



Reprinted
April 6, 2021

ENGROSSED HOUSE BILL No. 1002

DIGEST OF HB 1002 (Updated April 5, 2021 2:28 pm - DI 136)

Citations Affected: IC 5-1.2; IC 16-31; IC 25-1; IC 34-6; IC 34-7; IC 34-12; IC 34-13; IC 34-30.

Synopsis: Civil immunity related to COVID-19. Protects health care providers from professional discipline for certain acts or omissions arising from a disaster emergency unless the act or omission constitutes gross negligence, willful or wanton misconduct, or intentional misrepresentation. Provides that a health care provider is not protected from professional discipline for actions that are outside the skills, education, and training of the health care provider, unless certain circumstances apply. Specifies that orders and recommendations issued by local, state, and federal government agencies and officials during a state disaster emergency do not create new causes of action or new legal duties. Specifies that the orders and recommendations are presumed irrelevant to the issue of the existence of a duty or breach of a duty. Prohibits filing a class action lawsuit against a defendant in a
(Continued next page)

Effective: March 1, 2020 (retroactive); July 1, 2021.

Torr, Young J, Jeter, Lehman

(SENATE SPONSORS — MESSMER, BROWN L, FREEMAN, KRUSE)

January 4, 2021, read first time and referred to Committee on Judiciary.
January 26, 2021, amended, reported — Do Pass.
January 28, 2021, read second time, ordered engrossed. Engrossed.
February 1, 2021, read third time, passed. Yeas 76, nays 21.

SENATE ACTION

February 23, 2021, read first time and referred to Committee on Judiciary.
April 1, 2021, amended, reported favorably — Do Pass.
April 5, 2021, read second time, amended, ordered engrossed.

EH 1002—LS 7087/DI 92



Digest Continued

civil action allowed by the statute. Specifies that a governmental entity or employee is not liable if a loss results from an act or omission arising from COVID-19 unless the act or omission constitutes gross negligence, willful or wanton misconduct, or intentional misrepresentation. Provides that a person is not liable to a claimant for loss, damage, injury, or death arising from COVID-19 unless the claimant proves that the person caused the loss, damage, injury, or death by an act or omission constituting gross negligence, willful or wanton misconduct, or intentional misrepresentation. Provides immunity from civil liability to certain persons, entities, and facilities providing health care and other services for certain acts or omissions related to the provision of health care services and other services during a state disaster emergency. Extends COVID-19 health care immunity during periods of disaster emergency after February 29, 2020, and before April 1, 2022. Resolves conflicts between SEA 1 and HB 1002.

EH 1002—LS 7087/DI 92



Reprinted
April 6, 2021

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in *this style type*, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1002

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-1.2-12-4, AS ADDED BY P.L.189-2018,
2 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 MARCH 1, 2020 (RETROACTIVE)]: Sec. 4. (a) The authority shall do
4 the following under this chapter:
5 (1) Be responsible for the management of all aspects of the
6 Indiana brownfields program.
7 (2) Prepare and provide program information.
8 (3) Negotiate the negotiable aspects of each financial assistance
9 agreement.
10 (4) Sign each financial assistance agreement.
11 (5) Review each proposed project and financial assistance
12 agreement to determine if the project meets the credit, economic,
13 or fiscal criteria established by guidelines of the authority.
14 (6) Periodically inspect or cause to be inspected projects to
15 determine compliance with this chapter.

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- 1 (7) Conduct or cause to be conducted an evaluation concerning
 2 the financial ability of a private individual or entity, nonprofit
 3 entity, or political subdivision to:
- 4 (A) pay a loan or other financial assistance and other
 5 obligations evidencing loans or other financial assistance, if
 6 required to be paid; and
 7 (B) otherwise comply with terms of the financial assistance
 8 agreement.
- 9 (8) Evaluate or cause to be evaluated the technical aspects of the
 10 private individual or entity, nonprofit entity, or political
 11 subdivision's:
- 12 (A) environmental assessment of potential brownfield
 13 properties;
 14 (B) proposed remediation; and
 15 (C) remediation activities conducted on brownfield properties.
- 16 (9) Inspect or cause to be inspected remediation activities
 17 conducted under this chapter.
- 18 (10) Act as a liaison to the United States Environmental
 19 Protection Agency regarding the Indiana brownfields program.
- 20 (11) Be a point of contact for private entities, nonprofit entities,
 21 and political subdivisions concerning questions about the Indiana
 22 brownfields program.
- 23 (12) Enter into memoranda of understanding, as necessary, with
 24 the department of environmental management and the budget
 25 agency concerning the administration and management of the
 26 Indiana brownfields fund and the Indiana brownfields program.
- 27 (b) The authority may do the following under this chapter:
- 28 (1) Undertake activities to make private environmental insurance
 29 products available to encourage and facilitate the cleanup and
 30 redevelopment of brownfield properties.
- 31 (2) Enter into agreements with private entities, nonprofit entities,
 32 and political subdivisions to manage any of the following
 33 conducted on brownfield properties:
- 34 (A) Environmental assessment activities.
 35 (B) Environmental remediation activities.
 36 (C) Demolition and clearance activities.
- 37 (c) The authority may:
- 38 (1) negotiate with;
 39 (2) select; and
 40 (3) contract with;
 41 one (1) or more insurers to provide insurance products as described in
 42 subsection (b)(1).



1 (d) The authority may:

2 (1) negotiate with;

3 (2) select; and

4 (3) contract with;

5 one (1) or more environmental consultants to undertake the activities
6 described in subsection (b)(2) for the benefit of private entities,
7 nonprofit entities, and political subdivisions.

8 (e) Notwithstanding IC 13-23, IC 13-24-1, and IC 13-25-4, the
9 authority is not liable for any contamination addressed by the authority
10 under an agreement under subsection (b)(2) unless existing
11 contamination on the brownfield is exacerbated due to gross negligence
12 or intentional misconduct by the authority.

13 (f) For purposes of subsection (e), reckless, willful, or wanton
14 misconduct constitutes gross negligence.

15 (g) The authority is entitled to the same governmental immunity
16 afforded a political subdivision under ~~IC 34-13-3-3(22)~~
17 **IC 34-13-3-3(a)(22)** for any act taken to investigate or remediate
18 hazardous substances, petroleum, or other pollutants associated with a
19 brownfield under an agreement under subsection (b)(2).

20 (h) This chapter does not require the authority to provide a loan or
21 other financial assistance to any private individual or entity, nonprofit
22 entity, or political subdivision to the extent the authority determines
23 that providing the loan or other financial assistance is not in the best
24 interests of the Indiana brownfields program and the authority.

25 SECTION 2. IC 16-31-6-1, AS AMENDED BY P.L.113-2020,
26 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2021]: Sec. 1. (a) A **certified emergency medical responder**,
28 a certified emergency medical technician, a **certified advanced**
29 **emergency medical technician, or a licensed paramedic** who
30 provides emergency medical services to an emergency patient is not
31 liable for an act or omission in providing those services unless the act
32 or omission constitutes **gross** negligence or willful misconduct. If the
33 **certified** emergency medical ~~technician services provider~~ is not liable
34 for an act or omission, no other person incurs liability by reason of an
35 agency relationship with the **certified** emergency medical ~~technician~~
36 **services provider**.

37 (b) This section does not affect the liability of a driver of an
38 ambulance for negligent operation of the ambulance.

39 (c) Except as provided in subsections (a) and (b), a certified
40 emergency medical technician, a **certified advanced emergency**
41 **medical technician**, or a licensed paramedic who provides emergency
42 medical services is not liable for transporting any person to an



1 appropriate health care facility when the **certified** emergency medical
 2 technician, **the certified advanced emergency medical technician**, or
 3 the licensed paramedic makes a good faith judgment that the
 4 emergency patient or the emergency patient's primary caregiver lacks
 5 the capacity to make an informed decision about the patient's:

- 6 (1) safety; or
- 7 (2) need for medical attention;

8 and the emergency patient is reasonably likely to suffer disability or
 9 death without the medical intervention available at the facility.

10 SECTION 3. IC 16-31-6-2, AS AMENDED BY P.L.77-2012,
 11 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2021]: Sec. 2. (a) Except for an act of **gross** negligence or
 13 willful misconduct, a certified emergency medical responder who uses
 14 an automatic or semiautomatic defibrillator on an emergency patient
 15 according to the training procedures established by the commission
 16 under IC 16-31-2-9 is immune from civil liability for acts or omissions
 17 when rendering those services.

