

By: Hancock, et al.
(Leach, et al.)

S.B. No. 6

Substitute the following for S.B. No. 6:

By: Krause

C.S.S.B. No. 6

A BILL TO BE ENTITLED

AN ACT

relating to liability for certain claims arising during a pandemic or disaster related to a pandemic.

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

SECTION 1. Section 51.014(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:

(1) appoints a receiver or trustee;

(2) overrules a motion to vacate an order that appoints a receiver or trustee;

(3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;

(4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;

(5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;

(6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or

1 print media, arising under the free speech or free press clause of
2 the First Amendment to the United States Constitution, or Article
3 I, Section 8, of the Texas Constitution, or Chapter 73;

4 (7) grants or denies the special appearance of a
5 defendant under Rule 120a, Texas Rules of Civil Procedure, except
6 in a suit brought under the Family Code;

7 (8) grants or denies a plea to the jurisdiction by a
8 governmental unit as that term is defined in Section 101.001;

9 (9) denies all or part of the relief sought by a motion
10 under Section 74.351(b), except that an appeal may not be taken from
11 an order granting an extension under Section 74.351;

12 (10) grants relief sought by a motion under Section
13 74.351(1);

14 (11) denies a motion to dismiss filed under Section
15 90.007;

16 (12) denies a motion to dismiss filed under Section
17 27.003;

18 (13) denies a motion for summary judgment filed by an
19 electric utility regarding liability in a suit subject to Section
20 75.0022; ~~or~~

21 (14) denies a motion filed by a municipality with a
22 population of 500,000 or more in an action filed under Section
23 54.012(6) or 214.0012, Local Government Code; or

24 (15) overrules an objection filed under Section
25 148.003(d) or denies all or part of the relief sought by a motion
26 under Section 148.003(f).

27 SECTION 2. Subchapter D, Chapter 74, Civil Practice and

1 Remedies Code, is amended by adding Section 74.155 to read as
2 follows:

3 Sec. 74.155. LIABILITY OF PHYSICIANS, HEALTH CARE
4 PROVIDERS, AND FIRST RESPONDERS DURING PANDEMIC. (a) In this
5 section:

6 (1) "Disaster declaration" means a declaration of a
7 state of disaster or emergency by the president of the United States
8 applicable to the entire state, a declaration of a state of disaster
9 by the governor under Chapter 418, Government Code, for the entire
10 state, and any amendment, modification, or extension of the
11 declaration.

12 (2) "First responder" has the meaning assigned by
13 Section 421.095, Government Code.

14 (3) "Pandemic disease" means an infectious disease
15 that spreads to a significant portion of the population of the
16 United States and that poses a substantial risk of a significant
17 number of human fatalities, illnesses, or permanent long-term
18 disabilities.

19 (b) Except in a case of reckless conduct or intentional,
20 wilful, or wanton misconduct, a physician, health care provider, or
21 first responder is not liable for an injury, including economic and
22 noneconomic damages, or death arising from care, treatment, or
23 failure to provide care or treatment relating to or impacted by a
24 pandemic disease or a disaster declaration related to a pandemic
25 disease if the physician, health care provider, or first responder
26 proves by a preponderance of the evidence that:

27 (1) a pandemic disease or disaster declaration related

1 to a pandemic disease was a producing cause of the care, treatment,
2 or failure to provide care or treatment that allegedly caused the
3 injury or death; or

4 (2) the individual who suffered injury or death was
5 diagnosed or reasonably suspected to be infected with a pandemic
6 disease at the time of the care, treatment, or failure to provide
7 care or treatment.

8 (c) A physician, health care provider, or first responder may
9 not use the showing under Subsection (b)(2) as a defense to
10 liability under Subsection (b) for negligent care, treatment, or
11 failure to provide care or treatment if a claimant proves by a
12 preponderance of the evidence that the respective diagnosis,
13 treatment, or reasonable suspicion of infection with a pandemic
14 disease at the time of the care, treatment, or failure to provide
15 care or treatment was not a producing cause of the individual's
16 injury or death.

