

Recently enacted medical liability immunity statutes related to COVID-19

Note: State bills are hyperlinked to their respective state legislative websites

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| <p>Alaska SB 241. Signed into law on May 18, 2020.</p> | <p>Immunity for following a state standard order. A health care provider (HCP) who takes action based on a standing order issued by the chief medical officer in the Department of Health and Social Services is not liable for civil damages resulting from an act or omission in implementing the standing order except in cases of gross negligence, recklessness, or intentional misconduct.</p> <p>Duration. Standing orders shall be effective until retracted or for the duration of the COVID-19 public health disaster emergency declaration issued by the governor on March 11, 2020, and any extensions.</p> <p>Immunity relating to Personal Protective Equipment (PPE). During the COVID-19 public health disaster emergency any extensions, a HCP or manufacturer of PPE is not liable for civil damages resulting from an act or omission in issuing, providing, or manufacturing PPE in the event of injury or death to the user of the PPE if the PPE was issued, provided, or manufactured in good faith to respond to the COVID-19 public health disaster emergency. Does not apply to liability for civil damages as a result, of gross negligence, recklessness, or intentional misconduct.</p> |

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| <p>Georgia SB 359 Governor signed on August 5, 2020, effective on August 6, 2020.</p> | <p>HCP immunity relating to COVID-19 liability claims. No healthcare facility (HCF), HCP, entity, or individual, shall be held liable for damages in an action involving a COVID-19 liability claim against such HCF, HCP, or individual, unless the claimant proves that the actions of the HCF, HCP, entity, or individual, showed: gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.</p> <p>Rebuttable presumption or assumption of risk. Except for gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm, in an action involving a COVID-19 liability claim against an individual or entity for transmission, infection, exposure, or potential exposure of COVID-19 to a claimant on the premises of such individual or entity, there shall be a rebuttable presumption of assumption of the risk by the claimant when:</p> <p>(1) 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:</p> <p>“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</p> <p>(2) 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:</p> <p>“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.”</p> | <p>“Claimant” means an individual or an individual's survivor, including a decedent's estate, who seeks or has sought recovery of damages in a COVID-19 liability claim; provided, however, that all individuals claiming to have sustained damages of a single individual, are considered a single claimant.</p> <p>“COVID-19 liability claim” means a cause of action for:</p> <ul style="list-style-type: none"> (a) transmission, infection, exposure, or potential exposure of COVID-19 to a claimant: <ul style="list-style-type: none"> i. at any HCF or on the premises of any entity, individual, or HCP, resulting in injury to or death of a claimant; or ii. caused by actions of any HCP or individual resulting in injury to or death of a claimant; (b) acts or omissions by a HCF or HCP in arranging for or providing healthcare services or medical care to the claimant resulting in injury or death of the claimant for COVID-19 or where the response to COVID-19 reasonably interfered with the arranging for or the providing of healthcare services or medical care at issue to the claimant; or (c) manufacturing, labeling, donating, or distributing PPE or sanitizer that is directly related to providing such PPE or sanitizer to claimant by any entity during a public health state of emergency for COVID-19, which departs from the normal manufacturing, labeling, donating, or distributing PPE of such entity that proximately results in Injury to or death of a claimant. <p>“Personal protective equipment” means equipment worn to minimize exposure to hazards that cause injuries and illnesses, including but not limited to items such as gloves, masks, face shields, safety glasses, shoes, earplugs, muffs, respirators, coveralls, vests, and full body suits.</p> |

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| <p>Georgia SB 359 (Cont.)</p> | <p>Rebuttable presumption of risk for HCPs and HCFs. Except for gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm, in an action involving a COVID-19 liability claim for transmission, infection, exposure, or potential exposure of COVID-19 to a claimant at any HCF or on the premises of any HCP or death of a claimant there shall be a rebuttable presumption of assumption of the risk by the claimant when a HCF or a HCP 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:</p> <p style="text-align: center;">“Warning”</p> <p>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.'</p> <p>Application. This Act shall apply to causes of action accruing until July 14, 2021; and shall not apply to any causes of action accruing thereafter.</p> <p>When effective. This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval or on August 7, 2020, whichever occurs first.</p> | |
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| <p>Idaho H0006 Reported Signed by Governor on August 27, 2020; Effective: August 27, 2020.</p> | <p>This bill creates the "Coronavirus Limited Immunity Act."</p> <p>Limited Immunity from Liability.</p> <ol style="list-style-type: none"> (1) Subject to the other provisions of this section, a person is immune from civil liability for damages or an injury resulting from exposure of an individual to coronavirus. (2) Immunity shall not apply to acts or omissions that constitute an intentional tort or willful or reckless misconduct. (3) Nothing in this law shall be construed to modify the application of worker's compensation and related laws of the industrial commission. (4) The immunity provided in this new law is in addition to any other immunity protection that may apply in state or federal law. <p>When effective. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.</p> <p>How long the Act will remain in effect. The provisions of Section 1 of this act shall be null, void, and of no force and effect on and after July 1, 2021.</p> | <p>"Coronavirus" means:</p> <ol style="list-style-type: none"> (a) Severe acute respiratory syndrome coronavirus; (b) The disease caused by severe acute respiratory syndrome coronavirus; or (c) Any subsequently identified mutation, modification, or strain of coronavirus if the transmission of said virus among humans rises to the level of an epidemic or pandemic and qualifies for an emergency declaration under applicable Idaho law. <p>"Person" means any entity recognized in this state and shall include but not be limited to an individual, corporation, limited liability company, partnership, trust, association, church or religious organization, city, county, school district, college, university or other institution of higher education, or other unit of local government. However, "person" shall not include any Idaho public health district; the federal government or any of its agencies; the state of Idaho or any of its agencies, except colleges, universities, and other institutions of higher education; nor any foreign government or foreign jurisdiction.</p> |

