

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:

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

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

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

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

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

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

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

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

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

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

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

attorney general in the attorney general's investigation 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"</u> means an individual licensed under <u>Chapter 4753. of the Revised Code to practice audiology.</u>	198
<u>Chapter 4753. of the Revised Code to practice audiology.</u>	199
<u>(4) "Board of health"</u> 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.	200
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<u>(4) "Board of health"</u> 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.	202
<u>(5) "Chiropractor"</u> means an individual who is authorized under Chapter 4734. of the Revised Code to practice chiropractic.	203
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<u>(6) "Dentist"</u> has the same meaning as in section 2305.231 of the Revised Code.	206
<u>(6) "Dentist"</u> has the same meaning as in section 2305.231 of the Revised Code.	207
<u>(7) "Direct support professional"</u> means an individual employed by an agency to provide direct care to individuals with developmental disabilities.	208
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<u>(7) "Direct support professional"</u> means an individual employed by an agency to provide direct care to individuals with developmental disabilities.	210
<u>(8) "Disaster"</u> 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.	211
<u>(8) "Disaster"</u> 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.	212
<u>(8) "Disaster"</u> 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.	213
<u>(8) "Disaster"</u> 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.	214
<u>(8) "Disaster"</u> 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.	215
<u>(4) (9) "Emergency"</u> has the same meaning as in section 5502.21 of the Revised Code.	216
<u>(4) (9) "Emergency"</u> has the same meaning as in section 5502.21 of the Revised Code.	217
<u>(10) "Emergency medical technician"</u> means an EMT-basic, an EMT-I, or a paramedic.	218
<u>(10) "Emergency medical technician"</u> means an EMT-basic, an EMT-I, or a paramedic.	219
<u>(5) (11) "EMT-basic"</u> 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.	220
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(6) (12) "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. 224
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(7) (13) "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. 228
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(14) "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. 241
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(15) "Federally qualified health center" and "federally qualified health center look-alike" have the same meanings as in section 3701.047 of the Revised Code. 247
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(16) "Gross negligence" means a lack of care so great that it appears to be a conscious indifference to the rights of others. 250
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(17) "Health care <u>providerprofessional</u> " means an advanced practice registered nurse, a registered nurse, <u>a licensed practical nurse</u> , a pharmacist, a dentist, an optometrist, a physician, a physician assistant, <u>a chiropractor, a physical therapist, an occupational therapist, an athletic trainer, a speech-language pathologist, audiologist, a laboratory worker, a massage therapist</u> , or a <u>hospitalrespiratory care professional</u> .	253 254 255 256 257 258 259
(18) "Health care provider" means a <u>health care professional, health care worker, direct support professional, or emergency medical technician or a home health agency, hospice care program, home and community-based services provider under a medicaid waiver component, 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.</u>	260 261 262 263 264 265 266 267 268 269
(19) "Health care services" means services rendered by a <u>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.</u>	270 271 272 273 274 275
(20) "Health care worker" means a person other than a <u>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 therapist assistant, physical therapist assistant,</u>	276 277 278 279 280 281 282

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

(31) "Optometrist" means a person who is licensed under Chapter 4725. of the Revised Code to practice optometry.	310 311
(10)–(32) "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)–(33) " <u>Personal care services</u> " has the same meaning as in section 3721.01 of the Revised Code.	316 317
(34) "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)–(35) " <u>Physical therapist</u> " means an individual licensed under Chapter 4755. of the Revised Code to practice physical therapy.	321 322 323
(36) " <u>Physical therapist assistant</u> " means an individual licensed under Chapter 4755. of the Revised Code to practice as a physical therapist assistant.	324 325 326
(37) "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)–(38) "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)–(39) " <u>Reckless disregard</u> " 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 product, means conduct that a health care provider or emergency medical technician knew or should have known, at the time those services or that treatment or care were rendered, created an unreasonable risk of injury, death, or loss to person or property so as to affect the life or health of another and that risk was substantially greater than that which is necessary to make the conduct negligent.~~ 338
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~~(15) (40) "Registered nurse" means an individual who holds a current, valid license issued under Chapter 4723. of the Revised Code to practice as a registered nurse.~~ 346
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~~(16) (41) "Respiratory care professional" has the same meaning as in section 4761.01 of the Revised Code.~~ 349
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~~(42) "Speech-language pathologist" means an individual licensed under Chapter 4753. of the Revised Code to practice speech-language pathology.~~ 351
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~~(43) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons or governmental entities and includes claims arising under resident or patient bills of rights and contractual claims arising out of statutory or regulatory requirements applicable to health care providers. "Tort action" includes an action on a medical claim.~~ 354
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~~(B) (1) Subject to division (C) (3) of this section, a health care provider or emergency medical technician that provides health care services, emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical~~ 362
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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 anany of the 371
following: 372

(a) An act or omission of the health care provider or 373
emergency medical technicianin the health care provider's or 374
emergency medical technician's provision, withholding, or 375
withdrawal of those servicesor 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 provision, withholding, or withdrawal of health care services, emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical equipment or product, decisions related to such services or care, or compliance with an executive order or director's order~~ by a health care provider ~~or emergency medical technician~~ as a result of ~~or in response to a disaster or emergency~~ and through the duration of the disaster_ 432
or emergency. 441

