

Senate File 2338

H-8235

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 18, and
4 inserting:

5 <___. By striking everything after the enacting clause and
6 inserting:

7 DIVISION I

8 ESSENTIAL WORKERS

9 Sec. ___. Section 85A.3, Code 2020, is amended to read as
10 follows:

11 **85A.3 Employees covered.**

12 All employees as defined by the workers' compensation law
13 of Iowa, and as further defined by this section, employed in
14 any business or industrial process hereinafter designated and
15 described and who in the course of their employment are exposed
16 to an occupational disease as herein defined are subject to
17 the provisions of this chapter. For purposes of this section,
18 "employee" means the following individuals, whether engaged by
19 an employer as an employee or independent contractor:

20 1. A worker licensed or certified under chapter 147, 147A,
21 148, 148A, 148C, 149, 151, 152, 153, 154, 154B, 154F, or 155A
22 to provide in this state professional health care service to an
23 individual during that individual's medical care, treatment,
24 or confinement.

25 2. A worker providing emergency services, including fire
26 fighting, police, ambulance, emergency medical services, or
27 hazardous materials response services.

28 3. A worker providing sanitation services.

29 4. A worker at a business which the state or a political
30 subdivision of the state has determined must remain open to
31 serve the public during the public health disaster emergency
32 proclaimed by the governor on March 17, 2020.

33 5. Any other worker who cannot work remotely during the
34 public health disaster emergency proclaimed by the governor on
35 March 17, 2020.

1 Sec. ____ . EFFECTIVE DATE. This division of this Act, being
2 deemed of immediate importance, takes effect upon enactment.

3 DIVISION II

4 OCCUPATIONAL DISEASE

5 <Sec. ____ . NEW SECTION. **85A.9 Occupational disease —**
6 **COVID-19 virus exposure.**

7 1. Notwithstanding section 85A.8, an employee, as described
8 in section 85A.3, who contracts the COVID-19 virus and who
9 alleges the employee's employment has subjected the employee
10 to an increased risk of exposure to the COVID-19 virus is
11 presumed to have an occupational disease arising out of and in
12 the course of employment if the requirements of subsection 2
13 are met.

14 2. An employee is presumed to have an occupational
15 disease arising out of and in the course of employment if the
16 employee's contraction of the COVID-19 virus is confirmed by
17 a positive laboratory test or, if a laboratory test is not
18 available for the employee, as diagnosed and documented by the
19 employee's licensed physician, licensed physician assistant, or
20 licensed advanced registered nurse practitioner based upon the
21 employee's symptoms. The employee shall provide a copy of the
22 positive laboratory test or the written documentation of the
23 diagnosis to the employer or the employer's insurance carrier.

24 3. If the employee has met the requirements of subsections
25 1 and 2, the presumption that the employee has an occupational
26 disease arising out of and in the course of employment shall
27 only be rebutted upon proof by the employer or the employer's
28 insurance carrier that the employment did not pose an increased
29 risk of exposure to the employee and that the employee's
30 disease was caused by a nonoccupational exposure to the
31 COVID-19 virus.

32 4. The date of injury for an employee who has contracted
33 the COVID-19 virus under this section shall be the date that
34 the employee was first unable to work due to symptoms of the
35 COVID-19 virus, or the date the employee was first informed,

1 through a positive laboratory test or diagnosis, that the
2 employee contracted the COVID-19 virus, whichever occurred
3 first.

4 5. An employee who has contracted the COVID-19 virus but
5 who is not entitled to the presumption provided under this
6 section is not precluded from claiming an occupational disease
7 as otherwise provided for in this chapter or from claiming a
8 personal injury.

9 6. The commissioner shall provide a detailed report on
10 workers' compensation claims due to the COVID-19 virus under
11 this section to the workers' compensation advisory committee
12 and the chairpersons and ranking members of the senate standing
13 committee on labor and business relations and the house
14 standing committee on labor by January 15, 2021.

15 Sec. _____. EFFECTIVE DATE. This division of this Act, being
16 deemed of immediate importance, takes effect upon enactment.

17 Sec. _____. APPLICABILITY. This division of this Act applies
18 to employees, as described in section 85A.3, who contract the
19 COVID-19 virus on or after the effective date of this Act.

20 DIVISION III

21 COVID-19 RELATED LIABILITY

22 Sec. _____. NEW SECTION. 686D.1 Short title.

23 This chapter shall be known and may be cited as the
24 *"COVID-19 Response, Back to Business, Worker Protection,*
25 *Patient Protection, and Nursing Home Resident Protection Limited*
26 *Liability Act"*.

27 Sec. _____. NEW SECTION. 686D.2 Definitions.

28 When used in this chapter, unless the context otherwise
29 requires:

30 1. *"COVID-19"* means the novel coronavirus identified
31 as SARS-CoV-2, the disease caused by the novel coronavirus
32 SARS-CoV-2 or a virus mutating therefrom, and conditions
33 associated with the disease caused by the novel coronavirus
34 SARS-CoV-2 or a virus mutating therefrom.

35 2. *"Disinfecting or cleaning supplies"* means and includes

1 hand sanitizers, disinfectants, sprays, and wipes.

