

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 a civil
 10 action may be commenced; providing retroactive
 11 application; providing for applicability; providing an
 12 exception of the application of this act to certain
 13 civil actions; providing for future repeal unless
 14 reenacted; providing severability; providing an
 15 effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:
 18

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

21 768.381 Liability protections for COVID-19-related claims
 22 against certain health care providers.—

23 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
 24 that the COVID-19 outbreak in this state threatens the continued
 25 viability of certain health care institutions and other entities

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

41 | (2) DEFINITIONS.—As used in this section, the term:

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

45 | (b) "COVID-19-related medical claim" means a civil
46 | liability claim brought against a health care provider which is
47 | based on a breach of the applicable standard of care or duty of
48 | care owed to a patient or a resident related to:

49 | 1. Diagnosis or treatment of, or failure to diagnose or
50 | treat, a person for COVID-19;

- 51 2. Provision of a novel or experimental COVID-19
 52 treatment;
- 53 3. Transmission of COVID-19;
- 54 4. Delay or cancellation of a surgery or a delay or
 55 cancellation of a medical procedure, a test, or an appointment
 56 based on a health care provider's interpretation or application
 57 of government-issued health standards or guidance specifically
 58 relating to the COVID-19 emergency; or
- 59 5. An act or omission with respect to an emergency medical
 60 condition as defined in s. 395.002, which act or omission was
 61 the result of a lack of resources directly caused by the COVID-
 62 19 pandemic.
- 63 (c) "COVID-19-related negligence claim" means a civil
 64 liability claim brought against a health care provider which is
 65 based on a defendant's breach of the applicable duty of care
 66 which caused a person who is not a patient or a resident to
 67 contract COVID-19.
- 68 (d) "Health care provider" means:
- 69 1. A provider as defined in s. 408.803.
- 70 2. A clinical laboratory providing services in the state
 71 or services to health care providers in the state, if the
 72 clinical laboratory is certified by the Centers for Medicare and
 73 Medicaid Services under the federal Clinical Laboratory
 74 Improvement Amendments and the federal rules adopted thereunder.
- 75 3. A federally qualified health center as defined in 42

76 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the
77 effective date of this act.

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

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

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

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

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

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

90 10. A pharmacy permitted under chapter 465.

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

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

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

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

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

104 (d) The affirmative defenses that apply to a COVID-19-
105 related claim against a health care provider include, in
106 addition to any other affirmative defenses recognized by law,
107 the health care provider's:

108 1. Substantial compliance with government-issued health
109 standards specifically relating to COVID-19 or other relevant
110 standards, including standards relating to the preservation or
111 prioritization of supplies, materials, or equipment;

112 2. Substantial compliance with government-issued health
113 standards specific to infectious diseases in the absence of
114 standards specifically applicable to COVID-19;

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

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

122 5. Substantial compliance with government-issued health
123 standards relating to COVID-19 or other relevant standards was
124 not possible because there was insufficient time to implement
125 the standards.

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

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

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

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

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

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

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

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

149 c. If the court determines that the defendant did not make
150 such a good faith effort, the plaintiff may proceed with the

151 action. However, absent at least gross negligence proven by
152 clear and convincing evidence, the defendant is not liable for
153 any act or omission relating to a COVID-19-related negligence
154 claim.

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

158 (5) COMMENCEMENT OF ACTION.—A plaintiff must commence a
159 civil action for a COVID-19-related medical claim or a COVID-19-
160 related negligence claim within 1 year after the cause of action
161 accrued or within 1 year after the effective date of this act if
162 the cause of action accrued before the effective date of this
163 act.

164 (6) INTERACTION WITH OTHER LAWS.—

165 (a) This section does not create a new cause of action but
166 instead applies in addition to any other applicable provisions
167 of law, including, but not limited to, chapters 400, 429, 766,
168 and 768. This section controls over any conflicting provision of
169 law, but only to the extent of the conflict.

170 (b) This section does not apply to claims governed by
171 chapter 440.

172 (7) APPLICABILITY AND REPEAL.—The provisions of this act
173 apply retroactively but do not apply in a civil action against a
174 particularly named defendant that is commenced before the
175 effective date of this act. This act is repealed 1 year and 1

176 | day after the date this act becomes a law unless reenacted by
177 | the Legislature.

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

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