

# COVID-19 Liability Legislation

The following states are considering legislation that would limit liability for businesses operating during the pandemic:

- **California**
  - [AB 685](#)
  - **Status:** Passed Assembly, hearing held in the Senate on 8/5/20
  - This measure would require employers to provide notifications to employees about potential COVID-19 exposure. Specifically this measure would require a public or private employer to provide specified notifications to its employees, the Division of Occupational Safety and Health, and the State Department of Public Health, relating to the exposure of its employees to COVID-19 that the employer knew of or should have reasonably have known of, as specified. The measure would define “exposure to COVID-19.” The bill would make it a misdemeanor if an employer violates the notification requirements of these provisions. Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.
- **Michigan**
  - [HB 6030](#)
  - **Status:** Introduced to House Judiciary Committee
  - This measure creates the COVID-19 Response and Reopening Liability Assurance Act to make changes to liability requirements for COVID-19. This measure applies to providers of qualified products, insurers, as well as businesses and employees that operate premises. This measure states that 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 illness were caused by a reckless disregard of protocols or the person engaged in a deliberate act intended to cause harm.
  - [SB 1029](#)
  - **Status:** Referred to the Senate Economic and Small Business Development Committee
  - This measure shields an employer from liability if an employee catches COVID-19 under certain specific conditions. This measure will require that employers must allow employees who do not have 3 or more consecutive nonworking hours during the period where polls are open to request and take leave in order to vote. Employees must request this time at least one business day in advance. Employees may bring civil actions against employers that violate this measure and gain \$500 for each violation by the employer.
- **Massachusetts**
  - [HD 5163](#)
  - **Status:** Referred to House Committee on Rules

- The bill grants essential businesses immunity from suit and civil liability stemming from any exposure to COVID-19 on the premises of the business, or as a result of the operations of the business. Immunity is conditioned on the business operating in good faith and in compliance with required COVID-19 precautions, and voids immunity in case of fraud, deceptive acts or practices, negligence, or in the event of discrimination. This measure clarifies that claims may still be brought under workers' compensation statutes and regulations, or any healthcare or employment agreements. This measure provides for this act to be in effect for the duration of the COVID-19 state of emergency.
- **New York**
  - [Senate Bill 8587:](#)
  - **Status:** Hearing held, passed Senate committee.
  - **Summary:** The bill declares agreements exempting employers from liability for negligence related to the COVID-19 pandemic void and unenforceable. Specifically, the bill states that any agreement that exempts an employer from liability for damages for personal injury or death caused by or resulting from the employer's negligence in connection with the handling of measures related to the COVID-19 pandemic are void and unenforceable. The measure also allows an employer to seek damages from a third party that is wholly or partially responsible for the negligence. A hearing will take place on 7/20.
  - [Senate Bill 8800](#)
  - **Status:** Introduced, Referred to Senate Rules Committee
  - **Summary:** This measure relates to limiting 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. Specifically, the measure amends the labor law to establish definitions and provides that no individual, business trust, legal representative, corporation, company, association, firm, partnership, society, joint stock company, university, school, not-for-profit, religious organization, or any organized group of such entities shall be liable in any civil action for the spread or possible transmission of COVID-19 caused by an act or omission of such person acting in good faith in the workplace.
  - [Assembly Bill 10353:](#)
  - **Status:** Passed Assembly, referred to Senate Rules Committee
  - **Summary:** This measure would require employers to notify employees if they come into contact with other employees who have been infected with a virus that is causing a public health emergency. The measure would require employers with more than ten employees to notify any employee that has had direct contact with a coworker that has been diagnosed in relation to a disease outbreak causing a public health emergency. Employers would be required to notify each employee in writing within 24 hours of having reasonable knowledge of such diagnosis, in English and in

the employee's primary language. The Commissioner of Labor would be required to prepare templates of such notifications, and to determine which languages to provide in addition to English, for employers' use.

- **New Jersey**

- [AB 3999](#)

- **Status:** Passed Appropriations Committee

- **Summary:** This measure concerns employment benefits and COVID-19 infections contracted by essential employees. This measure creates a presumption that coronavirus disease 2019 infections contracted by essential employees, including but not limited to, health care workers and public safety workers, are work40 related for the purpose of employment benefits provided for work related injuries and illnesses, including but not limited to, workers' compensation benefits. Additionally, this measure provides that an essential employee's absence from work due to the employee contracting or being exposed to coronavirus disease 2019 will be considered on duty time, and an employer is prohibited from charging the employee any paid leave for the absence. The measure defines "essential employee" as: (1) an employee who is essential in support of gubernatorial or federally declared statewide emergency response and recovery operations; or (2) an employee in the public or private sector with duties and responsibilities, the performance of which is essential to the public's health, safety, and welfare.

