

As Reported by the Committee of Conference

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Representative Grendell

Cosponsors: Representatives Seitz, Baldrige, Carfagna, Cross, DeVitis, Fraizer, Ginter, Green, Greenspan, Holmes, A., Hoops, Jones, Jordan, Keller, Kick, Koehler, Lanese, Lang, LaRe, McClain, Patton, Perales, Plummer, Reineke, Richardson, Riedel, Roemer, Scherer, Smith, T., Stein, Stephens, Wiggam, Wilkin, Senators Coley, Blessing, Brenner, Burke, Dolan, Eklund, Gavarone, Hackett, Hoagland, Hottinger, Huffman, M., Huffman, S., Lehner, McColley, Peterson, Schaffer, Schuring, Wilson

A BILL

To make temporary changes related to qualified 1
civil immunity for health care and emergency 2
services provided during a government-declared 3
disaster or emergency and for exposure to or 4
transmission or contraction of certain 5
coronaviruses. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. (A) As used in this section: 7

(1) "Advanced practice registered nurse" means an 8
individual who holds a current, valid license issued under 9
Chapter 4723. of the Revised Code to practice as an advanced 10
practice registered nurse. 11

(2) "Athletic trainer" means an individual licensed under 12
Chapter 4755. of the Revised Code to practice athletic training. 13

- (3) "Audiologist" means an individual licensed under Chapter 4753. of the Revised Code to practice audiology. 14
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- (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: 16
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- (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; 20
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- (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; 27
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- (c) A psychologist. 32
- (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. 33
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- (6) "Chiropractor" means an individual who is authorized under Chapter 4734. of the Revised Code to practice chiropractic. 36
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- (7) "Dental hygienist" means an individual licensed under Chapter 4715. of the Revised Code to practice as a dental hygienist. 39
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- (8) "Dentist" has the same meaning as in section 2305.231 of the Revised Code. 42
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- (9) "Direct support professional" means an individual employed by an agency to provide direct care to individuals with developmental disabilities. 44
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- (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. 47
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- (11) "Emergency" has the same meaning as in section 5502.21 of the Revised Code. 52
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- (12) "Emergency medical technician" means an EMT-basic, an EMT-I, or a paramedic. 54
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- (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. 56
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- (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. 59
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- (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 63
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or therapeutic health setting; a federally qualified health 71
center or federally qualified health center look-alike; or any 72
modular field treatment facility or alternative care site 73
designated for temporary use for the purposes of providing 74
health care services in response to a disaster or emergency. 75

(16) "Facility for individuals with developmental 76
disabilities" means a facility that provides services to two or 77
more unrelated individuals with developmental disabilities in a 78
residential setting, such as an institution for mental disease 79
or a residential facility licensed under section 5123.19 of the 80
Revised Code. 81

(17) "Federally qualified health center" and "federally 82
qualified health center look-alike" have the same meanings as in 83
section 3701.047 of the Revised Code. 84

(18) "Gross negligence" means a lack of care so great that 85
it appears to be a conscious indifference to the rights of 86
others. 87

(19) "Health care professional" means an advanced practice 88
registered nurse, a registered nurse, a licensed practical 89
nurse, a pharmacist, a dentist, a dental hygienist, an 90
optometrist, a physician, a physician assistant, a chiropractor, 91
a physical therapist, an occupational therapist, an athletic 92
trainer, a speech-language pathologist, an audiologist, a 93
laboratory worker, a massage therapist, or a respiratory care 94
professional. 95

(20) "Health care provider" means a health care 96
professional, health care worker, direct support professional, 97
behavioral health provider, or emergency medical technician or a 98
home health agency, hospice care program, home and community- 99

based services provider, or facility, including any agent, board 100
member, committee member, employee, employer, officer, or 101
volunteer of the agency, program, provider, or facility acting 102
in the course of the agent's, board member's, committee 103
member's, employee's, employer's, officer's, or volunteer's 104
service or employment. 105

