

1 SB30
2 208662-2
3 By Senators Orr, Roberts, Albritton, Chambliss, Givhan,
4 Elliott, Chesteen, Allen, Price, Barfoot, Stutts, Jones,
5 Waggoner, Butler, Marsh, Scofield, Reed and Holley
6 RFD: Judiciary
7 First Read: 02-FEB-21
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8 SYNOPSIS: This bill would provide civil immunity for
9 business entities, health care providers,
10 educational entities, churches, governmental
11 entities, and cultural institutions operating in
12 this state, as well as individuals associated with
13 these entities, from certain damages claimed by
14 individuals who allege that they contracted or were
15 exposed to Coronavirus, during a declared state of
16 emergency.

17 This bill would also provide immunity for
18 certain health care providers during the
19 performance or provision of health care services or
20 treatment that resulted from, was negatively
21 affected by, or was done in support of or in
22 response to the Coronavirus pandemic or the state's
23 response to the pandemic.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 Relating to civil immunity; to provide legislative
3 findings; to provide definitions; to provide civil immunity
4 for certain entities and individuals from certain damages
5 claimed by individuals who allege that they contracted or were
6 exposed to Coronavirus during a declared state of emergency;
7 to provide civil immunity for certain health care providers
8 relating to the performance of certain health care services or
9 treatment during the Coronavirus pandemic; to provide for a
10 statute of limitations for certain claims; and to provide for
11 retroactive effect.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. The Legislature finds and declares the
14 following:

15 (1) Providing reasonable protections from the risk
16 and expense of lawsuits to businesses will help encourage
17 businesses to remain open and reopen and that providing such a
18 safe harbor to businesses that operate reasonably consistent
19 with applicable public health guidance will help ameliorate
20 the social harms of a closed economy and the resulting
21 unemployment.

22 (2) The Coronavirus has put, and will continue to
23 put, a significant strain on health care facilities, health
24 care providers, and health care resources of this state; the
25 Coronavirus has undermined, and will continue to undermine,
26 the ability to deliver patient care in the traditional,
27 normal, or customary manner; and our health care facilities,

1 health care professionals, and their supporting workers need
2 protection to respond to this pandemic and to do what they can
3 do to continue to provide treatment and services for the
4 people of Alabama.

5 Section 2. (a) For purposes of this act, the
6 following terms shall have the following meanings:

7 (1) APPLICABLE PUBLIC HEALTH GUIDANCE. Guidance
8 provided in any proclamation, order, or rule of the Governor,
9 the State Health Officer, or the State Board of Health that is
10 applicable to the type of covered entity and to the health
11 emergency claim at issue.

12 (2) BUSINESS ENTITY. A person or group of persons
13 employing one or more persons performing or engaging in any
14 activity, enterprise, profession, or occupation for gain,
15 benefit, advantage, or livelihood, whether for profit or not
16 for profit, including entities incorporated as nonprofit
17 corporations pursuant to Chapter 3 of Title 10A, Code of
18 Alabama 1975, self-employed individuals, business entities
19 filing articles of incorporation, cooperative corporations,
20 partnerships, limited partnerships, limited liability
21 companies, as well as foreign corporations, foreign limited
22 partnerships, foreign limited liability companies authorized
23 to transact business in this state, business trusts, and other
24 organizations, or their assigns.

25 (3) CHURCH. A bona fide duly constituted religious
26 society or ecclesiastical body of any sect, order, or
27 denomination, or any congregation thereof.

1 (4) CORONAVIRUS. Coronavirus disease 2019, commonly
2 abbreviated as "COVID-19," for which the Governor declared a
3 public health emergency on March 13, 2020, or any mutation
4 thereof that is declared a public health emergency under the
5 Emergency Management Act.

6 (5) COVERED ENTITY. Any of the following:

7 a. A business entity.

8 b. A health care provider.

9 c. An educational entity.

10 d. A church.

11 e. A governmental entity.

12 f. A cultural institution.

13 g. Any director, officer, trustee, manager, member,
14 employee, or agent of the covered entity with respect to any
15 act or omission performed while acting on behalf of the
16 covered entity.

17 (6) CULTURAL INSTITUTION. An organized and permanent
18 nonprofit or public or private institution in this state
19 operated by, or a division of, a nonprofit corporation, trust,
20 association, educational institution, or governmental entity,
21 that is primarily educational, scientific, historical, or
22 aesthetic in purpose, and that owns, borrows, cares for,
23 studies, archives, or exhibits cultural property. The term
24 includes art, history, science and natural history museums,
25 archives, libraries, historical societies, historical sites,
26 and science and technology centers.

