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Liability Protection Provisions in the New Republican COVID Relief Package

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Throughout the summer, Senate Majority Leader McConnell has emphasized that any additional COVID relief package would include COVID-related liability protections. While negotiations on an additional COVID package between the White House and Congress sputtered over August, on Tuesday, September 8, McConnell introduced a Republican so called "skinny" relief bill that included liability protections along with extension of the Paycheck Protection Program (PPP) funding, unemployment assistance, child care support, and other education funding.

The liability provisions are in TITLE II of the Senate targeted relief package and are from "The SAFE TO WORK Act" that leadership has promoted and worked on throughout the summer (i.e., Senator Cornyn's bill).

Provisions include liability limitations for COVID-related personal injury claims against businesses, COVID-related medical malpractice claims, expansion of the Public Readiness and Emergency Preparedness (PREP) Act to cover additional countermeasures, and protections from liability under labor and employment laws for businesses that help fight COVID.

These provisions also include federal causes of action for personal injury and medical malpractice laws and preempt conflicting state laws in order to promote uniformity and preclude trial lawyers from gaming the system. The protections of the bill apply to hospitals health care workers during the COVID public health emergency, small and large businesses, schools, colleges and universities, religious, philanthropic and other nonprofit institutions, and local government agencies.

The introduction of the bill on September 8 and the debate following indicated that there was little to no support from Senate Democrats. Leader McConnell indicated upon introduction of the bill that he did not expect any support from Democrats on this measure and he proved correct when the measure was blocked by Democrats on Thursday, September 10, with a 52-47 vote with all Republicans but Senator Rand Paul voting for the measure, but Democrats united against. (The measure failed to get the 60 votes needed to move forward, but the vote demonstrated strong Republican support.)

In the ongoing continuing resolution (CR) negotiations between the White House/Mnuchin and Congress, the Senate bill could be folded into the CR to serve as a starting point, and that bill will include the liability provisions as outlined in this measure according to Leader McConnell. There does seem to be bipartisan agreement to get the CR done by the end of the month. What additional provisions get included in the CR will be dependent upon the tenor of the Mnuchin/Congress negotiations. Given the first debate is on September 29, the political dynamic between now and the end of the month could provide both opportunity and peril for getting additional provisions beyond the CR.

In debate on the bill on September 10, Republican Senators emphasized the importance of the liability provisions that were targeted and temporary for COVID relief and would help businesses, hospitals, schools, etc. Outside business groups, hospitals, universities, and others have indicated their support for the liability provisions.

President Trump wants another COVID package and would be supportive of an effort in the \$2 trillion range. With the debate on September 29, the President would like to claim credit for an additional bill, so prospects may improve.