

By Senator Brandes

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1 A bill to be entitled
2 An act relating to civil liability for damages
3 relating to COVID-19; creating s. 768.38, F.S.;
4 providing legislative findings and intent; defining
5 terms; providing requirements for a civil action based
6 on a COVID-19-related claim; providing that the
7 plaintiff has the burden of proof in such action;
8 providing a statute of limitations; providing
9 severability; providing retroactive applicability;
10 providing an effective date.

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12 WHEREAS, on March 9, 2020, Governor Ron DeSantis issued
13 Executive Order Number 20-52 declaring a state of emergency for
14 the State of Florida due to the COVID-19 pandemic, and

15 WHEREAS, in light of the ongoing nature of the COVID-19
16 pandemic, the Governor has repeatedly extended the state of
17 emergency, including most recently on December 29, 2020, in
18 Executive Order Number 20-316, and

19 WHEREAS, the State of Florida continues under a declared
20 state of emergency, and

21 WHEREAS, throughout the declared state of emergency, the
22 Governor's executive orders included industry-specific
23 restrictions to prevent the spread of COVID-19 based on the best
24 information available at the time, allowing and encouraging
25 certain businesses to continue to safely operate, and

26 WHEREAS, a strong and vibrant economy is essential to
27 ensure that Floridians may continue in their meaningful work and
28 ultimately return to the quality of life they enjoyed before the
29 COVID-19 outbreak, and

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30 WHEREAS, Floridians must be allowed to earn a living and
31 support their families without unreasonable government
32 intrusion, and

33 WHEREAS, the Governor's responsible reopening strategy
34 allowed businesses to continue to safely operate, bolstering
35 consumer confidence, while also enforcing reasonable
36 restrictions, and

37 WHEREAS, the Legislature recognizes that certain
38 businesses, entities, and institutions operating within the
39 state are essential to the state's continuing success and well-
40 being, and

41 WHEREAS, the Legislature recognizes that many businesses,
42 entities, and institutions accept significant risk in order to
43 provide their services to the public, and

44 WHEREAS, the Legislature further recognizes that the threat
45 of frivolous and potentially limitless civil liability,
46 especially in the wake of a pandemic, causes businesses,
47 entities, and institutions to react in a manner detrimental to
48 the state's economy and residents, and

49 WHEREAS, the Legislature recognizes that practical, bright-
50 line guidance protecting prudent businesses, entities, and
51 institutions significantly alleviates such liability concerns,
52 while also continuing to provide for the public health, and

53 WHEREAS, the Legislature finds that the unprecedented and
54 rare nature of the COVID-19 pandemic, together with the
55 indefinite legal environment that has followed, requires the
56 Legislature to act swiftly and decisively, NOW, THEREFORE,

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58 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 768.38, Florida Statutes, is created to read:

768.38 Liability protections for COVID-19-related claims.-

(1) The Legislature finds that the COVID-19 outbreak in the state threatens the continued viability of certain business entities, educational institutions, governmental entities, and religious institutions that contribute to the overall well-being of the state. The threat of unknown and potentially unbounded liability to such businesses, entities, and institutions, in the wake of a pandemic that has already left many of these businesses, entities, and institutions vulnerable, has created an overpowering public necessity to provide an immediate and remedial legislative solution. Therefore, the Legislature intends for certain business entities, educational institutions, governmental entities, and religious institutions to enjoy heightened legal protections against liability as a result of the COVID-19 pandemic. The Legislature also finds that there are no alternative means to meet this public necessity, especially in light of the sudden, unprecedented nature of the COVID-19 pandemic. The Legislature finds the public interest as a whole is best served by providing relief to these businesses, entities, and institutions so that they may remain viable and continue to contribute to the state.

(2) As used in this section, the term:

(a) "Business entity" has the same meaning as provided in s. 606.03. The term also includes a charitable organization as defined in s. 496.404 and a corporation not for profit as defined in s. 617.01401.

