

**BILL No. \_\_\_\_**

(By \_\_\_\_\_)

1 AN ACT concerning the code of civil procedure, relating liability associated with  
2 COVID-19; providing actual injury requirement for claims alleging exposure to  
3 COVID-19; establishing premises liability standard for claims alleging exposure to  
4 COVID-19; precluding liability when conduct complies with regulations, orders, or  
5 guidance; limiting liability with respect to qualified products made, sold, or donated  
6 in response to COVID-19.

7  
8 *Be it enacted by the Legislature of the State of Kansas:*

9 New Section 1. As used in this act, unless the context otherwise requires, the  
10 following words and phrases shall have the meanings ascribed to them in this section:

11 (a) “Cleaning or disinfecting supplies” includes, but is not limited to, hand sanitizers,  
12 disinfectants, sprays, and wipes.

13 (b) “COVID-19” means the novel coronavirus identified as SARS-CoV-2, the disease  
14 caused by the novel coronavirus SARS-CoV-2, and conditions associated with the  
15 disease.

16 (c) “COVID-19 claim” means any claim for damages, losses, indemnification,  
17 contribution or other relief arising out of, based on, or in any way related to exposure or  
18 potential exposure to COVID-19. COVID-19 claim also includes a claim made by or on  
19 behalf of any person who has been exposed or potentially exposed to COVID-19, or any  
20 representative, spouse, parent, child or other relative of that person, for injury, including  
21 mental or emotional injury, death or loss to person, risk of disease or other injury, costs  
22 of medical monitoring or surveillance, or other losses allegedly caused by the person’s  
23 exposure or potential exposure to COVID-19.

24 (d) “COVID-19 emergency” means the State of Disaster Emergency declared for the  
25 State of Kansas on March 12, 2020, and any subsequent orders or amendments thereto.

26 (e) “Essential business” means a person or entity (1) meeting the criteria of the  
27 Kansas Essential Functions Framework as defined by Executive Order 20-16 on March  
28 28, 2020, and any subsequent orders or amendments thereto; or (2) within an essential  
29 critical infrastructure sector as defined by the United States Department of Homeland  
30 Security.

31 (f) “First responder” means a law enforcement officer, firefighter, emergency medical  
32 technician, an employer of a first responder, and any person or entity authorized by  
33 executive order to provide emergency services in response to the COVID-19 emergency.

34 (g) “Medical care facility” means a hospital, ambulatory surgical center, or  
35 recuperation center, as those terms are defined by K.S.A. 65-425, and also includes  
36 nursing facility, assisted living facility or a residential health care facility as those terms

1 are defined by K.S.A. 39-923, a hospice, and any other any entity authorized to provide  
2 health care in response to the COVID-19 emergency.

3 (h) "Health care provider" means a person as defined K.S.A. 40-3401, and also  
4 includes registered nurses, advanced practice registered nurses, licensed practical nurses,  
5 pharmacists, unlicensed volunteers, military personnel, or students and other support  
6 personnel and entities or individuals referenced in K.S.A. 48-915 authorized to provide  
7 health care in response to the COVID-19 emergency, whether paid or unpaid, including  
8 persons engaged in telemedicine or telehealth; and the employer or agent of a health care  
9 provider who provides or arranges health care.

10 (i) "Person" means an individual, association, for-profit or nonprofit entity, religious  
11 organization, or charitable organization.

12 (j) "Personal protective equipment" means coveralls, face shields, gloves, gowns,  
13 masks, respirators, or other equipment designed to protect the wearer from the spread of  
14 infection or illness.

15 (k) "Premises" means any physical place serving a commercial, residential,  
16 educational, religious, governmental, cultural, charitable, or health care purpose.

17 (l) "Product liability claim" includes any claim or action brought for harm caused by  
18 the manufacture, production, making, construction, fabrication, design, formula,  
19 preparation, assembly, installation, testing, warnings, instructions, marketing, packaging,  
20 storage or labeling of the relevant product. It includes, but is not limited to, any action  
21 based on, strict liability in tort, negligence, breach of express or implied warranty, breach  
22 of, or failure to, discharge a duty to warn or instruct, whether negligent or innocent,  
23 misrepresentation, concealment or nondisclosure, whether negligent or innocent, or under  
24 any other substantive legal theory.

25 (m) "Public health guidance" means written guidance related to COVID-19 issued by  
26 the Centers for Disease Control and Prevention, Occupational Safety & Health  
27 Administration of the United States Department of Labor, Kansas Department of Health  
28 and the Environment, Kansas Department of Labor, or other state agency.

