State of Tennessee

PUBLIC CHAPTER NO. 1

SECOND EXTRAORDINARY SESSION

SENATE BILL NO. 2

By Johnson, Bell, Yager, Rose, Bailey, Bowling, Gardenhire, Gresham, Kelsey, Lundberg, Massey, Reeves, Stevens

Substituted for: House Bill No. 1

By Lamberth, Gant, Curcio, Smith, Carr, Ramsey, Moon, Eldridge, Keisling, Crawford, Travis, Baum, Terry, Ragan, Marsh, Helton, Dunn, Hawk, Powers, Bricken, Hazlewood, Faison; Mr. Speaker Cameron Sexton; Byrd, Hall, White, Weaver, Sherrell, Rudd, Howell, Jerry Sexton, Griffey, Grills, Todd, Wright, Littleton, Moody, Cepicky, Ogles, Haston, Hurt, Kumar, Zachary, Lafferty, Russell, Lynn, Rudder, Halford, Boyd, Whitson, Vaughan, Sparks, Garrett, Daniel, Holsclaw, Reedy, Calfee, Doggett, Holt, Curtis Johnson, Hicks, Cochran, Shaw

AN ACT to amend Tennessee Code Annotated, Title 9, Chapter 8, Part 3; Title 29, Chapter 34; Title 29, Chapter 20 and Title 49, Chapter 7, Part 1, relative to civil liability related to COVID-19.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, is amended by adding the following language as a new part:

29-34-801. This part shall be known and may be cited as the "Tennessee COVID-19 Recovery Act."

29-34-802.

(a) As used in this part:

(1) "Arising from COVID-19" means caused by or resulting from the actual, alleged, or possible exposure to or contraction of COVID-19, or caused by or resulting from services, treatment, or other actions in response to COVID-19, including, but not limited to:

(A) Implementing policies and procedures to prevent or minimize the spread of COVID-19;

(B) Testing;

(C) Monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19-related information;

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

(E) Closing or partially closing to prevent or minimize the spread of COVID-19;

(F) Delaying or modifying the schedule or performance of any medical procedure; or

(G) Providing services or products in response to government appeal or repurposing operations to address an urgent need for

personal protective equipment, sanitation products, or other products necessary to protect the public;

(2) "COVID-19" means the novel coronavirus, SARS-CoV-2, and coronavirus disease 2019, commonly referred to as COVID-19, including any mutation of SARS-CoV-2 or COVID-19;

(3) "Healthcare provider" means a healthcare practitioner, person, or facility licensed, authorized, certified, registered, or regulated under title 33, title 63, title 68, federal law or order, or an executive order of the governor, including but not limited to any employees, agents, or contractors of such a practitioner, person, or facility, and residents, interns, students, fellows, or volunteers of an accredited school or of such school's affiliated teaching or training hospitals or programs in Tennessee; and

(4) "Person" means an individual, healthcare provider, sole proprietorship, corporation, limited liability company, partnership, trust, religious organization, association, 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.

(b) Notwithstanding any law to the contrary, there is no claim against any person for loss, damage, injury, or death arising from COVID-19, unless the claimant proves by clear and convincing evidence that the person proximately caused the loss, damage, injury, or death by an act or omission constituting gross negligence or willful misconduct.

(c)(1) In any claim alleging loss, damage, injury, or death arising from COVID-19, the claimant must file a verified complaint pleading specific facts with particularity from which a finder of fact could reasonably conclude that the alleged loss, damage, injury, or death was caused by the defendant's gross negligence or willful misconduct.

(2) In any claim alleging loss, damage, injury, or death based on exposure to or contraction of COVID-19, the claimant must also file a certificate of good faith stating that the claimant or claimant's counsel has consulted with a physician duly licensed to practice in the state or a contiguous bordering state, and the physician has provided a signed written statement that the physician is competent to express an opinion on exposure to or contraction of COVID-19 and, upon information and belief, believes that the alleged loss, damage, injury, or death was caused by an alleged act or omission of the defendant or defendants.

(3) The failure of a claimant to satisfy the requirements of subdivisions (c)(1) and (2), if required by subdivision (c)(2), shall, upon motion, make the action subject to dismissal with prejudice.