- [Senate Bill 2628](#)

- **Status:** Referred to Senate Judiciary Committee on 6/29/20.

- **Summary:** The bill establishes general immunity for businesses and their officers, employees, and agents, against civil actions relating to the COVID-19 pandemic or related viral strain in subsequent years. Immunity is conditioned upon good faith compliance with or exceeding all applicable public and personal health and safety measures to prevent or mitigate a person's exposure to COVID-19. Immunity would apply to incidents of exposure that occur because a person is required to be on a business' property or entered or remained on the property by express or implied invitation or permission, or the exposure occurred at some other place in the course of conducting business, activities and operations, or providing services. However, nothing in the measure would be deemed to grant immunity for an entity's or person's willful, wanton, or grossly negligent act of commission or omission. If passed, the bill would take effect immediately, and apply retroactively to March 9, 2020, the date the Public Health Emergency and State of Emergency was declared by the Governor's Executive Order 103 of 2020 concerning the Coronavirus disease 2019 pandemic.

- [Senate Bill 2634](#)

- **Status:** Referred to Senate Judiciary Committee on 6/29/20.

- **Summary:** The bill is very similar to SB 2628, but it includes a section that also provides liability immunity to public entities and public employees. The bill establishes general immunity for businesses and their officers, employees, and agents, against civil actions relating to the COVID-19 pandemic or related viral strain in subsequent years. Immunity is conditioned upon good faith compliance with or exceeding all applicable public and personal health and safety measures to prevent or mitigate a person's exposure to COVID-19. However, nothing in the measure would be deemed to grant immunity for an entity's or person's willful, wanton, or grossly negligent act of commission or omission. If passed, the bill would take effect immediately, and apply retroactively to March 9, 2020, the date the Public Health Emergency and State of Emergency was declared by the Governor's Executive Order 103 of 2020 concerning the Coronavirus disease 2019 pandemic.
- [Senate Bill 2695](#)
- **Status:** Introduced, Referred to Senate Judiciary Committee.
- **Summary:** The bill establishes immunity for senior planned real estate development associations relating to COVID-19. This measure would establish immunity for senior planned real estate development associations, and any members, employees, and agents thereof, for any civil damages caused by an exposure to COVID-19 alleged to have been sustained as a result of an act or omission in the course of managing or maintaining the common elements and facilities of the age-restricted planned real estate development. The immunity established by the measure would be retroactive to March 9, 2020. This immunity would not apply to acts or omissions constituting a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct. This immunity would apply in addition to any other available immunity. The bill may provide additional cover for these communities to re-open pools.
- **Mississippi**
  - [Senate Bill 3409](#)
  - **Status:** Signed by Governor Reeves.
  - **Summary:** As amended, the bill shields for-profit entities, among others, from suits for civil damages for injuries or death resulting from or related to actual or alleged exposure or potential exposure to COVID-19 in the course of or through the performance or provision of its functions or services. The bill is retroactive and protects entities from liability both before and after public health guidance became available. During the time after public health guidance was promulgated by the state, entities are required to have made a good faith effort to follow public health guidance to enjoy immunity from liability. Specifically, 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 or related to actual or alleged exposure or potential exposure to COVID-19. The bill further provides exceptions for malice or willful,

intentional misconduct and establishes a two-year statute of limitations from the day the cause of action accrues.

- **North Carolina**

- [House Bill 118](#)
- **Status:** In effect.
- **Summary:** As amended, the bill provides immunity to businesses from civil suits arising from any act or omission alleged to have resulted in the contraction of COVID-19. Every business must provide, with respect to any premises owned or under possession, custody, or control, reasonable notice of actions taken for the purpose of reducing the risk of transmission of COVID-19 to individuals present on the premises. Businesses retain immunity against claims based on failure of businesses to provide reasonable notice of actions taken for the purpose of reducing the risk transmission. Please note that businesses may be held liable for any act or omission that amounts to gross negligence, willful or wanton conduct, or intentional wrongdoing.

