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MISSISSIPPI LEGISLATURE

2020 Regular Session

To: Judiciary, Division A

By: Senator(s) Doty, Blackwell, Boyd, Branning, Caughman, Chassaniol, Chism, DeBar, DeLano, England, Harkins, McDaniel, McLendon, McMahan, Moran, Parker, Parks, Seymour, Sojourner, Sparks, Tate, Whaley, Younger

Senate Bill 3049

(As Sent to Governor)

AN ACT TO CREATE THE MISSISSIPPI BACK-TO-BUSINESS LIABILITY ASSURANCE AND HEALTH CARE EMERGENCY RESPONSE LIABILITY PROTECTION ACT; TO PROVIDE IMMUNITY FROM SUIT AND LIABILITY TO HEALTH CARE PROVIDERS AND HEALTH CARE FACILITIES THAT PROVIDE CARE DURING A STATE OF EMERGENCY AND CERTAIN CIRCUMSTANCES; TO DEFINE DUTY OF CARE FOR PREMISES OWNERS; TO PROVIDE IMMUNITY FROM SUIT AND LIABILITY FOR INDIVIDUALS, STATE AND LOCAL GOVERNMENT, ASSOCIATIONS, FOR-PROFIT AND NONPROFIT ENTITIES, RELIGIOUS AND CHARITABLE ORGANIZATIONS; TO PROVIDE SAFE HARBOR COMPLIANCE WITH PUBLIC HEALTH GUIDANCE; TO PROVIDE IMMUNITY FROM SUIT AND LIABILITY FOR PRODUCTS MADE, SOLD OR DONATED IN RESPONSE TO COVID-19 AND RELATED 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 "Mississippi Back-to-Business Liability Assurance and Health Care Emergency Response Liability Protection Act."

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

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

(b) "COVID-19 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).

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

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

(e) "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 the Mississippi Emergency Management Agency for temporary use for the purpose of providing health care services related to the COVID-19 state of emergency.

(f) "Health care professional" means:

(i) A person who is licensed, registered, permitted, or certified in any state 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) An emergency medical technician who is licensed in any state; or

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

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

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

(i) "Personal protective equipment" means coveralls, face shields, gloves, gowns, masks, respirators or other equipment designed to protect the wearer from the spread of infection or illness.

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

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

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

SECTION 3. (1) A person, or agent of that person, who attempts in good faith to follow applicable public health guidance shall be immune from suit for civil damages for any injuries or death resulting from or related to actual or alleged exposure or potential exposure to COVID-19 in the course of or through the performance or provision of its functions or services.

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

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

SECTION 4. (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 COVID-19 state of emergency. The immunity takes effect when the COVID-19 state of emergency is declared, applies to any health care services performed during the COVID-19 state of emergency, including any period of renewal or extension, and terminates one (1) year after the end of the COVID-19 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 COVID-19 state of emergency or the medical conditions causing the COVID-19 state of emergency, or acts or omissions while providing health care services to persons unrelated to the COVID-19 state of emergency when those acts or omissions were intended to support the state's response to the COVID-19 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 COVID-19 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 COVID-19 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 COVID-19 state of emergency.

(2) 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 COVID-19 state of emergency.

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

(2) A person who designs, manufactures, labels, sells, distributes, or donates disinfecting or cleaning supplies or personal protective equipment in response to COVID-19 outside the ordinary course of the person's business shall be immune from suit for civil damages for any injuries resulting from or related to actual or alleged exposure or potential exposure to COVID-19 caused by the disinfecting or cleaning supplies or personal protective equipment.

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

(2) Nothing in this act:

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

(b) Eliminates a required element of any claim;

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

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

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

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

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