

SENATE, No. 2703

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JULY 22, 2020

Sponsored by:

Senator DECLAN J. O'SCANLON, JR.

District 13 (Monmouth)

SYNOPSIS

Establishes general immunity for various private and public entities, and their officers, employees, and agents, against actions relating to COVID-19 pandemic or related viral strain in subsequent years; creates damage threshold for bringing lawsuits.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** establishing various legal protections for certain persons
2 and entities, including governmental entities, against legal
3 actions relating to the Coronavirus disease 2019 pandemic, or
4 related viral strain to the pandemic's virus in subsequent years,
5 and supplementing Title 2A of the New Jersey Statutes, and
6 chapters 2 and 3 of Title 59 of the New Jersey Statutes.

7
8 **BE IT ENACTED** *by the Senate and General Assembly of the State*
9 *of New Jersey:*

10
11 1. a. As used in this section, "business" means any non-
12 governmental, for-profit or non-profit corporation, company,
13 partnership, firm, sole proprietorship, society, association, business
14 trust, or other form of business organization or entity.

15 Notwithstanding any provisions of law to the contrary, a
16 business, and its trustees, directors, officers, employees, agents,
17 servants, and volunteers, which in good faith reasonably comply
18 with or exceed applicable health and safety measures to prevent or
19 mitigate a person's exposure to the virus SARS-CoV-2 or the
20 disease caused by the virus, Coronavirus disease 2019, also referred
21 to as COVID-19, or a related viral strain to that virus or a disease
22 caused by the related viral strain in subsequent years, which are in
23 effect at the time of an alleged exposure to Sars-CoV-2, a related
24 strain, or disease caused by either one, and which measures are
25 based on guidance, regulations, rules, and administrative orders
26 promulgated by the federal Centers for Disease Control and
27 Prevention, the federal Occupational Safety and Health
28 Administration, the State Departments of Health, Human Services,
29 and Labor and Workforce Development, or any other applicable
30 federal or State department, division, commission, board, bureau, or
31 agency, as well as applicable Executive Orders or portions of those
32 orders issued by the Governor, shall not be liable in any civil
33 action, or subject to any administrative proceeding concerning
34 professional disciplinary action, or suspension, revocation, refusal
35 to issue or refusal to renew any license, certification, certificate, or
36 permit, as applicable, for any act of commission or omission
37 resulting in damages arising from a person's exposure to SARS-
38 CoV-2, a related viral strain, or disease caused by either one.

39 b. (1) The immunity provided to a business, and its trustees,
40 directors, officers, employees, agents, servants, and volunteers by
41 this section applies in addition to any other available immunity, and
42 applies whether the exposure to SARS-CoV-2, a related viral strain,
43 or disease caused by either one, occurred because the person was
44 required to be on the business's property, or entered or remained on
45 the property by express or implied invitation or permission, or
46 exposure occurred at some other place in the course of conducting
47 business, providing services, or doing volunteer work on behalf of
48 the business as authorized by it.

1 (2) Nothing in this section shall be deemed to:

2 (a) grant immunity to any business or person causing damage by
3 a willful, wanton, or grossly negligent act of commission or
4 omission; or

5 (b) affect a worker' compensation claim or award pursuant to
6 any applicable State or federal law.

7 c. In addition to the immunity provided to a business, and its
8 trustees, directors, officers, employees, agents, servants, and
9 volunteers by this section, and any other available immunity, in any
10 civil action alleging liability, notwithstanding all available
11 immunities, the person bringing the action shall include in the
12 initial complaint or other initial pleading satisfactory
13 documentation, supported by an affidavit or sworn statement in lieu
14 of an affidavit, showing that the person, or other person on whose
15 behalf the action is brought, either has at least \$75,000 in
16 unreimbursed medical expenses due to exposure to SARS-CoV-2, a
17 related viral strain, or disease caused by either one, or died as a
18 result of that exposure. If the person fails to provide this
19 documentation and supporting affidavit or sworn statement, it shall
20 be deemed a failure to state a cause of action, and the action may be
21 dismissed with prejudice by motion of any party to the action, or on
22 the court's own motion in accordance with applicable Rules of
23 Court.

