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Representative Grendell

Cosponsors: Representatives Seitz, Baldrige, Carfagna, Cross, DeVitis, Fraizer, Ginter, Green, Greenspan, Holmes, A., Hoops, Jones, Jordan, Keller, Kick, Koehler, Lanese, Lang, LaRe, McClain, Patton, Perales, Plummer, Reineke, Richardson, Riedel, Roemer, Scherer, Smith, T., Stein, Stephens, Wiggam, Wilkin

A BILL

To amend sections 9.87, 2743.02, 2744.01, and 1
4123.68 of the Revised Code to make temporary 2
changes related to qualified civil immunity for 3
health care and emergency services provided 4
during a government-declared disaster or 5
emergency and for exposure to or transmission or 6
contraction of certain coronaviruses, to expand 7
the definition of "governmental function" 8
regarding political subdivision tort liability 9
in relation to emergency declarations, to expand 10
state immunity to include actions undertaken 11
under a duty during the COVID-19 pandemic, to 12
make COVID-19 contracted by certain employees an 13
occupational disease under the Workers' 14
Compensation Law under specific circumstances, 15
and to declare an emergency. 16

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

Section 1. That sections 9.87, 2743.02, 2744.01, and 17

4123.68 of the Revised Code be amended to read as follows: 18

Sec. 9.87. (A) The state, except as provided in division 19
(B) of this section, shall indemnify an officer or employee from 20
liability incurred in the performance of official duties by 21
paying any judgment in, or amount negotiated in settlement of, 22
any civil action arising under federal law, the law of another 23
state, or the law of a foreign jurisdiction. The reasonableness 24
of the amount of any consent judgment or settlement is subject 25
to the review and approval of the attorney general and of the 26
director, administrative chief, or governing body of the 27
employer of the officer or employee who is to be indemnified. 28
The maximum aggregate amount of indemnification paid directly 29
from state funds to or on behalf of any officer or employee 30
pursuant to this division shall be one million dollars per 31
occurrence, regardless of the number of persons who suffer 32
damage, injury, or death as a result of the occurrence. 33

(B) The state shall not indemnify an officer or employee 34
under any of the following circumstances: 35

(1) To the extent the officer or employee is covered by a 36
policy of insurance for civil liability purchased by the state; 37

(2) When the officer or employee acts manifestly outside 38
the scope of the officer's or employee's employment or official 39
responsibilities, with malicious purpose, in bad faith, or in a 40
wanton or reckless manner, as determined by the employer of the 41
officer or employee or by the attorney general. 42

(3) For any portion of a judgment that represents punitive 43
or exemplary damages, except that this prohibition does not 44
apply if the employer of the officer or employee and the 45
attorney general determine that the acts or omissions of the 46

officer or employee were not within the terms of division (B) (2) 47
of this section; 48

(4) For any portion of a consent judgment or settlement 49
that is unreasonable; 50

(5) For any portion of a judgment where a cause of action 51
exists on or after the effective date of this amendment that 52
involves the performance or nonperformance of a governmental 53
function or public duty as a result of a state agency's response 54
to the COVID-19 pandemic by arranging or providing care, 55
protection, or treatment for any person committed to the custody 56
of the state, including health care services, or that, as a 57
result of the performance or nonperformance of a governmental 58
function or public duty, an officer or employee becomes infected 59
with COVID-19. 60

(C) The director of administrative services may purchase a 61
policy or policies of insurance on behalf of officers and 62
employees of the state from an insurer or insurers licensed to 63
do business in this state providing coverage for amounts in 64
excess of one million dollars per occurrence incurred in 65
connection with any civil action, demand, or claim against the 66
officer or employee by reason of an act or omission by the 67
officer or employee occurring in the performance of the 68
officer's or employee's duties and not coming within the terms 69
of division (B) (2) of this section. 70

(D) This section does not affect any of the following: 71

(1) The waiver arising under division (A) (1) of section 72
2743.02 of the Revised Code; 73

(2) Any defense that would otherwise be available in an 74
action alleging personal liability of an officer or employee; 75

(3) The operation of section 9.83 of the Revised Code.	76
(E) The indemnification of officers or employees against judgments or settlements pursuant to this section shall be accomplished only through the following procedure:	77 78 79
(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.	80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99
(2) The attorney general shall forward a copy of the agreement to the director of budget and management.	100 101
(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	102 103 104 105

management shall have sole discretion to determine whether or 106
not unencumbered moneys in a particular appropriation are 107
available for payment of the indemnification. 108

(4) The director of budget and management shall, upon 109
receipt of the agreement from the attorney general pursuant to 110
division (E) (2) of this section, provide for payment to the 111
person or entity named in the agreement, in the amount specified 112
in the agreement. 113

(5) If the director of budget and management determines 114
that sufficient unencumbered moneys do not exist in the 115
particular appropriations to pay the indemnification, the 116
director shall make application for payment of the 117
indemnification out of the emergency purposes account or any 118
other appropriation for emergencies or contingencies, and 119
payment out of this account or other appropriation shall be 120
authorized if there are sufficient moneys greater than the sum 121
total of then pending emergency purposes account requests, or 122
requests for releases from the other appropriation. 123

(6) If sufficient moneys do not exist in the emergency 124
purposes account or any other appropriation for emergencies or 125
contingencies to pay the indemnification, the employer named in 126
the agreement shall request the general assembly to make an 127
appropriation sufficient to pay the indemnification, and no 128
payment shall be made until the appropriation has been made. The 129
employer shall make this appropriation request during the 130
current biennium and during each succeeding biennium until a 131
sufficient appropriation is made. 132

(7) If the indemnification is to be made by an employer 133
whose funds are not handled by the director of budget and 134
management, the employer shall pay the person or entity named in 135

the agreement. 136

If the employer determines that sufficient unencumbered 137
moneys do not exist to pay the indemnification, the employer 138
shall make application for payment of the indemnification out of 139
the emergency purposes account or any other appropriation for 140
emergencies or contingencies, and payment out of this account or 141
other appropriation shall be authorized if there are sufficient 142
moneys greater than the sum total of then pending emergency 143
purposes account requests, or requests for releases from the 144
other appropriation. 145

If sufficient moneys do not exist in the emergency 146
purposes account or any other appropriation for emergencies or 147
contingencies to pay the indemnification, the employer named in 148
the agreement shall request the general assembly to make an 149
appropriation sufficient to pay the indemnification, and no 150
payment shall be made until such an appropriation has been made. 151
The employer shall make this appropriation request during the 152
current biennium and during each succeeding biennium until a 153
sufficient appropriation is made. 154

(F) (1) Subject to division (F) (2) of this section, if an 155
employer or the attorney general fails to approve 156
indemnification or limits indemnification of an officer or 157
employee of the employer, the officer or employee may commence 158
an action against the employer in the court of claims pursuant 159
to sections 2743.01 to 2743.20 of the Revised Code to prove that 160
the officer or employee is entitled to indemnification pursuant 161
to division (A) of this section and that division (B) of this 162
section does not prohibit or limit the officer's or employee's 163
indemnification and seeking either a judgment against the 164
employer for a sum of money that the officer or employee has 165

paid to satisfy a judgment or settlement or an order directing 166
the employer to pay a judgment or settlement against the officer 167
or employee that has not been satisfied. Section 109.365 of the 168
Revised Code does not prohibit any information obtained by the 169
attorney general in the attorney general's investigation 170
conducted pursuant to division (A) of section 109.362 of the 171
Revised Code to determine whether to defend the officer or 172
employee from being admitted as evidence in any action brought 173
pursuant to this section. 174

