



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1616

Introduced 2/26/2021, by Sen. Dale Fowler

SYNOPSIS AS INTRODUCED:

New Act

Creates the COVID-19 Liability Act. Defines terms. Provides that a person may bring a coronavirus exposure action under certain circumstances. Provides that no individual or entity engaged in businesses, services, activities, or accommodations shall be liable in any coronavirus exposure action unless the plaintiff proves specified elements by clear and convincing evidence. Provides that a person may bring a coronavirus-related medical liability action under certain circumstances. Provides that no health care provider shall be liable in a coronavirus-related medical liability action unless the plaintiff proves certain requirements by clear and convincing evidence. Provides that if any person transmits or causes another to transmit in any form and by any means a demand for remuneration in exchange for settling, releasing, waiving, or otherwise not pursuing a claim that is, or could be, brought as part of a coronavirus-related action, the party receiving such a demand shall have a cause of action for the recovery of damages occasioned by such a demand and for declaratory judgment if the claim upon which the demand letter was based was meritless. Provides that an employer conducting testing for coronavirus at the workplace shall not be liable for any action or personal injury directly resulting from such testing. Includes provisions for: liability limitations; procedures; joint employment and independent contracting; and severability.

LRB102 13274 LNS 18618 b

1 AN ACT concerning civil liability.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 COVID-19 Liability Act.

6 Section 5. Definitions. As used in this Act:

7 "Applicable government standards and guidance" means:

8 (1) any mandatory standards, rules, or regulations
9 specifically concerning the prevention or mitigation of
10 the transmission of coronavirus issued by the federal,
11 State, or local government with jurisdiction over an
12 individual or entity, whether provided by executive,
13 judicial, or legislative order; and

14 (2) with respect to an individual or entity that, at
15 the time of the actual, alleged, feared, or potential for
16 exposure to coronavirus is not subject to any mandatory
17 standards, rules, or regulations described in paragraph
18 (1), any guidance, standards, or regulations specifically
19 concerning the prevention or mitigation of the
20 transmission of coronavirus issued by the federal, State,
21 or local government with jurisdiction over the individual
22 or entity.

23 "Business, services, activities, or accommodations" means

1 any act by an individual or entity, irrespective of whether
2 the act is carried on for profit, that is interstate or foreign
3 commerce, that involves persons or things in interstate or
4 foreign commerce, that involves the channels or
5 instrumentalities of interstate or foreign commerce, that
6 substantially affects interstate or foreign commerce, or that
7 is otherwise an act subject to regulation by the Congress of
8 the United States as necessary and proper to carry into
9 execution of the Congress of the United States' powers to
10 regulate interstate or foreign commerce or to spend funds for
11 the general welfare.

12 "Coronavirus" means any disease, health condition, or
13 threat of harm caused by the SARS-CoV-2 virus or a virus
14 mutating therefrom.

15 "Coronavirus-related action" means a coronavirus exposure
16 action or a coronavirus-related medical liability action.

17 "Coronavirus-related health care services" means services
18 provided by a health care provider, regardless of the location
19 where the services are provided, that relate to:

20 (1) the diagnosis, prevention, or treatment of
21 coronavirus;

22 (2) the assessment or care of an individual with a
23 confirmed or suspected case of coronavirus; or

24 (3) the care of any individual who is admitted to,
25 presents to, receives services from, or resides with, a
26 health care provider for any purpose during the period of

1 an emergency or disaster declaration concerning
2 coronavirus, if such provider's decisions or activities
3 with respect to such an individual are impacted as a
4 result of coronavirus.

5 "Employer" means any person serving as an employer or
6 acting directly in the interest of an employer in relation to
7 an employee. "Employer" includes a public agency. "Employer"
8 does not include any labor organization, other than when
9 acting as an employer, or any person acting in the capacity of
10 officer or agent of such labor organization.

11 "Government" means an agency, instrumentality, or other
12 entity of the federal, State, or local government.

13 "Gross negligence" means a conscious, voluntary act or
14 omission in reckless disregard of:

- 15 (1) a legal duty;
- 16 (2) the consequences to another party; and
- 17 (3) applicable government standards and guidance.

18 "Harm" includes:

- 19 (1) physical and nonphysical contact that results in
20 personal injury to an individual; and
- 21 (2) economic and noneconomic losses.