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88 (b) "COVID-19-related claim" means a civil liability claim
89 against a person, including a natural person, a business entity,
90 an educational institution, a governmental entity, or a
91 religious institution which arises from or is related to COVID-
92 19, otherwise known as the novel coronavirus. The term includes
93 any such claim for damages, injury, or death. Any such claim, no
94 matter how denominated, is a COVID-19-related claim for purposes
95 of this section. The term does not include a claim against a
96 healthcare provider, regardless of whether the healthcare
97 provider meets one or more of the definitions in this
98 subsection.

99 (c) "Educational institution" means a school, including a
100 preschool, elementary school, middle school, junior high school,
101 secondary school, career center, or postsecondary school,
102 whether public or nonpublic.

103 (d) "Governmental entity" means the state or any political
104 subdivision thereof, including the executive, legislative, and
105 judicial branches of government; the independent establishments
106 of the state, counties, municipalities, districts, authorities,
107 boards, or commissions; or any agencies that are subject to
108 chapter 286.

109 (e) "Healthcare provider" means:

110 1. A provider as defined in s. 408.803.

111 2. A clinical laboratory providing services in the state or
112 services to health care providers in the state, if the clinical
113 laboratory is certified by the Centers for Medicare and Medicaid
114 Services under the federal Clinical Laboratory Improvement
115 Amendments and the federal rules adopted thereunder.

116 3. A federally qualified health center as defined in 42

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117 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the
118 effective date of this act.

119 4. Any site providing health care services which was
120 established for the purpose of responding to the COVID-19
121 pandemic pursuant to any federal or state order, declaration, or
122 waiver.

123 5. A health care practitioner as defined in s. 456.001.

124 6. A health care professional licensed under part IV of
125 chapter 468.

126 7. A home health aide as defined in s. 400.462(15).

127 (f) "Religious institution" has the same meaning as
128 provided in s. 496.404.

129 (3) In a civil action based on a COVID-19-related claim:

130 (a) The complaint must be pled with particularity.

131 (b) At the same time the complaint is filed, the plaintiff
132 must submit an affidavit signed by a physician actively licensed
133 in the state which attests to the physician's belief, within a
134 reasonable degree of medical certainty, that the plaintiff's
135 COVID-19-related damages, injury, or death occurred as a result
136 of the defendant's acts or omissions.

137 (c) The court must determine, as a matter of law, whether:

138 1. The plaintiff complied with paragraphs (a) and (b). If
139 the plaintiff did not comply with paragraphs (a) and (b), the
140 court must dismiss the action without prejudice.

141 2. The defendant made a good faith effort to substantially
142 comply with authoritative or controlling government-issued
143 health standards or guidance at the time the cause of action
144 accrued.

145 a. During this stage of the proceeding, admissible evidence

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146 is limited to evidence tending to demonstrate whether the
147 defendant made such a good faith effort.

148 b. If the court determines that the defendant made such a
149 good faith effort, the defendant is immune from civil liability.

150 c. If the court determines that the defendant did not make
151 such a good faith effort, the plaintiff may proceed with the
152 action. However, absent at least gross negligence proven by
153 clear and convincing evidence, the defendant is not liable for
154 any act or omission relating to a COVID-19-related claim.

155 (d) The burden of proof is upon the plaintiff to
156 demonstrate that the defendant did not make a good faith effort
157 under subparagraph (c)2.

158 (4) A civil action for a COVID-19-related claim must be
159 commenced within 1 year after the cause of action accrues.
160 However, a plaintiff whose cause of action for a COVID-19-
161 related claim accrued before the effective date of this act must
162 commence such action within 1 year of the effective date of this
163 act.

164 Section 2. If any provision of this act or its application
165 to any person or circumstance is held invalid, the invalidity
166 does not affect other provisions or applications of the act
167 which can be given effect without the invalid provision or
168 application, and to this end the provisions of this act are
169 severable.

170 Section 3. This act shall take effect upon becoming a law
171 and shall apply retroactively. However, the provisions of this
172 act shall not apply in a civil action against a particularly
173 named defendant which is commenced before the effective date of
174 this act.