

116TH CONGRESS  
2D SESSION

# S. 4317

To lessen the burdens on interstate commerce by discouraging insubstantial lawsuits relating to COVID–19 while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

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## IN THE SENATE OF THE UNITED STATES

JULY 27, 2020

Mr. CORNYN (for himself and Mr. McCONNELL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To lessen the burdens on interstate commerce by discouraging insubstantial lawsuits relating to COVID–19 while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Safeguarding America’s Frontline Employees To Offer  
6       Work Opportunities Required to Kickstart the Economy  
7       Act” or the “SAFE TO WORK Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.

#### TITLE I—LIABILITY RELIEF

##### Subtitle A—Liability Limitations for Individuals and Entities Engaged in Businesses, Services, Activities, or Accommodations

- Sec. 121. Application of subtitle.
- Sec. 122. Liability; safe harbor.

##### Subtitle B—Liability Limitations for Health Care Providers

- Sec. 141. Application of subtitle.
- Sec. 142. Liability for health care professionals and health care facilities during  
 coronavirus public health emergency.

##### Subtitle C—Substantive and Procedural Provisions for Coronavirus-related Actions Generally

- Sec. 161. Jurisdiction.
- Sec. 162. Limitations on suits.
- Sec. 163. Procedures for suit in district courts of the United States.
- Sec. 164. Demand letters; cause of action.

##### Subtitle D—Relation to Labor and Employment Laws

- Sec. 181. Limitation on violations under specific laws.
- Sec. 182. Liability for conducting testing at workplace.
- Sec. 183. Joint employment and independent contracting.
- Sec. 184. Exclusion of certain notification requirements as a result of the  
 COVID–19 public health emergency.

#### TITLE II—PRODUCTS

- Sec. 201. Applicability of the targeted liability protections for pandemic and  
 epidemic products and security countermeasures with respect  
 to COVID–19.

#### TITLE III—GENERAL PROVISIONS

- Sec. 301. Severability.

### 3 **SEC. 2. FINDINGS AND PURPOSES.**

4 (a) FINDINGS.—Congress finds the following:

- 5 (1) The SARS–CoV–2 virus that originated in  
 6 China and causes the disease COVID–19 has caused

1 untold misery and devastation throughout the world,  
2 including in the United States.

3 (2) For months, frontline health care workers  
4 and health care facilities have fought the virus with  
5 courage and resolve. They did so at first with very  
6 little information about how to treat the virus and  
7 developed strategies to save lives of the people of the  
8 United States in real time. They risked their per-  
9 sonal health and wellbeing to protect and treat their  
10 patients.

11 (3) Businesses in the United States kicked into  
12 action to produce and procure personal protective  
13 equipment, such as masks, gloves, face shields, and  
14 hand sanitizer, and other necessary medical supplies,  
15 such as ventilators, at unprecedented rates.

16 (4) To halt the spread of the disease, State and  
17 local governments took drastic measures. They shut  
18 down small and large businesses, schools, colleges  
19 and universities, religious, philanthropic and other  
20 nonprofit institutions, and local government agen-  
21 cies. They ordered people to remain in their homes.

22 (5) This standstill was needed to slow the  
23 spread of the virus. But it devastated the economy  
24 of the United States. The sum of hundreds of local-  
25 level and State-level decisions to close nearly every

1 space in which people might gather brought inter-  
2 state commerce nearly to a halt.

3 (6) This halt led to the loss of millions of jobs.  
4 These lost jobs were not a natural consequence of  
5 the economic environment, but rather the result of  
6 a drastic, though temporary, response to the unprec-  
7 edented nature of this global pandemic.

8 (7) Congress passed a series of statutes to ad-  
9 dress the health care and economic crises—the  
10 Coronavirus Preparedness and Response Supple-  
11 mental Appropriations Act, 2020 (Public Law 116–  
12 123; 134 Stat. 146), the Families First Coronavirus  
13 Response Act (Public Law 116–127; 134 Stat. 178),  
14 the Coronavirus Aid, Relief, and Economic Security  
15 Act or the CARES Act (Public Law 116–136), and  
16 the Paycheck Protection Program and Health Care  
17 Enhancement Act (Public Law 116–139; 134 Stat.  
18 620). In these laws Congress exercised its power  
19 under the Commerce and Spending Clauses of the  
20 Constitution of the United States to direct trillions  
21 of taxpayer dollars toward efforts to aid workers,  
22 businesses, State and local governments, health care  
23 workers, and patients.

24 (8) This legislation provided short-term insula-  
25 tion from the worst of the economic storm, but these

1 laws alone cannot protect the United States from  
2 further devastation. Only reopening the economy so  
3 that workers can get back to work and students can  
4 get back to school can accomplish that goal.

5 (9) The Constitution of the United States spe-  
6 cifically enumerates the legislative powers of Con-  
7 gress. One of those powers is the regulation of inter-  
8 state commerce. The Government is not a substitute  
9 for the economy, but it has the authority and the  
10 duty to act when interstate commerce is threatened  
11 and damaged. As applied to the present crisis, Con-  
12 gress can deploy its power over interstate commerce  
13 to promote a prudent reopening of businesses and  
14 other organizations that serve as the foundation and  
15 backbone of the national economy and of commerce  
16 among the States. These include small and large  
17 businesses, schools (which are substantial employers  
18 in their own right and provide necessary services to  
19 enable parents and other caregivers to return to  
20 work), colleges and universities (which are substan-  
21 tial employers and supply the interstate market for  
22 higher-education services), religious, philanthropic  
23 and other nonprofit institutions (which are substan-  
24 tial employers and provide necessary services to their  
25 communities), and local government agencies.

1           (10) Congress must also ensure that the Na-  
2           tion’s health care workers and health care facilities  
3           are able to act fully to defeat the virus.

4           (11) Congress must also safeguard its invest-  
5           ment of taxpayer dollars under the CARES Act and  
6           other coronavirus legislation. Congress must ensure  
7           that those funds are used to help businesses and  
8           workers survive and recover from the economic cri-  
9           sis, and to help health care workers and health care  
10          facilities defeat the virus. CARES Act funds cannot  
11          be diverted from these important purposes to line  
12          the pockets of the trial bar.

13          (12) One of the chief impediments to the con-  
14          tinued flow of interstate commerce as this public-  
15          health crisis has unfolded is the risk of litigation.  
16          Small and large businesses, schools, colleges and  
17          universities, religious, philanthropic and other non-  
18          profit institutions, and local government agencies  
19          confront the risk of a tidal wave of lawsuits accusing  
20          them of exposing employees, customers, students,  
21          and worshipers to coronavirus. Health care workers  
22          face the threat of lawsuits arising from their efforts  
23          to fight the virus.

24          (13) They confront this litigation risk even as  
25          they work tirelessly to comply with the coronavirus

1 guidance, rules, and regulations issued by local gov-  
2 ernments, State governments, and the Federal Gov-  
3 ernment. They confront this risk notwithstanding  
4 equipment and staffing shortages. And they confront  
5 this risk while also grappling with constantly chang-  
6 ing information on how best to protect employees,  
7 customers, students, and worshipers from the virus,  
8 and how best to treat it.

9 (14) These lawsuits pose a substantial risk to  
10 interstate commerce because they threaten to keep  
11 small and large businesses, schools, colleges and uni-  
12 versities, religious, philanthropic and other nonprofit  
13 institutions, and local government agencies from re-  
14 opening for fear of expensive litigation that might  
15 prove to be meritless. These lawsuits further threat-  
16 en to undermine the Nation's fight against the virus  
17 by exposing our health care workers and health care  
18 facilities to liability for difficult medical decisions  
19 they have made under trying and uncertain cir-  
20 cumstances.

21 (15) These lawsuits also risk diverting taxpayer  
22 money provided under the CARES Act and other  
23 coronavirus legislation from its intended purposes to  
24 the pockets of opportunistic trial lawyers.

1           (16) This risk is not purely local. It is nec-  
2           essarily national in scale. A patchwork of local and  
3           State rules governing liability in coronavirus-related  
4           lawsuits creates tremendous unpredictability for ev-  
5           eryone participating in interstate commerce and acts  
6           as a significant drag on national recovery. The ag-  
7           gregation of each individual potential liability risk  
8           poses a substantial and unprecedented threat to  
9           interstate commerce.

10           (17) The accumulated economic risks for these  
11           potential defendants directly and substantially af-  
12           fects interstate commerce. Individuals and entities  
13           potentially subject to coronavirus-related liability will  
14           structure their decisionmaking to avoid that liability.  
15           Small and large businesses, schools, colleges and  
16           universities, religious, philanthropic and other non-  
17           profit institutions, and local government agencies  
18           may decline to reopen because of the risk of litiga-  
19           tion. They may limit their output or engagement  
20           with customers and communities to avoid the risk of  
21           litigation. These individual economic decisions sub-  
22           stantially affect interstate commerce because, as a  
23           whole, they will prevent the free and fair exchange  
24           of goods and services across State lines. Such eco-  
25           nomic activity that, individually and in the aggre-

1 gate, substantially affects interstate commerce is  
2 precisely the sort of conduct that should be subject  
3 to congressional regulation.

