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Locke Lord QuickStudy: Florida Enacts Comprehensive Law Providing COVID-19 Liability Protections?

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On Monday, March 29, Gov. Ron DeSantis signed S.B. 72, which provides broad protections from liability for COVID-19-related claims against health care providers, business entities, educational institutions, governmental entities, and religious institutions. S.B. 72 recognizes that health care providers are essential to Florida residents' survival and that the COVID-19 outbreak threatens the continued viability of individuals, businesses, and other entities that contribute to the well-being of the state. The legislation seeks to shield health care providers and other businesses from unfounded lawsuits and reassure business owners that they may safely reopen without fear of lawsuits provided they attempt to comply in good faith with government-issued health standards.

S.B. 72 creates section 768.38, Florida Statutes, which applies to claims against individuals, businesses, and other entities, and section 768.381, Florida Statutes, which applies to claims against health care providers. The two statutes are similar in many respects. In order to bring a COVID-19-related claim, a plaintiff now must allege his/her claims with particularity, a higher standard than the short and plain statement of facts required for most claims. Moreover, a plaintiff must submit an affidavit signed by a licensed physician attesting that his or her COVID-19-related damages occurred as a result of the defendant's acts or omissions (the affidavit requirement does not apply to claims against health care providers under section 768.381). The defendant's good faith efforts to substantially comply with authoritative or controlling government-issued health standards or guidance confers immunity from liability. Even if a plaintiff is able to overcome these preliminary hurdles, he/she must still prove at trial by clear and convincing evidence that the defendant was grossly negligent. This standard exceeds the typical simple negligence standard of proof by a preponderance of the evidence.

S.B. 72 also limits the statute of limitations for COVID-19-related claims to one year after the cause of action accrues or within one year after the effective date of the act, whichever is later. The bill, effective immediately, applies to all COVID-19-related claims except lawsuits already on file.

It now remains to be seen how many plaintiffs will attempt to assert claims for COVID-19-related damages in light of the numerous pleading, evidentiary, and procedural burdens imposed by S.B. 72. Also unknown at this time is how narrowly or broadly courts will apply S.B. 72. Locke Lord will continue to monitor implementation of S.B. 72 and its use in the Florida judicial system. For further information regarding these issues, please contact the author

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