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1                   A bill to be entitled  
2           An act relating to civil liability for damages  
3           relating to COVID-19; creating s. 768.38, F.S.;  
4           providing legislative findings and intent; defining  
5           terms; specifying requirements for civil actions based  
6           on COVID-19-related claims; requiring the court to  
7           make certain determinations in such actions; providing  
8           that plaintiffs have the burden of proof in such  
9           actions; requiring plaintiffs to commence COVID-19-  
10          related claims within specified timeframes; creating  
11          s. 768.381, F.S.; defining terms; providing  
12          preliminary procedures for civil actions based on  
13          COVID-19-related claims; providing the standard of  
14          proof required at trial for such claims; providing  
15          affirmative defenses; requiring COVID-19-related  
16          claims to commence within specified timeframes;  
17          providing applicability; providing construction;  
18          providing severability; providing applicability and  
19          for retroactive application; providing an effective  
20          date.

21  
22          WHEREAS, an outbreak of the disease known as COVID-19,  
23          which is caused by a novel coronavirus that was not previously  
24          found in humans, occurred in Hubei province, China, in late  
25          2019, and has currently been detected in more than 89 countries,  
26          including the United States, and

27          WHEREAS, COVID-19 is a severe respiratory disease that can  
28          result in illness or death and is caused by the person-to-person  
29          spread of the novel coronavirus, and

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30 WHEREAS, COVID-19, as a viral agent capable of causing  
31 extensive loss of life or serious disability, is deadly, and

32 WHEREAS, the transmission of COVID-19 is a threat to human  
33 health in this state, and

34 WHEREAS, the Secretary of the United States Department of  
35 Health and Human Services declared on January 31, 2020, that a  
36 public health emergency exists in the United States due to  
37 confirmed cases of COVID-19 in this country, and

38 WHEREAS, on March 1, 2020, the State of Florida Department  
39 of Health, in coordination with Governor Ron DeSantis, first  
40 declared a public health emergency based on the spread of COVID-  
41 19, and

42 WHEREAS, throughout the declared state of emergency, the  
43 Governor's executive orders included industry-specific  
44 restrictions to prevent the spread of COVID-19 based on the best  
45 information available at the time, allowing and encouraging  
46 certain businesses to continue to safely operate, and

47 WHEREAS, a strong and vibrant economy is essential to  
48 ensure that Floridians may continue in their meaningful work and  
49 ultimately return to the quality of life they enjoyed before the  
50 COVID-19 outbreak, and

51 WHEREAS, Floridians must be allowed to earn a living and  
52 support their families without unreasonable government  
53 intrusion, and

54 WHEREAS, the United States Centers for Disease Control and  
55 Prevention has issued health guidance to all state and local  
56 governments and all citizens, and

57 WHEREAS, in March 2020, the Centers for Medicare and  
58 Medicaid Services recommended the deferral of nonessential

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59 surgeries and other procedures, and

60 WHEREAS, the guidance from the Centers for Medicare and  
61 Medicaid Services to defer medical procedures was based in part  
62 on its recognition that the conservation of critical health care  
63 resources is essential, and

64 WHEREAS, on March 20, 2020, the Governor issued Executive  
65 Order 20-72, which prohibited health care providers "from  
66 providing any medically unnecessary, non-urgent or non-emergency  
67 procedure or surgery which, if delayed, does not place a  
68 patient's immediate health, safety, or well-being at risk, or  
69 will, if delayed, not contribute to the worsening of a serious  
70 or life-threatening medical condition," and

71 WHEREAS, on April 29, 2020, the Governor issued Executive  
72 Order 20-112, which allowed health care providers to perform  
73 procedures prohibited by the earlier order if the health care  
74 provider had adequate supplies of personal protective equipment  
75 and satisfied other conditions, and

76 WHEREAS, medical experts have been racing to develop  
77 vaccines and to learn how COVID-19 is transmitted and how best  
78 to treat those infected with the disease, and

79 WHEREAS, the Federal Government, along with state and local  
80 governments, has sought to slow the spread of COVID-19 through  
81 travel bans and restrictions, quarantines, lockdowns, social  
82 distancing, and the closure of businesses or limitations on  
83 business activities, including limitations on the provision of  
84 medical services, and

