

116TH CONGRESS
2D SESSION

S. _____

To support State and local governments as well as tribal entities and to protect small businesses, health care providers, education, and non-profit entities from frivolous lawsuits related to coronavirus.

IN THE SENATE OF THE UNITED STATES

Mr. MANCHIN (for himself, Mr. PORTMAN, Mr. ROMNEY, Ms. COLLINS, Ms. MURKOWSKI, and Mr. CASSIDY) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To support State and local governments as well as tribal entities and to protect small businesses, health care providers, education, and non-profit entities from frivolous lawsuits related to coronavirus.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Bipartisan State and Local Support and Small Business
6 Protections Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CORONAVIRUS LOCAL COMMUNITY STABILIZATION
FUND

Sec. 101. Coronavirus Local Community Stabilization Fund.

TITLE II—BACK TO WORK ACT

Sec. 201. Short title.

Sec. 202. Findings and purposes.

Sec. 203. Definitions.

Subtitle A—Liability Relief

PART I—LIABILITY LIMITATIONS FOR INDIVIDUALS AND ENTITIES
ENGAGED IN BUSINESSES, SERVICES, ACTIVITIES, OR ACCOMMODATIONS

Sec. 211. Limitations on causes of action.

PART II—LIABILITY LIMITATIONS FOR HEALTH CARE PROVIDERS

Sec. 221. Limitations on medical liability actions.

PART III—MISCELLANEOUS PROVISIONS

Sec. 231. Jurisdiction.

Sec. 232. Procedures for suit in district courts of the United States.

Sec. 233. Public readiness and emergency preparedness.

Sec. 234. Demand letters; enforcement by the Attorney General.

PART IV—RELATION TO LABOR AND EMPLOYMENT LAWS

Sec. 241. Definition.

Sec. 242. Limitation on violations under specific laws.

Sec. 243. Liability for conducting testing at workplace.

Sec. 244. Joint employment and independent contracting.

Sec. 245. Exclusion of certain notification requirements as a result of the
COVID-19 public health emergency.

Subtitle B—General Provisions

Sec. 281. Severability.

1 **TITLE I—CORONAVIRUS LOCAL**
2 **COMMUNITY STABILIZATION**
3 **FUND**

4 **SEC. 101. CORONAVIRUS LOCAL COMMUNITY STABILIZA-**
5 **TION FUND.**

6 (a) IN GENERAL.—Title VI of the Social Security Act
7 (42 U.S.C. 801 et seq.) is amended by inserting after sec-
8 tion 601 the following:

9 **“SEC. 602. CORONAVIRUS LOCAL COMMUNITY STABILIZA-**
10 **TION FUND.**

11 “(a) APPROPRIATION.—

12 “(1) IN GENERAL.—Out of any money in the
13 Treasury of the United States not otherwise appro-
14 priated, there are appropriated for making payments
15 to States and Tribal entities under this section,
16 \$160,000,000,000 for fiscal year 2021, to remain
17 available until expended.

18 “(2) RESERVATION OF FUNDS FOR PAYMENTS
19 TO TRIBAL ENTITIES.—

20 “(A) IN GENERAL.—Of the amount appro-
21 priated under paragraph (1), the Secretary
22 shall reserve \$8,000,000,000 of such amount
23 for making payments to Tribal entities under
24 subsection (c)(7), subject to subparagraph (B).

1 “(B) TECHNICAL ASSISTANCE TO TRIBAL
2 ENTITIES.—From the amount reserved under
3 subparagraph (A), the Secretary shall reserve
4 up to \$2,000,000 for the purpose of providing
5 technical assistance in complying with the re-
6 quirements of this title for Tribal entities that
7 are financially distressed (as determined by the
8 Secretary).

9 “(b) AUTHORITY TO MAKE PAYMENTS.—

10 “(1) IN GENERAL.—

11 “(A) PAYMENTS TO 50 STATES AND DIS-
12 TRICT OF COLUMBIA.—The Secretary shall pay
13 each State described in subparagraph (C) the
14 following amounts:

15 “(i) Not later than 30 days after the
16 date of enactment of this section, the rel-
17 ative population proportion amount deter-
18 mined for the State under paragraph (1)
19 of subsection (c).

20 “(ii) Not later than 30 days after the
21 date of enactment of this section, the first
22 lost revenue amount determined for the
23 State under paragraph (2) of subsection
24 (c).

1 “(iii) Not later than June 30, 2021,
2 the second lost revenue amount determined
3 for the State under paragraph (3) of sub-
4 section (c).

5 “(iv) Not later than September 30,
6 2021, the third lost revenue amount deter-
7 mined for the State under paragraph (4)
8 of subsection (c).

9 “(B) PAYMENTS TO TERRITORIES.—Not
10 later than 30 days after the date of enactment
11 of this section, the Secretary shall pay to each
12 State that is not described in subparagraph (C)
13 an amount equal to the product of—

14 “(i) \$152,000,000,000; and

15 “(ii) the quotient of—

16 “(I) the population of the State;
17 and

18 “(II) the total population of all
19 States (including States described in
20 subparagraph (C)).

21 “(C) STATES DESCRIBED.—The States de-
22 scribed in this subparagraph are each of the 50
23 States and the District of Columbia.

24 “(2) AMOUNTS RESERVED FOR PAYMENTS TO
25 LOCAL GOVERNMENTS.—

1 “(A) IN GENERAL.—A State described in
2 paragraph (1)(C) shall reserve—

3 “(i) 40 percent of each amount paid
4 to the State under paragraph (1) to make
5 direct payments to units of local govern-
6 ment in the State in accordance with sub-
7 section (c)(6); and

8 “(ii) from each amount paid to the
9 State under paragraph (1), an amount
10 (not to exceed 5 percent of such amount
11 paid to the State) to be determined by the
12 Secretary in consultation with the Gov-
13 ernor of the State to make direct payments
14 (in such amounts as the Secretary and the
15 Governor shall so determine) to—

16 “(I) special-purpose public enti-
17 ties in the State that perform essen-
18 tial public health and safety functions
19 related to the COVID–19 pandemic;
20 and

21 “(II) where applicable, multi-
22 State entities in the State that are in-
23 volved in the transportation of pas-
24 sengers or cargo.

1 “(B) AVAILABILITY OF AMOUNTS RE-
2 SERVED FOR SPECIAL-PURPOSE PUBLIC OR
3 MULTI-STATE ENTITIES.—If the amount re-
4 served by a State under subparagraph (A)(ii)
5 exceeds the total amount of direct payments to
6 special-purpose public or multi-State entities
7 determined for the State under such subpara-
8 graph, the State may use such excess amount
9 in accordance with subsection (d).

10 “(c) PAYMENT AMOUNTS.—

11 “(1) RELATIVE POPULATION PROPORTION
12 AMOUNT.—Subject to paragraph (5), the relative
13 population proportion amount for a State described
14 in subsection (b)(1)(C) is the product of—

15 “(A) \$50,666,666,666; and

16 “(B) the quotient of—

17 “(i) the population of the State; and

18 “(ii) the total population of all States
19 (including States not described in sub-
20 section (b)(1)(C)).

21 “(2) FIRST LOST REVENUE AMOUNT.—

22 “(A) IN GENERAL.—Subject to paragraph
23 (5), the first lost revenue amount determined
24 under this paragraph for a State described in
25 subsection (b)(1)(C) is the amount determined

1 for the State under subparagraph (B), as ad-
2 justed in accordance with subparagraph (C).

3 “(B) DETERMINATION OF LOST REV-
4 ENUE.—The amount determined for a State
5 under this subparagraph is the product of—

6 “(i) the amount by which—

7 “(I) the total amount of tax rev-
8 enue collected by the State in the sec-
9 ond and third calendar quarters of
10 2019 (as published by the Bureau of
11 the Census in the Quarterly Summary
12 of State and Local Tax Revenue); ex-
13 ceeds

14 “(II) the total amount of tax rev-
15 enue collected by the State in the sec-
16 ond and third calendar quarters of
17 2020 (as so published); and

18 “(ii) 1.48.

19 “(C) ADJUSTMENTS TO LOST REVENUE.—
20 The amount determined for a State under sub-
21 paragraph (B) shall be adjusted in the following
22 manner:

23 “(i) Such amount shall be reduced by
24 the amount of any reduction to State tax
25 revenue for the second and third calendar

1 quarters of 2020 that the Secretary deter-
2 mines results from the State—

3 “(I) having enacted on or after
4 March 1, 2020, a tax cut, rebate, de-
5 duction, or credit; or

6 “(II) reducing, delaying, or elimi-
7 nating (on or after such date) any fee
8 or other source of revenue.

9 “(ii) Such amount shall be increased
10 by the amount of any expenditures made
11 by the State during the second and third
12 calendar quarters of 2020 necessary to
13 meet the non-Federal share contribution
14 requirement of any public assistance that
15 is provided under the Robert T. Stafford
16 Disaster Relief and Emergency Assistance
17 Act (42 U.S.C. 5121 et seq.) on the basis
18 of a disaster or emergency declaration
19 under such Act that—

20 “(I) is declared during the period
21 beginning on January 1, 2020, and
22 ending on the date of enactment of
23 this section; and

24 “(II) is not related to the
25 COVID–19 pandemic.

