

AN ACT concerning civil actions and civil procedure; enacting the COVID-19 response and reopening for business liability protection act; relating to liability associated with COVID-19; providing an actual injury requirement for claims alleging exposure to COVID-19; establishing premises liability standard for claims alleging exposure to COVID-19; precluding liability when conduct complies with regulations, orders or guidance; limiting liability with respect to qualified products made, sold or donated in response to COVID-19.

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

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

Sec. 2. As used in the COVID-19 response and reopening for business liability protection act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Cleaning or disinfecting supplies" includes, but is not limited to, hand sanitizers, disinfectants, sprays and wipes.

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

(c) "COVID-19 claim" means any claim 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. "COVID-19 claim" includes a claim made by or on behalf of any person who has been exposed or potentially exposed to COVID-19, or any representative, spouse, parent, child or other relative of that person, 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 person's exposure or potential exposure to

COVID-19.

(d) "COVID-19 public health emergency" means the state of disaster emergency declared for the state of Kansas on March 12, 2020, and any subsequent orders or amendments thereto.

(e) "Essential business" means a person or an entity: (1) Meeting the criteria of the Kansas essential functions framework, as defined by executive order 20-16 issued on March 28, 2020, and any similar orders or amendments thereto; or (2) within an essential critical infrastructure sector, as defined by the United States department of homeland security.

(f) "First responder" means: (1) A law enforcement officer, firefighter or emergency medical services provider; (2) any person or entity authorized by the state of Kansas or the federal government to provide emergency services in response to the COVID-19 public health emergency; and (3) an employer of any person described in this subsection.

(g) "Healthcare provider" means: (1) A person or entity that is licensed, registered, certified or otherwise authorized by the state of Kansas or the United States government to perform healthcare services in this state; (2) a person acting under the direction and supervision of a person or entity described in paragraph (1) to perform healthcare services in this state; and (3) the employer or agent of a healthcare provider who provides or arranges healthcare including, but not limited to, behavioral or mental health services.

(h) "Healthcare services" means any activity within a healthcare provider's authorized scope of practice, whether paid or unpaid, for the diagnosis, cure or treatment of any injury, infirmity, disease, physical or mental illness or psychological disorder, of human beings, including telemedicine.

(i) "Medical care facility" means: (1) A medical care facility licensed under K.S.A. 65-425 et seq., and amendments thereto; (2) a nursing facility, an assisted living facility or a residential healthcare facility, as such terms are defined by K.S.A. 39-923, and amendments thereto; (3) a hospice; and (4) any other entity authorized by the state of Kansas or the federal government to provide healthcare in response to the COVID-19 public health emergency.

(j) "Minimum medical condition" means a diagnosis of COVID-19, or symptoms consistent with COVID-19, that required inpatient hospitalization or resulted in serious illness or death.

(k) "Person" means an individual, association, for-profit or not-for-profit business entity, religious organization or charitable organization.

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

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

(n) "Product liability claim" means any claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage or labeling of the relevant product. "Product liability claim" includes, but is not limited to, any action based on: Strict liability in tort; negligence; breach of express or implied warranty; breach of, or failure to, discharge a duty to warn or instruct, whether negligent or innocent; or misrepresentation, concealment or nondisclosure, whether negligent or innocent, or under any other substantive

legal theory.

(o) "Public health guidance" means written guidance related to COVID-19 issued by the centers for disease control and prevention, occupational safety and health administration of the United States department of labor, Kansas department of health and environment, Kansas department of labor or any other state agency.

(p) "Qualified product" means: (1) Personal protective equipment used to protect the wearer from COVID-19 or the spread of COVID-19; (2) medical devices, equipment or supplies used to treat COVID-19 including products that are used or modified for an unapproved use to treat COVID-19 or prevent the spread of COVID-19; (3) medical devices, equipment or supplies utilized outside of the product's normal use to treat COVID-19 or to prevent the spread of COVID-19; (4) medications used to treat COVID-19 including medications prescribed or dispensed for off-label use to attempt to combat COVID-19; (5) tests to diagnose or determine immunity to COVID-19; and (6) components of qualified products.

(q) "Serious illness" means a medical illness or physical injury or condition that causes an inability to engage in a person's usual and customary daily activities for at least 14 days, excluding any period of quarantine.

Sec. 3. (a) Notwithstanding any other provision of law, except as provided in subsection (b), a person shall not bring or maintain a civil action alleging a COVID-19 claim without a minimum medical condition.

(b) The requirements established by this section do not apply to a deliberate act intended to cause harm.

Sec. 4. Notwithstanding any other provision of law, a possessor of real property,

including an owner, lessee or other lawful occupant, who directly or indirectly invites or permits any person onto a premises, shall not be held liable in a civil action for a COVID-19 claim unless the possessor of real property willfully or maliciously fails to guard or warn against a substantial and unnecessary risk that a person would be exposed to COVID-19.

Sec. 5. (a) Notwithstanding any other provision of law, a person, or agent of that person, conducting business in this state shall not be held liable in a civil action for a COVID-19 claim if the act or omission alleged to violate a duty of care complied with or was consistent with a federal or state statute or regulation, executive order, or public health guidance document applicable to the person, premises or activity at issue at the time of the alleged exposure.

(b) If two or more public health guidance documents are applicable to the person or activity at issue at the time of the alleged exposure, subsection (a) may be satisfied through conduct consistent with any written guidance.

Sec. 6. (a) Notwithstanding any other provision of law, except as provided in subsection (c), any person that designs, manufactures, labels, sells, distributes, provides or donates a qualified product in response to COVID-19 that is utilized by a government entity, healthcare provider, medical care facility, first responder or essential business shall not be liable in a civil action alleging a product liability claim.

(b) Notwithstanding any other provision of law, except as provided in subsection (c), any person that designs, manufactures, labels, sells, distributes, provides or donates cleaning or disinfecting 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 shall not be liable in a civil action alleging a product liability claim.

(c) The limitations on liability provided in this section shall not apply to any person that:

(1) (A) Had actual knowledge of a defect in the product when put to the use for which the product was manufactured, sold, distributed or donated; and

(B) willfully disregarded a substantial and unnecessary risk that the product would cause serious injury to others; or

(2) acted with actual malice.

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

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

(b) eliminates a required element of any claim;

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

or

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

Sec. 8. The provisions of the COVID-19 response and reopening for business liability protection act shall apply to any cause of action accruing on or after March 12, 2020.

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

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