22 "Health care provider" means any person, including an
23 agent, volunteer, as described in this definition, contractor,
24 employee, or other entity, who is:

- 25 (1) required by federal or State law to be licensed,
26 registered, or certified to provide health care and is so

1 licensed, registered, or certified, or is exempt from any
2 such requirement;

3 (2) otherwise authorized by federal or State law to
4 provide care, including services and supports furnished in
5 a home or community-based residential setting under the
6 federal State Medicaid program or a waiver of that
7 program; or

8 (3) considered under applicable federal or State law
9 to be a health care provider, health care professional,
10 health care institution, or health care facility.

11 "Health care provider" includes a health care facility
12 administrator, executive, supervisor, board member or trustee,
13 or another individual responsible for directing, supervising,
14 or monitoring the provision of coronavirus-related health care
15 services in a comparable role. "Health care provider" includes
16 volunteers that meet the following criteria:

17 (1) The volunteer is a health care professional
18 providing coronavirus-related health care services.

19 (2) The act or omission by the volunteer occurs:

20 (A) in the course of providing health care
21 services;

22 (B) in the health care professional's capacity as
23 a volunteer;

24 (C) in the course of providing health care
25 services that:

26 (i) are within the scope of the license,

1 registration, or certification of the volunteer;
2 and

3 (ii) do not exceed the scope of license,
4 registration, or certification of a substantially
5 similar health professional in the State; and

6 (D) in a good faith belief that the individual
7 being treated is in need of health care services.

8 "Individual or entity" means:

9 (1) any natural person, corporation, company, trade,
10 business, firm, partnership, joint stock company,
11 educational institution, labor organization, or similar
12 organization or group of organizations;

13 (2) any nonprofit organization, foundation, society,
14 or association organized for religious, charitable,
15 educational, or other purposes; or

16 (3) any State or local government.

17 "Mandatory", with respect to standards, rules, or
18 regulations, means the standards, rules, or regulations are
19 themselves enforceable by the issuing government through
20 criminal, civil, or administrative action.

21 "Personal injury" means actual or potential physical
22 injury to an individual or death caused by a physical injury.

23 "Personal injury" includes mental suffering, emotional
24 distress, or similar injuries suffered by an individual in
25 connection with a physical injury.

26 (1) is wholly owned by that governing body; and

1 (2) has been delegated the right to exercise one or
2 more substantial governmental functions of the governing
3 body.

4 "Willful misconduct" means an act or omission that is
5 taken:

6 (1) intentionally to achieve a wrongful purpose;

7 (2) knowingly without legal or factual justification;

8 and

9 (3) in disregard of a known or obvious risk that is so
10 great as to make it highly probable that the harm will
11 outweigh the benefit.

12 Section 10. Coronavirus exposure actions.

13 (a) A person may bring a coronavirus exposure action if it
14 is:

15 (1) brought by a person who suffered personal injury
16 or is at risk of suffering personal injury, or a
17 representative of a person who suffered personal injury or
18 is at risk of suffering personal injury;

19 (2) brought against an individual or entity engaged in
20 businesses, services, activities, or accommodations; and

21 (3) alleging that an actual, alleged, feared, or
22 potential for exposure to coronavirus caused the personal
23 injury or risk of personal injury, that:

24 (A) occurred in the course of the businesses,
25 services, activities, or accommodations of the

1 individual or entity; and

2 (B) occurred:

3 (i) on or after December 1, 2019; and

4 (ii) before the later of:

5 (I) October 1, 2024; or

6 (II) the date on which there is no
7 declaration by the United States Secretary of
8 Health and Human Services under section
9 319F-3(b) of the Public Health Service Act (42
10 U.S.C. 247d-6d(b)) (relating to medical
11 countermeasures) that is in effect with
12 respect to coronavirus, including the
13 Declaration Under the Public Readiness and
14 Emergency Preparedness Act for Medical
15 Countermeasures Against COVID-19 (85 Federal
16 Register 15198) issued by the Secretary of
17 Health and Human Services on March 17, 2020.

18 (b) A person may prevail in a coronavirus exposure action
19 only in accordance with the requirements of this Act.

