



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2140

Introduced 2/26/2021, by Sen. Dan McConchie

SYNOPSIS AS INTRODUCED:

New Act

Creates the COVID-19 Limited Liability Act. Provides that a person shall not bring or maintain a civil action alleging exposure or potential exposure to COVID-19 unless: the civil action relates to a minimum medical condition; the civil action involves an act that was intended to cause harm; or the civil action involves an act that constitutes actual malice. Provides, with exceptions, that a person who possesses or is in control of a premises shall not be liable for civil damages for any injuries sustained from the individual's exposure to COVID-19. Provides that a person shall not be held liable for civil damages for any injuries sustained from exposure or potential exposure to COVID-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent with any federal or State statute, rule, regulation, order, or public health guidance related to COVID-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure. Provides that a health care provider shall not be liable for civil damages for causing or contributing to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the State's response to COVID-19. Provides that any person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to COVID-19 shall not be liable in a civil action alleging personal injury, death, or property damage caused by or resulting from: the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product; or a failure to provide proper instructions or sufficient warnings. Provides that the Act applies retroactively to January 1, 2020.

LRB102 11485 LNS 16819 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 COVID-19 Limited Liability Act.

6 Section 5. Definitions. As used in this Act:

7 "COVID-19" means the novel coronavirus identified as
8 SARS-CoV-2, the disease caused by the novel coronavirus
9 SARS-CoV-2, or a virus mutating therefrom, and conditions
10 associated with the disease caused by the novel coronavirus
11 SARS-CoV-2 or a virus mutating therefrom.

12 "Disinfecting or cleaning supplies" means hand sanitizers,
13 disinfectants, sprays, and wipes.

14 "Health care facility" means an institution providing
15 health care services or a health care setting, including, but
16 not limited to, hospitals and other licensed inpatient
17 centers, ambulatory surgical treatment centers, long-term care
18 facilities, as defined by Section 1-113 of the Nursing Home
19 Care Act, skilled nursing centers, residential treatment
20 centers, diagnostic, laboratory, and imaging centers,
21 rehabilitation and other therapeutic health settings, and
22 residential care facilities, nursing facilities, intermediate
23 care facilities for persons with mental illness, intermediate

1 care facilities for persons with intellectual disabilities,
2 hospice programs, elder group homes, and assisted living
3 programs.

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

13 "Health care provider" means a health care professional,
14 health care facility, home health care facility, and any other
15 person or facility otherwise authorized or permitted by any
16 federal or State statute, regulation, rule, order, or public
17 health guidance to administer health care services or
18 treatment.

19 "Health care services" means services for the diagnosis,
20 prevention, treatment, care, cure, or relief of a health
21 condition, illness, injury, or disease.

22 "Minimum medical condition" means a diagnosis of COVID-19
23 that requires inpatient hospitalization or results in death.

24 "Person" means an individual, corporation, limited
25 liability company, government or governmental subdivision or
26 agency, business trust, estate, trust, partnership or

1 association, or any other legal entity. "Person" includes an
2 agent of a person.

3 "Personal protective equipment" means protective clothing,
4 gloves, face shields, goggles, face masks, respirators, gowns,
5 aprons, coveralls, and other equipment designed to protect the
6 wearer from injury or the spread of infection or illness.

7 "Premises" means any real property and any appurtenant
8 building or structure serving a commercial, residential,
9 educational, religious, governmental, cultural, charitable, or
10 health care purpose.

11 "Public health guidance" means written guidance related to
12 COVID-19 issued by:

13 (1) the Centers for Disease Control and Prevention of
14 the federal Department of Health and Human Services;

15 (2) the Centers for Medicare and Medicaid Services of
16 the federal Department of Health and Human Services;

17 (3) the federal Occupational Safety and Health
18 Administration;

19 (4) the office of the Governor; or

20 (5) any State agency, including the Department of
21 Public Health.

22 "Qualified product" means:

23 (1) personal protective equipment used to protect the
24 wearer from COVID-19 or to prevent the spread of COVID-19;

25 (2) medical devices, equipment, and supplies used to
26 treat COVID-19, including medical devices, equipment, or

1 supplies that are used or modified for an unapproved use
2 to treat COVID-19 or to prevent the spread of COVID-19;

3 (3) medical devices, equipment, and supplies used
4 outside of their normal use to treat COVID-19 or to
5 prevent the spread of COVID-19,;

6 (4) medications used to treat COVID-19, including
7 medication prescribed or dispensed for off-label use to
8 attempt to treat COVID-19;

9 (5) tests to diagnose or determine immunity to
10 COVID-19; or

11 (6) any component of an item described in items (1)
12 through (5) of this definition.