18 (b) If the emergency medical responder is immune from civil
 19 liability for the emergency medical responder's act or omission, a
 20 person who has only an agency relationship with the emergency
 21 medical responder is also immune from civil liability for the act or
 22 omission.

23 SECTION 4. IC 16-31-6-3, AS AMENDED BY P.L.77-2012,
 24 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2021]: Sec. 3. An act or omission of a paramedic or an
 26 advanced emergency medical technician done or omitted in good faith
 27 while providing advanced life support to a patient or trauma victim
 28 does not impose liability upon the paramedic or advanced emergency
 29 medical technician, the authorizing physician, the hospital, or the
 30 officers, members of the staff, nurses, or other employees of the
 31 hospital or the local governmental unit if the advanced life support is
 32 provided:

- 33 (1) in connection with an emergency;
- 34 (2) in good faith; and
- 35 (3) under the written or oral direction of a licensed physician;

36 unless the act or omission was a result of **gross** negligence or willful
 37 misconduct.

38 SECTION 5. IC 25-1-20 IS ADDED TO THE INDIANA CODE AS
 39 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE MARCH
 40 1, 2020 (RETROACTIVE)]:

41 **Chapter 20. Effect of a State Disaster Emergency on**
 42 **Professional Disciplinary Action**



1 **Sec. 1. This chapter applies during a period of a state disaster**
 2 **emergency declared under IC 10-14-3-12 to respond to COVID-19,**
 3 **if the state of disaster emergency was declared:**

4 **(1) after February 29, 2020; and**

5 **(2) before April 1, 2022.**

6 **Sec. 2. The following definitions apply throughout this chapter:**

7 **(1) "Arising (or arises) from a (or the) state disaster**
 8 **emergency" means an injury or harm:**

9 **(A) caused by or resulting from an act or omission**
 10 **performed in response to a state disaster emergency**
 11 **declared under IC 10-14-3-12 to respond to COVID-19;**
 12 **and**

13 **(B) arising from COVID-19 (as defined by**
 14 **IC 34-6-2-10.4(b)).**

15 **(2) "COVID-19" has the meaning set forth in**
 16 **IC 34-6-2-31.4(c).**

17 **(3) "Health care provider" has the meaning set forth in**
 18 **IC 4-6-14-2.**

19 **(4) "Health care services" has the meaning set forth in**
 20 **IC 34-6-2-55(b).**

21 **Sec. 3. Except as provided in section 4 of this chapter, a health**
 22 **care provider is not subject to professional discipline under**
 23 **IC 25-1-7 or IC 25-1-9 for any of the following:**

24 **(1) Health care services provided in response to or arising**
 25 **from a state disaster emergency declared under IC 10-14-3-12**
 26 **to respond to COVID-19.**

27 **(2) An act or omission of the health care provider committed**
 28 **with respect to the provision, withholding, delay, or**
 29 **withdrawal of health care services in response to or arising**
 30 **from a state disaster emergency declared under IC 10-14-3-12**
 31 **to respond to COVID-19.**

32 **(3) Compliance with an executive order or local health order**
 33 **issued in response to or arising from a state disaster**
 34 **emergency declared under IC 10-14-3-12 to respond to**
 35 **COVID-19.**

36 **(4) An injury, a death, or a loss to a person or property**
 37 **alleged to have occurred because the health care provider was**
 38 **unable to treat, diagnose, or test the person for any illness,**
 39 **disease, or condition, including an inability to perform any**
 40 **elective procedure in compliance with an executive order or**
 41 **local health order issued in response to or arising from a state**
 42 **disaster emergency declared under IC 10-14-3-12 to respond**



1 to COVID-19.

2 **Sec. 4. (a) Except as provided by subsection (b), section 3 of this**
 3 **chapter does not protect a health care provider from professional**
 4 **discipline under IC 25-1-7 or IC 25-1-9 if the health care provider's**
 5 **action, omission, decision, or compliance constitutes gross**
 6 **negligence, willful or wanton misconduct, fraud, or intentional**
 7 **misrepresentation.**

8 **(b) The following do not constitute gross negligence, willful or**
 9 **wanton misconduct, fraud, or intentional misrepresentation under**
 10 **this chapter if performed in response to or arising from a state**
 11 **disaster emergency declared under IC 10-14-3-12 to respond to**
 12 **COVID-19:**

13 **(1) Providing services without required personal protective**
 14 **equipment caused by:**

15 **(A) a shortage; or**

16 **(B) an inability to timely acquire personal protective**
 17 **equipment;**

18 **during an event that is declared a disaster emergency under**
 19 **IC 10-14-3-12 to respond to COVID-19.**

20 **(2) Providing services without access to adequate or reliable**
 21 **testing for COVID-19, even if the COVID-19 testing that was**
 22 **used received emergency use authorization from the federal**
 23 **Food and Drug Administration.**

24 **(3) Using equipment, medicine, or supplies in a manner that**
 25 **is not approved by the federal Food and Drug Administration.**

26 **(4) Providing services under a reallocation of staff or**
 27 **resources.**

28 **(5) Providing services that are outside of an individual's**
 29 **expertise or specialty.**

30 **Sec. 5. An order or a recommendation issued in response to or**
 31 **arising from a state disaster emergency declared under**
 32 **IC 10-14-3-12 to respond to COVID-19 by:**

33 **(1) the governor or a state agency;**

34 **(2) the executive of a city, town, or county;**

35 **(3) a local health official or local health department; or**

36 **(4) an agency of the federal government;**

37 **does not create a new cause of action against any person with**
 38 **respect to the matters contained in the order or recommendation.**

39 **SECTION 6. IC 34-6-2-3.8, AS ADDED BY SEA 1-2021,**
 40 **SECTION 1, IS REPEALED [EFFECTIVE MARCH 1, 2020**
 41 **(RETROACTIVE)]. Sec. 3-8: "Arising from COVID-19", for purposes**
 42 **of IC 34-30-32, has the meaning set forth in IC 34-30-32-2.**



1 SECTION 7. IC 34-6-2-10.4 IS ADDED TO THE INDIANA CODE
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 3 MARCH 1, 2020 (RETROACTIVE)]: **Sec. 10.4. (a) "Arising from
 4 COVID-19", for purposes of IC 34-30-32, has the meaning set forth
 5 in IC 34-30-32-2.**

6 **(b) "Arising from COVID-19", for purposes of section 10.5 of
 7 this chapter, IC 34-12-5, and IC 34-13-3-3, means an injury or
 8 harm caused by or resulting from:**

9 **(1) the actual, alleged, or possible exposure to or contraction
 10 of COVID-19; or**

11 **(2) services, treatment, or other actions performed for
 12 COVID-19.**

13 **(c) The definition under subsection (b) includes:**

14 **(1) the implementation of policies and procedures to:**

15 **(A) prevent or minimize the spread of COVID-19; and**

16 **(B) reallocate or procure staff or resources for COVID-19.**

17 **(2) testing in response to COVID-19;**

18 **(3) monitoring, collecting, reporting, tracking, tracing,
 19 disclosing, or investigating COVID-19 exposure or other
 20 COVID-19 related information;**

21 **(4) using, designing, manufacturing, providing, donating, or
 22 servicing precautionary, diagnostic, collection, or other health
 23 equipment or supplies, including personal protective
 24 equipment, for COVID-19;**

25 **(5) closing or partially closing to prevent or minimize the
 26 spread of COVID-19;**

27 **(6) delaying or modifying the scheduling or performance of a
 28 nonemergency medical procedure or appointment due to
 29 COVID-19;**

30 **(7) reasonable nonperformance of medical services due to
 31 COVID-19; and**

32 **(8) providing services or products in response to government
 33 appeal or repurposing operations to address an urgent need
 34 for personal protective equipment, sanitation products, or
 35 other products necessary to protect the public from
 36 COVID-19.**

37 SECTION 8. IC 34-6-2-10.5 IS ADDED TO THE INDIANA CODE
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 39 MARCH 1, 2020 (RETROACTIVE)]: **Sec. 10.5. "Arising (or arises)
 40 from a (or the) state disaster emergency", for purposes of
 41 IC 34-7-8 and IC 34-30-13.5, means an injury or harm:**

42 **(1) caused by or resulting from an act or omission performed**



1 **in response to a state disaster emergency declared under**
 2 **IC 10-14-3-12 to respond to COVID-19; and**
 3 **(2) arising from COVID-19.**

4 SECTION 9. IC 34-6-2-31.4, AS ADDED BY P.L.1-2021,
 5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 MARCH 1, 2020 (RETROACTIVE)]: Sec. 31.4. (a) "COVID-19", for
 7 purposes of IC 34-30-32, has the meaning set forth in IC 34-30-32-3.

