

COVID-19 Senate Bill 72

On March 29, 2021, Governor DeSantis signed Senate Bill 72 into law, which created Florida Statute Sections 768.38 and 768.381. The law takes effect immediately and is designed to protect Florida businesses, governments, and healthcare providers from COVID-19 lawsuits if they make a good faith effort to follow guidelines implemented to prevent the spread of the virus. The full bill can be accessed at the link at the bottom. Below are highlights from the bill.

Fla. Stat. § 768.38, Liability Protections for COVID-19 Related Claims:

- "COVID 19-related claim" is defined as a civil liability claim for damages, injury, or death arising from or related to COVID-19.
- Establishes the following requirements to bring a civil lawsuit for a COVID 19-related claim:
 - (1) Complaint must be pled with particularity.
 - (2) At the same time the Complaint is filed, the plaintiff must submit an affidavit signed by a physician, within a reasonable degree of medical certainty, that the plaintiff's COVID-19 related damages, injury, or death occurred as a result of the defendant's acts or omissions.
 - (3) The Court must determine, as a matter of law, whether the above items have been met. If not, the Complaint should be dismissed without prejudice.
 - (4) The Court must determine, as a matter of law, whether the defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time of the cause of action accrued.
 - If the Court determined the defendant made a good faith effort, the defendant is immune from civil liability.
 - If the Court determined the defendant lacked such efforts, the plaintiff may proceed with the action.
- If allowed to proceed, the plaintiff has the burden of proving, by clear and convincing evidence, that the defendant acted with at least gross negligence, the defendant is not liable.
- The statute of limitations for these claims is one year, meaning a plaintiff must commence a civil action for a COVID-19 related claim within 1 year after the cause of action accrues. This law applies retroactively, so, if the action accrued before March 29, 2021, then a plaintiff must commence a civil action no later than March 29, 2022.

Fla. Stat. § 768.381, COVID-19 Related Claims Against Health Care Providers:

- “COVID 19-related claim” is defined as a civil liability claim against a health care provider that arises from the failure to diagnose or treat a person with COVID-19, the transmission of COVID-19, delay/cancellation of a medical procedure due to COVID-19, an act or omission caused by the lack of resources from the pandemic, and exacerbation of pre-existing conditions due to COVID-19 exposure.
- A Complaint must be pled with particularity (an affidavit of a physician is not required as part of the pleading).
- A plaintiff must prove by the greater weight of the evidence that the health care provider was grossly negligent or engaged in intentional misconduct.
- Available affirmative defenses for these claims include substantial compliance with government-issued health standards relating to COVID-19, among other items. If a health care provider proves by the greater weight of the evidence the existence of an affirmative defense that applies to a COVID-19 related claim, the provider has no liability.
- A plaintiff must commence a civil action for a COVID-19 related claim arising from the transmission, diagnosis, or treatment of COVID-19 within 1 year after the death, hospitalization, or first diagnosis of COVID-19, whichever is later. If the claim does not arise from the transmission, diagnosis, or treatment of COVID-19, then such an action must be brought within 1 year after the cause of action accrues. Any claims that accrue prior to March 29, 2021, must be filed no later than March 29, 2022.
- This statute does not apply to workers’ compensation claims.

<https://www.flsenate.gov/Session/Bill/2021/72/BillText/er/PDF>

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