1 “(3) SECOND LOST REVENUE AMOUNT.—

2 “(A) IN GENERAL.—Subject to paragraph
3 (5), the second lost revenue amount determined
4 under this paragraph for a State described in
5 subsection (b)(1)(C) is the amount determined
6 for the State under subparagraph (B), as ad-
7 justed in accordance with subparagraph (C).

8 “(B) DETERMINATION OF LOST REV-
9 ENUE.—The amount determined for a State
10 under this subparagraph is the product of—

11 “(i) the amount by which—

12 “(I) the total amount of tax rev-
13 enue collected by the State in the
14 fourth calendar quarter of 2019 and
15 the first calendar quarter of 2020 (as
16 published by the Bureau of the Cen-
17 sus in the Quarterly Summary of
18 State and Local Tax Revenue); ex-
19 ceeds

20 “(II) the total amount of tax rev-
21 enue collected by the State in the
22 fourth calendar quarter of 2020 and
23 the first calendar quarter of 2021 (as
24 so published); and

25 “(ii) 1.48.

1 “(C) ADJUSTMENTS TO LOST REVENUE.—

2 The amount determined for a State under sub-
3 paragraph (B) shall be adjusted in the following
4 manner:

5 “(i) Such amount shall be reduced by
6 the amount of any reduction to State tax
7 revenue for the fourth calendar quarter of
8 2020 and the first calendar quarter of
9 2021 that the Secretary determines results
10 from the State—

11 “(I) having enacted on or after
12 March 1, 2020, a tax cut, rebate, de-
13 duction, or credit; or

14 “(II) reducing, delaying, or elimi-
15 nating (on or after such date) any fee
16 or other source of revenue.

17 “(ii) Such amount shall be increased
18 by the amount of any expenditures made
19 by the State during the fourth calendar
20 quarter of 2020 and the second calendar
21 quarters of 2021 necessary to meet the
22 non-Federal share contribution require-
23 ment of any public assistance that is pro-
24 vided under the Robert T. Stafford Dis-
25 aster Relief and Emergency Assistance Act

1 (42 U.S.C. 5121 et seq.) on the basis of a
2 disaster or emergency declaration under
3 such Act that—

4 “(I) is declared during the period
5 beginning on January 1, 2020, and
6 ending on the date of enactment of
7 this section; and

8 “(II) is not related to the
9 COVID–19 pandemic.

10 “(D) PUBLICATION OF FIRST QUARTER OF
11 2021 STATE AND LOCAL GOVERNMENT TAX REV-
12 ENUE.—Notwithstanding the Bureau of the
13 Census release schedule for publishing the
14 Quarterly Summary of State and Local Govern-
15 ments Tax Revenue for each quarter of 2021,
16 the Bureau of the Census shall publish the
17 Quarterly Summary of State and Local Govern-
18 ments Tax Revenue for the first calendar quar-
19 ter of 2021 not later than June 1, 2021.

20 “(4) THIRD LOST REVENUE AMOUNT.—

21 “(A) IN GENERAL.—Subject to paragraph
22 (5), the third lost revenue amount determined
23 under this paragraph for a State described in
24 subsection (b)(1)(C) is the amount determined

1 for the State under subparagraph (B), as ad-
2 justed in accordance with subparagraph (C).

3 “(B) DETERMINATION OF LOST REV-
4 ENUE.—The amount determined for a State
5 under this subparagraph is the product of—

6 “(i) the amount by which—

7 “(I) the total amount of tax rev-
8 enue collected by the State in the sec-
9 ond calendar quarter of 2020 (as pub-
10 lished by the Bureau of the Census in
11 the Quarterly Summary of State and
12 Local Tax Revenue); exceeds

13 “(II) the total amount of tax rev-
14 enue collected by the State in the sec-
15 ond calendar quarter of 2021 (as so
16 published); and

17 “(ii) 1.48.

18 “(C) ADJUSTMENTS TO LOST REVENUE.—
19 The amount determined for a State under sub-
20 paragraph (B) shall be adjusted in the following
21 manner:

22 “(i) Such amount shall be reduced by
23 the amount of any reduction to State tax
24 revenue for the second calendar quarter of

1 2021 that the Secretary determines results
2 from the State—

3 “(I) having enacted on or after
4 March 1, 2020, a tax cut, rebate, de-
5 duction, or credit; or

6 “(II) reducing, delaying, or elimi-
7 nating (on or after such date) any fee
8 or other source of revenue.

9 “(ii) Such amount shall be increased
10 by the amount of any expenditures made
11 by the State during the second calendar
12 quarter of 2021 necessary to meet the non-
13 Federal share contribution requirement of
14 any public assistance that is provided
15 under the Robert T. Stafford Disaster Re-
16 lief and Emergency Assistance Act (42
17 U.S.C. 5121 et seq.) on the basis of a dis-
18 aster or emergency declaration under such
19 Act that—

20 “(I) is declared during the period
21 beginning on January 1, 2020, and
22 ending on the date of enactment of
23 this section; and

24 “(II) is not related to the
25 COVID–19 pandemic.

1 “(D) PUBLICATION OF SECOND QUARTER
2 OF 2021 STATE AND LOCAL GOVERNMENT TAX
3 REVENUE.—Notwithstanding the Bureau of the
4 Census release schedule for publishing the
5 Quarterly Summary of State and Local Govern-
6 ments Tax Revenue for each quarter of 2021,
7 the Bureau of the Census shall publish the
8 Quarterly Summary of State and Local Govern-
9 ments Tax Revenue for the second calendar
10 quarter of 2021 not later than September 1,
11 2021.

12 “(5) MINIMUM PAYMENT AMOUNTS; PAYMENT
13 CAPS; PAYMENT ADJUSTMENTS.—

14 “(A) MINIMUM PAYMENT AMOUNTS.—
15 Each of the amounts determined for a State de-
16 scribed in subsection (b)(1)(C) under each of
17 paragraphs (1) and (2) shall not be less than
18 \$250,000,000.

19 “(B) PAYMENT CAPS.—

20 “(i) CAP ON FIRST 3 PAYMENTS.—
21 The total amount of payments made to
22 States under subsection (b)(1)(B) and
23 paragraphs (1), (2), and (3) of this sub-
24 section shall not exceed \$142,000,000,000.

1 “(ii) CAP ON TOTAL PAYMENTS.—The
2 total amount of payments made to States
3 under this subsection and subsection
4 (b)(1)(B) shall not exceed
5 \$152,000,000,000.

6 “(C) PRO RATA ADJUSTMENTS.—The Sec-
7 retary shall adjust on a pro rata basis the
8 amounts determined for each State described in
9 subsection (b)(1)(C) under—

10 “(i) paragraphs (1) and (2) to the ex-
11 tent necessary to comply with the require-
12 ment of subparagraph (A);

13 “(ii) paragraphs (1), (2), and (3) to
14 the extent necessary to comply with the re-
15 quirement of subparagraph (B)(i); and

16 “(iii) paragraphs (1), (2), (3), and (4)
17 to the extent necessary to comply with the
18 requirement of subparagraph (B)(ii).

19 “(6) DIRECT PAYMENTS TO UNITS OF LOCAL
20 GOVERNMENT.—

21 “(A) IN GENERAL.—Not later than 30
22 days after a State described in subparagraph
23 (C) of subsection (b)(1) receives a payment de-
24 scribed in such subsection, from the amount re-
25 served by the State under subsection

1 (b)(2)(A)(i) from such payment, the State shall
2 make payments to units of local government in
3 the State in amounts to be determined under a
4 formula, to be established by the Governor of
5 the State subject to the approval of the Sec-
6 retary, that meets the requirements of subpara-
7 graph (B).

8 “(B) FORMULA FOR ALLOCATING PAY-
9 MENTS TO LOCAL GOVERNMENTS.—The re-
10 quirements of this subparagraph with respect to
11 a formula for determining payment amounts for
12 units of local government in a State under this
13 paragraph are the following:

14 “(i) That the formula—

15 “(I) determines the amount to be
16 paid to a unit of local government on
17 the basis of—

18 “(aa) the unit of local gov-
19 ernment’s population relative to
20 the population of all units of
21 local government in the State;

22 “(bb) the amount of revenue
23 lost by the unit of local govern-
24 ment as a result of the COVID-
25 19 pandemic (as determined by

1 the Governor of the State) rel-
2 ative to the total amount of such
3 lost revenue for all units of local
4 government in the State (as so
5 determined); or

6 “(cc) a combination of the
7 factors described in items (aa)
8 and (bb); and

9 “(II) is applied uniformly among
10 all units of local government across
11 the State.

12 “(ii) Under the formula—

13 “(I) 50 percent of the amount re-
14 served by the State under paragraph
15 (2)(A)(i) of subsection (b) from each
16 payment received by the State under
17 paragraph (1)(A) of such subsection
18 is paid to units of local government
19 that are municipalities; and

20 “(II) 50 percent of the amount
21 so reserved by the State from each
22 such payment is paid to units of local
23 government that are counties.

