

Legal Update

COVID-19 Liability Shield Laws Enacted in Several US States

A patchwork of states have enacted legislation to limit civil liability for COVID-19-related claims, offering immunity in addition to defenses and rights that already exist under the law. Many of the laws protect businesses and property owners from liability suits due to COVID-19 exposure or transmission, limiting the lawsuits to those that reach gross negligence, willful or wanton conduct, recklessness, intentional misconduct, and the like. Because the COVID-19 shield laws do not define legal terms such as "gross negligence," each state's common law and/or statutory definition would apply. The immunity also does not apply to certain claims, such as criminal and workers' compensation claims. Some states, such as Georgia, have also outlined specific disclaimer language to include on signage to preserve legal defenses.

While a number of states have enacted narrower laws limiting liability for healthcare facilities or providers, certain states have enacted broad COVID-19 shield laws limiting COVID-19 claims brought by those who have been exposed to or contracted the virus and/or, in the case of death, the decedents' estate or survivors. These laws are summarized below. Click a link to be taken to the state's summary, where you will also find a link to the full text of its law.

[Alabama](#), [Arkansas](#), [Georgia](#), [Idaho](#), [Iowa](#), [Kansas](#), [Louisiana](#), [Michigan](#), [Mississippi](#), [Nevada](#), [North Carolina](#), [Ohio](#), [Oklahoma](#), [Tennessee](#), [Utah](#), [Wyoming](#)

Note: Arizona ([House Bill 2912](#)) and other states have introduced similar COVID-19 liability shield legislation that may be revisited in future legislative sessions. Contact Mayer Brown lawyers [Ronald Shoss](#) and [Cindy Dinh](#) if you are interested in legislative activity on civil liability laws in other jurisdictions.

Alabama

[\(full text\)](#)

The governor of Alabama issued a proclamation providing broad protections to businesses for COVID-19 civil claims, limiting liability for businesses, and narrowing the type of damages a plaintiff may recover. The immunity provisions cover not just civil claims involving the contraction of COVID-19 but also claims alleging exposure or fear of exposure to COVID-19 while a business is engaged in a business activity on or off the premises of the business during the state of emergency. See § (B)(5). "A business, health care provider, or other covered entity shall not be liable for the death or injury to

persons or for damage to property in any way from...COVID-19 transmission or a covered COVID-19 response activity. See § I(C)(1). The liability protection does not apply to an alleged death, injury, or damage that was caused by “wanton, reckless, willful, or intentional misconduct.” *Id.*

Alabama is one of the few states that have specifically mentioned the heightened burden of clear and convincing evidence that plaintiffs have to prove in a COVID-19 liability case.

Plaintiffs are also limited on what damages they can recover. When the acts or omissions do not result in serious physical injury, the plaintiff can only recover the actual economic compensatory damages, and “in no event will the business, health care provider, or other covered entity be liable for non-economic damages.” See § I(C)(2). In wrongful death claims, the plaintiff can only recover punitive damages.

The law applies retroactively from March 13, 2020, and expires when the state’s COVID-19 public health emergency ends. For a COVID-19 transmission or covered COVID-19 response activity that took place before the proclamation’s effective date of March 13, 2020, refer to § I(C)(3).

Arkansas

[\(full text\)](#)

The governor of Arkansas issued Executive Order 20-33 to provide civil immunity to business and individuals. “[B]usinesses that open or remain open during the COVID-19 emergency, all persons, [including entities and businesses] in the State of Arkansas and [their] employees, agents, and officers shall be immune from civil liability for damages or injuries caused by or resulting from exposure of an individual to COVID-19 on the premises owned or operated by those persons or during any activity managed by those persons.” See § 1.

This immunity does not apply to “willful, reckless, or intentional misconduct resulting in injury or damages.” See § 2. It is presumed that behavior is not “willful, reckless, or intentional misconduct” when the person/agents/officers are substantially complying with or acting in good faith while attempting to comply with health and safety directives or guidelines issued by the governor or the secretary of the Department of Health. *Id.*

The immunity applies to all lawsuits filed after June 15, 2020, and expires when the governor’s declaration of public health emergency ends. See § 6.

