A BILL

To amend sections 9.87, 2743.02, and 2744.01 of the Revised Code 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, to expand the definition of "governmental function" regarding political subdivision tort liability in relation to emergency declarations, to expand state immunity to include actions undertaken under a duty during the COVID-19 pandemic, and to declare an emergency.

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

Section 1. That sections 9.87, 2743.02, and 2744.01 of the Revised Code be amended to read as follows:

Sec. 9.87. (A) The state, except as provided in division (B) of this section, shall indemnify an officer or employee from liability incurred in the performance of official duties by
paying any judgment in, or amount negotiated in settlement of, any civil action arising under federal law, the law of another state, or the law of a foreign jurisdiction. The reasonableness of the amount of any consent judgment or settlement is subject to the review and approval of the attorney general and of the director, administrative chief, or governing body of the employer of the officer or employee who is to be indemnified. The maximum aggregate amount of indemnification paid directly from state funds to or on behalf of any officer or employee pursuant to this division shall be one million dollars per occurrence, regardless of the number of persons who suffer damage, injury, or death as a result of the occurrence.

(B) The state shall not indemnify an officer or employee under any of the following circumstances:

(1) To the extent the officer or employee is covered by a policy of insurance for civil liability purchased by the state;

(2) When the officer or employee acts manifestly outside the scope of the officer's or employee's employment or official responsibilities, with malicious purpose, in bad faith, or in a wanton or reckless manner, as determined by the employer of the officer or employee or by the attorney general.

(3) For any portion of a judgment that represents punitive or exemplary damages, except that this prohibition does not apply if the employer of the officer or employee and the attorney general determine that the acts or omissions of the officer or employee were not within the terms of division (B)(2) of this section;

(4) For any portion of a consent judgment or settlement that is unreasonable.
(5) For any portion of a judgment where a cause of action exists on or after the effective date of this amendment that involves the performance or nonperformance of a governmental function or public duty as a result of a state agency's response to the COVID-19 pandemic by arranging or providing care, protection, or treatment for any person committed to the custody of the state, including health care services, or that, as a result of the performance or nonperformance of a governmental function or public duty, an officer or employee becomes infected with COVID-19.

(C) The director of administrative services may purchase a policy or policies of insurance on behalf of officers and employees of the state from an insurer or insurers licensed to do business in this state providing coverage for amounts in excess of one million dollars per occurrence incurred in connection with any civil action, demand, or claim against the officer or employee by reason of an act or omission by the officer or employee occurring in the performance of the officer's or employee's duties and not coming within the terms of division (B)(2) of this section.

(D) This section does not affect any of the following:

(1) The waiver arising under division (A)(1) of section 2743.02 of the Revised Code;

(2) Any defense that would otherwise be available in an action alleging personal liability of an officer or employee;


(E) The indemnification of officers or employees against judgments or settlements pursuant to this section shall be accomplished only through the following procedure:
(1) If the employer of the defendant officer or employee to be indemnified determines that the actions or omissions of its officer or employee giving rise to the claim were not within the terms of division (B)(2) of this section, an indemnity agreement shall be prepared by the attorney general, specifying that the employer will indemnify the officer or employee from a particular judgment that has been rendered or a particular settlement amount that has been negotiated. The agreement shall name the person or entity to whom payment by the state of the judgment or settlement amount will be made, and the agreement shall not be effective until it is approved by the officer or employee to be indemnified, the director, administrative chief, or other governing body of the employer, and by the attorney general. The attorney general shall approve the indemnity agreement, unless the attorney general finds that division (B) of this section prohibits the state from indemnifying the officer or employee, or prohibits the state from indemnifying the officer or employee for a portion of a judgment or settlement and the indemnity agreement would indemnify the officer or employee for all or a part of that portion.

(2) The attorney general shall forward a copy of the agreement to the director of budget and management.

(3) Any indemnification paid shall be charged by the director of budget and management against available unencumbered moneys in the appropriations of the employer of the officer or employee to be indemnified. The director of budget and management shall have sole discretion to determine whether or not unencumbered moneys in a particular appropriation are available for payment of the indemnification.

(4) The director of budget and management shall, upon
receipt of the agreement from the attorney general pursuant to division (E)(2) of this section, provide for payment to the person or entity named in the agreement, in the amount specified in the agreement.

(5) If the director of budget and management determines that sufficient unencumbered moneys do not exist in the particular appropriations to pay the indemnification, the director shall make application for payment of the indemnification out of the emergency purposes account or any other appropriation for emergencies or contingencies, and payment out of this account or other appropriation shall be authorized if there are sufficient moneys greater than the sum total of then pending emergency purposes account requests, or requests for releases from the other appropriation.

