

WEST VIRGINIA LEGISLATURE

2021 FIRST SESSION

Introduced

House Bill 2016

BY DELEGATES BURKHAMMER, PINSON, HIGGINBOTHAM,
REED, HOTT, KEATON, ANDERSON, HAYNES, BARNHART,
ROHRBACH, AND ELLINGTON

[Introduced February 10, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §55-19-1, §55-19-2, §55-19-3, §55-19-4, §55-19-5, §55-19-6, §55-19-7, §55-
3 19-8, §55-19-9, §55-19-10, §55-19-11, §55-19-12, §55-19-13, §55-19-14, §55-19-15, §55-
4 19-16, §55-19-17, and §55-19-18, all related to the "COVID-19 Essential Jobs Protection
5 Act"; provide a short title; provide definitions; provide legislative findings and statutory
6 purpose; establish requirements for civil actions related to COVID-19 exposure; establish
7 relevant expert qualifications; establish property owner's duty of care for COVID-19
8 exposure related to safe harbor requirements; provide limited civil immunity to premises
9 owners or possessors for COVID-19 claims; with noted exceptions provide civil immunity
10 for COVID-19 exposure where act is consistent with established legal guidance; provide
11 land owner or occupant immunity for COVID-19 invitee injury with designated exceptions;
12 exclude liability for civil damages where acts are in substantial compliance with state or
13 federal law, regulation, order or guidance; with designated exceptions establish immunity
14 exception for gross, willful or intentional misconduct; provide civil immunity to health care
15 providers for care of COVID-19 exposure, including screening and prescribing
16 pharmaceuticals; provide civil immunity to health care providers for COVID-19 exposure
17 care, including: actions in support of state response, delay or cancelling nonurgent
18 procedures, alteration of diagnosis or treatment in accordance with regulation, order or
19 public health guidance; diagnosis outside normal scope of practice; use of medical
20 devices or supplies outside normal scope of approved use; conducting tests or providing
21 treatment outside a healthcare facility; actions taken where staff, facilities, medical devices
22 or other resources are unavailable; failure to use protective equipment; establish that
23 decisions resulting from short staffing are not gross negligence, willful misconduct or
24 intentional infliction of harm; provide immunity to volunteers engaged in health care
25 services; other defenses or immunities for healthcare facilities and workers not affected;
26 persons involved with the design, manufacture, distribution or other endeavor related to a

27 qualified COVID-19 product, are immune unless actual knowledge of a defect existed or
 28 actions involved actual malice, criminal conduct, or intent; provide a statute of limitations
 29 for claims related to COVID injury; establish that a new cause of action, expanded liability
 30 or limitations for defense are not provided; provide retroactive application; providing a civil
 31 penalty for failure to obey COVID-19 order, rule or regulation; providing severability for
 32 any provision declared invalid or unconstitutional; restricting a cause of action against
 33 public institutions of higher learning arising for injury or death from COVID-19; license to
 34 conduct a business, profession, or service including religious institution or nonprofit
 35 organization may not be suspended for violation of any executive order related to COVID-
 36 19 state of emergency; compliance with legalities of testimonial, signature,
 37 acknowledgement notarization requirements including video teleconference generated
 38 documents; retroactive application; and expiration date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. COVID-19 ESSENTIAL JOBS PROTECTION ACT.

§55-19-1. Short Title.

1 This article shall be known and may be cited as the “COVID-19 Essential Jobs Protection
 2 Act”.

§55-19-2. Definitions.

1 For the purposes of this article:

2 (a) “Agent” means any volunteer or employee, contractual or permanent, serving at the
 3 discretion of a public official or public employee.

4 (b) “Arising from COVID-19” means caused by or resulting from the actual, alleged, or
 5 possible exposure to or contraction of COVID-19, or caused by, or resulting from services,
 6 treatment, or other actions in response to COVID-19, including, but not limited to:

7 (1) Implementing policies and procedures to prevent or minimize the spread of COVID-
 8 19;

9 (2) testing;

10 (3) monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-
11 19 exposure or other COVID-19 related information; personal protective equipment, sanitation
12 products, or other products necessary to protect the public.

13 (c) “Business Services” means any lawful activity conducted by a trade, business, or
14 nonprofit organization.

