

## **Tennessee Business Recovery and Safe Harbor Act**

### *Overview:*

Employers, employees and consumers are challenged with an unprecedented amount of stress in this unusual operating environment. In recent weeks, there have been a growing number of COVID-19 related lawsuits and efforts in other states to establish parameters for providing legal safety to employers. Recently, filings have increased by over 150% nationwide and there is no indication of this trend slowing. Tennessee employers are expressing deep concern and growing alarm that they will be subject to frivolous litigation, despite taking profoundly cautious and thoughtful steps to keep employees and customers safe. Most have implemented best practices from the “Tennessee Pledge” and/or are following U.S. Center for Disease Control (CDC) guidelines or other Government endorsed health and safety protocols. Tennessee businesses need to be provided certainty and confidence that providing their much-needed services will not result in unwarranted claims. Tennessee’s economic recovery should be a top priority, not focusing on threats of frivolous claims which will leave business leaders tentative and with fearfulness that will result in grossly delayed economic normalcy.

During these unprecedented times, doctors, nurses and healthcare providers on the front lines should not be further burdened with liability concerns while rendering much needed medical care and businesses should be focused on restoring production and reviving jobs, without the threat of unwarranted liability exposure associated with COVID-19. The Tennessee Business Recovery and Safe Harbor Act provides employers, businesses, health care providers and other “covered entities” with much needed protection against civil liability associated with the virus.

### *Who is supporting the Tennessee Business Recovery and Safe Harbor Act?*

- The Act is supported by the Tennessee Coalition for Business Recovery & Safe Harbors, a broad coalition of business and industry trade associations, higher education, the insurance industry, members of the healthcare sector and a number of other entities. The associations and organizations who support the Tennessee Business Recovery and Safe Harbor Act represent businesses that collectively employ approximately two million Tennesseans.

### *Why is this legislation needed?*

- Tennessee businesses in all industries and areas of the state are facing major financial damages from the sudden, all-consuming effect of Coronavirus which could take years to recover from. These businesses, especially those in the small business community, cannot afford to be exposed to additional financial injury through costly lawsuits resulting from an unprecedented pandemic and circumstances outside of their control.
- Swift economic recovery can not occur unless unfair legal exposure is mitigated and employers have certainty their very best efforts to implement reputable safeguards is acknowledged by the General Assembly and the courts.
- Entities are doing everything possible to remain open to serve Tennesseans and to keep their workers on the payroll; soaring legal defense costs from frivolous lawsuits will only

make it more difficult to stay afloat and keep prices practicable for Tennessean consumers.

- A higher standard for legal liability should be enacted, which employers who are taking reasonable workplace health precautions, are not subject to egregious legal exposure.
- The pandemic has left Tennessee in uncharted territory, and courts have no guidance on how to interpret cases. The Tennessee General Assembly has the ability to guide the judicial branch to establish a standard to review these cases.
- The reasonable measures provided in this legislation will protect healthcare providers on the front lines of the crisis, as well as businesses struggling to keep their doors open, from the risk and expense of lawsuits associated with COVID-19.

*What type entities are covered under the Act?*

- Entities covered under this legislation include businesses, nonprofits, LLCs, health care providers, educational entities, government entities, places of worship, and cultural institutions operating in this state, as well as individuals associated with these entities.

*How does the legislation protect plaintiffs?*

- A covered entity will not receive immunity from civil liability provided through this legislation if the claimant proves by clear and convincing evidence that the entity caused the injury or damage by acting with gross negligence or willful misconduct.
- Liability should not be completely eliminated and those acting in gross negligence should not, by default be protected. Bad actors should be held accountable.

*This document was prepared by the Tennessee Coalition for Business Recovery & Safe Harbors*