



**FLORIDA**  
Insurance Market Summit

# 2021 Florida Legislative Debrief

Presented by  
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Colodny Fass  
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# Property Insurance: SB 76 by Boyd

Prohibiting certain practices and solicitations by contractors; providing that the acts of any persons on behalf of a contractor are considered the acts of a contractor; providing that certain acts constitute unlicensed contracting; authorizing the residential property owner to void the contract within a specified timeframe; requiring property insurers include certain data regarding closed claims in their annual reports to the OIR; requiring the OIR to consider certain costs in determining whether payments made by an insurer to an affiliate are fair and reasonable; requiring managing general agents to enter into specified contracts with insurers even when the managing general agents control, or are controlled by, the insurers; providing that a managing general agent may be examined as if it were the insurer even if the managing general agent solely represents a single domestic insurer; prohibiting certain acts by a public adjusters; providing that certain acts constitute unlicensed practice of public adjusting; requiring Citizens to include the costs of catastrophe reinsurance to its projected 100-year probable maximum loss in its rate calculations even if it does not purchase such reinsurance; requiring Citizens to annually implement a rate increase that does not exceed a certain percent for specified years; revising the definitions of the terms "reopened claim" and "supplemental claim" to include all perils; revising the timeframe for providing notices of property insurance claims; providing that supplemental claims are barred under certain circumstances; requiring a claimant to provide presuit notice to the DFS before a suit is filed under a property insurance policy; requiring a claimant to serve notice within specified time limits; requiring an insurer to provide a response to the notice; requiring an insurer to have a procedure for the prompt investigation, review, and evaluation of a dispute stated in the notice; providing that the notice is admissible as evidence only in specified proceedings; providing for limitations on attorney fee recovery by insurers in property insurance litigation; authorizing the OIR to request information from an insurer or its affiliates as reasonably necessary; giving the OIR the authority to examine all affiliates of an insurer as reasonably necessary to ascertain the insurer's financial condition; prohibiting an examination of an insurer's affiliate from extending to specified investors under certain circumstances.



**STATUS - Passed Both Chambers; Passed Senate 35-5; Passed House 75-41**



# Property Insurance: SB 76 by Boyd – Continued

## *Litigation Reform*

- Requires a ten-day presuit notice before an insured can bring a lawsuit related to a residential or commercial property claim.
- Requires the insured to make a presuit settlement demand and the insurer to make a presuit settlement offer.
- Provides that insureds who prevail in a lawsuit against a residential or commercial property insurer can recover attorney fees based on a statutory formula tied to the difference between the amount obtained and the presuit settlement offer:
  - If the difference between the amount obtained and the presuit settlement offer is less than 20% of the disputed amount, each side pays its own attorney fees.
  - If the difference between the amount obtained and the presuit settlement offer is at least 20% but less than 50% of the disputed amount, the insurer pays the claimant's attorney fees equal to the percentage of the disputed amount obtained multiplied by total attorney fees and costs.
  - If the difference between the amount obtained and the presuit settlement offer is at least 50% of the disputed amount, the insurer pays the claimant's attorney fees and costs.



# Property Insurance: SB 76 by Boyd – Continued

## *Other Provisions*

- Changes the notice of claim deadlines so that notice of any property insurance claim or reopened claim must be provided to an insurer within two years of the date of loss. Still three years for supplemental claims.
- Provides that the OIR may examine the affiliates of insurers under certain conditions.
- Requires insurers to annually provide property insurance claims litigation data to the OIR.
- Restricts the ability of contractors and public adjusters to provide incentives for consumers to file insurance claims for roof damage.
- Revises the eligibility for residential property owners to obtain coverage from Citizens. A person is not eligible for Citizens coverage if coverage can be obtained from private insurers that is less than 20 percent greater than the premium for comparable coverage from Citizens (was 15 percent).
- Provides for Citizens to add 1 percent per year to its cap on rate increases starting 2022 until it reaches a maximum of a 15 percent rate cap on increases in 2026 and after.
- Provides that if Citizens does not buy reinsurance to cover its projected 100-year probable maximum loss, it must still include the cost of such reinsurance in its rate calculations.





# PIP Repeal/Replace with Mandatory BI: SB 54 by Burgess

Repealing provisions which comprise the Florida Motor Vehicle No-Fault Law; revising the motor vehicle insurance coverages that an applicant must show to register certain vehicles with the Department of Highway Safety and Motor Vehicles; revising minimum liability coverage requirements for motor vehicle owners or operators; revising financial responsibility requirements for owners or lessees of for-hire passenger transportation vehicles; providing an exception to the circumstances under which a person who is damaged may bring a civil action against an insurer

STATUS - Passed Both Chambers; Passed Senate  
37-3; Passed House 100-16



# PIP Repeal/Replace with Mandatory BI: SB 54 by Burgess – Continued

The bill repeals Florida's automobile "No-Fault" law. The repeal of the No-Fault Law eliminates the limitations on recovering pain and suffering damages from PIP insureds, which currently require bodily injury that causes death or significant and permanent injury. Under the bill, the legal liability of an uninsured motorist insurer includes damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of past and future capacity for the enjoyment of life.

The bill creates the following financial responsibility requirements:

- \$25,000 for bodily injury (BI) or death of one person in any one crash
- \$50,000 for BI or death of two or more people in any one crash.
- \$10,000 for property damage.



# PIP Repeal/Replace with Mandatory BI: SB 54 by Burgess – Continued

## *MedPay Coverage Requirements*

The bill provides for MedPay coverage at a limit of at least \$5,000. The coverage must provide an additional death benefit of at least \$5,000. The insurer *must offer* MedPay coverage at limits of \$5,000 and \$10,000 and *may offer* MedPay coverage at any limit greater than \$5,000. The insurer *must offer* MedPay coverage with no deductible. The insurer *may offer* MedPay coverage with a deductible not to exceed \$500. A policy is deemed to have:

- MedPay coverage to a limit of \$10,000 unless the insurer obtains a named insured's written refusal of coverage or written selection of coverage at a limit other than \$10,000. The rejection or selection of coverage must be made on a form approved by the OIR.
- No MedPay deductible, unless the insurer obtains a named insured's written selection of a deductible up to \$500. The selection of a deductible must be made on a form approved by the OIR.



# PIP Repeal/Replace with Mandatory BI: SB 54 by Burgess – Continued

## *Bad Faith Reform*

The bill creates a new framework to govern all third-party claims against motor vehicle insurers for bad faith failure to settle. The bill requires the third-party claimant in a bad faith failure to settle action to show the insurer violated its duty of good faith to the insured and in bad faith failed to settle the claim. The bill requires motor vehicle insurers to follow claims handling best practices standards based on duties related to claims handling, claims investigation, defense of the insured, and settlement negotiations.

The bill requires the insurer to meet specified best practices standards and requires insurers to communicate specified information to insureds. It creates a duty for insureds to cooperate with their insurer in the defense of the claim and requires insureds to execute financial affidavits. It allows the insurer to terminate the defense of the claim under certain conditions.

The bill creates a condition precedent to filing an action against an insurer for bad faith failure to settle a third-party claim. The third-party claimant must have obtained a final judgment exceeding policy limits against the insured unless the insurer expressly waived the requirement of a final excess judgment or wrongfully breached its duty to defend the insured.

