and hotels.

39 “Health care professional”, an individual, whether acting as an agent, volunteer,
40 contractor, employee or otherwise, who is: (i) authorized to provide health care services pursuant
41 to licensure or certification by the board of registration in medicine, the board of registration in
42 nursing, the board of respiratory care, the board of registration of nursing home administrators,
43 the board of registration in pharmacy, the board of registration of physician assistants, the board
44 of allied health professionals, the board of allied mental health and human services professions,
45 the board of registration of social workers or the board of registration of psychologists; (ii) a
46 student or trainee in their approved medical professional services academic training program;
47 (iii) a nursing attendant or certified nursing aide, including an individual who is providing care as
48 part of the individual’s approved nursing attendant or certified nurse aide training program; (iv)
49 certified, accredited or approved under chapter 111C of the General Laws to provide emergency
50 medical services; (v) a nurse or home health aide employed by home health agency that
51 participates in Medicare; (vi) providing health care services within the scope of authority or
52 license permitted by a COVID-19 emergency rule; or (vii) a health care facility administrator,
53 executive, supervisor, board member, trustee or other person responsible for directing,
54 supervising or managing a health care facility or its personnel.

55 “Volunteer organization”, an organization, company or institution that makes its facility
56 available to support the commonwealth’s response and activities under the COVID-19
57 emergency.

58 SECTION 2. (a) Notwithstanding any general or special law to the contrary, except as
59 provided in subsection (b), health care professionals and health care facilities shall be immune
60 from suit and civil liability for any damages alleged to have been sustained by an act or omission
61 by the health care professional or health care facility in the course of providing health care
62 services during the period of the COVID-19 emergency; provided, however, that: (i) the health
63 care facility or health care professional is arranging for or providing health care services pursuant
64 to a COVID-19 emergency rule and in accordance with otherwise applicable law; (ii) arranging
65 for or providing care or treatment of the individual was impacted by the health care facility’s or
66 health care professional’s decisions or activities in response to treatment conditions resulting
67 from the COVID-19 outbreak or COVID-19 emergency rules; and (iii) the health care facility or
68 health care professional is arranging for or providing health care services in good faith.

69 (b) The immunity provided in subsection (a) shall not apply: (i) if the damage was caused
70 by an act or omission constituting gross negligence, recklessness or conduct with an intent to
71 harm or to discriminate based on race, ethnicity, national origin, religion, disability, sexual
72 orientation or gender identity by a health care facility or health care professional providing health
73 care services; (ii) to consumer protection actions brought by the attorney general; or (iii) to false
74 claims actions brought by or on behalf of the commonwealth.

75 SECTION 3. Notwithstanding any general or special law to the contrary, a volunteer
76 organization shall be immune from suit and civil liability for any damages occurring in or at the

77 volunteer organization's facility where the damage arises from use of the facility for the
78 commonwealth's response and activities related to the COVID-19 emergency, unless it is
79 established that the damages were caused by the volunteer organization's gross negligence,
80 recklessness or conduct with an intent to harm.

81 SECTION 4. This act shall take effect upon its passage and shall apply to claims based
82 on acts or omissions that occur or have occurred during the effective period of the COVID-19
83 emergency, declared on March 10, 2020 and until terminated or rescinded.