4 (18) Lawsuits against health care workers and  
5 facilities pose a similarly dangerous risk to interstate  
6 commerce. Interstate commerce will not truly re-  
7 bound from this crisis until the virus is defeated,  
8 and that will not happen unless health care workers  
9 and facilities are free to combat vigorously the virus  
10 and treat patients with coronavirus and those other-  
11 wise impacted by the response to coronavirus.

12 (19) Subjecting health care workers and facili-  
13 ties to onerous litigation even as they have done  
14 their level best to combat a virus about which very  
15 little was known when it arrived in the United  
16 States would divert important health care resources  
17 from hospitals and providers to courtrooms.

18 (20) Such a diversion would substantially affect  
19 interstate commerce by degrading the national ca-  
20 pacity for combating the virus and saving patients,  
21 thereby substantially elongating the period before  
22 interstate commerce could fully re-engage.

23 (21) Congress also has the authority to deter-  
24 mine the jurisdiction of the courts of the United  
25 States, to set the standards for causes of action they

1 can hear, and to establish the rules by which those  
2 causes of action should proceed. Congress therefore  
3 must act to set rules governing liability in  
4 coronavirus-related lawsuits.

5 (22) These rules necessarily must be temporary  
6 and carefully tailored to the interstate crisis caused  
7 by the coronavirus pandemic. They must extend no  
8 further than necessary to meet this uniquely na-  
9 tional crisis for which a patchwork of State and local  
10 tort laws are ill-suited.

11 (23) Because of the national scope of the eco-  
12 nomic and health care dangers posed by the risks of  
13 coronavirus-related lawsuits, establishing temporary  
14 rules governing liability for certain coronavirus-re-  
15 lated tort claims is a necessary and proper means of  
16 carrying into execution Congress's power to regulate  
17 commerce among the several States.

18 (24) Because Congress must safeguard the in-  
19 vestment of taxpayer dollars it made in the CARES  
20 Act and other coronavirus legislation, and ensure  
21 that they are used for their intended purposes and  
22 not diverted for other purposes, establishing tem-  
23 porary rules governing liability for certain  
24 coronavirus-related tort claims is a necessary and  
25 proper means of carrying into execution Congress's

1 power to provide for the general welfare of the  
2 United States.

3 (b) PURPOSES.—Pursuant to the powers delegated to  
4 Congress by article I, section 8, clauses 1, 3, 9, and 18,  
5 and article III, section 2, clause 1 of the Constitution of  
6 the United States, the purposes of this Act are to—

7 (1) establish necessary and consistent standards  
8 for litigating certain claims specific to the unique  
9 coronavirus pandemic;

10 (2) prevent the overburdening of the court sys-  
11 tems with undue litigation;

12 (3) encourage planning, care, and appropriate  
13 risk management by small and large businesses,  
14 schools, colleges and universities, religious, philan-  
15 thropic and other nonprofit institutions, local gov-  
16 ernment agencies, and health care providers;

17 (4) ensure that the Nation’s recovery from the  
18 coronavirus economic crisis is not burdened or  
19 slowed by the substantial risk of litigation;

20 (5) prevent litigation brought to extract settle-  
21 ments and enrich trial lawyers rather than vindicate  
22 meritorious claims;

23 (6) protect interstate commerce from the bur-  
24 dens of potentially meritless litigation;

1           (7) ensure the economic recovery proceeds with-  
2           out artificial and unnecessary delay;

3           (8) protect the interests of the taxpayers by en-  
4           suring that emergency taxpayer support continues to  
5           aid businesses, workers, and health care providers  
6           rather than enrich trial lawyers; and

7           (9) protect the highest and best ideals of the  
8           national economy, so businesses can produce and  
9           serve their customers, workers can work, teachers  
10          can teach, students can learn, and believers can wor-  
11          ship.

12 **SEC. 3. DEFINITIONS.**

13          In this Act:

14           (1) **APPLICABLE GOVERNMENT STANDARDS**  
15           **AND GUIDANCE.**—The term “applicable government  
16           standards and guidance” means—

17                   (A) any mandatory standards or regula-  
18                   tions specifically concerning the prevention or  
19                   mitigation of the transmission of coronavirus  
20                   issued by the Federal Government, or a State  
21                   or local government with jurisdiction over an in-  
22                   dividual or entity, whether provided by execu-  
23                   tive, judicial, or legislative order; and

24                   (B) with respect to an individual or entity  
25                   that, at the time of the actual, alleged, feared,

1 or potential for exposure to coronavirus is not  
2 subject to any mandatory standards or regula-  
3 tions described in subparagraph (A), any guid-  
4 ance, standards, or regulations specifically con-  
5 cerning the prevention or mitigation of the  
6 transmission of coronavirus issued by the Fed-  
7 eral Government, or a State or local govern-  
8 ment with jurisdiction over the individual or en-  
9 tity.

10 (2) **BUSINESSES, SERVICES, ACTIVITIES, OR AC-**  
11 **COMMODATIONS.**—The term “businesses, services,  
12 activities, or accommodations” means any act by an  
13 individual or entity, irrespective of whether the act  
14 is carried on for profit, that is interstate or foreign  
15 commerce, that involves persons or things in inter-  
16 state or foreign commerce, that involves the channels  
17 or instrumentalities of interstate or foreign com-  
18 merce, that substantially affects interstate or foreign  
19 commerce, or that is otherwise an act subject to reg-  
20 ulation by Congress as necessary and proper to  
21 carry into execution Congress’s powers to regulate  
22 interstate or foreign commerce or to spend funds for  
23 the general welfare.

24 (3) **CORONAVIRUS.**—The term “coronavirus”  
25 means any disease, health condition, or threat of

1 harm caused by the SARS-CoV-2 virus or a virus  
2 mutating therefrom.

3 (4) CORONAVIRUS EXPOSURE ACTION.—

4 (A) IN GENERAL.—The term “coronavirus  
5 exposure action” means a civil action—

6 (i) brought by a person who suffered  
7 personal injury or is at risk of suffering  
8 personal injury, or a representative of a  
9 person who suffered personal injury or is  
10 at risk of suffering personal injury;

11 (ii) brought against an individual or  
12 entity engaged in businesses, services, ac-  
13 tivities, or accommodations; and

14 (iii) alleging that an actual, alleged,  
15 feared, or potential for exposure to  
16 coronavirus caused the personal injury or  
17 risk of personal injury, that—

18 (I) occurred in the course of the  
19 businesses, services, activities, or ac-  
20 commodated of the individual or en-  
21 tity; and

22 (II) occurred—

23 (aa) on or after December 1,  
24 2019; and

25 (bb) before the later of—

1 (AA) October 1, 2024;

2 or

3 (BB) the date on which  
4 there is no declaration by  
5 the Secretary of Health and  
6 Human Services under sec-  
7 tion 319F–3(b) of the Pub-  
8 lic Health Service Act (42  
9 U.S.C. 247d–6d(b)) (relat-  
10 ing to medical counter-  
11 measures) that is in effect  
12 with respect to coronavirus,  
13 including the Declaration  
14 Under the Public Readiness  
15 and Emergency Prepared-  
16 ness Act for Medical Coun-  
17 termeasures Against  
18 COVID–19 (85 Fed. Reg.  
19 15198) issued by the Sec-  
20 retary of Health and Human  
21 Services on March 17, 2020.

22 (B) EXCLUSIONS.—The term “coronavirus  
23 exposure action” does not include—

24 (i) a criminal, civil, or administrative  
25 enforcement action brought by the Federal

1 Government or any State, local, or Tribal  
2 government; or

3 (ii) a claim alleging intentional dis-  
4 crimination on the basis of race, color, na-  
5 tional origin, religion, sex (including preg-  
6 nancy), disability, genetic information, or  
7 age.

8 (5) CORONAVIRUS-RELATED ACTION.—The  
9 term “coronavirus-related action” means a  
10 coronavirus exposure action or a coronavirus-related  
11 medical liability action.

12 (6) CORONAVIRUS-RELATED HEALTH CARE  
13 SERVICES.—The term “coronavirus-related health  
14 care services” means services provided by a health  
15 care provider, regardless of the location where the  
16 services are provided, that relate to—

17 (A) the diagnosis, prevention, or treatment  
18 of coronavirus;

19 (B) the assessment or care of an individual  
20 with a confirmed or suspected case of  
21 coronavirus; or

22 (C) the care of any individual who is ad-  
23 mitted to, presents to, receives services from, or  
24 resides at, a health care provider for any pur-  
25 pose during the period of a Federal emergency

1 declaration concerning coronavirus, if such pro-  
2 vider’s decisions or activities with respect to  
3 such individual are impacted as a result of  
4 coronavirus.