The bill provides “safe harbors” if the insurer complies with the best practices standards. The bill provides that an insurer is not under any circumstances liable for the failure to accept a settlement offer within 45 days after receiving actual notice of the loss if:

- The settlement offer provides the insurer fewer than 15 days for acceptance; or
- The settlement offer provides the insurer fewer than 30 days for acceptance where the offer contains conditions for acceptance other than the insurer's disclosure of its policy limits.





# Named Driver Exclusion: SB 420 by Hooper

Providing that private passenger motor vehicle policies may exclude certain coverages for claims resulting from the operation of motor vehicles by identified individuals under certain circumstances; requiring excluded drivers to meet certain requirements for financial responsibility.

STATUS - Passed Both Chambers; Passed Both Chambers; Passed Senate 40-0; Passed House 116-0



# DFS Agency Package: HB 1209 by Fetterhoff

Requires State Risk Management Trust Fund to provide insurance for certain firefighter cancer-related benefits; prohibits unlicensed persons from acting as or advertising themselves as funeral directors, embalmers, direct disposers, or preneed sales agents unless they are so licensed; authorizes licensed funeral director interns & licensed combination funeral director & embalmer interns to continue performing certain tasks while transitioning to licensed funeral directors & licensed combination funeral director & embalmers; requires monument retailers to comply with specified requirements relating to place of business & operations; subjecting monument retailers to inspection; prohibits firesafety inspector from knowingly & intentionally requesting, soliciting, accepting, or agreeing to accept compensation offered to induce violation of certain codes, rules, or laws; provides that certain persons serving as volunteer firefighters may serve as regular or permanent firefighters for limited period; prohibits aiding or abetting of unlicensed activity of bail bond agent or temporary bail bond agent.

- **STATUS - Passed Both Chambers; Passed House 119-0; Passed Senate 39-1**



# DFS Consumer Protection: SB 1598 by Gruters

Deleting authorization for consumer reporting agencies to charge a fee for reissuing or providing a new unique personal identifier to a consumer; revising a requirement for persons licensed or authorized by the DFS or the OIR to respond to the Division of Consumer Services regarding consumer complaints; deleting a fee for adjusting firm licenses; authorizing the DFS to disapprove the use of insurance agency names containing the word “Medicare” or “Medicaid”; revising the timeframes in which an insured or a claimant may cancel a public adjuster’s contract to adjust a claim without penalty or obligation; revising disclosure requirements for certain classes of insurance before being eligible for export under the Surplus Lines Law.

- **STATUS; Passed Both Chambers; Passed Senate 34-3; Passed House 114-1**



# Credit for Reinsurance: SB 728 by Broxson

Transferring specified authority and duties relating to credit for reinsurance from the Commissioner of Insurance to the Office of Insurance Regulation; revising the attorney designation requirement in reinsurance agreements with certain assuming insurers under certain circumstances; specifying requirements for assuming insurers and reinsurance agreements; authorizing a ceding insurer or its representative that is subject to rehabilitation, liquidation, or conservation to seek a certain court order; providing construction.

**STATUS - Passed Both Chambers; Passed House 118-0; Passed Senate 38-1**





# Public Records: SB 7014 by Boyd

Adding the Office of Insurance Consumer Advocate to the list of entities to which the Office of Insurance Regulation may disclose confidential and exempt information; removing the scheduled repeal of an exemption from public records requirements for certain proprietary business information and information that is confidential and held by the Office of Insurance Regulation.

**STATUS - Passed Both Chambers; Passed Senate 39-1; Passed House 114-1**



# Shield from COVID Liability: SB 72 by Brandes

Specifying requirements for civil actions based on COVID-19-related claims; requiring the court to make certain determinations in such actions; providing that plaintiffs have the burden of proof in such actions; providing preliminary procedures for civil actions based on COVID-19-related claims; requiring COVID-19-related claims to commence within specified time frame.

- **STATUS** - Passed both chambers and signed by the Governor; Passed Senate 24.-15; Passed House 83-31



# Data Privacy: HB 969 by McFarland

Requires collectors to provide notice to consumers about data collection & selling practices; provides consumers right to request data be disclosed, deleted, or corrected & to opt-in or opt-out of sale or sharing of such data; provides nondiscrimination measures, methods for requesting data & opting-in or opting-out of sale or sharing of such data, private cause of action, enforcement, & jurisdiction.

- **STATUS - Passed House 118-1; Died in**



# Data Privacy: SB 1734 by Bradley

Citing this act as the "Florida Privacy Protection Act"; requiring certain businesses that collect consumer personal information to provide certain information to the consumer; providing that consumers have the right to direct certain businesses not to sell their personal information; prohibiting businesses from selling the personal information of consumers younger than a specified age without express authorization from the consumer or the consumer's parent or guardian under certain circumstances; authorizing consumers to initiate civil actions for violations; providing civil remedies.

• **STATUS** Laid on the Table by Senate





# Elected Insurance Commissioner: SJR 800 by Taddeo

Constitutional amendment to  
provide for election of  
Commissioner of Insurance

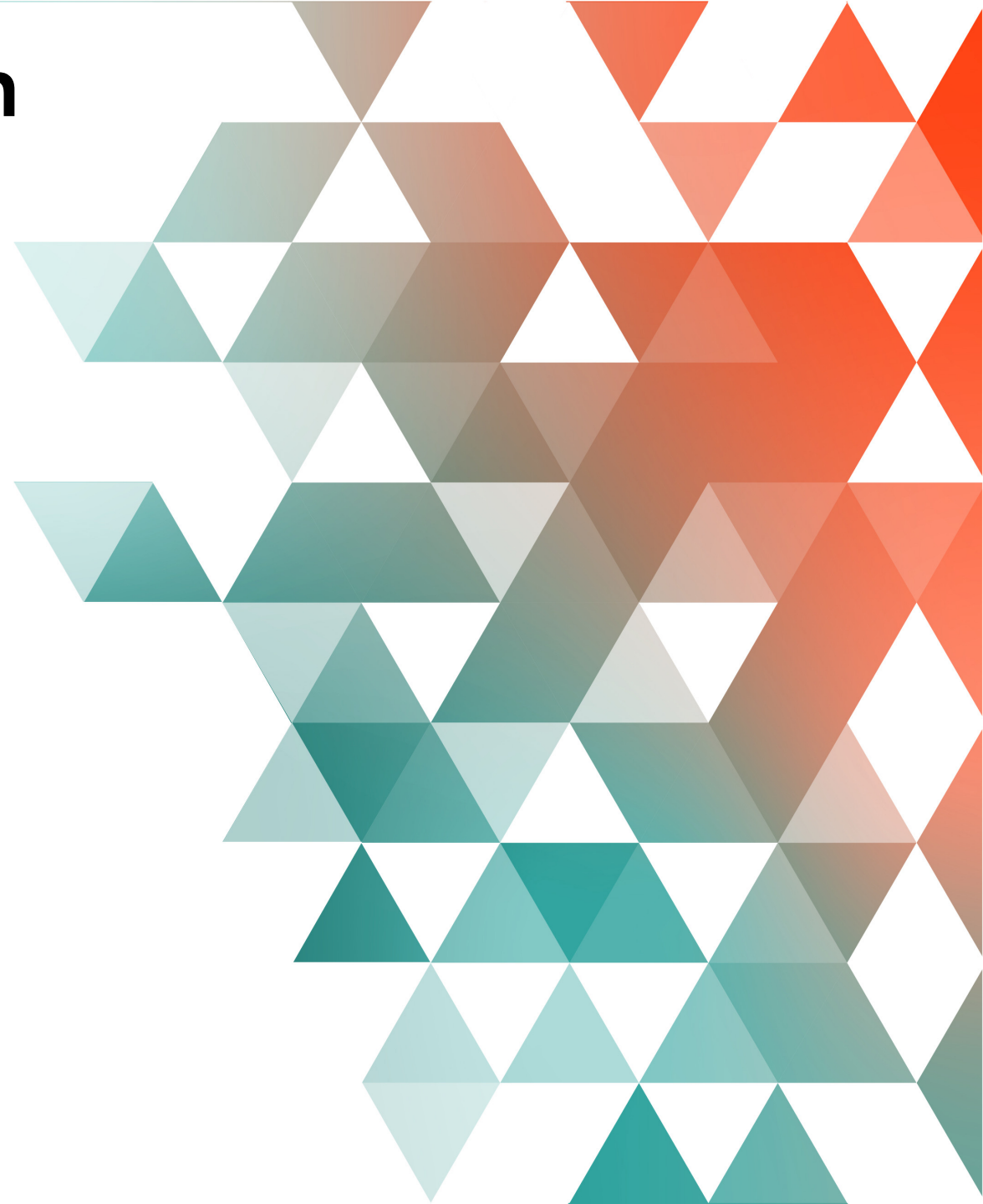
**STATUS - Died in Ethics and  
Elections**