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| <p>Iowa SF 2338 Signed by Governor on June, 18, 2020.</p> | <p>Evidence of Medical Expenses and Recoverable Damages for Medical Expenses (Sections 1 and 2)</p> <p>Section 1 of SF 2338. Medical expenses. Evidence offered to prove past medical expenses shall be limited to evidence of the amounts actually paid to satisfy the bills that have been satisfied, regardless of the source of payment, and evidence of the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied.</p> <p>Evidence of the amounts actually necessary to satisfy the bills that have been incurred shall not exceed the amount by which the bills could be satisfied by the claimant’s health insurance, regardless of whether such health insurance is used or will be used to satisfy the bills. This section does not impose upon any party an affirmative duty to seek a reduction affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled.</p> <p>Section 2 of SF 2338. Recoverable damages for medical expenses. In an action brought to recover damages for personal injury, the damages that may be recovered by a claimant for the reasonable and necessary cost or value of medical care rendered shall not exceed the sum of the amounts actually paid by or on behalf of the injured person to the HCPs who rendered treatment and any amounts actually necessary to satisfy the medical care charges that have been incurred but not yet satisfied.</p> <p>This section does not apply to actions governed by section 147.136.</p> | <p>Definitions under Sections 3-10 of SF 2338, which create the “COVID-19 Response and Back-to-Business Limited Liability Act”.</p> <p>“Minimum medical condition” means a diagnosis of COVID-19 that requires inpatient hospitalization or results in death.</p> <p>“Personal protective equipment” means and includes protective clothing, gloves, face shields, goggles, facemasks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or the spread of infection or illness.</p> <p>“Public health guidance” means and includes written guidance related to COVID-19 issued by any of the following:</p> <ul style="list-style-type: none"> (a) The CDC (b) The CMS (c) The OSHA (d) The office of the governor. (e) Any state agency, including the department of public health. |

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| <p>Iowa SF 2338 (Cont.)</p> | <p>Section 3-10 of SF 2338 create the “COVID-19 Response and Back-to-Business Limited Liability Act”.</p> <p>Section 4 of SF 2338 contains definitions under the “COVID-19 Response and Back-to-Business Limited Liability Act.” (See the right-hand column).</p> <p>Section 5 of SF 2338. Actual injury requirement in civil actions alleging COVID-19 exposure. A person shall not bring or maintain a civil action alleging exposure or potential exposure to COVID-19 unless one of the following applies:</p> <ol style="list-style-type: none"> (1) The civil action relates to a minimum medical condition. (2) The civil action involves an act that was intended to cause harm. (3) The civil action involves an act that constitutes actual malice. <p>Section 6 of SF 2338. Premises owner’s duty of care—limited liability. A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who 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> <ol style="list-style-type: none"> (1) The person who possesses or is in control of the premises recklessly disregards a substantial and unnecessary risk that the individual would be exposed to COVID-19. (2) The person who possesses or is in control of the premises exposes the individual to COVID-19 through an act that constitutes actual malice. (3) The person who possesses or is in control of the premises intentionally exposes the individual to COVID-19. | <p>“Qualified product” means and includes all, of the following:</p> <ol style="list-style-type: none"> (a) PPE used to protect the wearer from COVID-19 or to prevent the spread of COVID-19. (b) Medical devices, equipment, and supplies used to treat COVID-19, including medical devices, equipment, or supplies that are used or modified for an unapproved use to treat COVID-19 or to prevent the spread of COVID-19. (c) Medical devices, equipment, and supplies used outside of their normal use to treat COVID-19 or to prevent the spread of COVID-19. (d) Medications used to treat COVID-19, including medications prescribed or dispensed for off-label use to attempt to treat COVID-19. (e) Tests to diagnose or determine immunity to COVID-19. (f) Any component of an item described in paragraph (a) through (e). |

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| <p>Iowa SF 2338 (Cont.)</p> | <p>Section 7 of SF 2338. Safe harbor for compliance with regulations, executive orders, or public health guidance. A person in this state 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 alleged exposure or potential exposure.</p> <p>Section 8 of SF 2338. Liability of health care providers.</p> <p>(1) A HCP shall not be liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the HCP’s acts or omissions while providing or arranging health care in support of the state’s response to COVID-19. This subsection shall apply to all, of the following:</p> <ul style="list-style-type: none"> (a) Injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of COVID-19. (b) Prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of COVID-19. (c) Acts or omissions while providing health care to individuals unrelated to COVID-19 when those acts or omissions support the state’s response to COVID-19, including any of the following: <ul style="list-style-type: none"> i. Delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to any federal or state statute, regulation, order, or public health guidance. ii. Diagnosing or treating patients outside the normal scope of the HCP’s license or practice. iii. Using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use. iv. Conducting tests or providing treatment to any individual outside the premises of a HCF. v. Acts or omissions undertaken by a HCP because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to COVID-19 that renders the HCP unable to provide the level or manner of care to any person that otherwise would have been required in the absence of COVID-19. vi. Acts or omissions undertaken by a HCP relating to use or nonuse of PPE. <p>(2) This section shall not relieve any person of liability for civil damages for any act or omission which constitutes recklessness or willful misconduct.</p> <p>Section 9 of SF 2338. Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to COVID-19.</p> <p>(1) Any person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, PPE, or a qualified product in response to COVID-19 shall not be liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, PPE, or a qualified product.</p> <p>(2) Any person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, PPE, or a qualified product in response to COVID-19 shall not be liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings.</p> |

