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LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/11/2021	.	
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The Committee on Rules (Book) recommended the following:

Senate Substitute for Amendment (274920) (with title amendment)

Delete lines 65 - 174

and insert:

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



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

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

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

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

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



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

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

(e) "Healthcare provider" means:

1. A provider as defined in s. 408.803.

2. A clinical laboratory providing services in the state or
services to health care providers in the 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.

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

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.

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

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

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

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

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



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(a) The complaint must be pled with particularity.

(b) 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.

(c) The court must determine, as a matter of law, whether:

1. The plaintiff complied with paragraphs (a) and (b). If the plaintiff did not comply with paragraphs (a) and (b), the court must dismiss the action without prejudice.

2. 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.

a. During this stage of the proceeding, admissible evidence is limited to evidence tending to demonstrate whether the defendant made such a good faith effort.

b. If the court determines that the defendant made such a good faith effort, the defendant is immune from civil liability.

c. If the court determines that the defendant did not make such a good faith effort, the plaintiff may proceed with the action. However, absent at least gross negligence proven by clear and convincing evidence, the defendant is not liable for any act or omission relating to a COVID-19-related claim.

(d) The burden of proof is upon the plaintiff to demonstrate that the defendant did not make a good faith effort under subparagraph (c)2.

(4) A civil action for a COVID-19-related claim must be



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

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

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

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

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

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

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

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

(c) Pausing or modifying ancillary student activities and



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

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

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

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

Section 3. 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.

Section 4. This act shall take effect upon becoming a law.



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 8 - 9

and insert:

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