20 (c) The Section applies to:

21 (1) any cause of action giving rise to a coronavirus
22 exposure action that was filed before the date of
23 enactment of this Act and that is pending on such date of
24 enactment; and

25 (2) any coronavirus exposure action filed on or after
26 such date of enactment.

1 (d) Except as otherwise provided in this Section, nothing
2 in this Section expands any liability otherwise imposed or
3 limits any defense otherwise available under the law.

4 Except as described in this Section, this Section preempts
5 and supersedes any State law, including statutes, rules, or
6 standards that are enacted, adopted, or established under
7 common law, related to recovery for personal injuries caused
8 by actual, alleged, feared, or potential for exposure to
9 coronavirus.

10 Nothing in this Section shall be construed to affect the
11 applicability of any provision of any federal or State law
12 that imposes stricter limits on damages or liabilities for
13 personal injury caused by, arising out of, or related to an
14 actual, alleged, feared, or potential for exposure to
15 coronavirus, or otherwise affords greater protection to
16 defendants in any coronavirus exposure action, than are
17 provided in this Section. Any such provision of federal or
18 State law shall be applied in addition to the requirements of
19 this Section and not in lieu thereof.

20 Nothing in this Section shall be construed to affect the
21 applicability of the Workers' Compensation Act, or to preempt
22 or supersede an exclusive remedy under that Act.

23 Nothing in this Section shall be construed to impair,
24 limit, or affect the authority of the federal, State, or local
25 government to bring any criminal, civil, or administrative
26 enforcement action against any individual or entity.

1 Nothing in this Section shall be construed to affect the
2 applicability of any provision of any federal or State law
3 that creates a cause of action for intentional discrimination
4 on the basis of race, color, national origin, religion, sex,
5 disability, genetic information, or age.

6 (e) A coronavirus exposure action may not be commenced in
7 any State court later than one year after the date of the
8 actual, alleged, feared, or potential for exposure to
9 coronavirus.

10 Section 15. Liability; safe harbor.

11 (a) Notwithstanding any other provision of law, and except
12 as otherwise provided in this subsection, no individual or
13 entity engaged in businesses, services, activities, or
14 accommodations shall be liable in any coronavirus exposure
15 action unless the plaintiff can prove by clear and convincing
16 evidence that:

17 (1) in engaging in the businesses, services,
18 activities, or accommodations, the individual or entity
19 was not making reasonable efforts in light of all the
20 circumstances to comply with the applicable government
21 standards and guidance in effect at the time of the
22 actual, alleged, feared, or potential for exposure to
23 coronavirus;

24 (2) the individual or entity engaged in gross
25 negligence or willful misconduct that caused an actual

1 exposure to coronavirus; and

2 (3) the actual exposure to coronavirus caused the
3 personal injury of the plaintiff.

4 (b) If more than one government to whose jurisdiction an
5 individual or entity is subject issues applicable government
6 standards and guidance, and the applicable government
7 standards and guidance issued by one or more of the
8 governments conflicts with the applicable government standards
9 and guidance issued by 1 or more of the other governments, the
10 individual or entity shall be considered to have made
11 reasonable efforts in light of all the circumstances to comply
12 with the applicable government standards and guidance unless
13 the plaintiff establishes by clear and convincing evidence
14 that the individual or entity was not making reasonable
15 efforts in light of all the circumstances to comply with any of
16 the conflicting applicable government standards and guidance
17 issued by any government to whose jurisdiction the individual
18 or entity is subject.

19 If mandatory standards, rules, and regulations
20 constituting applicable government standards and guidance
21 issued by any government with jurisdiction over the individual
22 or entity conflict with applicable government standards and
23 guidance that are not mandatory and are issued by any other
24 government with jurisdiction over the individual or entity or
25 by the same government that issued the mandatory standards,
26 rules, and regulations, the plaintiff may establish that the

1 individual or entity did not make reasonable efforts in light
2 of all the circumstances to comply with the applicable
3 government standards and guidance by establishing by clear and
4 convincing evidence that the individual or entity was not
5 making reasonable efforts in light of all the circumstances to
6 comply with the mandatory standards, rules, and regulations to
7 which the individual or entity was subject.