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| <p>Iowa SF 2338 (Cont.)</p> | <p>(3) This section shall not apply in the event of any of the following:</p> <ul style="list-style-type: none"> (a) The person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, PPE, or a qualified product had actual knowledge of a defect in the household disinfecting or cleaning supplies, PPE, or a qualified product when put to the use for which the household disinfecting or cleaning supplies, PPE or a qualified product was designed, manufactured, sold, distributed, or donated, and the person recklessly disregarded a substantial and unnecessary risk that the household disinfecting or cleaning supplies, PPE, or a qualified product would cause serious personal injury, death, or serious property damage. (b) The person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, PPE, or a qualified product acted with actual malice. | |
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| <p>Kansas HB 2016 Approved by Governor on Monday, June 8, 2020</p> | <p>Section 10 of HB 2016.</p> <ul style="list-style-type: none"> (a) HCP immunity. Notwithstanding any other provision of law, except as provided in subsection (c), a HCP is immune from civil liability for damages, administrative fines or penalties for acts, omissions, healthcare decisions or the rendering of or the failure to render healthcare services, including services that are altered, delayed or withheld, as a direct response to any state of disaster emergency. (b) Scope of immunity. The provisions of this section shall apply to any claims for damages or liability that arise out of or relate to acts, omissions or healthcare decisions occurring during any state of disaster emergency. (c) (1) Exception for gross negligence, etc. The provisions of this section shall not apply to civil liability when it is established that the act, omission, or healthcare decision constituted gross negligence or willful, wanton, or reckless conduct. (2) Relation to COVID-19. The provisions of this section shall not apply to healthcare services not related to COVID-19 that have not been altered, delayed, or withheld as a direct response to COVID-19 public health emergency. <p>Section 11 of HB 2016. Immunity for businesses. Notwithstanding any other provision of law, a person, or an agent of such person, conducting business in this state shall be immune from liability in a civil action for a COVID-19 claim if such person was acting pursuant to and in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued.</p> | <p>"COVID-19 claim" means any claim for damages, losses, indemnification, contribution, or other relief arising out of or based on exposure or potential exposure to COVID-19. "COVID-19 claim" includes a claim made by or on behalf of any person who has been exposed or potentially exposed to COVID-19, or any representative, spouse, parent, child or other relative of such person, for injury, including mental or emotional injury, death or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or other losses allegedly caused by the person's exposure or potential exposure to COVID-19.</p> <p>"Personal protective equipment" means coveralls, face shields, gloves, gowns, masks, respirators, or other equipment designed to protect the wearer from the spread of infection or illness.</p> |

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| <p>Kansas HB 2016 (Cont.)</p> | <p>Duration of immunity. The provisions of this section shall expire on January 26, 2021.</p> <p>Section 12 of HB 2016.</p> <p>(1) Immunity relating to a qualified product. Notwithstanding any other provision of law, a person who designs, manufactures, labels, sells, distributes, provides or donates a qualified product in response to the COVID-19 public health emergency shall be immune from liability in a civil action alleging a product liability claim arising out of such qualified product if:</p> <p>(a) The product was manufactured, labeled, sold, distributed, provided or donated at the specific request of or in response to a written order or other directive finding a public need for a qualified product issued by the governor, the adjutant general or the division of emergency management; and</p> <p>(b) the damages are not occasioned by willful, wanton, or reckless disregard of a known, substantial, and unnecessary risk that the product would cause serious injury to others.</p> <p>Section 13 of HB 2016.</p> <p>(1) Affirmative defense for adult care facilities</p> <p>(a) Notwithstanding any other provision of law, an adult care facility shall have an affirmative defense to liability in a civil action for damages, administrative fines or penalties for a COVID-19 claim if such facility:</p> <p>(1)(A) Was caused, by the facility's compliance with a statute or rule and regulation, to reaccept a resident who had been removed from the facility for treatment of COVID-19; or</p> <p>(B) treats a resident who has tested positive for COVID-19 in such facility in compliance with a statute or rule and regulation; and</p> <p>(2) is acting pursuant to and in substantial compliance with public health directives.</p> <p>(b) As used in this section, “public health directives” means any of the following that is required by law to be followed related to public health and COVID-19;</p> | <p>"Person" means an individual, for-profit, or not-for-profit business entity, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or political subdivision, agency or instrumentality or any other legal or commercial entity.</p> <p>"Product liability claim" means any strict liability, ordinary negligence or implied warranty claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage or labeling of the relevant product.</p> <p>"Public health directives" means any of the following that is required by law to be followed related to public health and COVID-19:</p> <p>(1) State statutes, rules and regulations or executive orders issued by the governor pursuant to K.S.A. 48-925, and amendments thereto;</p> <p>(2) federal statutes or regulations from federal agencies, including the United States centers for disease control and prevention and the occupational safety and health administration of the United States department of labor; or</p> <p>(3) any lawful order or proclamation issued under authority of the Kansas emergency management act, and amendments thereto, by a board of county commissioners, the governing body of a city or a local health officer.</p> <p>"Qualified product" means:</p> <p>(1) PPE used to protect the wearer from COVID-19 or the spread of COVID-19;</p> <p>(2) Medical devices, equipment and supplies used to treat COVID-19, including products that are used or modified for an unapproved use to treat COVID-19 or prevent the spread of COVID-19;</p> |

