

Senate Bill 42 and Senate Bill 51 Update

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Senate Bill 42 and 51 have been combined into a single bill. The combined bill creates new statutory causes of action related to COVID-19 exposure, including a specific cause of action against health care providers. The same provisions creating these causes of action limit their applicability and place significant burdens on the claimant. Any suit alleging injuries resulting from exposure to COVID19, or from treatment therefor, must be brought as one of the enumerated causes of action or be subject to dismissal.

The bill is set for its third reading. Only technical corrective amendments can be introduced.

To make a submissible case of the various statutory causes of action created by the combined bill, a plaintiff must establish these two elements by clear and convincing evidence:

1. The individual or entity engaged in gross negligence or willful misconduct that caused an actual exposure to COVID-19; and
2. The actual exposure caused personal injury to the plaintiff.

The law also prevents a punitive damage award greater than 9 times the amount of compensatory damages awarded. There is no standard or burden on when or how punitive damages may be awarded in a COVID-19 lawsuit.

This heightened burden of proof and damage limitations will likely drastically curtail lawsuits against healthcare providers for causes of action related to COVID-19. A constitutional challenge is a sure thing.

We will continue to monitor these bills as they move through the Senate and House in order to keep you informed. For more information, contact us.