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To: Judiciary, Division A

SENATE BILL NO. 3049
(As Sent to Governor)

1 AN ACT TO CREATE THE MISSISSIPPI BACK-TO-BUSINESS LIABILITY
2 ASSURANCE AND HEALTH CARE EMERGENCY RESPONSE LIABILITY PROTECTION
3 ACT; TO PROVIDE IMMUNITY FROM SUIT AND LIABILITY TO HEALTH CARE
4 PROVIDERS AND HEALTH CARE FACILITIES THAT PROVIDE CARE DURING A
5 STATE OF EMERGENCY AND CERTAIN CIRCUMSTANCES; TO DEFINE DUTY OF
6 CARE FOR PREMISES OWNERS; TO PROVIDE IMMUNITY FROM SUIT AND
7 LIABILITY FOR INDIVIDUALS, STATE AND LOCAL GOVERNMENT,
8 ASSOCIATIONS, FOR-PROFIT AND NONPROFIT ENTITIES, RELIGIOUS AND
9 CHARITABLE ORGANIZATIONS; TO PROVIDE SAFE HARBOR COMPLIANCE WITH
10 PUBLIC HEALTH GUIDANCE; TO PROVIDE IMMUNITY FROM SUIT AND
11 LIABILITY FOR PRODUCTS MADE, SOLD OR DONATED IN RESPONSE TO
12 COVID-19 AND RELATED CIRCUMSTANCES; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** This act shall be known and may be cited as the
15 "Mississippi Back-to-Business Liability Assurance and Health Care
16 Emergency Response Liability Protection Act."

17 **SECTION 2.** As used in this act, the following words shall
18 have the following meanings:

19 (a) "COVID-19" means the novel coronavirus identified
20 as SARS-CoV-2, the disease, health condition or threat caused by
21 the novel coronavirus SARS-CoV-2, or a virus mutating therefrom,
22 and conditions associated with the disease.

23 (b) "COVID-19 State of Emergency" means:



24 (i) A public health emergency related to COVID-19
25 declared by the United States Secretary of Health and Human
26 Services under Section 319 of the Public Health Service Act (42
27 USC Section 247d);

28 (ii) A Presidential declaration of emergency
29 related to COVID-19 under the National Emergencies Act or the
30 Stafford Act; or

31 (iii) A state of emergency related to COVID-19
32 proclaimed by the Governor of the State of Mississippi under
33 Section 33-15-11(b) (17).

34 (c) "Disinfecting or cleaning supplies" includes, but
35 is not limited to, hand sanitizers, cleaners, disinfectants,
36 sprays and wipes intended for use in removal or mitigation of
37 bacterial or viral disease-causing agents from surfaces or spaces.

38 (d) "First responder" means state and local law
39 enforcement personnel, fire department personnel, emergency
40 medical personnel, ambulance service provider personnel, emergency
41 management personnel and public works personnel who may be
42 deployed in response to the COVID-19 state of emergency.

43 (e) "Health care facility" means:

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

47 (ii) Any field hospital, modular field-treatment
48 facility or other facility designated by the State Department of



49 Health or the Mississippi Emergency Management Agency for
50 temporary use for the purpose of providing health care services
51 related to the COVID-19 state of emergency.

52 (f) "Health care professional" means:

53 (i) A person who is licensed, registered,
54 permitted, or certified in any state to provide health care
55 services, whether paid or unpaid, including persons engaged in
56 telemedicine or telehealth, and any employee, agent or contractor
57 of such person;

58 (ii) An emergency medical technician who is
59 licensed in any state; or

60 (iii) A volunteer or military personnel who is
61 approved by or works under the direction of the State Department
62 of Health or the Mississippi Emergency Management Agency and who
63 provides health care services in response to the COVID-19 state of
64 emergency in the State of Mississippi.

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

68 (h) "Person" means an individual, the state and
69 political subdivisions as defined in Section 11-46-1, association,
70 educational entity, for-profit or nonprofit entity, religious
71 organization or charitable organization.

72 (i) "Personal protective equipment" means coveralls,
73 face shields, gloves, gowns, masks, respirators or other equipment



74 designed to protect the wearer from the spread of infection or
75 illness.

76 (j) "Premises" means any physical place serving a
77 commercial, residential, educational, religious, governmental,
78 cultural, charitable or health care purpose.

79 (k) "Public health guidance" means written guidance
80 related to the COVID-19 state of emergency that is issued by an
81 executive agency or regulatory agency of the federal government or
82 an executive agency of the State of Mississippi.

83 (l) "Qualified product" means personal protective
84 equipment used to protect the wearer from COVID-19 or the spread
85 of COVID-19; medical devices, equipment, and supplies used to
86 treat a person with COVID-19, including products that are used or
87 modified for an unapproved use to treat COVID-19 or prevent the
88 spread of COVID-19; medical devices, equipment, or supplies
89 utilized outside of the product's normal use to treat a person
90 with COVID-19 or to prevent the spread of COVID-19; medications
91 used to treat COVID-19, including medications prescribed or
92 dispensed for off-label use to attempt to combat COVID-19; tests
93 to diagnose or determine immunity to COVID-19 which have been
94 approved by or submitted to the United States Food and Drug
95 Administration ("FDA") for approval within FDA-prescribed time
96 periods; and components of qualified products.

