

The Best Defense Is A Good Offense:

*The Economic Impact of Protecting
Responsible Floridians from
COVID-Related Civil Liability*

JANUARY 2021



Florida  TaxWatch

in collaboration with the

REC | Regional Economic
Consulting Group



106 North Bronough Street, Tallahassee, FL 32301 floridatxwatch.org o: 850.222.5052 f: 850.222.7476

Senator George S. LeMieux
Chairman of the Board of Trustees

Dominic M. Calabro
President & Chief Executive Officer

Dear Fellow Taxpayer

As thousands of Florida businesses struggle to reopen or remain open in light of the COVID-19 pandemic, many are fearful of the threat of litigation resulting from alleged exposure to COVID-19. Healthcare workers who must make extremely difficult medical decisions under trying and uncertain circumstances are exposed to additional liability. In addition, educators must look for creative ways to manage the risk and ensure the health and safety of students and others who enter school facilities.

If Florida's economy is to recover and regain its pre-pandemic prosperity, it is important that businesses, healthcare facilities, schools, nonprofits, government organizations, and other entities that are working hard to comply with public health directives or protective measures to reduce the risk of exposure to or transmission of COVID-19 are protected from unnecessary and costly civil liability. It is also important to make sure that those acting in "bad faith" are held accountable for their negligence while ensuring that those who contract COVID-19 because of the gross negligence of others can recover for their injuries.

Florida TaxWatch undertakes this independent analysis to examine the economic and fiscal benefits and liabilities of the Florida Legislature creating responsible liability shield legislation related to the COVID-19 pandemic, and to assess the potential economic impacts of the Legislature's action or failure to do so.

Florida TaxWatch presents this independent assessment as compelling evidence of the tremendous economic and taxpayer benefits of providing this protection. The taxpayers of Florida expect and deserve nothing less.

Sincerely,

Dominic M. Calabro
President & CEO

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Executive Summary

As the impacts of the COVID-19 pandemic continue to be felt by Florida's businesses, non-profits, schools, colleges and universities, and healthcare providers, employers of all types are fearful of keeping their business open or reopening their business because of the threat of opportunistic, predatory, and expensive litigation resulting from alleged exposure to COVID-19 when they are taking proper precautions.

Florida is a litigious state. Only four states (Mississippi, California, Louisiana, and Illinois) have more litigious climates than Florida.¹ As of this report, nearly 500 COVID-19-related lawsuits have already been filed in Florida, and there is no evidence to suggest that this trend is slowing down. Even if a great many of these lawsuits are unsuccessful, they have the potential to stall Florida's economic recovery by hurting businesses and individuals who are trying to provide essential services during these times of great uncertainty.

It is critical that the Florida Legislature establish safeguards to protect individuals, businesses, and their agents who are acting responsibly to minimize exposure to COVID-19 from liability against specific types of COVID-19-related claims so they can remain open. It is also critical that these safeguards ensure that those who contract COVID-19 as a result of gross negligence or intent to harm by others are able to recover for their injuries.

As of this report, the federal government and more than 30 states have taken some action to narrow the liability limits related to COVID-19. Florida, however, is not yet one of those. Florida's first documented case of COVID-19 appeared just two weeks before the 2020 legislative session adjourned. Since March 1, 2020, Governor DeSantis has issued more than 50 executive orders related to COVID-19.

In the Summer of 2020, the Associated Industries of Florida's Restore Economic Strength through Employment and Tourism (RESET) Task Force was established (with some 50 statewide organizations, including Florida TaxWatch) to examine the issues facing Florida businesses during the COVID-19 pandemic and to prepare draft legislation that would protect businesses from a flood of pandemic-related lawsuits. The RESET Task Force, after hearing from numerous subject matter experts, surveying a broad coalition of Florida businesses, and reviewing legislation from other states, put forth draft legislation to protect Florida businesses from opportunistic and predatory COVID-19-related lawsuits.

Florida TaxWatch supports the good work of the RESET Task Force and urges the Legislature to pass the Task Force's draft legislation with consideration of the following additions: (1) make it clear that a covered entity (one that is following reasonable safety protocols) is entitled to the rebuttable presumption that a potential claimant assumes the risk when he or she enters certain premises that provide express warnings or disclaimers; (2) make it clear that, for the purposes of workers' compensation benefits, there is a rebuttable presumption that the contraction of COVID-19 by an essential employee, including but not limited to a health care worker or a public safety worker, is work-related; and (3) limit a covered entity's liability to "actual economic compensatory damages" and exclude any liability for non-economic or punitive damages.

¹ Institute for Legal Reform, "2019 Lawsuit Climate Survey Ranking the States," U.S. Chamber of Commerce, September 2019.

Florida TaxWatch partnered with the Regional Economic Consulting (REC) Group to answer this question: “What if no legislative action is taken and no measures are put into place to shield Florida businesses, nonprofit organizations, and government agencies from civil liability resulting from COVID-19 related litigation?” Depending on the extent to which employers’ confidence in the economy is shaken by the threat of opportunistic and predatory lawsuits, from March 2020 through September 2020, the absence of a meaningful shield from liability could have negatively impacted the Florida economy by as much as \$16.1 billion (12.9 percent since the fourth quarter of 2019) with more than 208,000 jobs lost. The impact on personal income amounts to a total maximum possible loss of \$14.6 billion. The total maximum effect on tax collections, both the state and local governments, is estimated at a \$1.5 billion loss with the lion’s share coming from sales tax during this six-month period. Assuming no change in employers’ confidence in the economy, the absence of a liability shield would reduce the Florida economy by as much as \$27.6 billion and more than 356,000 jobs annually.

Florida TaxWatch understands and acknowledges that immunity from civil liability will not stem the spread of COVID-19, nor will it prevent injury or harm or make the associated costs go away. Even if those harmed have to burden the costs, if Florida’s economy is to recover and regain its pre-pandemic prosperity, it is important that businesses, healthcare facilities, nonprofit organizations, and other entities that are working hard to comply with public health directives or protective measures to reduce the risk of exposure to or transmission of COVID-19 are protected from the costs and distractions of civil liability.

Responsible nonprofit organizations, business owners, and other covered entities who are acting in good faith to comply with public health directives and are investing in measures to protect their patrons and employees must have comfort that they will be able to open and operate their business without fear of opportunistic, predatory, and expensive litigation. It is also important to make sure that those acting in “bad faith” are held accountable for their negligence while ensuring that those who contract COVID-19 because of the gross negligence of others can recover for their injuries.

Introduction

“Now with the states beginning to gradually reopen their economies, we’re staring down the barrel of a second epidemic, one generated by opportunistic lawsuits, crushing legal fees and drawn out court battles... We’ve seen suits against healthcare workers, nursing homes, colleges, governments, retailers, you name it. As our economy begins to reopen, unfortunately so will the legal floodgates. The litigation epidemic is shaping up to be a big one.”

— U.S. SENATOR JOHN CORNYN, TEXAS² —

As the impacts of the COVID-19 pandemic continue to be felt by Florida’s businesses, non-profits, schools, colleges and universities, and healthcare providers, employers of all types are fearful of keeping their business open or reopening their business because of the threat of opportunistic, predatory, and expensive litigation resulting from alleged exposure to COVID-19 by customers and employees.

“... My biggest concern about reopening is the threat of lawsuits. This creates a threat for small businesses like mine who currently are in financial distress due to COVID-19. To protect our customers and our staff members, we are ensuring that all our staff are temperature checked on the daily, that all our staff members are wearing masks and gloves, and that everybody in the restaurant is practicing social distancing. As lawmakers, I ask you to please come up with any protection for small businesses like mine from liability due to COVID-19.”

— THOMAS WARD, OWNER, PIG FLOYD’S URBAN BARBAKOA, ORLANDO, FLORIDA³ —

Florida is a litigious state. According to the U.S. Chamber of Commerce’s Institute for Legal Reform, Florida ranked among the bottom five (worst) states (46th) in terms of their overall litigation climate. Only four states (Mississippi, California, Louisiana, and Illinois) have more litigious climates than Florida.⁴ More than 400 COVID-19-related lawsuits have already been filed in Florida, and there is nothing to suggest that this trend is slowing down. Even if a great many of these lawsuits are unsuccessful, they have the potential to paralyze Florida’s economic recovery by hurting businesses and individuals who are trying to provide essential services during times of great uncertainty.

It is critical that the Florida Legislature establish safeguards to protect businesses, and their agents and individuals, from liability against specific types of COVID-19-related claims so businesses can reopen or remain open. It is also critical that these safeguards ensure that those who contract COVID-19 as a result of gross negligence or intent to harm by others are able to recover for their injuries.

Florida TaxWatch undertakes this analysis to examine the economic, fiscal, and social (societal) benefits of the Florida Legislature creating meaningful liability shield legislation related to the COVID-19 pandemic. The analysis will also examine potential concepts that will need to be considered, including challenges and drawbacks of such legislation.

2 Jon Sternfeld, “Unprepared: America in the Time of Coronavirus,” Bloomsbury Publishing, September 22, 2020.

3 Faces of Lawsuit Abuse, “Small Businesses Worry About COVID Lawsuits: Owner of Pig Floyd Explains,” retrieved from https://www.facesoflawsuitabuse.org/aiovg_videos/small-businesses-worry-about-covid-lawsuits-owner-of-pig-floyd-explains/, December 29, 2020.

4 Institute for Legal Reform, “2019 Lawsuit Climate Survey Ranking the States,” U.S. Chamber of Commerce, September 2019.

Lawsuits – Florida

Perhaps the most comprehensive tracking of coronavirus-related lawsuits and complaints is being maintained by the law firm of Hunton Andrews Kurth, LLC.⁵ As shown in Table 1, 490 COVID-19-related lawsuits had been filed in Florida as of December 7, 2020. Only New York (1,189) and California (943) have more COVID-19-related lawsuits.⁶ These lawsuits range from price gouging to challenges to mask ordinances to wrongful death. Because of the inherent limitations in trying to track COVID-19-related lawsuits in 67 Florida counties, the information in Table 1 should be considered comprehensive but not exhaustive. The data do provide some insight into the types of lawsuits that have been filed to-date and the extent to which Florida businesses might be subject to liability in the absence of any legislated “safe harbor” provisions. A more detailed breakdown of COVID-19 related lawsuits in Florida is presented in Appendix 2.