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| <p>Kansas HB 2016 (Cont.)</p> | <p>(A) State statutes, rules and regulations or executive orders issues by the governor; or (B) Federal statutes or regulations from federal agencies, including the CDC and OSHA.</p> <p>Section 14 of HB 2016. (1) Nothing in the COVID-19 response and reopening for business liability protection act: (a) creates, recognizes or ratifies a claim or cause of action of any kind; (b) eliminates a required element of any claim; (c) affects workers' compensation law, including the exclusive application of such law; or (d) amends, repeals, alters or affects any other immunity or limitation of liability.</p> <p>Section 15 of HB 2016. (1) Retroactive application. (a) The provisions of sections 11, 12 and 14, and amendments thereto, shall apply retroactively to any cause of action accruing on or after March 12, 2020. (b) The provisions of sections 10 and 13, and amendments thereto, shall apply retroactively to any cause of action accruing on or after March 12, 2020, and prior to termination of the state of disaster emergency related to the COVID-19 public health emergency.</p> | <p>(3) medical devices, equipment or supplies utilized outside of the product's normal use to treat COVID-19 or to prevent the spread of COVID-19; (4) medications used to treat COVID-19, including medications prescribed or dispensed for off-label use to attempt to combat COVID-19; (5) tests used to diagnose or determine immunity to COVID-19; (6) disinfecting or cleaning supplies; (7) clinical laboratory services certified under the federal clinical laboratory improvement amendments in section 353 of the public health service act, 42 U.S.C. § 263a; and (8) components of qualified products.</p> |

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| <p>Kentucky SB 150 Signed by Governor (Acts Ch. 73) – March 30, 2020</p> | <p>(1) Compliance with executive orders and directives. A HCP shall be considered to be in compliance with any Executive Orders and directives issued by the Cabinet for Health and Family Services related to elective procedures if the HCP complies with recommendations from CMS on elective surgery and medical procedures and:</p> <ul style="list-style-type: none"> (a) The HCP, in his or her professional judgment, deems the procedure or service to be emergent or urgent; or (b) The procedure or service is ordered for a patient by a physician licensed by the Kentucky Board of Medical Licensure and is provided by one of the following providers or facilities: <ul style="list-style-type: none"> (i) Physical therapists; (ii) Occupational therapists; (iii) Speech-language pathologists; (iv) Pain management facilities; (v) Alcohol and drug abuse treatment programs; (vi) Substance use disorder programs licensed as "Chemical Dependency Treatment Services." <p>(2) HCP defense to civil liability for ordinary negligence. A HCP who in good faith renders care or treatment of a COVID-19 patient during the state of emergency shall have a defense to civil liability for ordinary negligence for any personal injury resulting from said care or treatment, or from any act or failure to act in providing or arranging further medical treatment, if the HCP acts as an ordinary, reasonable, and prudent HCP would have acted under the same or similar circumstances. The aforesaid defense under this paragraph shall include a HCP who:</p> <ul style="list-style-type: none"> (a) Prescribes or dispenses medicines for off-label use to attempt to combat the COVID-19 virus, in accordance with the federal Right to Try Act and Kansas Law; (b) Provides health care services, upon the request of health care facilities or public health entities, that are outside of the provider's professional scope of practice; or (c) Utilizes equipment or supplies outside of the product's normal use for medical practice and the provision of health care services. | <p>"Emergent" means any health care procedure or service that, were it not provided, is at high-risk of resulting in serious or irreparable harm to a patient if not provided within 24 hours.</p> <p>"Urgent" means any health care procedure or service that, were it not provided, is at high-risk of resulting in serious or irreparable harm to the patient if not provided within 24 hours to 30 days.</p> |

