THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL
No. 273 Session of 2021

INTRODUCED BY BAKER, STEFANO, BROOKS, PHILLIPS-HILL, BARTOLOTTA, MARTIN, J. WARD, DISANTO, SCAVELLO, GORDNER, MENSCH, AUGMENT, PITTMAN, MASTRIANO, DUSH AND ARGALL, FEBRUARY 24, 2021

REFERRED TO JUDICIARY, FEBRUARY 24, 2021

AN ACT

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

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

Section 1. Chapter 83 of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a subchapter to read:

SUBCHAPTER F.2

COVID-19-RELATED LIABILITY

Sec.

8368.11. Definitions.
8368.13. Personal protective equipment liability.
8368.15. Covered provider liability.
8368.16. Application of subchapter.
8368.17. Construction of subchapter.
8368.11. Definitions.

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

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

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


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

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

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

"Covered provider." Any of the following:

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

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

3. A health care facility as defined in section 802.1 of the Health Care Facilities Act. This paragraph includes a facility authorized to operate pursuant to a waiver.
(4) A temporary site operated by a health care facility under paragraph (3) during the proclamation of disaster emergency.

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

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

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

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

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

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

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

(ii) consists of covered services which nursing care providers are obligated to deliver or arrange under their requirements of licensure.
(11) A clinical laboratory:
   (i) certified under section 353 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 263a); or
   (ii) licensed under the act of September 26, 1951 (P.L.1539, No.389), known as The Clinical Laboratory Act.
(12) An individual employed or contracted by a person under paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) or (11), who is involved in providing medical care.
"COVID-19." The novel coronavirus as identified in the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020).
"Direct cost." The direct labor and direct material costs of producing personal protective equipment, excluding any manufacturing overhead costs.
"Institution of higher education." The term includes any of the following:
   (2) The State System of Higher Education. This paragraph includes a university within the system.
   (3) The Pennsylvania State University, the University of Pittsburgh, Temple University, Lincoln University or an institution designated as State-related by the Commonwealth.
   (4) The Thaddeus Stevens College of Technology and The Pennsylvania College of Technology.
   (5) A rural regional college operating under Article XIX-G of the Public School Code of 1949.
   (6) An institution of higher education located in and incorporated or chartered by the Commonwealth and entitled to
confer degrees under 24 Pa.C.S. § 6505 (relating to power to confer degrees) and as provided for by the standards and qualifications prescribed by the State Board of Education under 24 Pa.C.S. Ch. 65 (relating to private colleges, universities and seminaries).


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

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

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

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

"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 or another Federal authority or the Department of Health to prevent, limit or slow 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.

"Proclamation of disaster emergency." A proclamation of disaster emergency issued by the Governor relating to COVID-19 and any renewal of the state of disaster emergency, including

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the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of disaster emergency.

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

(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.

"School entity." Any school district, charter school, cyber charter school, regional charter school, chartered school for the deaf and blind, private school, nonpublic school, prekindergarten, intermediate unit, area career and technical school, approved private school or institution of higher education operating within this Commonwealth. The term includes an individual employed by or contracted by a school entity.


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

(b) Compliance with public health directives.--An act or omission in compliance with, or in a good faith belief that the act or omission is in compliance with, public health directives shall not be considered gross negligence, recklessness, willful
§ 8368.13. Personal protective equipment liability.

(a) Manufacturer, distributor, labeler and donor.--

(1) Notwithstanding any other provision of law, a person that manufactures, distributes, labels or donates personal protective equipment shall not be civilly liable for damage to property or personal injury, related to actual or alleged exposure to COVID-19 in connection with the use of personal protective equipment which, during the proclamation of disaster emergency, is donated or sold at direct cost, 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, public health directives shall not be considered recklessness, willful misconduct or intentional infliction of harm.

(b) Other manufacturers, distributors and labelers.--Subject to subsection (a), all of the following apply:

(1) Notwithstanding any other provision of law, a person that manufactures, distributes or labels personal protective equipment shall not be civilly liable for damage to property or personal injury 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) in accord with the same standards to which 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, or in a good
faith belief that the act or omission was in compliance with,
public health directives shall not be considered gross
negligence, recklessness, willful misconduct or intentional
infliction of harm.

(c) Users.--

(1) Notwithstanding any other provision of law, a person
that uses or employs personal protective equipment during the
proclamation of disaster emergency in compliance with public
health directives related to the personal protective
equipment shall not be civilly liable for damage to property
or personal injury 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,
public health directives shall not be considered gross
negligence, recklessness, willful misconduct or intentional
infliction of harm.


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

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

§ 8368.15. Covered provider liability.

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

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

(2) An act or omission proximately caused by:

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

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

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

(ii) 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

(iii) compliance with public health directives regarding the testing for and treatment of COVID-19.
(b) Compliance with public health directives.--An act or omission by a covered provider in compliance with, or in a good faith belief that the act or omission was in compliance with, public health directives shall not be considered gross negligence, recklessness, willful misconduct or intentional infliction of harm.

§ 8368.16. Application of subchapter.

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

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

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

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

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

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

§ 8368.17. Construction of subchapter.

This subchapter shall not be construed to:

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

(3) limit a defense;

(4) affect the applicability of a statute which affords greater protections to defendants than are provided under this subchapter; or

(5) prevent an individual from filing a claim 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 2. This act shall take effect immediately.