Georgia

[\(full text\)](#)

The Georgia COVID-19 Pandemic Business Safety Act limits liability for individuals and entities faced with COVID-19 liability claims resulting in the “transmission, infection, exposure, or potential exposure” to COVID-19 that does not amount to “gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.” See § 51-16-3. The law also specifies language to include on signage on receipts, tickets, proof of purchases as well as points of entry to preserve certain legal defenses. Inclusion of the warning language establishes a rebuttal presumption of assumption of risk by the claimant (in other words, the claimant would have the burden of proving he/she did not assume the risk).

Relevant Warnings:

Property owners should post a written warning at a point of entry to the premises a sign in at least one-inch Arial font placed apart from any other text stating the following:

Warning

Under Georgia law, there is no liability for an injury or death of an individual entering these premises if such injury or death results from the inherent risks of contracting COVID-19. You are assuming this risk by entering these premises.

For healthcare facilities or providers who are faced with COVID-19 claims resulting in injury to or death of a claimant, there shall be a rebuttable presumption of assumption of the risk by the claimant when a healthcare facility or a healthcare provider has posted a warning at a point of entry to the premises, a sign in at least one-inch Arial font placed apart from any other text stating the following:

Warning

Under Georgia law, there is no liability for an injury or death of an individual entering these premises if such injury or death results from the inherent risks of contracting COVID-19. You are assuming this risk by entering these premises.

This law is effective for lawsuits filed August 5, 2020, until July 14, 2021.

Idaho

[\(full text\)](#)

The Coronavirus Limited Immunity Act provides any individual or entity (except for certain governmental entities) immunity from civil liability for damages or an injury resulting from an individual's exposure to the coronavirus. The immunity does not apply to acts or omissions that constitute an "intentional tort or willful or reckless misconduct" as defined by Idaho statutes.

"[Willful or reckless misconduct](#)" means "conduct in which a person makes a conscious choice as to the person's course of conduct under circumstances in which the person knows or should know that such conduct both creates an unreasonable risk of harm to another and involves a high probability that such harm will actually result." § 6-1601, Idaho Code.

The Act is effective August 27, 2020, and expires on July 1, 2021.

Iowa

[\(full text\)](#)

The COVID-19 Response and Back-to-Business Limited Liability Act limits liability not just for property owners but also for people in possession or in control of the premises in COVID-19-related suits. "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, shall not be liable for civil damages for any injuries sustained from the individual's exposure to COVID-19, whether the exposure occurs on the premises or during any activity managed by the person who possesses or is in control of a premises." See § 6 (amending §686D.4).

Civil immunity does not apply if the person who possesses or is in control of the premises (1) “recklessly disregards a substantial and unnecessary risk that the plaintiff would be exposed to COVID-19” or (2) if the exposure to COVID-19 was intentional or constitutes actual malice. *Id.*

For civil actions alleging COVID-19 exposure or potential exposure, a person is not liable if the defendant was in “substantial compliance or was consistent with any federal or state statute, regulation order, or public health guidance related to COVID-19” that was in effect at the time of the exposure or potential exposure. See § 7 (amending § 686D.5). The plaintiff also has to show actual injury occurred by way of a minimum medical condition (i.e., a COVID-19 diagnosis resulting in inpatient hospitalization or death), or from intentional harm, or actual malice. See § 5 (amending § 686D.3).

Refer to §8-9 of the legislation for guidance for health care providers and suppliers of COVID-19 equipment.

The law applies retroactively from January 1, 2020.

Kansas

[\(full text\)](#)

Kansas enacted the COVID-19 Response and Reopening for Business Liability Protection Act. Among its many provisions, a person, entity, or agent conducting business in Kansas has immunity from liability in a civil action arising out of exposure or potential exposure to COVID-19 “if such person was acting pursuant to and in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued.” See § 11 (page 6 of the bill). The law also provides specific civil liability protection and/or affirmative defenses for health care providers, manufacturers and distributors of health products, adult care facilities, etc.

Immunity retroactively applies to causes of action accruing between March 12, 2020, and January 26, 2021.

Louisiana

[\(full text\)](#)

Louisiana limits liability for a natural person or legal entity. No person or entity “shall be liable for any civil damages for injury or death resulting from or related to actual or alleged exposure to COVID-19 in the course of or through the performance or provision of the person’s . . . business operations.” See § 2800.25(A) (amending Revised Statute 9:2800.25). However, this law does not apply to a defendant who (1) “failed to substantially comply with the applicable COVID-19 procedures established by the federal, state, or local agency which governs the business operations and (2) acted with “gross negligence or wanton or reckless misconduct.” See § 2800.25(A). If two or more COVID-19 procedures apply to the business operations, then the person just needs to substantially comply with any one set of procedures.

