(133rd General Assembly)
(Amended Substitute House Bill Number 606)

AN ACT

To make temporary changes related to qualified civil immunity for health care and emergency services provided during a government-declared disaster or emergency and for exposure to or transmission or contraction of certain coronaviruses.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. (A) As used in this section:

(1) "Advanced practice registered nurse" means an individual who holds a current, valid license issued under Chapter 4723. of the Revised Code to practice as an advanced practice registered nurse.

(2) "Athletic trainer" means an individual licensed under Chapter 4755. of the Revised Code to practice athletic training.

(3) "Audiologist" means an individual licensed under Chapter 4753. of the Revised Code to practice audiology.

(4) "Behavioral health provider" means a provider of alcohol and drug addiction services, mental health services, or other behavioral health services and includes the following providers:

(a) An independent chemical dependency counselor-clinical supervisor, independent chemical dependency counselor, chemical dependency counselor III, and chemical dependency counselor II, licensed under Chapter 4758. of the Revised Code, and a chemical dependency counselor assistant, prevention consultant, prevention specialist, prevention specialist assistant, and registered applicant, certified under that chapter;

(b) A licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, independent marriage and family therapist, or marriage and family therapist who holds a current, valid license issued under Chapter 4757. of the Revised Code;

(c) A psychologist.

(5) "Board of health" means the board of health of a city or general health district or the authority having the duties of a board of health under section 3709.05 of the Revised Code.

(6) "Chiropractor" means an individual who is authorized under Chapter 4734. of the Revised Code to practice chiropractic.

(7) "Dental hygienist" means an individual licensed under Chapter 4715. of the Revised Code to practice as a dental hygienist.

(8) "Dentist" has the same meaning as in section 2305.231 of the Revised Code.

(9) "Direct support professional" means an individual employed by an agency to provide direct care to individuals with developmental disabilities.

(10) "Disaster" means any occurrence of widespread personal injury or loss of life that results

from any natural or technological phenomenon or act of a human, or an epidemic and is declared to be a disaster by the federal government, the state government, or a political subdivision of this state.

(11) "Emergency" has the same meaning as in section 5502.21 of the Revised Code.

(12) "Emergency medical technician" means an EMT-basic, an EMT-I, or a paramedic.

(13) "EMT-basic" means an individual who holds a current, valid certificate issued under section 4765.30 of the Revised Code to practice as an emergency medical technician-basic.

(14) "EMT-I" means an individual who holds a current, valid certificate issued under section 4765.30 of the Revised Code to practice as an emergency medical technician-intermediate.

(15) "Facility" means an institution or setting where health care services are provided, including, without limitation, a hospital, inpatient, ambulatory, surgical, emergency care, urgent care, treatment, laboratory, adult day-care, residential care, residential treatment, long-term care, or intermediate care facility, or a facility for individuals with developmental disabilities; a physician's office; a developmental, diagnostic, or imaging center; a rehabilitation or therapeutic health setting; a federally qualified health center or federally qualified health center look-alike; or any modular field treatment facility or alternative care site designated for temporary use for the purposes of providing health care services in response to a disaster or emergency.

(16) "Facility for individuals with developmental disabilities" means a facility that provides services to two or more unrelated individuals with developmental disabilities in a residential setting, such as an institution for mental disease or a residential facility licensed under section 5123.19 of the Revised Code.

(17) "Federally qualified health center" and "federally qualified health center look-alike" have the same meanings as in section 3701.047 of the Revised Code.

(18) "Gross negligence" means a lack of care so great that it appears to be a conscious indifference to the rights of others.

(19) "Health care professional" means an advanced practice registered nurse, a registered nurse, a licensed practical nurse, a pharmacist, a dentist, a dental hygienist, an optometrist, a physician, a physician assistant, a chiropractor, a physical therapist, an occupational therapist, an athletic trainer, a speech-language pathologist, an audiologist, a laboratory worker, a massage therapist, or a respiratory care professional.

(20) "Health care provider" means a health care professional, health care worker, direct support professional, behavioral health provider, or emergency medical technician or a home health agency, hospice care program, home and community-based services provider, or facility, including any agent, board member, committee member, employee, employer, officer, or volunteer of the agency, program, provider, or facility acting in the course of the agent's, board member's, committee member's, employee's, employer's, officer's, or volunteer's service or employment.

(21) "Health care services" means services rendered by a health care provider for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease, including the provision of any medication, medical equipment, or other medical product. "Health care services" includes personal care services and experimental treatments.

(22) "Health care worker" means a person other than a health care professional or emergency medical technician who provides medical, dental, or other health care services under the direction of a health care professional authorized to direct the individual's activities. "Health care worker"

includes a medical technician, medical assistant, dental assistant, occupational therapy assistant, physical therapist assistant, orderly, nurse aide, and any other individual acting in a similar capacity.

(23) "Home and community-based services provider" means a provider of services under a home and community-based services medicaid waiver component.

(24) "Home health agency" has the same meaning as in section 3701.881 of the Revised Code.

(25) "Hospice care program" has the same meaning as in section 3712.01 of the Revised Code.