(d) 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, defense, limitation of liability, or procedure available or required under law or contract.

SECTION 2. Tennessee Code Annotated, Section 29-20-205, is amended by adding the following as a new subdivision:

(10) Or in connection with any loss, damage, injury, or death arising from COVID-19, as defined in § 29-34-802(a), unless the claimant proves by clear and convincing evidence that the loss, damage, injury, or death was proximately caused by an act or omission by the entity or its employees constituting gross negligence. The requirements of § 29-34-802(c) apply to any such cause of action when applicable.

SECTION 3. Tennessee Code Annotated, Section 29-20-310, is amended by adding the following as a new subsection:

(f)(1) No claim may be brought against an employee or judgment entered against an employee for any loss, damage, injury, or death arising from COVID-19, as defined in § 29-34-802(a), and proximately caused by an act or omission of the employee within the scope of the employee's employment for which the governmental entity is immune, unless the claimant proves by clear and convincing evidence that the loss, damage, injury, or death was caused by an act or omission that was willful, malicious, criminal, or performed for personal financial gain.

(2)(A) In any claim alleging loss, damage, injury, or death arising from COVID-19 under this subsection (f), the claimant must file a verified complaint pleading specific facts with particularity from which a finder of fact could reasonably conclude that the alleged loss, damage, injury, or death was caused by the defendant's willful, malicious, or criminal act or omission, or performed for personal financial gain; and

(B) In any claim alleging loss, damage, injury, or death based on exposure to or contraction of COVID-19 under this subsection (f), the claimant must also file with the verified complaint a certificate of good faith stating that the claimant or claimant's counsel has consulted with a physician duly licensed to practice in the state or a contiguous bordering state, and the physician has provided a signed written statement that the physician is competent to express an opinion on exposure to or contraction of COVID-19 and, upon information and belief, believes that the alleged loss, damage, injury, or death was caused by an act or omission of the defendant or defendants.

(3) The failure of a claimant to satisfy the requirements of subdivisions (f)(1) and (2), if required by subdivision (f)(2), shall, upon motion, make the action subject to dismissal with prejudice.

SECTION 4. Tennessee Code Annotated, Section 9-8-307, is amended by adding the following as a new subsection:

(j) Notwithstanding any other provision of this chapter to the contrary, the state does not waive its sovereign immunity for any loss, damage, injury, or death arising from COVID-19, as defined in § 29-34-802(a), unless the claimant proves by clear and convincing evidence that the loss, damage, injury, or death was proximately caused by an act or omission of the state or an employee or agent of the state constituting gross negligence. The requirements of § 29-34-802(c) apply to any such cause of action when applicable.

SECTION 5. Tennessee Code Annotated, Title 49, Chapter 7, Part 1, is amended by adding the following as a new section:

There is no cause of action against a public institution of higher education for any loss, damage, injury, or death arising from COVID-19, as defined in § 29-34-802(a), unless the claimant proves by clear and convincing evidence that the loss, damage, injury, or death was proximately caused by an act or omission of the institution or its employee or agent constituting gross negligence or willful misconduct. The requirements of § 29-34-802(c) apply to any such cause of action when applicable.

SECTION 6. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall 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 shall be severable.

SECTION 7.

(a) This act shall take effect upon becoming a law, the public welfare requiring it, and unless otherwise prohibited by the United States or Tennessee Constitution, this act applies to all claims arising from COVID-19 except those in which, on or before August 3, 2020:

(1) A complaint or civil warrant was filed;

(2) Notice of a claim was given pursuant to § 9-8-402; or

(3) Notice was satisfied pursuant to § 29-26-121(a)(3).

(b) This act is repealed on July 1, 2022, but continues to apply to any loss, illness, injury, or death occurring before that date to which none of the exceptions listed in subdivisions (a)(1)-(3) apply.

SECOND EXTRAORDINARY SESSION

ONE HUNDRED ELEVENTH GENERAL ASSEMBLY

SENATE BILL NO. 2

PASSED: August 12, 2020

RANDY McNALLY
SPEAKER OF THE SENATE

CAMERON SEXTON, *SPEAKER*
HOUSE OF REPRESENTATIVES

APPROVED this 17th **day of** August **2020**

BILL LEE, *GOVERNOR*