An action brought pursuant to division (F)(1) of this 175
section shall be commenced no later than two years after the 176
cause of action arising under division (F)(1) of this section 177
accrues. A cause of action arising under this section accrues 178
upon the entry of a money judgment against the officer or 179
employee if the time for filing an appeal in the action lapses 180
without the filing of an appeal, upon the conclusion of the 181
final appeal in any action in which a money judgment is entered 182
against the officer or employee if an appeal is filed in the 183
action, or upon execution of any settlement agreement requiring 184
payment of money by the officer or employee. 185

(2) Notwithstanding division (F)(1) of this section, an 186
officer or employee may not commence an action against the 187
employer in the court of claims or in any other court regarding 188
a refusal of the employer or the attorney general to indemnify 189
punitive or exemplary damages pursuant to this section or for 190
any action described in division (I) of section 2743.02 of the 191
Revised Code. 192

Sec. 2743.02. (A)(1) The Except as provided in division 193
(I) of this section, the state hereby waives its immunity from 194
liability, except as provided for the office of the state fire 195

marshal in division (G) (1) of section 9.60 and division (B) of 196
section 3737.221 of the Revised Code and subject to division (H) 197
of this section, and consents to be sued, and have its liability 198
determined, in the court of claims created in this chapter in 199
accordance with the same rules of law applicable to suits 200
between private parties, except that the determination of 201
liability is subject to the limitations set forth in this 202
chapter and, in the case of state universities or colleges, in 203
section 3345.40 of the Revised Code, and except as provided in 204
division (A) (2) or (3) of this section. To the extent that the 205
state has previously consented to be sued, this chapter has no 206
applicability. 207

Except in the case of a civil action filed by the state, 208
filing a civil action in the court of claims results in a 209
complete waiver of any cause of action, based on the same act or 210
omission, that the filing party has against any officer or 211
employee, as defined in section 109.36 of the Revised Code. The 212
waiver shall be void if the court determines that the act or 213
omission was manifestly outside the scope of the officer's or 214
employee's office or employment or that the officer or employee 215
acted with malicious purpose, in bad faith, or in a wanton or 216
reckless manner. 217

(2) If a claimant proves in the court of claims that an 218
officer or employee, as defined in section 109.36 of the Revised 219
Code, would have personal liability for the officer's or 220
employee's acts or omissions but for the fact that the officer 221
or employee has personal immunity under section 9.86 of the 222
Revised Code, the state shall be held liable in the court of 223
claims in any action that is timely filed pursuant to section 224
2743.16 of the Revised Code and that is based upon the acts or 225
omissions. 226

(3) (a) Except as provided in division (A) (3) (b) of this 227
section and as set forth in division (I) of this section, the 228
state is immune from liability in any civil action or proceeding 229
involving the performance or nonperformance of a public duty, 230
including the performance or nonperformance of a public duty 231
that is owed by the state in relation to any action of an 232
individual who is committed to the custody of the state. 233

(b) The state immunity provided in division (A) (3) (a) of 234
this section does not apply to any action of the state under 235
circumstances in which a special relationship can be established 236
between the state and an injured party. A special relationship 237
under this division is demonstrated if all of the following 238
elements exist: 239

(i) An assumption by the state, by means of promises or 240
actions, of an affirmative duty to act on behalf of the party 241
who was allegedly injured; 242

(ii) Knowledge on the part of the state's agents that 243
inaction of the state could lead to harm; 244

(iii) Some form of direct contact between the state's 245
agents and the injured party; 246

(iv) The injured party's justifiable reliance on the 247
state's affirmative undertaking. 248

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

owned or operated by political subdivisions that have been 256
determined by the supreme court to be subject to suit prior to 257
July 28, 1975. 258

(C) Any hospital, as defined in section 2305.113 of the 259
Revised Code, may purchase liability insurance covering its 260
operations and activities and its agents, employees, nurses, 261
interns, residents, staff, and members of the governing board 262
and committees, and, whether or not such insurance is purchased, 263
may, to the extent that its governing board considers 264
appropriate, indemnify or agree to indemnify and hold harmless 265
any such person against expense, including attorney's fees, 266
damage, loss, or other liability arising out of, or claimed to 267
have arisen out of, the death, disease, or injury of any person 268
as a result of the negligence, malpractice, or other action or 269
inaction of the indemnified person while acting within the scope 270
of the indemnified person's duties or engaged in activities at 271
the request or direction, or for the benefit, of the hospital. 272
Any hospital electing to indemnify those persons, or to agree to 273
so indemnify, shall reserve any funds that are necessary, in the 274
exercise of sound and prudent actuarial judgment, to cover the 275
potential expense, fees, damage, loss, or other liability. The 276
superintendent of insurance may recommend, or, if the hospital 277
requests the superintendent to do so, the superintendent shall 278
recommend, a specific amount for any period that, in the 279
superintendent's opinion, represents such a judgment. This 280
authority is in addition to any authorization otherwise provided 281
or permitted by law. 282

(D) Recoveries against the state shall be reduced by the 283
aggregate of insurance proceeds, disability award, or other 284
collateral recovery received by the claimant. This division does 285
not apply to civil actions in the court of claims against a 286

state university or college under the circumstances described in 287
section 3345.40 of the Revised Code. The collateral benefits 288
provisions of division (B) (2) of that section apply under those 289
circumstances. 290

(E) The only defendant in original actions in the court of 291
claims is the state. The state may file a third-party complaint 292
or counterclaim in any civil action, except a civil action for 293
ten thousand dollars or less, that is filed in the court of 294
claims. 295

(F) A civil action against an officer or employee, as 296
defined in section 109.36 of the Revised Code, that alleges that 297
the officer's or employee's conduct was manifestly outside the 298
scope of the officer's or employee's employment or official 299
responsibilities, or that the officer or employee acted with 300
malicious purpose, in bad faith, or in a wanton or reckless 301
manner shall first be filed against the state in the court of 302
claims that has exclusive, original jurisdiction to determine, 303
initially, whether the officer or employee is entitled to 304
personal immunity under section 9.86 of the Revised Code and 305
whether the courts of common pleas have jurisdiction over the 306
civil action. The officer or employee may participate in the 307
immunity determination proceeding before the court of claims to 308
determine whether the officer or employee is entitled to 309
personal immunity under section 9.86 of the Revised Code. 310

The filing of a claim against an officer or employee under 311
this division tolls the running of the applicable statute of 312
limitations until the court of claims determines whether the 313
officer or employee is entitled to personal immunity under 314
section 9.86 of the Revised Code. 315

(G) If a claim lies against an officer or employee who is 316

a member of the Ohio national guard, and the officer or employee 317
was, at the time of the act or omission complained of, subject 318
to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 319
2671, et seq., the Federal Tort Claims Act is the exclusive 320
remedy of the claimant and the state has no liability under this 321
section. 322