8 (c) If an individual or entity engaged in businesses,
9 services, activities, or accommodations maintained a written
10 or published policy on the mitigation of transmission of
11 coronavirus at the time of the actual, alleged, feared, or
12 potential for exposure to coronavirus that complied with, or
13 was more protective than, the applicable government standards
14 and guidance to which the individual or entity was subject,
15 the individual or entity shall be presumed to have made
16 reasonable efforts in light of all the circumstances to comply
17 with the applicable government standards and guidance.

18 The plaintiff may rebut the presumption under this
19 subsection by establishing that the individual or entity was
20 not complying with the written or published policy at the time
21 of the actual, alleged, feared, or potential for exposure to
22 coronavirus.

23 The absence of a written or published policy shall not
24 give rise to a presumption that the individual or entity did
25 not make reasonable efforts in light of all the circumstances
26 to comply with the applicable government standards and

1 guidance.

2 A change to a policy or practice by an individual or entity
3 before or after the actual, alleged, feared, or potential for
4 exposure to coronavirus, shall not be evidence of liability
5 for the actual, alleged, feared, or potential for exposure to
6 coronavirus.

7 (c) No individual or entity shall be held liable in a
8 coronavirus exposure action for the acts or omissions of a
9 third party, unless:

10 (1) the individual or entity had an obligation under
11 general common law principles to control the acts or
12 omissions of the third party; or

13 (2) the third party was an agent of the individual or
14 entity.

15 (d) Changes to the policies, practices, or procedures of
16 an individual or entity for complying with the applicable
17 government standards and guidance after the time of the
18 actual, alleged, feared, or potential for exposure to
19 coronavirus, shall not be considered evidence of liability or
20 culpability.

21 Section 20. Coronavirus-related medical liability actions.

22 (a) A person may bring a coronavirus-related medical
23 liability action if it is:

24 (1) brought by a person who suffered personal injury,
25 or a representative of a person who suffered personal

1 injury;

2 (2) brought against a health care provider; and

3 (3) alleging any harm, damage, breach, or tort
4 resulting in the personal injury alleged to have been
5 caused by, be arising out of, or be related to a health
6 care provider's act or omission in the course of arranging
7 for or providing coronavirus-related health care services
8 that occurred:

9 (A) on or after December 1, 2019; and

10 (B) before the later of:

11 (i) October 1, 2024; or

12 (ii) the date on which there is no declaration
13 by the United States Secretary of Health and Human
14 Services under section 319F-3(b) of the Public
15 Health Service Act (42 U.S.C. 247d-6d(b))
16 (relating to covered countermeasures) that is in
17 effect with respect to coronavirus, including the
18 Declaration Under the Public Readiness and
19 Emergency Preparedness Act for Medical
20 Countermeasures Against COVID-19 (85 Federal
21 Register 15198) issued by the Secretary of Health
22 and Human Services on March 17, 2020.

23 (b) A plaintiff may prevail in a coronavirus-related
24 medical liability action only in accordance with the
25 requirements of this Act.

26 (c) This Section applies to:

1 (1) any cause of action giving rise to a
2 coronavirus-related medical liability action that was
3 filed before the date of enactment of this Act and that is
4 pending on such date of enactment; and

5 (2) any coronavirus-related medical liability action
6 filed on or after such date of enactment.

7 (d) Except as otherwise provided in this Section, nothing
8 in this Section expands any liability otherwise imposed or
9 limits any defense otherwise available under federal or State
10 law.

11 Except as described in this Section, this Section preempts
12 and supersedes any State law, including statutes, rules, or
13 standards that are enacted, adopted, or established under
14 common law, related to recovery for personal injuries caused
15 by, arising out of, or related to an act or omission by a
16 health care provider in the course of arranging for or
17 providing coronavirus-related health care services.

18 Nothing in this Section shall be construed to affect the
19 applicability of any provision of any federal or State law
20 that imposes stricter limits on damages or liabilities for
21 personal injury caused by, arising out of, or related to an act
22 or omission by a health care provider in the course of
23 arranging for or providing coronavirus-related health care
24 services, or otherwise affords greater protection to
25 defendants in any coronavirus-related medical liability action
26 than are provided in this Section. Any such provision of

1 federal or State law shall be applied in addition to the
2 requirements of this Section and not in lieu thereof.