15 (d) “COVID-19” and “Coronavirus” means the novel coronavirus identified as SARS-CoV-
16 2, and coronavirus disease 2019, commonly referred to as COVID-19, including any disease
17 caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom, and conditions
18 associated with the disease.

19 (e) “COVID-19 care” means services provided by a health care facility or health care
20 provider, regardless of location, that relate to the diagnosis, prevention or treatment of COVID-19
21 or the assessment or care of an individual with a confirmed or suspected case of COVID-19.

22 (f) “COVID-19 emergency” means the State of Emergency declared by Proclamation on
23 March 16, 2020, and any subsequent orders or amendments thereto.

24 (g) “Disinfecting or cleaning supplies” includes, but is not limited to, hand sanitizers,
25 disinfectants, sprays, and wipes.

26 (h) “First responder” means a person or entity that is:

27 (1) An essential business or operation as specified by Executive Order No. 9-20 on March
28 23, 2020, and any subsequent orders or amendments thereto; or

29 (2) within an essential critical infrastructure sector as defined by the United States
30 Department of Homeland Security.

31 (3) a person who performs one or more “emergency services” as that term is defined in
32 §15-5-2 of this code. “First responder” also includes any other person authorized by executive
33 order who will be deployed in response to the COVID-19 pandemic.

34 (i) “Harm” means physical and nonphysical contact that results in injury to or death of an

35 individual.

36 (j) "Health care" means any act, service, or treatment as defined by §55-7B-2 of this code.

37 (k) "Health care facility" means a facility as defined by §55-7B-2 of this code and any other
38 any facility authorized to provide health care in response to the COVID-19 emergency.

39 (l) "Health care provider" means a person, partnership, corporation, professional limited
40 liability company, health care facility, entity, or institution as defined by §55-7B-2 of this code,
41 whether paid or unpaid, including persons engaged in telemedicine or telehealth; any person
42 authorized to provide health care in response to the COVID-19 emergency; and the employer or
43 agent of a health care provider who provides or arranges health care.

44 (m) "Impacted care" means care offered to any individual who presents at a health care
45 facility or to a health care provider during the COVID-19 emergency that is impacted by the health
46 care facility's or health care provider's decisions or activities in response to or as a result of
47 COVID-19.

48 (n) "Institutions of higher education" means the state's public and private baccalaureate
49 colleges and universities and community and technical colleges.

50 (o) "Person" means an individual, health care provider, sole proprietorship, corporation,
51 limited liability company, partnership, trust, religious organization, association, charitable
52 organization, nonprofit organization described in § 501(c) of the Internal Revenue Code that is
53 exempt from federal taxation under § 501(a) of the Internal Revenue Code, 26 U.S.C. § 501(a),
54 or any other legal entity whether formed as a for-profit or not-for-profit entity or association.

55 (p) "Personal protective equipment" means coveralls, face shields, gloves, gowns, masks,
56 respirators, or other equipment designed to protect the wearer from the spread of infection or
57 illness.

58 (q) "Premise" or "Premises" means any building, structure, dwelling, or real property which
59 may be entered or used by persons serving a commercial, residential, educational, religious,
60 governmental, cultural, charitable, or health care purpose, including any vehicle, aircraft, or

61 watercraft used for the lodging of persons or carrying on of business.

62 (r) "Public employee" means any full-time or part-time employee of any state, political
63 subdivision of the state, and their respective boards, agencies, departments, and commissions,
64 or in any regional or local government agency.

65 (s) "Public Health Guidance" means written guidance related to COVID-19 issued by the
66 Centers for Disease Control and Prevention, Occupational Safety & Health Administration of the
67 United States Department of Labor, Office of the Governor, West Virginia Department of Health
68 and Human Resources, or other state agency.

69 (t) "Qualified product" means personal protective equipment used to protect the wearer
70 from COVID-19 or the spread of COVID-19; medical devices, equipment, and supplies used to
71 treat COVID-19 including products that are used or modified for an unapproved use to treat
72 COVID-19 or prevent the spread of COVID-19; medical devices, equipment, or supplies utilized
73 outside of the product's normal use to treat COVID-19 or to prevent the spread of COVID-19;
74 medications used to treat COVID-19 including medications prescribed or dispensed for off-label
75 use to attempt to combat COVID-19; tests to diagnose or determine immunity to COVID-19; and
76 components of qualified products.