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| <p>Kentucky SB 150 (Cont.)</p> | <p>Defense for business providing PPE outside of the normal course of business. Any business in the Commonwealth that makes or provides PPE 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.</p> |
| <p>Louisiana SB 435 June 12, 2020, S, Signed by the Governor. Becomes Act No. 362. Effective date June 12, 2020</p> | <p>Limitation of liability during the COVID-19 public health emergency. Notwithstanding any other provision of law to the contrary, no natural or juridical person, state or local government, or political subdivision thereof, shall 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 person, government, or political subdivision failed to substantially comply with the applicable COVID-19 procedures established by the federal, state, or local agency which governs the business operations and the injury or death was caused by the person's, government's, or political subdivision's gross negligence or wanton or reckless misconduct. If two or more sources of procedures are applicable to the business operations at the time of the actual or alleged exposure, the person, government, or political subdivision shall substantially comply with any one applicable set of procedures.</p> <p>This Section shall not apply if the damages that resulted from or are related to the actual or alleged exposure to COVID-19 are shown by the evidence to be the result of gross negligence, willful misconduct, or intentional criminal misconduct. This Section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under the Louisiana Workers' Compensation Law.</p> <p>Section 2 of SB 435 states in part as follows: Due to the imminent threat posed by COVID-19 as provided in Proclamation Number 25 JBE 2020 and any subsequent proclamation, declaring the existence of a statewide public health emergency, Section 1 of this Act shall be retroactive to March 11, 2020.</p> |
| <p>Louisiana SB 491. Signed by the Governor on June 12, 2020. Effective on June 12, 2020.</p> | <p>Section 1 of SB 491 states in part as follows: Immunity for emergency efforts. During a declared state of emergency, any natural or juridical person, who renders disaster relief, recovery services, or products outside of the typical course and scope of their operations in coordination with the federal government, the state, or its political subdivisions shall not be liable to the recipient thereof for any injury or death to a person or any damage to property resulting therefrom, except in the event of gross negligence or willful misconduct.</p> <p>Section 2 of SB 491 states: Due to the imminent threat posed by COVID-19 as provided in Proclamation Number 25 JBE 2020 and any subsequent proclamation, declaring the existence of a statewide public health emergency, Section 1 of this Act shall be retroactive to March 11, 2020.</p> |

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| <p>Massachusetts SB 2640. Signed by Governor on April 17, 2020.</p> | <p>(1) Immunity for HCPs and HCFs. Notwithstanding any general or special law to the contrary, except as provided in subsection (b), health care professionals and health care facilities shall be immune from suit and civil liability for any damages alleged to have been sustained by an act or omission by the health care professional or HCF in the course of providing health care services during the period of the COVID-19 emergency; provided, however, that:</p> <ul style="list-style-type: none"> (a) the HCF or health care professional is arranging for or providing health care services pursuant to a COVID-19 emergency rule and in accordance with otherwise applicable law; (b) arranging for or providing care or treatment of the individual was impacted by the HCF’s or health care professional’s decisions or activities in response to treatment conditions resulting from the COVID-19 outbreak or COVID-19 emergency rules; and (c) the HCF or health care professional is arranging for or providing health care services in good faith. <p>(2) When immunity is inapplicable. The immunity provided in subsection (1) shall not apply:</p> <ul style="list-style-type: none"> (a) if the damage was caused by an act or omission constituting gross negligence, 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 a HCF or health care professional providing health care services; (b) to consumer protection actions brought by the attorney general; or (c) to false claims actions brought by or on behalf of the commonwealth. <p>Immunity for volunteer organizations. Notwithstanding any general or special law to the contrary, a volunteer organization shall be immune from suit and civil liability for any damages occurring in or at the volunteer organization’s facility where the damage arises from use of the facility for the commonwealth’s response and activities related to the COVID-19 emergency, unless it is established that the damages were caused by the volunteer organization’s gross negligence, recklessness or conduct with an intent to harm.</p> | <p>“COVID-19 emergency rule,” an executive order, order of the commissioner of public health, declaration, directive or other state or federal authorization, policy, statement, guidance, rule-making or regulation that waives, suspends or modifies otherwise applicable state or federal law, regulations or standards regarding either:</p> <ul style="list-style-type: none"> (1) scope of practice or conditions of licensure, including modifications authorizing health care professionals licensed in another state to practice in the commonwealth; or (2) the delivery of care, including those regarding the standard of care, the site at which care is delivered or the equipment used to deliver care, during the COVID-19 emergency. <p>“Damages”, injury or loss of property or personal injury or death, including economic or non-economic losses.</p> <p>“Good faith”, shall, without limitation, include acts or omissions undertaken consistent with the guidelines for crisis standards of care for the COVID-19 pandemic issued by the department of public health, and exclude, without limitation, acts or omissions based on race, ethnicity, national origin, religion, disability, sexual orientation or gender identity, and deceptive acts or practices, and fraud.</p> <p>“Health care services”, services provided by a HCF or health care professional, regardless of location, that involve the:</p> <ul style="list-style-type: none"> (1) treatment, diagnosis, prevention or mitigation of COVID-19; (2) assessment or care of an individual with a confirmed or suspected case of COVID-19; or (3) care of any other individual who presents at a HCF or to a health care professional during the period of the COVID-19 emergency. |

