House Civil Justice Subcommittee Am. #1

Amendment No._____

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

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Signature of Sponsor

AMEND Senate Bill No. 2381* **House Bill No. 2623**

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, is amended by adding Sections 2 through 8 as a new part.

SECTION 2. This part shall be known and may be cited as the "Tennessee Recovery and Safe Harbor Act."

SECTION 3. As used in this part:

(1) "Coronavirus" means both the novel coronavirus, SARS-CoV-2, and coronavirus disease 2019, commonly referred to as COVID-19, for which the governor issued Executive Order Number 14 declaring a state of emergency, including any mutation of SARS-CoV-2 or COVID-19 that is the subject of a declared public health emergency pursuant to § 58-2-107;

(2) "Covered entity" means the following entities, organizations, and any employee, volunteer, independent contractor, and subcontractor of the entity:

(A) A person, including an individual, sole proprietorship, corporation, limited liability company, partnership, trust, religious organization, association, or any other legal entity whether formed as a for-profit or not-for-profit entity pursuant to title 48;

(B) A healthcare provider; and

(C) A school, other than a public school as defined by § 49-6-3001(c)(3) or public institution of higher education, including a child care agency, as defined in § 71-3-501, preschool, nursery school, kindergarten, elementary school,

secondary school, or postsecondary institution authorized or exempt under title 49, chapter 7;

(3) "Health emergency claim" means any claim that proximately arises from or is related to:

(A) The actual, alleged, or possible exposure to or contraction of coronavirus from a covered entity or arising from a covered entity's operations, products, or services, whether provided on or off the premises of the covered entity; or

(B) The covered entity's efforts to prevent or minimize the spread of coronavirus, including, but not limited to, the following:

(i) Testing;

(ii) Monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating coronavirus exposure or other coronavirus-related information;

(iii) Using, supplying, or servicing precautionary, diagnostic, collection, or health equipment or supplies, such as personal protective equipment; or

(iv) Altering or discontinuing activities or services;

(4) "Healthcare provider" means:

(A) A healthcare provider that is licensed, certified, or authorized under title 33, 63, or 68 to provide healthcare or support services, or that is licensed to provide healthcare services under federal law, and any support personnel employed by such provider;

(B) A student, intern, or resident acting under the supervision of a licensed healthcare provider for the discipline in which the student, intern, or resident is engaged; and

(C) Any medical or healthcare professional, individual, support personnel, or entity holding a license, registration, permit, certification, or

approval pursuant to an executive order, including a temporary emergency license, registration, permit, certification, or approval, to practice a healthcare profession or occupation in this state, including under the Public Readiness and Emergency Preparedness Act and the final version of the U.S. Department of Homeland Security Cybersecurity and Infrastructure Security Agency Guidance on Essential Critical Infrastructure Workers, and any declaration of the federal department of health and human services in accordance with such act, under any emergency proclamation, order, or rule, adopted by a licensing board or agency pursuant to an authorizing emergency proclamation or executive order, or otherwise in response to the coronavirus; and

(5) "Public health guidance" means any of the following that is applicable to the covered entity:

(A) Guidance or direction provided in any plan, order, rule, or guidelines issued by:

(i) The president of the United States;

(ii) The federal or state government;

(iii) A local government, as authorized by the state government;

(iv) The federal centers for disease control and prevention;

(v) The department of homeland security;

(vi) An applicable federal or state occupational safety and health administration;

(vii) The governor;

(viii) The department of health; or

(ix) A public health department, as authorized by state government; and

(B) Guidance from or approval by any government agency or appointed taskforce or workgroup or medical specialty society accredited by the American

Board of Medical Societies that is applicable to a covered entity and healthcare provider or to the health emergency claim at issue.

SECTION 4.

(a)

(1) Notwithstanding any law to the contrary, a covered entity is not liable for damages, injury, or death that results from, or in connection with, a health emergency claim unless the claimant proves by clear and convincing evidence that the covered entity caused the damages, injury, or death by acting with gross negligence or willful misconduct.

(2) In addition to the limitation of liability provided under subdivision (a)(1), and notwithstanding any law to the contrary, a healthcare provider who provides healthcare services or treatment to a patient who has or is suspected of having coronavirus is not liable for any injury or death alleged to have been caused by an act or omission of the healthcare provider during the provision of healthcare services or treatment if the act or omission resulted from or was negatively affected by a lack of resources caused by the coronavirus.

(3) If a covered entity acted in substantial compliance with any public health guidance applicable to the covered entity, there is a rebuttable presumption that the covered entity did not act in a manner that constitutes gross negligence or willful misconduct.

(b)

(1) In any action alleging a health emergency claim, the claimant must file a verified complaint pleading specific facts with particularity from which a finder of fact could reasonably conclude that the harm alleged was caused by gross negligence or willful misconduct.

(2) In any action alleging a health emergency claim as defined in Section 3(3)(A), the claimant or claimant's counsel must file a certificate of good faith with the complaint stating that the claimant or claimant's counsel has obtained a

signed written statement from a physician licensed under title 63, chapter 6 or 9, who practices in the community in which the defendant is located or in a similar community at the time of the alleged gross negligence or willful misconduct. The statement must confirm that upon information and belief, the physician believes there is a good faith basis for maintaining a health emergency claim as defined in Section 3(3)(A). The failure of a claimant to file a certificate of good faith in compliance with this subdivision (b)(2) makes, upon motion, the action subject to dismissal with prejudice.

