

Senate File 2338

H-8173

1 Amend Senate File 2338, as passed by the Senate, as follows:

2 1. Page 1, by striking lines 1 through 14 and inserting:

3 <DIVISION I
4 EVIDENCE OF MEDICAL EXPENSES AND RECOVERABLE DAMAGES FOR
5 MEDICAL EXPENSES>

6 2. Page 2, after line 5 by inserting:

7 <DIVISION ____
8 COVID-19-RELATED LIABILITY

9 Sec. ____ . NEW SECTION. 686D.1 Short title.

10 This chapter shall be known and may be cited as the "*COVID-19*
11 *Response and Back-to-Business Limited Liability Act*".

12 Sec. ____ . NEW SECTION. 686D.2 Definitions.

13 When used in this chapter, unless the context otherwise
14 requires:

15 1. "*COVID-19*" means the novel coronavirus identified
16 as SARS-CoV-2, the disease caused by the novel coronavirus
17 SARS-CoV-2 or a virus mutating therefrom, and conditions
18 associated with the disease caused by the novel coronavirus
19 SARS-CoV-2 or a virus mutating therefrom.

20 2. "*Disinfecting or cleaning supplies*" means and includes
21 hand sanitizers, disinfectants, sprays, and wipes.

22 3. "*Health care facility*" means and includes all of the
23 following:

24 a. A facility as defined in section 514J.102.

25 b. A facility licensed pursuant to chapter 135B.

26 c. A facility licensed pursuant to chapter 135C.

27 d. Residential care facilities, nursing facilities,
28 intermediate care facilities for persons with mental illness,
29 intermediate care facilities for persons with intellectual
30 disabilities, hospice programs, elder group homes, and assisted
31 living programs.

32 4. "*Health care professional*" means physicians and other
33 health care practitioners who are licensed, certified, or
34 otherwise authorized or permitted by the laws of this state
35 to administer health care services in the ordinary course

1 of business or in the practice of a profession, whether
2 paid or unpaid, including persons engaged in telemedicine or
3 telehealth. *"Health care professional"* includes the employer or
4 agent of a health care professional who provides or arranges
5 health care.

6 5. *"Health care provider"* means and includes a health care
7 professional, health care facility, home health care facility,
8 and any other person or facility otherwise authorized or
9 permitted by any federal or state statute, regulation, order,
10 or public health guidance to administer health care services
11 or treatment.

12 6. *"Health care services"* means services for the diagnosis,
13 prevention, treatment, care, cure, or relief of a health
14 condition, illness, injury, or disease.

15 7. *"Minimum medical condition"* means a diagnosis of COVID-19
16 that requires inpatient hospitalization or results in death.

17 8. *"Person"* means the same as defined in section 4.1.
18 *"Person"* includes an agent of a person.

19 9. *"Personal protective equipment"* means and includes
20 protective clothing, gloves, face shields, goggles, facemasks,
21 respirators, gowns, aprons, coveralls, and other equipment
22 designed to protect the wearer from injury or the spread of
23 infection or illness.

24 10. *"Premises"* means and includes any real property and
25 any appurtenant building or structure serving a commercial,
26 residential, educational, religious, governmental, cultural,
27 charitable, or health care purpose.

28 11. *"Public health guidance"* means and includes written
29 guidance related to COVID-19 issued by any of the following:

30 a. The centers for disease control and prevention of the
31 federal department of health and human services.

32 b. The centers for Medicare and Medicaid services of the
33 federal department of health and human services.

34 c. The federal occupational safety and health
35 administration.

1 *d.* The office of the governor.

2 *e.* Any state agency, including the department of public
3 health.

4 12. "*Qualified product*" means and includes all of the
5 following:

6 *a.* Personal protective equipment used to protect the wearer
7 from COVID-19 or to prevent the spread of COVID-19.

8 *b.* Medical devices, equipment, and supplies used to treat
9 COVID-19, including medical devices, equipment, or supplies
10 that are used or modified for an unapproved use to treat
11 COVID-19 or to prevent the spread of COVID-19.

12 *c.* Medical devices, equipment, and supplies used outside of
13 their normal use to treat COVID-19 or to prevent the spread of
14 COVID-19.

15 *d.* Medications used to treat COVID-19, including medications
16 prescribed or dispensed for off-label use to attempt to treat
17 COVID-19.

18 *e.* Tests to diagnose or determine immunity to COVID-19.

19 *f.* Any component of an item described in paragraphs "*a*"
20 through "*e*".

21 Sec. _____. NEW SECTION. **686D.3 Actual injury requirement in**
22 **civil actions alleging COVID-19 exposure.**

23 A person shall not bring or maintain a civil action alleging
24 exposure or potential exposure to COVID-19 unless one of the
25 following applies:

26 1. The civil action relates to a minimum medical condition.

27 2. The civil action involves an act that was intended to
28 cause harm.

29 3. The civil action involves an act that constitutes actual
30 malice.

31 Sec. _____. NEW SECTION. **686D.4 Premises owner's duty of care**
32 **— limited liability.**

33 A person who possesses or is in control of a premises,
34 including a tenant, lessee, or occupant of a premises, who
35 directly or indirectly invites or permits an individual onto

1 a premises, shall not be liable for civil damages for any
2 injuries sustained from the individual's exposure to COVID-19,
3 whether the exposure occurs on the premises or during any
4 activity managed by the person who possesses or is in control
5 of a premises, unless any of the following apply to the person
6 who possesses or is in control of the premises:

7 1. The person who possesses or is in control of the premises
8 recklessly disregards a substantial and unnecessary risk that
9 the individual would be exposed to COVID-19.

