

## Summary COVID-19 Liability Protection Bill

TOPIC	CS/SB 72 1 <sup>st</sup> Eng.
<b>Definition of COVID-19</b>	“COVID-19” means the novel coronavirus identified as SARS-CoV-2; any disease caused by SARS-CoV-2, its viral fragments, or a virus mutating therefrom; and all conditions associated with the disease which are caused by SARS-CoV-2, its viral fragments, or a virus mutating therefrom.
<b>Definition Authoritative Guidance</b>	“Authoritative guidance” means nonbinding instructions or recommendations from a federal, state, or local governmental entity, a clinical professional organization, or another authoritative source of clinical guidance.
<b>Definition COVID-19 Emergency</b>	“COVID-19 emergency” means a public health emergency relating to COVID-19 which is declared by an emergency declaration of the Federal Government or an emergency order of the State Surgeon General or a state of emergency due to COVID-19 declared by executive order of the Governor.
<b>Definition Health Care Provider</b>	<p>“Health care provider” means any of the following:</p> <ol style="list-style-type: none"> <li>1. A provider as defined in s. 408.803.</li> <li>2. A clinical laboratory providing services in this state or services to health care providers in this state, if the clinical laboratory is certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder.</li> <li>3. A federally qualified health center as defined in 42 U.S.C. s. 1396d(l)(2)(B), as that definition exists on the effective date of this act.</li> <li>4. Any site providing health care services which was established for the purpose of responding to the COVID-19 pandemic pursuant to any federal or state order, declaration, or waiver.</li> <li>5. A health care practitioner as defined in s. 456.001.</li> <li>6. A health care professional licensed under part IV of chapter 468.</li> <li>7. A home health aide as defined in s. 400.462(15).</li> <li>8. A provider licensed under chapter 394 or 397 and its clinical and non-clinical staff providing inpatient or outpatient services.</li> <li>9. A continuing care facility licensed under chapter 651.</li> <li>10. A pharmacy permitted under chapter 465.</li> </ol>
<b>Definition gov’t-issued health standards</b>	“Government-issued health standards” means federal, state, or local laws, rules, regulations, or orders that describe the manner in which a health care provider must operate.

<p><b>COVID-19 related claim</b></p>	<p><i>From 728.381 (HCP Part)</i></p> <p>“COVID-19-related claim” means a civil liability claim against a health care provider which arises from the:</p> <ol style="list-style-type: none"> <li>1. Diagnosis or treatment of, or failure to diagnose or treat, a person for COVID-19;</li> <li>2. Provision of a novel or experimental COVID-19 treatment;</li> <li>3. Transmission of COVID-19;</li> <li>4. Delay or cancellation of a surgery or a delay or cancellation of a medical procedure, a test, or an appointment based on a health care provider’s interpretation or application of government-issued health standards or authoritative guidance specifically relating to the COVID-19 emergency;</li> <li>5. An act or omission with respect to an emergency medical condition as defined in s. 395.002, and which act or omission was the result of a lack of resources directly caused by the COVID-19 pandemic; or</li> <li>6. The provision of treatment to a patient diagnosed with COVID-19 whose injuries were directly related to an exacerbation of the patient’s preexisting conditions by COVID-19.</li> </ol> <p>The term does not include a claim alleging that an act or omission by a health care provider caused a person to contract COVID-19 or a derivative claim to such claim unless the person was a resident or patient of the health care provider or a person seeking care or treatment from the health care provider.</p>	<p><i>From 728.38 (Business Part)</i></p> <p>“COVID-19-related claim” means a civil liability claim against a person, including a natural person, a business entity, an educational institution, a governmental entity, or a religious institution, which arises from or is related to COVID 19, otherwise known as the novel coronavirus.</p> <p>The term includes a claim against a health care provider only if the claim is excluded from the definition of COVID-19-related claim under s. 768.381, regardless of whether the health care provider also meets one or more of the definitions in this subsection.</p>
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<b>Complaint Pleading Requirements</b>	Must be pled with particularity by alleging facts in sufficient detail to support each element of the claim.	Must be pled with particularity
<b>Physician Affidavit</b>	Specifically excluded	At the same time the complaint is filed, the plaintiff must submit an affidavit signed by a physician actively licensed in the state which attests to the physician's belief, within a reasonable degree of medical certainty, that the plaintiff's COVID-19-related damages, injury, or death occurred as a result of the defendant's acts or omissions.
<b>Initial Court Review</b>	If the complaint is not pled with particularity, the court must dismiss the action.	<p>The court must determine, as a matter of law, whether:</p> <p>The plaintiff complied with pleading and physician's affidavit requirements. If the plaintiff did not comply, the court must dismiss the action without prejudice.</p> <p>The defendant 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.</p> <p>Admissible evidence is limited to evidence tending to demonstrate whether the defendant made such a good faith effort.</p> <p>If the court determines that the defendant made a good faith effort, the defendant is immune from liability. If more than one source or set of standards or guidance was authoritative or controlling at the time the cause of action accrued, the defendant's good faith effort to substantially comply with any one of those sources or sets of standards or guidance confers such immunity from civil liability.</p> <p>If the court determines that the defendant did not make such a good faith effort, the plaintiff may proceed with the action.</p>

