

LEGAL UPDATES

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## Professional

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# 50-State Update on COVID-19 Business Liability Protections

A number of states have passed or are considering passing legislation to shield certain businesses from liability from claims for injury caused by exposure to COVID-19. Generally, the laws require that the business was in compliance with relevant guidance at the federal, state or local level in order for the protection to apply. Most state laws do not shield liability where the injury was caused by wanton, reckless, willful or intentional misconduct. Some states at this time have only shielded healthcare professionals or other essential businesses; however, there appears to be a trend expanding liability protections to all businesses and premise owners.

Please click on the state you are interested in to view state-specific information:

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Alabama	Illinois	Montana	Rhode Island
Alaska	Indiana	Nebraska	South Carolina
Arizona	Iowa	Nevada	South Dakota
Arkansas	Kansas	New Hampshire	Tennessee
California	Kentucky	New Jersey	Texas
Colorado	Louisiana	New Mexico	Utah
Connecticut	Maine	New York	Vermont
Delaware	Maryland	North Carolina	Virginia
Dist. of Col.	Massachusetts	North Dakota	Washington
Florida	Michigan	Ohio	West Virginia
Georgia	Minnesota	Oklahoma	Wisconsin
Hawaii	Mississippi	Oregon	Wyoming
Idaho	Missouri	Pennsylvania	

## Alabama

The Alabama legislature passed Senate Bill No. 30, which provides that any business, healthcare provider, church, educational entity, government entity, or cultural institution is immune from claims for injury caused by exposure to COVID-19, vaccinations for COVID-19, or providing personal protective equipment. The immunity does not apply if the injury is alleged to have been caused by “wanton, reckless, willful or intentional misconduct.” The Bill was signed by the Governor on February 12, 2021.

**(Pending Legislation):** Senate Bill 307, which parallels House Bill 521, would provide civil immunity for healthcare facilities acting in “good faith compliance” with its provisions that set minimum standards for visitation of persons receiving acute care or residing in long-term care facilities. Under the Bills, healthcare facilities that would be shielded from civil liability for compliance include: (i) general acute care hospitals, (ii) long-term care facilities, (iii) skilled nursing facilities, (iv) intermediate care facilities, (v) assisted living facilities, and (vi) specialty care assisted living facilities. Senate Bill 307 was referred to the Senate Committee on Healthcare on March 4, 2021, and House Bill 521 was referred to the House Committee on Health on March 9, 2021.

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## Alaska

Senate Bill 241, which was signed into law on May 18, 2020, authorizes the chief medical officer (“CMO”) of the Department of Health and Social Services to issue standing orders for public health agents and healthcare providers related to essential public health services and functions in response to COVID-19. The Bill protects public health agents and healthcare providers from civil liability resulting from an act or omission that occurs while they are implementing a standing order issued by the CMO, unless the act or omission is a result of gross negligence, recklessness, or intentional misconduct.

**(Pending Legislation):** The Alaska legislature introduced House Bill 4 in January 2021. The proposed Bill provides for immunity from liability and disciplinary action for occupational licensees for exposure of clients to COVID-19, if the licensee was in substantial compliance with applicable laws and health mandates at the time of the client’s exposure. The Bill also provides immunity for a person who engages in business activities and employees if a customer is exposed to COVID-19 while patronizing the business. To be granted immunity, the business must be operating in substantial compliance with applicable laws and health mandates. The Bill was referred to the House Labor & Commerce and Judiciary Committees on February 18, 2021.

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## Arizona

A.R.S. 36-790, commonly referred to as the Good Samaritan Law, states that a person or healthcare provider undertaking any activity required by Arizona Law, including reporting or participating in quarantine or isolation procedures, is immune from civil or criminal liability if they acted in good faith. The law states that “Actions required by this article are presumed to be in good faith.” The law incorporates the immunities prescribed in A.R.S. 26-314, which protects emergency workers engaging in emergency management activities or performing emergency functions from liability for claims based on the exercise or performance, or the failure to exercise or perform, a discretionary function or duty, unless they acted with gross negligence, in bad faith, or with willful misconduct.

Arizona’s Governor issued Executive Order 2020-63 to provide protections against liability for healthcare workers’ “good faith efforts to provide assistance” during the COVID-19 pandemic. The Order is in effect until March 31, 2021, unless or until rescinded or further extended.

**(Pending Legislation):** Senate Bill No. 1377, which passed the Senate on February 24, 2021, provides that if the Governor declares a state of emergency for a public health pandemic, a person or provider that acts in good faith to protect individuals from the public health pandemic is not liable for

damages in any civil action. The protection will not be available if it is proven by “clear and convincing evidence that the person or provider failed to act or acted with willful misconduct or gross negligence.” It provides the same protection and standard of proof for health professionals and healthcare institutions. Causes of action that occurred on or after March 11, 2020 and before December 31, 2022 would be included in this protection.

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### Arkansas

Arkansas’s Governor issued two related Executive Orders on June 15, 2020 that were effective immediately and will remain effective until the emergency is terminated. Executive Order No. 20-33 states that all businesses and their employees shall be immune from civil liability as a result of exposure to COVID-19. Executive Order 20-33 includes a presumption that all persons are (i) substantially complying with health and safety directives, or (ii) acting in good faith while attempting to comply with health and safety directives. Executive Order No. 20-34 gives healthcare providers and emergency workers authorization to use crisis standards of care to respond to and treat COVID-19 patients. Further, the Executive Order protects healthcare providers and emergency workers from civil liability. Neither Executive Order provides immunity in the case of willful, reckless, or intentional misconduct.

