

116TH CONGRESS
2D SESSION

S. 4317

To lessen the burdens on interstate commerce by discouraging insubstantial lawsuits relating to COVID–19 while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2020

Mr. CORNYN (for himself and Mr. McCONNELL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To lessen the burdens on interstate commerce by discouraging insubstantial lawsuits relating to COVID–19 while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Safeguarding America’s Frontline Employees To Offer
6 Work Opportunities Required to Kickstart the Economy
7 Act” or the “SAFE TO WORK Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.

TITLE I—LIABILITY RELIEF

Subtitle A—Liability Limitations for Individuals and Entities Engaged in Businesses, Services, Activities, or Accommodations

- Sec. 121. Application of subtitle.
- Sec. 122. Liability; safe harbor.

Subtitle B—Liability Limitations for Health Care Providers

- Sec. 141. Application of subtitle.
- Sec. 142. Liability for health care professionals and health care facilities during
coronavirus public health emergency.

Subtitle C—Substantive and Procedural Provisions for Coronavirus-related Actions Generally

- Sec. 161. Jurisdiction.
- Sec. 162. Limitations on suits.
- Sec. 163. Procedures for suit in district courts of the United States.
- Sec. 164. Demand letters; cause of action.

Subtitle D—Relation to Labor and Employment Laws

- Sec. 181. Limitation on violations under specific laws.
- Sec. 182. Liability for conducting testing at workplace.
- Sec. 183. Joint employment and independent contracting.
- Sec. 184. Exclusion of certain notification requirements as a result of the
COVID–19 public health emergency.

TITLE II—PRODUCTS

- Sec. 201. Applicability of the targeted liability protections for pandemic and
epidemic products and security countermeasures with respect
to COVID–19.

TITLE III—GENERAL PROVISIONS

- Sec. 301. Severability.

3 **SEC. 2. FINDINGS AND PURPOSES.**

4 (a) FINDINGS.—Congress finds the following:

- 5 (1) The SARS–CoV–2 virus that originated in
6 China and causes the disease COVID–19 has caused

1 untold misery and devastation throughout the world,
2 including in the United States.

3 (2) For months, frontline health care workers
4 and health care facilities have fought the virus with
5 courage and resolve. They did so at first with very
6 little information about how to treat the virus and
7 developed strategies to save lives of the people of the
8 United States in real time. They risked their per-
9 sonal health and wellbeing to protect and treat their
10 patients.

11 (3) Businesses in the United States kicked into
12 action to produce and procure personal protective
13 equipment, such as masks, gloves, face shields, and
14 hand sanitizer, and other necessary medical supplies,
15 such as ventilators, at unprecedented rates.

16 (4) To halt the spread of the disease, State and
17 local governments took drastic measures. They shut
18 down small and large businesses, schools, colleges
19 and universities, religious, philanthropic and other
20 nonprofit institutions, and local government agen-
21 cies. They ordered people to remain in their homes.

22 (5) This standstill was needed to slow the
23 spread of the virus. But it devastated the economy
24 of the United States. The sum of hundreds of local-
25 level and State-level decisions to close nearly every

1 space in which people might gather brought inter-
2 state commerce nearly to a halt.

3 (6) This halt led to the loss of millions of jobs.
4 These lost jobs were not a natural consequence of
5 the economic environment, but rather the result of
6 a drastic, though temporary, response to the unprec-
7 edented nature of this global pandemic.

8 (7) Congress passed a series of statutes to ad-
9 dress the health care and economic crises—the
10 Coronavirus Preparedness and Response Supple-
11 mental Appropriations Act, 2020 (Public Law 116–
12 123; 134 Stat. 146), the Families First Coronavirus
13 Response Act (Public Law 116–127; 134 Stat. 178),
14 the Coronavirus Aid, Relief, and Economic Security
15 Act or the CARES Act (Public Law 116–136), and
16 the Paycheck Protection Program and Health Care
17 Enhancement Act (Public Law 116–139; 134 Stat.
18 620). In these laws Congress exercised its power
19 under the Commerce and Spending Clauses of the
20 Constitution of the United States to direct trillions
21 of taxpayer dollars toward efforts to aid workers,
22 businesses, State and local governments, health care
23 workers, and patients.

24 (8) This legislation provided short-term insula-
25 tion from the worst of the economic storm, but these

1 laws alone cannot protect the United States from
2 further devastation. Only reopening the economy so
3 that workers can get back to work and students can
4 get back to school can accomplish that goal.

5 (9) The Constitution of the United States spe-
6 cifically enumerates the legislative powers of Con-
7 gress. One of those powers is the regulation of inter-
8 state commerce. The Government is not a substitute
9 for the economy, but it has the authority and the
10 duty to act when interstate commerce is threatened
11 and damaged. As applied to the present crisis, Con-
12 gress can deploy its power over interstate commerce
13 to promote a prudent reopening of businesses and
14 other organizations that serve as the foundation and
15 backbone of the national economy and of commerce
16 among the States. These include small and large
17 businesses, schools (which are substantial employers
18 in their own right and provide necessary services to
19 enable parents and other caregivers to return to
20 work), colleges and universities (which are substan-
21 tial employers and supply the interstate market for
22 higher-education services), religious, philanthropic
23 and other nonprofit institutions (which are substan-
24 tial employers and provide necessary services to their
25 communities), and local government agencies.

1 (10) Congress must also ensure that the Na-
2 tion's health care workers and health care facilities
3 are able to act fully to defeat the virus.

4 (11) Congress must also safeguard its invest-
5 ment of taxpayer dollars under the CARES Act and
6 other coronavirus legislation. Congress must ensure
7 that those funds are used to help businesses and
8 workers survive and recover from the economic cri-
9 sis, and to help health care workers and health care
10 facilities defeat the virus. CARES Act funds cannot
11 be diverted from these important purposes to line
12 the pockets of the trial bar.

13 (12) One of the chief impediments to the con-
14 tinued flow of interstate commerce as this public-
15 health crisis has unfolded is the risk of litigation.
16 Small and large businesses, schools, colleges and
17 universities, religious, philanthropic and other non-
18 profit institutions, and local government agencies
19 confront the risk of a tidal wave of lawsuits accusing
20 them of exposing employees, customers, students,
21 and worshipers to coronavirus. Health care workers
22 face the threat of lawsuits arising from their efforts
23 to fight the virus.

24 (13) They confront this litigation risk even as
25 they work tirelessly to comply with the coronavirus

1 guidance, rules, and regulations issued by local gov-
2 ernments, State governments, and the Federal Gov-
3 ernment. They confront this risk notwithstanding
4 equipment and staffing shortages. And they confront
5 this risk while also grappling with constantly chang-
6 ing information on how best to protect employees,
7 customers, students, and worshipers from the virus,
8 and how best to treat it.

9 (14) These lawsuits pose a substantial risk to
10 interstate commerce because they threaten to keep
11 small and large businesses, schools, colleges and uni-
12 versities, religious, philanthropic and other nonprofit
13 institutions, and local government agencies from re-
14 opening for fear of expensive litigation that might
15 prove to be meritless. These lawsuits further threat-
16 en to undermine the Nation's fight against the virus
17 by exposing our health care workers and health care
18 facilities to liability for difficult medical decisions
19 they have made under trying and uncertain cir-
20 cumstances.

21 (15) These lawsuits also risk diverting taxpayer
22 money provided under the CARES Act and other
23 coronavirus legislation from its intended purposes to
24 the pockets of opportunistic trial lawyers.

1 (16) This risk is not purely local. It is nec-
2 essarily national in scale. A patchwork of local and
3 State rules governing liability in coronavirus-related
4 lawsuits creates tremendous unpredictability for ev-
5 eryone participating in interstate commerce and acts
6 as a significant drag on national recovery. The ag-
7 gregation of each individual potential liability risk
8 poses a substantial and unprecedented threat to
9 interstate commerce.

10 (17) The accumulated economic risks for these
11 potential defendants directly and substantially af-
12 fects interstate commerce. Individuals and entities
13 potentially subject to coronavirus-related liability will
14 structure their decisionmaking to avoid that liability.
15 Small and large businesses, schools, colleges and
16 universities, religious, philanthropic and other non-
17 profit institutions, and local government agencies
18 may decline to reopen because of the risk of litiga-
19 tion. They may limit their output or engagement
20 with customers and communities to avoid the risk of
21 litigation. These individual economic decisions sub-
22 stantially affect interstate commerce because, as a
23 whole, they will prevent the free and fair exchange
24 of goods and services across State lines. Such eco-
25 nomic activity that, individually and in the aggre-

1 gate, substantially affects interstate commerce is
2 precisely the sort of conduct that should be subject
3 to congressional regulation.

