

SENATE BILL NO. 1198

October 13, 2020, Introduced by Senator HOLLIER and referred to the Committee on Economic and Small Business Development.

A bill to establish a presumption against civil liability arising from COVID-19 in favor of persons that comply with federal, state, and local law and guidance; and to provide for protection from civil liability with respect to certain products.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "COVID-19 liability safe harbor act".

3 Sec. 2. As used in this act:

4 (a) "COVID-19" means the disease caused by SARS-CoV-2, and

1 includes conditions associated with the disease.

2 (b) "Disinfecting or cleaning supplies" includes, but is not
3 limited to, hand sanitizers manufactured in a manner consistent
4 with United States Food and Drug Administration industry guidance,
5 disinfectants, sprays, and wipes, if the supplies meet any
6 applicable United States Environmental Protection Agency criteria
7 for use against COVID-19.

8 (c) "Minimum medical condition" means any of the following:

9 (i) A positive diagnosis of COVID-19, or symptoms consistent
10 with COVID-19, that required inpatient hospitalization of at least
11 24 hours.

12 (ii) A medical illness or physical injury or condition caused
13 by COVID-19 that results in the inability to engage in an
14 individual's usual and customary daily activities for at least 14
15 days, which does not include any period that the individual is in
16 quarantine to slow the spread of COVID-19.

17 (iii) Death attributed to COVID-19.

18 (d) "Nonprofit charitable organization" means an organization
19 granted tax exempt status by the Internal Revenue Service, if no
20 part of the organization's net earnings inure to the benefit of a
21 private shareholder or individual.

22 (e) "Person" means an individual, partnership, corporation,
23 association, or other legal entity, including, but not limited to,
24 a school, a college or university, an institution of higher
25 education, and a nonprofit charitable organization. Person includes
26 an employee, agent, or independent contractor of the person,
27 regardless of whether the individual is paid or an unpaid
28 volunteer.

29 (f) "Personal protective equipment" means coveralls, face

1 shields, gloves, gowns, masks, respirators, or other equipment used
2 to protect an individual from infection or illness or the spread of
3 infection or illness.

4 (g) "Product liability claim" means an action based on a legal
5 or equitable theory of liability brought for the death of an
6 individual or for injury to an individual or damage to property
7 caused by or resulting from the production of a product.

8 (h) "Qualified product" means personal protective equipment
9 used to protect the wearer from COVID-19 or the spread of COVID-19
10 or SARS-CoV-2; medical devices, equipment, and supplies used to
11 treat COVID-19 or prevent the spread of COVID-19 or SARS-CoV-2;
12 medications used to treat COVID-19 including medications prescribed
13 or dispensed for off-label use to attempt to combat COVID-19; tests
14 to diagnose or determine immunity to COVID-19 or SARS-CoV-2;
15 disinfecting or cleaning supplies; and components of qualified
16 products.

17 (i) "SARS-CoV-2" means the SARS-CoV-2 virus, also known as the
18 novel coronavirus, or a virus that mutates from that virus.

19 Sec. 3. (1) In a civil action in which a person is alleged to
20 be liable for damages, losses, indemnification, contribution, or
21 other relief arising out of exposure or potential exposure to
22 COVID-19 or SARS-CoV-2, there is a presumption that the person is
23 not liable only if all of the following apply:

24 (a) The person was in compliance with all statutes,
25 regulations, rules, and other forms of guidance pertaining to
26 COVID-19 or SARS-CoV-2 issued by the federal government, the
27 government of this state, or a local unit of government at the time
28 that the exposure to COVID-19 or SARS-CoV-2 is alleged in the civil
29 action to have occurred. If there is a conflict between different

1 applicable requirements, the person must follow the strictest
2 requirements.

3 (b) The person allows employees of the person who have
4 confirmed or suspected cases of COVID-19 to return to the workplace
5 only after the employees are no longer infectious according to the
6 latest guidelines from the Centers for Disease Control and
7 Prevention and are released from any quarantine or isolation
8 recommended by a local public health department.

9 (c) The person does not discharge, discipline, or otherwise
10 retaliate against employees of the person who stay home or who
11 leave work when they are at particular risk of infecting others
12 with COVID-19 or SARS-CoV-2.

13 (d) The person provides an employee who stays home or leaves
14 work when they are at particular risk of infecting others with
15 COVID-19 or SARS-CoV-2 the ability to work from home or provides
16 annual bank of paid leave time that employees can use if they have
17 a confirmed or suspected case of COVID-19. To the extent that the
18 employee has no paid leave, the leave may be unpaid.

19 (2) To overcome a presumption under subsection (1), a
20 plaintiff has the burden of presenting clear and convincing
21 evidence that all of the following apply:

22 (a) The statutes, regulations, and rules, and other forms of
23 guidance, of the federal government, of this state, and of a local
24 unit of government that were applicable at the time to the conduct
25 or risk that allegedly caused harm were inadequate to protect the
26 public from exposure to COVID-19 or SARS-CoV-2 based on scientific
27 knowledge available at that time.

28 (b) A reasonable person would have implemented specific
29 policies or practices to protect others from exposure to COVID-19

1 or SARS-CoV-2 exceeding those required or recommended by the
2 federal government, state government, or a local unit of government
3 that are applicable at the time to the conduct or risk that
4 allegedly caused harm.

5 (c) Had the person adopted specific policies or practices
6 exceeding those required or recommended by the federal government,
7 state government, or a local unit of government the plaintiff would
8 not have contracted COVID-19.

9 (d) The plaintiff developed or sustained a minimum medical
10 condition.

11 (3) The presumption provided by subsection (1) does not apply
12 to a deliberate act intended to cause harm.

13 Sec. 4. (1) Except as provided by subsection (3), a person
14 that designs, manufactures, labels, sells, distributes, provides
15 insurance coverage for, or donates a qualified product in response
16 to COVID-19 or SARS-CoV-2 is not liable in a civil action that
17 alleges a product liability claim related to the qualified product.

18 (2) Except as provided by subsection (3), a person that
19 selects or dispenses a qualified product in response to the COVID-
20 19 pandemic is not liable in a civil action for injuries or damages
21 claimed to have arisen from the selection, dispensation, or use of
22 the qualified product.

23 (3) The limitations on liability provided in this section do
24 not apply if a person had actual knowledge that the product was
25 defective and that there was a substantial likelihood that the
26 defect would cause the injury that is the basis of the action, and
27 the person willfully disregarded that knowledge in the manufacture,
28 distribution, sale, or donation of the product.

29 Sec. 5. This act does not do any of the following:

1 (a) Create, recognize, or ratify a claim or cause of action of
2 any kind.

3 (b) Eliminate a required element of any claim, including, but
4 not limited to, causation and proximate cause elements.

5 (c) Apply to or in any way limit or abridge any claims,
6 rights, remedies, or protections under the worker's disability
7 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

8 (d) Amend, repeal, alter, or affect any other immunity or
9 limitation of liability.

10 Sec. 6. As provided by section 5 of 1846 RS 1, MCL 8.5, the
11 provisions of this act are severable. If any portion of this act or
12 the application of this act to any person or circumstances is found
13 to be invalid by a court, the invalidity will not affect, impair,
14 or invalidate the other portions or applications of this act that
15 can be given effect without the invalid portion or application.

16 Sec. 7. The liability protection provided by this act applies
17 retroactively and applies only after March 9, 2020 and before July
18 15, 2020.