



COVID-19 States Liability Protection Statutes

July 31, 2020

Background

As a result of the COVID-19 pandemic, states have ordered many businesses to close in order to enable social distancing.¹ The aim is to combat the spread of the novel coronavirus which has killed more than 130k people as of July 2020.² Businesses deemed “essential” have been allowed to remain open with extreme limitations. Still, there is a growing concern that these businesses, which include restaurants, are now susceptible to civil lawsuits stemming from customers or employees who allege they’ve been improperly exposed to the dangerous virus while patronizing or working at the establishment.³

Fears of litigation are justified given the COVID-19-related wrongful death lawsuits already filed against Walmart Inc., JBS NA, Tyson Foods Inc., Royal Caribbean Cruises Ltd., and Quality Sausage.⁴ To address these concerns, a handful of states have passed legislation to protect essential businesses from civil liability resulting from COVID-19 exposure including early adopters, i.e., North Carolina, Oklahoma, Utah, and Wyoming.⁵

¹ Jasmine C. Lee, Sarah Mervosh, Yuriria Avila, Barbara Harvey and Alex Leeds Matthews, See How All 50 States Are Reopening (and Closing Again), NEW YORK TIMES (accessed July 9, 2020)

<https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>

² Sergio Hernandez, Sean O’Key, Amanda Watts, Byron Manley, Henrik Pettersson, Tracking Covid-19 cases in the US, CNN (accessed July 9, 2020) <https://www.cnn.com/interactive/2020/health/coronavirus-us-maps-and-cases/> .

³ Jim Sams, Four States Pass Laws Giving Businesses Immunity from COVID-19 Claims, CLAIMS JOURNAL (June 1, 2020) <https://www.claimsjournal.com/news/national/2020/06/01/297332.htm#>

⁴ Fatima Hussein, Jaelyn Diaz, Covid Wrongful Death Suits Test Employer Liability to Families, BLOOMBERG LAW (June 25, 2020) <https://news.bloomberglaw.com/daily-labor-report/covid-wrongful-death-suits-test-employer-liability-to-families?context=article-related>

⁵ *Id.*

Legal/Legislative Research Question

What is the status of COVID-19-related civil liability protection proposals and how do the presently passed or proposed statutes compare?

Summary

The civil liability shield laws and legislation vary widely from state to state and none provides absolute tort liability protection from exposure to COVID-19, but Ohio and Oklahoma’s proposals comes close. Still, they all set the bar higher, making it harder to bring a COVID-19 tort claim successfully. Typical limits to the liability shield include cases of gross negligence, willful misconduct, and failure to reasonably attempt to apply public health guidance⁶ Georgia, however, has an additional “posting” requirement mandating restaurants wishing to use the additional protections of the new law to post — at the point of entry — a “Warning” sign with specific language outlined in the statute.

States with Laws or Proposed Civil Liability Protection Legislation

The table below is in alphabetical order and it contains a list of the states that we know of with either laws or proposed legislation. Feel free to send us new information on your state and we will update the table accordingly. Currently, the table below has information for the states of Alabama, Arizona, Arkansas, Georgia, Iowa, Kansas, Louisiana, North Carolina, Ohio, Oklahoma, South Carolina, Utah, and Wyoming.

<u>State</u>	<u>Proposed/ Passed</u>	<u>Status</u>	<u>Bill No.</u>	<u>Summary</u>	<u>Limitations</u>	<u>Links</u>
Alabama	N/A	In effect	Executive Order	“[a] business, health care provider, or	Liability is not shielded if	Governor's Proclamation

⁶ Ian Richardson, Tyler Jett, [Iowa Legislature passes bill protecting businesses, nursing homes from coronavirus lawsuits](https://www.desmoinesregister.com/story/news/politics/2020/06/11/iowa-legislature-approves-bill-shielding-businesses-covid-19-coronavirus-lawsuits/3148024001/), DES MOINES REGISTER (June 12, 2020)