4 (18) Lawsuits against health care workers and
5 facilities pose a similarly dangerous risk to interstate
6 commerce. Interstate commerce will not truly re-
7 bound from this crisis until the virus is defeated,
8 and that will not happen unless health care workers
9 and facilities are free to combat vigorously the virus
10 and treat patients with coronavirus and those other-
11 wise impacted by the response to coronavirus.

12 (19) Subjecting health care workers and facili-
13 ties to onerous litigation even as they have done
14 their level best to combat a virus about which very
15 little was known when it arrived in the United
16 States would divert important health care resources
17 from hospitals and providers to courtrooms.

18 (20) Such a diversion would substantially affect
19 interstate commerce by degrading the national ca-
20 pacity for combating the virus and saving patients,
21 thereby substantially elongating the period before
22 interstate commerce could fully re-engage.

23 (21) Congress also has the authority to deter-
24 mine the jurisdiction of the courts of the United
25 States, to set the standards for causes of action they

1 can hear, and to establish the rules by which those
2 causes of action should proceed. Congress therefore
3 must act to set rules governing liability in
4 coronavirus-related lawsuits.

5 (22) These rules necessarily must be temporary
6 and carefully tailored to the interstate crisis caused
7 by the coronavirus pandemic. They must extend no
8 further than necessary to meet this uniquely na-
9 tional crisis for which a patchwork of State and local
10 tort laws are ill-suited.

11 (23) Because of the national scope of the eco-
12 nomic and health care dangers posed by the risks of
13 coronavirus-related lawsuits, establishing temporary
14 rules governing liability for certain coronavirus-re-
15 lated tort claims is a necessary and proper means of
16 carrying into execution Congress's power to regulate
17 commerce among the several States.

18 (24) Because Congress must safeguard the in-
19 vestment of taxpayer dollars it made in the CARES
20 Act and other coronavirus legislation, and ensure
21 that they are used for their intended purposes and
22 not diverted for other purposes, establishing tem-
23 porary rules governing liability for certain
24 coronavirus-related tort claims is a necessary and
25 proper means of carrying into execution Congress's

1 power to provide for the general welfare of the
2 United States.

3 (b) PURPOSES.—Pursuant to the powers delegated to
4 Congress by article I, section 8, clauses 1, 3, 9, and 18,
5 and article III, section 2, clause 1 of the Constitution of
6 the United States, the purposes of this Act are to—

7 (1) establish necessary and consistent standards
8 for litigating certain claims specific to the unique
9 coronavirus pandemic;

10 (2) prevent the overburdening of the court sys-
11 tems with undue litigation;

12 (3) encourage planning, care, and appropriate
13 risk management by small and large businesses,
14 schools, colleges and universities, religious, philan-
15 thropic and other nonprofit institutions, local gov-
16 ernment agencies, and health care providers;

17 (4) ensure that the Nation’s recovery from the
18 coronavirus economic crisis is not burdened or
19 slowed by the substantial risk of litigation;

20 (5) prevent litigation brought to extract settle-
21 ments and enrich trial lawyers rather than vindicate
22 meritorious claims;

23 (6) protect interstate commerce from the bur-
24 dens of potentially meritless litigation;

1 (7) ensure the economic recovery proceeds with-
2 out artificial and unnecessary delay;

3 (8) protect the interests of the taxpayers by en-
4 suring that emergency taxpayer support continues to
5 aid businesses, workers, and health care providers
6 rather than enrich trial lawyers; and

7 (9) protect the highest and best ideals of the
8 national economy, so businesses can produce and
9 serve their customers, workers can work, teachers
10 can teach, students can learn, and believers can wor-
11 ship.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) **APPLICABLE GOVERNMENT STANDARDS**
15 **AND GUIDANCE.**—The term “applicable government
16 standards and guidance” means—

17 (A) any mandatory standards or regula-
18 tions specifically concerning the prevention or
19 mitigation of the transmission of coronavirus
20 issued by the Federal Government, or a State
21 or local government with jurisdiction over an in-
22 dividual or entity, whether provided by execu-
23 tive, judicial, or legislative order; and

24 (B) with respect to an individual or entity
25 that, at the time of the actual, alleged, feared,

1 or potential for exposure to coronavirus is not
2 subject to any mandatory standards or regula-
3 tions described in subparagraph (A), any guid-
4 ance, standards, or regulations specifically con-
5 cerning the prevention or mitigation of the
6 transmission of coronavirus issued by the Fed-
7 eral Government, or a State or local govern-
8 ment with jurisdiction over the individual or en-
9 tity.

10 (2) **BUSINESSES, SERVICES, ACTIVITIES, OR AC-**
11 **COMMODATIONS.**—The term “businesses, services,
12 activities, or accommodations” means any act by an
13 individual or entity, irrespective of whether the act
14 is carried on for profit, that is interstate or foreign
15 commerce, that involves persons or things in inter-
16 state or foreign commerce, that involves the channels
17 or instrumentalities of interstate or foreign com-
18 merce, that substantially affects interstate or foreign
19 commerce, or that is otherwise an act subject to reg-
20 ulation by Congress as necessary and proper to
21 carry into execution Congress’s powers to regulate
22 interstate or foreign commerce or to spend funds for
23 the general welfare.

24 (3) **CORONAVIRUS.**—The term “coronavirus”
25 means any disease, health condition, or threat of

1 harm caused by the SARS-CoV-2 virus or a virus
2 mutating therefrom.

3 (4) CORONAVIRUS EXPOSURE ACTION.—

4 (A) IN GENERAL.—The term “coronavirus
5 exposure action” means a civil action—

6 (i) brought by a person who suffered
7 personal injury or is at risk of suffering
8 personal injury, or a representative of a
9 person who suffered personal injury or is
10 at risk of suffering personal injury;

11 (ii) brought against an individual or
12 entity engaged in businesses, services, ac-
13 tivities, or accommodations; and

14 (iii) alleging that an actual, alleged,
15 feared, or potential for exposure to
16 coronavirus caused the personal injury or
17 risk of personal injury, that—

18 (I) occurred in the course of the
19 businesses, services, activities, or ac-
20 commodated of the individual or en-
21 tity; and

22 (II) occurred—

23 (aa) on or after December 1,
24 2019; and

25 (bb) before the later of—

1 (AA) October 1, 2024;

2 or

3 (BB) the date on which
4 there is no declaration by
5 the Secretary of Health and
6 Human Services under sec-
7 tion 319F–3(b) of the Pub-
8 lic Health Service Act (42
9 U.S.C. 247d–6d(b)) (relat-
10 ing to medical counter-
11 measures) that is in effect
12 with respect to coronavirus,
13 including the Declaration
14 Under the Public Readiness
15 and Emergency Prepared-
16 ness Act for Medical Coun-
17 termeasures Against
18 COVID–19 (85 Fed. Reg.
19 15198) issued by the Sec-
20 retary of Health and Human
21 Services on March 17, 2020.

22 (B) EXCLUSIONS.—The term “coronavirus
23 exposure action” does not include—

24 (i) a criminal, civil, or administrative
25 enforcement action brought by the Federal

1 Government or any State, local, or Tribal
2 government; or

3 (ii) a claim alleging intentional dis-
4 crimination on the basis of race, color, na-
5 tional origin, religion, sex (including preg-
6 nancy), disability, genetic information, or
7 age.

8 (5) CORONAVIRUS-RELATED ACTION.—The
9 term “coronavirus-related action” means a
10 coronavirus exposure action or a coronavirus-related
11 medical liability action.

12 (6) CORONAVIRUS-RELATED HEALTH CARE
13 SERVICES.—The term “coronavirus-related health
14 care services” means services provided by a health
15 care provider, regardless of the location where the
16 services are provided, that relate to—

17 (A) the diagnosis, prevention, or treatment
18 of coronavirus;

19 (B) the assessment or care of an individual
20 with a confirmed or suspected case of
21 coronavirus; or

22 (C) the care of any individual who is ad-
23 mitted to, presents to, receives services from, or
24 resides at, a health care provider for any pur-
25 pose during the period of a Federal emergency

1 declaration concerning coronavirus, if such pro-
 2 vider’s decisions or activities with respect to
 3 such individual are impacted as a result of
 4 coronavirus.