8 (b) "COVID-19", for purposes of IC 34-30-33, has the meaning set
 9 forth in IC 34-30-33-2.

10 (c) "**COVID-19**", for purposes of sections 10.4 and 55 of this
 11 chapter, **IC 34-7-8, IC 34-12-5, IC 34-13-3-3, IC 34-30-13.5-1, and**
 12 **IC 34-30-13.5-3, has the meaning set forth in IC 34-30-32-3.**

13 SECTION 10. IC 34-6-2-46.4 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE MARCH 1, 2020 (RETROACTIVE)]: **Sec. 46.4.**
 16 **"Financial interest", for purposes of IC 34-30-13.5-3, means an**
 17 **ownership or investment interest through equity, debt, or other**
 18 **means. The term includes an ownership or investment interest in**
 19 **an entity that holds, either directly or through a subsidiary, an**
 20 **ownership or investment interest.**

21 SECTION 11. IC 34-6-2-55, AS AMENDED BY P.L.161-2015,
 22 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 MARCH 1, 2020 (RETROACTIVE)]: Sec. 55. (a) "Health care
 24 services":

25 (1) except as provided in subdivision (2), for purposes of
 26 IC 34-30-13, has the meaning set forth in IC 27-13-1-18(a); and
 27 (2) for purposes of IC 34-30-13-1.2, means only noninvasive
 28 examinations, treatments, and procedures and the following
 29 invasive procedures:

- 30 (A) Routine dental services.
 31 (B) Injections.
 32 (C) Suturing of minor lacerations.
 33 (D) Incisions of boils or superficial abscesses.

34 The term does not include performance of an abortion, including
 35 abortion by surgical means, by use of an abortion inducing drug,
 36 or by prescribing a controlled substance or scheduled drug under
 37 IC 35-48.

38 (b) "Health care services", for purposes of IC 34-30-13.5, means:

- 39 (1) any services provided by an individual licensed under:
 40 (A) IC 25-2.5;
 41 (B) IC 25-10;
 42 (C) IC 25-13;



- 1 (D) IC 25-14;
 2 **(E) IC 25-19;**
 3 ~~(F)~~ (F) IC 25-22.5;
 4 ~~(G)~~ (G) IC 25-23;
 5 ~~(H)~~ (H) IC 25-23.5;
 6 ~~(I)~~ (I) IC 25-23.6;
 7 ~~(J)~~ (J) IC 25-24;
 8 ~~(K)~~ (K) IC 25-26;
 9 ~~(L)~~ (L) IC 25-27;
 10 ~~(M)~~ (M) IC 25-27.5;
 11 ~~(N)~~ (N) IC 25-29;
 12 ~~(O)~~ (O) IC 25-33;
 13 ~~(P)~~ (P) IC 25-34.5; or
 14 ~~(Q)~~ (Q) IC 25-35.6;
- 15 (2) services provided as the result of hospitalization, **to an**
 16 **individual admitted to a health facility licensed under**
 17 **IC 16-28, or to a person residing in a housing with services**
 18 **establishment (as defined by IC 12-10-15-3);**
- 19 (3) services incidental to the furnishing of services described in
 20 subdivisions (1) or (2);
- 21 (4) any services by individuals:
 22 (A) licensed as paramedics;
 23 (B) certified as advanced emergency medical technicians; or
 24 (C) certified as emergency medical technicians under
 25 ~~IC 16-31-2~~; **IC 16-31;**
- 26 (5) any services provided by individuals certified as emergency
 27 medical responders under ~~IC 16-31-2~~; **or IC 16-31;**
- 28 **(6) any services provided by certified health care**
 29 **professionals who are registered with the Indiana state**
 30 **department of health, including:**
 31 (A) certified nurse aides certified under IC 16-28-1-11;
 32 (B) qualified medication aides certified under
 33 IC 16-28-1-11; and
 34 (C) home health aides registered under rules adopted
 35 under IC 16-27-1-7;
- 36 (7) any services provided by unlicensed health care
 37 professionals who have successfully completed any applicable
 38 training required by the Indiana state department of health;
- 39 (8) any services provided by health care volunteers who are
 40 permitted to practice during an event that is declared a
 41 disaster emergency under IC 10-14-3-12 to respond to
 42 COVID-19;



1 **(9) any services provided by individuals with provisional or**
 2 **temporary licenses who are permitted to practice during an**
 3 **event that is declared a disaster emergency under**
 4 **IC 10-14-3-12 to respond to COVID-19; or**
 5 ~~(6)~~ **(10) any other services or goods furnished for the purpose of**
 6 preventing, alleviating, curing, or healing human illness, physical
 7 disability, or injury.

8 SECTION 12. IC 34-7-8 IS ADDED TO THE INDIANA CODE AS
 9 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE MARCH
 10 1, 2020 (RETROACTIVE)]:

11 **Chapter 8. Effect of Orders Issued in Response to or Arising**
 12 **From a State Disaster Emergency**

13 **Sec. 1. This chapter applies during a period of a state disaster**
 14 **emergency declared under IC 10-14-3-12 to respond to COVID-19,**
 15 **if the state of disaster emergency was declared:**

- 16 (1) after February 29, 2020; and
- 17 (2) before April 1, 2022.

18 **Sec. 2. An order or a recommendation issued in response to or**
 19 **arising from a state disaster emergency declared under**
 20 **IC 10-14-3-12 to respond to COVID-19 by:**

- 21 (1) the governor or a state agency;
- 22 (2) the executive of a city, town, or county;
- 23 (3) a local health official or local health department; or
- 24 (4) an agency of the federal government;

25 **does not create a new cause of action against any person with**
 26 **respect to the matters contained in the order or recommendation.**

27 SECTION 13. IC 34-12-5 IS ADDED TO THE INDIANA CODE
 28 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 29 MARCH 1, 2020 (RETROACTIVE)]:

30 **Chapter 5. Prohibited Class Actions Based on Contract Arising**
 31 **from COVID-19**

32 **Sec. 1. This chapter applies only to an action based on a**
 33 **contract, implied contract, quasi-contract, or unjust enrichment**
 34 **claim.**

35 **Sec. 2. (a) This chapter applies to a claim arising from**
 36 **COVID-19 during a period of a state disaster emergency declared**
 37 **under IC 10-14-3-12 to respond to COVID-19, if the state of**
 38 **disaster emergency was declared:**

- 39 (1) after February 29, 2020; and
- 40 (2) before April 1, 2022.

41 **(b) This chapter does not:**
 42 (1) create a cause of action;



- 1 (2) eliminate a required element of any existing cause of
- 2 action;
- 3 (3) affect a worker's compensation claim under IC 22-3; or
- 4 (4) except as otherwise provided in this chapter, amend,
- 5 repeal, alter, or affect any immunity, defense, limitation of
- 6 liability, or procedure available or required under law or
- 7 contract.

8 **Sec. 3. As used in this chapter, "arising from COVID-19" has**
 9 **the meaning set forth in IC 34-6-2-10.4.**

10 **Sec. 4. As used in this chapter, "claimant" means an individual**
 11 **or entity who initiates a cause of action alleging loss or damages**
 12 **arising from COVID-19 in a contract, implied contract,**
 13 **quasi-contract, or unjust enrichment claim.**

14 **Sec. 5. As used in this chapter, "covered entity" means:**

- 15 (1) a governmental entity (as defined by IC 34-6-2-49),
- 16 including a political subdivision (as defined in IC 34-6-2-110);
- 17 and
- 18 (2) an approved postsecondary educational institution (as
- 19 defined by IC 21-7-13-6).