~~(D) This section does not apply to a tort action alleging wrongful death against a health care provider or emergency medical technician that provides emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical product, that allegedly arises from an act or omission of the health care provider or emergency medical technician in the health care provider's or emergency medical technician's provision of those services or that treatment or care as a result of a disaster.~~ 442
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Sec. 2743.02. (A) (1) ~~The Except as provided in division (I) of this section, the state hereby waives its immunity from liability, except as provided for the office of the state fire marshal in division (G) (1) of section 9.60 and division (B) of~~ 452
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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 section and as set forth in division (I) of this section, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty, including the performance or nonperformance of a public duty that is owed by the state in relation to any action of an individual who is committed to the custody of the state. 486
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(b) The state immunity provided in division (A) (3) (a) of this section does not apply to any action of the state under circumstances in which a special relationship can be established between the state and an injured party. A special relationship under this division is demonstrated if all of the following elements exist: 493
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(i) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who was allegedly injured; 499
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(ii) Knowledge on the part of the state's agents that inaction of the state could lead to harm; 502
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(iii) Some form of direct contact between the state's agents and the injured party; 504
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(iv) The injured party's justifiable reliance on the state's affirmative undertaking. 506
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(B) The state hereby waives the immunity from liability of all hospitals owned or operated by one or more political subdivisions and consents for them to be sued, and to have their liability determined, in the court of common pleas, in accordance with the same rules of law applicable to suits between private parties, subject to the limitations set forth in this chapter. This division is also applicable to hospitals 508
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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:

(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 from regulation as a hazardous waste by those rules.	693 694
(l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;	695 696 697
(m) The operation of a job and family services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;	698 699 700 701
(n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;	702 703 704 705 706 707 708 709 710
(o) The operation of mental health facilities, developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;	711 712 713
(p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;	714 715 716 717 718 719 720 721

(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 750
or joint county public defender's office pursuant to Chapter 751
120. of the Revised Code; 752

(w) (i) At any time before regulations prescribed pursuant 753
to 49 U.S.C.A 20153 become effective, the designation, 754
establishment, design, construction, implementation, operation, 755
repair, or maintenance of a public road rail crossing in a zone 756
within a municipal corporation in which, by ordinance, the 757
legislative authority of the municipal corporation regulates the 758
sounding of locomotive horns, whistles, or bells; 759

(ii) On and after the effective date of regulations 760
prescribed pursuant to 49 U.S.C.A. 20153, the designation, 761
establishment, design, construction, implementation, operation, 762
repair, or maintenance of a public road rail crossing in such a 763
zone or of a supplementary safety measure, as defined in 49 764
U.S.C.A 20153, at or for a public road rail crossing, if and to 765
the extent that the public road rail crossing is excepted, 766
pursuant to subsection (c) of that section, from the requirement 767
of the regulations prescribed under subsection (b) of that 768
section. 769

(x) Compliance with any order or directive issued as a 770
result of the COVID-19 pandemic by the state department of 771
health or a general health district or city health district 772
created by or under the authority of Chapter 3709. of the 773
Revised Code; 774

(y) Compliance with any order or directive issued as a 775
result of the COVID-19 pandemic by the state government, a 776
political subdivision, or an emergency management agency 777

<u>established within the department of public safety under section</u>	778
<u>5502.22 of the Revised Code;</u>	779
<u>(z) Any operation or function to abate the effects of</u>	780
<u>either of the following:</u>	781
<u>(i) An emergency declaration issued by the state</u>	782
<u>government or any political subdivision;</u>	783
<u>(ii) A public health emergency issued by the federal</u>	784
<u>government, the state government, or any county or municipal</u>	785
<u>health department.</u>	786
<u>(aa) The provision or nonprovision of any function of</u>	787
<u>local government during an emergency declaration issued by the</u>	788
<u>state government or any political subdivision, or during a</u>	789
<u>public health emergency declaration issued by the federal</u>	790
<u>government, the state government, any county or municipal health</u>	791
<u>department, or any general health district created by or under</u>	792
<u>the authority of Chapter 3709. of the Revised Code;</u>	793
<u>(bb) A function that the general assembly mandates a</u>	794
<u>political subdivision to perform.</u>	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 program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.	838 839 840 841 842 843
(G) (1) "Proprietary function" means a function of a political subdivision that is specified in division (G) (2) of this section or that satisfies both of the following:	844 845 846
(a) The function is not one described in division (C) (1) (a) or (b) of this section and is not one specified in division (C) (2) of this section;	847 848 849
(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.	850 851 852 853
(2) A "proprietary function" includes, but is not limited to, the following:	854 855
(a) The operation of a hospital by one or more political subdivisions;	856 857
(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;	858 859 860
(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;	861 862 863 864
(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, governmental, or religious entity, or a state institution of higher education. 895
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(2) "Reckless conduct" means conduct by which, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause an exposure to or a transmission or contraction of a coronavirus infection or is likely to be of a nature that results in a transmission or contraction of a coronavirus infection. A person is reckless with respect to circumstances in relation to causing an exposure to or a transmission or contraction of a coronavirus infection when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist. A violation of an order issued by the director of health of this state, alone, is not sufficient to prove "reckless conduct" regarding the transmission or contraction of a coronavirus infection. 898
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(3) "State institution of higher education" has the same meaning as in section 3345.011 of the Revised Code. 913
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Section 2. That existing sections 9.87, 2305.2311, 2743.02, and 2744.01 of the Revised Code are hereby repealed. 915
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Section 3. (A) The General Assembly makes the following findings: 917
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(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. 919
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(2) It is also 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 re-open.

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

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

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

power to create new legal duties for businesses and premises 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