5 (7) CORONAVIRUS-RELATED MEDICAL LIABIL-
 6 ITY ACTION.—

7 (A) IN GENERAL.—The term “coronavirus-
 8 related medical liability action” means a civil
 9 action—

10 (i) brought by a person who suffered
 11 personal injury, or a representative of a
 12 person who suffered personal injury;

13 (ii) brought against a health care pro-
 14 vider; and

15 (iii) alleging any harm, damage,
 16 breach, or tort resulting in the personal in-
 17 jury alleged to have been caused by, be
 18 arising out of, or be related to a health
 19 care provider’s act or omission in the
 20 course of arranging for or providing
 21 coronavirus-related health care services
 22 that occurred—

23 (I) on or after December 1,
 24 2019; and

25 (II) before the later of—

1 (aa) October 1, 2024; or
2 (bb) the date on which there
3 is no declaration by the Secretary
4 of Health and Human Services
5 under section 319F–3(b) of the
6 Public Health Service Act (42
7 U.S.C. 247d–6d(b)) (relating to
8 covered countermeasures) that is
9 in effect with respect to
10 coronavirus, including the Dec-
11 laration Under the Public Readiness
12 and Emergency Preparedness
13 Act for Medical Counter-
14 measures Against COVID–19 (85
15 Fed. Reg. 15198) issued by the
16 Secretary of Health and Human
17 Services on March 17, 2020.

18 (B) EXCLUSIONS.—The term
19 “coronavirus-related medical liability action”
20 does not include—

21 (i) a criminal, civil, or administrative
22 enforcement action brought by the Federal
23 Government or any State, local, or Tribal
24 government; or

1 (ii) a claim alleging intentional dis-
2 crimination on the basis of race, color, na-
3 tional origin, religion, sex (including preg-
4 nancy), disability, genetic information, or
5 age.

6 (8) EMPLOYER.—The term “employer”—

7 (A) means any person serving as an em-
8 ployer or acting directly in the interest of an
9 employer in relation to an employee;

10 (B) includes a public agency; and

11 (C) does not include any labor organization
12 (other than when acting as an employer) or any
13 person acting in the capacity of officer or agent
14 of such labor organization.

15 (9) GOVERNMENT.—The term “government”
16 means an agency, instrumentality, or other entity of
17 the Federal Government, a State government (in-
18 cluding multijurisdictional agencies, instrumental-
19 ities, and entities), a local government, or a Tribal
20 government.

21 (10) GROSS NEGLIGENCE.—The term “gross
22 negligence” means a conscious, voluntary act or
23 omission in reckless disregard of—

24 (A) a legal duty;

25 (B) the consequences to another party; and

1 (C) applicable government standards and
2 guidance.

3 (11) HARM.—The term “harm” includes—

4 (A) physical and nonphysical contact that
5 results in personal injury to an individual; and

6 (B) economic and noneconomic losses.

7 (12) HEALTH CARE PROVIDER.—

8 (A) IN GENERAL.—The term “health care
9 provider” means any person, including an
10 agent, volunteer (subject to subparagraph (C)),
11 contractor, employee, or other entity, who is—

12 (i) required by Federal or State law to
13 be licensed, registered, or certified to pro-
14 vide health care and is so licensed, reg-
15 istered, or certified (or is exempt from any
16 such requirement);

17 (ii) otherwise authorized by Federal or
18 State law to provide care (including serv-
19 ices and supports furnished in a home or
20 community-based residential setting under
21 the State Medicaid program or a waiver of
22 that program); or

23 (iii) considered under applicable Fed-
24 eral or State law to be a health care pro-

1 vider, health care professional, health care
2 institution, or health care facility.

3 (B) INCLUSION OF ADMINISTRATORS, SU-
4 PERVISORS, ETC.—The term “health care pro-
5 vider” includes a health care facility adminis-
6 trator, executive, supervisor, board member or
7 trustee, or another individual responsible for di-
8 recting, supervising, or monitoring the provision
9 of coronavirus-related health care services in a
10 comparable role.

11 (C) INCLUSION OF VOLUNTEERS.—The
12 term “health care provider” includes volunteers
13 that meet the following criteria:

14 (i) The volunteer is a health care pro-
15 fessional providing coronavirus-related
16 health care services.

17 (ii) The act or omission by the volun-
18 teer occurs—

19 (I) in the course of providing
20 health care services;

21 (II) in the health care profes-
22 sional’s capacity as a volunteer;

23 (III) in the course of providing
24 health care services that—

1 (aa) are within the scope of
 2 the license, registration, or cer-
 3 tification of the volunteer, as de-
 4 fined by the State of licensure,
 5 registration, or certification; and

6 (bb) do not exceed the scope
 7 of license, registration, or certifi-
 8 cation of a substantially similar
 9 health professional in the State
 10 in which such act or omission oc-
 11 curs; and

12 (IV) in a good-faith belief that
 13 the individual being treated is in need
 14 of health care services.

15 (13) INDIVIDUAL OR ENTITY.—The term “indi-
 16 vidual or entity” means—

17 (A) any natural person, corporation, com-
 18 pany, trade, business, firm, partnership, joint
 19 stock company, educational institution, labor
 20 organization, or similar organization or group
 21 of organizations;

22 (B) any nonprofit organization, foundation,
 23 society, or association organized for religious,
 24 charitable, educational, or other purposes; or

25 (C) any State, Tribal, or local government.

1 (14) LOCAL GOVERNMENT.—The term “local
2 government” means any unit of government within
3 a State, including a—

4 (A) county;

5 (B) borough;

6 (C) municipality;

7 (D) city;

8 (E) town;

9 (F) township;

10 (G) parish;

11 (H) local public authority, including any
12 public housing agency under the United States
13 Housing Act of 1937 (42 U.S.C. 1437 et seq.);

14 (I) special district;

15 (J) school district;

16 (K) intrastate district;

17 (L) council of governments, whether or not
18 incorporated as a nonprofit corporation under
19 State law; and

20 (M) agency or instrumentality of—

21 (i) multiple units of local government
22 (including units of local government lo-
23 cated in different States); or

24 (ii) an intra-State unit of local gov-
25 ernment.

1 (15) MANDATORY.—The term “mandatory”,
2 with respect to standards or regulations, means the
3 standards or regulations are themselves enforceable
4 by the issuing government through criminal, civil, or
5 administrative action.

6 (16) PERSONAL INJURY.—The term “personal
7 injury”—

8 (A) means actual or potential physical in-
9 jury to an individual or death caused by a phys-
10 ical injury; and

11 (B) includes mental suffering, emotional
12 distress, or similar injuries suffered by an indi-
13 vidual in connection with a physical injury.

14 (17) STATE.—The term “State”—

15 (A) means any State of the United States,
16 the District of Columbia, the Commonwealth of
17 Puerto Rico, the Northern Mariana Islands, the
18 United States Virgin Islands, Guam, American
19 Samoa, and any other territory or possession of
20 the United States, and any political subdivision
21 or instrumentality thereof; and

22 (B) includes any agency or instrumentality
23 of 2 or more of the entities described in sub-
24 paragraph (A).

25 (18) TRIBAL GOVERNMENT.—

1 (A) IN GENERAL.—The term “Tribal gov-
2 ernment” means the recognized governing body
3 of any Indian tribe included on the list pub-
4 lished by the Secretary of the Interior pursuant
5 to section 104(a) of the Federally Recognized
6 Indian Tribe List Act of 1994 (25 U.S.C.
7 5131(a)).

8 (B) INCLUSION.—The term “Tribal gov-
9 ernment” includes any subdivision (regardless
10 of the laws and regulations of the jurisdiction
11 in which the subdivision is organized or incor-
12 porated) of a governing body described in sub-
13 paragraph (A) that—

14 (i) is wholly owned by that governing
15 body; and

16 (ii) has been delegated the right to ex-
17 ercise 1 or more substantial governmental
18 functions of the governing body.

19 (19) WILLFUL MISCONDUCT.—The term “will-
20 ful misconduct” means an act or omission that is
21 taken—

22 (A) intentionally to achieve a wrongful
23 purpose;

24 (B) knowingly without legal or factual jus-
25 tification; and

1 (C) in disregard of a known or obvious risk
 2 that is so great as to make it highly probable
 3 that the harm will outweigh the benefit.

4 **TITLE I—LIABILITY RELIEF**
 5 **Subtitle A—Liability Limitations**
 6 **for Individuals and Entities En-**
 7 **gaged in Businesses, Services,**
 8 **Activities, or Accommodations**

9 **SEC. 121. APPLICATION OF SUBTITLE.**

10 (a) CAUSE OF ACTION; TRIBAL SOVEREIGN IMMUN-
 11 NITY.—

12 (1) CAUSE OF ACTION.—

13 (A) IN GENERAL.—This subtitle creates an
 14 exclusive cause of action for coronavirus expo-
 15 sure actions.

