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A bill to be entitled
 An act relating to civil liability for COVID-19-
 related claims against certain healthcare entities;
 creating s. 768.381, F.S.; providing legislative
 findings and intent; defining terms; providing
 requirements for a civil action based on a COVID-19-
 related medical claim; providing requirements for a
 civil action based on a COVID-19-related negligence
 claim; providing severability; providing retroactive
 application; providing an effective date.

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

Section 1. Section 768.381, Florida Statutes, is created
 to read:

768.381 Liability protections for COVID-19-related claims
 against certain healthcare providers.—

(1) The Legislature finds that the COVID-19 outbreak in
 the state threatens the continued viability of certain
 healthcare institutions and other entities that serve the
 overall well-being of the state. The threat of unknown and
 potentially unbounded liability to such institutions and
 entities, in the wake of a pandemic that has already left many
 of these institutions vulnerable, has created an overpowering
 public necessity to provide an immediate and remedial

26 legislative solution. Therefore, the Legislature intends for
 27 these institutions and entities to enjoy heightened protections
 28 against certain types of civil liability as a result of the
 29 COVID-19 pandemic. The Legislature also finds that there are no
 30 alternative means to meet this public necessity, especially in
 31 light of the sudden, unprecedented nature of the COVID-19
 32 pandemic. The Legislature finds the public interest as a whole
 33 is best served by providing relief to these institutions and
 34 entities so that they may remain viable and continue to serve
 35 the state.

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

37 (a) "COVID-19" means the novel coronavirus.

38 (b) "COVID-19-related medical claim" means a tort claim
 39 arising under chapter 400, 429, or 766, which is based on the
 40 defendant's breach of the applicable standard of care or duty of
 41 care, and which breach:

42 1. Caused a person to contract COVID-19;

43 2. Arose from the defendant's delay or omission in
 44 performing a surgical procedure, which delay or omission was
 45 directly caused by the COVID-19 pandemic; or

46 3. Arose from the defendant's act or omission with respect
 47 to an emergency medical condition as defined in s. 395.002(8),
 48 and which act or omission was the result of a lack of resources
 49 directly caused by the COVID-19 pandemic.

50 4. Arose from the defendant's provision of a novel or
 51 experimental COVID-19 treatment to a patient diagnosed with
 52 COVID-19.

53 5. Arose from the defendant's provision of treatment to a
 54 patient diagnosed with COVID-19 whose injuries were directly
 55 related to an exacerbation of the patient's pre-existing
 56 conditions by COVID-19.

57 (c) "COVID-19-related negligence claim" means a tort claim
 58 brought against a healthcare provider not arising under chapter
 59 400, 429, or 766, which is based on the defendant's breach of
 60 the applicable duty of care which caused a person to contract
 61 COVID-19.

62 (d) "Healthcare provider" means:

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

64 2. A clinical laboratory providing services in the state
 65 or services to health care providers in the state, if the
 66 clinical laboratory is certified by the Centers for Medicare and
 67 Medicaid Services under the federal Clinical Laboratory
 68 Improvement Amendments and the federal rules adopted thereunder.

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

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

75 waiver.

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

77 6. A health care professional licensed under part IV of

78 chapter 468.

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

80 8. A provider licensed under chapter 394 or 397 and its

81 clinical and non-clinical staff providing inpatient or

82 outpatient services.

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

84 10. A pharmacy permitted under chapter 465.

85 (3) With respect to a COVID-19-related medical claim:

86 (a) It is an affirmative defense that the defendant

87 complied with government-issued health standards or guidance in

88 effect at the time the cause of action accrued.

89 (b) The factfinder must consider all relevant surrounding

90 circumstances, including any relevant effects of the COVID-19

91 pandemic, in determining the appropriate standard of care.

92 (c) A defendant is not liable for any act or omission

93 unless such act or omission constitutes gross negligence as

94 defined in s. 768.72(2)(b), recklessness, or intentional

95 misconduct as defined in s. 768.72(2)(a).

96 (4) With respect to a COVID-19-related negligence claim:

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

98 (b) At the same time the complaint is filed, the plaintiff

99 must submit an affidavit signed by a physician actively licensed

100 in the state which attests to the physician's belief, within a
101 reasonable degree of medical certainty, that the plaintiff's
102 COVID-19-related damages, injury, or death occurred as a result
103 of the defendant's acts or omissions.

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

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

108 2. The defendant made a good faith effort to substantially
109 comply with any authoritative or controlling government-issued
110 health standards or guidance at the time the cause of action
111 accrued.

112 a. During this stage of the proceeding, admissible
113 evidence is limited to evidence tending to demonstrate whether
114 the defendant made such a good faith effort.

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

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

123 (d) The burden of proof is upon the plaintiff to
124 demonstrate that the defendant did not make a good faith effort

125 | under subparagraph (c)2.

126 | (e) The factfinder must consider all relevant surrounding
 127 | circumstances, including any relevant effects of the COVID-19
 128 | pandemic, in determining the appropriate standard of care.

129 | (5) A plaintiff must commence a civil action for a COVID-
 130 | 19-related medical claim or a COVID-19-related negligence claim
 131 | within 1 year after the cause of action accrues or within 1 year
 132 | of the effective date of this act if the cause of action accrued
 133 | before the effective date of this act.

134 | Section 2. If any provision of this act or its application
 135 | to any person or circumstance is held invalid, the invalidity
 136 | does not affect other provisions or applications of the act
 137 | which can be given effect without the invalid provision or
 138 | application, and to this end the provisions of this act are
 139 | severable.

140 | Section 3. This act shall take effect upon becoming a law
 141 | and shall apply retroactively. However, the provisions of this
 142 | act shall not apply in a civil action against a particularly
 143 | named defendant which is commenced before the effective date of
 144 | this act.

145 | Section 4. This act is repealed one year and a day from the
 146 | date of becoming a law, unless reenacted by the Legislature.