The safe harbor provisions contained in the federal SAFE TO WORK Act and in the actions by state governments to-date (See Appendix 1) are intended to apply to instances where there have been injuries, damages, or death related to exposure to, transmission of, or contraction of COVID-19. Of the 490 lawsuits identified in Table 1, only a small fraction (less than 20 percent) would appear on their face to involve injuries, damages, or death related to exposure to, transmission of, or contraction of COVID-19.

TABLE 1. COVID-19-RELATED LAWSUITS IN FLORIDA

Banking / Financial Services	14
Challenges Against Foreign Sovereigns or NGOs	1
Civil Rights	58
Consumer Cases	33
Contract Disputes	32
Education	24
General Court Administrative Orders Related to COVID-19	2
Habeas / Confinement Conditions / Prisoner & Detainee Petitions	27
Health / Medical	7
Insurance	143
Intellectual Property	3
Labor & Employment	89
Miscellaneous Tort	3
Real Property	40
Securities Litigation	5
Other	9
TOTAL	490

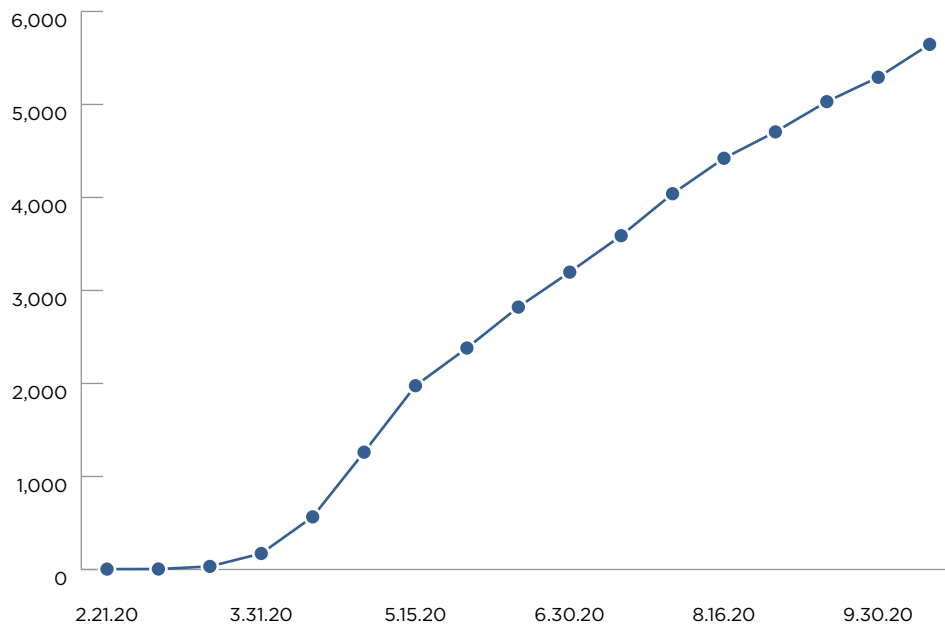
Source: Hunton, Andrews, Kurth, LLP COVID-19 Complaint Tracker (December 7, 2020)

5 See <https://www.huntonak.com/en/covid-19-tracker.html>.

6 Hunton Andrews Kurth LLP, COVID-19 Complaint Tracker, retrieved from <https://www.huntonak.com/en/covid-19-tracker.html>, December 3, 2020.

There is nothing to suggest that this represents the total number of COVID-19-related lawsuits that will be filed in Florida, or that the number or percentage of lawsuits involving allegations of injuries, damages, or death related to exposure to, transmission of, or contraction of COVID-19. The cumulative growth of COVID-19-related lawsuits in the U.S. since March 2020 is shown in Figure 1. If this trend continues, then one would expect the number of COVID-19-related lawsuits in Florida to continue to increase as well.

FIGURE 1. COVID-19 RELATED U.S. LAWSUITS



Source: Hunton, Andrews, Kurth, LLP COVID-19 Complaint Tracker (December 3, 2020)

What is the Federal Government Doing?

In July 2020, the U.S. Senate filed the “*Safeguarding America’s Frontline Employees To Offer Work Opportunities Required to Kickstart the Economy Act*,” more commonly known as the “*SAFE TO WORK Act*,” as part of a \$1 trillion COVID-19 relief package. The SAFE TO WORK Act is intended “to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits relating to COVID-19 while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.”⁷

The SAFE TO WORK Act acknowledges that one of the major impediments to permitting businesses that are open to stay open, and to help other businesses reopen safely, is the risk of expensive litigation and distractions even though plaintiffs are not likely to prevail in their lawsuit. Further, healthcare workers who must make extremely difficult medical decisions under trying and uncertain circumstances are exposed to additional liability. The SAFE TO WORK Act looks to make sure that those acting in bad faith are held accountable for their negligence while ensuring that those who contract COVID-19 because of the gross negligence of others can recover for their injuries.

⁷ 116th Congress, 2nd Session, S.4317.

One of the key components of the SAFE TO WORK Act is the “safe harbor” provision.⁸ The safe harbor exempts any individual or entity engaged in businesses, services, activities, or accommodations from liability in any COVID-19 exposure unless the plaintiff can prove by “clear and convincing evidence” that:

- The individual or entity was not making reasonable efforts to comply with the applicable government standards and guidance in effect at the time of the “actual, alleged, feared, or potential for exposure” to COVID-19;
- The individual or entity engaged in “gross negligence⁹ or willful misconduct”¹⁰ that caused actual exposure to COVID-19; and
- The actual exposure to COVID-19 caused the plaintiff’s personal injury.¹¹

A defendant would not, therefore, be liable for COVID-19 exposure as long as the defendant undertook reasonable efforts in light of all the circumstances to comply with the applicable mandatory COVID-19 standards and regulations in effect at the time of the alleged exposure.

The SAFE TO WORK Act also exempts health care providers from COVID-19-related medical liability unless the plaintiff can prove by “clear and convincing evidence” that:

- There was “gross negligence or willful misconduct” by the health care provider; and
- The alleged harm, damage, breach, or tort resulting in the personal injury was directly caused by the alleged gross negligence or willful misconduct.¹²

Compensatory damages are limited to economic losses and punitive damages are prohibited, except in cases involving intentional misconduct. The SAFE TO WORK Act establishes a floor on liability but makes it expressly clear that states are free to further limit liability for COVID-19 exposure. To date, the Senate has taken no action on the bill, as filed.¹³

What Are Other States Doing?

At the time of this report, more than 30 other states have taken some action --- either issuance of an Executive Order or enactment of legislation --- to narrow the liability limits related to COVID-19 (See Appendix 1). Although the various emergency measures contain similarities, each differs in ways that leave businesses, nonprofits, schools, colleges, universities, workers, and healthcare providers subject to differing limitations to immunity from civil liability related to the exposure, contraction, or transmission of COVID-19.

What is Florida Doing?

Conspicuously absent from the list of states in Appendix 1 is the state of Florida. Because Florida’s 60-day legislative session begins in January in even-numbered years, the first documented case of COVID-19 (March 1) appeared just two weeks before the session adjourned. When the legislature adjourned on March 19, Florida had roughly 50 documented cases of COVID-19 statewide. Since March 1, 2020, Governor DeSantis has issued more than 50 executive orders related to COVID-19.¹⁴

⁸ 116th Congress, 2nd Session, S.4317, §122.

⁹ Gross negligence is defined as a conscious, voluntary act or omission in reckless disregard of a legal duty, the consequences to another party, and applicable government standards and guidance.

¹⁰ Willful misconduct is defined as an act or omission that is taken to achieve a wrongful purpose, knowingly without legal factual justification, and in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

¹¹ 116th Congress, 2nd Session, S.4317, §122(a)(1)-(3).

¹² 116th Congress, 2nd Session, S.4317, §142.

¹³ Congress.gov, “S.4317 - SAFE TO WORK Act,” retrieved from <https://www.congress.gov/bill/116th-congress/senate-bill/4317/actions>, December 3, 2020.

¹⁴ Executive Office of the Governor, “COVID-19 Executive Orders,” retrieved from <https://www.flgov.com/covid-19-executive-orders/>, October 28, 2020.

In the Summer of 2020, the Associated Industries of Florida’s Restore Economic Strength through Employment and Tourism (RESET) Task Force was established to examine the issues facing Florida businesses during the COVID-19 pandemic and to prepare draft legislation that would protect businesses from a flood of pandemic-related lawsuits.¹⁵ The RESET Task Force includes Florida TaxWatch, the Florida Retail Federation, the National Federation of Independent Businesses, the Florida Restaurant & Lodging Association, Florida Justice Reform, and more than 50 other organizations. The RESET Task Force, after hearing from numerous subject matter experts, surveying a broad coalition of Florida businesses, and reviewing legislation from other states, put forth draft legislation to protect Florida businesses from opportunistic and predatory COVID-19-related lawsuits.

The draft legislation proposed by the RESET Task Force provides the following safeguards:

Essential Business Liability Immunity --- Would provide immunity from liability for “essential businesses” that have been required to remain open and in operation throughout the pandemic and to agents of essential businesses. An “essential business” includes: (a) those businesses deemed “essential” within the meaning of Governor DeSantis’ COVID-19 executive orders; and (b) an industry identified as part of the “essential workforce” in March 28, 2020 guidance issued by the U.S. Department of Homeland Security Cybersecurity and Infrastructure Security Agency.

Community Amenities Liability Immunity --- Would provide limited immunity from liability to owners of “community amenities” and their agents. A “community amenity” is privately owned and includes (but is not limited to) swimming pools, clubhouses, gyms or workout rooms, libraries, tennis courts, meeting rooms, or any other common areas or common elements that are owned, operated, or maintained by a condominium, cooperative, or homeowners’ association.

Clear and Convincing Evidence --- Would require a plaintiff or claimant seeking relief to show “by clear and convincing evidence” that (a) an act or omission by the covered entity proximately caused the damages, injury, or death; and (b) the act or omission constituted “gross negligence” or that the act or omission was “intended to cause harm” to an individual.

Clear Intent of Proposed Immunity Law --- Makes it expressly clear and understood that the immunities afforded to the entities covered by the draft legislation do not apply to claims for injury, damages, or death where the act or omission was intended to cause harm.

Rebuttable Presumption --- Establishes a “rebuttable presumption” of no exposure. It is presumed that all individuals who come into contact with an entity covered by the draft legislation were not infected with COVID-19 at the time of the interaction. To rebut this presumption, it would have to be shown by clear and convincing evidence that the covered entity knew that the individual who transmitted the COVID-19 to the injured party was, at the time, infected by COVID-19.

