Senate File 2338 - Enrolled

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AN ACT

RELATING TO CIVIL ACTIONS, INCLUDING RECOVERABLE DAMAGES FOR MEDICAL EXPENSES, EVIDENCE OFFERED TO PROVE PAST MEDICAL EXPENSES, AND CIVIL ACTIONS RELATED TO THE NOVEL CORONAVIRUS, AND INCLUDING RETROACTIVE APPLICABILITY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

EVIDENCE OF MEDICAL EXPENSES AND RECOVERABLE DAMAGES FOR MEDICAL EXPENSES

Section 1. NEW SECTION. **622.4 Medical expenses.**

Evidence offered to prove past medical expenses shall be limited to evidence of the amounts actually paid to satisfy the bills that have been satisfied, regardless of the source of payment, and evidence of the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied. Evidence of the amounts actually necessary to satisfy the bills that have been incurred shall not exceed

the amount by which the bills could be satisfied by the claimant's health insurance, regardless of whether such health insurance is used or will be used to satisfy the bills. This section does not impose upon any party an affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled.

Sec. 2. NEW SECTION. **668.14A Recoverable damages for medical expenses.**

1. In an action brought to recover damages for personal injury, the damages that may be recovered by a claimant for the reasonable and necessary cost or value of medical care rendered shall not exceed the sum of the amounts actually paid by or on behalf of the injured person to the health care providers who rendered treatment and any amounts actually necessary to satisfy the medical care charges that have been incurred but not yet satisfied.

2. This section does not apply to actions governed by section 147.136.

DIVISION II

COVID-19 RELATED LIABILITY

Sec. 3. NEW SECTION. **686D.1 Short title.**

This chapter shall be known and may be cited as the *"COVID-19 Response and Back-to-Business Limited Liability Act"*.

Sec. 4. NEW SECTION. **686D.2 Definitions.**

When used in this chapter, unless the context otherwise requires:

1. *"COVID-19"* means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom.

2. *"Disinfecting or cleaning supplies"* means and includes hand sanitizers, disinfectants, sprays, and wipes.

3. *"Health care facility"* means and includes all of the following:

a. A facility as defined in section 514J.102.

b. A facility licensed pursuant to chapter 135B.

c. A facility licensed pursuant to chapter 135C.

d. Residential care facilities, nursing facilities, intermediate care facilities for persons with mental illness, intermediate care facilities for persons with intellectual disabilities, hospice programs, elder group homes, and assisted living programs.

4. *"Health care professional"* means physicians and other health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid, including persons engaged in telemedicine or telehealth. *"Health care professional"* includes the employer or agent of a health care professional who provides or arranges health care.

5. *"Health care provider"* means and includes a health care professional, health care facility, home health care facility, and any other person or facility otherwise authorized or permitted by any federal or state statute, regulation, order, or public health guidance to administer health care services or treatment.

6. *"Health care services"* means services for the diagnosis, prevention, treatment, care, cure, or relief of a health condition, illness, injury, or disease.

7. *"Minimum medical condition"* means a diagnosis of COVID-19 that requires inpatient hospitalization or results in death.

8. *"Person"* means the same as defined in section 4.1. *"Person"* includes an agent of a person.

9. *"Personal protective equipment"* means and includes protective clothing, gloves, face shields, goggles, facemasks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or the spread of infection or illness.

10. *"Premises"* means and includes any real property and any appurtenant building or structure serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

11. *"Public health guidance"* means and includes written guidance related to COVID-19 issued by any of the following:

a. The centers for disease control and prevention of the

federal department of health and human services.

b. The centers for Medicare and Medicaid services of the federal department of health and human services.

c. The federal occupational safety and health administration.

d. The office of the governor.

e. Any state agency, including the department of public health.

12. *"Qualified product"* means and includes all of the following:

a. Personal protective equipment used to protect the wearer from COVID-19 or to prevent the spread of COVID-19.

b. Medical devices, equipment, and supplies used to treat COVID-19, including medical devices, equipment, or supplies that are used or modified for an unapproved use to treat COVID-19 or to prevent the spread of COVID-19.

c. Medical devices, equipment, and supplies used outside of their normal use to treat COVID-19 or to prevent the spread of COVID-19.

d. Medications used to treat COVID-19, including medications prescribed or dispensed for off-label use to attempt to treat COVID-19.

e. Tests to diagnose or determine immunity to COVID-19.

f. Any component of an item described in paragraphs *"a"* through *"e"*.

