

Amendment No. 5 to HB2623

**Clemmons
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 the virus or disease that is the subject of a declared public health emergency pursuant to § 58-2-107;

(2) "Coronavirus claim" means any claim that proximately arises from:

(A) The actual, alleged, or possible exposure to or contraction of coronavirus 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 actions in response to coronavirus including:

(i) Implementing policies and procedures to prevent or minimize the spread of coronavirus;

(ii) Testing;

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

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(iv) Using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, such as personal protective equipment;

(v) Closing, partially closing, or modifying a covered entity pursuant to public health guidance or to prevent or minimize the spread of coronavirus;

(vi) Delaying or modifying the schedule or performance of any medical procedure in response to public health guidance; or

(vii) Providing services or products in response to government appeal or the covered entity's repurposing operations to address an urgent need for personal protective equipment, sanitation products, or other products necessary to protect the public;

(3) "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, or association identified as an "essential service" in attachment A to executive order 22;

(B) A religious organization or nonprofit organization described in § 501(c) of the Internal Revenue Code that is exempt from federal income taxation under § 501(a) of the Internal Revenue Code, 26 U.S.C. § 501(a), or any other legal entity whether formed as a for-profit or not-for-profit entity pursuant to title 48;

(C) A healthcare provider; and

(D) A school, including a child care agency, as defined in § 71-3-501, child care program, as defined in § 49-1-1102, preschool, nursery school, kindergarten, elementary school, secondary school, or postsecondary institution that is authorized or exempt under title 49, chapter 7, but not including a public school as defined by § 49-6-3001, public postsecondary institution, or home school as defined in § 49-6-3050;

(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 or contracted with 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 related to coronavirus and applicable to the covered entity:

(A) Guidance or direction provided in any plan, order, rule, request, 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; or

(B) Guidance from or approved 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 coronavirus claim at issue.

SECTION 4.

(a)

(1) In a coronavirus claim, the claimant must plead specific facts with particularity from which a finder of fact could reasonably conclude that the harm alleged was caused by the covered entity's negligence and, if public health guidance applicable to the covered entity had been issued, that the covered entity failed to comply with any public health guidance applicable to the covered entity.

(2) In a coronavirus claim based on exposure to or contraction of coronavirus as a result of negligence and a covered entity's failure to comply with any public health guidance, if any had been issued, applicable to the covered entity the claimant or the claimant's counsel must file a certificate of good faith with the complaint stating that the claimant or claimant's counsel has consulted with one (1) or more experts who have provided a signed written statement confirming that the expert is competent to express an opinion on exposure to or contraction of coronavirus and, upon information and belief, the expert believes there is a good faith basis for maintaining the claim. Claimant or claimant's counsel need not disclose the identity of the expert and claimant or claimant's counsel need not rely on the same expert's testimony at trial or for purposes of disclosure under the requirements of Rule 26 of the Tennessee rules of civil procedure.

(3) The failure of a claimant to file a certificate of good faith, if required by subdivision (a)(2), makes, upon motion, the action subject to dismissal. A claim arising from the same set of facts and circumstances may be brought within one (1) year, or within the relevant statute of limitations, whichever is earlier.

(b)

(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 coronavirus claim unless the claimant proves by a preponderance of the evidence that:

(A) The covered entity caused the damage, injury, or death by acting with negligence; and

(B) If public health guidance applicable to the covered entity had been issued, the covered entity failed to comply with any public health guidance applicable to the covered entity.

(2) In addition to the limitation of liability provided under subdivision (b)(1), and notwithstanding any law to the contrary, a healthcare provider 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 was caused by a lack of resources due to the coronavirus unless the lack of resources resulted from the healthcare provider's negligence.

(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 negligence or the public health guidance with which the covered entity failed to comply, if any.

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 filed on or after the date on which this act takes effect. The limitation of liability provided by this part is not intended to infringe upon or otherwise limit any cause of action arising 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 any cause of action not covered by this act;
- (3) Eliminate a required element of any existing cause of action;
- (4) Affect workers' compensation claims, under the Workers' Compensation Law, compiled in title 50, chapter 6, including the exclusive application of such law; or

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

SECTION 8.

(a) This part applies to all causes of action accruing on or after the date on which this act takes effect upon becoming a law.

(b) This part remains in effect until August 1, 2021. Any coronavirus claim in which the act or omission occurred while this part is in effect is subject to the provisions of this part.

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 August 1, 2021, 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 negligence of the governmental entity or the entity's employees. In any cause of action brought pursuant to this subdivision (10), the claimant must prove negligence by the governmental entity or the entity's employees by a preponderance of the evidence.

SECTION 10. Tennessee Code Annotated, Section 29-20-310, is amended by adding the following as a new subsection:

(f) No claim may be brought against an employee or judgment entered against an employee for injury proximately caused by an act or omission of the employee within the employee's scope of employment in connection with any loss, illness, or injury occurring before August 1, 2021, caused directly or indirectly by the coronavirus, as defined in Section 3, unless the act or omission of the employee was willful, malicious, criminal, performed for personal financial gain, or against the advice or guidance of the employer or a supervisor. In any cause of action brought pursuant to this subsection (f), the claimant must prove that the act or omission of the employee was willful, malicious,

criminal, performed for personal financial gain, or against the advice of the employer or a supervisor by a preponderance of the evidence.

SECTION 11. Tennessee Code Annotated, Title 49, Chapter 7, Part 1, is amended by adding the following as a new section:

A public postsecondary institution is not liable for any act or omission by the institution or the institution's employees or agents that results in alleged or actual exposure to, contraction of, or illness or death arising from coronavirus, as defined in Section 3, unless the exposure, contraction, illness, or death was caused by negligence of the institution or the institution's employees. In any cause of action brought pursuant to this section, the claimant must prove that act or omission of the institution or the institution's employee constituted negligence by a preponderance of the evidence.

SECTION 12. 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 or actual exposure to, contraction of, or illness or death arising from coronavirus, as defined in Section 3. The determination of the state's liability shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care.

SECTION 13. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it, and applies to all causes of action accruing on or after that date. This act shall cease to be effective August 1, 2021.