Compliance with COVID-Safe Practices --- Ensures that changes in policies, procedures, or practices by an entity covered by the draft legislation to comply with applicable public health guidelines and government-issued protective measures after an alleged exposure occurs cannot be used to suggest that the covered entity exposed a plaintiff or claimant to COVID-19 in the first place.

¹⁵ Restore Economic Strength through Employment and Tourism (RESET) Task Force, “Florida Businesses Need COVID-19 Liability Protections,” Florida Justice Reform Institute, October 1, 2020.

Third Parties --- Makes it expressly clear and understood that an entity covered by the draft legislation is not liable for a COVID-19-related claim that is premised on the acts or omissions of a third party, unless the covered entity has a duty to control the third party.

Shortened Statute of Limitations --- Includes a shortened statute of limitations. Under current Florida law, tort claims (including negligence claims) are subject to a four-year statute of limitations;¹⁶ however, the draft legislation requires a claimant to file a COVID-19 related claim “no later than one year after the date of the injury or death.”

Additional Employee Protections --- Provides additional protections from employees’ COVID-19 related claims, provided the employer generally complied with applicable public health guidelines and protective measures.

Analysis

As shown in Appendix 1, more than 30 states have taken or are in the process of taking emergency steps to provide limited immunity from COVID-19-related civil liability. Although each emergency measure differs from state-to-state in terms of who is covered, behaviors and actions that are not covered, damages, and burden of proof, there are numerous similarities that should be considered by Florida lawmakers when this matter is considered, either in special session or the 2021 regular session.

The draft legislation proposed by Florida’s RESET Task Force, as well as the legislation summarized in Appendix 1, are all designed to limit or discourage opportunistic or predatory lawsuits that might be filed against businesses or individuals related to the spread of COVID-19. Absent these measures, any patron of a business who contracts COVID-19 or any patient who questions difficult treatment decisions made by their healthcare professionals under trying and uncertain circumstances could file a lawsuit.

Most of the legislation summarized in Appendix 1 is broadly written with respect to the covered entities, which could leave room for differing interpretations. Generally, the broader the language, the more room for interpretation. The covered entities included in the draft legislation proposed by Florida’s RESET Task Force include “essential businesses” that have been required to remain open and in operation throughout the pandemic and to agents of essential businesses. The Governor’s Executive Order No. 20-91 references “essential services” that are:

- Included in the U.S. Department of Homeland Security’s “Guidance on the Essential Critical Infrastructure Workforce, v.2 (March 28, 2020)” and any subsequent lists published;¹⁷
- Designated by Executive Order 20-89 and its attached list of businesses and activities designated by Miami-Dade County in multiple orders; and
- Added with the approval of the State Coordinating Officer, in close coordination with the State Health Officer.

All told, the expansive list of essential services maintained on the Florida Division of Emergency Management’s website is 19 pages, and includes workers in the following businesses: health care/public health; law enforcement, public safety, and other first responders; food and agriculture; energy; water and wastewater; transportation and logistics; public works and infrastructure support services; communications and

¹⁶ § 95.11(3)(a), (o), (p), Fla. Stat.

¹⁷ CISA issued the guidance originally on March 19, 2020, and published three additional updates to reflect the changing landscape of the nation’s COVID-19 response.

information technology; other community- or government-based operations and essential functions; critical manufacturing; hazardous materials; financial services; chemical; defense industrial base; commercial facilities; residential/shelter facilities and services; hygiene products and services; and houses of worship.¹⁸ As a result, there is considerably less ambiguity with respect to which business would have immunity from COVID-19 related civil liability.

The draft legislation affords protection against the ever-changing standards of care. As more is learned about how COVID-19 is contracted and transmitted (e.g., community spread), the more likely the guidelines issued by the U.S. Centers for Disease Control and Prevention (CDC) and state and local public health agencies will continue to evolve. Any change in policies, procedures, or practices by a covered entity necessary to comply with applicable public health guidelines after the alleged exposure to COVID-19 is not admissible to prove negligence or culpability.

In both the draft legislation proposed by Florida's RESET Task Force and the legislation summarized in Appendix 1, immunity from liability is not "blanket" immunity. Only those covered entities that are acting "in good faith" to comply with applicable public health guidelines to minimize exposure to and transmission of COVID-19 are immune. The emergency measures implemented by the draft legislation and by other states in no way absolve business owners of their responsibility to protect their patrons and employees from exposure to COVID-19.

In both the draft legislation proposed by Florida's RESET Task Force and the legislation summarized in Appendix 1, those who are acting "in bad faith" to comply with applicable public health guidelines to minimize exposure to and transmission of COVID-19 will be held accountable. Covered entities can be sued if it can be established that the damages were caused by gross negligence, recklessness, or conduct with an intent to harm.

It is clear in both the draft legislation proposed by Florida's RESET Task Force and the legislation summarized in Appendix 1 that the plaintiff in any civil action will have a heavy burden of proof and a significant financial burden. The draft legislation and most, if not all, of the emergency measures implemented by the states adopt the "clear and convincing evidence" standard of proof. A "medium-level" burden of proof, clear and convincing evidence requires the evidence to be highly and substantially more likely to be true than untrue.¹⁹ It is a more rigorous standard to meet than the "preponderance of evidence" standard, but a less rigorous standard than the "beyond a reasonable doubt" standard. Regardless of which standard is used, proving that a patron contracted COVID-19 at a particular business, or that a student contracted COVID-19 while at school (for example) will prove to be difficult and undoubtedly expensive.

18 "Governor DeSantis Executive Order 90-21 Essential Services List," retrieved from <https://www.floridadisaster.org/globalassets/governor-essential-services.pdf>, October 30, 2020.

19 Legal Information Institute, "Clear and Convincing Evidence," Cornell Law School, retrieved from https://www.law.cornell.edu/wex/clear_and_convincing_evidence, October 26, 2020.

What if No Legislative Action is Taken?

Florida TaxWatch enlisted the services of the Regional Economic Consulting (REC) Group²⁰ to answer this question: What if no legislative action is taken and no measures are put into place to shield Florida businesses from civil liability resulting from opportunistic, predatory, and expensive litigation? REC's analysis²¹ looks at the effects no liability shield would have on the state's Gross Domestic Product (GDP), employment, labor and business income, and state and local tax revenues. REC's analysis, entitled "*Analysis of the Effects of Liability Shield on Florida's Economy: A Florida TaxWatch Project*," is available on the Florida TaxWatch website.²²

Methodology

The REC analysis is based on the premise that an employer's decision whether to increase or decrease its workforce depends upon how consumers feel about the economy in light of COVID-19. REC uses the University of Florida's Bureau of Economic and Business Research (BEBR) Consumer Sentiment Index (CSI), which measures how consumers perceive the current status of the economy. If the CSI is up because consumers feel good about the economy, businesses hire more workers to meet the increased demand. Conversely, if the CSI goes down, then businesses lay off employees.

This "elasticity" permits REC to compare the difference between the projected employment that is tied to consumer optimism and the actual employment levels to determine the employment loss as a result of employers' concern of being sued. The REC analysis uses data from the U.S. Bureau of Labor Statistics, the U.S. Bureau of Economic Analysis, BEBR, the Legislative Office of Economic and Demographic Research, and the Florida Economic Estimating Conference.

Using the economic model IMPLAN (see Appendix 3), the analysis estimates the direct, indirect and induced impacts of employers' decisions. The analysis does not measure the effects of the entire economic slowdown caused by other economic factors but focuses on the portion of the economic decline resulting from the employers' pessimism regarding COVID-19.

Impacts on Employment

Table 2 displays three variables --- the effect of consumer sentiments on jobs; the total change in employment; and the effect of employer sentiments on jobs --- from March 2020 through September 2020. The effect of consumer sentiments on jobs describes what the change in employment would look like if employment were purely driven by consumer sentiment barring any optimism or pessimism felt by employers. The total change in employment reflects the actual change in employment. The effect of employer sentiments on jobs reflects the difference between the consumer outlook for jobs and the actual change in jobs. It can be explained as the optimism or pessimism of the employers themselves.

As shown in Table 2, if hiring was tied solely to the emotions and demands of the consumer, the job loss in March 2020 (488,070) would have been much greater than the actual 95,300 lost jobs. From March to September, Florida has seen a total 539,100 jobs lost; 412,719 of these job losses can be attributed to falling

²⁰ The Regional Economic Consulting (REC) Group is an analytical think tank with expertise in general state and tax policy, constitutional amendments, state trust funds, and other state and local projects. Using the latest methodologies and econometric modeling techniques, REC produces a wide range of demographic and labor market studies, and fiscal impact studies, that are then applied to pending legislation and government projects. For more information, see <https://www.regionaleconomicconsulting.com/>.

²¹ Regional Economic Consulting Group, "Analysis of the Effects of Liability Shield on Florida's Economy: A Florida TaxWatch Project," November 10, 2020.

²² REC analysis in full available at <https://floridataxwatch.org/Research/Full-Library>.

consumer optimism while the rest is due to employers' and businesses' unwillingness to increase their labor force due to low demand.

In the absence of a general lockdown there are 126,381 jobs that employers have not filled that would otherwise be a part of the workforce absent the COVID-19 pandemic. The REC analysis uses IMPLAN to measure what a loss of 126,381 jobs would mean to the rest of the economy. It is important to note that these 126,381 jobs represent the maximum impacts that would be related to employers' concerns about litigation.

TABLE 2. TOTAL NON-FARM EMPLOYMENT IMPACT²³

Date	Consumer Sentiment Effect on Jobs	Employment Change	Employer Sentiment Effect on Jobs
Mar. '20	(488,070)	(95,300)	392,770
Apr. '20	(308,735)	(1,082,800)	(774,065)
May '20	10,358	207,400	197,042
June '20	221,024	286,900	65,876
July '20	(71,097)	79,300	150,397
Aug. '20	(62,372)	18,000	80,372
Sept. '20	286,173	47,400	(238,773)
TOTALS	(412,719)	(539,100)	(126,381)

Source: Regional Economic Consulting Group, "Analysis of the Effects of Liability Shield on Florida's Economy: A Florida TaxWatch Project," November 10, 2020.