24 “(7) PAYMENTS TO TRIBAL ENTITIES.—

1 owned entity of such a government) or
2 a Tribal organization;

3 “(ii) the Secretary shall only take the
4 relative populations of Tribal entities into
5 account in determining amounts to be paid
6 under this section to Tribal entities that
7 are Tribal governments and Native cor-
8 porations; and

9 “(iii) if the Secretary allocates fund-
10 ing using total American Indian or Alas-
11 kan Native (AIAN) persons data collected
12 in the U.S. Decennial Census, and a Tribal
13 government (as so defined) would other-
14 wise be assigned zero AIAN persons due to
15 the Tribal government lacking an Indian
16 Housing Block Grant formula area, the
17 Secretary shall be authorized to allocate
18 this funding to such Tribal governments
19 using an alternative equitable method, as
20 determined by the Secretary, including by
21 providing such Tribal governments min-
22 imum funding.

23 “(8) DATA.—For purposes of this subsection,
24 the population of States and units of local govern-
25 ments shall be determined based on the most recent

1 year for which data are available from the Bureau
2 of the Census as of March 27, 2020.

3 “(d) USE OF FUNDS.—

4 “(1) IN GENERAL.—Amounts received by a
5 State, unit of local government, Tribal entity, or a
6 special-purpose public or multi-State entity described
7 in subsection (b)(2)(A)(ii) under this section shall be
8 used—

9 “(A) to cover only those costs of the State,
10 unit of local government, Tribal entity, or spe-
11 cial-purpose public or multi-State entity that—

12 “(i) are expenditures incurred due to
13 the public health emergency with respect to
14 the Coronavirus Disease 2019 (COVID-
15 19) (including expenditures necessary to
16 meet the non-Federal share contribution
17 requirement of any public assistance that
18 is provided under the Robert T. Stafford
19 Disaster Relief and Emergency Assistance
20 Act (42 U.S.C. 5121 et seq.) on the basis
21 of a disaster or emergency declaration
22 under such Act that is declared in calendar
23 year 2020);

24 “(ii) were not accounted for in the
25 budget most recently approved as of March

1 27, 2020, for the State, unit of local gov-
2 ernment, Tribal entity, or special-purpose
3 public or multi-State entity; and

4 “(iii) were incurred during the period
5 that begins on March 1, 2020, and ends on
6 December 31, 2021;

7 “(B) in the case of a State, unit of local
8 government, special-purpose public or multi-
9 State entity, or a Tribal entity that is a Tribal
10 government (or a tribally-owned entity of such
11 Tribal government) or a Tribal organization,
12 for expenditures in calendar year 2020 or 2021
13 that the State, unit of local government, Tribal
14 entity, or special-purpose public or multi-State
15 entity would otherwise be unable to make be-
16 cause of decreased or delayed revenues; or

17 “(C) for expenditures associated with the
18 distribution, storage, or administration of a
19 COVID–19 vaccine licensed under section 351
20 of the Public Health Service Act or authorized
21 under section 564 of the Federal Food, Drug,
22 and Cosmetic Act.

23 “(2) LIMITATION ON DEPOSITS INTO STATE
24 PENSION FUND; PROHIBITION ON STATE CHANGES

1 TO PENSION PROGRAMS THAT WOULD INCREASE
2 PENSION OBLIGATION PAYMENTS.—

3 “(A) LIMITATION ON DEPOSITS INTO
4 STATE PENSION FUNDS.—No State or unit of
5 local government may deposit funds paid under
6 this section into any State or local government
7 pension fund.

8 “(B) PROHIBITION ON STATE CHANGES TO
9 PENSION PROGRAMS THAT WOULD INCREASE
10 PENSION OBLIGATION PAYMENTS.—

11 “(i) IN GENERAL.—As a condition of
12 receiving funds under this section, a State
13 or unit of local government shall not make
14 any change to a pension program of the
15 State or unit of local government that
16 would result in the total pension obligation
17 payments of such program for State fiscal
18 year 2021 or 2022 exceeding the total pen-
19 sion obligation payments of such program
20 for State fiscal year 2019, as adjusted
21 under clause (ii).

22 “(ii) ADJUSTMENT.—For purposes of
23 applying clause (i), the total pension obli-
24 gation payments of a State for State fiscal
25 year 2019 with respect to a pension pro-

1 gram of the State or unit of local govern-
2 ment shall be adjusted in each of State fis-
3 cal years 2021 and 2022 in a manner that
4 takes into account—

5 “(I) any cost-of-living adjustment
6 or other adjustment to benefit
7 amounts under such program that
8 took effect after State fiscal year
9 2019, provided that such adjustment
10 is not the result of a change to the
11 program that was made after the date
12 of enactment of this section; and

13 “(II) any change to the total
14 number of individuals receiving bene-
15 fits under such program from State
16 fiscal year 2019, provided that such
17 change is not the result of any change
18 to the eligibility requirements or other
19 terms of the program that was made
20 after the date of enactment of this
21 section.

22 “(e) FAIR AND EQUITABLE BUDGETING REQUIRE-
23 MENT.—As a condition for receiving funds under this sec-
24 tion, each State, to the extent allowable by State law, shall
25 agree—

1 “(1) to base any cut to funding for units of
2 local government under the State budget on emer-
3 gency need, and shall ensure that such cuts are bal-
4 anced to ensure all units of local government are
5 treated fairly;

6 “(2) to primarily use economic conditions,
7 budgetary shortfall, and revenue loss for each re-
8 spective county and municipality, as compared to
9 State fiscal year 2019 levels, to determine whether
10 any such cut is balanced and appropriate; and

11 “(3) that the State legislative body shall have
12 the authority to disapprove such a cut if such body
13 determines that the cut would violate a condition of
14 paragraph (1) or (2).

15 “(f) APPLICATION OF OTHER PROVISIONS.—

16 “(1) DEFINITIONS.—

17 “(A) IN GENERAL.—Except as otherwise
18 provided in this paragraph, the terms used in
19 this section have the meanings given those
20 terms in subsection (g) of section 601.

21 “(B) OTHER TERMS.—In this section:

22 “(i) COUNTY.—The term ‘county’
23 means a county, parish, or other equivalent
24 county division (as defined by the Bureau
25 of the Census).

1 “(ii) NATIVE CORPORATION.—The
2 term ‘Native Corporation’ means a Native
3 Corporation (as such term is defined in
4 section 3 of the Alaska Native Claims Set-
5 tlement Act (43 U.S.C. 1602)) that serves
6 an Alaska Native community that is not
7 served by a Tribal government.

8 “(iii) TRIBAL ENTITY.—The term
9 ‘Tribal entity’ means any of the following:

10 “(I) A Tribal government (as de-
11 fined in clause (iv)).

12 “(II) A Tribal organization (as
13 defined in clause (v)).

14 “(III) A Native Corporation (as
15 defined in clause (ii)).

16 “(iv) TRIBAL GOVERNMENT.—The
17 term ‘Tribal government’ means the gov-
18 erning body of any Indian or Alaska Na-
19 tive tribe, band, nation, pueblo, village,
20 community, component band, or compo-
21 nent reservation, individually identified (in-
22 cluding parenthetically) in the list pub-
23 lished most recently as of the date of en-
24 actment of this section pursuant to section

1 104 of the Federally Recognized Indian
2 Tribe List Act of 1994 (25 U.S.C. 5131).

3 “(v) TRIBAL ORGANIZATION.—The
4 term ‘Tribal organization’ has the meaning
5 given such term in section 4 of the Indian
6 Self-Determination and Education Assist-
7 ance Act (25 U.S.C. 5304)).

8 “(vi) UNIT OF LOCAL GOVERN-
9 MENT.—The term ‘unit of local govern-
10 ment’ means a county, municipality, town,
11 township, village, borough, or other unit of
12 general government below the State level.

13 “(2) LOCAL GOVERNMENT CERTIFICATION RE-
14 QUIREMENT.—The certification requirement of sub-
15 section (e) of section 601 shall apply to a unit of
16 local government receiving a payment under this sec-
17 tion in the same manner as such requirement applies
18 to a unit of local government receiving a payment
19 under that section, except that a unit of local gov-
20 ernment shall not be required to submit a certifi-
21 cation prior to receiving a payment from a State
22 from each payment received by the State under sub-
23 section (b)(1)(A).

24 “(3) OVERSIGHT.—The amounts paid under
25 this section—

1 “(A) shall be subject to the oversight re-
2 quirements of subsection (f) of section 601 in
3 the same manner as such requirements apply to
4 the amounts paid under that section, and the
5 recoupment authority under paragraph (2) of
6 that subsection shall apply to oversight of com-
7 pliance with the use of funds requirements of
8 subsection (d) of this section and the fair and
9 equitable budgeting requirements of subsection
10 (e) of this section; and

11 “(B) shall be distributed in accordance
12 with all applicable Federal laws.

