



N ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; AMENDING SECTION 27-1-719 AND 70-24-303, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.”

WHEREAS, the COVID-19 pandemic has caused significant disruption to Montana's people, businesses, places of worship, property owners, and nonprofit organizations and has adversely affected Montana's economy and the rights of Montana's citizens; and

WHEREAS, in order to improve Montana's economy and to encourage people to engage in private sector activities, the Legislature believes it is necessary to enact this legislation to establish standards for imposing liability and to provide defenses for claims relating to COVID-19.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 8], unless the context clearly indicates otherwise, the following definitions apply:

(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 from it, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

(2) "Health care professional" means, for the purposes of [sections 1 through 8], physicians, physician assistants, nurse practitioners, nurses, nursing assistants, chiropractors, pharmacists, pharmacy technicians, dentists, dental hygienists, optometrists, medication aides, respiratory therapist practitioners, professional

counselors, occupational therapists, midwives, psychologists, 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. This term includes persons engaged in telemedicine as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

(3) "Health care provider" means and includes, for the purposes of [sections 1 through 8], a health care professional, health care facility, home health care facility, assisted living 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. It does not include a government entity or a health care professional that is employed by a government entity.

(4) "Person" means an individual, corporation, nonprofit corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, place of worship, personal representative, trustee, or any other legal or commercial entity. It does not include a government entity.

(5) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

(6) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

(7) "Public health guidance" includes guidance related to covid-19 issued by the following:

(a) the centers for disease control and prevention of the U.S. department of health and human services;

(b) the centers for medicare and medicaid services of the U.S. department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the department of public health and human services; or

(f) a local government including a local government health department or local government board of

health.

(8) "Qualified product" means and includes:

(a) personal protective equipment and supplies used to treat 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, and 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; and

(f) a component of an item described in subsections (8)(a) through (8)(e).

Section 2. Liability. Except as provided in [sections 3 through 8], a person is not liable for civil damages for injuries or death from or relating to exposure or potential exposure to covid-19 unless the civil action involves an act or omission that constitutes gross negligence, willful and wanton misconduct, or intentional tort.

Section 3. Premises owner's duty of care -- limited liability. (1) 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, is not liable for civil damages for injuries or death sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises, unless the civil action involves an act or omission that constitutes gross negligence, willful and wanton misconduct, or intentional tort.

(2) The standard established in subsection (1) applies in landlord-tenant claims made under 70-24-303(1)(b) through (1)(e) for injuries or death sustained from an individual's exposure to covid-19.

Section 4. Liability of health care providers. A health care provider is not 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 response to covid-19 unless the health care provider caused the death or injury of an individual through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort. This section applies to:

- (1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19;
- (2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of covid-19;
- (3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19 when those acts or omissions support the response to covid-19, including the following:
 - (a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance;
 - (b) diagnosing or treating patients outside the normal scope of the health care provider's license or practice;
 - (c) 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;
 - (d) conducting tests or providing treatment to an individual outside the premises of a health care facility;
 - (e) 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 a person that otherwise would have been required in the absence of covid-19; or
 - (f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment.

Section 5. Supplies, equipment, and products designed, manufactured, labeled, sold,

distributed, and donated in response to covid-19. (1) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 is not 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 unless the person caused the personal injury, death, or property damage through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort.

(2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 is not 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 unless the person caused the personal injury, death, or property damage through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort.

(3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part by covid-19 as defined in [section 1].

Section 6. Affirmative defense -- reasonable measures consistent with regulations, orders, and public health guidance. (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a 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 injury, death, or property damage.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of public health guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action relating to covid-19.

(4) This section may not be construed to impose liability on a person for failing to comply with a federal or state statute, regulation, order, or public health guidance related to covid-19.

Section 7. Limitation on action. A government order, regulation, or public health guidance related to covid-19 may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or public health guidance.

Section 8. Limitation on requirements. (1) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of covid-19 to meet the standard of care.

(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires temperature checks, a person is not required to conduct temperature checks before allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care.

Section 9. Section 27-1-719, MCA, is amended to read:

"27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer. (1)

As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the

seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the

seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section 2].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

Section 10. Section 70-24-303, MCA, is amended to read:

"70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector or carbon monoxide detector. (1) Subject to [section 3], a landlord:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured;

(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and

habitable condition;

(d) shall keep all common areas of the premises in a clean and safe condition;

(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(h) shall install in each dwelling unit under the landlord's control an approved carbon monoxide detector, in accordance with rules adopted by the department of labor and industry, and an approved smoke detector, in accordance with rules adopted by the department of justice. Upon commencement of a rental agreement, the landlord shall verify that the carbon monoxide detector and the smoke detector in the dwelling unit are in good working order. The tenant shall maintain the carbon monoxide detector and the smoke detector in good working order during the tenant's rental period. For the purposes of this subsection (1)(h), an approved carbon monoxide detector, as defined in 70-20-113, and an approved smoke detector, as defined in 70-20-113, bear a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to

perform specified repairs, maintenance tasks, alterations, or remodeling only if:

- (a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;
 - (b) the work is not necessary to cure noncompliance with subsection (1)(a); and
 - (c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.
- (5) The landlord is not liable for damages caused as a result of the failure of the carbon monoxide detector or the smoke detector required under subsection (1)(h)."

Section 11. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through 8].

Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective date. [This act] is effective on passage and approval.

Section 15. Termination. [This act] terminates January 1, 2031.

- END -

SENATE BILL NO. 65

INTRODUCED BY S. FITZPATRICK, M. NOLAND

AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING SAFE HARBOR AFFIRMATIVE DEFENSE FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; AND AMENDING SECTION 27-1-719, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

I hereby certify that the within bill,
SB 65, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.