20 **Sec. 6. As used in this chapter, "COVID-19" has the meaning set**
 21 **forth in IC 34-6-2-31.4.**

22 **Sec. 7. A claimant may not bring, and a court may not certify,**
 23 **a class action lawsuit against a covered entity for loss or damages**
 24 **arising from COVID-19 in a contract, implied contract,**
 25 **quasi-contract, or unjust enrichment claim.**

26 SECTION 14. IC 34-13-3-3, AS AMENDED BY P.L.65-2016,
 27 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 MARCH 1, 2020 (RETROACTIVE)]: Sec. 3. **(a)** A governmental
 29 entity or an employee acting within the scope of the employee's
 30 employment is not liable if a loss results from the following:

- 31 (1) The natural condition of unimproved property.
- 32 (2) The condition of a reservoir, dam, canal, conduit, drain, or
- 33 similar structure when used by a person for a purpose that is not
- 34 foreseeable.
- 35 (3) The temporary condition of a public thoroughfare or extreme
- 36 sport area that results from weather.
- 37 (4) The condition of an unpaved road, trail, or footpath, the
- 38 purpose of which is to provide access to a recreation or scenic
- 39 area.
- 40 (5) The design, construction, control, operation, or normal
- 41 condition of an extreme sport area, if all entrances to the extreme
- 42 sport area are marked with:



- 1 (A) a set of rules governing the use of the extreme sport area;
- 2 (B) a warning concerning the hazards and dangers associated
- 3 with the use of the extreme sport area; and
- 4 (C) a statement that the extreme sport area may be used only
- 5 by persons operating extreme sport equipment.
- 6 This subdivision shall not be construed to relieve a governmental
- 7 entity from liability for the continuing duty to maintain extreme
- 8 sports areas in a reasonably safe condition.
- 9 (6) The initiation of a judicial or an administrative proceeding.
- 10 (7) The performance of a discretionary function; however, the
- 11 provision of medical or optical care as provided in IC 34-6-2-38
- 12 shall be considered as a ministerial act.
- 13 (8) The adoption and enforcement of or failure to adopt or
- 14 enforce:
- 15 (A) a law (including rules and regulations); or
- 16 (B) in the case of a public school or charter school, a policy;
- 17 unless the act of enforcement constitutes false arrest or false
- 18 imprisonment.
- 19 (9) An act or omission performed in good faith and without
- 20 malice under the apparent authority of a statute which is invalid
- 21 if the employee would not have been liable had the statute been
- 22 valid.
- 23 (10) The act or omission of anyone other than the governmental
- 24 entity or the governmental entity's employee.
- 25 (11) The issuance, denial, suspension, or revocation of, or failure
- 26 or refusal to issue, deny, suspend, or revoke any permit, license,
- 27 certificate, approval, order, or similar authorization, where the
- 28 authority is discretionary under the law.
- 29 (12) Failure to make an inspection, or making an inadequate or
- 30 negligent inspection, of any property, other than the property of
- 31 a governmental entity, to determine whether the property
- 32 complied with or violates any law or contains a hazard to health
- 33 or safety.
- 34 (13) Entry upon any property where the entry is expressly or
- 35 impliedly authorized by law.
- 36 (14) Misrepresentation if unintentional.
- 37 (15) Theft by another person of money in the employee's official
- 38 custody, unless the loss was sustained because of the employee's
- 39 own negligent or wrongful act or omission.
- 40 (16) Injury to the property of a person under the jurisdiction and
- 41 control of the department of correction if the person has not
- 42 exhausted the administrative remedies and procedures provided



- 1 by section 7 of this chapter.
- 2 (17) Injury to the person or property of a person under supervision
3 of a governmental entity and who is:
- 4 (A) on probation; or
5 (B) assigned to an alcohol and drug services program under
6 IC 12-23, a minimum security release program under
7 IC 11-10-8, a pretrial conditional release program under
8 IC 35-33-8, or a community corrections program under
9 IC 11-12.
- 10 (18) Design of a highway (as defined in IC 9-13-2-73), toll road
11 project (as defined in IC 8-15-2-4(4)), tollway (as defined in
12 IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the
13 claimed loss occurs at least twenty (20) years after the public
14 highway, toll road project, tollway, or project was designed or
15 substantially redesigned; except that this subdivision shall not be
16 construed to relieve a responsible governmental entity from the
17 continuing duty to provide and maintain public highways in a
18 reasonably safe condition.
- 19 (19) Development, adoption, implementation, operation,
20 maintenance, or use of an enhanced emergency communication
21 system.
- 22 (20) Injury to a student or a student's property by an employee of
23 a school corporation if the employee is acting reasonably under a:
- 24 (A) discipline policy adopted under IC 20-33-8-12; or
25 (B) restraint and seclusion plan adopted under IC 20-20-40-14.
- 26 (21) An act or omission performed in good faith under the
27 apparent authority of a court order described in IC 35-46-1-15.1
28 or IC 35-46-1-15.3 that is invalid, including an arrest or
29 imprisonment related to the enforcement of the court order, if the
30 governmental entity or employee would not have been liable had
31 the court order been valid.
- 32 (22) An act taken to investigate or remediate hazardous
33 substances, petroleum, or other pollutants associated with a
34 brownfield (as defined in IC 13-11-2-19.3) unless:
- 35 (A) the loss is a result of reckless conduct; or
36 (B) the governmental entity was responsible for the initial
37 placement of the hazardous substances, petroleum, or other
38 pollutants on the brownfield.
- 39 (23) The operation of an off-road vehicle (as defined in
40 IC 14-8-2-185) by a nongovernmental employee, or by a
41 governmental employee not acting within the scope of the
42 employment of the employee, on a public highway in a county



1 road system outside the corporate limits of a city or town, unless
2 the loss is the result of an act or omission amounting to:

- 3 (A) gross negligence;
4 (B) willful or wanton misconduct; or
5 (C) intentional misconduct.

6 This subdivision shall not be construed to relieve a governmental
7 entity from liability for the continuing duty to maintain highways
8 in a reasonably safe condition for the operation of motor vehicles
9 licensed by the bureau of motor vehicles for operation on public
10 highways.

11 (24) Any act or omission rendered in connection with a request,
12 investigation, assessment, or opinion provided under
13 IC 36-9-28.7.

14 **(b) This subsection applies to a cause of action that accrues**
15 **during a period of a state disaster emergency declared under**
16 **IC 10-14-3-12 to respond to COVID-19, if the state of disaster**
17 **emergency was declared after February 29, 2020, and before April**
18 **1, 2022. A governmental entity or an employee acting within the**
19 **scope of the employee's employment is not liable for an act or**
20 **omission arising from COVID-19 unless the act or omission**
21 **constitutes gross negligence, willful or wanton misconduct, or**
22 **intentional misrepresentation. If a claim described in this**
23 **subsection is:**

- 24 (1) a claim for injury or death resulting from medical
25 malpractice; and
26 (2) not barred by the immunity provided under this
27 subsection;

28 **the claimant is required to comply with all of the provisions of**
29 **IC 34-18 (medical malpractice act).**

30 SECTION 15. IC 34-30-2-68, AS AMENDED BY P.L.113-2020,
31 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2021]: Sec. 68. IC 16-31-6-1 (Concerning ~~ambulance~~
33 ~~attendants and certified emergency medical technicians who render~~
34 ~~emergency ambulance services and certified emergency medical~~
35 ~~technicians or licensed paramedics who provide emergency medical~~
36 ~~services providers).~~

37 SECTION 16. IC 34-30-13.5-1, AS ADDED BY P.L.138-2006,
38 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 MARCH 1, 2020 (RETROACTIVE)]: Sec. 1. (a) **This subsection does**
40 **not apply during a period of a state disaster emergency declared**
41 **under IC 10-14-3-12 to respond to COVID-19, if the state of**
42 **disaster emergency was declared after February 29, 2020, and**



1 **before April 1, 2022.** Except as provided in section 2 of this chapter,
 2 a person who meets the following criteria may not be held civilly liable
 3 for an act or omission relating to the provision of health care services
 4 in response to an event that is declared a disaster emergency under
 5 IC 10-14-3-12, regardless of whether the provision of health care
 6 services occurred before or after the declaration of a disaster
 7 emergency:

8 (1) Has a license to provide health care services under Indiana
 9 law or the law of another state.

10 (2) Provides a health care service:

11 (A) within the scope of the person's license to another person;
 12 and

13 (B) at a location where health care services are provided
 14 during an event that is declared as a disaster.