The law also provides liability protection to manufacturers and distributors of personal protective equipment, and to event planners and event hosts for actual or alleged exposure to COVID-19 during the course of the meeting or event unless caused by “gross negligence or willful or wanton misconduct.” See § 773 (A)-(B); § 2800.25(B).

Employees are also prevented from recovering damages if they file a tort claim against their employer for contracting COVID-19, unless the exposure was intentional. See §2800.25(C)-(D).

The law applies retroactively from March 11, 2020.

Michigan

(full text of the laws can be accessed by clicking the numbers below)

Michigan enacted four COVID-19-related laws that are tie-barred, tying the passage of one legislation to the other. This set of laws includes [\(1\)](#) immunity to tort claims from alleged exposure or potential exposure to COVID-19; [\(2\)](#) employer immunity to an employee's exposure to COVID-19; [\(3\)](#) non-retaliation against employees who experience principal symptoms of COVID-19, who test positive, and who do not report to work; and [\(4\)](#) defining COVID-19 in the Michigan statute regulating working conditions.

The "COVID-19 response and reopening liability assurance act" provides a person, corporation, or other legal entity that is compliant with government regulations and orders related to COVID-19 immunity from liability for a tort claim based on or in part to "exposure or potential exposure...or to conduct intended to reduce transmission of COVID-19." The immunity also applies to claims made by a member of the same household or relative of the individual who was allegedly exposed or potentially exposed to COVID-19 and claims of "mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or other losses."

"[I]solated, de minimis deviation from strict compliance" with the COVID-19 regulations unrelated to the plaintiff's injuries does not deny immunity.

The law is effective as of October 22, 2020.

Mississippi

[\(full text\)](#)

Mississippi enacted the Mississippi Back-to-Business Liability Assurance and Health Care Emergency Response Liability Protection Act. For those who attempt in good faith to follow applicable public health guidance, the law provides civil immunity for "any injuries or death resulting from or related to actual or alleged exposure or potential exposure to COVID-19." See § 3. This law applies to an entity, person (or person's agent), and to owners, occupants, lessees, or those in control of premises who directly or indirectly invite or permit any person onto the premises. See § 3.

The immunities do not apply to a defendant, or any employee/agent who acted with "actual malice or willful, intentional misconduct." See § 6. Mississippi is one of the few states that have specifically mentioned the heightened burden of clear and convincing evidence that plaintiffs have to prove in a COVID-19 liability case.

The law also protects health care professionals, facilities and persons involved in providing COVID-19 equipment.

The law applies retroactively from March 14, 2020, and expires one year after the end of the COVID-19 state of emergency. See § 8. Plaintiffs have a two-year statute of limitations period to bring a suit alleging injury arising from COVID-19 starting the day after the claim accrues.

Nevada

[\(full text\)](#)

Nevada enacted business liability protections and immunity for most businesses (except for some medical facilities), government (except for public schools), non-profit organizations and its officers and employees in civil actions alleging “personal injury or death as a result of exposure to COVID-19 while on a premises owned or operated by an entity, or during an activity conducted or managed by the entity” if the entity was in “substantial compliance with controlling health standards.” See § 29.

This immunity does not apply if the entity (1) violated controlling health standards with “gross negligence,” and (2) the entity was the proximate cause of the plaintiff’s personal injury or death. See § 29.

“Substantial compliance” means an entity’s good faith efforts to help control the spread of COVID-19 in conformity with controlling health standards. While a court will determine whether an entity was in substantial compliance, the plaintiff bears the burden of proof. See § 29(3).

The law also provides guidelines for a public accommodation facility to follow, which in part, include establishing employer-employee notification of close contact to someone diagnosed with COVID-19 and up to three-days of paid-time off while waiting for test results. See § 12-13.

The law is effective as of August 11, 2020.

North Carolina

[\(full text\)](#)

North Carolina enacted a law that limits liability for an individual, entity, or government from a claim resulting in the contraction of COVID-19 that does not amount to “gross negligence, willful or wanton conduct, or intentional wrongdoing.” See § 99E-71(a). The law also requires premises to provide reasonable notice of actions taken to reduce the risk of transmission of COVID-19 to individuals on the premises; however no one will be liable for failing to comply with the guidelines contained in the notice.

