

# DeSantis Bill Aims to Reduce Frivolous COVID-19 Claims

On March 29, Florida Gov. Ron DeSantis signed the COVID-19 Liability Protection Bill (S.B. 72), which provides preliminary procedures for the court to make certain determinations in civil actions based on COVID-19-related claims.

*Daily Business Review*

April 23, 2021

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On March 29, Florida Gov. Ron DeSantis signed the COVID-19 Liability Protection Bill (S.B. 72), which provides preliminary procedures for the court to make certain determinations in civil actions based on COVID-19-related claims. The intended effect of the bill is to protect businesses, educational institutions, governmental entities, religious institutions and health care providers from COVID-19 lawsuits if they made a “good faith effort” to follow applicable health guidelines.

This bill places a heavy burden on a plaintiff right out of the gate to show that the defendant deliberately ignored health guidelines and that the injury or death caused by COVID-19 was a result of the defendant’s acts or omissions. Short and sweet complaints will simply not get the job done anymore. Upon receipt of the complaint, the court will immediately make a determination of whether a defendant made a good faith effort to substantially comply with health standards or guidance at the time the cause of action accrued. The bill strictly provides that “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.” Therefore,

complaints must be plead with particularity and be submitted with an affidavit signed by a licensed physician attesting to the degree of medical certainty that the damages were caused by the defendant.

Florida law defines gross negligence as “conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.” In other causes of action, proving gross negligence may be easier than establishing a standard negligence claim since the conduct involved may be clearly dangerous and unreasonable. However, COVID-19 claims may not be as clear as a drunk driving accident for establishing gross negligence since the bill requires considering applicable guidance in effect at the time of the cause of action.

Opponents to the bill claim it could restrict Floridians’ access to courts and pose a public health threat by immunizing conduct that may be negligent but not rising to the level of gross negligence. Proponents of the bill maintain these claims are unsubstantiated and that the bill will protect Floridians’ livelihoods by allowing businesses to continue to reopen without the threat of frivolous and opportunistic litigation.

Challenges to the bill are expected, and time will tell how Florida's appellate courts interpret the new law.

As the country developed an understanding of preventing the spread of COVID-19 and what protocols should be taken to prevent it, states hastily passed legislation enacting certain guidance, including initial stay at home orders. Specifically, Florida administered a three phase recovery plan that took effect May 4, 2020. In evaluating a COVID-19 claim, Florida courts will need to consider in what phase the cause of action took place and whether the defendant met applicable guidance in effect at the time.

The bill undoubtedly creates a higher bar for bringing COVID-19 claims than other causes of action. Accordingly, this could result in fewer fact patterns meeting the new requirements, fewer plaintiff attorneys taking these types of cases due to the extra requirements associated with them, and fewer of these cases ultimately reaching court dockets. If the bill results in limiting the number of COVID-19 cases landing on dockets, it may provide the courts the additional time necessary to continue

working through the existing litigation backlog caused by last year's court disruptions. At the same time, intrepid plaintiff attorneys may still try to pursue these claims, but this legislation should provide the defense bar more arrows in its quiver to combat these claims at the early stages.

Interestingly, the bill applies retroactively to the beginning of the pandemic and remains effective for one year after the effective date (i.e., March 29). Therefore, plaintiffs will have until March 29, 2022, to file COVID-19 lawsuits. The foresight demonstrated by the Florida legislation suggests that it believes COVID-19 cases (and any accompanying lawsuits) will diminish within a year's time. ■

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