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| <p>Massachusetts SB 2640 (Cont.)</p> | <p>This act shall take effect upon its passage and shall apply to claims based on acts or omissions that occur or have occurred during the effective period of the COVID-19 emergency, declared on March 10, 2020, and until terminated or rescinded.</p> | |
| <p>Mississippi SB 3049 Approved by Governor on July 8, 2020.</p> | <p>This bill creates the "Mississippi Back-to-Business Liability Assurance and Health Care 16 Emergency Response Liability Protection Act."</p> <p>Immunity for persons acting in good faith. A person, or agent of that person, who attempts in good faith to follow applicable public health guidance 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 in the course of or through the performance or provision of its functions or services.</p> <p>Immunity applicable prior to public health guidance. A person, or agent of that person, shall be immune from suit 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 in the time before applicable public health guidance was available.</p> | <p>"COVID-19 State of Emergency" means:</p> <ol style="list-style-type: none"> (1) A public health emergency related to COVID-19 declared by the United States Secretary of Health and Human Services under Section 319 of the Public Health Service Act (42 USC Section 247d); (2) A Presidential declaration of emergency related to COVID-19 under the National Emergencies Act or the Stafford Act; or (3) A state of emergency related to COVID-19 proclaimed by the Governor of the State of Mississippi under Section 33-15-11(b)(17). <p>"Disinfecting or cleaning supplies" includes, but is not limited to, hand sanitizers, cleaners, disinfectants, sprays, and wipes intended for use in removal or mitigation of bacterial or viral disease-causing agents from surfaces or spaces.</p> <p>"First responder" means state and local law enforcement personnel, fire department personnel, emergency medical personnel, ambulance service provider personnel, emergency management personnel and public works personnel who may be deployed in response to the COVID-19 state of emergency.</p> |

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| <p>Mississippi SB 3049 (Cont.)</p> | <p>Immunity for persons in control of premises. 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.</p> <p>(1) Immunity for health care professionals and HCFs. Any health care professional or HCF shall be immune from suit for any injury or death directly or indirectly sustained because of the health care professional's or HCF's acts or omissions while providing health care services related to a COVID-state of emergency. The immunity takes effect when the COVID-19 state of emergency is declared, applies to any health care services performed during the COVID-19 state of emergency, including any period of renewal or extension, and terminates one (1) year after the end of the COVID-19 state of emergency. The immunity includes, but is not limited to, injury or death resulting from screening, assessing, diagnosing or treating persons in relation to the COVID-19 state of emergency or the medical conditions causing the COVID-19 state of emergency, or acts or omissions while providing health care services to persons unrelated to the COVID-19 state of emergency when those acts or omissions were intended to support the state's response to the COVID-19 state of emergency, including, but not limited to, the following:</p> <ol style="list-style-type: none"> a. Delaying or cancelling nonurgent or elective dental, medical or surgical procedures, or altering the diagnosing or treatment of any person in response to an order, directive or guideline issued by the federal, state or a local government; b. Diagnosing or treating patients outside the normal scope of the health care professional's license or practice; c. Using equipment or supplies outside of the product's normal use for medical practice and the provision of health care services, including using or modifying a medical device for an unapproved use or indication; d. Prescribing, administering or dispensing a pharmaceutical for off-label use to treat a patient in relation to a COVID-19 state of emergency; | <p>"Personal protective equipment" means coveralls, face shields, gloves, gowns, masks, respirators, or other equipment designed to protect the wearer from the spread of infection or illness.</p> <p>"Premises" means any physical place serving a commercial, residential, educational, religious, governmental, cultural, charitable or health care purpose.</p> <p>"Public health guidance" means written guidance related to the COVID-19 state of emergency that is issued by an executive agency or regulatory agency of the federal government or an executive agency of the State of Mississippi.</p> <p>"Qualified product" means PPE used to protect the wearer from COVID-19 or the spread of COVID-19; medical devices, equipment, and supplies used to treat a person with COVID-19, including products that are used or modified for an unapproved use to treat COVID-19 or prevent the spread of COVID-19; medical devices, equipment, or supplies utilized outside of the product's normal use to treat a person with COVID-19 or to prevent the spread of COVID-19; medications used to treat COVID-19, including medications prescribed or dispensed for off-label use to attempt to combat COVID-19; tests to diagnose or determine immunity to COVID-19 which have been approved by or submitted to the United States Food and Drug Administration ("FDA") for approval within FDA-prescribed time periods; and components of qualified products.</p> |

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| <p>Mississippi SB 3049 (Cont.)</p> | <ul style="list-style-type: none"> e. Conducting tests or providing treatment to any person outside of the premises of standard health care facilities; or f. Acts or omissions undertaken by a health care professional or HCF because of a lack of staffing, facilities, equipment, supplies or other resources attributable to the COVID-19 state of emergency that make it impractical for the health care professional or HCF to provide the level or manner of care to any person that otherwise would have been required in the absence of the COVID-19 state of emergency. <p>Liberal construal. This act shall be liberally construed with regard to immunizing health care professionals or health care facilities for acts or omissions undertaken while providing health care services related to a COVID-19 state of emergency.</p> <p>Immunity for distributors of PPE or cleaning supplies. A person who designs, manufactures, labels, sells, distributes, or donates disinfecting or cleaning supplies or PPE 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 actual or alleged exposure or potential exposure to COVID-19 caused by the disinfecting or cleaning supplies or PPE.</p> <p>When immunity is inapplicable. Notwithstanding any other provision of this act, the immunities provided in this act shall not apply where the plaintiff shows, by clear and convincing evidence, that a defendant, or any employee or agent thereof, acted with actual malice or willful, intentional misconduct.</p> <p>(1) What the act does not do. Nothing in this act:</p> <ul style="list-style-type: none"> (a) Creates, recognizes or ratifies a claim or cause of action of any kind; (b) Eliminates a required element of any claim; (c) Affects workers' compensation law, including the exclusive application of such law; or (d) Amends, repeals, alters or affects any other immunity or limitation of liability. <p>Time limit within which a suit must be brought. Except as otherwise provided in Section 11-46-11, a person must bring suit for any alleged injury arising from COVID-19 not later than two (2) years after the day the cause of action accrues.</p> <p>When the act terminates. This act shall take effect and be in force from and after March 14, 2020, and expire one (1) year after the end of the COVID-19 state of emergency, except that any civil liability arising out of acts or omissions or related to an injury that occurred during the operation of this act shall be subject to its provisions in perpetuity. It is the intent of the Legislature that this act take effect retroactively.</p> |

