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State of Minnesota

HOUSE OF REPRESENTATIVES

SPECIAL SESSION

H. F. No. 163

06/19/2020 Authored by Scott
The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division

1.1 A bill for an act
1.2 relating to civil actions; limiting liability for products and supplies made, sold, or
1.3 donated in response to COVID-19; providing minimum injury requirements for
1.4 claims related to COVID-19; addressing premises liability related to COVID-19;
1.5 precluding liability when conduct complies with government-issued guidance
1.6 related to COVID-19; proposing coding for new law in Minnesota Statutes, chapter
1.7 604A.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. 604A.50 PRODUCTS IN RESPONSE TO COVID-19; LIABILITY.

1.10 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have
1.11 the meanings given them.

1.12 (b) "Essential business" means a person or entity:

1.13 (1) within a critical sector identified by Executive Order 20-48 filed on May 1, 2020,
1.14 and any subsequent orders or amendments thereto; or

1.15 (2) within an essential critical infrastructure sector as defined by United States Department
1.16 of Homeland Security Guidance on the Essential Critical Infrastructure Workforce, dated
1.17 April 17, 2020.

1.18 (c) "First responder" means state and local law enforcement personnel, fire department
1.19 personnel, and emergency medical personnel. First responder includes any person authorized
1.20 by executive order to deploy in response to the COVID-19 pandemic.

1.21 (d) "Health care facility" means:

1.22 (1) any licensed facility providing health care services including, but not limited to, a
1.23 hospital, clinic, outpatient surgery center, dialysis center, hospice, or nursing home; or

2.1 (2) any temporary alternative health care facility established by the commissioner of
2.2 health.

2.3 (e) "Health care professional" means:

2.4 (1) any person licensed, credentialed, or registered by a health licensing board, whether
2.5 paid or unpaid, including persons engaged in telemedicine or telehealth, and any employee,
2.6 agent, or contractor of such person;

2.7 (2) any emergency medical technician;

2.8 (3) any person authorized to provide health care services during a declared peacetime
2.9 public health emergency related to COVID-19; and

2.10 (4) an employer, agent, or health care professional who provides or arranges health care
2.11 services.

2.12 (f) "Household cleaning or disinfecting supplies" includes, but is not limited to, hand
2.13 sanitizers, disinfectants, sprays, and wipes.

2.14 (g) "Person" means an individual, association, for-profit or nonprofit entity, religious
2.15 organization, or charitable organization and their officials, agents, and employees.

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

2.19 (i) "Qualified product" means:

2.20 (1) personal protective equipment used to protect the wearer from COVID-19 or the
2.21 spread of COVID-19;

2.22 (2) medical devices, equipment, and supplies used to diagnose or treat COVID-19,
2.23 including products that are used or modified for an unapproved use to diagnose or treat
2.24 COVID-19 or prevent the spread of COVID-19;

2.25 (3) medical devices, equipment, or supplies used outside of the product's normal use to
2.26 treat COVID-19 or to prevent the spread of COVID-19;

2.27 (4) medications used to treat COVID-19, including medications prescribed or dispensed
2.28 for off-label use to attempt to treat COVID-19;

2.29 (5) tests to diagnose or determine prior exposure or immunity to COVID-19;

2.30 (6) components and constituent materials of a qualified product; and

2.31 (7) products and technologies used to enhance the use or effect of a qualified product.

3.1 Subd. 2. **Liability limited.** (a) Any person who designs, manufactures, labels, sells,
3.2 distributes, or donates a qualified product in response to COVID-19 that is used by a
3.3 government entity, health care professional, health care facility, first responder, or essential
3.4 business shall not be liable in a civil action alleging an act or omission arising out of or
3.5 relating to the administration or use of a qualified product.

3.6 (b) Any person who designs, manufactures, labels, sells, distributes, or donates household
3.7 cleaning or disinfecting supplies or personal protective equipment in response to COVID-19
3.8 who does not design or manufacture such products in the ordinary course of the person's
3.9 business shall not be liable in a civil action alleging an act or omission arising out of or
3.10 relating to the administration or use of the product.

