

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. The term
41 includes the disease caused by the novel coronavirus identified
42 as SARS-CoV-2 or any variants and mutations of that coronavirus.

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

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

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

51 3. Arose from the defendant's act or omission with respect
52 to an emergency medical condition as defined in s. 395.002, and
53 which act or omission was the result of a lack of resources
54 directly caused by the COVID-19 pandemic;

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

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

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

67 (d) "Health care provider" means:

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

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

74 3. A federally qualified health center as defined in 42
75 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the

76 effective date of this act.

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

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

82 6. A health care professional certified under part IV of
83 chapter 468.

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

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

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

89 10. A pharmacy permitted under chapter 465.

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

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

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

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

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

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

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

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

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

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

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

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

123 c. If the court determines that the defendant did not make
124 such a good faith effort, the plaintiff may proceed with the
125 action. However, absent at least gross negligence proven by

126 clear and convincing evidence, the defendant is not liable for
127 any act or omission relating to a COVID-19-related negligence
128 claim.

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

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

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

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

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

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