77 (u) "Serious illness" means a medical illness or physical injury or condition that causes an
78 inability to engage in a person's usual and customary daily activities for at least fourteen days,
79 which does not include any period of quarantine.

80 (v) "Volunteer" means any person or entity that makes a facility or product or provides any
81 service available to support the state's response to COVID-19.

§55-19-3. Findings and Purpose.

1 (a) The West Virginia Legislature finds that:

2 (1) On January 31, 2020, pursuant to the Public Readiness and Emergency Preparedness
3 Act (PREP Act); §42 U.S.C. 247d-6d), the Secretary of Health and Human Services declared a
4 public health emergency related to the novel coronavirus, also known as COVID-19, to provide

5 liability immunity for activities related to medical countermeasures against COVID-19.

6 (2) The Governor issued a State of Preparedness on March 4, 2020, to allow agencies to
7 coordinate and create necessary measures to prepare for COVID-19.

8 (3) On March 11, 2020, COVID-19, was deemed a global pandemic by the World Health
9 Organization.

10 (4) By proclamation, on March 13, 2020, the President of the United States declared a
11 National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.

12 (5) The Governor proclaimed a State of Emergency on March 16, 2020, finding the
13 COVID-19 pandemic constitutes a disaster as defined in W. Va. Code §15-5-2 . To protect public
14 health, safety, and welfare, all nonessential businesses were directed to cease all activities except
15 for minimum basic operations in the state. To protect public health, safety, and welfare, and to
16 ensure the health care system can serve all citizens in need, especially those at high risk and
17 vulnerable to COVID-19, all West Virginia residents were directed to stay at home unless
18 performing an essential activity.

19 (6) Health care providers have operated with shortages of medical personnel, equipment,
20 and supplies while responding to COVID-19 and were prohibited by Executive Order No. 16-10
21 from engaging in elective medical procedures.

22 (7) There is a critical need for personal protective equipment, such as masks, respirators,
23 ventilators, and other medical equipment and products designed to guard against or treat COVID-
24 19.

25 (8) Manufacturers have substantially increased production of essential products and made
26 products outside their ordinary course of business to aid in the response to COVID-19.

27 (9) West Virginia is reopening its businesses, including restaurants, retail stores, office
28 buildings, fitness centers, hotels, hair and nail salons, barber shops, religious institutions, schools,
29 and institutions of higher learning.

30 (10) Lawsuits seeking damages associated with a person's exposure to COVID-19 are

31 being filed across the country against individuals, employers, businesses, institutions of higher
32 education, manufacturers, health care providers, and health care facilities associated with care
33 provided during the COVID-19 pandemic.

34 (11) The threat of liability poses an obstacle to efforts to reopen and rebuild the West
35 Virginia economy.

36 (12) Providing reasonable protections from the risk and expense of lawsuits to businesses
37 will help encourage businesses to remain open and reopen and that providing such a safe harbor
38 to businesses that operate reasonably consistent with applicable public health guidance will help
39 ameliorate the social harms of a closed economy and the resulting unemployment.

40 (13) COVID-19 has put, and will continue to put, a significant strain on health care
41 facilities, health care providers, and health care resources of this state; COVID-19 has
42 undermined, and will continue to undermine, the ability to deliver patient care in the traditional,
43 normal, or customary manner; and our health care facilities, health care professionals, and their
44 supporting workers need protection to respond to this pandemic and to do what they can do to
45 continue to provide treatment and services for the people of West Virginia.

46 (b) It is the purpose of this article to:

47 (1) Limit the liability of the citizens of West Virginia, including individuals, employers,
48 businesses, institutions of higher education, health care providers, health care facilities, and
49 manufacturers that are vital to West Virginia's response to the unprecedented COVID-19
50 pandemic; and

51 (2) Provide assurance to businesses and institutions of higher education that reopening
52 will not expose them to lawsuits seeking to impose liability for a person's exposure to COVID-19,
53 particularly when a person experienced no injury or no more than common flu-like symptoms, or
54 when a business's operations adhered to guidance issued by federal, state, or local government
55 agencies.

