

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Michael S. Day

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the protection of essential businesses.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-----------------------|-----------------------|------------------|
| <i>Michael S. Day</i> | <i>31st Middlesex</i> | <i>6/25/2020</i> |

HOUSE No.

By Mr. Day of Stoneham, a petition (subject to Joint Rule 12) of Michael S. Day relative to liability protections for essential businesses during the COVID-19 pandemic. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to the protection of essential businesses.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide liability protections for essential businesses during the COVID-19 pandemic, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. As used in this act, the following terms shall, unless the context clearly
2 indicates otherwise, have the following meanings:-

3 “COVID-19 emergency”, the state of emergency concerning the novel coronavirus
4 disease outbreak declared by the governor on March 10, 2020 pursuant to executive order 591.

5 “Essential Business”, any business or other organization providing the services and
6 functions identified as COVID-19 Essential Services in the governor’s March 23, 2020 COVID-
7 19 Order No. 13 and any subsequent extensions of such order defining essential businesses and
8 services, including the business or organization’s individual employees, owners, directors or
9 agents.

10 “Damages”, injury or loss of property or personal injury or death, including economic or
11 non-economic losses.

12 “Good faith”, shall, without limitation, include acts or omissions undertaken consistent
13 with the guidelines for crisis standards of care for the COVID-19 pandemic issued by the
14 governor, and exclude, without limitation: (i) acts or omissions based on race, ethnicity, national
15 origin, religion, disability, sexual orientation or gender identity; (ii) deceptive acts or practices;
16 and (iii) fraud.

17 SECTION 2. (a) Notwithstanding any general or special law to the contrary, except as
18 provided in subsection (b), essential businesses shall be immune from suit and civil liability for
19 any damages alleged to have been sustained as a result of alleged exposure to the 2019 novel
20 coronavirus on the premises of such essential business or due to the operations of such essential
21 business; provided, however, that the essential business is providing its services in good faith.

22 (b) The immunity provided in subsection (a) shall not:

23 (i) apply if damages were caused by an act or omission constituting gross negligence or
24 recklessness or conduct with an intent to harm or to discriminate based on race, ethnicity,
25 national origin, religion, disability, sexual orientation or gender identity by the essential
26 business;

27 (ii) modify or prohibit any claims brought forward under applicable workers'
28 compensation statutes and regulations, healthcare agreements, employment agreements or
29 applicable statutes and regulations governing employment relations;

30 (iii) diminish the rights, privileges or remedies of any employee under any other federal
31 or state law or regulation or under any collective bargaining agreement or employment contract.

32 SECTION 3. This act shall apply to claims based on acts or omissions that occur or have
33 occurred during the effective period of the COVID-19 emergency, declared on March 10, 2020
34 and until terminated or rescinded.