

House Amendment to  
Senate File 2338

S-5111

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, or the rights or limits  
8 related to police officers or fire fighters under chapter 410  
9 or 411.

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

12 Sec. \_\_\_\_ . RETROACTIVE APPLICABILITY. This division of this  
13 Act applies retroactively to January 1, 2020.>

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

20 4. By renumbering as necessary.