17 (d) Care, treatment, or failure to provide care or treatment
18 relating to or impacted by a pandemic disease or a disaster
19 declaration related to a pandemic disease under Subsection (b)
20 includes:

21 (1) screening, assessing, diagnosing, or treating an
22 individual who is infected or suspected of being infected with a
23 pandemic disease;

24 (2) prescribing, administering, or dispensing a drug
25 or medicine for off-label or investigational use to treat an
26 individual who is infected or suspected of being infected with a
27 pandemic disease;

1 (3) diagnosing or treating an individual who is
2 infected or suspected of being infected with a pandemic disease
3 outside the normal area of the physician's or provider's specialty,
4 if any;

5 (4) delaying or canceling nonurgent or elective
6 medical, surgical, or dental procedures;

7 (5) delaying, canceling, or not accepting in-person
8 appointments for office or clinical visits, diagnostic tests,
9 scheduled treatment, physical or occupational therapy, or any other
10 diagnosis or treatment of an illness or condition not related to a
11 pandemic disease;

12 (6) using medical devices, equipment, or supplies
13 outside of their normal use, including using or modifying such
14 devices, equipment, or supplies for an unapproved use, to treat an
15 individual who is infected or suspected of being infected with a
16 pandemic disease;

17 (7) conducting tests on or providing treatment to an
18 individual who is infected or suspected of being infected with a
19 pandemic disease outside the premises of a health care facility;

20 (8) acts or omissions caused by a lack of personnel or
21 staffing, facilities, medical devices, supplies, or other
22 resources attributable to a pandemic disease that renders a
23 physician, health care provider, or first responder unable to
24 provide the same level or manner of care to any individual that
25 otherwise would have been acquired in the absence of the disease;
26 and

27 (9) acts or omissions arising from the use or nonuse of

1 personal protective equipment.

2 (e) This section does not alter the scope of practice of a
3 physician, health care provider, or first responder under the laws
4 of this state.

5 (f) A defense under this section is in addition to any other
6 defense, immunity, or limitation of liability provided by law.
7 This section does not constitute a waiver of sovereign immunity of
8 this state or governmental immunity of a political subdivision.

9 (g) A physician, health care provider, or first responder
10 who intends to raise a defense under Subsection (b) must provide to
11 a claimant specific facts that support an assertion under
12 Subsection (b)(1) or (2) not later than the later of:

13 (1) the 60th day after the date the claimant serves an
14 expert report on the physician, health care provider, or first
15 responder under Section [74.351](#); or

16 (2) the 120th day after the date the physician, health
17 care provider, or first responder files an original answer in the
18 suit.

19 (h) This section applies only to a claim arising from care,
20 treatment, or failure to provide care or treatment that occurred
21 during a period beginning on the date that the president of the
22 United States or the governor makes a disaster declaration related
23 to a pandemic disease and ending on the date the declaration
24 terminates.

25 SECTION 3. Title 6, Civil Practice and Remedies Code, is
26 amended by adding Chapter 148 to read as follows:

1 CHAPTER 148. LIABILITY DURING PANDEMIC EMERGENCY

2 Sec. 148.001. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

27 (5) commercial cleaning, sanitizing, or disinfecting

1 supplies used to prevent the spread of a pandemic disease; or
2 (6) any component of a product described by this
3 subsection.

4 (b) A person who designs, manufactures, sells, or donates a
5 product described by Subsection (a) during a pandemic emergency is
6 not liable for personal injury, death, or property damage caused by
7 the product unless:

8 (1) the person:

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

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

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

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

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

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

27 (d) A person is not liable for personal injury, death, or

1 property damage caused by or resulting from the person's selection,
2 distribution, or use of a product described by Subsection (a)
3 during a pandemic emergency unless:

4 (1) the person:

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

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

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

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

16 (1) the person who exposed the individual:

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

21 (i) had control over the condition;

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

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

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

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

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

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

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

22 (b) Except as provided by Subsection (c), not later than the
23 120th day after the date a defendant files an answer to a claim to
24 which Subsection (a) applies, the claimant shall serve on the
25 defendant:

26 (1) a report authored by at least one qualified expert
27 that provides a factual and scientific basis for the assertion that

1 the defendant's failure to act caused the individual to contract a
2 pandemic disease; and

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

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

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

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

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

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

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

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

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

27 (g) Nothing in this section shall be construed to mean that

1 a single expert must address all causation issues with respect to
2 all defendants.

3 (h) A report served under this section:

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

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

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

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

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

24 Sec. 148.004. LIABILITY OF EDUCATIONAL INSTITUTIONS FOR
25 CERTAIN ACTIONS DURING PANDEMIC EMERGENCY. (a) In this section,
26 "educational institution" means an institution or program that
27 facilitates learning or the acquisition of knowledge, skills,

1 values, beliefs, or habits. The term includes:

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

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

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

9 (b) An educational institution is not liable for damages or
10 equitable monetary relief arising from a cancellation or
11 modification of a course, program, or activity of the institution
12 if the cancellation or modification arose during a pandemic
13 emergency and was caused, in whole or in part, by the emergency.