		(so long as Alabama remains in a state of emergency)		other covered entity shall not be liable for the death or injury to persons or for damage to property in any way arising from any act or omission related to, or in connection with, COVID-19 transmission or a covered COVID-19 response activity, unless a claimant shows by clear and convincing evidence that the claimant's alleged death, injury or damage was caused by the business, health care provider, or other covered entity's wanton, reckless, willful, or intentional misconduct." ⁷	claimant can prove that covered entity did not "reasonably attempt" to comply with the then-applicable public health guidance	
Arizona	Proposed	Passed one Chamber	HB 2912	Liability Shield for all COVID-19 related claims except those resulting from Gross Negligence. ⁸	Liability shield limited by gross negligence claims.	HB. 2912
Arkansas		In effect (so long as Arkansas remains in a state of emergency)		"all persons in the State of Arkansas and the person's 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	Immunity is not extended to willful, reckless, or intentional misconduct resulting in injury or damages. DOES NOT apply to worker's comp benefits.	Arkansas Governor's Proclamation

⁷ Wesley Redmond, Susan Bullock, [Alabama Governor's Proclamation Provides Civil Immunities for Businesses](#), FORD HARRISON (May 11, 2020)

⁸ Andrew Crawford, [Arizona House adjourns after passing bill to block many coronavirus lawsuits](#), ARIZONA REPUBLIC (May 21, 2020) <https://www.azcentral.com/story/news/politics/legislature/2020/05/21/arizona-house-adjourns-after-passing-coronavirus-liability-bill/5237541002/>.

				any activity managed by those persons.” ⁹		
Georgia	Passed	In effect	SB. 359	“The Georgia bill would shield businesses, health-care providers, and other entities from liability related to COVID-19 infections or transmissions, except in cases where the entity is found to have committed ‘gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.’” ¹⁰	Immunity does not apply to gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm. A “Warning” must also be posted at the point of entry.	SB. 359
Illinois	Proposed (introduced 5/19/20)		SB 3989	“[N]otwithstanding any other provision of law, any individual, business, or unit of local government shall not be liable for any civil damages for any acts or omissions that result in the transmission of COVID-19, other than damages occasioned by willful and wanton misconduct by the individual, business, or unit of local government.”	Exceptions for willful and wanton misconduct	SB. 3989
Iowa	Passed	In effect	Senate File 2338	“A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who	Exceptions for cases of actual malice, intention exposure and Reckless disregard of a	Senate File 2338

⁹ Asa Hutchinson, Office of the Governor of Arkansas (June 15, 2020)
https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-33.pdf

¹⁰ Chris Marr, [Covid-19 Liability Shield Heads to Georgia Governor’s Desk](https://news.bloomberglaw.com/daily-labor-report/covid-19-liability-shield-heads-to-georgia-governors-desk) BLOOMBERG LAW (June 29, 2020)
<https://news.bloomberglaw.com/daily-labor-report/covid-19-liability-shield-heads-to-georgia-governors-desk>.

				<p>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, unless any of the following apply to the person who possesses or is in control of the premises."</p>	<p>substantial and unnecessary risk</p>	
<p>Kansas</p>	<p>Passed</p>	<p>In effect</p>	<p>HB 2016</p>	<p>"[T]he act purports to provide immunity from civil liability to any person conducting business in Kansas from a COVID-19 claim, so long as the person was acting in substantial compliance with public health directives when the cause of action accrued. Under the act's broad definition of 'person,' immunity would be available to any business, individual, government agency or political subdivision "conducting</p>	<p>So long as businesses take measures to follow health directives they are shielded.</p>	<p>HB. 2016</p>

				business in Kansas.” ¹¹		
Louisiana	Passed	In effect	SB.508, HB 826	“SB 508 would provide immunity for restaurant operators from civil liability related to COVID-19, while HB 826 would more broadly shield businesses and specifically block employees from bringing a complaint in court, limiting their relief for on-the-job infections to the state’s workers’ compensation system.” ¹²	Liability remains for cases of gross negligence or willful and wanton misconduct	SB. 508 HB. 826
Massachusetts	Proposed (for claims taking place during the state of emergency)	In House	HD 5163	“Notwithstanding any general or special law to the contrary, except as provided in subsection (b), essential businesses shall be immune from suit and civil liability for any damages alleged to have been sustained as a result of alleged exposure to the 2019 novel coronavirus on the premises of such essential business or due to the operations of such essential business; provided, however, that the essential business is providing its services in good faith.”	“The immunity provided in subsection (a) shall not: (i) apply if damages were caused by an act or omission constituting gross negligence or recklessness or conduct with an intent to harm or to discriminate based on race, ethnicity, national origin, religion, disability, sexual orientation or gender identity by the essential business; (ii) modify or prohibit any claims brought	HD 5163