The direct job loss of 126,381 jobs indirectly results in an additional employment loss of 34,046 jobs. These are jobs tied to the supply chain. A restaurant operating at 50 percent capacity, for example, will purchase less food, drink, and other supplies from distributors and wholesalers who, in turn, will need fewer employees to process these orders. Further downstream are induced effects related to the reduction in the workforce, where workers affected will have less money available to spend at other establishments. The "ripple effect" of these induced effects is a loss of an additional 48,303 jobs, for a total direct, indirect, and induced job loss of 208,731 jobs. The employment-related impacts for each non-farm sector of the state's economy are depicted in Table 3 and Figure 2.

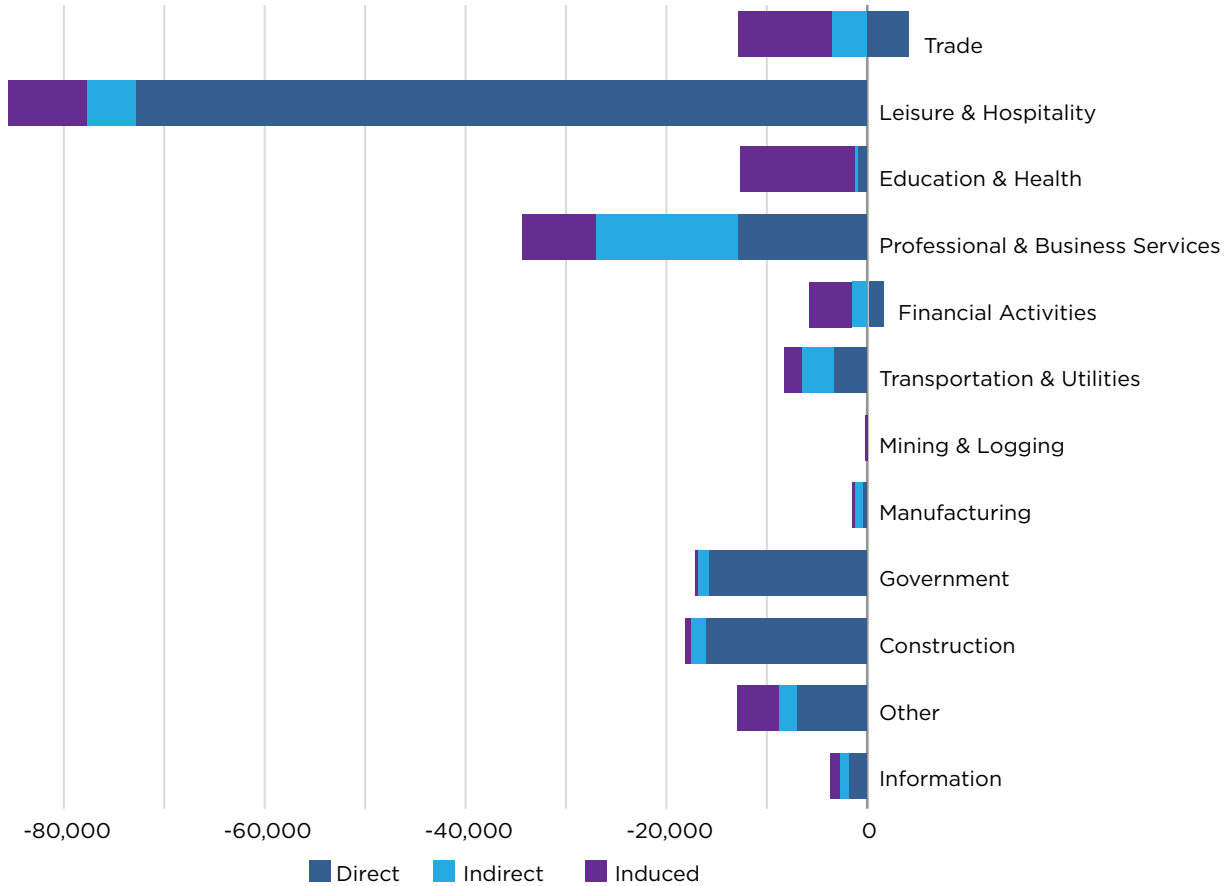
²³ The REC analysis excludes agricultural employees due to the challenges collecting, disseminating, and using agricultural labor data. There are wide variations in peak employment by type of commodity by region due to seasonal fluctuations. As a result, numerical estimates provided by agricultural employment data vary depending on time of collection and whether data refer to employment for one week or the entire year. Obtaining accurate farming employment numbers is complicated by: self-employment, unpaid family employment; part-time or hobby farmers; and other partnerships. Further, agricultural labor data are affected by the unknown number of undocumented workers in the field. Thus, using this data will bias the estimation of the economic impacts. It is for this reason why the Bureau of Labor Statistics uses non-farm employment and agencies use non-farm employment as a basis for projections.

TABLE 3. EMPLOYMENT IMPACTS – MARCH 2020 THROUGH SEPTEMBER 2020

Super Sectors	Direct	Indirect	Induced	Total	% of Total
Information	(1,831)	(1,050)	(811)	(3,692)	1.8%
Other	(7,177)	(1,827)	(4,104)	(13,108)	6.3%
Construction	(16,085)	(1,505)	(571)	(18,161)	8.7%
Government	(15,852)	(1,179)	(506)	(17,537)	8.4%
Manufacturing	(512)	(683)	(507)	(1,702)	0.8%
Mining and Logging	62	(201)	(16)	(155)	0.1%
Transportation and Utilities	(3,446)	(3,043)	(1,723)	(8,212)	3.9%
Financial Activities	1,697	(1,671)	(4,415)	(4,389)	2.1%
Professional and Business Services	(12,969)	(14,373)	(7,164)	(34,506)	16.5%
Education and Health	(1,112)	(283)	(11,312)	(12,706)	6.1%
Leisure and Hospitality	(73,084)	(4,551)	(7,858)	(85,493)	41.0%
Trade	3,927	(3,680)	(9,317)	(9,070)	4.3%
TOTAL	(126,382)	(34,046)	(48,303)	(208,731)	100.0%

Source: Regional Economic Consulting Group, "Analysis of the Effects of Liability Shield on Florida's Economy: A Florida TaxWatch Project," November 10, 2020.

FIGURE 2. EMPLOYMENT IMPACT (NUMBER OF JOBS)



Source: Regional Economic Consulting Group, "Analysis of the Effects of Liability Shield on Florida's Economy: A Florida TaxWatch Project," November 10, 2020.

It comes as no surprise that the Leisure and Hospitality sector bears the brunt of the employment losses, with a total loss of more than 85,000 jobs during this seven-month period. Businesses in this sector see the highest volumes of patrons on a daily basis and face the greatest challenges complying with state and local public health mandates (e.g., mask and limited occupancy mandates, etc.). Employer optimism has resulted in a direct increase in jobs in the Trade sector. With many small businesses shuttering or not reopening, larger grocery stores and “big box” retail stores have benefitted. The indirect and induced effects of lost jobs from other sectors will have negative ripple effects, however, resulting in an overall loss of 9,070 jobs in the Trade sector.

Impacts on Personal Income

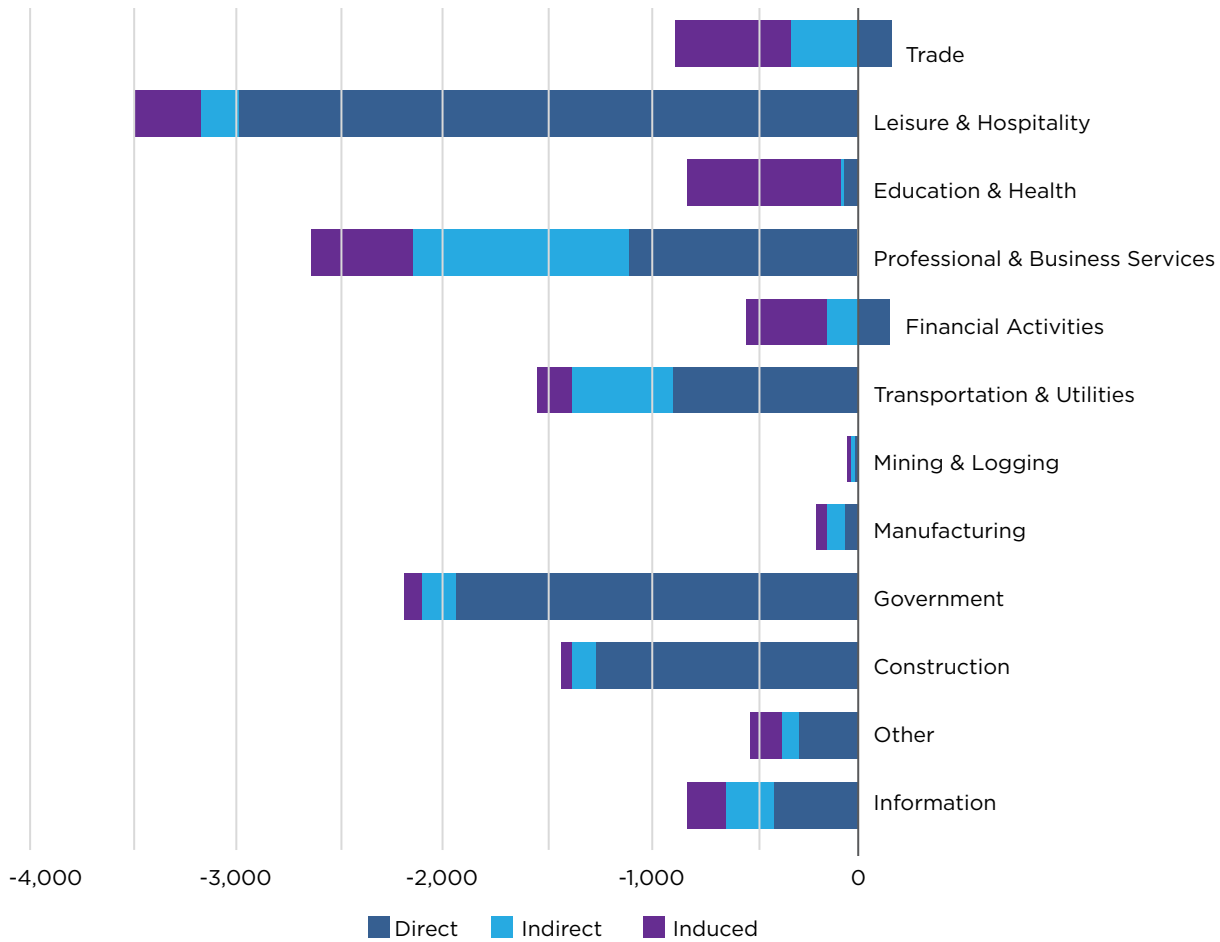
As shown in Table 4 and Figure 3, the impact on personal income also follows a similar pattern to job losses. The Leisure and Hospitality sector again has the largest impact on personal income (-\$3.5 billion at 23.6 percent) followed by Professional and Business Services (-\$2.6 billion at 17.9 percent), Government (-\$2.2 billion at 14.8 percent), Transportation and Utilities (-\$1.6 billion at 10.6 percent), and the Construction sector (-\$1.4 billion at 9.7 percent). The maximum total impact on personal income during this seven-month period is estimated at -\$14.7 billion.

