State of Arizona
Senate
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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)
Be it enacted by the Legislature of the State of Arizona:

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

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

A. If the governor declares a state of emergency for a public health pandemic pursuant to Title 26, chapter 2, a person or provider that acts in good faith to protect a customer, student, tenant, volunteer, guest or neighbor or the public from injury from the public health pandemic is not liable for damages in any civil action for any injury, death or loss to person or property that is based on a claim that the person or provider failed to protect the customer, student, tenant, volunteer, guest, neighbor or public from the effects of the public health pandemic unless it is proven by clear and convincing evidence that the person or provider failed to act or acted with wilful misconduct or gross negligence.

B. A person or provider is presumed to have acted in good faith and to have adopted and implemented reasonable policies or practices if the person or provider relied on and reasonably attempted to comply with applicable published guidance relating to the public health pandemic that was issued by a federal or state agency. This subsection does not prohibit a party from introducing any other evidence that proves the person or provider acted in good faith and adopted and implemented reasonable policies or practices.

C. This section applies to all causes of action that are brought after the effective date of this section for an act or omission by a person or provider that occurred on or after March 11, 2020 and before December 30, 2022 and that relates to a public health pandemic that is the subject of the state of emergency declared by the governor.

D. This section does not apply to any claim that is subject to Title 23, chapter 6.

E. For the purposes of this section, “provider” means any of the following:

1. A person who furnishes consumer or business goods or services or entertainment.
2. An educational institution or district.
3. A school district or charter school.
4. A property owner, property manager or property lessor or lessee.
5. A nonprofit organization.
6. A religious institution.
7. This state or an agency or instrumentality of this state.
8. A local government or political subdivision of this state, including a department, agency or commission of a local government or political subdivision of this state.
10. A HEALTH PROFESSIONAL AS DEFINED IN SECTION 32-3201.
11. A HEALTH CARE INSTITUTION AS DEFINED IN SECTION 36-401.

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

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

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

1. DELAYING OR CANCELING A NONURGENT OR ELECTIVE DENTAL, MEDICAL OR SURGICAL PROCEDURE.
2. PROVIDING NURSING CARE OR PROCEDURES.
3. ALTERING A PERSON'S DIAGNOSIS OR TREATMENT IN RESPONSE TO AN ORDER, DIRECTIVE OR GUIDELINE THAT IS ISSUED BY THE FEDERAL GOVERNMENT, THIS STATE OR A LOCAL GOVERNMENT.
4. AN ACT OR OMISSION UNDERTAKEN BY A HEALTH PROFESSIONAL OR HEALTH CARE INSTITUTION BECAUSE OF A LACK OF STAFFING, FACILITIES, EQUIPMENT, SUPPLIES OR OTHER RESOURCES THAT ARE ATTRIBUTABLE TO THE STATE OF EMERGENCY AND THAT RENDER THE HEALTH PROFESSIONAL OR HEALTH CARE INSTITUTION UNABLE TO PROVIDE THE LEVEL OR MANNER OF CARE TO A PERSON THAT OTHERWISE WOULD HAVE BEEN REQUIRED IN THE ABSENCE OF THE STATE OF EMERGENCY.

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

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

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

F. FOR THE PURPOSES OF THIS SECTION:

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

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

Sec. 2. Retroactivity

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

Sec. 3. Severability

If a 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 that can be given effect without the
invalid provision or application, and to this end the provisions of this
act are severable.