

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>      </u>	

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Burton offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:  
6 Section 1. Section 768.381, Florida Statutes, is created  
7 to read:

8 768.381 Liability protections for COVID-19-related claims  
9 against certain health care providers.-

10 (1) The Legislature finds that the COVID-19 outbreak in  
11 this state threatens the continued viability of certain health  
12 care institutions and other entities that contribute to the  
13 overall well-being of the state. The threat of unknown and  
14 potentially unbounded liability to such institutions and  
15 entities, in the wake of a pandemic that has already left many  
16 of these institutions vulnerable, has created an overpowering

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17 public necessity to provide an immediate and remedial  
18 legislative solution. Therefore, the Legislature intends for  
19 these institutions and entities to enjoy heightened legal  
20 protections against liability as a result of the COVID-19  
21 pandemic. The Legislature also finds that there are no  
22 alternative means to meet this public necessity, especially in  
23 light of the sudden, unprecedented nature of the COVID-19  
24 pandemic. The Legislature finds the public interest as a whole  
25 is best served by providing relief to these institutions and  
26 entities so that they may remain viable and continue to  
27 contribute to this state.

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

29 (a) "COVID-19" means the novel coronavirus. The term  
30 includes the disease caused by the novel coronavirus identified  
31 as SARS-CoV-2 or any variants and mutations of that coronavirus.

32 (b) "COVID-19-related medical claim" means a civil  
33 liability claim brought against a health care provider which is  
34 based on a breach of the applicable standard of care or duty of  
35 care owed to a patient or a resident related to:

36 1. Diagnosis or treatment of, or failure to diagnose or  
37 treat, a person for COVID-19;

38 2. Provision of a novel or experimental COVID-19 treatment;

39 3. Transmission of COVID-19;

40 4. Delay or cancellation of a surgery or a delay or  
41 cancellation of a medical procedure, a test, or an appointment

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42 based on a health care provider's interpretation or application  
43 of government-issued health standards or guidance specifically  
44 relating to the COVID-19 emergency; or

45 5. An act or omission with respect to an emergency medical  
46 condition as defined in s. 395.002, which act or omission was  
47 the result of a lack of resources directly caused by the COVID-  
48 19 pandemic.

49 (c) "COVID-19-related negligence claim" means a civil  
50 liability claim brought against a health care provider which is  
51 based on a defendant's breach of the applicable duty of care  
52 which caused a person who is not a patient or a resident to  
53 contract COVID-19.

54 (d) "Health care provider" means:

55 1. A provider as defined in s. 408.803.

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

61 3. A federally qualified health center as defined in 42  
62 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the  
63 effective date of this act.

64 4. Any site providing health care services which was  
65 established for the purpose of responding to the COVID-19

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66 pandemic pursuant to any federal or state order, declaration, or  
67 waiver.

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

69 6. A health care professional certified under part IV of  
70 chapter 468.

71 7. A home health aide as defined in s. 400.462(15).

72 8. A provider licensed under chapter 394 or chapter 397  
73 and its clinical and nonclinical staff providing inpatient or  
74 outpatient services.

75 9. A continuing care facility licensed under chapter 651.

76 10. A pharmacy permitted under chapter 465.

77 (e) "Resident" means a person residing in and receiving  
78 care from a nursing facility licensed under chapter 400 or an  
79 assisted living facility licensed under chapter 429.

80 (3) COVID-19-RELATED MEDICAL CLAIMS. The provisions of  
81 this subsection apply to a COVID-19-related medical claim.

82 (a) The complaint must be pled with particularity by  
83 alleging facts in sufficient detail to support each element of  
84 the claim.

85 (b) If the complaint is not pled with particularity, the  
86 court must dismiss the action.

87 (c) A plaintiff must prove by the greater weight of the  
88 evidence that the health care provider was grossly negligent or  
89 engaged in intentional misconduct.

90 (d) The affirmative defenses that apply to a COVID-19-

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91 related claim against a health care provider include, in  
92 addition to any other affirmative defenses recognized by law,  
93 the health care provider's:

94 1. Substantial compliance with government-issued health  
95 standards specifically relating to COVID-19 or other relevant  
96 standards, including standards relating to the preservation or  
97 prioritization of supplies, materials, or equipment;

98 2. Substantial compliance with government-issued health  
99 standards specific to infectious diseases in the absence of  
100 standards specifically applicable to COVID-19;

101 3. Substantial compliance with government-issued health  
102 standards relating to COVID-19 or other relevant standards was  
103 not possible due to the widespread shortages of necessary  
104 supplies, materials, equipment, or personnel;

105 4. Substantial compliance with any applicable government-  
106 issued health standards relating to COVID-19 or other relevant  
107 standards if the applicable standards were in conflict; or

108 5. Substantial compliance with government-issued health  
109 standards relating to COVID-19 or other relevant standards was  
110 not possible because there was insufficient time to implement  
111 the standards.

112 (4) COVID-19-RELATED NEGLIGENCE CLAIMS. The provisions of  
113 this subsection apply to a COVID-19-related negligence claim.

114 (a) The complaint must be pled with particularity.

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

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

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

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

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

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

135 c. If the court determines that the defendant did not make  
136 such a good faith effort, the plaintiff may proceed with the  
137 action. However, absent at least gross negligence proven by  
138 clear and convincing evidence, the defendant is not liable for

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139 any act or omission relating to a COVID-19-related negligence  
140 claim.

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

144 (5) A plaintiff must commence a civil action for a COVID-  
145 19-related medical claim or a COVID-19-related negligence claim  
146 within 1 year after the cause of action accrued or within 1 year  
147 after the effective date of this act if the cause of action  
148 accrued before the effective date of this act.

149 (6) (a) This section does not create a new cause of action  
150 but instead applies in addition to any other applicable  
151 provisions of law, including, but not limited to, chapters 400,  
152 429, 766, and 768. This section controls over any conflicting  
153 provision of law, but only to the extent of the conflict.

154 (b) This section does not apply to claims governed by  
155 chapter 440.

156 (7) The provisions of this act apply retroactively but do  
157 not apply in a civil action against a particularly named  
158 defendant that is commenced before the effective date of this  
159 act. This act is repealed 1 year and 1 day after the date this  
160 act becomes a law, unless reenacted by the Legislature.

161 Section 2. If any provision of this act or its application  
162 to any person or circumstance is held invalid, the invalidity  
163 does not affect other provisions or applications of the act

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164 which can be given effect without the invalid provision or  
165 application, and to this end the provisions of this act are  
166 severable.

167 Section 3. This act shall take effect upon becoming a law.

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170 **T I T L E A M E N D M E N T**

171 Remove everything before the enacting clause and insert:  
172 An act relating to civil liability for COVID-19-related claims  
173 against certain health care providers; creating s. 768.381,  
174 F.S.; providing legislative findings and intent; defining terms;  
175 providing requirements for a civil action based on a COVID-19-  
176 related medical claim; providing requirements for a civil action  
177 based on a COVID-19-related negligence claim; specifying the  
178 timeframe within which civil action may be commenced; providing  
179 retroactive application; providing for applicability; providing  
180 an exception of the application of this act to certain civil  
181 actions; providing severability; providing an effective date.