5 (7) CORONAVIRUS-RELATED MEDICAL LIABIL-  
6 ITY ACTION.—

7 (A) IN GENERAL.—The term “coronavirus-  
8 related medical liability action” means a civil  
9 action—

10 (i) brought by a person who suffered  
11 personal injury, or a representative of a  
12 person who suffered personal injury;

13 (ii) brought against a health care pro-  
14 vider; and

15 (iii) alleging any harm, damage,  
16 breach, or tort resulting in the personal in-  
17 jury alleged to have been caused by, be  
18 arising out of, or be related to a health  
19 care provider’s act or omission in the  
20 course of arranging for or providing  
21 coronavirus-related health care services  
22 that occurred—

23 (I) on or after December 1,  
24 2019; and

25 (II) before the later of—

1 (aa) October 1, 2024; or  
2 (bb) the date on which there  
3 is no declaration by the Secretary  
4 of Health and Human Services  
5 under section 319F–3(b) of the  
6 Public Health Service Act (42  
7 U.S.C. 247d–6d(b)) (relating to  
8 covered countermeasures) that is  
9 in effect with respect to  
10 coronavirus, including the Dec-  
11 laration Under the Public Readiness  
12 and Emergency Preparedness  
13 Act for Medical Counter-  
14 measures Against COVID–19 (85  
15 Fed. Reg. 15198) issued by the  
16 Secretary of Health and Human  
17 Services on March 17, 2020.

18 (B) EXCLUSIONS.—The term  
19 “coronavirus-related medical liability action”  
20 does not include—

21 (i) a criminal, civil, or administrative  
22 enforcement action brought by the Federal  
23 Government or any State, local, or Tribal  
24 government; or

1           (ii) a claim alleging intentional dis-  
2           crimination on the basis of race, color, na-  
3           tional origin, religion, sex (including preg-  
4           nancy), disability, genetic information, or  
5           age.

6           (8) EMPLOYER.—The term “employer”—

7           (A) means any person serving as an em-  
8           ployer or acting directly in the interest of an  
9           employer in relation to an employee;

10          (B) includes a public agency; and

11          (C) does not include any labor organization  
12          (other than when acting as an employer) or any  
13          person acting in the capacity of officer or agent  
14          of such labor organization.

15          (9) GOVERNMENT.—The term “government”  
16          means an agency, instrumentality, or other entity of  
17          the Federal Government, a State government (in-  
18          cluding multijurisdictional agencies, instrumental-  
19          ities, and entities), a local government, or a Tribal  
20          government.

21          (10) GROSS NEGLIGENCE.—The term “gross  
22          negligence” means a conscious, voluntary act or  
23          omission in reckless disregard of—

24          (A) a legal duty;

25          (B) the consequences to another party; and

1 (C) applicable government standards and  
2 guidance.

3 (11) HARM.—The term “harm” includes—

4 (A) physical and nonphysical contact that  
5 results in personal injury to an individual; and

6 (B) economic and noneconomic losses.

7 (12) HEALTH CARE PROVIDER.—

8 (A) IN GENERAL.—The term “health care  
9 provider” means any person, including an  
10 agent, volunteer (subject to subparagraph (C)),  
11 contractor, employee, or other entity, who is—

12 (i) required by Federal or State law to  
13 be licensed, registered, or certified to pro-  
14 vide health care and is so licensed, reg-  
15 istered, or certified (or is exempt from any  
16 such requirement);

17 (ii) otherwise authorized by Federal or  
18 State law to provide care (including serv-  
19 ices and supports furnished in a home or  
20 community-based residential setting under  
21 the State Medicaid program or a waiver of  
22 that program); or

23 (iii) considered under applicable Fed-  
24 eral or State law to be a health care pro-

1 vider, health care professional, health care  
2 institution, or health care facility.

3 (B) INCLUSION OF ADMINISTRATORS, SU-  
4 PERVISORS, ETC.—The term “health care pro-  
5 vider” includes a health care facility adminis-  
6 trator, executive, supervisor, board member or  
7 trustee, or another individual responsible for di-  
8 recting, supervising, or monitoring the provision  
9 of coronavirus-related health care services in a  
10 comparable role.

11 (C) INCLUSION OF VOLUNTEERS.—The  
12 term “health care provider” includes volunteers  
13 that meet the following criteria:

14 (i) The volunteer is a health care pro-  
15 fessional providing coronavirus-related  
16 health care services.

17 (ii) The act or omission by the volun-  
18 teer occurs—

19 (I) in the course of providing  
20 health care services;

21 (II) in the health care profes-  
22 sional’s capacity as a volunteer;

23 (III) in the course of providing  
24 health care services that—

1 (aa) are within the scope of  
 2 the license, registration, or cer-  
 3 tification of the volunteer, as de-  
 4 fined by the State of licensure,  
 5 registration, or certification; and

6 (bb) do not exceed the scope  
 7 of license, registration, or certifi-  
 8 cation of a substantially similar  
 9 health professional in the State  
 10 in which such act or omission oc-  
 11 curs; and

12 (IV) in a good-faith belief that  
 13 the individual being treated is in need  
 14 of health care services.

15 (13) INDIVIDUAL OR ENTITY.—The term “indi-  
 16 vidual or entity” means—

17 (A) any natural person, corporation, com-  
 18 pany, trade, business, firm, partnership, joint  
 19 stock company, educational institution, labor  
 20 organization, or similar organization or group  
 21 of organizations;

22 (B) any nonprofit organization, foundation,  
 23 society, or association organized for religious,  
 24 charitable, educational, or other purposes; or

25 (C) any State, Tribal, or local government.

1           (14) LOCAL GOVERNMENT.—The term “local  
2 government” means any unit of government within  
3 a State, including a—

4           (A) county;

5           (B) borough;

6           (C) municipality;

7           (D) city;

8           (E) town;

9           (F) township;

10          (G) parish;

11          (H) local public authority, including any  
12 public housing agency under the United States  
13 Housing Act of 1937 (42 U.S.C. 1437 et seq.);

14          (I) special district;

15          (J) school district;

16          (K) intrastate district;

17          (L) council of governments, whether or not  
18 incorporated as a nonprofit corporation under  
19 State law; and

20          (M) agency or instrumentality of—

21           (i) multiple units of local government  
22 (including units of local government lo-  
23 cated in different States); or

24           (ii) an intra-State unit of local gov-  
25 ernment.

1           (15) MANDATORY.—The term “mandatory”,  
2           with respect to standards or regulations, means the  
3           standards or regulations are themselves enforceable  
4           by the issuing government through criminal, civil, or  
5           administrative action.

6           (16) PERSONAL INJURY.—The term “personal  
7           injury”—

8                   (A) means actual or potential physical in-  
9                   jury to an individual or death caused by a phys-  
10                   ical injury; and

11                   (B) includes mental suffering, emotional  
12                   distress, or similar injuries suffered by an indi-  
13                   vidual in connection with a physical injury.

14           (17) STATE.—The term “State”—

15                   (A) means any State of the United States,  
16                   the District of Columbia, the Commonwealth of  
17                   Puerto Rico, the Northern Mariana Islands, the  
18                   United States Virgin Islands, Guam, American  
19                   Samoa, and any other territory or possession of  
20                   the United States, and any political subdivision  
21                   or instrumentality thereof; and

22                   (B) includes any agency or instrumentality  
23                   of 2 or more of the entities described in sub-  
24                   paragraph (A).

25           (18) TRIBAL GOVERNMENT.—

1           (A) IN GENERAL.—The term “Tribal gov-  
2           ernment” means the recognized governing body  
3           of any Indian tribe included on the list pub-  
4           lished by the Secretary of the Interior pursuant  
5           to section 104(a) of the Federally Recognized  
6           Indian Tribe List Act of 1994 (25 U.S.C.  
7           5131(a)).

8           (B) INCLUSION.—The term “Tribal gov-  
9           ernment” includes any subdivision (regardless  
10          of the laws and regulations of the jurisdiction  
11          in which the subdivision is organized or incor-  
12          porated) of a governing body described in sub-  
13          paragraph (A) that—

14                   (i) is wholly owned by that governing  
15                   body; and

16                   (ii) has been delegated the right to ex-  
17                   ercise 1 or more substantial governmental  
18                   functions of the governing body.

19          (19) WILLFUL MISCONDUCT.—The term “will-  
20          ful misconduct” means an act or omission that is  
21          taken—

22                   (A) intentionally to achieve a wrongful  
23                   purpose;

24                   (B) knowingly without legal or factual jus-  
25                   tification; and

1 (C) in disregard of a known or obvious risk  
 2 that is so great as to make it highly probable  
 3 that the harm will outweigh the benefit.

4 **TITLE I—LIABILITY RELIEF**  
 5 **Subtitle A—Liability Limitations**  
 6 **for Individuals and Entities En-**  
 7 **gaged in Businesses, Services,**  
 8 **Activities, or Accommodations**

9 **SEC. 121. APPLICATION OF SUBTITLE.**

10 (a) CAUSE OF ACTION; TRIBAL SOVEREIGN IMMUN-  
 11 NITY.—

12 (1) CAUSE OF ACTION.—

13 (A) IN GENERAL.—This subtitle creates an  
 14 exclusive cause of action for coronavirus expo-  
 15 sure actions.

16 (B) LIABILITY.—A plaintiff may prevail in  
 17 a coronavirus exposure action only in accord-  
 18 ance with the requirements of this title.