(H) If an inmate of a state correctional institution has a 323
claim against the state for the loss of or damage to property 324
and the amount claimed does not exceed three hundred dollars, 325
before commencing an action against the state in the court of 326
claims, the inmate shall file a claim for the loss or damage 327
under the rules adopted by the director of rehabilitation and 328
correction pursuant to this division. The inmate shall file the 329
claim within the time allowed for commencement of a civil action 330
under section 2743.16 of the Revised Code. If the state admits 331
or compromises the claim, the director shall make payment from a 332
fund designated by the director for that purpose. If the state 333
denies the claim or does not compromise the claim at least sixty 334
days prior to expiration of the time allowed for commencement of 335
a civil action based upon the loss or damage under section 336
2743.16 of the Revised Code, the inmate may commence an action 337
in the court of claims under this chapter to recover damages for 338
the loss or damage. 339

The director of rehabilitation and correction shall adopt 340
rules pursuant to Chapter 119. of the Revised Code to implement 341
this division. 342

(I) Notwithstanding any provision of law to the contrary, 343
the state is immune from liability in any civil action or 344
proceeding existing on or after the effective date of this 345
amendment that involves the performance or nonperformance of a 346

governmental function or public duty as a result of a state 347
agency's response to the COVID-19 pandemic by arranging or 348
providing care, protection, or treatment for any person 349
committed to the custody of the state, including health care 350
services, or that, as a result of the performance or 351
nonperformance of a governmental function or public duty, an 352
officer or employee becomes infected with COVID-19. The state 353
expressly does not consent to be sued as set forth in this 354
division. Neither the court of claims nor any courts of common 355
pleas shall have jurisdiction to hear any case or controversy, 356
initiate any immunity determination, or have the state's 357
liability subject to any determination, nor shall the state 358
indemnify any employee found liable in any court of competent 359
jurisdiction. 360

Sec. 2744.01. As used in this chapter: 361

(A) "Emergency call" means a call to duty, including, but 362
not limited to, communications from citizens, police dispatches, 363
and personal observations by peace officers of inherently 364
dangerous situations that demand an immediate response on the 365
part of a peace officer. 366

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

offense and who has been sentenced to perform community service 377
work in a political subdivision whether pursuant to section 378
2951.02 of the Revised Code or otherwise, and a child who is 379
found to be a delinquent child and who is ordered by a juvenile 380
court pursuant to section 2152.19 or 2152.20 of the Revised Code 381
to perform community service or community work in a political 382
subdivision. 383

(C) (1) "Governmental function" means a function of a 384
political subdivision that is specified in division (C) (2) of 385
this section or that satisfies any of the following: 386

(a) A function that is imposed upon the state as an 387
obligation of sovereignty and that is performed by a political 388
subdivision voluntarily or pursuant to legislative requirement; 389

(b) A function that is for the common good of all citizens 390
of the state; 391

(c) A function that promotes or preserves the public 392
peace, health, safety, or welfare; that involves activities that 393
are not engaged in or not customarily engaged in by 394
nongovernmental persons; and that is not specified in division 395
(G) (2) of this section as a proprietary function. 396

(2) A "governmental function" includes, but is not limited 397
to, the following: 398

(a) The provision or nonprovision of police, fire, 399
emergency medical, ambulance, and rescue services or protection; 400

(b) The power to preserve the peace; to prevent and 401
suppress riots, disturbances, and disorderly assemblages; to 402
prevent, mitigate, and clean up releases of oil and hazardous 403
and extremely hazardous substances as defined in section 3750.01 404
of the Revised Code; and to protect persons and property; 405

(c) The provision of a system of public education;	406
(d) The provision of a free public library system;	407
(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;	408 409 410
(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;	411 412
(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;	413 414 415 416
(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;	417 418 419 420
(i) The enforcement or nonperformance of any law;	421
(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;	422 423
(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	424 425 426 427 428 429 430 431 432 433

under section 3734.12 of the Revised Code, but that is excluded 434
from regulation as a hazardous waste by those rules. 435

(l) The provision or nonprovision, planning or design, 436
construction, or reconstruction of a public improvement, 437
including, but not limited to, a sewer system; 438

(m) The operation of a job and family services department 439
or agency, including, but not limited to, the provision of 440
assistance to aged and infirm persons and to persons who are 441
indigent; 442

(n) The operation of a health board, department, or 443
agency, including, but not limited to, any statutorily required 444
or permissive program for the provision of immunizations or 445
other inoculations to all or some members of the public, 446
provided that a "governmental function" does not include the 447
supply, manufacture, distribution, or development of any drug or 448
vaccine employed in any such immunization or inoculation program 449
by any supplier, manufacturer, distributor, or developer of the 450
drug or vaccine; 451

(o) The operation of mental health facilities, 452
developmental disabilities facilities, alcohol treatment and 453
control centers, and children's homes or agencies; 454

(p) The provision or nonprovision of inspection services 455
of all types, including, but not limited to, inspections in 456
connection with building, zoning, sanitation, fire, plumbing, 457
and electrical codes, and the taking of actions in connection 458
with those types of codes, including, but not limited to, the 459
approval of plans for the construction of buildings or 460
structures and the issuance or revocation of building permits or 461
stop work orders in connection with buildings or structures; 462

(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;	463 464 465 466
(r) Flood control measures;	467
(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;	468 469
(t) The issuance of revenue obligations under section 140.06 of the Revised Code;	470 471
(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:	472 473 474 475 476
(i) A park, playground, or playfield;	477
(ii) An indoor recreational facility;	478
(iii) A zoo or zoological park;	479
(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;	480 481
(v) A golf course;	482
(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;	483 484 485
(vii) A rope course or climbing walls;	486
(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	487 488 489

activities.	490
(v) The provision of public defender services by a county	491
or joint county public defender's office pursuant to Chapter	492
120. of the Revised Code;	493
(w) (i) At any time before regulations prescribed pursuant	494
to 49 U.S.C.A 20153 become effective, the designation,	495
establishment, design, construction, implementation, operation,	496
repair, or maintenance of a public road rail crossing in a zone	497
within a municipal corporation in which, by ordinance, the	498
legislative authority of the municipal corporation regulates the	499
sounding of locomotive horns, whistles, or bells;	500
(ii) On and after the effective date of regulations	501
prescribed pursuant to 49 U.S.C.A. 20153, the designation,	502
establishment, design, construction, implementation, operation,	503
repair, or maintenance of a public road rail crossing in such a	504
zone or of a supplementary safety measure, as defined in 49	505
U.S.C.A 20153, at or for a public road rail crossing, if and to	506
the extent that the public road rail crossing is excepted,	507
pursuant to subsection (c) of that section, from the requirement	508
of the regulations prescribed under subsection (b) of that	509
section.	510
(x) <u>Compliance with any order or directive issued as a</u>	511
<u>result of the COVID-19 pandemic by the state department of</u>	512
<u>health or a general health district or city health district</u>	513
<u>created by or under the authority of Chapter 3709. of the</u>	514
<u>Revised Code;</u>	515
(y) <u>Compliance with any order or directive issued as a</u>	516
<u>result of the COVID-19 pandemic by the state government, a</u>	517
<u>political subdivision, or an emergency management agency</u>	518

