

SENATE BILL 2147

By Briggs

AN ACT to amend Tennessee Code Annotated, Title 56;
Title 63 and Title 68, relative to a medical supply
donation program.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 1, is amended by adding the following as a new part:

68-1-2601. As used in this part:

(1) "Administering entity" means a not-for-profit entity that operates a medical supply donation program and that registers with the department in accordance with this part;

(2) "Department" means the department of health;

(3) "Donor" means a person, a pharmacy, medical facility, or manufacturer of medical supplies who donates unused medical supplies to a donation program approved pursuant to this part;

(4) "Indigent" means a person with an income that is below two hundred percent (200%) of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services;

(5) "Medical facility" means any of the following:

(A) A physician's office;

(B) A hospital;

(C) A health clinic;

(D) A nonprofit health clinic, which includes a federally qualified health center as defined in 42 U.S.C. § 1396d(l)(2)(B); a rural health clinic, as defined in 42 U.S.C. § 1396d(l)(1); and a nonprofit health clinic that provides medical care to patients who are indigent, uninsured, or underinsured;

(E) A free clinic as defined in § 63-6-703;

(F) A charitable organization as defined in § 48-101-501; or

(G) A nursing home as defined in § 68-11-201;

(6) "Recipient entity" means a not-for-profit or governmental entity that provides medical services to indigent individuals and that registers with the department in accordance with this part; and

(7) "Supplies" means any medical supplies other than prescription drugs, as defined in § 63-10-204.

68-1-2602.

(a)

(1) The department of health shall promulgate rules to establish and enforce a medical supply donation program in accordance with this part. The medical supply donation program shall permit an administering entity to accept donations of unused medical supplies, verify the condition of the donated unused medical supplies, and provide the donated unused medical supplies to recipient entities.

(2) To serve as an administering entity, an entity must be certified by the department, have received a determination of exemption from the United States internal revenue service pursuant to 26 U.S.C. § 501(c)(3), register with the department, and meet any other eligibility criteria specified by rule.

(3) To serve as a recipient entity, an entity must be certified by the department; have received a determination of exemption from the United States internal revenue service pursuant to 26 U.S.C. § 501(c)(3), or be a governmental

entity; provide medical services to indigent individuals; register with the department; and meet any other eligibility criteria specified by rule.

(b) Participation in medical supply donation program is voluntary for any person or entity.

68-1-2603.

(a) If a donor receives official notice of a recall of any medical supply donated pursuant to this part, the donor shall make every effort, as required by rule, to notify the medical supply donation program to which the supplies were donated of the recall.

(b) If an administering entity receives official notice of a recall of a medical supply donated pursuant to this part, the entity shall make every effort, as required by rule, to notify the recipient entity to which the medical supply was delivered, of the recall.

(c) Any medical supply donation program or recipient entity that receives notice of a recall shall properly dispose of all recalled medical supplies.

(d) Medical supplies received from a medical supply donation program are not eligible for reimbursement under the medical assistance program.

(e) The department shall adopt rules establishing standards and procedures for ensuring that medical supplies donated through a medical supply donation program are safe for use for their intended purpose, which may include identifying specific supplies that may or may not be donated.

68-1-2604.

(a) Except as provided in subsection (c), a medical facility or other person is not civilly liable or subject to criminal prosecution for injury to or the death of an individual for whom a donated medical supply is used under this part except due to its own gross negligence, willful misconduct, or bad faith. The medical facility or other person is also exempt from disciplinary action related to the facility's or person's acts or omissions

related to the donation, acceptance, distribution, or use of a donated medical supply under this part.

(b) Except for gross negligence, willful misconduct, or bad faith, or as provided in subsection (c), the department of health or any relevant licensing board shall not be civilly liable or subject to criminal prosecution for injury, death, or loss to a person or property resulting from matters related to the donation, acceptance, distribution, or use of a medical supply donated pursuant to this part.

(c) The immunity and exemption provided in subsections (a) and (b) do not extend to the following:

(1) The donation, acceptance, distribution, or use of a medical supply under this part by a person if the person's acts or omissions are not performed reasonably and in good faith; or

(2) Acts or omissions outside the scope of the medical supply donation program.

68-1-2605. This part does not permit any person or entity to donate, accept, distribute, or use a medical supply after the expiration date of the medical supply.

68-1-2606. The department of health is authorized to promulgate rules to effectuate the purposes of this part. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

68-1-2607. Notwithstanding this part or the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, any rule promulgated to implement this part shall be provided to the chairs of the health committee of the house of representatives and the health and welfare committee of the senate by the secretary of state, after approval by the attorney general and reporter, at the same time the text of the rule is made available to the government operations committees of the senate and the house of representatives for purposes of conducting the

review required by § 4-5-226 in order for the health committee of the house of representatives and the health and welfare committee of the senate to be afforded the opportunity to comment on the rule.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 3. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on January 1, 2019, the public welfare requiring it.