19 (C) APPLICATION.—The provisions of this  
 20 subtitle shall apply to—

21 (i) any cause of action that is a  
 22 coronavirus exposure action that was filed  
 23 before the date of enactment of this Act  
 24 and that is pending on such date of enact-  
 25 ment; and

1 (ii) any coronavirus exposure action  
2 filed on or after such date of enactment.

3 (2) PRESERVATION OF LIABILITY LIMITS AND  
4 DEFENSES.—Except as otherwise explicitly provided  
5 in this subtitle, nothing in this subtitle expands any  
6 liability otherwise imposed or limits any defense oth-  
7 erwise available under Federal, State, or Tribal law.

8 (3) IMMUNITY.—Nothing in this subtitle abro-  
9 gates the immunity of any State, or waives the im-  
10 munity of any Tribal government. The limitations on  
11 liability provided under this subtitle shall control in  
12 any action properly filed against a State or Tribal  
13 government pursuant to a duly executed waiver by  
14 the State or Tribe of sovereign immunity and stat-  
15 ing claims within the scope of this subtitle.

16 (b) PREEMPTION AND SUPERSEDURE.—

17 (1) IN GENERAL.—Except as described in para-  
18 graphs (2) through (6), this subtitle preempts and  
19 supersedes any Federal, State, or Tribal law, includ-  
20 ing statutes, regulations, rules, or standards that are  
21 enacted, promulgated, or established under common  
22 law, related to recovery for personal injuries caused  
23 by actual, alleged, feared, or potential for exposure  
24 to coronavirus.

1           (2) STRICTER LAWS NOT PREEMPTED OR SU-  
2           PERSEDED.—Nothing in this subtitle shall be con-  
3           strued to affect the applicability of any provision of  
4           any Federal, State, or Tribal law that imposes  
5           stricter limits on damages or liabilities for personal  
6           injury caused by, arising out of, or related to an ac-  
7           tual, alleged, feared, or potential for exposure to  
8           coronavirus, or otherwise affords greater protection  
9           to defendants in any coronavirus exposure action,  
10          than are provided in this subtitle. Any such provi-  
11          sion of Federal, State, or Tribal law shall be applied  
12          in addition to the requirements of this subtitle and  
13          not in lieu thereof.

14          (3) WORKERS' COMPENSATION LAWS NOT PRE-  
15          EMPTED OR SUPERSEDED.—Nothing in this subtitle  
16          shall be construed to affect the applicability of any  
17          State or Tribal law providing for a workers' com-  
18          pensation scheme or program, or to preempt or su-  
19          persede an exclusive remedy under such scheme or  
20          program.

21          (4) ENFORCEMENT ACTIONS.—Nothing in this  
22          subtitle shall be construed to impair, limit, or affect  
23          the authority of the Federal Government, or of any  
24          State, local, or Tribal government, to bring any

1 criminal, civil, or administrative enforcement action  
2 against any individual or entity.

3 (5) DISCRIMINATION CLAIMS.—Nothing in this  
4 subtitle shall be construed to affect the applicability  
5 of any provision of any Federal, State, or Tribal law  
6 that creates a cause of action for intentional dis-  
7 crimination on the basis of race, color, national ori-  
8 gin, religion, sex (including pregnancy), disability,  
9 genetic information, or age.

10 (6) MAINTENANCE AND CURE.—Nothing in this  
11 subtitle shall be construed to affect a seaman’s right  
12 to claim maintenance and cure benefits.

13 (c) STATUTE OF LIMITATIONS.—A coronavirus expo-  
14 sure action may not be commenced in any Federal, State,  
15 or Tribal government court later than 1 year after the  
16 date of the actual, alleged, feared, or potential for expo-  
17 sure to coronavirus.

18 **SEC. 122. LIABILITY; SAFE HARBOR.**

19 (a) REQUIREMENTS FOR LIABILITY FOR EXPOSURE  
20 TO CORONAVIRUS.—Notwithstanding any other provision  
21 of law, and except as otherwise provided in this section,  
22 no individual or entity engaged in businesses, services, ac-  
23 tivities, or accommodations shall be liable in any  
24 coronavirus exposure action unless the plaintiff can prove  
25 by clear and convincing evidence that—

1           (1) in engaging in the businesses, services, ac-  
2           tivities, or accommodations, the individual or entity  
3           was not making reasonable efforts in light of all the  
4           circumstances to comply with the applicable govern-  
5           ment standards and guidance in effect at the time  
6           of the actual, alleged, feared, or potential for expo-  
7           sure to coronavirus;

8           (2) the individual or entity engaged in gross  
9           negligence or willful misconduct that caused an ac-  
10          tual exposure to coronavirus; and

11          (3) the actual exposure to coronavirus caused  
12          the personal injury of the plaintiff.

13          (b) REASONABLE EFFORTS TO COMPLY.—

14               (1) CONFLICTING APPLICABLE GOVERNMENT  
15               STANDARDS AND GUIDANCE.—

16                       (A) IN GENERAL.—If more than 1 govern-  
17                       ment to whose jurisdiction an individual or enti-  
18                       ty is subject issues applicable government  
19                       standards and guidance, and the applicable gov-  
20                       ernment standards and guidance issued by 1 or  
21                       more of the governments conflicts with the ap-  
22                       plicable government standards and guidance  
23                       issued by 1 or more of the other governments,  
24                       the individual or entity shall be considered to  
25                       have made reasonable efforts in light of all the

1           circumstances to comply with the applicable  
2           government standards and guidance for pur-  
3           poses of subsection (a)(1) unless the plaintiff  
4           establishes by clear and convincing evidence  
5           that the individual or entity was not making  
6           reasonable efforts in light of all the cir-  
7           cumstances to comply with any of the con-  
8           flicting applicable government standards and  
9           guidance issued by any government to whose ju-  
10          risdiction the individual or entity is subject.

11           (B) EXCEPTION.—If mandatory standards  
12          and regulations constituting applicable govern-  
13          ment standards and guidance issued by any  
14          government with jurisdiction over the individual  
15          or entity conflict with applicable government  
16          standards and guidance that are not mandatory  
17          and are issued by any other government with  
18          jurisdiction over the individual or entity or by  
19          the same government that issued the mandatory  
20          standards and regulations, the plaintiff may es-  
21          tablish that the individual or entity did not  
22          make reasonable efforts in light of all the cir-  
23          cumstances to comply with the applicable gov-  
24          ernment standards and guidance for purposes  
25          of subsection (a)(1) by establishing by clear and

1 convincing evidence that the individual or entity  
2 was not making reasonable efforts in light of all  
3 the circumstances to comply with the manda-  
4 tory standards and regulations to which the in-  
5 dividual or entity was subject.

6 (2) WRITTEN OR PUBLISHED POLICY.—

7 (A) IN GENERAL.—If an individual or enti-  
8 ty engaged in businesses, services, activities, or  
9 accommodations maintained a written or pub-  
10 lished policy on the mitigation of transmission  
11 of coronavirus at the time of the actual, alleged,  
12 feared, or potential for exposure to coronavirus  
13 that complied with, or was more protective  
14 than, the applicable government standards and  
15 guidance to which the individual or entity was  
16 subject, the individual or entity shall be pre-  
17 sumed to have made reasonable efforts in light  
18 of all the circumstances to comply with the ap-  
19 plicable government standards and guidance for  
20 purposes of subsection (a)(1).

21 (B) REBUTTAL.—The plaintiff may rebut  
22 the presumption under subparagraph (A) by es-  
23 tablishing that the individual or entity was not  
24 complying with the written or published policy

1 at the time of the actual, alleged, feared, or po-  
2 tential for exposure to coronavirus.

3 (C) ABSENCE OF A WRITTEN OR PUB-  
4 LISHED POLICY.—The absence of a written or  
5 published policy shall not give rise to a pre-  
6 sumption that the individual or entity did not  
7 make reasonable efforts in light of all the cir-  
8 cumstances to comply with the applicable gov-  
9 ernment standards and guidance for purposes  
10 of subsection (a)(1).

11 (3) TIMING.—For purposes of subsection  
12 (a)(1), a change to a policy or practice by an indi-  
13 vidual or entity before or after the actual, alleged,  
14 feared, or potential for exposure to coronavirus, shall  
15 not be evidence of liability for the actual, alleged,  
16 feared, or potential for exposure to coronavirus.

17 (c) THIRD PARTIES.—No individual or entity shall be  
18 held liable in a coronavirus exposure action for the acts  
19 or omissions of a third party, unless—

20 (1) the individual or entity had an obligation  
21 under general common law principles to control the  
22 acts or omissions of the third party; or

23 (2) the third party was an agent of the indi-  
24 vidual or entity.

1 (d) MITIGATION.—Changes to the policies, practices,  
2 or procedures of an individual or entity for complying with  
3 the applicable government standards and guidance after  
4 the time of the actual, alleged, feared, or potential for ex-  
5 posure to coronavirus, shall not be considered evidence of  
6 liability or culpability.

7 **Subtitle B—Liability Limitations**  
8 **for Health Care Providers**

9 **SEC. 141. APPLICATION OF SUBTITLE.**

10 (a) IN GENERAL.—

11 (1) CAUSE OF ACTION.—

12 (A) IN GENERAL.—This subtitle creates an  
13 exclusive cause of action for coronavirus-related  
14 medical liability actions.

