

2021 South Dakota Legislature

House Bill 1046**AMENDMENT 1046A FOR THE INTRODUCED BILL**1 **An Act to limit liability for certain exposures to COVID-19.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:4 **21-68-1. Definitions.**5 Terms used in this Act mean:

- 6 (1) "COVID-19," the novel coronavirus identified as SARS-CoV-2, the disease caused
7 by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom, and
8 conditions associated with the disease caused by the novel coronavirus SARS-CoV-
9 2 or a virus mutating therefrom;
- 10 (2) "Disinfecting or cleaning supplies," hand sanitizers, disinfectants, sprays, and
11 wipes;
- 12 (3) "First responders," law enforcement officers, firemen, emergency medical services
13 workers, and other similarly situated persons;
- 14 (4) "Health care facility":
15 (a) Any facility regulated under chapter 34-12; or
16 (b) Residential care facilities, nursing facilities, intermediate care facilities for
17 persons with mental illness, intermediate care facilities for persons with
18 intellectual disabilities, hospice programs, elder group homes, dental clinics,
19 orthodontic clinics, optometric clinics, chiropractic clinics, and assisted living
20 programs;
- 21 (5) "Health care professional," physicians and other health care practitioners who are
22 licensed, certified, or otherwise authorized or permitted by the laws of this state
23 to administer health care services in the ordinary course of business or in the
24 practice of a profession, whether paid or unpaid, including persons engaged in
25 telemedicine or telehealth. The term includes the employer or agent of a health
26 care professional who provides or arranges health care;

- 1 (6) "Health care provider," a health care professional, health care facility, home health
2 care facility, and any other person or facility otherwise authorized or permitted by
3 any federal or state statute, rule, order, or public health guidance to administer
4 health care services or treatment, including first responders;
- 5 (7) "Health care services," services for the diagnosis, prevention, treatment, care,
6 cure, or relief of a health condition, illness, injury, or disease;
- 7 (8) "Person," a natural person, corporate or common law entity, business entity
8 registered pursuant to § 37-11-1, and the state and any political subdivision
9 thereof, including school districts. The term includes an agent of a person;
- 10 (9) "Personal protective equipment," protective clothing, gloves, face shields, goggles,
11 facemasks, respirators, gowns, aprons, coveralls, and other equipment designed
12 to protect the wearer from injury or the spread of infection or illness;
- 13 (10) "Premises," any real property and any appurtenant building or structure, and any
14 vehicle, serving a commercial, residential, educational, religious, governmental,
15 cultural, charitable, or health care purpose;
- 16 (11) "Public health guidance," written guidance related to COVID-19 issued by any of
17 the following:
- 18 (a) The Center for Disease Control and Prevention of the federal Department of
19 Health and Human Services;
- 20 (b) The Centers for Medicare and Medicaid Services of the federal Department
21 of Health and Human Services;
- 22 (c) The federal Occupational Safety and Health Administration;
- 23 (d) The Office of the Governor; or
- 24 (e) Any state agency, including the Department of Health;
- 25 (12) "Qualified product:"
- 26 (a) Personal protective equipment used to protect the wearer from COVID-19
27 or to prevent the spread of COVID-19;
- 28 (b) Medical devices, equipment, and supplies used to treat COVID-19, including
29 medical devices, equipment, or supplies that are used or modified for an
30 unapproved use to treat COVID-19 or to prevent the spread of COVID-19;
- 31 (c) Medical devices, equipment, and supplies used outside of their normal use
32 to treat COVID-19 or to prevent the spread of COVID-19;
- 33 (d) Medications used to treat COVID-19, including medications prescribed or
34 dispensed for off-label use to attempt to treat COVID-19;
- 35 (e) Tests to diagnose or determine immunity to COVID-19; or

- 1 (f) Any component of an item described in this subdivision.
2 (13) "Vehicle," a device used for transporting people, goods, or substances, including,
3 but not limited to, an automobile, truck, bus, train, helicopter, or airplane.

4 **Section 2.** That a NEW SECTION be added:

5 **21-68-2. Limitation--Actions--Diagnosis--Intentional exposure.**

6 A person may not bring or maintain any action or claim for damages or relief
7 alleging exposure or potential exposure to COVID-19 unless the exposure results in a
8 COVID-19 diagnosis and the exposure is the result of intentional exposure with the intent
9 to transmit COVID-19. In alleging intentional exposure with the intent to transmit COVID-
10 19, a party shall state with particularity the circumstances constituting intentional
11 exposure with the intent to transmit COVID-19 including all duty, breach, and intent
12 elements and establish all elements by clear and convincing evidence.

