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TO: Local Chambers of Commerce

FROM: Carolyn Johnson, Senior Policy Director

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RE: Ch. 2021-1, Laws of Fla. (2021 SB 72) COVID-19 Liability Protections

Given that there have been questions regarding conflicting governmental guidance and the impact on COVID-19 liability protections, I want to provide some clarity.

Chapter 2021-1, Laws of Florida, which took effect on March 29, 2021, provides businesses with a defense to COVID-19-related civil actions where the business demonstrates that they made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance. The law states that if more than one source or set of standards or guidance was authoritative or controlling at the time the plaintiff's claim arose, the defendant's good faith effort to substantially comply with any one of those sources or sets of standards confers immunity from civil liability. For example, if CDC and OSHA guidelines conflict, the business likely has a defense if they show they made a good faith effort to substantially comply with the OSHA guideline. The same could be said if the business is following a state or local guideline.

In the months leading up to the enactment of Chapter 2021-1, there were significant concerns about attempts to comply with the ever-changing and often conflicting guidelines applicable to businesses imposed by different governmental entities. The legislation aimed to avoid that by providing protection if a business in good faith attempted to substantially comply with any one controlling or authoritative standard. Note, though, that good faith compliance is a defense that must be raised in a lawsuit and decided by a court after the consideration of evidence; it is not a defense that allows a business to avoid a lawsuit entirely.

In order for a COVID-19-related lawsuit to proceed, there are several steps that must first take place. First, the complaint must be pled with particularity, and when the complaint is filed, the plaintiff is required to submit an affidavit signed by a physician that attests that the plaintiff's COVID-19-related damages occurred as a result of the defendant's acts or omissions. If these two steps do not occur, the court is required to dismiss the case.

As noted above, the court must also determine before a lawsuit continues whether the defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidelines. The plaintiff bears the burden to prove that the defendant did not make a good faith effort. If the plaintiff fails to meet their burden, the defendant is immune from civil liability. If the court finds that the defendant did not make a good faith effort, the lawsuit will proceed. But to prevail on the claim, the plaintiff must ultimately prove that the defendant was grossly negligent, proven by clear and convincing evidence.

If you are interested in reading the law's text in its entirety, you can find a copy [here](#).

I want to thank the over 100 local chambers that united behind the effort to pass the strongest COVID-19 liability protections in the country. Unfortunately, our work is not over as the protections afforded to many health care workers by Ch. 2021-1 expire on March 29, 2022. More information will be forthcoming.