

1 A bill to be entitled
 2 An act relating to civil liability for COVID-19-
 3 related claims against certain health care providers;
 4 creating s. 768.381, F.S.; providing legislative
 5 findings and intent; defining terms; providing
 6 requirements for a civil action based on a COVID-19-
 7 related medical claim; providing requirements for a
 8 civil action based on a COVID-19-related negligence
 9 claim; specifying the timeframe within which civil
 10 action may be commenced; providing retroactive
 11 application; providing an exception of the application
 12 of this act to certain civil actions; providing
 13 severability; providing an effective date.

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

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 17 Section 1. Section 768.381, Florida Statutes, is created
 18 to read:

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

21 (1) The Legislature finds that the COVID-19 outbreak
 22 threatens the continued viability of certain health care
 23 institutions and other entities that serve the overall well-
 24 being of the state. The threat of unknown and potentially
 25 unbounded liability to such institutions and entities, in the

26 wake of a pandemic that has already left many of these
27 institutions vulnerable, has created an overpowering public
28 necessity to provide an immediate and remedial legislative
29 solution. Therefore, the Legislature intends for these
30 institutions and entities to enjoy heightened protections
31 against certain types of civil liability as a result of the
32 COVID-19 pandemic. The Legislature also finds that there are no
33 alternative means to meet this public necessity, especially in
34 light of the sudden, unprecedented nature of the COVID-19
35 pandemic. The Legislature finds that the public interest as a
36 whole is best served by providing relief to these institutions
37 and entities so that they may remain viable and continue to
38 serve the state.

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

40 (a) "COVID-19" means the novel coronavirus.

41 (b) "COVID-19-related medical claim" means a tort claim
42 arising under chapter 400, chapter 429, or chapter 766, which is
43 based on a defendant's breach of the applicable standard of care
44 or duty of care and that:

45 1. Caused a person to contract COVID-19;

46 2. Arose from the defendant's delay or omission in
47 performing a surgical procedure, which delay or omission was
48 directly caused by the COVID-19 pandemic;

49 3. Arose from the defendant's act or omission with respect
50 to an emergency medical condition as defined in s. 395.002, and

51 which act or omission was the result of a lack of resources
52 directly caused by the COVID-19 pandemic;

53 4. Arose from the defendant's provision of a novel or
54 experimental COVID-19 treatment to a patient diagnosed with
55 COVID-19; or

56 5. Arose from the defendant's provision of treatment to a
57 patient diagnosed with COVID-19 whose injuries were directly
58 related to an exacerbation of the patient's preexisting
59 conditions by COVID-19.

60 (c) "COVID-19-related negligence claim" means a tort claim
61 brought against a health care provider not arising under chapter
62 400, chapter 429, or chapter 766, which is based on a
63 defendant's breach of the applicable duty of care and that
64 caused a person to contract COVID-19.

65 (d) "Health care provider" means:

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

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

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

75 4. Any site providing health care services which was

76 established for the purpose of responding to the COVID-19
 77 pandemic pursuant to any federal or state order, declaration, or
 78 waiver.

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

80 6. A health care professional certified under part IV of
 81 chapter 468.

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

83 8. A provider licensed under chapter 394 or chapter 397
 84 and its clinical and nonclinical staff providing inpatient or
 85 outpatient services.

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

87 10. A pharmacy permitted under chapter 465.

88 (3) With respect to a COVID-19-related medical claim:

89 (a) It is an affirmative defense that the defendant
 90 complied with government-issued health standards or guidance in
 91 effect at the time the cause of action accrued.

92 (b) The fact finder must consider all relevant surrounding
 93 circumstances, including any relevant effects of the COVID-19
 94 pandemic, in determining the appropriate standard of care.

95 (c) A defendant is not liable for any act or omission
 96 unless such act or omission constitutes gross negligence as
 97 defined in s. 768.72(2)(b), recklessness, or intentional
 98 misconduct as defined in s. 768.72(2)(a).

99 (4) With respect to a COVID-19-related negligence claim:

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

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

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

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

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

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

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

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

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

129 (e) The fact finder must consider all relevant surrounding
130 circumstances, including any relevant effects of the COVID-19
131 pandemic, in determining the appropriate standard of care.

132 (5) A plaintiff must commence a civil action for a COVID-
133 19-related medical claim or a COVID-19-related negligence claim
134 within 1 year after the cause of action accrued or within 1 year
135 after the effective date of this act if the cause of action
136 accrued before the effective date of this act.

137 (6) The provisions of this act apply retroactively but do
138 not apply in a civil action against a particularly named
139 defendant that is commenced before the effective date of this
140 act. This act is repealed 1 year and 1 day after the date this
141 act becomes a law, unless reenacted by the Legislature.

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

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