AN ACT concerning civil actions and civil procedure; enacting the COVID-19 response and reopening for business liability protection act; relating to limitations on liability associated with the COVID-19 public health emergency; providing immunity from civil liability for healthcare providers during the COVID-19 public health emergency.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Sections 1 through 9, and amendments thereto, shall be known and may be cited as the COVID-19 response and reopening for business liability protection act.

Sec. 2. As used in the COVID-19 response and reopening for business liability protection act, unless the context otherwise requires:

(a) "COVID-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 and conditions associated with such disease.

(b) "COVID-19 claim" means any claim for damages, losses, indemnification, contribution or other relief arising out of or based on exposure or potential exposure to COVID-19. "COVID-19 claim" includes a claim made by or on behalf of any person who has been exposed or potentially exposed to COVID-19, or any representative, spouse, parent, child or other relative of such person, for injury, including mental or emotional injury, death or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or other losses allegedly caused by the person's exposure or potential exposure to COVID-19.

(c) "COVID-19 public health emergency" means the state of disaster emergency declared for the state of Kansas on March 12, 2020, any subsequent orders or amendments to such orders and any subsequent disaster emergency declared for the state of Kansas regarding the COVID-19 pandemic.

(d) "Disinfecting or cleaning supplies" includes, but is not limited to, hand sanitizers, disinfectants, sprays and wipes.

(e) "Healthcare provider" means a person or entity that is licensed, registered, certified or otherwise authorized by the state of Kansas to provide healthcare services in this state, including a hospice certified to participate in the medicare program under 42 C.F.R. § 418 et seq. and any entity licensed under chapter 39 of the Kansas Statutes Annotated, and
amendments thereto.

(f) "Person" means an individual, association, for-profit or not-for-profit business entity, postsecondary educational institution as defined in K.S.A. 74-3201b, and amendments thereto, nonprofit organization, religious organization or charitable organization.

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

(h) "Premises" means any physical place serving a commercial, residential, educational, religious, governmental, cultural, charitable or healthcare purpose.

(i) "Premises owner" means a person who owns, in whole or in part, leases, rents, maintains or controls any land or body of water or any building or structure on such lands or bodies of water.

(j) "Product liability claim" means any strict liability, ordinary negligence or implied warranty claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage or labeling of the relevant product.

(k) "Public health guidance" means written guidance related to COVID-19 issued by the United States centers for disease control and prevention, the occupational safety and health administration of the United States department of labor, the Kansas department of health and environment, the Kansas department for aging and disability services, the Kansas department of labor, another state agency or a municipality.

(l) "Qualified product" means: (1) Personal protective equipment used to protect the wearer from COVID-19 or the spread of COVID-19; (2) medical devices, equipment and supplies used to treat COVID-19, including products that are used or modified for an unapproved use to treat COVID-19 or prevent the spread of COVID-19; (3) medical devices, equipment or supplies utilized outside of the product's normal use to treat COVID-19 or to prevent the spread of COVID-19; (4) medications used to treat COVID-19, including medications prescribed or dispensed for off-label use to attempt to combat COVID-19; (5) tests used to diagnose or determine immunity to COVID-19; (6) disinfecting or cleaning supplies; (7) clinical laboratory services certified under the federal clinical laboratory improvement amendments in section 353 of the public health service act, 42 U.S.C. § 263a; and (8) components of qualified products.

Sec. 3. (a) Notwithstanding any other provision of law, except as provided in subsection (c), a healthcare provider is immune from civil liability for damages, administrative fines or penalties for acts, omissions, healthcare decisions or the rendering of or the failure to render healthcare services, including services that are altered, delayed or withheld, as a
direct response to any state of disaster emergency declared pursuant to
K.S.A. 48-924, and amendments thereto, related to the COVID-19 public
health emergency.

(b) The provisions of this section shall apply to any claims for
damages or liability that arise out of or relate to acts, omissions or
healthcare decisions occurring during any state of disaster emergency
declared pursuant to K.S.A. 48-924, and amendments thereto, related to
the COVID-19 public health emergency.

(c) (1) The provisions of this section shall not apply to civil liability
when it is established that the act, omission or healthcare decision
constituted gross negligence or willful, wanton or reckless conduct.

(2) The provisions of this section shall not apply to healthcare
services not related to COVID-19 that have not been altered, delayed or
withheld as a direct response to the COVID-19 public health emergency.

Sec. 4. (a) Notwithstanding any other provision of law, a premises
owner shall not be liable for a COVID-19 claim other than for damages
occasioned by gross negligence or willful, wanton or reckless disregard of
a substantial and unnecessary risk that a person would be exposed to
COVID-19 on the premises.

(b) When an act or omission is directed, recommended or advised by
public health guidance applicable to the activity at issue at the time of the
alleged exposure, the act or omission shall not constitute gross negligence
or willful, wanton or reckless conduct under subsection (a), unless the
claimant proves by clear and convincing evidence that a reasonably
prudent premises owner would have taken additional precautions that
would have prevented the alleged harm.

(c) The provisions of this section shall expire 90 days after the
termination of the COVID-19 public health emergency, unless the
legislature acts to reenact such provisions.

Sec. 5. Notwithstanding any other provision of law, a person, or an
agent of such person, conducting business in this state shall not be held
liable for a COVID-19 claim if the act or omission alleged to violate a
duty of care was mandated or specifically and affirmatively permitted by a
federal or state statute, regulation or executive order passed or issued in
response to the COVID-19 pandemic and applicable to the activity at issue
at the time of the alleged exposure.

Sec. 6. Notwithstanding any other provision of law, a person who
designs, manufactures, labels, sells, distributes, provides or donates a
qualified product in response to the COVID-19 public health emergency
shall not be liable in a civil action alleging a product liability claim arising
out of such qualified product if:

(a) The product was manufactured, labeled, sold, distributed,
provided or donated at the specific request of or in response to a written
order or other directive finding a public need for a qualified product issued by the governor, the adjutant general or the division of emergency management; and

(b) the damages are not occasioned by willful, wanton or reckless disregard of a known, substantial and unnecessary risk that the product would cause serious injury to others.

Sec. 7. Nothing in the COVID-19 response and reopening for business liability protection act:

(a) Creates, recognizes or ratifies a claim or cause of action of any kind;

(b) eliminates a required element of any claim;

(c) affects workers’ compensation law, including the exclusive application of such law; or

(d) amends, repeals, alters or affects any other immunity or limitation of liability.

Sec. 8. The provisions of sections 4 through 7, and amendments thereto, shall apply retroactively to any cause of action accruing on or after March 12, 2020.

Sec. 9. The provisions of the COVID-19 response and reopening for business liability protection act are severable. If any portion of the act is declared unconstitutional or invalid, or the application of any portion of the act to any person or circumstance is held unconstitutional or invalid, the invalidity shall not affect other portions of the act that can be given effect without the invalid portion or application, and the applicability of such other portions of the act to any person or circumstance shall remain valid and enforceable.

Sec. 10. This act shall take effect and be in force from and after its publication in the Kansas register.