§55-19-4. Actual injury and pleading requirements in civil actions alleging COVID-19

exposure; expert qualifications.

1 (a) Notwithstanding any law to the contrary, there is no claim against any person for loss,
2 damage, injury, or death arising from COVID-19 unless the claimant proves by clear and
3 convincing evidence that the person proximately caused the loss, damage, injury, or death by an
4 act or omission constituting gross negligence or willful misconduct.

5 (b) No person may file a civil action alleging injury from exposure to COVID-19 if that
6 person was:

7 (1) Not diagnosed with COVID-19 and alleges only exposure or potential exposure to
8 COVID-19;

9 (2) Not diagnosed with COVID-19 and did not experience symptoms consistent with
10 COVID-19 resulting in serious illness or death;

11 (3) Diagnosed with COVID-19 when that person was asymptomatic; or

12 (4) Diagnosed with COVID-19 when that person did not experience symptoms that
13 required inpatient hospitalization or resulted in serious illness or death.

14 (5) Nothing in this act shall be construed to preempt, remove, displace, repeal, or limit in
15 any way any immunity, defense, or right that exists under existing law that would be applicable to
16 any covered entity in a cause of action filed on or after the January 1, 2020. The immunity provided
17 by this act is in addition to and cumulative of any other immunity, defense, and right that exists
18 under law.

19 (6) This act shall be construed in pari materia with any emergency order or proclamation
20 of the Governor relating to the Coronavirus and immunity from civil lawsuits.

21 (d) The requirements established by the provisions of this section do not apply to willful
22 misconduct, intentional criminal misconduct, or a deliberate act intended to cause harm or
23 threaten exposure to COVID-19.

§55-19-5. Premise owner's duty of care; limited liability.

1 (a) Except as otherwise provided by this section, a possessor of real property, including

2 an owner, lessee, or other lawful occupant, who directly or indirectly invites or permits any person
3 onto a premise shall not be held liable for civil damages for any injuries sustained from exposure
4 to COVID-19 unless the possessor of real property:

5 (1) Acts with conscious, reckless, and outrageous indifference to a substantial and
6 unnecessary risk that a person would be exposed to COVID-19; or,

7 (2) Intentionally exposes a person to COVID-19.

8 (b) A possessor of real property, including an owner, lessee or other lawful occupant does
9 not act with conscious, reckless, and outrageous indifference to a substantial and unnecessary
10 risk that a person would be exposed to COVID-19 if such possessor satisfies the safe harbor
11 requirements of section six of this article.

§55-19-6. Safe harbor for compliance with regulations, executive orders, or guidance.

1 (a) Notwithstanding any other provision of law to the contrary, no person or agent of that
2 person providing business services shall be liable for any damages or personal injuries sustained
3 from or related to an actual or alleged exposure to COVID-19 if, in the performance of its business
4 or educational services at the time of alleged or actual exposure, the person or agent was relying
5 in good faith on and generally followed applicable public health guidance related to COVID-19
6 exposure.

7 (b) A person in this state shall not be held liable for civil damages for any injuries sustained
8 from exposure or potential exposure to COVID-19 if the act or omission alleged to violate a duty
9 of care was in substantial compliance or was consistent with any federal or state statute,
10 regulation, order, or public health guidance related to COVID-19 that was applicable to the person
11 or activity at issue at the time of the alleged exposure or potential exposure.

12 (c) If two or more public health guidances are applicable to the person or activity at the
13 time of the alleged exposure, subsection (a) may be satisfied through conduct consistent with any
14 relevant written guidance.

15 (d) Subsection (a) shall not apply if damages, injury, or death resulted from or related to

16 the actual or alleged exposure to COVID-19 is shown by clear and convincing evidence to be the
17 result of gross negligence, willful misconduct, intentional criminal misconduct, or intentional
18 infliction of harm.

§55-19-7. Liability of health care providers; volunteer liability.

