

Gov. DeSantis Signs COVID-19 Business Liability Protection Bill Into Law

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On March 29, 2021, Florida Gov. Ron DeSantis signed the first bill of the 2021 Florida legislative session into law — Senate Bill 72 (SB 72) limiting civil liability against businesses for damages related to COVID-19. The bill creates separate standards and procedures for lawsuits against general businesses and entities versus suits against health care providers.

Suits Against Businesses and Entities That Are Not Health Care Providers

The new law, which was immediately effective upon the governor's signature on March 29, provides broad-ranging "safe harbor" to persons, businesses, governmental entities, nonprofit and charitable organizations, and educational institutions from civil liability for COVID-19-related claims so long as the entity made a good faith effort to "substantially comply with authoritative or controlling government-issued health standards or guidance at the time the cause of action accrued."

SB 72 creates specific procedures for COVID-19 damages suits that require a plaintiff to:

- Plead the complaint with particularity.
- File a physician's affidavit that states it is the physician's belief, within a reasonable degree of medical certainty, that the plaintiff's COVID-19 damages occurred as a result of the defendant's acts or omissions.
- Prove a defendant did not make a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time the cause of action accrued.
- And, if the plaintiff proves the defendant did not make a good faith effort to comply, the plaintiff then must prove by clear and convincing evidence of "at least" gross negligence by the defendant in its actions.

Additionally, the court decides as a matter of law whether the defendant made its required good faith effort.

SB 72 also provides a very strict statute of limitations for such COVID-19 liability claims, requiring that a lawsuit be filed within one year of the cause of action accruing, or within one year of March 29, 2021, if the cause of action accrued before that date.

Suits Against Health Care Providers

The bill also creates separate standards and procedures for actions against health care providers and defines what is considered a health care provider for COVID-19 liability cases.

In suits against health care providers for COVID-19 damages, while no physician affidavit is required, the plaintiff must particularly allege facts in sufficient detail to support every element of the claim and must also prove by the greater weight of the evidence that the health care provider was "grossly negligent or engaged in intentional misconduct."

A number of affirmative defenses are available for health care provider defendants as set forth in SB 72, and likewise impose a strict statute of limitations of one year for actions against health care providers, depending on a number of specific factors.

Finally, all the standards and procedures created by SB 72 apply both retroactively and prospectively for suits against both general business and entities as well as health care providers, but exclude any lawsuits that were already commenced before March 29, 2021, against a particular named defendant.

Carlton Fields' Government Law and Consulting Practice continues to track the 2021 Florida legislative session. For any questions concerning pending legislation that affects your industry, please contact the authors of this alert or any member of the Government Law and Consulting Practice.

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