

HOUSE BILL No. 2126

AN ACT concerning adult care facilities; relating to civil liability for COVID-19 claims; providing immunity therefrom; modifying the definition of adult care facility; amending K.S.A. 2020 Supp. 60-5502, 60-5506 and 60-5508 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2020 Supp. 60-5502 is hereby amended to read as follows: 60-5502. As used in the COVID-19 response and reopening for business liability protection act, unless the context otherwise requires:

(a) ~~"Adult care facility" means a "nursing facility," "assisted living facility" or "residential healthcare facility" as those terms are:~~

(1) *An "adult care home" as defined in K.S.A. 39-923, and amendments thereto, except that "covered facility" includes a center approved by the centers for medicare and medicaid services as a program for all-inclusive care for the elderly (PACE) under 42 C.F.R. § 460 et seq., that provides services only to PACE participants;*

(2) *a "community mental health center" and a "crisis intervention center" as defined in K.S.A. 2020 Supp. 39-2002, and amendments thereto; and*

(3) *a "community service provider," a "community developmental disability organization" and an "institution" as defined in K.S.A. 2020 Supp. 39-1803, and amendments thereto.*

(b) "COVID-19" means the novel coronavirus identified as SARS-CoV-2.

(c) "COVID-19 claim" means any claim for damages, losses, indemnification, contribution or other relief arising out of or based on exposure or potential exposure to COVID-19. "COVID-19 claim" includes a claim made by or on behalf of any person who has been exposed or potentially exposed to COVID-19, or any representative, spouse, parent, child or other relative of such person, for injury, including mental or emotional injury, death or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or other losses allegedly caused by the person's exposure or potential exposure to COVID-19.

(d) "COVID-19 public health emergency" means the state of disaster emergency declared for the state of Kansas on March 12, 2020, any subsequent orders or amendments to such orders and any subsequent disaster emergency declared for the state of Kansas regarding the COVID-19 pandemic.

(e) "Disinfecting or cleaning supplies" includes, but is not limited to, hand sanitizers, disinfectants, sprays and wipes.

(f) "Healthcare provider" means a person or entity that is licensed, registered, certified or otherwise authorized by the state of Kansas to provide healthcare services in this state, including a hospice certified to participate in the medicare program under 42 C.F.R. § 418 et seq. "Healthcare provider" does not include any entity licensed under chapter 39 of the Kansas Statutes Annotated, and amendments thereto.

(g) "Person" means an individual, for-profit or not-for-profit business entity, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or political subdivision, agency or instrumentality or any other legal or commercial entity.

(h) "Personal protective equipment" means coveralls, face shields, gloves, gowns, masks, respirators or other equipment designed to protect the wearer from the spread of infection or illness.

(i) "Product liability claim" means any strict liability, ordinary negligence or implied warranty claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage or labeling of the relevant product.

(j) "Public health directives" means any of the following that is required by law to be followed related to public health and COVID-19:

(1) State statutes, rules and regulations or executive orders issued by the governor pursuant to K.S.A. 48-925, and amendments thereto;

(2) federal statutes or regulations from federal agencies, including the United States centers for disease control and prevention and the occupational safety and health administration of the United States department of labor; or

(3) any lawful order or proclamation issued under authority of the Kansas emergency management act, and amendments thereto, by a board of county commissioners, the governing body of a city or a local health officer.

(k) "Qualified product" means: (1) Personal protective equipment used to protect the wearer from COVID-19 or the spread of COVID-19; (2) medical devices, equipment and supplies used to treat COVID-19, including products that are used or modified for an unapproved use to treat COVID-19 or prevent the spread of COVID-19; (3) medical devices, equipment or supplies utilized outside of the product's normal use to treat COVID-19 or to prevent the spread of COVID-19; (4) medications used to treat COVID-19, including medications prescribed or dispensed for offlabel use to attempt to combat COVID-19; (5) tests used to diagnose or determine immunity to COVID-19; (6) disinfecting or cleaning supplies; (7) clinical laboratory services certified under the federal clinical laboratory improvement amendments in section 353 of the public health service act, 42 U.S.C. § 263a; and (8) components of qualified products.

Sec. 2. K.S.A. 2020 Supp. 60-5506 is hereby amended to read as follows: 60-5506. (a) Notwithstanding any other provision of law, ~~an adult care a covered facility shall have an affirmative defense to is immune from liability in a civil action for damages, administrative fines or penalties for a COVID-19 claim if such facility:~~

~~(1) (A) Was caused, by the facility's compliance with a statute or rule and regulation, to reaccept a resident who had been removed from the facility for treatment of COVID-19; or~~

~~(B) treats a resident who has tested positive for COVID-19 in such facility in compliance with a statute or rule and regulation; and~~

~~(2) is acting pursuant to and in substantial compliance with public health directives.~~

~~(b) As used in this section, "public health directives" means any of the following that is required by law to be followed related to public health and COVID-19:~~

~~(1) State statutes, rules and regulations or executive orders issued by the governor pursuant to K.S.A. 48-925, and amendments thereto; or~~

~~(2) federal statutes or regulations from federal agencies, including the United States centers for disease control and prevention and the occupational safety and health administration of the United States department of labor if such facility was in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued.~~

~~(b) As used in this section, "public health directives" means any of the following that are required by law to be followed related to COVID-19:~~

~~(1) State statutes or rules and regulations; or~~

~~(2) federal statutes or regulations from federal agencies, including the United States centers for disease control and prevention and the occupational safety and health administration of the United States department of labor.~~

~~(c) The provisions of this section shall not apply to civil liability when it is established that the act, omission or decision giving rise to the cause of action constituted gross negligence or willful, wanton or reckless conduct.~~

Sec. 3. K.S.A. 2020 Supp. 60-5508 is hereby amended to read as follows: 60-5508. (a) The provisions of K.S.A. 2020 Supp. 60-5504, 60-5505 and 60-5507, and amendments thereto, shall apply retroactively to any cause of action accruing on or after March 12, 2020.

(b) The provisions of K.S.A. 2020 Supp. 60-5503 and 60-5506, and amendments thereto, *and the amendments made to K.S.A. 2020 Supp. 60-5506 by section 2 of this act*, shall apply retroactively to any cause of action accruing on or after March 12, 2020, and prior to termination of the state of disaster emergency related to the COVID-19 public health emergency declared pursuant to K.S.A. 48-924, and amendments thereto.

Sec. 4. K.S.A. 2020 Supp. 60-5502, 60-5506 and 60-5508 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.