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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

768.38 Liability protections for COVID-19-related claims.-

(1) The Legislature finds that the COVID-19 outbreak in  
this state threatens the continued viability of certain business  
entities, educational institutions, governmental entities, and  
religious institutions that contribute to the overall well-being



395520

12 of this state. The threat of unknown and potentially unbounded  
13 liability to such businesses, entities, and institutions, in the  
14 wake of a pandemic that has already left many of these  
15 businesses, entities, and institutions vulnerable, has created  
16 an overpowering public necessity to provide an immediate and  
17 remedial legislative solution. Therefore, the Legislature  
18 intends for certain business entities, educational institutions,  
19 governmental entities, and religious institutions to enjoy  
20 heightened legal protections against liability as a result of  
21 the COVID-19 pandemic. The Legislature also finds that there are  
22 no alternative means to meet this public necessity, especially  
23 in light of the sudden, unprecedented nature of the COVID-19  
24 pandemic. The Legislature finds the public interest as a whole  
25 is best served by providing relief to these businesses,  
26 entities, and institutions so that they may remain viable and  
27 continue to contribute to this state.

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

29 (a) "Business entity" has the same meaning as provided in  
30 s. 606.03. The term also includes a charitable organization as  
31 defined in s. 496.404 and a corporation not for profit as  
32 defined in s. 617.01401.

33 (b) "COVID-19-related claim" means a civil liability claim  
34 against a person, including a natural person, a business entity,  
35 an educational institution, a governmental entity, or a  
36 religious institution, which arises from or is related to COVID-  
37 19, otherwise known as the novel coronavirus. The term includes  
38 any such claim for damages, injury, or death. Any such claim, no  
39 matter how denominated, is a COVID-19-related claim for purposes  
40 of this section. The term includes a claim against a health care



41 provider only if the claim is excluded from the definition of  
42 COVID-19-related claim under s. 768.381, regardless of whether  
43 the health care provider also meets one or more of the  
44 definitions in this subsection.

45 (c) "Educational institution" means a school, including a  
46 preschool, elementary school, middle school, junior high school,  
47 secondary school, career center, or postsecondary school,  
48 whether public or nonpublic.

49 (d) "Governmental entity" means the state or any political  
50 subdivision thereof, including the executive, legislative, and  
51 judicial branches of government; the independent establishments  
52 of the state, counties, municipalities, districts, authorities,  
53 boards, or commissions; or any agencies that are subject to  
54 chapter 286.

55 (e) "Health care provider" means:

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

57 2. A clinical laboratory providing services in this state  
58 or services to health care providers in this state, if the  
59 clinical laboratory is certified by the Centers for Medicare and  
60 Medicaid Services under the federal Clinical Laboratory  
61 Improvement Amendments and the federal rules adopted thereunder.

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

65 4. Any site providing health care services which was  
66 established for the purpose of responding to the COVID-19  
67 pandemic pursuant to any federal or state order, declaration, or  
68 waiver.

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



395520

70 6. A health care professional licensed under part IV of  
71 chapter 468.

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

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

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

77 10. A pharmacy permitted under chapter 465.

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

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

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

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

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

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

92 2. The defendant made a good faith effort to substantially  
93 comply with authoritative or controlling government-issued  
94 health standards or guidance at the time the cause of action  
95 accrued.

96 a. During this stage of the proceeding, admissible evidence  
97 is limited to evidence tending to demonstrate whether the  
98 defendant made such a good faith effort.



395520

99           b. If the court determines that the defendant made such a  
100 good faith effort, the defendant is immune from civil liability.  
101 If more than one source or set of standards or guidance was  
102 authoritative or controlling at the time the cause of action  
103 accrued, the defendant's good faith effort to substantially  
104 comply with any one of those sources or sets of standards or  
105 guidance confers such immunity from civil liability.

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

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

114           (4) A plaintiff must commence a civil action for a COVID-  
115 19-related claim within 1 year after the cause of action accrues  
116 or within 1 year after the effective date of this act if the  
117 cause of action accrued before the effective date of this act.

118           Section 2. Section 768.381, Florida Statutes, is created to  
119 read:

120           768.381 COVID-19-related claims against health care  
121 providers.-

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

123           (a) "Authoritative guidance" means nonbinding instructions  
124 or recommendations from a federal, state, or local governmental  
125 entity, a clinical professional organization, or another  
126 authoritative source of clinical guidance.

