Ten States With COVID-19 Biz Immunity, And Five That May Follow

Amid pending efforts to enact legislation at the federal level that would shield businesses from COVID-19 infection suits, at least nine states have taken it upon themselves to pass their own such laws or enact executive orders, while lawmakers in at least three others are contemplating such changes.

In late April, Senate Majority Leader Mitch McConnell (R-KY) said a civil liability shield for businesses would be a top Republican priority for the next federal coronavirus relief bill, calling it a “red line” issue. On July 6, McConnell offered a time period for these protections, saying he envisioned a “narrowly crafted liability protection” for activities related to COVID-19 that would kick in December 2019 and last through 2024. Democrats have strongly opposed such liability protections, and it’s not clear where a compromise on the issue might lie.

Meanwhile, more than a half dozen states have enacted their own laws or executive orders giving businesses a safe haven from coronavirus civil suits. Below is a summary of the latest state-level business immunity legislation for coronavirus infections, starting with the most recently enacted measures, and an examination of other states with pending legislation.

Alabama

Republican Gov. Kay Ivey issued an executive order on May 8 providing a litigation safe harbor for businesses and health care providers.

Under the order, retroactive to March 13, hospitals, businesses as well as public entities such as universities and its members are immune to civil suits stemming from COVID-19 exposure contracted on their premises.

The order, which does not cover reckless and intentional misconduct, also protects businesses from emotional distress claims.

Arkansas

On June 15, Republican Gov. Asa Hutchinson signed an executive order giving businesses immunity to COVID-19 exposure suits.

Executive Order 20-33 does not apply to willful or reckless misconduct and does not bar workers' compensation claims. The law is effective immediately and will remain in effect until January 2021, when it will be up for review by the Arkansas General Assembly.

Georgia

In the last hours of its 2020 legislative session, the Georgia General Assembly passed legislation
providing COVID-19 liability protections for healthcare facilities, healthcare providers, property owners, sports promoters, and manufacturers of personal protective equipment. The legislation, S.B. 359, augments and expands upon Governor Kemp’s April 14 Executive Order limiting the liability of employees, staff, and contractors of healthcare institutions and medical facilities during the COVID-19 Public Health State of Emergency.

S.B. 359 shields healthcare facilities, healthcare providers, and other entities from legal liability for COVID-19 liability claims unless a claimant proves “gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.” These standards require a higher level of proof by plaintiffs than in an ordinary negligence claim.

Iowa

Republican Gov. Kim Reynolds on June 18 signed into law S. 2338, which states that premises owners shall not be held civilly liable for COVID-19 exposures or infections absent reckless disregard or actual malice.

The law, which is retroactive to Jan. 1, also shields individuals from civil suits over coronavirus exposure so long as they can demonstrate they substantially complied with applicable federal and state laws and regulations.

Kansas

Kansas has enacted a law shielding businesses from COVID-19 suits so long as they can prove they substantially complied with applicable regulations and guidance. H.B. 2016 was signed into law by Democratic Gov. Laura Kelly on June 8. It is retroactive to March 12 and expires on Jan. 26, 2021.

The bill also provides civil immunity to doctors, nurses and hospitals providing treatment that has been impacted by COVID-19, absent gross negligence, and specifically states that nursing homes will be allowed to mount an affirmative defense to civil suits so long as they can establish that they've complied with public health directives.

Louisiana

Gov. John Bel Edwards, a Democrat, signed H.B. 826 into law on June 13, giving businesses civil liability protections related to employee and customer coronavirus exposure.

Under the new law, which is retroactive to March 11 and remains in effect for the duration of the state's health emergency, a business can be sued if it can be established that it failed to substantially comply with all relevant federal, state and local guidelines and also committed gross negligence.
North Carolina

On July 2, Democratic Gov. Roy Cooper signed into law H.B. 118, which shields from lawsuit companies, government agencies, and other groups sued by someone who contracts COVID-19. The new law applies to claims that arise no later than 180 days after North Carolina’s state of emergency ends.

Under the state's coronavirus relief bill, essential businesses such as grocery stores and makers of personal protective equipment had been granted temporary immunity from virus-related suits. A May 20 executive order issued by Cooper expanded that safe harbor to restaurants.

Oklahoma

Republican Gov. Kevin Stitt on May 21 signed into law S.B. 1946, which states that businesses can't be held civilly liable for infection or exposure to the novel coronavirus if the companies can prove they complied with prevailing federal and state guidelines and regulations.

Utah

Republican Gov. Gary Herbert on May 4 signed into law legislation shielding business owners from civil suits related to coronavirus infections or exposure that occurred on their premises. The law, S.B. 3007, excludes cases of willful misconduct and gross negligence and went into effect May 4.

Wyoming

An amendment to SF File 1002 states that health care providers and "business entities" can't be held liable for coronavirus injuries if they made a good-faith effort to follow state and local health guidelines.

Republican Gov. Mark Gordon noted in a letter to the Wyoming Secretary of State that "ambush legislation" rarely results in good laws, but in this case the last-minute amendment furthered the overall goals of the bill. He signed it into law May 20 and it became effective immediately.

Pending Legislation

California

AB 1035 which was filed June 26 would shield from COVID-19 lawsuits businesses with 25 or fewer employees that have followed state public health laws and protocols. The bill is slated to be heard next by the Senate Judiciary Committee, likely after the Senate reconvenes next month from summer recess.
On June 29, the Assembly Education Committee Chair introduced AB 1384, which would indemnify school districts as they aim to accommodate students under state guidelines that have been criticized for leaving too many decisions up to local control. The bill will have its first committee hearing after the Legislature reconvenes.

Democratic Gov. Gavin Newsom has so far held off on a June 5 bipartisan request from two-dozen lawmakers to issue an executive order shielding small businesses from lawsuits from employees or customers who contract the disease.

**Mississippi**

Republican-backed legislation that would give premises owners a coronavirus liability shield was advanced by the Mississippi Senate on June 24 with a 39-12 vote.

S.B. 3049 would provide business owners civil immunity from coronavirus exposure suits if they can show they made a good-faith effort to follow applicable public health guidance. Cases of actual malice and intentional misconduct are excluded.

**New Jersey**

On June 30, a New Jersey state senator introduced legislation that would grant general legal protection for organizations—including institutions of higher education, nonprofits and governments, as well as their employees—against lawsuits relating to the coronavirus pandemic or “related viral strains in subsequent years.”

If signed, the bill, S2634, would take effect immediately, and apply retroactively to March 9, when Democratic Gov. Phil Murphy declared a public health emergency and state of emergency.

**North Carolina**

As referenced above, while some essential businesses are already protected from coronavirus suits, a pending bill, H.B. 118, would widen the scope of immunity to cover all businesses that potentially face such legal claims.

The state Legislature on June 23 overwhelmingly voted in favor of the bill, but Democratic Gov. Roy Cooper has not stated whether he plans to sign it into law.

**Ohio**

The Ohio House of Representatives on May 28 voted overwhelmingly in favor of a bill that would bar individuals from filing civil suits against premises owners and health care providers in connection with injuries or deaths stemming from coronavirus infection or exposure.
Following an 84-9 vote, H.B. 606 was sent to the Ohio Senate for consideration. If enacted, the law would not cover cases of reckless or intentional conduct and would be retroactive to March 9.