(21) "Health care services" means services rendered by a 106
health care provider for the diagnosis, prevention, treatment, 107
cure, or relief of a health condition, illness, injury, or 108
disease, including the provision of any medication, medical 109
equipment, or other medical product. "Health care services" 110
includes personal care services and experimental treatments. 111

(22) "Health care worker" means a person other than a 112
health care professional or emergency medical technician who 113
provides medical, dental, or other health care services under 114
the direction of a health care professional authorized to direct 115
the individual's activities. "Health care worker" includes a 116
medical technician, medical assistant, dental assistant, 117
occupational therapy assistant, physical therapist assistant, 118
orderly, nurse aide, and any other individual acting in a 119
similar capacity. 120

(23) "Home and community-based services provider" means a 121
provider of services under a home and community-based services 122
medicaid waiver component. 123

(24) "Home health agency" has the same meaning as in 124
section 3701.881 of the Revised Code. 125

(25) "Hospice care program" has the same meaning as in 126
section 3712.01 of the Revised Code. 127

(26) "Hospital" and "medical claim" have the same meanings 128

as in section 2305.113 of the Revised Code. 129

(27) "Licensed practical nurse" means an individual who 130
holds a current, valid license issued under Chapter 4723. of the 131
Revised Code to practice as a licensed practical nurse. 132

(28) "Long-term care facility" has the same meaning as in 133
section 3701.74 of the Revised Code. 134

(29) "Massage therapist" means an individual licensed 135
under section 4731.15 of the Revised Code to practice massage 136
therapy. 137

(30) "Medicaid waiver component" has the same meaning as 138
in section 5166.01 of the Revised Code. 139

(31) "Occupational therapist" means an individual who 140
holds a current license or limited certificate under Chapter 141
4755. of the Revised Code to practice occupational therapy. 142

(32) "Occupational therapy assistant" means an individual 143
who holds a license or limited permit under Chapter 4755. of the 144
Revised Code to practice as an occupational therapy assistant. 145

(33) "Optometrist" means a person who is licensed under 146
Chapter 4725. of the Revised Code to practice optometry. 147

(34) "Paramedic" means an individual who holds a current, 148
valid certificate issued under section 4765.30 of the Revised 149
Code to practice as an emergency medical technician-paramedic. 150

(35) "Personal care services" has the same meaning as in 151
section 3721.01 of the Revised Code. 152

(36) "Pharmacist" means an individual who holds a current, 153
valid license issued under Chapter 4729. of the Revised Code to 154
practice as a pharmacist. 155

(37) "Physical therapist" means an individual licensed 156
under Chapter 4755. of the Revised Code to practice physical 157
therapy. 158

(38) "Physical therapist assistant" means an individual 159
licensed under Chapter 4755. of the Revised Code to practice as 160
a physical therapist assistant. 161

(39) "Physician" means an individual who is authorized 162
under Chapter 4731. of the Revised Code to practice medicine and 163
surgery, osteopathic medicine and surgery, or podiatric medicine 164
and surgery. 165

(40) "Physician assistant" means an individual who is 166
authorized under Chapter 4730. of the Revised Code to practice 167
as a physician assistant. 168

(41) "Psychologist" means an individual who is licensed as 169
a psychologist or school psychologist under Chapter 4732. of the 170
Revised Code. 171

(42) "Reckless disregard" means, as it applies to a given 172
health care provider rendering health care services, emergency 173
medical services, first-aid treatment, or other emergency 174
professional care, conduct by which, with heedless indifference 175
to the consequences, the health care provider disregards a 176
substantial and unjustifiable risk that the health care 177
provider's conduct is likely to cause, at the time those 178
services or that treatment or care were rendered, an 179
unreasonable risk of injury, death, or loss to person or 180
property. 181

(43) "Registered nurse" means an individual who holds a 182
current, valid license issued under Chapter 4723. of the Revised 183
Code to practice as a registered nurse. 184

(44) "Respiratory care professional" has the same meaning 185
as in section 4761.01 of the Revised Code. 186

