

1 SB30
2 208662-3
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
8 PFD: 12/18/2020

1 SB30

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4 ENROLLED, An Act,

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

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. The Legislature finds and declares the
17 following:

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

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

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

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

18 (2) BUSINESS ENTITY. A person or group of persons
19 employing one or more persons performing or engaging in any
20 activity, enterprise, profession, or occupation for gain,
21 benefit, advantage, or livelihood, whether for profit or not
22 for profit, including entities incorporated as nonprofit
23 corporations pursuant to Chapter 3 of Title 10A, Code of
24 Alabama 1975, self-employed individuals, business entities
25 filing articles of incorporation, cooperative corporations,

1 partnerships, limited partnerships, limited liability
2 companies, as well as foreign corporations, foreign limited
3 partnerships, foreign limited liability companies authorized
4 to transact business in this state, business trusts, and other
5 organizations, or their assigns.

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

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

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

- 15 a. A business entity.
- 16 b. A health care provider.
- 17 c. An educational entity.
- 18 d. A church.
- 19 e. A governmental entity.
- 20 f. A cultural institution.
- 21 g. Any director, officer, trustee, manager, member,
22 employee, or agent of the covered entity with respect to any
23 act or omission performed while acting on behalf of the
24 covered entity.

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

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

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

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

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

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

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

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

16 c. Any medical or health care professional,
17 individual, or entity holding a license, registration, permit,
18 certification, or approval, including a temporary emergency
19 license, registration, permit, certification, or approval, to
20 practice a health care profession or occupation in this state,
21 including under the federal Public Readiness and Emergency
22 Preparedness Act and any declaration of the Department of
23 Health and Human Services in accordance with that act, under
24 any emergency proclamations, orders, or rules, adopted by a
25 licensing board or agency pursuant to authorizing emergency

1 proclamations or executive orders, or otherwise in response to
2 Coronavirus, including any support personnel of the
3 professional, individual, or entity.

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

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

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

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

20 1. Testing.

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

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

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

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

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

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

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

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

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

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

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

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

24 (2) Notwithstanding any other provision of law, for
25 a cause of action to which this section applies, a covered

1 entity shall not be liable for damages from mental anguish or
2 emotional distress or for punitive damages, but may be liable
3 for economic compensatory damages in a cause of action that
4 does not involve serious physical injury.

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

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

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

1 or the Medical Liability Act of 1996, or any amendment to or
2 judicial interpretation thereof.

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

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

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

21 Section 8. A health emergency claim under Section 3
22 or a claim under Section 4 or 5 must be filed not later than
23 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.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB30
Senate 04-FEB-21
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 11-FEB-21

By: Senator Orr