

I_133_2690-5

133rd General Assembly
Regular Session
2019-2020

Sub. H. B. No. 606

A BILL

To amend sections 9.87, 2305.2311, 2743.02, and 1
2744.01 and to enact section 3701.26 of the 2
Revised Code to make changes related to 3
qualified civil immunity for health care and 4
emergency services provided during a government- 5
declared disaster or emergency and for 6
transmission of coronavirus, to expand the 7
definition of "governmental function" regarding 8
political subdivision tort liability in relation 9
to emergency declarations, to expand state 10
immunity to include actions undertaken under a 11
duty during the COVID-19 pandemic, and to 12
declare an emergency. 13

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

Section 1. That sections 9.87, 2305.2311, 2743.02, and 14
2744.01 be amended and section 3701.26 of the Revised Code be 15
enacted to read as follows: 16

Sec. 9.87. (A) The state, except as provided in division 17
(B) of this section, shall indemnify an officer or employee from 18



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

(B) The state shall not indemnify an officer or employee 32
under any of the following circumstances: 33

(1) To the extent the officer or employee is covered by a 34
policy of insurance for civil liability purchased by the state; 35

(2) When the officer or employee acts manifestly outside 36
the scope of the officer's or employee's employment or official 37
responsibilities, with malicious purpose, in bad faith, or in a 38
wanton or reckless manner, as determined by the employer of the 39
officer or employee or by the attorney general. 40

(3) For any portion of a judgment that represents punitive 41
or exemplary damages, except that this prohibition does not 42
apply if the employer of the officer or employee and the 43
attorney general determine that the acts or omissions of the 44
officer or employee were not within the terms of division (B) (2) 45
of this section; 46

(4) For any portion of a consent judgment or settlement 47

that is unreasonable; 48

(5) For any portion of a judgment where a cause of action 49
exists on or after the effective date of this amendment that 50
involves the performance or nonperformance of a governmental 51
function or public duty as a result of a state agency's response 52
to the COVID-19 pandemic by arranging or providing care, 53
protection, or treatment for any person committed to the custody 54
of the state, including health care services, or that, as a 55
result of the performance or nonperformance of a governmental 56
function or public duty, an officer or employee becomes infected 57
with COVID-19. 58

(C) The director of administrative services may purchase a 59
policy or policies of insurance on behalf of officers and 60
employees of the state from an insurer or insurers licensed to 61
do business in this state providing coverage for amounts in 62
excess of one million dollars per occurrence incurred in 63
connection with any civil action, demand, or claim against the 64
officer or employee by reason of an act or omission by the 65
officer or employee occurring in the performance of the 66
officer's or employee's duties and not coming within the terms 67
of division (B) (2) of this section. 68

(D) This section does not affect any of the following: 69

(1) The waiver arising under division (A) (1) of section 70
2743.02 of the Revised Code; 71

(2) Any defense that would otherwise be available in an 72
action alleging personal liability of an officer or employee; 73

(3) The operation of section 9.83 of the Revised Code. 74

(E) The indemnification of officers or employees against 75
judgments or settlements pursuant to this section shall be 76

accomplished only through the following procedure: 77

(1) If the employer of the defendant officer or employee 78
to be indemnified determines that the actions or omissions of 79
its officer or employee giving rise to the claim were not within 80
the terms of division (B) (2) of this section, an indemnity 81
agreement shall be prepared by the attorney general, specifying 82
that the employer will indemnify the officer or employee from a 83
particular judgment that has been rendered or a particular 84
settlement amount that has been negotiated. The agreement shall 85
name the person or entity to whom payment by the state of the 86
judgment or settlement amount will be made, and the agreement 87
shall not be effective until it is approved by the officer or 88
employee to be indemnified, the director, administrative chief, 89
or other governing body of the employer, and by the attorney 90
general. The attorney general shall approve the indemnity 91
agreement, unless the attorney general finds that division (B) 92
of this section prohibits the state from indemnifying the 93
officer or employee, or prohibits the state from indemnifying 94
the officer or employee for a portion of a judgment or 95
settlement and the indemnity agreement would indemnify the 96
officer or employee for all or a part of that portion. 97

(2) The attorney general shall forward a copy of the 98
agreement to the director of budget and management. 99

(3) Any indemnification paid shall be charged by the 100
director of budget and management against available unencumbered 101
moneys in the appropriations of the employer of the officer or 102
employee to be indemnified. The director of budget and 103
management shall have sole discretion to determine whether or 104
not unencumbered moneys in a particular appropriation are 105
available for payment of the indemnification. 106

(4) The director of budget and management shall, upon 107
receipt of the agreement from the attorney general pursuant to 108
division (E) (2) of this section, provide for payment to the 109
person or entity named in the agreement, in the amount specified 110
in the agreement. 111

(5) If the director of budget and management determines 112
that sufficient unencumbered moneys do not exist in the 113
particular appropriations to pay the indemnification, the 114
director shall make application for payment of the 115
indemnification out of the emergency purposes account or any 116
other appropriation for emergencies or contingencies, and 117
payment out of this account or other appropriation shall be 118
authorized if there are sufficient moneys greater than the sum 119
total of then pending emergency purposes account requests, or 120
requests for releases from the other appropriation. 121

(6) If sufficient moneys do not exist in the emergency 122
purposes account or any other appropriation for emergencies or 123
contingencies to pay the indemnification, the employer named in 124
the agreement shall request the general assembly to make an 125
appropriation sufficient to pay the indemnification, and no 126
payment shall be made until the appropriation has been made. The 127
employer shall make this appropriation request during the 128
current biennium and during each succeeding biennium until a 129
sufficient appropriation is made. 130

