

AN ACT to amend Tennessee Code Annotated, Title 9,
Chapter 8, Part 3, Title 29, Chapters 20 and 34,
and Title 49, Chapter 7, Part 1, relative to causes of
action related to COVID-19.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, is amended by adding the following language as a new part:

29-34-__01. This part shall be known and may be cited as the "Tennessee COVID-19 Recovery Act."

29-34-__02.

(a)(1) "Arising from COVID-19" means caused by or resulting from COVID-19 or the effects of COVID-19, directly or indirectly, including a health care provider's services or treatment related to the contraction of, or suspected contraction of, COVID-19 or the lack of resources attributable to or arising out of a health care provider's response to the COVID-19 pandemic that renders the health care provider unable to provide the level or manner of care or services that would otherwise be required in the absence of the COVID-19 pandemic;

(2) "COVID-19" means both the novel coronavirus, SARS-CoV-2, and coronavirus disease 2019, commonly referred to as COVID-19, including any mutation of SARS-CoV-2 or COVID-19; and

(3) "Health care provider" means a health care practitioner, entity, or facility licensed, authorized, certified, registered, or regulated under title 33, title 63, title 68, federal law or order, or an executive order of the governor, including but not limited to the employees or contractors of such a practitioner, entity, or facility, or medical resident physicians, interns, and fellows participating in a training program of one of the accredited medical schools or of one of such medical school's affiliated teaching hospitals in Tennessee.

(b) Notwithstanding any law to the contrary, there is no cause of action against any person or entity for loss, damage, injury, or death arising from COVID-19, unless the claimant proves by clear and convincing evidence that the loss, damage, injury, or death was caused by an act or omission constituting gross negligence or willful misconduct.

(c)(1) In any claim or cause of action alleging loss, damage, injury, or death caused by exposure to, or contraction of, COVID-19, the claimant must:

(A) File a verified complaint pleading specific facts with particularity from which a finder of fact could reasonably conclude that the alleged loss, damage, injury, or death was caused by an act or omission constituting gross negligence or willful misconduct; and

(B) File with the verified complaint a certificate of good faith stating that the claimant or claimant's counsel has obtained from a duly licensed physician a written statement that the physician in good faith believes that the alleged loss, damage, injury, or death arising from COVID-19 was caused by an act or omission of the defendant or defendants.

(2) The failure of a claimant to satisfy the requirements of subdivision (c)(1) shall, upon motion, make the action subject to dismissal with prejudice.

(d) This part does not:

(1) Create a cause of action;

(2) Eliminate a required element of any existing cause of action;

(3) Affect workers' compensation claims under the Workers'

Compensation Law, compiled in title 50, chapter 6, including the exclusive application of such law; or

(4) Amend, repeal, alter, or affect any immunity, defense, limitation of liability, or procedure available or required under law or contract.

SECTION 2. Tennessee Code Annotated, Section 29-20-205, is amended by adding the following as a new subdivision:

(10) Or in connection with any loss, damage, injury, or death arising from COVID-19, as defined in § 29-34-_02(a), unless the claimant proves by clear and convincing evidence that the loss, damage, injury, or death was caused by an act or omission by the entity or its employees constituting gross negligence. The requirements of § 29-34-_02(c) shall apply to any such cause of action when applicable. For purposes of this subdivision (10), “arising from COVID-19” means caused by or resulting from COVID-19 or the effects of COVID-19, directly or indirectly, including the services or treatment of a health care provider, as defined in § 29-34-_02(a), related to the contraction of, or suspected contraction of, COVID-19 or the lack of resources attributable to or arising out of a health care provider’s response to the COVID-19 pandemic that renders the health care provider unable to provide the level or manner of care or services that would otherwise be required in the absence of the COVID-19 pandemic.