13 “(4) IG FUNDING AUTHORITY.—Notwith-
14 standing section 601(f)(3), the Inspector General of
15 the Department of the Treasury may use the
16 amounts appropriated under that section to carry
17 out oversight and recoupment activities under this
18 section in addition to the oversight and recoupment
19 activities carried out under section 601(f).”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Section 601(d) of the Social Security Act
22 (42 U.S.C. 801(d)) is amended—

23 (A) by redesignating paragraphs (1)
24 through (3) as subparagraphs (A) through (C),

1 respectively, and adjusting the margins accord-
2 ingly;

3 (B) in subparagraph (A) (as so redesign-
4 nated)—

5 (i) by striking “necessary expendi-
6 tures” and inserting “expenditures”; and

7 (ii) by inserting “(including expendi-
8 tures necessary to meet the non-Federal
9 share contribution requirement of any pub-
10 lic assistance that is provided under the
11 Robert T. Stafford Disaster Relief and
12 Emergency Assistance Act (42 U.S.C.
13 5121 et seq.) on the basis of a disaster or
14 emergency declaration under such Act that
15 is declared in calendar year 2020)” before
16 the semicolon;

17 (C) in subparagraph (C) (as so redesign-
18 nated)—

19 (i) by striking “December 30, 2020”
20 and inserting “December 31, 2021”; and

21 (ii) by striking the period at the end
22 and inserting a semicolon;

23 (D) by striking “under this section to
24 cover only” and inserting “under this section—
25 “(1) to cover only”; and

1 (E) by adding at the end the following new
2 paragraphs:

3 “(2) for expenditures in calendar year 2020 or
4 2021 that the State, Tribal government (or a trib-
5 ally-owned entity of such Tribal government), or
6 unit of local government would otherwise be unable
7 to make because of decreased or delayed revenues;
8 or

9 “(3) for expenditures associated with the dis-
10 tribution, storage, or administration of a COVID–19
11 vaccine licensed under section 351 of the Public
12 Health Service Act or authorized under section 564
13 of the Federal Food, Drug, and Cosmetic Act.”.

14 (2) Section 5001(b) of the Coronavirus Aid, Re-
15 lief, and Economic Security Act (Public Law 116–
16 136) is amended by striking “for fiscal year 2020
17 under section 601(a)(1) of the Social Security Act
18 (as added by subsection (a))” and inserting “under
19 title VI of the Social Security Act”.

20 **TITLE II—BACK TO WORK ACT**

21 **SEC. 201. SHORT TITLE.**

22 This title may be cited as the “Back to Work Act”.

23 **SEC. 202. FINDINGS AND PURPOSES.**

24 (a) FINDINGS.—Congress finds the following:

1 (1) The SARS–CoV–2 virus that originated in
2 China and causes the disease COVID–19 has caused
3 untold misery and devastation throughout the world,
4 including in the United States.

5 (2) For months, frontline health care workers
6 and health care facilities have fought the virus with
7 courage and resolve. They did so at first with very
8 little information about how to treat the virus and
9 developed strategies to save lives of the people of the
10 United States in real time. They risked their per-
11 sonal health and wellbeing to protect and treat their
12 patients.

13 (3) Businesses in the United States kicked into
14 action to produce and procure personal protective
15 equipment, such as masks, gloves, face shields, and
16 hand sanitizer, and other necessary medical supplies,
17 such as ventilators, at unprecedented rates.

18 (4) To halt the spread of the disease, State and
19 local governments took drastic measures. They shut
20 down small and large businesses, schools, colleges
21 and universities, religious, philanthropic and other
22 nonprofit institutions, and local government agen-
23 cies. They ordered people to remain in their homes.

24 (5) This standstill was needed to slow the
25 spread of the virus. But it devastated the economy

1 of the United States. The sum of hundreds of local-
2 level and State-level decisions to close nearly every
3 space in which people might gather brought inter-
4 state commerce nearly to a halt.

5 (6) This halt led to the loss of millions of jobs.
6 These lost jobs were not a natural consequence of
7 the economic environment, but rather the result of
8 a drastic, though temporary, response to the unprec-
9 edented nature of this global pandemic.

10 (7) Congress passed a series of statutes to ad-
11 dress the health care and economic crises—the
12 Coronavirus Preparedness and Response Supple-
13 mental Appropriations Act, 2020 (Public Law 116–
14 123; 134 Stat. 146), the Families First Coronavirus
15 Response Act (Public Law 116–127; 134 Stat. 178),
16 the Coronavirus Aid, Relief, and Economic Security
17 Act or the CARES Act (Public Law 116–136), and
18 the Paycheck Protection Program and Health Care
19 Enhancement Act (Public Law 116–139; 134 Stat.
20 620). In these laws Congress exercised its power
21 under the Commerce and Spending Clauses of the
22 Constitution of the United States to direct trillions
23 of taxpayer dollars toward efforts to aid workers,
24 businesses, State and local governments, health care
25 workers, and patients.

1 (8) This legislation provided short-term insula-
2 tion from the worst of the economic storm, but these
3 laws alone cannot protect the United States from
4 further devastation. Only reopening the economy so
5 that workers can get back to work and students can
6 get back to school can accomplish that goal.

7 (9) The Constitution of the United States spe-
8 cifically enumerates the legislative powers of Con-
9 gress. One of those powers is the regulation of inter-
10 state commerce. The Government is not a substitute
11 for the economy, but it has the authority and the
12 duty to act when interstate commerce is threatened
13 and damaged. As applied to the present crisis, Con-
14 gress can deploy its power over interstate commerce
15 to promote a prudent reopening of businesses and
16 other organizations that serve as the foundation and
17 backbone of the national economy and of commerce
18 among the States. These include small and large
19 businesses, schools (which are substantial employers
20 in their own right and provide necessary services to
21 enable parents and other caregivers to return to
22 work), colleges and universities (which are substan-
23 tial employers and supply the interstate market for
24 higher-education services), religious, philanthropic
25 and other nonprofit institutions (which are substan-

1 tial employers and provide necessary services to their
2 communities), and local government agencies.

3 (10) Congress must also ensure that the Na-
4 tion's health care workers and health care facilities
5 are able to act fully to defeat the virus.

6 (11) Congress must also safeguard its invest-
7 ment of taxpayer dollars under the CARES Act and
8 other coronavirus legislation. Congress must ensure
9 that those funds are used to help businesses and
10 workers survive and recover from the economic cri-
11 sis, and to help health care workers and health care
12 facilities defeat the virus.

13 (12) One of the chief impediments to the con-
14 tinued flow of interstate commerce as this public-
15 health crisis has unfolded is the risk of litigation.
16 Small and large businesses, schools, colleges and
17 universities, religious, philanthropic and other non-
18 profit institutions, and local government agencies
19 confront the risk of a tidal wave of lawsuits accusing
20 them of exposing employees, customers, students,
21 and worshipers to coronavirus. Health care workers
22 face the threat of lawsuits arising from their efforts
23 to fight the virus.

24 (13) They confront this litigation risk even as
25 they work tirelessly to comply with the coronavirus

1 guidance, rules, and regulations issued by local gov-
2 ernments, State governments, and the Federal Gov-
3 ernment. They confront this risk notwithstanding
4 equipment and staffing shortages. And they confront
5 this risk while also grappling with constantly chang-
6 ing information on how best to protect employees,
7 customers, students, and worshipers from the virus,
8 and how best to treat it.

9 (14) These lawsuits pose a substantial risk to
10 interstate commerce because they threaten to keep
11 small and large businesses, schools, colleges and uni-
12 versities, religious, philanthropic and other nonprofit
13 institutions, and local government agencies from re-
14 opening for fear of expensive litigation that might
15 prove to be meritless. These lawsuits further threat-
16 en to undermine the Nation's fight against the virus
17 by exposing our health care workers and health care
18 facilities to liability for difficult medical decisions
19 they have made under trying and uncertain cir-
20 cumstances.

21 (15) These lawsuits also risk diverting taxpayer
22 money provided under the CARES Act and other
23 coronavirus legislation from its intended purposes.

24 (16) This risk is not purely local. It is nec-
25 essarily national in scale. A patchwork of local and

1 State rules governing liability in coronavirus-related
2 lawsuits creates tremendous unpredictability for ev-
3 eryone participating in interstate commerce and acts
4 as a significant drag on national recovery. The ag-
5 gregation of each individual potential liability risk
6 poses a substantial and unprecedented threat to
7 interstate commerce.

8 (17) The accumulated economic risks for these
9 potential defendants directly and substantially af-
10 fects interstate commerce. Individuals and entities
11 potentially subject to coronavirus-related liability will
12 structure their decisionmaking to avoid that liability.
13 Small and large businesses, schools, colleges and
14 universities, religious, philanthropic and other non-
15 profit institutions, and local government agencies
16 may decline to reopen because of the risk of litiga-
17 tion. They may limit their output or engagement
18 with customers and communities to avoid the risk of
19 litigation. These individual economic decisions sub-
20 stantially affect interstate commerce because, as a
21 whole, they will prevent the free and fair exchange
22 of goods and services across State lines. Such eco-
23 nomic activity that, individually and in the aggre-
24 gate, substantially affects interstate commerce is

1 precisely the sort of conduct that should be subject
2 to congressional regulation.

