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A JOINT RESOLUTION

TO PROVIDE THAT A WORKER WHO CONTRACTS COVID-19 ARISING OUT OF AND IN THE COURSE AND SCOPE OF EMPLOYMENT IS CONSIDERED AN INJURY BY ACCIDENT AS DEFINED BY SECTION 42-1-60; TO PROVIDES THAT A FIRST RESPONDER, HEALTH CARE PROVIDER, OR CORRECTIONAL EMPLOYEE WHO IS DIAGNOSED WITH COVID-19 IS ENTITLED TO THE CONCLUSIVE PRESUMPTION THAT THE DIAGNOSIS OF COVID-19 IS AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HIS EMPLOYMENT; TO PROVIDE THAT AN ESSENTIAL WORKER WHO IS DIAGNOSED WITH COVID-19 IS ENTITLED TO A REBUTTABLE PRESUMPTION THAT THE DIAGNOSIS OF COVID-19 IS AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF THE EMPLOYMENT; TO PROVIDE THAT ANY WORKER IS ENTITLED TO ALL BENEFITS UNDER TITLE 42 OF THE 1976 CODE; TO PROVIDE DEFINITIONS; AND TO PROVIDE FOR THE SCOPE OF APPLICATION OF CLAIMS; TO PROVIDE LIABILITY PROTECTIONS FOR A LIMITED TIME PERIOD FOR HEALTH CARE PROVIDERS AND BUSINESSES THAT FOLLOW APPLICABLE PUBLIC HEALTH GUIDANCE IN RESPONSE TO THE COVID-19 PUBLIC HEALTH EMERGENCY; TO PROVIDE THAT A PARTY TO A COVID-19 RELATED CLAIM ARISING FROM THE PARTY'S ACT OR OMISSION IS NOT LIABLE FOR CIVIL DAMAGES UNLESS THE PARTY'S ACT OR OMISSION CONSTITUTES GROSS NEGLIGENCE; TO PROVIDE IMMUNITY FROM CIVIL LITIGATION FOR A PERSON OR BUSINESS THAT DESIGNS, MANUFACTURES, LABELS, SELLS, DISTRIBUTES, OR DONATES DISINFECTING AND CLEANING SUPPLIES, PERSONAL PROTECTIVE EQUIPMENT, OR A QUALIFYING

1 PRODUCT DURING AND IN RESPONSE TO THE COVID-19
2 PUBLIC HEALTH EMERGENCY WHO DOES NOT MAKE
3 SUCH PRODUCTS IN THE ORDINARY COURSE OF
4 BUSINESS; TO PROVIDE IMMUNITY FOR THE USE OF
5 PRODUCTS PRODUCED BY SUCH PEOPLE OR
6 BUSINESSES; AND TO PROVIDE FOR CERTAIN
7 LIMITATIONS ON THE GRANT OF IMMUNITY CONTAINED
8 IN THIS ACT.

9
10 Whereas, it is the public policy of this State to support businesses,
11 workers, and support economic stability; and;

12
13 Whereas, the State of South Carolina continues to assess and
14 respond to the evolving public health threat presented by the 2019
15 Novel Coronavirus (“COVID-19”), while also simultaneously
16 addressing and mitigating the significant economic impacts and
17 burdens on businesses and workers; and

18
19 Whereas, the Governor organized “accelerateSC” as the State’s
20 coordinated COVID-19 advisory team to consider and recommend
21 an economic revitalization plan for the State that covers response,
22 protection, governance, resources, and information; and

23
24 Whereas, the accelerateSC Final Report and Recommendations
25 provides that the General Assembly should take action to ensure that
26 there is recourse for workers and businesses when exposed to
27 COVID-19 in performance of their duties, and

28
29 Whereas, the General Assembly believes that businesses and people
30 acting as good Samaritans during the COVID-19 pandemic by
31 designing, manufacturing, labeling, selling, distributing, or donating
32 disinfecting and cleaning supplies, personal protective equipment,
33 or a qualifying product and should not be held liable in any civil
34 action related to the provided products. Now, therefore,

35
36 Be it enacted by the General Assembly of the State of South
37 Carolina:

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39 SECTION 1. This act may be cited as the “South Carolina
40 COVID-19 Liability Act.”