16 (B) LIABILITY.—A plaintiff may prevail in
 17 a coronavirus exposure action only in accord-
 18 ance with the requirements of this title.

19 (C) APPLICATION.—The provisions of this
 20 subtitle shall apply to—

21 (i) any cause of action that is a
 22 coronavirus exposure action that was filed
 23 before the date of enactment of this Act
 24 and that is pending on such date of enact-
 25 ment; and

1 (ii) any coronavirus exposure action
2 filed on or after such date of enactment.

3 (2) PRESERVATION OF LIABILITY LIMITS AND
4 DEFENSES.—Except as otherwise explicitly provided
5 in this subtitle, nothing in this subtitle expands any
6 liability otherwise imposed or limits any defense oth-
7 erwise available under Federal, State, or Tribal law.

8 (3) IMMUNITY.—Nothing in this subtitle abro-
9 gates the immunity of any State, or waives the im-
10 munity of any Tribal government. The limitations on
11 liability provided under this subtitle shall control in
12 any action properly filed against a State or Tribal
13 government pursuant to a duly executed waiver by
14 the State or Tribe of sovereign immunity and stat-
15 ing claims within the scope of this subtitle.

16 (b) PREEMPTION AND SUPERSEDURE.—

17 (1) IN GENERAL.—Except as described in para-
18 graphs (2) through (6), this subtitle preempts and
19 supersedes any Federal, State, or Tribal law, includ-
20 ing statutes, regulations, rules, or standards that are
21 enacted, promulgated, or established under common
22 law, related to recovery for personal injuries caused
23 by actual, alleged, feared, or potential for exposure
24 to coronavirus.

1 (2) STRICTER LAWS NOT PREEMPTED OR SU-
2 PERSEDED.—Nothing in this subtitle shall be con-
3 strued to affect the applicability of any provision of
4 any Federal, State, or Tribal law that imposes
5 stricter limits on damages or liabilities for personal
6 injury caused by, arising out of, or related to an ac-
7 tual, alleged, feared, or potential for exposure to
8 coronavirus, or otherwise affords greater protection
9 to defendants in any coronavirus exposure action,
10 than are provided in this subtitle. Any such provi-
11 sion of Federal, State, or Tribal law shall be applied
12 in addition to the requirements of this subtitle and
13 not in lieu thereof.

14 (3) WORKERS' COMPENSATION LAWS NOT PRE-
15 EMPTED OR SUPERSEDED.—Nothing in this subtitle
16 shall be construed to affect the applicability of any
17 State or Tribal law providing for a workers' com-
18 pensation scheme or program, or to preempt or su-
19 persede an exclusive remedy under such scheme or
20 program.

21 (4) ENFORCEMENT ACTIONS.—Nothing in this
22 subtitle shall be construed to impair, limit, or affect
23 the authority of the Federal Government, or of any
24 State, local, or Tribal government, to bring any

1 criminal, civil, or administrative enforcement action
2 against any individual or entity.

3 (5) DISCRIMINATION CLAIMS.—Nothing in this
4 subtitle shall be construed to affect the applicability
5 of any provision of any Federal, State, or Tribal law
6 that creates a cause of action for intentional dis-
7 crimination on the basis of race, color, national ori-
8 gin, religion, sex (including pregnancy), disability,
9 genetic information, or age.

10 (6) MAINTENANCE AND CURE.—Nothing in this
11 subtitle shall be construed to affect a seaman’s right
12 to claim maintenance and cure benefits.

13 (c) STATUTE OF LIMITATIONS.—A coronavirus expo-
14 sure action may not be commenced in any Federal, State,
15 or Tribal government court later than 1 year after the
16 date of the actual, alleged, feared, or potential for expo-
17 sure to coronavirus.

18 **SEC. 122. LIABILITY; SAFE HARBOR.**

19 (a) REQUIREMENTS FOR LIABILITY FOR EXPOSURE
20 TO CORONAVIRUS.—Notwithstanding any other provision
21 of law, and except as otherwise provided in this section,
22 no individual or entity engaged in businesses, services, ac-
23 tivities, or accommodations shall be liable in any
24 coronavirus exposure action unless the plaintiff can prove
25 by clear and convincing evidence that—

1 (1) in engaging in the businesses, services, ac-
2 tivities, or accommodations, the individual or entity
3 was not making reasonable efforts in light of all the
4 circumstances to comply with the applicable govern-
5 ment standards and guidance in effect at the time
6 of the actual, alleged, feared, or potential for expo-
7 sure to coronavirus;

8 (2) the individual or entity engaged in gross
9 negligence or willful misconduct that caused an ac-
10 tual exposure to coronavirus; and

11 (3) the actual exposure to coronavirus caused
12 the personal injury of the plaintiff.

13 (b) REASONABLE EFFORTS TO COMPLY.—

14 (1) CONFLICTING APPLICABLE GOVERNMENT
15 STANDARDS AND GUIDANCE.—

16 (A) IN GENERAL.—If more than 1 govern-
17 ment to whose jurisdiction an individual or enti-
18 ty is subject issues applicable government
19 standards and guidance, and the applicable gov-
20 ernment standards and guidance issued by 1 or
21 more of the governments conflicts with the ap-
22 plicable government standards and guidance
23 issued by 1 or more of the other governments,
24 the individual or entity shall be considered to
25 have made reasonable efforts in light of all the

1 circumstances to comply with the applicable
2 government standards and guidance for pur-
3 poses of subsection (a)(1) unless the plaintiff
4 establishes by clear and convincing evidence
5 that the individual or entity was not making
6 reasonable efforts in light of all the cir-
7 cumstances to comply with any of the con-
8 flicting applicable government standards and
9 guidance issued by any government to whose ju-
10 risdiction the individual or entity is subject.

11 (B) EXCEPTION.—If mandatory standards
12 and regulations constituting applicable govern-
13 ment standards and guidance issued by any
14 government with jurisdiction over the individual
15 or entity conflict with applicable government
16 standards and guidance that are not mandatory
17 and are issued by any other government with
18 jurisdiction over the individual or entity or by
19 the same government that issued the mandatory
20 standards and regulations, the plaintiff may es-
21 tablish that the individual or entity did not
22 make reasonable efforts in light of all the cir-
23 cumstances to comply with the applicable gov-
24 ernment standards and guidance for purposes
25 of subsection (a)(1) by establishing by clear and

1 convincing evidence that the individual or entity
2 was not making reasonable efforts in light of all
3 the circumstances to comply with the manda-
4 tory standards and regulations to which the in-
5 dividual or entity was subject.

6 (2) WRITTEN OR PUBLISHED POLICY.—

7 (A) IN GENERAL.—If an individual or enti-
8 ty engaged in businesses, services, activities, or
9 accommodations maintained a written or pub-
10 lished policy on the mitigation of transmission
11 of coronavirus at the time of the actual, alleged,
12 feared, or potential for exposure to coronavirus
13 that complied with, or was more protective
14 than, the applicable government standards and
15 guidance to which the individual or entity was
16 subject, the individual or entity shall be pre-
17 sumed to have made reasonable efforts in light
18 of all the circumstances to comply with the ap-
19 plicable government standards and guidance for
20 purposes of subsection (a)(1).

21 (B) REBUTTAL.—The plaintiff may rebut
22 the presumption under subparagraph (A) by es-
23 tablishing that the individual or entity was not
24 complying with the written or published policy

1 at the time of the actual, alleged, feared, or po-
2 tential for exposure to coronavirus.

3 (C) ABSENCE OF A WRITTEN OR PUB-
4 LISHED POLICY.—The absence of a written or
5 published policy shall not give rise to a pre-
6 sumption that the individual or entity did not
7 make reasonable efforts in light of all the cir-
8 cumstances to comply with the applicable gov-
9 ernment standards and guidance for purposes
10 of subsection (a)(1).

11 (3) TIMING.—For purposes of subsection
12 (a)(1), a change to a policy or practice by an indi-
13 vidual or entity before or after the actual, alleged,
14 feared, or potential for exposure to coronavirus, shall
15 not be evidence of liability for the actual, alleged,
16 feared, or potential for exposure to coronavirus.

17 (c) THIRD PARTIES.—No individual or entity shall be
18 held liable in a coronavirus exposure action for the acts
19 or omissions of a third party, unless—

20 (1) the individual or entity had an obligation
21 under general common law principles to control the
22 acts or omissions of the third party; or

23 (2) the third party was an agent of the indi-
24 vidual or entity.