TABLE 4. PERSONAL INCOME IMPACT (MILLIONS \$) – MARCH 2020 THROUGH SEPTEMBER 2020

Super Sectors	Direct	Indirect	Induced	Total	% of Total
Information	(\$405.0)	(\$232.3)	(\$179.4)	(\$816.6)	5.6%
Other	(\$285.5)	(\$72.7)	(\$163.3)	(\$521.4)	3.5%
Construction	(\$1,259.9)	(\$117.9)	(\$44.7)	(\$1,422.5)	9.7%
Government	(\$1,923.5)	(\$178.7)	(\$76.8)	(\$2,178.9)	14.8%
Manufacturing	(\$62.0)	(\$82.8)	(\$61.4)	(\$206.2)	1.4%
Mining and Logging	\$2.7	(\$8.7)	(\$0.7)	(\$6.7)	0.0%
Transportation and Utilities	(\$886.1)	(\$488.6)	(\$175.6)	(\$1,550.4)	10.6%
Financial Activities	\$147.9	(\$145.6)	(\$384.6)	(\$382.4)	2.6%
Professional and Business Services	(\$1,086.1)	(\$1,039.6)	(\$501.2)	(\$2,627.0)	17.9%
Education and Health	(\$61.7)	(\$12.4)	(\$738.8)	(\$813.0)	5.5%
Leisure and Hospitality	(\$2,970.1)	(\$186.0)	(\$315.6)	(\$3,471.8)	23.6%
Trade	\$176.0	(\$313.0)	(\$559.8)	(\$696.8)	4.7%
Total	(\$8,613.4)	(\$2,878.3)	(\$3,201.9)	(\$14,693.7)	100%

Source: Regional Economic Consulting Group, “Analysis of the Effects of Liability Shield on Florida’s Economy: A Florida TaxWatch Project,” November 10, 2020.

FIGURE 3. PERSONAL INCOME IMPACT (000,000s)



Source: Regional Economic Consulting Group, "Analysis of the Effects of Liability Shield on Florida's Economy: A Florida TaxWatch Project," November 10, 2020.

Impacts on Gross Domestic Product (GDP)

The reluctance of employers to hire has major ramifications on Florida's GDP (which is the sum of the total value of goods produced and services rendered in Florida's economy within a given period of time). Together with employment, GDP and Personal Income correlate with one another. The GDP numbers follow the same patterns as the job losses, with the Leisure and Hospitality sector suffering the greatest impact (see Table 5 and Figure 4).

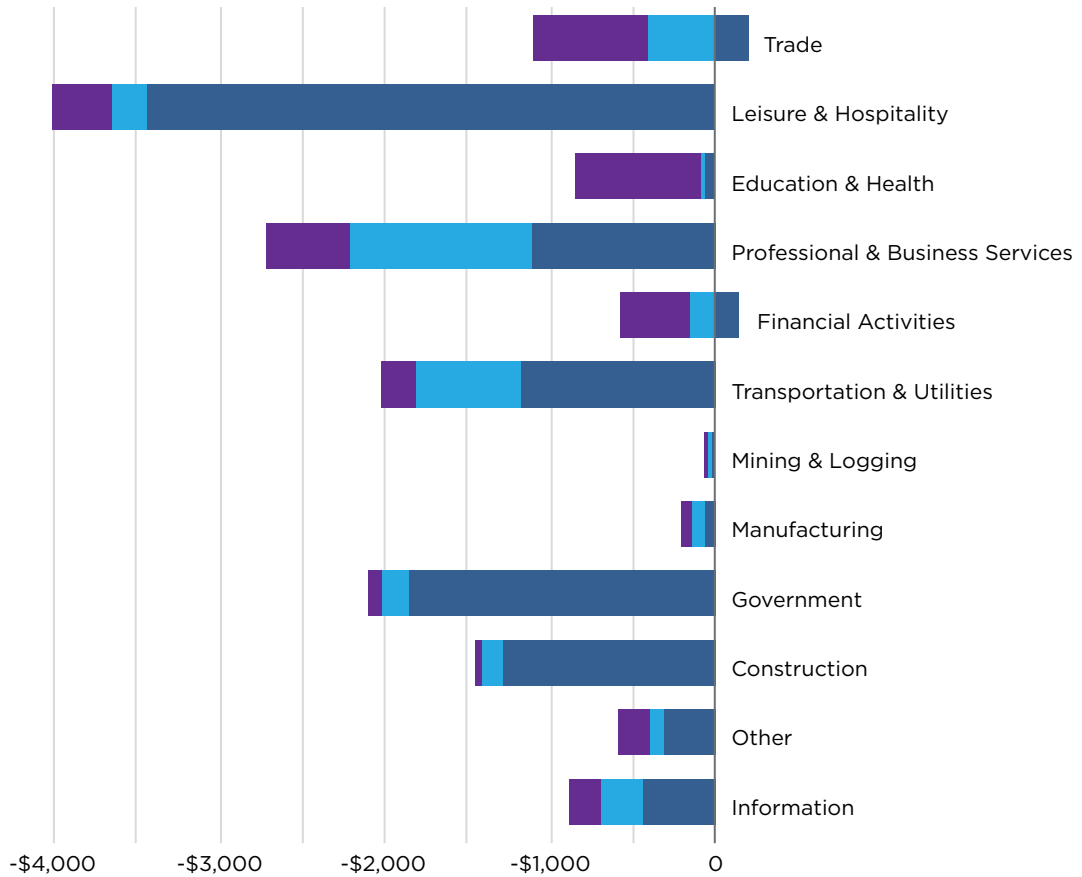
As shown in Table 5, the total maximum GDP impact from employer sentiment accounts for almost \$16.1 billion in losses across the state during the seven-month period. The two hardest hit economic sectors are Leisure and Hospitality (-\$3.9 billion at 24.9 percent) and Professional and Business Services (-\$2.7 billion at 16.9 percent).

TABLE 5. STATE GDP IMPACT (MILLION \$) – MARCH 2020 THROUGH SEPTEMBER 2020

Super Sectors	Direct	Indirect	Induced	Total	% of Total
Information	(\$435.2)	(\$249.6)	(\$192.7)	(\$877.5)	5.5%
Other	(\$319.7)	(\$81.4)	(\$182.8)	(\$583.9)	3.6%
Construction	(\$1,279.6)	(\$119.8)	(\$45.4)	(\$1,444.8)	9.0%
Government	(\$1,855.0)	(\$168.5)	(\$72.4)	(\$2,095.8)	13.0%
Manufacturing	(\$64.9)	(\$86.7)	(\$64.3)	(\$215.9)	1.3%
Mining and Logging	\$3.0	(\$9.6)	(\$0.8)	(\$7.4)	0.0%
Transportation and Utilities	(\$1,184.1)	(\$626.0)	(\$210.1)	(\$2,020.2)	12.6%
Financial Activities	\$154.9	(\$152.5)	(\$402.9)	(\$400.5)	2.5%
Professional and Business Services	(\$1,121.7)	(\$1,078.5)	(\$519.3)	(\$2,719.5)	16.9%
Education and Health	(\$63.3)	(\$12.9)	(\$753.2)	(\$829.4)	5.2%
Leisure and Hospitality	(\$3,421.5)	(\$214.1)	(\$364.1)	(\$3,999.6)	24.9%
Trade	\$216.8	(\$392.2)	(\$695.9)	(\$871.4)	5.4%
Total	(\$9,370.4)	(\$3,191.7)	(\$3,503.9)	(\$16,066.0)	100.0%

Source: Regional Economic Consulting Group, "Analysis of the Effects of Liability Shield on Florida's Economy: A Florida TaxWatch Project," November 10, 2020.

FIGURE 4. STATE GDP IMPACT (\$000,000s)



Source: Regional Economic Consulting Group, "Analysis of the Effects of Liability Shield on Florida's Economy: A Florida TaxWatch Project," November 10, 2020.

Fiscal Impacts on State and Local Governments

The fiscal impact on tax collections for state and local governments from March 2020 through September 2020 is estimated at a loss of \$1.49 billion (see Table 6). The largest driver in lost revenue during this seven-month period is sales tax (-\$765.2 million), followed by property tax (-\$520.7 million).

TABLE 6. STATE AND LOCAL TAX IMPACT (MILLIONS \$) - MARCH 2020 THROUGH SEPTEMBER 2020

State Tax Total	Local Tax Total	Total Taxes
(-\$765.2)	(-\$728.0)	(-\$1,493.2)

Source: Regional Economic Consulting Group, "Analysis of the Effects of Liability Shield on Florida's Economy: A Florida TaxWatch Project," November 10, 2020.

Summary of Economic Impacts

Table 7 summarizes the estimated impacts across different categories of job losses, GDP losses, and private income losses. This represents a maximum total for each category and reflects the potential impacts during this seven-month period due to employers' concern and their business outlook facing uncertainties and challenges in this current economy. Employer concern in the economy is estimated to account for a maximum 1.6 percent loss to GDP, and 12.9 percent of the total GDP loss since late 2019. If every single one of the 208,731 jobs were tied to litigation concerns, the maximum cost of that concern to the state GDP from March 2020 through September 2020 is \$16.1 billion; however, these are "worst-case" estimates and accordingly they must be considered within a range of potential outcomes.

As shown in Table 7, depending on the extent to which employers' confidence in the economy is shaken by the threat of opportunistic and predatory lawsuits, the Legislature's failure to enact a meaningful shield from liability could negatively impact the Florida economy from March 2020 through September 2020 by as much as \$16.1 billion (12.9 percent since the fourth quarter of 2019) with more than 208,000 jobs lost.