85 WHEREAS, health care providers, including hospitals,  
86 doctors, nurses, and other health care facilities and workers,  
87 have struggled to acquire personal protective equipment and

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88 other supplies to protect against the risk of COVID-19  
89 transmission and medications used in the treatment of the  
90 disease, and

91 WHEREAS, the circumstances of the COVID-19 pandemic have  
92 made it difficult or impossible for health care providers to  
93 maintain ideal levels of staffing, and

94 WHEREAS, health care providers are essential to the  
95 residents of this state's survival of the pandemic, and health  
96 care providers have continued to treat patients despite the  
97 potential, and still not fully known, risks of exposure to  
98 COVID-19, and

99 WHEREAS, while many actions may seem reasonable during the  
100 pandemic, some may attempt to construe these actions differently  
101 in hindsight when calm is restored, and

102 WHEREAS, as the pandemic continues and recovery begins,  
103 health care providers must be able to remain focused on serving  
104 the health care needs of their respective communities and not on  
105 the potential for unfounded lawsuits, and

106 WHEREAS, the Legislature finds that it is an overpowering  
107 public necessity to enact legislation that will deter unfounded  
108 lawsuits against individuals, businesses, health care providers,  
109 and other entities based on COVID-19-related claims, while  
110 allowing meritorious claims to proceed, and

111 WHEREAS, the Legislature finds that the unprecedented and  
112 rare nature of the COVID-19 pandemic, together with the  
113 indefinite legal environment that has followed, requires the  
114 Legislature to act swiftly and decisively, NOW, THEREFORE,

115  
116 Be It Enacted by the Legislature of the State of Florida:

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117  
118 Section 1. Section 768.38, Florida Statutes, is created to  
119 read:

120 768.38 Liability protections for COVID-19-related claims.-  
121 (1) The Legislature finds that the COVID-19 outbreak in  
122 this state threatens the continued viability of certain business  
123 entities, educational institutions, governmental entities, and  
124 religious institutions that contribute to the overall well-being  
125 of this state. The threat of unknown and potentially unbounded  
126 liability to such businesses, entities, and institutions, in the  
127 wake of a pandemic that has already left many of these  
128 businesses, entities, and institutions vulnerable, has created  
129 an overpowering public necessity to provide an immediate and  
130 remedial legislative solution. Therefore, the Legislature  
131 intends for certain business entities, educational institutions,  
132 governmental entities, and religious institutions to enjoy  
133 heightened legal protections against liability as a result of  
134 the COVID-19 pandemic. The Legislature also finds that there are  
135 no alternative means to meet this public necessity, especially  
136 in light of the sudden, unprecedented nature of the COVID-19  
137 pandemic. The Legislature finds the public interest as a whole  
138 is best served by providing relief to these businesses,  
139 entities, and institutions so that they may remain viable and  
140 continue to contribute to this state.

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

142 (a) "Business entity" has the same meaning as provided in  
143 s. 606.03. The term also includes a charitable organization as  
144 defined in s. 496.404 and a corporation not for profit as  
145 defined in s. 617.01401.

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146 (b) "COVID-19-related claim" means a civil liability claim  
147 against a person, including a natural person, a business entity,  
148 an educational institution, a governmental entity, or a  
149 religious institution, which arises from or is related to COVID-  
150 19, otherwise known as the novel coronavirus. The term includes  
151 any such claim for damages, injury, or death. Any such claim, no  
152 matter how denominated, is a COVID-19-related claim for purposes  
153 of this section. The term includes a claim against a health care  
154 provider only if the claim is excluded from the definition of  
155 COVID-19-related claim under s. 768.381, regardless of whether  
156 the health care provider also meets one or more of the  
157 definitions in this subsection.

158 (c) "Educational institution" means a school, including a  
159 preschool, elementary school, middle school, junior high school,  
160 secondary school, career center, or postsecondary school,  
161 whether public or nonpublic.

162 (d) "Governmental entity" means the state or any political  
163 subdivision thereof, including the executive, legislative, and  
164 judicial branches of government; the independent establishments  
165 of the state, counties, municipalities, districts, authorities,  
166 boards, or commissions; or any agencies that are subject to  
167 chapter 286.

