

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1175
(Representatives Howe, Bosch, Devlin, Lefor, Mock, Stemen)
(Senators Burckhard, Klein, Bell)

AN ACT to create and enact a new chapter to title 32 of the North Dakota Century Code, relating to business immunity from COVID-19 liability claims; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 32 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "COVID-19" means:
 - a. Severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2 and any mutation or viral fragments of SARS-CoV-2; and
 - b. Any disease or condition caused by severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2.
2. "Disinfecting or cleaning supplies" includes hand sanitizers, disinfectants, disinfecting sprays, and disinfecting wipes.
3. "Health care facility" means any facility in which health care services are provided and includes a hospital, special care unit, skilled nursing facility, intermediate care facility, basic care facility, assisted living facility, ambulatory surgical center, freestanding emergency department, rural primary care hospital, critical access hospital, inpatient hospice facility, including a clinic not located on a hospital's primary campus, health maintenance organization, home health agency, any field hospital, modular field-treatment facility, or other alternative care facility designated by the state department of health for temporary use related to the COVID-19 state of emergency, and a diagnostic, examination, treatment, imaging, or rehabilitation center.
4. "Health care provider" means an individual or entity licensed, certified, or otherwise authorized to provide health care services in this state whether paid or unpaid. The term includes:
 - a. The employer or agent of a health care provider that provides or arranges a health care service;
 - b. A person engaged in telemedicine or telehealth; and
 - c. A volunteer or military member who is approved by or works under the direction of the state department of health and who provides health care services in response to the COVID-19 state of emergency.
5. "Intentional" means when engaging in the conduct, it is the person's purpose to do so.
6. "Personal protective equipment" means equipment worn to prevent or minimize exposure to hazards that cause injuries or illnesses.

7. "Premises" means any real property, any appurtenant building or structure, and any vehicle serving a residential, agricultural, commercial, industrial, educational, religious, governmental, cultural, charitable, or health care purpose.
8. "Qualified product" means:
 - a. Personal protective equipment used to protect the wearer from COVID-19 or to prevent the spread of COVID-19.
 - b. A medical device or equipment used to treat COVID-19, including a medical device or equipment used or modified for an unapproved use to treat COVID-19 or to prevent the spread of COVID-19.
 - c. A medical device or equipment used outside its normal use to treat COVID-19 or to prevent the spread of COVID-19.
 - d. Medication or treatment used to treat or prevent COVID-19, including medication or treatment prescribed or dispensed for off-label use to treat or prevent COVID-19.
 - e. A test to diagnose or determine immunity to COVID-19.
9. "Reckless" means conduct engaged in a conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
10. "Unapproved" means not authorized, accredited, or certified by a federal or state agency for any other use, purpose, or design.
11. "Willful" means the conduct is engaged in intentionally, knowingly, or recklessly.

Actual injury requirement in civil actions alleging COVID-19 exposure.

A person may not bring or maintain a civil action alleging exposure or potential exposure to COVID-19 unless the civil action involves an act intended to cause harm or an act that constitutes actual malice.

Premises owner's duty of care - Limited liability.

A person that possesses, owns, or is in control of premises, including a tenant, lessee, or occupant of a premises, which directly or indirectly invites or permits an individual onto the premises is immune from civil liability for any act or omission resulting in damage or injury sustained from the individual's exposure to COVID-19, unless the person that possesses, owns, or is in control of the premises:

1. Exposes the individual to COVID-19 through an act that constitutes actual malice; or
2. Intentionally exposes the individual to COVID-19 with the intent to cause harm.

Safe harbor for compliance with statutes, regulations, or executive orders.

A person is immune from civil liability for an act or omission resulting in damage or injury sustained from exposure or potential exposure to COVID-19 if the act or omission was in substantial compliance or was consistent with a federal or state statute, regulation, or order related to COVID-19 which was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.

Liability of health care providers and health care facilities.

1. A health care provider or health care facility is immune from civil liability for any act or omission in response to COVID-19 that causes or contributes, directly or indirectly, to the death or injury of an individual. The immunity provided under this subsection includes:

- a. Injury or death resulting from screening, assessing, diagnosing, caring for, triaging, or treating an individual with a suspected or confirmed case of COVID-19.
 - b. Prescribing, administering, or dispensing a pharmaceutical for off-label use to treat or prevent a suspected or confirmed case of COVID-19.
 - c. An act or omission while providing a health care service to an individual unrelated to COVID-19 if the act or omission supports the state's response to COVID-19, including:
 - (1) Delaying or canceling a nonurgent or elective dental, medical, or surgical procedure; delaying the diagnosis of an individual; or altering the treatment of an individual.
 - (2) Conducting a test or providing treatment to an individual outside the premises of a health care facility.
 - (3) An act or omission undertaken by a health care provider or a health care facility because of a lack of staff, facility, medical device, treatment, equipment, or other resource, attributable to COVID-19 which renders the health care provider or health care facility unable to provide the level or manner of care to an individual which otherwise would have been required in the absence of COVID-19.
 - (4) An act or omission undertaken by a health care provider or a health care facility relating to use or nonuse of personal protective equipment.
 - (5) An act or omission undertaken by a health care provider or a health care facility relating to the administration, delivery, distribution, allocation, prioritization, or dispensing of scarce resources among individuals such as medical devices, treatment, and equipment.
2. The immunity provided under subsection 1 does not apply to an act or omission that constitutes:
- a. Willful and wanton misconduct;
 - b. Reckless infliction of harm; or
 - c. Intentional infliction of harm.

Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to COVID-19.

1. A 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 immune from civil liability for any 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.
2. A 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 immune from civil liability for any personal injury, death, or property damage caused by or resulting from a failure to provide proper instruction or sufficient warning.
3. The immunity provided under subsections 1 and 2 does not apply:
 - a. To a person that designs, manufactures, labels, sells, distributes, or donates disinfecting or cleaning supplies, personal protective equipment, or a qualified product:

- (1) With actual knowledge of a defect in the disinfecting or cleaning supplies, personal protective equipment, or a qualified product when put to the use for which the disinfecting or cleaning supplies, personal protective equipment, or a qualified product was designed, manufactured, sold, distributed, or donated; and
 - (2) If the person recklessly disregarded a substantial and unnecessary risk the disinfecting or cleaning supplies, personal protective equipment, or a qualified product would cause serious personal injury, death, or serious property damage; or
- b. If the person that designs, manufactures, labels, sells, distributes, or donates disinfecting or cleaning supplies, personal protective equipment, or a qualified product acts with actual malice.

Construction.

This chapter may not be construed to:

1. Create, recognize, or ratify a liability claim or cause of action.
2. Eliminate or satisfy a required element of a liability claim or cause of action.
3. Amend, repeal, affect, or supersede any other immunity protection that may apply under state or federal law.

Exception.

This chapter does not apply to enforcement actions under chapters 50-24.8, 51-08.1, and 51-15.

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to January 1, 2020.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1175 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 79 Nays 15 Absent 0

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 40 Nays 7 Absent 0

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,
at _____ o'clock _____ M.

Secretary of State