

As Reported by the House Civil Justice Committee

133rd General Assembly

Regular Session

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Sub. H. B. No. 606

Representative Grendell

Cosponsor: Representative Seitz

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, 19
any civil action arising under federal law, the law of another 20
state, or the law of a foreign jurisdiction. The reasonableness 21
of the amount of any consent judgment or settlement is subject 22
to the review and approval of the attorney general and of the 23
director, administrative chief, or governing body of the 24
employer of the officer or employee who is to be indemnified. 25
The maximum aggregate amount of indemnification paid directly 26
from state funds to or on behalf of any officer or employee 27
pursuant to this division shall be one million dollars per 28
occurrence, regardless of the number of persons who suffer 29
damage, injury, or death as a result of the occurrence. 30

(B) The state shall not indemnify an officer or employee 31
under any of the following circumstances: 32

(1) To the extent the officer or employee is covered by a 33
policy of insurance for civil liability purchased by the state; 34

(2) When the officer or employee acts manifestly outside 35
the scope of the officer's or employee's employment or official 36
responsibilities, with malicious purpose, in bad faith, or in a 37
wanton or reckless manner, as determined by the employer of the 38
officer or employee or by the attorney general. 39

(3) For any portion of a judgment that represents punitive 40
or exemplary damages, except that this prohibition does not 41
apply if the employer of the officer or employee and the 42
attorney general determine that the acts or omissions of the 43
officer or employee were not within the terms of division (B) (2) 44
of this section; 45

(4) For any portion of a consent judgment or settlement 46
that is unreasonable; 47

(5) For any portion of a judgment where a cause of action 48
exists on or after the effective date of this amendment that 49
involves the performance or nonperformance of a governmental 50
function or public duty as a result of a state agency's response 51
to the COVID-19 pandemic by arranging or providing care, 52
protection, or treatment for any person committed to the custody 53
of the state, including health care services, or that, as a 54
result of the performance or nonperformance of a governmental 55
function or public duty, an officer or employee becomes infected 56
with COVID-19. 57

(C) The director of administrative services may purchase a 58
policy or policies of insurance on behalf of officers and 59
employees of the state from an insurer or insurers licensed to 60
do business in this state providing coverage for amounts in 61
excess of one million dollars per occurrence incurred in 62
connection with any civil action, demand, or claim against the 63
officer or employee by reason of an act or omission by the 64
officer or employee occurring in the performance of the 65
officer's or employee's duties and not coming within the terms 66
of division (B) (2) of this section. 67

(D) This section does not affect any of the following: 68

(1) The waiver arising under division (A) (1) of section 69
2743.02 of the Revised Code; 70

(2) Any defense that would otherwise be available in an 71
action alleging personal liability of an officer or employee; 72

(3) The operation of section 9.83 of the Revised Code. 73

(E) The indemnification of officers or employees against 74
judgments or settlements pursuant to this section shall be 75
accomplished only through the following procedure: 76

(1) If the employer of the defendant officer or employee 77
to be indemnified determines that the actions or omissions of 78
its officer or employee giving rise to the claim were not within 79
the terms of division (B) (2) of this section, an indemnity 80
agreement shall be prepared by the attorney general, specifying 81
that the employer will indemnify the officer or employee from a 82
particular judgment that has been rendered or a particular 83
settlement amount that has been negotiated. The agreement shall 84
name the person or entity to whom payment by the state of the 85
judgment or settlement amount will be made, and the agreement 86
shall not be effective until it is approved by the officer or 87
employee to be indemnified, the director, administrative chief, 88
or other governing body of the employer, and by the attorney 89
general. The attorney general shall approve the indemnity 90
agreement, unless the attorney general finds that division (B) 91
of this section prohibits the state from indemnifying the 92
officer or employee, or prohibits the state from indemnifying 93
the officer or employee for a portion of a judgment or 94
settlement and the indemnity agreement would indemnify the 95
officer or employee for all or a part of that portion. 96

(2) The attorney general shall forward a copy of the 97
agreement to the director of budget and management. 98

(3) Any indemnification paid shall be charged by the 99
director of budget and management against available unencumbered 100
moneys in the appropriations of the employer of the officer or 101
employee to be indemnified. The director of budget and 102
management shall have sole discretion to determine whether or 103
not unencumbered moneys in a particular appropriation are 104
available for payment of the indemnification. 105

(4) The director of budget and management shall, upon 106

receipt of the agreement from the attorney general pursuant to 107
division (E)(2) of this section, provide for payment to the 108
person or entity named in the agreement, in the amount specified 109
in the agreement. 110