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| <p>Nevada SB 4 Approved by Governor on August 11, 2020.</p> | <p>(1) Immunity applicable to an “entity.” In any civil action where a plaintiff alleges a personal injury or death, as a result, of exposure to COVID-19 while on premises owned or operated by an entity, or during an activity conducted or managed by the entity:</p> <ul style="list-style-type: none"> (a) The complaint must be pled with particularity. (b) the entity was in substantial compliance with controlling health standards, the entity is immune from liability unless the plaintiff pleads sufficient facts and proves that: <ul style="list-style-type: none"> (i) The entity violated controlling health standards with gross negligence; and (ii) The gross negligence was the proximate cause of the plaintiff’s personal injury or death. (c) If the entity was not in substantial compliance with controlling health standards: <ul style="list-style-type: none"> (i) The plaintiff may pursue any claim recognized at common law or by statute; and (ii) The immunity described in paragraph (b) does not apply to the entity. <p>Determining substantial compliance. The court shall determine as a matter of law whether an entity was in substantial compliance with controlling health standards at the time of an alleged exposure to COVID-19. The plaintiff has the burden of establishing the entity was not in substantial compliance with controlling health standards.</p> | <p>“Business” means a natural person, or a corporation, partnership, association or other business organization, engaging in an activity for profit at premises located in this State. The term does not include a business that operates:</p> <ul style="list-style-type: none"> (1) an agency to provide nursing in the home; (2) a facility for hospice care; (3) a facility for intermediate care; (4) a facility for skilled nursing; (5) a hospital; or (6) an independent center for emergency medical care. <p>“Controlling health standards” means any of the following that are clearly and conspicuously related to COVID-19 and that prescribed, the manner in which an entity must operate at the time of the alleged exposure:</p> <ul style="list-style-type: none"> (1) a federal, state or local law, regulation or ordinance; or (2) a written order or other document published by a federal, state or local government or regulatory body. <p>“Entity” means a business, governmental entity or nonprofit organization and the officers and employees of the business, governmental entity or nonprofit organization.</p> <p>“Nonprofit organization” means any private organization not operated for profit. The term does not include a nonprofit organization that operates:</p> <ul style="list-style-type: none"> (1) an agency to provide nursing in the home; (2) a facility for hospice care; (3) a facility for intermediate care; (4) a facility for skilled nursing; (5) a hospital; or (6) an independent center for emergency medical care. |

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| <p>Nevada SB 4 (Cont.)</p> | | <p>“Substantial compliance” means the good faith efforts of an entity to help control the spread of COVID-19 in conformity with controlling health standards. The entity may demonstrate substantial compliance by establishing policies and procedures to enforce and implement the controlling health standards in a reasonable manner. Isolated or unforeseen events of noncompliance with the controlling health standards do not demonstrate noncompliance by the entity.</p> |
| <p>New Jersey S 2333. Approved on April 14, 2020.</p> | <p>Legislative declaration. The Legislature finds and declares:</p> <p>This statement of legislative intent is made to establish clearly, our intent because of the lack of committee hearings. This statement shall be made an official part of the record in establishing this Legislature’s intent.</p> <p>It has been reported that this bill would grant immunity to all medical doctors and healthcare workers in New Jersey for all inpatient or outpatient procedures or any medical treatment rendered during the timeframe of the COVID-19 emergency. This is not an accurate statement.</p> <p>The enactment of this bill is to ensure that there are no impediments to providing medical treatment related to the COVID-19 emergency and that all medical personnel supporting the COVID-19 response are granted immunity. However, medical care rendered in the ordinary course of medical practice does not provide the granting of immunity. For example, procedures performed by licensed medical professionals in their ordinary course of business, including orthopedic procedures, OB/GYN services, and necessary cardiological procedures.</p> | <p>“Scarce critical resource allocation policy” means a policy, protocol or guidelines for the allocation by a HCF, or a health care system that owns or operates more than one HCF, of ventilators, intensive care unit beds, or other medical resources or supplies that may be in limited supply and high demand during a public health emergency.</p> |

