An act relating to civil liability for damages relating to COVID-19; creating s. 768.38, F.S.; providing legislative findings and intent; defining terms; specifying requirements for civil actions based on COVID-19-related claims; requiring the court to make certain determinations in such actions; providing that plaintiffs have the burden of proof in such actions; requiring plaintiffs to commence COVID-19-related claims within specified timeframes; creating s. 768.381, F.S.; defining terms; providing preliminary procedures for civil actions based on COVID-19-related claims; providing the standard of proof required at trial for such claims; providing affirmative defenses; requiring COVID-19-related claims to commence within specified timeframes; providing applicability; providing construction; providing severability; providing applicability and for retroactive application; providing an effective date.

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

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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

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

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

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

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

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

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

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

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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

surgeries and other procedures, and

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

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

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

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

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

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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

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

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

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

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

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

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

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

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 of this state. The threat of unknown and potentially unbounded liability to such businesses, entities, and institutions, in the wake of a pandemic that has already left many of these businesses, entities, and institutions vulnerable, has created an overpowering public necessity to provide an immediate and remedial legislative solution. Therefore, the Legislature intends for certain business entities, educational institutions, governmental entities, and religious institutions 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 businesses, entities, and institutions so that they may remain viable and continue to contribute to this state.

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

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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

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

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

(e) "Health care provider" means:

1. A provider as defined in s. 408.803.

2. A clinical laboratory providing services in this state or services to health care providers in this 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.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 licensed 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.

9. A continuing care facility licensed under chapter 651.

10. A pharmacy permitted under chapter 465.

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

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

(a) The complaint must be pled with particularity.

(b) At the same time the complaint is filed, the plaintiff must submit an affidavit signed by a physician actively licensed in this state which attests to the physician's belief, within a reasonable degree of medical certainty, that the plaintiff's COVID-19-related damages, injury, or death 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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

court must dismiss the action without prejudice.

2. The defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance 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. If more than one source or set of standards or guidance was authoritative or controlling at the time the cause of action accrued, the defendant's good faith effort to substantially comply with any one of those sources or sets of standards or guidance confers such immunity 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 claim.

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

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

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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

768.381 COVID-19-related claims against health care providers.—

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

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

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

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

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

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 authoritative guidance specifically relating to the COVID-19 emergency;

5. An act or omission with respect to an emergency medical

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

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

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

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

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

1. A provider as defined in s. 408.803.

2. A clinical laboratory providing services in this state or services to health care providers in this 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 existed 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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

waiver.

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

6. A health care professional licensed 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.

9. A continuing care facility licensed under chapter 651.

10. A pharmacy permitted under chapter 465.

(2) PRELIMINARY PROCEDURES.—

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

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

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

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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

(a) 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;

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

(c) 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;

(d) 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

(e) 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.

(5) LIMITATIONS PERIOD.—

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

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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

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

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

(7) 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.

Section 3. 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 4. This act applies retroactively and prospectively. However, this act does not apply in a civil action against a particular named defendant which is commenced before the effective date of this act.

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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.