

FLORIDA LEGAL ALERT

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FLORIDA'S NEW COVID-19 LIABILITY PROTECTION LAW

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On March 29, 2021, Governor Ron DeSantis signed into law Senate Bill 72 (2021) to protect Florida individuals and businesses against lawsuits claiming COVID-19 related damages, injuries or death.

WHO IS PROTECTED BY THIS NEW LAW?

Individuals, business entities, including charitable organizations and not-for-profit corporations, educational institutions (public and private), governmental entities, health care providers, and religious entities are all protected by S.B. 72.

KEY ELEMENTS OF THE NEW LAW.

- Shifts the burden of proof to the Plaintiff.
- Imposes a heightened pleading standard by requiring a Plaintiff to plead its complaint with particularity.
- At the time of filing the complaint, requires a Plaintiff to submit an affidavit signed by a Florida licensed physician which attests to the physician's belief, within a reasonable degree of medical certainty, that Plaintiff's COVID-19 related damages, injuries or death occurred as a result of the defendant's acts or omissions.
- Defendant will not be liable for COVID-19 related damages, injuries or death if defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidelines at the time the cause of action accrued.
- Defendant will not be liable for COVID-19 related damages, injuries or death unless defendant's acts or omissions constituted gross negligence by clear and convincing evidence.
- Shortens the statute of limitations period to bring a COVID-19 related lawsuit to one year.
- The new law applies retroactively.

KEY PROTECTIONS FOR HEALTH CARE PROVIDERS.

The new law contains separate liability protections for Health Care Providers. These include:

- A Plaintiff must plead its complaint against a Health Care Provider with particularity, but is not required to submit a physician's affidavit.
- A Plaintiff must prove the Health Care Provider was grossly negligent or engaged in intentional misconduct by the greater weight of the evidence.
- Creates affirmative defenses for Health Care Providers who either substantially complied with government-issued health standards specifically related COVID-19 or that substantial compliance with the standards was not possible due to widespread shortages of necessary supplies, equipment, or personnel or not possible because there was not enough time to implement such standards.
- The statute of limitations period to bring a COVID-19 related claim against a Health Care Provider must be commenced 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.

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