

## Tennessee Recovery and Safe Harbor Act Talking Points

- With COVID-19 related lawsuits on the rise across the country, employers, employees, and consumers are challenged with navigating a new landscape of potential liabilities during these unprecedented times.
- As businesses throughout the state gradually reopen, Tennessee employers from nearly every industry have expressed deep concern that they will soon be subject to unwarranted litigation, despite investing significant cost and effort to implement protective measures designed to keep their employees and customers safe.
- In addition, state health care providers on the front lines of the pandemic are burdened with liability concerns stemming from the delivery of essential medical care to COVID-19 patients during extraordinarily difficult circumstances.
- This legislation seeks to provide necessary protection against unsupported legal claims, allowing these entities to resume operations with confidence and actively participate in Tennessee’s economic recovery.
- **The Tennessee Recovery and Safe Harbor Act** will provide broad civil liability protection from “health emergency claims” for a wide array of covered entities in Tennessee, including:
  - **For-profit and nonprofit business entities;**
  - **Health care providers;**
  - **Educational entities;**
  - **Religious organizations; and**
  - **Local governments.**

### Covered Entity Protection

- Under this act, a covered entity ***will not be liable*** for any damages, injury, or death that results from a health emergency claim if the covered entity (1) ***did not act with gross negligence or willful misconduct***, and (2) ***substantially complied with applicable public health guidance***.
  - A “***health emergency claim***” includes any cause of action that is related to the following circumstances:
    - ***The actual, alleged, or possible exposure to, or contraction of, Coronavirus*** from a covered entity or arising from a covered entity's operations, products, or services; or
    - ***The covered entity’s efforts to prevent or delay the spread of Coronavirus.***
- This legislation also offers ***specific protection for health care providers*** from claims related to the provision of health care services or treatment in response to the Coronavirus.
- As covered entities have been faced with interpreting a complex framework of local, state, and federal guidelines, the Tennessee Recovery and Safe Harbor Act adopts a comprehensive definition of “***public health guidance***,” which includes ***all forms of governmental guidance and direction released throughout the progression of the pandemic.***

### Legal Standards

- While this legislation intends to provide protection from the financial toll and distraction of legal defense, it ***does not seek to excuse bad actors*** or create blanket immunity from pandemic-related lawsuits.
  - Protection from health emergency claims ***does not apply*** if a claimant proves by clear and convincing evidence that the covered entity caused damages, injury, or death by acting with ***gross negligence or willful misconduct.***

- In order to overcome the act’s safe harbor from health emergency claims, a claimant **must demonstrate** that the harm alleged was:
  1. Caused by the covered entity’s *gross negligence or willful misconduct*; and
  2. *Did not substantially comply with applicable public health guidance.*
- Considering the severe economic damage caused by the pandemic, covered entities throughout the state have expressed that the *expense of defending frivolous lawsuits would drive them into financial ruin.*
  - In an effort to prevent costly defense of unsubstantiated litigation, claimants will be required to meet a **heightened standard of pleading specific facts with particularity** in order for a health emergency claim to advance.

This crucial piece of legislation will encourage Tennessee employers to safely reopen with confidence, *providing urgently needed jobs, goods, and services, and generating consumer driven tax revenues for state and local governments.* By offering protection from excessive, unwarranted legal claims, which could result in closure or bankruptcy, covered entities can focus on directing critical financial resources toward restoring their operations, and supporting the state economy.

*This legislation is supported by a broad coalition of business and industry, trade associations, higher education, the insurance industry, and members of the healthcare sector, that collectively employ approximately two million Tennesseans.*