SECTION 3. Tennessee Code Annotated, Section 29-20-310, is amended by adding the following as a new subsection:

(_)(1) No claim may be brought against an employee or judgment entered against an employee for any loss, damage, injury, or death arising from COVID-19, as defined in § 29-34-_02(a), and proximately caused by an act or omission of the employee within the scope of the employee’s employment for which the governmental entity is immune, unless the claimant proves by clear and convincing evidence that the loss, damage, injury, or death was caused by an act or omission that was willful, malicious, criminal, or performed for personal financial gain. For purposes of this subsection (_), “arising from COVID-19” means caused by or resulting from COVID-19 or the effects of COVID-19, directly or indirectly, including the services or treatment of a

health care provider, as defined in § 29-34-_02(a), related to the contraction of, or suspected contraction of, COVID-19 or the lack of resources attributable to or arising out of a health care provider's response to the COVID-19 pandemic that renders the health care provider unable to provide the level or manner of care or services that would otherwise be required in the absence of the COVID-19 pandemic.

(2) In any claim or cause of action alleging loss, damage, injury, or death caused by exposure to, or contraction of, COVID-19 under this subsection (___), the claimant must:

(A) File a verified complaint pleading specific facts with particularity from which a finder of fact could reasonably conclude that the alleged loss, damage, injury, or death was caused by an act or omission that was willful, malicious, criminal, or performed for personal financial gain; and

(B) File with the verified complaint a certificate of good faith stating that the claimant or claimant's counsel has obtained from a duly licensed physician a written statement that the physician in good faith believes that the alleged loss, damage, injury, or death arising from COVID-19 was caused by an act or omission of the defendant or defendants.

(3) The failure of a claimant to satisfy the requirements of subdivision (___)(2) shall, upon motion, make the action subject to dismissal with prejudice.

SECTION 4. Tennessee Code Annotated, Section 9-8-307, is amended by adding the following as a new subsection:

(___) Notwithstanding any other provision of this chapter to the contrary, the state does not waive its sovereign immunity for any loss, damage, injury, or death arising from COVID-19, as defined in § 29-34-_02(a), unless the claimant proves by clear and

convincing evidence that the loss, damage, injury, or death was caused by an act or omission of the state or an employee or agent of the state constituting gross negligence or willful misconduct. The requirements of § 29-34-__02(c) shall apply to any such cause of action when applicable. For purposes of this subsection (__), “arising from COVID-19” means caused by or resulting from COVID-19 or the effects of COVID-19, directly or indirectly, including the services or treatment of a health care provider, as defined in § 29-34-__02(a), related to the contraction of, or suspected contraction of, COVID-19 or the lack of resources attributable to or arising out of a health care provider’s response to the COVID-19 pandemic that renders the health care provider unable to provide the level or manner of care or services that would otherwise be required in the absence of the COVID-19 pandemic.

SECTION 5. Tennessee Code Annotated, Title 49, Chapter 7, Part 1, is amended by adding the following as a new section:

49-7-__.

There is no cause of action against a public institution of higher education for any loss, damage, injury, or death arising from COVID-19, as defined in § 29-34-__02(a), unless the claimant proves by clear and convincing evidence that the loss, damage, injury, or death was caused by an act or omission of the institution or its employee or agent constituting gross negligence or willful misconduct. The requirements of § 29-34-__02(c) shall apply to any such cause of action when applicable. For purposes of this section, “arising from COVID-19” means caused by or resulting from COVID-19 or the effects of COVID-19, directly or indirectly, including the services or treatment of a health care provider, as defined in § 29-34-__02(a), related to the contraction of, or suspected contraction of, COVID-19 or the lack of resources attributable to or arising out of a health care provider’s response to the COVID-19 pandemic that renders the health care

provider unable to provide the level or manner of care or services that would otherwise be required in the absence of the COVID-19 pandemic.

SECTION 6. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it, and unless otherwise prohibited by the United States or Tennessee Constitution, this act shall apply to all causes of action except those in which, on or before the date the governor issued the proclamation calling the extraordinary session during which this act was introduced, a complaint or civil warrant was filed, or, in cases when required, proper notice was given pursuant to § 29-26-121 or notice of a claim was given pursuant to § 9-8-402. This act shall be repealed on July 1, 2022, but shall apply to any loss, illness, injury, or death occurring before that date.