(6) If sufficient moneys do not exist in the emergency purposes account or any other appropriation for emergencies or contingencies to pay the indemnification, the employer named in the agreement shall request the general assembly to make an appropriation sufficient to pay the indemnification, and no payment shall be made until the appropriation has been made. The employer shall make this appropriation request during the current biennium and during each succeeding biennium until a sufficient appropriation is made.

(7) If the indemnification is to be made by an employer whose funds are not handled by the director of budget and management, the employer shall pay the person or entity named in the agreement.

If the employer determines that sufficient unencumbered moneys do not exist to pay the indemnification, the employer shall make application for payment of the indemnification out of
the emergency purposes account or any other appropriation for
emergencies or contingencies, and payment out of this account or
other appropriation shall be authorized if there are sufficient
moneys greater than the sum total of then pending emergency
purposes account requests, or requests for releases from the
other appropriation.

If sufficient moneys do not exist in the emergency
purposes account or any other appropriation for emergencies or
contingencies to pay the indemnification, the employer named in
the agreement shall request the general assembly to make an
appropriation sufficient to pay the indemnification, and no
payment shall be made until such an appropriation has been made.
The employer shall make this appropriation request during the
current biennium and during each succeeding biennium until a
sufficient appropriation is made.

(F)(1) Subject to division (F)(2) of this section, if an
employer or the attorney general fails to approve
indemnification or limits indemnification of an officer or
employee of the employer, the officer or employee may commence
an action against the employer in the court of claims pursuant
to sections 2743.01 to 2743.20 of the Revised Code to prove that
the officer or employee is entitled to indemnification pursuant
to division (A) of this section and that division (B) of this
section does not prohibit or limit the officer's or employee's
indemnification and seeking either a judgment against the
employer for a sum of money that the officer or employee has
paid to satisfy a judgment or settlement or an order directing
the employer to pay a judgment or settlement against the officer
or employee that has not been satisfied. Section 109.365 of the
Revised Code does not prohibit any information obtained by the
attorney general in the attorney general's investigation
conducted pursuant to division (A) of section 109.362 of the Revised Code to determine whether to defend the officer or employee from being admitted as evidence in any action brought pursuant to this section.

An action brought pursuant to division (F)(1) of this section shall be commenced no later than two years after the cause of action arising under division (F)(1) of this section accrues. A cause of action arising under this section accrues upon the entry of a money judgment against the officer or employee if the time for filing an appeal in the action lapses without the filing of an appeal, upon the conclusion of the final appeal in any action in which a money judgment is entered against the officer or employee if an appeal is filed in the action, or upon execution of any settlement agreement requiring payment of money by the officer or employee.

(2) Notwithstanding division (F)(1) of this section, an officer or employee may not commence an action against the employer in the court of claims or in any other court regarding a refusal of the employer or the attorney general to indemnify punitive or exemplary damages pursuant to this section or for any action described in division (I) of section 2743.02 of the Revised Code.

Sec. 2743.02. (A)(1) The Except as provided in division (I) of this section, the state hereby waives its immunity from liability, except as provided for the office of the state fire marshal in division (G)(1) of section 9.60 and division (B) of section 3737.221 of the Revised Code and subject to division (H) of this section, and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits
between private parties, except that the determination of liability is subject to the limitations set forth in this chapter and, in the case of state universities or colleges, in section 3345.40 of the Revised Code, and except as provided in division (A)(2) or (3) of this section. To the extent that the state has previously consented to be sued, this chapter has no applicability.

Except in the case of a civil action filed by the state, filing a civil action in the court of claims results in a complete waiver of any cause of action, based on the same act or omission, that the filing party has against any officer or employee, as defined in section 109.36 of the Revised Code. The waiver shall be void if the court determines that the act or omission was manifestly outside the scope of the officer's or employee's office or employment or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

(2) If a claimant proves in the court of claims that an officer or employee, as defined in section 109.36 of the Revised Code, would have personal liability for the officer's or employee's acts or omissions but for the fact that the officer or employee has personal immunity under section 9.86 of the Revised Code, the state shall be held liable in the court of claims in any action that is timely filed pursuant to section 2743.16 of the Revised Code and that is based upon the acts or omissions.

(3)(a) Except as provided in division (A)(3)(b) of this section and as set forth in division (I) of this section, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty,
including the performance or nonperformance of a public duty that is owed by the state in relation to any action of an individual who is committed to the custody of the state.