<u>established within the department of public safety under section</u>	519
<u>5502.22 of the Revised Code;</u>	520
<u>(z) Any operation or function to abate the effects of the</u>	521
<u>conditions for which either of the following have been issued:</u>	522
<u>(i) An emergency declaration issued by the state</u>	523
<u>government or any political subdivision;</u>	524
<u>(ii) A public health emergency issued by the federal</u>	525
<u>government, the state government, or any county or municipal</u>	526
<u>health department.</u>	527
<u>(aa) The provision or nonprovision of any function of</u>	528
<u>local government during an emergency declaration issued by the</u>	529
<u>state government or any political subdivision, or during a</u>	530
<u>public health emergency declaration issued by the federal</u>	531
<u>government, the state government, any county or municipal health</u>	532
<u>department, or any general health district created by or under</u>	533
<u>the authority of Chapter 3709. of the Revised Code;</u>	534
<u>(bb) A function that the general assembly mandates a</u>	535
<u>political subdivision to perform.</u>	536
(D) "Law" means any provision of the constitution,	537
statutes, or rules of the United States or of this state;	538
provisions of charters, ordinances, resolutions, and rules of	539
political subdivisions; and written policies adopted by boards	540
of education. When used in connection with the "common law,"	541
this definition does not apply.	542
(E) "Motor vehicle" has the same meaning as in section	543
4511.01 of the Revised Code.	544
(F) "Political subdivision" or "subdivision" means a	545
municipal corporation, township, county, school district, or	546

other body corporate and politic responsible for governmental 547
activities in a geographic area smaller than that of the state. 548
"Political subdivision" includes, but is not limited to, a 549
county hospital commission appointed under section 339.14 of the 550
Revised Code, board of hospital commissioners appointed for a 551
municipal hospital under section 749.04 of the Revised Code, 552
board of hospital trustees appointed for a municipal hospital 553
under section 749.22 of the Revised Code, regional planning 554
commission created pursuant to section 713.21 of the Revised 555
Code, county planning commission created pursuant to section 556
713.22 of the Revised Code, joint planning council created 557
pursuant to section 713.231 of the Revised Code, interstate 558
regional planning commission created pursuant to section 713.30 559
of the Revised Code, port authority created pursuant to section 560
4582.02 or 4582.26 of the Revised Code or in existence on 561
December 16, 1964, regional council established by political 562
subdivisions pursuant to Chapter 167. of the Revised Code, 563
emergency planning district and joint emergency planning 564
district designated under section 3750.03 of the Revised Code, 565
joint emergency medical services district created pursuant to 566
section 307.052 of the Revised Code, fire and ambulance district 567
created pursuant to section 505.375 of the Revised Code, joint 568
interstate emergency planning district established by an 569
agreement entered into under that section, county solid waste 570
management district and joint solid waste management district 571
established under section 343.01 or 343.012 of the Revised Code, 572
community school established under Chapter 3314. of the Revised 573
Code, county land reutilization corporation organized under 574
Chapter 1724. of the Revised Code, the county or counties served 575
by a community-based correctional facility and program or 576
district community-based correctional facility and program 577
established and operated under sections 2301.51 to 2301.58 of 578

the Revised Code, a community-based correctional facility and 579
program or district community-based correctional facility and 580
program that is so established and operated, and the facility 581
governing board of a community-based correctional facility and 582
program or district community-based correctional facility and 583
program that is so established and operated. 584

(G) (1) "Proprietary function" means a function of a 585
political subdivision that is specified in division (G) (2) of 586
this section or that satisfies both of the following: 587

(a) The function is not one described in division (C) (1) 588
(a) or (b) of this section and is not one specified in division 589
(C) (2) of this section; 590

(b) The function is one that promotes or preserves the 591
public peace, health, safety, or welfare and that involves 592
activities that are customarily engaged in by nongovernmental 593
persons. 594

(2) A "proprietary function" includes, but is not limited 595
to, the following: 596

(a) The operation of a hospital by one or more political 597
subdivisions; 598

(b) The design, construction, reconstruction, renovation, 599
repair, maintenance, and operation of a public cemetery other 600
than a township cemetery; 601

(c) The establishment, maintenance, and operation of a 602
utility, including, but not limited to, a light, gas, power, or 603
heat plant, a railroad, a busline or other transit company, an 604
airport, and a municipal corporation water supply system; 605

(d) The maintenance, destruction, operation, and upkeep of 606

a sewer system; 607

(e) The operation and control of a public stadium, 608
auditorium, civic or social center, exhibition hall, arts and 609
crafts center, band or orchestra, or off-street parking 610
facility. 611

(H) "Public roads" means public roads, highways, streets, 612
avenues, alleys, and bridges within a political subdivision. 613
"Public roads" does not include berms, shoulders, rights-of-way, 614
or traffic control devices unless the traffic control devices 615
are mandated by the Ohio manual of uniform traffic control 616
devices. 617

(I) "State" means the state of Ohio, including, but not 618
limited to, the general assembly, the supreme court, the offices 619
of all elected state officers, and all departments, boards, 620
offices, commissions, agencies, colleges and universities, 621
institutions, and other instrumentalities of the state of Ohio. 622
"State" does not include political subdivisions. 623

Sec. 4123.68. Every employee who is disabled because of 624
the contraction of an occupational disease or the dependent of 625
an employee whose death is caused by an occupational disease, is 626
entitled to the compensation provided by sections 4123.55 to 627
4123.59 and 4123.66 of the Revised Code subject to the 628
modifications relating to occupational diseases contained in 629
this chapter. An order of the administrator issued under this 630
section is appealable pursuant to sections 4123.511 and 4123.512 631
of the Revised Code. 632

The following diseases are occupational diseases and 633
compensable as such when contracted by an employee in the course 634
of the employment in which such employee was engaged and due to 635

the nature of any process described in this section. A disease 636
which meets the definition of an occupational disease is 637
compensable pursuant to this chapter though it is not 638
specifically listed in this section. 639

SCHEDULE 640

Description of disease or injury and description of 641
process: 642

(A) Anthrax: Handling of wool, hair, bristles, hides, and 643
skins. 644

(B) Glanders: Care of any equine animal suffering from 645
glanders; handling carcass of such animal. 646

(C) Lead poisoning: Any industrial process involving the 647
use of lead or its preparations or compounds. 648

(D) Mercury poisoning: Any industrial process involving 649
the use of mercury or its preparations or compounds. 650

(E) Phosphorous poisoning: Any industrial process 651
involving the use of phosphorous or its preparations or 652
compounds. 653

(F) Arsenic poisoning: Any industrial process involving 654
the use of arsenic or its preparations or compounds. 655

(G) Poisoning by benzol or by nitro-derivatives and amido- 656
derivatives of benzol (dinitro-benzol, anilin, and others): Any 657
industrial process involving the use of benzol or nitro- 658
derivatives or amido-derivatives of benzol or its preparations 659
or compounds. 660