**(Pending Legislation):** Senate Bill No. 17 was introduced in the Arkansas Senate on December 16, 2020, which would provide a person or a person’s employee, agent, or office with immunity from civil liability for damages caused by or resulting from exposure of an individual to COVID-19 on a business’ premises. The immunity would not apply to “willful, reckless, or intentional misconduct.” The Bill also creates the presumption that a person is not committing “willful, reckless, or intentional misconduct” if the person is (i) substantially complying with health and safety directives, or (ii) acting in good faith while attempting to comply with health and safety directives concerning COVID-19. The Bill was referred to the Senate Public Health, Welfare and Labor Committee on January 11, 2021.

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### California

**(Pending Legislation):** On February 18, 2021, Assembly Bill 1152 was introduced which would create a standard of care on COVID-19 safety and a temporary limitation on liability in postsecondary educational institutions working to re-open for in-person education. An additional bill, Assembly Bill 1759 is similarly pending, which would provide liability protection for all institutions of higher education, its officers and governing bodies that substantially complied with or operated in a manner consistent with applicable public health safety guidance for COVID-19. The Bill would exclude

intentional misconduct, wanton or reckless misconduct, gross negligence, or willful and wanton negligence.

Assembly Bill 1313 would exempt businesses from civil liability for claims alleging that a person contracted COVID-19 while at the business or due to the actions of the business. For this protection to apply, the business must substantially comply with all applicable state and local health laws, regulations, and protocols. The protection does not apply in cases involving gross negligence, willful misconduct, or unlawful discrimination by the business. The bill was referred to committee on March 4, 2021.

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### **Colorado**

**(Pending Legislation):** Colorado has a number of current Bills pending that would protect entities that comply with public health guidelines related to COVID-19. HB21-1074 and SB 21-080 would establish immunity from civil liability for entities for acts or omissions that result in exposure, loss, damage, injury or death arising out of COVID-19 where that entity attempted in good faith to comply with applicable public health guidance. SB21-080 creates an additional exception for gross negligence or willful and wanton acts or omissions of the entity. If enacted, both Bills would be repealed two years after the date that the state of disaster emergency terminates. An additional Bill, SB20B-011, was introduced in 2020 but limited to small businesses.

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### **Connecticut**

#### **(Pending Legislation):**

Beginning March 10, 2020, Governor Lamont's Executive Order No. 7U provided immunity for healthcare professionals and health care facilities from civil suit for any injury occurring while the professionals or facilities were providing healthcare services in support of the State's COVID-19 response. Immunity does not extend to acts that constitute a crime, fraud, malice, gross negligence, willful misconduct, or would constitute a false claim. This immunity expired March 1, 2021, per Governor Lamont's Executive Order No. 10A. A similar immunity was introduced in Senate Bill 234. This bill would provide immunity to healthcare professionals and healthcare facilities from civil liability for injuries occurring while these healthcare professionals and facilities were supporting the state's COVID-19 response. The bill was referred to committee on January 22, 2021.

House Bill No. 5125 was introduced on January 12, 2021. The Bill would provide temporary immunity from civil liability to businesses, nonprofit organizations, universities, the state and any of its political

subdivision who, on or after March 10, 2020, acted in substantial compliance with public health guidelines for any damages arising out of exposure to COVID-19, except in the instances of gross negligence or willful misconduct.

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### **Delaware**

At this time, Delaware does not have any legislation specific to COVID-19 liability. However, under Title 20, Section 3121 of the Delaware Code, qualified medical personnel engaged in emergency or disaster relief operations and activities in connection with such emergency or disaster as declared by the Governor, shall not be liable for death or any injury to persons as a result of such relief operations. The statute excludes willful or wanton disregard of the rights of others.

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### **District of Columbia**

The Council of the District of Columbia enacted the COVID-19 Response Supplemental Emergency Amendment Act of 2020 and Section 7-311 to address limitations on liability for certain persons performing tasks relating to the COVID-19 pandemic. The certain persons protected from liability include, but are not limited to the following: (i) healthcare providers; (ii) first responders; (iii) donors of time, professional services, equipment, or supplies for the benefit of persons or entities providing care for COVID-19 patients; and (iv) contractors who is contracted to provide healthcare services related to the District's COVID-19 response. The Act was only effective until July 9, 2020, but Section 7-311 is effective until April 1, 2021.

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### **Florida**

**(Pending Legislation):** On January 6, 2021, the Florida legislature proposed Senate Bill No. 72, and its identical counterpart House Bill No. 7, which would allow business entities, educational institutions, government entities, and religious institutions to “enjoy heightened legal protections against liability as a result of the COVID-19 pandemic.” A plaintiff who files a civil action based on a COVID-19 related claim must submit an affidavit signed by a physician who attests to the physician’s belief that the plaintiff’s COVID-19 related damages occurred as a result of the defendant’s acts or omissions. If the court determines that the defendant made a good faith effort to comply with applicable health standards, the defendant is immune from civil liability. House Bill No. 7 passed the House on March 5, 2021.

Senate Bill No. 74 provides civil liability protection against COVID-19 for healthcare providers, except in the case of grossly negligent or intentional misconduct. Additionally, it provides that a healthcare provider is immune from civil liability for COVID-19 related claims if “supplies, materials, equipment, or personnel necessary to comply with the applicable government-issued health standards or guidance at issue were not readily available or were not available at a reasonable cost.” This Bill would be effective to causes of action “that accrue no later than one year after the termination or expiration of the state public health emergency related to COVID-19.” This bill is now being considered by the Committee on Rules as of March 11, 2021. House Bill No. 7005 is substantially similar to Senate Bill 74, but applies to a wider set of health care providers. This Bill would extend civil liability protection to (i) certain licensed providers, (ii) clinical and nonclinical staff providing inpatient or outpatient services, (iii) continuing care facilities, and (iv) pharmacies. This Bill would automatically terminate one year and one day after it is effective unless the legislature reenacts the law.

