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Substitute Bill Comparative Synopsis

Sub. H.B. 606

133rd General Assembly

House Civil Justice

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This table summarizes how the latest substitute version of the bill differs from the immediately preceding version. It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same.

Previous Version (I_133_2690-2)	Latest Version (I_133_2690-5)
Civil immunity for health care providers	
Expands the existing qualified civil immunity granted to certain health care providers and emergency medical technicians who provide emergency services during a disaster as follows:	Same.

Previous Version (I_133_2690-2)	Latest Version (I_133_2690-5)
<ul style="list-style-type: none"> ▪ Applies the immunity to health care services, emergency medical services, first-aid treatment, or other emergency professional care rendered “during or in response to a disaster or emergency” (<i>R.C. 2305.2311(B)(1)</i>). ▪ Extends the immunity to health care services, including personal care services (in addition to emergency medical services, first-aid treatment, or other emergency professional care) (<i>RC. 2305.2311(A)(12)</i>). ▪ Grants immunity to the following additional health care providers: licensed practical nurses; athletic trainers; home and community-based service providers; chiropractors; therapy providers (occupational therapists, physical therapists, and speech-language pathologists); and respiratory care professionals (<i>R.C. 2305.2311(A)(11)</i>). ▪ No provision. ▪ Grants immunity to the following additional health care facilities: adult day care facilities; facilities for individuals with developmental disabilities (including residential facilities and institutions for mental diseases); laboratories; home health agencies; hospice care programs; and long-term care facilities (<i>R.C. 2305.2311(A)(11)</i>). 	<ul style="list-style-type: none"> ▪ Same, but instead applies the immunity to those services rendered “as a result of or in response to a disaster or emergency” (<i>R.C. 2305.2311(B)(1)</i>). ▪ Also includes experimental treatments (<i>R.C. 2305.2311(A)(19)</i>). ▪ Also includes audiologists, laboratory workers, massage therapists, direct support professionals (<i>R.C. 2305.2311(A)(17) and (18)</i>). ▪ Also includes a person, other than a health care professional or emergency medical technician, who provides health care services under the direction of a health care professional authorized to direct the individual’s activities, including a medical technician, medical assistant, dental assistant, occupational therapist assistant, physical therapist assistant, orderly, nurse aide, or any other individual acting in a similar capacity (<i>R.C. 2305.2311(A)(20)</i>). ▪ Also includes the following facilities: an institution where health care services are provided, including an inpatient, ambulatory, surgical, emergency care, urgent care, treatment, residential care, residential treatment, or intermediate care facility; a physician’s office; a developmental, diagnostic or imaging center; a rehabilitation or therapeutic health setting; a

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<ul style="list-style-type: none"> <ul style="list-style-type: none"> ▫ Includes any agent or employee of the facility, laboratory, or hospital acting in the course of service or employment <i>(R.C. 2305.2311(A)(11))</i>. ▪ Grants immunity to a health care provider that is unable to treat, diagnose, or test a person for any illness, disease, or condition, including performing an elective procedure, due to an epidemic, pandemic, or other public health emergency <i>(R.C. 2305.2311(B)(3))</i>. ▪ Excludes from immunity conduct that constitutes willful or wanton misconduct <i>(R.C. 2305.2311(B)(2))</i>. ▪ No provision. ▪ No provision. 	<p>federally qualified health center (FQHC) or FQHC look-alike; 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. <i>(R.C. 2305.2311(A)(13) and (18))</i>.</p> <ul style="list-style-type: none"> <ul style="list-style-type: none"> ▫ Also includes any agent, board member, committee member, employee, employer, officer, or volunteer of an agency, program, provider, or facility acting in the course and scope of service or employment <i>(R.C. 2305.2311(A)(13) and (18))</i>. ▪ Same, but the inability must be due to an executive or director's order or an order of a board of health of a city or general health district issued in relation to an epidemic or pandemic disease or other public health emergency <i>(R.C. 2305.2311(B)(4))</i>. ▪ Instead, from the bill's effective date through December 31, 2020, the immunity does not apply in a tort action (that does not arise out of regulatory requirements applicable to facilities) for conduct that constitutes willful or wanton misconduct <i>(R.C. 2305.2311(B)(2)(a))</i>. ▪ Beginning January 1, 2021, the immunity does not apply to a tort action (that does not arise out of regulatory requirements applicable to facilities) for conduct that constitutes a reckless disregard for the consequences so as to affect the life or health of the patient <i>(R.C. 2305.2311(B)(2)(b))</i>. ▪ Specifies that immunity does not apply in a professional disciplinary action or in a tort action that arises out of regulatory requirements applicable to facilities for conduct

