

COVID-19 State Actions - Liability

Disclaimer: ACC State Affairs and Political Mobilization has created this guide as a resource for information pertaining to COVID-19. This report is a compilation of information obtained using public sources and as such should be verified for completeness and accuracy before relying upon it.

Note: the following list includes both executive orders and legislation relating to business liability- including policies on workers compensation eligibility and policies that limit liability, and also policies that expand liability.

Limitations to Liability - Civil Damages

- **Alabama –[SB 330](#)** – Passed one committee; Died upon adjournment -Provides civil immunity for business entities, etc. from certain damages claimed by individuals who claim exposure to Coronavirus, during a declared state of emergency.
- **Alabama [May 8 Proclamation](#)** – Issued - A business . . . 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 (*which includes design, manufacture, distribution of precautionary equipment or supplies such as PPE*), 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.
- **Arizona [HB 2912](#)** - Died - states that various institutions and a person, including a person who owns or operates a business during a state of emergency order related to the COVID-19 outbreak or before April 1, 2021, whichever is later, is not liable to a person who contracts COVID-19 before April 1, 2021, including after entering and remaining on the premises of the business if the action is based on strict liability, premises liability or negligence unless there was gross negligence. The burden of proof is clear and convincing evidence.
- **Arkansas [Executive Order 20-33](#)** - Issued 6/15/20. Establishes that a persons 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 any activity managed by those persons. Immunity does not apply to willful, reckless, or intentional misconduct resulting in injury or damages. It is presumed that a person and person's employees, agents, and officers are not committing willful, reckless, or intentional misconduct under this order if the person and the person's, agents, and officers are substantially complying with health and safety directives or guidelines issued by the Governor or the Secretary of the Department of Health; 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. The immunity provided under this Executive Order does not extend to workers' compensation benefits paid by or on

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behalf of an employer to an employee under the state Workers' Compensation Law.

- **California** [AB 1035](#) – Amended 6/25/20 in Senate to exempt a small business with 25 or fewer employees from liability for an injury or illness to a person due to coronavirus (COVID-19) based on a claim that the person contracted COVID-19 while at that small business, or due to the actions of that small business. To qualify, the business must have implemented all state and local health laws, regulations, and protocols. Does not apply if the injury or illness resulted from a grossly negligent act or omission, willful or wanton misconduct, or unlawful discrimination by the business or an employee of the business.
- **Delaware** [HB 359](#) – Dead – Establishes that a person is immune from civil liability for damages or injury resulting from exposure of an individual to Covid-19 on the premises owned or operated by the person, or during an activity managed by the person. Immunity does not apply to willful misconduct, reckless infliction of harm, or intentional infliction of harm. The provision does not modify the application of workers' compensation, or the occupational health program.
- **Georgia** [HB 167](#) - Passed Senate 6/23/20 as substituted Died. – Establishes that no cause of action shall exist for any transmission of, contraction of, or exposure to COVID-19 unless such transmission, contraction, or exposure was caused by an act or omission constituting willful and wanton misconduct or intentional infliction of harm.
- **Georgia** [HB 216](#) - Passed House on 3/10/20 as substituted Died. - Establishes that persons shall be immune from any civil liability for any damages arising from exposure of an individual to, or contraction by an individual of, COVID-19 on the premises of such persons and any injury or death resulting therefrom. Such immunity shall apply in all circumstances (examples listed in bill) with the exception of gross negligence; willful and wanton misconduct; reckless infliction of harm; or intentional infliction of harm.
- **Georgia** [HB 1188](#) - Introduced - Died. No person shall be liable for any civil damages for the transmission of, or for injury or injuries resulting from, COVID-19 that arise out of activity with the object of direct or indirect profit or gain, benefit, advantage, or nonprofit activity unless actions during such activity were willful and wanton for such transmission or injury or injuries.
- **Georgia** [SB 359](#) - **6/29/20 Sent to Governor** - Provides that an individual, entity, a healthcare facility, or a healthcare provider shall not be held liable for damages in an action involving a COVID-19 liability claim against them unless the claimant proves that their actions showed: gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.
Acceptance of Risk. There shall be a rebuttable presumption of assumption of the risk by the claimant when: any receipt or proof of purchase for entry issued to a claimant by the individual or entity for entry or attendance, includes a statement with a warning described in the bill. These provisions in the bill do not modify or supersede workers' compensation law.
- **Illinois** [SB 3989](#) - Stalled 6/24/20 - Provides that 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 Coronavirus, other than damages

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occasioned by willful and wanton misconduct by the individual, business, or unit of local government.