(26) "Hospital" and "medical claim" have the same meanings as in section 2305.113 of the Revised Code.

(27) "Licensed practical nurse" means an individual who holds a current, valid license issued under Chapter 4723. of the Revised Code to practice as a licensed practical nurse.

(28) "Long-term care facility" has the same meaning as in section 3701.74 of the Revised Code.

(29) "Massage therapist" means an individual licensed under section 4731.15 of the Revised Code to practice massage therapy.

(30) "Medicaid waiver component" has the same meaning as in section 5166.01 of the Revised Code.

(31) "Occupational therapist" means an individual who holds a current license or limited certificate under Chapter 4755. of the Revised Code to practice occupational therapy.

(32) "Occupational therapy assistant" means an individual who holds a license or limited permit under Chapter 4755. of the Revised Code to practice as an occupational therapy assistant.

(33) "Optometrist" means a person who is licensed under Chapter 4725. of the Revised Code to practice optometry.

(34) "Paramedic" means an individual who holds a current, valid certificate issued under section 4765.30 of the Revised Code to practice as an emergency medical technician-paramedic.

(35) "Personal care services" has the same meaning as in section 3721.01 of the Revised Code.

(36) "Pharmacist" means an individual who holds a current, valid license issued under Chapter 4729. of the Revised Code to practice as a pharmacist.

(37) "Physical therapist" means an individual licensed under Chapter 4755. of the Revised Code to practice physical therapy.

(38) "Physical therapist assistant" means an individual licensed under Chapter 4755. of the Revised Code to practice as a physical therapist assistant.

(39) "Physician" means an individual who is authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.

(40) "Physician assistant" means an individual who is authorized under Chapter 4730. of the Revised Code to practice as a physician assistant.

(41) "Psychologist" means an individual who is licensed as a psychologist or school psychologist under Chapter 4732. of the Revised Code.

(42) "Reckless disregard" means, as it applies to a given health care provider rendering health

care services, emergency medical services, first-aid treatment, or other emergency professional care, conduct by which, with heedless indifference to the consequences, the health care provider disregards a substantial and unjustifiable risk that the health care provider's conduct is likely to cause, at the time those services or that treatment or care were rendered, an unreasonable risk of injury, death, or loss to person or property.

(43) "Registered nurse" means an individual who holds a current, valid license issued under Chapter 4723. of the Revised Code to practice as a registered nurse.

(44) "Respiratory care professional" has the same meaning as in section 4761.01 of the Revised Code.

(45) "Speech-language pathologist" means an individual licensed under Chapter 4753. of the Revised Code to practice speech-language pathology.

(46) "Tort action" means a civil action for damages for injury, death, or loss to person or property and includes claims arising under resident or patient bills of rights and contractual claims arising out of statutory or regulatory requirements applicable to health care providers. "Tort action" includes an action on a medical claim.

(B)(1) Subject to division (C)(3) of this section, a health care provider that provides health care services, emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical equipment or product, as a result of or in response to a disaster or emergency is not subject to professional disciplinary action and is not liable in damages to any person or government agency in a tort action for injury, death, or loss to person or property that allegedly arises from any of the following:

(a) An act or omission of the health care provider in the health care provider's provision, withholding, or withdrawal of those services;

(b) Any decision related to the provision, withholding, or withdrawal of those services;

(c) Compliance with an executive order or director's order issued during and in response to the disaster or emergency.

(2) Division (B)(1) of this section does not apply in a tort action if the health care provider's action, omission, decision, or compliance constitutes a reckless disregard for the consequences so as to affect the life or health of the patient or intentional misconduct or willful or wanton misconduct on the part of the person against whom the action is brought.

(3) Division (B)(1) of this section does not apply in a professional disciplinary action if the health care provider's action, omission, decision, or compliance constitutes gross negligence.

(4) A health care provider is not subject to professional disciplinary action and is not liable in damages to any person or government agency in a tort action for injury, death, or loss to person or property that allegedly arises because the provider was unable to treat, diagnose, or test the person for any illness, disease, or condition, including the inability to perform any elective procedure, due to an executive or director's order or an order of a board of health of a city or general health district issued in relation to an epidemic or pandemic disease or other public health emergency.

(C)(1) This section does not create a new cause of action or substantive legal right against a health care provider.

(2) This section does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a health care provider may

be entitled in connection with the provision of health care services, emergency medical services, first-aid treatment, or other emergency professional care, including the provision of medication, medical equipment, or other medical product.

(3) This section does not grant an immunity from tort or other civil liability or a professional disciplinary action to a health care provider for actions that are outside the skills, education, and training of the health care provider, unless the health care provider undertakes the action in good faith and in response to a lack of resources caused by a disaster or emergency.

(4) This section does not affect any legal responsibility of a health care provider to comply with any applicable law of this state or rule of an agency of this state.

(5) Division (B) of this section applies only to the provision, withholding, or withdrawal of health care services, emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical equipment or product, decisions related to such services or care, or compliance with an executive order or director's order by a health care provider as a result of or in response to a disaster or emergency and through the duration of the disaster or emergency.

