
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, AUMENT,
PITTMAN, MASTRIANO, DUSH AND ARGALL, FEBRUARY 24, 2021

REFERRED TO JUDICIARY, FEBRUARY 24, 2021

AN ACT

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

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

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

8 SUBCHAPTER F.2

9 COVID-19-RELATED LIABILITY

10 Sec.

11 8368.11. Definitions.

12 8368.12. School and child care liability.

13 8368.13. Personal protective equipment liability.

14 8368.14. Business or government services liability.

15 8368.15. Covered provider liability.

16 8368.16. Application of subchapter.

17 8368.17. Construction of subchapter.

1 § 8368.11. Definitions.

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

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

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

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

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

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

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

20 "Covered provider." Any of the following:

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

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

28 (3) A health care facility as defined in section 802.1
29 of the Health Care Facilities Act. This paragraph includes
30 a facility authorized to operate pursuant to a waiver.

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

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

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

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

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

17 (9) An emergency medical services agency as defined in
18 35 Pa.C.S. § 8103. This paragraph includes a parent
19 organization of the agency.

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

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

28 (ii) consists of covered services which nursing care
29 providers are obligated to deliver or arrange under their
30 requirements of licensure.

1 (11) A clinical laboratory:
2 (i) certified under section 353 of the Public Health
3 Service Act (58 Stat. 682, 42 U.S.C. § 263a); or
4 (ii) licensed under the act of September 26, 1951
5 (P.L.1539, No.389), known as The Clinical Laboratory Act.
6 (12) An individual employed or contracted by a person
7 under paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9),
8 (10) or (11), who is involved in providing medical care.
9 "COVID-19." The novel coronavirus as identified in the
10 proclamation of disaster emergency issued by the Governor on
11 March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020).
12 "Direct cost." The direct labor and direct material costs of
13 producing personal protective equipment, excluding any
14 manufacturing overhead costs.
15 "Institution of higher education." The term includes any of
16 the following:
17 (1) A community college operating under Article XIX-A of
18 the act of March 10, 1949 (P.L.30, No.14), known as the
19 Public School Code of 1949.
20 (2) The State System of Higher Education. This paragraph
21 includes a university within the system.
22 (3) The Pennsylvania State University, the University of
23 Pittsburgh, Temple University, Lincoln University or an
24 institution designated as State-related by the Commonwealth.
25 (4) The Thaddeus Stevens College of Technology and The
26 Pennsylvania College of Technology.
27 (5) A rural regional college operating under Article
28 XIX-G of the Public School Code of 1949.
29 (6) An institution of higher education located in and
30 incorporated or chartered by the Commonwealth and entitled to

1 confer degrees under 24 Pa.C.S. § 6505 (relating to power to
2 confer degrees) and as provided for by the standards and
3 qualifications prescribed by the State Board of Education
4 under 24 Pa.C.S. Ch. 65 (relating to private colleges,
5 universities and seminaries).

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

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

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

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

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

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

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

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

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

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

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

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

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

19 § 8368.12. School and child care liability.

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

27 (b) Compliance with public health directives.--An act or
28 omission in compliance with, or in a good faith belief that the
29 act or omission is in compliance with, public health directives
30 shall not be considered gross negligence, recklessness, willful

1 misconduct or intentional infliction of harm.

2 § 8368.13. Personal protective equipment liability.

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

4 (1) Notwithstanding any other provision of law, a person
5 that manufactures, distributes, labels or donates personal
6 protective equipment shall not be civilly liable for damage
7 to property or personal injury, related to actual or alleged
8 exposure to COVID-19 in connection with the use of personal
9 protective equipment which, during the proclamation of
10 disaster emergency, is donated or sold at direct cost, absent
11 a showing by clear and convincing evidence of recklessness,
12 willful misconduct or intentional infliction of harm.

13 (2) An act or omission in compliance with, or in a good
14 faith belief that the act or omission was in compliance with,
15 public health directives shall not be considered
16 recklessness, willful misconduct or intentional infliction of
17 harm.

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

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

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

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

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

10 (c) Users.--

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

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

25 § 8368.14. Business or government services liability.

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

1 recklessness, willful misconduct or intentional infliction of
2 harm.

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

8 § 8368.15. Covered provider liability.

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

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

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

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

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

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

25 (ii) a number of patients in excess of the capacity
26 of a department or of a unit of a covered provider as a
27 direct result of the need to test for or treat COVID-19;
28 or

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

1 (b) Compliance with public health directives.--An act or
2 omission by a covered provider 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 § 8368.16. Application of subchapter.

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

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

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

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

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

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

28 § 8368.17. Construction of subchapter.

29 This subchapter shall not be construed to:

30 (1) create a new cause of action;

1 (2) expand a civil or criminal liability otherwise
2 imposed;

3 (3) limit a defense;

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

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

11 Section 2. This act shall take effect immediately.