

AMENDMENTS TO HOUSE BILL NO. 605

Sponsor: REPRESENTATIVE ECKER

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1 Amend Bill, page 1, line 3, by striking out the period after  
2 "actions" and inserting  
3 ; and, in particular rights and immunities, providing for COVID-  
4 19-related liability.

5 Amend Bill, page 2, line 26, by inserting after  
6 "manufacturing"  
7 , distribution, labeling

8 Amend Bill, page 3, by inserting between lines 1 and 2  
9 Section 2. Chapter 83 of Title 42 is amended by adding a  
10 subchapter to read:

11 SUBCHAPTER F.2  
12 COVID-19-RELATED LIABILITY

13 Sec.

14 8368.11. Definitions.

15 8368.12. School and child care liability.

16 8368.13. Personal protective equipment liability.

17 8368.14. Business or government services liability.

18 8368.15. Covered provider liability.

19 8368.16. Application of subchapter.

20 8368.17. Construction of subchapter.

21 § 8368.11. Definitions.

22 The following words and phrases when used in this subchapter  
23 shall have the meanings given to them in this section unless the  
24 context clearly indicates otherwise:

25 "Business or government services." A lawful activity  
26 conducted by a trade, business, association, nonprofit entity or  
27 organization or local governmental unit which is permitted by  
28 the terms of a proclamation of disaster emergency to hold itself  
29 out as open to members of the public or to its members.

30 "Child-care facility." Any of the following:

31 (1) A child care center as defined in section 1001 of  
32 the act of June 13, 1967 (P.L.31, No.21), known as the Human  
33 Services Code.

34 (2) A children's institution as defined in section 901  
35 of the Human Services Code.

1       (3) A family child care home as defined in section 1001  
2 of the Human Services Code.

3       (4) An individual employed or contracted by a person  
4 under paragraph (1), (2) or (3).

5 "Covered provider." Any of the following:

6       (1) A health care practitioner as defined in section 103  
7 of the act of July 19, 1979 (P.L.130, No.48), known as the  
8 Health Care Facilities Act.

9       (2) A health care provider, including a registered  
10 nurse, licensed by a state or a political division of the  
11 United States. This paragraph includes licensure pursuant to  
12 a waiver.

13       (3) A health care facility as defined in section 802.1  
14 of the Health Care Facilities Act, including a hospital  
15 caring exclusively for the mentally ill. This paragraph  
16 includes a facility authorized to operate pursuant to a  
17 waiver.

18       (4) A temporary site operated by a health care facility  
19 under paragraph (3) during the proclamation of disaster  
20 emergency.

21       (5) A health care provider as defined in section 103 of  
22 the Health Care Facilities Act or another legal entity whose  
23 primary purpose is the provision of medical care for a health  
24 care provider.

25       (6) A facility as defined in section 1001 of the Human  
26 Services Code or a parent organization of the facility.

27       (7) A business, institution of higher education,  
28 facility or organization, which provides a venue for the  
29 provision of medical care.

30       (8) A licensed, certified, registered or authorized  
31 person providing emergency medical services as defined in 35  
32 Pa.C.S. § 8103 (relating to definitions). The term includes  
33 an emergency medical services vehicle operator.

34       (9) An emergency medical services agency as defined in  
35 35 Pa.C.S. § 8103. This paragraph includes a parent  
36 organization of the agency.

37       (10) A person engaged in nursing care as defined in 28  
38 Pa. Code § 201.3 (relating to definitions), if the nursing  
39 care:

40           (i) is in support of the activities of daily living  
41 and other instrumental activities of daily living as  
42 defined in 55 Pa. Code § 2600.4 (relating to definitions)  
43 or 2800.4 (relating to definitions) and other  
44 instrumental activities; or

45           (ii) consists of covered services which nursing care  
46 providers are obligated to deliver or arrange under their  
47 requirements of licensure.

48       (11) A clinical laboratory:

49           (i) certified under section 353 of the Public Health  
50 Service Act (58 Stat. 682, 42 U.S.C. § 263a); or

51           (ii) licensed under the act of September 26, 1951

1 (P.L.1539, No.389), known as The Clinical Laboratory Act.  
2 (12) An individual employed or contracted by a person  
3 under paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9),  
4 (10) or (11), who is involved in providing medical care.  
5 "COVID-19." The novel coronavirus as identified in the  
6 proclamation of disaster emergency issued by the Governor on  
7 March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020).

8 "Institution of higher education." The term includes any of  
9 the following:

10 (1) A community college operating under Article XIX-A of  
11 the act of March 10, 1949 (P.L.30, No.14), known as the  
12 Public School Code of 1949.

13 (2) The State System of Higher Education. This paragraph  
14 includes a university within the system.

