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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Book) recommended the following:

1 **Senate Substitute for Amendment (274920) (with title**
2 **amendment)**

3
4 Delete lines 65 - 174

5 and insert:

6 entities, governmental entities, and religious institutions that
7 contribute to the overall well-being of the state. The threat of
8 unknown and potentially unbounded liability to such businesses,
9 entities, and institutions, in the wake of a pandemic that has
10 already left many of these businesses, entities, and
11 institutions vulnerable, has created an overpowering public



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12 necessity to provide an immediate and remedial legislative
13 solution. Therefore, the Legislature intends for certain
14 business entities, governmental entities, and religious
15 institutions to enjoy heightened legal protections against
16 liability as a result of the COVID-19 pandemic. The Legislature
17 also finds that there are no alternative means to meet this
18 public necessity, especially in light of the sudden,
19 unprecedented nature of the COVID-19 pandemic. The Legislature
20 finds the public interest as a whole is best served by providing
21 relief to these businesses, entities, and institutions so that
22 they may remain viable and continue to contribute to the state.

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

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

28 (b) "COVID-19-related claim" means a civil liability claim
29 against a person, including a natural person, a business entity,
30 a governmental entity, or a religious institution which arises
31 from or is related to COVID-19, otherwise known as the novel
32 coronavirus. The term includes any such claim for damages,
33 injury, or death. Any such claim, no matter how denominated, is
34 a COVID-19-related claim for purposes of this section. The term
35 does not include a claim against an educational institution or a
36 healthcare provider, regardless of whether the healthcare
37 provider meets one or more of the definitions in this
38 subsection.

39 (c) "Educational institution" means a school, including a
40 preschool, elementary school, middle school, junior high school,



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41 secondary school, career center, or postsecondary school,
42 whether public or nonpublic.

43 (d) "Governmental entity" means the state or any political
44 subdivision thereof, including the executive, legislative, and
45 judicial branches of government; the independent establishments
46 of the state, counties, municipalities, districts, authorities,
47 boards, or commissions; or any agencies that are subject to
48 chapter 286.

49 (e) "Healthcare provider" means:

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

51 2. A clinical laboratory providing services in the state or
52 services to health care providers in the state, if the clinical
53 laboratory is certified by the Centers for Medicare and Medicaid
54 Services under the federal Clinical Laboratory Improvement
55 Amendments and the federal rules adopted thereunder.

56 3. A federally qualified health center as defined in 42
57 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the
58 effective date of this act.

59 4. Any site providing health care services which was
60 established for the purpose of responding to the COVID-19
61 pandemic pursuant to any federal or state order, declaration, or
62 waiver.

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

64 6. A health care professional licensed under part IV of
65 chapter 468.

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

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

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



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70 (a) The complaint must be pled with particularity.
71 (b) At the same time the complaint is filed, the plaintiff
72 must submit an affidavit signed by a physician actively licensed
73 in the state which attests to the physician's belief, within a
74 reasonable degree of medical certainty, that the plaintiff's
75 COVID-19-related damages, injury, or death occurred as a result
76 of the defendant's acts or omissions.
77 (c) The court must determine, as a matter of law, whether:
78 1. The plaintiff complied with paragraphs (a) and (b). If
79 the plaintiff did not comply with paragraphs (a) and (b), the
80 court must dismiss the action without prejudice.
81 2. The defendant made a good faith effort to substantially
82 comply with authoritative or controlling government-issued
83 health standards or guidance at the time the cause of action
84 accrued.
85 a. During this stage of the proceeding, admissible evidence
86 is limited to evidence tending to demonstrate whether the
87 defendant made such a good faith effort.
88 b. If the court determines that the defendant made such a
89 good faith effort, the defendant is immune from civil liability.
90 c. If the court determines that the defendant did not make
91 such a good faith effort, the plaintiff may proceed with the
92 action. However, absent at least gross negligence proven by
93 clear and convincing evidence, the defendant is not liable for
94 any act or omission relating to a COVID-19-related claim.
95 (d) The burden of proof is upon the plaintiff to
96 demonstrate that the defendant did not make a good faith effort
97 under subparagraph (c)2.
98 (4) A civil action for a COVID-19-related claim must be



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99 commenced within 1 year after the cause of action accrues.
100 However, a plaintiff whose cause of action for a COVID-19-
101 related claim accrued before the effective date of this act must
102 commence such action within 1 year of the effective date of this
103 act.

104 (5) This section shall apply retroactively. However, this
105 section shall not apply in a civil action against a particularly
106 named defendant which is commenced before the effective date of
107 this act.

108 Section 2. Section 768.39, Florida Statutes, is created to
109 read:

110 768.39 Immunity for educational institutions for actions
111 related to the COVID-19 pandemic.-

112 (1) For the purposes of this section, the term "educational
113 institution" has the same meaning as in s. 768.38(2).

114 (2) Any educational institution that has taken reasonably
115 necessary actions in compliance with federal, state, or local
116 guidance to diminish the impact or the spread of COVID-19 may
117 not be held liable for, and shall be immune from, any civil
118 damages, equitable relief, or other remedies relating to such
119 actions. Reasonably necessary actions include, but are not
120 limited to, any of the following:

121 (a) Shifting in-person instruction to online or remote
122 instruction for any period of time while a state of emergency
123 was declared for this state for the COVID-19 pandemic;

124 (b) Closing or modifying the provision of residential
125 housing, dining, or other facilities on the campus of the
126 educational institution; or

127 (c) Pausing or modifying ancillary student activities and



128 services available through the educational institution while a
129 state of emergency was declared for this state for the COVID-19
130 pandemic.

131 (3) The provision of in-person or on-campus education and
132 related services is deemed to have been impossible for
133 educational institutions to provide for any period of time in
134 which such institutions took reasonably necessary actions
135 described in subsection (2) to protect students, staff, and
136 educators in response to the COVID-19 pandemic. As a result of
137 the various governmental orders and the need of educational
138 institutions to protect their communities, the reasonably
139 necessary actions described in subsection (2) are deemed to have
140 been justified.

141 (4) If any aspect of the immunity under subsection (2) is
142 limited by a court or by operation of law from applying to
143 certain types of claims or causes of action, the immunity under
144 this section must still be provided to the fullest extent
145 authorized by law to any other types of claims or causes of
146 action.

147 (5) This section shall apply retroactively to causes of
148 actions accruing on or before March 9, 2020.

149 Section 3. If any provision of this act or its application
150 to any person or circumstance is held invalid, the invalidity
151 does not affect other provisions or applications of the act
152 which can be given effect without the invalid provision or
153 application, and to this end the provisions of this act are
154 severable.

155 Section 4. This act shall take effect upon becoming a law.
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157 ===== T I T L E A M E N D M E N T =====

158 And the title is amended as follows:

159 Delete lines 8 - 9

160 and insert:

161 providing a statute of limitations; providing
162 retroactive applicability; creating s. 768.39, F.S.;
163 defining the term "educational institution"; providing
164 that educational institutions that have taken certain
165 actions may not be held liable for and are immune from
166 civil damages, equitable relief, or other remedies;
167 specifying that the provision of in-person or on-
168 campus education and related services is deemed
169 impossible during a specified timeframe; specifying
170 that certain actions are deemed to have been
171 justified; providing construction; providing
172 retroactive applicability; providing severability;