(7) If the indemnification is to be made by an employer 131
whose funds are not handled by the director of budget and 132
management, the employer shall pay the person or entity named in 133
the agreement. 134

If the employer determines that sufficient unencumbered 135
moneys do not exist to pay the indemnification, the employer 136

shall make application for payment of the indemnification out of 137
the emergency purposes account or any other appropriation for 138
emergencies or contingencies, and payment out of this account or 139
other appropriation shall be authorized if there are sufficient 140
moneys greater than the sum total of then pending emergency 141
purposes account requests, or requests for releases from the 142
other appropriation. 143

If sufficient moneys do not exist in the emergency 144
purposes account or any other appropriation for emergencies or 145
contingencies to pay the indemnification, the employer named in 146
the agreement shall request the general assembly to make an 147
appropriation sufficient to pay the indemnification, and no 148
payment shall be made until such an appropriation has been made. 149
The employer shall make this appropriation request during the 150
current biennium and during each succeeding biennium until a 151
sufficient appropriation is made. 152

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

attorney general in the attorney general's investigation 168
conducted pursuant to division (A) of section 109.362 of the 169
Revised Code to determine whether to defend the officer or 170
employee from being admitted as evidence in any action brought 171
pursuant to this section. 172

An action brought pursuant to division (F)(1) of this 173
section shall be commenced no later than two years after the 174
cause of action arising under division (F)(1) of this section 175
accrues. A cause of action arising under this section accrues 176
upon the entry of a money judgment against the officer or 177
employee if the time for filing an appeal in the action lapses 178
without the filing of an appeal, upon the conclusion of the 179
final appeal in any action in which a money judgment is entered 180
against the officer or employee if an appeal is filed in the 181
action, or upon execution of any settlement agreement requiring 182
payment of money by the officer or employee. 183

(2) Notwithstanding division (F)(1) of this section, an 184
officer or employee may not commence an action against the 185
employer in the court of claims or in any other court regarding 186
a refusal of the employer or the attorney general to indemnify 187
punitive or exemplary damages pursuant to this section or for 188
any action described in division (I) of section 2743.02 of the 189
Revised Code. 190

Sec. 2305.2311. (A) As used in this section: 191

(1) "Advanced practice registered nurse" means an 192
individual who holds a current, valid license issued under 193
Chapter 4723. of the Revised Code to practice as an advanced 194
practice registered nurse. 195

(2) "Athletic trainer" means an individual licensed under 196

<u>Chapter 4755. of the Revised Code to practice athletic training.</u>	197
<u>(3) "Audiologist" means an individual licensed under</u>	198
<u>Chapter 4753. of the Revised Code to practice audiology.</u>	199
<u>(4) "Board of health" means the board of health of a city</u>	200
<u>or general health district or the authority having the duties of</u>	201
<u>a board of health under section 3709.05 of the Revised Code.</u>	202
<u>(5) "Chiropractor" means an individual who is authorized</u>	203
<u>under Chapter 4734. of the Revised Code to practice</u>	204
<u>chiropractic.</u>	205
<u>(6) "Dentist" has the same meaning as in section 2305.231</u>	206
<u>of the Revised Code.</u>	207
(3) <u>(7) "Direct support professional" means an individual</u>	208
<u>employed by an agency to provide direct care to individuals with</u>	209
<u>developmental disabilities.</u>	210
<u>(8) "Disaster" means any occurrence of widespread personal</u>	211
<u>injury or loss of life that results from any natural or</u>	212
<u>technological phenomenon or act of a human, or an epidemic and</u>	213
<u>is declared to be a disaster by the federal government, the</u>	214
<u>state government, or a political subdivision of this state.</u>	215
(4) <u>(9) "Emergency" has the same meaning as in section</u>	216
<u>5502.21 of the Revised Code.</u>	217
<u>(10) "Emergency medical technician" means an EMT-basic, an</u>	218
<u>EMT-I, or a paramedic.</u>	219
(5) <u>(11) "EMT-basic" means an individual who holds a</u>	220
<u>current, valid certificate issued under section 4765.30 of the</u>	221
<u>Revised Code to practice as an emergency medical technician-</u>	222
<u>basic.</u>	223

~~(6)~~ (12) "EMT-I" means an individual who holds a current, 224
valid certificate issued under section 4765.30 of the Revised 225
Code to practice as an emergency medical technician- 226
intermediate. 227

~~(7)~~ (13) "Facility" means an institution or setting where 228
health care services are provided, including, without 229
limitation, a hospital, inpatient, ambulatory, surgical, 230
emergency care, urgent care, treatment, laboratory, adult day- 231
care, residential care, residential treatment, long-term care, 232
or intermediate care facility, or a facility for individuals 233
with developmental disabilities; a physician's office; a 234
developmental, diagnostic, or imaging center; a rehabilitation 235
or therapeutic health setting; a federally qualified health 236
center or federally qualified health center look-alike; or any 237
modular field treatment facility or alternative care site 238
designated for temporary use for the purposes of providing 239
health care services in response to a disaster or emergency. 240

(14) "Facility for individuals with developmental 241
disabilities" means a facility that provides services to two or 242
more unrelated individuals with developmental disabilities in a 243
residential setting, such as an institution for mental disease 244
or a residential facility licensed under section 5123.19 of the 245
Revised Code. 246

(15) "Federally qualified health center" and "federally 247
qualified health center look-alike" have the same meanings as in 248
section 3701.047 of the Revised Code. 249

(16) "Gross negligence" means a lack of care so great that 250
it appears to be a conscious indifference to the rights of 251
others. 252