15 (3) The Pennsylvania State University, the University of  
16 Pittsburgh, Temple University, Lincoln University or an  
17 institution designated as State-related by the Commonwealth.

18 (4) The Thaddeus Stevens College of Technology and The  
19 Pennsylvania College of Technology.

20 (5) A rural regional college operating under Article  
21 XIX-G of the Public School Code of 1949.

22 (6) An institution of higher education located in and  
23 incorporated or chartered by the Commonwealth and entitled to  
24 confer degrees under 24 Pa.C.S. § 6505 (relating to power to  
25 confer degrees) and as provided for by the standards and  
26 qualifications prescribed by the State Board of Education  
27 under 24 Pa.C.S. Ch. 65 (relating to private colleges,  
28 universities and seminaries).

29 (7) A private school licensed under the act of December  
30 15, 1986 (P.L.1585, No.174), known as the Private Licensed  
31 Schools Act.

32 (8) A foreign corporation approved to operate an  
33 educational enterprise under 22 Pa. Code Ch. 36 (relating to  
34 foreign corporation standards).

35 (9) A community education council operating under  
36 Article XIX-D of the Public School Code of 1949.

37 "Local governmental unit." A municipality or local  
38 authority.

39 "Person." A natural person, corporation, firm, association,  
40 organization, partnership, limited liability company, business,  
41 trust, business trust, estate or foundation.

42 "Personal protective equipment." A device, equipment,  
43 substance or material, recommended by the Centers for Disease  
44 Control and Prevention, Food and Drug Administration,  
45 Environmental Protection Agency, Department of Homeland Security  
46 or another Federal authority or the Department of Health to  
47 prevent, limit or slow the spread of COVID-19, such as  
48 respirators, masks, surgical apparel, gowns, gloves and other  
49 apparel intended for a medical purpose. The term includes  
50 sanitizers and disinfectants.

51 "Proclamation of disaster emergency." A proclamation of

1 disaster emergency issued by the Governor relating to COVID-19  
2 and any renewal of the state of disaster emergency, including  
3 the proclamation of disaster emergency issued by the Governor on  
4 March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and  
5 any renewal of the state of disaster emergency.

6 "Public health directives." Orders or guidelines issued by  
7 the Federal or State government regarding any of the following:

8 (1) The manufacturing, distribution, labeling or use of  
9 personal protective equipment during the proclamation of  
10 disaster emergency.

11 (2) Treatment or testing of individuals with or  
12 reasonably believed to have COVID-19.

13 (3) Steps necessary or recommended to prevent, limit or  
14 slow the spread of COVID-19.

15 "School entity." Any school district, charter school, cyber  
16 charter school, regional charter school, chartered school for  
17 the deaf and blind, private school, nonpublic school,  
18 prekindergarten, intermediate unit, area career and technical  
19 school, approved private school or institution of higher  
20 education operating within this Commonwealth. The term includes  
21 an individual employed by or contracted by a school entity.  
22 § 8368.12. School and child care liability.

23 (a) Limited liability.--Notwithstanding any other provision  
24 of law, a school entity or child-care facility shall not be  
25 civilly liable for damages or personal injury relating to an  
26 actual or alleged exposure to COVID-19, absent a showing, by  
27 clear and convincing evidence, of gross negligence,  
28 recklessness, willful misconduct or intentional infliction of  
29 harm.

30 (b) Compliance with public health directives.--An act or  
31 omission in compliance with, or in a good faith belief that the  
32 act or omission is in compliance with, public health directives  
33 shall not be considered gross negligence, recklessness, willful  
34 misconduct or intentional infliction of harm.  
35 § 8368.13. Personal protective equipment liability.

36 (a) Manufacturers, distributors and labelers.--All of the  
37 following apply:

38 (1) Notwithstanding any other provision of law, a person  
39 that manufactures, distributes or labels personal protective  
40 equipment shall not be civilly liable for damages or personal  
41 injury related to actual or alleged exposure to COVID-19 in  
42 connection with the use of personal protective equipment,  
43 absent a showing, by clear and convincing evidence, of gross  
44 negligence, recklessness, willful misconduct or intentional  
45 infliction of harm if the person commenced manufacturing,  
46 distributing or labeling:

47 (i) only in connection with a proclamation of  
48 disaster emergency; or

49 (ii) in accord with the same standards to which it  
50 manufactured, distributed or labeled the equipment before  
51 a proclamation of disaster emergency, unless the

1 equipment is clearly labeled to indicate otherwise.

2 (2) An act or omission in compliance with, or in a good  
3 faith belief that the act or omission was in compliance with,  
4 public health directives shall not be considered gross  
5 negligence, recklessness, willful misconduct or intentional  
6 infliction of harm.