This law is effective as of July 2, 2020, until no later than 180 days after the expiration or rescission of the North Carolina governor’s March 10, 2020, declaration of a state of emergency.

Ohio

[\(full text\)](#)

Ohio enacted a statute limiting civil liability not just for COVID-19 but also for mutated strains of the virus. No person, school, for-profit, non-profit, or government entity will be liable for a civil action for damages due to injury, death, or loss to person or property that is based on “exposure to, or the transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2, or any mutation thereof.” See § 2(A). This does not apply to exposures, transmissions, or contractions of the viruses due to “reckless conduct, or intentional misconduct, or willful or wanton misconduct.” The law also prohibits class actions when the civil immunity does not apply.

Notably, government orders and regulations issued do not create a separate duty of care that can be enforced in a cause of action for breach of such duty. There is also a presumption that the

government order, recommendation or guideline is not admissible as evidence to establish a duty or breach of duty.

The law applies retroactively from March 9, 2020, and expires on September 30, 2021.

Oklahoma

[\(full text\)](#)

Oklahoma modified its statute to establish immunity in certain civil actions where a corporation, person or agent conducting business in Oklahoma will “not be liable in a civil action claiming an injury from exposure or potential exposure to COVID-19 if the act or omission alleged to violate a duty of care of the person or agent was in compliance or consistent with [federal or state regulations/orders or public health guidance] applicable at the time of the alleged exposure.” See § 1(B). If two or more guidance apply, then the defendant is not liable if the defendant acted consistent with any one applicable guidance.

The law applies to lawsuits filed on or after May 21, 2020. See § 1(C).

Tennessee

[\(full text\)](#)

The Tennessee COVID-19 Recovery Act provides a person, healthcare provider, or entity immunity from civil lawsuits for “loss, damage, injury, or death arising from COVID-19...” unless the defendant’s conduct constituted “gross negligence or willful misconduct.” See § 29-34-802.

For suits based on exposure to or contraction of COVID-19, the plaintiff must also have consulted with a physician and obtained a physician’s written statement. The law also provides similar immunity for public institutions of higher education unless the institutions or employee’s conduct constituted “gross negligence or willful misconduct” § 5 (amending Tenn. Code Ann. 49-7-1). Similarly, government employees acting within the scope of employment are immune unless the employee’s conduct was “willful, malicious, criminal, or performed for personal financial gain.” See § 29.20-310(f).

Tennessee is one of the few states that have specifically mentioned the heightened burden of clear and convincing evidence that plaintiffs have to prove in a COVID-19 liability case.

With minor exceptions, the law applies to all claims arising from COVID-19 filed or noticed after August 3, 2020, and to any loss, illness, injury or death occurring before July 1, 2022.

Utah

[\(full text\)](#)

Utah enacted a law providing immunity from civil liability for damages or an injury resulting from an exposure to COVID-19 while on the premises owned or operated by a person, or during an activity managed by a person or entity. See § 78B-4 517(2). This immunity does not apply to “willful misconduct, reckless infliction of harm, or intentional infliction of harm.” See § 68-3-12.5

The law is effective as of May 4, 2020.

Wyoming

([full text](#))

Wyoming provides liability immunity for the duration of the Wyoming's public health emergency. "[A]ny health care provider or other person, including a business entity, who in good faith follows the instructions of a state, city, town or county health officer or who acts in good faith in responding to the public health emergency is immune from any liability arising from complying with those instructions or acting in good faith." This immunity does not cover acts or omissions considered "gross negligence or willful or wanton misconduct." See § 1(35-4-114).

The law is effective as of May 20, 2020, and applies during periods of public health emergencies as determined by the Wyoming governor. See W.S. 35-4-115(a)(i).

If you wish to receive regular updates on the range of the complex issues confronting businesses in the face of the novel coronavirus, please [subscribe](#) to our COVID-19 "Special Interest" mailing list.

And for any legal questions related to this pandemic, please contact the authors of this Legal Update or Mayer Brown's COVID-19 Core Response Team at FW-SIG-COVID-19-Core-Response-Team@mayerbrown.com.

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