(H) Poisoning by gasoline, benzine, naphtha, or other 661
volatile petroleum products: Any industrial process involving 662

the use of gasoline, benzine, naphtha, or other volatile	663
petroleum products.	664
(I) Poisoning by carbon bisulphide: Any industrial process	665
involving the use of carbon bisulphide or its preparations or	666
compounds.	667
(J) Poisoning by wood alcohol: Any industrial process	668
involving the use of wood alcohol or its preparations.	669
(K) Infection or inflammation of the skin on contact	670
surfaces due to oils, cutting compounds or lubricants, dust,	671
liquids, fumes, gases, or vapors: Any industrial process	672
involving the handling or use of oils, cutting compounds or	673
lubricants, or involving contact with dust, liquids, fumes,	674
gases, or vapors.	675
(L) Epithelion cancer or ulceration of the skin or of the	676
corneal surface of the eye due to carbon, pitch, tar, or tarry	677
compounds: Handling or industrial use of carbon, pitch, or tarry	678
compounds.	679
(M) Compressed air illness: Any industrial process carried	680
on in compressed air.	681
(N) Carbon dioxide poisoning: Any process involving the	682
evolution or resulting in the escape of carbon dioxide.	683
(O) Brass or zinc poisoning: Any process involving the	684
manufacture, founding, or refining of brass or the melting or	685
smelting of zinc.	686
(P) Manganese dioxide poisoning: Any process involving the	687
grinding or milling of manganese dioxide or the escape of	688
manganese dioxide dust.	689
(Q) Radium poisoning: Any industrial process involving the	690

use of radium and other radioactive substances in luminous	691
paint.	692
(R) Tenosynovitis and prepatellar bursitis: Primary	693
tenosynovitis characterized by a passive effusion or crepitus	694
into the tendon sheath of the flexor or extensor muscles of the	695
hand, due to frequently repetitive motions or vibrations, or	696
prepatellar bursitis due to continued pressure.	697
(S) Chrome ulceration of the skin or nasal passages: Any	698
industrial process involving the use of or direct contact with	699
chromic acid or bichromates of ammonium, potassium, or sodium or	700
their preparations.	701
(T) Potassium cyanide poisoning: Any industrial process	702
involving the use of or direct contact with potassium cyanide.	703
(U) Sulphur dioxide poisoning: Any industrial process in	704
which sulphur dioxide gas is evolved by the expansion of liquid	705
sulphur dioxide.	706
(V) Berylliosis: Berylliosis means a disease of the lungs	707
caused by breathing beryllium in the form of dust or fumes,	708
producing characteristic changes in the lungs and demonstrated	709
by x-ray examination, by biopsy or by autopsy.	710
This chapter does not entitle an employee or the	711
employee's dependents to compensation, medical treatment, or	712
payment of funeral expenses for disability or death from	713
berylliosis unless the employee has been subjected to injurious	714
exposure to beryllium dust or fumes in the employee's employment	715
in this state preceding the employee's disablement and only in	716
the event of such disability or death resulting within eight	717
years after the last injurious exposure; provided that such	718
eight-year limitation does not apply to disability or death from	719

exposure occurring after January 1, 1976. In the event of death 720
following continuous total disability commencing within eight 721
years after the last injurious exposure, the requirement of 722
death within eight years after the last injurious exposure does 723
not apply. 724

Before awarding compensation for partial or total 725
disability or death due to berylliosis, the administrator of 726
workers' compensation shall refer the claim to a qualified 727
medical specialist for examination and recommendation with 728
regard to the diagnosis, the extent of the disability, the 729
nature of the disability, whether permanent or temporary, the 730
cause of death, and other medical questions connected with the 731
claim. An employee shall submit to such examinations, including 732
clinical and x-ray examinations, as the administrator requires. 733
In the event that an employee refuses to submit to examinations, 734
including clinical and x-ray examinations, after notice from the 735
administrator, or in the event that a claimant for compensation 736
for death due to berylliosis fails to produce necessary consents 737
and permits, after notice from the administrator, so that such 738
autopsy examination and tests may be performed, then all rights 739
for compensation are forfeited. The reasonable compensation of 740
such specialist and the expenses of examinations and tests shall 741
be paid, if the claim is allowed, as part of the expenses of the 742
claim, otherwise they shall be paid from the surplus fund. 743

(W) Cardiovascular, pulmonary, or respiratory diseases 744
incurred by firefighters or police officers following exposure 745
to heat, smoke, toxic gases, chemical fumes and other toxic 746
substances: Any cardiovascular, pulmonary, or respiratory 747
disease of a firefighter or police officer caused or induced by 748
the cumulative effect of exposure to heat, the inhalation of 749
smoke, toxic gases, chemical fumes and other toxic substances in 750

the performance of the firefighter's or police officer's duty 751
constitutes a presumption, which may be refuted by affirmative 752
evidence, that such occurred in the course of and arising out of 753
the firefighter's or police officer's employment. For the 754
purpose of this section, "firefighter" means any regular member 755
of a lawfully constituted fire department of a municipal 756
corporation or township, whether paid or volunteer, and "police 757
officer" means any regular member of a lawfully constituted 758
police department of a municipal corporation, township or 759
county, whether paid or volunteer. 760

This chapter does not entitle a firefighter, or police 761
officer, or the firefighter's or police officer's dependents to 762
compensation, medical treatment, or payment of funeral expenses 763
for disability or death from a cardiovascular, pulmonary, or 764
respiratory disease, unless the firefighter or police officer 765
has been subject to injurious exposure to heat, smoke, toxic 766
gases, chemical fumes, and other toxic substances in the 767
firefighter's or police officer's employment in this state 768
preceding the firefighter's or police officer's disablement, 769
some portion of which has been after January 1, 1967, except as 770
provided in division (E) of section 4123.57 of the Revised Code. 771

Compensation on account of cardiovascular, pulmonary, or 772
respiratory diseases of firefighters and police officers is 773
payable only in the event of temporary total disability, 774
permanent total disability, or death, in accordance with section 775
4123.56, 4123.58, or 4123.59 of the Revised Code. Medical, 776
hospital, and nursing expenses are payable in accordance with 777
this chapter. Compensation, medical, hospital, and nursing 778
expenses are payable only in the event of such disability or 779
death resulting within eight years after the last injurious 780
exposure; provided that such eight-year limitation does not 781

apply to disability or death from exposure occurring after 782
January 1, 1976. In the event of death following continuous 783
total disability commencing within eight years after the last 784
injurious exposure, the requirement of death within eight years 785
after the last injurious exposure does not apply. 786

This chapter does not entitle a firefighter or police 787
officer, or the firefighter's or police officer's dependents, to 788
compensation, medical, hospital, and nursing expenses, or 789
payment of funeral expenses for disability or death due to a 790
cardiovascular, pulmonary, or respiratory disease in the event 791
of failure or omission on the part of the firefighter or police 792
officer truthfully to state, when seeking employment, the place, 793
duration, and nature of previous employment in answer to an 794
inquiry made by the employer. 795

Before awarding compensation for disability or death under 796
this division, the administrator shall refer the claim to a 797
qualified medical specialist for examination and recommendation 798
with regard to the diagnosis, the extent of disability, the 799
cause of death, and other medical questions connected with the 800
claim. A firefighter or police officer shall submit to such 801
examinations, including clinical and x-ray examinations, as the 802
administrator requires. In the event that a firefighter or 803
police officer refuses to submit to examinations, including 804
clinical and x-ray examinations, after notice from the 805
administrator, or in the event that a claimant for compensation 806
for death under this division fails to produce necessary 807
consents and permits, after notice from the administrator, so 808
that such autopsy examination and tests may be performed, then 809
all rights for compensation are forfeited. The reasonable 810
compensation of such specialists and the expenses of examination 811
and tests shall be paid, if the claim is allowed, as part of the 812

expenses of the claim, otherwise they shall be paid from the 813
surplus fund. 814