1 (d) MITIGATION.—Changes to the policies, practices,
2 or procedures of an individual or entity for complying with
3 the applicable government standards and guidance after
4 the time of the actual, alleged, feared, or potential for ex-
5 posure to coronavirus, shall not be considered evidence of
6 liability or culpability.

7 **Subtitle B—Liability Limitations**
8 **for Health Care Providers**

9 **SEC. 141. APPLICATION OF SUBTITLE.**

10 (a) IN GENERAL.—

11 (1) CAUSE OF ACTION.—

12 (A) IN GENERAL.—This subtitle creates an
13 exclusive cause of action for coronavirus-related
14 medical liability actions.

15 (B) LIABILITY.—A plaintiff may prevail in
16 a coronavirus-related medical liability action
17 only in accordance with the requirements of this
18 title.

19 (C) APPLICATION.—The provisions of this
20 subtitle shall apply to—

21 (i) any cause of action that is a
22 coronavirus-related medical liability action
23 that was filed before the date of enactment
24 of this Act and that is pending on such
25 date of enactment; and

1 (ii) any coronavirus-related medical li-
2 ability action filed on or after such date of
3 enactment.

4 (2) PRESERVATION OF LIABILITY LIMITS AND
5 DEFENSES.—Except as otherwise explicitly provided
6 in this subtitle, nothing in this subtitle expands any
7 liability otherwise imposed or limits any defense oth-
8 erwise available under Federal, State, or Tribal law.

9 (3) IMMUNITY.—Nothing in this subtitle abro-
10 gates the immunity of any State, or waives the im-
11 munity of any Tribal government. The limitations on
12 liability provided under this subtitle shall control in
13 any action properly filed against a State or Tribal
14 government pursuant to a duly executed waiver by
15 the State or Tribe of sovereign immunity and stat-
16 ing claims within the scope of this subtitle.

17 (b) PREEMPTION AND SUPERSEDURE.—

18 (1) IN GENERAL.—Except as described in para-
19 graphs (2) through (6), this subtitle preempts and
20 supersedes any Federal, State, or Tribal law, includ-
21 ing statutes, regulations, rules, or standards that are
22 enacted, promulgated, or established under common
23 law, related to recovery for personal injuries caused
24 by, arising out of, or related to an act or omission
25 by a health care provider in the course of arranging

1 for or providing coronavirus-related health care serv-
2 ices.

3 (2) STRICTER LAWS NOT PREEMPTED OR SU-
4 PERSEDED.—Nothing in this subtitle shall be con-
5 strued to affect the applicability of any provision of
6 any Federal, State, or Tribal law that imposes
7 stricter limits on damages or liabilities for personal
8 injury caused by, arising out of, or related to an act
9 or omission by a health care provider in the course
10 of arranging for or providing coronavirus-related
11 health care services, or otherwise affords greater
12 protection to defendants in any coronavirus-related
13 medical liability action than are provided in this sub-
14 title. Any such provision of Federal, State, or Tribal
15 law shall be applied in addition to the requirements
16 of this subtitle and not in lieu thereof.

17 (3) ENFORCEMENT ACTIONS.—Nothing in this
18 subtitle shall be construed to impair, limit, or affect
19 the authority of the Federal Government, or of any
20 State, local, or Tribal government to bring any
21 criminal, civil, or administrative enforcement action
22 against any health care provider.

23 (4) DISCRIMINATION CLAIMS.—Nothing in this
24 subtitle shall be construed to affect the applicability
25 of any provision of any Federal, State, or Tribal law

1 that creates a cause of action for intentional dis-
2 crimination on the basis of race, color, national ori-
3 gin, religion, sex (including pregnancy), disability,
4 genetic information, or age.

5 (5) PUBLIC READINESS AND EMERGENCY PRE-
6 PAREDNESS.—Nothing in this subtitle shall be con-
7 strued to affect the applicability of section 319F–3
8 of the Public Health Service Act (42 U.S.C. 247d–
9 6d) to any act or omission involving a covered coun-
10 termeasure, as defined in subsection (i) of such sec-
11 tion in arranging for or providing coronavirus-re-
12 lated health care services. Nothing in this subtitle
13 shall be construed to affect the applicability of sec-
14 tion 319F–4 of the Public Health Service Act (42
15 U.S.C. 247d–6e).

16 (6) VACCINE INJURY.—To the extent that title
17 XXI of the Public Health Service Act (42 U.S.C.
18 300aa–1 et seq.) establishes a Federal rule applica-
19 ble to a civil action brought for a vaccine-related in-
20 jury or death, this subtitle does not affect the appli-
21 cation of that rule to such an action.

22 (c) STATUTE OF LIMITATIONS.—A coronavirus-re-
23 lated medical liability action may not be commenced in
24 any Federal, State, or Tribal government court later than

1 1 year after the date of the alleged harm, damage, breach,
2 or tort, unless tolled for—

3 (1) proof of fraud;

4 (2) intentional concealment; or

5 (3) the presence of a foreign body, which has no
6 therapeutic or diagnostic purpose or effect, in the
7 person of the injured person.

8 **SEC. 142. LIABILITY FOR HEALTH CARE PROFESSIONALS**
9 **AND HEALTH CARE FACILITIES DURING**
10 **CORONAVIRUS PUBLIC HEALTH EMERGENCY.**

11 (a) REQUIREMENTS FOR LIABILITY FOR
12 CORONAVIRUS-RELATED HEALTH CARE SERVICES.—Not-
13 withstanding any other provision of law, and except as
14 provided in subsection (b), no health care provider shall
15 be liable in a coronavirus-related medical liability action
16 unless the plaintiff can prove by clear and convincing evi-
17 dence—

18 (1) gross negligence or willful misconduct by
19 the health care provider; and

20 (2) that the alleged harm, damage, breach, or
21 tort resulting in the personal injury was directly
22 caused by the alleged gross negligence or willful mis-
23 conduct.

24 (b) EXCEPTIONS.—For purposes of this section, acts,
25 omissions, or decisions resulting from a resource or staff-

1 ing shortage shall not be considered willful misconduct or
2 gross negligence.

3 **Subtitle C—Substantive and Proce-**
4 **dural Provisions for**
5 **Coronavirus-related Actions**
6 **Generally**

7 **SEC. 161. JURISDICTION.**

8 (a) JURISDICTION.—The district courts of the United
9 States shall have concurrent original jurisdiction of any
10 coronavirus-related action.

11 (b) REMOVAL.—

12 (1) IN GENERAL.—A coronavirus-related action
13 of which the district courts of the United States
14 have original jurisdiction under subsection (a) that
15 is brought in a State or Tribal government court
16 may be removed to a district court of the United
17 States in accordance with section 1446 of title 28,
18 United States Code, except that—

19 (A) notwithstanding subsection (b)(2)(A)
20 of such section, such action may be removed by
21 any defendant without the consent of all de-
22 fendants; and

23 (B) notwithstanding subsection (b)(1) of
24 such section, for any cause of action that is a
25 coronavirus-related action that was filed in a

1 State court before the date of enactment of this
2 Act and that is pending in such court on such
3 date of enactment, and of which the district
4 courts of the United States have original juris-
5 diction under subsection (a), any defendant
6 may file a notice of removal of a civil action or
7 proceeding within 30 days of the date of enact-
8 ment of this Act.

9 (2) PROCEDURE AFTER REMOVAL.—Section
10 1447 of title 28, United States Code, shall apply to
11 any removal of a case under paragraph (1), except
12 that, notwithstanding subsection (d) of such section,
13 a court of appeals of the United States shall accept
14 an appeal from an order of a district court granting
15 or denying a motion to remand the case to the State
16 or Tribal government court from which it was re-
17 moved if application is made to the court of appeals
18 of the United States not later than 10 days after the
19 entry of the order.

20 **SEC. 162. LIMITATIONS ON SUITS.**

21 (a) JOINT AND SEVERAL LIABILITY LIMITATIONS.—

22 (1) IN GENERAL.—An individual or entity
23 against whom a final judgment is entered in any
24 coronavirus-related action shall be liable solely for
25 the portion of the judgment that corresponds to the

1 relative and proportionate responsibility of that indi-
2 vidual or entity. In determining the percentage of re-
3 sponsibility of any defendant, the trier of fact shall
4 determine that percentage as a percentage of the
5 total fault of all individuals or entities, including the
6 plaintiff, who caused or contributed to the total loss
7 incurred by the plaintiff.