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42 SECTION 2. For purposes of this joint resolution:

1 (A) 'COVID-19' means coronavirus disease 2019 as defined by
2 the Center for Disease Control.

3 (B) 'COVID-19-related claim' may include any cause of action
4 that is related to any actual, alleged, or feared exposure to or
5 contraction of COVID-19, including delayed or withheld medical
6 care or the failure to make precautionary protective equipment or
7 supplies available.

8 (C) 'Correctional employee' means a person employed at a
9 'detention facility', as defined in Section 24-13-80(A)(1), including
10 correctional officers employed at the South Carolina Department of
11 Juvenile Justice and the South Carolina Department of Mental
12 Health.

13 (D) 'First responder' means a law enforcement officer,
14 firefighter, emergency medical technician, or paramedic employed
15 by state or local government, as well as a volunteer law enforcement
16 officer, firefighter, emergency medical technician, or paramedic
17 engaged by state or local government. 'First responder' also means
18 a member of the South Carolina National Guard or the South
19 Carolina State Guard who has been ordered to state duty or state
20 active duty by proper state authority in response to a:

- 21 (1) declared state of emergency for all or part of the State; or
- 22 (2) public health emergency as defined in Chapter 4, Title 44.

23 (E) 'Essential worker' means an employee of any business in
24 South Carolina not deemed 'non-essential' by the Governor's
25 Executive Orders 2020-17, 2020-18, and 2020-21 or by subsequent
26 clarification from the South Carolina Department of Commerce
27 deeming the business as an essential business as provided in the
28 aforementioned orders.

29 (F) 'Isolate' or 'isolation' means an assignment of work
30 restrictions resulting from a diagnosis of COVID-19 including, but
31 not limited to, a restriction to stay at home, to distance oneself in
32 such a manner so as to restrict the employee from doing his or her
33 regular duties, or a respiratory based limitation that causes the
34 employee to be effectively restricted from performing his or her job
35 duties.

36 (G) 'Qualifying product' means medical devices, equipment, or
37 supplies used to treat COVID-19 including, but not limited to,
38 products that are used or modified for an unapproved use to treat
39 COVID-19 or prevent the spread of COVID-19, medical devices,
40 equipment, or supplies utilized outside of such product's normal use
41 to treat COVID-19 or to prevent the spread of COVID-19,
42 medications used to treat COVID-19 patients including medications
43 prescribed or dispensed for off-label use to attempt to combat

1 COVID-19, tests to diagnose or determine immunity to COVID-19;
2 and components of qualified products.

3
4 SECTION 3.A. (A) For purposes of this SECTION only,
5 'health care provider' means a person employed to provide 'health
6 service', as defined in Section 44-7-130(11). This includes, but is
7 not limited to, employees of organizations defined in Section
8 44-7-130(2), (7), (10), and (12).

9 (B) Notwithstanding any other provision of law to the contrary,
10 the contraction of COVID-19 is considered an injury by accident, as
11 defined in Section 42-1-60, arising out of and in the course and
12 scope of employment.

13 (1) A first responder, health care provider, or correctional
14 employee who is diagnosed with COVID-19 is entitled to the
15 conclusive presumption that the diagnosis of COVID-19 is an injury
16 by accident arising out of and in the course and scope of his
17 employment as a first responder, health care provider, or
18 correctional employee.

19 (2) Additionally, an essential worker who is diagnosed with
20 COVID-19 is entitled to a rebuttable presumption that the diagnosis
21 of COVID-19 is an injury by accident arising out of and in the
22 course and scope of the employment as an essential worker. To rebut
23 the presumption established in this item, an employer must prove by
24 clear and convincing evidence that the essential worker's diagnosis
25 of COVID-19 was not an injury by accident arising out of and in the
26 course and scope of the employment as an essential worker.