(45) "Speech-language pathologist" means an individual 187
licensed under Chapter 4753. of the Revised Code to practice 188
speech-language pathology. 189

(46) "Tort action" means a civil action for damages for 190
injury, death, or loss to person or property and includes claims 191
arising under resident or patient bills of rights and 192
contractual claims arising out of statutory or regulatory 193
requirements applicable to health care providers. "Tort action" 194
includes an action on a medical claim. 195

(B) (1) Subject to division (C) (3) of this section, a 196
health care provider that provides health care services, 197
emergency medical services, first-aid treatment, or other 198
emergency professional care, including the provision of any 199
medication or other medical equipment or product, as a result of 200
or in response to a disaster or emergency is not subject to 201
professional disciplinary action and is not liable in damages to 202
any person or government agency in a tort action for injury, 203
death, or loss to person or property that allegedly arises from 204
any of the following: 205

(a) An act or omission of the health care provider in the 206
health care provider's provision, withholding, or withdrawal of 207
those services; 208

(b) Any decision related to the provision, withholding, or 209
withdrawal of those services; 210

(c) Compliance with an executive order or director's order 211
issued during and in response to the disaster or emergency. 212

(2) Division (B) (1) of this section does not apply in a 213

tort action if the health care provider's action, omission, 214
decision, or compliance constitutes a reckless disregard for the 215
consequences so as to affect the life or health of the patient 216
or intentional misconduct or willful or wanton misconduct on the 217
part of the person against whom the action is brought. 218

(3) Division (B)(1) of this section does not apply in a 219
professional disciplinary action if the health care provider's 220
action, omission, decision, or compliance constitutes gross 221
negligence. 222

(4) A health care provider is not subject to professional 223
disciplinary action and is not liable in damages to any person 224
or government agency in a tort action for injury, death, or loss 225
to person or property that allegedly arises because the provider 226
was unable to treat, diagnose, or test the person for any 227
illness, disease, or condition, including the inability to 228
perform any elective procedure, due to an executive or 229
director's order or an order of a board of health of a city or 230
general health district issued in relation to an epidemic or 231
pandemic disease or other public health emergency. 232

(C)(1) This section does not create a new cause of action 233
or substantive legal right against a health care provider. 234

(2) This section does not affect any immunities from civil 235
liability or defenses established by another section of the 236
Revised Code or available at common law to which a health care 237
provider may be entitled in connection with the provision of 238
health care services, emergency medical services, first-aid 239
treatment, or other emergency professional care, including the 240
provision of medication, medical equipment, or other medical 241
product. 242

(3) This section does not grant an immunity from tort or 243
other civil liability or a professional disciplinary action to a 244
health care provider for actions that are outside the skills, 245
education, and training of the health care provider, unless the 246
health care provider undertakes the action in good faith and in 247
response to a lack of resources caused by a disaster or 248
emergency. 249

(4) This section does not affect any legal responsibility 250
of a health care provider to comply with any applicable law of 251
this state or rule of an agency of this state. 252

(5) Division (B) of this section applies only to the 253
provision, withholding, or withdrawal of health care services, 254
emergency medical services, first-aid treatment, or other 255
emergency professional care, including the provision of any 256
medication or other medical equipment or product, decisions 257
related to such services or care, or compliance with an 258
executive order or director's order by a health care provider as 259
a result of or in response to a disaster or emergency and 260
through the duration of the disaster or emergency. 261

(D) If the immunity described in division (B) of this 262
section does not apply, no class action shall be brought against 263
any health care provider alleging liability for damages for 264
injury, death, or loss to person or property on a cause of 265
action specified in that division. 266

(E) This section applies from the date of the Governor's 267
Executive Order 2020-01D, issued on March 9, 2020, declaring a 268
state of emergency due to COVID-19, through September 30, 2021, 269
and supersedes section 2305.2311 of the Revised Code during that 270
period. 271

