

SENATE BILL NO. 1024

July 23, 2020, Introduced by Senators THEIS, HORN, MACGREGOR and SCHMIDT and referred to the Committee on Economic and Small Business Development.

A bill to provide minimum requirements for claims alleging exposure to COVID-19; establishing liability standards for claims alleging exposure to COVID-19; precluding liability if conduct complies with regulations, orders, or public health guidance; and limiting liability with respect to certain products made, sold, or donated in response to COVID-19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "COVID-19 response and reopening liability assurance act".

1 Sec. 2. As used in this act:

2 (a) "Conduct intended to reduce transmission of COVID-19"
3 means health screening, testing, contact tracing, and other actions
4 intended to reduce transmission of COVID-19 in a workplace or on
5 other premises.

6 (b) "COVID-19" means the novel coronavirus identified as SARS-
7 CoV-2 or a virus mutating from SARS-CoV-2, the disease caused by
8 the novel coronavirus SARS-CoV-2, and conditions associated with
9 the disease.

10 (c) "COVID-19 claim" means a claim or cause of action for
11 damages, losses, indemnification, contribution, or other relief
12 arising out of, based on, or in any way related to exposure or
13 potential exposure to COVID-19, or a person's actions intended to
14 maintain workplace safety. COVID-19 claim also includes, but is not
15 limited to, a claim made by or on behalf of an individual who has
16 been exposed or potentially exposed to COVID-19, or any
17 representative, spouse, parent, child, member of the same
18 household, or other relative of the individual, for injury,
19 including mental or emotional injury, death, or loss to person,
20 risk of disease or other injury, costs of medical monitoring or
21 surveillance, or other losses allegedly caused by the individual's
22 exposure or potential exposure to COVID-19.

23 (d) "COVID-19 emergency" means the state of emergency declared
24 under 1945 PA 302, MCL 10.31 to 10.33, or the emergency management
25 act, 1976 PA 390, MCL 30.401 to 30.421, on March 10, 2020, and any
26 subsequent orders or amendments to those orders.

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

29 (f) "Essential business" means an individual or employer of an

1 individual who meets the definition of a critical infrastructure
2 worker as defined by Executive Order No. 2020-70 on May 1, 2020,
3 and any subsequent orders or amendments to those orders.

4 (g) "First responder" means a firefighter, law enforcement
5 officer, member of a rescue squad or ambulance crew, or public
6 safety officer as those terms are defined in section 2 of the
7 public safety officers benefit act, 2004 PA 46, MCL 28.632, and any
8 other person authorized to provide emergency services during the
9 COVID-19 emergency.

10 (h) "Gross negligence" means conduct so reckless as to
11 demonstrate a substantial lack of concern for whether an injury
12 results.

13 (i) "Health facility" means a health facility or agency
14 licensed under article 17 of the public health code, 1978 PA 368,
15 MCL 333.20101 to 333.22260, a temporary or mobile facility
16 established to provide care during the COVID-19 emergency, and any
17 other person authorized to provide health care in response to the
18 COVID-19 emergency.

19 (j) "Health professional" means an individual licensed,
20 registered, certified, or otherwise authorized to engage in a
21 health profession under article 15 of the public health code, 1978
22 PA 368, MCL 333.16101 to 333.18838, whether paid or unpaid,
23 including individuals engaged in telemedicine or telehealth, any
24 other individual authorized to provide health care during the
25 COVID-19 emergency, and the employer or agent of a health
26 professional who provides or arranges health care.

27 (k) "Minimum medical condition" means any of the following:

28 (i) A positive diagnosis of COVID-19, or symptoms consistent
29 with COVID-19, that required inpatient hospitalization of at least

1 24 hours.

2 (ii) A medical illness or physical injury or condition caused
3 by COVID-19 that results in the inability to engage in an
4 individual's usual and customary daily activities for at least 14
5 days, which does not include any period that the individual is in
6 quarantine to slow the spread of COVID-19.

7 (iii) Death.

8 (l) "Person" means an individual, partnership, corporation,
9 association, governmental entity, or other legal entity, including,
10 but not limited to, a school, a college or university, and a
11 nonprofit charitable organization. Person includes an employee,
12 agent, or independent contractor of the person, regardless of
13 whether the individual is paid or an unpaid volunteer.

14 (m) "Personal protective equipment" means coveralls, face
15 shields, gloves, gowns, masks, respirators, or other equipment used
16 to protect the wearer from infection or illness or the spread of
17 infection or illness.

18 (n) "Premises" means any real property and any appurtenant
19 building or structure, or a vehicle, that serves a commercial,
20 residential, charitable, cultural, educational, governmental,
21 health care, religious, or other purpose.

22 (o) "Product liability claim" means an action based on a legal
23 or equitable theory of liability brought for the death of an
24 individual or for injury to an individual or damage to property
25 caused by or resulting from the production of a product.

26 (p) "Public health guidance" means written guidance related to
27 COVID-19 issued by the Centers for Disease Control and Prevention
28 or the Occupational Safety and Health Administration of the United
29 States Department of Labor, or by the department of health and

1 human services or another agency of this state.

