

Senate File 2338

H-8216

1 Amend the amendment, H-8173, to Senate File 2338, as passed
2 by the Senate, as follows:

3 1. By striking page 1, line 2, through page 7, line 9, and
4 inserting:

5 <___. Page 1, by striking lines 1 through 14 and inserting:

6 <DIVISION ___
7 EVIDENCE OF MEDICAL EXPENSES AND RECOVERABLE DAMAGES FOR
8 MEDICAL EXPENSES>

9 ___. Page 2, after line 5 by inserting:

10 <DIVISION ___
11 COVID-19 RELATED LIABILITY

12 Sec. ___. NEW SECTION. **686D.1 Short title.**

13 This chapter shall be known and may be cited as the
14 *"COVID-19 Response, Back to Business, Employer Protection,*
15 *Worker Protection, Patient Protection, and Nursing Home Resident*
16 *Protection Limited Liability Act"*.

17 Sec. ___. NEW SECTION. **686D.2 Definitions.**

18 When used in this chapter, unless the context otherwise
19 requires:

20 1. *"COVID-19"* means the novel coronavirus identified
21 as SARS-CoV-2, the disease caused by the novel coronavirus
22 SARS-CoV-2 or a virus mutating therefrom, and conditions
23 associated with the disease caused by the novel coronavirus
24 SARS-CoV-2 or a virus mutating therefrom.

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

27 3. *"Health care facility"* means and includes all of the
28 following:

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

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

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

32 d. Residential care facilities, nursing facilities,
33 intermediate care facilities for persons with mental illness,
34 intermediate care facilities for persons with intellectual
35 disabilities, hospice programs, elder group homes, and assisted

1 living programs.

2 4. "*Health care professional*" means physicians and other
3 health care practitioners who are licensed, certified, or
4 otherwise authorized or permitted by the laws of this state
5 to administer health care services in the ordinary course
6 of business or in the practice of a profession, whether
7 paid or unpaid, including persons engaged in telemedicine or
8 telehealth. "*Health care professional*" includes the employer or
9 agent of a health care professional who provides or arranges
10 health care.

11 5. "*Health care provider*" means and includes a health care
12 professional, health care facility, home health care facility,
13 and any other person or facility otherwise authorized or
14 permitted by any federal or state statute, regulation, order,
15 or public health guidance to administer health care services
16 or treatment.

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

20 7. "*Minimum medical condition*" means a diagnosis of
21 COVID-19.

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

24 9. "*Personal protective equipment*" means and includes
25 protective clothing, gloves, face shields, goggles, facemasks,
26 respirators, gowns, aprons, coveralls, and other equipment
27 designed to protect the wearer from injury or the spread of
28 infection or illness.

29 10. "*Premises*" means and includes any real property and
30 any appurtenant building or structure serving a commercial,
31 residential, educational, religious, governmental, cultural,
32 charitable, or health care purpose.

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

35 a. The centers for disease control and prevention of the

1 federal department of health and human services.

2 *b.* The centers for Medicare and Medicaid services of the
3 federal department of health and human services.

4 *c.* The federal occupational safety and health
5 administration.

6 *d.* The office of the governor.

7 *e.* Any state agency, including the department of public
8 health.

9 12. "*Qualified product*" means and includes all of the
10 following:

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

13 *b.* Medical devices, equipment, and supplies used to treat
14 COVID-19, including medical devices, equipment, or supplies
15 that are used or modified for an unapproved use to treat
16 COVID-19 or to prevent the spread of COVID-19.

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

20 *d.* Medications used to treat COVID-19, including medications
21 prescribed or dispensed for off-label use to attempt to treat
22 COVID-19.

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

24 *f.* Any component of an item described in paragraphs "*a*"
25 through "*e*".

26 Sec. ____ . NEW SECTION. **686D.3 Civil actions alleging**
27 **COVID-19 exposure.**

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

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

32 2. The civil action involves an act that was intended to
33 cause harm.

34 3. The civil action involves an act that constitutes actual
35 malice.

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

3 A person who possesses or is in control of a premises,
4 including a tenant, lessee, or occupant of a premises, who
5 directly or indirectly invites or permits an individual onto
6 a premises, shall not be liable for civil damages for any
7 injuries sustained from the individual's exposure to COVID-19,
8 whether the exposure occurs on the premises or during any
9 activity managed by the person who possesses or is in control
10 of a premises, if the person qualifies for the protection
11 afforded by section 686D.5.

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

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

22 Sec. _____. NEW SECTION. **686D.6 Liability of health care**
23 **providers.**

24 A health care provider that qualifies for the protection
25 afforded by section 686D.5 shall not be liable for civil
26 damages for causing or contributing, directly or indirectly, to
27 the death or injury of an individual as a result of the health
28 care provider's acts or omissions while providing or arranging
29 health care in support of the state's response to COVID-19.
30 This section shall apply to all of the following:

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

34 2. Prescribing, administering, or dispensing a
35 pharmaceutical for off-label use to treat a patient with a

1 suspected or confirmed case of COVID-19.

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

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

10 b. Diagnosing or treating patients outside the normal scope
11 of the health care provider's license or practice.

12 c. Using medical devices, equipment, or supplies outside of
13 their normal use for the provision of health care, including
14 using or modifying medical devices, equipment, or supplies for
15 an unapproved use.

16 d. Conducting tests or providing treatment to any individual
17 outside the premises of a health care facility.

18 Sec. _____. NEW SECTION. **686D.7 Supplies, equipment, and**
19 **products designed, manufactured, labeled, sold, distributed, and**
20 **donated in response to COVID-19.**

21 1. Any person that qualifies for the protection afforded
22 by section 686D.5 that designs, manufactures, labels, sells,
23 distributes, or donates household disinfecting or cleaning
24 supplies, personal protective equipment, or a qualified product
25 in response to COVID-19 shall not be liable in a civil action
26 alleging personal injury, death, or property damage caused by
27 or resulting from the design, manufacturing, labeling, selling,
28 distributing, or donating of the household disinfecting
29 or cleaning supplies, personal protective equipment, or a
30 qualified product.

31 2. Any person that designs, manufactures, labels, sells,
32 distributes, or donates household disinfecting or cleaning
33 supplies, personal protective equipment, or a qualified product
34 in response to COVID-19 shall not be liable in a civil action
35 alleging personal injury, death, or property damage caused by

1 or resulting from a failure to provide proper instructions or
2 sufficient warnings.

3 Sec. ____ . NEW SECTION. **686D.8 Construction.**

4 This chapter shall not be construed to affect the rights or
5 limits under workers' compensation as provided in chapter 85,
6 85A, or 85B.

7 Sec. ____ . NEW SECTION. **686D.9 Repeal.**

8 This chapter is repealed December 31, 2022.>>

MEYER of Polk