

SENATE BILL NO. 73—SENATOR TITUS

PREFILED JANUARY 23, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing civil liability for injury or death resulting from exposure to COVID-19. (BDR 3-516)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public health; revising provisions limiting civil liability for personal injury or death resulting from exposure to COVID-19; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires a complaint to be pled with particularity in a civil action
2 alleging a personal injury or death as a result of exposure to COVID-19 while on a
3 premises owned or operated by certain entities or during an activity conducted or
4 managed by such entities. Existing law also provides that an entity that was in
5 substantial compliance with controlling health standards is immune from liability in
6 such an action unless the plaintiff proves that: (1) the entity violated controlling
7 health standards while acting with gross negligence; and (2) the gross negligence
8 was the proximate cause of the plaintiff’s personal injury or death. (NRS 41.835)
9 Existing law excludes from the entities receiving immunity from civil liability
10 under those provisions: (1) an agency to provide nursing in the home; (2) a facility
11 for hospice care; (3) a facility for intermediate care; (4) a facility for skilled
12 nursing; (5) a hospital; or (6) an independent center for emergency medical care.
13 (NRS 41.815, 41.830) **Sections 1 and 2** of this bill remove those exclusions,
14 thereby providing such medical facilities and providers with immunity from civil
15 liability under those provisions. **Section 3** of this bill: (1) extends that immunity
16 from civil liability to apply also to an independent contractor of an entity; and (2)
17 clarifies that the immunity from civil liability also applies to officers and
18 employees of an entity. **Section 4** of this bill provides that the extended protections
19 from liability created by **sections 1-3** of this bill: (1) apply to any cause of action or
20 claim that accrues before, on or after the effective date of this bill and before July 1,
21 2023; and (2) do not apply to any final judgments or verdicts that are entered by a
22 court before the effective date of this bill.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 41.815 is hereby amended to read as follows:

2 41.815 ~~[1]~~ “Business” means a natural person, or a
3 corporation, partnership, association or other business organization,
4 engaging in an activity for profit at a premises located in this State.

5 ~~[2. The term does not include a business that operates:~~

6 ~~—(a) An agency to provide nursing in the home as defined in~~
7 ~~NRS 449.0015;~~

8 ~~—(b) A facility for hospice care as defined in NRS 449.0033;~~

9 ~~—(c) A facility for intermediate care as defined in NRS 449.0038;~~

10 ~~—(d) A facility for skilled nursing as defined in NRS 449.0039;~~

11 ~~—(e) A hospital as defined in NRS 449.012; or~~

12 ~~—(f) An independent center for emergency medical care as~~
13 ~~defined in NRS 449.013.]~~

14 **Sec. 2.** NRS 41.830 is hereby amended to read as follows:

15 41.830 1. “Nonprofit organization” means any private
16 organization not operated for profit.

17 2. The term, includes, without limitation, an organization for
18 youth sports or an alumni, charitable, civic, educational, fraternal,
19 patriotic, religious, labor or veterans’ organization, a credit union
20 organized under the provisions of chapter 672 of NRS or the Federal
21 Credit Union Act, or a state or local bar association, that:

22 (a) Has been determined pursuant to NRS 372.326 to be created
23 for religious, charitable or educational purposes; or

24 (b) Qualifies as a tax exempt organization pursuant to 26 U.S.C.
25 § 501(c).

26 ~~[3. The term does not include a nonprofit organization that~~
27 ~~operates:~~

28 ~~—(a) An agency to provide nursing in the home as defined in~~
29 ~~NRS 449.0015;~~

30 ~~—(b) A facility for hospice care as defined in NRS 449.0033;~~

31 ~~—(c) A facility for intermediate care as defined in NRS 449.0038;~~

32 ~~—(d) A facility for skilled nursing as defined in NRS 449.0039;~~

33 ~~—(e) A hospital as defined in NRS 449.012; or~~

34 ~~—(f) An independent center for emergency medical care as~~
35 ~~defined in NRS 449.013.]~~

36 **Sec. 3.** NRS 41.835 is hereby amended to read as follows:

37 41.835 1. In any civil action where a plaintiff alleges a
38 personal injury or death as a result of exposure to COVID-19 while
39 on a premises owned or operated by an entity, or during an activity
40 conducted or managed by the entity ~~[1]~~, *including, without*
41 *limitation, such a civil action where the defendant is an officer,*
42 *employee or independent contractor of the entity:*



1 (a) The complaint must be pled with particularity.

2 (b) If the ~~[entity]~~ *defendant* was in substantial compliance with
3 controlling health standards, the ~~[entity]~~ *defendant* is immune from
4 liability unless the plaintiff pleads sufficient facts and proves that:

5 (1) The ~~[entity]~~ *defendant* violated controlling health
6 standards with gross negligence; and

7 (2) The gross negligence was the proximate cause of the
8 plaintiff's personal injury or death.

9 (c) If the ~~[entity]~~ *defendant* was not in substantial compliance
10 with controlling health standards:

11 (1) The plaintiff may pursue any claim recognized at
12 common law or by statute; and

13 (2) The immunity described in paragraph (b) does not apply
14 to the ~~[entity]~~ *defendant*.

15 2. The court shall determine as a matter of law whether an
16 entity *or an officer, employee or independent contractor of an*
17 *entity* was in substantial compliance with controlling health
18 standards at the time of an alleged exposure to COVID-19. The
19 plaintiff has the burden of establishing *that* the entity, *or officer,*
20 *employee or independent contractor of the entity* was not in
21 substantial compliance with controlling health standards.

22 3. As used in this section:

23 (a) "Controlling health standards" means any of the following
24 that are clearly and conspicuously related to COVID-19 and that
25 prescribed the manner in which an entity must operate at the time of
26 the alleged exposure:

27 (1) A federal, state or local law, regulation or ordinance; or

28 (2) A written order or other document published by a federal,
29 state or local government or regulatory body.

30 (b) "Entity" means a business, governmental entity or nonprofit
31 organization. ~~[and the officers and employees of the business,~~
32 ~~governmental entity or nonprofit organization.]~~

33 (c) "Premises" means any real property located in this State.

34 (d) "Substantial compliance" means the good faith efforts of an
35 entity, *or an officer, employee or independent contractor of an*
36 *entity*, to help control the spread of COVID-19 in conformity with
37 controlling health standards. The entity *or an officer of the entity*
38 may demonstrate substantial compliance by establishing policies
39 and procedures to enforce and implement the controlling health
40 standards in a reasonable manner. *An officer, employee or*
41 *independent contractor of an entity may demonstrate substantial*
42 *compliance by establishing that he or she adhered in a reasonable*
43 *manner to such policies and procedures.* Isolated or unforeseen
44 events of noncompliance with the controlling health standards do



1 not demonstrate noncompliance by the entity **H** *or the officer,*
2 *employee or independent contractor of the entity.*

3 **Sec. 4.** The amendatory provisions of sections 1, 2 and 3 of
4 this act:

5 1. Apply only to a cause of action or claim arising from a
6 personal injury or death specified in NRS 41.835, as amended by
7 section 3 of this act, that accrues before, on or after the effective
8 date of this act and before July 1, 2023.

9 2. Do not apply to final judgments or verdicts which are
10 entered by a court before the effective date of this act.

11 **Sec. 5.** This act becomes effective upon passage and approval.