(5) If the director of budget and management determines 111
that sufficient unencumbered moneys do not exist in the 112
particular appropriations to pay the indemnification, the 113
director shall make application for payment of the 114
indemnification out of the emergency purposes account or any 115
other appropriation for emergencies or contingencies, and 116
payment out of this account or other appropriation shall be 117
authorized if there are sufficient moneys greater than the sum 118
total of then pending emergency purposes account requests, or 119
requests for releases from the other appropriation. 120

(6) If sufficient moneys do not exist in the emergency 121
purposes account or any other appropriation for emergencies or 122
contingencies to pay the indemnification, the employer named in 123
the agreement shall request the general assembly to make an 124
appropriation sufficient to pay the indemnification, and no 125
payment shall be made until the appropriation has been made. The 126
employer shall make this appropriation request during the 127
current biennium and during each succeeding biennium until a 128
sufficient appropriation is made. 129

(7) If the indemnification is to be made by an employer 130
whose funds are not handled by the director of budget and 131
management, the employer shall pay the person or entity named in 132
the agreement. 133

If the employer determines that sufficient unencumbered 134
moneys do not exist to pay the indemnification, the employer 135
shall make application for payment of the indemnification out of 136

the emergency purposes account or any other appropriation for 137
emergencies or contingencies, and payment out of this account or 138
other appropriation shall be authorized if there are sufficient 139
moneys greater than the sum total of then pending emergency 140
purposes account requests, or requests for releases from the 141
other appropriation. 142

If sufficient moneys do not exist in the emergency 143
purposes account or any other appropriation for emergencies or 144
contingencies to pay the indemnification, the employer named in 145
the agreement shall request the general assembly to make an 146
appropriation sufficient to pay the indemnification, and no 147
payment shall be made until such an appropriation has been made. 148
The employer shall make this appropriation request during the 149
current biennium and during each succeeding biennium until a 150
sufficient appropriation is made. 151

(F) (1) Subject to division (F) (2) of this section, if an 152
employer or the attorney general fails to approve 153
indemnification or limits indemnification of an officer or 154
employee of the employer, the officer or employee may commence 155
an action against the employer in the court of claims pursuant 156
to sections 2743.01 to 2743.20 of the Revised Code to prove that 157
the officer or employee is entitled to indemnification pursuant 158
to division (A) of this section and that division (B) of this 159
section does not prohibit or limit the officer's or employee's 160
indemnification and seeking either a judgment against the 161
employer for a sum of money that the officer or employee has 162
paid to satisfy a judgment or settlement or an order directing 163
the employer to pay a judgment or settlement against the officer 164
or employee that has not been satisfied. Section 109.365 of the 165
Revised Code does not prohibit any information obtained by the 166
attorney general in the attorney general's investigation 167

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 198
liability is subject to the limitations set forth in this 199
chapter and, in the case of state universities or colleges, in 200
section 3345.40 of the Revised Code, and except as provided in 201
division (A) (2) or (3) of this section. To the extent that the 202
state has previously consented to be sued, this chapter has no 203
applicability. 204

Except in the case of a civil action filed by the state, 205
filing a civil action in the court of claims results in a 206
complete waiver of any cause of action, based on the same act or 207
omission, that the filing party has against any officer or 208
employee, as defined in section 109.36 of the Revised Code. The 209
waiver shall be void if the court determines that the act or 210
omission was manifestly outside the scope of the officer's or 211
employee's office or employment or that the officer or employee 212
acted with malicious purpose, in bad faith, or in a wanton or 213
reckless manner. 214

(2) If a claimant proves in the court of claims that an 215
officer or employee, as defined in section 109.36 of the Revised 216
Code, would have personal liability for the officer's or 217
employee's acts or omissions but for the fact that the officer 218
or employee has personal immunity under section 9.86 of the 219
Revised Code, the state shall be held liable in the court of 220
claims in any action that is timely filed pursuant to section 221
2743.16 of the Revised Code and that is based upon the acts or 222
omissions. 223

(3) (a) Except as provided in division (A) (3) (b) of this 224
section and as set forth in division (I) of this section, the 225
state is immune from liability in any civil action or proceeding 226
involving the performance or nonperformance of a public duty, 227

including the performance or nonperformance of a public duty 228
that is owed by the state in relation to any action of an 229
individual who is committed to the custody of the state. 230

