

_____ **BILL No.** _____

(By _____)

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

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

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

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

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

32 (g) “Medical care facility” means a hospital, ambulatory surgical center, or
33 recuperation center, as those terms are defined by K.S.A. 65-425, and also includes nursing
34 facility, assisted living facility or a residential health care facility as those terms are defined
35 by K.S.A. 39-923, a hospice, and any other any entity authorized to provide health care in
36 response to the COVID-19 emergency.

1 (h) "Health care provider" means a person as defined K.S.A. 40-3401, and also
2 includes registered nurses, advanced practice registered nurses, licensed practical nurses,
3 pharmacists, unlicensed volunteers, military personnel, licensed bachelor social worker,
4 licensed master social worker, and licensed specialist clinical social worker, licensed
5 marriage and family therapist, behavioral health or mental health specialists, or students
6 and other support personnel and entities or individuals referenced in K.S.A. 48-915
7 authorized to provide health care in response to the COVID-19 emergency, whether paid
8 or unpaid, including persons engaged in telemedicine or telehealth; and the employer or
9 agent of a health care provider who provides or arranges health care including but not
10 limited to behavioral or mental health services

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

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

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

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

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

30 (n) "Qualified product" means personal protective equipment used to protect the wearer
31 from COVID-19 or the spread of COVID-19; medical devices, equipment, and supplies
32 used to treat COVID-19 including products that are used or modified for an unapproved
33 use to treat COVID-19 or prevent the spread of COVID-19; medical devices, equipment,
34 or supplies utilized outside of the product's normal use to treat COVID-19 or to prevent the
35 spread of COVID-19; medications used to treat COVID-19 including medications
36 prescribed or dispensed for off-label use to attempt to combat COVID-19; tests to diagnose
37 or determine immunity to COVID-19; and components of qualified products. Qualified
38 product also includes clinical laboratory services certified under the federal Clinical
39 Laboratory Improvement Amendments in section 353 of the Public Health Service Act (42
40 U.S.C. § 263a).

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (2) acted with actual malice.

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

1 Sec. 6. The provisions of this act are severable. If any portion of this act is declared
2 unconstitutional or the application of any part of this act to any person or circumstance is
3 held invalid, the remaining portions of the act and their applicability to any person or
4 circumstance shall remain valid and enforceable.

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

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

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