

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 880

By: Jett

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5
6 AS INTRODUCED

7 An Act relating to torts; amending Section 1, Chapter
8 160, O.S.L. 2020 (76 O.S. Supp. 2020, Section 112),
9 which relates to the COVID-19 Product Protection Act;
removing definition; and providing an effective date.

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11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY Section 1, Chapter 160, O.S.L.
13 2020 (76 O.S. Supp. 2020, Section 112), is amended to read as
14 follows:

15 Section 112. A. This section shall be known and may be cited
16 as the "COVID-19 Product Protection Act".

17 B. As used in this act:

18 1. "COVID-19" means the novel coronavirus identified as SARS-
19 CoV-2, the disease caused by SARS-CoV-2, and conditions associated
20 with the disease;

21 2. "COVID-19 public health emergency" means any emergency
22 declared by the Governor ~~of Oklahoma~~ related to COVID-19, including
23 but not limited to the emergency declared by the Governor by
24 Executive Order 2020-07, and any amendments thereto, under the

1 Oklahoma Emergency Management Act of 2003, Section 683.1 et seq. of
2 Title 63 of the Oklahoma Statutes, beginning on March 15, 2020, and
3 the health emergency declared by the Governor by Executive Order
4 2020-13, and any amendments thereto, under the Catastrophic Health
5 Emergency Powers Act, Section 6101 et seq. of Title 63 of the
6 Oklahoma Statutes, beginning on April 8, 2020;

7 3. "Disinfecting and cleaning supplies" includes, but is not
8 limited to, hand sanitizers, disinfectants, sprays, and wipes;

9 4. ~~"Essential business" means a person or entity:~~

10 ~~a. within a critical infrastructure sector as defined by~~

11 ~~the United States Department of Homeland Security,~~

12 ~~b. defined as essential by the Oklahoma Department of~~

13 ~~Commerce through use of the North American Industry~~

14 ~~Classification System during the COVID-19 pandemic, or~~

15 ~~c. within an industry designated as critical or essential~~

16 ~~by Executive Order or Executive Memorandum;~~

17 5. "First responder" means state and local law enforcement
18 personnel, fire department personnel and emergency medical
19 personnel. First responder includes a person authorized by
20 executive order who will be deployed in response to the COVID-19
21 pandemic;

22 ~~6.~~ 5. "Health care facility" and "health care provider" shall
23 have the same meaning as such terms are defined as provided in
24 Section 6104 of Title 63 of the Oklahoma Statutes;

1 ~~7.~~ 6. "Person" means an individual, firm, partnership,
2 corporation or association;

3 ~~8.~~ 7. "Personal protective equipment" means coveralls, face
4 shields, gloves, gowns, masks, respirators~~7~~ and other equipment
5 designed to protect the wearer from the spread of infection or
6 illness; and

7 ~~9.~~ 8. "Qualified product" means personal protective equipment
8 used to protect the wearer from COVID-19 or the spread of COVID-19;
9 medical devices, equipment~~7~~ or supplies used to treat COVID-19
10 including products that are used or modified for an unapproved use
11 to treat COVID-19 or prevent the spread of COVID-19; medical
12 devices, equipment~~7~~ or supplies utilized outside of such product's
13 normal use to treat COVID-19 or to prevent the spread of COVID-19;
14 medications used to treat COVID-19 patients including medications
15 prescribed or dispensed for off-label use to attempt to combat
16 COVID-19; tests to diagnose or determine immunity to COVID-19; and
17 components of qualified products.

18 C. Except as provided by subsection E of this section, any
19 person that designs, manufactures, labels, sells, distributes~~7~~ or
20 donates disinfecting and cleaning supplies or personal protective
21 equipment during and in response to the COVID-19 public health
22 emergency that does not make such products in the ordinary course of
23 business shall not be liable in a civil action alleging personal
24 injury, death or property damage caused by or resulting from the

1 product's manufacturing or design, or a failure to provide proper
2 instructions or sufficient warnings.

3 D. Except as provided by subsection E of this section, a
4 government entity, health care facility, health care provider, first
5 responder, or any business, or the employer or agent of such
6 business, that utilizes a product meeting the qualifications of
7 either subsection C or D of this section, shall not be liable in a
8 civil action alleging personal injury, death or property damage
9 caused by or resulting from the selection, distribution, or use of
10 such product.

11 E. The immunity provided in subsections C and D of this section
12 shall not apply to any person, or any employee or agent thereof,
13 that:

- 14 1. a. Had actual knowledge that the product was defective
15 when put to the use for which the product was
16 manufactured, sold, distributed, or donated, and
17 b. Acted with deliberate indifference to or conscious
18 disregard of a substantial and unnecessary risk that
19 the product would cause serious injury to others; or
20 2. Acted with a deliberate intention to cause harm.

21 F. Nothing contained in this section shall be construed to:

- 22 1. Relieve a plaintiff of the need to satisfy any required
23 element of a claim; or

1 2. Amend, repeal, alter or affect any other immunity or
2 limitation of liability provided for under the laws of this state.

3 G. The provisions of this section shall apply to any claim
4 arising on or after the emergency declared by the Governor ~~of~~
5 ~~Oklahoma~~ related to COVID-19 by Executive Order 2020-07 on March 15,
6 2020.

7 SECTION 2. This act shall become effective November 1, 2021.

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