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### **Georgia**

The Georgia COVID-19 Pandemic Business Safety Act (GCPBSA), signed by Governor Kemp on August 5, 2020, protects individuals and business from certain COVID-19 related liability claims. The GCPBSA went into effect August 7, 2020 and will remain in effect until July 14, 2021. To avoid liability, an individual or business must either (i) provide the guest with a receipt of proof of purchase for entry or (ii) post a warning sign at the point of entry to the premises, with the specific language being subject to the requirements specified in the Act. The GCPBSA does not apply in cases of gross negligence, willful and wanton misconduct, reckless infliction of harm.

**(Pending Legislation):** House Bill No. 112 was introduced on January 26, 2021, which would extend the immunities from liability claims regarding COVID-19 until July 14, 2022. The Bill passed the House of Representatives on February 9, 2021.

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### **Hawaii**

Under Executive Order No. 20-05, healthcare facilities, healthcare professionals and healthcare volunteers that in good faith comply with state and federal orders regarding the disaster emergency are immune from civil liability for death or injury to persons or property damage caused by their acts or omissions that occurred at a time when that individual was engaged in providing healthcare services.

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## Idaho

The Idaho "Coronavirus Limited Immunity Act" was signed by the Governor on August 27, 2020. The Act provides that a person is immune from civil liability for damages resulting from exposure of an individual to COVID-19. The immunity can apply to individuals, businesses, cities, counties, school districts, universities, religious organizations, and other units of local government. Immunity does not apply to acts or omissions that constitute an intentional tort or willful or reckless misconduct. This Act will remain in effect until July 1, 2021. House Bill No. 149 was introduced to extend the date in which the Act would be effective. The Bill has passed the House, and if it is signed into law the Act will be effective until July 1, 2022.

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## Illinois

Through Governor Pritzker's Executive Order No. 37, hospitals and healthcare professionals (including healthcare volunteers) are protected from civil liability for injury or death alleged to have been caused by an act or omission that occurred at a time when the hospital or healthcare professional was providing healthcare services in response to the COVID-19 outbreak and consistent with Illinois Department of Public Health guidelines. The immunity does not apply if such injury was caused by gross negligence or willful misconduct.

**(Pending Legislation):** House Bill No. 2571 creates the COVID-19 Immunity Act. The Act would provide that individuals, business, or units of local government shall not be liable in a civil action claiming an injury from exposure or potential exposure to COVID-19. To gain this protection the act or omission alleged to violate a duty of care of the individuals, business, or units of local government must be in compliance or consistent with (i) federal regulations, (ii) State regulations, (iii) a presidential executive order, (iv) gubernatorial executive order, or (v) other guidance applicable at the time of the alleged exposure. The Bill provides that immunity does not apply to willful misconduct, reckless infliction of harm, or intentional infliction of harm. This Bill remains in Judiciary-Civil Committee.

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## Indiana

On February 18, 2021, Governor Holcomb signed Senate Bill No. 1 into law. The Bill provides civil tort immunity for damages arising from COVID-19 if someone is exposed to COVID-19 at a business or a location where an organization is providing a service, including schools and local government functions. Further, the Bill defines "COVID-19 protective product" and provides civil tort immunity for harm that results from the design, manufacture, labeling, sale, distribution, or donation of a



COVID-19 protective product, Businesses and COVID-19 protective products will not be protected if an act or omission that constitutes gross negligence or willful or wanton misconduct was involved. The Bill also prohibits class action suits. This bill applies retroactively to all activity since March 1, 2020.

**(Pending Legislation):** House Bill No. 1002 provides immunity for healthcare workers from certain professional discipline during a state emergency, but does not have any liability protection for employers. The House Bill passed the House and has been referred to the Senate. If passed, this Bill would be retroactive to March 1, 2020.

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### Iowa

On June 18, 2020 Governor Reynolds signed the "COVID-19 Response and Back-to-Business Limited Liability Act" into law. The law protects businesses, landlords, nursing homes and medical facilities from COVID-19-related lawsuits, except under certain circumstances. Under the new law, persons who possess or are in control of a premises are not liable for civil damages arising out of an individual's exposure to COVID-19 on the premises unless the person in control of the premises recklessly disregards a substantial and unnecessary risk or exposed the individual to COVID-19 maliciously or intentionally. The law provides a similar protection for healthcare providers unless the provider's actions amount to recklessness or willful misconduct. It also protects any person that designs, manufacturers, labels, sells, distributes, or donates cleaning supplies, personal protective equipment, tests or medications, medical devices, equipment, supplies, or treatments in response to COVID-19 from civil liability for failure to provide proper instructions or warnings, unless the person had actual knowledge of a defect in the product and recklessly disregarded a substantial and unnecessary risk or the person acted with actual malice. The Act is retroactive to January 1, 2020.

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### Kansas

Kansas passed the Business Liability Protection Act in June 2020. This Act establishes that healthcare providers are immune from civil liability for damages for acts and omissions as a direct response to any COVID-19 state of disaster emergency under Kansas Emergency Management Association (KEMA). The Act also establishes that a person (or agent of such person, such as an employee) conducting business in Kansas is immune from liability in a civil action for a COVID-19 claim if such person was acting pursuant to and in substantial compliance with public health directives applicable to the activity giving rise to the claim. The provisions related to immunity apply retroactively to any

cause of action accruing on or after March 12, 2020. This business liability section of this legislation expired on January 26, 2021, while the healthcare provider immunity remains in place.