15 (B) LIABILITY.—A plaintiff may prevail in  
16 a coronavirus-related medical liability action  
17 only in accordance with the requirements of this  
18 title.

19 (C) APPLICATION.—The provisions of this  
20 subtitle shall apply to—

21 (i) any cause of action that is a  
22 coronavirus-related medical liability action  
23 that was filed before the date of enactment  
24 of this Act and that is pending on such  
25 date of enactment; and

1                   (ii) any coronavirus-related medical li-  
2                   ability action filed on or after such date of  
3                   enactment.

4                   (2) PRESERVATION OF LIABILITY LIMITS AND  
5                   DEFENSES.—Except as otherwise explicitly provided  
6                   in this subtitle, nothing in this subtitle expands any  
7                   liability otherwise imposed or limits any defense oth-  
8                   erwise available under Federal, State, or Tribal law.

9                   (3) IMMUNITY.—Nothing in this subtitle abro-  
10                  gates the immunity of any State, or waives the im-  
11                  munity of any Tribal government. The limitations on  
12                  liability provided under this subtitle shall control in  
13                  any action properly filed against a State or Tribal  
14                  government pursuant to a duly executed waiver by  
15                  the State or Tribe of sovereign immunity and stat-  
16                  ing claims within the scope of this subtitle.

17                  (b) PREEMPTION AND SUPERSEDURE.—

18                  (1) IN GENERAL.—Except as described in para-  
19                  graphs (2) through (6), this subtitle preempts and  
20                  supersedes any Federal, State, or Tribal law, includ-  
21                  ing statutes, regulations, rules, or standards that are  
22                  enacted, promulgated, or established under common  
23                  law, related to recovery for personal injuries caused  
24                  by, arising out of, or related to an act or omission  
25                  by a health care provider in the course of arranging

1 for or providing coronavirus-related health care serv-  
2 ices.

3 (2) STRICTER LAWS NOT PREEMPTED OR SU-  
4 PERSEDED.—Nothing in this subtitle shall be con-  
5 strued to affect the applicability of any provision of  
6 any Federal, State, or Tribal law that imposes  
7 stricter limits on damages or liabilities for personal  
8 injury caused by, arising out of, or related to an act  
9 or omission by a health care provider in the course  
10 of arranging for or providing coronavirus-related  
11 health care services, or otherwise affords greater  
12 protection to defendants in any coronavirus-related  
13 medical liability action than are provided in this sub-  
14 title. Any such provision of Federal, State, or Tribal  
15 law shall be applied in addition to the requirements  
16 of this subtitle and not in lieu thereof.

17 (3) ENFORCEMENT ACTIONS.—Nothing in this  
18 subtitle shall be construed to impair, limit, or affect  
19 the authority of the Federal Government, or of any  
20 State, local, or Tribal government to bring any  
21 criminal, civil, or administrative enforcement action  
22 against any health care provider.

23 (4) DISCRIMINATION CLAIMS.—Nothing in this  
24 subtitle shall be construed to affect the applicability  
25 of any provision of any Federal, State, or Tribal law

1 that creates a cause of action for intentional dis-  
2 crimination on the basis of race, color, national ori-  
3 gin, religion, sex (including pregnancy), disability,  
4 genetic information, or age.

5 (5) PUBLIC READINESS AND EMERGENCY PRE-  
6 PAREDNESS.—Nothing in this subtitle shall be con-  
7 strued to affect the applicability of section 319F–3  
8 of the Public Health Service Act (42 U.S.C. 247d–  
9 6d) to any act or omission involving a covered coun-  
10 termeasure, as defined in subsection (i) of such sec-  
11 tion in arranging for or providing coronavirus-re-  
12 lated health care services. Nothing in this subtitle  
13 shall be construed to affect the applicability of sec-  
14 tion 319F–4 of the Public Health Service Act (42  
15 U.S.C. 247d–6e).

16 (6) VACCINE INJURY.—To the extent that title  
17 XXI of the Public Health Service Act (42 U.S.C.  
18 300aa–1 et seq.) establishes a Federal rule applica-  
19 ble to a civil action brought for a vaccine-related in-  
20 jury or death, this subtitle does not affect the appli-  
21 cation of that rule to such an action.

22 (c) STATUTE OF LIMITATIONS.—A coronavirus-re-  
23 lated medical liability action may not be commenced in  
24 any Federal, State, or Tribal government court later than

1 1 year after the date of the alleged harm, damage, breach,  
2 or tort, unless tolled for—

3 (1) proof of fraud;

4 (2) intentional concealment; or

5 (3) the presence of a foreign body, which has no  
6 therapeutic or diagnostic purpose or effect, in the  
7 person of the injured person.

8 **SEC. 142. LIABILITY FOR HEALTH CARE PROFESSIONALS**  
9 **AND HEALTH CARE FACILITIES DURING**  
10 **CORONAVIRUS PUBLIC HEALTH EMERGENCY.**

11 (a) REQUIREMENTS FOR LIABILITY FOR  
12 CORONAVIRUS-RELATED HEALTH CARE SERVICES.—Not-  
13 withstanding any other provision of law, and except as  
14 provided in subsection (b), no health care provider shall  
15 be liable in a coronavirus-related medical liability action  
16 unless the plaintiff can prove by clear and convincing evi-  
17 dence—

18 (1) gross negligence or willful misconduct by  
19 the health care provider; and

20 (2) that the alleged harm, damage, breach, or  
21 tort resulting in the personal injury was directly  
22 caused by the alleged gross negligence or willful mis-  
23 conduct.

24 (b) EXCEPTIONS.—For purposes of this section, acts,  
25 omissions, or decisions resulting from a resource or staff-

1 ing shortage shall not be considered willful misconduct or  
 2 gross negligence.

3 **Subtitle C—Substantive and Proce-**  
 4 **dural Provisions for**  
 5 **Coronavirus-related Actions**  
 6 **Generally**

7 **SEC. 161. JURISDICTION.**

8 (a) JURISDICTION.—The district courts of the United  
 9 States shall have concurrent original jurisdiction of any  
 10 coronavirus-related action.

11 (b) REMOVAL.—

12 (1) IN GENERAL.—A coronavirus-related action  
 13 of which the district courts of the United States  
 14 have original jurisdiction under subsection (a) that  
 15 is brought in a State or Tribal government court  
 16 may be removed to a district court of the United  
 17 States in accordance with section 1446 of title 28,  
 18 United States Code, except that—

19 (A) notwithstanding subsection (b)(2)(A)  
 20 of such section, such action may be removed by  
 21 any defendant without the consent of all de-  
 22 fendants; and

23 (B) notwithstanding subsection (b)(1) of  
 24 such section, for any cause of action that is a  
 25 coronavirus-related action that was filed in a

1 State court before the date of enactment of this  
2 Act and that is pending in such court on such  
3 date of enactment, and of which the district  
4 courts of the United States have original juris-  
5 diction under subsection (a), any defendant  
6 may file a notice of removal of a civil action or  
7 proceeding within 30 days of the date of enact-  
8 ment of this Act.

9 (2) PROCEDURE AFTER REMOVAL.—Section  
10 1447 of title 28, United States Code, shall apply to  
11 any removal of a case under paragraph (1), except  
12 that, notwithstanding subsection (d) of such section,  
13 a court of appeals of the United States shall accept  
14 an appeal from an order of a district court granting  
15 or denying a motion to remand the case to the State  
16 or Tribal government court from which it was re-  
17 moved if application is made to the court of appeals  
18 of the United States not later than 10 days after the  
19 entry of the order.

20 **SEC. 162. LIMITATIONS ON SUITS.**

21 (a) JOINT AND SEVERAL LIABILITY LIMITATIONS.—

22 (1) IN GENERAL.—An individual or entity  
23 against whom a final judgment is entered in any  
24 coronavirus-related action shall be liable solely for  
25 the portion of the judgment that corresponds to the

1 relative and proportionate responsibility of that indi-  
2 vidual or entity. In determining the percentage of re-  
3 sponsibility of any defendant, the trier of fact shall  
4 determine that percentage as a percentage of the  
5 total fault of all individuals or entities, including the  
6 plaintiff, who caused or contributed to the total loss  
7 incurred by the plaintiff.

8 (2) PROPORTIONATE LIABILITY.—

9 (A) DETERMINATION OF RESPONSIBI-  
10 BILITY.—In any coronavirus-related action, the  
11 court shall instruct the jury to answer special  
12 interrogatories, or, if there is no jury, the court  
13 shall make findings with respect to each defend-  
14 ant, including defendants who have entered into  
15 settlements with the plaintiff or plaintiffs, con-  
16 cerning the percentage of responsibility, if any,  
17 of each defendant, measured as a percentage of  
18 the total fault of all individuals or entities who  
19 caused or contributed to the loss incurred by  
20 the plaintiff.

21 (B) FACTORS FOR CONSIDERATION.—In  
22 determining the percentage of responsibility  
23 under this subsection, the trier of fact shall  
24 consider—

1 (i) the nature of the conduct of each  
2 individual or entity found to have caused  
3 or contributed to the loss incurred by the  
4 plaintiff; and

5 (ii) the nature and extent of the caus-  
6 al relationship between the conduct of each  
7 such individual or entity and the damages  
8 incurred by the plaintiff.

