

House Engrossed Senate Bill

civil liability; public health pandemic

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

CHAPTER 179

SENATE BILL 1377

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, PATIENT, 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, PATIENT, 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 AND THE FAILURE TO ACT OR ACTION WAS DUE TO THAT PERSON'S OR PROVIDER'S WILFUL MISCONDUCT OR GROSS NEGLIGENCE. A PERSON OR PROVIDER IS PRESUMED TO HAVE ACTED IN GOOD FAITH IF THE PERSON OR PROVIDER ADOPTED AND IMPLEMENTED REASONABLE POLICIES RELATED TO THE PUBLIC HEALTH PANDEMIC.

B. THIS SECTION APPLIES TO ALL CLAIMS THAT ARE FILED BEFORE OR 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 THAT RELATES TO A PUBLIC HEALTH PANDEMIC THAT IS THE SUBJECT OF THE STATE OF EMERGENCY DECLARED BY THE GOVERNOR.

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

D. 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.

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

10. A HEALTH PROFESSIONAL AS DEFINED IN SECTION 32-3201, INCLUDING A PERSON WHO IS SUPERVISED BY THE HEALTH PROFESSIONAL IN THE COURSE OF PROVIDING HEALTH CARE SERVICES.

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 ALLEGED TO BE CAUSED BY 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 AND THE FAILURE TO ACT

OR ACTION WAS DUE TO THAT HEALTH PROFESSIONAL'S OR HEALTH CARE INSTITUTION'S WILFUL MISCONDUCT OR GROSS NEGLIGENCE.

B. SUBSECTION A OF THIS SECTION APPLIES TO ANY ACTION OR OMISSION THAT IS ALLEGED TO HAVE OCCURRED 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 PROCEDURE THAT THE HEALTH PROFESSIONAL DETERMINED IN GOOD FAITH WAS 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. IN THE CASE OF A CLAIM AGAINST A NURSING CARE INSTITUTION OR RESIDENTIAL CARE INSTITUTION, WHERE THE CARE IN QUESTION DID NOT DIRECTLY RELATE TO THE PUBLIC HEALTH PANDEMIC, THE BURDEN IS ON THE FACILITY TO PROVE THAT THE ACT OR OMISSION WAS A DIRECT RESULT OF HAVING TO PROVIDE CARE TO PATIENTS NEEDING TREATMENT FOR THE PANDEMIC OR DUE TO LIMITATIONS IN EQUIPMENT, SUPPLIES OR STAFF CAUSED BY THE PANDEMIC.

E. THIS SECTION APPLIES TO ALL CLAIMS THAT ARE FILED BEFORE OR AFTER THE EFFECTIVE DATE OF THIS SECTION FOR AN ACT OR OMISSION BY A PERSON THAT OCCURRED ON OR AFTER MARCH 11, 2020 AND THAT RELATES TO A PUBLIC HEALTH PANDEMIC THAT IS THE SUBJECT OF THE STATE OF EMERGENCY DECLARED BY THE GOVERNOR.

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

G. FOR THE PURPOSES OF THIS SECTION:

1. "HEALTH CARE INSTITUTION" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-401 AND INCLUDES AN AMBULANCE SERVICE AS DEFINED IN SECTION 36-2201.

2. "HEALTH PROFESSIONAL" HAS THE SAME MEANING PRESCRIBED IN SECTION 32-3201 AND INCLUDES AN AMBULANCE ATTENDANT AS DEFINED IN SECTION 36-2201.

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.

APPROVED BY THE GOVERNOR APRIL 5, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2021.