13 Section 10. Actual injury requirement in civil actions
14 alleging COVID-19 exposure. A person shall not bring or
15 maintain a civil action alleging exposure or potential
16 exposure to COVID-19 unless:

17 (1) the civil action relates to a minimum medical
18 condition;

19 (2) the civil action involves an act that was intended to
20 cause harm; or

21 (3) the civil action involves an act that constitutes
22 actual malice.

23 Section 15. Premises owner's duty of care; limited
24 liability. A person who possesses or is in control of a

1 premises, including a tenant, lessee, or occupant of a
2 premises, who directly or indirectly invites or permits an
3 individual onto a premises, shall not be liable for civil
4 damages for any injuries sustained from an individual's
5 exposure to COVID-19, whether the exposure occurs on the
6 premises or during any activity managed by the person who
7 possesses or is in control of a premises, unless the person who
8 possesses or is in control of the premises:

9 (1) recklessly disregards a substantial and unnecessary
10 risk that the individual would be exposed to COVID-19;

11 (2) exposes the individual to COVID-19 through an act that
12 constitutes actual malice; or

13 (3) intentionally exposes the individual to COVID-19.

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

24 Section 25. Liability of health care providers.

1 (a) A health care provider shall not be liable for civil
2 damages for causing or contributing, directly or indirectly,
3 to the death or injury of an individual as a result of the
4 health care provider's acts or omissions while providing or
5 arranging health care in support of the State's response to
6 COVID-19. This applies to:

7 (1) injury or death resulting from screening,
8 assessing, diagnosing, care for, or treating individuals
9 with a suspected or confirmed case of COVID-19;

10 (2) prescribing, administering, or dispensing a
11 pharmaceutical for off-label use to treat a patient with a
12 suspected or confirmed case of COVID-19; or

13 (3) acts or omissions while providing health care to
14 individuals unrelated to COVID-19 when those acts or
15 omissions support the State's response to COVID-19,
16 including:

17 (i) delaying or canceling nonurgent or elective
18 dental, medical, or surgical procedures, or altering
19 the diagnosis or treatment of an individual in
20 response to any federal or State statute, rule,
21 regulation, order, or public health guidance;

22 (ii) diagnosing or treating patients outside the
23 normal scope of the health care provider's license or
24 practice;

25 (iii) using medical devices, equipment, or
26 supplies outside of their normal use for the provision

1 of health care, including using or modifying medical
2 devices, equipment, or supplies for unapproved use;

3 (iv) conducting tests or providing treatment to
4 any individual outside the premises of a health care
5 facility;

6 (v) acts or omissions undertaken by a health care
7 provider because of a lack of staffing, facilities,
8 medical devices, equipment, supplies, or other
9 resources attributable to COVID-19 that renders the
10 health care provider unable to provide the level or
11 manner of care to any person that otherwise would have
12 been required in the absence of COVID-19; or

13 (vi) acts or omissions undertaken by a health care
14 provider relating to use or nonuse of personal
15 protective equipment.

16 (b) This Section shall not relieve any person of liability
17 for civil damages for any act or omission that constitutes
18 recklessness or willful misconduct.

19 Section 30. Supplies, equipment, and products designed,
20 manufactured, labeled, sold, distributed, and donated in
21 response to COVID-19.

22 (a) Any person who designs, manufactures, labels, sells,
23 distributes, or donates household disinfecting or cleaning
24 supplies, personal protective equipment, or a qualified
25 product in response to COVID-19 shall not be liable in a civil

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

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

13 (c) This Section does not apply if:

14 (1) the person who designs, manufactures, labels,
15 sells, distributes, or donates household disinfecting or
16 cleaning supplies, personal protective equipment, or a
17 qualified product has actual knowledge of a defect in the
18 household disinfecting or cleaning supplies, personal
19 protective equipment, or a qualified product when put to
20 the use for which the household disinfecting or cleaning
21 supplies, personal protective equipment, or a qualified
22 product was designed, manufactured, sold, distributed, or
23 donated, and the person recklessly disregarded a
24 substantial and unnecessary risk that the household
25 disinfecting or cleaning supplies, personal protective
26 equipment, or a qualified product would cause serious

1 personal injury, death, or serious property damage; or
2 (2) the person who designs, manufactures, labels,
3 sells, distributes, or donates household disinfecting or
4 cleaning supplies, personal protective equipment, or a
5 qualified product acts with actual malice.

6 Section 35. Construction. This Act shall not be construed
7 to:

8 (1) create, recognize, or ratify a claim or cause of
9 action of any kind;

10 (2) eliminate or satisfy a required element of a claim or
11 cause of action of any kind;

12 (3) affect the rights or limits under the Workers'
13 Compensation Act, or the rights or limits related to police
14 officers or firefighters under the laws of this State; or

15 (4) abrogate, amend, repeal, alter, or affect any
16 statutory or common law immunity or limitation of liability.

17 Section 40. Applicability. This Act applies retroactively
18 to January 1, 2020.