**(Pending Legislation):** House Bill No. 2126 gives adult care homes, essentially, the same level of immunity given to hospitals and healthcare providers. The immunity for adult care homes would be virtually blanket for all coronavirus-related claims, except in cases of gross negligence or reckless conduct. The Bill was referred to Committee on Judiciary on March 11, 2021.

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### **Kentucky**

Governor Beshear signed Senate Bill 150 into law on March 30, 2020. The Bill includes a provision providing a defense to civil liability for ordinary negligence for any healthcare provider who, in good faith, renders care or treatment of a COVID-19 patient during the state of emergency.

#### **(Pending Legislation):**

On January 5, 2021, the Kentucky Senate introduced Senate Bill No. 5 to provide liability protection for persons providing essential services related to a declared emergency during the period from when the emergency is declared until one year after the emergency declaration ends, except in cases of willful, grossly negligent, or intentional misconduct. It also provides protections for owners who invite another person onto their premises during a declared emergency. Under the Bill, owners do not owe a duty to protect persons from or warn them about risks related to the declared emergency and do not assume responsibility or incur liability for any damages caused by the emergency.

On January 6, 2021, the Kentucky House of Representatives also introduced House Bill No. 10, which provides that any person acting in good faith in the performance of the person's business operations, or on the premises owned or operated by the person, has a defense to civil liability for ordinary negligence for any personal injury resulting from exposure to COVID-19 if the person "acts as an ordinary, reasonable, and prudent person would have acted." There is a rebuttable presumption that the safety measures adopted by a person are reasonable if they conform to The Center for Disease Control guidelines.

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### **Louisiana**

On June 16, 2020, the Louisiana Governor signed Act No. 336 into law. The law provides that "no natural or juridical person, state or local government, or political subdivision thereof shall be liable for any civil damages" related to exposure to COVID-19 in the course of their business operations. This limitation of liability does not apply if the person, government, or political subdivision: (i) failed

to substantially comply with applicable COVID-19 procedures or (ii) acted with gross negligence or wanton or reckless misconduct. The Act also provides liability protection for event organizers, producers, hosts, and personal protective equipment manufacturers unless the damages were caused by gross negligence or willful or wanton misconduct. Persons administering, employing, or dispensing personal protective equipment in the state of Louisiana are also not liable for civil damages unless they: (a) did not substantially comply with COVID-19 guidelines or (b) acted with gross negligence or wanton or reckless misconduct.

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### **Maine**

At this time, no pending or current legislation exists in Maine that would shield any entity from liability from injury as a result of exposure from COVID-19.

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### **Maryland**

Pursuant to Md. Code Ann. Pub. Safety § 14-3A-06, which was in place prior to the COVID-19 pandemic, a healthcare provider is immune from civil or criminal liability if the healthcare provider acts in good faith and under a catastrophic health emergency proclamation.

**(Pending Legislation):** Senate Bill No. 210 was introduced on January 13, 2021, and would provide civil immunity from liability for a COVID-19 claim to a person who acts in compliance with certain statutes, rules, regulations, executive orders and agency orders, unless the person acted with gross negligence or intentional wrongdoing. House Bill No. 508 was introduced on January 15, 2021 and is a similar to Senate Bill 210.

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### **Massachusetts**

On April 17, 2020, the Massachusetts Governor signed Bill S. 2640 into law. This law provides civil immunity for healthcare providers and facilities providing medical care during the COVID-19 emergency, absent gross negligence or other reckless or willful misconduct. Volunteer organizations are provided similar immunity if the claim arises out of the use of the facility as part of the commonwealth's COVID-19 response.

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### **Michigan**

On October 22, 2020, the Michigan Governor signed House Bill No. 6030 and House Bill No. 6031 into law. House Bill 6030, titled "COVID-19 Response and Reopening Liability Assurance Act," provides immunity from tort liability from COVID-19 claims to a person (defined broadly to include individuals, businesses, government entities, education institutions, and non-profit organizations) acting in compliance with COVID-19-regulations that "had not been denied legal effect at the time of the conduct or risk that allegedly caused harm." House Bill 6031 amends the Michigan Occupational Safety and Health Act to provide immunity from liability for an employee's exposure to COVID-19, if the employer is operating in compliance with COVID-19-related regulations that "had not been denied legal effect at the time of the exposure." Both Bills are effective retroactive to March 1, 2020.

**(Pending Legislation):** On March 11, 2021 House Bill 4501 was introduced and referred to the Committee on Government Operations. This bill amends the Michigan Occupational and Safety Health Act to provide employers immunity from civil penalties for violating an emergency standard if certain conditions are met. The conditions are: (i) the emergency standard addresses COVID-19, (ii) the violation is the employer's first violations of the emergency standard, and (iii) the employer takes action to correct the violation. Further, if a civil penalty for violating an executive order dealing with COVID-19 was assessed and the order is determined to be unconstitutional or otherwise void by the supreme court, and if the employer pays the civil penalty, the department shall reimburse the employer for that amount. This Bill would be retroactive and applies regardless of whether the civil penalty was assessed before its effective date.