# Hurricane Loss Mitigation Program: HB 423 by Tuck

Deletes construction relating to  
Citizens Property Insurance  
Corporation coverage rates; delays  
future repeal of the Hurricane Loss  
Mitigation Program.

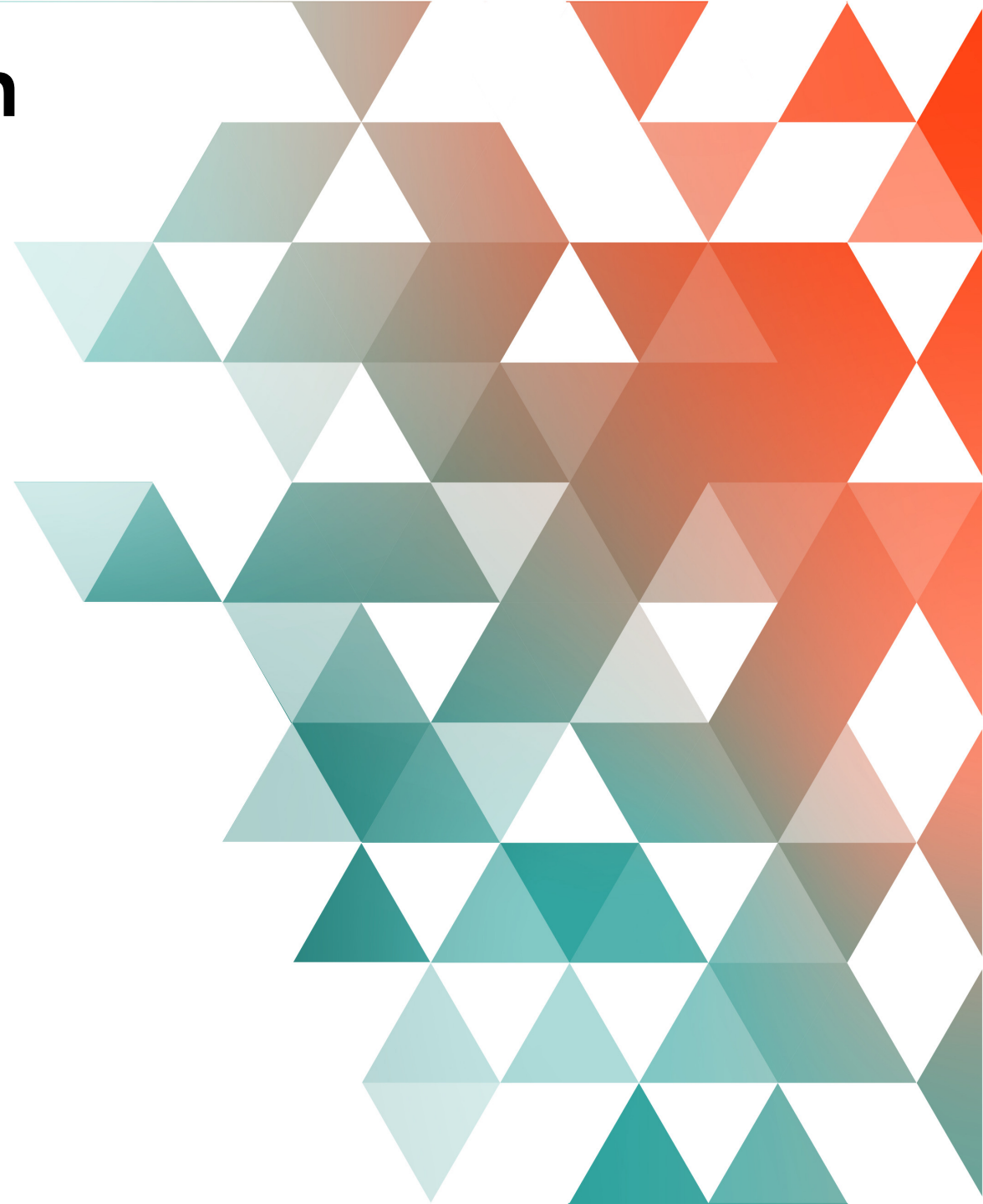
- **STATUS - Died in Appropriations**



# Hurricane Loss Mitigation Program: Died in Appropriations

Deletes construction relating to Citizens Property Insurance Corporation coverage rates; delays future repeal of the Hurricane Loss Mitigation Program.

- **STATUS - Passed Senate 39-0;  
Died in the House**



# Omnibus: HB 815 by Gregory

Authorizes association, trust, or pool created for purpose of forming risk management mechanism or providing self-insurance for public entity to establish quorum & conduct public business through communications media technology; revises qualification for licensure as customer representative; revises factors for determining whether insurance rate filing is excessive, inadequate, or unfairly discriminatory; revises required claims history in loss run statements; limits loss run statement requests with respect to group health insurance policies to group policyholders; authorizes insurers to file certain insurance rating plans based on certain windstorm mitigation construction standards; provides exemption from diligent effort requirement for agents exporting contracts or endorsements providing flood coverage.

**STATUS - Died on the Calendar**





# Omnibus: SB 742 by Perry

Redefining the term “covered policy” under the Florida Hurricane Catastrophe Fund in relation to certain collateral protection insurance policies; authorizing any association, trust, or pool created for the purpose of forming or managing a risk management mechanism or providing self-insurance for a public entity to establish a quorum and conduct public business through communication media technology; specifying the entities that must receive requests for loss run statements; providing a ratemaking factor for workers’ compensation and employer’s liability insurance

**STATUS - Died in Appropriations**



# Citizens: SB 1574 by Brandes

Revising the method for determining the amounts of potential surcharges to be levied against policyholders under certain circumstances; specifying a limit for agent commission rates; providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as an authorized insurer, in depopulation, take-out, or keep-out programs relating to policies removed from Citizens Property Insurance Corporation.

