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Act No. 2021-4

SB30

By Senators Orr, Roberts, Albritton, Chambliss, Givhan, Elliott, Chesteen, Allen, Price, Barfoot, Stutts, Jones, Waggoner, Butler, Marsh, Scofield, Reed and Holley

ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The Legislature finds and declares the following:

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

(2) The Coronavirus has put, and will continue to put, a significant strain on health care facilities, health care providers, and health care resources of this state; the Coronavirus has undermined, and will continue to undermine, the ability to deliver patient care in the traditional, normal, or customary manner; and our health care facilities, health care professionals, and their supporting workers need protection to respond to this pandemic and to do what they can do to continue to provide treatment and services for the people of Alabama.

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

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

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

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

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

(5) COVERED ENTITY. Any of the following:

a. A business entity.

b. A health care provider.

c. An educational entity.

d. A church.

e. A governmental entity.

f. A cultural institution.

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

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

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

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

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

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

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

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

b. Any health care facility licensed or approved in this state, including, but not limited to, any facility licensed or approved by the Alabama Department of Public Health or mental health facility certified by the Alabama Department of Mental Health, including any health care facility or pharmacy operating and providing services pursuant to the provisions outlined in the Governor's proclamation of April 2, 2020, and any support personnel of the facility or pharmacy.

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

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

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

a. The actual, alleged, or feared exposure to or contraction of Coronavirus from the premises of a covered entity or otherwise related to or arising from its operations, products, or services provided on or off-premises.

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

1. Testing.

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

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

(14) SERIOUS PHYSICAL INJURY. A death or an injury that requires either in patient hospitalization of at least 48 hours, permanent

impairment of a bodily function, or permanent damage to a body structure.

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

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

(c) In those instances where liability is established as required by subsection (b), and the acts or omissions do not result in serious physical injury, a covered entity's liability shall be limited to actual economic compensatory damages, and in no event shall the covered entity be liable for noneconomic or punitive damages.

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

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

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

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

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

(1) Notwithstanding any other provision of law, as a matter of law, a covered entity shall not be liable for negligence, premises liability, or for any non-wanton, non-willful, or non-intentional civil cause of action to which this section applies, unless the claimant shows by clear and convincing evidence that the covered entity did not reasonably attempt to comply with the then applicable public health guidance.

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

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

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

(b) If a court determines that the immunity afforded in this section does not apply to a health care provider, this section may not be construed to supersede, amend, or modify any other law, emergency proclamation, order, rule, or governing legal standards or procedures for health care providers relating to the performance or provision of health care services or treatment provided by the health care provider, including the Alabama Medical Liability Act of 1987 or the Medical Liability Act of 1996, or any amendment to or judicial interpretation thereof.

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

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

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

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

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

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

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

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

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

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