3 (18) Lawsuits against health care workers and
4 facilities pose a similarly dangerous risk to interstate
5 commerce. Interstate commerce will not truly re-
6 bound from this crisis until the virus is defeated,
7 and that will not happen unless health care workers
8 and facilities are free to combat vigorously the virus
9 and treat patients with coronavirus and those other-
10 wise impacted by the response to coronavirus.

11 (19) Subjecting health care workers and facili-
12 ties to onerous litigation even as they have done
13 their level best to combat a virus about which very
14 little was known when it arrived in the United
15 States would divert important health care resources
16 from hospitals and providers to courtrooms.

17 (20) Such a diversion would substantially affect
18 interstate commerce by degrading the national ca-
19 pacity for combating the virus and saving patients,
20 thereby substantially elongating the period before
21 interstate commerce could fully re-engage.

22 (21) Congress also has the authority to deter-
23 mine the jurisdiction of the courts of the United
24 States, to set the standards for causes of action they
25 can hear, and to establish the rules by which those

1 causes of action should proceed. Congress therefore
2 must act to set rules governing liability in
3 coronavirus-related lawsuits.

4 (22) These rules necessarily must be temporary
5 and carefully tailored to the interstate crisis caused
6 by the coronavirus pandemic. They must extend no
7 further than necessary to meet this uniquely na-
8 tional crisis for which a patchwork of State and local
9 tort laws are ill-suited.

10 (23) Because of the national scope of the eco-
11 nomic and health care dangers posed by the risks of
12 coronavirus-related lawsuits, establishing temporary
13 rules governing liability for certain coronavirus-re-
14 lated tort claims is a necessary and proper means of
15 carrying into execution Congress's power to regulate
16 commerce among the several States.

17 (24) Because Congress must safeguard the in-
18 vestment of taxpayer dollars it made in the CARES
19 Act and other coronavirus legislation, and ensure
20 that they are used for their intended purposes and
21 not diverted for other purposes, establishing tem-
22 porary rules governing liability for certain
23 coronavirus-related tort claims is a necessary and
24 proper means of carrying into execution Congress's

1 power to provide for the general welfare of the
2 United States.

3 (b) PURPOSES.—Pursuant to the powers delegated to
4 Congress by article I, section 8, clauses 1, 3, 9, and 18,
5 and article III, section 2, clause 1 of the Constitution of
6 the United States, the purposes of this title are to—

7 (1) establish necessary and consistent standards
8 for litigating certain claims specific to the unique
9 coronavirus pandemic;

10 (2) prevent the overburdening of the court sys-
11 tems with undue litigation;

12 (3) encourage planning, care, and appropriate
13 risk management by small and large businesses,
14 schools, colleges and universities, religious, philan-
15 thropic and other nonprofit institutions, local gov-
16 ernment agencies, and health care providers;

17 (4) ensure that the Nation’s recovery from the
18 coronavirus economic crisis is not burdened or
19 slowed by the substantial risk of litigation;

20 (5) prevent litigation brought to extract settle-
21 ments, rather than vindicate meritorious claims;

22 (6) protect interstate commerce from the bur-
23 dens of potentially meritless litigation;

24 (7) ensure the economic recovery proceeds with-
25 out artificial and unnecessary delay;

1 (8) protect the interests of the taxpayers by en-
2 suring that emergency taxpayer support continues to
3 aid businesses, workers, and health care providers;
4 and

5 (9) protect the highest and best ideals of the
6 national economy, so businesses can produce and
7 serve their customers, workers can work, teachers
8 can teach, students can learn, and believers can wor-
9 ship.

10 **SEC. 203. DEFINITIONS.**

11 In this title:

12 (1) **APPLICABLE GOVERNMENT STANDARDS**
13 **AND GUIDANCE.**—The term “applicable government
14 standards and guidance” means—

15 (A) any mandatory standards or regula-
16 tions specifically concerning the prevention or
17 mitigation of the transmission of coronavirus
18 issued by the Federal Government, or a State
19 or local government with jurisdiction over an in-
20 dividual or entity, whether provided by execu-
21 tive, judicial, or legislative order; and

22 (B) with respect to an individual or entity
23 that, at the time of the actual, alleged, feared,
24 or potential for exposure to coronavirus is not
25 subject to any mandatory standards or regula-

1 tions described in subparagraph (A), any guid-
2 ance, standards, or regulations specifically con-
3 cerning the prevention or mitigation of the
4 transmission of coronavirus issued by the Fed-
5 eral Government, or a State or local govern-
6 ment with jurisdiction over the individual or en-
7 tity.

8 (2) **BUSINESSES, SERVICES, ACTIVITIES, OR AC-**
9 **COMMODATIONS.**—The term “businesses, services,
10 activities, or accommodations” means any act by an
11 individual or entity, irrespective of whether the act
12 is carried on for profit, that is interstate or foreign
13 commerce, that involves persons or things in inter-
14 state or foreign commerce, that involves the channels
15 or instrumentalities of interstate or foreign com-
16 merce, that substantially affects interstate or foreign
17 commerce, or that is otherwise an act subject to reg-
18 ulation by Congress as necessary and proper to
19 carry into execution Congress’s powers to regulate
20 interstate or foreign commerce or to spend funds for
21 the general welfare.

22 (3) **CORONAVIRUS.**—The term “coronavirus”
23 means any disease, health condition, or threat of
24 harm caused by the SARS-CoV-2 virus or a virus
25 mutating therefrom.

1 (4) CORONAVIRUS EXPOSURE ACTION.—

2 (A) IN GENERAL.—The term “coronavirus
3 exposure action” means a civil action—

4 (i) brought by a person who suffered
5 personal injury or is at risk of suffering
6 personal injury, or a representative of a
7 person who suffered personal injury or is
8 at risk of suffering personal injury;

9 (ii) brought against an individual or
10 entity engaged in businesses, services, ac-
11 tivities, or accommodations; and

12 (iii) alleging that an actual, alleged,
13 feared, or potential for exposure to
14 coronavirus caused the personal injury or
15 risk of personal injury, that—

16 (I) occurred in the course of the
17 businesses, services, activities, or ac-
18 commodated of the individual or en-
19 tity; and

20 (II) occurred—

21 (aa) on or after December 1,
22 2019; and

23 (bb) before the later of—

1 (AA) the date that is
2 12 months after the date of
3 enactment of this Act; or

4 (BB) the date on which
5 there is no declaration by
6 the Secretary of Health and
7 Human Services under sec-
8 tion 319F-3(b) of the Pub-
9 lic Health Service Act (42
10 U.S.C. 247d-6d(b)) (relat-
11 ing to medical counter-
12 measures) that is in effect
13 with respect to coronavirus,
14 including the Declaration
15 Under the Public Readiness
16 and Emergency Prepared-
17 ness Act for Medical Coun-
18 termeasures Against
19 COVID-19 (85 Fed. Reg.
20 15198) issued by the Sec-
21 retary of Health and Human
22 Services on March 17, 2020.

23 (B) EXCLUSIONS.—The term “coronavirus
24 exposure action” does not include—

1 (i) a criminal, civil, or administrative
2 enforcement action brought by the Federal
3 Government or any State, local, or Tribal
4 government; or

5 (ii) a claim alleging intentional dis-
6 crimination on the basis of race, color, na-
7 tional origin, religion, sex (including preg-
8 nancy), disability, genetic information, or
9 age.

10 (5) CORONAVIRUS-RELATED ACTION.—The
11 term “coronavirus-related action” means a
12 coronavirus exposure action or a coronavirus-related
13 medical liability action.

14 (6) CORONAVIRUS-RELATED HEALTH CARE
15 SERVICES.—The term “coronavirus-related health
16 care services” means services provided by a health
17 care provider, regardless of the location where the
18 services are provided, that relate to—

19 (A) the diagnosis, prevention, or treatment
20 of coronavirus;

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

24 (C) the care of any individual who is ad-
25 mitted to, presents to, receives services from, or

1 resides at, a health care provider for any pur-
2 pose during the period of a Federal emergency
3 declaration concerning coronavirus, if such pro-
4 vider’s decisions or activities with respect to
5 such individual are impacted as a result of
6 coronavirus.

7 (7) CORONAVIRUS-RELATED MEDICAL LIABIL-
8 ITY ACTION.—

9 (A) IN GENERAL.—The term “coronavirus-
10 related medical liability action” means a civil
11 action—

12 (i) brought by a person who suffered
13 personal injury, or a representative of a
14 person who suffered personal injury;

15 (ii) brought against a health care pro-
16 vider; and

17 (iii) alleging any harm, damage,
18 breach, or tort resulting in the personal in-
19 jury alleged to have been caused by, be
20 arising out of, or be related to a health
21 care provider’s act or omission in the
22 course of arranging for or providing
23 coronavirus-related health care services
24 that occurred—

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1 (I) on or after December 1,
2 2019; and

3 (II) before the later of—

4 (aa) the date that is 12
5 months after the date of enact-
6 ment of this Act; or

7 (bb) the date on which there
8 is no declaration by the Secretary
9 of Health and Human Services
10 under section 319F–3(b) of the
11 Public Health Service Act (42
12 U.S.C. 247d–6d(b)) (relating to
13 medical countermeasures) that is
14 in effect with respect to
15 coronavirus, including the Dec-
16 laration Under the Public Readiness
17 and Emergency Preparedness
18 Act for Medical Counter-
19 measures Against COVID–19 (85
20 Fed. Reg. 15198) issued by the
21 Secretary of Health and Human
22 Services on March 17, 2020.