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<ul style="list-style-type: none"> ▪ Specifies that immunity does not apply to conduct that is outside the skills, education, and training of the health care provider (R.C. 2305.2311(C)(3)). 	<p>that constitutes gross negligence (a lack of care so great that it appears to be a conscious indifference to the rights of others) (R.C. 2305.2311(A)(16) and (B)(3)).</p> <ul style="list-style-type: none"> ▪ Provides that this exception does not apply if the health care provider undertook the action in good faith and in response to a lack of resources caused by a disaster or emergency (R.C. 2305.2311(C)(3)).
General immunity and exception	
<p>Precludes a civil action for damages for injury, death, or loss to person or property from being brought if the cause of action on which the action is based is that the injury, death, or loss is caused by the transmission of a coronavirus infection, unless it is established by clear and convincing evidence that the infection was transmitted by “reckless” or intentional conduct or with willful or wanton misconduct of the person against whom the action is brought (R.C. 3701.26(A)).</p> <p>Defines “reckless conduct” as 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 a transmission of a coronavirus infection or is likely to be of a nature that results in a transmission of a coronavirus infection. A person is reckless with respect to circumstances in relation to a transmission 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 Ohio Director of Health, alone, is not sufficient to prove “reckless conduct” regarding the transmission of a coronavirus infection (R.C. 3701.26(B)).</p>	<p>Precludes a civil action for damages for injury, death, or loss to person or property from being brought <i>against any “person”</i> if the cause of action on which the action is based is that the injury, death, or loss is caused by <i>the exposure to, or the transmission or contraction, of a coronavirus infection</i>, unless the infection was transmitted by “reckless” or intentional misconduct or with willful or wanton misconduct of the person against whom the action is brought (R.C. 3701.26(A)).</p> <p>Same definition of “reckless conduct” but adds references to the <i>exposure to, or contraction of, the coronavirus infection</i> (R.C. 3701.26(B)).</p>

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No provision.	Defines “person” as in continuing law, i.e., an individual, corporation, business trust, estate, trust, partnership, and association, and also includes a school, a for-profit, nonprofit, governmental, or religious entity, or a “state institution of higher education,” defined as any of the 13 “state universities” under continuing law, and the Northeast Ohio Medical University, a community college, state community college, university branch established under R.C. Chapter 3355, or technical college (<i>R.C. 3701.26(B)(1) and (3)</i>), and by reference to <i>R.C. 1.59 and 3345.011</i> , not in the bill).
State immunity	
No provision.	Declares that the state is immune from liability in any civil action or proceeding existing on or after the bill’s effective date (1) involving the performance or nonperformance of a governmental function or public duty as a result of a state agency’s response to the COVID-19 pandemic by arranging or providing care, protection, or treatment for any person committed to the custody of the state, including health care services, or (2) that, as a result of the performance or nonperformance of a function or duty, an officer or employee becomes infected with COVID-19 (<i>R.C. 2743.02(I)</i>).
No provision.	Declares that the state does not consent to be sued in such actions and that neither the court of claims nor any courts of common pleas have jurisdiction to hear any case or controversy, initiate any immunity determination, or have the state’s liability subject to any determination, nor shall the state indemnify any employee found liable in court (<i>R.C. 2743.02(I)</i> ; <i>conforming change in R.C. 9.87(F)(2)</i>).
No provision.	Provides that the state shall not indemnify an officer or employee for any portion of a judgment from a cause of action that exists on or after the bill’s effective date (1) involving the performance or

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	<p>nonperformance of a governmental function or public duty as a result of a state agency’s response to the COVID-19 pandemic by arranging or providing care, protection, or treatment for any person committed to the custody of the state, including health care services, or (2) that, as a result of the performance or nonperformance of a function or duty, an officer or employee becomes infected with COVID-19 (<i>R.C. 9.87(B)(5)</i>).</p>
Political subdivision tort liability law	
<p>No provision.</p>	<p>Expands the definition of “governmental function” regarding political subdivision general immunity to include:</p> <ol style="list-style-type: none"> 1. Compliance with an order resulting from the COVID-19 pandemic issued by the Ohio Health Department, health districts, the state government, a political subdivision, or the Emergency Management Agency; 2. Any operation to abate the effects of an emergency declaration by the state or a political subdivision, or a public health emergency declaration issued by the federal or state government or county or municipal health department; 3. The provision or nonprovision of a local government function during an emergency declaration issued by the state government or a political subdivision, or during a public health emergency declaration issued by the federal or state government, a county or municipal health department, or a general health district. <p><i>(R.C. 2744.01(C)(2)(x), (y), (z), and (aa).)</i></p>