(b) The state immunity provided in division (A) (3) (a) of 231
this section does not apply to any action of the state under 232
circumstances in which a special relationship can be established 233
between the state and an injured party. A special relationship 234
under this division is demonstrated if all of the following 235
elements exist: 236

(i) An assumption by the state, by means of promises or 237
actions, of an affirmative duty to act on behalf of the party 238
who was allegedly injured; 239

(ii) Knowledge on the part of the state's agents that 240
inaction of the state could lead to harm; 241

(iii) Some form of direct contact between the state's 242
agents and the injured party; 243

(iv) The injured party's justifiable reliance on the 244
state's affirmative undertaking. 245

(B) The state hereby waives the immunity from liability of 246
all hospitals owned or operated by one or more political 247
subdivisions and consents for them to be sued, and to have their 248
liability determined, in the court of common pleas, in 249
accordance with the same rules of law applicable to suits 250
between private parties, subject to the limitations set forth in 251
this chapter. This division is also applicable to hospitals 252
owned or operated by political subdivisions that have been 253
determined by the supreme court to be subject to suit prior to 254
July 28, 1975. 255

(C) Any hospital, as defined in section 2305.113 of the 256

Revised Code, may purchase liability insurance covering its 257
operations and activities and its agents, employees, nurses, 258
interns, residents, staff, and members of the governing board 259
and committees, and, whether or not such insurance is purchased, 260
may, to the extent that its governing board considers 261
appropriate, indemnify or agree to indemnify and hold harmless 262
any such person against expense, including attorney's fees, 263
damage, loss, or other liability arising out of, or claimed to 264
have arisen out of, the death, disease, or injury of any person 265
as a result of the negligence, malpractice, or other action or 266
inaction of the indemnified person while acting within the scope 267
of the indemnified person's duties or engaged in activities at 268
the request or direction, or for the benefit, of the hospital. 269
Any hospital electing to indemnify those persons, or to agree to 270
so indemnify, shall reserve any funds that are necessary, in the 271
exercise of sound and prudent actuarial judgment, to cover the 272
potential expense, fees, damage, loss, or other liability. The 273
superintendent of insurance may recommend, or, if the hospital 274
requests the superintendent to do so, the superintendent shall 275
recommend, a specific amount for any period that, in the 276
superintendent's opinion, represents such a judgment. This 277
authority is in addition to any authorization otherwise provided 278
or permitted by law. 279

(D) Recoveries against the state shall be reduced by the 280
aggregate of insurance proceeds, disability award, or other 281
collateral recovery received by the claimant. This division does 282
not apply to civil actions in the court of claims against a 283
state university or college under the circumstances described in 284
section 3345.40 of the Revised Code. The collateral benefits 285
provisions of division (B) (2) of that section apply under those 286
circumstances. 287

(E) The only defendant in original actions in the court of 288
claims is the state. The state may file a third-party complaint 289
or counterclaim in any civil action, except a civil action for 290
ten thousand dollars or less, that is filed in the court of 291
claims. 292

(F) A civil action against an officer or employee, as 293
defined in section 109.36 of the Revised Code, that alleges that 294
the officer's or employee's conduct was manifestly outside the 295
scope of the officer's or employee's employment or official 296
responsibilities, or that the officer or employee acted with 297
malicious purpose, in bad faith, or in a wanton or reckless 298
manner shall first be filed against the state in the court of 299
claims that has exclusive, original jurisdiction to determine, 300
initially, whether the officer or employee is entitled to 301
personal immunity under section 9.86 of the Revised Code and 302
whether the courts of common pleas have jurisdiction over the 303
civil action. The officer or employee may participate in the 304
immunity determination proceeding before the court of claims to 305
determine whether the officer or employee is entitled to 306
personal immunity under section 9.86 of the Revised Code. 307

The filing of a claim against an officer or employee under 308
this division tolls the running of the applicable statute of 309
limitations until the court of claims determines whether the 310
officer or employee is entitled to personal immunity under 311
section 9.86 of the Revised Code. 312

(G) If a claim lies against an officer or employee who is 313
a member of the Ohio national guard, and the officer or employee 314
was, at the time of the act or omission complained of, subject 315
to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 316
2671, et seq., the Federal Tort Claims Act is the exclusive 317

remedy of the claimant and the state has no liability under this 318
section. 319