- **Iowa [SF 2338](#) - Signed by the governor 6/18/20.** Places limits on liability claims related to COVID-19 for businesses where an individual is exposed to COVID-19 or products (see other section) manufactured in response to COVID-19. **Safe harbor.** A person shall not be held liable for civil damages for any injuries sustained from exposure to COVID-19 if the act or omission by the person that is alleged to violate a duty of care was in substantial compliance with any federal or state statute, regulation, order, or public health guidance related to COVID-19 applicable at the time. The bill clarifies that it is not designed to affect the rights or limits under workers' compensation as provided in Iowa chapter 85, 85A, or 85B or affect any statutory or common law immunity or limitation of liability. **Visitors.** The bill provides protection to a person who possesses or is in control of a premises (e.g. tenant, lessee, or occupant) and who invites or permits an individual onto a premises. The person 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, unless the person recklessly disregards a substantial and unnecessary risk, the person acts with malice; or the person intentionally exposes the individual to COVID-19. **Civil Action.** The bill prohibits a person from bringing a civil action alleging exposure to COVID-19 unless one of the following applies: it relates to a minimum medical condition, it involves an act that was intended to cause harm or it involves an act that constituted actual malice.
- **Kansas [HB 2016](#) - Signed by governor 6/8/20.** States that a person conducting business in the state shall be immune from liability in a civil action for a COVID-19 claim if the person was acting in substantial compliance with public health directives applicable to the activity that gave rise to the claim. The provision expires 1/26/21.
- **Louisiana [SB 435](#) - Signed by governor 6/12/20.** The bill states that a person, state or local government, or political subdivision shall not be liable for damages or personal injury resulting from or related to an actual or alleged exposure to COVID-19 in the course of or through the performance or provision of the person's, government's, or political subdivision's business operations unless the entity failed to substantially comply with the applicable COVID-19 procedures established by the federal, state, or local agency and the injury or death was caused by the entity's gross negligence or wanton or reckless misconduct. The immunity does not apply if damages are shown by the evidence to be the result of gross negligence, willful misconduct, or intentional criminal misconduct. This provision does not affect the right of any person to receive benefits to which they would otherwise be entitled under the Louisiana Workers' Compensation Law.

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- **Louisiana [HB 826](#)** – Signed by governor on 6/13/20. Contains a provision similar to the one in enacted SB 435, stating that no person or political entities shall be liable for any civil damages for injury or death related to exposure to COVID-19 related to business operations unless the entities failed to substantially comply with the applicable COVID-19 procedures established by the federal, state, or local agency and the damage was caused by the entities' gross negligence or wanton or reckless misconduct. **Events.** HB 826 grants immunity from civil damages to persons hosting events or exhibitions unless the damages were caused by gross negligence or willful or wanton misconduct. **Tort.** An employee whose contraction of COVID-19 is determined to be compensable under the Louisiana Workers' Compensation Law shall have no remedy based in tort against his employer, or other entities described in the bill unless the exposure was intentional. A similar limit applies to employees not covered under the workers' compensation law. The bill also contains provisions on liability related to personal protective equipment.
- **Louisiana SB 508** – Signed by Governor on 6/22/20 - Limits liability for restaurants that provide food-to-go during a state declared emergency
- **Massachusetts [SB 2700](#)** - Proposed - Establishes that it is unlawful to file a civil action for damages against any employee organization or union for advising their bargaining unit members of their right to refuse to work because of an abnormally dangerous condition at the place of employment, as provided by Section 7 of the National Labor Relations Act (NLRA) and Section 502 of the Labor Management Relations Act (LMRA).
- **Michigan HR 249** – Introduced – bill describes liability of businesses; urges businesses that interact with the public to adopt a no gloves and/or no mask, no services policy during the Coronavirus pandemic
- **Michigan [SB 1023](#)** - Introduced 7/23/20 - Establishes that an employer is not liable for damages that result from the exposure of an employee to COVID-19 if the employee was exposed to COVID-19 during the COVID-19 emergency and the employer was operating in substantial compliance or reasonable consistent with a federal or state statute or regulation, executive order, or public health guidance that was applicable at the time of the exposure. Immunity doesn't apply if the employer willfully exposed the employee to COVID-19.
- **Minnesota [HF 4664/ SF 4606](#)** – Died upon adjournment - Limits civil damage claims by individuals alleging COVID-19 exposure without specified criteria being met; also limits liability relating to products.
- **Minnesota [HF 163](#)** – Died in Special Session. **Products.** A person who designs, manufactures, sells, distributes, or donates a qualified product in response to COVID-19 that is used by a government entity, health care professional, health care facility, first responder, or essential business shall not be liable in a civil action alleging an act or omission arising out of or relating to the administration or use of a qualified product. **Cleaning/Disinfecting/PPE** - A person who designs, manufactures, sells, distributes, or donates household cleaning or disinfecting

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supplies or personal protective equipment in response to COVID-19 who does not design or manufacture such products in the ordinary course of the person's business shall not be liable in a civil action alleging an act or omission arising out of or relating to the administration or use of the product. Immunity doesn't apply if the person had knowledge that products were defective and acted with complete indifference to or conscious disregard of a substantial and unnecessary risk, or acted with intent to cause harm. The bill also contains provisions limiting civil liability.

