

THE FLORIDA SENATE
2021 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/SB 72 — Civil Liability for Damages Relating to COVID-19

by Rules Committee and Senators Brandes, Perry, Baxley, and Hutson

The bill (Chapter 2021-1, L.O.F.) creates civil liability protections for individuals, businesses, governmental entities, and other organizations against COVID-19-related claims. The bill provides lesser liability protections to health care providers, who are defined in the bill, and provides procedures for civil actions against them.

Liability Protections for COVID-19-Related Claims

For a claim against a person, business, or other entity, but generally not a health care provider, the bill establishes preliminary requirements that a plaintiff must complete before the case may proceed. A court must determine whether:

- The complaint was pled with particularity.
- The complaint is supported by a physician's affidavit attesting to the physician's belief, within a reasonable degree of medical certainty, that the defendant caused, through acts of omissions, the plaintiff's damages, injury, or death. If the plaintiff did not meet these requirements, the court must dismiss the action, but the plaintiff may correct the deficiencies and refile the claim.
- The defendant made a good faith effort to substantially comply with authoritative or controlling health standards when the actions accrued.

If the court determines that the defendant made the requisite good faith effort, the defendant is immune from civil liability. However, if the court determines that the defendant did not make the requisite good faith effort, the lawsuit may proceed.

If the defendant is not immune, the plaintiff must meet the heightened standard of proving that the defendant's acts or omissions were grossly negligent by the clear and convincing evidence standard.

Liability Protections for Health Care Providers

The liability protections for COVID-19-related claims against a health care provider mainly relate to claims:

- Arising from the diagnosis or treatment of a person for COVID-19;
- The provision of a novel or experimental COVID-19 treatment;
- The transmission of COVID-19; and
- The delay or cancellation of a surgery or medical procedure.

To prevail in a claim against a health care provider, the plaintiff must plead the claim with particularity and generally must prove by the greater weight of the evidence that the health care provider was grossly negligent or engaged in intentional misconduct.

A COVID-19-related lawsuit against any type of defendant must be brought within 1 year after a cause of action accrues unless the cause of action occurred before the effective date of the bill. However, if a cause accrues before the effective date of the bill, the plaintiff has 1 year from the effective date of the act to bring the claim.

While the bill takes effect upon becoming a law, it applies retroactively. However, the bill does not apply in a civil action against a particular named defendant to a suit filed before the bill's effective date.

These provisions became law upon approval by the Governor on March 29, 2021.

Vote: Senate 24-15; House 83-31