15 **(b) This subsection applies during a period of a state disaster**
 16 **emergency declared under IC 10-14-3-12 to respond to COVID-19,**
 17 **if the state of disaster emergency was declared after February 29,**
 18 **2020, and before April 1, 2022. Except as provided in section 2 of**
 19 **this chapter, the following apply to the provision of health care**
 20 **services arising from a state disaster emergency declared under**
 21 **IC 10-14-3-12 to respond to COVID-19:**

22 (1) A person providing health care services or emergency
 23 medical services, whether in person or through telemedicine
 24 services permitted by IC 25-1-9.5, at a facility or other
 25 location where health care services or emergency medical
 26 services are provided may not be held civilly liable for an act
 27 or omission relating to the provision or delay of health care
 28 services or emergency medical services arising from a state
 29 disaster emergency declared under IC 10-14-3-12 to respond
 30 to COVID-19.

31 (2) An employer, including an agency that provides or
 32 arranges health care services or emergency medical services,
 33 of a person described in subdivision (1) may not be held civilly
 34 liable for an act or omission relating to the provision or delay
 35 of health care services or emergency medical services arising
 36 from a state disaster emergency declared under IC 10-14-3-12
 37 to respond to COVID-19.

38 **(c) This subsection applies during a period of a state disaster**
 39 **emergency declared under IC 10-14-3-12 to respond to COVID-19,**
 40 **if the state of disaster emergency was declared after February 29,**
 41 **2020, and before April 1, 2022. The following do not constitute**
 42 **gross negligence, willful or wanton misconduct, fraud, or**



1 intentional misrepresentation under this chapter if arising from a
 2 state disaster emergency declared under IC 10-14-3-12 to respond
 3 to COVID-19:

4 (1) Providing services without required personal protective
 5 equipment caused by:

6 (A) a shortage; or

7 (B) an inability to timely acquire personal protective
 8 equipment;

9 in response to or arising from a state disaster emergency
 10 declared under IC 10-14-3-12 to respond to COVID-19.

11 (2) Providing services without access to adequate or reliable
 12 testing for COVID-19, even if the COVID-19 testing that was
 13 used received emergency use authorization from the federal
 14 Food and Drug Administration.

15 (3) Using equipment, medicine, or supplies to treat or help
 16 prevent the transmission of COVID-19 in a manner that is not
 17 approved by the federal Food and Drug Administration.

18 (4) Providing services that are outside of an individual's
 19 expertise or specialty but within the individual's scope of
 20 practice under IC 16 or IC 25.

21 SECTION 17. IC 34-30-13.5-2, AS ADDED BY P.L.138-2006,
 22 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 MARCH 1, 2020 (RETROACTIVE)]: Sec. 2. A person described in
 24 this chapter is not immune from civil liability if the damages resulting
 25 from the act or omission relating to the provision **or delay** of the health
 26 care services resulted from the person's gross negligence, ~~or willful~~
 27 ~~misconduct.~~ **or wanton misconduct, fraud, or intentional**
 28 **misrepresentation.**

29 SECTION 18. IC 34-30-13.5-3, AS ADDED BY P.L.138-2006,
 30 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 MARCH 1, 2020 (RETROACTIVE)]: Sec. 3. **(a) This subsection does**
 32 **not apply during a period of a state disaster emergency declared**
 33 **under IC 10-14-3-12 to respond to COVID-19, if the state of**
 34 **disaster emergency was declared after February 29, 2020, and**
 35 **before April 1, 2022.** A facility or other location that is providing
 36 health care services in response to an event that is declared as a disaster
 37 emergency may not be held civilly liable for an act or omission relating
 38 to the provision of health care services in response to that event by a
 39 health professional licensed to provide the health care service under
 40 Indiana law or the law of another state if the person is acting during an
 41 event that is declared as a disaster emergency, regardless of whether
 42 the provision of health care services occurred before or after the



1 declaration of a disaster emergency.

2 **(b) This subsection applies during a period of a state disaster**
 3 **emergency declared under IC 10-14-3-12 to respond to COVID-19,**
 4 **if the state of disaster emergency was declared after February 29,**
 5 **2020, and before April 1, 2022. A facility or other location,**
 6 **including a location used to provide emergency medical services or**
 7 **used to provide telemedicine services permitted under IC 25-1-9.5,**
 8 **that provides health care services or emergency medical services**
 9 **in response to or arising from a state disaster emergency declared**
 10 **under IC 10-14-3-12 to respond to COVID-19 may not be held**
 11 **civilly liable for an act or omission relating to the provision of**
 12 **health care services with respect to which an individual providing**
 13 **health care services, a provider, an agent, or an employee are not**
 14 **liable under this chapter.**

15 **(c) This subsection applies during a period of a state disaster**
 16 **emergency declared under IC 10-14-3-12 to respond to COVID-19,**
 17 **if the state of disaster emergency was declared after February 29,**
 18 **2020, and before April 1, 2022. An individual or an entity that:**

19 **(1) has a financial interest in;**

20 **(2) serves on the board of directors of; or**

21 **(3) provides management or administrative services for;**

22 **a facility or other location that provides health care services or**
 23 **emergency medical services in response to or arising from a state**
 24 **disaster emergency declared under IC 10-14-3-12 to respond to**
 25 **COVID-19 may not be held civilly liable for an act or omission**
 26 **described in subsection (b).**

27 SECTION 19. IC 34-30-13.5-4 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE MARCH 1, 2020 (RETROACTIVE)]: **Sec. 4. This**
 30 **section applies during a period of a state disaster emergency**
 31 **declared under IC 10-14-3-12 to respond to COVID-19, if the state**
 32 **of disaster emergency was declared after February 29, 2020, and**
 33 **before April 1, 2022. If a claim described in this chapter is:**

34 **(1) a claim for injury or death resulting from medical**
 35 **malpractice; and**

36 **(2) not barred by the immunity provided under this chapter;**
 37 **the claimant is required to comply with all of the provisions of**
 38 **IC 34-18 (medical malpractice act).**

39 SECTION 20. An emergency is declared for this act.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1002, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, delete lines 33 through 36, begin a new paragraph and insert:

"Sec. 2. The following definitions apply throughout this chapter:

(1) "Arising (or arises) from a (or the) state disaster emergency" means an injury or harm:

(A) caused by or resulting from an act or omission performed in response to a state disaster emergency declared under IC 10-14-3-12; or

(B) arising from COVID-19 (as defined by IC 34-31-12-2).

(2) "COVID-19" has the meaning set forth in IC 34-12-4-2.

(3) "Health care provider" has the meaning set forth in IC 4-6-14-2.

(4) "Health care services" has the meaning set forth in IC 34-6-2-55(b)."

Page 3, line 37, delete "Sec. 4." and insert "**Sec. 3.**".

Page 3, line 37, delete "section 5" and insert "**section 4**".

Page 3, line 39, delete "IC 25-1-11" and insert "**IC 25-1-9**".

Page 3, line 40, delete "during" and insert "**arising from**".

Page 4, line 1, after "withholding," insert "**delay,**".

Page 4, line 2, delete "during" and insert "**arising from**".

Page 4, line 5, delete "during" and insert "**arising from**".

Page 4, line 12, delete "during" and insert "**arising from**".

Page 4, line 14, delete "Sec. 5." and insert "**Sec. 4.**".

Page 4, line 14, delete "Section 4" and insert "**Except as provided by subsection (b), section 3**".

Page 4, line 16, delete "IC 25-1-11" and insert "**IC 25-1-9**".

Page 4, line 17, delete "negligence or willful misconduct." and insert "**negligence, willful or wanton misconduct, or intentional misrepresentation.**".

Page 4, delete lines 18 through 24, begin a new paragraph and insert:

"(b) The following do not constitute gross negligence, willful or wanton misconduct, or intentional misrepresentation:

(1) Providing services without required personal protective equipment caused by:

(A) a shortage; or



(B) an inability to timely acquire personal protective equipment;

during an event that is declared a disaster emergency under IC 10-14-3-12.

(2) Providing services without access to adequate or reliable testing for COVID-19, even if the COVID-19 testing that was used received emergency use authorization from the federal Food and Drug Administration.

(3) Using equipment, medicine, or supplies in a manner that is not approved by the federal Food and Drug Administration in good faith in response to COVID-19.

(4) Providing services under a reallocation of staff or resources.

(5) Providing services under a staffing shortage.

(6) Providing services that are outside of an individual's expertise or specialty in good faith in response to COVID-19."

Page 4, line 25, delete "Sec. 6." and insert "**Sec. 5.**".

Page 4, line 26, delete "during" and insert "**arising from**".

Page 4, line 38, delete "Sec. 7." and insert "**Sec. 6.**".