8 (2) PROPORTIONATE LIABILITY.—

9 (A) DETERMINATION OF RESPONSIBI-
10 BILITY.—In any coronavirus-related action, the
11 court shall instruct the jury to answer special
12 interrogatories, or, if there is no jury, the court
13 shall make findings with respect to each defend-
14 ant, including defendants who have entered into
15 settlements with the plaintiff or plaintiffs, con-
16 cerning the percentage of responsibility, if any,
17 of each defendant, measured as a percentage of
18 the total fault of all individuals or entities who
19 caused or contributed to the loss incurred by
20 the plaintiff.

21 (B) FACTORS FOR CONSIDERATION.—In
22 determining the percentage of responsibility
23 under this subsection, the trier of fact shall
24 consider—

1 (i) the nature of the conduct of each
2 individual or entity found to have caused
3 or contributed to the loss incurred by the
4 plaintiff; and

5 (ii) the nature and extent of the caus-
6 al relationship between the conduct of each
7 such individual or entity and the damages
8 incurred by the plaintiff.

9 (3) JOINT LIABILITY FOR SPECIFIC INTENT OR
10 FRAUD.—Notwithstanding paragraph (1), in any
11 coronavirus-related action the liability of a defendant
12 is joint and several if the trier of fact specifically de-
13 termines that the defendant—

14 (A) acted with specific intent to injure the
15 plaintiff; or

16 (B) knowingly committed fraud.

17 (4) RIGHT TO CONTRIBUTION NOT AF-
18 FECTED.—Nothing in this subsection affects the
19 right, under any other law, of a defendant to con-
20 tribution with respect to another defendant deter-
21 mined under paragraph (3) to have acted with spe-
22 cific intent to injure the plaintiff or to have know-
23 ingly committed fraud.

24 (b) LIMITATIONS ON DAMAGES.—In any coronavirus-
25 related action—

1 (1) the award of compensatory damages shall
2 be limited to economic losses incurred as the result
3 of the personal injury, harm, damage, breach, or
4 tort, except that the court may award damages for
5 noneconomic losses if the trier of fact determines
6 that the personal injury, harm, damage, breach, or
7 tort was caused by the willful misconduct of the in-
8 dividual or entity;

9 (2) punitive damages—

10 (A) may be awarded only if the trier of
11 fact determines that the personal injury to the
12 plaintiff was caused by the willful misconduct of
13 the individual or entity; and

14 (B) may not exceed the amount of compen-
15 satory damages awarded; and

16 (3) the amount of monetary damages awarded
17 to a plaintiff shall be reduced by the amount of com-
18 pensation received by the plaintiff from another
19 source in connection with the personal injury, harm,
20 damage, breach, or tort, such as insurance or reim-
21 bursement by a government.

22 (c) PREEMPTION AND SUPERSEDURE.—

23 (1) IN GENERAL.—Except as described in para-
24 graphs (2) and (3), this section preempts and super-
25 sedes any Federal, State, or Tribal law, including

1 statutes, regulations, rules, or standards that are en-
2 acted, promulgated, or established under common
3 law, related to joint and several liability, propor-
4 tionate or contributory liability, contribution, or the
5 award of damages for any coronavirus-related ac-
6 tion.

7 (2) STRICTER LAWS NOT PREEMPTED OR SU-
8 PERSEDED.—Nothing in this section shall be con-
9 strued to affect the applicability of any provision of
10 any Federal, State, or Tribal law that—

11 (A) limits the liability of a defendant in a
12 coronavirus-related action to a lesser degree of
13 liability than the degree of liability determined
14 under this section;

15 (B) otherwise affords a greater degree of
16 protection from joint or several liability than is
17 afforded by this section; or

18 (C) limits the damages that can be recov-
19 ered from a defendant in a coronavirus-related
20 action to a lesser amount of damages than the
21 amount determined under this section.

22 (3) PUBLIC READINESS AND EMERGENCY PRE-
23 PAREDNESS.—Nothing in this subtitle shall be con-
24 strued to affect the applicability of section 319F-3
25 of the Public Health Service Act (42 U.S.C. 247d-

1 6d) to any act or omission involving a covered coun-
2 termeasure, as defined in subsection (i) of such sec-
3 tion in arranging for or providing coronavirus-re-
4 lated health care services. Nothing in this subtitle
5 shall be construed to affect the applicability of sec-
6 tion 319F-4 of the Public Health Service Act (42
7 U.S.C. 247d-6e).

8 **SEC. 163. PROCEDURES FOR SUIT IN DISTRICT COURTS OF**
9 **THE UNITED STATES.**

10 (a) PLEADING WITH PARTICULARITY.—In any
11 coronavirus-related action filed in or removed to a district
12 court of the United States—

13 (1) the complaint shall plead with particu-
14 larity—

15 (A) each element of the plaintiff’s claim;
16 and

17 (B) with respect to a coronavirus exposure
18 action, all places and persons visited by the per-
19 son on whose behalf the complaint was filed and
20 all persons who visited the residence of the per-
21 son on whose behalf the complaint was filed
22 during the 14-day-period before the onset of the
23 first symptoms allegedly caused by coronavirus,
24 including—

1 (i) each individual or entity against
2 which a complaint is filed, along with the
3 factual basis for the belief that such indi-
4 vidual or entity was a cause of the per-
5 sonal injury alleged; and

6 (ii) every other person or place visited
7 by the person on whose behalf the com-
8 plaint was filed and every other person
9 who visited the residence of the person on
10 whose behalf the complaint was filed dur-
11 ing such period, along with the factual
12 basis for the belief that these persons and
13 places were not the cause of the personal
14 injury alleged; and

15 (2) the complaint shall plead with particularity
16 each alleged act or omission constituting gross neg-
17 ligence or willful misconduct that resulted in per-
18 sonal injury, harm, damage, breach, or tort.

19 (b) SEPARATE STATEMENTS CONCERNING THE NA-
20 TURE AND AMOUNT OF DAMAGES AND REQUIRED STATE
21 OF MIND.—

22 (1) NATURE AND AMOUNT OF DAMAGES.—In
23 any coronavirus-related action filed in or removed to
24 a district court of the United States in which mone-
25 tary damages are requested, there shall be filed with

1 the complaint a statement of specific information as
2 to the nature and amount of each element of dam-
3 ages and the factual basis for the damages calcula-
4 tion.

5 (2) REQUIRED STATE OF MIND.—In any
6 coronavirus-related action filed in or removed to a
7 district court of the United States in which a claim
8 is asserted on which the plaintiff may prevail only on
9 proof that the defendant acted with a particular
10 state of mind, there shall be filed with the com-
11 plaint, with respect to each element of that claim, a
12 statement of the facts giving rise to a strong infer-
13 ence that the defendant acted with the required
14 state of mind.

15 (c) VERIFICATION AND MEDICAL RECORDS.—

16 (1) VERIFICATION REQUIREMENT.—

17 (A) IN GENERAL.—The complaint in a
18 coronavirus-related action filed in or removed to
19 a district court of the United States shall in-
20 clude a verification, made by affidavit of the
21 plaintiff under oath, stating that the pleading is
22 true to the knowledge of the deponent, except
23 as to matters specifically identified as being al-
24 leged on information and belief, and that as to
25 those matters the plaintiff believes it to be true.

1 (B) IDENTIFICATION OF MATTERS AL-
2 LEGED UPON INFORMATION AND BELIEF.—Any
3 matter that is not specifically identified as
4 being alleged upon the information and belief of
5 the plaintiff, shall be regarded for all purposes,
6 including a criminal prosecution, as having been
7 made upon the knowledge of the plaintiff.

8 (2) MATERIALS REQUIRED.—In any
9 coronavirus-related action filed in or removed to a
10 district court of the United States, the plaintiff shall
11 file with the complaint—

12 (A) an affidavit by a physician or other
13 qualified medical expert who did not treat the
14 person on whose behalf the complaint was filed
15 that explains the basis for such physician’s or
16 other qualified medical expert’s belief that such
17 person suffered the personal injury, harm, dam-
18 age, breach, or tort alleged in the complaint;
19 and

20 (B) certified medical records documenting
21 the alleged personal injury, harm, damage,
22 breach, or tort.

23 (d) APPLICATION WITH FEDERAL RULES OF CIVIL
24 PROCEDURE.—This section applies exclusively to any
25 coronavirus-related action filed in or removed to a district

1 court of the United States and, except to the extent that
2 this section requires additional information to be con-
3 tained in or attached to pleadings, nothing in this section
4 is intended to amend or otherwise supersede applicable
5 rules of Federal civil procedure.