(H) If an inmate of a state correctional institution has a 320
claim against the state for the loss of or damage to property 321
and the amount claimed does not exceed three hundred dollars, 322
before commencing an action against the state in the court of 323
claims, the inmate shall file a claim for the loss or damage 324
under the rules adopted by the director of rehabilitation and 325
correction pursuant to this division. The inmate shall file the 326
claim within the time allowed for commencement of a civil action 327
under section 2743.16 of the Revised Code. If the state admits 328
or compromises the claim, the director shall make payment from a 329
fund designated by the director for that purpose. If the state 330
denies the claim or does not compromise the claim at least sixty 331
days prior to expiration of the time allowed for commencement of 332
a civil action based upon the loss or damage under section 333
2743.16 of the Revised Code, the inmate may commence an action 334
in the court of claims under this chapter to recover damages for 335
the loss or damage. 336

The director of rehabilitation and correction shall adopt 337
rules pursuant to Chapter 119. of the Revised Code to implement 338
this division. 339

(I) Notwithstanding any provision of law to the contrary, 340
the state is immune from liability in any civil action or 341
proceeding existing on or after the effective date of this 342
amendment that involves the performance or nonperformance of a 343
governmental function or public duty as a result of a state 344
agency's response to the COVID-19 pandemic by arranging or 345
providing care, protection, or treatment for any person 346
committed to the custody of the state, including health care 347

services, or that, as a result of the performance or 348
nonperformance of a governmental function or public duty, an 349
officer or employee becomes infected with COVID-19. The state 350
expressly does not consent to be sued as set forth in this 351
division. Neither the court of claims nor any courts of common 352
pleas shall have jurisdiction to hear any case or controversy, 353
initiate any immunity determination, or have the state's 354
liability subject to any determination, nor shall the state 355
indemnify any employee found liable in any court of competent 356
jurisdiction. 357

Sec. 2744.01. As used in this chapter: 358

(A) "Emergency call" means a call to duty, including, but 359
not limited to, communications from citizens, police dispatches, 360
and personal observations by peace officers of inherently 361
dangerous situations that demand an immediate response on the 362
part of a peace officer. 363

(B) "Employee" means an officer, agent, employee, or 364
servant, whether or not compensated or full-time or part-time, 365
who is authorized to act and is acting within the scope of the 366
officer's, agent's, employee's, or servant's employment for a 367
political subdivision. "Employee" does not include an 368
independent contractor and does not include any individual 369
engaged by a school district pursuant to section 3319.301 of the 370
Revised Code. "Employee" includes any elected or appointed 371
official of a political subdivision. "Employee" also includes a 372
person who has been convicted of or pleaded guilty to a criminal 373
offense and who has been sentenced to perform community service 374
work in a political subdivision whether pursuant to section 375
2951.02 of the Revised Code or otherwise, and a child who is 376
found to be a delinquent child and who is ordered by a juvenile 377

court pursuant to section 2152.19 or 2152.20 of the Revised Code 378
to perform community service or community work in a political 379
subdivision. 380

(C) (1) "Governmental function" means a function of a 381
political subdivision that is specified in division (C) (2) of 382
this section or that satisfies any of the following: 383

(a) A function that is imposed upon the state as an 384
obligation of sovereignty and that is performed by a political 385
subdivision voluntarily or pursuant to legislative requirement; 386

(b) A function that is for the common good of all citizens 387
of the state; 388

(c) A function that promotes or preserves the public 389
peace, health, safety, or welfare; that involves activities that 390
are not engaged in or not customarily engaged in by 391
nongovernmental persons; and that is not specified in division 392
(G) (2) of this section as a proprietary function. 393

(2) A "governmental function" includes, but is not limited 394
to, the following: 395

(a) The provision or nonprovision of police, fire, 396
emergency medical, ambulance, and rescue services or protection; 397

(b) The power to preserve the peace; to prevent and 398
suppress riots, disturbances, and disorderly assemblages; to 399
prevent, mitigate, and clean up releases of oil and hazardous 400
and extremely hazardous substances as defined in section 3750.01 401
of the Revised Code; and to protect persons and property; 402

