

Florida Legislation Protects Businesses From COVID-19 Lawsuits

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Legislation providing businesses and other institutions protection from civil liability for COVID-19 claims has been introduced into both houses of the Florida Legislature. The bills (HB 7, sponsored by Rep. Lawrence McClure, and SB 72, sponsored by Sen. Jeff Brandes) are identical and are on the "fast track" through the Legislature, according to House Speaker Chris Sprowls, who has described the legislation as "the most aggressive liability protection bill in the nation." HB 7 was approved on January 13 and SB 72 was approved on January 25 by their respective first committees of reference. They each have two committees left before reaching the floor of their chambers.

The bills provide a "safe harbor" from liability for COVID-19-related claims for businesses, governmental entities, educational institutions, and religious organizations that make "a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance." The bill applies to any claim for damages, injury, or death, regardless of how the claim is described, that "arises from or is related to COVID-19." Liability protections for health care providers and hospitals will be addressed in separate, stand-alone legislation that has yet to be released. "There is an incredible amount of detail that needs to go into the health care issue, and that needs to take a little more time," according to Sen. Brandes.

HB 7 and SB 72 create a two-step legal process for addressing COVID-19-related claims, with the first step focused on weeding out legitimate claims from frivolous claims, and step two addressing damages. Before a plaintiff can proceed to step two, the court must determine that the plaintiff has met a more rigorous pleading standard than typically applied to civil claims, specifically that the claim be "pleaded with particularity." The plaintiff must also file with the complaint an affidavit signed by a Florida-licensed physician attesting to the physician's belief, within a reasonable degree of medical certainty, that the plaintiff's injury resulted directly from the defendant's acts or omissions.

If the plaintiff clears those opening hurdles, then the sole issue for the court in phase one is whether the defendant made a "good faith effort" to "substantially comply" with governmental requirements or guidance in force at the time of the purported COVID-19-related injury. Defendants that made a good faith effort to comply are immune from liability, ending the action. If the plaintiff demonstrates that the defendant did not make the requisite good faith effort, he or she proceeds to step two, wherein the plaintiff must prove by "clear and convincing evidence" that the defendant acted with "at least gross negligence" in causing the plaintiff's injury. Otherwise, the defendant is immune from liability.

The act provides a one-year statute of limitations for COVID-19-related claims. The one-year limit runs from the effective date of the bill for claims that accrued before its passage. The bill is to take effect upon the governor's signature and retroactively applies its heightened standards to claims that accrued before its passage but were not yet filed. The bill does not, however, apply to actions that were actually commenced before the effective date of the act.

The bill is supported by the Florida Chamber of Commerce, the National Federation of Independent Business, and the Associated Industries of Florida. The Florida Justice Association, which advocates in the Florida Legislature on behalf of personal injury and trial attorneys and their clients, opposes the bill.

The Carlton Fields Government Law and Consulting Practice will continue to track this legislation as it makes its way through the Florida Legislature. We will provide updates regarding any significant developments and are available to answer questions regarding the bills as the Florida legislative session progresses.

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