1 (7) DAMAGES. Economic damages, non-economic damages
2 for mental anguish and emotional distress, compensatory
3 damages, consequential damages, punitive damages, and any
4 other damages arising from any injury, death, or property
5 damage or otherwise.

6 (8) EDUCATIONAL ENTITY. Any public or private pre-K
7 or K-12 school or public or private two-year or four-year
8 institution of higher education.

9 (9) EMERGENCY MANAGEMENT ACT. The Alabama Emergency
10 Management Act of 1955, Section 31-9-1, et seq., Code of
11 Alabama 1975.

12 (10) GOVERNMENTAL ENTITY. The state, a county, or a
13 municipality or any instrumentality of the state, a county, or
14 a municipality.

15 (11) HEALTH CARE PROVIDER. Those facilities,
16 professionals, and personnel, including, but not limited to,
17 the following:

18 a. Any health care provider as that term is defined
19 in Section 6-5-542(1) or Section 6-5-481(1)-(8), Code of
20 Alabama 1975.

21 b. Any health care facility licensed or approved in
22 this state, including, but not limited to, any facility
23 licensed or approved by the Alabama Department of Public
24 Health or mental health facility certified by the Alabama
25 Department of Mental Health, including any health care
26 facility or pharmacy operating and providing services pursuant
27 to the provisions outlined in the Governor's proclamation of

1 April 2, 2020, and any support personnel of the facility or
2 pharmacy.

3 c. Any medical or health care professional,
4 individual, or entity holding a license, registration, permit,
5 certification, or approval, including a temporary emergency
6 license, registration, permit, certification, or approval, to
7 practice a health care profession or occupation in this state,
8 including under the federal Public Readiness and Emergency
9 Preparedness Act and any declaration of the Department of
10 Health and Human Services in accordance with that act, under
11 any emergency proclamations, orders, or rules, adopted by a
12 licensing board or agency pursuant to authorizing emergency
13 proclamations or executive orders, or otherwise in response to
14 Coronavirus, including any support personnel of the
15 professional, individual, or entity.

16 (12) HEALTH CARE SERVICES OR TREATMENT. Any health
17 care service or treatment defined by existing law and Section
18 6-5-540 et seq., Code of Alabama 1975.

19 (13) HEALTH EMERGENCY CLAIM. Any claim that arises
20 from or is related to Coronavirus. All such claims, no matter
21 how denominated, shall be considered a health emergency claim
22 for purposes of this act. The term includes, but is not
23 limited to, any cause of action that is related in any manner
24 to either or both of the following:

25 a. The actual, alleged, or feared exposure to or
26 contraction of Coronavirus from the premises of a covered

1 entity or otherwise related to or arising from its operations,
2 products, or services provided on or off-premises.

3 b. The covered entity's efforts to prevent or delay
4 the spread of Coronavirus, including, but not limited to, any
5 of the following:

6 1. Testing.

7 2. Monitoring, collecting, reporting, tracking,
8 tracing, disclosing, or investigating exposures or other
9 information.

10 3. Using or supplying precautionary equipment or
11 supplies such as personal protective equipment.

12 (14) SERIOUS PHYSICAL INJURY. A death or an injury
13 that requires either in patient hospitalization of at least 48
14 hours, permanent impairment of a bodily function, or permanent
15 damage to a body structure.

16 Section 3. (a) Notwithstanding any other provision
17 of law, a covered entity shall not be liable for any damages,
18 injury, or death suffered by any person or entity as a result
19 of, or in connection with, a health emergency claim that
20 results from any act or omission of the covered entity.

21 (b) Subsection (a) does not apply if the claimant
22 proves by clear and convincing evidence that the covered
23 entity caused the damages, injury, or death by acting with
24 wanton, reckless, willful, or intentional misconduct.

25 (c) In those instances where liability is
26 established as required by subsection (b), and the acts or
27 omissions do not result in serious physical injury, a covered

1 entity's liability shall be limited to actual economic
2 compensatory damages, and in no event shall the covered entity
3 be liable for noneconomic or punitive damages.

4 (d) A party asserting a health emergency claim
5 alleging wrongful death is only entitled to an award of
6 punitive damages.

