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AS PASSED BY THE SENATE

February 25, 2021

S. 147

Introduced by Senators Massey, Rice, Hembree, Adams, Peeler, Turner, Alexander, Gustafson, Talley, Loftis, Climer, Kimbrell and Grooms

S. Printed 2/25/21--S.

Read the first time January 12, 2021.

A JOINT RESOLUTION

TO ENACT THE "SOUTH CAROLINA COVID-19 LIABILITY IMMUNITY ACT"; TO PROVIDE LIABILITY PROTECTIONS FOR A LIMITED TIME PERIOD FOR HEALTH CARE PROVIDERS AND BUSINESSES THAT FOLLOW PUBLIC HEALTH GUIDANCE IN RESPONSE TO THE CORONAVIRUS PUBLIC HEALTH EMERGENCY; TO STATE THE LIABILITY PROTECTION FOR COVERED ENTITIES AND COVERED INDIVIDUALS FOR CORONAVIRUS CLAIMS; TO PROVIDE THAT DEFENSES ARE CUMULATIVE; TO PROVIDE THAT THE PROVISIONS OF THIS JOINT RESOLUTION ARE SEVERABLE; TO PROVIDE THAT, IN THE CASE OF A CONFLICT OF LAW BETWEEN THIS JOINT RESOLUTION AND ANY OTHER LAW OF THIS STATE, THE PROVISIONS OF THIS JOINT RESOLUTION SHALL PREVAIL; TO PROVIDE THAT THE PROVISIONS OF THIS JOINT RESOLUTION ARE RETROACTIVE AND EFFECTIVE AS OF MARCH 13, 2020; AND TO DEFINE NECESSARY TERMS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This joint resolution must be known and may be cited as the "South Carolina COVID-19 Liability Immunity Act".

SECTION 2. The General Assembly hereby finds and declares that providing businesses and health care providers with reasonable protections from the risk and expense of lawsuits related to actual, alleged, or feared exposure to or contraction of the coronavirus will help encourage them to reopen and remain open and will help to protect those who provided services or goods that were novel or altered in an effort to combat the coronavirus pandemic. Providing such immunity to businesses and health care providers that operate consistently with applicable public health guidance will help ameliorate the adverse impacts of a closed economy and the resulting unemployment.

SECTION 3. The following terms shall have the following meanings unless otherwise specified:

- (1) "Coronavirus claim" means any claim or cause of action arising from:
 - (a) an actual, alleged, or feared exposure to or contraction of coronavirus:
 - (i) from the premises of a covered entity;

- (ii) from the operations, products, or services provided on-premises or off-premises for a covered entity; or
 - (iii) from the acts or omissions of a covered individual or covered entity, to include the delay or withholding of medical care for the treatment or diagnosis of the coronavirus;
- (b)(i) the prescribing or dispensing of medicines for off-label use to attempt to combat the coronavirus;
- (ii) the providing of health care services related to the coronavirus that are outside of a provider's professional scope of practice; or
- (iii) the utilizing of equipment or supplies to combat or treat the coronavirus in a manner outside of the equipment or supplies' normal use in medical practice or in the provision of health care services; or
- (c) the manufacturing or donating of precautionary equipment or supplies, including personal protective equipment, due to shortages that occurred during the coronavirus pandemic.
- (2) "Coronavirus disease 2019" or "coronavirus", commonly abbreviated as "COVID-19", means the virus generally known as "severe acute respiratory syndrome coronavirus 2", any mutation thereof, and any disease or condition caused by "severe acute respiratory syndrome coronavirus 2".
- (3) "Covered entity" means any of the following:
- (a) any for-profit or not-for-profit business entity, organized in any form whatsoever;
- (b) any South Carolina government agency, division, authority, board, commission, instrumentality, political subdivision, municipality, county, or other governmental entity; or
- (c) any health care facility, as defined in Chapter 4, Title 44 of the South Carolina Code, and any health care provider, as defined in Chapter 4, Title 44 of the South Carolina Code.
- (4) "Covered individual" means any director, officer, employee, agent, contractor, third-party worker, or other representative of a covered entity.
- (5) "Public health guidance" means any applicable published guidance, directive, order, or rule provided by the South Carolina Occupational Safety and Health Administration, the South Carolina Department of Health and Environmental Control, or another state governmental entity, and federal guidance if referenced by state entities, that is applicable to the type of covered entity or covered individual at issue and to the coronavirus claim at issue.

SECTION 4. Notwithstanding any other provision of law, a covered entity or covered individual that reasonably adheres to public health guidance applicable at the time the conduct giving rise to a coronavirus claim occurs shall be entitled to immunity from liability for any acts or omissions resulting in a coronavirus claim. This immunity will not apply:

- (1) for claims arising pursuant to SECTION 3(1)(b), if a claimant proves by a preponderance of the evidence that the covered entity or covered individual caused the injury or damage by:
- (a) grossly negligent, reckless, willful, or intentional misconduct; or
- (b) a failure to make any attempt to adhere to public health guidance; or
- (2) for all other claims, if the claimant proves by clear and convincing evidence that the covered entity or covered individual caused the injury or damage by:
- (a) grossly negligent, reckless, willful, or intentional misconduct; or

(b) a failure to make any attempt to adhere to public health guidance.

SECTION 5. Nothing in this joint resolution shall be construed to preclude an insured's claim against an insurer's business interruption insurance policy.

SECTION 6. (A) Nothing in this joint resolution shall be construed to limit in any way any defense or right that exists under law, and the liability protection provided by this joint resolution is in addition to and cumulative of other defenses and rights that exist under law.

(B) Nothing in this joint resolution shall be construed to limit in any way any claim a claimant may have under the law against a covered entity or covered individual for liability as a result of acts or omissions that cause injuries, death, or damages other than from a coronavirus claim.

SECTION 7. The provisions of this joint resolution are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, or word of this joint resolution is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of the joint resolution, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective. To the extent any provision of this joint resolution conflicts with any other law of this State, then the provisions of this joint resolution shall prevail.

SECTION 8. The provisions of this joint resolution do not apply to and do not exclude or limit any actions or remedies available under Title 42, commonly known as the South Carolina Workers' Compensation Law.

SECTION 9. This joint resolution takes effect upon approval by the Governor, and its provisions apply to all civil and administrative causes of action that arise between March 13, 2020, and June 30, 2021, or one hundred eighty days after the final state of emergency is lifted for COVID-19 in this State, whichever is later, and that are based upon facts that occurred during this time period.