¹¹ Brittany Barrientos, Alisa Nickel Ehrlich, Erin Naeger, [Kansas Act Purports to Provide Immunity from COVID-19 Related Claims](https://www.jdsupra.com/legalnews/kansas-act-purports-to-provide-immunity-93260/), JD SUPRA (June 20,2020) <https://www.jdsupra.com/legalnews/kansas-act-purports-to-provide-immunity-93260/>

¹² Chris Marr, [Virus Liability Shields Move Ahead in Louisiana, Other States](https://news.bloomberglaw.com/daily-labor-report/virus-liability-shields-move-ahead-in-louisiana-other-states), BLOOMBERG LAW (June 4, 2020) <https://news.bloomberglaw.com/daily-labor-report/virus-liability-shields-move-ahead-in-louisiana-other-states>

					<p>forward under applicable workers' compensation statutes and regulations, healthcare agreements, employment agreements or applicable statutes and regulations governing employment relations;</p> <p>(iii) diminish the rights, privileges or remedies of any employee under any other federal or state law or regulation or under any collective bargaining agreement or employment contract."</p>	
Michigan	Proposed	In Senate	SB 1023	<p>"A person is not liable for a COVID-19 claim that arises from exposure of an individual to COVID-19 on premises owned, leased, managed, or operated by a person, or during an activity managed by a person, unless it is shown by clear and convincing evidence that the injuries were caused by a reckless disregard of a substantial and unnecessary risk that an individual would be exposed to COVID-19, or the person engaged in a deliberate act</p>	<p>Deliberate act and cases involving negligent behavior.</p>	SB 1023

				intended to cause harm.” “A person that operates in substantial compliance with or reasonably consistent with a federal or state statute or regulation, executive order, or public health guidance that was applicable at the time... is not liable for a COVID-19 claim related to conduct intended to reduce the transmission of COVID-19.”		
Mississippi	Passed	In effect (So long as the state of emergency remains)	HB 1783	“Except as otherwise provided by this section, an owner, lessee, occupant or any other person in control of a premises, who attempts, in good faith, to follow any applicable public health guidance and directly or indirectly invites or permits any person onto a premises shall be immune from suit for civil damages for any injuries sustained from exposure to COVID-19” The bill then defines premises as: “any physical place serving a commercial, residential, educational, religious, governmental,	There are exceptions made for malicious conduct, willful misconduct, and failure to comply in good faith with shutdown procedures. An additional presumption is provided to potential defendants: “No person who attempts, in good faith, to follow applicable public health guidance shall be found to have committed actual malice, or willful or intentional misconduct.”	HB. 1783

				cultural, charitable, or health care purpose”		
New Jersey	Proposed (introduced 7/6/20)	In Assembly	NJ A4388,	NJ A4388 provides immunity to businesses against claims for damage to individuals arising out of exposure to the COVID-19 at premises owned or operated by the employer, or during activity managed by the employer.	The immunity provided in NJ A4388 shall not apply to willful misconduct, reckless infliction of harm or the intentional infliction of harm. In addition, the immunity established in this act shall not be applicable where a business fails to maintain documented proof of adherence to public health guidelines including Executive Orders, guidelines from the New Jersey Department of Health and other State agencies, and guidelines from the Centers for Disease Control and Prevention (CDC) and other federal agencies.	NJ A4388
New York	Proposed	In Assembly, In Senate	A 10887, S 8800	Limits the civil liability of employers and employees for the spread or possible transmission of COVID-19 caused by an act or omission while acting in good faith.	“shall not apply if harm to another individual is shown, by clear and convincing evidence, to be caused by an act or omission constituting willful or criminal misconduct, reckless misconduct, gross negligence, or a conscious flagrant	A 10887, S 8800

					indifference to the rights or safety of the individual harmed by such covered entity”	
North Carolina	Passed	In effect	SB. 704	<p>“The law provides protection by creating immunity against claims of ordinary negligence, which are the most common claims for injuries in North Carolina. Specifically, the Recovery Act bars all negligence claims against covered businesses:</p> <ol style="list-style-type: none"> 1. Asserted by customers and employees; 2. For injuries or death; Caused by the contraction of COVID-19; 3. While employed by or doing business with an Essential business; and 4. Arising from interactions occurring between March 27, 2020 and the eventual rescission/expiration date of Governor Cooper's State of Emergency.”¹³ 	<p>“The Recovery Act does not, however, protect essential businesses from individuals asserting claims of gross negligence, reckless misconduct, or infliction of intentional harm. Additionally, the act does not preclude an employee suffering from COVID-19 from filing a workers' compensation claim.”¹⁴</p>	SB. 704
Ohio	Proposed	Passed one Chamber	HB. 606	“No civil action for damages for injury, death, or loss to person or property	Exceptions for reckless conduct or intentional misconduct or	HB. 606

