

REFERENCE TITLE: **civil liability; public health pandemic**

State of Arizona  
Senate  
Fifty-fifth Legislature  
First Regular Session  
2021

## **SB 1377**

Introduced by

Senators Leach: Barto, Borrelli, Boyer, Fann, Gowan, Gray, Kerr,  
Livingston, Mesnard, Pace, Shope, Townsend, Ugenti-Rita; Representatives  
Biasiucci, Bolick, Bowers, Hoffman, Kavanagh, Osborne, Toma, Weninger

**AN ACT**

**AMENDING TITLE 12, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY  
ADDING SECTIONS 12-515 AND 12-516; RELATING TO CIVIL LIABILITY.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 5, article 1, Arizona Revised  
3 Statutes, is amended by adding sections 12-515 and 12-516, to read:

4 12-515. Emergency declaration for a public health pandemic;  
5 immunity from liability; burden of proof;  
6 presumption; applicability; definition

7 A. IF THE GOVERNOR DECLARES A STATE OF EMERGENCY FOR A PUBLIC  
8 HEALTH PANDEMIC PURSUANT TO TITLE 26, CHAPTER 2, A PERSON OR PROVIDER THAT  
9 ACTS IN GOOD FAITH TO PROTECT A CUSTOMER, STUDENT, TENANT, VOLUNTEER,  
10 GUEST OR NEIGHBOR OR THE PUBLIC FROM INJURY FROM THE PUBLIC HEALTH  
11 PANDEMIC IS NOT LIABLE FOR DAMAGES IN ANY CIVIL ACTION FOR ANY INJURY,  
12 DEATH OR LOSS TO PERSON OR PROPERTY THAT IS BASED ON A CLAIM THAT THE  
13 PERSON OR PROVIDER FAILED TO PROTECT THE CUSTOMER, STUDENT, TENANT,  
14 VOLUNTEER, GUEST, NEIGHBOR OR PUBLIC FROM THE EFFECTS OF THE PUBLIC HEALTH  
15 PANDEMIC UNLESS IT IS PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT THE  
16 PERSON OR PROVIDER FAILED TO ACT OR ACTED WITH WILFUL MISCONDUCT OR GROSS  
17 NEGLIGENCE.

18 B. A PERSON OR PROVIDER IS PRESUMED TO HAVE ACTED IN GOOD FAITH AND  
19 TO HAVE ADOPTED AND IMPLEMENTED REASONABLE POLICIES OR PRACTICES IF THE  
20 PERSON OR PROVIDER RELIED ON AND REASONABLY ATTEMPTED TO COMPLY WITH  
21 APPLICABLE PUBLISHED GUIDANCE RELATING TO THE PUBLIC HEALTH PANDEMIC THAT  
22 WAS ISSUED BY A FEDERAL OR STATE AGENCY. THIS SUBSECTION DOES NOT  
23 PROHIBIT A PARTY FROM INTRODUCING ANY OTHER EVIDENCE THAT PROVES THE  
24 PERSON OR PROVIDER ACTED IN GOOD FAITH AND ADOPTED AND IMPLEMENTED  
25 REASONABLE POLICIES OR PRACTICES.

26 C. THIS SECTION APPLIES TO ALL CAUSES OF ACTION THAT ARE BROUGHT  
27 AFTER THE EFFECTIVE DATE OF THIS SECTION FOR AN ACT OR OMISSION BY A  
28 PERSON OR PROVIDER THAT OCCURRED ON OR AFTER MARCH 11, 2020 AND BEFORE  
29 DECEMBER 30, 2022 AND THAT RELATES TO A PUBLIC HEALTH PANDEMIC THAT IS THE  
30 SUBJECT OF THE STATE OF EMERGENCY DECLARED BY THE GOVERNOR.

31 D. THIS SECTION DOES NOT APPLY TO ANY CLAIM THAT IS SUBJECT TO  
32 TITLE 23, CHAPTER 6.

33 E. FOR THE PURPOSES OF THIS SECTION, "PROVIDER" MEANS ANY OF THE  
34 FOLLOWING:

35 1. A PERSON WHO FURNISHES CONSUMER OR BUSINESS GOODS OR SERVICES OR  
36 ENTERTAINMENT.

37 2. AN EDUCATIONAL INSTITUTION OR DISTRICT.

38 3. A SCHOOL DISTRICT OR CHARTER SCHOOL.

39 4. A PROPERTY OWNER, PROPERTY MANAGER OR PROPERTY LESSOR OR LESSEE.

40 5. A NONPROFIT ORGANIZATION.

41 6. A RELIGIOUS INSTITUTION.

42 7. THIS STATE OR AN AGENCY OR INSTRUMENTALITY OF THIS STATE.

43 8. A LOCAL GOVERNMENT OR POLITICAL SUBDIVISION OF THIS STATE,  
44 INCLUDING A DEPARTMENT, AGENCY OR COMMISSION OF A LOCAL GOVERNMENT OR  
45 POLITICAL SUBDIVISION OF THIS STATE.

1 9. A SERVICE PROVIDER AS DEFINED IN SECTION 36-551.

2 10. A HEALTH PROFESSIONAL AS DEFINED IN SECTION 32-3201.

3 11. A HEALTH CARE INSTITUTION AS DEFINED IN SECTION 36-401.