- **Mississippi [HB 1783](#)** - Passed House - Civil Liability. A person in control of a premises, who attempts, in good faith, to follow any applicable public health guidance and 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, except when damages, injuries or death resulted as the result of actual malice, or willful or intentional misconduct. 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 under this section. Failure to comply with public health guidance alone shall not be sufficient to establish that a person committed actual malice, willful or intentional misconduct under this section. This section does not affect workers' compensation law. The bill also contains a section limiting liability on products and cleaning/disinfecting suppliers.
- **Mississippi [SB 3049](#) - Signed 7/8/20 as amended.** Establishes that a person who attempts in good faith to follow applicable public health guidance shall be immune from suit for civil damages for any injury related to exposure or potential exposure to COVID-19 in the course of or through the performance or provision of its functions or services. This immunity also applies for the time before applicable public health guidance was available. In addition, an owner, lessee, occupant or any other person in control of a premises, who attempts, in good faith, to follow 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 or death resulting from actual or alleged exposure or potential exposure to COVID-19. The immunity does not apply where the plaintiff shows, by clear and convincing evidence, that a defendant, or any employee acted with actual malice or willful, intentional misconduct. The bill doesn't alter workers' compensation law.
- **New Jersey [AB 4189](#) / [SB 2502](#)** - Introduced 6/4/20 - Limits civil liability. An employer is immune from civil liability for damages or injury resulting from exposure of an individual to COVID-19 on the premises owned or operated by the employer, or during activity managed by the employer. Immunity does not apply to willful misconduct; reckless infliction of harm; or intentional infliction of harm.
- **New Jersey [AB 3951](#)** – Introduced – Provides civil immunity for employer for damages arising from employee's injury or death related to exposure to coronavirus disease 2019 ("COVID-19") during public health emergency and state of emergency declared by Governor in Executive Order 103 of 2020.

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- **New Jersey** [AB 4388](#) - Introduced - Establishes that an employer is immune from civil liability for damages for injury resulting from exposure of an individual to COVID-19 on the premises owned or operated by the employer, or during activity managed by the employer. Immunity does not apply to willful misconduct; reckless infliction of harm; intentional infliction of harm or 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.
- **New Mexico** [HB 16](#) - Died 6/23/20 - Establishes tort claim protections for businesses against breach of duty of care claims related to COVID-19 exposure.
- **New York** [SB 8800](#) – Introduced 7/17/20 – Provides immunity from liability in a civil action to individuals, businesses, organizations, universities, and schools for the spread or possible transmission of COVID-19 caused by an act or omission of the entity if the entity made a reasonable efforts to act in compliance with applicable guidance from a federal, state, local, territorial or tribal public health authority; or appropriate professional or industry standards, recommendations or guidance. The immunity does 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 indifference to the rights or safety of the individual harmed by such covered entity. The bill states that infection with COVID-19 shall not be the basis for damages arising from bodily injury, except to the extent that such injury is serious bodily injury.
- **New York** [AB 10838](#) / [SB 8587](#) – Pending. SB 8587 was ordered to third reading on the Senate floor on 7/21/20. **Makes void and unenforceable** any agreement that exempts an employer from liability for negligence related to the COVID-19 pandemic. This applies to provisions in contracts, agreements or understandings relating to the employment, hiring or retaining of the services of any person that exempts the employer or hiring party from liability for damages for personal injury or death caused by the employer's negligence in connection with handling of measures related to the COVID-19 pandemic. **Allowable.** The bill states these provisions shall not preclude an employer or hiring party from **requiring indemnification** for damages arising out of personal injury or death caused by or resulting from the negligence of a party other than the employee, independent contractor and intern, whether or not the employer or hiring party is partially negligent.
- **North Carolina** [HB 118](#) - **Signed by Governor** 7/2/20- Establishes that in any claim for relief arising from any act or omission alleged to have resulted in the contraction of COVID-19 no person shall be liable for any act or omission that does not amount to gross negligence, willful or wanton conduct, or intentional wrongdoing. Another subsection of the bill requires information to be provided to individuals visiting premises owned by a person or under the person's possession, custody, or control (but not individually owned premises), reasonable notice of actions taken by the person to reduce the risk of transmission of COVID-19. The bill states that no person shall be liable for the failure of any

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individual to comply with rules, policies, or guidelines contained in the notice required by this subsection. This subsection shall not apply to premises owned by an individual, other than premises that are used in the operation of a sole proprietorship. The bill does not apply to claims payable under the Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes.