168 (e) "Health care provider" means:

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

170 2. A clinical laboratory providing services in this state  
171 or services to health care providers in this state, if the  
172 clinical laboratory is certified by the Centers for Medicare and  
173 Medicaid Services under the federal Clinical Laboratory  
174 Improvement Amendments and the federal rules adopted thereunder.

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

178 4. Any site providing health care services which was  
179 established for the purpose of responding to the COVID-19  
180 pandemic pursuant to any federal or state order, declaration, or  
181 waiver.

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

183 6. A health care professional licensed under part IV of  
184 chapter 468.

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

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

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

190 10. A pharmacy permitted under chapter 465.

191 (f) "Religious institution" has the same meaning as  
192 provided in s. 496.404.

193 (3) In a civil action based on a COVID-19-related claim:

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

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

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

202 1. The plaintiff complied with paragraphs (a) and (b). If  
203 the plaintiff did not comply with paragraphs (a) and (b), the

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204 court must dismiss the action without prejudice.

205 2. The defendant made a good faith effort to substantially  
206 comply with authoritative or controlling government-issued  
207 health standards or guidance at the time the cause of action  
208 accrued.

209 a. During this stage of the proceeding, admissible evidence  
210 is limited to evidence tending to demonstrate whether the  
211 defendant made such a good faith effort.

212 b. If the court determines that the defendant made such a  
213 good faith effort, the defendant is immune from civil liability.  
214 If more than one source or set of standards or guidance was  
215 authoritative or controlling at the time the cause of action  
216 accrued, the defendant's good faith effort to substantially  
217 comply with any one of those sources or sets of standards or  
218 guidance confers such immunity from civil liability.

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

224 (d) The burden of proof is upon the plaintiff to  
225 demonstrate that the defendant did not make a good faith effort  
226 under subparagraph (c)2.

227 (4) A plaintiff must commence a civil action for a COVID-  
228 19-related claim within 1 year after the cause of action accrues  
229 or within 1 year after the effective date of this act if the  
230 cause of action accrued before the effective date of this act.

231 Section 2. Section 768.381, Florida Statutes, is created to  
232 read:

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233 768.381 COVID-19-related claims against health care  
234 providers.-

235 (1) DEFINITIONS.-As used in this section, the term:

236 (a) "Authoritative guidance" means nonbinding instructions  
237 or recommendations from a federal, state, or local governmental  
238 entity, a clinical professional organization, or another  
239 authoritative source of clinical guidance.

240 (b) "COVID-19" means the novel coronavirus identified as  
241 SARS-CoV-2; any disease caused by SARS-CoV-2, its viral  
242 fragments, or a virus mutating therefrom; and all conditions  
243 associated with the disease which are caused by SARS-CoV-2, its  
244 viral fragments, or a virus mutating therefrom.

245 (c) "COVID-19 emergency" means a public health emergency  
246 relating to COVID-19 which is declared by an emergency  
247 declaration of the Federal Government or an emergency order of  
248 the State Surgeon General or a state of emergency due to COVID-  
249 19 declared by executive order of the Governor.

250 (d) "COVID-19-related claim" means a civil liability claim  
251 against a health care provider which arises from the:

- 252 1. Diagnosis or treatment of, or failure to diagnose or  
253 treat, a person for COVID-19;  
254 2. Provision of a novel or experimental COVID-19 treatment;  
255 3. Transmission of COVID-19;  
256 4. Delay or cancellation of a surgery or a delay or  
257 cancellation of a medical procedure, a test, or an appointment  
258 based on a health care provider's interpretation or application  
259 of government-issued health standards or authoritative guidance  
260 specifically relating to the COVID-19 emergency;  
261 5. An act or omission with respect to an emergency medical

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262 condition as defined in s. 395.002, and which act or omission  
263 was the result of a lack of resources directly caused by the  
264 COVID-19 pandemic; or

265 6. The provision of treatment to a patient diagnosed with  
266 COVID-19 whose injuries were directly related to an exacerbation  
267 of the patient's preexisting conditions by COVID-19.

268  
269 The term does not include a claim alleging that an act or  
270 omission by a health care provider caused a person to contract  
271 COVID-19 or a derivative claim to such claim unless the person  
272 was a resident or patient of the health care provider or a  
273 person seeking care or treatment from the health care provider.

