

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