6 (e) CIVIL DISCOVERY FOR ACTIONS IN DISTRICT
7 COURTS OF THE UNITED STATES.—

8 (1) TIMING.—Notwithstanding any other provi-
9 sion of law, in any coronavirus-related action filed in
10 or removed to a district court of the United States,
11 no discovery shall be allowed before—

12 (A) the time has expired for the defendant
13 to answer or file a motion to dismiss; and

14 (B) if a motion to dismiss is filed, the
15 court has ruled on the motion.

16 (2) STANDARD.—Notwithstanding any other
17 provision of law, the court in any coronavirus-related
18 action that is filed in or removed to a district court
19 of the United States—

20 (A) shall permit discovery only with re-
21 spect to matters directly related to material
22 issues contested in the coronavirus-related ac-
23 tion; and

24 (B) may compel a response to a discovery
25 request (including a request for admission, an

1 interrogatory, a request for production of docu-
2 ments, or any other form of discovery request)
3 under rule 37 of the Federal Rules of Civil Pro-
4 cedure, only if the court finds that—

5 (i) the requesting party needs the in-
6 formation sought to prove or defend as to
7 a material issue contested in such action;
8 and

9 (ii) the likely benefits of a response to
10 such request equal or exceed the burden or
11 cost for the responding party of providing
12 such response.

13 (f) INTERLOCUTORY APPEAL AND STAY OF DIS-
14 COVERY.—The courts of appeals of the United States shall
15 have jurisdiction of an appeal from a motion to dismiss
16 that is denied in any coronavirus-related action in a dis-
17 trict court of the United States. The district court shall
18 stay all discovery in such a coronavirus-related action until
19 the court of appeals has disposed of the appeal.

20 (g) CLASS ACTIONS AND MULTIDISTRICT LITIGA-
21 TION PROCEEDINGS.—

22 (1) CLASS ACTIONS.—In any coronavirus-re-
23 lated action that is filed in or removed to a district
24 court of the United States and is maintained as a
25 class action or multidistrict litigation—

1 (A) an individual or entity shall only be a
2 member of the class if the individual or entity
3 affirmatively elects to be a member; and

4 (B) the court, in addition to any other no-
5 tice required by applicable Federal or State law,
6 shall direct notice of the action to each member
7 of the class, which shall include—

8 (i) a concise and clear description of
9 the nature of the action;

10 (ii) the jurisdiction where the case is
11 pending; and

12 (iii) the fee arrangements with class
13 counsel, including—

14 (I) the hourly fee being charged;

15 or

16 (II) if it is a contingency fee, the
17 percentage of the final award which
18 will be paid, including an estimate of
19 the total amount that would be paid if
20 the requested damages were to be
21 granted; and

22 (III) if the cost of the litigation
23 is being financed, a description of the
24 financing arrangement.

25 (2) MULTIDISTRICT LITIGATIONS.—

1 (A) TRIAL PROHIBITION.—In any coordi-
2 nated or consolidated pretrial proceedings con-
3 ducted pursuant to section 1407(b) of title 28,
4 United States Code, the judge or judges to
5 whom coronavirus-related actions are assigned
6 by the Judicial Panel on Multidistrict Litigation
7 may not conduct a trial in a coronavirus-related
8 action transferred to or directly filed in the pro-
9 ceedings unless all parties to that coronavirus-
10 related action consent.

11 (B) REVIEW OF ORDERS.—The court of
12 appeals of the United States having jurisdiction
13 over the transferee district court shall permit
14 an appeal to be taken from any order issued in
15 the conduct of coordinated or consolidated pre-
16 trial proceedings conducted pursuant to section
17 1407(b) of title 28, United States Code, if the
18 order is applicable to 1 or more coronavirus-re-
19 lated actions and an immediate appeal from the
20 order may materially advance the ultimate ter-
21 mination of 1 or more coronavirus-related ac-
22 tions in the proceedings.

23 **SEC. 164. DEMAND LETTERS; CAUSE OF ACTION.**

24 (a) CAUSE OF ACTION.—If any person transmits or
25 causes another to transmit in any form and by any means

1 a demand for remuneration in exchange for settling, re-
2 leasing, waiving, or otherwise not pursuing a claim that
3 is, or could be, brought as part of a coronavirus-related
4 action, the party receiving such a demand shall have a
5 cause of action for the recovery of damages occasioned by
6 such demand and for declaratory judgment in accordance
7 with chapter 151 of title 28, United States Code, if the
8 claim for which the letter was transmitted was meritless.

9 (b) DAMAGES.—Damages available under subsection
10 (a) shall include—

11 (1) compensatory damages including costs in-
12 curred in responding to the demand; and

13 (2) punitive damages, if the court determines
14 that the defendant had knowledge or was reckless
15 with regard to the fact that the claim was meritless.

16 (c) ATTORNEY'S FEES AND COSTS.—In an action
17 commenced under subsection (a), if the plaintiff is a pre-
18 vailing party, the court shall, in addition to any judgment
19 awarded to a plaintiff, allow a reasonable attorney's fee
20 to be paid by the defendant, and costs of the action.

21 (d) JURISDICTION.—The district courts of the United
22 States shall have concurrent original jurisdiction of all
23 claims arising under subsection (a).

24 (e) ENFORCEMENT BY THE ATTORNEY GENERAL.—

1 (1) IN GENERAL.—Whenever the Attorney Gen-
2 eral has reasonable cause to believe that any person
3 or group of persons is engaged in a pattern or prac-
4 tice of transmitting demands for remuneration in ex-
5 change for settling, releasing, waiving, or otherwise
6 not pursuing a claim that is, or could be, brought
7 as part of a coronavirus-related action and that is
8 meritless, the Attorney General may commence a
9 civil action in any appropriate district court of the
10 United States.

11 (2) RELIEF.—In a civil action under paragraph
12 (1), the court may, to vindicate the public interest,
13 assess a civil penalty against the respondent in an
14 amount not exceeding \$50,000 per transmitted de-
15 mand for remuneration in exchange for settling, re-
16 leasing, waiving or otherwise not pursuing a claim
17 that is meritless.

18 (3) DISTRIBUTION OF CIVIL PENALTIES.—If
19 the Attorney General obtains civil penalties in ac-
20 cordance with paragraph (2), the Attorney General
21 shall distribute the proceeds equitably among those
22 persons aggrieved by the respondent’s pattern or
23 practice of transmitting demands for remuneration
24 in exchange for settling, releasing, waiving or other-
25 wise not pursuing a claim that is meritless.

1 **Subtitle D—Relation to Labor and**
2 **Employment Laws**

3 **SEC. 181. LIMITATION ON VIOLATIONS UNDER SPECIFIC**
4 **LAWS.**

5 (a) IN GENERAL.—

6 (1) DEFINITION.—In this subsection, the term
7 “covered Federal employment law” means any of the
8 following:

9 (A) The Occupational Safety and Health
10 Act of 1970 (29 U.S.C. 651 et seq.) (including
11 any standard included in a State plan approved
12 under section 18 of such Act (29 U.S.C. 667)).

13 (B) The Fair Labor Standards Act of
14 1938 (29 U.S.C. 201 et seq.).

15 (C) The Age Discrimination in Employ-
16 ment Act of 1967 (29 U.S.C. 621 et seq.).

17 (D) The Worker Adjustment and Retraining
18 Notification Act (29 U.S.C. 2101 et seq.).

19 (E) Title VII of the Civil Rights Act of
20 1964 (42 U.S.C. 2000e et seq.).

21 (F) Title II of the Genetic Information
22 Nondiscrimination Act of 2008 (42 U.S.C.
23 2000ff et seq.).

24 (G) Title I of the Americans with Disabil-
25 ities Act of 1990 (42 U.S.C. 12111 et seq.).

1 (2) LIMITATION.—Notwithstanding any provi-
2 sion of a covered Federal employment law, in any
3 action, proceeding, or investigation resulting from or
4 related to an actual, alleged, feared, or potential for
5 exposure to coronavirus, or a change in working con-
6 ditions caused by a law, rule, declaration, or order
7 related to coronavirus, an employer shall not be sub-
8 ject to any enforcement proceeding or liability under
9 any provision of a covered Federal employment law
10 if the employer—

11 (A) was relying on and generally following
12 applicable government standards and guidance;

13 (B) knew of the obligation under the rel-
14 evant provision; and

15 (C) attempted to satisfy any such obliga-
16 tion by—

17 (i) exploring options to comply with
18 such obligations and with the applicable
19 government standards and guidance (such
20 as through the use of virtual training or
21 remote communication strategies);

22 (ii) implementing interim alternative
23 protections or procedures; or

24 (iii) following guidance issued by the
25 relevant agency with jurisdiction with re-

1 spect to any exemptions from such obliga-
2 tion.

