AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for COVID-19-related liability.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 84

COVID-19-RELATED LIABILITY

Sec.

8401. Definitions.

8402. Personal protective equipment liability.

8403. Business services liability.

8404. Covered provider liability.

8405. Guidelines.

§ 8401. Definitions.

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

"Business services." A lawful activity conducted by a trade, business, nonprofit organization or school entity as defined in section 1301-B of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, that is permitted by the terms of the proclamation of disaster emergency to hold itself out as open to members of the public.

"Covered provider." Any of the following:

(1) A health care practitioner as defined in section 103 and section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, or a health care practitioner or provider, including a registered nurse, licensed by a state or a political division of the United States, including pursuant to a waiver of a law or a regulation issued by the United States, the Commonwealth or a local governmental authority.

(2) A health care facility as defined in the Health Care Facilities Act or a temporary site operated by a health care facility during the proclamation of disaster emergency, including a facility authorized to operate pursuant to a waiver of a law or a regulation issued by the United States, the Commonwealth or a local governmental authority.

(3) A health care provider as defined in the Health Care Facilities Act or other legal entity whose primary purpose is the provision of medical care for a health care provider.

(4) A facility as defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, or a parent organization of the facility.

(5) A business, university, facility or organization that provides a venue for the provision of medical care.
(6) A licensed, certified, registered or authorized person providing emergency medical services as defined in 35 Pa.C.S. § 8103 (relating to definitions), including an EMS vehicle operator.

(7) An EMS agency as defined in 35 Pa.C.S. § 8103, including a parent organization of the EMS agency.

(8) A person engaged in nursing care as defined in 28 Pa. Code Ch. 201 (relating to applicability, definitions, ownership and general operation of long-term care nursing facilities), if the nursing care is in support of the activities of daily living and other instrumental activities of daily living as defined in 55 Pa. Code Chs. 2600 (relating to personal care homes) and 2800 (relating to assisted living residences), or services covered that nursing care providers are obligated to deliver or arrange under their requirements of licensure.

(9) Any clinical laboratory certified under the Federal Clinical Laboratory amendments in section 353 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 201 et seq.), or licensed under the act of September 26, 1951 (P.L.1539, No.389), known as The Clinical Laboratory Act.

(10) An individual employed or contracted by an individual or entity under paragraphs (1), (2), (3), (4), (5), (6), (7), (8) and (9), who is involved in providing medical care.

"COVID-19." The coronavirus disease 2019, an infectious disease caused by severe acute respiratory syndrome coronavirus 2 that was first identified during December 2019 in Wuhan, China.

"Direct cost." The direct labor and direct material costs of
producing personal protective equipment, excluding any manufacturing overhead costs.

"Guidelines." Guidelines issued by the Federal or State government regarding:

(1) The manufacturing or use of personal protective equipment during the proclamation of disaster emergency.

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

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

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

"Premises." A building, structure, dwelling or real property which may be entered or used by persons for business services, public use, lodging or the storage of goods, including any vehicle, aircraft or watercraft used for the lodging of persons or carrying on of business services.

"Proclamation of disaster emergency." Any proclamation of disaster emergency issued by the Governor regarding COVID-19 and any renewal of the state of disaster emergency, such as the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and renewed on June 3, 2020, and any renewal of the state of disaster emergency.
§ 8402. Personal protective equipment liability.

(a) Manufacturer, distributor, labeler and donor.--The following apply:

(1) A person that manufactures, distributes, labels or donates personal protective equipment shall not be civilly liable for damages, injury or death resulting from or related to actual or alleged exposure to COVID-19, in connection with the use of personal protective equipment that, during the proclamation of disaster emergency, is donated or sold at direct cost, to a charitable organization, governmental unit or covered provider, absent a showing by clear and convincing evidence of recklessness, willful misconduct or intentional infliction of harm.

(2) An act or omission in compliance with, or in a good faith belief that the act or omission was in compliance with, the guidelines, shall not be considered willful misconduct or an act or omission intentionally designed to harm or that is reckless.