- **STATUS - Died on the Senate Calendar**



# Questions?

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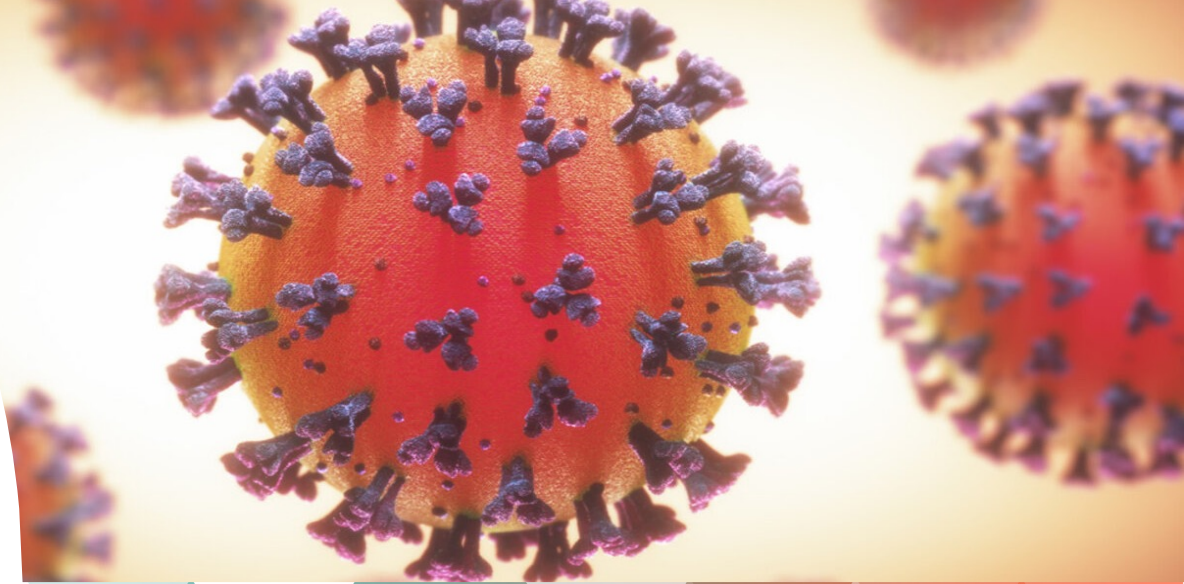
**FLORIDA**  
Insurance Market Summit

# Limiting Liability From Covid-19

Presented by

**Maria Elena Abate and Matthew Scarfone**

Colodny Fass

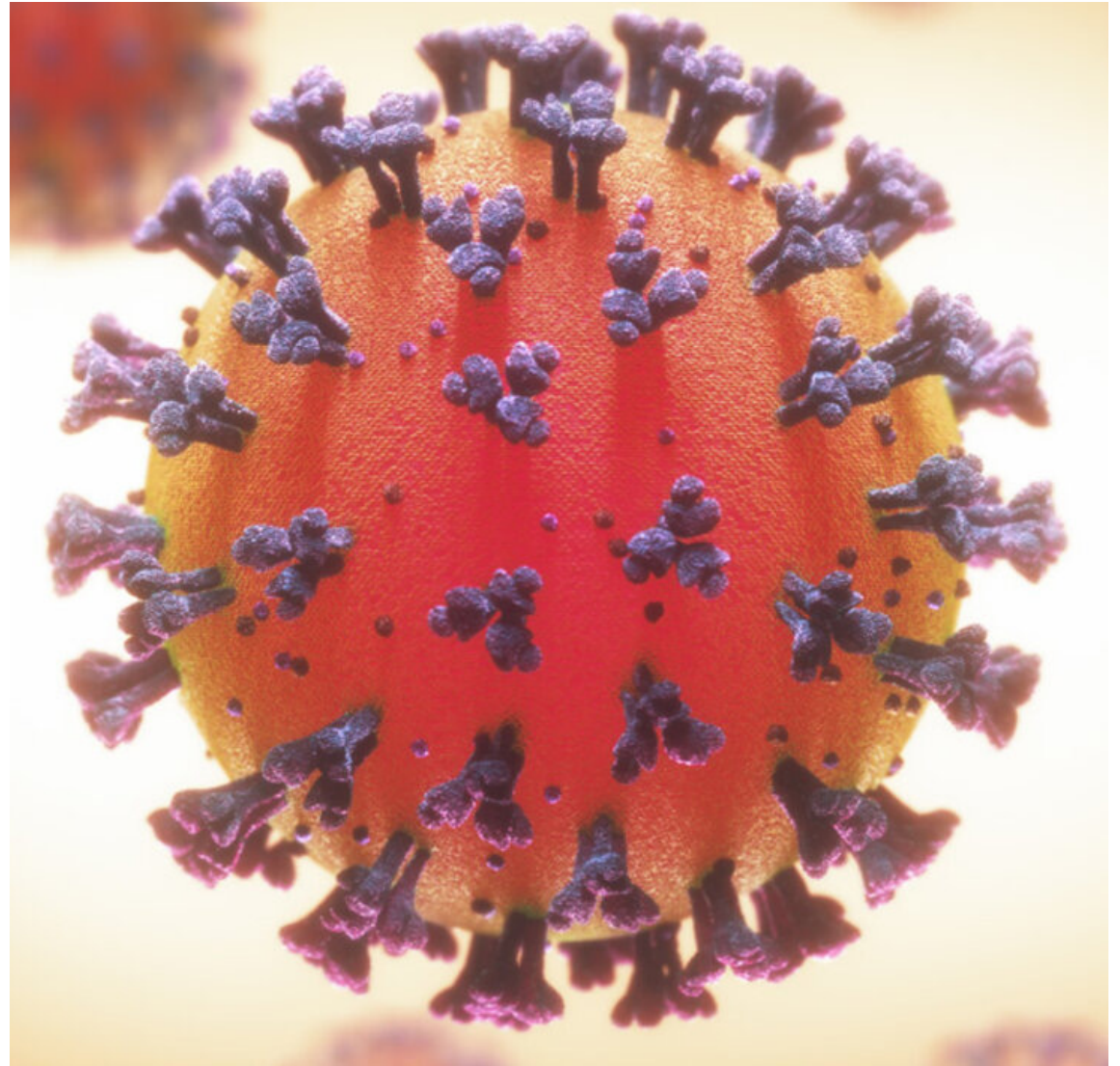




# Today, we will cover...

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- **Florida Statute Section 768.38**
  - Liability Protections for COVID-19-Related Claims
- **Florida Statute Section 768.381**
  - COVID-19-Related Claims Against Health Care Providers