- **North Carolina [SB 704](#) – Signed by Governor 5/4/20** – immunity from civil liability for essential businesses and emergency response entities during the pandemic. b) The immunity shall not apply if the injuries or death were caused by gross negligence, reckless misconduct, or intentional infliction of harm. This provision doesn't prevent an employee of an essential business from seeking an appropriate remedy under Chapter 97 of the General Statutes for any injuries or death alleged while employed. See pages 42-43.
- **Ohio [HB 606](#) – Passed House on May 28. Civil Actions.** As amended and passed by the House, the bill declares that no civil action for damages for injury, death, or loss to person or property shall be brought against any person if the cause of action on which the civil action is based, in whole or in part, is that the injury, death, or loss to person or property is caused by the exposure to, or the transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV- 2, or any mutation thereof, unless it is established that the exposure to, or the transmission or contraction of, any of those viruses or mutations was by reckless or intentional conduct or with willful or wanton misconduct on the part of the person against whom the action is brought. It states that a government order, recommendation, or guideline shall neither create nor be construed as creating a duty of care upon any person that may be enforced in a cause of action or that may create a new cause of action or substantive legal right against any person with respect to the matters contained in the government order, recommendation, or guideline. A presumption exists that any such government order, recommendation, or guideline is not admissible as evidence that a duty of care, a new cause of action, or a substantive legal right has been established.
Tort liability. In addition, the bill intends to remove tort liability for businesses if they do not follow emergency orders and recommendations regarding COVID-19. The bill states that the General Assembly declares its intent that orders and recommendations from the Executive Branch, from counties and local municipalities, from boards of health and other agencies, and from any federal government agency, do not create any new legal duties for purposes of tort liability. Any such orders and recommendations are presumed to be irrelevant to the issue of the existence of a duty or breach of a duty. Furthermore, any such orders and recommendations are presumed to be inadmissible at trial to establish proof of a duty or breach of a duty in tort actions. This bill applies to acts, omissions, conduct, decisions, or compliance from the date of the Governor's Executive Order 2020-01D, issued on March 9, 2020, declaring a state of emergency due to COVID-19 through December 31, 2020. **As**

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introduced, the bill would have granted civil immunity to a person who provides services for essential businesses and operations for injury, death, or loss that was caused by the transmission of COVID-19 during the period of emergency declared by Executive Order 2020-01D, issued 3/9/20.

- **Oklahoma [SB 1946](#) – Signed by Governor 5/21/20** – A person or agent of the person who conducts business in this state shall 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, a Presidential or Gubernatorial Executive Order, or guidance applicable at the time of the alleged exposure. If two or more sources of guidance are applicable to the conduct or risk at the time of the alleged exposure, the person or agent shall not be liable if the conduct is consistent with any applicable guidance.
- **Pennsylvania [HB 2639](#)** – Introduced – An employer may not be subject to civil liability for any cause of action arising out of the COVID-19 status of an employee if the employer complies with all applicable laws relating to employment, including any lawful orders issued by the Governor as a result of the COVID-19 disaster emergency. This immunity may be rebutted only by clear and convincing evidence establishing that the employer: knew or should have known that an employee tested positive for COVID-19; failed to take reasonable measures to protect the safety of another employee or individual who had contact with the employee who tested positive for COVID-19; and injury or death resulted to another employee or individual as a result of contact with the employee who tested positive for COVID-19. The bill also provides immunity related to products. The bill does not apply to any criminal act, or to an injury or death to a person that results from an act or omission of the person constituting recklessness or intentional conduct.
- **Pennsylvania [SB 1194](#)** - Introduced - A person that attempts, in good faith, to adhere to the COVID-19 emergency declaration, the Governor's TWW COVID-19 Business Closure Order or any other executive order relating to COVID-19, or any guidance issued by the Department of Health or the Secretary of Health relating thereto, shall not be liable for damages, 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 business services or activities absent clear and convincing evidence of gross negligence. A person must bring suit for an alleged injury resulting from exposure to COVID-19 not later than one year after the date the cause of action accrues.
- **South Carolina [HJR 5527](#)** - Introduced - Provides that an entity or individual that reasonably adheres to public health guidance applicable at the time the conduct giving rise to a coronavirus claim occurs shall be entitled to a safe harbor from liability for any acts or omissions in the course of, or through the performance or provision of, any business or health care service. This safe

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harbor will not apply if a claimant proves by clear and convincing evidence that the entity or individual caused the injury or damage through knowingly reckless, willful, or intentional misconduct; or by failing to make any attempt to adhere to public health guidance. A failure by an entity or individual to adhere to public health guidance shall not constitute negligence per se, nor mean the entity or individual acted in a knowingly reckless, willful, intentional, or wanton manner.