9 (3) JOINT LIABILITY FOR SPECIFIC INTENT OR  
10 FRAUD.—Notwithstanding paragraph (1), in any  
11 coronavirus-related action the liability of a defendant  
12 is joint and several if the trier of fact specifically de-  
13 termines that the defendant—

14 (A) acted with specific intent to injure the  
15 plaintiff; or

16 (B) knowingly committed fraud.

17 (4) RIGHT TO CONTRIBUTION NOT AF-  
18 FECTED.—Nothing in this subsection affects the  
19 right, under any other law, of a defendant to con-  
20 tribution with respect to another defendant deter-  
21 mined under paragraph (3) to have acted with spe-  
22 cific intent to injure the plaintiff or to have know-  
23 ingly committed fraud.

24 (b) LIMITATIONS ON DAMAGES.—In any coronavirus-  
25 related action—

1           (1) the award of compensatory damages shall  
2 be limited to economic losses incurred as the result  
3 of the personal injury, harm, damage, breach, or  
4 tort, except that the court may award damages for  
5 noneconomic losses if the trier of fact determines  
6 that the personal injury, harm, damage, breach, or  
7 tort was caused by the willful misconduct of the in-  
8 dividual or entity;

9           (2) punitive damages—

10           (A) may be awarded only if the trier of  
11 fact determines that the personal injury to the  
12 plaintiff was caused by the willful misconduct of  
13 the individual or entity; and

14           (B) may not exceed the amount of compen-  
15 satory damages awarded; and

16           (3) the amount of monetary damages awarded  
17 to a plaintiff shall be reduced by the amount of com-  
18 pensation received by the plaintiff from another  
19 source in connection with the personal injury, harm,  
20 damage, breach, or tort, such as insurance or reim-  
21 bursement by a government.

22           (c) PREEMPTION AND SUPERSEDURE.—

23           (1) IN GENERAL.—Except as described in para-  
24 graphs (2) and (3), this section preempts and super-  
25 sedes any Federal, State, or Tribal law, including

1 statutes, regulations, rules, or standards that are en-  
2 acted, promulgated, or established under common  
3 law, related to joint and several liability, propor-  
4 tionate or contributory liability, contribution, or the  
5 award of damages for any coronavirus-related ac-  
6 tion.

7 (2) STRICTER LAWS NOT PREEMPTED OR SU-  
8 PERSEDED.—Nothing in this section shall be con-  
9 strued to affect the applicability of any provision of  
10 any Federal, State, or Tribal law that—

11 (A) limits the liability of a defendant in a  
12 coronavirus-related action to a lesser degree of  
13 liability than the degree of liability determined  
14 under this section;

15 (B) otherwise affords a greater degree of  
16 protection from joint or several liability than is  
17 afforded by this section; or

18 (C) limits the damages that can be recov-  
19 ered from a defendant in a coronavirus-related  
20 action to a lesser amount of damages than the  
21 amount determined under this section.

22 (3) PUBLIC READINESS AND EMERGENCY PRE-  
23 PAREDNESS.—Nothing in this subtitle shall be con-  
24 strued to affect the applicability of section 319F-3  
25 of the Public Health Service Act (42 U.S.C. 247d-

1 6d) to any act or omission involving a covered coun-  
2 termeasure, as defined in subsection (i) of such sec-  
3 tion in arranging for or providing coronavirus-re-  
4 lated health care services. Nothing in this subtitle  
5 shall be construed to affect the applicability of sec-  
6 tion 319F-4 of the Public Health Service Act (42  
7 U.S.C. 247d-6e).

8 **SEC. 163. PROCEDURES FOR SUIT IN DISTRICT COURTS OF**  
9 **THE UNITED STATES.**

10 (a) PLEADING WITH PARTICULARITY.—In any  
11 coronavirus-related action filed in or removed to a district  
12 court of the United States—

13 (1) the complaint shall plead with particu-  
14 larity—

15 (A) each element of the plaintiff’s claim;  
16 and

17 (B) with respect to a coronavirus exposure  
18 action, all places and persons visited by the per-  
19 son on whose behalf the complaint was filed and  
20 all persons who visited the residence of the per-  
21 son on whose behalf the complaint was filed  
22 during the 14-day-period before the onset of the  
23 first symptoms allegedly caused by coronavirus,  
24 including—

1 (i) each individual or entity against  
2 which a complaint is filed, along with the  
3 factual basis for the belief that such indi-  
4 vidual or entity was a cause of the per-  
5 sonal injury alleged; and

6 (ii) every other person or place visited  
7 by the person on whose behalf the com-  
8 plaint was filed and every other person  
9 who visited the residence of the person on  
10 whose behalf the complaint was filed dur-  
11 ing such period, along with the factual  
12 basis for the belief that these persons and  
13 places were not the cause of the personal  
14 injury alleged; and

15 (2) the complaint shall plead with particularity  
16 each alleged act or omission constituting gross neg-  
17 ligence or willful misconduct that resulted in per-  
18 sonal injury, harm, damage, breach, or tort.

19 (b) SEPARATE STATEMENTS CONCERNING THE NA-  
20 TURE AND AMOUNT OF DAMAGES AND REQUIRED STATE  
21 OF MIND.—

22 (1) NATURE AND AMOUNT OF DAMAGES.—In  
23 any coronavirus-related action filed in or removed to  
24 a district court of the United States in which mone-  
25 tary damages are requested, there shall be filed with

1 the complaint a statement of specific information as  
2 to the nature and amount of each element of dam-  
3 ages and the factual basis for the damages calcula-  
4 tion.

5 (2) REQUIRED STATE OF MIND.—In any  
6 coronavirus-related action filed in or removed to a  
7 district court of the United States in which a claim  
8 is asserted on which the plaintiff may prevail only on  
9 proof that the defendant acted with a particular  
10 state of mind, there shall be filed with the com-  
11 plaint, with respect to each element of that claim, a  
12 statement of the facts giving rise to a strong infer-  
13 ence that the defendant acted with the required  
14 state of mind.

15 (c) VERIFICATION AND MEDICAL RECORDS.—

16 (1) VERIFICATION REQUIREMENT.—

17 (A) IN GENERAL.—The complaint in a  
18 coronavirus-related action filed in or removed to  
19 a district court of the United States shall in-  
20 clude a verification, made by affidavit of the  
21 plaintiff under oath, stating that the pleading is  
22 true to the knowledge of the deponent, except  
23 as to matters specifically identified as being al-  
24 leged on information and belief, and that as to  
25 those matters the plaintiff believes it to be true.

1 (B) IDENTIFICATION OF MATTERS AL-  
2 LEGED UPON INFORMATION AND BELIEF.—Any  
3 matter that is not specifically identified as  
4 being alleged upon the information and belief of  
5 the plaintiff, shall be regarded for all purposes,  
6 including a criminal prosecution, as having been  
7 made upon the knowledge of the plaintiff.

8 (2) MATERIALS REQUIRED.—In any  
9 coronavirus-related action filed in or removed to a  
10 district court of the United States, the plaintiff shall  
11 file with the complaint—

12 (A) an affidavit by a physician or other  
13 qualified medical expert who did not treat the  
14 person on whose behalf the complaint was filed  
15 that explains the basis for such physician’s or  
16 other qualified medical expert’s belief that such  
17 person suffered the personal injury, harm, dam-  
18 age, breach, or tort alleged in the complaint;  
19 and

20 (B) certified medical records documenting  
21 the alleged personal injury, harm, damage,  
22 breach, or tort.

23 (d) APPLICATION WITH FEDERAL RULES OF CIVIL  
24 PROCEDURE.—This section applies exclusively to any  
25 coronavirus-related action filed in or removed to a district

1 court of the United States and, except to the extent that  
2 this section requires additional information to be con-  
3 tained in or attached to pleadings, nothing in this section  
4 is intended to amend or otherwise supersede applicable  
5 rules of Federal civil procedure.

6 (e) CIVIL DISCOVERY FOR ACTIONS IN DISTRICT  
7 COURTS OF THE UNITED STATES.—

8 (1) TIMING.—Notwithstanding any other provi-  
9 sion of law, in any coronavirus-related action filed in  
10 or removed to a district court of the United States,  
11 no discovery shall be allowed before—

12 (A) the time has expired for the defendant  
13 to answer or file a motion to dismiss; and

14 (B) if a motion to dismiss is filed, the  
15 court has ruled on the motion.

16 (2) STANDARD.—Notwithstanding any other  
17 provision of law, the court in any coronavirus-related  
18 action that is filed in or removed to a district court  
19 of the United States—

20 (A) shall permit discovery only with re-  
21 spect to matters directly related to material  
22 issues contested in the coronavirus-related ac-  
23 tion; and

24 (B) may compel a response to a discovery  
25 request (including a request for admission, an

1 interrogatory, a request for production of docu-  
2 ments, or any other form of discovery request)  
3 under rule 37 of the Federal Rules of Civil Pro-  
4 cedure, only if the court finds that—

5 (i) the requesting party needs the in-  
6 formation sought to prove or defend as to  
7 a material issue contested in such action;  
8 and

9 (ii) the likely benefits of a response to  
10 such request equal or exceed the burden or  
11 cost for the responding party of providing  
12 such response.