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### Minnesota

**(Pending Legislation):** On February 1, 2021, Minnesota State Senators introduced Senate File No. 512 to provide healthcare providers (doctors, nurses, pharmacists, etc.), facilities (including, but not limited to hospitals, nursing homes, and clinics), and responders civil immunity from COVID-19 related lawsuits. This immunity applies unless the act or omission constitutes intentional or reckless misconduct or gross negligence. In addition to providing broad immunity, SF 512 also contains administrative immunity provisions to retroactively protect healthcare entities and providers from government sanctions and financial penalties for health and safety violations occurring on or after March 13, 2020. A companion bill has also been introduced in the House of Representatives, House File No. 571.

On February 4, 2021 House File No. 688 was introduced and referred to the Committee on Judiciary Finance and Civil Law. This bill provides immunity from civil liability for damages resulting from exposure of an individual to COVID-19: (i) on the premises owned or operated by the person; (ii) on any premises on which the person provided property or services to the individual; or (iii) during an activity managed, organized, or sponsored by such person. However, this immunity does not apply to

any person whose actions or omissions constitute gross negligence. This section would be effective retroactively for causes of action accruing on or after January 1, 2020.

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### **Mississippi**

The "Mississippi Back-to-Business Liability Assurance and Health Care Emergency Response Liability Protection Act" (Mississippi Code §§ 11-71-1 — 11-71-13) provides COVID-19 liability protections. The liability protections include the following:

Miss. Code § 11-71-5 establishes legal immunity from civil damages related to exposure to COVID-19 if a person, including premises owners and those in control of premises, makes a good faith attempt to follow applicable public health guidance. The Act also creates civil immunity for claims related to actual or alleged exposure to COVID-19 in the time before applicable public health guidance was available.

Miss. Code § 11-71-7 establishes immunity for healthcare professionals or healthcare facilities during the entirety of the COVID-19 public health emergency and will terminate one year after the end of the COVID-19 public health emergency. The immunity applies to both acts or omissions related to treating COVID-19, as well as acts or omissions while providing healthcare services to persons unrelated to COVID-19 when those acts or omissions were intended to support the state's response to the COVID-19 emergency.

Miss. Code § 11-71-9 establishes immunity from suit for civil damages for injuries related to exposure to COVID-19 for persons who make, sell, or donate qualified medical products, cleaning supplies or personal protective equipment.

The immunities provided in the Act do not apply where the plaintiff shows, by clear and convincing evidence, that a defendant or any employee or agent thereof acted with actual malice or willful, intentional misconduct. There is a two-year statute of limitations on COVID-19 related claims. The Act and immunities that it establishes went into effect on March 14, 2020.

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### **Missouri**

**(Pending Legislation):**

In January 2021, Missouri lawmakers filed various pieces of legislation to provide protection from civil actions during the COVID-19 state of emergency. As of January 25, 2021, the Bills have been combined into Senate Bill No. 51. The Bill provides that healthcare providers who provide care necessitated by the COVID-19 pandemic are not liable for any civil damages unless the damages are a result of malicious or intentional misconduct. This protection would apply to all civil actions filed on or after the effective date of the bill. Further, a premises owner is protected from liability from an individual's claim for COVID-19 exposure, unless a plaintiff can prove intentional harm. There is a rebuttable presumption in favor of the owner when the owner posts a warning notice, with the specific language specified in the Bill.

House Bill No. 1064 and House Bill No. 759 provide similar liability protections. The Bills would provide that no individual or entity engaged in businesses, services, activities, or accommodations will be liable in a COVID-19 exposure action unless the individual or entity engages in reckless or willful misconduct that causes actual exposure to and injury from COVID-19. The Bills also provide that no healthcare provider shall be liable in a COVID-19 medical liability action, except in the case of reckless or willful misconduct and the injury was caused by such misconduct. Additionally, the Bill also provides immunity from liability for individuals and entities that design, manufacture, distribute, sell, or donate a covered product under certain circumstances when the product is made outside of the ordinary course of business. This immunity does not apply for reckless or willful misconduct and an action must be brought within two years of the date of alleged harm.

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### **Montana**

Senate Bill No. 65, signed into law on February 10, 2021, provides an affirmative defense for businesses and other private entities against legal liability in the event someone is injured or dies after being exposed to COVID-19 on their premises. To avail themselves of this shield, businesses must take "reasonable measures" to follow public-health guidelines. The only exceptions to this shield are actions constituting gross negligence, or willful and wanton misconduct, or intentional torts.

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### **Nebraska**

**(Pending Legislation):** The Nebraska Legislature is considering Legislative Bill 139 intending to incentivize compliance with federal, state, and local safety standards and regulations by providing a "limited, temporary liability protection for those who comply with safety standards and regulations related to COVID-19." The main components of the bill include: (i) a bar against lawsuits except in the case of hospitalization or death due to COVID-19; (ii) a bar against suing entities that were following

federal and state laws or public health orders; (iii) a requirement that plaintiffs demonstrate, by clear and convincing evidence, that an entity acted with gross negligence or willful misconduct; and (iv) additional liability protections for healthcare providers who caused or contributed to the death or injury of an individual through acts or omissions while providing or arranging for healthcare services. Further, the Bill would create a two-year statute of limitations on claims of gross negligence and willful misconduct. If the Bill were to pass, it would apply to any cause of action occurring on or after the effective date and before the earlier of (i) December 31, 2022 or (ii) one year after the end of the COVID-19 state of emergency.