Page 4, line 38, delete "section 6" and insert "**section 5**".

Page 4, line 40, delete "IC 25-1-11" and insert "**IC 25-1-9**".

Page 4, after line 42, begin a new paragraph and insert:

"SECTION 3. IC 34-6-2-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE MARCH 1, 2020 (RETROACTIVE)]: **Sec. 10.5. "Arising (or arises) from a (or the) state disaster emergency", for purposes of IC 34-7-8 and IC 34-30-13.5, means an injury or harm:**

(1) caused by or resulting from an act or omission performed in response to a state disaster emergency declared under IC 10-14-3-12; or

(2) arising from COVID-19 (as defined by IC 34-31-12-2).

SECTION 4. IC 34-6-2-46.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE MARCH 1, 2020 (RETROACTIVE)]: **Sec. 46.4. "Financial interest", for purposes of IC 34-30-13.5-3, means an ownership or investment interest through equity, debt, or other means. The term includes an ownership or investment interest in an entity that holds, either directly or through a subsidiary, an ownership or investment interest."**

Page 5, delete lines 19 through 35, begin a new line block indented and insert:

"(1) any services provided by an individual licensed under:



- (A) IC 25-2.5;
- (B) IC 25-10;
- (C) IC 25-13;
- (D) IC 25-14;
- (E) IC 25-19;**
- ~~(F)~~ (F) IC 25-22.5;
- ~~(G)~~ (G) IC 25-23;
- ~~(H)~~ (H) IC 25-23.5;
- ~~(I)~~ (I) IC 25-23.6;
- ~~(J)~~ (J) IC 25-24;
- ~~(K)~~ (K) IC 25-26;
- ~~(L)~~ (L) IC 25-27;
- ~~(M)~~ (M) IC 25-27.5;
- ~~(N)~~ (N) IC 25-29;
- ~~(O)~~ (O) IC 25-33;
- ~~(P)~~ (P) IC 25-34.5; or
- ~~(Q)~~ (Q) IC 25-35.6;".

Page 6, line 4, strike "IC 16-31-2;" and insert "**IC 16-31;**".

Page 6, line 6, strike "IC 16-31-2; or" and insert "**IC 16-31;**".

Page 6, between lines 6 and 7, begin a new line block indented and insert:

"(6) any services provided by certified health care professionals who are registered with the Indiana state department of health, including:

- (A) certified nurse aides certified under IC 16-28-1-11;**
- (B) qualified medication aides certified under IC 16-28-1-11; and**
- (C) home health aides registered under rules adopted under IC 16-27-1-7;**

(7) any services provided by unlicensed health care professionals who have successfully completed any applicable training required by the Indiana state department of health;

(8) any services provided by health care volunteers who are permitted to practice during an event that is declared a disaster emergency under IC 10-14-3-12;

(9) any services provided by individuals with provisional or temporary licenses who are permitted to practice during an event that is declared a disaster emergency under IC 10-14-3-12; or"

Page 6, line 7, strike "(6)" and insert "**(10)**".

Page 6, line 9, delete "injury." and insert "injury, **including environmental cleaning services.**".



Page 6, line 13, delete "During" and insert "**Arising From**".

Page 6, line 18, delete "during" and insert "**arising from**".

Page 7, line 21, delete "negligence or willful misconduct." and insert "**negligence, willful or wanton misconduct, or intentional misrepresentation.**".

Page 7, between lines 23 and 24, begin a new paragraph and insert:
"**Sec. 5. If a claim described in this section is:**

(1) a claim for injury or death resulting from medical malpractice; and

(2) not barred by the immunity provided under this chapter; the claimant is required to comply with all of the provisions of IC 34-18 (medical malpractice act)."

Page 10, line 13, delete "January 1, 2022." and insert "**April 1, 2022.**".

Page 10, line 17, delete "negligence or willful misconduct." and insert "**negligence, willful or wanton misconduct, or intentional misrepresentation.**".

Page 10, line 20, after "IC 34-31-12-4)." insert "**If a claim described in this subsection is:**

(1) a claim for injury or death resulting from medical malpractice; and

(2) not barred by the immunity provided under this subsection;

the claimant is required to comply with all of the provisions of IC 34-18 (medical malpractice act)."

Page 10, delete lines 21 through 42.

Delete page 11.

Page 12, delete lines 1 through 16.

Page 12, delete lines 34 through 42, begin a new paragraph and insert:

"(b) This subsection applies after February 29, 2020, and before April 1, 2022. Except as provided in section 2 of this chapter, the following apply to the provision or delay of health care services or other services in response to or arising from a disaster emergency under IC 10-14-3-12:

(1) A person providing health care services or emergency medical services, whether in person or through telemedicine services permitted by IC 25-1-9.5, at a facility or other location where health care services or emergency medical services are provided may not be held civilly liable for an act or omission relating to:

(A) the provision or delay of health care services in



response to or arising from a state disaster emergency declared under IC 10-14-3-12; and

(B) any of the activities listed in items (i) through (iii), if the activity was materially affected by an event that is declared a disaster emergency under IC 10-14-3-12:

(i) clinical or nonclinical administrative activities, organization, management, planning, preparation, or staffing concerning a health care service;

(ii) the use or nonuse of supplies or equipment in the course of providing health care services; or

(iii) the performance, supervision, or monitoring of a health care service;

regardless of whether the provision or delay of health care services occurs before or after the declaration of a state disaster emergency.

(2) An employee or agent providing services, including administrative services and emergency medical services, at a facility or other location where health care services or emergency medical services are provided may not be held civilly liable for an act or omission related to the provision of those services in response to or arising from a state disaster emergency declared under IC 10-14-3-12, regardless of whether the provision of services occurs before or after the declaration of a state disaster emergency.

(3) An employer, including an agency that provides or arranges health care services, of a person described in subdivision (1) or (2) may not be held civilly liable for an act or omission relating to:

(A) the provision or delay of health care services or other services provided in response to or arising from a state disaster emergency declared under IC 10-14-3-12; and

(B) any of the activities listed in items (i) through (iii) if the activity was materially affected by an event that is declared a disaster emergency under IC 10-14-3-12:

(i) clinical or nonclinical administrative activities, organization, management, planning, preparation, or staffing concerning a health care service;

(ii) the use or nonuse of supplies or equipment in the course of providing health care services; or

(iii) the performance, supervision, or monitoring of a health care service;

regardless of whether the provision or delay of health care



services or other services occurs before or after the declaration of a state disaster emergency.

(c) This subsection applies after February 29, 2020, and before April 1, 2022. A person or an employer of a person described in this chapter may not be held civilly liable, and the action does not constitute gross negligence, willful or wanton misconduct, or intentional misrepresentation under this chapter, for the following:

(1) Providing services without required personal protective equipment caused by:

(A) a shortage; or

(B) an inability to timely acquire personal protective equipment;

in response to or arising from a disaster emergency under IC 10-14-3-12.

(2) Providing services without access to adequate or reliable testing for COVID-19, even if the COVID-19 testing that was used received emergency use authorization from the federal Food and Drug Administration.

(3) Using equipment, medicine, or supplies in a manner that is not approved by the federal Food and Drug Administration in good faith in response to COVID-19.

(4) Providing services under a reallocation of staff or resources.

(5) Providing services under a staffing shortage.

(6) Providing services that are outside of an individual's expertise or specialty in good faith in response to COVID-19.

SECTION 10. IC 34-30-13.5-2, AS ADDED BY P.L.138-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MARCH 1, 2020 (RETROACTIVE)]: Sec. 2. A person described in this chapter is not immune from civil liability if the damages resulting from the act or omission relating to the provision **or delay** of the health care services **or other services** resulted from the person's gross negligence, ~~or willful misconduct~~ **or wanton misconduct, or intentional misrepresentation.**"

Page 13, delete lines 1 through 9.

Page 13, line 23, after "a location" insert "**used to provide emergency medical services or**".

Page 13, line 25, after "services" insert "**or emergency medical services**".

Page 13, line 25, delete "during" and insert "**arising from**".

Page 13, line 29, after "provision" insert "**or delay**".

Page 13, line 30, after "services" insert "**or other services**".



Page 13, line 30, delete "section 1(b)(1) of".

Page 13, line 32, delete "of" and insert "**or delay of health care services or other**".

Page 13, line 33, delete "employee or agent" and insert "**employer or agency**".

Page 13, line 33, delete "section 1(b)(2) of".

