

As Amended by House Committee

Session of 2021

HOUSE BILL No. 2126

By Committee on Judiciary

1-25

1 AN ACT concerning adult care facilities; relating to civil liability for
2 COVID-19 claims; providing immunity therefrom; modifying the
3 definition of adult care facility; amending K.S.A. 2020 Supp. 60-5502,
4 60-5506 and 60-5508 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2020 Supp. 60-5502 is hereby amended to read as
8 follows: 60-5502. As used in the COVID-19 response and reopening for
9 business liability protection act, unless the context otherwise requires:

10 (a) ~~"Adult care~~**Covered** facility" means a "nursing facility," "assisted
11 living facility" or "residential health care facility" as those terms are:

12 (1) *An "adult care home" as defined in K.S.A. 39-923, and*
13 *amendments thereto, except that "~~adult care~~covered facility" includes a*
14 *center approved by the centers for medicare and medicaid services as a*
15 *program for all-inclusive care for the elderly (PACE) under 42 C.F.R. §*
16 *460 et seq., that provides services only to PACE participants;*

17 (2) **a "community mental health center" and a "crisis**
18 **intervention center" as defined in K.S.A. 2020 Supp. 39-2002, and**
19 **amendments thereto; and**

20 (3) **a "community service provider," a "community**
21 **developmental disability organization" and an "institution" as defined**
22 **in K.S.A. 2020 Supp. 39-1803, and amendments thereto.**

23 (b) "COVID-19" means the novel coronavirus identified as SARS-
24 CoV-2.

25 (c) "COVID-19 claim" means any claim for damages, losses,
26 indemnification, contribution or other relief arising out of or based on
27 exposure or potential exposure to COVID-19. "COVID-19 claim" includes
28 a claim made by or on behalf of any person who has been exposed or
29 potentially exposed to COVID-19, or any representative, spouse, parent,
30 child or other relative of such person, for injury, including mental or
31 emotional injury, death or loss to person, risk of disease or other injury,
32 costs of medical monitoring or surveillance, or other losses allegedly
33 caused by the person's exposure or potential exposure to COVID-19.

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

1 disaster emergency declared for the state of Kansas regarding the COVID-
2 19 pandemic.

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

5 (f) "Healthcare provider" means a person or entity that is licensed,
6 registered, certified or otherwise authorized by the state of Kansas to
7 provide healthcare services in this state, including a hospice certified to
8 participate in the medicare program under 42 C.F.R. § 418 et seq.
9 "Healthcare provider" does not include any entity licensed under chapter
10 39 of the Kansas Statutes Annotated, and amendments thereto.

11 (g) "Person" means an individual, for-profit or not-for-profit business
12 entity, business trust, estate, trust, partnership, limited liability company,
13 association, joint venture, public corporation, government or political
14 subdivision, agency or instrumentality or any other legal or commercial
15 entity.

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

19 (i) "Product liability claim" means any strict liability, ordinary
20 negligence or implied warranty claim or action brought for harm caused by
21 the manufacture, production, making, construction, fabrication, design,
22 formula, preparation, assembly, installation, testing, warnings, instructions,
23 marketing, packaging, storage or labeling of the relevant product.

24 (j) "Public health directives" means any of the following that is
25 required by law to be followed related to public health and COVID-19:

26 (1) State statutes, rules and regulations or executive orders issued by
27 the governor pursuant to K.S.A. 48-925, and amendments thereto;

28 (2) federal statutes or regulations from federal agencies, including the
29 United States centers for disease control and prevention and the
30 occupational safety and health administration of the United States
31 department of labor; or

32 (3) any lawful order or proclamation issued under authority of the
33 Kansas emergency management act, and amendments thereto, by a board
34 of county commissioners, the governing body of a city or a local health
35 officer.

