2021 South Dakota Legislature

House Bill 1046

AMENDMENT 1046E FOR THE HOUSE STATE AFFAIRS BILL

An Act to limit liability for certain exposures to COVID-19.

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

Section 1. That a NEW SECTION be added:

21-68-1. Definitions.

Terms used in this Act mean:

(1) "COVID-19," the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom;

(2) "Disinfecting or cleaning supplies," hand sanitizers, disinfectants, sprays, and wipes;

(3) "First responders," law enforcement officers, firemen, emergency medical services workers, and other similarly situated persons;

(4) "Health care facility":

(a) Any facility regulated under chapter 34-12; or

(b) Residential care facilities, nursing facilities, intermediate care facilities for persons with mental illness, intermediate care facilities for persons with intellectual disabilities, hospice programs, elder group homes, dental clinics, orthodontic clinics, optometric clinics, chiropractic clinics, and assisted living programs;

(5) "Health care professional," physicians and other health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid, including persons engaged in telemedicine or telehealth. The term includes the employer or agent of a health care professional who provides or arranges health care;

(6) "Health care provider," a health care professional, health care facility, home health care facility, and any other person or facility otherwise authorized or permitted by any federal or state statute, rule, order, or public health guidance to administer health care services or treatment, including first responders;

(7) "Health care services," services for the diagnosis, prevention, treatment, care, cure, or relief of a health condition, illness, injury, or disease;

(8) "Person," a natural person, corporate or common law entity, business entity registered pursuant to § 37-11-1, and the state and any political subdivision thereof, including school districts. The term includes an agent of a person;

(9) "Personal protective equipment," protective clothing, gloves, face shields, goggles, facemasks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or the spread of infection or illness;

(10) "Premises," any real property and any appurtenant building or structure, and any vehicle, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose;

(11) "Public health guidance," written guidance related to COVID-19 issued by any of the following:

(a) The Center for Disease Control and Prevention of the federal Department of Health and Human Services;

(b) The Centers for Medicare and Medicaid Services of the federal Department of Health and Human Services;

(c) The federal Occupational Safety and Health Administration;

(d) The Office of the Governor; or

(e) Any state agency, including the Department of Health;

(12) "Qualified product:"

(a) Personal protective equipment used to protect the wearer from COVID-19 or to prevent the spread of COVID-19;

(b) Medical devices, equipment, and supplies used to treat COVID-19, including medical devices, equipment, or supplies that are used or modified for an unapproved use to treat COVID-19 or to prevent the spread of COVID-19;

(c) Medical devices, equipment, and supplies used outside of their normal use to treat COVID-19 or to prevent the spread of COVID-19;

(d) Medications used to treat COVID-19, including medications prescribed or dispensed for off-label use to attempt to treat COVID-19;

(e) Tests to diagnose or determine immunity to COVID-19; or

(f) Any component of an item described in this subdivision.

(13) "Vehicle," a device used for transporting people, goods, or substances, including, but not limited to, an automobile, truck, bus, train, helicopter, or airplane.

Section 2. That a NEW SECTION be added:

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

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

Section 3. That a NEW SECTION be added:

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

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

Section 4. That a NEW SECTION be added:

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

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

(1) Injury or death resulting from screening, assessing, diagnosing, caring for, or treating persons with a suspected or confirmed case of COVID-19;

(2) Prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of COVID-19; and

(3) Acts or omissions while providing health care to persons unrelated to COVID-19 if those acts or omissions support the state's response to COVID-19, including any of the following:

(a) Delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of a person in response to any federal or state statute, regulation, order, or public health guidance;

(b) Diagnosing or treating patients outside the normal scope of the health care provider's license or practice;

(c) Using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

(d) Conducting tests or providing treatment to any person outside the premises of a health care facility;

(e) Acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to COVID-19 that renders the health care provider unable to provide the level or manner of care to any person that otherwise would have been required in the absence of COVID-19; and

(f) Acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment.

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

Section 5. That a NEW SECTION be added:

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

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

distributing, or donating of the disinfecting or cleaning supplies, personal protective equipment, or a qualified product.

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

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

Section 6. That a NEW SECTION be added:

21-68-6. Construction.

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

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

(2) Eliminate or satisfy a required element of a claim or cause of action of any kind;

(3) Deem COVID-19 an occupational disease. COVID-19 is not an occupational disease under state law; or

(4) Abrogate, amend, repeal, alter, or affect any statutory or common law immunity or limitation of liability.

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

AMENDMENT