

**As Passed by the Senate**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**Sub. H. B. No. 606**

**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**

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**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 and to declare an emergency. 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 15
(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 17 18 19
(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 21 22 23 24 25 26
(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 28 29 30 31
(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 34 35
(6) "Chiropractor" means an individual who is authorized under Chapter 4734. of the Revised Code to practice chiropractic.	36 37 38
(7) "Dental hygienist" means an individual licensed under Chapter 4715. of the Revised Code to practice as a dental hygienist.	39 40 41

(8) "Dentist" has the same meaning as in section 2305.231	42
of the Revised Code.	43
(9) "Direct support professional" means an individual	44
employed by an agency to provide direct care to individuals with	45
developmental disabilities.	46
(10) "Disaster" means any occurrence of widespread	47
personal injury or loss of life that results from any natural or	48
technological phenomenon or act of a human, or an epidemic and	49
is declared to be a disaster by the federal government, the	50
state government, or a political subdivision of this state.	51
(11) "Emergency" has the same meaning as in section	52
5502.21 of the Revised Code.	53
(12) "Emergency medical technician" means an EMT-basic, an	54
EMT-I, or a paramedic.	55
(13) "EMT-basic" means an individual who holds a current,	56
valid certificate issued under section 4765.30 of the Revised	57
Code to practice as an emergency medical technician-basic.	58
(14) "EMT-I" means an individual who holds a current,	59
valid certificate issued under section 4765.30 of the Revised	60
Code to practice as an emergency medical technician-	61
intermediate.	62
(15) "Facility" means an institution or setting where	63
health care services are provided, including, without	64
limitation, a hospital, inpatient, ambulatory, surgical,	65
emergency care, urgent care, treatment, laboratory, adult day-	66
care, residential care, residential treatment, long-term care,	67
or intermediate care facility, or a facility for individuals	68
with developmental disabilities; a physician's office; a	69
developmental, diagnostic, or imaging center; a rehabilitation	70

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 holds a current, valid license issued under Chapter 4723. of the Revised Code to practice as a licensed practical nurse.	130 131 132
(28) "Long-term care facility" has the same meaning as in section 3701.74 of the Revised Code.	133 134
(29) "Massage therapist" means an individual licensed under section 4731.15 of the Revised Code to practice massage therapy.	135 136 137
(30) "Medicaid waiver component" has the same meaning as in section 5166.01 of the Revised Code.	138 139
(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.	140 141 142
(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.	143 144 145
(33) "Optometrist" means a person who is licensed under Chapter 4725. of the Revised Code to practice optometry.	146 147
(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.	148 149 150
(35) "Personal care services" has the same meaning as in section 3721.01 of the Revised Code.	151 152
(36) "Pharmacist" means an individual who holds a current, valid license issued under Chapter 4729. of the Revised Code to practice as a pharmacist.	153 154 155

(37) "Physical therapist" means an individual licensed under Chapter 4755. of the Revised Code to practice physical therapy.	156 157 158
(38) "Physical therapist assistant" means an individual licensed under Chapter 4755. of the Revised Code to practice as a physical therapist assistant.	159 160 161
(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.	162 163 164 165
(40) "Physician assistant" means an individual who is authorized under Chapter 4730. of the Revised Code to practice as a physician assistant.	166 167 168
(41) "Psychologist" means an individual who is licensed as a psychologist or school psychologist under Chapter 4732. of the Revised Code.	169 170 171
(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.	172 173 174 175 176 177 178 179 180 181
(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.	182 183 184

(44) "Respiratory care professional" has the same meaning as in section 4761.01 of the Revised Code.	185 186
(45) "Speech-language pathologist" means an individual licensed under Chapter 4753. of the Revised Code to practice speech-language pathology.	187 188 189
(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.	190 191 192 193 194 195
(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:	196 197 198 199 200 201 202 203 204 205
(a) An act or omission of the health care provider in the health care provider's provision, withholding, or withdrawal of those services;	206 207 208
(b) Any decision related to the provision, withholding, or withdrawal of those services;	209 210
(c) Compliance with an executive order or director's order issued during and in response to the disaster or emergency.	211 212
(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 December 31, 2020, 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 301  
the Revised Code and includes a school, a for-profit or 302  
nonprofit entity, a governmental entity, a religious entity, or 303  
a state institution of higher education. 304

(3) "Reckless conduct" means conduct by which, with 305  
heedless indifference to the consequences, the person disregards 306  
a substantial and unjustifiable risk that the person's conduct 307  
is likely to cause an exposure to, or a transmission or 308  
contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2, or any 309  
mutation thereof, or is likely to be of a nature that results in 310  
an exposure to, or a transmission or contraction of, any of 311  
those viruses or mutations. A person is reckless with respect to 312  
circumstances in relation to causing an exposure to, or a 313  
transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV- 314  
2, or any mutation thereof, when, with heedless indifference to 315  
the consequences, the person disregards a substantial and 316  
unjustifiable risk that such circumstances are likely to exist. 317

(4) "SARS-CoV" means the coronavirus that causes severe 318  
acute respiratory syndrome. 319

(5) "SARS-CoV-2" means the novel coronavirus that causes 320  
coronavirus disease 2019 (COVID-19). 321

(6) "State institution of higher education" has the same 322  
meaning as in section 3345.011 of the Revised Code. 323

(E) This section applies from the date of the Governor's 324  
Executive Order 2020-01D, issued on March 9, 2020, declaring a 325  
state of emergency due to COVID-19, through December 31, 2020. 326

**Section 3.** (A) The General Assembly makes the following 327  
findings: 328

(1) The General Assembly is aware that lawsuits related to 329

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 December 31, 2020. 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

**Section 6.** This act is hereby declared to be an emergency 387  
measure necessary for the immediate preservation of the public 388

peace, health, and safety. The reason for such necessity is that 389  
it is crucial to provide protections for essential workers and 390  
immunity from law suits in response to a disaster or emergency 391  
declared by the federal government, state government, or 392  
political subdivision of the state. Therefore, this act shall go 393  
into immediate effect. 394