24
25 2. a. Notwithstanding any provisions of law to the contrary,
26 any public or private institution of higher education, and its
27 trustees, directors, officers, administrators, employees, agents,
28 servants, and volunteers, which in good faith reasonably comply
29 with or exceed applicable health and safety measures to prevent or
30 mitigate a person's exposure to the virus SARS-CoV-2 or the
31 disease caused by the virus, Coronavirus disease 2019, also referred
32 to as COVID-19, or a related viral strain to that virus or a disease
33 caused by the related viral strain in subsequent years, which are in
34 effect at the time of an alleged exposure to SARS-CoV-2, a related
35 strain, or disease caused by either one, and which measures are
36 based on guidance, regulations, rules, and administrative orders
37 promulgated by the federal Centers for Disease Control and
38 Prevention, the federal Occupational Safety and Health
39 Administration, the State Departments of Health, Human Services,
40 and Labor and Workforce Development, the Secretary of Higher
41 Education, or any other applicable federal or State department,
42 division, commission, board, bureau, or agency, as well as
43 applicable Executive Orders or portions of those orders issued by
44 the Governor, shall not be liable in any civil action, or subject to
45 any administrative proceeding concerning professional disciplinary
46 action, or suspension, revocation, refusal to issue or refusal to
47 renew any license, certification, certificate, or permit, as applicable,
48 for any act of commission or omission resulting in damages arising

1 from a person's exposure to SARS-CoV-2, a related viral strain, or
2 disease caused by either one.

3 b. (1) The immunity provided to a public or private institution
4 of higher education, and its trustees, directors, officers,
5 administrators, employees, agents, servants, and volunteers by this
6 section applies in addition to any other available immunity, and
7 applies whether the exposure to SARS-CoV-2, a related viral strain,
8 or disease caused by either one, occurred because the person was
9 required to be on the campus or other property of the institution of
10 higher education, or entered or remained on the campus or other
11 property by express or implied invitation or permission, or exposure
12 occurred at some other place in the course of conducting activities
13 and operations, providing services, or doing volunteer work on
14 behalf of the public or private institution of higher education as
15 authorized by it.

16 (2) Nothing in this section shall be deemed to:

17 (a) grant immunity to any public or private institution of higher
18 education or person causing damage by a willful, wanton, or grossly
19 negligent act of commission or omission; or

20 (b) affect a worker's compensation claim or award pursuant to
21 any applicable State or federal law.

22 c. In addition to the immunity provided to a public or private
23 institution of higher education, and its trustees, directors, officers,
24 administrators, employees, agents, servants, and volunteers by this
25 section, and any other available immunity, in any civil action
26 alleging liability, notwithstanding all available immunities, the
27 person bringing the action shall include in the initial complaint or
28 other initial pleading satisfactory documentation, supported by an
29 affidavit or sworn statement in lieu of an affidavit, showing that the
30 person, or other person on whose behalf the action is brought, either
31 has at least \$75,000 in unreimbursed medical expenses due to
32 exposure to SARS-CoV-2, a related viral strain, or disease caused
33 by either one, or died as a result of that exposure. If the person fails
34 to provide this documentation and supporting affidavit or sworn
35 statement, it shall be deemed a failure to state a cause of action, and
36 the action may be dismissed with prejudice by motion of any party
37 to the action, or on the court's own motion in accordance with
38 applicable Rules of Court.

39

40 3. a. Notwithstanding any provisions of law to the contrary, a
41 public entity, which in good faith reasonably complies with or
42 exceeds applicable health and safety measures to prevent or
43 mitigate a person's exposure to the virus SARS-CoV-2 or the
44 disease caused by the virus, Coronavirus disease 2019, also referred
45 to as COVID-19, or a related viral strain to that virus or a disease
46 caused by the related viral strain in subsequent years, which are in
47 effect at the time of an alleged exposure to Sars-CoV-2, a related
48 strain, or disease caused by either one, and which measures are

1 based on guidance, regulations, rules, and administrative orders
2 promulgated by the federal Centers for Disease Control and
3 Prevention, the federal Occupational Safety and Health
4 Administration, the State Departments of Health, Human Services,
5 and Labor and Workforce Development, or any other applicable
6 federal or State department, division, commission, board, bureau, or
7 agency, as well as applicable Executive Orders or portions of those
8 orders issued by the Governor, shall not be liable in any civil action
9 for any act of commission or omission resulting in damages arising
10 from a person's exposure to SARS-CoV-2, a related viral strain, or
11 disease caused by either one.