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

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

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

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

7 d. Residential care facilities, nursing facilities,
8 intermediate care facilities for persons with mental illness,
9 intermediate care facilities for persons with intellectual
10 disabilities, hospice programs, elder group homes, and assisted
11 living programs.

12 4. *"Health care professional"* means physicians and other
13 health care practitioners who are licensed, certified, or
14 otherwise authorized or permitted by the laws of this state
15 to administer health care services in the ordinary course
16 of business or in the practice of a profession, whether
17 paid or unpaid, including persons engaged in telemedicine or
18 telehealth. *"Health care professional"* includes the employer or
19 agent of a health care professional who provides or arranges
20 health care.

21 5. *"Health care provider"* means and includes a health care
22 professional, health care facility, home health care facility,
23 and any other person or facility otherwise authorized or
24 permitted by any federal or state statute, regulation, order,
25 or public health guidance to administer health care services
26 or treatment.

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

30 7. *"Minimum medical condition"* means a diagnosis of
31 COVID-19.

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

34 9. *"Personal protective equipment"* means and includes
35 protective clothing, gloves, face shields, goggles, facemasks,

1 respirators, gowns, aprons, coveralls, and other equipment
2 designed to protect the wearer from injury or the spread of
3 infection or illness.

4 10. "*Premises*" means and includes any real property and
5 any appurtenant building or structure serving a commercial,
6 residential, educational, religious, governmental, cultural,
7 charitable, or health care purpose.

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

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

12 b. The centers for Medicare and Medicaid services of the
13 federal department of health and human services.

14 c. The federal occupational safety and health
15 administration.

16 d. The office of the governor.

17 e. Any state agency, including the department of public
18 health.

19 12. "*Qualified product*" means and includes all of the
20 following:

21 a. Personal protective equipment used to protect the wearer
22 from COVID-19 or to prevent the spread of COVID-19.

23 b. Medical devices, equipment, and supplies used to treat
24 COVID-19, including medical devices, equipment, or supplies
25 that are used or modified for an unapproved use to treat
26 COVID-19 or to prevent the spread of COVID-19.

27 c. Medical devices, equipment, and supplies used outside of
28 their normal use to treat COVID-19 or to prevent the spread of
29 COVID-19.

30 d. Medications used to treat COVID-19, including medications
31 prescribed or dispensed for off-label use to attempt to treat
32 COVID-19.

33 e. Tests to diagnose or determine immunity to COVID-19.

34 f. Any component of an item described in paragraphs "a"
35 through "e".

1 Sec. _____. NEW SECTION. **686D.3 Civil actions alleging**
2 **COVID-19 exposure.**

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

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

7 2. The civil action involves an act that was intended to
8 cause harm.

9 3. The civil action involves an act that constitutes actual
10 malice.

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

13 A person who possesses or is in control of a premises,
14 including a tenant, lessee, or occupant of a premises, who
15 directly or indirectly invites or permits an individual onto
16 a premises, shall not be liable for civil damages for any
17 injuries sustained from the individual's exposure to COVID-19,
18 whether the exposure occurs on the premises or during any
19 activity managed by the person who possesses or is in control
20 of a premises, if the person qualifies for the protection
21 afforded by section 686D.5.

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

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

32 Sec. _____. NEW SECTION. **686D.6 Liability of health care**
33 **providers.**

34 A health care provider that qualifies for the protection
35 afforded by section 686D.5 shall not be liable for civil

1 damages for causing or contributing, directly or indirectly, to
2 the death or injury of an individual as a result of the health
3 care provider's acts or omissions while providing or arranging
4 health care in support of the state's response to COVID-19.

5 This section shall apply to all of the following:

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

9 2. Prescribing, administering, or dispensing a
10 pharmaceutical for off-label use to treat a patient with a
11 suspected or confirmed case of COVID-19.

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

16 a. Delaying or canceling nonurgent or elective dental,
17 medical, or surgical procedures, or altering the diagnosis or
18 treatment of an individual in response to any federal or state
19 statute, regulation, order, or public health guidance.

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

22 c. Using medical devices, equipment, or supplies outside of
23 their normal use for the provision of health care, including
24 using or modifying medical devices, equipment, or supplies for
25 an unapproved use.

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

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

31 1. Any person that qualifies for the protection afforded
32 by section 686D.5 that designs, manufactures, labels, sells,
33 distributes, or donates household disinfecting or cleaning
34 supplies, personal protective equipment, or a qualified product
35 in response to COVID-19 shall not be liable in a civil action

1 alleging personal injury, death, or property damage caused by
2 or resulting from the design, manufacturing, labeling, selling,
3 distributing, or donating of the household disinfecting
4 or cleaning supplies, personal protective equipment, or a
5 qualified product.

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

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

14 This chapter shall not be construed to affect the rights or
15 limits under workers' compensation as provided in chapter 85,
16 85A, or 85B.

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

18 This chapter is repealed December 31, 2022.

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

21 2. Title page, by striking lines 1 through 4 and
22 inserting <An Act relating to COVID-19, including workers'
23 compensation claims arising from COVID-19, civil actions
24 related to COVID-19, and including effective date provisions,
25 applicability provisions, and retroactive applicability
26 provisions.>

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