23 (B) EXCLUSIONS.—The term
24 “coronavirus-related medical liability action”
25 does not include—

1 (i) a criminal, civil, or administrative
2 enforcement action brought by the Federal
3 Government or any State, local, or Tribal
4 government; or

5 (ii) a claim alleging intentional dis-
6 crimination on the basis of race, color, na-
7 tional origin, religion, sex (including preg-
8 nancy), disability, genetic information, or
9 age.

10 (8) EMPLOYER.—The term “employer”—

11 (A) means any person serving as an em-
12 ployer or acting directly in the interest of an
13 employer in relation to an employee;

14 (B) includes a public agency; and

15 (C) does not include any labor organization
16 (other than when acting as an employer) or any
17 person acting in the capacity of officer or agent
18 of such labor organization.

19 (9) GOVERNMENT.—The term “government”
20 means an agency, instrumentality, or other entity of
21 the Federal Government, a State government (in-
22 cluding multijurisdictional agencies, instrumental-
23 ities, and entities), a local government, or a Tribal
24 government.

1 (10) GROSS NEGLIGENCE.—The term “gross
2 negligence” means a conscious, voluntary act or
3 omission in reckless disregard of—

4 (A) a legal duty;

5 (B) the consequences to another party; and

6 (C) applicable government standards and
7 guidance.

8 (11) HARM.—The term “harm” includes—

9 (A) physical and nonphysical contact that
10 results in personal injury to an individual; and

11 (B) economic and noneconomic losses.

12 (12) HEALTH CARE PROVIDER.—

13 (A) IN GENERAL.—The term “health care
14 provider” means any person, including an
15 agent, volunteer (subject to subparagraph (C)),
16 contractor, employee, or other entity, who is—

17 (i) required by Federal or State law to
18 be licensed, registered, or certified to pro-
19 vide health care and is so licensed, reg-
20 istered, or certified (or is exempt from any
21 such requirement);

22 (ii) otherwise authorized by Federal or
23 State law to provide care (including serv-
24 ices and supports furnished in a home or
25 community-based residential setting under

1 the State Medicaid program or a waiver of
2 that program); or

3 (iii) considered under applicable Fed-
4 eral or State law to be a health care pro-
5 vider, health care professional, health care
6 institution, or health care facility.

7 (B) INCLUSION OF ADMINISTRATORS, SU-
8 PERVISORS, ETC.—The term “health care pro-
9 vider” includes a health care facility adminis-
10 trator, executive, supervisor, board member or
11 trustee, or another individual responsible for di-
12 recting, supervising, or monitoring the provision
13 of coronavirus-related health care services in a
14 comparable role.

15 (C) INCLUSION OF VOLUNTEERS.—The
16 term “health care provider” includes volunteers
17 that meet the following criteria:

18 (i) The volunteer is a health care pro-
19 fessional providing coronavirus-related
20 health care services.

21 (ii) The act or omission by the volun-
22 teer occurs—

23 (I) in the course of providing
24 health care services;

1 (II) in the health care profes-
2 sional's capacity as a volunteer;

3 (III) in the course of providing
4 health care services that—

5 (aa) are within the scope of
6 the license, registration, or cer-
7 tification of the volunteer, as de-
8 fined by the State of licensure,
9 registration, or certification; and

10 (bb) do not exceed the scope
11 of license, registration, or certifi-
12 cation of a substantially similar
13 health professional in the State
14 in which such act or omission oc-
15 curs; and

16 (IV) in a good-faith belief that
17 the individual being treated is in need
18 of health care services.

19 (13) INDIVIDUAL OR ENTITY.—The term “indi-
20 vidual or entity” means—

21 (A) any natural person, corporation, com-
22 pany, trade, business, firm, partnership, joint
23 stock company, vessel in rem, educational insti-
24 tution, labor organization, or similar organiza-
25 tion or group of organizations;

1 (B) any nonprofit organization, foundation,
2 society, or association organized for religious,
3 charitable, educational, or other purposes; or

4 (C) any State, Tribal, or local government.

5 (14) LOCAL GOVERNMENT.—The term “local
6 government” means any unit of government within
7 a State, including a—

8 (A) county;

9 (B) borough;

10 (C) municipality;

11 (D) city;

12 (E) town;

13 (F) township;

14 (G) parish;

15 (H) local public authority, including any
16 public housing agency under the United States
17 Housing Act of 1937 (42 U.S.C. 1437 et seq.);

18 (I) special district;

19 (J) school district;

20 (K) intrastate district;

21 (L) council of governments, whether or not
22 incorporated as a nonprofit corporation under
23 State law; and

24 (M) agency or instrumentality of—

1 (i) multiple units of local government
2 (including units of local government lo-
3 cated in different States); or

4 (ii) an intra-State unit of local gov-
5 ernment.

6 (15) MANDATORY.—The term “mandatory”,
7 with respect to applicable government standards and
8 guidance, means the standards or regulations are
9 themselves enforceable by the issuing government
10 through criminal, civil, or administrative action.

11 (16) PERSONAL INJURY.—The term “personal
12 injury” means—

13 (A) actual or potential physical injury to
14 an individual or death caused by a physical in-
15 jury; or

16 (B) mental suffering, emotional distress, or
17 similar injuries suffered by an individual in con-
18 nection with a physical injury.

19 (17) STATE.—The term “State”—

20 (A) means any State of the United States,
21 the District of Columbia, the Commonwealth of
22 Puerto Rico, the Northern Mariana Islands, the
23 United States Virgin Islands, Guam, American
24 Samoa, and any other territory or possession of

1 the United States, and any political subdivision
2 or instrumentality thereof; and

3 (B) includes any agency or instrumentality
4 of 2 or more of the entities described in sub-
5 paragraph (A).

6 (18) TRIBAL GOVERNMENT.—

7 (A) IN GENERAL.—The term “Tribal gov-
8 ernment” means the recognized governing body
9 of any Indian tribe included on the list pub-
10 lished by the Secretary of the Interior pursuant
11 to section 104(a) of the Federally Recognized
12 Indian Tribe List Act of 1994 (25 U.S.C.
13 5131(a)).

14 (B) INCLUSION.—The term “Tribal gov-
15 ernment” includes any subdivision (regardless
16 of the laws and regulations of the jurisdiction
17 in which the subdivision is organized or incor-
18 porated) of a governing body described in sub-
19 paragraph (A) that—

20 (i) is wholly owned by that governing
21 body; and

22 (ii) has been delegated the right to ex-
23 ercise 1 or more substantial governmental
24 functions of the governing body.

1 (19) WILLFUL MISCONDUCT.—The term “will-
2 ful misconduct” means an act or omission that is
3 taken—

4 (A) intentionally to achieve a wrongful
5 purpose;

6 (B) knowingly without legal or factual jus-
7 tification; and

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

11 **Subtitle A—Liability Relief**

12 **PART I—LIABILITY LIMITATIONS FOR INDIVID-** 13 **UALS AND ENTITIES ENGAGED IN BUSI-** 14 **NESSES, SERVICES, ACTIVITIES, OR ACCOM-** 15 **MODATIONS**

16 **SEC. 211. LIMITATIONS ON CAUSES OF ACTION.**

17 (a) MINIMUM STANDARD FOR CAUSE OF ACTION.—

18 (1) IN GENERAL.—A coronavirus exposure ac-
19 tion in which liability may be imposed under a
20 standard that is less stringent than a standard of
21 gross negligence may not be filed or maintained in
22 any Federal, State, or Tribal court.

23 (2) APPLICATION.—Paragraph (1) shall apply
24 to—

1 (A) any cause of action that is a
2 coronavirus exposure action that was filed be-
3 fore the date of enactment of this Act and that
4 is pending on such date of enactment; and

5 (B) any coronavirus exposure action filed
6 on or after such date of enactment.

7 (b) PRESERVATION OF LIABILITY LIMITS AND DE-
8 FENSES.—Except as otherwise explicitly provided in this
9 section, nothing in this section expands any liability other-
10 wise imposed or limits any defense otherwise available
11 under Federal, State, or Tribal law.

12 (c) IMMUNITY.—Nothing in this section abrogates the
13 immunity of any State, or waives the immunity of any
14 Tribal government. The limitations on liability provided
15 under this section shall control in any action properly filed
16 against a State or Tribal government pursuant to a duly
17 executed waiver by the State or Tribe of sovereign immu-
18 nity and stating claims within the scope of this section.

19 (d) PREEMPTION AND SUPERSEDURE.—

20 (1) IN GENERAL.—Except as described in para-
21 graphs (2) through (5), this section preempts and
22 supersedes any Federal, State, or Tribal law, includ-
23 ing statutes, regulations, rules, orders, proclama-
24 tions, or standards that are enacted, promulgated,
25 or established under common law, under which li-

1 ability may be imposed in a coronavirus exposure ac-
2 tion under a standard that is less stringent than a
3 standard of gross negligence.

