

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 1947

By: Treat and Bullard of the  
Senate

3

and

4

McCall and O'Donnell of the  
House

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An Act relating to product liability; creating the  
COVID-19 Product Protection Act; providing short  
title; defining terms; establishing immunity from  
liability for persons or entities from certain civil  
actions related to certain products; establishing  
requirements for certain immunity; providing  
exceptions to certain immunity; construing  
provisions; clarifying applicability of act;  
providing for codification; and declaring an  
emergency.

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AUTHOR: Add the following House Coauthor: Lepak

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AMENDMENT NO. 1. Page 3, line 23 through page 4, line 7, delete  
subsection C in its entirety

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17

and reletter subsequent subsections

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and amend title to conform

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1 Passed the House of Representatives the 14th day of May, 2020.

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4 Presiding Officer of the House of  
Representatives

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6 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2020.

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8  
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14 provisions; clarifying applicability of act;  
15 providing for codification; and declaring an  
16 emergency.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 112 of Title 76, unless there is  
20 created a duplication in numbering, reads as follows:

21 A. This section shall be known and may be cited as the "COVID-  
22 19 Product Protection Act".

23 B. As used in this Act:

24 1. "COVID-19" means the novel coronavirus identified as SARS-  
CoV-2, the disease caused by SARS-CoV-2, and conditions associated  
with the disease;

1           2. "COVID-19 public health emergency" means any emergency  
2 declared by the Governor of Oklahoma related to COVID-19, including  
3 but not limited to the emergency declared by the Governor by  
4 Executive Order 2020-07, and any amendments thereto, under the  
5 Oklahoma Emergency Management Act of 2003, Section 683.1 et seq. of  
6 Title 63 of the Oklahoma Statutes, beginning on March 15, 2020, and  
7 the health emergency declared by the Governor by Executive Order  
8 2020-13, and any amendments thereto, under the Catastrophic Health  
9 Emergency Powers Act, Section 6101 et seq. of Title 63 of the  
10 Oklahoma Statutes, beginning on April 8, 2020;

11           3. "Disinfecting and cleaning supplies" includes, but is not  
12 limited to, hand sanitizers, disinfectants, sprays, and wipes;

13           4. "Essential business" means a person or entity:

14           a. within a critical infrastructure sector as defined by  
15 the United States Department of Homeland Security,

16           b. defined as essential by the Oklahoma Department of  
17 Commerce through use of the North American Industry  
18 Classification System during the COVID-19 pandemic, or

19           c. within an industry designated as critical or essential  
20 by Executive Order or Executive Memorandum;

21           5. "First responder" means state and local law enforcement  
22 personnel, fire department personnel and emergency medical  
23 personnel. First responder includes a person authorized by  
24

1 executive order who will be deployed in response to the COVID-19  
2 pandemic;

3 6. "Health care facility" and "health care provider" shall have  
4 the same meaning as such terms are defined as provided in Section  
5 6104 of Title 63 of the Oklahoma Statutes;

6 7. "Person" means an individual, firm, partnership, corporation  
7 or association;

8 8. "Personal protective equipment" means coveralls, face  
9 shields, gloves, gowns, masks, respirators, and other equipment  
10 designed to protect the wearer from the spread of infection or  
11 illness; and

12 9. "Qualified product" means personal protective equipment used  
13 to protect the wearer from COVID-19 or the spread of COVID-19;  
14 medical devices, equipment, or supplies used to treat COVID-19  
15 including products that are used or modified for an unapproved use  
16 to treat COVID-19 or prevent the spread of COVID-19; medical  
17 devices, equipment, or supplies utilized outside of such product's  
18 normal use to treat COVID-19 or to prevent the spread of COVID-19;  
19 medications used to treat COVID-19 patients including medications  
20 prescribed or dispensed for off-label use to attempt to combat  
21 COVID-19; tests to diagnose or determine immunity to COVID-19; and  
22 components of qualified products.

23 C. Except as provided by subsection F of this section, any  
24 person that designs, manufactures, labels, sells, distributes, or

1 donates a qualified product during and in response to the COVID-19  
2 public health emergency that is utilized by a government entity,  
3 health care facility, health care provider, first responder, or  
4 essential business shall not be liable in a civil action alleging  
5 personal injury, death or property damage caused by or resulting  
6 from the product's manufacturing or design, or a failure to provide  
7 proper instructions or sufficient warnings.

8 D. Except as provided by subsection F of this section, any  
9 person that designs, manufactures, labels, sells, distributes, or  
10 donates disinfecting and cleaning supplies or personal protective  
11 equipment during and in response to the COVID-19 public health  
12 emergency that does not make such products in the ordinary course of  
13 business shall not be liable in a civil action alleging personal  
14 injury, death or property damage caused by or resulting from the  
15 product's manufacturing or design, or a failure to provide proper  
16 instructions or sufficient warnings.

17 E. Except as provided by subsection F of this section, a  
18 government entity, health care facility, health care provider, first  
19 responder, or any business, or the employer or agent of such  
20 business, that utilizes a product meeting the qualifications of  
21 either subsection C or D of this section, shall not be liable in a  
22 civil action alleging personal injury, death or property damage  
23 caused by or resulting from the selection, distribution, or use of  
24 such product.

1 F. The immunity provided in subsections C, D and E of this  
2 section shall not apply to any person, or any employee or agent  
3 thereof, that:

4 1. a. Had actual knowledge that the product was defective  
5 when put to the use for which the product was  
6 manufactured, sold, distributed, or donated, and

7 b. Acted with deliberate indifference to or conscious  
8 disregard of a substantial and unnecessary risk that  
9 the product would cause serious injury to others; or

10 2. Acted with a deliberate intention to cause harm.

11 G. Nothing contained in this section shall be construed to:

12 1. Relieve a plaintiff of the need to satisfy any required  
13 element of a claim; or

14 2. Amend, repeal, alter or affect any other immunity or  
15 limitation of liability provided for under the laws of this state.

16 H. The provisions of this section shall apply to any claim  
17 arising on or after the emergency declared by the Governor of  
18 Oklahoma related to COVID-19 by Executive Order 2020-07 on March 15,  
19 2020.

20 SECTION 2. It being immediately necessary for the preservation  
21 of the public peace, health or safety, an emergency is hereby  
22 declared to exist, by reason whereof this act shall take effect and  
23 be in full force from and after its passage and approval.