(17) "Health care ~~provider~~professional" means an advanced 253
practice registered nurse, a registered nurse, a licensed 254
practical nurse, a pharmacist, a dentist, an optometrist, a 255
physician, a physician assistant, a chiropractor, a physical 256
therapist, an occupational therapist, an athletic trainer, a 257
speech-language pathologist, audiologist, a laboratory worker, a 258
massage therapist, or a ~~hospital~~respiratory care professional. 259

~~(8)~~(18) "Health care provider" means a health care 260
professional, health care worker, direct support professional, 261
or emergency medical technician or a home health agency, hospice 262
care program, home and community-based services provider under a 263
medicaid waiver component, or facility, including any agent, 264
board member, committee member, employee, employer, officer, or 265
volunteer of the agency, program, provider, or facility acting 266
in the course of the agent's, board member's, committee 267
member's, employee's, employer's, officer's, or volunteer's 268
service or employment. 269

(19) "Health care services" means services rendered by a 270
health care provider for the diagnosis, prevention, treatment, 271
cure, or relief of a health condition, illness, injury, or 272
disease, including the provision of any medication, medical 273
equipment, or other medical product. "Health care services" 274
includes personal care services and experimental treatments. 275

(20) "Health care worker" means a person other than a 276
health care professional or emergency medical technician who 277
provides medical, dental, or other health care services under 278
the direction of a health care professional authorized to direct 279
the individual's activities. "Health care worker" includes a 280
medical technician, medical assistant, dental assistant, 281
occupational therapist assistant, physical therapist assistant, 282

<u>orderly, nurse aide, and any other individual acting in a</u>	283
<u>similar capacity.</u>	284
<u>(21) "Home and community-based services provider" means a</u>	285
<u>provider of services under a home and community-based services</u>	286
<u>medicaid waiver component.</u>	287
<u>(22) "Home health agency" has the same meaning as in</u>	288
<u>section 3701.881 of the Revised Code.</u>	289
<u>(23) "Hospice care program" has the same meaning as in</u>	290
<u>section 3712.01 of the Revised Code.</u>	291
<u>(24) "Hospital" and "medical claim" have the same meanings</u>	292
<u>as in section 2305.113 of the Revised Code.</u>	293
(9) <u>(25) "Licensed practical nurse" means an individual</u>	294
<u>who holds a current, valid license issued under Chapter 4723. of</u>	295
<u>the Revised Code to practice as a licensed practical nurse.</u>	296
<u>(26) "Long-term care facility" has the same meaning as in</u>	297
<u>section 3701.74 of the Revised Code.</u>	298
<u>(27) "Massage therapist" means an individual licensed</u>	299
<u>under section 4731.15 of the Revised Code to practice massage</u>	300
<u>therapy.</u>	301
<u>(28) "Medicaid waiver component" has the same meaning as</u>	302
<u>in section 5166.01 of the Revised Code.</u>	303
<u>(29) "Occupational therapist" means an individual who</u>	304
<u>holds a current license or limited certificate under Chapter</u>	305
<u>4755. of the Revised Code to practice occupational therapy.</u>	306
<u>(30) "Occupational therapy assistant" means an individual</u>	307
<u>who holds a license or limited permit under Chapter 4755. of the</u>	308
<u>Revised Code to practice as an occupational therapy assistant.</u>	309

<u>(31)</u> "Optometrist" means a person who is licensed under Chapter 4725. of the Revised Code to practice optometry.	310 311
(10) <u>(32)</u> "Paramedic" means an individual who holds a current, valid certificate issued under section 4765.30 of the Revised Code to practice as an emergency medical technician-paramedic.	312 313 314 315
(11) <u>(33)</u> "Personal care services" has the same meaning as in section 3721.01 of the Revised Code.	316 317
<u>(34)</u> "Pharmacist" means an individual who holds a current, valid license issued under Chapter 4729. of the Revised Code to practice as a pharmacist.	318 319 320
(12) <u>(35)</u> "Physical therapist" means an individual licensed under Chapter 4755. of the Revised Code to practice physical therapy.	321 322 323
<u>(36)</u> "Physical therapist assistant" means an individual licensed under Chapter 4755. of the Revised Code to practice as a physical therapist assistant.	324 325 326
<u>(37)</u> "Physician" means an individual who is authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.	327 328 329 330
(13) <u>(38)</u> "Physician assistant" means an individual who is authorized under Chapter 4730. of the Revised Code to practice as a physician assistant.	331 332 333
(14) <u>(39)</u> "Reckless disregard" means, as it applies to a given health care provider or emergency medical technician rendering <u>health care services</u> , emergency medical services, first-aid treatment, or other emergency professional care,	334 335 336 337

~~including the provision of any medication or other medical~~ 338
~~product, means~~ conduct that a health care provider ~~or emergency~~ 339
~~medical technician~~ knew or should have known, at the time those 340
services or that treatment or care were rendered, created an 341
unreasonable risk of injury, death, or loss to person or 342
property so as to affect the life or health of another and that 343
risk was substantially greater than that which is necessary to 344
make the conduct negligent. 345

~~(15)~~ (40) "Registered nurse" means an individual who holds 346
a current, valid license issued under Chapter 4723. of the 347
Revised Code to practice as a registered nurse. 348

~~(16)~~ (41) "Respiratory care professional" has the same 349
meaning as in section 4761.01 of the Revised Code. 350

(42) "Speech-language pathologist" means an individual 351
licensed under Chapter 4753. of the Revised Code to practice 352
speech-language pathology. 353