- **Tennessee** liability protection legislation: Upcoming legislation likely (an effort of the Tennessee Recovery and Safe Harbor Coalition and Tennessee Chamber that will” common sense safe harbor protections while setting forth framework for claimants when legitimate claims of negligence are present” Negotiations on final bill language are currently underway and we should see some movement next week.
- **Utah [SB 3007](#) - Signed by governor 5/4/20** – Establishes that a person is immune from civil liability for damages or an injury resulting from exposure of an individual to COVID-19 on the premises owned or operated by the person, or during an activity managed by the person unless there was willful misconduct; reckless infliction of harm; or intentional infliction of harm. This immunity does not modify the application of (a) Title 34A, Chapter 2, Workers' Compensation Act; (b) Title 34A, Chapter 3, Utah Occupational Disease Act; (c) Title 34A, Chapter 6, Utah Occupational Safety and Health Act; or (d) Title 63G, Chapter 7, Governmental Immunity Act of Utah.
- **Wyoming [SF 1002](#) Signed by governor 5/20/20.** (a) During a public health emergency as defined by W.S. 35-4-115(a)(i), any health care provider or other person, including a business entity, who in good faith follows the instructions of the a state, city, town or county health officer in responding 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 shall not apply to acts or omissions constituting gross negligence or willful or wanton misconduct.

PPE- Limited Liability

- **AK [SB 241](#) - Enacted 4/10/20** - liability for PPE (a) In addition to the immunity available under AS 09.65.091, during the novel coronavirus disease (COVID-19) public health disaster . . . a health care provider or manufacturer of personal protective equipment is not liable for civil damages resulting from an act or omission in issuing, providing, or manufacturing personal protective equipment in the event of injury or death to the user of the PPE if the personal protective equipment was issued, provided, or manufactured in good faith to respond to the COVID-19 public health disaster emergency. The law states that nothing in this section precludes liability for civil damages as a result of gross negligence, recklessness, or intentional misconduct. It requires a health care provider or manufacturer of personal protective equipment to notify the user of the personal

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protective equipment that the equipment may not meet established federal standards and requirements.

- **Alabama [May 8 Proclamation](#)** – Issued - A business . . . 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 (***which includes design, manufacture, distribution of precautionary equipment or supplies such as PPE***), 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.
- **CA-limited liability for manufacturers of PPE (EO)**
- **Kansas [HB 2016](#) - Signed by governor 6/8/20.** States that a person who manufactures, sells or donates a qualified product in response to the COVID-19 public health emergency shall be immune from liability in a product liability claim if the product was manufactured, sold or donated at the specific request of a written order or other directive issued by the governor, the adjutant general or the Division of Emergency Management, and the damages are not the result of wanton or reckless disregard of a known, substantial and unnecessary risk.
- **Kentucky [SB 150](#) – Enacted** - Any business in the Commonwealth that makes or provides personal protective equipment or personal hygiene supplies relative to COVID-19, such as masks, gowns, or sanitizer, during and in response to the state of emergency and that does not make or provide such products in the normal course of its business shall have a defense to ordinary negligence and product liability so long as the business has acted in good faith and in an ordinary, reasonable, and prudent manner under the same or similar circumstances.
- **Iowa [SF 2338](#) - Signed by the governor 6/18/20.** Places limits on liability claims related to products manufactured in response to COVID-19 or for businesses where an individual is exposed to COVID-19 (see other section.) **Products.** The bill protects a person that designs, manufactures, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to COVID-19. The person shall not be liable in a civil action alleging personal injury, death, or property damage resulting from those activities or from a failure to provide proper instructions or sufficient warnings unless the person recklessly disregarded a substantial and unnecessary risk that the product would cause serious personal injury, death, or property damage; or the person acted with actual malice.
- **Louisiana [HB 826](#) – Signed by governor on 6/13/20.** Provides that no person that designs, manufactures or distributes personal protective equipment in response to the COVID-19 public health emergency shall be liable for civil damages for injury or death caused by the PEE, unless such damages were caused by gross negligence or willful or wanton misconduct. **Use of PPE.** During

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the COVID-19 public health emergency, no person who uses, employs, dispenses, or administers PPE shall be liable for civil damages for injury or death resulting from or related to the PPE unless the person failed to substantially comply with the applicable procedures established by federal, state, or local agencies which govern the PPE and the injury or death was caused by the person's gross negligence or wanton or reckless misconduct. The bill also contains provisions on civil liability.