(b) The state immunity provided in division (A)(3)(a) of this section does not apply to any action of the state under circumstances in which a special relationship can be established between the state and an injured party. A special relationship under this division is demonstrated if all of the following elements exist:

(i) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who was allegedly injured;

(ii) Knowledge on the part of the state's agents that inaction of the state could lead to harm;

(iii) Some form of direct contact between the state's agents and the injured party;

(iv) The injured party's justifiable reliance on the state's affirmative undertaking.

(B) The state hereby waives the immunity from liability of all hospitals owned or operated by one or more political subdivisions and consents for them to be sued, and to have their liability determined, in the court of common pleas, in accordance with the same rules of law applicable to suits between private parties, subject to the limitations set forth in this chapter. This division is also applicable to hospitals owned or operated by political subdivisions that have been determined by the supreme court to be subject to suit prior to July 28, 1975.

(C) Any hospital, as defined in section 2305.113 of the
Revised Code, may purchase liability insurance covering its operations and activities and its agents, employees, nurses, interns, residents, staff, and members of the governing board and committees, and, whether or not such insurance is purchased, may, to the extent that its governing board considers appropriate, indemnify or agree to indemnify and hold harmless any such person against expense, including attorney's fees, damage, loss, or other liability arising out of, or claimed to have arisen out of, the death, disease, or injury of any person as a result of the negligence, malpractice, or other action or inaction of the indemnified person while acting within the scope of the indemnified person's duties or engaged in activities at the request or direction, or for the benefit, of the hospital. Any hospital electing to indemnify those persons, or to agree to so indemnify, shall reserve any funds that are necessary, in the exercise of sound and prudent actuarial judgment, to cover the potential expense, fees, damage, loss, or other liability. The superintendent of insurance may recommend, or, if the hospital requests the superintendent to do so, the superintendent shall recommend, a specific amount for any period that, in the superintendent's opinion, represents such a judgment. This authority is in addition to any authorization otherwise provided or permitted by law.

(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section apply under those circumstances.
(E) The only defendant in original actions in the court of claims is the state. The state may file a third-party complaint or counterclaim in any civil action, except a civil action for ten thousand dollars or less, that is filed in the court of claims.

(F) A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of the officer's or employee's employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims that has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action. The officer or employee may participate in the immunity determination proceeding before the court of claims to determine whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code.

The filing of a claim against an officer or employee under this division tolls the running of the applicable statute of limitations until the court of claims determines whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code.

(G) If a claim lies against an officer or employee who is a member of the Ohio national guard, and the officer or employee was, at the time of the act or omission complained of, subject to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 2671, et seq., the Federal Tort Claims Act is the exclusive
The remedy of the claimant and the state has no liability under this section.

(H) If an inmate of a state correctional institution has a claim against the state for the loss of or damage to property and the amount claimed does not exceed three hundred dollars, before commencing an action against the state in the court of claims, the inmate shall file a claim for the loss or damage under the rules adopted by the director of rehabilitation and correction pursuant to this division. The inmate shall file the claim within the time allowed for commencement of a civil action under section 2743.16 of the Revised Code. If the state admits or compromises the claim, the director shall make payment from a fund designated by the director for that purpose. If the state denies the claim or does not compromise the claim at least sixty days prior to expiration of the time allowed for commencement of a civil action based upon the loss or damage under section 2743.16 of the Revised Code, the inmate may commence an action in the court of claims under this chapter to recover damages for the loss or damage.

The director of rehabilitation and correction shall adopt rules pursuant to Chapter 119. of the Revised Code to implement this division.

(I) Notwithstanding any provision of law to the contrary, the state is immune from liability in any civil action or proceeding existing on or after the effective date of this amendment that involves the performance or nonperformance of a governmental function or public duty as a result of a state agency's response to the COVID-19 pandemic by arranging or providing care, protection, or treatment for any person committed to the custody of the state, including health care
services, or that, as a result of the performance or nonperformance of a governmental function or public duty, an officer or employee becomes infected with COVID-19. The state expressly does not consent to be sued as set forth in this division. Neither the court of claims nor any courts of common pleas shall have jurisdiction to hear any case or controversy, initiate any immunity determination, or have the state's liability subject to any determination, nor shall the state indemnify any employee found liable in any court of competent jurisdiction.

Sec. 2744.01. As used in this chapter:

(A) "Emergency call" means a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.

(B) "Employee" means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision. "Employee" does not include an independent contractor and does not include any individual engaged by a school district pursuant to section 3319.301 of the Revised Code. "Employee" includes any elected or appointed official of a political subdivision. "Employee" also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile
court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision.