(43) "Tort action" means a civil action for damages for 354
injury, death, or loss to person or property ~~other than a civil~~ 355
~~action for damages for a breach of contract or another agreement~~ 356
between persons or governmental entities and includes claims 357
arising under resident or patient bills of rights and 358
contractual claims arising out of statutory or regulatory 359
requirements applicable to health care providers. "Tort action" 360
includes an action on a medical claim. 361

(B) (1) Subject to division (C) (3) of this section, a 362
health care provider ~~or emergency medical technician~~ that 363
provides health care services, emergency medical services, 364
first-aid treatment, or other emergency professional care, 365
including the provision of any medication or other medical 366

equipment or product, as a result of or in response to a 367
disaster or emergency is not subject to professional 368
disciplinary action and is not liable in damages to any person 369
or government agency in a tort action for injury, death, or loss 370
to person or property that allegedly arises from ~~an~~ any of the 371
following: 372

(a) An act or omission of the health care provider ~~or~~ 373
~~emergency medical technician in the health care provider's or~~ 374
~~emergency medical technician's provision, withholding, or~~ 375
~~withdrawal of those services or that treatment or care;~~ 376

(b) Any decision related to the provision, withholding, or 377
withdrawal of those services; 378

(c) Compliance with an executive order or director's order 379
issued during and in response to the disaster or emergency. 380

(2) (a) During the period beginning on the effective date 381
of this section through December 31, 2020, division (B) (1) of 382
this section does not apply in a tort action that does not arise 383
out of regulatory requirements applicable to facilities if ~~that~~ 384
~~act or omission does not constitute the health care provider's~~ 385
~~action, omission, decision, or compliance constitutes willful or~~ 386
~~wanton misconduct.~~ 387

(b) Beginning January 1, 2021, division (B) (1) of this 388
section does not apply in a tort action that does not arise out 389
of regulatory requirements applicable to facilities if the 390
health care provider's action, omission, decision, or compliance 391
constitutes a reckless disregard for the consequences so as to 392
affect the life or health of the patient. 393

(3) Division (B) (1) of this section does not apply in a 394
professional disciplinary action or in a tort action that arises 395

out of regulatory requirements applicable to facilities if the 396
health care provider's action, omission, decision, or compliance 397
constitutes gross negligence. 398

(4) A health care provider is not subject to professional 399
disciplinary action and is not liable in damages to any person 400
or government agency in a tort action for injury, death, or loss 401
to person or property that allegedly arises because the provider 402
was unable to treat, diagnose, or test the person for any 403
illness, disease, or condition, including the inability to 404
perform any elective procedure, due to an executive or 405
director's order or an order of a board of health of a city or 406
general health district issued in relation to an epidemic or 407
pandemic disease or other public health emergency. 408

(C) (1) This section does not create a new cause of action 409
or substantive legal right against a health care provider ~~or~~ 410
~~emergency medical technician.~~ 411

(2) This section does not affect any immunities from civil 412
liability or defenses established by another section of the 413
Revised Code or available at common law to which a health care 414
provider ~~or emergency medical technician~~ may be entitled in 415
connection with the provision of health care services, emergency 416
medical services, first-aid treatment, or other emergency 417
professional care, including the provision of medication, 418
medical equipment, or other medical product. 419

(3) This section does not grant an immunity from tort or 420
other civil liability or a professional disciplinary action to a 421
health care provider ~~or emergency medical technician~~ for actions 422
that are outside the ~~scope of authority~~ skills, education, and 423
training of the health care provider ~~or emergency medical~~ 424
~~technician,~~ unless the health care provider undertakes the 425

action in good faith and in response to a lack of resources 426
caused by a disaster or emergency. 427

(4) This section does not affect any legal responsibility 428
of a health care provider ~~or emergency medical technician to~~ 429
comply with any applicable law of this state or rule of an 430
agency of this state. 431

(5) ~~This Division (B) of this section applies only to the~~ 432
~~provision, withholding, or withdrawal of health care services,~~ 433
emergency medical services, first-aid treatment, or other 434
emergency professional care, including the provision of any 435
medication or other medical equipment or product, decisions 436
related to such services or care, or compliance with an 437
executive order or director's order by a health care provider ~~or~~ 438
~~emergency medical technician as a result of or in response to a~~ 439
~~disaster or emergency and through the duration of the disaster,~~ 440
or emergency. 441

~~(D) This section does not apply to a tort action alleging~~ 442
~~wrongful death against a health care provider or emergency~~ 443
~~medical technician that provides emergency medical services,~~ 444
~~first-aid treatment, or other emergency professional care,~~ 445
~~including the provision of any medication or other medical~~ 446
~~product, that allegedly arises from an act or omission of the~~ 447
~~health care provider or emergency medical technician in the~~ 448
~~health care provider's or emergency medical technician's~~ 449
~~provision of those services or that treatment or care as a~~ 450
~~result of a disaster.~~ 451

Sec. 2743.02. (A) (1) The Except as provided in division 452
(I) of this section, the state hereby waives its immunity from 453
liability, except as provided for the office of the state fire 454
marshal in division (G) (1) of section 9.60 and division (B) of 455

section 3737.221 of the Revised Code and subject to division (H) 456
of this section, and consents to be sued, and have its liability 457
determined, in the court of claims created in this chapter in 458
accordance with the same rules of law applicable to suits 459
between private parties, except that the determination of 460
liability is subject to the limitations set forth in this 461
chapter and, in the case of state universities or colleges, in 462
section 3345.40 of the Revised Code, and except as provided in 463
division (A) (2) or (3) of this section. To the extent that the 464
state has previously consented to be sued, this chapter has no 465
applicability. 466