1 (a) A health care provider shall not be liable for civil damages for causing or contributing,
2 directly or indirectly, to the death or injury of an individual because of the health care provider's
3 acts or omissions while providing or arranging health care in support of the state's response to
4 COVID-19. This subsection applies to all the following:

5 (1) Injury or death resulting from screening, assessing, diagnosing, caring for, or treating
6 individuals with a suspected or confirmed case of COVID-19.

7 (2) Prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a
8 patient with a suspected or confirmed case of COVID-19.

9 (3) Acts or omissions while providing health care to individuals unrelated to COVID-19
10 when those acts or omissions support the state's response to COVID-19, including any of the
11 following:

12 (A) Delaying or canceling nonurgent or elective dental, medical, or surgical procedures,
13 or altering the diagnosis or treatment of an individual in response to any federal or state statute,
14 regulation, order, or public health guidance.

15 (B) Diagnosing or treating patients outside the normal scope of the health care provider's
16 license or practice.

17 (C) Using medical devices, equipment, or supplies outside of their normal use for the
18 provision of health care, including using or modifying medical devices, equipment, or supplies for
19 an unapproved use.

20 (D) Conducting tests or providing treatment to any individual outside the premises of a
21 health care facility.

22 (E) Acts or omissions undertaken by a health care provider because of a lack of staffing,
23 facilities, medical devices, equipment, supplies, or other resources attributable to COVID-19 that
24 renders the health care provider unable to provide the level or manner of care to any person that
25 otherwise would have been required in the absence of COVID-19.

26 (F) Acts or omissions undertaken by a health care provider relating to use or nonuse of
27 personal protective equipment.

28 (b) Notwithstanding any other provision of law, any health care facility or health care
29 provider shall not be liable for any damage, injury or death alleged to have been sustained as the
30 result of an act or omission while arranging for or providing COVID-19 care or impacted care.

31 (c) Volunteer Liability.— Notwithstanding any other provision of law, a volunteer providing
32 health care services shall be immune to any civil liability for damages, injury, or death that occurs
33 at its facility arising from the state's response to COVID-19 absent clear and convincing evidence
34 that such damages, injury, or death resulted from the volunteer's willful misconduct or intentional
35 infliction of harm.

36 (d) Nothing in this section shall be construed to preempt, remove, or limit any applicable
37 defense or immunity from civil liability otherwise available to any agent, public employee, public
38 official, health care provider or health care facility.

39 (e) If a court determines the immunity afforded in this section does not apply to a health
40 care provider, this section may not be construed to supersede, amend, or modify any other law,
41 emergency proclamation, order, rule, or governing legal standards or procedures for health care
42 providers relating to the performance or provision of health care services or treatment provided
43 by the health care provider including, but not limited to, an action alleging medical professional
44 liability, pursuant to W.Va. Code §§ 55-7B-1, et seq., or any amendment to or judicial
45 interpretation thereof.

46 (f) In those instances where liability is established as required by provisions of law related
47 to medical professional liability, W.Va. Code §§ 55-7B-1, et seq., and the acts or omissions do

48 not result in serious illness, a health care provider's liability shall be limited to actual economic
49 compensatory damages, and in no event shall the health care provider be liable for non-economic
50 or punitive damages.

51 (g) This section shall not apply if it is proven by clear and convincing evidence that
52 damage, injury or death was caused by gross negligence, willful misconduct, reckless infliction of
53 harm, or intentional infliction of harm by the health care provider or health care facility: *Provided,*
54 That acts, omissions, or decisions resulting from a resource or staffing shortage shall not be
55 considered gross negligence, willful misconduct, or intentional infliction of harm.

56 (h) The immunity provided in this section is in addition to any other immunity protection
57 that may apply in state or federal law.

§55-19-8. Licensing for medical, nursing and emergency medical services.