4 (2) WORKERS' COMPENSATION LAWS NOT PRE-
5 EMPTED OR SUPERSEDED.—Nothing in this title
6 shall be construed to affect the applicability of any
7 State or Tribal law providing for a claim for benefits
8 under a workers' compensation scheme or program,
9 or to preempt or supersede an exclusive remedy
10 under such scheme or program.

11 (3) ENFORCEMENT ACTIONS.—Nothing in this
12 section shall be construed to impair, limit, or affect
13 the authority of the Federal Government, or of any
14 State, local, or Tribal government, to bring any
15 criminal, civil, or administrative enforcement action
16 against any individual or entity.

17 (4) DISCRIMINATION CLAIMS.—Nothing in this
18 section shall be construed to affect the applicability
19 of any provision of any Federal, State, or Tribal law
20 that creates a cause of action for intentional dis-
21 crimination on the basis of race, color, national ori-
22 gin, religion, sex (including pregnancy), disability,
23 genetic information, or age.

1 wise imposed or limits any defense otherwise available
2 under Federal, State, or Tribal law.

3 (c) IMMUNITY.—Nothing in this section abrogates the
4 immunity of any State, or waives the immunity of any
5 Tribal government. The limitations on liability provided
6 under this section shall control in any action properly filed
7 against a State or Tribal government pursuant to a duly
8 executed waiver by the State or Tribe of sovereign immu-
9 nity and stating claims within the scope of this section.

10 (d) PREEMPTION AND SUPERSEDURE.—

11 (1) IN GENERAL.—Except as described in para-
12 graphs (2) through (5), this section preempts and
13 supersedes any Federal, State, or Tribal law, includ-
14 ing statutes, regulations, rules, orders, proclama-
15 tions, or standards that are enacted, promulgated,
16 or established under common law, under which li-
17 ability may be imposed in a coronavirus-related med-
18 ical liability action under a standard that is less
19 stringent than a standard of gross negligence.

20 (2) ENFORCEMENT ACTIONS.—Nothing in this
21 section shall be construed to impair, limit, or affect
22 the authority of the Federal Government, or of any
23 State, local, or Tribal government to bring any
24 criminal, civil, or administrative enforcement action
25 against any health care provider.

1 (3) DISCRIMINATION CLAIMS.—Nothing in this
2 section shall be construed to affect the applicability
3 of any provision of any Federal, State, or Tribal law
4 that creates a cause of action for intentional dis-
5 crimination on the basis of race, color, national ori-
6 gin, religion, sex (including pregnancy), disability,
7 genetic information, or age.

8 (4) PUBLIC READINESS AND EMERGENCY PRE-
9 PAREDNESS.—Nothing in this section shall be con-
10 strued to affect the applicability of section 319F–3
11 of the Public Health Service Act (42 U.S.C. 247d–
12 6d) to any act or omission involving a covered coun-
13 termeasure, as defined in subsection (i) of such sec-
14 tion in arranging for or providing coronavirus-re-
15 lated health care services. Nothing in this section
16 shall be construed to affect the applicability of sec-
17 tion 319F–4 of the Public Health Service Act (42
18 U.S.C. 247d–6e).

19 (5) VACCINE INJURY.—To the extent that title
20 XXI of the Public Health Service Act (42 U.S.C.
21 300aa–1 et seq.) establishes a Federal rule applica-
22 ble to a civil action brought for a vaccine-related in-
23 jury or death, this section does not affect the appli-
24 cation of that rule to such an action.

1 **PART III—MISCELLANEOUS PROVISIONS**

2 **SEC. 231. JURISDICTION.**

3 (a) **JURISDICTION.**—The district courts of the United
4 States shall have concurrent original jurisdiction of any
5 coronavirus-related action.

6 (b) **REMOVAL.**—

7 (1) **IN GENERAL.**—A coronavirus-related action
8 of which the district courts of the United States
9 have original jurisdiction under subsection (a) that
10 is brought in a State or Tribal government court
11 may be removed to a district court of the United
12 States in accordance with section 1446 of title 28,
13 United States Code, except that—

14 (A) notwithstanding subsection (b)(2)(A)
15 of such section, such action may be removed by
16 any defendant without the consent of all de-
17 fendants; and

18 (B) notwithstanding subsection (b)(1) of
19 such section, for any cause of action that is a
20 coronavirus-related action that was filed in a
21 State court before the date of enactment of this
22 Act and that is pending in such court on such
23 date of enactment, and of which the district
24 courts of the United States have original juris-
25 diction under subsection (a), any defendant
26 may file a notice of removal of a civil action or

1 proceeding within 30 days of the date of enact-
2 ment of this Act.

3 (2) PROCEDURE AFTER REMOVAL.—Section
4 1447 of title 28, United States Code, shall apply to
5 any removal of a case under paragraph (1), except
6 that, notwithstanding subsection (d) of such section,
7 a court of appeals of the United States shall accept
8 an appeal from an order of a district court granting
9 or denying a motion to remand the case to the State
10 or Tribal government court from which it was re-
11 moved if application is made to the court of appeals
12 of the United States not later than 10 days after the
13 entry of the order.

14 **SEC. 232. PROCEDURES FOR SUIT IN DISTRICT COURTS OF**
15 **THE UNITED STATES.**

16 (a) PLEADING WITH PARTICULARITY.—In any
17 coronavirus-related action filed in or removed to a district
18 court of the United States—

19 (1) the complaint shall plead with particu-
20 larity—

21 (A) all factual matters asserted to estab-
22 lish that the individual or entity against which
23 a complaint is filed was a cause of the personal
24 injury alleged; and

1 (B) with respect to a coronavirus exposure
2 action, all places and persons visited by the per-
3 son on whose behalf the complaint was filed and
4 all persons who visited the residence of the per-
5 son on whose behalf the complaint was filed
6 during the 14-day-period before the alleged ex-
7 posure to the coronavirus, including—

8 (i) each individual or entity against
9 which a complaint is filed, along with the
10 factual basis for the belief that such indi-
11 vidual or entity was a cause of the per-
12 sonal injury alleged; and

13 (ii) every other person or place visited
14 by the person on whose behalf the com-
15 plaint was filed and every other person
16 who visited the residence of the person on
17 whose behalf the complaint was filed dur-
18 ing such period, along with the factual
19 basis for the belief that these persons and
20 places were not the cause of the personal
21 injury alleged; and

22 (2) the complaint shall plead with particularity
23 each alleged act or omission that resulted in per-
24 sonal injury, harm, damage, breach, or tort.

1 (b) APPLICATION WITH FEDERAL RULES OF CIVIL
2 PROCEDURE.—This section applies exclusively to any
3 coronavirus-related action filed in or removed to a district
4 court of the United States and, except to the extent that
5 this section requires additional information to be con-
6 tained in or attached to pleadings, nothing in this section
7 is intended to amend or otherwise supersede applicable
8 rules of Federal civil procedure.

9 **SEC. 233. PUBLIC READINESS AND EMERGENCY PREPARED-**
10 **NESS.**

11 Nothing in this subtitle shall be construed to affect
12 the applicability of section 319F–3 of the Public Health
13 Service Act (42 U.S.C. 247d–6d) to any act or omission
14 involving a covered countermeasure, as defined in sub-
15 section (i) of such section in arranging for or providing
16 coronavirus-related health care services. Nothing in this
17 subtitle shall be construed to affect the applicability of sec-
18 tion 319F–4 of the Public Health Service Act (42 U.S.C.
19 247d–6e).

20 **SEC. 234. DEMAND LETTERS; ENFORCEMENT BY THE AT-**
21 **TORNEY GENERAL.**

22 (a) IN GENERAL.—Whenever the Attorney General
23 has reasonable cause to believe that any person or group
24 of persons is engaged in a pattern or practice of transmit-
25 ting demands for remuneration in exchange for settling,

1 releasing, waiving, or otherwise not pursuing a claim that
2 is, or could be, brought as part of a coronavirus-related
3 action and that is meritless, the Attorney General may
4 commence a civil action in any appropriate district court
5 of the United States.

6 (b) RELIEF.—In a civil action under subsection (a),
7 the court may, to vindicate the public interest, assess a
8 civil penalty against the respondent in an amount not ex-
9 ceeding \$50,000 per transmitted demand for remunera-
10 tion in exchange for settling, releasing, waiving or other-
11 wise not pursuing a claim that is meritless.

12 (c) DISTRIBUTION OF CIVIL PENALTIES.—If the At-
13 torney General obtains civil penalties in accordance with
14 subsection (b), the Attorney General shall distribute the
15 proceeds equitably among those persons aggrieved by the
16 respondent’s pattern or practice of transmitting demands
17 for remuneration in exchange for settling, releasing,
18 waiving or otherwise not pursuing a claim that is
19 meritless.

