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 a civil action may be commenced; providing retroactive application; providing for applicability; providing an exception of the application of this act to certain civil actions; providing for future repeal unless reenacted; 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) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that the COVID-19 outbreak in this state threatens the continued viability of certain health care institutions and other entities
that contribute to 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 legal protections against 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 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 contribute to this state.

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

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

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

1. Diagnosis or treatment of, or failure to diagnose or treat, a person for COVID-19;
2. Provision of a novel or experimental COVID-19 treatment;
3. Transmission of COVID-19;
4. Delay or cancellation of a surgery or a delay or cancellation of a medical procedure, a test, or an appointment based on a health care provider's interpretation or application of government-issued health standards or guidance specifically relating to the COVID-19 emergency; or
5. An act or omission with respect to an emergency medical condition as defined in s. 395.002, which act or omission was the result of a lack of resources directly caused by the COVID-19 pandemic.

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

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

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

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

(b) If the complaint is not pled with particularity, the court must dismiss the action.
(c) A plaintiff must prove by the greater weight of the evidence that the health care provider was grossly negligent or engaged in intentional misconduct.

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

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

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

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

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

5. Substantial compliance with government-issued health standards relating to COVID-19 or other relevant standards was not possible because there was insufficient time to implement the standards.
COVID-19-RELATED NEGLIGENCE CLAIMS.—The provisions of this subsection apply 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 COVID-19-related damages, injury, or death alleged in the complaint 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.

(5) COMMENCEMENT OF ACTION.—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) INTERACTION WITH OTHER LAWS.—

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

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

(7) APPLICABILITY AND REPEAL.—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.