Except in the case of a civil action filed by the state, 467
filing a civil action in the court of claims results in a 468
complete waiver of any cause of action, based on the same act or 469
omission, that the filing party has against any officer or 470
employee, as defined in section 109.36 of the Revised Code. The 471
waiver shall be void if the court determines that the act or 472
omission was manifestly outside the scope of the officer's or 473
employee's office or employment or that the officer or employee 474
acted with malicious purpose, in bad faith, or in a wanton or 475
reckless manner. 476

(2) If a claimant proves in the court of claims that an 477
officer or employee, as defined in section 109.36 of the Revised 478
Code, would have personal liability for the officer's or 479
employee's acts or omissions but for the fact that the officer 480
or employee has personal immunity under section 9.86 of the 481
Revised Code, the state shall be held liable in the court of 482
claims in any action that is timely filed pursuant to section 483
2743.16 of the Revised Code and that is based upon the acts or 484
omissions. 485

(3) (a) Except as provided in division (A) (3) (b) of this 486
section and as set forth in division (I) of this section, the 487
state is immune from liability in any civil action or proceeding 488
involving the performance or nonperformance of a public duty, 489
including the performance or nonperformance of a public duty 490
that is owed by the state in relation to any action of an 491
individual who is committed to the custody of the state. 492

(b) The state immunity provided in division (A) (3) (a) of 493
this section does not apply to any action of the state under 494
circumstances in which a special relationship can be established 495
between the state and an injured party. A special relationship 496
under this division is demonstrated if all of the following 497
elements exist: 498

(i) An assumption by the state, by means of promises or 499
actions, of an affirmative duty to act on behalf of the party 500
who was allegedly injured; 501

(ii) Knowledge on the part of the state's agents that 502
inaction of the state could lead to harm; 503

(iii) Some form of direct contact between the state's 504
agents and the injured party; 505

(iv) The injured party's justifiable reliance on the 506
state's affirmative undertaking. 507

(B) The state hereby waives the immunity from liability of 508
all hospitals owned or operated by one or more political 509
subdivisions and consents for them to be sued, and to have their 510
liability determined, in the court of common pleas, in 511
accordance with the same rules of law applicable to suits 512
between private parties, subject to the limitations set forth in 513
this chapter. This division is also applicable to hospitals 514

owned or operated by political subdivisions that have been 515
determined by the supreme court to be subject to suit prior to 516
July 28, 1975. 517

(C) Any hospital, as defined in section 2305.113 of the 518
Revised Code, may purchase liability insurance covering its 519
operations and activities and its agents, employees, nurses, 520
interns, residents, staff, and members of the governing board 521
and committees, and, whether or not such insurance is purchased, 522
may, to the extent that its governing board considers 523
appropriate, indemnify or agree to indemnify and hold harmless 524
any such person against expense, including attorney's fees, 525
damage, loss, or other liability arising out of, or claimed to 526
have arisen out of, the death, disease, or injury of any person 527
as a result of the negligence, malpractice, or other action or 528
inaction of the indemnified person while acting within the scope 529
of the indemnified person's duties or engaged in activities at 530
the request or direction, or for the benefit, of the hospital. 531
Any hospital electing to indemnify those persons, or to agree to 532
so indemnify, shall reserve any funds that are necessary, in the 533
exercise of sound and prudent actuarial judgment, to cover the 534
potential expense, fees, damage, loss, or other liability. The 535
superintendent of insurance may recommend, or, if the hospital 536
requests the superintendent to do so, the superintendent shall 537
recommend, a specific amount for any period that, in the 538
superintendent's opinion, represents such a judgment. This 539
authority is in addition to any authorization otherwise provided 540
or permitted by law. 541

(D) Recoveries against the state shall be reduced by the 542
aggregate of insurance proceeds, disability award, or other 543
collateral recovery received by the claimant. This division does 544
not apply to civil actions in the court of claims against a 545

state university or college under the circumstances described in 546
section 3345.40 of the Revised Code. The collateral benefits 547
provisions of division (B) (2) of that section apply under those 548
circumstances. 549

(E) The only defendant in original actions in the court of 550
claims is the state. The state may file a third-party complaint 551
or counterclaim in any civil action, except a civil action for 552
ten thousand dollars or less, that is filed in the court of 553
claims. 554

(F) A civil action against an officer or employee, as 555
defined in section 109.36 of the Revised Code, that alleges that 556
the officer's or employee's conduct was manifestly outside the 557
scope of the officer's or employee's employment or official 558
responsibilities, or that the officer or employee acted with 559
malicious purpose, in bad faith, or in a wanton or reckless 560
manner shall first be filed against the state in the court of 561
claims that has exclusive, original jurisdiction to determine, 562
initially, whether the officer or employee is entitled to 563
personal immunity under section 9.86 of the Revised Code and 564
whether the courts of common pleas have jurisdiction over the 565
civil action. The officer or employee may participate in the 566
immunity determination proceeding before the court of claims to 567
determine whether the officer or employee is entitled to 568
personal immunity under section 9.86 of the Revised Code. 569

The filing of a claim against an officer or employee under 570
this division tolls the running of the applicable statute of 571
limitations until the court of claims determines whether the 572
officer or employee is entitled to personal immunity under 573
section 9.86 of the Revised Code. 574

(G) If a claim lies against an officer or employee who is 575

a member of the Ohio national guard, and the officer or employee 576
was, at the time of the act or omission complained of, subject 577
to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 578
2671, et seq., the Federal Tort Claims Act is the exclusive 579
remedy of the claimant and the state has no liability under this 580
section. 581