- **Minnesota HF 4545 and MN S 4517** – Died upon adjournment - creates immunity defense for manufacturers producing coronavirus products.
- **Minnesota HF 4664/ SF 4606** – Died upon adjournment - Limits liability relating to products sold/made/manufactured for use in emergency response capacity, including disinfecting and cleaning products, PPE, medical devices; also limited civil damage claims.
- **Mississippi SB 3049 - Signed 7/8/20. Products.** A person that designs, manufactures, sells, distributes, or donates a qualified product in response to COVID-19 shall be immune from suit for civil damages for any injuries resulting from or related to actual or alleged exposure or potential exposure to COVID-19 caused by a qualified product. **Disinfecting & Cleaning Supplies & PPE.** A person that designs, manufactures, sells, distributes, or donates disinfecting or cleaning supplies or personal protective equipment in response to COVID-19 outside the ordinary course of the person's business shall be immune from suit for civil damages for any injuries resulting from or related to exposure or potential exposure to COVID-19 173 caused by the supplies or equipment. The immunity doesn't apply where the plaintiff shows by clear and convincing evidence that a defendant, or any employee acted with actual malice or willful, intentional misconduct.
- **Mississippi HB 1783** - Passed House - Civil Liability. **Products.** Any person that designs, manufactures, sells, distributes, or donates a qualified product in response to COVID-19, shall be immune from suit for civil damages for any injuries resulting from or related to actual or alleged exposure or potential exposure to COVID-19 allegedly caused by a qualified product. Also, any person that designs, manufactures, sells, distributes, or donates cleaning or disinfecting supplies or personal protective equipment in response to COVID-19, that does not make such products in the ordinary course of the person's business shall be immune from suit for civil damages for any injuries. The limit on liability does not apply where plaintiff shows by clear and convincing evidence that any person, or any employee or agent thereof, engaged in actual malice, or willful or intentional misconduct. This section does not affect workers' compensation law. The bill also contains sections on civil liability.
- **New Jersey AB 4279** - Introduced - Establishes that manufacturers are not liable for civil damages for injury or death alleged to have been sustained as a result of an act or omission by the manufacturer in the course of manufacturing or distributing PPE in support of the State's response to the outbreak of coronavirus disease. The immunity does not apply to acts or omissions constituting a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct.

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- **Oklahoma [SB 1947](#) - Signed by Governor 5/21/20** - Relates to product liability for PPE. The bill states that, except as provided by subsection E in the bill, any person that designs, manufactures, labels, sells, distributes, or donates disinfecting and cleaning supplies or personal protective equipment during and in response to the COVID-19 public health emergency that does not make such products in the ordinary course of business shall not be liable in a civil action alleging personal injury, death or property damage caused by or resulting from the product's manufacturing or design, or a failure to provide proper instructions or sufficient warnings.
- **Pennsylvania [HB 2546](#)** - Introduced - Establishes a COVID-19 Good Samaritan Emergency Liability Waiver. It states that a person is not subject to civil liability arising from the use, nature or condition of equipment or other goods manufactured, modified, produced for or utilized, including an atypical or novel utilization, by a healthcare facility or health care practitioner. Non-applicability. This section shall not apply to an injury or death to a person that results from an act or omission of the person constituting recklessness or intentional misconduct. Non-liability. This section shall not be construed as establishing any liability.
- **Pennsylvania [HB 2639](#)** – Introduced – **Goods**. Establishes that a person who manufactures or distributes equipment or other goods manufactured or produced for use by a covered health care provider in response to the COVID-19 disaster emergency shall not be subject to civil liability arising from the nature or condition of the equipment or goods, if the equipment or goods are reasonably believed to be in good condition at the time of manufacture or delivery. The bill also provides immunity from civil liability for employers. The bill does not apply to any criminal act, or to an injury or death to a person that results from an act or omission of the person constituting recklessness or intentional conduct.
- **Wisconsin [AB 1038](#)** – Approved by Governor 4/16/20 - contains provisions including a liability exemption for persons who manufacture, donate or sell emergency medical supplies.

Limits to Liability - Workers Compensation

- **Arkansas [Executive Order 20-35](#) - Issued 6/15/20**. Clarifies that under the Workers Compensation law employers won't lose the protections of the law if they require an employee to perform work when the employer knows that in the normal course and scope of the employees job, exposure to COVID-19 is possible or likely. The bill establishes that COVID-19 is defined as an occupational disease and that exposure to Covid-19 is a respiratory accident or incident that may be found to have been the major cause of physical harm. Any employee asserting an occupational disease under this Executive Order must meet all requirements of proof for an occupational disease, including a causal connection between employment and the disease.
- **Illinois – [HB 2455](#)** – Signed by the governor 6/5/20 – amends the state's worker compensation program to maintain a rebuttable presumption for employers regarding whether a worker was exposed to COVID-19 at work when certain conditions existed such as the employer adhered to health and safety guidelines

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from the CDC and Illinois Department of Health and provided necessary PPE to employees. Other provisions of interest.

- Michigan [SB 1019](#) – Introduced 7/22/20 – Establishes that an employee who receives a personal injury as a result of exposure to COVID-19 during the course of employment by an employer that provides workers disability compensation is not eligible to be paid compensation if the employer was in compliance with a federal or state statute or regulation, executive order, or public health guidance that was applicable at the time of the employee’s exposure to COVID-19. This restriction on compensation does not apply to a personal injury that was the result of an intentional tort. The bill would apply retroactively to injuries that occurred after March 11, 2020 and injuries that occurred during the COVID-19 state of emergency.
- **Minnesota** [HF 158](#) - Introduced 6/19/20. **Stalled.** Workers’ compensation benefits; Paid Leave Related to COVID-19. Establishes that if an employer provides paid leave in response to COVID-19 that is in addition to the paid leave the employee is regularly entitled to, the employer may deduct the net amount of the additional leave from any temporary total or temporary partial disability benefits that the employee is entitled to receive, subject to several requirements in the bill. Reinsurance. The bill allows members of a reinsurance association to be reimbursed from the association for losses for the member's COVID-19 workers' compensation claims with dates of injury from 4/8/20 to 5/1/21, under Laws 2020, chapter 72, aggregated to count toward the member's retention limit.

