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**A JOINT RESOLUTION**

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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.

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

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

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2 SECTION 2. The General Assembly hereby finds and declares that  
3 providing reasonable protections from the risk and expense of  
4 lawsuits related to the Coronavirus pandemic to businesses and  
5 health care providers will help encourage them to remain open and  
6 reopen and that providing such a safe harbor to businesses and  
7 health care providers that operate consistent with applicable public  
8 health guidance will help ameliorate the adverse impacts of a closed  
9 economy and the resulting unemployment.

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

13 (1) "Covered Entity" means any of the following:

14 (a) any for profit or not-for-profit business entity, organized  
15 in any form whatsoever;

16 (b) any South Carolina government agency, division,  
17 authority, board, commission, instrumentality, political subdivision,  
18 municipality, county, or other governmental entity;

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

22 (2) "Covered Individual" means any director, officer, employee,  
23 agent, contractor, third-party worker, or other representative of a  
24 Covered Entity.

25 (3) "Coronavirus disease 2019", commonly abbreviated as  
26 "COVID-19", means the virus generally known as "severe acute  
27 respiratory syndrome coronavirus 2", any mutation thereof, and any  
28 disease or condition caused by "severe acute respiratory syndrome  
29 coronavirus 2".

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

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

- 1 (a) from the premises of a Covered Entity;
- 2 (b) from the operations, products, or services provided on or
- 3 off premises of a Covered Entity;
- 4 (c) from the acts or omissions of a Covered Individual or
- 5 Covered Entity, to include the delay or withholding of medical care;
- 6 and
- 7 (d) from efforts to prevent or delay the spread of the
- 8 coronavirus, to include making precautionary equipment or supplies
- 9 such as personal protective equipment.

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11 SECTION 4. (A) Notwithstanding any other provision of law, a  
12 Covered Entity or Covered Individual that reasonably adheres to  
13 Public Health Guidance applicable at the time the conduct giving  
14 rise to a Coronavirus Claim occurs shall be entitled to a safe harbor  
15 from liability for any acts or omissions in the course of, or through  
16 the performance or provision of, any business or health care service.

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

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

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

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

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

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35 SECTION 6. The provisions of this joint resolution are severable.  
36 If any section, subsection, paragraph, subparagraph, item, subitem,  
37 sentence, clause, phrase, or word of this joint resolution is for any  
38 reason held to be unconstitutional or invalid, such holding shall not  
39 affect the constitutionality or validity of the remaining portions of  
40 the joint resolution, the General Assembly hereby declaring that it  
41 would have passed each and every section, subsection, paragraph,  
42 subparagraph, item, subitem, sentence, clause, phrase, and word  
43 thereof, irrespective of the fact that any one or more other sections,

1 subsections, paragraphs, subparagraphs, items, subitems, sentences,  
2 clauses, phrases, or words hereof may be declared to be  
3 unconstitutional, invalid, or otherwise ineffective. To the extent any  
4 provision of this joint resolution conflicts with any other law of this  
5 State, then the provisions of this joint resolution shall prevail.

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7 SECTION 7. This joint resolution takes effect upon approval by  
8 the Governor and its provisions apply to all civil and administrative  
9 causes of action that arise between March 13, 2020, and December  
10 31, 2021, or 180 days after the final state of emergency is lifted for  
11 COVID-19 in this State, whichever is later, that are based upon facts  
12 that occurred during this time period. The provisions of this joint  
13 resolution continue to apply to all claims that arise during this time  
14 period for three years and one day after December 31, 2021, or 180  
15 days after the final state of emergency for COVID-19 is lifted in this  
16 State, whichever is later, at which time the provisions of this joint  
17 resolution are repealed.

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