3 (b) PUBLIC ACCOMMODATION LAWS.—

4 (1) DEFINITIONS.—In this subsection—

5 (A) the term “auxiliary aids and services”
6 has the meaning given the term in section 4 of
7 the Americans with Disabilities Act of 1990 (42
8 U.S.C. 12103);

9 (B) the term “covered public accommoda-
10 tion law” means—

11 (i) title III of the Americans with Dis-
12 abilities Act of 1990 (42 U.S.C. 12181 et
13 seq.); or

14 (ii) title II of the Civil Rights Act of
15 1964 (42 U.S.C. 2000a et seq.);

16 (C) the term “place of public accommoda-
17 tion” means—

18 (i) a place of public accommodation,
19 as defined in section 201 of the Civil
20 Rights Act of 1964 (42 U.S.C. 2000a); or

21 (ii) a public accommodation, as de-
22 fined in section 301 of the Americans with
23 Disabilities Act of 1990 (42 U.S.C.
24 12181); and

1 (D) the term “public health emergency pe-
2 riod” means a period designated a public health
3 emergency period by a Federal, State, or local
4 government authority.

5 (2) ACTIONS AND MEASURES DURING A PUBLIC
6 HEALTH EMERGENCY.—

7 (A) IN GENERAL.—Notwithstanding any
8 other provision of law or regulation, during any
9 public health emergency period, no person who
10 owns, leases (or leases to), or operates a place
11 of public accommodation shall be liable under,
12 or found in violation of, any covered public ac-
13 commodation law for any action or measure
14 taken regarding coronavirus and that place of
15 public accommodation, if such person—

16 (i) has determined that the significant
17 risk of substantial harm to public health or
18 the health of employees cannot be reduced
19 or eliminated by reasonably modifying poli-
20 cies, practices, or procedures, or the provi-
21 sion of an auxiliary aid or service; or

22 (ii) has offered such a reasonable
23 modification or auxiliary aid or service but
24 such offer has been rejected by the indi-
25 vidual protected by the covered law.

1 (as defined in section 181(a)), the Labor Management Re-
2 lations Act, 1947 (29 U.S.C. 141 et seq.), the Employ-
3 ment Retirement Income Security Act of 1974 (29 U.S.C.
4 1001 et seq.), and the Family and Medical Leave Act of
5 1993 (29 U.S.C. 2601 et seq.), it shall not constitute evi-
6 dence of a joint employment relationship or employment
7 relationship for any employer to provide or require, for
8 an employee of another employer or for an independent
9 contractor, any of the following:

10 (1) Coronavirus-related policies, procedures, or
11 training.

12 (2) Personal protective equipment or training
13 for the use of such equipment.

14 (3) Cleaning or disinfecting services or the
15 means for such cleaning or disinfecting.

16 (4) Workplace testing for coronavirus.

17 (5) Temporary assistance due to coronavirus,
18 including financial assistance or other health and
19 safety benefits.

20 **SEC. 184. EXCLUSION OF CERTAIN NOTIFICATION RE-**
21 **QUIREMENTS AS A RESULT OF THE COVID-19**
22 **PUBLIC HEALTH EMERGENCY.**

23 (a) DEFINITIONS.—Section 2(a) of the Worker Ad-
24 justment and Retraining Notification Act (29 U.S.C.
25 2101(a)) is amended—

1 (1) in paragraph (2), by adding before the
2 semicolon at the end the following: “and the shut-
3 down, if occurring during the covered period, is not
4 a result of the COVID–19 national emergency”;

5 (2) in paragraph (3)—

6 (A) in subparagraph (A), by striking
7 “and” at the end;

8 (B) in subparagraph (B), by adding “and”
9 at the end; and

10 (C) by adding at the end the following:

11 “(C) if occurring during the covered pe-
12 riod, is not a result of the COVID–19 national
13 emergency;”;

14 (3) in paragraph (7), by striking “and”;

15 (4) in paragraph (8), by striking the period at
16 the end and inserting a semicolon; and

17 (5) by adding at the end the following:

18 “(9) the term ‘covered period’ means the period
19 that—

20 “(A) begins on January 1, 2020; and

21 “(B) ends 90 days after the last date of
22 the COVID–19 national emergency; and

23 “(10) the term ‘COVID–19 national emergency’
24 means the national emergency declared by the Presi-
25 dent under the National Emergencies Act (50

1 U.S.C. 1601 et seq.) with respect to the Coronavirus
 2 Disease 2019 (COVID–19).”.

3 (b) EXCLUSION FROM DEFINITION OF EMPLOYMENT
 4 LOSS.—Section 2(b) of the Worker Adjustment and Re-
 5 training Notification Act (29 U.S.C. 2101(b)) is amended
 6 by adding at the end the following:

7 “(3) Notwithstanding subsection (a)(6), during
 8 the covered period an employee may not be consid-
 9 ered to have experienced an employment loss if the
 10 termination, layoff exceeding 6 months, or reduction
 11 in hours of work of more than 50 percent during
 12 each month of any 6-month period involved is a re-
 13 sult of the COVID–19 national emergency.”.

14 **TITLE II—PRODUCTS**

15 **SEC. 201. APPLICABILITY OF THE TARGETED LIABILITY** 16 **PROTECTIONS FOR PANDEMIC AND EPI-** 17 **DEMIC PRODUCTS AND SECURITY COUNTER-** 18 **MEASURES WITH RESPECT TO COVID–19.**

19 (a) IN GENERAL.—Section 319F–3(i)(1) of the Pub-
 20 lic Health Service Act (42 U.S.C. 247d–6d(i)(1)) is
 21 amended—

22 (1) in subparagraph (C), by striking “; or” and
 23 inserting a semicolon;

24 (2) in subparagraph (D), by striking the period
 25 and inserting “; or”; and

1 (3) by adding at the end the following:

2 “(E) a drug (as such term is defined in
3 section 201(g)(1) of the Federal Food, Drug,
4 and Cosmetic Act), biological product (including
5 a vaccine) (as such term is defined in section
6 351(i)), or device (as such term is defined in
7 section 201(h) of the Federal Food, Drug, and
8 Cosmetic Act) that—

9 “(i) is the subject of a notice of use
10 of enforcement discretion issued by the
11 Secretary if such drug, biological product,
12 or device is used—

13 “(I) when such notice is in effect;

14 “(II) within the scope of such no-
15 tice; and

16 “(III) in compliance with other
17 applicable requirements of the Federal
18 Food, Drug, and Cosmetic Act that
19 are not the subject of such notice;

20 “(ii) in the case of a device, is exempt
21 from the requirement under section 510(k)
22 of the Federal Food, Drug, and Cosmetic
23 Act; or

24 “(iii) in the case of a drug—

1 “(I) meets the requirements for
2 marketing under a final administra-
3 tive order under section 505G of the
4 Federal Food, Drug, and Cosmetic
5 Act; or

6 “(II) is marketed in accordance
7 with section 505G(a)(3) of such Act.”.

8 (b) CLARIFYING MEANS OF DISTRIBUTION.—Section
9 319F–3(a)(5) of the Public Health Service Act (42 U.S.C.
10 247d–6d(a)(5)) is amended by inserting “by, or in part-
11 nership with, Federal, State, or local public health officials
12 or the private sector” after “distribution” the first place
13 it appears.

14 (c) NO CHANGE TO ADMINISTRATIVE PROCEDURE
15 ACT APPLICATION TO ENFORCEMENT DISCRETION EXER-
16 CISE.—Section 319F–3 of the Public Health Service Act
17 (42 U.S.C. 247d–6d) is amended by adding at the end
18 the following:

19 “(j) RULE OF CONSTRUCTION.—Nothing in this sec-
20 tion shall be construed—

21 “(1) to require use of procedures described in
22 section 553 of title 5, United States Code, for a no-
23 tice of use of enforcement discretion for which such
24 procedures are not otherwise required; or

1 “(2) to affect whether such notice constitutes
2 final agency action within the meaning of section
3 704 of title 5, United States Code.”.

4 **TITLE III—GENERAL**
5 **PROVISIONS**

6 **SEC. 301. SEVERABILITY.**

7 If any provision of this Act, an amendment made by
8 this Act, or the application of such a provision or amend-
9 ment to any person or circumstance is held to be unconsti-
10 tutional, the remaining provisions of and amendments
11 made by this Act, as well as the application of such provi-
12 sion or amendment to any person other than the parties
13 to the action holding the provision or amendment to be
14 unconstitutional, or to any circumstances other than those
15 presented in such action, shall not be affected thereby.

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