12 b. (1) The immunity provided to a public entity by this section
13 applies in addition to any other available immunity, and applies
14 whether the exposure to SARS-CoV-2, a related viral strain, or
15 disease caused by either one, occurred because the person was
16 required to be on the public entity's property, or entered or
17 remained on the property by express or implied invitation or
18 permission, or exposure occurred at some other place in the course
19 of providing government services, or doing volunteer work on
20 behalf of the public entity as authorized by it.

21 (2) Nothing in this section shall be deemed to:

22 (a) grant immunity to any public entity causing damage by a
23 willful, wanton, or grossly negligent act of commission or omission;
24 or

25 (b) affect a worker's compensation claim or award pursuant to
26 any applicable State or federal law.

27 c. In addition to the immunity provided to a public entity by
28 this section, and any other available immunity, in any civil action
29 alleging liability, notwithstanding all available immunities, the
30 person bringing the action shall include in the initial complaint or
31 other initial pleading satisfactory documentation, supported by an
32 affidavit or sworn statement in lieu of an affidavit, showing that the
33 person, or other person on whose behalf the action is brought, either
34 has at least \$75,000 in unreimbursed medical expenses due to
35 exposure to SARS-CoV-2, a related viral strain, or disease caused
36 by either one, or died as a result of that exposure. If the person fails
37 to provide this documentation and supporting affidavit or sworn
38 statement, it shall be deemed a failure to state a cause of action, and
39 the action may be dismissed with prejudice by motion of any party
40 to the action, or on the court's own motion in accordance with
41 applicable Rules of Court.

42

43 4. a. Notwithstanding any provisions of law to the contrary, a
44 public employee, who in good faith reasonably complies with or
45 exceeds applicable health and safety measures to prevent or
46 mitigate a person's exposure to the virus SARS-CoV-2 or the
47 disease caused by the virus, Coronavirus disease 2019, also referred
48 to as COVID-19, or a related viral strain to that virus or a disease

1 caused by the related viral strain in subsequent years, which are in
2 effect at the time of an alleged exposure to Sars-CoV-2, a related
3 strain, or disease caused by either one, and which measures are
4 based on guidance, regulations, rules, and administrative orders
5 promulgated by the federal Centers for Disease Control and
6 Prevention, the federal Occupational Safety and Health
7 Administration, the State Departments of Health, Human Services,
8 and Labor and Workforce Development, or any other applicable
9 federal or State department, division, commission, board, bureau, or
10 agency, as well as applicable Executive Orders or portions of those
11 orders issued by the Governor, shall not be liable in any civil action
12 for any act of commission or omission resulting in damages arising
13 from a person's exposure to SARS-CoV-2, a related viral strain, or
14 disease caused by either one.

15 b. (1) The immunity provided to a public employee by this
16 section applies in addition to any other available immunity, and
17 applies whether the exposure to SARS-CoV-2, a related viral strain,
18 or disease caused by either one, occurred because the person was
19 required to be on the same public property as the public employee,
20 or entered or remained on the property by express or implied
21 invitation or permission, or exposure occurred at some other place
22 in the course of the public employee providing government
23 services, or doing volunteer work on behalf of a public entity as
24 authorized by it.

25 (2) Nothing in this section shall be deemed to:

26 (a) grant immunity to any public employee causing damage by a
27 willful, wanton, or grossly negligent act of commission or omission;
28 or

29 (b) affect a worker's compensation claim or award pursuant to
30 any applicable State or federal law.

