COMMITTEE REPORT

February 11, 2021

**S. 147**

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

S. Printed 2/11/21--S. [SEC 2/12/21 1:31 PM]

Read the first time January 12, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Joint Resolution (S. 147) to enAct the “South Carolina COVID‑19 Liability Safe Harbor Act”; to provide liability protections for a limited time period for health care providers, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the joint resolution, as and if amended, page 3, by striking lines 1 through 17, as contained in SECTION 4, and inserting therein the following:

/ SECTION 4. Notwithstanding any other provision of law, a covered entity or covered individual that substantially 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 resulting in the coronavirus claim unless a claimant proves by a preponderance of the evidence that the covered entity or covered individual caused the injury or damage:

(1) through grossly negligent, reckless, willful, or intentional misconduct; or

(2) by failing to make any attempt to adhere to public health guidance. /

Amend the joint resolution further, as and if amended, beginning on page 3, line 39, and ending on page 4, line 4, by striking SECTION 7 and SECTION 8 in their entireties and inserting therein the following:

/ SECTION 7. The provisions of this act 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 8. 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, that are based upon facts that occurred during this time period. /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill establishes a safe harbor from coronavirus claims for businesses, governmental entities, health care facilities, and their employees. This safe harbor only applies if public health guidance is followed. This bill takes effect upon approval by the Governor and applies to all civil and administrative causes of action arising between March 13, 2020 and June 30, 2021 or 180 days after the final state of emergency is lifted for COVID-19 in this state, whichever is later.

SFAA anticipates the creation of a safe harbor may result in a cost saving for the Insurance Reserve Fund (IRF) due to liability claims against state and local entities that may otherwise succeed. Because the number of COVID-19 related claims against state and local entities covered by the IRF that would have succeeded but for the creation of this safe harbor is unknown, the estimate potential cost savings to the IRF is undetermined.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **JOINT RESOLUTION**

TO ENACT THE “SOUTH CAROLINA COVID‑19 LIABILITY SAFE HARBOR 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.

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

SECTION 1. This act must be known and 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) “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; or

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

(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 that is applicable to the type of covered entity or covered individual and to the coronavirus claim at issue.

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 resulting from a coronavirus claim.

(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 reckless, willful, 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 reckless, willful, 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, 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 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 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, that are based upon facts that occurred during this time period.

SECTION 8. This act takes effect upon approval by the Governor.

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