

CIVIL PRACTICE AND REMEDIES CODE

TITLE 6. MISCELLANEOUS PROVISIONS

CHAPTER 148. LIABILITY DURING PANDEMIC EMERGENCY

Sec. 148.001. DEFINITIONS. In this chapter:

(1) "Pandemic disease" has the meaning assigned by Section 74.155.

(2) "Pandemic emergency" means a state of disaster declared by the governor under Chapter 418, Government Code, in response to a pandemic disease.

Added by Acts 2021, 87th Leg., R.S., Ch. 528 (S.B. 6), Sec. 3, eff. June 14, 2021.

Sec. 148.002. PRODUCTS LIABILITY ACTIONS RELATED TO PANDEMIC EMERGENCY. (a) This section applies only to the following products:

(1) clothing or equipment worn to minimize exposure to hazards of a pandemic disease that cause injury or illness;

(2) medical devices, equipment, and supplies used during a pandemic emergency or to treat individuals infected or suspected to be infected with a pandemic disease, including devices, equipment, and supplies used or modified for an unapproved use to treat or prevent the spread of the disease or used outside of their normal use to treat or prevent the spread of the disease;

(3) drugs, medicines, or vaccines used to treat or prevent the spread of a pandemic disease, including drugs, medicines, or vaccines prescribed, dispensed, or administered for an unapproved use in an attempt to treat or prevent the spread of the disease or used outside of their normal use in an attempt to treat or prevent the spread of the disease;

(4) tests to diagnose or determine immunity to a pandemic disease;

(5) commercial cleaning, sanitizing, or disinfecting supplies used to prevent the spread of a pandemic disease; or

(6) any component of a product described by this subsection.

(b) A person who designs, manufactures, sells, or donates a

product described by Subsection (a) during a pandemic emergency is not liable for personal injury, death, or property damage caused by the product unless:

(1) the person:

(A) had actual knowledge of a defect in the product when the product left the person's control; or

(B) acted with actual malice in designing, manufacturing, selling, or donating the product; and

(2) the product presents an unreasonable risk of substantial harm to an individual using or exposed to the product.

(c) A person who designs, manufactures, labels, sells, or donates a product described by Subsection (a) during a pandemic emergency is not liable for personal injury, death, or property damage caused by a failure to warn or provide adequate instructions regarding the use of a product unless:

(1) the person acted with actual malice in failing to warn or provide adequate instructions regarding the use of the product; and

(2) the failure to warn or provide adequate instructions regarding the use of the product presents an unreasonable risk of substantial harm to an individual using or exposed to the product.

(d) A person is not liable for personal injury, death, or property damage caused by or resulting from the person's selection, distribution, or use of a product described by Subsection (a) during a pandemic emergency unless:

(1) the person:

(A) had actual knowledge of a defect in the product when the person selected, distributed, or used the product; or

(B) acted with actual malice in selecting, distributing, or using the product; and

(2) the product presents an unreasonable risk of substantial harm to an individual using or exposed to the product.

Added by Acts 2021, 87th Leg., R.S., Ch. 528 (S.B. 6), Sec. 3, eff. June 14, 2021.

Sec. 148.003. LIABILITY FOR CAUSING EXPOSURE TO PANDEMIC DISEASE. (a) A person is not liable for injury or death caused by exposing an individual to a pandemic disease during a pandemic emergency unless the claimant establishes that:

(1) the person who exposed the individual:

(A) knowingly failed to warn the individual of or remediate a condition that the person knew was likely to result in the exposure of an individual to the disease, provided that the person:

(i) had control over the condition;

(ii) knew that the individual was more likely than not to come into contact with the condition; and

(iii) had a reasonable opportunity and ability to remediate the condition or warn the individual of the condition before the individual came into contact with the condition; or

(B) knowingly failed to implement or comply with government-promulgated standards, guidance, or protocols intended to lower the likelihood of exposure to the disease that were applicable to the person or the person's business, provided that:

(i) the person had a reasonable opportunity and ability to implement or comply with the standards, guidance, or protocols;

(ii) the person refused to implement or comply with or acted with flagrant disregard of the standards, guidance, or protocols; and

(iii) the government-promulgated standards, guidance, or protocols that the person failed to implement or comply with did not, on the date that the individual was exposed to the disease, conflict with government-promulgated standards, guidance, or protocols that the person implemented or complied with; and

(2) reliable scientific evidence shows that the failure to warn the individual of the condition, remediate the condition, or implement or comply with the government-promulgated standards, guidance, or protocols was the cause in fact of the individual contracting the disease.