(c) The provision of a system of public education; 403

(d) The provision of a free public library system; 404

(e) The regulation of the use of, and the maintenance and	405
repair of, roads, highways, streets, avenues, alleys, sidewalks,	406
bridges, aqueducts, viaducts, and public grounds;	407
(f) Judicial, quasi-judicial, prosecutorial, legislative,	408
and quasi-legislative functions;	409
(g) The construction, reconstruction, repair, renovation,	410
maintenance, and operation of buildings that are used in	411
connection with the performance of a governmental function,	412
including, but not limited to, office buildings and courthouses;	413
(h) The design, construction, reconstruction, renovation,	414
repair, maintenance, and operation of jails, places of juvenile	415
detention, workhouses, or any other detention facility, as	416
defined in section 2921.01 of the Revised Code;	417
(i) The enforcement or nonperformance of any law;	418
(j) The regulation of traffic, and the erection or	419
nonerection of traffic signs, signals, or control devices;	420
(k) The collection and disposal of solid wastes, as	421
defined in section 3734.01 of the Revised Code, including, but	422
not limited to, the operation of solid waste disposal	423
facilities, as "facilities" is defined in that section, and the	424
collection and management of hazardous waste generated by	425
households. As used in division (C) (2) (k) of this section,	426
"hazardous waste generated by households" means solid waste	427
originally generated by individual households that is listed	428
specifically as hazardous waste in or exhibits one or more	429
characteristics of hazardous waste as defined by rules adopted	430
under section 3734.12 of the Revised Code, but that is excluded	431
from regulation as a hazardous waste by those rules.	432
(l) The provision or nonprovision, planning or design,	433

construction, or reconstruction of a public improvement, 434
including, but not limited to, a sewer system; 435

(m) The operation of a job and family services department 436
or agency, including, but not limited to, the provision of 437
assistance to aged and infirm persons and to persons who are 438
indigent; 439

(n) The operation of a health board, department, or 440
agency, including, but not limited to, any statutorily required 441
or permissive program for the provision of immunizations or 442
other inoculations to all or some members of the public, 443
provided that a "governmental function" does not include the 444
supply, manufacture, distribution, or development of any drug or 445
vaccine employed in any such immunization or inoculation program 446
by any supplier, manufacturer, distributor, or developer of the 447
drug or vaccine; 448

(o) The operation of mental health facilities, 449
developmental disabilities facilities, alcohol treatment and 450
control centers, and children's homes or agencies; 451

(p) The provision or nonprovision of inspection services 452
of all types, including, but not limited to, inspections in 453
connection with building, zoning, sanitation, fire, plumbing, 454
and electrical codes, and the taking of actions in connection 455
with those types of codes, including, but not limited to, the 456
approval of plans for the construction of buildings or 457
structures and the issuance or revocation of building permits or 458
stop work orders in connection with buildings or structures; 459

(q) Urban renewal projects and the elimination of slum 460
conditions, including the performance of any activity that a 461
county land reutilization corporation is authorized to perform 462

under Chapter 1724. or 5722. of the Revised Code;	463
(r) Flood control measures;	464
(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;	465 466
(t) The issuance of revenue obligations under section 140.06 of the Revised Code;	467 468
(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:	469 470 471 472 473
(i) A park, playground, or playfield;	474
(ii) An indoor recreational facility;	475
(iii) A zoo or zoological park;	476
(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;	477 478
(v) A golf course;	479
(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;	480 481 482
(vii) A rope course or climbing walls;	483
(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.	484 485 486 487
(v) The provision of public defender services by a county	488

or joint county public defender's office pursuant to Chapter	489
120. of the Revised Code;	490
(w) (i) At any time before regulations prescribed pursuant	491
to 49 U.S.C.A 20153 become effective, the designation,	492
establishment, design, construction, implementation, operation,	493
repair, or maintenance of a public road rail crossing in a zone	494
within a municipal corporation in which, by ordinance, the	495
legislative authority of the municipal corporation regulates the	496
sounding of locomotive horns, whistles, or bells;	497
(ii) On and after the effective date of regulations	498
prescribed pursuant to 49 U.S.C.A. 20153, the designation,	499
establishment, design, construction, implementation, operation,	500
repair, or maintenance of a public road rail crossing in such a	501
zone or of a supplementary safety measure, as defined in 49	502
U.S.C.A 20153, at or for a public road rail crossing, if and to	503
the extent that the public road rail crossing is excepted,	504
pursuant to subsection (c) of that section, from the requirement	505
of the regulations prescribed under subsection (b) of that	506
section.	507
(x) <u>Compliance with any order or directive issued as a</u>	508
<u>result of the COVID-19 pandemic by the state department of</u>	509
<u>health or a general health district or city health district</u>	510
<u>created by or under the authority of Chapter 3709. of the</u>	511
<u>Revised Code;</u>	512
(y) <u>Compliance with any order or directive issued as a</u>	513
<u>result of the COVID-19 pandemic by the state government, a</u>	514
<u>political subdivision, or an emergency management agency</u>	515
<u>established within the department of public safety under section</u>	516
<u>5502.22 of the Revised Code;</u>	517