1 (a) The West Virginia Board of Medicine, the West Virginia Board of Osteopathic Medicine,
2 and the West Virginia Board of Examiners for Registered Professional Nurses, may waive or
3 modify state statutes or administrative regulations relating to the respective professions over
4 which each board has jurisdiction:

5 (1) For licensure or certification requirements for health care providers who are licensed or
6 certified in other states to provide services in West Virginia; or,

7 (2) To relax the scope of practice requirements to allow health care providers to practice in
8 all settings of care;

9 (3) To allow physicians, nurses or other certified to supervise a greater number of other
10 health care providers and to do so using remote or telephonic means;

11 (4) To allow for rapid certification or licensure and recertification or re-licensure of health care
12 providers;

13 (5) To allow medical students to conduct triage, diagnose, and treat patients under the
14 supervision of licensed health care providers;

15 (6) For standards that are not necessary for the applicable standards of care to establish a
16 patient-provider relationship, diagnose, and deliver treatment recommendations utilizing
17 telehealth technologies; and

18 (7) To reactivate the licenses of inactive and retired health care providers, including
19 emergency medical providers and nurses, to allow them to re-enter the healthcare workforce.

§55-19-9. Products made, sold, and donated in response to COVID-19.

1 (a) Any business in the state that makes or provides personal protective equipment or
2 personal hygiene supplies relative to COVID-19, such as masks, gowns, or sanitizer, during and
3 in response to the state of emergency and that does not make or provide such products in the
4 normal course of its business shall have a defense to ordinary negligence and product liability so
5 long as the business has acted in good faith and in an ordinary, reasonable, and prudent manner
6 under the same or similar circumstances.

7 (b) Any person that designs, manufactures, labels, sells, distributes, or donates a qualified
8 product in response to COVID-19 that is utilized by a government entity, health care provider,
9 health care facility, first responder, or essential business shall not be liable in a civil action alleging
10 personal injury, death or property damage caused by or resulting from the product's
11 manufacturing or design, or a failure to provide proper instructions or sufficient warnings.

12 (c) Any person, including an institution of higher education, that designs, manufactures,
13 labels, sells, distributes, or donates household disinfecting or cleaning supplies or personal
14 protective equipment in response to COVID-19 that does not make such products in the ordinary
15 course of the person's business shall not be liable in a civil action alleging personal injury, death
16 or property damage caused by or resulting from the product's manufacturing or design, or a failure
17 to provide proper instructions or sufficient warnings.

18 (d) The limitations on liability provided in this section shall not apply to any person, or any
19 employee or agent thereof, that:

20 (1) Had actual knowledge of a defect in the product when put to the use for which the product

21 was manufactured, sold, distributed, or donated; and acted with conscious, reckless, and
22 outrageous indifference to a substantial and unnecessary risk that the product would cause
23 serious injury to others; or

24 (2) Acted with actual malice, intentional criminal misconduct, or intention to inflict harm.

§55-19-10. Retroactive application; no new cause of action; failure to obey lawful order, rule, or regulation; civil penalty; effect on sovereign immunity or other code; and severability.

1 (a) This article shall be effective retroactively from January 1, 2020, and applies to any
2 cause of action accruing on or after that date.

3 (b) Nothing in this article shall be construed to create a new cause of action or expand any
4 liability otherwise imposed, limit any defense, or affect the applicability of any law that affords
5 greater protections to defendants than those provided in this article.

6 (c) This article does not:

7 (1) Create a cause of action; or,

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

9 (d) Notwithstanding any other law, a person who knowingly fails or refuses to obey any
10 lawful order, rule or regulation that is required by an executive order that is related to a state of
11 emergency declared by the governor and that relates to the COVID-19 outbreak is subject to a
12 civil penalty of not more than \$100 if the person is provided notice of the violation and does not
13 cure the violation within twenty-four hours after receiving the notice.

14 (e) Nothing in this article modifies the application of:

15 (1) The sovereign immunity afforded the State of West Virginia by the West Virginia
16 Constitution, Article VI, § 35;

17 (2) The West Virginia Workers' Compensation Act, W. Va. Code § 23-1-1, et seq.

18 (3) The West Virginia Occupational Safety and Health Act, W. Va. Code § 21-3A-1, et
19 seq.; or,

20 (4) The West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code
21 § 29-12A-1, et seq.

22 (f) The immunity afforded in this article is in addition to any other immunity protection that
23 may apply in either state or federal law.

24 (g) The provisions of this act are severable. If any part of this act is declared invalid or
25 unconstitutional, that declaration shall not affect the part or parts which remain.