(b) Other manufacturers, distributors and labelers.--Except as provided under subsection (a), the following apply:

(1) A person that manufactures, distributes or labels personal protective equipment shall not be civilly liable for damages, injury or death resulting from or related to actual or alleged exposure to COVID-19 in connection with the use of personal protective equipment absent a showing, by clear and convincing evidence, of gross negligence, recklessness, willful misconduct or intentional infliction of harm if the person commenced manufacturing, distributing or labeling:

(i) only in connection with a proclamation of disaster emergency; or
(ii) to the same standards that it manufactured, distributed or labeled the equipment before a proclamation of disaster emergency, unless the equipment is clearly labeled to indicate otherwise.

(2) An act or omission in compliance with the guidelines shall not be considered willful misconduct, an act or omission intentionally designed to harm or to be grossly negligent or reckless.

(c) Users.--The following apply:

(1) A person that used or employed personal protective equipment during the proclamation of disaster emergency in compliance with guidelines related to the personal protective equipment shall not be civilly liable for damages, injury or death caused by or related to use of the personal protective equipment absent a showing, by clear and convincing evidence, of gross negligence, recklessness, willful misconduct or intentional infliction of harm.

(2) An act or omission in compliance with, or in a good faith belief that the act or omission was in compliance with, the guidelines, shall not be considered willful misconduct, an act or omission intentionally designed to harm or to be grossly negligent or reckless.

§ 8403. Business services liability.

(a) Limited liability.--Notwithstanding any other provision of law to the contrary and except as provided in subsection (b), a person providing business services shall not be civilly liable for damages or personal injury resulting from an actual or alleged exposure to COVID-19 while on the premises, absent a showing, by clear and convincing evidence, of gross negligence, recklessness, willful misconduct or intentional infliction of
harm if in the performance of business services at the time of
alleged or actual exposure, the person attempted in good faith
to follow guidelines related to COVID-19 exposure.
(b) Compliance with guidelines.--An act or omission in
compliance with, or in a good faith belief that the act or
omission is in compliance with, the guidelines shall not be
considered willful misconduct, an act or omission designed to
harm or to be grossly negligent or reckless.
§ 8404. Covered provider liability.
(a) Limited immunity.--The following apply:
(1) A covered provider, notwithstanding if the covered
provider is compensated for medical care, shall be immune
from civil liability as a result of any acts or omissions by
the covered provider during the proclamation of disaster
emergency, absent a showing, by clear and convincing
evidence, of gross negligence, recklessness, willful
misconduct or intentional infliction of harm, as follows:
(i) the provision of treatment or testing for COVID-
19 to patients that have been exposed to or whom a
covered provider reasonably believes may have been
exposed to COVID-19; or
(ii) an action taken by a covered provider or the
failure of a covered provider to take an action which
action or failure to take an action was proximately
caused by any of the following:
(A) equipment, supplies or personnel shortages
at a covered provider caused by the demand for
testing for or treatment of COVID-19 and which was
beyond the reasonable control of the covered
provider;
(B) a number of patients in excess of the capacity of a department or of a unit of a covered provider as a direct result of the need to test for or treat COVID-19; or

(C) compliance with guidelines regarding the testing for and treatment of COVID-19.

(2) An act or omission by a covered provider in compliance with the guidelines shall not be considered willful misconduct, an act or omission intentionally designed to harm or to be grossly negligent or reckless.

(b) Vicarious liability.--No vicarious liability shall attach to the employer of any person who is otherwise immune under this section.

§ 8405. Guidelines.

In determining civil liability under this chapter, a court shall:

(1) For a manufacturer, distributor or labeler, consider guidelines that were in effect at the time, either of the manufacture, distribution, labeling or sale of the personal protective equipment.

(2) For a person providing business services, consider guidelines that were in effect at the time of an alleged exposure.

(3) For a covered provider, consider guidelines that were in effect at the time an alleged act or failure to act occurred.

Section 2. The addition of 42 Pa.C.S. Ch. 84 shall not:

(1) Be construed to create a new cause of action or expand any civil or criminal liability otherwise imposed, limit any defense or affect the applicability of any law that
affords greater protections to defendants that are provided under 42 Pa.C.S. Ch. 84.

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

Section 3. This act shall take effect immediately.