MISSISSIPPI LEGISLATURE

REGULAR SESSION 2020

By: Representative Mims

To: Rules

HOUSE BILL NO. 1779

AN ACT TO CREATE THE HEALTH CARE EMERGENCY RESPONSE LIABILITY PROTECTION ACT; TO PROVIDE IMMUNITY FROM LIABILITY TO HEALTH CARE PROVIDERS AND HEALTH CARE FACILITIES THAT PROVIDE CARE DURING A STATE OF EMERGENCY IN CERTAIN CIRCUMSTANCES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act shall be known and may be cited as "The Health Care Emergency Response Liability Protection Act."

SECTION 2. As used in this act, the following words shall be defined as provided in this section:

(a) "COVID-19" means the Coronavirus Disease 2019.

(b) "Health care facility" means:

(i) Any facility in which health care services are provided, including, but not limited to, any licensed or state-approved facility; or

(ii) Any field hospital, modular field treatment facility, or other facility designated by the State Department of Health or Mississippi Emergency Management Agency for temporary
use for the purpose of providing health care services related to a state of emergency.

(c) "Health care professional" means:

(i) Any person who is licensed, registered, permitted or certified in any state to provide health care services or employed by a health care facility to provide health care services, whether paid or unpaid, including persons engaged in telemedicine or telehealth, and any employee, agent or contractor of such person;

(ii) Any emergency medical technician who is licensed in any state; or

(iii) Any volunteer who is approved by or works under the direction of the State Department of Health or Mississippi Emergency Management Agency and who provides health care services in response to a state of emergency.

(d) "Health care services" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

(e) "State of emergency" means (i) a public health emergency related to COVID-19 declared by the United States Secretary of Health and Human Services under Section 319 of the Public Health Service Act (42 USC Section 247d); (ii) a Presidential declaration of emergency related to COVID-19 under the National Emergencies Act or the Stafford Act; or (iii) a state
of emergency related to COVID-19 proclaimed by the Governor of the State of Mississippi under Section 33-15-11(b)(17).

SECTION 3. (1) Any health care professional or health care facility shall be immune from suit for any injury or death directly or indirectly sustained because of the health care professional's or health care facility's acts or omissions while providing health care services related to a state of emergency. The immunity takes effect when the state of emergency is declared, applies to any health care services performed during the state of emergency, including any period of renewal or extension, and terminates ninety (90) days after the end of the state of emergency. The immunity includes, but is not limited to, injury or death resulting from screening, assessing, diagnosing or treating persons in relation to the state of emergency or the medical conditions causing the state of emergency, or acts or omissions while providing health care services to persons unrelated to the state of emergency when those acts or omissions were intended to support the state's response to the state of emergency, including, but not limited to, the following:

(a) Delaying or cancelling nonurgent or elective dental, medical or surgical procedures, or altering the diagnosing or treatment of any person in response to an order, directive or guideline issued by the federal, state or a local government;

(b) Diagnosing or treating patients outside the normal scope of the health care professional's license or practice;
(c) Using equipment or supplies outside of the product's normal use for medical practice and the provision of health care services, including using or modifying a medical device for an unapproved use or indication;

(d) Prescribing, administering or dispensing a pharmaceutical for off-label use to treat a patient in relation to a state of emergency;

(e) Conducting tests or providing treatment to any person outside of the premises of standard health care facilities; or

(f) Acts or omissions undertaken by a health care professional or health care facility because of a lack of staffing, facilities, equipment, supplies or other resources attributable to the state of emergency that make it impractical for the health care professional or health care facility to provide the level or manner of care to any person that otherwise would have been required in the absence of the state of emergency.

(2) The immunity provided in subsection (1) of this section shall not extend to acts or omissions that constitute reckless disregard for a person's health and safety or willful misconduct that result in death or personal injury.

(3) This act shall be liberally construed with regard to immunizing health care professionals or health care facilities for acts or omissions undertaken while providing health care services related to a state of emergency.
SECTION 4. Nothing in this act shall be construed to preempt, remove or limit any applicable defense or immunity from civil liability otherwise available to any health care professional or health care facility.

SECTION 5. This act shall take effect and be in force from and after its passage.