36 (k) "Qualified product" means: (1) Personal protective equipment
37 used to protect the wearer from COVID-19 or the spread of COVID-19;
38 (2) medical devices, equipment and supplies used to treat COVID-19,
39 including products that are used or modified for an unapproved use to treat
40 COVID-19 or prevent the spread of COVID-19; (3) medical devices,
41 equipment or supplies utilized outside of the product's normal use to treat
42 COVID-19 or to prevent the spread of COVID-19; (4) medications used to
43 treat COVID-19, including medications prescribed or dispensed for

1 offlabel use to attempt to combat COVID-19; (5) tests used to diagnose or
2 determine immunity to COVID-19; (6) disinfecting or cleaning supplies;
3 (7) clinical laboratory services certified under the federal clinical
4 laboratory improvement amendments in section 353 of the public health
5 service act, 42 U.S.C. § 263a; and (8) components of qualified products.

6 Sec. 2. K.S.A. 2020 Supp. 60-5506 is hereby amended to read as
7 follows: 60-5506. (a) Notwithstanding any other provision of law, ~~an adult~~
8 **care a covered facility shall have an affirmative defense to is immune from**
9 liability in a civil action for damages, ~~administrative fines or penalties for~~
10 a COVID-19 claim if such facility:

11 (1) (A) ~~Was caused, by the facility's compliance with a statute or rule~~
12 ~~and regulation, to reaccept a resident who had been removed from the~~
13 ~~facility for treatment of COVID-19; or~~

14 (B) ~~treats a resident who has tested positive for COVID-19 in such~~
15 ~~facility in compliance with a statute or rule and regulation; and~~

16 (2) ~~is acting pursuant to and in substantial compliance with public~~
17 ~~health directives.~~

18 (b) ~~As used in this section, "public health directives" means any of~~
19 ~~the following that is required by law to be followed related to public health~~
20 ~~and COVID-19:~~

21 (1) ~~State statutes, rules and regulations or executive orders issued by~~
22 ~~the governor pursuant to K.S.A. 48-925, and amendments thereto; or~~

23 (2) ~~federal statutes or regulations from federal agencies, including the~~
24 ~~United States centers for disease control and prevention and the~~
25 ~~occupational safety and health administration of the United States~~
26 ~~department of labor if such facility was in substantial compliance with~~
27 **public health directives applicable to the activity giving rise to the**
28 **cause of action when the cause of action accrued.**

29 (b) ~~The provisions of this section shall apply to any claim for~~
30 ~~damages or liability that arise out of or relate to acts, omissions or~~
31 ~~decisions related to the COVID-19 public health emergency~~
32 **As used in this section, "public health directives" means any of the following that**
33 **are required by law to be followed related to COVID-19:**

34 (1) **State statutes or rules and regulations; or**

35 (2) **federal statutes or regulations from federal agencies, including**
36 **the United States centers for disease control and prevention and the**
37 **occupational safety and health administration of the United States**
38 **department of labor.**

39 (c) *The provisions of this section shall not apply to civil liability*
40 *when it is established that the act, omission or decision giving rise to the*
41 **cause of action constituted gross negligence or willful, wanton or reckless**
42 *conduct.*

43 Sec. 3. K.S.A. 2020 Supp. 60-5508 is hereby amended to read as

1 follows: 60-5508. (a) The provisions of K.S.A. 2020 Supp. 60-5504, 60-
2 5505 and 60-5507, and amendments thereto, shall apply retroactively to
3 any cause of action accruing on or after March 12, 2020.

4 (b) The provisions of K.S.A. 2020 Supp. 60-5503 and 60-5506, and
5 amendments thereto, *and the amendments made to K.S.A. 2020 Supp. 60-*
6 *5506 by section 2 of this act*, shall apply retroactively to any cause of
7 action accruing on or after March 12, 2020, and prior to termination of the
8 state of disaster emergency related to the COVID-19 public health
9 emergency declared pursuant to K.S.A. 48-924, and amendments thereto.

10 Sec. 4. K.S.A. 2020 Supp. 60-5502, 60-5506 and 60-5508 are hereby
11 repealed.

12 Sec. 5. This act shall take effect and be in force from and after its
13 publication in the Kansas register.