<u>(z) Any operation or function to abate the effects of the</u>	518
<u>conditions for which either of the following have been issued:</u>	519
<u>(i) An emergency declaration issued by the state</u>	520
<u>government or any political subdivision;</u>	521
<u>(ii) A public health emergency issued by the federal</u>	522
<u>government, the state government, or any county or municipal</u>	523
<u>health department.</u>	524
<u>(aa) The provision or nonprovision of any function of</u>	525
<u>local government during an emergency declaration issued by the</u>	526
<u>state government or any political subdivision, or during a</u>	527
<u>public health emergency declaration issued by the federal</u>	528
<u>government, the state government, any county or municipal health</u>	529
<u>department, or any general health district created by or under</u>	530
<u>the authority of Chapter 3709. of the Revised Code;</u>	531
<u>(bb) A function that the general assembly mandates a</u>	532
<u>political subdivision to perform.</u>	533
(D) "Law" means any provision of the constitution,	534
statutes, or rules of the United States or of this state;	535
provisions of charters, ordinances, resolutions, and rules of	536
political subdivisions; and written policies adopted by boards	537
of education. When used in connection with the "common law,"	538
this definition does not apply.	539
(E) "Motor vehicle" has the same meaning as in section	540
4511.01 of the Revised Code.	541
(F) "Political subdivision" or "subdivision" means a	542
municipal corporation, township, county, school district, or	543
other body corporate and politic responsible for governmental	544
activities in a geographic area smaller than that of the state.	545
"Political subdivision" includes, but is not limited to, a	546

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 579
program or district community-based correctional facility and 580
program that is so established and operated. 581

(G) (1) "Proprietary function" means a function of a 582
political subdivision that is specified in division (G) (2) of 583
this section or that satisfies both of the following: 584

(a) The function is not one described in division (C) (1) 585
(a) or (b) of this section and is not one specified in division 586
(C) (2) of this section; 587

(b) The function is one that promotes or preserves the 588
public peace, health, safety, or welfare and that involves 589
activities that are customarily engaged in by nongovernmental 590
persons. 591

(2) A "proprietary function" includes, but is not limited 592
to, the following: 593

(a) The operation of a hospital by one or more political 594
subdivisions; 595

(b) The design, construction, reconstruction, renovation, 596
repair, maintenance, and operation of a public cemetery other 597
than a township cemetery; 598

(c) The establishment, maintenance, and operation of a 599
utility, including, but not limited to, a light, gas, power, or 600
heat plant, a railroad, a busline or other transit company, an 601
airport, and a municipal corporation water supply system; 602

(d) The maintenance, destruction, operation, and upkeep of 603
a sewer system; 604

(e) The operation and control of a public stadium, 605
auditorium, civic or social center, exhibition hall, arts and 606

crafts center, band or orchestra, or off-street parking 607
facility. 608

(H) "Public roads" means public roads, highways, streets, 609
avenues, alleys, and bridges within a political subdivision. 610
"Public roads" does not include berms, shoulders, rights-of-way, 611
or traffic control devices unless the traffic control devices 612
are mandated by the Ohio manual of uniform traffic control 613
devices. 614

(I) "State" means the state of Ohio, including, but not 615
limited to, the general assembly, the supreme court, the offices 616
of all elected state officers, and all departments, boards, 617
offices, commissions, agencies, colleges and universities, 618
institutions, and other instrumentalities of the state of Ohio. 619
"State" does not include political subdivisions. 620

Section 2. That existing sections 9.87, 2743.02, and 621
2744.01 of the Revised Code are hereby repealed. 622

Section 3. (A) As used in this section: 623

(1) "Advanced practice registered nurse" means an 624
individual who holds a current, valid license issued under 625
Chapter 4723. of the Revised Code to practice as an advanced 626
practice registered nurse. 627

(2) "Athletic trainer" means an individual licensed under 628
Chapter 4755. of the Revised Code to practice athletic training. 629

(3) "Audiologist" means an individual licensed under 630
Chapter 4753. of the Revised Code to practice audiology. 631

(4) "Behavioral health provider" means a provider of 632
alcohol and drug addiction services, mental health services, or 633
other behavioral health services and includes the following 634

providers: 635

(a) An independent chemical dependency counselor-clinical 636
supervisor, independent chemical dependency counselor, chemical 637
dependency counselor III, and chemical dependency counselor II, 638
licensed under Chapter 4758. of the Revised Code, and a chemical 639
dependency counselor assistant, prevention consultant, 640
prevention specialist, prevention specialist assistant, and 641
registered applicant, certified under that chapter; 642

