A bill to be entitled
An act relating to civil liability for damages
relating to COVID-19; creating s. 768.38, F.S.;
providing legislative findings and intent; defining
terms; providing requirements for a civil action based
on a COVID-19-related claim; providing that the
plaintiff has the burden of proof in such action;
providing a statute of limitations; providing
severability; providing retroactive applicability;
providing an effective date.

WHEREAS, on March 9, 2020, Governor Ron DeSantis issued
Executive Order Number 20-52 declaring a state of emergency for
the State of Florida due to the COVID-19 pandemic, and
WHEREAS, in light of the ongoing nature of the COVID-19
pandemic, the Governor has repeatedly extended the state of
emergency, including most recently on December 29, 2020, in
Executive Order Number 20-316, and
WHEREAS, the State of Florida continues under a declared
state of emergency, and
WHEREAS, throughout the declared state of emergency, the
Governor’s executive orders included industry-specific
restrictions to prevent the spread of COVID-19 based on the best
information available at the time, allowing and encouraging
certain businesses to continue to safely operate, and
WHEREAS, a strong and vibrant economy is essential to ensure that Floridians may continue in their meaningful work and ultimately return to the quality of life they enjoyed before the COVID-19 outbreak, and
WHEREAS, Floridians must be allowed to earn a living and support their families without unreasonable government intrusion, and
WHEREAS, the Governor's responsible reopening strategy allowed businesses to continue to safely operate, bolstering consumer confidence, while also enforcing reasonable restrictions, and
WHEREAS, the Legislature recognizes that certain businesses, entities, and institutions operating within the state are essential to the state's continuing success and well-being, and
WHEREAS, the Legislature recognizes that many businesses, entities, and institutions accept significant risk in order to provide their services to the public, and
WHEREAS, the Legislature further recognizes that the threat of frivolous and potentially limitless civil liability, especially in the wake of a pandemic, causes businesses, entities, and institutions to react in a manner detrimental to the state's economy and residents, and
WHEREAS, the Legislature recognizes that practical, bright-line guidance protecting prudent businesses, entities, and
institutions significantly alleviates such liability concerns, while also continuing to provide for the public health, and

WHEREAS, the Legislature finds that the unprecedented and rare nature of the COVID-19 pandemic, together with the indefinite legal environment that has followed, requires the Legislature to act swiftly and decisively, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 768.38, Florida Statutes, is created to read:

768.38 Liability protections for COVID-19-related claims.—
(1) The Legislature finds that the COVID-19 outbreak in the state threatens the continued viability of certain business entities, educational institutions, governmental entities, and religious institutions that contribute to the overall well-being of the state. The threat of unknown and potentially unbounded liability to such businesses, entities, and institutions, in the wake of a pandemic that has already left many of these businesses, entities, and institutions vulnerable, has created an overpowering public necessity to provide an immediate and remedial legislative solution. Therefore, the Legislature intends for certain business entities, educational institutions, governmental entities, and religious institutions to enjoy heightened legal protections against liability as a result of
The COVID-19 pandemic. The Legislature also finds that there are no alternative means to meet this public necessity, especially in light of the sudden, unprecedented nature of the COVID-19 pandemic. The Legislature finds the public interest as a whole is best served by providing relief to these businesses, entities, and institutions so that they may remain viable and continue to contribute to the state.

(2) As used in this section, the term:

(a) "Business entity" has the same meaning as provided in s. 606.03. The term also includes a charitable organization as defined in s. 496.404 and a corporation not for profit as defined in s. 617.01401.

(b) "COVID-19-related claim" means a civil liability claim against a person, including a natural person, a business entity, an educational institution, a governmental entity, or a religious institution, which arises from or is related to COVID-19, otherwise known as the novel coronavirus. The term includes any such claim for damages, injury, or death. Any such claim, no matter how denominated, is a COVID-19-related claim for purposes of this section. The term does not include a claim against a healthcare provider, regardless of whether the healthcare provider meets one or more of the definitions in this subsection.

(c) "Educational institution" means a school, including a preschool, elementary school, middle school, junior high school,
secondary school, career center, or postsecondary school, whether public or nonpublic.

(d) "Governmental entity" means the state or any political subdivision thereof, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies that are subject to chapter 286.

(e) "Healthcare provider" means:

1. A provider as defined in s. 408.803.

2. A clinical laboratory providing services in the state or services to health care providers in the state, if the clinical laboratory is certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder.

3. A federally qualified health center as defined in 42 U.S.C. s. 1396d(l)(2)(B), as that definition exists on the effective date of this act.

4. Any site providing health care services which was established for the purpose of responding to the COVID-19 pandemic pursuant to any federal or state order, declaration, or waiver.

5. A health care practitioner as defined in s. 456.001.

6. A health care professional licensed under part IV of chapter 468.
7. A home health aide as defined in s. 400.462(15).

(f) "Religious institution" has the same meaning as provided in s. 496.404.

(3) In a civil action based on a COVID-19-related claim:

(a) The complaint must be pled with particularity.

(b) At the same time the complaint is filed, the plaintiff must submit an affidavit signed by a physician actively licensed in the state which attests to the physician's belief, within a reasonable degree of medical certainty, that the plaintiff's COVID-19-related damages, injury, or death occurred as a result of the defendant's acts or omissions.

(c) The court must determine, as a matter of law, whether:

1. The plaintiff complied with paragraphs (a) and (b). If the plaintiff did not comply with paragraphs (a) and (b), the court must dismiss the action without prejudice.

2. The defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time the cause of action accrued.

   a. During this stage of the proceeding, admissible evidence is limited to evidence tending to demonstrate whether the defendant made such a good faith effort.

   b. If the court determines that the defendant made such a good faith effort, the defendant is immune from civil liability.

   c. If the court determines that the defendant did not make
such a good faith effort, the plaintiff may proceed with the action. However, absent at least gross negligence proven by clear and convincing evidence, the defendant is not liable for any act or omission relating to a COVID-19-related claim.

(d) The burden of proof is upon the plaintiff to demonstrate that the defendant did not make a good faith effort under subparagraph (c)2.

(4) A civil action for a COVID-19-related claim must be commenced within 1 year after the cause of action accrues. However, a plaintiff whose cause of action for a COVID-19-related claim accrued before the effective date of this act must commence such action within 1 year of the effective date of this act.

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

Section 3. This act shall take effect upon becoming a law and shall apply retroactively. However, the provisions of this act shall not apply in a civil action against a particularly named defendant which is commenced before the effective date of this act.