Section 2. (A) No civil action for damages for injury, 272
death, or loss to person or property shall be brought against 273
any person if the cause of action on which the civil action is 274
based, in whole or in part, is that the injury, death, or loss 275
to person or property is caused by the exposure to, or the 276
transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV- 277
2, or any mutation thereof, unless it is established that the 278
exposure to, or the transmission or contraction of, any of those 279
viruses or mutations was by reckless conduct or intentional 280
misconduct or willful or wanton misconduct on the part of the 281
person against whom the action is brought. 282

(B) A government order, recommendation, or guideline shall 283
neither create nor be construed as creating a duty of care upon 284
any person that may be enforced in a cause of action or that may 285
create a new cause of action or substantive legal right against 286
any person with respect to the matters contained in the 287
government order, recommendation, or guideline. A presumption 288
exists that any such government order, recommendation, or 289
guideline is not admissible as evidence that a duty of care, a 290
new cause of action, or a substantive legal right has been 291
established. 292

(C) If the immunity described in division (A) of this 293
section does not apply, no class action shall be brought against 294
any person alleging liability for damages for injury, death, or 295
loss to person or property on a cause of action specified in 296
that division. 297

(D) As used in this section: 298

(1) "MERS-CoV" means the coronavirus that causes middle 299
east respiratory syndrome. 300

(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 330
being filed across the country. Ohio business owners, small and 331
large, as they begin to re-open their businesses are unsure 332
about what tort liability they may face. 333

(2) It also is a fact that recommendations regarding how 334
best to avoid infection with COVID-19 change frequently, and 335
such recommendations are often not based on well-tested 336
scientific information. For example, the Centers for Disease 337
Control and Prevention (CDC) for the first eight weeks of the 338
COVID-19 health emergency recommended that members of the 339
general public not wear masks since most masks are ineffective 340
in protecting individuals from viruses. The CDC then reversed 341
its recommendation and started encouraging members of the 342
general public to wear masks in public places. Ohio businesses 343
need certainty and consistency to enable them to reopen. 344

(3) The General Assembly is further aware that businesses 345
and premises owners have not historically been required to keep 346
members of the public from being exposed to airborne viruses, 347
bacteria, and germs. In Ohio, it has been the responsibility of 348
individuals going into public places to avoid exposure to 349
individuals who are sick. The same is true today: those 350
individuals who decide to go out into public places are 351
responsible to take those steps they feel are necessary to avoid 352
exposure to COVID-19, such as social distancing and wearing 353
masks. 354

(4) The current COVID-19 health emergency is new and 355
novel. Past opinions of the Ohio Supreme Court do not deal with 356
COVID-19 or duties to protect the public from exposure in public 357
places to airborne germs and viruses. Nothing in the Ohio 358
Revised Code establishes duties upon businesses and premises 359

owners to ensure that members of the general public will not be 360
exposed to such airborne germs and viruses. 361

(5) Additionally, the General Assembly has not delegated 362
to the Executive Branch of Ohio's government the authority or 363
power to create new legal duties for businesses and premises 364
owners. In Ohio's system of government, the General Assembly 365
makes Ohio's laws, and the Executive Branch enforces those laws. 366

(B) Based on its findings in division (A) of this section, 367
the General Assembly declares its intent that orders and 368
recommendations from the Executive Branch, from counties and 369
local municipalities, from boards of health and other agencies, 370
and from any federal government agency, do not create any new 371
legal duties for purposes of tort liability. Any such orders and 372
recommendations are presumed to be irrelevant to the issue of 373
the existence of a duty or breach of a duty. Furthermore, any 374
such orders and recommendations are presumed to be inadmissible 375
at trial to establish proof of a duty or breach of a duty in 376
tort actions. 377

Section 4. This act applies to acts, omissions, conduct, 378
decisions, or compliance from the date of the Governor's 379
Executive Order 2020-01D, issued on March 9, 2020, declaring a 380
state of emergency due to COVID-19 through September 30, 2021. 381

Section 5. If any provision of this act or the application 382
thereof to any person or circumstance is held invalid, the 383
invalidity does not affect other provisions or applications of 384
the act which can be given effect without the invalid provision 385
or application, and to this end the provisions are severable. 386