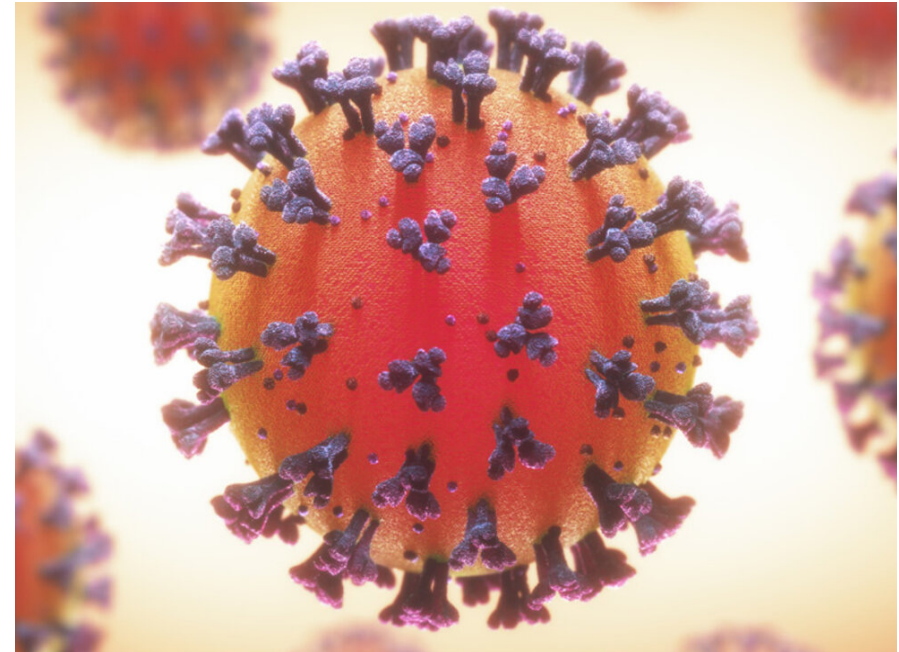


# F.S. 768.38

## Liability Protections for Covid-19 Related Claims Scope of the Law

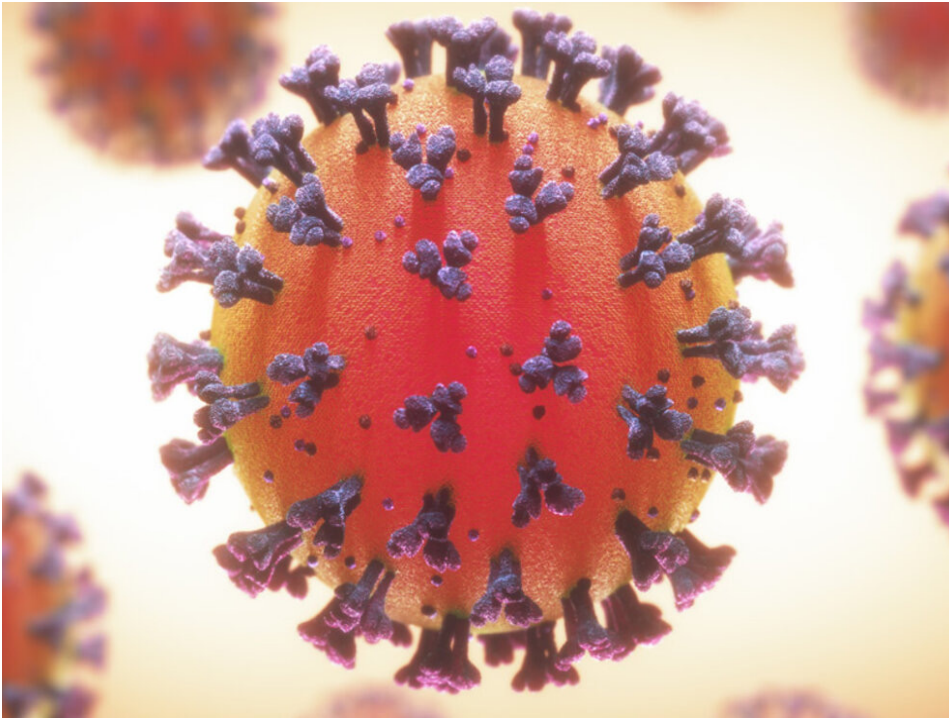
### APPLIES TO ANY COVID-19 RELATED CLAIM BROUGHT AGAINST:

- Individuals
- Business Entities
- Educational Institutions
- Governmental Entities
- Religious Institutions
- Charitable Organizations and Non-Profits
- Health Care Providers if the claim does not fall within 768.381 (non-patients who get COVID)



# F.S. 768.38

## Liability Protections for Covid-19 Related Claims Effect of the Law



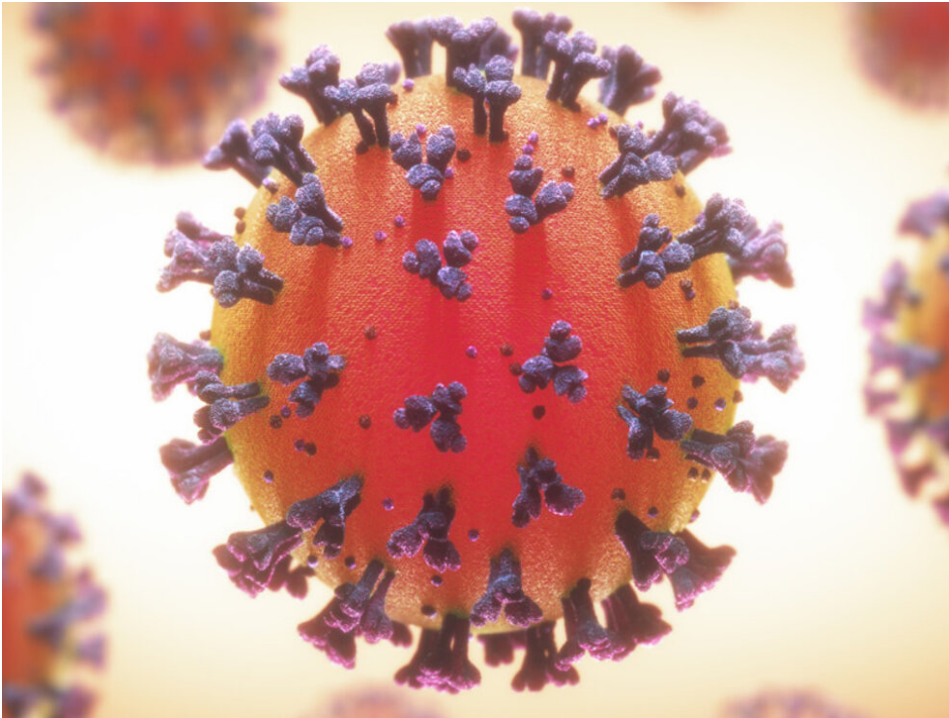
### LIMITS CLAIMS THAT CAN BE BROUGHT:

- Eliminates simple negligence
  - Not relevant in w/comp
- Must be gross negligence or intentional act



# F.S. 768.38

## Liability Protections for Covid-19 Related Claims Effect of the Law



### Limits Time for Bringing Lawsuit:

- One year from date of accrual; or
- Until March 29, 2022, if claim accrued on or before March 29, 2021