Expands Liability- Workers Compensation

- **California** [Executive Order 40](#) - **Issued 5/6/20** - Any COVID-19-related illness of an employee shall be presumed to arise out of and in the course of the employment for purposes of awarding workers’ compensation benefits if all of the following requirements are satisfied . . .(see order)
- **California** [AB 196](#) - Passed Assembly 5/23/20 - 3213.5. (a) In the case of an employee. . .who is employed in an occupation or industry deemed essential in the Governor’s Executive Order of March 19, 2020 (Executive Order N-33-20), or who is subsequently deemed essential, the term “injury,” as used in this section, includes coronavirus disease 2019 (COVID-19) that develops or manifests itself during a period of the person’s employment in the essential occupation or industry.(c)The compensation awarded for an injury described in subdivision (a) shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division. (d) The injury described in subdivision (a) so developing or manifesting itself shall be conclusively presumed to arise out of and in the course of employment.
- **California** May 6, 2020 Executive Order - EXECUTIVE ORDER N-62-20 – worker’s compensation
- **Kansas** [HB 2007](#), [HB 2018 SB 1](#) - Failed. Establishes under the workers’ compensation law in the case of employment that includes contact with or work

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in proximity to or in the same space as the public or co-workers, there shall be a rebuttable presumption that the COVID-19 disease arose out of and in the course of the employment in which the employee was engaged and was contracted while the employee was so engaged, and that the employment was the prevailing factor in causing the COVID-19. The claimant shall not be required to prove that the COVID-19 resulted from the nature of the employment, as defined current law. There shall be a rebuttable presumption that the COVID-19 was the sole cause or the prevailing factor of any resulting disability, disablement, impairment or death. The bill would be retroactive to 1/1/20 and expire 5/1/21.

- **Kentucky** [Executive Order 2020-277](#) – Issued 4/9/20. [Agency Letter of Clarification](#) An employee removed from work by a physician due to occupational exposure to COVID-19 shall be entitled to temporary total disability payments under Workers’ Compensation, even if the employer ultimately denies liability for the claim. There must be a causal connection between the conditions under which the work is performed and COVID-19, and the sickness can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment.
- **Massachusetts** [HB 4739](#) - Hearing 6/5/20 - would create a presumption of relatedness for coronavirus for essential employees. Essential employee definition relates to healthcare workers or workers at an “essential business that includes contact with the public. The provisions of [Section 23](#) (Release of Claims or demands at common law) and [Section 24](#) (waiver of right of action for injuries) of Chapter 152 do not apply to claims brought under this Act, unless the employer demonstrates compliance with all relevant and active orders and advisories of the Governor of the Commonwealth concerning workplace safety restrictions during the state of emergency, such as, but not limited to, the provision to essential workers of available Personal Protective Equipment and appropriate safe distancing opportunities.
- **Massachusetts** [HB 4740](#) - Hearing 6/12/20 - would establish hazard health benefits for essential employees.
- **Massachusetts** HB 4734/ HD 5031 would require hazard pay for essential workers. “Essential workers” are those that cannot perform workplace functions from their residence.
- **Michigan** [SB 928](#) - **Introduced** - Establishes that for an essential worker, “personal injury” includes an injury or illness resulting from the essential worker’s exposure to an infectious disease during an emergency declared by the governor. As used in this subsection, “essential employee” means an individual who is required to work during a state declared emergency because he or she is considered necessary to sustain or protect life or to conduct minimum operations during a time that the state has ordered the closure of all businesses that are considered nonessential.

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- **Minnesota [HF 4537](#)** - Enacted. States that an employee who has contracted COVID-19 but who is not entitled to the rebuttable presumption given to certain front-line workers described in the bill is not precluded from claiming an occupational disease as provided in other paragraphs of this subdivision or from claiming a personal injury under subdivision 16 of the workers' compensation law.
- **New Jersey [SB 2380](#) (Passed Senate 5/14/20) and NJ A 3999 (Introduced)** - If, during the public health emergency . . . an individual contracts coronavirus disease 2019 during a time period in which the individual is working in a place of employment other than the individual's own residence as a health care worker, public safety worker, or other essential employee, there shall be a rebuttable presumption that the contraction of the disease is work-related and fully compensable for the purposes of benefits provided under R.S.34:15-1 et seq., ordinary and accidental disability retirement, and any other benefits provided by law to individuals suffering injury or illness through the course of their employment. This prima facie presumption may be rebutted by a preponderance of the evidence showing that the worker was not exposed to the disease while working in the place of employment other than the individual's own residence. Any workers' compensation claims paid as a result of the rebuttable presumption provided for in this act shall not be considered in calculating an employer's experience modifier rate or otherwise affect an employer's insurance premium rate for the employer's workers' compensation policy.
- **New Jersey [AB 3998](#)** – Introduced - concerns certain workers' compensation supplemental benefits for surviving dependents of essential employees who die in course of employment.
- **New York - [AB 10391/ \[SB 8117\]\(#\)](#)** – Introduced - The bill amends workers' compensation statutes. The bill defines "essential employee during COVID-19 outbreak" means an employee who worked at an essential business during the COVID-19 outbreak beginning 1/1/2020 as defined by executive order 202.6 or guidance by Empire State Development, or received a waiver as an essential business from Empire State Development. § 185. Liability of employer and insurance carrier. The employer in whose employment an essential employee is during the COVID-19 outbreak shall be liable for 50% of any claim for a qualifying condition presumed to be causally related to such employment and the state shall be liable for 50% provided that such participation arose in the course of such employment. The bill also addresses notice requirements, treating disablement as an accident, reopening of disallowed claims, and registration as an essential employee. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to

