

By: Senator(s) Doty, Blackwell, Boyd,
Branning, Caughman, Chassaniol, Chism, DeBar,
DeLano, England, Harkins, McDaniel, McLendon,
McMahan, Moran, Parker, Parks, Seymour,
Sojourner, Sparks, Tate, Whaley, Younger

To: Judiciary, Division A

SENATE BILL NO. 3049

1 AN ACT TO CREATE THE MISSISSIPPI BACK-TO-BUSINESS LIABILITY
2 ASSURANCE ACT; TO DEFINE DUTY OF CARE FOR PREMISES OWNERS; TO
3 PROVIDE LIABILITY PROTECTION FOR INDIVIDUALS, STATE AND LOCAL
4 GOVERNMENT, ASSOCIATIONS, FOR-PROFIT AND NONPROFIT ENTITIES,
5 RELIGIOUS AND CHARITABLE ORGANIZATIONS; TO PROVIDE SAFE HARBOR FOR
6 COMPLIANCE WITH PUBLIC HEALTH GUIDANCE; TO PROVIDE LIABILITY
7 PROTECTION FOR PRODUCTS MADE, SOLD, OR DONATED IN RESPONSE TO
8 COVID-19 AND RELATED CIRCUMSTANCES; AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1.** This act shall be known and may be cited as the
11 "Mississippi Back-to-Business Liability Assurance Act."

12 **SECTION 2.** As used in this act, the following words shall
13 have the following meanings:

14 (a) "COVID-19" means the novel coronavirus identified
15 as SARS-CoV-2, the disease, health condition or threat caused by
16 the novel coronavirus SARS-CoV-2, or a virus mutating therefrom,
17 and conditions associated with the disease.

18 (b) "COVID-19 State of Emergency" means the state of
19 emergency declared by Executive Order of the Governor of the State
20 of Mississippi on March 14, 2020, and any subsequent orders or
21 amendments thereto.



22 (c) "Disinfecting or cleaning supplies" includes, but
23 is not limited to, hand sanitizers, cleaners, disinfectants,
24 sprays and wipes intended for use in removal or mitigation of
25 bacterial or viral disease-causing agents from surfaces or spaces.

26 (d) "Essential business" means a person or entity that
27 is an essential business or operation as defined by an Executive
28 Order issued by the Governor in response to the COVID-19 state of
29 emergency, and any subsequent orders or amendments thereto.

30 (e) "First responder" means state and local law
31 enforcement personnel, fire department personnel, emergency
32 medical personnel, ambulance service provider personnel, emergency
33 management personnel and public works personnel who may be
34 deployed in response to the COVID-19 state of emergency.

35 (f) "Health care facility" means:

36 (i) A licensed or state-approved facility in which
37 health care services are provided, including, but not limited to,
38 a hospital, licensed physician's clinic, outpatient surgery
39 center, dialysis center, hospice, institution for the aged or
40 infirm, long-term care facility or mental health center; or

41 (ii) A field hospital, modular field-treatment
42 facility or other facility designated by the Mississippi
43 Department of Health or the Mississippi Emergency Management
44 Agency for temporary use for the purpose of providing health care
45 services in support of the state's response to the COVID-19 state
46 of emergency.



47 (g) "Health care professional" means:

48 (i) A person who is licensed, registered,
49 permitted, or certified in any state to provide health care
50 services, whether paid or unpaid, including persons engaged in
51 telemedicine or telehealth, and any employee, agent or contractor
52 of such person;

53 (ii) An emergency medical technician who is
54 licensed in any state; or

55 (iii) A volunteer or military personnel who is
56 approved by or works under the direction of the Mississippi
57 Department of Health or the Mississippi Emergency Management
58 Agency and who provides health care services in response to the
59 COVID-19 state of emergency in the State of Mississippi.

60 (h) "Health care services" means any care, treatment,
61 service, or procedure to maintain, diagnose or otherwise affect an
62 individual's physical or mental condition.

63 (i) "Noneconomic damages" means subjective,
64 nonpecuniary damages arising from death, pain, suffering,
65 inconvenience, mental anguish, worry, emotional distress, loss of
66 society and companionship, loss of consortium, bystander injury,
67 physical impairment, disfigurement, injury to reputation,
68 humiliation, embarrassment, loss of the enjoyment of life, hedonic
69 damages, other nonpecuniary damages, and any other theory of
70 damages such as fear of loss, illness or injury. The term



"noneconomic damages" shall not include punitive or exemplary damages.

(j) "Person" means an individual, the state and political subdivisions as defined in Section 11-46-1, association, educational entity, for-profit or nonprofit entity, religious organization, or charitable organization.

(k) "Personal protective equipment" means coveralls, face shields, gloves, gowns, masks, respirators or other equipment designed to protect the wearer from the spread of infection or illness.

(l) "Premises" means any physical place serving a commercial, residential, educational, religious, governmental, cultural, charitable or health care purpose.

