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

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. a. As used in this section, “business” means any non-
governmental, for-profit or non-profit corporation, company,
partnership, firm, sole proprietorship, society, association, business
trust, or other form of business organization or entity.
Notwithstanding any provisions of law to the contrary, a
business, and its trustees, directors, officers, employees, agents,
servants, and volunteers, which in good faith reasonably comply
with or exceed applicable health and safety measures to prevent or
mitigate a person’s exposure to the virus SARS-CoV-2 or the
disease caused by the virus, Coronavirus disease 2019, also referred
to as COVID-19, or a related viral strain to that virus or a disease
caused by the related viral strain in subsequent years, which are in
effect at the time of an alleged exposure to Sars-CoV-2, a related
strain, or disease caused by either one, and which measures are
based on guidance, regulations, rules, and administrative orders
promulgated by the federal Centers for Disease Control and
Prevention, the federal Occupational Safety and Health
Administration, the State Departments of Health, Human Services,
and Labor and Workforce Development, or any other applicable
federal or State department, division, commission, board, bureau, or
agency, as well as applicable Executive Orders or portions of those
orders issued by the Governor, shall not be liable in any civil
action, or subject to any administrative proceeding concerning
professional disciplinary action, or suspension, revocation, refusal
to issue or refusal to renew any license, certification, certificate, or
permit, as applicable, for any act of commission or omission
resulting in damages arising from a person’s exposure to SARS-
CoV-2, a related viral strain, or disease caused by either one.

b. (1) The immunity provided to a business, and its trustees,
directors, officers, employees, agents, servants, and volunteers by
this section applies in addition to any other available immunity, and
applies whether the exposure to SARS-CoV-2, a related viral strain,
or disease caused by either one, occurred because the person was
required to be on the business’s property, or entered or remained on
the property by express or implied invitation or permission, or
exposure occurred at some other place in the course of conducting
business, providing services, or doing volunteer work on behalf of
the business as authorized by it.
(2) Nothing in this section shall be deemed to:

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

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

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

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

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

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

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

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

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

3. a. Notwithstanding any provisions of law to the contrary, a public entity, which in good faith reasonably complies with or exceeds applicable health and safety measures to prevent or mitigate a person’s exposure to the virus SARS-CoV-2 or the disease caused by the virus, Coronavirus disease 2019, also referred to as COVID-19, or a related viral strain to that virus or a disease caused by the related viral strain in subsequent years, which are in effect at the time of an alleged exposure to Sars-CoV-2, a related strain, or disease caused by either one, and which measures are
based on guidance, regulations, rules, and administrative orders promulgated by the federal Centers for Disease Control and Prevention, the federal Occupational Safety and Health Administration, the State Departments of Health, Human Services, and Labor and Workforce Development, or any other applicable federal or State department, division, commission, board, bureau, or agency, as well as applicable Executive Orders or portions of those orders issued by the Governor, shall not be liable in any civil action for any act of commission or omission resulting in damages arising from a person’s exposure to SARS-CoV-2, a related viral strain, or disease caused by either one.

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

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

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

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

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

4. a. Notwithstanding any provisions of law to the contrary, a public employee, who in good faith reasonably complies with or exceeds applicable health and safety measures to prevent or mitigate a person’s exposure to the virus SARS-CoV-2 or the disease caused by the virus, Coronavirus disease 2019, also referred to as COVID-19, or a related viral strain to that virus or a disease
caused by the related viral strain in subsequent years, which are in effect at the time of an alleged exposure to Sars-CoV-2, a related strain, or disease caused by either one, and which measures are based on guidance, regulations, rules, and administrative orders promulgated by the federal Centers for Disease Control and Prevention, the federal Occupational Safety and Health Administration, the State Departments of Health, Human Services, and Labor and Workforce Development, or any other applicable federal or State department, division, commission, board, bureau, or agency, as well as applicable Executive Orders or portions of those orders issued by the Governor, shall not be liable in any civil action for any act of commission or omission resulting in damages arising from a person’s exposure to SARS-CoV-2, a related viral strain, or disease caused by either one.

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

(2) Nothing in this section shall be deemed to:
   (a) grant immunity to any public employee causing damage by a willful, wanton, or grossly negligent act of commission or omission; or
   (b) affect a worker’s compensation claim or award pursuant to any applicable State or federal law.

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

5. This act shall take effect immediately, and apply retroactively to the date that the Public Health Emergency and State
of Emergency was declared by the Governor in Executive Order 103 of 2020 concerning the coronavirus disease 2019 pandemic.

STATEMENT

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

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

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

As to the lawsuit damage threshold, in addition to the immunity provided by the bill, and any other available immunity, in any civil
action alleging liability, notwithstanding all available immunities, the person bringing the action would be required to include in the initial complaint or other initial pleading satisfactory documentation, supported by an affidavit or sworn statement in lieu of an affidavit, showing that the person, or other person on whose behalf the action is brought, either has at least $75,000 in unreimbursed medical expenses due to exposure to SARS-CoV-2, a related viral strain, or disease caused by either one, or died as a result of that exposure. If the person failed to provide this documentation and supporting affidavit or sworn statement, it would be deemed a failure to state a cause of action, and the action could be dismissed with prejudice by motion of any party to the action, or on the court’s own motion in accordance with applicable Rules of Court.

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