TABLE 7. SUMMARY OF POTENTIAL ECONOMIC IMPACTS - MARCH 2020 THROUGH SEPTEMBER 2020

Impact (%)	Job Impact	Personal Income Impact (Millions \$)	State GDP Impact (Millions \$)
100	208,731	\$14,693.7	\$16,066.0
75	156,549	\$11,020.3	\$12,049.5
50	104,366	\$7,346.9	\$8,033.0
25	52,183	\$368.5	\$4,016.5

Source: Regional Economic Consulting Group, "Analysis of the Effects of Liability Shield on Florida's Economy: A Florida TaxWatch Project," November 10, 2020.

Conclusions and Recommendations

Florida TaxWatch understands and acknowledges that immunity from civil liability will not stem the spread of COVID-19, nor will it prevent injury or harm or make the associated costs go away. Persons who contract COVID-19 could have contracted the coronavirus from almost anyone they have come into contact with, or at any business they have patronized over the past eight to ten months. As a result, proving a causal relationship will be a difficult burden for a plaintiff. Permitting unlimited civil litigation given the difficulty in proving the proximate cause of contracting COVID-19, even recognizing that the costs will be borne (absent negligence or intent to harm) by those who are injured or harmed and ultimately the taxpayers, is not in the taxpayers' best interest.

Even if those harmed have to burden the costs, if Florida's economy is to recover and regain its pre-pandemic prosperity, it is important that businesses, healthcare facilities, and other entities that are working hard to comply with public health directives or protective measures to reduce the risk of exposure to or transmission of COVID-19 are protected from unnecessary and costly civil liability, even when the plaintiffs cannot meet the current statutory burden of "preponderance of evidence." Responsible business owners and other covered entities who are acting in good faith to comply with public health directives and are investing in measures to protect their patrons and employees must have comfort that they will be able to open and operate their business without fear of opportunistic, predatory, and expensive litigation. It is also important to make sure that those acting in "bad faith" are held accountable for their negligence while ensuring that those who contract COVID-19 because of the gross negligence of others can recover for their injuries.

The analysis by the Regional Economic Consulting Group uses the difference between the projected employment tied to consumer optimism and the actual employment levels to estimate the portion of the change in the number of jobs attributable to employers' concern over litigation, and their economic outlook. Depending on the extent to which employers' confidence in the economy is shaken by the threat of opportunistic and predatory lawsuits, the Legislature's failure to enact a meaningful shield from liability could negatively impact the Florida economy from March 2020 through September 2020 by as much as \$16.1 billion (12.9 percent since the fourth quarter of 2019) with more than 208,000 jobs lost. The impact on personal income amounts to a total maximum possible loss of -\$14.6 billion. The total maximum effect on tax collections, both the state and local governments, is estimated at -\$1.5 billion loss with the lion's share coming from sales tax.

Florida TaxWatch supports the good work of the RESET Task Force and urges the Legislature to pass the Task Force's draft legislation with consideration of the following additions at the earliest opportunity:

- The rebuttable presumption provisions should be strengthened to make it clear that a covered entity (one that is following reasonable safety protocols) is entitled to the rebuttable presumption that a potential claimant assumes the risk when he or she enters certain premises that provide express warnings or disclaimers.
- The rebuttable presumption provisions should be strengthened to make it clear that, for the purposes of workers' compensation benefits, there is a rebuttable presumption that the contraction of COVID-19 by an essential employee, including but not limited to a health care worker or a public safety worker, is work-related. The presumption applies only to an essential employee who performs functions pertaining to those roles and involving interactions with the public during the public health emergency declared by the governor's executive orders.
- The draft legislation should limit a covered entity's liability to "actual economic compensatory damages," and to exclude any liability for non-economic or punitive damages.

Appendix 1.

EMERGENCY STATE ACTIONS TO LIMIT LIABILITY FROM COVID-19

- Alabama** On May 8, 2020, Governor Kay Ivey issued an Executive Order that offers protection for businesses, health care providers, universities, public institutions of higher education, and their employees, officers and agents from unwarranted legal liability stemming from COVID-19. Under the Governor's Proclamation, businesses, health care providers, and other covered entities will not be liable for the death or injury to persons or for damage to property resulting from an act or omission related to COVID-19, unless the claimant can show by clear and convincing evidence that the alleged death, injury, or damage was caused by the covered entity's "wanton, reckless, willful, or intentional misconduct." In cases where liability is established and the acts or omissions do not result in serious physical injury, liability is limited to actual economic compensatory damages. In cases involving wrongful death, liability is limited to an award of punitive damages.
- Alaska** On May 8, 2020, Governor Mike Dunleavy signed into law Senate Bill 241, which provides immunity from civil liability primarily to healthcare providers who take an action based upon an order from the state's health department. Local companies that manufacture personal protective equipment are immune from civil liability for damages resulting from injury to or the death of a user of the personal protective equipment if the manufacturer acted "in good faith" to respond to the COVID-19 pandemic. The immunity from civil liability does not protect businesses or healthcare providers from liability for "gross negligence, recklessness or intentional misconduct."
- Arizona** The Arizona legislature adjourned its regular session without the Senate taking action on House Bill 2912, which would have allowed COVID-19-related lawsuits only if a business acted with "gross negligence," essentially the reckless disregard for the consequences of the action on others. The burden of proof in any civil action that is based on the plaintiff contracting COVID-19 and that is filed pursuant to House Bill 2912 is "clear and convincing evidence."
- Arkansas** On June 15, 2020, Arkansas Governor Asa Hutchinson issued an Executive Order to protect Arkansas businesses from liability related to COVID-19. Businesses that opened or remained open during the COVID-19 pandemic are immune from civil liability for damages or injuries resulting from exposure to COVID-19 on the business premises; however, this immunity does not apply to "willful, reckless, or intentional misconduct" that results in injury or damages. There is a presumption that willful, reckless or intentional misconduct does not exist if the businesses are (a) substantially complying with health and safety directives or guidelines issued by the state; or (b) acting in good faith while attempting to comply. The "clear and convincing evidence" standard of proof established by other states is absent.
- California** The California General Assembly is currently considering a bill (No. 1759) that would provide immunity from civil liability to public and independent institutions of higher education for injuries related to COVID-19 infection. This immunity does not apply to claims from damages caused by "intentional misconduct, wanton or reckless misconduct, gross negligence, or willful and wanton negligence" if both of the following conditions exist: (1) The alleged negligence or misconduct is proven by "clear and convincing evidence" to have resulted in the transmission of COVID-19 that led to the injury, emotional distress, damage, death of a person, or economic loss; and (2) the action is not brought pursuant to Section 382 of the Code of Civil Procedure.
- Connecticut** On April 7, 2020, Governor Ned Lamont issued an executive order to protect hospitals and nursing homes from COVID-19 lawsuits and to exempt the medical care community from lawsuits over deaths or injuries involving shortages of personal protective equipment and other medical supplies during the pandemic. The executive order directed every workplace in the state to take additional protective measures to reduce the risk of transmission of COVID-19 between and among employees, customers, and other persons who might enter the workplace. Legally binding, statewide mandatory rules prescribing such additional protective measures were put into effect. Healthcare professionals and facilities were immune and protected from suit for civil liability for any injury or death alleged to have been sustained because of an individual's or healthcare facility's acts or omissions undertaken "in good faith" while providing health care services in support of the State's COVID-19 response.

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- Delaware** Delaware's Emergency Management Act provides immunity from civil litigation to qualified medical personnel who are engaged in emergency or disaster relief operations for the death or injury to persons, or damage to property. The immunity does not apply if the qualified medical personnel commit "intentional conduct and willful or wanton disregard of the rights of others resulting in death, injury or damages."
- Georgia** On June 26, 2020, the Georgia General Assembly passed Senate Bill 359, also known as the "Georgia COVID-19 Pandemic Business Safety Act." The Act, which currently awaits final approval by Governor Brian Kemp pending his office's legal review, intends to protect healthcare providers and certain other businesses, entities, and individuals in the State of Georgia from legal liability arising from COVID-19. However, the Act allows lawsuits to proceed if the claimant can prove "gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm" by one of the Act's covered parties. In other words, if the Act becomes law, the covered parties operating in Georgia would be shielded from lawsuits related to COVID-19 exposure, absent one of the carve-outs for gross negligence or wanton misconduct.
- Hawaii** On April 16, 2020, Governor Ige issued Executive Order 20-05 which provides immunity from civil liability to health care workers who act "in good faith" for any COVID-19-related death, injury, or property damage that occurs while rendering assistance. Civil immunity does not apply to "willful misconduct, gross negligence, or recklessness."
- Idaho** On August 24, 2020, the Idaho legislature introduced a series of bills[1] to provide immunity from civil liability to accredited institutions of higher education and to persons who take actions in an effort to "address or mitigate the disaster or emergency arising from a coronavirus-related disaster or emergency." The immunity does not apply to accredited institutions of higher education who act with "malice or criminal intent" and with "reckless, willful, and wanton conduct," and to persons whose actions are the result of "willful misconduct, reckless infliction of harm, or intentional infliction of harm."
- Illinois** On April 1, 2020 Governor J.B. Pritzker signed Executive Order 2020-19, which provides immunity from civil liability for health care professionals, volunteers, and facilities for any injury caused by any act or omission that occurred while the professional, volunteer, or facility was providing health care services in response to the COVID-19 outbreak. The immunity does not apply to injuries or deaths caused by "gross negligence or willful misconduct" of healthcare professionals or facilities, or or injuries or deaths caused by "willful misconduct" by healthcare volunteers.
- Indiana** Existing Indiana law provides immunity from civil liability to facilities and individuals for injuries resulting from healthcare services provided in response to an emergency. This immunity does not apply to injuries or deaths caused by "gross negligence or willful misconduct."
- Iowa** On June 18, 2020, Iowa Governor Kim Reynolds signed into law the COVID-19 Response and Back-to-Business Liability Act, which provides immunity from civil liability for Iowa businesses and healthcare providers for damages or injuries sustained from exposure to COVID-19 if the act or omission causing the alleged damage or injury was in "substantial compliance or was consistent with any federal or state statute, regulation, order, or public health guidance elated to COVID-19 that was applicable to the person or activity at the time of the alleged exposure or potential exposure." The Act prohibits a person from bringing a civil action alleging exposure to COVID-19 unless the action relates to a minimum medical condition, involves an act that was intended to cause harm, or involves an act that constitutes actual malice. Damages that may be recovered by a claimant for the cost of medical care shall not exceed the amounts actually paid to the healthcare providers who rendered treatment and any amounts necessary to satisfy the charges that have been incurred but not yet been paid.
- Kansas** On June 8, 2020, Kansas Governor Laura Kelly signed the COVID-19 Response and Reopening for Business Liability Protection Act, which provides immunity from civil liability for COVID-19 related claims to Kansas businesses acting in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued. The provisions of this Act do not apply to civil liability when it is established that the act, omission, or decision constituted gross negligence or willful, wanton, or reckless conduct.
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Kentucky On March 30, 2020, Governor Andy Beshear signed into law Senate Bill 150, which provides limited civil immunity to healthcare providers and manufacturers of personal protective equipment and personal hygiene supplies from liability for COVID-19-related negligence and product liability. The conduct of healthcare providers is immune from liability to the extent that the provider “acts as an ordinary, reasonable, and prudent health care provider would have acted under the same or similar circumstances.” The conduct of manufacturers of personal protective equipment and personal hygiene supplies is immune from liability to the extent the companies “acted in good faith and in an ordinary, reasonable, and prudent manner under the same or similar circumstances.” The immunity does not apply to claims of “gross negligence, or willful and wanton conduct.”