7 (b) Users.--

8 (1) Notwithstanding any other provision of law, a person  
9 that uses or employs personal protective equipment during the  
10 proclamation of disaster emergency in compliance with public  
11 health directives related to the personal protective  
12 equipment shall not be civilly liable for damages or personal  
13 injury related to use of the personal protective equipment,  
14 absent a showing, by clear and convincing evidence, of gross  
15 negligence, recklessness, willful misconduct or intentional  
16 infliction of harm.

17 (2) An act or omission in compliance with, or in a good  
18 faith belief that the act or omission was in compliance with,  
19 public health directives shall not be considered gross  
20 negligence, recklessness, willful misconduct or intentional  
21 infliction of harm.

22 (c) Federal protections.--This section applies only to a  
23 person who does not enjoy liability protections under the Public  
24 Readiness and Emergency Preparedness (PREP) Act (42 U.S.C. §  
25 247d-6d et seq.).

26 § 8368.14. Business or government services liability.

27 (a) Limited liability.--Notwithstanding any other provision  
28 of law, a person providing business or government services shall  
29 not be civilly liable for damages or personal injury, related to  
30 an actual or alleged exposure to COVID-19, absent a showing, by  
31 clear and convincing evidence, of gross negligence,  
32 recklessness, willful misconduct or intentional infliction of  
33 harm.

34 (b) Compliance with public health directives.--An act or  
35 omission in compliance with, or in a good faith belief that the  
36 act or omission is in compliance with, public health directives  
37 shall not be considered gross negligence, recklessness, willful  
38 misconduct or intentional infliction of harm.

39 § 8368.15. Covered provider liability.

40 (a) Limited liability.--Notwithstanding any other provision  
41 of law, a covered provider shall not be civilly liable for  
42 damages or personal injury, related to any of the following,  
43 absent a showing, by clear and convincing evidence, of gross  
44 negligence, recklessness, willful misconduct or intentional  
45 infliction of harm:

46 (1) Provision of treatment or testing for COVID-19 to  
47 patients who have been exposed to or whom a covered provider  
48 reasonably believes may have been exposed to COVID-19.

49 (2) An act or omission proximately caused by:

50 (i) shortage of equipment, supplies or personnel  
51 which:

1           (A) was a direct result of the demand for  
2           testing for or treatment of COVID-19; and

3           (B) was beyond the reasonable control of the  
4           covered provider;

5           (ii) a number of patients in excess of the capacity  
6           of a department or of a unit of a covered provider as a  
7           direct result of the need to test for or treat COVID-19;  
8           or

9           (iii) compliance with public health directives  
10           regarding the testing for and treatment of COVID-19.

11       (b) Compliance with public health directives.--An act or  
12       omission by a covered provider in compliance with, or in a good  
13       faith belief that the act or omission was in compliance with,  
14       public health directives shall not be considered gross  
15       negligence, recklessness, willful misconduct or intentional  
16       infliction of harm.

17       § 8368.16. Application of subchapter.

18       (a) Vicarious liability.--Vicarious liability shall not  
19       attach to the employer of an individual who is otherwise immune  
20       under this subchapter or an executive order.

21       (b) Public health directives.--In determining civil  
22       liability under this subchapter, a court shall:

23           (1) For a manufacturer, distributor, labeler or user,  
24           consider public health directives which were in effect at the  
25           time of the manufacture, distribution, labeling, sale or use  
26           of the personal protective equipment.

27           (2) For a person providing business or government  
28           services, user of personal protective equipment, school  
29           entity or child-care facility, consider public health  
30           directives which were in effect at the time an alleged act or  
31           omission occurred.

32           (3) For a covered provider, consider public health  
33           directives which were in effect at the time an alleged act or  
34           omission occurred.

35       (c) Proclamation of disaster emergency.--This subchapter  
36       shall apply to acts or omissions during a proclamation of  
37       disaster emergency.

38       § 8368.17. Construction of subchapter.

39       This subchapter shall not be construed to:

40           (1) create a new cause of action;  
41           (2) expand a civil or criminal liability otherwise  
42           imposed;

43           (3) limit a defense;  
44           (4) affect the applicability of a statute which affords  
45           greater protections to defendants than are provided under  
46           this subchapter; or

47           (5) prevent an individual from filing a claim or  
48           receiving benefits under the act of June 2, 1915 (P.L.736,  
49           No.338), known as the Workers' Compensation Act, if otherwise  
50           available.

1 Amend Bill, page 3, line 2, by striking out "2" and inserting

2 3

3 Amend Bill, page 3, by inserting between lines 9 and 10

4 Section 4. The provisions of this act are severable. If any  
5 provision of this act or its application to any person or  
6 circumstances is held invalid, the invalidity shall not affect  
7 other provisions or applications of this act which can be given  
8 effect without the invalid provisions or application.

9 Amend Bill, page 3, line 10, by striking out "3" and

10 inserting

11 5