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Thanks to banker outreach, new bill protects against frivolous COVID-19 lawsuits

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The successful passage of legislation to protect businesses from frivolous COVID-19 lawsuits during the General Assembly's special session in August is a testament to the saying, "if at first you don't succeed, try, try again."

When the second session of the 111th General Assembly adjourned in the early morning hours of June 19, the Tennessee business community was in somewhat of a state of shock after seeing legislation we all rallied behind fail to pass in the House. That bill, to prevent frivolous COVID-19 lawsuits, was arguably one of the most important bills presented during session.

The Tennessee General Assembly has traditionally been "pro-business" so to see this legislation, lobbied by more than 30 industry trade, health, and nonprofit groups, not pass, was disappointing to say the least. It was one of the last bills to be voted on during session and had support—albeit in different forms—from the Senate and House. But, ultimately, the two chambers were unable to reach a resolution on their differences—largely when the legislation would take effect.

Fortunately, Governor Bill Lee understood the importance of passing this legislation so banks and other businesses can operate during the pandemic without fear of unwarranted lawsuits being brought against them and called for a special session to begin on August 10. The governor, under his powers, set a specific agenda for the session—extend

COVID-19 liability protections for businesses; address telehealth services; and clarify laws governing Capitol grounds and vandalism.

Although the special session was necessary to address critical needs for the business community, it was likely not an easy decision with it being an election year. Legislators were already faced with a shortened campaign season due to the regular legislative session extending through mid-June and the primary elections being held August 6.

And when they returned, they were laser-focused on their agenda. Just two days after session was called to order, the Senate and House on August 12 overwhelmingly passed the business liability protection bill with 27 votes and 80 "yes" votes, respectively.

As passed, the legislation provides that there is no cause of action against any person or business arising from COVID-19 unless a claimant can prove by clear and convincing evidence that his/her loss or injury was caused by an act or omission constituting gross negligence or willful misconduct. To prove this, a claimant must, among other things, file a verified complaint with a certificate of good faith stating that his/her counsel has obtained a statement from a licensed physician stating he or she believes the alleged loss or injury from COVID-19 was caused by an act or omission of the person or business.

The law will take effect upon Governor Lee's signature and will be retroactive, applying to all causes of action except those where a com-



Governor Bill Lee called for a special session with an agenda that included extending COVID-19 liability protections for businesses.

plaint or civil warrant was filed prior to the issuance of the proclamation calling for the special session which came on August 3, 2020.

I, along with the other members of TBA's government relations team, sincerely thank every banker in the state who called, texted, and emailed lawmakers urging them to support the COVID-19 liability protection bill. We appreciate your outreach, especially at time when your focus may have been elsewhere—helping your customers through these uncertain times, lobbying Congress for reforms to PPP forgiveness, or ensuring a safe and healthy work environment for your employees.

Now banks and banks' commercial customers across the state can continue operating during these unusual times without fear that opening your doors to your customers could result in legal costs defending against frivolous COVID-19 legal actions. This is only possible because of your outreach to lawmakers. 🇺🇸

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