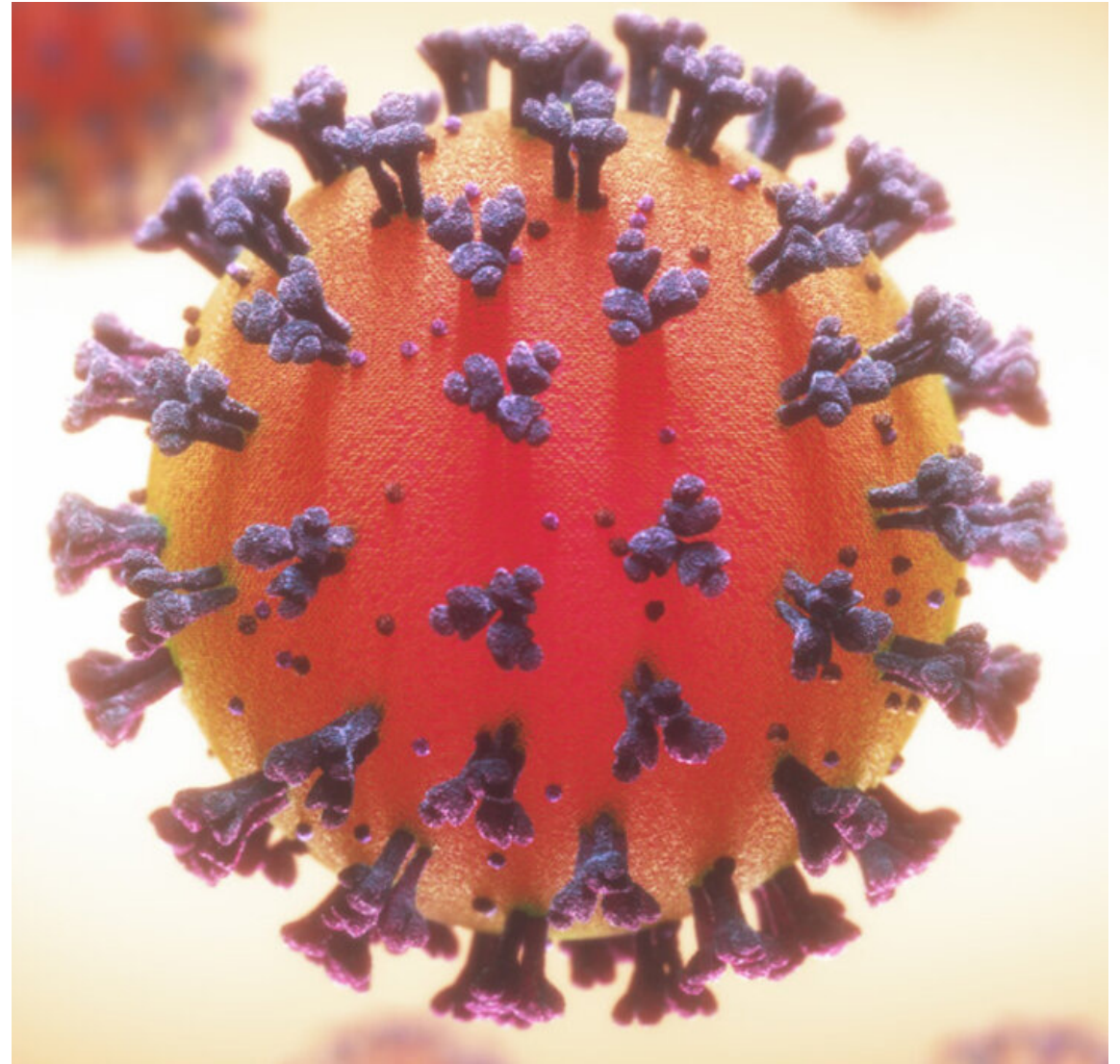


## F.S. 768.38 Effect of the Law

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### HEIGHTENED PLEADING STANDARDS:

- Complaint must be pled with particularity
- Physician's Causation Affidavit - within a "Reasonable Degree of Medical Certainty" - Covid-19 related damages, injury or death occurred as a result of the Defendant's acts or omissions

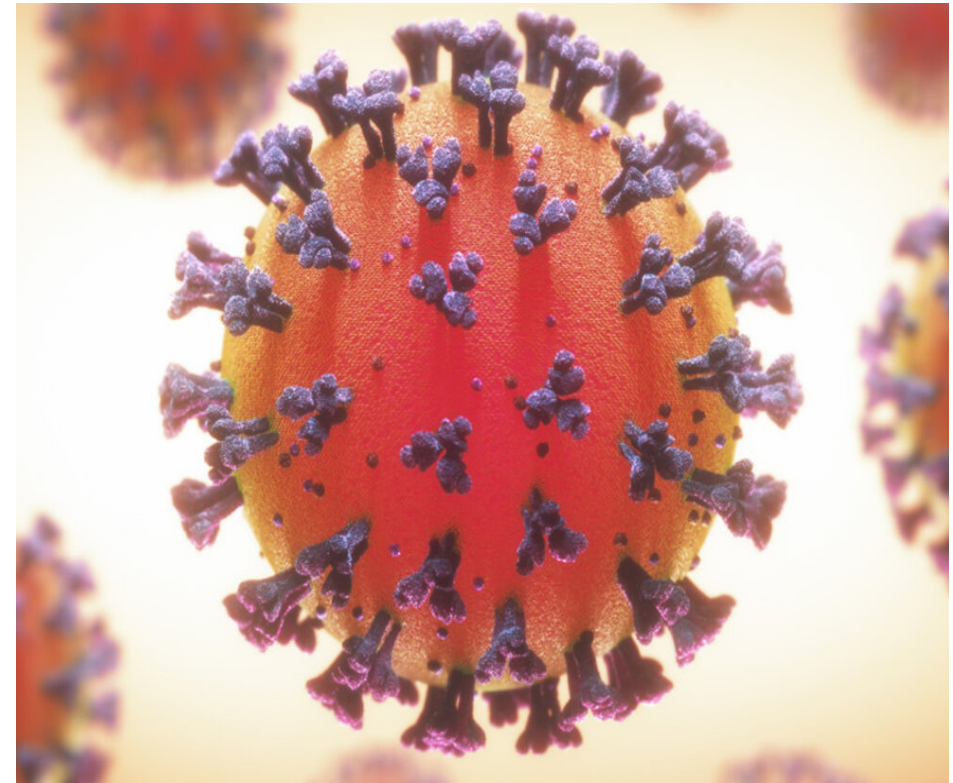


# F.S. 768.38

## Effect of the Law

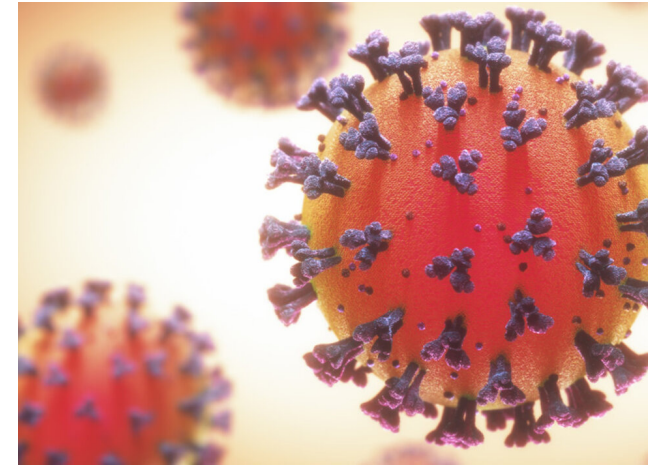
### HEIGHTENED BURDEN OF PROOF:

- Burden of Proof on Plaintiff to show Defendant did not make “Good Faith Effort” to substantially comply with authoritative or controlling standards or guidance
- Gross Negligence must be proven by “Clear and Convincing Evidence”