20 **PART IV—RELATION TO LABOR AND**
21 **EMPLOYMENT LAWS**

22 **SEC. 241. DEFINITION.**

23 In this part, the term “covered period” means the
24 period—

25 (1) beginning on December 1, 2019; and

1 (2) ending on later of—

2 (A) the date that is 12 months after the
3 date of enactment of this Act; or

4 (B) the date on which there is no declara-
5 tion by the Secretary of Health and Human
6 Services under section 319F–3(b) of the Public
7 Health Service Act (42 U.S.C. 247d–6d(b)) (re-
8 lating to medical countermeasures) that is in ef-
9 fect with respect to coronavirus, including the
10 Declaration Under the Public Readiness and
11 Emergency Preparedness Act for Medical Coun-
12 termeasures Against COVID–19 (85 Fed. Reg.
13 15198) issued by the Secretary of Health and
14 Human Services on March 17, 2020.

15 **SEC. 242. LIMITATION ON VIOLATIONS UNDER SPECIFIC**
16 **LAWS.**

17 (a) IN GENERAL.—

18 (1) DEFINITION.—In this subsection, the term
19 “covered Federal employment law” means any of the
20 following:

21 (A) The Occupational Safety and Health
22 Act of 1970 (29 U.S.C. 651 et seq.) (including
23 any standard included in a State plan approved
24 under section 18 of such Act (29 U.S.C. 667)).

1 (B) The Fair Labor Standards Act of
2 1938 (29 U.S.C. 201 et seq.).

3 (C) The Age Discrimination in Employ-
4 ment Act of 1967 (29 U.S.C. 621 et seq.).

5 (D) The Worker Adjustment and Retraining
6 Notification Act (29 U.S.C. 2101 et seq.).

7 (E) Title VII of the Civil Rights Act of
8 1964 (42 U.S.C. 2000e et seq.).

9 (F) Title II of the Genetic Information
10 Nondiscrimination Act of 2008 (42 U.S.C.
11 2000ff et seq.).

12 (G) Title I of the Americans with Disabil-
13 ities Act of 1990 (42 U.S.C. 12111 et seq.).

14 (2) LIMITATION.—Notwithstanding any provi-
15 sion of a covered Federal employment law, in any
16 action, proceeding, or investigation resulting from or
17 related to an actual, alleged, feared, or potential for
18 exposure to coronavirus during the covered period,
19 or a change in working conditions during the cov-
20 ered period caused by a law, rule, declaration, or
21 order related to coronavirus, an employer shall not
22 be subject to any enforcement proceeding or liability
23 under any provision of a covered Federal employ-
24 ment law if the employer—

1 (A) was relying on and substantially fol-
2 lowing applicable government standards and
3 guidance;

4 (B) knew of the obligation under the rel-
5 evant provision; and

6 (C) attempted to satisfy any such obliga-
7 tion by—

8 (i) exploring options to comply with
9 such obligations and with the applicable
10 government standards and guidance (such
11 as through the use of virtual training or
12 remote communication strategies);

13 (ii) implementing interim alternative
14 protections or procedures; or

15 (iii) following guidance issued by the
16 relevant agency with jurisdiction with re-
17 spect to any exemptions from such obliga-
18 tion.

19 (b) PUBLIC ACCOMMODATION LAWS.—

20 (1) DEFINITIONS.—In this subsection—

21 (A) the term “auxiliary aids and services”
22 has the meaning given the term in section 4 of
23 the Americans with Disabilities Act of 1990 (42
24 U.S.C. 12103);

1 (B) the term “covered public accommoda-
2 tion law” means—

3 (i) title III of the Americans with Dis-
4 abilities Act of 1990 (42 U.S.C. 12181 et
5 seq.); or

6 (ii) title II of the Civil Rights Act of
7 1964 (42 U.S.C. 2000a et seq.); and

8 (C) the term “place of public accommoda-
9 tion” means—

10 (i) a place of public accommodation,
11 as defined in section 201 of the Civil
12 Rights Act of 1964 (42 U.S.C. 2000a); or

13 (ii) a public accommodation, as de-
14 fined in section 301 of the Americans with
15 Disabilities Act of 1990 (42 U.S.C.
16 12181).

17 (2) ACTIONS AND MEASURES DURING A PUBLIC
18 HEALTH EMERGENCY.—

19 (A) IN GENERAL.—Notwithstanding any
20 other provision of law or regulation, during the
21 covered period, no person who owns, leases (or
22 leases to), or operates a place of public accom-
23 modation shall be liable under, or found in vio-
24 lation of, any covered public accommodation law
25 for any action or measure taken regarding

1 coronavirus and that place of public accommo-
2 dation, if such person—

3 (i) has determined that the significant
4 risk of substantial harm to public health or
5 the health of employees cannot be reduced
6 or eliminated by reasonably modifying poli-
7 cies, practices, or procedures, or the provi-
8 sion of an auxiliary aid or service; or

9 (ii) has offered such a reasonable
10 modification or auxiliary aid or service but
11 such offer has been rejected by the indi-
12 vidual protected by the covered law.

13 (B) REQUIRED WAIVER PROHIBITED.—For
14 purposes of this subsection, no person who
15 owns, leases (or leases to), or operates a place
16 of public accommodation shall be required to
17 waive any measure, requirement, or rec-
18 ommendation that has been adopted in accord-
19 ance with a requirement or recommendation
20 issued by the Federal Government or any State
21 or local government with regard to coronavirus,
22 in order to offer such a reasonable modification
23 or auxiliary aids and services.

1 **SEC. 243. LIABILITY FOR CONDUCTING TESTING AT WORK-**
2 **PLACE.**

3 Notwithstanding any other provision of Federal,
4 State, or local law, an employer, or other person who hires
5 or contracts with other individuals to provide services,
6 that, during the covered period, conducts tests for
7 coronavirus on the employees of the employer or persons
8 hired or contracted to provide services shall not be liable
9 for any action or personal injury directly resulting from
10 such testing, except for those personal injuries caused by
11 the gross negligence or intentional misconduct of the em-
12 ployer or other person.

13 **SEC. 244. JOINT EMPLOYMENT AND INDEPENDENT CON-**
14 **TRACTING.**

15 Notwithstanding any other provision of Federal or
16 State law, including any covered Federal employment law
17 (as defined in section 242(a)), the Labor Management Re-
18 lations Act, 1947 (29 U.S.C. 141 et seq.), the Employ-
19 ment Retirement Income Security Act of 1974 (29 U.S.C.
20 1001 et seq.), and the Family and Medical Leave Act of
21 1993 (29 U.S.C. 2601 et seq.), it shall not constitute evi-
22 dence of a joint employment relationship or employment
23 relationship for any employer to provide or require, during
24 the covered period, for an employee of another employer
25 or for an independent contractor, any of the following:

1 (1) Coronavirus-related policies, procedures, or
2 training.

3 (2) Personal protective equipment or training
4 for the use of such equipment.

5 (3) Cleaning or disinfecting services or the
6 means for such cleaning or disinfecting.

7 (4) Workplace testing for coronavirus.

8 (5) Temporary assistance due to coronavirus,
9 including financial assistance or other health and
10 safety benefits.

11 **SEC. 245. EXCLUSION OF CERTAIN NOTIFICATION RE-**
12 **QUIREMENTS AS A RESULT OF THE COVID-19**
13 **PUBLIC HEALTH EMERGENCY.**

14 (a) DEFINITIONS.—Section 2(a) of the Worker Ad-
15 justment and Retraining Notification Act (29 U.S.C.
16 2101(a)) is amended—

17 (1) in paragraph (2), by adding before the
18 semicolon at the end the following: “and the shut-
19 down, if occurring during the covered period, is not
20 a result of the COVID-19 national emergency”;

21 (2) in paragraph (3)—

22 (A) in subparagraph (A), by striking
23 “and” at the end;

24 (B) in subparagraph (B), by adding “and”
25 at the end; and

1 (C) by adding at the end the following:

2 “(C) if occurring during the covered pe-
3 riod, is not a result of the COVID–19 national
4 emergency;”;

5 (3) in paragraph (7), by striking “and”;

6 (4) in paragraph (8), by striking the period at
7 the end and inserting “; and”; and

8 (5) by adding at the end the following:

9 “(9) the term ‘covered period’ has the meaning
10 given that term in section 241 of the Back to Work
11 Act.”.

12 (b) EXCLUSION FROM DEFINITION OF EMPLOYMENT
13 LOSS.—Section 2(b) of the Worker Adjustment and Re-
14 training Notification Act (29 U.S.C. 2101(b)) is amended
15 by adding at the end the following:

16 “(3) Notwithstanding subsection (a)(6), during
17 the covered period an employee may not be consid-
18 ered to have experienced an employment loss if the
19 termination, layoff exceeding 6 months, or reduction
20 in hours of work of more than 50 percent during
21 each month of any 6-month period involved is a re-
22 sult of the COVID–19 national emergency.”.

1 **Subtitle B—General Provisions**

2 **SEC. 281. SEVERABILITY.**

3 If any provision of this title, an amendment made by
4 this title, or the application of such a provision or amend-
5 ment to any person or circumstance is held to be unconsti-
6 tutional, the remaining provisions of and amendments
7 made by this title, as well as the application of such provi-
8 sion or amendment to any person other than the parties
9 to the action holding the provision or amendment to be
10 unconstitutional, or to any circumstances other than those
11 presented in such action, shall not be affected thereby.