(b) Except as provided by Subsection (c), not later than the 120th day after the date a defendant files an answer to a claim to which Subsection (a) applies, the claimant shall serve on the defendant:

(1) a report authored by at least one qualified expert that provides a factual and scientific basis for the assertion that the defendant's failure to act caused the individual to contract a pandemic disease; and

(2) a curriculum vitae for each expert whose opinion is included in the report.

(c) The deadline for serving the report and curriculum vitae required by Subsection (b) may be extended by written agreement of the affected parties.

(d) A defendant must file an objection to the sufficiency of the report and serve the objection on the claimant not later than 21 days after the later of:

(1) the date the report is served on the defendant; or

(2) the date the defendant's answer to the claim is filed.

(e) If a court determines that a report served under Subsection (b) does not represent an objective, good faith effort to provide a factual and scientific basis for the assertion that the defendant's failure to act caused the injured individual to contract a pandemic disease, the court may grant the claimant, on one occasion, a 30-day period to cure any deficiency in the report.

(f) If a sufficient report is not timely served under this section, the court, on the defendant's motion, shall enter an order:

(1) dismissing the claim with respect to the defendant, with prejudice; and

(2) awarding to the defendant reasonable attorney's fees and costs of court incurred by the defendant in the action.

(g) Nothing in this section shall be construed to mean that a single expert must address all causation issues with respect to all defendants.

(h) A report served under this section:

(1) is not admissible in evidence by any party;

(2) may not be used in a deposition, trial, or other proceeding; and

(3) may not be referred to by any party during the course of the action, except in a proceeding to determine if a report is sufficient or timely.

(i) After a claim to which Subsection (a) applies is filed, all claimants, collectively, may take not more than two depositions before the expert report is served as required by Subsection (b).

(j) For purposes of Subsection (a)(1)(B), if an order, rule, or authoritative declaration promulgated by the governor, the legislature, a state agency, or a local governmental entity with jurisdiction over the person conflicts with a different government-promulgated standard, guideline, or protocol, a person may not be considered to fail to implement or comply with the government-promulgated standard, guideline, or protocol if, at the time of the injured individual's exposure to the pandemic disease during a pandemic emergency, the person is making a good faith effort to substantially comply with at least one conflicting order, rule, or declaration.

Added by Acts 2021, 87th Leg., R.S., Ch. 528 (S.B. 6), Sec. 3, eff. June 14, 2021.

Sec. 148.004. LIABILITY OF EDUCATIONAL INSTITUTIONS FOR CERTAIN ACTIONS DURING PANDEMIC EMERGENCY. (a) In this section, "educational institution" means an institution or program that facilitates learning or the acquisition of knowledge, skills, values, beliefs, or habits. The term includes:

(1) a public or private preschool, child-care facility, primary or secondary school, college, or university;

(2) an institution of higher education, as that term is defined by Section 61.003, Education Code; and

(3) a private or independent institution of higher education, as that term is defined by Section 61.003, Education Code.

(b) An educational institution is not liable for damages or equitable monetary relief arising from a cancellation or modification of a course, program, or activity of the institution

if the cancellation or modification arose during a pandemic emergency and was caused, in whole or in part, by the emergency.

Added by Acts 2021, 87th Leg., R.S., Ch. 528 (S.B. 6), Sec. 3, eff. June 14, 2021.

Sec. 148.005. NO CIVIL CAUSE OF ACTION. This chapter does not create a civil cause of action.

Added by Acts 2021, 87th Leg., R.S., Ch. 528 (S.B. 6), Sec. 3, eff. June 14, 2021.