

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend House Bill No. 3616, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Daniels

Daniels-TEK-FS-Req#4096
5/5/2020 4:35 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

FLOOR SUBSTITUTE
FOR ENGROSSED

HOUSE BILL NO. 3616

By: O'Donnell and Lowe of the
House

and

Daniels of the Senate

FLOOR SUBSTITUTE

An Act relating to product liability; creating the COVID-19 Product Protection Act; providing short title; defining terms; establishing immunity from liability for persons or entities from certain civil actions related to certain products; establishing requirements for certain immunity; providing exceptions to certain immunity; construing provisions; clarifying applicability of act; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 112 of Title 76, unless there is created a duplication in numbering, reads as follows :

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

B. As used in this Act:

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

4 2. "Disinfecting and cleaning supplies" includes, but is not
5 limited to, hand sanitizers, disinfectants, sprays, and wipes;

6 3. "Essential business" means a person or entity:

7 a. within a critical infrastructure sector as defined by
8 the United States Department of Homeland Security,

9 b. defined as essential by the Oklahoma Department of
10 Commerce through use of the North American Industry
11 Classification System during the COVID-19 pandemic, or

12 c. within an industry designated as critical or essential
13 by Executive Order or Executive Memorandum;

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

19 5. "Health care facility" and "health care provider" shall have
20 the same meaning as such terms are defined as provided in Section
21 6104 of Title 63 of the Oklahoma Statutes;

22 6. "Person" means an individual, firm, partnership, corporation
23 or association;

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

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

16 C. Except as provided by subsection E of this section, any
17 person that designs, manufactures, labels, sells, distributes, or
18 donates a qualified product in response to the COVID-19 pandemic
19 that is utilized by a government entity, health care facility,
20 health care provider, first responder, or essential business shall
21 not be liable in a civil action alleging personal injury, death or
22 property damage caused by or resulting from the product's
23 manufacturing or design, or a failure to provide proper instructions
24 or sufficient warnings.

1 D. Except as provided by subsection E of this section, any
2 person that designs, manufactures, labels, sells, distributes, or
3 donates disinfecting and cleaning supplies or personal protective
4 equipment in response to the COVID-19 pandemic that does not make
5 such products in the ordinary course of business shall not be liable
6 in a civil action alleging personal injury, death or property damage
7 caused by or resulting from the product's manufacturing or design,
8 or a failure to provide proper instructions or sufficient warnings.

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

12 1. a. Had actual knowledge that the product was defective
13 when put to the use for which the product was
14 manufactured, sold, distributed, or donated, and

15 b. Acted with deliberate indifference to or conscious
16 disregard of a substantial and unnecessary risk that
17 the product would cause serious injury to others; or

18 2. Acted with a deliberate intention to cause harm.

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

20 1. Relieve a plaintiff of the need to satisfy any required
21 element of a claim; or

22 2. Amend, repeal, alter, or affect any other immunity or
23 limitation of liability provided for under the laws of this state.
24

1 G. The provisions of this section shall apply to all civil
2 actions filed on or after the effective date of this act.

3 SECTION 2. It being immediately necessary for the preservation
4 of the public peace, health or safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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8 57-2-4096 TEK 5/5/2020 4:35:16 PM

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