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Statement of intent	
No provision.	<p>States that the General Assembly finds:</p> <ul style="list-style-type: none"> ▪ That it is aware that COVID-19 lawsuits numbering in the thousands are being filed across the country and Ohio business owners are unsure about what tort liability they may face. ▪ That recommendations about how to avoid a COVID-19 infection change frequently and are often not based on well-tested scientific information and Ohio businesses need certainty and consistency to reopen. ▪ That it is aware that businesses and premise owners have not historically been required to keep members of the public from being exposed to airborne viruses, bacteria, and germs. Individuals who decide to go into public places are responsible for taking steps the individual feels are necessary to avoid exposure to COVID-19. ▪ That the current COVID-19 health emergency is novel. Past opinions of the Ohio Supreme Court do not deal with COVID-19 duties and the Revised Code does not establish duties on businesses and premises owners to ensure that members of the public will not be exposed. ▪ That the General Assembly has not delegated to the Executive Branch the authority to create new legal duties for businesses and premise owners. Executive branch orders and recommendations do not create any new legal duties for purposes of tort liability and are presumed to be (1) irrelevant to the issue of the existence or breach of a duty and

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	(2) inadmissible at trial to establish proof of the existence or breach of a duty in tort actions. (Section 3.)
Application of the bill	
No provision.	Specifies that with respect to the COVID-19 outbreak, the bill applies from the date of the Governor’s Executive Order 2020-01D, issued on March 9, 2020, and applies through December 31, 2020 (Section 4).
Emergency clause	
Declares the bill takes effect as an emergency measure necessary to address the urgent needs of the state arising from a COVID-19 outbreak (Section 4).	Instead, specifies that the necessity is because it is crucial to provide immunity in response to a disaster or emergency declared by the federal government, state government, or political subdivision of the state (Section 5).

Appendix A

The table below compares the list of health care providers included in Sub. H.B. 606 (I_133_2690-2) and the latest version (I_133_2690-5). Current law includes advanced practice registered nurses, registered nurses, emergency medical technicians-basic, emergency medical technicians-intermediate, paramedics, pharmacists, dentists, optometrists, physicians, physician assistants, and hospitals.

Health care provider	Prior version (I_133_2690-2)	Latest version (I_133_2690-5)
Licensed practical nurse	Yes	Yes
Athletic trainer	Yes	Yes

Health care provider	Prior version (I_133_2690-2)	Latest version (I_133_2690-5)
Home and community-based services provider	Yes	Yes (referred to as a home and community-based services provider under a Medicaid waiver component)
Chiropractor	Yes	Yes
Occupational therapist	Yes (therapy provider)	Yes
Occupational therapy assistant	No	Yes
Physical therapist	Yes (therapy provider)	Yes
Physical therapist assistant	No	Yes
Speech-language pathologist	Yes (therapy provider)	Yes
Audiologist	No	Yes
Respiratory care professional	Yes	Yes
Massage therapist	No	Yes
Laboratory worker	No	Yes
Direct support professional	No	Yes
Health care worker (a person who provides medical, dental, or other health care services under the direction of a health care professional, including a medical technician, medical assistant, dental assistant, occupational therapy assistant, physical	No	Yes

Health care provider	Prior version (I_133_2690-2)	Latest version (I_133_2690-5)
therapist assistant, orderly, nurse aide, and any other individual acting in a similar capacity)		
Any institution or setting where health care services are provided	No	Yes
Adult day-care facility	Yes	Yes
Federally qualified health centers	No	Yes
Federally qualified health center look-alikes	No	Yes
Facility for individuals with developmental disabilities	Yes	Yes
Laboratory	Yes	Yes
Home health agency	Yes	Yes
Hospice care program	Yes	Yes
Long-term care facility (includes a nursing home, assisted living facility, home for the aging, residential facility licensed by the OhioMHAS, nursing facility, skilled nursing facility, and intermediate care facility for individuals with intellectual disabilities)	Yes	Yes
Inpatient facility	No	Yes
Ambulatory facility	No	Yes

Health care provider	Prior version (I_133_2690-2)	Latest version (I_133_2690-5)
Surgical facility	No	Yes
Emergency care facility	No	Yes
Urgent care facility	No	Yes
Treatment facility	Not expressly ¹	Yes
Residential treatment facility	Not expressly ²	Yes
Physician's office	No	Yes
Diagnostic center	No	Yes
Imaging center	No	Yes
Rehabilitation or therapeutic health setting	No	Yes
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	No	Yes

¹ I_133_2690-2 does not define "treatment facility." Depending on the facts, it is possible that a treatment facility could be a long-term care facility, which it does include as a health care provider.

² I_133_2690-2 does not define "residential treatment facility." Depending on the facts, it is possible that a residential treatment facility could be a long-term care facility, which it does include as a health care provider.

Health care provider	Prior version (I_133_2690-2)	Latest version (I_133_2690-5)
Any agent, board member, committee member, employee, employer, officer, or volunteer of a home health agency, hospice care program, Medicaid waiver provider, or facility ³ acting in the course of service or employment	Applies only to an agent or employee of an adult day-care facility, facility for individuals with developmental disabilities, hospital, laboratory, or long-term care facility	Yes

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³ Under I_133_2690-5, a “facility” is 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 (FQHC) or FQHC 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.