13 (f) INTERLOCUTORY APPEAL AND STAY OF DIS-  
14 COVERY.—The courts of appeals of the United States shall  
15 have jurisdiction of an appeal from a motion to dismiss  
16 that is denied in any coronavirus-related action in a dis-  
17 trict court of the United States. The district court shall  
18 stay all discovery in such a coronavirus-related action until  
19 the court of appeals has disposed of the appeal.

20 (g) CLASS ACTIONS AND MULTIDISTRICT LITIGA-  
21 TION PROCEEDINGS.—

22 (1) CLASS ACTIONS.—In any coronavirus-re-  
23 lated action that is filed in or removed to a district  
24 court of the United States and is maintained as a  
25 class action or multidistrict litigation—

1 (A) an individual or entity shall only be a  
2 member of the class if the individual or entity  
3 affirmatively elects to be a member; and

4 (B) the court, in addition to any other no-  
5 tice required by applicable Federal or State law,  
6 shall direct notice of the action to each member  
7 of the class, which shall include—

8 (i) a concise and clear description of  
9 the nature of the action;

10 (ii) the jurisdiction where the case is  
11 pending; and

12 (iii) the fee arrangements with class  
13 counsel, including—

14 (I) the hourly fee being charged;

15 or

16 (II) if it is a contingency fee, the  
17 percentage of the final award which  
18 will be paid, including an estimate of  
19 the total amount that would be paid if  
20 the requested damages were to be  
21 granted; and

22 (III) if the cost of the litigation  
23 is being financed, a description of the  
24 financing arrangement.

25 (2) MULTIDISTRICT LITIGATIONS.—

1 (A) TRIAL PROHIBITION.—In any coordi-  
2 nated or consolidated pretrial proceedings con-  
3 ducted pursuant to section 1407(b) of title 28,  
4 United States Code, the judge or judges to  
5 whom coronavirus-related actions are assigned  
6 by the Judicial Panel on Multidistrict Litigation  
7 may not conduct a trial in a coronavirus-related  
8 action transferred to or directly filed in the pro-  
9 ceedings unless all parties to that coronavirus-  
10 related action consent.

11 (B) REVIEW OF ORDERS.—The court of  
12 appeals of the United States having jurisdiction  
13 over the transferee district court shall permit  
14 an appeal to be taken from any order issued in  
15 the conduct of coordinated or consolidated pre-  
16 trial proceedings conducted pursuant to section  
17 1407(b) of title 28, United States Code, if the  
18 order is applicable to 1 or more coronavirus-re-  
19 lated actions and an immediate appeal from the  
20 order may materially advance the ultimate ter-  
21 mination of 1 or more coronavirus-related ac-  
22 tions in the proceedings.

23 **SEC. 164. DEMAND LETTERS; CAUSE OF ACTION.**

24 (a) CAUSE OF ACTION.—If any person transmits or  
25 causes another to transmit in any form and by any means

1 a demand for remuneration in exchange for settling, re-  
2 leasing, waiving, or otherwise not pursuing a claim that  
3 is, or could be, brought as part of a coronavirus-related  
4 action, the party receiving such a demand shall have a  
5 cause of action for the recovery of damages occasioned by  
6 such demand and for declaratory judgment in accordance  
7 with chapter 151 of title 28, United States Code, if the  
8 claim for which the letter was transmitted was meritless.

9 (b) DAMAGES.—Damages available under subsection  
10 (a) shall include—

11 (1) compensatory damages including costs in-  
12 curred in responding to the demand; and

13 (2) punitive damages, if the court determines  
14 that the defendant had knowledge or was reckless  
15 with regard to the fact that the claim was meritless.

16 (c) ATTORNEY'S FEES AND COSTS.—In an action  
17 commenced under subsection (a), if the plaintiff is a pre-  
18 vailing party, the court shall, in addition to any judgment  
19 awarded to a plaintiff, allow a reasonable attorney's fee  
20 to be paid by the defendant, and costs of the action.

21 (d) JURISDICTION.—The district courts of the United  
22 States shall have concurrent original jurisdiction of all  
23 claims arising under subsection (a).

24 (e) ENFORCEMENT BY THE ATTORNEY GENERAL.—

1           (1) IN GENERAL.—Whenever the Attorney Gen-  
2           eral has reasonable cause to believe that any person  
3           or group of persons is engaged in a pattern or prac-  
4           tice of transmitting demands for remuneration in ex-  
5           change for settling, releasing, waiving, or otherwise  
6           not pursuing a claim that is, or could be, brought  
7           as part of a coronavirus-related action and that is  
8           meritless, the Attorney General may commence a  
9           civil action in any appropriate district court of the  
10          United States.

11          (2) RELIEF.—In a civil action under paragraph  
12          (1), the court may, to vindicate the public interest,  
13          assess a civil penalty against the respondent in an  
14          amount not exceeding \$50,000 per transmitted de-  
15          mand for remuneration in exchange for settling, re-  
16          leasing, waiving or otherwise not pursuing a claim  
17          that is meritless.

18          (3) DISTRIBUTION OF CIVIL PENALTIES.—If  
19          the Attorney General obtains civil penalties in ac-  
20          cordance with paragraph (2), the Attorney General  
21          shall distribute the proceeds equitably among those  
22          persons aggrieved by the respondent’s pattern or  
23          practice of transmitting demands for remuneration  
24          in exchange for settling, releasing, waiving or other-  
25          wise not pursuing a claim that is meritless.

1     **Subtitle D—Relation to Labor and**  
2                     **Employment Laws**

3     **SEC. 181. LIMITATION ON VIOLATIONS UNDER SPECIFIC**  
4                     **LAWS.**

5             (a) IN GENERAL.—

6                     (1) DEFINITION.—In this subsection, the term  
7             “covered Federal employment law” means any of the  
8             following:

9                             (A) The Occupational Safety and Health  
10                             Act of 1970 (29 U.S.C. 651 et seq.) (including  
11                             any standard included in a State plan approved  
12                             under section 18 of such Act (29 U.S.C. 667)).

13                             (B) The Fair Labor Standards Act of  
14                             1938 (29 U.S.C. 201 et seq.).

15                             (C) The Age Discrimination in Employ-  
16                             ment Act of 1967 (29 U.S.C. 621 et seq.).

17                             (D) The Worker Adjustment and Retraining  
18                             Notification Act (29 U.S.C. 2101 et seq.).

19                             (E) Title VII of the Civil Rights Act of  
20                             1964 (42 U.S.C. 2000e et seq.).

21                             (F) Title II of the Genetic Information  
22                             Nondiscrimination Act of 2008 (42 U.S.C.  
23                             2000ff et seq.).

24                             (G) Title I of the Americans with Disabil-  
25                             ities Act of 1990 (42 U.S.C. 12111 et seq.).

1           (2) LIMITATION.—Notwithstanding any provi-  
2           sion of a covered Federal employment law, in any  
3           action, proceeding, or investigation resulting from or  
4           related to an actual, alleged, feared, or potential for  
5           exposure to coronavirus, or a change in working con-  
6           ditions caused by a law, rule, declaration, or order  
7           related to coronavirus, an employer shall not be sub-  
8           ject to any enforcement proceeding or liability under  
9           any provision of a covered Federal employment law  
10          if the employer—

11                   (A) was relying on and generally following  
12                   applicable government standards and guidance;

13                   (B) knew of the obligation under the rel-  
14                   evant provision; and

15                   (C) attempted to satisfy any such obliga-  
16                   tion by—

17                           (i) exploring options to comply with  
18                           such obligations and with the applicable  
19                           government standards and guidance (such  
20                           as through the use of virtual training or  
21                           remote communication strategies);

22                           (ii) implementing interim alternative  
23                           protections or procedures; or

24                           (iii) following guidance issued by the  
25                           relevant agency with jurisdiction with re-

1           spect to any exemptions from such obliga-  
2           tion.

3       (b) PUBLIC ACCOMMODATION LAWS.—

4           (1) DEFINITIONS.—In this subsection—

5               (A) the term “auxiliary aids and services”  
6           has the meaning given the term in section 4 of  
7           the Americans with Disabilities Act of 1990 (42  
8           U.S.C. 12103);

9               (B) the term “covered public accommoda-  
10          tion law” means—

11                   (i) title III of the Americans with Dis-  
12                   abilities Act of 1990 (42 U.S.C. 12181 et  
13                   seq.); or

14                   (ii) title II of the Civil Rights Act of  
15                   1964 (42 U.S.C. 2000a et seq.);

16               (C) the term “place of public accommoda-  
17          tion” means—

18                   (i) a place of public accommodation,  
19                   as defined in section 201 of the Civil  
20                   Rights Act of 1964 (42 U.S.C. 2000a); or

21                   (ii) a public accommodation, as de-  
22                   fined in section 301 of the Americans with  
23                   Disabilities Act of 1990 (42 U.S.C.  
24                   12181); and

1 (D) the term “public health emergency pe-  
2 riod” means a period designated a public health  
3 emergency period by a Federal, State, or local  
4 government authority.