3.11 Subd. 3. **Exception.** Subdivision 2 does not apply to any person who:

3.12 (1) had actual knowledge that the qualified product, household cleaning or disinfecting
3.13 supply, or personal protective equipment was defective when put to the use for which the
3.14 product, supply, or equipment was manufactured, sold, distributed, or donated; and

3.15 (2) acted with complete indifference to or conscious disregard of a substantial and
3.16 unnecessary risk that the qualified product, household cleaning or disinfecting supply, or
3.17 personal protective equipment would cause serious injury to others, or acted with intent to
3.18 cause harm.

3.19 **EFFECTIVE DATE.** This section is effective retroactively from March 13, 2020, and
3.20 applies to causes of action accruing on or after that date.

3.21 Sec. 2. **[604A.51] MINIMUM INJURY REQUIREMENT; COVID-19.**

3.22 Subdivision 1. **Minimum injury required; exception.** (a) No person may file a civil
3.23 action alleging injury, damage, death of a person, or economic loss related to COVID-19
3.24 if that person was:

3.25 (1) not diagnosed with or did not experience symptoms consistent with COVID-19;

3.26 (2) diagnosed with COVID-19 when that person was asymptomatic; or

3.27 (3) diagnosed with COVID-19 but that person did not require inpatient hospitalization
3.28 or experience a serious illness or death. For purposes of this section, "serious illness" means
3.29 a medical illness, physical injury, or condition that causes an inability to engage in a person's
3.30 usual or customary daily activities for at least 14 days.

3.31 (b) This section does not apply to acts or omissions committed with intent to cause harm
3.32 or threaten exposure to COVID-19.

4.1 Subd. 2. **Effect on other law.** Nothing in this section shall eliminate a required element
 4.2 of any claim.

4.3 **EFFECTIVE DATE.** This section is effective retroactively from March 13, 2020, and
 4.4 applies to causes of action accruing on or after that date.

4.5 **Sec. 3. [604A.52] NO DUTY OF CARE OWED; LIMITED LIABILITY.**

4.6 Subdivision 1. **No duty of care.** (a) An owner, lessor, lessee, or occupant of commercial,
 4.7 business, industrial, governmental, recreational, or residential premises, who directly or
 4.8 indirectly invites or permits any person onto the premises, owes no duty to:

4.9 (1) eliminate or reduce the risk related to COVID-19; or

4.10 (2) warn persons entering the premises of a risk related to COVID-19.

4.11 Subd. 2. **Liability limited.** An owner, lessor, lessee, or occupant of commercial, business,
 4.12 industrial, governmental, recreational, or residential premises is not liable for injury, damage,
 4.13 death of a person, or economic loss related to COVID-19 unless the owner, lessor, lessee,
 4.14 or occupant:

4.15 (1) acts in a willful and wanton or reckless manner by disregarding a substantial and
 4.16 unnecessary risk that a person would be exposed to or contract COVID-19; or

4.17 (2) intentionally causes the person to be exposed to or contract COVID-19.

4.18 Subd. 3. **Exemption.** This section does not apply to workers' compensation claims under
 4.19 chapter 176.

4.20 **EFFECTIVE DATE.** This section is effective retroactively from March 13, 2020, and
 4.21 applies to causes of action accruing on or after that date.

4.22 **Sec. 4. [604A.53] SAFE HARBOR FOR COMPLIANCE WITH GOVERNMENT**
 4.23 **GUIDANCE; COVID-19.**

4.24 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have
 4.25 the meanings given them.

4.26 (b) "Person" means an individual, association, for-profit or nonprofit entity, religious
 4.27 organization, or charitable organization and their officials, agents, and employees.

4.28 (c) "Guidance" means recommendations, policies, procedures, regulations, or executive
 4.29 orders related to COVID-19 issued by a federal, state, or local government agency in writing.

5.1 Subd. 2. **Effect of compliance on liability.** Any person conducting business in this state
5.2 shall not be liable in a civil action for injury, damage, death of a person, or economic loss
5.3 related to COVID-19 if the act or omission at issue complied or was consistent with guidance
5.4 applicable at the time of the alleged act or omission. If two or more guidances are applicable
5.5 to the same alleged act or omission, this section applies if the act or omission at issue
5.6 complied or was consistent with any written guidance.

5.7 **EFFECTIVE DATE.** This section is effective retroactively from March 13, 2020, and
5.8 applies to causes of action accruing on or after that date.