

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; providing requirements for a civil action based  
6           on a COVID-19-related claim; providing that the  
7           plaintiff has the burden of proof in such action;  
8           providing a statute of limitations; providing  
9           severability; providing retroactive applicability;  
10          providing an effective date.

11  
12          WHEREAS, on March 9, 2020, Governor Ron DeSantis issued  
13          Executive Order Number 20-52 declaring a state of emergency for  
14          the State of Florida due to the COVID-19 pandemic, and

15          WHEREAS, in light of the ongoing nature of the COVID-19  
16          pandemic, the Governor has repeatedly extended the state of  
17          emergency, including most recently on December 29, 2020, in  
18          Executive Order Number 20-316, and

19          WHEREAS, the State of Florida continues under a declared  
20          state of emergency, and

21          WHEREAS, throughout the declared state of emergency, the  
22          Governor's executive orders included industry-specific  
23          restrictions to prevent the spread of COVID-19 based on the best  
24          information available at the time, allowing and encouraging  
25          certain businesses to continue to safely operate, and

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

30 WHEREAS, Floridians must be allowed to earn a living and  
31 support their families without unreasonable government  
32 intrusion, and

33 WHEREAS, the Governor's responsible reopening strategy  
34 allowed businesses to continue to safely operate, bolstering  
35 consumer confidence, while also enforcing reasonable  
36 restrictions, and

37 WHEREAS, the Legislature recognizes that certain  
38 businesses, entities, and institutions operating within the  
39 state are essential to the state's continuing success and well-  
40 being, and

41 WHEREAS, the Legislature recognizes that many businesses,  
42 entities, and institutions accept significant risk in order to  
43 provide their services to the public, and

44 WHEREAS, the Legislature further recognizes that the threat  
45 of frivolous and potentially limitless civil liability,  
46 especially in the wake of a pandemic, causes businesses,  
47 entities, and institutions to react in a manner detrimental to  
48 the state's economy and residents, and

49 WHEREAS, the Legislature recognizes that practical, bright-  
50 line guidance protecting prudent businesses, entities, and

HB 7

2021

51 institutions significantly alleviates such liability concerns,  
52 while also continuing to provide for the public health, and

53 WHEREAS, the Legislature finds that the unprecedented and  
54 rare nature of the COVID-19 pandemic, together with the  
55 indefinite legal environment that has followed, requires the  
56 Legislature to act swiftly and decisively, NOW, THEREFORE,

57

58 Be It Enacted by the Legislature of the State of Florida:

59

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

62 768.38 Liability protections for COVID-19-related claims.—

63 (1) The Legislature finds that the COVID-19 outbreak in  
64 the state threatens the continued viability of certain business  
65 entities, educational institutions, governmental entities, and  
66 religious institutions that contribute to the overall well-being  
67 of the state. The threat of unknown and potentially unbounded  
68 liability to such businesses, entities, and institutions, in the  
69 wake of a pandemic that has already left many of these  
70 businesses, entities, and institutions vulnerable, has created  
71 an overpowering public necessity to provide an immediate and  
72 remedial legislative solution. Therefore, the Legislature  
73 intends for certain business entities, educational institutions,  
74 governmental entities, and religious institutions to enjoy  
75 heightened legal protections against liability as a result of

76 | the COVID-19 pandemic. The Legislature also finds that there are  
77 | no alternative means to meet this public necessity, especially  
78 | in light of the sudden, unprecedented nature of the COVID-19  
79 | pandemic. The Legislature finds the public interest as a whole  
80 | is best served by providing relief to these businesses,  
81 | entities, and institutions so that they may remain viable and  
82 | continue to contribute to the state.

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

84 | (a) "Business entity" has the same meaning as provided in  
85 | s. 606.03. The term also includes a charitable organization as  
86 | defined in s. 496.404 and a corporation not for profit as  
87 | defined in s. 617.01401.

88 | (b) "COVID-19-related claim" means a civil liability claim  
89 | against a person, including a natural person, a business entity,  
90 | an educational institution, a governmental entity, or a  
91 | religious institution, which arises from or is related to COVID-  
92 | 19, otherwise known as the novel coronavirus. The term includes  
93 | any such claim for damages, injury, or death. Any such claim, no  
94 | matter how denominated, is a COVID-19-related claim for purposes  
95 | of this section. The term does not include a claim against a  
96 | healthcare provider, regardless of whether the healthcare  
97 | provider meets one or more of the definitions in this  
98 | subsection.

99 | (c) "Educational institution" means a school, including a  
100 | preschool, elementary school, middle school, junior high school,

101 secondary school, career center, or postsecondary school,  
102 whether public or nonpublic.

103 (d) "Governmental entity" means the state or any political  
104 subdivision thereof, including the executive, legislative, and  
105 judicial branches of government; the independent establishments  
106 of the state, counties, municipalities, districts, authorities,  
107 boards, or commissions; or any agencies that are subject to  
108 chapter 286.

109 (e) "Healthcare provider" means:

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

111 2. A clinical laboratory providing services in the state  
112 or services to health care providers in the state, if the  
113 clinical laboratory is certified by the Centers for Medicare and  
114 Medicaid Services under the federal Clinical Laboratory  
115 Improvement Amendments and the federal rules adopted thereunder.

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

119 4. Any site providing health care services which was  
120 established for the purpose of responding to the COVID-19  
121 pandemic pursuant to any federal or state order, declaration, or  
122 waiver.

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

124 6. A health care professional licensed under part IV of  
125 chapter 468.

126        7. A home health aide as defined in s. 400.462(15).  
 127        (f) "Religious institution" has the same meaning as  
 128 provided in s. 496.404.

129        (3) In a civil action based on a COVID-19-related claim:  
 130        (a) The complaint must be pled with particularity.  
 131        (b) At the same time the complaint is filed, the plaintiff  
 132 must submit an affidavit signed by a physician actively licensed  
 133 in the state which attests to the physician's belief, within a  
 134 reasonable degree of medical certainty, that the plaintiff's  
 135 COVID-19-related damages, injury, or death occurred as a result  
 136 of the defendant's acts or omissions.

137        (c) The court must determine, as a matter of law, whether:  
 138        1. The plaintiff complied with paragraphs (a) and (b). If  
 139 the plaintiff did not comply with paragraphs (a) and (b), the  
 140 court must dismiss the action without prejudice.

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

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

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

150        c. If the court determines that the defendant did not make

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

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

158 (4) A civil action for a COVID-19-related claim must be  
159 commenced within 1 year after the cause of action accrues.  
160 However, a plaintiff whose cause of action for a COVID-19-  
161 related claim accrued before the effective date of this act must  
162 commence such action within 1 year of the effective date of this  
163 act.

164 Section 2. If any provision of this act or its application  
165 to any person or circumstance is held invalid, the invalidity  
166 does not affect other provisions or applications of the act  
167 which can be given effect without the invalid provision or  
168 application, and to this end the provisions of this act are  
169 severable.

170 Section 3. This act shall take effect upon becoming a law  
171 and shall apply retroactively. However, the provisions of this  
172 act shall not apply in a civil action against a particularly  
173 named defendant which is commenced before the effective date of  
174 this act.