

HBS LEGISLATIVE ALERT

Senate COVID Proposal Details Released

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Senate COVID Proposal Released

On Monday evening, the Senate GOP released their response to the House Democrats' \$3.5 trillion HEROES Act in a series of initiatives that would shield employers from virus-related lawsuits from workers and invest \$15 billion to help child-care providers stay afloat.

Here is a general summary of the long-awaited proposal:

Protecting Businesses

One of the component bills, Cornyn's SAFE TO WORK Act, would give employers protection from lawsuits stemming from workplace coronavirus testing—a central demand of the business lobby.

Senate Majority Leader McConnell has described liability protections for businesses as a must-have in a final package, but Democrats call it a non-starter. The proposed liability shield would cover claims from Dec. 1, 2019 until Oct. 1, 2024. The bill clarifies that when a business provides training, personal protective equipment, or other assistance to an independent contractor or a franchisee's employee, those actions can't be used as evidence of an employer-employee relationship. The proposal also would place a cap on damage awards. Compensatory damages would be limited to the economic losses incurred as a result of the injury, as long as the harm wasn't a result of "willful misconduct," according to the bill text. The employer shield would supersede any local statute or regulation related to personal injury lawsuits stemming from coronavirus exposure, but it wouldn't preempt broader local liability reforms or workers' compensation systems.

Coronavirus Exposure Protections

- Temporarily limits liability for personal injuries arising from alleged COVID-19 exposure at a school, college, nonprofit, church, or business.
 - In order to qualify, entities must (1) have made reasonable efforts to comply with applicable public health guidelines, and (2) not engage in willful misconduct or grossly negligent behavior.
 - These protections would apply to personal injury lawsuits stemming from actual exposure to coronavirus as well as feared or potential exposure. Nuisance claims will also be covered.
- Creates detailed procedural requirements to prevent frivolous litigation in federal court, including requiring notice of suit, limiting punitive damages to findings of willfulness, and fee arrangement disclosures for class actions.
- Covers coronavirus-related exposure injuries that take place between December 1, 2019 and October 1, 2024, the end date of the COVID-19 PREP Act Declaration.

Healthcare Provider Protections

- Health care providers, including hospitals, doctors and nurses as well as nursing homes and other care facilities, would be protected from liability claims arising out of the provision of care for coronavirus or services provided as a result of coronavirus.

- Sets a willful misconduct or gross negligence standard for coronavirus-related medical malpractice suits, including diagnosis and treatment for coronavirus, as well as medical care directly affected by the coronavirus.
- Covers coronavirus-related medical liability claims occurring from December 1, 2019 to October 1, 2024.
- Protecting Public-Private Partnerships to Better Distribute Equipment and PPE
- Provides liability protections for new pandemic prevention and mitigation tools like ventilators and personal protective equipment (PPE) if they meet certain FDA requirements.
- Clarifies the PREP Act so that liability protections apply to products distributed by the private sector.

Employer Protections

- Ensures employers are not liable under federal labor and employment laws for complying with coronavirus-related guidance, including stay-at-home orders.
- Protects employers from liability for injuries arising from workplace coronavirus testing.
- Clarifies that a business providing training, PPE, or other assistance to an independent contractor or a franchisee's employee does not convert the independent contractor or franchisee's employee into the employee of the person providing the training, PPE, or other assistance.

Appropriations and Child Care

Senate Appropriations Committee Chairman Richard Shelby (R-Ala.) today [introduced legislation](#) containing \$306 billion in emergency appropriations to aid American families and businesses suffering from the COVID-19 global pandemic.

The emergency supplemental appropriations package contains \$105 billion to help schools adapt and provide a safe path for children to return to the classroom; \$16 billion in grants to states for testing, contact tracing, and surveillance; \$20 billion for vaccine, therapeutic and diagnostic development; \$20 billion to assist America's farmers and ranchers who have suffered as a result of the pandemic; and nearly \$30 billion to protect our nation's military and defense industrial base.