(X) (1) Cancer contracted by a firefighter: Cancer 815
contracted by a firefighter who has been assigned to at least 816
six years of hazardous duty as a firefighter constitutes a 817
presumption that the cancer was contracted in the course of and 818
arising out of the firefighter's employment if the firefighter 819
was exposed to an agent classified by the international agency 820
for research on cancer or its successor organization as a group 821
1 or 2A carcinogen. 822

(2) The presumption described in division (X) (1) of this 823
section is rebuttable in any of the following situations: 824

(a) There is evidence that the firefighter's exposure, 825
outside the scope of the firefighter's official duties, to 826
cigarettes, tobacco products, or other conditions presenting an 827
extremely high risk for the development of the cancer alleged, 828
was probably a significant factor in the cause or progression of 829
the cancer. 830

(b) There is evidence that shows, by a preponderance of 831
competent scientific evidence, that exposure to the type of 832
carcinogen alleged did not or could not have caused the cancer 833
being alleged. 834

(c) There is evidence that the firefighter was not exposed 835
to an agent classified by the international agency for research 836
on cancer as a group 1 or 2A carcinogen. 837

(d) There is evidence that the firefighter incurred the 838
type of cancer alleged before becoming a member of the fire 839
department. 840

(e) The firefighter is seventy years of age or older. 841

(3) The presumption described in division (X) (1) of this section does not apply if it has been more than fifteen years since the firefighter was last assigned to hazardous duty as a firefighter.

(4) Compensation for cancer contracted by a firefighter in the course of hazardous duty under division (X) of this section is payable only in the event of temporary total disability, working wage loss, permanent total disability, or death, in accordance with division (A) or (B) (1) of section 4123.56 and sections 4123.58 and 4123.59 of the Revised Code.

(5) As used in division (X) of this section, "hazardous duty" has the same meaning as in 5 C.F.R. 550.902, as amended.

(Y) Silicosis: Silicosis means a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules distributed through the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.

(Z) Coal miners' pneumoconiosis: Coal miners' pneumoconiosis, commonly referred to as "black lung disease," resulting from working in the coal mine industry and due to exposure to the breathing of coal dust, and demonstrated by x-ray examination, biopsy, autopsy or other medical or clinical tests.

This chapter does not entitle an employee or the employee's dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from silicosis, asbestosis, or coal miners' pneumoconiosis unless the employee has been subject to injurious exposure to silica dust (silicon dioxide), asbestos, or coal dust in the employee's employment in this state preceding the employee's disablement,

some portion of which has been after October 12, 1945, except as 871
provided in division (E) of section 4123.57 of the Revised Code. 872

Compensation on account of silicosis, asbestosis, or coal 873
miners' pneumoconiosis are payable only in the event of 874
temporary total disability, permanent total disability, or 875
death, in accordance with sections 4123.56, 4123.58, and 4123.59 876
of the Revised Code. Medical, hospital, and nursing expenses are 877
payable in accordance with this chapter. Compensation, medical, 878
hospital, and nursing expenses are payable only in the event of 879
such disability or death resulting within eight years after the 880
last injurious exposure; provided that such eight-year 881
limitation does not apply to disability or death occurring after 882
January 1, 1976, and further provided that such eight-year 883
limitation does not apply to any asbestosis cases. In the event 884
of death following continuous total disability commencing within 885
eight years after the last injurious exposure, the requirement 886
of death within eight years after the last injurious exposure 887
does not apply. 888

This chapter does not entitle an employee or the 889
employee's dependents to compensation, medical, hospital and 890
nursing expenses, or payment of funeral expenses for disability 891
or death due to silicosis, asbestosis, or coal miners' 892
pneumoconiosis in the event of the failure or omission on the 893
part of the employee truthfully to state, when seeking 894
employment, the place, duration, and nature of previous 895
employment in answer to an inquiry made by the employer. 896

Before awarding compensation for disability or death due 897
to silicosis, asbestosis, or coal miners' pneumoconiosis, the 898
administrator shall refer the claim to a qualified medical 899
specialist for examination and recommendation with regard to the 900

diagnosis, the extent of disability, the cause of death, and 901
other medical questions connected with the claim. An employee 902
shall submit to such examinations, including clinical and x-ray 903
examinations, as the administrator requires. In the event that 904
an employee refuses to submit to examinations, including 905
clinical and x-ray examinations, after notice from the 906
administrator, or in the event that a claimant for compensation 907
for death due to silicosis, asbestosis, or coal miners' 908
pneumoconiosis fails to produce necessary consents and permits, 909
after notice from the commission, so that such autopsy 910
examination and tests may be performed, then all rights for 911
compensation are forfeited. The reasonable compensation of such 912
specialist and the expenses of examinations and tests shall be 913
paid, if the claim is allowed, as a part of the expenses of the 914
claim, otherwise they shall be paid from the surplus fund. 915

(AA) Radiation illness: Any industrial process involving 916
the use of radioactive materials. 917

Claims for compensation and benefits due to radiation 918
illness are payable only in the event death or disability 919
occurred within eight years after the last injurious exposure 920
provided that such eight-year limitation does not apply to 921
disability or death from exposure occurring after January 1, 922
1976. In the event of death following continuous disability 923
which commenced within eight years of the last injurious 924
exposure the requirement of death within eight years after the 925
last injurious exposure does not apply. 926

(BB) Asbestosis: Asbestosis means a disease caused by 927
inhalation or ingestion of asbestos, demonstrated by x-ray 928
examination, biopsy, autopsy, or other objective medical or 929
clinical tests. 930

(CC) (1) COVID-19: COVID-19 contracted by an employee 931
described in division (CC) (2) of this section during the 932
emergency declared by Executive Order 2020-01D, issued March 9, 933
2020, constitutes a presumption, which may be refuted by 934
affirmative evidence, that COVID-19 was contracted in the course 935
of and arising out of the employee's employment. This division 936
applies only to claims arising during the period that begins 937
with the issuance of Executive Order 2020-01D, issued on March 938
9, 2020 and ending December 31, 2020. 939

(2) Division (CC) (1) of this section applies to all of the 940
following: 941

(a) An employee of a retail food establishment as defined 942
in section 3717.01 of the Revised Code; 943

(b) An employee of a food processing establishment as 944
defined in section 3715.021 of the Revised Code; 945

(c) A peace officer, firefighter, or emergency medical 946
worker as those terms are defined in section 4123.026 of the 947
Revised Code; 948

(d) A person employed as a corrections officer by any 949
public or private place used for the confinement of a person 950
charged with or convicted of any crime in this state or another 951
state or under the laws of the United States or alleged or found 952
to be a delinquent child or unruly child in this state or 953
another state or under the laws of the United States. 954

All conditions, restrictions, limitations, and other 955
provisions of this section, with reference to the payment of 956
compensation or benefits on account of silicosis or coal miners' 957
pneumoconiosis apply to the payment of compensation or benefits 958
on account of any other occupational disease of the respiratory 959

tract resulting from injurious exposures to dust. 960

The refusal to produce the necessary consents and permits 961
for autopsy examination and testing shall not result in 962
forfeiture of compensation provided the administrator finds that 963
such refusal was the result of bona fide religious convictions 964
or teachings to which the claimant for compensation adhered 965
prior to the death of the decedent. 966

Section 2. That existing sections 9.87, 2743.02, 2744.01, 967
and 4123.68 of the Revised Code are hereby repealed. 968

Section 3. (A) As used in this section: 969

(1) "Advanced practice registered nurse" means an 970
individual who holds a current, valid license issued under 971
Chapter 4723. of the Revised Code to practice as an advanced 972
practice registered nurse. 973

(2) "Athletic trainer" means an individual licensed under 974
Chapter 4755. of the Revised Code to practice athletic training. 975

(3) "Audiologist" means an individual licensed under 976
Chapter 4753. of the Revised Code to practice audiology. 977

(4) "Behavioral health provider" means a provider of 978
alcohol and drug addiction services, mental health services, or 979
other behavioral health services and includes the following 980
providers: 981

(a) An independent chemical dependency counselor-clinical 982
supervisor, independent chemical dependency counselor, chemical 983
dependency counselor III, and chemical dependency counselor II, 984
licensed under Chapter 4758. of the Revised Code, and a chemical 985
dependency counselor assistant, prevention consultant, 986
prevention specialist, prevention specialist assistant, and 987

registered applicant, certified under that chapter;	988
(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;	989 990 991 992 993
(c) A psychologist.	994
(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.	995 996 997
(6) "Chiropractor" means an individual who is authorized under Chapter 4734. of the Revised Code to practice chiropractic.	998 999 1000
(7) "Dental hygienist" means an individual licensed under Chapter 4715. of the Revised Code to practice as a dental hygienist.	1001 1002 1003
(8) "Dentist" has the same meaning as in section 2305.231 of the Revised Code.	1004 1005
(9) "Direct support professional" means an individual employed by an agency to provide direct care to individuals with developmental disabilities.	1006 1007 1008
(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.	1009 1010 1011 1012 1013
(11) "Emergency" has the same meaning as in section 5502.21 of the Revised Code.	1014 1015

- (12) "Emergency medical technician" means an EMT-basic, an EMT-I, or a paramedic. 1016
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- (13) "EMT-basic" means an individual who holds a current, valid certificate issued under section 4765.30 of the Revised Code to practice as an emergency medical technician-basic. 1018
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- (14) "EMT-I" means an individual who holds a current, valid certificate issued under section 4765.30 of the Revised Code to practice as an emergency medical technician-intermediate. 1021
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- (15) "Facility" means an institution or setting where health care services are provided, including, without limitation, a hospital, inpatient, ambulatory, surgical, emergency care, urgent care, treatment, laboratory, adult day-care, residential care, residential treatment, long-term care, or intermediate care facility, or a facility for individuals with developmental disabilities; a physician's office; a developmental, diagnostic, or imaging center; a rehabilitation 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. 1025
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- (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. 1038
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- (17) "Federally qualified health center" and "federally 1044

qualified health center look-alike" have the same meanings as in 1045
section 3701.047 of the Revised Code. 1046

(18) "Gross negligence" means a lack of care so great that 1047
it appears to be a conscious indifference to the rights of 1048
others. 1049

(19) "Health care professional" means an advanced practice 1050
registered nurse, a registered nurse, a licensed practical 1051
nurse, a pharmacist, a dentist, a dental hygienist, an 1052
optometrist, a physician, a physician assistant, a chiropractor, 1053
a physical therapist, an occupational therapist, an athletic 1054
trainer, a speech-language pathologist, an audiologist, a 1055
laboratory worker, a massage therapist, or a respiratory care 1056
professional. 1057

(20) "Health care provider" means a health care 1058
professional, health care worker, direct support professional, 1059
behavioral health provider, or emergency medical technician or a 1060
home health agency, hospice care program, home and community- 1061
based services provider, or facility, including any agent, board 1062
member, committee member, employee, employer, officer, or 1063
volunteer of the agency, program, provider, or facility acting 1064
in the course of the agent's, board member's, committee 1065
member's, employee's, employer's, officer's, or volunteer's 1066
service or employment. 1067

(21) "Health care services" means services rendered by a 1068
health care provider for the diagnosis, prevention, treatment, 1069
cure, or relief of a health condition, illness, injury, or 1070
disease, including the provision of any medication, medical 1071
equipment, or other medical product. "Health care services" 1072
includes personal care services and experimental treatments. 1073

(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 1102
holds a current license or limited certificate under Chapter 1103
4755. of the Revised Code to practice occupational therapy. 1104

(32) "Occupational therapy assistant" means an individual 1105
who holds a license or limited permit under Chapter 4755. of the 1106
Revised Code to practice as an occupational therapy assistant. 1107

(33) "Optometrist" means a person who is licensed under 1108
Chapter 4725. of the Revised Code to practice optometry. 1109

(34) "Paramedic" means an individual who holds a current, 1110
valid certificate issued under section 4765.30 of the Revised 1111
Code to practice as an emergency medical technician-paramedic. 1112

(35) "Personal care services" has the same meaning as in 1113
section 3721.01 of the Revised Code. 1114

(36) "Pharmacist" means an individual who holds a current, 1115
valid license issued under Chapter 4729. of the Revised Code to 1116
practice as a pharmacist. 1117

(37) "Physical therapist" means an individual licensed 1118
under Chapter 4755. of the Revised Code to practice physical 1119
therapy. 1120

(38) "Physical therapist assistant" means an individual 1121
licensed under Chapter 4755. of the Revised Code to practice as 1122
a physical therapist assistant. 1123

(39) "Physician" means an individual who is authorized 1124
under Chapter 4731. of the Revised Code to practice medicine and 1125
surgery, osteopathic medicine and surgery, or podiatric medicine 1126
and surgery. 1127

(40) "Physician assistant" means an individual who is 1128
authorized under Chapter 4730. of the Revised Code to practice 1129

as a physician assistant. 1130

(41) "Psychologist" means an individual who is licensed as 1131
a psychologist or school psychologist under Chapter 4732. of the 1132
Revised Code. 1133

(42) "Reckless disregard" means, as it applies to a given 1134
health care provider rendering health care services, emergency 1135
medical services, first-aid treatment, or other emergency 1136
professional care, conduct by which, with heedless indifference 1137
to the consequences, the health care provider disregards a 1138
substantial and unjustifiable risk that the health care 1139
provider's conduct is likely to cause, at the time those 1140
services or that treatment or care were rendered, an 1141
unreasonable risk of injury, death, or loss to person or 1142
property. 1143

(43) "Registered nurse" means an individual who holds a 1144
current, valid license issued under Chapter 4723. of the Revised 1145
Code to practice as a registered nurse. 1146

(44) "Respiratory care professional" has the same meaning 1147
as in section 4761.01 of the Revised Code. 1148

(45) "Speech-language pathologist" means an individual 1149
licensed under Chapter 4753. of the Revised Code to practice 1150
speech-language pathology. 1151

(46) "Tort action" means a civil action for damages for 1152
injury, death, or loss to person or property and includes claims 1153
arising under resident or patient bills of rights and 1154
contractual claims arising out of statutory or regulatory 1155
requirements applicable to health care providers. "Tort action" 1156
includes an action on a medical claim. 1157

(B) (1) Subject to division (C) (3) of this section, a 1158

health care provider that provides health care services, 1159
emergency medical services, first-aid treatment, or other 1160
emergency professional care, including the provision of any 1161
medication or other medical equipment or product, as a result of 1162
or in response to a disaster or emergency is not subject to 1163
professional disciplinary action and is not liable in damages to 1164
any person or government agency in a tort action for injury, 1165
death, or loss to person or property that allegedly arises from 1166
any of the following: 1167

(a) An act or omission of the health care provider in the 1168
health care provider's provision, withholding, or withdrawal of 1169
those services; 1170

(b) Any decision related to the provision, withholding, or 1171
withdrawal of those services; 1172

(c) Compliance with an executive order or director's order 1173
issued during and in response to the disaster or emergency. 1174

(2) Division (B)(1) of this section does not apply in a 1175
tort action if the health care provider's action, omission, 1176
decision, or compliance constitutes a reckless disregard for the 1177
consequences so as to affect the life or health of the patient 1178
or intentional conduct or willful or wanton misconduct on the 1179
part of the person against whom the action is brought. 1180

(3) Division (B)(1) of this section does not apply in a 1181
professional disciplinary action if the health care provider's 1182
action, omission, decision, or compliance constitutes gross 1183
negligence. 1184

(4) A health care provider is not subject to professional 1185
disciplinary action and is not liable in damages to any person 1186
or government agency in a tort action for injury, death, or loss 1187

to person or property that allegedly arises because the provider 1188
was unable to treat, diagnose, or test the person for any 1189
illness, disease, or condition, including the inability to 1190
perform any elective procedure, due to an executive or 1191
director's order or an order of a board of health of a city or 1192
general health district issued in relation to an epidemic or 1193
pandemic disease or other public health emergency. 1194

(C) (1) This section does not create a new cause of action 1195
or substantive legal right against a health care provider. 1196

(2) This section does not affect any immunities from civil 1197
liability or defenses established by another section of the 1198
Revised Code or available at common law to which a health care 1199
provider may be entitled in connection with the provision of 1200
health care services, emergency medical services, first-aid 1201
treatment, or other emergency professional care, including the 1202
provision of medication, medical equipment, or other medical 1203
product. 1204

(3) This section does not grant an immunity from tort or 1205
other civil liability or a professional disciplinary action to a 1206
health care provider for actions that are outside the skills, 1207
education, and training of the health care provider, unless the 1208
health care provider undertakes the action in good faith and in 1209
response to a lack of resources caused by a disaster or 1210
emergency. 1211

(4) This section does not affect any legal responsibility 1212
of a health care provider to comply with any applicable law of 1213
this state or rule of an agency of this state. 1214

(5) Division (B) of this section applies only to the 1215
provision, withholding, or withdrawal of health care services, 1216

emergency medical services, first-aid treatment, or other 1217
emergency professional care, including the provision of any 1218
medication or other medical equipment or product, decisions 1219
related to such services or care, or compliance with an 1220
executive order or director's order by a health care provider as 1221
a result of or in response to a disaster or emergency and 1222
through the duration of the disaster or emergency. 1223

(D) This section applies from the date of the Governor's 1224
Executive Order 2020-01D, issued on March 9, 2020, declaring a 1225
state of emergency due to COVID-19, through December 31, 2020, 1226
and supersedes section 2305.2311 of the Revised Code during that 1227
period. 1228

Section 4. (A) No civil action for damages for injury, 1229
death, or loss to person or property shall be brought against 1230
any person if the cause of action on which the civil action is 1231
based, in whole or in part, is that the injury, death, or loss 1232
to person or property is caused by the exposure to, or the 1233
transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV- 1234
2, or any mutation thereof, unless it is established that the 1235
exposure to, or the transmission or contraction of, any of those 1236
viruses or mutations was by reckless or intentional conduct or 1237
with willful or wanton misconduct on the part of the person 1238
against whom the action is brought. 1239

(B) A government order, recommendation, or guideline shall 1240
neither create nor be construed as creating a duty of care upon 1241
any person that may be enforced in a cause of action or that may 1242
create a new cause of action or substantive legal right against 1243
any person with respect to the matters contained in the 1244
government order, recommendation, or guideline. A presumption 1245
exists that any such government order, recommendation, or 1246

guideline is not admissible as evidence that a duty of care, a 1247
new cause of action, or a substantive legal right has been 1248
established. 1249

(C) As used in this section: 1250

(1) "MERS-CoV" means the coronavirus that causes middle 1251
east respiratory syndrome. 1252

(2) "Person" has the same meaning as in section 1.59 of 1253
the Revised Code and includes a school, a for-profit, nonprofit, 1254
governmental, or religious entity, or a state institution of 1255
higher education. 1256

(3) "Reckless conduct" means conduct by which, with 1257
heedless indifference to the consequences, the person disregards 1258
a substantial and unjustifiable risk that the person's conduct 1259
is likely to cause an exposure to, or a transmission or 1260
contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2, or any 1261
mutation thereof, or is likely to be of a nature that results in 1262
an exposure to, or a transmission or contraction of, any of 1263
those viruses or mutations. A person is reckless with respect to 1264
circumstances in relation to causing an exposure to, or a 1265
transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV- 1266
2, or any mutation thereof, when, with heedless indifference to 1267
the consequences, the person disregards a substantial and 1268
unjustifiable risk that such circumstances are likely to exist. 1269

(4) "SARS-CoV" means the coronavirus that causes severe 1270
acute respiratory syndrome. 1271

(5) "SARS-CoV-2" means the novel coronavirus that causes 1272
coronavirus disease 2019 (COVID-19). 1273

(6) "State institution of higher education" has the same 1274
meaning as in section 3345.011 of the Revised Code. 1275

(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. 1306

(4) The current COVID-19 health emergency is new and 1307
novel. Past opinions of the Ohio Supreme Court do not deal with 1308
COVID-19 or duties to protect the public from exposure in public 1309
places to airborne germs and viruses. Nothing in the Ohio 1310
Revised Code establishes duties upon businesses and premises 1311
owners to ensure that members of the general public will not be 1312
exposed to such airborne germs and viruses. 1313

(5) Additionally, the General Assembly has not delegated 1314
to the Executive Branch of Ohio's government the authority or 1315
power to create new legal duties for businesses and premises 1316
owners. In Ohio's system of government, the General Assembly 1317
makes Ohio's laws, and the Executive Branch enforces those laws. 1318

(B) Based on its findings in division (A) of this section, 1319
the General Assembly declares its intent that orders and 1320
recommendations from the Executive Branch, from counties and 1321
local municipalities, from boards of health and other agencies, 1322
and from any federal government agency, do not create any new 1323
legal duties for purposes of tort liability. Any such orders and 1324
recommendations are presumed to be irrelevant to the issue of 1325
the existence of a duty or breach of a duty. Furthermore, any 1326
such orders and recommendations are presumed to be inadmissible 1327
at trial to establish proof of a duty or breach of a duty in 1328
tort actions. 1329

Section 6. This act applies to acts, omissions, conduct, 1330
decisions, or compliance from the date of the Governor's 1331
Executive Order 2020-01D, issued on March 9, 2020, declaring a 1332
state of emergency due to COVID-19 through December 31, 2020. 1333

Section 7. This act is hereby declared to be an emergency 1334

measure necessary for the immediate preservation of the public 1335
peace, health, and safety. The reason for such necessity is that 1336
it is crucial to provide protections for essential workers and 1337
immunity from law suits in response to a disaster or emergency 1338
declared by the federal government, state government, or 1339
political subdivision of the state. Therefore, this act shall 1340
go into immediate effect. 1341