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### **Nevada**

Nevada passed SB4 providing most businesses with immunity from liability where there is an alleged personal injury or death as a result of COVID-19 exposure, so long as they follow local, state, and federal health standards and the business doesn't act with gross negligence and such negligence was the proximate cause of the personal injury or death. Expressly excluded from the law's protections are home nursing agencies, facilities for hospice care, facilities for intermediate care, facilities for skilled nursing, hospitals, independent centers for emergency medical care, and public school entities for preschool, kindergarten, or grades 1 through 12, including school districts, charter schools or university schools for profoundly gifted pupils. The legislation is effective through the later of (i) the date of termination of the Governor's Declaration of Emergency for COVID-19 or (ii) July 1, 2023.

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### **New Hampshire**

**(Pending Legislation):** On January 19, 2021, SB63 was introduced. This Bill would provide that no business organization shall be liable from personal injury resulting from or related to an actual or alleged exposure to COVID-19 in the course of such business's activity or while working for such business organization, where that business organization was following applicable government standards. The liability shield will not apply to gross negligence, willful misconduct, intentional criminal misconduct or intentional infliction of harm. The Bill would also create a one-year statute of limitations for lawsuits alleging injury from COVID-19.

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### **New Jersey**

New Jersey's Governor Murphy signed Senate Bill No. 2333 granting immunity to healthcare professionals, facilities, and systems during the COVID-19 emergency. The immunity extends to (i)

civil liability for injury or death as a result of an act or omission by the healthcare professional, health care facility or systems in the course of providing care, including acts or omissions undertaken in good faith by the healthcare professional or facility to support the effort to treat or prevent the spread of COVID-19, and (ii) civil and criminal liability for any damages related to the allocation of ventilators or other scarce medical resources.

**(Pending Legislation):** New Jersey is considering Senate Bill 3006 which would restore civil liability of nursing homes and related facilities during the COVID-19 pandemic, which were granted immunity under Senate Bill No. 2333. Additionally, two bills were introduced in 2020, Assembly Bill 4189 and Senate Bill 2502, establishing immunity for businesses against any damage claims resulting from COVID-19 exposure occurring at the premises owned or operated by the employer, or during activity managed by the employer. The grant of immunity protection would not apply to willful misconduct, reckless infliction of harm or intentional infliction of harm.

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### **New Mexico**

New Mexico's Governor Grisham signed Executive Order 2020-083, in December 2020, providing for professional liability protection for medical professionals that are providing healthcare services related to COVID-19. The order highlights several issues that practitioners have faced during the pandemic, including but not limited to, extended hours with heavy workloads, personal illnesses and fewer resources. Governor Grisham's Order was initially effective for a period of thirty days.

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### **New York**

New York's Emergency or Disaster Treatment Protection Act immunized healthcare facilities and professionals from certain forms of liability during the COVID-19 pandemic, if they met certain conditions under the Act. Additionally, volunteer organizations are immune from civil and criminal liability for any damages at their facilities that are a result of the state's response to the emergency declaration. The Act expanded on Governor Cuomo's Executive Order 202.10, signed on March 7, 2020, that provided protection for physicians and nurses from civil liability for acts or omissions that result in injury or death during the COVID-19 pandemic. The Act applies retroactively from March 7 and lasts until the New York COVID-19 emergency declaration expires. On August 3, 2020, Governor Cuomo signed Senate Bill 8835 rolling back some of the protections in the Emergency or Disaster Treatment Protection Act. In particular, the Bill removed the immunity protection for (i) treatment that was not directly related to treating a known or suspected case of COVID-19 and (ii) for any treatment related to the prevention of COVID-19.



## **(Pending Legislation):**

During the 2021-2022 New York Legislative Session, numerous pieces of legislation have been introduced, including Assembly Bill 3677 which would amend the Emergency or Disaster Treatment Protection Act to include addiction service providers as protected under the Act.

Additionally, Senate Bill 2560/Assembly Bill 4102, provides that “covered entities” would be shielded from liability related to the contraction of COVID 19, so long as such entities were operating in “good faith.” A “covered entity” includes most businesses and individuals and “good faith” is defined as reasonable efforts to comply with current federal, state, and local laws. Further, Senate Bill 3725 would more generally shield employers from liability associated with the contraction of any disease in conjunction with a pandemic, as declared by the World Health Organization. To be covered by this liability shield, employers must develop a business safety plan within 14-days of the first confirmed case in New York State. To the extent that this plan is in place and reasonably protective, the employer should not be held liable for any contraction of disease from their business operations.

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## **North Carolina**

North Carolina’s Act to Provide Limited Immunity from Liability for Claims Based on Transmission of Coronavirus Disease 2019 (COVID-19) provides limited immunity to businesses, individuals, government agencies and subdivisions, and other protected entities, referred to as “Covered Entities.” To receive the immunity, the Covered Entity must take some sort of protective action to prevent the spread of COVID-19 on its premises and provide reasonable notice of such safety plans to individuals present on the property. Covered Entities will not be liable for any act or omission alleged to have resulted in the contraction of COVID-19. The protection only applies for claims that arise within 180 days of the rescission or expiration of the Governor’s State of Emergency Executive Order.

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## **North Dakota**

**(Pending Legislation):** On February 5, 2021, the North Dakota House of Representatives passed House Bill No. 1175 to shield employers from COVID-19-related lawsuits. The Bill was written to prevent civil lawsuits brought by employees—even employees working for health care providers—alleging contraction of COVID-19 following exposure at work, unless the employee believes that the employer intended to hurt the employee. As written, the Bill would apply retroactively to exposures occurring from the beginning of 2020.

