

Tennessee Recovery & Safe Harbor Act

Overview:

Employers, employees and consumers are challenged with an unprecedented amount of potential liabilities 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, businesses and healthcare providers. Court filings have increased substantially with approximately 736 new filings nationwide (reported from the U.S. Chamber) and other sources note over 2,276 complaints (Hunton, Andrews & Kurth law firm) have been filed with no indication of this trend slowing. With no guidance established, 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. Overall they are doing the best they can under the circumstances and most if not all have implemented best practices from the “Tennessee Pledge” and/or are following U.S. Center for Disease Control (CDC) guidelines. These businesses need the legislature to establish guidance for our judiciary to interpret cases during Tennessee’s state of emergency and the overall pandemic.

During these unprecedented times, hospitals, physicians, nurses and other healthcare providers on the front lines should not be further burdened with liability concerns while rendering much needed and essential medical care. Healthcare providers themselves in challenging circumstances that warrant additional legal protection. At the same time, businesses should be focused on restoring production and reviving jobs, without the threat of unwarranted liability exposure associated with COVID-19. Businesses in all sectors must have predictability in uncertain times. The Tennessee Safe Harbor for Business Act provides employers, businesses, and healthcare providers ("covered entities") with necessary protection against undue civil liability associated with the virus.

Who is supporting the Tennessee Safe Harbor for Business Act?

- The Act is supported by the Tennessee Coalition for Business Recovery & Safe Harbors, a broad coalition of business and industry trade associations, as well as non-profits, higher education, insurance, and many from the healthcare sector. The associations and organizations who support the Tennessee Safe Harbor for Business 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.
- The vast majority of businesses are following guidance issued by federal, state and local government entities to remain open to serve their customers 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. There is no standard guidance confirmed as a legal standard like in many areas of existing law.

- A higher standard or safe harbor for legal liability should be enacted. Employers who are taking reasonable workplace health precautions should not be subject to egregious legal exposure.
- The pandemic has left Tennessee in uncharted territory, and the executive and legislative branches have in the past reliably provided guidance for courts to interpret cases. The Tennessee General Assembly, the people's body, has the ability and obligation to guide the judicial branch to establish a standard to review these cases.
- Coalition members are not asking for an outright release from liability; we are asking for standards under which allegations should be reviewed.
- 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.

How does the legislation protect plaintiffs?

- Entities that are grossly negligent should be held accountable; covered entities 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 through wanton, reckless, willful or intentional misconduct.
- Liability should not be completely eliminated; those acting in gross negligence should not, by default, be protected. Bad actors should be held accountable.

This document was prepared by the Tennessee Recovery & Safe Harbor Coalition.