Louisiana Louisiana Governor John Bel Edwards has signed two measures passed during the 2020 legislative session legislation that provide immunity to businesses from civil liability for COVID-19 exposure, and that make it difficult for anyone to recover damages for exposure to COVID-19, even if that exposure results in death or serious injury. The first measure (Act 305) shields businesses from liability for COVID-19 exposure if they are in substantial compliance with governmentally established COVID-19 procedures except in cases of “gross negligence or willful and wanton misconduct.” The second measure (Act 336) limits the ability of persons claiming injury from exposure to COVID-19 to recover damages. Recovery of damages is allowed only if: (a) the business failed to substantially comply with applicable COVID-19 procedures established by the public agency governing those operation; and (b) the death or injury was caused by “gross negligence of reckless misconduct.”

Maryland Under existing Maryland law, healthcare providers are immune from civil or criminal liability if the provider acts in good faith and under a catastrophic health emergency proclamation. The immunity applies only if the provider acts “in good faith.”

Massachusetts On April 17, Governor Charlie Baker signed into law Chapter 64 of the Acts of 2020, which provides to health care professionals and health care facilities immunity from suit and civil liability for any damages alleged to have been sustained by an act or omission by the health care professional or health care facility in the course of providing health care services during the period of the COVID-19 pandemic. This immunity does not apply if the damage was caused by an act or omission constituting “gross negligence, recklessness or conduct with an intent to harm or to discriminate.”

Michigan On March 29, 2020, Governor Gretchen Whitmer issued Executive Order 2020-31, which provides immunity from civil liability to healthcare workers who provide services in support of the state’s response to COVID-19. The immunity does not apply to claims of “gross negligence or willful misconduct.” Senate Bill 899, which would have provided additional protections to healthcare workers, was vetoed by the Governor in August.

Minnesota Minnesota’s emergency management act provides immunity from civil liability to “responders” when acting under an emergency plan. The term “responders” is broadly defined and includes physicians, nurses, first responders, hospitals, clinics, laboratories, and other health care providers and entities. The immunity applies to damages from “good faith acts or omissions” by responders in rendering emergency care. The immunity does not apply if the responder acts in a “willful and wanton or reckless manner” when providing care or assistance.

Mississippi On July 8, 2020, Mississippi Governor Tate Reeves signed the Mississippi Back-to-Business Liability Assurance and Health Care Emergency Response Liability Protection Act,” which is designed to protect businesses from civil damages for injuries or death resulting from or related to actual, alleged, or potential exposure to COVID-19. Businesses are immune from civil liability if they can show that they attempted “in good faith” to follow applicable public health guidance. Healthcare professionals and facilities are immune from civil liability related to COVID-19 for “acts or omissions while providing health care services related to a COVID-19 state of emergency.” Civil immunity would not apply if it can be shown by “clear and convincing evidence” that a defendant acted with “actual malice or willful, intentional misconduct.”

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- Missouri** On July 1, 2020, Governor Mike Parson signed into law Senate Bill 591, which provides immunity from civil liability to small businesses. Under the new law, employers are liable for the actions of their employees if they ordered the employee to act in a manner that caused harm; if they knew about the act; or if the employer knew that their employee was unfit to do their job.
- Montana** Under existing Montana law, healthcare professionals who “in good faith” render or fail to render emergency care are immune from civil liability during declared states of emergency. The immunity does not apply when the damage or injury is caused by “gross negligence or willful and wanton misconduct” and in cases of “willful misconduct, gross negligence, or bad faith.”
- Nevada** On August 11, 2020, Governor Steve Sisolak signed into law Senate Bill 4, which provides immunity from civil liability to businesses in the event a customer contracts COVID-19 while on the business premises or during an activity conducted or managed by the business if the business is in “substantial compliance with controlling health standards”. The business is immune from civil liability unless it can be proven that the business violated controlling health standards with gross negligence and the gross negligence was the proximate cause of the plaintiff’s personal injury or death.
- New Jersey** On April 13, 2020, Governor Phil Murphy signed into law SB 2333, which provides immunity from civil liability to healthcare facilities and professionals in the course of providing medical services to COVID-19 patients, including those undertaken in good faith to support efforts to treat and prevent the spread of COVID-19. Senate Bill 2333 also provides immunity from civil and criminal civil and criminal liability for any damages related to the allocation of ventilators or other scarce medical resources. Immunity does not apply if the acts or omissions constitute a crime or fraud, malice, or “gross negligence, recklessness, or willful misconduct.” In August, legislation was introduced that would provide immunity from civil liability for businesses against any damage claim stemming from COVID-19 exposure occurring onsite at the businesses. The immunity would not apply to “willful misconduct, reckless infliction of harm or the intentional infliction of harm.”
- New Mexico** In June 2020, legislation was introduced that would provide immunity from civil liability for business owners for a “breach of duty of care” when damages or injury are alleged to result from exposure or potential exposure to COVID-19. The immunity does not apply if the owner failed to comply with “federal and state laws that provide requirements for mitigation of the spread of coronavirus disease 2019.”
- New York** On April 3, 2020, Governor Andrew Cuomo signed into law the Emergency Disaster Treatment Act, which provides immunity from civil and criminal liability to healthcare professionals and facilities, and volunteer organizations, for damages caused by an act or omission in the course of providing healthcare services, if done in “good faith” and pursuant to a COVID-19 emergency rule. These immunities do not apply to “gross negligence, reckless misconduct, intentional harm or willful or intentional criminal misconduct.”
- North Carolina** On July 2, 2020, North Carolina Governor Roy Cooper signed legislation (House Bill 118) designed to protect businesses from civil damages arising from any act or omission alleged to have resulted in the contraction of COVID-19. Businesses are required to provide reasonable notice of actions taken on the premises to reduce the risk of transmission of COVID-19 to individuals present on the premises. No person is liable for the failure of any individual to comply with rules, policies, or guidelines contained in the notice of actions. The civil immunity does not apply to acts or omissions that constitute “gross negligence, willful or wanton conduct, or intentional wrongdoing.”
- Ohio** On September 14, 2020, Governor Mike DeWine signed legislation (House Bill 606) that provides all entities civil immunity for injuries, damages, or death related to exposure to, transmission of, or contraction of COVID-19. The civil immunity does not apply if it can be shown that the exposure, transmission, or contraction was the result of “reckless conduct, intentional misconduct, or willful or wanton misconduct.” Healthcare providers are also protected from both professional disciplinary action and tort liability resulting from the “provision, withholding, or withdrawal” of healthcare services resulting from the COVID-19 pandemic. Claimants can still recover damages in a civil action if it can be proven that a healthcare provider acted with “reckless disregard for the consequences” of their actions or engaged in “intentional misconduct or willful or wanton misconduct”.
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- Oklahoma** On May 21, 2020, Governor Kevin Stitt signed legislation (Senate Bill 1946) that provides civil immunity from a claim by someone who was exposed to COVID-19 to everyone, provided that no laws were violated and the business accused followed official health guidelines. The civil immunity would not extend to claims where gross negligence or misconduct can be shown.
- Oregon** On June 30, 2020, Governor Kate Brown signed into law House Bill 4212, which provides immunity to certain public entities from civil liability for claim of illness, injury or death from COVID-19. The immunity does not apply to conduct that constitutes “gross negligence, malice or fraud, that is willful, intentional or reckless, that is criminal or that is unrelated to COVID-19.”
- Pennsylvania** On May 6, 2020, Governor Tom Wolf issued an Executive Order providing healthcare professionals immunity from civil liability related to the death of or any injury to a person or for loss of or damage to property as a result of emergency services activity related to COVID-19. This immunity does not apply to cases of “willful misconduct or gross negligence,” and does not apply to the rendering of non-COVID-19 treatment or services. In June, legislation was introduced that, if enacted, would provide immunity from civil liability to health care practitioners and providers acting “in good faith” for any act or omission in the course of rendering health care during the state of a disaster emergency. Immunity from civil liability would also be provided to medical equipment manufacturers and providers for claims stemming from an act or omission that is related to the proper use, condition or nature of the health care equipment. Such immunity would not extend to “criminal actions, intentional torts or instances involving gross negligence.”
- Rhode Island** On April 10, 2020, Governor Gina Raimondo issued Executive Order 20-121, which provides immunity from civil liability to health care facilities and workers, and to other individuals and organizations assisting in the response to COVID-19. These covered entities are not liable for the death of, or injury to, persons, or for damage to property, as a result of COVID-19 response activities. The immunity does not apply to negligence that occurs in the course of providing patient care to patients without COVID-19, and for “willful misconduct, gross negligence, or bad faith.”
- South Carolina** The legislature is considering a joint resolution that would provide immunity from civil liability to “health care providers and businesses that follow public health guidance,” regarding COVID-19. Covered entities that follow applicable public health guidance will be immune from liability for claims arising from acts or omissions in the course of operating their businesses unless a claimant can prove, by “clear and convincing evidence,” that the damages were caused by “knowingly reckless, willful or intentional misconduct,” or by failing to make any attempt to follow public health guidance.
- Tennessee** On August 18, 2020, Governor Bill Lee signed the Tennessee COVID-19 Recovery Act, which provides immunity from civil liability for loss, damage, injury, or death arising from COVID-19 to any person, healthcare provider, or public institution of higher education. The immunity does not apply if a claimant proves by “clear and convincing evidence” that the loss, damage, injury, or death was proximately caused by an act or omission of the institution or its employee or agent constituting “gross negligence or willful misconduct.”
- Utah** On May 4, 2020, Governor Gary Herbert signed legislation (Senate Bill 3007) that grants businesses immunity from civil liability for injury or damage resulting from exposure to COVID-19. The immunity from civil liability does not apply in cases of “willful misconduct, reckless infliction of harm or intentional infliction of harm.”
- Vermont** On April 10, Governor Phil Scott amended Executive Order 01-20 to provide immunity for healthcare facilities, healthcare providers, and healthcare volunteers from civil liability for any death, injury, or loss resulting from COVID-19 related emergency management services or response activities, except in the case of willful misconduct or gross negligence.
- Virginia** Existing law provides immunity from civil liability to healthcare providers for any injury or wrongful death during a state or local emergency and the provider was unable to provide the requisite level of care as a result of the emergency. The immunity does not apply in cases of “gross negligence or willful misconduct.”
-

Wisconsin On April 15, Governor Tony Evers signed into law Assembly Bill 1038, which provides immunity from civil liability for health care professionals acting “in good faith” and “consistent with state or federal guidance” to address the COVID-19 pandemic and limited immunity for the manufacturers, distributors and sellers of emergency medical supplies and equipment that donate or sell their products.