(C)(1) "Governmental function" means a function of a political subdivision that is specified in division (C)(2) of this section or that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

(2) A "governmental function" includes, but is not limited to, the following:

(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;

(c) The provision of a system of public education;

(d) The provision of a free public library system;
(e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;

(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;

(g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;

(h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code;

(i) The enforcement or nonperformance of any law;

(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;

(k) The collection and disposal of solid wastes, as defined in section 3734.01 of the Revised Code, including, but not limited to, the operation of solid waste disposal facilities, as "facilities" is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, "hazardous waste generated by households" means solid waste originally generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under section 3734.12 of the Revised Code, but that is excluded from regulation as a hazardous waste by those rules.

(l) The provision or nonprovision, planning or design,
construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;

(m) The operation of a job and family services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;

(n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;

(o) The operation of mental health facilities, developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;

(p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;

(q) Urban renewal projects and the elimination of slum conditions, including the performance of any activity that a county land reutilization corporation is authorized to perform
under Chapter 1724. or 5722. of the Revised Code;

(r) Flood control measures;

(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;

(t) The issuance of revenue obligations under section 140.06 of the Revised Code;

(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any school athletic facility, school auditorium, or gymnasium or any recreational area or facility, including, but not limited to, any of the following:

(i) A park, playground, or playfield;

(ii) An indoor recreational facility;

(iii) A zoo or zoological park;

(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;

(v) A golf course;

(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skateboarding, or scooter riding is engaged;

(vii) A rope course or climbing walls;

(viii) An all-purpose vehicle facility in which all-purpose vehicles, as defined in section 4519.01 of the Revised Code, are contained, maintained, or operated for recreational activities.

(v) The provision of public defender services by a county
or joint county public defender's office pursuant to Chapter 120. of the Revised Code;

(w)(i) At any time before regulations prescribed pursuant to 49 U.S.C.A 20153 become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells;

(ii) On and after the effective date of regulations prescribed pursuant to 49 U.S.C.A. 20153, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in 49 U.S.C.A 20153, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted, pursuant to subsection (c) of that section, from the requirement of the regulations prescribed under subsection (b) of that section.

(x) Compliance with any order or directive issued as a result of the COVID-19 pandemic by the state department of health or a general health district or city health district created by or under the authority of Chapter 3709. of the Revised Code;

(y) Compliance with any order or directive issued as a result of the COVID-19 pandemic by the state government, a political subdivision, or an emergency management agency established within the department of public safety under section 5502.22 of the Revised Code;
(z) Any operation or function to abate the effects of the conditions for which either of the following have been issued:

(i) An emergency declaration issued by the state government or any political subdivision;

(ii) A public health emergency issued by the federal government, the state government, or any county or municipal health department.

(aa) The provision or nonprovision of any function of local government during an emergency declaration issued by the state government or any political subdivision, or during a public health emergency declaration issued by the federal government, the state government, any county or municipal health department, or any general health district created by or under the authority of Chapter 3709. of the Revised Code;

(bb) A function that the general assembly mandates a political subdivision to perform.

(D) "Law" means any provision of the constitution, statutes, or rules of the United States or of this state; provisions of charters, ordinances, resolutions, and rules of political subdivisions; and written policies adopted by boards of education. When used in connection with the "common law," this definition does not apply.

(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a
county hospital commission appointed under section 339.14 of the Revised Code, board of hospital commissioners appointed for a municipal hospital under section 749.04 of the Revised Code, board of hospital trustees appointed for a municipal hospital under section 749.22 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, community school established under Chapter 3314. of the Revised Code, county land reutilization corporation organized under Chapter 1724. of the Revised Code, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under sections 2301.51 to 2301.58 of the Revised Code, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility
governing board of a community-based correctional facility and
program or district community-based correctional facility and
program that is so established and operated.

(G)(1) "Proprietary function" means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies both of the following:

(a) The function is not one described in division (C)(1) (a) or (b) of this section and is not one specified in division (C)(2) of this section;

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

(2) A "proprietary function" includes, but is not limited to, the following:

(a) The operation of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and
crafts center, band or orchestra, or off-street parking facility.

(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. "Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.

(I) "State" means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, colleges and universities, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

Section 2. That existing sections 9.87, 2743.02, and 2744.01 of the Revised Code are hereby repealed.

Section 3. (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 conduct 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) 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 December 31, 2020, and supersedes section 2305.2311 of the Revised Code during that period.

Section 4. (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 or intentional conduct or with 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) 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, nonprofit, governmental, or 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.

(D) 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 December 31, 2020.

Section 5. (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 6. 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 December 31, 2020.

Section 7. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that it is crucial to provide immunity in response to a disaster or emergency declared by the federal government, state government, or political subdivision of the state. Therefore, this act shall go into immediate effect.