(b) A licensed professional clinical counselor, licensed 643
professional counselor, independent social worker, social 644
worker, independent marriage and family therapist, or marriage 645
and family therapist who holds a current, valid license issued 646
under Chapter 4757. of the Revised Code; 647

(c) A psychologist. 648

(5) "Board of health" means the board of health of a city 649
or general health district or the authority having the duties of 650
a board of health under section 3709.05 of the Revised Code. 651

(6) "Chiropractor" means an individual who is authorized 652
under Chapter 4734. of the Revised Code to practice 653
chiropractic. 654

(7) "Dental hygienist" means an individual licensed under 655
Chapter 4715. of the Revised Code to practice as a dental 656
hygienist. 657

(8) "Dentist" has the same meaning as in section 2305.231 658
of the Revised Code. 659

(9) "Direct support professional" means an individual 660
employed by an agency to provide direct care to individuals with 661
developmental disabilities. 662

- (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	751
under section 4731.15 of the Revised Code to practice massage	752
therapy.	753
(30) "Medicaid waiver component" has the same meaning as	754
in section 5166.01 of the Revised Code.	755
(31) "Occupational therapist" means an individual who	756
holds a current license or limited certificate under Chapter	757
4755. of the Revised Code to practice occupational therapy.	758
(32) "Occupational therapy assistant" means an individual	759
who holds a license or limited permit under Chapter 4755. of the	760
Revised Code to practice as an occupational therapy assistant.	761
(33) "Optometrist" means a person who is licensed under	762
Chapter 4725. of the Revised Code to practice optometry.	763
(34) "Paramedic" means an individual who holds a current,	764
valid certificate issued under section 4765.30 of the Revised	765
Code to practice as an emergency medical technician-paramedic.	766
(35) "Personal care services" has the same meaning as in	767
section 3721.01 of the Revised Code.	768
(36) "Pharmacist" means an individual who holds a current,	769
valid license issued under Chapter 4729. of the Revised Code to	770
practice as a pharmacist.	771
(37) "Physical therapist" means an individual licensed	772
under Chapter 4755. of the Revised Code to practice physical	773
therapy.	774
(38) "Physical therapist assistant" means an individual	775
licensed under Chapter 4755. of the Revised Code to practice as	776
a physical therapist assistant.	777

(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 807
arising under resident or patient bills of rights and 808
contractual claims arising out of statutory or regulatory 809
requirements applicable to health care providers. "Tort action" 810
includes an action on a medical claim. 811

(B) (1) Subject to division (C) (3) of this section, a 812
health care provider that provides health care services, 813
emergency medical services, first-aid treatment, or other 814
emergency professional care, including the provision of any 815
medication or other medical equipment or product, as a result of 816
or in response to a disaster or emergency is not subject to 817
professional disciplinary action and is not liable in damages to 818
any person or government agency in a tort action for injury, 819
death, or loss to person or property that allegedly arises from 820
any of the following: 821

(a) An act or omission of the health care provider in the 822
health care provider's provision, withholding, or withdrawal of 823
those services; 824

(b) Any decision related to the provision, withholding, or 825
withdrawal of those services; 826

(c) Compliance with an executive order or director's order 827
issued during and in response to the disaster or emergency. 828

(2) Division (B) (1) of this section does not apply in a 829
tort action if the health care provider's action, omission, 830
decision, or compliance constitutes a reckless disregard for the 831
consequences so as to affect the life or health of the patient 832
or intentional conduct or willful or wanton misconduct on the 833
part of the person against whom the action is brought. 834

(3) Division (B) (1) of this section does not apply in a 835

professional disciplinary action if the health care provider's 836
action, omission, decision, or compliance constitutes gross 837
negligence. 838

(4) A health care provider is not subject to professional 839
disciplinary action and is not liable in damages to any person 840
or government agency in a tort action for injury, death, or loss 841
to person or property that allegedly arises because the provider 842
was unable to treat, diagnose, or test the person for any 843
illness, disease, or condition, including the inability to 844
perform any elective procedure, due to an executive or 845
director's order or an order of a board of health of a city or 846
general health district issued in relation to an epidemic or 847
pandemic disease or other public health emergency. 848

(C) (1) This section does not create a new cause of action 849
or substantive legal right against a health care provider. 850