(m) "Public health guidance" means written guidance related to the COVID-19 State of Emergency that is issued by an executive agency or regulatory agency of the federal government or an executive agency of the State of Mississippi, including the Office of the Governor.

(n) "Qualified product" means personal protective equipment used to protect the wearer from COVID-19 or the spread of COVID-19; medical devices, equipment, and supplies used to treat a person with COVID-19, including products that are used or modified for an unapproved use to treat COVID-19 or prevent the spread of COVID-19; medical devices, equipment, or supplies utilized outside of the product's normal use to treat a person



with COVID-19 or to prevent the spread of COVID-19; medications used to treat COVID-19, including medications prescribed or dispensed for off-label use to attempt to combat COVID-19; tests to diagnose or determine immunity to COVID-19 which have been approved by or submitted to the Federal Drug Administration ("FDA") for approval within FDA-prescribed time periods; and components of qualified products.

SECTION 3. (1) An essential business, or agent of that essential business, shall not be held liable for civil damages for any injuries or death resulting from or related to actual or alleged exposure or potential exposure to COVID-19 in the course of or through the performance or provision of its functions or services in the time before applicable public health guidance was available.

(2) Except as otherwise provided by this section, an owner, lessee, occupant or any other person in control of a premises, who attempts, in good faith, to follow applicable public health guidance and directly or indirectly invites or permits any person onto a premises shall not be held liable for civil damages for any injuries or death resulting from or related to actual or alleged exposure or potential exposure to COVID-19.

(3) The limitations on liability provided in this section shall not apply where the plaintiff shows, by clear and convincing evidence, that a defendant, or any employee or agent thereof, acted with actual malice or willful, intentional misconduct.



(4) Nothing in this section: (a) creates, recognizes or ratifies a claim or cause of action of any kind; (b) eliminates a required element of any claim; (c) affects workers' compensation law, including the exclusive application of such law; or (d) amends, repeals, alters, or affects any other immunity or limitation of liability.

SECTION 4. (1) A health care professional, health care facility, person or agent of that person who attempts, in good faith, to follow applicable public health guidance shall not be held liable for civil damages for any injuries or death resulting from or related to actual or alleged exposure or potential exposure to COVID-19 in the course of or through the performance or provision of its functions or services.

(2) Except as otherwise provided by this section, any health care professional or health care facility shall not be held liable for civil damages for any injury or death directly sustained because of the health care professional's or health care facility's acts or omissions while providing health care services in response to the COVID-19 State of Emergency. The immunity includes, but is not limited to, injury or death resulting from screening, assessing, diagnosing or treating persons directly related to the COVID-19 State of Emergency.

(3) The limitations on liability provided in this section shall not apply where the plaintiff shows, by clear and convincing



evidence, that a defendant, or any employee or agent thereof,
acted with actual malice or willful, intentional misconduct.

(4) Nothing in this section: (a) creates, recognizes or
ratifies a claim or cause of action of any kind; (b) eliminates a
required element of any claim; (c) affects workers' compensation
law, including the exclusive application of such law; or (d)
amends, repeals, alters, or affects any other immunity or
limitation of liability.

SECTION 5. (1) Except as otherwise provided by this
section, a person that designs, manufactures, labels, sells,
distributes, or donates a qualified product that is utilized by a
government entity, health care professional, health care facility,
first responder, association, for-profit or nonprofit entity,
religious organization or charitable organization in response to
COVID-19 shall not be held liable for civil damages for any
injuries resulting from or related to actual or alleged exposure
or potential exposure to COVID-19 caused by a qualified product.

(2) Except as otherwise provided by this section, a person
that designs, manufactures, labels, sells, distributes, or donates
disinfecting or cleaning supplies or personal protective equipment
in response to COVID-19 outside the ordinary course of the
person's business shall not be held liable for civil damages for
any injuries resulting from or related to actual or alleged
exposure or potential exposure to COVID-19 caused by the



disinfecting or cleaning supplies or personal protective equipment.

(3) The limitations on liability provided in this section shall not apply where the plaintiff shows, by clear and convincing evidence, that a defendant, or any employee or agent thereof, acted with actual malice or willful, intentional misconduct.

(4) Nothing in this section: (a) creates, recognizes or ratifies a claim or cause of action of any kind; (b) eliminates a required element of any claim; (c) affects workers' compensation law, including the exclusive application of such law; or (d) amends, repeals, alters, or affects any other immunity or limitation of liability.

SECTION 6. If liability is established in conformity with this act, a person's liability is limited to actual economic compensatory damages and, when actual economic compensatory damages are alleged and proven, noneconomic damages not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00).

SECTION 7. Nothing in this act shall be construed to preempt, remove, or limit any applicable defense or immunity from civil liability otherwise available.

SECTION 8. Except as otherwise provided in Section 11-46-11, a person must bring suit for any alleged injury arising from COVID-19 not later than two (2) years after the day the cause of action accrues.



193 **SECTION 9.** This act shall take effect and be in force from
194 and after March 14, 2020, it being the intent of the Legislature
195 that this act take effect retroactively.

