



**ARIZONA STATE SENATE**  
*Fifty-Fifth Legislature, First Regular Session*

**AMENDED**

FACT SHEET FOR S.B. 1377

civil liability; public health pandemic

Purpose

Establishes, retroactive to March 11, 2020, civil liability standards for specified acts or omissions during a state of emergency for a public health pandemic.

Background

The Governor may proclaim a state of emergency that takes effect immediately in an area affected or likely to be affected if the Governor finds that circumstances exist meeting the statutory definition of a *state of emergency* ([A.R.S. § 26-303](#)). On March 11, 2020, the Governor issued a [declaration of emergency](#) and issued an [executive order](#) related to the spread of the Coronavirus Disease 2019 (COVID-19). The Governor has since issued additional [executive orders](#) relating to COVID-19.

*Health care institution* is statutorily defined as every place, institution, building or agency, whether organized for profit or not, that provides facilities with medical services, nursing services, behavioral health services, health screening services, other health-related services, supervisory care services, personal care services or directed care services and includes home health agencies, outdoor behavioral health care programs and hospice service agencies. A health care institution does not include a community residential setting ([A.R.S. § 36-401](#)). A *health professional* includes a person who is certified or licensed pursuant to enumerated statutes ([A.R.S. § 32-3201](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

***Public Health Pandemic Civil Liability***

1. Precludes from liability for damages, during a public health pandemic state of emergency declared by the Governor, a person or provider who acts in good faith to protect a customer, student, tenant, volunteer, patient, guest or neighbor, or the public (litigant), from injury from the public health pandemic for injury, death or loss to person or property that is based on a claim that the person or provider failed to protect the litigant 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 willful misconduct or gross negligence.
2. Establishes a presumption that a person or provider acted in good faith if the person or provider adopted and implemented reasonable policies related to the public health pandemic.

3. Applies the standard for liability to all claims that are filed before or after the general effective date for an act or omission by a person or provider that occurred 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.
4. Exempts claims for workers compensation from the outlined liability standard.
5. Defines *provider* as:
  - a) a person who furnishes consumer or business goods or services or entertainment;
  - b) an educational institution or district;
  - c) a school district or charter school;
  - d) a property owner, property manager or property lessor or lessee;
  - e) a nonprofit organization;
  - f) a religious institution;
  - g) the state or a state agency or instrumentality;
  - h) a local government or political subdivision, including a department, agency or commission of a local government or political subdivision;
  - i) a service provider;
  - j) a health professional; or
  - k) a health care institution.

***Health Professionals and Health Care Institutions***

6. Precludes from liability for damages, during a public health pandemic state of emergency declared by the Governor, a health professional (professional) or health care institution (institution) that acts in good faith in any civil action for an injury or death that is alleged to be the professional's or institution's action or omission while providing health care services in support of the state's response to the state of emergency, unless it is proven by clear and convincing evidence that the professional or institution failed to act or acted and the failure to act or action was due to that professional's or institution's willful misconduct or gross negligence.
7. Applies the outlined limited liability to any action or omission that occurs:
  - a) 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
  - b) 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 professional's or institution's action or omission was in good faith support of the state's response to the state of emergency, including:
    - i. delaying or canceling a procedure that the professional determined in good faith was a nonurgent or elective dental, medical or surgical procedure;
    - ii. providing nursing care or procedures;
    - iii. altering a person's diagnosis or treatment in response to an order, directive or guideline that is issued by the federal government, the state or a local government; or
    - iv. an act or omission undertaken by a professional or 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 professional or 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.

8. Establishes a presumption that a professional or institution acted in good faith if the professional or 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.
9. Allows a party to introduce any other evidence that proves the professional or institution acted in good faith.
10. Applies the standard for liability to all claims that are filed before or after the general effective date for an act or omission by a person or provider that occurred 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.
11. Exempts claims for workers compensation from the outlined liability standard.
12. Specifies, for claims against a nursing care institution or residential care institution, where the care in question did not directly relate to the public health pandemic, the nursing care institution or residential care institution has the burden to prove the act or omission was the direct result of having to provide care to patients needing treatment for the pandemic or due to limitations caused by the pandemic.

#### *Miscellaneous*

13. Contains a *severability clause*.
14. Defines key terms.
15. Becomes effective on the general effective date, retroactive to March 11, 2020.

#### Amendments Adopted by Committee

1. Revises the rebuttable presumption by stating 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.
2. Removes the end date of December 30, 2022, for acts or omissions that may give rise to a claim.
3. Revises definitions of *professional* and *institution*.

#### Amendments Adopted by Committee of the Whole

- Removes the qualifying term *directly or indirectly* as it relates to allegations of injury or death caused by professional or institution acts or omissions.

#### Amendments Adopted by the House of Representatives

- Specifies, for claims against a nursing care institution or residential care institution, where the care in question did not directly relate to the public health pandemic, the nursing care institution or residential care institution has the burden to prove the act or omission was the direct result of having to provide care to patients needing treatment for the pandemic or due to limitations caused by the pandemic.

FACT SHEET – Amended

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Senate Action

JUD	2/11/21	DPA	5-3-0
3 <sup>rd</sup> Read	2/24/21		18-12-0

House Action

JUD	3/17/21	DP	6-4-0-0
3 <sup>rd</sup> Read	3/29/21		31-29-0

Prepared by Senate Research

March 29, 2021

JA/gS/kja