3 Nothing in this Section shall be construed to impair,
4 limit, or affect the authority of the federal, State, or local
5 government to bring any criminal, civil, or administrative
6 enforcement action against any health care provider.

7 Nothing in this Section shall be construed to affect the
8 applicability of any provision of any federal or State law
9 that creates a cause of action for intentional discrimination
10 on the basis of race, color, national origin, religion, sex,
11 disability, genetic information, or age.

12 (e) A coronavirus-related medical liability action may not
13 be commenced in any State court later than one year after the
14 date of the alleged harm, damage, breach, or tort, unless
15 tolled for:

16 (1) proof of fraud;

17 (2) intentional concealment; or

18 (3) the presence of a foreign body, which has no
19 therapeutic or diagnostic purpose or effect, in the person
20 of the injured person.

21 Section 25. Liability for health care professionals and
22 health care facilities during coronavirus public health
23 emergency.

24 (a) Notwithstanding any other provision of law, and except
25 as provided in subsection (b), no health care provider shall

1 be liable in a coronavirus-related medical liability action
2 unless the plaintiff can prove by clear and convincing
3 evidence:

4 (1) gross negligence or willful misconduct by the
5 health care provider; and

6 (2) that the alleged harm, damage, breach, or tort
7 resulting in the personal injury was directly caused by
8 the alleged gross negligence or willful misconduct.

9 (b) For purposes of this Section, acts, omissions, or
10 decisions resulting from a resource or staffing shortage shall
11 not be considered willful misconduct or gross negligence.

12 Section 30. Liability limitations.

13 (a) An individual or entity against whom a final judgment
14 is entered in any coronavirus-related action shall be liable
15 solely for the portion of the judgment that corresponds to the
16 relative and proportionate responsibility of that individual
17 or entity. In determining the percentage of responsibility of
18 any defendant, the court shall determine that percentage as a
19 percentage of the total fault of all individuals or entities,
20 including the plaintiff, who caused or contributed to the
21 total loss incurred by the plaintiff.

22 (b) In any coronavirus-related action, the court shall
23 instruct the jury to answer special interrogatories, or, if
24 there is no jury, the court shall make findings with respect to
25 each defendant, including defendants who have entered into

1 settlements with the plaintiff or plaintiffs, concerning the
2 percentage of responsibility, if any, of each defendant,
3 measured as a percentage of the total fault of all individuals
4 or entities who caused or contributed to the loss incurred by
5 the plaintiff.

6 (c) In determining the percentage of responsibility under
7 this Section, the court shall consider:

8 (1) the nature of the conduct of each individual or
9 entity found to have caused or contributed to the loss
10 incurred by the plaintiff; and

11 (2) the nature and extent of the causal relationship
12 between the conduct of each such individual or entity and
13 the damages incurred by the plaintiff.

14 (d) Notwithstanding subsection (a), in any
15 coronavirus-related action the liability of a defendant is
16 joint and several if the court specifically determines that
17 the defendant:

18 (1) acted with specific intent to injure the
19 plaintiff; or

20 (2) knowingly committed fraud.

21 (e) Nothing in this Section affects the right, under any
22 other law, of a defendant to contribution with respect to
23 another defendant determined under subsection (d) to have
24 acted with specific intent to injure the plaintiff or
25 knowingly to have committed fraud.

26 (f) In any coronavirus-related action:

1 (1) the award of compensatory damages shall be limited
2 to economic losses incurred as the result of the personal
3 injury, harm, damage, breach, or tort, except that the
4 court may award damages for noneconomic losses if the
5 court determines that the personal injury, harm, damage,
6 breach, or tort was caused by the willful misconduct of
7 the individual or entity;

8 (2) punitive damages, which may:

9 (A) be awarded only if the court determines that
10 the personal injury to the plaintiff was caused by the
11 willful misconduct of the individual or entity; and

12 (B) not exceed the amount of compensatory damages
13 awarded; and

14 (3) the amount of monetary damages awarded to a
15 plaintiff shall be reduced by the amount of compensation
16 received by the plaintiff from another source in
17 connection with the personal injury, harm, damage, breach,
18 or tort, such as insurance or reimbursement by a
19 government.