(H) If an inmate of a state correctional institution has a 582
claim against the state for the loss of or damage to property 583
and the amount claimed does not exceed three hundred dollars, 584
before commencing an action against the state in the court of 585
claims, the inmate shall file a claim for the loss or damage 586
under the rules adopted by the director of rehabilitation and 587
correction pursuant to this division. The inmate shall file the 588
claim within the time allowed for commencement of a civil action 589
under section 2743.16 of the Revised Code. If the state admits 590
or compromises the claim, the director shall make payment from a 591
fund designated by the director for that purpose. If the state 592
denies the claim or does not compromise the claim at least sixty 593
days prior to expiration of the time allowed for commencement of 594
a civil action based upon the loss or damage under section 595
2743.16 of the Revised Code, the inmate may commence an action 596
in the court of claims under this chapter to recover damages for 597
the loss or damage. 598

The director of rehabilitation and correction shall adopt 599
rules pursuant to Chapter 119. of the Revised Code to implement 600
this division. 601

(I) Notwithstanding any provision of law to the contrary, 602
the state is immune from liability in any civil action or 603
proceeding existing on or after the effective date of this 604
amendment that involves the performance or nonperformance of a 605

governmental function or public duty as a result of a state 606
agency's response to the COVID-19 pandemic by arranging or 607
providing care, protection, or treatment for any person 608
committed to the custody of the state, including health care 609
services, or that, as a result of the performance or 610
nonperformance of a governmental function or public duty, an 611
officer or employee becomes infected with COVID-19. The state 612
expressly does not consent to be sued as set forth in this 613
division. Neither the court of claims nor any courts of common 614
pleas shall have jurisdiction to hear any case or controversy, 615
initiate any immunity determination, or have the state's 616
liability subject to any determination, nor shall the state 617
indemnify any employee found liable in any court of competent 618
jurisdiction. 619

Sec. 2744.01. As used in this chapter: 620

(A) "Emergency call" means a call to duty, including, but 621
not limited to, communications from citizens, police dispatches, 622
and personal observations by peace officers of inherently 623
dangerous situations that demand an immediate response on the 624
part of a peace officer. 625

(B) "Employee" means an officer, agent, employee, or 626
servant, whether or not compensated or full-time or part-time, 627
who is authorized to act and is acting within the scope of the 628
officer's, agent's, employee's, or servant's employment for a 629
political subdivision. "Employee" does not include an 630
independent contractor and does not include any individual 631
engaged by a school district pursuant to section 3319.301 of the 632
Revised Code. "Employee" includes any elected or appointed 633
official of a political subdivision. "Employee" also includes a 634
person who has been convicted of or pleaded guilty to a criminal 635

offense and who has been sentenced to perform community service 636
work in a political subdivision whether pursuant to section 637
2951.02 of the Revised Code or otherwise, and a child who is 638
found to be a delinquent child and who is ordered by a juvenile 639
court pursuant to section 2152.19 or 2152.20 of the Revised Code 640
to perform community service or community work in a political 641
subdivision. 642

(C) (1) "Governmental function" means a function of a 643
political subdivision that is specified in division (C) (2) of 644
this section or that satisfies any of the following: 645

(a) A function that is imposed upon the state as an 646
obligation of sovereignty and that is performed by a political 647
subdivision voluntarily or pursuant to legislative requirement; 648

(b) A function that is for the common good of all citizens 649
of the state; 650

(c) A function that promotes or preserves the public 651
peace, health, safety, or welfare; that involves activities that 652
are not engaged in or not customarily engaged in by 653
nongovernmental persons; and that is not specified in division 654
(G) (2) of this section as a proprietary function. 655

(2) A "governmental function" includes, but is not limited 656
to, the following: 657

(a) The provision or nonprovision of police, fire, 658
emergency medical, ambulance, and rescue services or protection; 659

(b) The power to preserve the peace; to prevent and 660
suppress riots, disturbances, and disorderly assemblages; to 661
prevent, mitigate, and clean up releases of oil and hazardous 662
and extremely hazardous substances as defined in section 3750.01 663
of the Revised Code; and to protect persons and property; 664

(c) The provision of a system of public education;	665
(d) The provision of a free public library system;	666
(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;	667 668 669
(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;	670 671
(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;	672 673 674 675
(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;	676 677 678 679
(i) The enforcement or nonperformance of any law;	680
(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;	681 682
(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	683 684 685 686 687 688 689 690 691 692

under section 3734.12 of the Revised Code, but that is excluded 693
from regulation as a hazardous waste by those rules. 694

(l) The provision or nonprovision, planning or design, 695
construction, or reconstruction of a public improvement, 696
including, but not limited to, a sewer system; 697

(m) The operation of a job and family services department 698
or agency, including, but not limited to, the provision of 699
assistance to aged and infirm persons and to persons who are 700
indigent; 701

(n) The operation of a health board, department, or 702
agency, including, but not limited to, any statutorily required 703
or permissive program for the provision of immunizations or 704
other inoculations to all or some members of the public, 705
provided that a "governmental function" does not include the 706
supply, manufacture, distribution, or development of any drug or 707
vaccine employed in any such immunization or inoculation program 708
by any supplier, manufacturer, distributor, or developer of the 709
drug or vaccine; 710

(o) The operation of mental health facilities, 711
developmental disabilities facilities, alcohol treatment and 712
control centers, and children's homes or agencies; 713

(p) The provision or nonprovision of inspection services 714
of all types, including, but not limited to, inspections in 715
connection with building, zoning, sanitation, fire, plumbing, 716
and electrical codes, and the taking of actions in connection 717
with those types of codes, including, but not limited to, the 718
approval of plans for the construction of buildings or 719
structures and the issuance or revocation of building permits or 720
stop work orders in connection with buildings or structures; 721

