

**MALPRACTICE LIABILITY DURING
PANDEMIC EVENT**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: Kevin S. Garn

LONG TITLE

General Description:

This bill amends the Health Care Providers Immunity From Liability Act.

Highlighted Provisions:

This bill:

▶ in certain circumstances, expands the application of immunity from liability during an emergency to health care facilities;

▶ protects health care providers including facilities, from malpractice liability when they respond to a natural disaster, pandemic event, or bioterrorism unless the health care provider is:

- grossly negligent; or
- caused the emergency; and

▶ applies the limited liability protections to a health care provider even if:

- the provider has a duty to respond; or
- the provider has an expectation of payment or remuneration.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 ENACTS:

29 **58-13-2.6**, Utah Code Annotated 1953

30

31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **58-13-2.6** is enacted to read:

33 **58-13-2.6. Emergency care rendered by a person or health care facility.**

34 (1) For purposes of this section:

35 (a) "Emergency" means an unexpected occurrence involving injury, the threat of injury,

36 or illness to a person or the public due to:

37 (i) a natural disaster;

38 (ii) bioterrorism;

39 (iii) an act of terrorism;

40 (iv) a pandemic; or

41 (v) other event of similar nature.

42 (b) "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or
 43 attempt to mitigate the effects of an emergency.

44 (c) "Person" is defined in Subsection 26-21-2(18).

45 (2) (a) A person, who in good faith, assists governmental agencies or political
 46 subdivisions with the activities described in Subsection (2)(b) is not liable for civil damages or
 47 penalties as a result of any act or omission unless the person rendering the assistance:

48 (i) is grossly negligent; ~~§→ [or] ←§~~

49 (ii) caused the emergency ~~§→ ; or~~

49a (iii) **has engaged in criminal conduct** ←§ .

50 (b) The following activities are protected from liability in accordance with Subsection

51 (2)(a):

52 (i) implementing measures to control the causes of epidemic, pandemic, communicable
 53 diseases, or other conditions significantly affecting public health, as necessary to protect the
 54 public health in accordance with Title 26A, Chapter 1, Local Health Departments;

55 (ii) investigating, controlling, and treating suspected bioterrorism or disease in
 56 accordance with Title 26, Chapter 23b, Detection of Public Health Emergencies Act; or

57 (iii) responding to:

58 (A) a national, state, or local emergency;

59 (B) a public health emergency as defined in Section 26-23b-102; or

60 (C) a declaration by the President of the United States or other federal official

61 requesting public health related activities.

62 (c) Subsection (2)(a) applies to a person even if that person has:

63 (i) a duty to respond; or

64 (ii) an expectation of payment or remuneration.

65 (3) The immunity in Subsection (2) is in addition to any immunity protections that may

66 apply in state or federal law.

Legislative Review Note

as of 1-9-07 8:36 AM

Office of Legislative Research and General Counsel

S.B. 153 - Malpractice Liability During Pandemic Event

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Persons or businesses falling under the protection of this bill are provided protection from malpractice liability in certain situations.

1/23/2007, 5:35:33 PM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst