

As Introduced

**134th General Assembly
Regular Session
2021-2022**

H. B. No. 424

Representative Koehler

A BILL

To amend section 2305.2311 and to enact sections 1
2305.2312 and 3792.05 of the Revised Code to 2
prohibit a political subdivision, public 3
official, public school, state agency, or state 4
institution of higher education from taking 5
certain actions related to the COVID-19 vaccine, 6
to codify the qualified civil immunities under 7
H.B. 606 of the 133rd General Assembly 8
permanently, to repeal section 3792.05 of the 9
Revised Code on the date that is two years after 10
the effective date of that section, and to 11
declare an emergency. 12

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

Section 1. That section 2305.2311 be amended and sections 13
2305.2312 and 3792.05 of the Revised Code be enacted to read as 14
follows: 15

Sec. 2305.2311. (A) As used in this section: 16

(1) "Advanced practice registered nurse" means an 17
individual who holds a current, valid license issued under 18
Chapter 4723. of the Revised Code to practice as an advanced 19

practice registered nurse. 20

(2) "Athletic trainer" means an individual licensed under Chapter 4755. of the Revised Code to practice athletic training. 21
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(3) "Audiologist" means an individual licensed under Chapter 4753. of the Revised Code to practice audiology. 23
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(4) "Behavioral health provider" means a provider of alcohol and drug addiction services, mental health services, or behavioral health services and includes the following providers: 25
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(a) An independent chemical dependency counselor-clinical supervisor, independent chemical dependency counselor, chemical dependency counselor III, and chemical dependency counselor II, licensed under Chapter 4758. of the Revised Code, and a chemical dependency counselor assistant, prevention consultant, prevention specialist, prevention specialist assistant, and registered applicant, certified under that chapter; 28
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(b) A licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, independent marriage and family therapist, or marriage and family therapist who holds a current, valid license issued under Chapter 4757. of the Revised Code; 35
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(c) A psychologist. 40

(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. 41
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(6) "Chiropractor" means an individual who is authorized under Chapter 4734. of the Revised Code to practice chiropractic. 44
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(7) "Dental hygienist" means an individual licensed under 47

<u>Chapter 4715. of the Revised Code to practice as a dental</u>	48
<u>hygienist.</u>	49
<u>(8)</u> "Dentist" has the same meaning as in section 2305.231 of the Revised Code.	50 51
(3) <u>(9) "Direct support professional" means an individual</u> <u>employed by an agency to provide direct care to individuals with</u> <u>developmental disabilities.</u>	52 53 54
<u>(10)</u> "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.	55 56 57 58 59
(4) <u>(11) "Emergency" has the same meaning as in section</u> <u>5502.21 of the Revised Code.</u>	60 61
<u>(12)</u> "Emergency medical technician" means an EMT-basic, an EMT-I, or a paramedic.	62 63
(5) <u>(13) "EMT-basic" means an individual who holds a</u> current, valid certificate issued under section 4765.30 of the Revised Code to practice as an emergency medical technician- basic.	64 65 66 67
(6) <u>(14) "EMT-I" means an individual who holds a current,</u> valid certificate issued under section 4765.30 of the Revised Code to practice as an emergency medical technician- intermediate.	68 69 70 71
(7) <u>(15) "Facility" means an institution or setting where</u> <u>health care services are provided, including, without</u> <u>limitation, a hospital, inpatient, ambulatory, surgical,</u> <u>emergency care, urgent care, treatment, laboratory, adult day-</u>	72 73 74 75

care, residential care, residential treatment, long-term care, 76
or intermediate care facility, or a facility for individuals 77
with developmental disabilities; a physician's office; a 78
developmental, diagnostic, or imaging center; a rehabilitation 79
or therapeutic health setting; a federally qualified health 80
center or federally qualified health center look-alike; or any 81
modular field treatment facility or alternative care site 82
designated for temporary use for the purposes of providing 83
health care services in response to a disaster or emergency. 84

(16) "Facility for individuals with developmental 85
disabilities" means a facility that provides services to two or 86
more unrelated individuals with developmental disabilities in a 87
residential setting, such as an institution for mental disease 88
or a residential facility licensed under section 5123.19 of the 89
Revised Code. 90

(17) "Federally qualified health center" and "federally 91
qualified health center look-alike" have the same meanings as in 92
section 3701.047 of the Revised Code. 93

(18) "Gross negligence" means a lack of care so great that 94
it appears to be a conscious indifference to the rights of 95
others. 96

(19) "Health care ~~provider~~professional" means an advanced 97
practice registered nurse, a registered nurse, a licensed 98
practical nurse, a pharmacist, a dentist, a dental hygienist, an 99
optometrist, a physician, a physician assistant, a chiropractor, 100
a physical therapist, an occupational therapist, an athletic 101
trainer, a speech-language pathologist, an audiologist, a 102
laboratory worker, a massage therapist, or a ~~hospital~~respiratory 103
care professional. 104

(8)-(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. 105
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(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. 115
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(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. 121
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(23) "Home and community-based services provider" means a provider of services under a home and community-based services medicaid waiver component. 130
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(24) "Home health agency" has the same meaning as in section 3701.881 of the Revised Code. 133
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<u>(25) "Hospice care program" has the same meaning as in</u>	135
<u>section 3712.01 of the Revised Code.</u>	136
<u>(26) "Hospital" and "medical claim" have the same meanings</u>	137
<u>as in section 2305.113 of the Revised Code.</u>	138
(9) <u>(27) "Licensed practical nurse" means an individual</u>	139
<u>who holds a current, valid license issued under Chapter 4723. of</u>	140
<u>the Revised Code to practice as a licensed practical nurse.</u>	141
<u>(28) "Long-term care facility" has the same meaning as in</u>	142
<u>section 3701.74 of the Revised Code.</u>	143
<u>(29) "Massage therapist" means an individual licensed</u>	144
<u>under section 4731.15 of the Revised Code to practice massage</u>	145
<u>therapy.</u>	146
<u>(30) "Medicaid waiver component" has the same meaning as</u>	147
<u>in section 5166.01 of the Revised Code.</u>	148
<u>(31) "Occupational therapist" means an individual who</u>	149
<u>holds a current license or limited certificate under Chapter</u>	150
<u>4755. of the Revised Code to practice occupational therapy.</u>	151
<u>(32) "Occupational therapy assistant" means an individual</u>	152
<u>who holds a license or limited permit under Chapter 4755. of the</u>	153
<u>Revised Code to practice as an occupational therapy assistant.</u>	154
<u>(33) "Optometrist" means a person who is licensed under</u>	155
<u>Chapter 4725. of the Revised Code to practice optometry.</u>	156
(10) <u>(34) "Paramedic" means an individual who holds a</u>	157
<u>current, valid certificate issued under section 4765.30 of the</u>	158
<u>Revised Code to practice as an emergency medical technician-</u>	159
<u>paramedic.</u>	160
(11) <u>(35) "Personal care services" has the same meaning as</u>	161

in section 3721.01 of the Revised Code. 162

(36) "Pharmacist" means an individual who holds a current, 163
valid license issued under Chapter 4729. of the Revised Code to 164
practice as a pharmacist. 165

~~(12)-(37) "Physical therapist" means an individual~~ 166
licensed under Chapter 4755. of the Revised Code to practice 167
physical therapy. 168

(38) "Physical therapist assistant" means an individual 169
licensed under Chapter 4755. of the Revised Code to practice as 170
a physical therapist assistant. 171

(39) "Physician" means an individual who is authorized 172
under Chapter 4731. of the Revised Code to practice medicine and 173
surgery, osteopathic medicine and surgery, or podiatric medicine 174
and surgery. 175

~~(13)-(40) "Physician assistant" means an individual who is~~ 176
authorized under Chapter 4730. of the Revised Code to practice 177
as a physician assistant. 178

~~(14)-(41) "Psychologist" means an individual who is~~ 179
licensed as a psychologist or school psychologist under Chapter 180
4732. of the Revised Code. 181

(42) "Reckless disregard" means, as it applies to a given 182
health care provider ~~or emergency medical technician~~ rendering 183
health care services, emergency medical services, first-aid 184
treatment, or other emergency professional care, ~~including the~~ 185
~~provision of any medication or other medical product, means~~ 186
conduct that a by which, with heedless indifference to the 187
consequences, the health care provider or emergency medical 188
~~technician knew or should have known, disregards a substantial~~ 189
and unjustifiable risk that the health care provider's conduct 190

is likely to cause, at the time those services or that treatment 191
or care were rendered, ~~created~~ an unreasonable risk of injury, 192
death, or loss to person or property ~~so as to affect the life or~~ 193
~~health of another and that risk was substantially greater than~~ 194
~~that which is necessary to make the conduct negligent.~~ 195

~~(15)~~ (43) "Registered nurse" means an individual who holds 196
a current, valid license issued under Chapter 4723. of the 197
Revised Code to practice as a registered nurse. 198

~~(16)~~ (44) "Respiratory care professional" has the same 199
meaning as in section 4761.01 of the Revised Code. 200

(45) "Speech-language pathologist" means an individual 201
licensed under Chapter 4753. of the Revised Code to practice 202
speech-language pathology. 203

(46) "Tort action" means a civil action for damages for 204
injury, death, or loss to person or property ~~other than a civil-~~ 205
~~action for damages for a breach of contract or another agreement~~ 206
~~between persons or governmental entities~~and includes claims 207
arising under resident or patient bills of rights and 208
contractual claims arising out of statutory or regulatory 209
requirements applicable to health care providers. "Tort action" 210
includes an action on a medical claim. 211

(B) (1) Subject to division (C) (3) of this section, a 212
health care provider ~~or emergency medical technician~~ that 213
provides health care services, emergency medical services, 214
first-aid treatment, or other emergency professional care, 215
including the provision of any medication or other medical 216
equipment or product, as a result of or in response to a 217
disaster or emergency is not subject to professional 218
disciplinary action and is not liable in damages to any person 219

or government agency in a tort action for injury, death, or loss 220
to person or property that allegedly arises from ~~an~~ any of the 221
following: 222

(a) An act or omission of the health care provider ~~or~~ 223
~~emergency medical technician in the health care provider's or~~ 224
~~emergency medical technician's provision, withholding, or~~ 225
~~withdrawal of those services or that treatment or care;~~ 226

(b) Any decision related to the provision, withholding, or 227
withdrawal of those services; 228

(c) Compliance with an executive order or director's order 229
issued during and in response to the disaster or emergency. 230

(2) Division (B)(1) of this section does not apply in a 231
tort action if that act or omission does not constitute the 232
health care provider's action, omission, decision, or compliance 233
constitutes a reckless disregard for the consequences so as to 234
affect the life or health of the patient or intentional 235
misconduct or willful or wanton misconduct on the part of the 236
person against whom the action is brought. 237

(3) Division (B)(1) of this section does not apply in a 238
professional disciplinary action if the health care provider's 239
action, omission, decision, or compliance constitutes gross 240
negligence. 241

(4) A health care provider is not subject to professional 242
disciplinary action and is not liable in damages to any person 243
or government agency in a tort action for injury, death, or loss 244
to person or property that allegedly arises because the provider 245
was unable to treat, diagnose, or test the person for any 246
illness, disease, or condition, including the inability to 247
perform any elective procedure, due to an executive or 248

director's order or an order of a board of health of a city or 249
general health district issued in relation to an epidemic or 250
pandemic disease or other public health emergency. 251

(C) (1) This section does not create a new cause of action 252
or substantive legal right against a health care provider ~~or~~ 253
~~emergency medical technician.~~ 254

(2) This section does not affect any immunities from civil 255
liability or defenses established by another section of the 256
Revised Code or available at common law to which a health care 257
provider ~~or emergency medical technician~~ may be entitled in 258
connection with the provision of health care services, emergency 259
medical services, first-aid treatment, or other emergency 260
professional care, including the provision of medication, 261
medical equipment, or other medical product. 262

(3) This section does not grant an immunity from tort or 263
other civil liability or a professional disciplinary action to a 264
health care provider ~~or emergency medical technician~~ for actions 265
that are outside the ~~scope of authority~~ skills, education, and 266
training of the health care provider ~~or emergency medical~~ 267
~~technician, unless the health care provider undertakes the~~ 268
action in good faith and in response to a lack of resources 269
caused by a disaster or emergency. 270

(4) This section does not affect any legal responsibility 271
of a health care provider ~~or emergency medical technician~~ to 272
comply with any applicable law of this state or rule of an 273
agency of this state. 274

(5) ~~This Division (B) of this section~~ applies only to the 275
provision, withholding, or withdrawal of health care services, 276
emergency medical services, first-aid treatment, or other 277

emergency professional care, including the provision of any 278
medication or other medical equipment or product, decisions 279
related to such services or care, or compliance with an 280
executive order or director's order by a health care provider ~~or~~ 281
~~emergency medical technician~~ as a result of or in response to a 282
disaster or emergency and through the duration of the disaster 283
or emergency. 284

(D) ~~This section does not apply to a tort action alleging~~ 285
~~wrongful death against a health care provider or emergency~~ 286
~~medical technician that provides emergency medical services,~~ 287
~~first aid treatment, or other emergency professional care,~~ 288
~~including the provision of any medication or other medical~~ 289
~~product, that allegedly arises from an act or omission of the~~ 290
~~health care provider or emergency medical technician in the~~ 291
~~health care provider's or emergency medical technician's~~ 292
~~provision of those services or that treatment or care as a~~ 293
~~result of a disaster.~~If the immunity described in division (B) 294
of this section does not apply, no class action shall be brought 295
against any health care provider alleging liability for damages 296
for injury, death, or loss to person or property on a cause of 297
action specified in that division. 298

Sec. 2305.2312. (A) No civil action for damages for 299
injury, death, or loss to person or property shall be brought 300
against any person if the cause of action on which the civil 301
action is based, in whole or in part, is that the injury, death, 302
or loss to person or property is caused by the exposure to, or 303
the transmission or contraction of, MERS-CoV, SARS-CoV, or SARS- 304
CoV-2, or any mutation thereof, unless it is established that 305
the exposure to, or the transmission or contraction of, any of 306
those viruses or mutations was by reckless conduct or 307
intentional misconduct or willful or wanton misconduct on the 308

part of the person against whom the action is brought. 309

(B) For purposes of division (A) of this section, a 310
government order, recommendation, or guideline shall neither 311
create nor be construed as creating a duty of care upon any 312
person that may be enforced in a cause of action or that may 313
create a new cause of action or substantive legal right against 314
any person with respect to the matters contained in the 315
government order, recommendation, or guideline. A presumption 316
exists that any such government order, recommendation, or 317
guideline is not admissible as evidence that a duty of care, a 318
new cause of action, or a substantive legal right has been 319
established. 320

(C) If the immunity described in division (A) of this 321
section does not apply, no class action shall be brought against 322
any person alleging liability for damages for injury, death, or 323
loss to person or property on a cause of action specified in 324
that division. 325

(D) As used in this section: 326

(1) "MERS-CoV" means the coronavirus that causes middle 327
east respiratory syndrome. 328

(2) "Person" has the same meaning as in section 1.59 of 329
the Revised Code and includes a school, a for-profit or 330
nonprofit entity, a governmental entity, a religious entity, or 331
a state institution of higher education. 332

(3) "Reckless conduct" means conduct by which, with 333
heedless indifference to the consequences, the person disregards 334
a substantial and unjustifiable risk that the person's conduct 335
is likely to cause an exposure to, or a transmission or 336
contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2, or any 337

mutation thereof, or is likely to be of a nature that results in 338
an exposure to, or a transmission or contraction of, any of 339
those viruses or mutations. A person is reckless with respect to 340
circumstances in relation to causing an exposure to, or a 341
transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV- 342
2, or any mutation thereof, when, with heedless indifference to 343
the consequences, the person disregards a substantial and 344
unjustifiable risk that such circumstances are likely to exist. 345

(4) "SARS-CoV" means the coronavirus that causes severe 346
acute respiratory syndrome. 347

(5) "SARS-CoV-2" means the novel coronavirus that causes 348
coronavirus disease 2019 (COVID-19). 349

(6) "State institution of higher education" has the same 350
meaning as in section 3345.011 of the Revised Code. 351

Sec. 3792.05. (A) As used in this section: 352

(1) "Political subdivision" means a county, township, 353
municipal corporation, school district, or other body corporate 354
and politic responsible for governmental activities in a 355
geographic area smaller than that of the state. "Political 356
subdivision" also includes a board of health of a city or 357
general health district. 358

(2) "Public official" means any officer, employee, or duly 359
authorized agent or representative of a state agency or 360
political subdivision. 361

(3) "Public school" and "state institution of higher 362
education" have the same meanings as in section 3792.04 of the 363
Revised Code. 364

(4) "State agency" means any organized agency, board, 365

body, commission, department, institution, office, or other 366
entity established by the laws of the state for the exercise of 367
any function of state government. "State agency" does not 368
include a court. 369

(B) A political subdivision, public official, public 370
school, state agency, or state institution of higher education 371
shall not do any of the following: 372

(1) Require an individual to receive a COVID-19 vaccine; 373

(2) Require an individual to show proof of vaccination 374
against or immunity from COVID-19 or provide the individual's 375
COVID-19 vaccination or immunity status; 376

(3) Deny an individual the full and equal enjoyment of 377
goods, services, privileges, advantages, facilities, and public 378
spaces based on the individual's COVID-19 vaccination or 379
immunity status; 380

(4) Take an adverse employment action against an 381
individual based on the individual's COVID-19 vaccination or 382
immunity status. 383

Section 2. That existing section 2305.2311 of the Revised 384
Code is hereby repealed. 385

Section 3. That section 3792.05 of the Revised Code is 386
hereby repealed, effective on the date that is two years after 387
the effective date of that section. 388

Section 4. This act is hereby declared to be an emergency 389
measure necessary for the immediate preservation of the public 390
peace, health, and safety. The reason for such necessity is that 391
vaccines have been developed against COVID-19, with at least one 392
fully approved by the United States Food and Drug 393

Administration, and are being administered to Ohio residents. 394

Therefore, this act shall go into immediate effect. 395