
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1239 Session of
2020

INTRODUCED BY BAKER, STEFANO, BROOKS, PHILLIPS-HILL, ARGALL,
MENSCH, GORDNER, PITTMAN, AUMENT, ARNOLD, BARTOLOTTA AND
J. WARD, JULY 27, 2020

REFERRED TO JUDICIARY, JULY 27, 2020

AN ACT

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

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

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

8 CHAPTER 84

9 COVID-19-RELATED LIABILITY

10 Sec.

11 8401. Definitions.

12 8402. Personal protective equipment liability.

13 8403. Business services liability.

14 8404. Covered provider liability.

15 8405. Guidelines.

16 § 8401. Definitions.

17 The following words and phrases when used in this chapter

18 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

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

8 "Covered provider." Any of the following:

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

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

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

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

29 (5) A business, university, facility or organization
30 that provides a venue for the provision of medical care.

1 (6) A licensed, certified, registered or authorized
2 person providing emergency medical services as defined in 35
3 Pa.C.S. § 8103 (relating to definitions), including an EMS
4 vehicle operator.

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

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

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

22 (10) An individual employed or contracted by an
23 individual or entity under paragraphs (1), (2), (3), (4),
24 (5), (6), (7), (8) and (9), who is involved in providing
25 medical care.

26 "COVID-19." The coronavirus disease 2019, an infectious
27 disease caused by severe acute respiratory syndrome coronavirus
28 2 that was first identified during December 2019 in Wuhan,
29 China.

30 "Direct cost." The direct labor and direct material costs of

1 producing personal protective equipment, excluding any
2 manufacturing overhead costs.

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

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

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

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

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

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

24 "Proclamation of disaster emergency." Any proclamation of
25 disaster emergency issued by the Governor regarding COVID-19 and
26 any renewal of the state of disaster emergency, such as the
27 proclamation of disaster emergency issued by the Governor on
28 March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and
29 renewed on June 3, 2020, and any renewal of the state of
30 disaster emergency.

1 § 8402. Personal protective equipment liability.

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

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

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

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

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

29 (i) only in connection with a proclamation of
30 disaster emergency; or

1 (ii) to the same standards that it manufactured,
2 distributed or labeled the equipment before a
3 proclamation of disaster emergency, unless the equipment
4 is clearly labeled to indicate otherwise.

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

9 (c) Users.--The following apply:

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

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

23 § 8403. Business services liability.

24 (a) Limited liability.--Notwithstanding any other provision
25 of law to the contrary and except as provided in subsection (b),
26 a person providing business services shall not be civilly liable
27 for damages or personal injury resulting from an actual or
28 alleged exposure to COVID-19 while on the premises, absent a
29 showing, by clear and convincing evidence, of gross negligence,
30 recklessness, willful misconduct or intentional infliction of

1 harm if in the performance of business services at the time of
2 alleged or actual exposure, the person attempted in good faith
3 to follow guidelines related to COVID-19 exposure.

4 (b) Compliance with guidelines.--An act or omission in
5 compliance with, or in a good faith belief that the act or
6 omission is in compliance with, the guidelines shall not be
7 considered willful misconduct, an act or omission designed to
8 harm or to be grossly negligent or reckless.

9 § 8404. Covered provider liability.

10 (a) Limited immunity.--The following apply:

11 (1) A covered provider, notwithstanding if the covered
12 provider is compensated for medical care, shall be immune
13 from civil liability as a result of any acts or omissions by
14 the covered provider during the proclamation of disaster
15 emergency, absent a showing, by clear and convincing
16 evidence, of gross negligence, recklessness, willful
17 misconduct or intentional infliction of harm, as follows:

18 (i) the provision of treatment or testing for COVID-
19 19 to patients that have been exposed to or whom a
20 covered provider reasonably believes may have been
21 exposed to COVID-19; or

22 (ii) an action taken by a covered provider or the
23 failure of a covered provider to take an action which
24 action or failure to take an action was proximately
25 caused by any of the following:

26 (A) equipment, supplies or personnel shortages
27 at a covered provider caused by the demand for
28 testing for or treatment of COVID-19 and which was
29 beyond the reasonable control of the covered
30 provider;

1 (B) a number of patients in excess of the
2 capacity of a department or of a unit of a covered
3 provider as a direct result of the need to test for
4 or treat COVID-19; or

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

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

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

14 § 8405. Guidelines.

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

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

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

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

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

28 (1) Be construed to create a new cause of action or
29 expand any civil or criminal liability otherwise imposed,
30 limit any defense or affect the applicability of any law that

1 affords greater protections to defendants that are provided
2 under 42 Pa.C.S. Ch. 84.

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

7 Section 3. This act shall take effect immediately.