¹³ R. Ryan Holbrook, [North Carolina Essential Businesses Receive Partial Liability Cover During COVID-19 Recovery](https://www.fisherphillips.com/resources-alerts-north-carolina-essential-businesses-receive-partial-liability), FISHER PHILLIPS, (May 7, 2020) <https://www.fisherphillips.com/resources-alerts-north-carolina-essential-businesses-receive-partial-liability>

¹⁴ *Id.*

				shall be brought [for COVID-19] unless it is established that the exposure to, or the transmission or contraction of [COVID-19]...was by reckless conduct or intentional misconduct or willful or wanton misconduct on the part of the person against whom the action is brought.”	willful or wanton misconduct.	
Oklahoma	Passed	In effect	SB 1946	SB 1946 “offers broader protections than North Carolina’s new law. The legislation, signed into law by Gov. Kevin Stitt (R) on May 21, makes everyone immune from liability for any claim by a person who was exposed to COVID-19 as long as no laws were violated and the person of business accused followed official safety guidance.” ¹⁵	Immunity does not apply if business fails a duty of care.	SB. 1946
South Carolina	Proposed		Senate and House are currently working on separate bills in committee	The goal is to raise the common law standard of care for lawsuits involving COVID-19 tort claims. ¹⁶		
Utah	Passed	In effect	SB. 3007	“Immunity to everyone, as long as safety rules are followed and no laws are broken.” ¹⁷	Immunity does not apply to willful misconduct; reckless infliction of harm; or	SB. 307

¹⁵ *Supra*, Sams.

¹⁶ Emily Bohatch, [SC lawmakers to weigh legal protections for businesses reopening in COVID-19](https://www.thestate.com/news/politics-government/article243660157.html), THE STATE (June 22, 2020) <https://www.thestate.com/news/politics-government/article243660157.html>

¹⁷ *Supra*, Sams.

					intentional infliction of harm.	
Wyoming	Passed	In effect (expires June 30, 2021)	Senate File 1002	“Immunity to everyone, as long as safety rules are followed and no laws are broken.” ¹⁸	Immunity does not apply to cases of bad faith and those who do not follow safety instructions.	Senate File 1002

Conclusion

While there is some momentum in state legislatures to pass additional tort liability shield laws, there has been pushback from several powerful groups, including the AARP.¹⁹ National Republicans have voiced support for a national tort liability shield bill, but it has been opposed so far by some Democrats.²⁰ As a result, any federal tort liability shield law will likely be the result of a larger compromise proposal.

For questions or to receive the latest version, please contact [Angelo I. Amador](#), Executive Director of the Restaurant Law Center (RLC), at 202-492-5037 or via e-mail at aamador@restaurant.org. Special thanks to Keenan Conder, Summer Law Clerk at the RLC, for his work in drafting this document.

¹⁸ *Id.*

¹⁹ Dana Marie Kennedy, [AARP AZ Opposition to HB 2912 “Limiting Enforcement Actions and Civil Liability During A Public Health Emergency”](https://states.aarp.org/arizona/aarp-az-opposition-to-hb-2912-limiting-enforcement-actions-and-civil-liability-during-a-public-health-emergency), ARIZONA AARP <https://states.aarp.org/arizona/aarp-az-opposition-to-hb-2912-limiting-enforcement-actions-and-civil-liability-during-a-public-health-emergency>

²⁰ Jim Saksa, [Democrats, tort lawyers pan McConnell’s liability immunity idea](https://www.rollcall.com/2020/04/29/democrats-tort-lawyers-pan-mcconnells-liability-immunity-idea/), ROLL CALL (April 29, 2020) <https://www.rollcall.com/2020/04/29/democrats-tort-lawyers-pan-mcconnells-liability-immunity-idea/>