13 **Section 3.** That a NEW SECTION be added:

14 **21-68-3. Limitation--Actions--Owner--Premises.**

15 A person who possesses or is in control of a premises, including a tenant, lessee,
16 or occupant of a premises, who directly or indirectly invites or permits an individual onto
17 a premises, shall not be liable for damages for any injuries sustained from the individual's
18 exposure to COVID-19, whether the exposure occurs on the premises or during any
19 activity managed by the person who possesses or is in control of a premises unless the
20 person who possesses or is in control of the premises intentionally exposes the individual
21 to COVID-19 with the intent to transmit COVID-19. In alleging intentional exposure with
22 the intent to transmit COVID-19, a party must state with particularity the circumstances
23 constituting intentional exposure with the intent to transmit COVID-19 including all duty,
24 breach, and intent elements and establish all elements by clear and convincing evidence.

25 **Section 4.** That a NEW SECTION be added:

26 **21-68-4. Limitation--Actions--Health care provider.**

27 A health care provider is not liable for any damages for causing or contributing,
28 directly or indirectly, to the death or injury of a person as a result of the health care
29 provider's acts or omissions in response to COVID-19. This section applies to all of the
30 following:

- 1 (1) Injury or death resulting from screening, assessing, diagnosing, caring for, or
2 treating persons with a suspected or confirmed case of COVID-19;
- 3 (2) Prescribing, administering, or dispensing a pharmaceutical for off-label use to treat
4 a patient with a suspected or confirmed case of COVID-19; and
- 5 (3) Acts or omissions while providing health care to persons unrelated to COVID-19 if
6 those acts or omissions support the state's response to COVID-19, including any
7 of the following:
- 8 (a) Delaying or canceling nonurgent or elective dental, medical, or surgical
9 procedures, or altering the diagnosis or treatment of a person in response
10 to any federal or state statute, regulation, order, or public health guidance;
- 11 (b) Diagnosing or treating patients outside the normal scope of the health care
12 provider's license or practice;
- 13 (c) Using medical devices, equipment, or supplies outside of their normal use
14 for the provision of health care, including using or modifying medical
15 devices, equipment, or supplies for an unapproved use;
- 16 (d) Conducting tests or providing treatment to any person outside the premises
17 of a health care facility;
- 18 (e) Acts or omissions undertaken by a health care provider because of a lack of
19 staffing, facilities, medical devices, equipment, supplies, or other resources
20 attributable to COVID-19 that renders the health care provider unable to
21 provide the level or manner of care to any person that otherwise would have
22 been required in the absence of COVID-19; and
- 23 (f) Acts or omissions undertaken by a health care provider relating to the use
24 or nonuse of personal protective equipment.

25 This section does not relieve any person of liability for civil damages for any act or
26 omission that constitutes **gross negligence**, **recklessness**, or **willful misconduct**.

27 **Section 5.** That a NEW SECTION be added:

28 **21-68-5. Limitation--Actions--Personal protective equipment.**

29 Any person that designs, manufactures, labels, sells, distributes, or donates
30 disinfecting or cleaning supplies, personal protective equipment, or a qualified product in
31 response to COVID-19 is not liable in a civil action alleging personal injury, death, or
32 property damage caused by or resulting from the design, manufacturing, labeling, selling,
33 distributing, or donating of the disinfecting or cleaning supplies, personal protective
34 equipment, or a qualified product.

1 Any person that designs, manufactures, labels, sells, distributes, or donates
2 disinfecting or cleaning supplies, personal protective equipment, or a qualified product in
3 response to COVID-19 is not liable in a civil action alleging personal injury, death, or
4 property damage caused by or resulting from a failure to provide proper instructions or
5 sufficient warnings.

6 This section does not apply if:

- 7 (1) The person that designs, manufactures, labels, sells, distributes, or donates
8 disinfecting or cleaning supplies, personal protective equipment, or a qualified
9 product had actual knowledge of a defect in the disinfecting or cleaning supplies,
10 personal protective equipment, or a qualified product when put to the use for which
11 the disinfecting or cleaning supplies, personal protective equipment, or a qualified
12 product was designed, manufactured, sold, distributed, or donated, and the person
13 recklessly disregarded a substantial and unnecessary risk that the disinfecting or
14 cleaning supplies, personal protective equipment, or a qualified product would
15 cause serious personal injury, death, or serious property damage; or
16 (2) The person that designs, manufactures, labels, sells, distributes, or donates
17 disinfecting or cleaning supplies, personal protective equipment, or a qualified
18 product acted with the specific intent to cause exposure to and transmit COVID-
19 19.

20 **Section 6.** That a NEW SECTION be added:

21 **21-68-6. Construction.**

22 This Act may not be construed to do any of the following:

- 23 (1) Create, recognize, or ratify a claim or cause of action of any kind;
24 (2) Eliminate or satisfy a required element of a claim or cause of action of any kind;
25 (3) Deem COVID-19 an occupational disease. COVID-19 is not an occupational disease
26 under state law; or
27 (4) Abrogate, amend, repeal, alter, or affect any statutory or common law immunity
28 or limitation of liability.

29 **Section 7.** This Act applies to any ~~damages occurring after January 1, 2020~~ exposure to
30 COVID-19, injury, latent injury, damages, claim, cause of action, or loss that occurs, accrues,
31 or begins, whether known, unknown, or latent between January 1, 2020 and December 31,
32 2022.