27 (3) Notwithstanding any other provision of the Act, any
28 worker is entitled to all benefits under Title 42, SC Code of Laws,
29 1976, commonly referred to as the South Carolina Workers'
30 Compensation Act immediately upon isolation.

31
32 B. The provisions of this SECTION apply to all claims filed by first
33 responders, health care providers, correctional employees, or
34 essential workers who, before the effective date of this act, received
35 a COVID-19 diagnosis from a physician; received a presumptive
36 positive COVID-19 test; received a laboratory-confirmed
37 COVID-19 test; were notified they had been exposed by any official
38 agency or their employer; or were directed to isolate by any official
39 agency or their employer due to confirmed or suspected COVID-19
40 exposure.

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42 C. This SECTION takes effect upon approval by the Governor
43 and shall apply to any claim arising on or after March 13, 2020.

1
2 SECTION 4.A. (A) A party to a COVID-19 related claim arising
3 from the party's act or omission is not liable for civil damages unless
4 the party's act or omission constitutes gross negligence.

5
6 B. This SECTION takes effect upon approval of the Governor and
7 applies to all civil and administrative causes of action resulting from
8 an act or omission that occurs between March 13, 2020 and March
9 31, 2021.

10
11 SECTION 5. (A) For purposes of this SECTION only, 'health
12 care provider' means a person employed to provide 'health service',
13 as defined in Section 44-7-130(11). This includes, but is not limited
14 to, employees of organizations defined in Section 44-7-130(2), (7),
15 (10), and (12).

16
17 B. Any person or business that designs, manufactures, labels, sells,
18 distributes, or donates disinfecting and cleaning supplies, personal
19 protective equipment, or a qualifying product during and in response
20 to the COVID-19 public health emergency that does not make such
21 products in the ordinary course of business shall not be liable in a
22 civil action alleging personal injury, death, or property damage
23 caused by or resulting from the product's manufacturing or design,
24 or a failure to provide proper instructions or sufficient warnings.

25
26 C. A government entity, health care facility, health care provider,
27 first responder, or any business, or the employer or agent of any
28 business, that utilizes a cleaning supplies, personal protective
29 equipment, or a qualifying product subject to the provisions
30 contained in B., shall not be liable in a civil action alleging personal
31 injury, death or property damage caused by or resulting from the
32 selection, distribution, or use of such product.

33
34 D. The immunity provided in B. and C. of this SECTION shall not
35 apply to any person, or any employee or agent thereof, who:

36 (1) had actual knowledge that the product was defective when
37 put to the use for which the product was manufactured, sold,
38 distributed, or donated, and acted with deliberate indifference to or
39 conscious disregard of a substantial and unnecessary risk that the
40 product would cause serious injury to others; or

41 (2) acted with a deliberate intention to cause harm.

42

1 E. This SECTION takes effect upon approval by the Governor and
2 shall apply to any claim arising on or after March 13, 2020.

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

8
9 SECTION 7. The provisions of joint resolution act are severable.
10 If any section, subsection, paragraph, subparagraph, item, subitem,
11 sentence, clause, phrase, or word of this act is for any reason held to
12 be unconstitutional or invalid, such holding shall not affect the
13 constitutionality or validity of the remaining portions of the act, the
14 General Assembly hereby declaring that it would have passed each
15 and every section, subsection, paragraph, subparagraph, item,
16 subitem, sentence, clause, phrase, and word thereof, irrespective of
17 the fact that any one or more other sections, subsections, paragraphs,
18 subparagraphs, items, subitems, sentences, clauses, phrases, or
19 words hereof may be declared to be unconstitutional, invalid, or
20 otherwise ineffective. To the extent any provision of this joint
21 resolution conflicts with any other law of this State, then the
22 provisions of this joint resolution shall prevail.

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24 SECTION 8. Unless otherwise specified, this joint resolution takes
25 effect upon approval by the Governor.

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