Sec. 5. NEW SECTION. **686D.3 Actual injury requirement in civil actions alleging COVID-19 exposure.**

A person shall not bring or maintain a civil action alleging exposure or potential exposure to COVID-19 unless one of the following applies:

1. The civil action relates to a minimum medical condition.

2. The civil action involves an act that was intended to cause harm.

3. The civil action involves an act that constitutes actual malice.

Sec. 6. NEW SECTION. **686D.4 Premises owner's duty of care — limited liability.**

A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who

directly or indirectly invites or permits an individual onto a premises, shall not be liable for civil damages for any injuries sustained from the individual's exposure to COVID-19, whether the exposure occurs on the premises or during any activity managed by the person who possesses or is in control of a premises, unless any of the following apply to the person who possesses or is in control of the premises:

1. The person who possesses or is in control of the premises recklessly disregards a substantial and unnecessary risk that the individual would be exposed to COVID-19.

2. The person who possesses or is in control of the premises exposes the individual to COVID-19 through an act that constitutes actual malice.

3. The person who possesses or is in control of the premises intentionally exposes the individual to COVID-19.

Sec. 7. NEW SECTION. **686D.5 Safe harbor for compliance with regulations, executive orders, or public health guidance.**

A person in this state shall not be held liable for civil damages for any injuries sustained from exposure or potential exposure to COVID-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent with any federal or state statute, regulation, order, or public health guidance related to COVID-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.

Sec. 8. NEW SECTION. **686D.6 Liability of health care providers.**

1. A health care provider shall not be liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the state's response to COVID-19. This subsection shall apply to all of the following:

a. Injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of COVID-19.

b. Prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of COVID-19.

c. Acts or omissions while providing health care to individuals unrelated to COVID-19 when those acts or omissions support the state's response to COVID-19, including any of the following:

(1) Delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to any federal or state statute, regulation, order, or public health guidance.

(2) Diagnosing or treating patients outside the normal scope of the health care provider's license or practice.

(3) Using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use.

(4) Conducting tests or providing treatment to any individual outside the premises of a health care facility.

(5) Acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to COVID-19 that renders the health care provider unable to provide the level or manner of care to any person that otherwise would have been required in the absence of COVID-19.

(6) Acts or omissions undertaken by a health care provider relating to use or nonuse of personal protective equipment.

2. This section shall not relieve any person of liability for civil damages for any act or omission which constitutes recklessness or willful misconduct.

Sec. 9. NEW SECTION. **686D.7 Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to COVID-19.**

1. Any person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to COVID-19 shall not be liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product.

2. Any person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to COVID-19 shall not be liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings.

3. This section shall not apply in the event of any of the following:

a. The person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product had actual knowledge of a defect in the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product when put to the use for which the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product was designed, manufactured, sold, distributed, or donated, and the person recklessly disregarded a substantial and unnecessary risk that the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product would cause serious personal injury, death, or serious property damage.

b. The person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product acted with actual malice.

Sec. 10. NEW SECTION. **686D.8 Construction.**

This chapter shall not be construed to do any of the following:

1. Create, recognize, or ratify a claim or cause of action of any kind.

2. Eliminate or satisfy a required element of a claim or cause of action of any kind.

3. Affect the rights or limits under workers' compensation as provided in chapter 85, 85A, or 85B, or the rights or limits related to police officers or fire fighters under chapter 410 or 411.

4. Abrogate, amend, repeal, alter, or affect any statutory or common law immunity or limitation of liability.

Sec. 11. RETROACTIVE APPLICABILITY. This division of this Act applies retroactively to January 1, 2020.

CHARLES SCHNEIDER
President of the Senate

PAT GRASSLEY
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2338, Eighty-eighth General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2020

KIM REYNOLDS
Governor