

HB 2638 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 2/24

WHAT THE MEASURE DOES:

Provides liability protection to persons acting in reasonable compliance with guidance applicable to the person's professional or business activities during a COVID-19 emergency period. Defines guidance as executive orders, federal guidelines, state rules, local rules, and state informational materials that create a standard or waive, suspend, or modify otherwise applicable laws or ordinances relating to the person's professional or business services. Specifies that if person is in compliance with any applicable guidance, even if multiple sources of guidance exist, liability protection attaches. Specifies liability protections do not apply to acts taken with gross negligence, reckless, wanton, or intentional misconduct or failure to provide services in good faith, or false claims, fraud, workers' compensation, or acts unrelated to the COVID-19 emergency. Specifies process for striking prohibited claims. Places initial burden of showing prima facie bar of claim on defendant to show that defendant was in reasonable compliance with guidance applicable to defendant's business or professional activities. Shifts burden to plaintiff to present substantial evidence to support a prima facie case that claim is not barred.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

On March 8, 2020, Governor Brown declared a state of emergency due to COVID-19 infections. At the time, there were 14 presumptive or confirmed cases in the state. As of February 23rd, there were nearly 155,000 cases and 2,162 deaths in the state. In response to the COVID-19 emergency, various government entities at state, local, and federal levels, have issued guidance and orders directing social distancing and methods for slowing the spread of coronavirus infection.

House Bill 2638 offers liability protection for damages caused by a person acting in reasonable compliance with a COVID-19 guidance applicable to the person's business or professional services. Liability protection is not extended for actions unrelated to COVID-19, or for those taken in gross negligence, recklessly, wantonly, or intentionally. The measure also does not provide liability protection for workers' compensation claims, fraud, or false claims brought on behalf of the state. HB 2638 creates a process for striking a claim early in the legal process.