7 Section 4. (a) This section applies to both of the
8 following causes of action that accrue before the effective
9 date of this act:

10 (1) A health emergency claim for which a court holds
11 that neither Section 3 nor the liability limiting provisions
12 of any gubernatorial emergency order applies.

13 (2) Any cause of action relating to an act or
14 omission of the health care provider during the performance or
15 provision of health care services or treatment that resulted
16 from, was negatively affected by, was negatively impacted by a
17 lack of resources caused by, or was done in response to the
18 Coronavirus pandemic or the state's response to the pandemic,
19 for which a court holds that neither Section 5 nor the
20 liability limiting provisions of any gubernatorial emergency
21 order applies.

22 (b) For any health emergency claim or cause of
23 action under subsection (a), the following provisions shall
24 apply:

25 (1) Notwithstanding any other provision of law, as a
26 matter of law, a covered entity shall not be liable for
27 negligence, premises liability, or for any non-wanton,

1 non-willful, or non-intentional civil cause of action to which
2 this section applies, unless the claimant shows by clear and
3 convincing evidence that the covered entity did not reasonably
4 attempt to comply with the then applicable public health
5 guidance.

6 (2) Notwithstanding any other provision of law, for
7 a cause of action to which this section applies, a covered
8 entity shall not be liable for damages from mental anguish or
9 emotional distress or for punitive damages, but may be liable
10 for economic compensatory damages in a cause of action that
11 does not involve serious physical injury.

12 (3) This section does not prohibit an award of
13 punitive damages for wrongful death claims, but no other
14 damages shall be allowed for such claims.

15 Section 5. (a) Absent wanton, reckless, willful, or
16 intentional misconduct, a health care provider is not liable
17 for any damages, injury, or death alleged to have been caused
18 by an act or omission of the health care provider during the
19 performance or provision of health care services or treatment
20 that resulted from, was negatively affected by, was negatively
21 impacted by a lack of resources caused by, or was done in
22 response to the Coronavirus pandemic or the state's response
23 to the pandemic.

24 (b) If a court determines that the immunity afforded
25 in this section does not apply to a health care provider, this
26 section may not be construed to supersede, amend, or modify
27 any other law, emergency proclamation, order, rule, or

1 governing legal standards or procedures for health care
2 providers relating to the performance or provision of health
3 care services or treatment provided by the health care
4 provider, including the Alabama Medical Liability Act of 1987
5 or the Medical Liability Act of 1996, or any amendment to or
6 judicial interpretation thereof.

7 (c) In those instances where liability is
8 established as required by subsection (a), and the acts or
9 omissions do not result in serious physical injury, a health
10 care provider's liability shall be limited to actual economic
11 compensatory damages, and in no event shall the health care
12 provider be liable for noneconomic or punitive damages.

13 Section 6. Nothing in this act shall be construed to
14 preempt, remove, displace, repeal, or limit in any way any
15 immunity, defense, or right that exists under existing law
16 that would be applicable to any covered entity in a cause of
17 action filed on or after the March 13, 2020. This section
18 confirms that the immunity provided by this act is in addition
19 to and cumulative of any other immunity, defense, and right
20 that exists under law.

21 Section 7. This act shall be construed in pari
22 materia with the Emergency Management Act and with any
23 emergency order or proclamation of the Governor relating to
24 Coronavirus and immunity from civil lawsuits.

25 Section 8. A health emergency claim under Section 3
26 or a claim under Section 4 or 5 must be filed not later than
27 two years after the date of the damages, injury, or death.

1 Section 9. The provisions of this act shall not
2 affect the right of any person to receive or claim benefits
3 otherwise available under the Workers' Compensation Act.

4 Section 10. The provisions of this act are
5 severable. If any part of this act is declared invalid or
6 unconstitutional, that declaration shall not affect the part
7 which remains.

8 Section 11. The provisions of this act shall be
9 retroactive and apply to causes of action filed on or after
10 March 13, 2020.

11 Section 12. The immunity and other provisions
12 provided in this act shall terminate December 31, 2021, or one
13 year after a declared health emergency relating to Coronavirus
14 expires, whichever is later, except that any civil liability
15 arising out of acts or omissions related to health emergency
16 claims or claims under Section 5 where the act or omission
17 occurred during the operation of this act shall be subject to
18 the provisions of this act in perpetuity.

19 Section 13. This act shall become effective
20 immediately following its passage and approval by the
21 Governor, or its otherwise becoming law.