# F.S. 768.38

## Effect of the Law

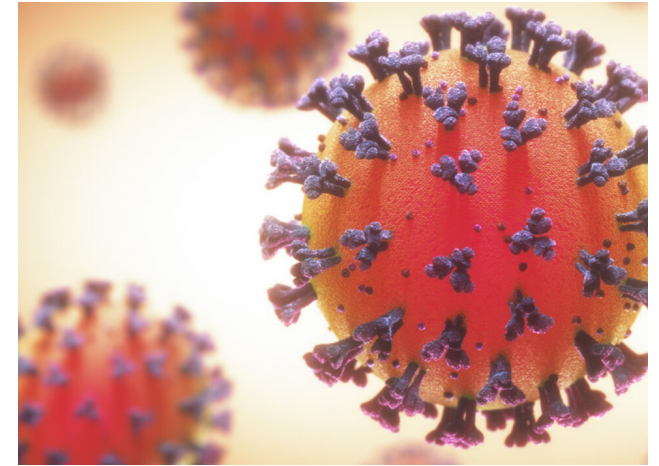


### COURT MUST DETERMINE:

- 1) Whether Plaintiff Meets the Pleading/Affidavit Requirements
  - If it does not case must be dismissed without prejudice
- 2) Whether Defendant Made a Good Faith Effort to Substantially Comply with at Least One Authoritative or Controlling Set of Standards or Guidance (i.e., CDC or Local Ordinances)
  - If there is more than one source or set of authoritative/controlling standards or guidance, compliance with any one standard is sufficient to confer immunity
  - QUERY: Business that opens during mandated lock-down but follows CDC Guidance

# F.S. 768.38

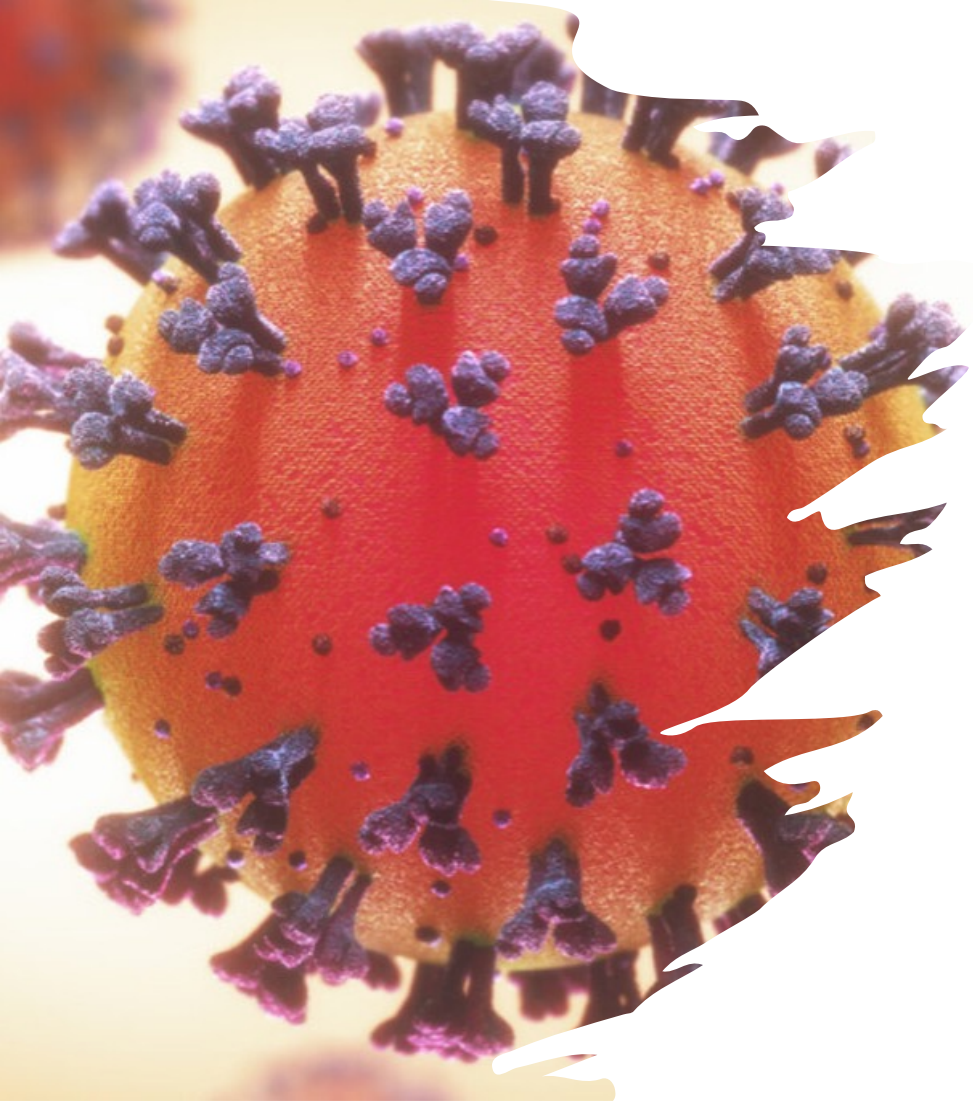
## Effect of the Law



### IMMUNITY EVIDENTIARY HEARING

- Admissible evidence at this stage is limited to evidence “tending to demonstrate whether the defendant made such a good faith effort”
  - Discovery will likely be allowed
- If there is a finding of compliance – Defendant is Immune from Civil Liability
- Only if Court affirmatively finds Defendant did not substantially comply can the case proceed





# **F.S. 768.38**

## **Effect of the Law**

**ULTIMATELY PLAINTIFF MUST PROVE BY  
CLEAR AND CONVINCING EVIDENCE THAT:**

- Defendant was **Grossly Negligent**; or
- Defendant Acted with Intent to Harm

Example: Employer requiring in person attendance during Lockdown or prohibiting vaccination

**If Plaintiff is unable to prove this, then Defendant is  
“not liable for any act or omission relating to a COVID-  
19 related claim”**

# F.S. 768.381 - COVID-19-Related Claims Against Health Care Providers

## Scope of the Law

### APPLIES TO COVID-19 RELATED CLAIMS BROUGHT AGAINST HEALTH CARE PROVIDERS:

- Clinical Labs
- Federally Qualified Health Centers
- Sites Established to Provide Covid-19 Health Care Services
- Health Care Practitioners and Providers
- Home Health Aides
- Continuing Care Facilities
- Pharmacies



# F.S. 768.381 - COVID-19-Related Claims Against Health Care Providers

## Scope of the Law

### Relates to claims involving:

- Diagnosis or treatment of a person for COVID-19;
- Provision of a novel or experimental COVID-19 treatment;
- Transmission of COVID-19 to a patient or resident;
- Delay or cancellation of surgery, procedure, test or appointment
- Involving a lack of resources caused by the COVID-19 pandemic
- Treatment of COVID-19 patient whose pre-existing conditions are exacerbated



# F.S. 768.381 - COVID-19-Related Claims Against Health Care Providers

## Effect of the Law

### LIMITS CLAIMS THAT CAN BE BROUGHT:

- Eliminates Simple Negligence
- Must Be Gross Negligence or Intentional Misconduct
- Limits Time for Bringing Lawsuit:
  - Transmission/Diagnosis/Treatment Cases - One Year from latter of:
    - Date of death;
    - Date of Hospitalization
    - Date of Diagnosis
  - For All Other Cases – One Year From Accrual
  - However, for Cases Accruing Prior to Passage of Law - Until March 29, 2022