5 (2) ACTIONS AND MEASURES DURING A PUBLIC  
6 HEALTH EMERGENCY.—

7 (A) IN GENERAL.—Notwithstanding any  
8 other provision of law or regulation, during any  
9 public health emergency period, no person who  
10 owns, leases (or leases to), or operates a place  
11 of public accommodation shall be liable under,  
12 or found in violation of, any covered public ac-  
13 commodation law for any action or measure  
14 taken regarding coronavirus and that place of  
15 public accommodation, if such person—

16 (i) has determined that the significant  
17 risk of substantial harm to public health or  
18 the health of employees cannot be reduced  
19 or eliminated by reasonably modifying poli-  
20 cies, practices, or procedures, or the provi-  
21 sion of an auxiliary aid or service; or

22 (ii) has offered such a reasonable  
23 modification or auxiliary aid or service but  
24 such offer has been rejected by the indi-  
25 vidual protected by the covered law.

1 (B) REQUIRED WAIVER PROHIBITED.—For  
2 purposes of this subsection, no person who  
3 owns, leases (or leases to), or operates a place  
4 of public accommodation shall be required to  
5 waive any measure, requirement, or rec-  
6 ommendation that has been adopted in accord-  
7 ance with a requirement or recommendation  
8 issued by the Federal Government or any State  
9 or local government with regard to coronavirus,  
10 in order to offer such a reasonable modification  
11 or auxiliary aids and services.

12 **SEC. 182. LIABILITY FOR CONDUCTING TESTING AT WORK-**  
13 **PLACE.**

14 Notwithstanding any other provision of Federal,  
15 State, or local law, an employer, or other person who hires  
16 or contracts with other individuals to provide services, con-  
17 ducting testing for coronavirus at the workplace shall not  
18 be liable for any action or personal injury directly result-  
19 ing from such testing, except for those personal injuries  
20 caused by the gross negligence or intentional misconduct  
21 of the employer or other person.

22 **SEC. 183. JOINT EMPLOYMENT AND INDEPENDENT CON-**  
23 **TRACTING.**

24 Notwithstanding any other provision of Federal or  
25 State law, including any covered Federal employment law

1 (as defined in section 181(a)), the Labor Management Re-  
2 lations Act, 1947 (29 U.S.C. 141 et seq.), the Employ-  
3 ment Retirement Income Security Act of 1974 (29 U.S.C.  
4 1001 et seq.), and the Family and Medical Leave Act of  
5 1993 (29 U.S.C. 2601 et seq.), it shall not constitute evi-  
6 dence of a joint employment relationship or employment  
7 relationship for any employer to provide or require, for  
8 an employee of another employer or for an independent  
9 contractor, any of the following:

10 (1) Coronavirus-related policies, procedures, or  
11 training.

12 (2) Personal protective equipment or training  
13 for the use of such equipment.

14 (3) Cleaning or disinfecting services or the  
15 means for such cleaning or disinfecting.

16 (4) Workplace testing for coronavirus.

17 (5) Temporary assistance due to coronavirus,  
18 including financial assistance or other health and  
19 safety benefits.

20 **SEC. 184. EXCLUSION OF CERTAIN NOTIFICATION RE-**  
21 **QUIREMENTS AS A RESULT OF THE COVID-19**  
22 **PUBLIC HEALTH EMERGENCY.**

23 (a) DEFINITIONS.—Section 2(a) of the Worker Ad-  
24 justment and Retraining Notification Act (29 U.S.C.  
25 2101(a)) is amended—

1 (1) in paragraph (2), by adding before the  
2 semicolon at the end the following: “and the shut-  
3 down, if occurring during the covered period, is not  
4 a result of the COVID–19 national emergency”;

5 (2) in paragraph (3)—

6 (A) in subparagraph (A), by striking  
7 “and” at the end;

8 (B) in subparagraph (B), by adding “and”  
9 at the end; and

10 (C) by adding at the end the following:

11 “(C) if occurring during the covered pe-  
12 riod, is not a result of the COVID–19 national  
13 emergency;”;

14 (3) in paragraph (7), by striking “and”;

15 (4) in paragraph (8), by striking the period at  
16 the end and inserting a semicolon; and

17 (5) by adding at the end the following:

18 “(9) the term ‘covered period’ means the period  
19 that—

20 “(A) begins on January 1, 2020; and

21 “(B) ends 90 days after the last date of  
22 the COVID–19 national emergency; and

23 “(10) the term ‘COVID–19 national emergency’  
24 means the national emergency declared by the Presi-  
25 dent under the National Emergencies Act (50

1 U.S.C. 1601 et seq.) with respect to the Coronavirus  
 2 Disease 2019 (COVID–19).”.

3 (b) EXCLUSION FROM DEFINITION OF EMPLOYMENT  
 4 LOSS.—Section 2(b) of the Worker Adjustment and Re-  
 5 training Notification Act (29 U.S.C. 2101(b)) is amended  
 6 by adding at the end the following:

7 “(3) Notwithstanding subsection (a)(6), during  
 8 the covered period an employee may not be consid-  
 9 ered to have experienced an employment loss if the  
 10 termination, layoff exceeding 6 months, or reduction  
 11 in hours of work of more than 50 percent during  
 12 each month of any 6-month period involved is a re-  
 13 sult of the COVID–19 national emergency.”.

## 14 **TITLE II—PRODUCTS**

### 15 **SEC. 201. APPLICABILITY OF THE TARGETED LIABILITY** 16 **PROTECTIONS FOR PANDEMIC AND EPI-** 17 **DEMIC PRODUCTS AND SECURITY COUNTER-** 18 **MEASURES WITH RESPECT TO COVID–19.**

19 (a) IN GENERAL.—Section 319F–3(i)(1) of the Pub-  
 20 lic Health Service Act (42 U.S.C. 247d–6d(i)(1)) is  
 21 amended—

22 (1) in subparagraph (C), by striking “; or” and  
 23 inserting a semicolon;

24 (2) in subparagraph (D), by striking the period  
 25 and inserting “; or”; and

1 (3) by adding at the end the following:

2 “(E) a drug (as such term is defined in  
3 section 201(g)(1) of the Federal Food, Drug,  
4 and Cosmetic Act), biological product (including  
5 a vaccine) (as such term is defined in section  
6 351(i)), or device (as such term is defined in  
7 section 201(h) of the Federal Food, Drug, and  
8 Cosmetic Act) that—

9 “(i) is the subject of a notice of use  
10 of enforcement discretion issued by the  
11 Secretary if such drug, biological product,  
12 or device is used—

13 “(I) when such notice is in effect;

14 “(II) within the scope of such no-  
15 tice; and

16 “(III) in compliance with other  
17 applicable requirements of the Federal  
18 Food, Drug, and Cosmetic Act that  
19 are not the subject of such notice;

20 “(ii) in the case of a device, is exempt  
21 from the requirement under section 510(k)  
22 of the Federal Food, Drug, and Cosmetic  
23 Act; or

24 “(iii) in the case of a drug—

1                   “(I) meets the requirements for  
2                   marketing under a final administra-  
3                   tive order under section 505G of the  
4                   Federal Food, Drug, and Cosmetic  
5                   Act; or

6                   “(II) is marketed in accordance  
7                   with section 505G(a)(3) of such Act.”.

8           (b) CLARIFYING MEANS OF DISTRIBUTION.—Section  
9   319F–3(a)(5) of the Public Health Service Act (42 U.S.C.  
10 247d–6d(a)(5)) is amended by inserting “by, or in part-  
11 nership with, Federal, State, or local public health officials  
12 or the private sector” after “distribution” the first place  
13 it appears.

14       (c) NO CHANGE TO ADMINISTRATIVE PROCEDURE  
15 ACT APPLICATION TO ENFORCEMENT DISCRETION EXER-  
16 CISE.—Section 319F–3 of the Public Health Service Act  
17 (42 U.S.C. 247d–6d) is amended by adding at the end  
18 the following:

19       “(j) RULE OF CONSTRUCTION.—Nothing in this sec-  
20 tion shall be construed—

21               “(1) to require use of procedures described in  
22               section 553 of title 5, United States Code, for a no-  
23               tice of use of enforcement discretion for which such  
24               procedures are not otherwise required; or

1           “(2) to affect whether such notice constitutes  
2           final agency action within the meaning of section  
3           704 of title 5, United States Code.”.

4                           **TITLE III—GENERAL**  
5                           **PROVISIONS**

6   **SEC. 301. SEVERABILITY.**

7           If any provision of this Act, an amendment made by  
8           this Act, or the application of such a provision or amend-  
9           ment to any person or circumstance is held to be unconsti-  
10          tutional, the remaining provisions of and amendments  
11          made by this Act, as well as the application of such provi-  
12          sion or amendment to any person other than the parties  
13          to the action holding the provision or amendment to be  
14          unconstitutional, or to any circumstances other than those  
15          presented in such action, shall not be affected thereby.

○