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

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

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

768.381 Liability protections for COVID-19-related claims
against certain health care providers.—
(1) The Legislature finds that the COVID-19 outbreak
threatens the continued viability of certain health care
institutions and other entities that serve the overall well-
being of the state. The threat of unknown and potentially
unbounded liability to such institutions and entities, in the
wake of a pandemic that has already left many of these
institutions vulnerable, has created an overpowering public
necessity to provide an immediate and remedial legislative
solution. Therefore, the Legislature intends for these
institutions and entities to enjoy heightened protections
against certain types of civil 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 that the public interest as a
whole is best served by providing relief to these institutions
and entities so that they may remain viable and continue to
serve the state.

(2) As used in this section, the term:
(a) "COVID-19" means the novel coronavirus.
(b) "COVID-19-related medical claim" means a tort claim
arising under chapter 400, chapter 429, or chapter 766, which is
based on a defendant's breach of the applicable standard of care
or duty of care and that:
1. Caused a person to contract COVID-19;
2. Arose from the defendant's delay or omission in
performing a surgical procedure, which delay or omission was
directly caused by the COVID-19 pandemic;
3. Arose from the defendant's act or omission with respect
to an emergency medical condition as defined in s. 395.002, and
which act or omission was the result of a lack of resources
directly caused by the COVID-19 pandemic;

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

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

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

(d) "Health care 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(1)(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 certified under part IV of chapter 468.

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

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


10. A pharmacy permitted under chapter 465.

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

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

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

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

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

(a) The complaint must be pled with particularity.
(b) At the same time that 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 any authoritative or controlling government-issued health standards or guidance in effect 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 negligence claim.
(d) The plaintiff has the burden of proof to demonstrate that the defendant did not make a good faith effort under subparagraph (c)2.

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

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

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

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.