Democrats' plan would establish a \$200 billion fund to ensure hazard pay for essential workers, along with providing \$2 billion to support worker training and more than \$900 million to assist states in unemployment insurance processing.

The GOP package would give child-care providers \$15 billion in emergency assistance, double the amount Democrats have offered. Closures of child-care centers are a major factor impacting businesses' return-to-work planning, a problem that could become more acute if schools reopen this fall.

The money provided by the Shelby bill would go toward the existing Child Care and Development Block Grant program, which allows states to disseminate federal funds as needed.

Democrats are in the process of updating their negotiating position on child-care aid. Two House bills set for a vote this week, the Child Care Is Essential Act (H.R. 7027) and the Child Care for Economic Recovery Act (H.R. 7327), would give providers access to \$50 billion in aid, and the child- and dependent-care tax credit would be made refundable, among other provisions.

A summary of the total allocation per Appropriations Section is as follows:

- Agriculture, Rural Development, FDA, and Related Agencies - \$20.457 Billion
- Commerce, Justice, Science, and Related Agencies - \$4.747 Billion
- Defense - \$29.400 Billion
- Energy and Water Development - \$307 Million
- Financial Services and General Government - \$2.469 Billion
- Homeland Security - \$3.014 Billion
- Interior, Environment, and Related Agencies - \$1.605 Billion
- Legislative Branch - \$78 Million
- Labor, HHS, Education, and Related Agencies - \$226.202 Billion
- Military Construction and Veterans Affairs - (No New Funding)
- State, Foreign Operations, and Related Programs - \$4.435 Billion
- Transportation, HUD, and Related Agencies - \$13.351 Billion

Federal Trust Fund Measures

The Senate Republican COVID-19 proposals would rescue federal trust funds that are threatened with insolvency. According to the proposal, unless Congress acts now, our country's largest federal trust funds will go broke in the near future—threatening middle-class Americans with massive tax hikes or a large increase in deficit spending. Some economists predict coronavirus-related spending may speed up these deadlines, making action all the more urgent. Our projected federal budget deficit for this year could exceed \$3.7 trillion. Senator Romney's [TRUST Act](#) would create a process for legislation to rescue each of the major, endangered trust funds.

American Workers, Families, and Employers Assistance Act (CARES 2.0)

Senate Finance Committee Chairman Chuck Grassley released [historic legislation](#) growing on the success of the bipartisan Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to assist the country in combatting the coronavirus and safely reopening the economy. Some key components of the legislation include:

- Businesses would get a refundable payroll tax credit equal to 50% of the employer's total expenditure on workplace virus testing or other costs associated with implementing stronger health and safety measures;

- For unemployment insurance, the proposal would boost the federal government's reimbursements to local governments and nonprofits to 75 percent – up from 50 percent in the CARES Act to prevent further layoffs;
- The proposal maintains some of the current enhanced unemployment benefit, while responsibly honing programs to target help where it's needed. This transition from a flat rate to a replacement of about 70 percent of lost wages is a better approach;
- The bill expands access to the CARES Act employment tax credit for small and medium-sized businesses, and expand the Work Opportunity Tax Credit for larger employers hiring people currently receiving unemployment insurance;
- Provides a new credit for expenses, like PPE and cleaning, needed to maintain a safe and healthy workplace for employees and customers;
- Provides for another round of \$1,200 Economic Impact Payments for most American adults, with an additional \$500 provided for each dependent regardless of age; and
- For health care providers, the bill
 - Relaxes the terms of loans received from Medicare;
 - Ensures that Medicare telehealth options don't expire before Congress can determine what should be made permanent;
 - Extends for five years the CARES Act provision that pays clinics and health centers for telehealth to provide a down payment on meeting health care needs in rural America; and
 - Freezes Medicare premiums at 2020 levels to head off a predicted spike next year. We also assist nursing home patients and workers.