274 (e) "Government-issued health standards" means federal,  
275 state, or local laws, rules, regulations, or orders that  
276 describe the manner in which a health care provider must  
277 operate.

278 (f) "Health care provider" means any of the following:

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

280 2. A clinical laboratory providing services in this state  
281 or services to health care providers in this state, if the  
282 clinical laboratory is certified by the Centers for Medicare and  
283 Medicaid Services under the federal Clinical Laboratory  
284 Improvement Amendments and the federal rules adopted thereunder.

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

288 4. Any site providing health care services which was  
289 established for the purpose of responding to the COVID-19  
290 pandemic pursuant to any federal or state order, declaration, or

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291 waiver.

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

293 6. A health care professional licensed under part IV of  
294 chapter 468.

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

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

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

300 10. A pharmacy permitted under chapter 465.

301 (2) PRELIMINARY PROCEDURES.—

302 (a) In any civil action against a health care provider  
303 based on a COVID-19-related claim, the complaint must be pled  
304 with particularity by alleging facts in sufficient detail to  
305 support each element of the claim. An affidavit of a physician  
306 is not required as part of the pleading.

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

309 (3) STANDARD OF PROOF.—A plaintiff who brings an action for  
310 a COVID-19-related claim against a health care provider must  
311 prove by the greater weight of the evidence that the health care  
312 provider was grossly negligent or engaged in intentional  
313 misconduct.

314 (4) AFFIRMATIVE DEFENSES.—If a health care provider proves  
315 by the greater weight of the evidence the existence of an  
316 affirmative defense that applies to a specific COVID-19-related  
317 claim, the health care provider has no liability for that claim.  
318 The affirmative defenses that may apply to a COVID-19-related  
319 claim against a health care provider include, in addition to any

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320 other affirmative defenses recognized by law, the health care  
321 provider's:

322 (a) Substantial compliance with government-issued health  
323 standards specifically relating to COVID-19 or other relevant  
324 standards, including standards relating to the preservation or  
325 prioritization of supplies, materials, or equipment;

326 (b) Substantial compliance with government-issued health  
327 standards specific to infectious diseases in the absence of  
328 standards specifically applicable to COVID-19;

329 (c) Substantial compliance with government-issued health  
330 standards relating to COVID-19 or other relevant standards was  
331 not possible due to the widespread shortages of necessary  
332 supplies, materials, equipment, or personnel;

333 (d) Substantial compliance with any applicable government-  
334 issued health standards relating to COVID-19 or other relevant  
335 standards if the applicable standards were in conflict; or

336 (e) Substantial compliance with government-issued health  
337 standards relating to COVID-19 or other relevant standards was  
338 not possible because there was insufficient time to implement  
339 the standards.

340 (5) LIMITATIONS PERIOD.—

341 (a) An action for a COVID-19-related claim against a health  
342 care provider which arises out of the transmission, diagnosis,  
343 or treatment of COVID-19 must commence within 1 year after the  
344 later of the date of death due to COVID-19, hospitalization  
345 related to COVID-19, or the first diagnosis of COVID-19 which  
346 forms the basis of the action.

347 (b) An action for a COVID-19-related claim against a health  
348 care provider which does not arise out of the transmission,

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349 diagnosis, or treatment of COVID-19, such as a claim arising out  
350 of a delayed or canceled procedure, must commence within 1 year  
351 after the cause of action accrues.

352 (c) Notwithstanding paragraph (a) or paragraph (b), an  
353 action for a COVID-19-related claim that accrued before the  
354 effective date of this act must commence within 1 year after the  
355 effective date of this act.

356 (6) APPLICATION PERIOD.—This section applies to claims that  
357 have accrued before the effective date of this act and within 1  
358 year after the effective date of this act.

359 (7) INTERACTION WITH OTHER LAWS.—

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

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

367 Section 3. If any provision of this act or its application  
368 to any person or circumstance is held invalid, the invalidity  
369 does not affect other provisions or applications of the act  
370 which can be given effect without the invalid provision or  
371 application, and to this end the provisions of this act are  
372 severable.

373 Section 4. This act applies retroactively and  
374 prospectively. However, this act does not apply in a civil  
375 action against a particular named defendant which is commenced  
376 before the effective date of this act.

377 Section 5. This act shall take effect upon becoming a law.