(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;	722 723 724 725
(r) Flood control measures;	726
(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;	727 728
(t) The issuance of revenue obligations under section 140.06 of the Revised Code;	729 730
(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:	731 732 733 734 735
(i) A park, playground, or playfield;	736
(ii) An indoor recreational facility;	737
(iii) A zoo or zoological park;	738
(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;	739 740
(v) A golf course;	741
(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;	742 743 744
(vii) A rope course or climbing walls;	745
(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	746 747 748

activities.	749
(v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code;	750 751 752
(w) (i) At any time before regulations prescribed pursuant to 49 U.S.C.A 20153 become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells;	753 754 755 756 757 758 759
(ii) On and after the effective date of regulations prescribed pursuant to 49 U.S.C.A. 20153, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in 49 U.S.C.A 20153, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted, pursuant to subsection (c) of that section, from the requirement of the regulations prescribed under subsection (b) of that section.	760 761 762 763 764 765 766 767 768 769
(x) <u>Compliance with any order or directive issued as a result of the COVID-19 pandemic by the state department of health or a general health district or city health district created by or under the authority of Chapter 3709. of the Revised Code;</u>	770 771 772 773 774
(y) <u>Compliance with any order or directive issued as a result of the COVID-19 pandemic by the state government, a political subdivision, or an emergency management agency</u>	775 776 777

established within the department of public safety under section 778
5502.22 of the Revised Code; 779

(z) Any operation or function to abate the effects of 780
either of the following: 781

(i) An emergency declaration issued by the state 782
government or any political subdivision; 783

(ii) A public health emergency issued by the federal 784
government, the state government, or any county or municipal 785
health department. 786

(aa) The provision or nonprovision of any function of 787
local government during an emergency declaration issued by the 788
state government or any political subdivision, or during a 789
public health emergency declaration issued by the federal 790
government, the state government, any county or municipal health 791
department, or any general health district created by or under 792
the authority of Chapter 3709. of the Revised Code; 793

(bb) A function that the general assembly mandates a 794
political subdivision to perform. 795

(D) "Law" means any provision of the constitution, 796
statutes, or rules of the United States or of this state; 797
provisions of charters, ordinances, resolutions, and rules of 798
political subdivisions; and written policies adopted by boards 799
of education. When used in connection with the "common law," 800
this definition does not apply. 801

(E) "Motor vehicle" has the same meaning as in section 802
4511.01 of the Revised Code. 803

(F) "Political subdivision" or "subdivision" means a 804
municipal corporation, township, county, school district, or 805

other body corporate and politic responsible for governmental 806
activities in a geographic area smaller than that of the state. 807
"Political subdivision" includes, but is not limited to, a 808
county hospital commission appointed under section 339.14 of the 809
Revised Code, board of hospital commissioners appointed for a 810
municipal hospital under section 749.04 of the Revised Code, 811
board of hospital trustees appointed for a municipal hospital 812
under section 749.22 of the Revised Code, regional planning 813
commission created pursuant to section 713.21 of the Revised 814
Code, county planning commission created pursuant to section 815
713.22 of the Revised Code, joint planning council created 816
pursuant to section 713.231 of the Revised Code, interstate 817
regional planning commission created pursuant to section 713.30 818
of the Revised Code, port authority created pursuant to section 819
4582.02 or 4582.26 of the Revised Code or in existence on 820
December 16, 1964, regional council established by political 821
subdivisions pursuant to Chapter 167. of the Revised Code, 822
emergency planning district and joint emergency planning 823
district designated under section 3750.03 of the Revised Code, 824
joint emergency medical services district created pursuant to 825
section 307.052 of the Revised Code, fire and ambulance district 826
created pursuant to section 505.375 of the Revised Code, joint 827
interstate emergency planning district established by an 828
agreement entered into under that section, county solid waste 829
management district and joint solid waste management district 830
established under section 343.01 or 343.012 of the Revised Code, 831
community school established under Chapter 3314. of the Revised 832
Code, county land reutilization corporation organized under 833
Chapter 1724. of the Revised Code, the county or counties served 834
by a community-based correctional facility and program or 835
district community-based correctional facility and program 836
established and operated under sections 2301.51 to 2301.58 of 837

the Revised Code, a community-based correctional facility and 838
program or district community-based correctional facility and 839
program that is so established and operated, and the facility 840
governing board of a community-based correctional facility and 841
program or district community-based correctional facility and 842
program that is so established and operated. 843

(G) (1) "Proprietary function" means a function of a 844
political subdivision that is specified in division (G) (2) of 845
this section or that satisfies both of the following: 846

(a) The function is not one described in division (C) (1) 847
(a) or (b) of this section and is not one specified in division 848
(C) (2) of this section; 849

(b) The function is one that promotes or preserves the 850
public peace, health, safety, or welfare and that involves 851
activities that are customarily engaged in by nongovernmental 852
persons. 853

(2) A "proprietary function" includes, but is not limited 854
to, the following: 855

(a) The operation of a hospital by one or more political 856
subdivisions; 857

(b) The design, construction, reconstruction, renovation, 858
repair, maintenance, and operation of a public cemetery other 859
than a township cemetery; 860

(c) The establishment, maintenance, and operation of a 861
utility, including, but not limited to, a light, gas, power, or 862
heat plant, a railroad, a busline or other transit company, an 863
airport, and a municipal corporation water supply system; 864

(d) The maintenance, destruction, operation, and upkeep of 865

a sewer system; 866

(e) The operation and control of a public stadium, 867
auditorium, civic or social center, exhibition hall, arts and 868
crafts center, band or orchestra, or off-street parking 869
facility. 870

