



SECOND EXTRAORDINARY SESSION ADJOURNS SINE DIE

Lawmakers Advance Telemedicine, Liability Protection Measures

The Tennessee General Assembly reconvened this week for a three-day special session to consider several bills related to COVID-19 including litigation protections for businesses, telemedicine reimbursement, and enhanced penalties related to protesting and vandalization of state property.



House lawmakers question the bill's sponsor during COVID Related Liability committee on Tuesday, August 11. Source: Herald Standard

Lawmakers were called in by Gov. Bill Lee's proclamation last week after the legislature failed to reach a consensus on two major initiatives before adjourning in June. Both liability protections and telemedicine reimbursement were priority efforts for Republicans, but the two chambers disagreed on policy implementation and were unable to reconcile their differences. The Lee Administration stepped in to mediate negotiations and the bodies were able to reach a compromise.

Liability Protections

The Senate's succeeded in securing retroactivity to the liability protection legislation, a priority that had been previously contentious in the House. Despite questions of the constitutionality of such a clause, the bodies settled on August 3, 2020 as the date when protections would begin applying to businesses, hospitals, schools, and other entities. House Majority Leader, Rep. William Lamberth, R-Portland, said that the shorter retroactivity in the current version gives Tennesseans enough notice of the proposed procedural changes to make the statute valid moving forward.

Dubbed the "Tennessee COVID-19 Recovery Act," **SB8002/HB8001** establishes legal standards a plaintiff must meet to sue for damages relating to COVID-19. According to the bill, a claimant must prove by clear and convincing evidence that a person (or entity) was "grossly negligent" in adhering to public health guidelines and was the "proximate cause" of them contracting the virus. Further, a claimant must obtain a certificate of a good faith from a licensed physician expressing his or her opinion of possible exposure. Failure to satisfy these requirements would result in dismissal with prejudice.

Telemedicine Reimbursement

The House's priority for the special session was ensuring that telemedicine services would continue to be covered and reimbursed in a manner similar to Gov. Lee's COVID-related Executive Orders. Namely, the bill expands provider eligibility across a variety of specialties and requires health insurance entities to reimburse at a rate equal to in-person services. The inclusion of these provisions was accepted by the Senate and Administration but only under the condition that the bill would repeal on April 1, 2022.

The request to repeal, or “sunset,” the bill derived primarily from the Senate’s objections to imposing mandates on health insurance entities. Despite this philosophical opposition, the Senate agreed. Unlike previous versions of the legislation, the final telemedicine bill included a provision allowing insurers to only cover the costs of clinically appropriate, medically necessary services through telemedicine.

The bill sailed through the House and Senate with bipartisan support and almost no opposition. One member called the bill “one of the best things we’ve done for healthcare in a long time.”

Only one no vote was cast in the Senate while the House approved it unanimously.

Protest-Related Legislation

In an apparent response to months-long protests and demonstrations at the Capitol, the General Assembly passed two pieces of legislation aimed at increasing punishments for vandalizing and camping on state property, as well as a measure that would empower the state attorney general to prosecute cases if the local district attorney declines to do so.

Once again, the Senate and House were at odds on how punitive **SB8005/HB8005** should be, the Senate seeking to lower the felony punishment for illegal camping, but eventually agreed to the House's stricter version. The final bill contains harsher mandatory minimums for vandalism, rioting, and assaulting first responders, as well as a new definition of camping which reclassifies penalties from a class A misdemeanor to a class E felony.

While Democrats argued the bill was unnecessary, Republicans maintained that clarification of these laws was needed. They referenced several demonstrations in other parts of the country that saw “occupied” protest zones in addition to protests in Nashville that turned violent and resulted in damage to the city's courthouse.

While Democrats in both chambers attempted to rebuke the legislation, their efforts were effectively stymied by the supermajority. The bill passed down party lines.



Sen. Mike Bell, R-Riceville, speaks in the Senate Chamber on Wednesday, August 12. **Source: The Tennessean**