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## Ohio

**(Pending Legislation):** Ohio has two separate pieces of legislation aimed at providing protection for business regarding COVID-19 liabilities. On December 16, 2020, the House passed the Grant Immunity to Essential Workers Who Transmit COVID-19 Bill providing that no civil action for damages regarding injury, death or loss to person or property shall be brought against any person if the cause of action is based on COVID-19, unless it is established that exposure or transition was by reckless conduct or intentional misconduct on the part of the person. Under the Bill, “person” includes a school, for-profit or nonprofit entity, a governmental entity, a religious entity, or a state institution of higher education. The second piece of legislation is Senate Bill 308 providing that no service provider shall be liable for damages to any person in a civil action resulting from a person’s exposure to COVID-19. This protection is set to expire on April 1, 2021.

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## Oklahoma

Oklahoma has two laws providing liability protections in relation to the COVID-19 pandemic. First, Senate Bill 1946 provides businesses and individuals with immunity from any civil action claiming injury from exposure or potential exposure to COVID-19, if the act or omission alleged to violate a duty of care was in compliance or consistent with federal or state regulations, a Presidential or Gubernatorial Executive Order, or guidance applicable at the time of the alleged exposure. Applicable guidance includes that which is issued by the Centers for Disease Control and Prevention, the Occupational Safety and Health Administration, the Oklahoma State Department of Health, and the Oklahoma Department of Commerce. Second, Senate Bill 1947 provides products liability immunity to any person or business that designs, manufactures, labels, sells, distributes, or donates disinfecting and cleaning supplies or personal protective equipment during and in response to COVID-19 that does not make such products in the ordinary course of business, unless the person or business had actual knowledge that the product was defective or acted with deliberate indifference to or conscious disregard of a substantial and unnecessary risk that the product would cause serious injury to others.

Oklahoma also passed the COVID-19 Public Health Emergency Limited Liability Act, which provides health care facilities and health care providers with immunity from civil liability resulting from an act or omission by the facilities or the providers for any loss or harm to a person suspected or confirmed to have COVID-19. The immunity only applies if the act or omission was not the result of gross negligence or willful or wanton misconduct and occurred while providing COVID-19 healthcare services to the person impacted.

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## **Oregon**

Oregon's Governor signed House Bill 4402 which provides protection for schools, both public and private, so long as they open in accordance with the Oregon Health Authority's guidance on reopening schools. Such guidelines dovetail with county-by-county guidelines, whereby schools opening outside of their county's risk level's guidelines might not be afforded liability protections. The law applies to COVID-19 claims brought during the coronavirus state of emergency, currently in effect until May 2, 2021.

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## **Pennsylvania**

Pennsylvania's Governor signed Executive Order to Enhance Protections for Health Care Professionals, which provides healthcare practitioners protection against liability for good faith actions taken in response to the COVID-19 pandemic at any healthcare facilities, including nursing facilities, personal care homes, assisted living facilities, and more. Further, the Executive Order provides immunity for any person or organization allowing real estate or other premises used for the treatment of COVID-19 patients from any liability in the case of death, injury or loss or damage to the property. The Executive Order does not grant immunity for acts or omissions that constitute a crime, gross negligence, or fraud, malice, or willful misconduct. The Executive Order will remain in effect for the duration of the disaster emergency.

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## **Rhode Island**

Rhode Island Governor Raimondo's Executive Order 20-21 provides immunity for certain healthcare workers and healthcare facilities. Specifically, the Executive Order classifies the following people as "disaster response workers" entitled to immunity and entitled to provide services beyond or without a license as permitted under Rhode Island Law: (i) health care workers providing community-based healthcare services at surge hospitals and services in existing hospitals, nursing facilities and alternative nursing care sites, and (ii) landlords making the surge hospital locations and alternative nursing care sites available to the State, plus their employees, management companies and contractors providing services to construct, operate or decommission the surge hospital locations." This Executive Order was only effective until May 8, 2020.

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## **South Carolina**

**(Pending Legislation):** On February 25, 2021, the South Carolina Senate passed the COVID-19 Liability Safe Harbor Act. The Act would shield any business and non-profit organizations that adhere to the public health guidance from COVID-19 claims. After the Bill passed the Senate, the Bill was referred to the House Committee on Judiciary.

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### **South Dakota**

**(Pending Legislation):** The South Dakota legislature passed House Bill 1046, on February 8, 2021, prohibiting any claim or action for damages or relief alleging exposure or potential exposure to COVID-19, unless the exposure results in a COVID-19 diagnosis and the exposure is a result of intentional exposure with the intent to transmit COVID-19. This law, if signed by the Governor, would apply to healthcare providers, business owners, and even personal protective equipment manufacturers and distributors.

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### **Tennessee**

Tennessee Governor Lee signed the Tennessee COVID-19 Recovery Act, prohibiting claims “against any person for loss, damage, injury, or death arising from COVID-19 unless the claimant proves by clear and convincing evidence that the person proximately caused the loss, damage, injury, or death by an act or omission constituting gross negligence or willful misconduct.” The protections are applicable to claims pursued against a broad category of “persons,” including healthcare providers, business entities and schools, as well as to claims pursued against governmental entities or employees.

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### **Texas**

#### **(Pending Legislation):**

On March 3, 2021, House Bill No. 2782 was introduced, which provides that a business entity, or person who owns a business, may not be held liable for injury or death caused by exposure to COVID-19 that occurs due to the entity’s operations. This protection would not apply if there was gross negligence or willful misconduct involved. If passed, this Act would take effect on September 1, 2021.