Page 13, line 39, after "services" insert "**or emergency medical services**".

Page 13, line 39, delete "during" and insert "**arising from**".

Page 14, line 2, delete "during" and insert "**arises from**".

Page 14, line 11, after "services" insert "**or emergency medical services**".

Page 14, line 12, delete "during" and insert "**arising from**".

Page 14, between lines 15 and 16, begin a new paragraph and insert:
"SECTION 12. IC 34-30-13.5-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE MARCH 1, 2020 (RETROACTIVE)]: **Sec. 4. This section applies after February 29, 2020, and before April 1, 2022. If a claim described in this chapter is:**

(1) a claim for injury or death resulting from medical malpractice; and

(2) not barred by the immunity provided under this chapter; the claimant is required to comply with all of the provisions of IC 34-18 (medical malpractice act)."

Page 14, line 21, delete "January 1, 2022." and insert "**April 1, 2022.**".

Page 14, line 34, delete "performed" and insert "**performed, not performed, or delayed**".

Page 15, line 26, delete "(2); or" and insert "**(2);**".

Page 15, line 28, delete "hospital." and insert "**hospital; or**

(5) an individual licensed as a paramedic, advanced emergency medical technician under IC 16-31, or an individual certified as an emergency medical responder under IC 16-31."

Page 15, delete line 39 and insert "**negligence, willful or wanton misconduct, or intentional misrepresentation.**".

Page 15, delete lines 40 through 42, begin a new paragraph and insert:

"Sec. 8. If a claim described in this chapter is:

(1) a claim for injury or death resulting from medical malpractice; and

(2) not barred by the immunity provided under this chapter;



the claimant is required to comply with all of the provisions of IC 34-18 (medical malpractice act)."

Page 16, delete lines 1 through 18.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1002 as introduced.)

TORR

Committee Vote: yeas 9, nays 3.

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1002, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete committee amendment AM100212 adopted by the Senate Committee on Judiciary on March 17, 2021.

Delete committee amendment AM100213 adopted by the Senate Committee on Judiciary on March 24, 2021.

Page 3, between lines 24 and 25, begin a new paragraph and insert:

"SECTION 2. IC 16-31-6-1, AS AMENDED BY P.L.113-2020, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. (a) A **certified emergency medical responder, a certified emergency medical technician, a certified advanced emergency medical technician, or a licensed paramedic** who provides emergency medical services to an emergency patient is not liable for an act or omission in providing those services unless the act or omission constitutes **gross** negligence or willful misconduct. If the **certified emergency medical technician services provider** is not liable for an act or omission, no other person incurs liability by reason of an agency relationship with the **certified emergency medical technician services provider**.

(b) This section does not affect the liability of a driver of an ambulance for negligent operation of the ambulance.

(c) Except as provided in subsections (a) and (b), a certified emergency medical technician, **a certified advanced emergency medical technician**, or a licensed paramedic who provides emergency



medical services is not liable for transporting any person to an appropriate health care facility when the **certified** emergency medical technician, **the certified advanced emergency medical technician**, or the licensed paramedic makes a good faith judgment that the emergency patient or the emergency patient's primary caregiver lacks the capacity to make an informed decision about the patient's:

- (1) safety; or
- (2) need for medical attention;

and the emergency patient is reasonably likely to suffer disability or death without the medical intervention available at the facility.

SECTION 1. IC 16-31-6-2, AS AMENDED BY P.L.77-2012, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) Except for an act of **gross** negligence or willful misconduct, a certified emergency medical responder who uses an automatic or semiautomatic defibrillator on an emergency patient according to the training procedures established by the commission under IC 16-31-2-9 is immune from civil liability for acts or omissions when rendering those services.

(b) If the emergency medical responder is immune from civil liability for the emergency medical responder's act or omission, a person who has only an agency relationship with the emergency medical responder is also immune from civil liability for the act or omission.

SECTION 2. IC 16-31-6-3, AS AMENDED BY P.L.77-2012, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3. An act or omission of a paramedic or an advanced emergency medical technician done or omitted in good faith while providing advanced life support to a patient or trauma victim does not impose liability upon the paramedic or advanced emergency medical technician, the authorizing physician, the hospital, or the officers, members of the staff, nurses, or other employees of the hospital or the local governmental unit if the advanced life support is provided:

- (1) in connection with an emergency;
- (2) in good faith; and
- (3) under the written or oral direction of a licensed physician;

unless the act or omission was a result of **gross** negligence or willful misconduct."

Page 3, delete lines 30 through 32, begin a new paragraph and insert:

"Sec. 1. This chapter applies during a period of a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19,



if the state of disaster emergency was declared:

(1) after February 29, 2020; and

(2) before April 1, 2022."

Page 3, line 38, delete "IC 10-14-3-12; or" and insert "**IC 10-14-3-12 to respond to COVID-19; and**".

Page 3, line 39, delete "IC 34-31-12-2)." and insert "**IC 34-6-2-10.4(b)).**".

Page 3, line 40, delete "IC 34-12-4-2." and insert "**IC 34-6-2-31.4(c).**".

Page 4, line 8, delete "." and insert "**to respond to COVID-19.**".

Page 4, line 13, delete "." and insert "**to respond to COVID-19.**".

Page 4, line 16, delete "." and insert "**to respond to COVID-19.**".

Page 4, line 23, delete "." and insert "**to respond to COVID-19.**".

Page 4, line 28, after "misconduct," insert "**fraud,**".

Page 4, line 31, after "misconduct," insert "**fraud,**".

Page 4, line 31, delete "misrepresentation:" and insert "**misrepresentation under this chapter if performed in response to or arising from a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19:**".

Page 4, line 38, delete "." and insert "**to respond to COVID-19.**".

Page 5, line 2, delete "Administration" and insert "**Administration.**".

Page 5, delete line 3.

Page 5, delete line 6.

Page 5, line 7, delete "(6)" and insert "**(5)**".

Page 5, line 8, delete "specialty in good faith in response to COVID-19." and insert "**specialty.**".

Page 5, line 9, delete "(a)".

Page 5, line 11, after "IC 10-14-3-12" insert "**to respond to COVID-19**".

Page 5, line 16, delete "or substantive legal right".

Page 5, delete lines 19 through 26, begin a new paragraph and insert:

"SECTION 3. IC 34-6-2-3.8 IS REPEALED [EFFECTIVE MARCH 1, 2020 (RETROACTIVE)]. **Sec. 3.8. "Arising from COVID-19"**, for purposes of IC 34-30-32, has the meaning set forth in IC 34-30-32-2.

SECTION 4. IC 34-6-2-10.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE MARCH 1, 2020 (RETROACTIVE)]: **Sec. 10.4. (a) "Arising from COVID-19"**, for purposes of IC 34-30-32, has the meaning set forth in IC 34-30-32-2.

(b) "Arising from COVID-19", for purposes of section 10.5 of



this chapter, IC 34-12-5, and IC 34-13-3-3, means an injury or harm caused by or resulting from:

- (1) the actual, alleged, or possible exposure to or contraction of COVID-19; or
 - (2) services, treatment, or other actions performed for COVID-19.
- (c) The definition under subsection (b) includes:
- (1) the implementation of policies and procedures to:
 - (A) prevent or minimize the spread of COVID-19; and
 - (B) reallocate or procure staff or resources for COVID-19.
 - (2) testing in response to COVID-19;
 - (3) monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19 related information;
 - (4) using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, including personal protective equipment, for COVID-19;
 - (5) closing or partially closing to prevent or minimize the spread of COVID-19;
 - (6) delaying or modifying the scheduling or performance of a nonemergency medical procedure due to COVID-19;
 - (7) reasonable nonperformance of medical services due to COVID-19; and
 - (8) 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 from COVID-19."

Page 5, line 34, delete "IC 10-14-3-12; or" and insert "**IC 10-14-3-12 to respond to COVID-19; and**".

Page 5, line 35, delete "COVID-19 (as defined by IC 34-31-12-2)." and insert "**COVID-19**".

Page 5, between lines 35 and 36, begin a new paragraph and insert: "SECTION 6. IC 34-6-2-31.4, AS ADDED BY P.L.1-2021, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MARCH 1, 2020 (RETROACTIVE)]: Sec. 31.4. (a) "COVID-19", for purposes of IC 34-30-32, has the meaning set forth in IC 34-30-32-3.

(b) "COVID-19", for purposes of IC 34-30-33, has the meaning set forth in IC 34-30-33-2.