10 2. The person who possesses or is in control of the
11 premises exposes the individual to COVID-19 through an act that
12 constitutes actual malice.

13 3. The person who possesses or is in control of the premises
14 intentionally exposes the individual to COVID-19.

15 Sec. _____. NEW SECTION. **686D.5 Safe harbor for compliance**
16 **with regulations, executive orders, or public health guidance.**

17 A person in this state shall not be held liable for civil
18 damages for any injuries sustained from exposure or potential
19 exposure to COVID-19 if the act or omission alleged to violate
20 a duty of care was in substantial compliance or was consistent
21 with any federal or state statute, regulation, order, or public
22 health guidance related to COVID-19 that was applicable to the
23 person or activity at issue at the time of the alleged exposure
24 or potential exposure.

25 Sec. _____. NEW SECTION. **686D.6 Liability of health care**
26 **providers.**

27 1. A health care provider shall not be liable for civil
28 damages for causing or contributing, directly or indirectly, to
29 the death or injury of an individual as a result of the health
30 care provider's acts or omissions while providing or arranging
31 health care in support of the state's response to COVID-19.
32 This subsection shall apply to all of the following:

33 a. Injury or death resulting from screening, assessing,
34 diagnosing, caring for, or treating individuals with a
35 suspected or confirmed case of COVID-19.

1 *b.* Prescribing, administering, or dispensing a
2 pharmaceutical for off-label use to treat a patient with a
3 suspected or confirmed case of COVID-19.

4 *c.* Acts or omissions while providing health care to
5 individuals unrelated to COVID-19 when those acts or omissions
6 support the state's response to COVID-19, including any of the
7 following:

8 (1) Delaying or canceling nonurgent or elective dental,
9 medical, or surgical procedures, or altering the diagnosis or
10 treatment of an individual in response to any federal or state
11 statute, regulation, order, or public health guidance.

12 (2) Diagnosing or treating patients outside the normal
13 scope of the health care provider's license or practice.

14 (3) Using medical devices, equipment, or supplies outside
15 of their normal use for the provision of health care, including
16 using or modifying medical devices, equipment, or supplies for
17 an unapproved use.

18 (4) Conducting tests or providing treatment to any
19 individual outside the premises of a health care facility.

20 (5) Acts or omissions undertaken by a health care provider
21 because of a lack of staffing, facilities, medical devices,
22 equipment, supplies, or other resources attributable to
23 COVID-19 that renders the health care provider unable to
24 provide the level or manner of care to any person that
25 otherwise would have been required in the absence of COVID-19.

26 (6) Acts or omissions undertaken by a health care provider
27 relating to use or nonuse of personal protective equipment.

28 2. This section shall not relieve any person of liability
29 for civil damages for any act or omission which constitutes
30 recklessness or willful misconduct.

31 Sec. ____ . NEW SECTION. **686D.7 Supplies, equipment, and**
32 **products designed, manufactured, labeled, sold, distributed, and**
33 **donated in response to COVID-19.**

34 1. Any person that designs, manufactures, labels, sells,
35 distributes, or donates household disinfecting or cleaning

1 supplies, personal protective equipment, or a qualified product
2 in response to COVID-19 shall not be liable in a civil action
3 alleging personal injury, death, or property damage caused by
4 or resulting from the design, manufacturing, labeling, selling,
5 distributing, or donating of the household disinfecting
6 or cleaning supplies, personal protective equipment, or a
7 qualified product.

8 2. Any person that designs, manufactures, labels, sells,
9 distributes, or donates household disinfecting or cleaning
10 supplies, personal protective equipment, or a qualified product
11 in response to COVID-19 shall not be liable in a civil action
12 alleging personal injury, death, or property damage caused by
13 or resulting from a failure to provide proper instructions or
14 sufficient warnings.

15 3. This section shall not apply in the event of any of the
16 following:

17 a. The person that designs, manufactures, labels, sells,
18 distributes, or donates household disinfecting or cleaning
19 supplies, personal protective equipment, or a qualified
20 product had actual knowledge of a defect in the household
21 disinfecting or cleaning supplies, personal protective
22 equipment, or a qualified product when put to the use for which
23 the household disinfecting or cleaning supplies, personal
24 protective equipment, or a qualified product was designed,
25 manufactured, sold, distributed, or donated, and the person
26 recklessly disregarded a substantial and unnecessary risk that
27 the household disinfecting or cleaning supplies, personal
28 protective equipment, or a qualified product would cause
29 serious personal injury, death, or serious property damage.

30 b. The person that designs, manufactures, labels, sells,
31 distributes, or donates household disinfecting or cleaning
32 supplies, personal protective equipment, or a qualified product
33 acted with actual malice.

34 Sec. ____ . NEW SECTION. 686D.8 Construction.

35 This chapter shall not be construed to do any of the

1 following:

2 1. Create, recognize, or ratify a claim or cause of action
3 of any kind.

4 2. Eliminate or satisfy a required element of a claim or
5 cause of action of any kind.

6 3. Affect the rights or limits under workers' compensation
7 as provided in chapter 85, 85A, or 85B.

8 4. Abrogate, amend, repeal, alter, or affect any statutory
9 or common law immunity or limitation of liability.

10 Sec. ____ . RETROACTIVE APPLICABILITY. This division of this
11 Act applies retroactively to January 1, 2020.>

12 3. Title page, by striking lines 1 through 4 and inserting
13 <An Act relating to civil actions, including recoverable
14 damages for medical expenses, evidence offered to prove
15 past medical expenses, and civil actions related to the
16 novel coronavirus, and including retroactive applicability
17 provisions.>

18 4. By renumbering as necessary.

COMMITTEE ON COMMERCE

CARLSON of Muscatine, Chairperson