

Fla. Stat. § 381.00316

Section 381.00316 - COVID-19 vaccine documentation

(1) A business entity, as defined in s. 768.38 to include any business operating in this state, may not require patrons or customers to provide any documentation certifying COVID-19 vaccination or post-infection recovery to gain access to, entry upon, or service from the business operations in this state. This subsection does not otherwise restrict businesses from instituting screening protocols consistent with authoritative or controlling government-issued guidance to protect public health.

(2) A governmental entity as defined in s. 768.38 may not require persons to provide any documentation certifying COVID-19 vaccination or post-infection recovery to gain access to, entry upon, or service from the governmental entity's operations in this state. This subsection does not otherwise restrict governmental entities from instituting screening protocols consistent with authoritative or controlling government-issued guidance to protect public health.

(3) An educational institution as defined in s. 768.38 may not require students or residents to provide any documentation certifying COVID-19 vaccination or post-infection recovery for attendance or enrollment, or to gain access to, entry upon, or service from such educational institution in this state. This subsection does not otherwise restrict educational institutions from instituting screening protocols consistent with authoritative or controlling government-issued guidance to protect public health.

(4) The department may impose a fine not to exceed \$5,000 per violation.

(5) This section does not apply to a health care provider as defined in s. 768.38; a service provider licensed or certified under s. 393.17, part III of chapter 401, or part IV of chapter 468; or a provider with an active health care clinic exemption under s. 400.9935.

(6) The department may adopt rules pursuant to ss. 120.536 and 120.54 to implement this section.

Fla. Stat. § 381.00316

Added by 2021 Fla. Laws, ch. 8,s 18, eff. 7/1/2021.

Fla. Stat. § 768.38

Section 768.38 - [See also Version 2 as added by a different 2021 act] Liability protections for COVID-19-related claims

(1) The Legislature finds that the COVID-19 outbreak in this state threatens the continued viability of certain business entities, educational institutions, governmental entities, and religious institutions that contribute to the overall well-being of this state. The threat of unknown and potentially unbounded liability to such businesses, entities, and institutions, in the wake of a pandemic that has already left many of these businesses, entities, and institutions vulnerable, has created an overpowering public necessity to provide an immediate and remedial legislative solution. Therefore, the Legislature intends for certain business entities, educational institutions, governmental entities, and religious institutions to enjoy heightened legal protections against liability as a result of the COVID-19 pandemic. The Legislature also finds that there are no alternative means to meet this public necessity, especially in light of the sudden, unprecedented nature of the COVID-19 pandemic. The Legislature finds the public interest as a whole is best served by providing relief to these businesses, entities, and institutions so that they may remain viable and continue to contribute to this state.

(2) As used in this section, the term:

(a) "Business entity" has the same meaning as provided in s. 606.03. The term also includes a charitable organization as defined in s. 496.404 and a corporation not for profit as defined in s. 617.01401.

(b) "COVID-19-related claim" means a civil liability claim against a person, including a natural person, a business entity, an educational institution, a governmental entity, or a religious institution, which arises from or is related to COVID-19, otherwise known as the novel coronavirus. The term includes any such claim for damages, injury, or death. Any such claim, no matter how denominated, is a COVID-19-related claim for purposes of this section. The term includes a claim against a health care provider only if the claim is excluded from the definition of COVID-19-related claim under s. 768.381, regardless of whether the health care provider also meets one or more of the definitions in this subsection.

(c) "Educational institution" means a school, including a preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.

(d) "Governmental entity" means the state or any political subdivision thereof, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies that are subject to chapter 286.

(e) "Health care provider" means:

1. A provider as defined in s. 408.803.

2. A clinical laboratory providing services in this state or services to health care providers in this state, if the clinical laboratory is certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder.
 3. A federally qualified health center as defined in 42 U.S.C. s. 1396d (1)(2)(B), as that definition exists on the effective date of this act.
 4. Any site providing health care services which was established for the purpose of responding to the COVID-19 pandemic pursuant to any federal or state order, declaration, or waiver.
 5. A health care practitioner as defined in s. 456.001.
 6. A health care professional licensed under part IV of chapter 468.
 7. A home health aide as defined in s. 400.462(15).
 8. A provider licensed under chapter 394 or chapter 397 and its clinical and nonclinical staff providing inpatient or outpatient services.
 9. A continuing care facility licensed under chapter 651.
 10. A pharmacy permitted under chapter 465.
- (f) "Religious institution" has the same meaning as provided in s. 496.404.
- (3) In a civil action based on a COVID-19-related claim:
- (a) The complaint must be pled with particularity.
 - (b) At the same time the complaint is filed, the plaintiff must submit an affidavit signed by a physician actively licensed in this state which attests to the physician's belief, within a reasonable degree of medical certainty, that the plaintiff's COVID-19-related damages, injury, or death occurred as a result of the defendant's acts or omissions.
 - (c) The court must determine, as a matter of law, whether:
 1. The plaintiff complied with paragraphs (a) and (b). If the plaintiff did not comply with paragraphs (a) and (b), the court must dismiss the action without prejudice.
 2. The defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time the cause of action accrued.
 - a. During this stage of the proceeding, admissible evidence is limited to evidence tending to demonstrate whether the defendant made such a good faith effort.
 - b. If the court determines that the defendant made such a good faith effort, the defendant is immune from civil liability. If more than one source or set of standards or guidance was authoritative or controlling at the time the cause of action accrued, the

defendant's good faith effort to substantially comply with any one of those sources or sets of standards or guidance confers such immunity from civil liability.

c. If the court determines that the defendant did not make such a good faith effort, the plaintiff may proceed with the action. However, absent at least gross negligence proven by clear and convincing evidence, the defendant is not liable for any act or omission relating to a COVID-19-related claim.

(d) The burden of proof is upon the plaintiff to demonstrate that the defendant did not make a good faith effort under subparagraph (c)2.

(4) A plaintiff must commence a civil action for a COVID-19-related claim within 1 year after the cause of action accrues or within 1 year after the effective date of this act if the cause of action accrued before the effective date of this act.

Fla. Stat. § 768.38

Added by 2021 Fla. Laws, ch. 1, s 1, eff. 3/29/2021.

See 2021 Fla. Laws, ch. 1, s 4.