The proposal extends the time frame in which governments can utilize the \$150 billion in funding provided under the CARES Act, while also providing more flexibility – allowing some funds to be used to cover revenue shortfalls.

The legislation, which is based on past bipartisan legislative successes in response to coronavirus, will provide further relief for workers affected by coronavirus, assistance to individuals, families and employers to reopen the economy, support for patients, nursing home residents, providers and foster youth in responding to coronavirus, additional flexibility and accountability for coronavirus relief fund payments and state tax certainty for employees and employers.

Supporting America's Restaurant Workers Act

As Senate Republicans unveiled the next phase of coronavirus relief and recovery this afternoon, U.S. Senator Tim Scott (R-SC) formally announced his effort to aid restaurants and restaurant workers. The Health, Economic Assistance, Liability protection, and Schools (HEALS) Act will include Scott's Supporting America's Restaurant Workers Act, which provides a 100% deduction for business meals through the end of 2020. Currently, the deduction is available for only 50% of such expenses.

“The [Supporting America's Restaurant Workers Act](#) will lead to more customers, more opportunities for hardworking waitstaff and kitchen staff, and much needed revenue for small businesses across

the country,” **Scott said.** “We know that more than 5.5 million restaurant workers lost their jobs as the pandemic hit, and while some of those jobs have been recovered, it is clear more help is needed. This is a simple, commonsense solution to help restaurants across South Carolina and the country.”

Health; Economic Assistance; Liability Protection; and Schools Act (HEALS Act)

In response to the COVID-19 pandemic, Senate Health and Education Committee Chairman Lamar Alexander introduced legislation to allow student loan borrowers with no income to continue to defer their monthly payment, give parents more choices of schools for their children and to increase availability of childcare for working parents.

Alexander introduced other sections of the “Safely Back to Work and Back to School Act” that would improve stockpiles of pandemic supplies and sustain onshore manufacturing of tests, treatments and vaccines. There are four proposals combined with proposals from four other Senate committee chairmen that constitute “the Health; Economic Assistance; Liability Protection; and Schools Act (HEALS Act),” which Alexander said implements Senate Republican priorities of “children, jobs and health care.”

The Senate Health and Education Committee Bill’s Four Proposals are:

- [Protects Student Loan Borrowers](#)

Zero income-Zero Payment: Allows 43 million student loan borrowers to have a \$0 monthly payment if they have no income; and when a borrower does begin earning income, their monthly payment will never be more than 10 percent of their income after deducting for the necessities of life, such as the cost of housing and food.

- [Protects K-12 Students](#)

Provides scholarships to students to have the opportunity to return to the private school they attended before the pandemic, and gives other students a new opportunity to attend private school.

- [Supports and Expands Access to Child Care](#)

Provides critical support to child care providers so they can continue to serve working parents and provide safe environments for the two-thirds of children in the U.S. under age 6 who have parents in the workforce.

- [Safely Back to Work and Back to School Act](#)

- **Strengthens Federal Stockpile** — Helps the federal government partner with companies to increase reserve amounts of medical products and supplies needed during a public health emergency, such as masks and ventilators.
- **Improves Diagnostic Testing** — Helps speed the development and distribution of diagnostic tests to address emerging infectious diseases.
- **Modernizes Disease Surveillance** — Improves the ability to collect data in order to better detect, identify, and track emerging infectious diseases to inform public health preparedness and response.

Continuing Small Business Recovery and Paycheck Protection Program Act

As part of the package of COVID initiatives introduced, U.S. Senator Marco Rubio, Chairman of the Senate Committee on Small Business and Entrepreneurship, and Senator Susan Collins, a senior member of the Senate Committee on Appropriations and Committee on Health, Education, Labor, and Pensions, introduced the [Continuing Small Business Recovery and Paycheck Protection Program Act](#), a federal relief package that builds on the success of the bipartisan Paycheck Protection Program (PPP) and other small business relief programs in the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* (P.L. 116-36).

