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:

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

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

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

(c) "COVID-19 claim" means a claim or cause of action for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to exposure or potential exposure to COVID-19, or a person's actions intended to maintain workplace safety. COVID-19 claim also includes, but is not limited to, a claim made by or on behalf of an individual who has been exposed or potentially exposed to COVID-19, or any representative, spouse, parent, child, member of the same household, or other relative of the individual, 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 individual's exposure or potential exposure to COVID-19.

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

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

(f) "Essential business" means an individual or employer of an
individual who meets the definition of a critical infrastructure worker as defined by Executive Order No. 2020-70 on May 1, 2020, and any subsequent orders or amendments to those orders.

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

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

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

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

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

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

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

(iii) Death.

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

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

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

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

(p) "Public health guidance" means written guidance related to COVID-19 issued by the Centers for Disease Control and Prevention or the Occupational Safety and Health Administration of the United States Department of Labor, or by the department of health and
human services or another agency of this state.

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

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

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

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

Sec. 5. (1) A person that operates in substantial compliance
with or reasonably consistent with a federal or state statute or
regulation, executive order, or public health guidance that was
applicable at the time to the conduct or risk that allegedly caused
harm is not liable for a COVID-19 claim or a claim related to
conduct intended to reduce transmission of COVID-19.

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

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

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

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

(4) The limitations on liability provided in this section do
not apply if there is clear and convincing evidence that a person
had actual knowledge that the product was defective and that there
was a substantial likelihood that the defect would cause the injury
that is the basis of the action, and the person willfully
disregarded that knowledge in the manufacture, distribution, sale,
or donation of the product.

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

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

Sec. 8. This act does not do any of the following:
(a) Create, recognize, or ratify a claim or cause of action of
any kind.

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

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

(d) Amend, repeal, alter, or affect any other immunity or
limitation of liability.

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

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

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

(a) Senate Bill No. 1023.

(b) Senate Bill No. 1022.