**§55-19-11. No cause of action against public institutions of higher learning; suspension or
revocation of business, profession, or service license prohibited.**

1 (a) There is no cause of action against any institution of higher education for any loss,
2 damage, injury, or death arising from COVID-19, unless the claimant proves by clear and
3 convincing evidence that the loss, damage, injury, or death was proximately caused by an act or
4 omission of the institution or its employee or agent constituting gross negligence or willful
5 misconduct.

6 (b) Notwithstanding any other law, beginning January 1, 2020, this state, including a
7 board or commission of this state, a county, a city, a town and any political subdivision of this
8 state that issues a license or permit to a person to conduct a business, profession or service in
9 the issuing jurisdiction, including a church, religious institution or nonprofit organization, may not
10 suspend or revoke the license or permit that is issued to the person based on an act committed
11 by the person or involving the business, including a church, religious institution or nonprofit
12 organization, that is directly prohibited or required by an executive order, including any extension
13 of that order, that is related to a state of emergency declared by the governor and that is related
14 to the COVID-19 outbreak.

§55-19-12. Evidence to prove medical expenses.

1 Evidence offered to prove past medical expenses shall be limited to evidence of the
2 amounts actually paid to satisfy the bills that have been engendered, regardless of the source of
3 payment, and evidence of the amounts necessary to satisfy the bills that have been incurred but

4 not yet satisfied. Evidence of the amounts necessary to satisfy the bills that have been incurred
5 shall not exceed the amount by which the bills could be satisfied by the claimant's health
6 insurance, regardless of whether such health insurance is used or will be used to satisfy the bills.
7 This section does not impose upon any party an affirmative duty to seek a reduction in billed
8 charges to which the party is not contractually entitled.

§55-19-13. Limited liability of architects, engineers, and contractors.

1 (a) No architect, engineer, or contractor may be held liable for personal injury, wrongful
2 death, property damage, or other loss related to any architectural, structural, electrical,
3 mechanical, construction, design, or other professional service provided by the architect or
4 engineer, voluntarily or without compensation, or the contractor at the request or approval of a
5 national, state, or local public official in response to a declared national, state, or local emergency,
6 a disaster, or a catastrophic event. The provisions of this subsection shall apply to all services
7 arising from COVID-19.

8 (b) Limited liability hereunder shall not apply if the injury, death, or damage is the result of
9 unreasonable acts, gross negligence, or willful or wanton acts.

§55-19-14. Legal compliance related to testimony, signatures, and documents.

1 (a) For purposes of complying with any law, rule, order, or other requirement relating to
2 the receipt of testimony or signature from any party or witness, or the acknowledgement or
3 notarization of any document, for any legal purpose:

4 (1) Individuals, whether acting for themselves or in a representative capacity, not in the
5 same physical location shall be considered in the presence of one another if the individuals can
6 communicate via a video teleconference in real time to the same extent as if they were physically
7 present in the same location; and

8 (2) Any document resulting from a video teleconference conducted in accordance with
9 paragraph (1) of this subsection may be executed, acknowledged, or notarized in counterparts,
10 which together shall be considered a single document.

§55-19-15. Retroactive applicability.

1 The Essential Jobs Protection Act applies retroactively to January 1, 2020.

§55-19-16. Statute of Limitations.

1 A person must bring suit for any alleged injury arising from COVID-19 not later than one
2 year after the day the cause of action accrues.

§55-19-17. Immunity protection in addition to other state or federal law.

1 The immunity provided in this article is in addition to any other immunity protection that
2 may apply in state or federal law.

§55-19-18. Expiration.

1 Effective four years after the date the Governor or the Legislature terminates the state of
2 emergency declared by the Governor on March 16, 2020, the COVID-19 Essential Jobs
3 Protection Act expires.

NOTE: The purpose of this bill is to created the “COVID-19 Essential Jobs Protection Act,” which shall establish requirements for civil actions related to COVID-19 exposure; establish relevant expert qualifications; establish property owner's duty of care for COVID-19 exposure related to safe harbor requirements; provide limited civil immunity to premises owners or possessors for COVID-19 claims; provide a civil penalty for failure to obey COVID-19 order, rule or regulation; providing severability for any provision declared invalid or unconstitutional; restrict a cause of action against public institutions of higher learning arising for injury or death from COVID-19; and protect nonprofits and religious institutions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.