		Burden of proof is on plaintiff to demonstrate that defendant did not make good faith effort.
<b>Culpability Standard of Care</b>	Gross negligence or intentional misconduct	Gross negligence
<b>Evidentiary Standard</b>	Greater weight of the evidence.	Clear and convincing evidence
<b>Burden of Proof</b>	Plaintiff	Plaintiff
<b>Affirmative Defense</b>	<p>If a health care provider proves by the greater weight of the evidence the existence of an affirmative defense that applies to a specific COVID-19-related claim, the health care provider has no liability for that claim.</p> <p>The affirmative defenses that may apply to a COVID-19-related claim against a health care provider include, in addition to any other affirmative defenses recognized by law, the health care provider's:</p> <p>(a) Substantial compliance with government-issued health standards specifically relating to COVID-19 or other relevant standards, including standards relating to the preservation or prioritization of supplies, materials, or equipment;</p> <p>(b) Substantial compliance upon government-issued health standards specific to infectious diseases in the absence of standards specifically applicable to COVID-19;</p> <p>(c) Substantial compliance with government-issued health standards relating to COVID-19 or other relevant standards was not possible due to the widespread shortages of necessary supplies,</p>	N/A

	<p>materials, equipment, or personnel;</p> <p>(d) Substantial compliance with any applicable government issued health standards relating to COVID-19 or other relevant standards if the applicable standards were in conflict; or</p> <p>(e) Substantial compliance with government-issued health standards relating to COVID-19 or other relevant standards was not possible because there was insufficient time to implement the standards.</p>	
<b>Statute of Limitations</b>	<p>An action for a COVID-19-related claim against a health care provider which arises out of the transmission, diagnosis, or treatment of COVID-19 must commence within 1 year after the later of the date of death due to COVID-19, hospitalization related to COVID-19, or the first diagnosis of COVID-19 which forms the basis of the action.</p> <p>An action for a COVID-19-related claim against a health care provider which does not arise out of the transmission, diagnosis, or treatment of COVID-19, such as a claim arising out of a delayed or canceled procedure, must commence within 1 year after the cause of action accrues.</p> <p>Notwithstanding paragraph (a) or paragraph (b), an action for a COVID-19-related claim that accrued before the effective date of this act must commence within 1 year after the effective date of this act.</p>	
<b>Conflicting Laws or Exclusive Remedy</b>	<p>This section does not create a new cause of action but instead applies in addition to any other applicable provisions of law, including, but not limited to, chapters 400, 429, 766, and 768. This section controls over any conflicting provision of law, but only to the extent of the conflict.</p> <p>This section does not apply to claims governed by chapter 440.</p>	
<b>Applicability/ Sunset</b>	<p>Applies to claims that have accrued before the effective date of this act and within 1 year after the effective date of this act.</p>	
<b>Severable</b>	<p>If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.</p>	

<b>Retroactive</b>	This section ... applies retroactively. However, this act does not apply in a civil action against a particular named defendant which is commenced before the effective date of this act.
<b>Effective Date</b>	Upon becoming law