29 (n) "Qualified product" means personal protective equipment used to protect the  
30 wearer from COVID-19 or the spread of COVID-19; medical devices, equipment, and  
31 supplies used to treat COVID-19 including products that are used or modified for an  
32 unapproved use to treat COVID-19 or prevent the spread of COVID-19; medical devices,  
33 equipment, or supplies utilized outside of the product's normal use to treat COVID-19 or  
34 to prevent the spread of COVID-19; medications used to treat COVID-19 including  
35 medications prescribed or dispensed for off-label use to attempt to combat COVID-19;  
36 tests to diagnose or determine immunity to COVID-19; and components of qualified  
37 products.

38 (o) "Serious illness" means a medical illness or physical injury or condition that  
39 causes an inability to engage in a person's usual and customary daily activities for at least  
40 fourteen days, which does not include any period of quarantine.

41 Sec 2. (a) No person shall bring or maintain a civil action alleging a COVID-19  
42 claim in absence of a minimum medical condition.

43 (b) A minimum medical condition is a diagnosis of COVID-19, or symptoms  
44 consistent with COVID-19, that required inpatient hospitalization or resulted in serious  
45 illness or death.

1 (c) The requirements established by the provisions of this section do not apply to a  
2 deliberate act intended to cause harm.

3 (d) Nothing in this section (1) creates, recognizes or ratifies a claim or cause of action  
4 of any kind; (2) eliminates a required element of any claim; or (3) affects workers'  
5 compensation law, including the exclusive application of such law; or (4) amends,  
6 repeals, alters, or affects any other immunity or limitation of liability.

7 Sec. 3. (a) A possessor of real property, including an owner, lessee or other lawful  
8 occupant, who directly or indirectly invites or permits any person onto a premises, shall  
9 not be held liable for a COVID-19 claim unless the possessor of real property willfully or  
10 maliciously fails to guard or warn against a substantial and unnecessary risk that a person  
11 would be exposed to COVID-19.

12 (b) Nothing in this section (1) creates, recognizes or ratifies a claim or cause of action  
13 of any kind; (2) eliminates a required element of any claim; (3) affects workers'  
14 compensation law, including the exclusive application of such law; or (4) amends,  
15 repeals, alters, or affects any other immunity or limitation of liability.

16 Sec. 4. (a) A person, or agent of that person, conducting business in this state shall  
17 not be held liable for a COVID-19 claim if the act or omission alleged to violate a duty of  
18 care complied or was consistent with a federal or state statute or regulation, Executive  
19 Order, or public health guidance applicable to the person or activity at issue at the time of  
20 the alleged exposure.

21 (b) If two or more public health guidance are applicable to the person or activity at  
22 issue at the time of the alleged exposure, subsection (a) may be satisfied through conduct  
23 consistent with any written guidance.

24 Sec. 5. (a) Any person that designs, manufactures, labels, sells, distributes, or donates  
25 a qualified product in response to COVID-19 that is utilized by a government entity,  
26 health care provider, medical care facility, first responder, or essential business shall not  
27 be liable in a civil action alleging a product liability claim.

28 (b) Any person that designs, manufactures, labels, sells, distributes, or donates  
29 cleaning or disinfecting supplies or personal protective equipment in response to COVID-  
30 19 that does not make such products in the ordinary course of the person's business shall  
31 not be liable in a civil action alleging a product liability claim.

32 (c) The limitations on liability provided in this section shall not apply to any person  
33 that:

34 (1)(i) had actual knowledge of a defect in the product when put to the use for which  
35 the product was manufactured, sold, distributed, or donated; and (ii) willfully disregarded  
36 a substantial and unnecessary risk that the product would cause serious injury to others;  
37 or

38 (2) acted with actual malice.

39 (d) Nothing in this section (1) creates, recognizes or ratifies a claim or cause of action  
40 of any kind; (2) eliminates a required element of any claim; (3) affects workers'  
41 compensation law, including the exclusive application of such law; or (4) amends,  
42 repeals, alters, or affects any other immunity or limitation of liability.

43 Sec. 6. The provisions of this act are severable. If any portion of this act is declared  
44 unconstitutional or the application of any part of this act to any person or circumstance is

1 held invalid, the remaining portions of the act and their applicability to any person or  
2 circumstance shall remain valid and enforceable.

3 Sec. 7. Sections 1 through 6 are retroactively applicable to any cause of action  
4 accruing on or after March 12, 2020.

5 Sec. 8. Sections 1 through 8 may be cited as the COVID-19 Response and Reopening  
6 for Business Liability Protection Act.

7 Sec. 9. This act shall take effect and be in force from and after its publication in the  
8 statute book.