**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3698**

**STATUS INFORMATION**

Joint Resolution

Sponsors: Reps. Pope, Elliott, Hewitt, Davis, Ott, Weeks, Bamberg, Allison, Anderson, Ballentine, Blackwell, Bradley, Bryant, Burns, Caskey, Erickson, Forrest, Gagnon, Gilliam, Haddon, Hiott, Hixon, Huggins, Hyde, Jefferson, Jones, Jordan, Long, Martin, May, McGarry, T. Moore, D.C. Moss, Murray, W. Newton, Nutt, Oremus, Sandifer, M.M. Smith, Thayer, West, Wooten, Yow, Felder, B. Newton and Taylor

Document Path: l:\council\bills\bh\7395ahb21.docx

Companion/Similar bill(s): 147, 3597

Introduced in the House on January 14, 2021

Currently residing in the House Committee on **Judiciary**

Summary: Liability protection

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/14/2021 House Introduced and read first time ([House Journal‑page 574](file:///h:\hj\20210114.docx))

1/14/2021 House Referred to Committee on **Judiciary** ([House Journal‑page 574](file:///h:\hj\20210114.docx))

1/27/2021 House Member(s) request name added as sponsor: Felder

2/2/2021 House Member(s) request name added as sponsor: Taylor

2/9/2021 House Member(s) request name added as sponsor: B.Newton

2/10/2021 House Member(s) request name added as sponsor: Taylor

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**VERSIONS OF THIS BILL**

[1/14/2021](file:///p:\pprever\2021-22\3698_20210114.docx)

**A** **JOINT RESOLUTION**

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 PURPOSES OF THIS JOINT RESOLUTION TO PROTECT AGAINST LIABILITY FOR BUSINESSES DURING THE CORONAVIRUS PUBLIC HEALTH EMERGENCY; TO PROVIDE DEFINITIONS FOR COVERED ENTITY, COVERED INDIVIDUAL, CORONAVIRUS, CORONAVIRUS CLAIM, AND PUBLIC HEALTH GUIDANCE; TO STATE THE LIABILITY PROTECTION FOR COVERED ENTITIES AND COVERED INDIVIDUALS FOR CORONAVIRUS CLAIMS; TO STATE 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 ANY OTHER LAW OF THIS STATE, THE PROVISIONS OF THIS JOINT RESOLUTION SHALL PREVAIL, AND TO PROVIDE FOR THE EFFECTIVE DATE OF THE JOINT RESOLUTION TO BE UPON APPROVAL BY THE GOVERNOR AND FOR ITS PROVISIONS TO BE RETROACTIVE AND EFFECTIVE AS OF MARCH 13, 2020, THE DATE UPON WHICH THE GOVERNOR DECLARED A PUBLIC HEALTH EMERGENCY RELATING TO CORONAVIRUS.

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

SECTION 1. This act may be cited as the “South Carolina COVID‑19 Liability Safe Harbor Act”.

SECTION 2. The General Assembly hereby finds and declares that providing reasonable protections from the risk and expense of lawsuits related to the Coronavirus pandemic to businesses and health care providers will help encourage them to remain open and reopen and that providing such a safe harbor to businesses and health care providers that operate consistent 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) “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;

(c) any health care facility, as further defined in Chapter 4, Title 44 of the South Carolina Code, and any health care provider, as further defined in Chapter 4, Title 44, of the South Carolina Code.

(2) “Covered Individual” means any director, officer, employee, agent, contractor, third‑party worker, or other representative of a Covered Entity.

(3) “Coronavirus disease 2019”, 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”.

(4) “Public Health Guidance” means any applicable published guidance, directive, order, or rule provided by the United States Center for Disease Control and Prevention, the United States Occupational Safety and Health Administration, South Carolina Occupational Safety and Health Administration, United States Department of Health and Human Services, United States Food and Drug Administration, South Carolina Department of Health and Environmental Control, or other federal or state governmental entity that is applicable to the type of Covered Entity or Covered Individual and to the Coronavirus Claim at issue.

(5) “Coronavirus Claim” means any claim that arises from the Coronavirus, which shall include any cause of action that is related to any actual, alleged, or feared exposure to or contraction of Coronavirus:

(a) from the premises of a Covered Entity;

(b) from the operations, products, or services provided on or off premises of a Covered Entity;

(c) from the acts or omissions of a Covered Individual or Covered Entity, to include the delay or withholding of medical care; and

(d) from efforts to prevent or delay the spread of the coronavirus, to include making precautionary equipment or supplies such as personal protective equipment.

SECTION 4. (A) 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 a safe harbor from liability for any acts or omissions in the course of, or through the performance or provision of, any business or health care service.

(B) This safe harbor will not apply if a claimant proves by clear and convincing evidence that the Covered Entity or Covered Individual caused the injury or damage:

(1) through knowingly reckless, wilful, or intentional misconduct; or

(2) by failing to make any attempt to adhere to Public Health Guidance.

(C) Any failure by a Covered Entity or Covered Individual to adhere to Public Health Guidance shall not constitute negligence per se, nor shall such failure create an inference that the Covered Entity or Covered Individual acted in a knowingly reckless, wilful, intentional, or wanton manner.

SECTION 5. 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.

SECTION 6. 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, 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 7. 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 December 31, 2021, or 180 days after the final state of emergency is lifted for COVID‑19 in this State, whichever is later, that are based upon facts that occurred during this time period. The provisions of this joint resolution continue to apply to all claims that arise during this time period for three years and one day after December 31, 2021, or 180 days after the final state of emergency for COVID‑19 is lifted in this State, whichever is later, at which time the provisions of this joint resolution are repealed.

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