20 (g) Except as described in this Section, this Section
21 preempts and supersedes any State law, including statutes,
22 rules, or standards that are enacted, adopted, or established
23 under common law, related to joint and several liability,
24 proportionate or contributory liability, contribution, or the
25 award of damages for any coronavirus-related action.

26 (h) Nothing in this Section shall be construed to affect

1 the applicability of any provision of any federal or State law
2 that:

3 (1) limits the liability of a defendant in a
4 coronavirus-related action to a lesser degree of liability
5 than the degree of liability determined under this
6 section;

7 (2) otherwise affords a greater degree of protection
8 from joint or several liability than is afforded by this
9 Section; or

10 (3) limits the damages that can be recovered from a
11 defendant in a coronavirus-related action to a lesser
12 amount of damages than the amount determined under this
13 Section.

14 Section 35. Procedures.

15 (a) In any coronavirus-related action the complaint shall
16 plead with particularity:

17 (1) each element of the plaintiff's claim and, with
18 respect to a coronavirus exposure action, all places and
19 persons visited by the person on whose behalf the
20 complaint was filed and all persons who visited the
21 residence of the person on whose behalf the complaint was
22 filed during the 14 days before the onset of the first
23 symptoms allegedly caused by coronavirus, including:

24 (A) each individual or entity against which a
25 complaint is filed, along with the factual basis for

1 the belief that such individual or entity was a cause
2 of the personal injury alleged; and

3 (B) every other person or place visited by the
4 person on whose behalf the complaint was filed and
5 every other person who visited the residence of the
6 person on whose behalf the complaint was filed during
7 such period, along with the factual basis for the
8 belief that these persons and places were not the
9 cause of the personal injury alleged; and

10 (2) each alleged act or omission constituting gross
11 negligence or willful misconduct that resulted in personal
12 injury, harm, damage, breach, or tort.

13 (b) In any coronavirus-related action in which monetary
14 damages are requested, there shall be filed with the complaint
15 a statement of specific information as to the nature and
16 amount of each element of damages and the factual basis for the
17 damages calculation.

18 (c) In any coronavirus-related action in which a claim is
19 asserted on which the plaintiff may prevail only on proof that
20 the defendant acted with a particular state of mind, there
21 shall be filed with the complaint, with respect to each
22 element of that claim, a statement of the facts giving rise to
23 a strong inference that the defendant acted with the required
24 state of mind.

25 (d) The complaint in a coronavirus-related action shall
26 include a verification, made by affidavit of the plaintiff

1 under oath, stating that the pleading is true to the knowledge
2 of the deponent, except as to matters specifically identified
3 as being alleged on information and belief, and that as to
4 those matters the plaintiff believes it to be true.

5 (e) Any matter that is not specifically identified as
6 being alleged upon the information and belief of the plaintiff
7 shall be regarded for all purposes, including a criminal
8 prosecution, as having been made upon the knowledge of the
9 plaintiff.

10 (f) In any coronavirus-related action, the plaintiff shall
11 file with the complaint:

12 (1) an affidavit by a physician or other qualified
13 medical expert who did not treat the person on whose
14 behalf the complaint was filed that explains the basis for
15 such physician's or other qualified medical expert's
16 belief that such person suffered the personal injury,
17 harm, damage, breach, or tort alleged in the complaint;
18 and

19 (2) certified medical records documenting the alleged
20 personal injury, harm, damage, breach, or tort.

21 (g) This Section applies exclusively to any
22 coronavirus-related action and, except to the extent that this
23 Section requires additional information to be contained in or
24 attached to pleadings, nothing in this Section is intended to
25 amend or otherwise supersede applicable rules of civil
26 procedure.

1 (h) Notwithstanding any other provision of law, in any
2 coronavirus-related action, no discovery shall be allowed
3 before:

4 (1) the time has expired for the defendant to answer
5 or file a motion to dismiss; and

6 (2) if a motion to dismiss is filed, the court has
7 ruled on the motion.

8 (i) Notwithstanding any other provision of law, the court
9 in any coronavirus-related action:

10 (1) shall permit discovery only with respect to
11 matters directly related to material issues contested in
12 the coronavirus-related action; and

13 (2) may compel a response to a discovery request,
14 including a request for admission, an interrogatory, a
15 request for production of documents, or any other form of
16 discovery request, only if the court finds that:

17 (A) the requesting party needs the information
18 sought to prove or defend as to a material issue
19 contested in such action; and

20 (B) the likely benefits of a response to such
21 request equal or exceed the burden or cost for the
22 responding party of providing such response.