- **Oklahoma**

- [SB 1946](#)
- **Status:** In effect.
- This measure provides civil liability protections for businesses where an injury was claimed from exposure or potential exposure to COVID-19. The measure requires a business to have complied or acted consistent with federal or state regulations, a Presidential or Gubernatorial Executive Order, or guidance applicable at the time of the alleged exposure. The measure defines "guidance" as written guidelines related to COVID-19 issued by the Centers for Disease Control and Prevention, Occupational Safety and Health Administration of the United States Department of Labor, Oklahoma State Department of Health, the Oklahoma Department of Commerce, or any other state agency, board or commission.

- **Iowa**

- [Senate File 2338](#)
- **Status:** In effect.
- **Summary:** The measure mandates that a person may not bring or maintain civil action alleging exposure or potential exposure to COVID-19 unless the civil action relates to a minimum medical condition, involves an act that was intended to cause harm, or involves an act that constitutes actual malice. The measure mandates that a person shall not be held liable for civil damages for any injuries sustained from exposure or potential exposure to COVID-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent with any federal or state statute, regulation, order, or public health guidance related to COVID-19 that was applicable to the person or activity at issue at the time of the exposure.

- **Georgia**

- [Senate Bill 359](#)
- **Status:** In effect.

- **Summary:** As amended, the bill provides immunity to businesses for claims arising from COVID-19 liability with exceptions for gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm. Moreover, the bill creates a rebuttable presumption for businesses that may be utilized against claims arising from the transmission, infection, exposure, or potential exposure of COVID-19 on businesses' premises.
  - The bill creates an assumption of risk defense if one of two conditions are met:
    - Any receipt or proof of purchase for entry, including but not limited to an electronic or paper ticket or wristband, issued to a claimant by the individual or entity for entry or attendance, includes a statement in at least ten-point Arial font placed apart from any other text, stating the following warning:
      - 'Any person entering the premises waives all civil liability against this premises owner and operator for any injuries caused by the inherent risk associated with contracting COVID-19 at public gatherings, except for gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm, by the individual or entity of the premises.'; or
    - An individual or entity of the premises has posted at a point of entry, if present, to the premises, a sign in at least one-inch Arial font placed apart from any other text, a written warning stating the following:
      - 'Under Georgia law, there is no liability for an injury or death of an individual entering these premises if such injury or death results from the inherent risks of contracting COVID-19. You are assuming this risk by entering these premises.'
  - The act applies *only* to causes of action accruing until July 14, 2021 and does not apply to any causes of action accruing thereafter.
- **Kansas:**
  - [House Bill 2016](#)
  - **Status:** In effect.
  - The bill creates the COVID 19 Response and Reopening for Business Liability Protection Act which provides immunity to many Kansas businesses if the business was acting pursuant to and in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued.
- **Louisiana**
  - [HB 826](#)
  - Status: In effect.

- Under this measure no person or local or state government or political subdivision thereof will be liable for civil damages for injury or death resulting from exposure to COVID-19 in the course of or through the performance of a person's business operations unless it is proven that the person, government, or political subdivision was not in substantial compliance with applicable COVID-19 procedures, and unless such damage was caused by gross negligence or willful or wanton misconduct.
- **Utah**
  - [SB 3007](#)
  - **Status:** In effect.
  - This measure provides a person immunity from civil liability for damages or an injury resulting from exposure of an individual to COVID-19, whether it be on the premises owned or operated by the person or during an activity managed by the person. This measure also addresses the relationship of this immunity to other state or federal laws. It does not apply to willful misconduct or intentional infliction of harm.
- **Wyoming**
  - [SF 1002](#)
  - **Status:** In effect.
  - **Summary:** This measure clarifies that during a public health emergency any health care provider or other person, including a business entity, who in good faith follows the instructions of a state, city, town or county health officer or who acts in good faith in responding to the public health emergency is immune from any liability arising from complying with those instructions or acting in good faith. This immunity will apply to health care providers who are retired, who have an inactive license or who are licensed in another state without a valid Wyoming license and while performing as a volunteer during a declared public health emergency. This immunity does not apply to acts of negligence or willful misconduct.
- **Federal**
  - [SB 4317](#)
  - **Status:** Referred to Senate Judiciary Committee
  - This measure would give employers protection from lawsuits stemming from workplace coronavirus testing. The measure would cover claims from Dec. 1, 2019 until Oct. 1, 2024. The bill clarifies that when a business provides training, personal protective equipment, or other assistance to an independent contractor or a franchisee's employee, those actions can't be used as evidence of an employer-employee relationship. The proposal also would place a cap on damage awards. Compensatory damages would be limited to the economic losses incurred as a result of the injury, as long as the harm wasn't a result of "willful misconduct".