(H) "Public roads" means public roads, highways, streets, 871
avenues, alleys, and bridges within a political subdivision. 872
"Public roads" does not include berms, shoulders, rights-of-way, 873
or traffic control devices unless the traffic control devices 874
are mandated by the Ohio manual of uniform traffic control 875
devices. 876

(I) "State" means the state of Ohio, including, but not 877
limited to, the general assembly, the supreme court, the offices 878
of all elected state officers, and all departments, boards, 879
offices, commissions, agencies, colleges and universities, 880
institutions, and other instrumentalities of the state of Ohio. 881
"State" does not include political subdivisions. 882

Sec. 3701.26. (A) No civil action for damages for injury, 883
death, or loss to person or property shall be brought against 884
any person if the cause of action on which the civil action is 885
based, in whole or in part, is that the injury, death, or loss 886
to person or property is caused by the exposure to or 887
transmission or contraction of a coronavirus infection, unless 888
it is established that the exposure to, or transmission or 889
contraction of, infection was by reckless or intentional 890
misconduct or with willful or wanton misconduct on the part of 891
the person against whom the action is brought. 892

(B) As used in this section: 893

(1) "Person" has the same meaning as in section 1.59 of 894

the Revised Code and includes a school, a for-profit, nonprofit, 895
governmental, or religious entity, or a state institution of 896
higher education. 897

(2) "Reckless conduct" means conduct by which, with 898
heedless indifference to the consequences, the person disregards 899
a substantial and unjustifiable risk that the person's conduct 900
is likely to cause an exposure to or a transmission or 901
contraction of a coronavirus infection or is likely to be of a 902
nature that results in a transmission or contraction of a 903
coronavirus infection. A person is reckless with respect to 904
circumstances in relation to causing an exposure to or a 905
transmission or contraction of a coronavirus infection when, 906
with heedless indifference to the consequences, the person 907
disregards a substantial and unjustifiable risk that such 908
circumstances are likely to exist. A violation of an order 909
issued by the director of health of this state, alone, is not 910
sufficient to prove "reckless conduct" regarding the 911
transmission or contraction of a coronavirus infection. 912

(3) "State institution of higher education" has the same 913
meaning as in section 3345.011 of the Revised Code. 914

Section 2. That existing sections 9.87, 2305.2311, 915
2743.02, and 2744.01 of the Revised Code are hereby repealed. 916

Section 3. (A) The General Assembly makes the following 917
findings: 918

(1) The General Assembly is aware that lawsuits related to 919
the COVID-19 health emergency numbering in the thousands are 920
being filed across the country. Ohio business owners, small and 921
large, as they begin to re-open their businesses are unsure 922
about what tort liability they may face. 923

(2) It is also a fact that recommendations regarding how 924
best to avoid infection with COVID-19 change frequently, and 925
such recommendations are often not based on well-tested 926
scientific information. For example, the Centers for Disease 927
Control and Prevention (CDC) for the first eight weeks of the 928
COVID-19 health emergency recommended that members of the 929
general public not wear masks since most masks are ineffective 930
in protecting individuals from viruses. The CDC then reversed 931
its recommendation and started encouraging members of the 932
general public to wear masks in public places. Ohio businesses 933
need certainty and consistency to enable them to re-open. 934

(3) The General Assembly is further aware that businesses 935
and premises owners have not historically been required to keep 936
members of the public from being exposed to airborne viruses, 937
bacteria, and germs. In Ohio, it has been the responsibility of 938
individuals going into public places to avoid exposure to 939
individuals who are sick. The same is true today: those 940
individuals who decide to go out into public places are 941
responsible to take those steps they feel are necessary to avoid 942
exposure to COVID-19, such as social distancing and wearing 943
masks. 944

(4) The current COVID-19 health emergency is new and 945
novel. Past opinions of the Ohio Supreme Court do not deal with 946
COVID-19 or duties to protect the public from exposure in public 947
places to airborne germs and viruses. Nothing in the Ohio 948
Revised Code establishes duties upon businesses and premises 949
owners to ensure that members of the general public will not be 950
exposed to such airborne germs and viruses. 951

(5) Additionally, the General Assembly has not delegated 952
to the Executive Branch of Ohio's government the authority or 953

power to create new legal duties for businesses and premises 954
owners. In Ohio's system of government, the General Assembly 955
makes Ohio's laws, and the Executive Branch enforces those laws. 956

(B) Based on its findings in division (A) of this section, 957
the General Assembly declares its intent that orders and 958
recommendations from the Executive Branch, from counties and 959
local municipalities, from boards of health and other agencies, 960
and from any federal government agency, do not create any new 961
legal duties for purposes of tort liability. Any such orders and 962
recommendations are presumed to be irrelevant to the issue of 963
the existence of a duty or breach of a duty. Furthermore, any 964
such orders and recommendations are presumed to be inadmissible 965
at trial to establish proof of a duty or breach of a duty in 966
tort actions. 967

Section 4. With respect to the COVID-19 outbreak, this act 968
applies to acts, omissions, conduct, decisions, or compliance 969
from the date of the Governor's Executive Order 2020-01D, issued 970
on March 9, 2020, declaring a state of emergency due to COVID- 971
19, through December 31, 2020. 972

Section 5. This act is hereby declared to be an emergency 973
measure necessary for the immediate preservation of the public 974
peace, health, and safety. The reason for such necessity is that 975
it is crucial to provide immunity in response to a disaster or 976
emergency declared by the federal government, state government, 977
or political subdivision of the state. Therefore, this act shall 978
go into immediate effect. 979