2 (q) "Qualified product" means personal protective equipment
3 used to protect the wearer from COVID-19 or the spread of COVID-19;
4 medical devices, equipment, and supplies used to treat COVID-19
5 including products that are used or modified for an unapproved use
6 outside of the product's normal use to treat COVID-19 or prevent
7 the spread of COVID-19; medical devices, equipment, or supplies
8 used outside of the product's normal use to treat COVID-19 or to
9 prevent the spread of COVID-19; medications used to treat COVID-19
10 including medications prescribed or dispensed for off-label use to
11 attempt to combat COVID-19; tests to diagnose or determine immunity
12 to COVID-19; and components of qualified products.

13 Sec. 3. (1) A person shall not bring or maintain a civil
14 action alleging a COVID-19 claim unless the claim alleges harm
15 related to a minimum medical condition.

16 (2) This section does not apply if the conduct that is the
17 subject of the COVID-19 claim was a deliberate act intended to
18 cause harm.

19 Sec. 4. A person is not liable for a COVID-19 claim that
20 arises from exposure of an individual to COVID-19 on premises
21 owned, leased, managed, or operated by a person, or during an
22 activity managed by a person, unless it is shown by clear and
23 convincing evidence that the injuries were caused by a reckless
24 disregard of a substantial and unnecessary risk that an individual
25 would be exposed to COVID-19, or the person engaged in a deliberate
26 act intended to cause harm.

27 Sec. 5. (1) A person that operates in substantial compliance
28 with or reasonably consistent with a federal or state statute or
29 regulation, executive order, or public health guidance that was

1 applicable at the time to the conduct or risk that allegedly caused
2 harm is not liable for a COVID-19 claim or a claim related to
3 conduct intended to reduce transmission of COVID-19.

4 (2) If more than 1 public health guidance applies to the
5 person or conduct at issue at the time of the alleged harm,
6 subsection (1) is satisfied by conduct reasonably consistent with
7 any public health guidance.

8 Sec. 6. (1) Except as provided by subsection (4), a person
9 that designs, manufactures, labels, sells, delivers, distributes,
10 provides insurance coverage for, or donates a qualified product in
11 response to COVID-19 that is used by an essential business, first
12 responder, government entity, health facility, or health
13 professional is not liable in a civil action that alleges a product
14 liability claim related to the qualified product.

15 (2) Except as provided by subsection (4), a person that
16 designs, manufactures, labels, sells, delivers, distributes,
17 provides insurance coverage for, or donates disinfecting or
18 cleaning supplies or personal protective equipment in response to
19 COVID-19 that does not make such products in the ordinary course of
20 the person's business is not liable in a civil action that alleges
21 a product liability claim related to the disinfecting or cleaning
22 supplies or personal protective equipment.

23 (3) Except as provided by subsection (4), a person that
24 selects or dispenses a qualified product in response to the COVID-
25 19 pandemic is not liable in a civil action for injuries or damages
26 claimed to have arisen from the selection, dispensation, or use of
27 the qualified product.

28 (4) The limitations on liability provided in this section do
29 not apply if there is clear and convincing evidence that a person

1 had actual knowledge that the product was defective and that there
2 was a substantial likelihood that the defect would cause the injury
3 that is the basis of the action, and the person willfully
4 disregarded that knowledge in the manufacture, distribution, sale,
5 or donation of the product.

6 Sec. 7. (1) A person that owns or controls premises that,
7 voluntarily or at the request or order of this state or a political
8 subdivision of this state, designates and uses the whole or any
9 part of the premises to provide health care services, to provide
10 shelter to patients, first responders, or health professionals, or
11 for quarantine purposes in response to the COVID-19 emergency is
12 not civilly liable for causing the death of or injury to an
13 individual on or about the premises or for loss of or damage to the
14 property of the individual absent gross negligence that is the
15 proximate cause of the death, injury, or damage.

16 (2) This section does not affect any obligation of a person
17 that owns or controls premises to disclose hidden dangers or safety
18 hazards that are known to the owner or occupant of the premises
19 that might possibly result in the death or injury or loss of or
20 damage to the property.

21 Sec. 8. This act does not do any of the following:

22 (a) Create, recognize, or ratify a claim or cause of action of
23 any kind.

24 (b) Eliminate a required element of any claim, including, but
25 not limited to, causation and proximate cause elements.

26 (c) Affect rights, remedies, or protections under the worker's
27 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to
28 418.941, including the exclusive application of that act.

29 (d) Amend, repeal, alter, or affect any other immunity or

1 limitation of liability.

2 Sec. 9. As provided by section 5 of 1846 RS 1, MCL 8.5, the
3 provisions of this act are severable. If any portion of this act or
4 the application of this act to any person or circumstances is found
5 to be invalid by a court, the invalidity will not affect, impair,
6 or invalidate the other portions or applications of this act that
7 can be given effect without the invalid portion or application.

8 Sec. 10. This act applies retroactively to any claim or cause
9 of action that accrues after January 1, 2020.

10 Enacting section 1. This act does not take effect unless all
11 of the following bills of the 100th Legislature are enacted into
12 law:

13 (a) Senate Bill No. 1023.

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15 (b) Senate Bill No. 1022.

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