127           (b) "COVID-19" means the novel coronavirus identified as



395520

128 SARS-CoV-2; any disease caused by SARS-CoV-2, its viral  
129 fragments, or a virus mutating therefrom; and all conditions  
130 associated with the disease which are caused by SARS-CoV-2, its  
131 viral fragments, or a virus mutating therefrom.

132 (c) "COVID-19 emergency" means a public health emergency  
133 relating to COVID-19 which is declared by an emergency  
134 declaration of the Federal Government or an emergency order of  
135 the State Surgeon General or a state of emergency due to COVID-  
136 19 declared by executive order of the Governor.

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

139 1. Diagnosis or treatment of, or failure to diagnose or  
140 treat, a person for COVID-19;

141 2. Provision of a novel or experimental COVID-19 treatment;

142 3. Transmission of COVID-19;

143 4. Delay or cancellation of a surgery or a delay or  
144 cancellation of a medical procedure, a test, or an appointment  
145 based on a health care provider's interpretation or application  
146 of government-issued health standards or authoritative guidance  
147 specifically relating to the COVID-19 emergency;

148 5. An act or omission with respect to an emergency medical  
149 condition as defined in s. 395.002, and which act or omission  
150 was the result of a lack of resources directly caused by the  
151 COVID-19 pandemic; or

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

155  
156 The term does not include a claim alleging that an act or



157 omission by a health care provider caused a person to contract  
158 COVID-19 or a derivative claim to such claim unless the person  
159 was a resident or patient of the health care provider or a  
160 person seeking care or treatment from the health care provider.

161 (e) "Government-issued health standards" means federal,  
162 state, or local laws, rules, regulations, or orders that  
163 describe the manner in which a health care provider must  
164 operate.

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

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

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

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

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

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

180 6. A health care professional licensed under part IV of  
181 chapter 468.

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

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



395520

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

187 10. A pharmacy permitted under chapter 465.

188 (2) PRELIMINARY PROCEDURES.—

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

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

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

201 (4) AFFIRMATIVE DEFENSES.—If a health care provider proves  
202 by the greater weight of the evidence the existence of an  
203 affirmative defense that applies to a specific COVID-19-related  
204 claim, the health care provider has no liability for that claim.  
205 The affirmative defenses that may apply to a COVID-19-related  
206 claim against a health care provider include, in addition to any  
207 other affirmative defenses recognized by law, the health care  
208 provider's:

209 (a) Substantial compliance with government-issued health  
210 standards specifically relating to COVID-19 or other relevant  
211 standards, including standards relating to the preservation or  
212 prioritization of supplies, materials, or equipment;

213 (b) Substantial reliance upon government-issued health  
214 standards specific to infectious diseases in the absence of





395520

215 standards specifically applicable to COVID-19;

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

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

223 (e) Substantial compliance with government-issued health  
224 standards relating to COVID-19 or other relevant standards was  
225 not possible because there was insufficient time to implement  
226 the standards.

227 (5) LIMITATIONS PERIOD.—

228 (a) An action for a COVID-19-related claim against a health  
229 care provider which arises out of the transmission, diagnosis,  
230 or treatment of COVID-19 must commence within 1 year after the  
231 later of the date of death due to COVID-19, hospitalization  
232 related to COVID-19, or the first diagnosis of COVID-19 which  
233 forms the basis of the action.

234 (b) An action for a COVID-19-related claim against a health  
235 care provider which does not arise out of the transmission,  
236 diagnosis, or treatment of COVID-19, such as a claim arising out  
237 of a delayed or canceled procedure, must commence within 1 year  
238 after the cause of action accrues.

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

243 (6) INTERACTION WITH OTHER LAWS.—



395520

244 (a) This section is in addition to other provisions of law,  
245 including, but not limited to, chapters 400, 429, 766, and 768,  
246 and supersedes any conflicting provision of law but only to the  
247 extent of the conflict.

248 (b) This section provides the exclusive cause of action for  
249 a COVID-19-related claim against a health care provider.

250 (c) This section does not apply to claims governed by  
251 chapter 440.

252 Section 3. If any provision of this act or its application  
253 to any person or circumstance is held invalid, the invalidity  
254 does not affect other provisions or applications of the act  
255 which can be given effect without the invalid provision or  
256 application, and to this end the provisions of this act are  
257 severable.

258 Section 4. This act applies to causes of action that accrue  
259 within 1 year after the effective date of this act and applies  
260 retroactively. However, this act does not apply in a civil  
261 action against a particular named defendant which is commenced  
262 before the effective date of this act.