31 c. In addition to the immunity provided to a public employee
32 by this section, and any other available immunity, in any civil
33 action alleging liability, notwithstanding all available immunities,
34 the person bringing the action shall include in the initial complaint
35 or other initial pleading satisfactory documentation, supported by
36 an affidavit or sworn statement in lieu of an affidavit, showing that
37 the person, or other person on whose behalf the action is brought,
38 either has at least \$75,000 in unreimbursed medical expenses due to
39 exposure to SARS-CoV-2, a related viral strain, or disease caused
40 by either one, or died as a result of that exposure. If the person fails
41 to provide this documentation and supporting affidavit or sworn
42 statement, it shall be deemed a failure to state a cause of action, and
43 the action may be dismissed with prejudice by motion of any party
44 to the action, or on the court's own motion in accordance with
45 applicable Rules of Court.

46
47 5. This act shall take effect immediately, and apply
48 retroactively to the date that the Public Health Emergency and State

1 of Emergency was declared by the Governor in Executive Order
2 103 of 2020 concerning the coronavirus disease 2019 pandemic.

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STATEMENT

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7 This bill would establish general immunity, as well as a lawsuit
8 damage threshold, to protect business entities, including non-
9 profits, and institutions of higher education, and their officers,
10 employees, agents, and volunteers, as well as public entities,
11 including primary and secondary schools, and their employees,
12 against actions relating to a person's exposure to the virus SARS-
13 CoV-2 or the disease caused by the virus, Coronavirus disease
14 2019, also referred to as COVID-19, or a related viral strain to that
15 virus or a disease caused by the related viral strain in subsequent
16 years.

17 The immunity would be based on good faith reasonable
18 compliance with or exceeding applicable health and safety measures
19 to prevent or mitigate a person's exposure to SARS-CoV-2, a
20 related viral strain, or disease caused by either one, which are in
21 effect at the time of an alleged exposure to SARS-CoV-2, a related
22 strain, or disease caused by either one, and which measures are
23 based on guidance, regulations, rules, and administrative orders
24 promulgated by applicable federal or State departments, divisions,
25 commissions, boards, bureaus, or agencies, as well as applicable
26 Executive Orders or portions of those orders issued by the
27 Governor. The immunity would bar civil lawsuits as well as any
28 administrative proceedings concerning professional disciplinary
29 action, or suspension, revocation, refusal to issue or refusal to
30 renew any license, certification, certificate, or permit, as applicable.

31 The immunity provided by the bill would apply in addition to
32 any other available immunity, and would apply whether the
33 exposure to SARS-CoV-2, a related viral strain, or disease caused
34 by either one, occurred because a person was required to be on a
35 business' property, the campus or other property of an institution of
36 higher education, or public property, or entered or remained on the
37 property or campus by express or implied invitation or permission,
38 or the exposure occurred at some other place in the course of
39 conducting business, activities and operations, providing services,
40 or doing volunteer work on behalf of a business, institution of
41 higher education, or public entity as authorized by it. However,
42 nothing in the bill would be deemed to grant immunity for an
43 entity's or person's willful, wanton, or grossly negligent act of
44 commission or omission. Additionally, the bill would not affect a
45 worker' compensation claim or award pursuant to any applicable
46 State or federal law.

47 As to the lawsuit damage threshold, in addition to the immunity
48 provided by the bill, and any other available immunity, in any civil

1 action alleging liability, notwithstanding all available immunities,
2 the person bringing the action would be required to include in the
3 initial complaint or other initial pleading satisfactory
4 documentation, supported by an affidavit or sworn statement in lieu
5 of an affidavit, showing that the person, or other person on whose
6 behalf the action is brought, either has at least \$75,000 in
7 unreimbursed medical expenses due to exposure to SARS-CoV-2, a
8 related viral strain, or disease caused by either one, or died as a
9 result of that exposure. If the person failed to provide this
10 documentation and supporting affidavit or sworn statement, it
11 would be deemed a failure to state a cause of action, and the action
12 could be dismissed with prejudice by motion of any party to the
13 action, or on the court's own motion in accordance with applicable
14 Rules of Court.

15 The bill would take effect immediately, and apply retroactively
16 to March 9, 2020, the date the Public Health Emergency and State
17 of Emergency was declared by the Governor's Executive Order 103
18 of 2020 concerning the coronavirus disease 2019 pandemic.