(c) In any action brought under this section, the plaintiff bears the burden of proof to demonstrate the specific act or omission by the covered entity that constitutes gross negligence or willful misconduct.

SECTION 5. This part does not amend, repeal, or limit any immunity, defense, or right that exists under current law or any contract that applies to a covered entity in a cause of action. The limitation of liability provided by this part is intended to be in addition to any other immunity, defense, and right that exist under current law or contract.

SECTION 6. This part must be construed in conjunction with the Facilitating Business Rapid Response to State Declared Disaster Act, compiled in title 58, chapter 2, and any emergency order or proclamation issued by the governor relating to the coronavirus and civil liability.

SECTION 7. This part does not:

(1) Create a cause of action;

(2) Eliminate a required element of any existing cause of action;

(3) Affect workers' compensation claims, under the Workers' Compensation Law, compiled in title 50, chapter 6, including the exclusive application of such law; or

(4) Amend, repeal, alter, or affect any immunity or limitation of liability available under current law.

SECTION 8.

(a) This part applies to causes of action accruing on or after the effective date of this act.

(b) This part remains in effect until July 1, 2022. Any health emergency claim in which the act or omission occurred while this part is in effect is subject to this part in perpetuity.

SECTION 9. Tennessee Code Annotated, Section 29-20-205, is amended by adding the following as a new subdivision:

(10) Or in connection with any loss, illness, or injury occurring before July 1, 2022, caused directly or indirectly by the coronavirus, as defined in Section 3, or as a result of action or inaction by any governmental entity or any of the entity's employees in response to or related to the coronavirus, unless the loss, illness, or injury was caused by gross negligence or willful misconduct of the governmental entity or the entity's employees. If a governmental entity's operations were conducted in substantial compliance with public health guidance applicable to the governmental entity, the entity and the entity's employees are presumed to have been acting in a manner that was not gross negligence or willful misconduct.

SECTION 10. Tennessee Code Annotated, Title 49, Chapter 7, Part 1, is amended by adding the following as a new section:

A public institution of higher education is not liable for any act or omission by the institution or the institution's employees or agents that results in alleged, actual, or possible exposure to, contraction of, or illness or death arising from coronavirus, as defined in Section 3.

SECTION 11. Tennessee Code Annotated, Section 9-8-307, is amended by adding the following as a new subsection:

Notwithstanding any provision of this chapter to the contrary, the state does not waive sovereign immunity for civil liability for any act or omission by the state or any employee or agent of the state that results in alleged, actual, or possible exposure to, contraction of, or illness or death arising from coronavirus, as defined in Section 3.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it, and applies to causes of action accruing on or after that date. This act shall cease to be effective July 1, 2022.

House Civil Justice Subcommittee Am. #2

Amendment No._____

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Comm. Amdt. _____

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Signature of Sponsor

AMEND Senate Bill No. 2381* **House Bill No. 2623**

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, Part 2, is amended by adding the following new section:

(a) As used in this section:

(1) "Coronavirus" means both the novel coronavirus, SARS-CoV-2, and coronavirus disease 2019, commonly referred to as COVID-19, for which the governor issued Executive Order Number 14 declaring a state of emergency, including any mutation of SARS-CoV-2 or COVID-19 that is the subject of a declared public health emergency pursuant to § 58-2-107; and

(2) "Person" includes a corporation, firm, company, association, or other business entity.

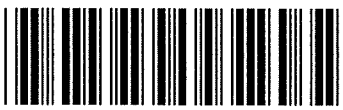
(b) Notwithstanding any law to the contrary, there is no cause of action against a person based on exposure to or contraction of coronavirus unless the person caused the exposure to or contraction of coronavirus by willful misconduct.

(c)

(1) This section applies to all causes of action accruing on or after the effective date of this act.

(2) This section remains in effect until January 1, 2022. Any claims that accrue while this section is in effect are subject to this section in perpetuity.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it. This act shall cease to be effective January 1, 2022.



House Civil Justice Subcommittee Am. #3

Amendment No._____

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Signature of Sponsor

AMEND Senate Bill No. 2381* **House Bill No. 2623**

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, Part 2, is amended by adding the following new section:

(a) As used in this section:

(1) "Coronavirus" means both the novel coronavirus, SARS-CoV-2, and coronavirus disease 2019, commonly referred to as COVID-19, for which the governor issued Executive Order Number 14 declaring a state of emergency, including any mutation of SARS-CoV-2 or COVID-19 that is the subject of a declared public health emergency pursuant to § 58-2-107; and

(2) "Person" includes a corporation, firm, company, association, or other business entity.

(b) Notwithstanding any law to the contrary, except as provided in subsection (c), there is no cause of action against a person based on exposure to or contraction of coronavirus unless the person caused the exposure to or contraction of coronavirus by willful misconduct.

(c) The limitation in liability provided in subsection (b) does not apply to health care liability claims brought under title 29, chapter 26, part 1, against a hospital, licensed pursuant to title 68, chapter 11, part 2, that is designated as a level I trauma center.

(d)

(1) This section applies to all causes of action accruing on or after the effective date of this act.

(2) This section remains in effect until January 1, 2022. Any claims that accrue while this section is in effect are subject to this section in perpetuity.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it. This act shall cease to be effective January 1, 2022.