263 Section 5. This act shall take effect upon becoming a law.  
264

265 ===== T I T L E A M E N D M E N T =====

266 And the title is amended as follows:

267 Delete everything before the enacting clause  
268 and insert:

269 A bill to be entitled  
270 An act relating to civil liability for damages  
271 relating to COVID-19; creating s. 768.38, F.S.;;  
272 providing legislative findings and intent; defining



273 terms; specifying requirements for civil actions based  
274 on COVID-19-related claims; requiring the court to  
275 make certain determinations in such actions; providing  
276 that plaintiffs have the burden of proof in such  
277 actions; requiring plaintiffs to commence COVID-19-  
278 related claims within specified timeframes; creating  
279 s. 768.381, F.S.; defining terms; providing  
280 preliminary procedures for civil actions based on  
281 COVID-19-related claims; providing the standard of  
282 proof required at trial for such claims; providing  
283 affirmative defenses; requiring COVID-19-related  
284 claims to commence within specified timeframes;  
285 providing construction; providing that the act  
286 provides the exclusive cause of action for COVID-19-  
287 related claims against health care providers;  
288 providing applicability; providing severability;  
289 providing applicability and for retroactive  
290 application; providing an effective date.

291  
292 WHEREAS, an outbreak of the disease known as COVID-19,  
293 which is caused by a novel coronavirus that was not previously  
294 found in humans, occurred in Hubei province, China, in late  
295 2019, and has currently been detected in more than 89 countries,  
296 including the United States, and

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

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



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

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

308 WHEREAS, on March 1, 2020, the State of Florida Department  
309 of Health, in coordination with Governor Ron DeSantis, first  
310 declared a public health emergency based on the spread of COVID-  
311 19, and

312 WHEREAS, throughout the declared state of emergency, the  
313 Governor's executive orders included industry-specific  
314 restrictions to prevent the spread of COVID-19 based on the best  
315 information available at the time, allowing and encouraging  
316 certain businesses to continue to safely operate, and

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

321 WHEREAS, Floridians must be allowed to earn a living and  
322 support their families without unreasonable government  
323 intrusion, and

324 WHEREAS, the United States Centers for Disease Control and  
325 Prevention has issued health guidance to all state and local  
326 governments and all citizens, and

327 WHEREAS, in March 2020, the Centers for Medicare and  
328 Medicaid Services recommended the deferral of nonessential  
329 surgeries and other procedures, and

330 WHEREAS, the guidance from the Centers for Medicare and



395520

331 Medicaid Services to defer medical procedures was based in part  
332 on its recognition that the conservation of critical health care  
333 resources is essential, and

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

341 WHEREAS, on April 29, 2020, the Governor issued Executive  
342 Order 20-112, which allowed health care providers to perform  
343 procedures prohibited by the earlier order if the health care  
344 provider had adequate supplies of personal protective equipment  
345 and satisfied other conditions, and

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

349 WHEREAS, the Federal Government, along with state and local  
350 governments, has sought to slow the spread of COVID-19 through  
351 travel bans and restrictions, quarantines, lockdowns, social  
352 distancing, and the closure of businesses or limitations on  
353 business activities, including limitations on the provision of  
354 medical services, and

355 WHEREAS, health care providers, including hospitals,  
356 doctors, nurses, and other health care facilities and workers,  
357 have struggled to acquire personal protective equipment and  
358 other supplies to protect against the risk of COVID-19  
359 transmission and medications used in the treatment of the



395520

360 disease, and

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

364 WHEREAS, health care providers are essential to the  
365 residents of this state's survival of the pandemic, and health  
366 care providers have continued to treat patients despite the  
367 potential, and still not fully known, risks of exposure to  
368 COVID-19, and

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

372 WHEREAS, as the pandemic continues and recovery begins,  
373 health care providers must be able to remain focused on serving  
374 the health care needs of their respective communities and not on  
375 the potential for unfounded lawsuits, and

376 WHEREAS, the Legislature finds that it is an overpowering  
377 public necessity to enact legislation that will deter unfounded  
378 lawsuits against individuals, businesses, health care providers,  
379 and other entities based on COVID-19-related claims, while  
380 allowing meritorious claims to proceed, and

381 WHEREAS, the Legislature finds that the unprecedented and  
382 rare nature of the COVID-19 pandemic, together with the  
383 indefinite legal environment that has followed, requires the  
384 Legislature to act swiftly and decisively, NOW, THEREFORE,