Wyoming On May 20, 2020, Governor Mark Gordon signed into law Senate Bill 1002, which provides immunity from civil liability to all businesses that “act in good faith” to follow the instructions of a state or local health officer in responding to COVID-19. The immunity does not apply in cases of “gross negligence” or “willful and wanton misconduct.”

Sources: King & Spalding COVID-19 Survey of State Liability Reform, retrieved from <https://www.kslaw.com/pages/covid-19-survey-of-state-liability-reform>, December 3, 2020. Ogletree Deakins COVID-19 Survey of State Liability Reform, retrieved from <https://ogletree.com/app/uploads/covid-19/COVID-19-liability-shield-50-state-survey.pdf>, December 3, 2020.

Appendix 2.

COVID-19-RELATED FLORIDA LAWSUITS

Banking / Financial Services	14	General Court Administrative Orders Related to COVID-19	2
Challenges Against Foreign Sovereigns or NGOs		Habeas / Confinement Conditions / Prisoner & Detainee Petitions	27
Cases Against PRC and Its Political Subdivisions	1	Health / Medical	
Subtotal	1	Right to Visit Nursing Home Patients	1
Civil Rights		Wrongful Death	4
Business Closure, Stay-At-Home Order and Group		Other	2
Gathering Ban Challenges	14	Subtotal	7
Essential Versus Non-Essential Business Designations	1	Insurance	
Freedom of Information Act Disputes	1		126
Government Taking / Commandeering of Property	1	Intellectual Property	
Other Public Safety Measures (Including Private Parties)		Trademark	3
Trying to Enforce Government Bans	22	Subtotal	3
Schools Closing	2	Labor & Employment	
Voting	4	Conditions of Employment (e.g., Lack of PPE, Exposure, Wrongful Death, Personal Injury)	12
Other	13	Leaves of Absence	7
Subtotal	58	Under-, Over-, and Non-Payment Issues / Wage Issues	17
Consumer Cases		Unlawful Termination	51
False Advertising or UDTPA-Type Claims	10	Other	2
Non-Education-Related Cancellations / Postponements (e.g., Prepaid Air, Cruise, Events, Vacation Rentals)	14	Subtotal	89
Personal Injury (i.e., From Exposure)	2	Miscellaneous Tort	
Price Gouging	2	Libel / Slander / Defamation	2
Recurring Membership Fees Charged During Shutdown	3	Other	1
Other	2	Subtotal	3
Subtotal	32	None/ Not Coded	
Contract Disputes			9
Cancel or Suspend Contract Performance (i.e., Force Majeure)	6	Real Property	
Failure to Close a Deal Due to COVID-19	2	Damage to Property	1
Failure to Refund	11	Landlord / Tenant Issues (e.g., Eviction, Failure to Pay)	31
Termination of Supply Contract	3	Mortgage Disputes	1
Other	10	Refusal to Extend Closing Date	2
Subtotal	32	Other	5
Education		Subtotal	40
Request for Refund	15	Securities Litigation	
Other	9	Derivative Shareholder Claims	1
Subtotal	24	Other	4
		Subtotal	5
		TOTAL	490

Source: Hunton, Andrews, Kurth, LLP COVID-19 Complaint Tracker (December 7, 2020)

Appendix 3

IMPLAN Model and Definitions

IMPLAN Model

IMPLAN is a leading provider of economic impact data and analytical software. The company began in 1972 working with the US Forest Service and has grown to a current user base of academics, governments, economic developers, corporations, nonprofits, and consultants. Input-Output (I-O) modeling is based on the foundational concept that all industries, households, and government in the economy are connected through buy-sell relationships; therefore, a given economic activity supports a ripple of additional economic activity throughout the economy.

IMPLAN is an I-O modeling system that uses annual, regional data to map these buy-sell relationships so users can predict how specific economic changes will impact a given regional economy or estimate the effect of past or existing economic activity. Input-output accounting (using the IMPLAN model as an example) describes commodity flows from producers to intermediate and final consumers. The total industry purchases of commodities, services, employment compensation, value added, and imports are equal to the value of the commodities produced. Industries producing goods and services for final use and purchases for final use (final demand) drive the model. Industries producing goods and services for final demand purchase goods and services from other producers. These other producers, in turn, purchase goods and services. This buying of goods and services continues until leakages from the region stop the cycle. The resulting sets of multipliers describe the change of output for every regional industry caused by a US \$1.00 change in final demand for any given industry.

Input-Output (I-O) Analysis and IMPLAN are designed to predict the ripple effect of an economic activity by using data about previous spending. Production in a given sector in an economy supports demand for production in sectors throughout the economy, both due to supply chain spending and spending by workers. One of the tenets that makes IMPLAN so attractive is that there are no black boxes. Analysts can view the background data used in the models and customize them with local data and knowledge.

Direct Effects

Direct effects are the set of expenditures applied to the I-O for an impact analysis. It is the initial exogenous change in final demand in terms of industry output, employment, and labor income dollars. It is one or more production changes or expenditures made by producers/consumers as a result of an activity or policy. Direct effects can be positive or negative. These initial changes are determined by an analyst and demonstrate the result of an activity or policy being analyzed. Applying these initial changes to the multipliers in IMPLAN will then display how a region will respond economically to these changes. When consumers purchase goods and services, they create final demand to the Industries producing the goods and services they consume.

Indirect Effects

Indirect effects are the business to business purchases in the supply chain taking place in the region that stem from the initial industry input purchases. As the industry specified spends their money in the region with their suppliers, this spending is shown through the indirect effect.

Induced Effects

Induced effects are the values stemming from household spending of Labor Income, after removal of taxes, savings, and commuter income. The induced effects are generated by the spending of the employees within the business' supply chain.

Employment

Employment data in IMPLAN follows the same definition as Bureau of Economic Analysis Regional Economic Accounts (BEA REA) and Bureau of Labor Statistics Census of Employment and Wages (BLS CEW) data, which is full-time/part-time annual average. Thus, 1 job lasting 12 months = 2 jobs lasting 6 months each = 3 jobs lasting 4 months each. A job can be either full-time or part-time. Similarly, a job that lasts one quarter of the year would be 0.25 jobs. Note that a person can hold more than one job, so the job count is not necessarily the same as the count of employed persons. Jobs in IMPLAN are not the same as a full-time equivalent number.

Labor Income

Labor Income represents the total value of all forms of employment income paid throughout a defined economy during a specified period of time. It reflects the combined cost of total payroll paid to employees (e.g. wages and salaries, benefits, payroll taxes) and payments received by self-employed individuals and/or unincorporated business owners (e.g. capital consumption allowance) across the defined economy. Labor Income (LI) encompasses two additional representative metrics called Proprietor Income (PI) and Employee Compensation (EC).

Value Added

Value Added represents the difference between *Output* and the cost of *Intermediate Inputs* throughout a defined economy during a specified period of time. It equals gross Output minus Intermediate Inputs (consumption of goods and services purchased from other industries or imported). Value Added is a measure of the contribution to GDP made by an individual producer, Industry, or Sector.

Output

All analysis in IMPLAN is based on Output, which is the value of production by industry in a calendar year. IMPLAN Output data largely come from the same sources as those used by the BEA in developing their Benchmark Input-Output tables. Since output is the total production value of a Sector, it includes all components of production value or output for a given Sector: $\text{Output} = \text{Employee Compensation} + \text{Proprietor Income} + \text{Intermediate Expenditures} + \text{Tax on Production and Imports} + \text{Other Property Income}$.

Other Property Income

Other Property Income (OPI), previously denoted as "Profit" includes consumption of fixed capital (CFC), corporate profits, and business current transfer payments (net). Subsidies for government enterprises is considered negative profit, therefore any subsidization of a government enterprise will count as a negative value towards the government enterprise Sector's OPI.

Taxes on Production & Imports

Taxes on Production & Imports, less subsidies (TOPI) includes sales and excise taxes, customs duties, property taxes, motor vehicle licenses, severance taxes, other taxes, and special assessments. For all Sectors other than government enterprises, subsidies are counted as a negative value towards TOPI.

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As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

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Tony Carvajal	<i>Executive Vice President</i>
Robert G. Nave	<i>VP of Research</i>
Kurt Wenner	<i>VP of Research</i>

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Steve Evans	<i>Senior Advisor</i>

RESEARCH PROJECT TEAM

Tony Carvajal	Executive Vice President	
Robert G. Nave	VP of Research	<i>Principal Author</i>
Clyde L. Diao, Ph.D.	Regional Economic Consulting Group	<i>Contributing Author</i>
Jared Parker, MS	Regional Economic Consulting Group	<i>Contributing Author</i>
Chris Barry	Vice President of Communications	<i>Design, Layout, Publication</i>

All Florida TaxWatch research done under the direction of Dominic M. Calabro, President, CEO, Publisher & Editor.

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Florida TaxWatch
106 N. Bronough St.
Tallahassee, FL 32301

o: 850.222.5052
f: 850.222.7476

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