(c) "COVID-19", for purposes of sections 10.4 and 55 of this chapter, IC 34-7-8, IC 34-12-5, IC 34-13-3-3, IC 34-30-13.5-1, and



IC 34-30-13.5-3, has the meaning set forth in IC 34-30-32-3."

Page 7, line 22, after "IC 10-14-3-12" insert **"to respond to COVID-19"**.

Page 7, line 26, after "IC 10-14-3-12" insert **"to respond to COVID-19"**.

Page 7, line 29, delete "injury," and insert "injury."

Page 7, line 29, delete "including environmental cleaning services."

Page 7, delete lines 35 through 36, begin a new paragraph and insert:

"Sec. 1. This chapter applies during a period of a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19, if the state of disaster emergency was declared:

(1) after February 29, 2020; and

(2) before April 1, 2022."

Page 7, line 37, delete "(a)".

Page 7, line 39, after "IC 10-14-3-12" insert **"to respond to COVID-19"**.

Page 8, line 2, delete "or substantive legal right".

Page 8, delete lines 5 through 42.

Page 9, delete lines 1 through 8, begin a new paragraph and insert:

"SECTION 9. IC 34-12-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE MARCH 1, 2020 (RETROACTIVE)]:

Chapter 5. Prohibited Class Actions Based on Contract Arising from COVID-19

Sec. 1. This chapter applies only to an action based on a contract, implied contract, quasi-contract, or unjust enrichment claim.

Sec. 2. (a) This chapter applies to a claim arising from COVID-19 during a period of a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19, if the state of disaster emergency was declared:

(1) after February 29, 2020; and

(2) before April 1, 2022.

(b) This chapter does not:

(1) create a cause of action;

(2) eliminate a required element of any existing cause of action;

(3) affect a worker's compensation claim under IC 22-3; or

(4) except as otherwise provided in this chapter, amend, repeal, alter, or affect any immunity, defense, limitation of liability, or procedure available or required under law or



contract.

Sec. 3. As used in this chapter, "arising from COVID-19" has the meaning set forth in IC 34-6-2-10.4.

Sec. 4. As used in this chapter, "claimant" means an individual or entity who initiates a cause of action alleging loss or damages arising from COVID-19 in a contract, implied contract, quasi-contract, or unjust enrichment claim.

Sec. 5. As used in this chapter, "covered entity" means:

- (1) a governmental entity (as defined by IC 34-6-2-49), including a political subdivision (as defined in IC 34-6-2-110); and**
- (2) an approved postsecondary educational institution (as defined by IC 21-7-13-6).**

Sec. 6. As used in this chapter, "COVID-19" has the meaning set forth in IC 34-6-2-31.4.

Sec. 7. A claimant may not bring, and a court may not certify, a class action lawsuit against a covered entity for loss or damages arising from COVID-19 in a contract, implied contract, quasi-contract, or unjust enrichment claim."

Page 11, line 39, delete "accrues after" and insert **"accrues during a period of a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19, if the state of disaster emergency was declared:**

- (1) after February 29, 2020; and**
- (2) before April 1, 2022."**

Page 11, line 40, delete "February 29, 2020, and before April 1, 2022."

Page 12, line 1, delete "COVID-19 (as defined by IC 34-31-12-2)" and insert **"COVID-19"**.

Page 12, line 3, delete "IC 34-31-12-8 applies to a cause of".

Page 12, delete line 4.

Page 12, line 5, delete "or contraction of COVID-19 (as defined by IC 34-31-12-4)."

Page 12, between lines 12 and 13, begin a new paragraph and insert:
"SECTION 12. IC 34-30-2-68, AS AMENDED BY P.L.113-2020, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 68. IC 16-31-6-1 (Concerning ambulance attendants and certified emergency medical technicians who render emergency ambulance services and certified emergency medical technicians or licensed paramedics who provide emergency medical services providers)."

Page 12, line 16, delete "applies before March 1, 2020, and after



March 31, 2022." and insert **"does not apply during a period of a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19, if the state of disaster emergency was declared after February 29, 2020, and before April 1, 2022."**

Page 12, delete line 30, begin a new paragraph and insert:

"(b) This subsection applies during a period of a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19, if the state of disaster emergency was declared after February 29, 2020, and before April 1, 2022."

Page 12, line 31, delete "April 1, 2022."

Page 12, line 32, delete "or delay".

Page 12, line 32, delete "services or" and insert **"services"**.

Page 12, line 33, delete "other services in response to or".

Page 12, line 33, after "a" insert **"state"**.

Page 12, line 33, after "emergency" insert **"declared"**.

Page 12, line 34, delete "IC 10-14-3-12:" and insert **"IC 10-14-3-12 to respond to COVID-19:"**.

Page 12, delete lines 35 through 42, begin a new line block indented and insert:

"(1) A person providing health care services or emergency medical services, whether in person or through telemedicine services permitted by IC 25-1-9.5, at a facility or other location where health care services or emergency medical services are provided may not be held civilly liable for an act or omission relating to the provision or delay of health care services or emergency medical services arising from a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19.

(2) An employer, including an agency that provides or arranges health care services or emergency medical services, of a person described in subdivision (1) may not be held civilly liable for an act or omission relating to the provision or delay of health care services or emergency medical services arising from a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19.

(c) This subsection applies during a period of a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19, if the state of disaster emergency was declared after February 29, 2020, and before April 1, 2022. The following do not constitute gross negligence, willful or wanton misconduct, fraud, or intentional misrepresentation under this chapter if arising from a state disaster emergency declared under IC 10-14-3-12 to respond



to COVID-19:

(1) Providing services without required personal protective equipment caused by:

(A) a shortage; or

(B) an inability to timely acquire personal protective equipment;

in response to or arising from a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19.

(2) Providing services without access to adequate or reliable testing for COVID-19, even if the COVID-19 testing that was used received emergency use authorization from the federal Food and Drug Administration.

(3) Using equipment, medicine, or supplies to treat or help prevent the transmission of COVID-19 in a manner that is not approved by the federal Food and Drug Administration.

(4) Providing services that are outside of an individual's expertise or specialty but within the individual's scope of practice under IC 16 or IC 25."

Delete page 13.

Page 14, delete lines 1 through 25.

Page 14, line 31, delete "or other services".

Page 14, line 32, after "wanton misconduct," insert "**fraud**".

Page 14, line 37, delete "applies before March 1, 2020, and after March 31, 2022." and insert "**does not apply during a period of a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19, if the state of disaster emergency was declared after February 29, 2020, and before April 1, 2022.**".

Page 15, delete lines 4 through 42, begin a new paragraph and insert:

"(b) This subsection applies during a period of a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19, if the state of disaster emergency was declared after February 29, 2020, and before April 1, 2022. A facility or other location, including a location used to provide emergency medical services or used to provide telemedicine services permitted under IC 25-1-9.5, that provides health care services or emergency medical services in response to or arising from a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19 may not be held civilly liable for an act or omission relating to the provision of health care services with respect to which an individual providing health care services, a provider, an agent, or an employee are not liable under this chapter.



(c) This subsection applies during a period of a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19, if the state of disaster emergency was declared after February 29, 2020, and before April 1, 2022. An individual or an entity that:

(1) has a financial interest in;

(2) serves on the board of directors of; or

(3) provides management or administrative services for; a facility or other location that provides health care services or emergency medical services in response to or arising from a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19 may not be held civilly liable for an act or omission described in subsection (b)."

Page 16, delete line 4, and insert **"section applies during a period of a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19, if the state of disaster emergency was declared after February 29, 2020, and before April 1, 2022."**

Page 16, delete lines 11 through 42.

Delete page 17.

Page 18, delete lines 1 through 3.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1002 as printed January 26, 2021, and amended by the Senate Committee on Judiciary on March 17, 2021, and March 24, 2021.)

BROWN L, Chairperson

Committee Vote: Yeas 7, Nays 1.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1002 be amended to read as follows:

Page 6, line 39, after "IC 34-6-2-3.8" insert ", AS ADDED BY SEA 1-2021, SECTION 1,".

Page 7, line 27, after "procedure" insert "**or appointment**".

Page 14, delete lines 15 through 17 and insert:

"emergency was declared after February 29, 2020, and before April 1, 2022."

EH 1002—LS 7087/DI 92



(Reference is to EHB 1002 as printed April 2, 2021.)

BROWN L