House Bill No. 4481, introduced on March 12, 2021, would provide that a person who acts in good faith in the course of or through the performance of the person’s business operations or on the premises owned or operated by such person is immune from civil liability for ordinary negligence for

any injury or death arising from COVID-19. To receive this immunity, the person must act as an ordinary, reasonable, and prudent person would have acted in the same or similar circumstances, including the adoption of reasonable safety measures. The Bill includes a rebuttable presumption that the safety measures are reasonable if they conform to Centers for Disease Control guidelines. This immunity does not apply to an intentional tort or willful or reckless misconduct. The Bill provides that if the legislation does not receive enough votes to make it effectively immediately, then it will take effect on September 1, 2021.

House Bill No. 3659, and a similar piece of legislation in the Senate, Senate Bill No. 6, both provide for limited liability for certain claims arising during a pandemic. The Bills specifically provide for limited liability for (i) physicians, (ii) healthcare providers, and (iii) first responders who will not be liable for an injury arising from care, treatment, or failure to provide care or treatment related to or impacted by a pandemic disease. This limited liability protection would not apply in a case of reckless conduct or intentional, willful, or wanton misconduct. Also, the Bills provide that educational institutions are not liable for damages arising from a cancellation or modification of a course, program, or activity during a pandemic. The immunity applies to claims from care that arise on the date the President or Governor makes a disaster declaration and ends sixty (60) days after the declaration terminates. Additionally, House Bill No. 3748 is substantially similar to the provisions in House Bill No. 3659 and Senate Bill No. 6.

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### **Utah**

Utah Governor Cox signed Senate Bill 5003, which provides immunity from civil liability if a person is exposed to COVID-19 on a person's premises. The immunity protects any person from civil liability if someone is exposed to COVID-19 while on the premises of that person. "Persons" include businesses and organizations. Further, this immunity is in addition to any other immunity found under Utah law. The immunity is not absolute and does not include immunity for willful, reckless, or intentional misconduct.

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### **Vermont**

Vermont Statutes Annotated, Title 20, Section 20 provides that the State, its agencies and employees, political subdivisions, local emergency planning committees, and individuals, partnerships, associations, and corporations involved in emergency management activities are not liable for injury or death to any person. This protection extends to emergency management which includes a "health or disease-related emergency."

**(Pending Legislation):** On February 24, 2021, House Bill No. 319 was introduced. The Bill provides immunity from civil liability for licensed professionals who provide essential services through an agreement with a local emergency planning committees, the State Emergency Response Commission, or local emergency response officials.

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### Virginia

SB 5082, signed into law by Governor Northam, provides immunity from civil lawsuits to hospices, assisted living facilities, and related providers related to injury or death from exposure to COVID-19 or from other injury that was a result of lack of resources due to the COVID-19 disaster.

Virginia Code Sections 8.01-225.01-02 similarly provide immunity to all healthcare providers during a disaster, for response to a disaster or withholding from healthcare when a state or local emergency has been declared. The liability protection does not cover acts of gross negligence or willful misconduct.

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### Washington

At this time, no pending or current legislation exists in Washington that would shield any entity from liability from injury as a result of exposure from COVID-19.

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### West Virginia

**(Pending Legislation):** The West Virginia Senate and House have passed Senate Bill 277, also referred to as the COVID-19 Jobs Protection Act, and the legislation has been sent to the Governor's desk for signature. Under the Act, there is no claim against any person, essential business, healthcare facility, or health care provider for loss, damage, physical injury or death arising from COVID-19, COVID-19 care, or impacted care. Further, the Act provides immunity for any product liability claim for products used in response to COVID-19. With regards to this product liability protection, there is a limitation to the protection if the person: (i) had knowledge of the defect and acted with conscious, reckless, and outrageous indifference to the risk of the product or (ii) acted with malice. There is also a one-year statute of limitations from the date of the personal injury, death, or property damage. If signed, this Act will be retroactively effective beginning on January 1, 2020.

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## **Wisconsin**

Sections 98 through 104 of the 2019 Wisconsin Act 185, effective April 15, 2020, provides immunity from civil liability for healthcare workers. Healthcare workers must have in good faith substantially complied with direction, guidance, recommendations, or statements made by federal, state or local officials or guidance published by state or federal health departments. Further, wanton and reckless conduct is not covered. Further, any person who manufactures, distributes, sells, or donates emergency medical supplies is immune from civil liability.

Additionally, Senate Bill 1 provides civil liability immunity to businesses, government entities, schools, and other entities for death or injury to an individual or damages caused by an act or omission resulting in exposure to COVID-19. This immunity is effective March 1, 2020. The Bill was signed by the Governor on February 26, 2021.

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## **Wyoming**

Wyoming's COVID-19 liability protections under Enrolled Act No. 2 include protections for businesses and employees, who act in good faith in responding to the COVID-19 health emergency and follow the instructions of state, city, town, or county officials, from civil suits related to actual or potential exposure to COVID-19. There is no protection for willful, reckless, intentional, or grossly negligent misconduct, and employees are not barred from filing workers' compensation claims related to actual or potential workplace exposure to COVID-19. These protections expire on June 30, 2021.

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## **Contact us**

If you have questions about COVID-19 and business liability in your state contact Lowell Pearson, Natalie Holden, Mackenzie Conway, Reagan Kays or your Husch Blackwell attorney.

## **Your comprehensive COVID-19 legal resource**

Since the pandemic's onset, Husch Blackwell has continually monitored state-by-state orders regarding capacity, masking, vaccines, and more. We regularly address your FAQs and provide you with easy-to-use COVID-19 tools about returning to work and navigating federal programs. Contact our industry-specific legal teams or your Husch Blackwell attorney to plan through and beyond the pandemic.