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*Bill Analysis*  
Legislative Service Commission

## **S.B. 124**

125th General Assembly  
(As Introduced)

**Sens. Amstutz, Nein, Randy Gardner, Carey, Jacobson, Spada, Blessing, Stivers**

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### **BILL SUMMARY**

- Modifies the "performance of an operation" and the "delivery of a baby" exceptions to the civil immunity provided in certain circumstances to health care professionals, health care workers, and nonprofit shelter care or health care facilities.
- Modifies the definition of "indigent and uninsured person" by increasing the income threshold included within the definition to an amount not greater than 200% of the current poverty line.

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### **CONTENT AND OPERATION**

#### **Civil immunity for health care professionals, health care workers, and nonprofit shelters or health care facilities**

##### **General civil immunity**

Generally, a "health care professional" who is a "volunteer" (see **COMMENT**) and who complies with the requirements listed below is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the volunteer in the provision at a "nonprofit shelter or health care facility" (see **COMMENT**) to an "indigent and uninsured person" (see "**Indigent and uninsured persons**," below) of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct. The covered diagnosis, care, and treatment includes the health care professional providing samples of medicine and other medical products to the indigent and uninsured person. (R.C. 2305.234(B)(1).)

In order for the health care professional to qualify for the immunity described above, the professional must do all of the following prior to providing diagnosis, care, or treatment (R.C. 2305.234(B)(2)): (1) determine, in good faith, that the indigent and uninsured person is mentally capable of giving informed consent to the provision of the diagnosis, care, or treatment and is not subject to duress or under undue influence, (2) inform the person of the provisions of R.C. 2305.234, and (3) obtain the informed consent of the person and a written waiver, signed by the person or by another individual on behalf of and in the presence of the person, that states that the person is mentally competent to give informed consent and, without being subject to duress or under undue influence, gives informed consent to the provision of the diagnosis, care, or treatment subject to the provisions of R.C. 2305.234.

Generally, "health care workers" (see **COMMENT**) who are volunteers are not liable in damages to any person or government entity in a tort or other civil action, including an action upon a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care worker in the provision at a nonprofit shelter or health care facility to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct. (R.C. 2305.234(C).) In addition, a nonprofit shelter or health care facility associated with a health care professional or a health care worker described in either of the immunity provisions summarized above generally is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care professional or worker in providing for the shelter or facility medical, dental, or other health-related diagnosis, care, or treatment to an indigent and uninsured person, unless the action or omission constitutes willful or wanton misconduct. (R.C. 2305.234(D).)

### **Exceptions to the civil immunity**

**Existing law.** Generally, the above-described immunities are not available to an individual or to a nonprofit shelter or health care facility if, at the time of an alleged injury, death, or loss to person or property, the individuals involved are providing one of the following (R.C. 2305.234(E)(1)):

(1) Any medical, dental, or other health-related diagnosis, care, or treatment pursuant to a community service work order entered by a court under R.C. 2951.02(F) as a condition of probation or other suspension of a term of imprisonment or imposed by a court as a community control sanction pursuant to R.C. 2929.15 and 2929.17;

- (2) Performance of an operation;
- (3) Delivery of a baby.

The above-described exceptions do not apply to an individual who provides, or a nonprofit shelter or health care facility at which the individual provides, diagnosis, care, or treatment that is necessary to preserve the life of a person in a medical emergency (R.C. 2305.234(E)(2)).

**Operation of the bill.** The bill modifies the exceptions to the civil immunities described in (2) and (3) above by providing that, under those exceptions, the immunities are not available to an individual or to a nonprofit shelter or health care facility if, at the time of an alleged injury, death, or loss to person or property, the individuals involved are providing delivery of a baby or any other purposeful termination of a human pregnancy (R.C. 2305.234(F)(1)(c)) or are providing the performance of an operation to which all of the following apply (R.C. 2305.234(E)(1)(b)):

- (1) The operation requires the administration of a general anesthetic.
- (2) The operation requires the support of a surgical facility.
- (3) The operation is a procedure that is not typically performed in an office.
- (4) The individual involved is a physician, and the operation is beyond the scope of practice of the physician.

### **Indigent and uninsured persons**

#### **Existing law**

Existing law defines "indigent and uninsured person," for purposes of the above-described civil immunity provisions, as a person who meets all of the following requirements (R.C. 2305.234(A)(6)):

- (1) The person's income is not greater than 150% of the current poverty line as defined by the United States Office of Management and Budget and revised in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981."
- (2) The person is not eligible to receive medical assistance under R.C. Chapter 5111., disability assistance medical assistance under R.C. Chapter 5115., or assistance under any other governmental health care program.

(3) Either of the following applies: (a) the person is not a policyholder, certificate holder, insured, contract holder, subscriber, enrollee, member, beneficiary, or other covered individual under a health insurance or health care policy, contract, or plan, or (b) the person is a policyholder, certificate holder, insured, contract holder, subscriber, enrollee, member, beneficiary, or other covered individual under a health insurance or health care policy, contract, or plan, but the insurer, policy, contract, or plan denies coverage or is the subject of insolvency or bankruptcy proceedings in any jurisdiction.

### **Operation of the bill**

The bill modifies the definition of "indigent and uninsured person" by increasing the income threshold specified in the first qualifying requirement, set forth in (1), above, to an amount not greater than 200% of the current poverty line (R.C. 2305.234(A)(6)).

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## **COMMENT**

The following terms used in the bill are defined in existing R.C. 2305.234(A), unchanged by the bill:

(1) "Health care professional" means any of the following who provide medical, dental, or other health-related diagnosis, care, or treatment: (a) physicians authorized under R.C. Chapter 4731. to practice medicine and surgery or osteopathic medicine and surgery, (b) registered nurses, advanced practice nurses, and licensed practical nurses licensed under R.C. Chapter 4723., (c) physician assistants authorized to practice under R.C. Chapter 4730., (d) dentists and dental hygienists licensed under R.C. Chapter 4715., (e) physical therapists licensed under R.C. Chapter 4755., (f) chiropractors licensed under R.C. Chapter 4734., (g) optometrists licensed under R.C. Chapter 4725., (h) podiatrists authorized to practice under R.C. Chapter 4731., (i) dietitians licensed under R.C. Chapter 4759., (j) pharmacists licensed under R.C. Chapter 4729., or (k) emergency medical technicians-basic, emergency medical technicians-intermediate, and emergency medical technicians-paramedic, certified under R.C. Chapter 4765.

(2) "Health care worker" means a person other than a health care professional who provides medical, dental, or other health-related care or treatment under the direction of a health care professional with the authority to direct that individual's activities, including medical technicians, medical assistants, dental assistants, orderlies, aides, and individuals acting in similar capacities.

(3) "Nonprofit shelter or health care facility" means a charitable nonprofit corporation organized and operated pursuant to R.C. Chapter 1702., or any



charitable organization not organized and not operated for profit, that provides shelter, health care services, or shelter and health care services to indigent and uninsured persons, except that "shelter or health care facility" does not include a hospital as defined in R.C. 3727.01, a facility licensed under R.C. Chapter 3721., or a medical facility that is operated for profit.

(4) "Volunteer" means an individual who provides any medical, dental, or other health-care related diagnosis, care, or treatment without the expectation of receiving and without receipt of any compensation or other form of remuneration from an indigent and uninsured person, another person on behalf of an indigent and uninsured person, any shelter or health care facility, or any other person or governmental entity.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>	<b>JOURNAL ENTRY</b>
Introduced	09-02-03	p. 1008

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