SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT No. _____ _____

☐ COMMITTEE AMENDMENT _____

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1947, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

_____

Senator Daniels

Daniels-MD-FS-Req#4123
5/11/2020 10:24 AM

(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
SENATE BILL NO. 1947 By: Treat of the Senate

and

McCall of the House

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

2. “COVID-19 public health emergency” means any emergency declared by the Governor of Oklahoma related to COVID-19, including but not limited to the emergency declared by the Governor by Executive Order 2020-07, and any amendments thereto, under the Oklahoma Emergency Management Act of 2003, Section 683.1 et seq. of Title 63 of the Oklahoma Statutes, beginning on March 15, 2020, and the health emergency declared by the Governor by Executive Order 2020-13, and any amendments thereto, under the Catastrophic Health Emergency Powers Act, Section 6101 et seq. of Title 63 of the Oklahoma Statutes, beginning on April 8, 2020;

2. “Disinfecting and cleaning supplies” includes, but is not limited to, hand sanitizers, disinfectants, sprays, and wipes;

3. “Essential business” means a person or entity:

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

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

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

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

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

6. “Person” means an individual, firm, partnership, corporation or association;

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

8. “Qualified product” means personal protective equipment used to protect the wearer from COVID-19 or the spread of COVID-19; medical devices, equipment, or 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; medical devices, equipment, or supplies utilized outside of such product’s normal use to treat COVID-19 or to prevent the spread of COVID-19; medications used to treat COVID-19 patients including medications prescribed or dispensed for off-label use to attempt to combat

COVID-19; tests to diagnose or determine immunity to COVID-19; and components of qualified products.

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

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

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

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

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

2. Acted with a deliberate intention to cause harm.

F. A government entity, health care provider, health care facility, first responder, or any business, or the employer or agent of the same, that utilizes a product meeting the qualifications of either subsection C or D, shall not be liable in a civil action alleging personal injury, death or property damage caused by or resulting from the selection, distribution, or use of that product, except as provided by subsection E.

G. Nothing contained in this section shall be construed to:

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

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

H. The provisions of this section shall apply to any claim arising on or after the emergency declared by the Governor of Oklahoma related to COVID-19 by Executive Order 2020-70 on March 15, 2020.

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

57-2-4123 MD 5/11/2020 10:24:21 AM