23 (j) In any coronavirus-related action that is maintained
24 as a class action:

25 (1) an individual or entity shall only be a member of
26 the class if the individual or entity affirmatively elects

1 to be a member; and

2 (2) the court, in addition to any other notice
3 required by applicable federal or State law, shall direct
4 notice of the action to each member of the class, which
5 shall include:

6 (A) a concise and clear description of the nature
7 of the action;

8 (B) the jurisdiction where the case is pending;
9 and

10 (C) the fee arrangements with class counsel,
11 including:

12 (i) the hourly fee being charged; or

13 (ii) if it is a contingency fee, the
14 percentage of the final award which will be paid,
15 including an estimate of the total amount that
16 would be paid if the requested damages were to be
17 granted; and

18 (iii) if the cost of the litigation is being
19 financed, a description of the financing
20 arrangement.

21 Section 40. Demand letters; cause of action.

22 (a) If any person transmits or causes another to transmit
23 in any form and by any means a demand for remuneration in
24 exchange for settling, releasing, waiving, or otherwise not
25 pursuing a claim that is, or could be, brought as part of a

1 coronavirus-related action, the party receiving such a demand
2 shall have a cause of action for the recovery of damages
3 occasioned by such demand and for declaratory judgment, if the
4 claim for which the letter was transmitted was meritless.

5 (b) Damages available under this Section shall include:

6 (1) compensatory damages including costs incurred in
7 responding to the demand; and

8 (2) punitive damages, if the court determines that the
9 defendant had knowledge or was reckless with regard to the
10 fact that the claim was meritless.

11 (c) In an action commenced under subsection (a), if the
12 plaintiff is a prevailing party, the court, in addition to any
13 judgment awarded to a plaintiff, shall allow a reasonable
14 attorney's fee to be paid by the defendant, and costs of the
15 action.

16 (d) Whenever the Attorney General has reasonable cause to
17 believe that any person or group of persons is engaged in a
18 pattern or practice of transmitting demands for remuneration
19 in exchange for settling, releasing, waiving, or otherwise not
20 pursuing a claim that is, or could be, brought as part of a
21 coronavirus-related action and that is meritless, the Attorney
22 General may commence a civil action in any appropriate State
23 court.

24 In a civil action under this subsection, to vindicate the
25 public interest, the court may assess a civil penalty against
26 the respondent in an amount not exceeding \$50,000 per

1 transmitted demand for remuneration in exchange for settling,
2 releasing, waiving, or otherwise not pursuing a meritless
3 claim.

4 If the Attorney General obtains civil penalties, the
5 Attorney General shall distribute the proceeds equitably among
6 those persons aggrieved by the respondent's pattern or
7 practice of transmitting demands for remuneration in exchange
8 for settling, releasing, waiving or otherwise not pursuing a
9 claim that is meritless.

10 Section 45. Liability for conducting testing at workplace.
11 Notwithstanding any other provision of law, an employer, or
12 other person who hires or contracts with other individuals to
13 provide services, conducting testing for coronavirus at the
14 workplace shall not be liable for any action or personal
15 injury directly resulting from such testing, except for those
16 personal injuries caused by the gross negligence or
17 intentional misconduct of the employer or other person.

18 Section 50. Joint employment and independent contracting.
19 Notwithstanding any other provision of law, it shall not
20 constitute evidence of a joint employment relationship or
21 employment relationship for any employer to provide or
22 require, for an employee of another employer or for an
23 independent contractor, any:

24 (1) coronavirus-related policies, procedures, or training;

1 (2) personal protective equipment or training for the use
2 of such equipment;

3 (3) cleaning or disinfecting services or the means for
4 such cleaning or disinfecting;

5 (4) workplace testing for coronavirus; or

6 (5) temporary assistance due to coronavirus, including
7 financial assistance or other health and safety benefits.

8 Section 97. Severability. The provisions of this Act are
9 severable under Section 1.31 of the Statute on Statutes.