

Senate Substitute for HOUSE BILL No. 2244

By Committee on Judiciary

5-21

1 AN ACT concerning civil actions and civil procedure; enacting the
2 COVID-19 response and reopening for business liability protection act;
3 relating to limitations on liability associated with the COVID-19 public
4 health emergency; providing immunity from civil liability for
5 healthcare providers during the COVID-19 public health emergency.
6

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

8 Section 1. Sections 1 through 9, and amendments thereto, shall be
9 known and may be cited as the COVID-19 response and reopening for
10 business liability protection act.

11 Sec. 2. As used in the COVID-19 response and reopening for
12 business liability protection act, unless the context otherwise requires:

13 (a) "COVID-19" means the novel coronavirus identified as SARS-
14 CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 and
15 conditions associated with such disease.

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

25 (c) "COVID-19 public health emergency" means the state of disaster
26 emergency declared for the state of Kansas on March 12, 2020, any
27 subsequent orders or amendments to such orders and any subsequent
28 disaster emergency declared for the state of Kansas regarding the COVID-
29 19 pandemic.

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

32 (e) "Healthcare provider" means a person or entity that is licensed,
33 registered, certified or otherwise authorized by the state of Kansas to
34 provide healthcare services in this state, including a hospice certified to
35 participate in the medicare program under 42 C.F.R. § 418 et seq. and any
36 entity licensed under chapter 39 of the Kansas Statutes Annotated, and

1 amendments thereto.

2 (f) "Person" means an individual, association, for-profit or not-for-
3 profit business entity, postsecondary educational institution as defined in
4 K.S.A. 74-3201b, and amendments thereto, nonprofit organization,
5 religious organization or charitable organization.

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

9 (h) "Premises" means any physical place serving a commercial,
10 residential, educational, religious, governmental, cultural, charitable or
11 healthcare purpose.

12 (i) "Premises owner" means a person who owns, in whole or in part,
13 leases, rents, maintains or controls any land or body of water or any
14 building or structure on such lands or bodies of water.

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

20 (k) "Public health guidance" means written guidance related to
21 COVID-19 issued by the United States centers for disease control and
22 prevention, the occupational safety and health administration of the United
23 States department of labor, the Kansas department of health and
24 environment, the Kansas department for aging and disability services, the
25 Kansas department of labor, another state agency or a municipality.

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

39 Sec. 3. (a) Notwithstanding any other provision of law, except as
40 provided in subsection (c), a healthcare provider is immune from civil
41 liability for damages, administrative fines or penalties for acts, omissions,
42 healthcare decisions or the rendering of or the failure to render healthcare
43 services, including services that are altered, delayed or withheld, as a

1 direct response to any state of disaster emergency declared pursuant to
2 K.S.A. 48-924, and amendments thereto, related to the COVID-19 public
3 health emergency.

4 (b) The provisions of this section shall apply to any claims for
5 damages or liability that arise out of or relate to acts, omissions or
6 healthcare decisions occurring during any state of disaster emergency
7 declared pursuant to K.S.A. 48-924, and amendments thereto, related to
8 the COVID-19 public health emergency.

9 (c) (1) The provisions of this section shall not apply to civil liability
10 when it is established that the act, omission or healthcare decision
11 constituted gross negligence or willful, wanton or reckless conduct.

12 (2) The provisions of this section shall not apply to healthcare
13 services not related to COVID-19 that have not been altered, delayed or
14 withheld as a direct response to the COVID-19 public health emergency.

15 Sec. 4. (a) Notwithstanding any other provision of law, a premises
16 owner shall not be liable for a COVID-19 claim other than for damages
17 occasioned by gross negligence or willful, wanton or reckless disregard of
18 a substantial and unnecessary risk that a person would be exposed to
19 COVID-19 on the premises.

20 (b) When an act or omission is directed, recommended or advised by
21 public health guidance applicable to the activity at issue at the time of the
22 alleged exposure, the act or omission shall not constitute gross negligence
23 or willful, wanton or reckless conduct under subsection (a), unless the
24 claimant proves by clear and convincing evidence that a reasonably
25 prudent premises owner would have taken additional precautions that
26 would have prevented the alleged harm.

27 (c) The provisions of this section shall expire 90 days after the
28 termination of the COVID-19 public health emergency, unless the
29 legislature acts to reenact such provisions.

30 Sec. 5. Notwithstanding any other provision of law, a person, or an
31 agent of such person, conducting business in this state shall not be held
32 liable for a COVID-19 claim if the act or omission alleged to violate a
33 duty of care was mandated or specifically and affirmatively permitted by a
34 federal or state statute, regulation or executive order passed or issued in
35 response to the COVID-19 pandemic and applicable to the activity at issue
36 at the time of the alleged exposure.

37 Sec. 6. Notwithstanding any other provision of law, a person who
38 designs, manufactures, labels, sells, distributes, provides or donates a
39 qualified product in response to the COVID-19 public health emergency
40 shall not be liable in a civil action alleging a product liability claim arising
41 out of such qualified product if:

42 (a) The product was manufactured, labeled, sold, distributed,
43 provided or donated at the specific request of or in response to a written

1 order or other directive finding a public need for a qualified product issued
2 by the governor, the adjutant general or the division of emergency
3 management; and

4 (b) the damages are not occasioned by willful, wanton or reckless
5 disregard of a known, substantial and unnecessary risk that the product
6 would cause serious injury to others.

7 Sec. 7. Nothing in the COVID-19 response and reopening for
8 business liability protection act:

9 (a) Creates, recognizes or ratifies a claim or cause of action of any
10 kind;

11 (b) eliminates a required element of any claim;

12 (c) affects workers' compensation law, including the exclusive
13 application of such law; or

14 (d) amends, repeals, alters or affects any other immunity or limitation
15 of liability.

16 Sec. 8. The provisions of sections 4 through 7, and amendments
17 thereto, shall apply retroactively to any cause of action accruing on or after
18 March 12, 2020.

19 Sec. 9. The provisions of the COVID-19 response and reopening for
20 business liability protection act are severable. If any portion of the act is
21 declared unconstitutional or invalid, or the application of any portion of
22 the act to any person or circumstance is held unconstitutional or invalid,
23 the invalidity shall not affect other portions of the act that can be given
24 effect without the invalid portion or application, and the applicability of
25 such other portions of the act to any person or circumstance shall remain
26 valid and enforceable.

27 Sec. 10. This act shall take effect and be in force from and after its
28 publication in the Kansas register.