

SESSION OF 2020

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 2244**

As Recommended by Senate Committee on  
Judiciary

**Brief\***

Senate Sub. for HB 2244 would create the COVID-19 Response and Reopening for Business Liability Protection Act (Act).

***Definitions (Section 2)***

The bill would define the following terms: “COVID-19,” “COVID-19 claim,” “COVID-19 public health emergency,” “disinfecting or cleaning supplies,” “healthcare provider,” “person,” “personal protective equipment,” “premises,” “premises owner,” “product liability claim,” “public health guidance,” and “qualified product.”

***Healthcare Provider Immunity (Section 3)***

The bill would state, notwithstanding any other provision of law, 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 COVID-19 state of disaster emergency under the Kansas Emergency Management Act (KEMA).

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

This immunity would apply to any claims for damages or liability arising out of or relating to acts, omissions, or healthcare decisions occurring during any state of disaster emergency pursuant to KEMA, related to COVID-19.

This immunity would 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. This immunity also would not apply to healthcare services not related to COVID-19 that have not been altered, delayed, or withheld because of the COVID-19 public health emergency.

***Premises Owner Liability (Section 4)***

The bill would state that, notwithstanding any other provision of law, a premises owner shall not be liable for a COVID-19 claim other than for damages for 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. An act or omission directed, recommended, or advised by public health guidance applicable to the activity at issue at the time of the alleged exposure would not constitute such gross negligence or willful, wanton, or reckless conduct, 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. The provisions of this section would expire 90 days after the termination of the COVID-19 public health emergency, unless the Legislature re-enacts the provisions.

***Business Liability (Section 5)***

The bill would state that, notwithstanding any other provision of law, a person (or agent of such person) conducting business in Kansas 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.

***Product Liability (Section 6)***

The bill would state that, notwithstanding any other provision of law, a person who designs, manufactures, 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 involving the product if any of the above actions were taken 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, Adjutant General, or Division of Emergency Management, and 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.

***Other Provisions (Sections 7, 8, and 9)***

The bill would state that nothing in the Act creates, recognizes, or ratifies a claim or cause of action of any kind; eliminates a required element of any claim; affects workers' compensation law, including the exclusive application of such law; or amends, repeals, alters, or affects any other immunity or limitation of liability.

The bill would state sections 4 through 7 would apply retroactively to any cause of action accruing on or after March 12, 2020.

The bill would include a severability provision, stating if any portion of the Act or application thereof to any person or circumstance is held unconstitutional or invalid, such invalidity

would not affect other portions that can be given effect without the invalid portion or application, and such other portions would remain valid and enforceable.

The bill would be in effect upon publication in the *Kansas Register*.

## **Background**

As passed by the House in 2019, HB 2244 would have enacted “Claire and Lola’s Law,” regarding possession of certain cannabidiol treatment preparations. Provisions based on this language were enacted in 2019 SB 28.

On May 18, 2020, the Senate Committee on Judiciary held an informational hearing on the topic of COVID-19 liability concerns and possible legislation. At the hearing, a representative of the Kansas Medical Society (KMS) and Kansas Hospital Association (KHA) presented draft legislation addressing liability protections for healthcare providers, as well as provisions from 2020 SB 493 regarding the Health Care Stabilization Fund. A representative of the Kansas Chamber of Commerce discussed draft legislation, later provided to the Committee, regarding business liability protections. A representative of the Kansas Livestock Association expressed support for limiting liability for COVID-19-related medical conditions within the agricultural industry. A representative of the Kansas Trial Lawyers Association stated the civil justice system works, even in times of crisis, and special laws, exceptions, and immunities from negligence are not needed to assure that justice prevails. A representative of the Kansas Bar Association (KBA) stated the KBA opposes blanket immunity for COVID-19-related claims against business and healthcare institutions.

Representatives of the following organizations submitted written-only testimony regarding the topic: AARP Kansas; American College of Obstetricians and Gynecologists; American Tort Reform Association; Cowley College; InterHab;

Kansas Academy of Family Physicians; Kansas Advocates for Better Care; Kansas AFL-CIO; Kansas Association of Community College Trustees; Kansas Association of Technical Colleges; LeadingAge Kansas; League of Kansas Municipalities; National Federation of Independent Business; and Working Kansas Alliance.

On May 20, 2020, the Senate Committee recommended a substitute for HB 2244, replacing the language of the bill as passed by the House with language based upon the draft bill submitted by KMS and KHA, without the provisions regarding the Health Care Stabilization Fund, and the draft bill submitted by the Kansas Chamber of Commerce.

No fiscal note was available for the substitute bill at the time of the Senate Committee action.