

**AN AMENDMENT**

Bill 23-735, "COVID-19 Supplemental Corrections Emergency Amendment Act of 2020"  
April 21, 2020  
Amendment in the Nature of a Substitute Version

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**Amendment 1:**

**Section 3(b). Limitation on liability for COVID-19 actions. [Lines 95-104]**

Section 3(b), amendatory paragraph (3A) is amended to read as follows:

“(3A)(A)(i) Exempt from liability in a civil action a healthcare provider, first responder, or volunteer who renders care or treatment to a potential, suspected, or diagnosed individual with COVID-19 for damages resulting from such care or treatment of COVID-19, or from any act or failure to act in providing or arranging medical treatment for COVID-19 during a declared public-health emergency;

“(ii) Exempt from liability in a civil action a donor of time, professional services, equipment, or supplies for the benefit of persons or entities providing care or treatment for COVID-19 to a suspected or diagnosed individual with COVID-19, or care for the family members of such individuals for damages resulting from such donation during a declared public-health emergency; or

“(iii) Exempt from liability in a civil action a contractor or subcontractor on a District government contract that has contracted to provide health care services related to a declared public health emergency related to the District government’s COVID-19 response.

“(B) The limitation on liability provided by subparagraph (A) of this paragraph applies to any healthcare provider, first responder, volunteer, or District government contractor or subcontractor of a District government contractor (“provider”), including a party involved in the healthcare process at the request of a health-care facility or the District government, and within the scope of the provider’s employment or organization’s purpose, or contractual or voluntary service, even if outside the provider’s professional scope of practice, state of licensure, or with an expired license, who:

“(i) Prescribes or dispenses medicines for off-label use to attempt to combat the COVID-19 virus, in accordance with the federal Right to Try Act, United States Public Law 115-176;

“(ii) Provides direct or ancillary health-care services or health care products, including direct patient care, testing, equipment or supplies, consultations, triage services, resource teams, nutrition services, and physical, mental, and behavioral therapies; or

“(iii) Utilizes equipment or supplies outside of the product’s normal use for medical practice and the provision of health-care services to combat the COVID-19 virus; or

“(C) The limitation on liability provided by subparagraph (A) of this paragraph shall not extend to:

“(i) Acts or omissions that constitute a crime, actual fraud, actual malice, recklessness, breach of contract, gross negligence, or willful misconduct; or

“(ii) Acts or omissions unrelated to direct patient care.

“(D) This limitation on liability extends to acts, omissions, and donations performed or made during a period of time for which the Mayor has declared a public health emergency pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), and to damages that ensue at any time from acts, omissions and donations made during the emergency.

“(E) This paragraph does not limit the applicability of other limitations on liability, including qualified and absolute immunity, that may otherwise apply to a person covered by this section, nor does this section limit the authority of the Mayor under section 5a(d) of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01(d)).

**Rationale:** The purpose of this amendment is to narrow exemptions from liability for District actions during the COVID-19 public health emergency. These changes were recommended by advocates and refined by the Executive and the Council. As previously drafted (April 7 bill), the concern was that the language was overly broad. The new language is more narrowly tailored to extend immunity and protect healthcare workers, first responders, and certain District employees, contractors, and volunteers. This language will provide protection to the covered workers while maintaining appropriate safety standards for those not involved with the COVID-19 response. It is the intent of the Council that any exemption from liability should be for acts or services provided directly as a result of caring those afflicted by COVID-19 and not for ancillary actions taken by individuals that are not directly related to the public health emergency.

**Amendment 2:**

**Section 2(a)(B) [Line 36]**

Strike the phrase “interest-free”

**Rationale:** This amendment fixes a drafting error. The phrase “interest free” was not in the filed version of Councilmember McDuffie’s underlying emergency bill and therefore should not appear in the ANS.