14 SECTION 4. (a) For purposes of Section 74.155, Civil
15 Practice and Remedies Code, as added by this Act, the legislature
16 finds that:

17 (1) the widespread effect of Coronavirus Disease 2019
18 ("COVID-19") in this state has resulted in a state of disaster as
19 declared by the governor under Section 418.014, Government Code;

20 (2) the frequency and severity of such cases in this
21 state have severely taxed the physicians and health care providers,
22 including health care institutions, stressed the state's health
23 care system, and created shortages of medical staff, therapeutics,
24 hospital beds, testing equipment, and safety supplies;

25 (3) physicians and health care providers often have
26 inadequate facilities to respond to the disaster;

27 (4) physicians and health care providers often have

1 inadequate test kits and monitoring devices to properly assess all
2 those presenting themselves for care or treatment;

3 (5) because of the number and severity of cases, many
4 physicians and health care providers in this state have been forced
5 to prioritize care and treatment;

6 (6) many physicians and health care providers have
7 placed themselves, their loved ones, and their livelihoods at risk
8 by trying to respond to the disaster;

9 (7) at the current time, there is no certainty as far
10 as how long this crisis will last;

11 (8) a pandemic, including the COVID-19 pandemic,
12 requires an enormous response from governments working in
13 coordination with physicians and health care providers in the
14 community;

15 (9) protecting physicians and health care providers
16 from unnecessary liability supports their efforts during a
17 pandemic, including the COVID-19 pandemic; and

18 (10) there is a strong public interest to be served by
19 this Act.

20 (b) Because of the conditions stated in Subsection (a) of
21 this section, the purpose of Section 74.155, Civil Practice and
22 Remedies Code, as added by this Act, is to improve and modify the
23 system by which health care liability claims are determined in
24 order to:

25 (1) promote the public health, safety, and welfare of
26 all citizens and ensure access to care and treatment during a
27 pandemic by broadly protecting physicians and health care

1 providers, including health care institutions, in this state from
2 liability that may relate to the care or treatment of individuals
3 associated with a pandemic, including COVID-19;

4 (2) provide for prompt and swift medical and health
5 care responses to the citizens of this state suffering from
6 COVID-19;

7 (3) recognize that many physicians and health care
8 providers responding to these situations may not have the full
9 benefits of the medical devices and facilities they would in
10 non-disaster situations;

11 (4) encourage physicians and health care providers
12 from other states to respond, if necessary, to the COVID-19
13 disaster in this state as declared by the president of the United
14 States and by the governor; and

15 (5) ensure that the focus and resources of physicians
16 and health care providers in responding to the COVID-19 disaster
17 are being addressed.

18 (c) For purposes of Section 74.155 and Chapter 148, Civil
19 Practice and Remedies Code, as added by this Act, the legislature
20 finds that while some settled expectations regarding claims to
21 which this Act applies may be impaired by this Act, the Act serves a
22 compelling public interest in establishing certain procedures and
23 standards for addressing potential claims against individuals and
24 entities faced with an unprecedented public health emergency that
25 has had severe and adverse impacts on both the health and safety of
26 individuals and the ordinary functioning of governmental entities,
27 the judicial system, the health care delivery system, educational

1 and religious institutions, businesses, nonprofit entities, and
2 others whose daily lives have been upended by the emergency.

3 SECTION 5. (a) Section 74.155 and Chapter 148, Civil
4 Practice and Remedies Code, as added by this Act, apply only to an
5 action commenced on or after March 13, 2020, for which a judgment
6 has not become final before the effective date of this Act. An
7 action commenced before March 13, 2020, or an action for which a
8 judgment has become final before the effective date of this Act is
9 governed by the law applicable to the action immediately before the
10 effective date of this Act, and that law is continued in effect for
11 that purpose.

12 (b) In an action commenced before the effective date of this
13 Act and to which Section 74.155, Civil Practice and Remedies Code,
14 as added by this Act, applies, a physician, health care provider, or
15 first responder who intends to raise a defense under Subsection (b)
16 of that section must provide to the claimant specific facts
17 required under Subsection (g) of that section not later than the
18 later of:

19 (1) the 60th day after the effective date of this Act;

20 (2) the 120th day after the date the physician, health
21 care provider, or first responder files an original answer in the
22 suit; or

23 (3) the 60th day after the date the claimant serves an
24 expert report on the physician, health care provider, or first
25 responder under Section 74.351, Civil Practice and Remedies Code.

26 SECTION 6. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2021.