4 12-516. Emergency declaration for a public health pandemic;  
5 immunity from liability for health professionals or  
6 health care institutions; burden of proof;  
7 presumption; applicability; definitions

8 A. IF THE GOVERNOR DECLARES A STATE OF EMERGENCY FOR A PUBLIC  
9 HEALTH PANDEMIC PURSUANT TO TITLE 26, CHAPTER 2, A HEALTH PROFESSIONAL OR  
10 HEALTH CARE INSTITUTION THAT ACTS IN GOOD FAITH IS NOT LIABLE FOR DAMAGES  
11 IN ANY CIVIL ACTION FOR AN INJURY OR DEATH THAT IS DIRECTLY OR INDIRECTLY  
12 SUSTAINED BECAUSE OF THE HEALTH PROFESSIONAL'S OR HEALTH CARE  
13 INSTITUTION'S ACTION OR OMISSION WHILE PROVIDING HEALTH CARE SERVICES IN  
14 SUPPORT OF THIS STATE'S RESPONSE TO THE STATE OF EMERGENCY DECLARED BY THE  
15 GOVERNOR UNLESS IT IS PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT THE  
16 HEALTH PROFESSIONAL OR HEALTH CARE INSTITUTION FAILED TO ACT OR ACTED WITH  
17 WILFUL MISCONDUCT OR GROSS NEGLIGENCE.

18 B. SUBSECTION A OF THIS SECTION APPLIES TO ANY ACTION OR OMISSION  
19 THAT OCCURS DURING A PERSON'S SCREENING, ASSESSMENT, DIAGNOSIS OR  
20 TREATMENT AND THAT IS RELATED TO THE PUBLIC HEALTH PANDEMIC THAT IS THE  
21 SUBJECT OF THE STATE OF EMERGENCY OR ANY ACTION OR OMISSION THAT OCCURS IN  
22 THE COURSE OF PROVIDING A PERSON WITH HEALTH CARE SERVICES AND THAT IS  
23 UNRELATED TO THE PUBLIC HEALTH PANDEMIC THAT IS THE SUBJECT OF THE STATE  
24 OF EMERGENCY IF THE HEALTH PROFESSIONAL'S OR HEALTH CARE INSTITUTION'S  
25 ACTION OR OMISSION WAS IN GOOD FAITH SUPPORT OF THIS STATE'S RESPONSE TO  
26 THE STATE OF EMERGENCY, INCLUDING ANY OF THE FOLLOWING:

27 1. DELAYING OR CANCELING A NONURGENT OR ELECTIVE DENTAL, MEDICAL OR  
28 SURGICAL PROCEDURE.

29 2. PROVIDING NURSING CARE OR PROCEDURES.

30 3. ALTERING A PERSON'S DIAGNOSIS OR TREATMENT IN RESPONSE TO AN  
31 ORDER, DIRECTIVE OR GUIDELINE THAT IS ISSUED BY THE FEDERAL GOVERNMENT,  
32 THIS STATE OR A LOCAL GOVERNMENT.

33 4. AN ACT OR OMISSION UNDERTAKEN BY A HEALTH PROFESSIONAL OR HEALTH  
34 CARE INSTITUTION BECAUSE OF A LACK OF STAFFING, FACILITIES, EQUIPMENT,  
35 SUPPLIES OR OTHER RESOURCES THAT ARE ATTRIBUTABLE TO THE STATE OF  
36 EMERGENCY AND THAT RENDER THE HEALTH PROFESSIONAL OR HEALTH CARE  
37 INSTITUTION UNABLE TO PROVIDE THE LEVEL OR MANNER OF CARE TO A PERSON THAT  
38 OTHERWISE WOULD HAVE BEEN REQUIRED IN THE ABSENCE OF THE STATE OF  
39 EMERGENCY.

40 C. A HEALTH PROFESSIONAL OR HEALTH CARE INSTITUTION IS PRESUMED TO  
41 HAVE ACTED IN GOOD FAITH IF THE HEALTH PROFESSIONAL OR HEALTH CARE  
42 INSTITUTION RELIED ON AND REASONABLY ATTEMPTED TO COMPLY WITH APPLICABLE  
43 PUBLISHED GUIDANCE RELATING TO THE PUBLIC HEALTH PANDEMIC THAT WAS ISSUED  
44 BY A FEDERAL OR STATE AGENCY. THIS SUBSECTION DOES NOT PROHIBIT A PARTY

1 FROM INTRODUCING ANY OTHER EVIDENCE THAT PROVES THE HEALTH PROFESSIONAL OR  
2 HEALTH CARE INSTITUTION ACTED IN GOOD FAITH.

3 D. THIS SECTION APPLIES TO ALL CAUSES OF ACTION THAT ARE BROUGHT  
4 AFTER THE EFFECTIVE DATE OF THIS SECTION FOR AN ACT OR OMISSION BY A  
5 PERSON THAT OCCURRED ON OR AFTER MARCH 11, 2020 AND BEFORE DECEMBER 30,  
6 2022 AND THAT RELATES TO A PUBLIC HEALTH PANDEMIC THAT IS THE SUBJECT OF  
7 THE STATE OF EMERGENCY DECLARED BY THE GOVERNOR.

8 E. THIS SECTION DOES NOT APPLY TO ANY CLAIM THAT IS SUBJECT TO  
9 TITLE 23, CHAPTER 6.

10 F. FOR THE PURPOSES OF THIS SECTION:

11 1. "HEALTH CARE INSTITUTION" HAS THE SAME MEANING PRESCRIBED IN  
12 SECTION 36-401.

13 2. "HEALTH PROFESSIONAL" HAS THE SAME MEANING PRESCRIBED IN SECTION  
14 32-3201.

15 Sec. 2. Retroactivity

16 This act applies retroactively to from and after March 10, 2020.

17 Sec. 3. Severability

18 If a provision of this act or its application to any person or  
19 circumstance is held invalid, the invalidity does not affect other  
20 provisions or applications of the act that can be given effect without the  
21 invalid provision or application, and to this end the provisions of this  
22 act are severable.