(D) If the immunity described in division (B) of this section does not apply, no class action shall be brought against any health care provider alleging liability for damages for injury, death, or loss to person or property on a cause of action specified in that division.

(E) This section applies from the date of the Governor's Executive Order 2020-01D, issued on March 9, 2020, declaring a state of emergency due to COVID-19, through September 30, 2021, and supersedes section 2305.2311 of the Revised Code during that period.

SECTION 2. (A) No civil action for damages for injury, death, or loss to person or property shall be brought against any person if the cause of action on which the civil action is based, in whole or in part, is that the injury, death, or loss to person or property is caused by the exposure to, or the transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2, or any mutation thereof, unless it is established that the exposure to, or the transmission or contraction of, any of those viruses or mutations was by reckless conduct or intentional misconduct or willful or wanton misconduct on the part of the person against whom the action is brought.

(B) A government order, recommendation, or guideline shall neither create nor be construed as creating a duty of care upon any person that may be enforced in a cause of action or that may create a new cause of action or substantive legal right against any person with respect to the matters contained in the government order, recommendation, or guideline. A presumption exists that any such government order, recommendation, or guideline is not admissible as evidence that a duty of care, a new cause of action, or a substantive legal right has been established.

(C) If the immunity described in division (A) of this section does not apply, no class action shall be brought against any person alleging liability for damages for injury, death, or loss to person or property on a cause of action specified in that division.

(D) As used in this section:

(1) "MERS-CoV" means the coronavirus that causes middle east respiratory syndrome.

(2) "Person" has the same meaning as in section 1.59 of the Revised Code and includes a school, a for-profit or nonprofit entity, a governmental entity, a religious entity, or a state institution

of higher education.

(3) "Reckless conduct" means conduct by which, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause an exposure to, or a transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2, or any mutation thereof, or is likely to be of a nature that results in an exposure to, or a transmission or contraction of, any of those viruses or mutations. A person is reckless with respect to circumstances in relation to causing an exposure to, or a transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2, or any mutation thereof, when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.

(4) "SARS-CoV" means the coronavirus that causes severe acute respiratory syndrome.

(5) "SARS-CoV-2" means the novel coronavirus that causes coronavirus disease 2019 (COVID-19).

(6) "State institution of higher education" has the same meaning as in section 3345.011 of the Revised Code.

(E) This section applies from the date of the Governor's Executive Order 2020-01D, issued on March 9, 2020, declaring a state of emergency due to COVID-19, through September 30, 2021.

SECTION 3. (A) The General Assembly makes the following findings:

(1) The General Assembly is aware that lawsuits related to the COVID-19 health emergency numbering in the thousands are being filed across the country. Ohio business owners, small and large, as they begin to re-open their businesses are unsure about what tort liability they may face.

(2) It also is a fact that recommendations regarding how best to avoid infection with COVID-19 change frequently, and such recommendations are often not based on well-tested scientific information. For example, the Centers for Disease Control and Prevention (CDC) for the first eight weeks of the COVID-19 health emergency recommended that members of the general public not wear masks since most masks are ineffective in protecting individuals from viruses. The CDC then reversed its recommendation and started encouraging members of the general public to wear masks in public places. Ohio businesses need certainty and consistency to enable them to reopen.

(3) The General Assembly is further aware that businesses and premises owners have not historically been required to keep members of the public from being exposed to airborne viruses, bacteria, and germs. In Ohio, it has been the responsibility of individuals going into public places to avoid exposure to individuals who are sick. The same is true today: those individuals who decide to go out into public places are responsible to take those steps they feel are necessary to avoid exposure to COVID-19, such as social distancing and wearing masks.

(4) The current COVID-19 health emergency is new and novel. Past opinions of the Ohio Supreme Court do not deal with COVID-19 or duties to protect the public from exposure in public places to airborne germs and viruses. Nothing in the Ohio Revised Code establishes duties upon businesses and premises owners to ensure that members of the general public will not be exposed to such airborne germs and viruses.

(5) Additionally, the General Assembly has not delegated to the Executive Branch of Ohio's government the authority or power to create new legal duties for businesses and premises owners. In

Ohio's system of government, the General Assembly makes Ohio's laws, and the Executive Branch enforces those laws.

(B) Based on its findings in division (A) of this section, the General Assembly declares its intent that orders and recommendations from the Executive Branch, from counties and local municipalities, from boards of health and other agencies, and from any federal government agency, do not create any new legal duties for purposes of tort liability. Any such orders and recommendations are presumed to be irrelevant to the issue of the existence of a duty or breach of a duty. Furthermore, any such orders and recommendations are presumed to be inadmissible at trial to establish proof of a duty or breach of a duty in tort actions.

SECTION 4. This act applies to acts, omissions, conduct, decisions, or compliance from the date of the Governor's Executive Order 2020-01D, issued on March 9, 2020, declaring a state of emergency due to COVID-19 through September 30, 2021.

SECTION 5. If any provision of this act or the application thereof 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 are severable.

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Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

This act is not of a general and permanent nature and does not require a code section number.

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Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

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Secretary of State.

File No. _____ Effective Date _____