(2) This section does not affect any immunities from civil 851
liability or defenses established by another section of the 852
Revised Code or available at common law to which a health care 853
provider may be entitled in connection with the provision of 854
health care services, emergency medical services, first-aid 855
treatment, or other emergency professional care, including the 856
provision of medication, medical equipment, or other medical 857
product. 858

(3) This section does not grant an immunity from tort or 859
other civil liability or a professional disciplinary action to a 860
health care provider for actions that are outside the skills, 861
education, and training of the health care provider, unless the 862
health care provider undertakes the action in good faith and in 863
response to a lack of resources caused by a disaster or 864
emergency. 865

(4) This section does not affect any legal responsibility 866
of a health care provider to comply with any applicable law of 867
this state or rule of an agency of this state. 868

(5) Division (B) of this section applies only to the 869
provision, withholding, or withdrawal of health care services, 870
emergency medical services, first-aid treatment, or other 871
emergency professional care, including the provision of any 872
medication or other medical equipment or product, decisions 873
related to such services or care, or compliance with an 874
executive order or director's order by a health care provider as 875
a result of or in response to a disaster or emergency and 876
through the duration of the disaster or emergency. 877

(D) This section applies from the date of the Governor's 878
Executive Order 2020-01D, issued on March 9, 2020, declaring a 879
state of emergency due to COVID-19, through December 31, 2020, 880
and supersedes section 2305.2311 of the Revised Code during that 881
period. 882

Section 4. (A) No civil action for damages for injury, 883
death, or loss to person or property shall be brought against 884
any person if the cause of action on which the civil action is 885
based, in whole or in part, is that the injury, death, or loss 886
to person or property is caused by the exposure to, or the 887
transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV- 888
2, or any mutation thereof, unless it is established that the 889
exposure to, or the transmission or contraction of, any of those 890
viruses or mutations was by reckless or intentional conduct or 891
with willful or wanton misconduct on the part of the person 892
against whom the action is brought. 893

(B) A government order, recommendation, or guideline shall 894
neither create nor be construed as creating a duty of care upon 895

any person that may be enforced in a cause of action or that may 896
create a new cause of action or substantive legal right against 897
any person with respect to the matters contained in the 898
government order, recommendation, or guideline. A presumption 899
exists that any such government order, recommendation, or 900
guideline is not admissible as evidence that a duty of care, a 901
new cause of action, or a substantive legal right has been 902
established. 903

(C) As used in this section: 904

(1) "MERS-CoV" means the coronavirus that causes middle 905
east respiratory syndrome. 906

(2) "Person" has the same meaning as in section 1.59 of 907
the Revised Code and includes a school, a for-profit, nonprofit, 908
governmental, or religious entity, or a state institution of 909
higher education. 910

(3) "Reckless conduct" means conduct by which, with 911
heedless indifference to the consequences, the person disregards 912
a substantial and unjustifiable risk that the person's conduct 913
is likely to cause an exposure to, or a transmission or 914
contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2, or any 915
mutation thereof, or is likely to be of a nature that results in 916
an exposure to, or a transmission or contraction of, any of 917
those viruses or mutations. A person is reckless with respect to 918
circumstances in relation to causing an exposure to, or a 919
transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV- 920
2, or any mutation thereof, when, with heedless indifference to 921
the consequences, the person disregards a substantial and 922
unjustifiable risk that such circumstances are likely to exist. 923

(4) "SARS-CoV" means the coronavirus that causes severe 924

acute respiratory syndrome.	925
(5) "SARS-CoV-2" means the novel coronavirus that causes coronavirus disease 2019 (COVID-19).	926 927
(6) "State institution of higher education" has the same meaning as in section 3345.011 of the Revised Code.	928 929
(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.	930 931 932
Section 5. (A) The General Assembly makes the following findings:	933 934
(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.	935 936 937 938 939
(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.	940 941 942 943 944 945 946 947 948 949 950
(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,	951 952 953

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, 984
decisions, or compliance from the date of the Governor's 985
Executive Order 2020-01D, issued on March 9, 2020, declaring a 986
state of emergency due to COVID-19 through December 31, 2020. 987

Section 7. This act is hereby declared to be an emergency 988
measure necessary for the immediate preservation of the public 989
peace, health, and safety. The reason for such necessity is that 990
it is crucial to provide immunity in response to a disaster or 991
emergency declared by the federal government, state government, 992
or political subdivision of the state. Therefore, this act shall 993
go into immediate effect. 994