97 **SECTION 3.** (1) A person, or agent of that person, who
98 attempts in good faith to follow applicable public health guidance



99 shall be immune from suit for civil damages for any injuries or
100 death resulting from or related to actual or alleged exposure or
101 potential exposure to COVID-19 in the course of or through the
102 performance or provision of its functions or services.

103 (2) A person, or agent of that person, shall be immune from
104 suit for civil damages for injuries or death resulting from or
105 related to actual or alleged exposure or potential exposure to
106 COVID-19 in the course of or through the performance or provision
107 of its functions or services in the time before applicable public
108 health guidance was available.

109 (3) An owner, lessee, occupant or any other person in
110 control of a premises, who attempts, in good faith, to follow
111 applicable public health guidance and directly or indirectly
112 invites or permits any person onto a premises shall be immune from
113 suit for civil damages for any injuries or death resulting from or
114 related to actual or alleged exposure or potential exposure to
115 COVID-19.

116 **SECTION 4.** (1) Any health care professional or health care
117 facility shall be immune from suit for any injury or death
118 directly or indirectly sustained because of the health care
119 professional's or health care facility's acts or omissions while
120 providing health care services related to a COVID-19 state of
121 emergency. The immunity takes effect when the COVID-19 state of
122 emergency is declared, applies to any health care services
123 performed during the COVID-19 state of emergency, including any



124 period of renewal or extension, and terminates one (1) year after
125 the end of the COVID-19 state of emergency. The immunity
126 includes, but is not limited to, injury or death resulting from
127 screening, assessing, diagnosing or treating persons in relation
128 to the COVID-19 state of emergency or the medical conditions
129 causing the COVID-19 state of emergency, or acts or omissions
130 while providing health care services to persons unrelated to the
131 COVID-19 state of emergency when those acts or omissions were
132 intended to support the state's response to the COVID-19 state of
133 emergency, including, but not limited to, the following:

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

138 (b) Diagnosing or treating patients outside the normal
139 scope of the health care professional's license or practice;

140 (c) Using equipment or supplies outside of the
141 product's normal use for medical practice and the provision of
142 health care services, including using or modifying a medical
143 device for an unapproved use or indication;

144 (d) Prescribing, administering or dispensing a
145 pharmaceutical for off-label use to treat a patient in relation to
146 a COVID-19 state of emergency;



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

150 (f) Acts or omissions undertaken by a health care
151 professional or health care facility because of a lack of
152 staffing, facilities, equipment, supplies or other resources
153 attributable to the COVID-19 state of emergency that make it
154 impractical for the health care professional or health care
155 facility to provide the level or manner of care to any person that
156 otherwise would have been required in the absence of the COVID-19
157 state of emergency.

158 (2) This act shall be liberally construed with regard to
159 immunizing health care professionals or health care facilities for
160 acts or omissions undertaken while providing health care services
161 related to a COVID-19 state of emergency.

162 **SECTION 5.** (1) A person who designs, manufactures, labels,
163 sells, distributes, or donates a qualified product in response to
164 COVID-19 shall be immune from suit for civil damages for any
165 injuries resulting from or related to actual or alleged exposure
166 or potential exposure to COVID-19 caused by a qualified product.

167 (2) A person who designs, manufactures, labels, sells,
168 distributes, or donates disinfecting or cleaning supplies or
169 personal protective equipment in response to COVID-19 outside the
170 ordinary course of the person's business shall be immune from suit
171 for civil damages for any injuries resulting from or related to



172 actual or alleged exposure or potential exposure to COVID-19
173 caused by the disinfecting or cleaning supplies or personal
174 protective equipment.

175 **SECTION 6.** (1) Notwithstanding any other provision of this
176 act, the immunities provided in this act shall not apply where the
177 plaintiff shows, by clear and convincing evidence, that a
178 defendant, or any employee or agent thereof, acted with actual
179 malice or willful, intentional misconduct.

180 (2) Nothing in this act:

181 (a) Creates, recognizes or ratifies a claim or cause of
182 action of any kind;

183 (b) Eliminates a required element of any claim;

184 (c) Affects workers' compensation law, including the
185 exclusive application of such law; or

186 (d) Amends, repeals, alters or affects any other
187 immunity or limitation of liability.

188 **SECTION 7.** Except as otherwise provided in Section 11-46-11,
189 a person must bring suit for any alleged injury arising from
190 COVID-19 not later than two (2) years after the day the cause of
191 action accrues.

192 **SECTION 8.** This act shall take effect and be in force from
193 and after March 14, 2020, and expire one (1) year after the end of
194 the COVID-19 state of emergency, except that any civil liability
195 arising out of acts or omissions or related to an injury that
196 occurred during the operation of this act shall be subject to its



197 provisions in perpetuity. It is the intent of the Legislature
198 that this act take effect retroactively.