The package aims to ensure small businesses, including minority-owned firms and those in underserved communities, have the necessary resources to weather the COVID-19 pandemic. The bill would allow the most severely affected small businesses to receive a second PPP loan. It would also create a new long-term recovery loan program, which would provide working capital to industries that have been hardest hit by the COVID-19 pandemic. The nearly \$60 billion long-term recovery loan program would target low-income communities, minority-owned, and seasonal businesses.

The [Continuing Small Business Recovery and Paycheck Protection Program Act](#) would provide additional assistance to the hardest-hit small businesses that are struggling to recover from the impacts of the COVID-19 pandemic. The bill has four main components:

7(a) Loans to Recovery Sector Businesses

- Authorizes \$100 billion in long-term, low-cost loans to recovery sector businesses, which include seasonal businesses and businesses located in low-income census tracts that meet the applicable SBA revenue size standard, have no more than 500 employees, and demonstrate at least a 50 percent reduction in gross revenues.
- Loan amounts would be available at up to twice the borrower's annual revenues, not to exceed \$10 million. The loan would have a 100% SBA guarantee and maturity of up to 20 years with a one percent fixed interest rate to the borrower.
- Waives the SBA's credit elsewhere test and allows the borrower to defer loan and interest payments for the first 2 years.
- Allowable loan uses include working capital, acquisition of fixed assets, and refinancing existing indebtedness.

PPP Second Draw Loans

- Provides \$190 billion of committed and appropriated funds to support PPP and PPP Second Draw Loans.
- Defines eligibility for PPP Second Draw loans as small businesses that meet the applicable SBA revenue size standard, have no more than 300 employees, and demonstrate at least a 50 percent reduction in gross revenues.
- Includes a \$25 billion set-aside for entities with 10 or fewer employees and a \$10 billion set-aside for loans made by community lenders.

- The maximum loan size would equal 2.5 times average total monthly payroll costs, up to \$2 million. Businesses that received a PPP loan may not receive another PPP loan that aggregates to more than \$10 million.
- The 60/40 cost allocation for payroll and non-payroll costs to receive full PPP forgiveness continues to apply.

PPP Improvements

- Expands forgivable expenses to include covered supplier costs, covered worker protection expenditures, and covered operations expenditures.
- Allows borrowers to select a preferred 8-week period through 2020 to use the forgivable loan proceeds.
- Simplifies the forgiveness application process for smaller loans.
- Expands PPP eligibility to include certain 501(c)(6) organizations, including Chambers of Commerce and Destination Marketing Organizations with 300 or fewer employees, excluding lobbying expenses.
- Establishes a specific PPP loan calculation for farmers and ranchers and provides Farm Credit System Institutions with greater certainty and equity in participating in PPP lending.

Small Business Growth and Domestic Production Investment Facility

- Provides for \$10 billion in long-term debt with equity features to registered SBA Small Business Investment Companies (SBICs) that invest in small businesses with significant revenue losses from COVID-19, manufacturing startups in the domestic supply chain, and low- income communities.

Restoring Critical Supply Chains and Intellectual Property Act

Senator Graham's legislation, [Restoring Critical Supply Chains and Intellectual Property Act](#), was also included as part of the GOP COVID-Relief package and includes:

- Personal Protective Equipment (PPE), such as clothing, sanitizing supplies, ancillary medical supplies (wipes, bedding, test swabs, etc.) and other textile equipment must be grown, reprocessed, reused, or produced in the United States;
- The Department of Health and Human Services (HHS) will immediately begin increasing procurements of domestic PPE for the Strategic National Stockpile incrementally and reach 100 percent domestic sourcing as soon as practicable within five years;
- HHS also must submit a plan to Congress within 90 days detailing how they will reach 50 percent domestic sourcing in one year, 75 percent in 18 months, and 100 percent in two years; and
- Establishes a \$7.5 billion medical manufacturing project tax credit to buildout and retrofit factories to meet increased PPE demand.