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disablement resulting from a qualifying condition suffered by the employee during the COVID-19 outbreak shall be 80%.

- **New York** [SB 8266](#) / [AB 10401](#) – Introduced - Amends the workers compensation law to add exposure to COVID-19 as an occupational disease and applies to . . . all work that could expose workers to novel coronavirus . . . which shall include. . . work for any businesses deemed to provide essential services during an outbreak of the novel coronavirus, COVID-19, any work outside the home during a period of closure of non-essential businesses, or public employment during an outbreak of the novel coronavirus, COVID-19.
- **Ohio** [HB 573](#) - Introduced - Establishes that COVID-19 is an occupational disease under Workers Compensation when contracted by an employee who was required to work outside of the employee's home: and when contracted by an employee who was required to work by the employee's employer outside of the employee's home during the emergency declared by Executive Order 2020-01D, and constitutes a presumption, which may be refuted by affirmative evidence, that COVID-19 was contracted in the course of and arising out of the employee's employment outside of the employee's home.
- **Pennsylvania PA S 613** – Vetoed - The contraction of the COVID-19 virus by an essential employee shall be considered a personal injury to the employee under the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act. The fact that the essential employee contracted the COVID-19 virus shall establish a presumption that the injury arose in the course of the employee's employment within the meaning of the Workers' Compensation Act. The presumption shall not be conclusive but may be rebutted if the employer establishes that the employee contracted the COVID-19 virus prior to any job-related exposure.
- **Vermont** [SB 342](#) – **Signed by Governor 7/13** – Establishes that for an employee, who is not a front-line worker, disability or death resulting from COVID-19 shall be presumed to be compensable pursuant to 21 V.S.A. [chapter 9](#) (workers' compensation) if the employee receives a positive laboratory test or a diagnosis for COVID-19 between April 1, 2020 and January 15, 2021 and, not more than 14 days prior to the date on which the employee is tested or examined, either: (1) had documented occupational exposure in the course of employment to an individual with COVID-19; or (2) performed services at a residence or facility with one or more residents or employees who: (A) were present at the time the services were performed; and either (B)(i) had COVID-19 at that time; or (ii) tested positive for COVID-19 within 14 days after the services were performed. The presumption of compensability shall not apply if the employer can show by a preponderance of the evidence that: (a) the disease was caused by non-employment-connected risk factors or non-employment-connected exposure; or (b) at the time the employee was potentially exposed to

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COVID-19, the employee's place of employment was in compliance with: between April 1, 2020 and April 20, 2020, the relevant COVID-19 related guidance for businesses and workplaces issued by the U.S. Centers for Disease Control and the Vermont Department of Health and any similar guidance issued by local or municipal authorities; and between April 20, 2020 and January 15, 2021, the Restart Vermont Worksafe Guidance issued by the Agency of Commerce and Community Development, and any similar guidance issued by local or municipal authorities.

- **Wyoming SF 1002** Signed by governor 5/20/20. - The bill amends worker's compensation statute **Section 27-14-102**. The law states that "injury" doesn't include any illness or communicable disease unless the risk of contracting the illness or disease is increased by the nature of the employment. SF 1002 adds new language: For the period beginning 1/1/20 through 12/30/20, if any employee in an employment sector for which coverage is provided by this act is infected with the COVID-19 Coronavirus, it shall be presumed that the risk of contracting the illness or disease was increased by the nature of the employment. **Section 27-14-201** is amended to include: No injury related to COVID-19 for which coverage is provided under this act and for which a claim was filed on or before 12/30/30 shall be chargeable to an employer's experience rating under this section. The division shall estimate the cost to the fund of an injury subject to this subsection and shall deposit into the fund or dedicate within the fund the amount of the estimated cost but only to the extent federal monies are available for that purpose from the Coronavirus Aid, Relief and Economic Security (CARES) Act, P.L. 116-136, or from any other available federal monies related to the COVID-19 emergency response.