# **F.S. 768.381 - COVID-19-Related Claims Against Health Care Providers Effect of the Law**

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- Needs to be Pled with Particularity – But No Affidavit Required with Complaint – Is Pre-Suit Med Mal Opinion Still Required?
- Standard of Proof – Still Greater Weight of the Evidence

# F.S. 768.381 - COVID-19-Related Claims Against Health Care Providers Effect of the Law

No liability if health care provider proves substantial compliance with standards;

- Substantial compliance with any applicable standards, if applicable standards were in conflict;

If health care provider proves inability to substantially comply because of:

- Widespread shortages or
- Insufficient time to implement





# F.S. 768.381 - COVID-19-Related Claims Against Health Care Providers Interaction With Other Laws

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## (7) INTERACTION WITH OTHER LAWS. -

(a) This section does not create a new cause of action but instead applies in addition to any other applicable provisions of law, including, but not limited to, chapters 400, 429, 766, 363 and 768. *This section controls over any conflicting provision of law, but only to the extent of the conflict.*

(b) This section does not apply to claims governed by chapter 440.

# Main Differences Between Statutes

## Requirement of Affidavit with Filing:

- Required under 768.38
- Not Required under 768.381 but part of medical malpractice pre-suit

## Evidentiary Hearing as to Substantial Compliance:

- Required under 768.38
- Not Required under 768.31

## Burden of Proof:

- Clear and Convincing Evidence under 768.38
- Preponderance of Evidence under 768.31



# Potential Constitutional Challenges



- **Retroactive Application**
- **Access to Courts**
- **Due Process**
- **Equal Protection**

# Retroactive Application Statute of Limitations

Two questions must be answered:

- (1) *Clear legislative intent* for retroactive application?
- (2) Is retroactive application *constitutional*?



# Retroactive Application Clear Legislative Intent

Legislature clearly intended SOL to apply retroactively:

“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.*”

F.S. 768.38(4)



## Retroactive Application Clear Legislative Intent

Legislature clearly intended SOL to apply retroactively:

“...an action for a COVID-19-related claim that accrued before the effective date of this act must commence within 1 year after the effective date of this act..”

F.S. 768.381(5)(c)





# Retroactive Application and Constitutionality

- Due process protects against retroactive application of a substantive law that “adversely affects or destroys a vested right; imposes or creates a new obligation or duty in connection with a previous transaction or consideration; or imposes new penalties.”
  - *Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Ass'n, Inc.*, 127 So. 3d 1258, 1272 (Fla. 2013)
- “Generally, it is impermissible for an amendment to a statute of limitations to *extinguish* an existing claim.”
  - *Allegheny Cas. Co. v. Roche Sur., Inc.*, 885 So. 2d 1016, 1018 (Fla. 5th DCA 2004)



# Retroactive Application and Constitutionality

- Legislative amendment can *shorten* a limitations period “if the intent to make the amendment retroactive is clearly expressed, and if a *reasonable time is allowed* within which to seek enforcement of such claim.”
  - *Allegheny Cas. Co.*, 885 So. 2d at 1018.
- F.S. 768.38 gives claimant one year from date of enactment – reasonable time?



# Access to Courts

- **Florida Constitution: Art. 1, § 21, Fla. Const.**
  - “The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.”
- **U.S. Constitution: Not expressly stated**
  - Implied in First Amendment, Due Process Clause, Equal Protection Clause







# Access to Courts

**Substantive access:** Legislature may not *abolish* or *restrict* a person's access to court's unless it:

- (1) provides a reasonable alternative for redress; or
- (2) demonstrates an overpowering public necessity and that there is no other means by which to meet that necessity.

**Procedural access:** a statute that merely imposes a *condition precedent* to suit without abolishing or eliminating a substantive right must be upheld in the face of a constitutional challenge unless the statute creates a "significantly difficult impediment to the right of access"



# Access to Courts

Statutes *abolish* ordinary negligence causes of action without providing a reasonable alternative – such as “no fault”

- ISSUE: Is there truly an *overpowering public necessity* and *no other means* by which to meet that necessity?



# Due Process of Law

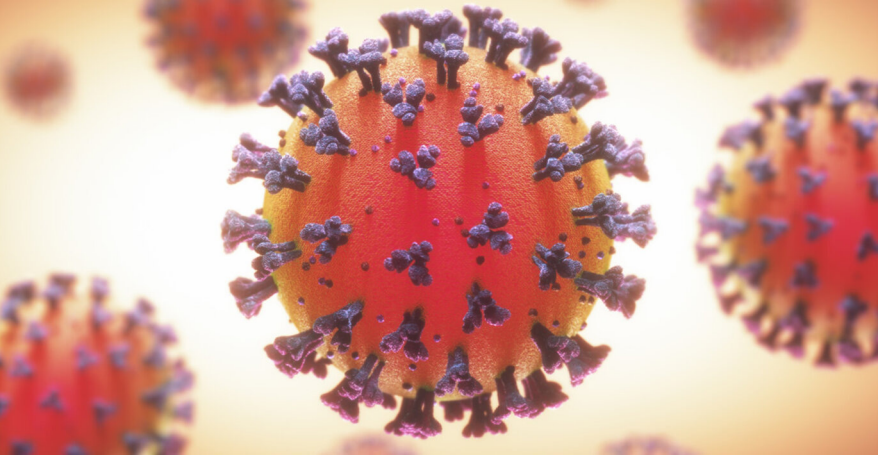
“No person shall be deprived of life, liberty or property without due process of law.” Art. I, § 9, Fla. Const.

State action that infringes fundamental rights is reviewed under “**STRICT SCRUTINY**,” which means the law must:

- (1) be necessary to promote a *compelling governmental interest*,
- (2) be *narrowly tailored* to advance that interest, and
- (3) accomplish its goal through the *least intrusive means*.







# Access to Courts/ Due Process

F.S. 768.38(1):

“The threat of unknown and potentially unbounded liability..., 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.”

“The Legislature also finds that there are no alternative means to ***meet this public necessity....***”

## Legislative History:

“The legislative findings conclude that there are no alternative means to meet this public necessity of providing legal protections caused by the sudden and unprecedented nature of the COVID-19 pandemic.” Bill Analysis, CS/SB 72, March 15, 2021.



# Equal Protection Under the Law

“nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws”

## Potential Constitutional Arguments:

- 768.38 creates separate classes of Plaintiffs who are not treated equally:
  - Employee (w/comp) – will not be affected by elimination of negligence claims
  - Non-Employee - no alternative for simple negligence
- 768.381 creates separate classes of Plaintiffs who are not treated equally:
  - Patients and Residents
  - Non-Patients (higher burden of proof)
- Does Not Include Suspect or Quasi-Suspect Classes
  - Rational Basis Test





# INSURANCE COVERAGES AND MANAGING RISK

EPLI, Worker's Compensation, CGL, Premises Liability, Professional Liability, E&O, D&O

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- Employment/Operational Manuals and Notices
- Clear Records of Compliance with Procedures
- Quality Assurance Audits
- Clear Communications with any Agents or Subcontractors Regarding Adequate Procedures
- Early Evaluation of Liability Claim to Determine True Cost to Defend
  - May Depend on Arguments Raised and on Treatment by Courts of Statutory Requirements/Procedures



# Questions?

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