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| <p>New Jersey S 2333. (Cont.)</p> | <p>It is not the Legislature’s intent to grant immunity for medical services, treatment and procedures that are unrelated to the COVID-19 emergency. Notwithstanding the provisions of any law, rule, or regulation to the contrary:</p> <p>(1) Immunity for health care professionals, health care facilities, or health care systems.</p> <p>(a) A health care professional shall not be liable for civil damages for injury or death alleged to have been sustained as a result of an act or omission by the health care professional in the course of providing medical services in support of the State’s response to the outbreak of coronavirus disease during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020; and</p> <p>(b) A HCF or a health care system that owns or operates more than one HCF shall not be liable for civil damages for injury or death alleged to have been sustained as a result of an act or omission by one or more of its agents, officers, employees, servants, representatives or volunteers, if, and to the extent, such agent, officer, employee, servant, representative or volunteer is immune from liability pursuant to paragraph (1).</p> <p>Additional immunity for health care professionals, healthcare facilities, or health care systems. Immunity shall also include any act or omission undertaken in good faith by a health care professional or healthcare facility or a health care system to support efforts to treat COVID-19 patients and to prevent the spread of COVID-19 during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020, including but not limited to engaging in telemedicine or telehealth, and diagnosing or treating patients outside the normal scope of the health care professional’s license or practice. The immunity granted pursuant to (1) shall not apply to acts or omissions constituting a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct, and shall be retroactive to March 9, 2020.</p> <p>Immunity with respect to allocation of mechanical ventilators or other scarce medical resources. Notwithstanding the provisions of any law, rule, or regulation to the contrary, a HCF or a health care system that owns or operates more than one HCF shall not be criminally or civilly liable for damages for injury or death alleged to have been sustained as a result of an act or omission by the facility or system or one or more of the facility’s or system’s agents, officers, employees, servants, representatives or volunteers during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020 in connection with the allocation of mechanical ventilators or other scarce medical resources, if the HCF or system adopts and adheres to a scarce critical resource allocation policy that at a minimum incorporates the core principles identified by the Commissioner of Health in an executive directive or administrative order, and the HCF’s or system’s agents, officers, employees, servants, representatives and volunteers shall not be civilly or criminally liable for an injury caused by any act or omission pursuant to this subsection during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020 pursuant to, and consistent with, such policy.</p> |

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| <p>New York S 7506 Signed Chapter 56 – April 4, 2020; S 8835, signed on August 3, 2020.</p> | <p>This bill enacts the “Emergency or Disaster Treatment Protection Act.”</p> <p>Declaration of purpose. A public health emergency that occurs on a statewide basis requires an enormous response from state and federal and local governments working in concert with private and public HCP s in the community. The furnishing of treatment of patients during such a public health emergency is a matter of vital state concern affecting the public health, safety and welfare of all citizens. It is the purpose of this article to promote the public health, safety and welfare of all citizens by broadly protecting the health care facilities and health care professionals in this state from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with the public health emergency.</p> <p>§ 3082. Limitation of liability.</p> <p>(1) Immunity for HCFs or health care professionals. Notwithstanding any law to the contrary, except as provided in subdivision two of this section, any HCF or health care professional shall have immunity from any liability, civil or criminal, for any harm or damages alleged to have been sustained as a result of an act or omission in the course of providing health care services, if:</p> <ul style="list-style-type: none"> (a) the HCF or health care professional is providing health care services in accordance with applicable law, or where appropriate pursuant to a COVID-19 emergency rule; (b) the act or omission occurs in the course of providing health care services and the treatment of the individual is impacted by the HCF’s or health care professional’s decisions or activities in response to or as a result of the COVID-19 outbreak and in support of the state’s directives; and (c) the HCF or health care professional is providing health care services in good faith. | <p>“COVID-19 emergency declaration” means the state disaster emergency declared for the entire state by Executive Order #122 and any further amendments or modifications, and as may be further extended.</p> <p>“COVID-19 emergency rule” means any executive order, declaration, directive or other state or federal authorization, policy statement, rule-making, or regulation that waives, suspends, or modifies otherwise applicable state or federal law regarding scope of practice, such as modifications authorizing physicians licensed in another state to practice in the state of New York, or the delivery of care, including those regarding the facility space in which care is delivered and the equipment used to deliver care, during the COVID-19 emergency declaration.</p> <p>“Damages” means economic or non-economic losses for harm to an individual.</p> <p>“Harm” includes physical and nonphysical contact that results in injury to or death of an individual.</p> <p>“Health care services” means services provided by a HCF or a health care professional, regardless of the location where those services are provided, that relate to:</p> <ul style="list-style-type: none"> (a) the diagnosis or treatment of COVID-19; or (b) the assessment or care of an individual as it relates to COVID-19, when such individual has a confirmed or suspected case of COVID-19; |

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| <p>New York S 7506 (Cont.)</p> | <p>(2) When immunity is inapplicable. The immunity provided by (1) shall not apply if the harm or damages were caused by an act or omission constituting willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm by the health care facility or health care professional providing health care services, provided, however, that acts, omissions or decisions resulting from a resource or staffing shortage shall not be considered to be willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.</p> <p>(3) Immunity for volunteer organizations. Notwithstanding any law to the contrary, a volunteer organization shall have immunity from any liability, civil or criminal, for any harm or damages irrespective of the cause of such harm or damage occurring in or at its facility or facilities arising from the state's response and activities under the COVID-19 emergency declaration and in accordance with any applicable COVID-19 emergency rule, unless it is established that such harm or damages were caused by the willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm by the volunteer organization.</p> <p>Effective date and application. This act shall take effect immediately and shall be deemed to have been in full force and effect on or after March 7, 2020 and shall apply to a claim for harm or damages only if the act or omission that caused such harm or damage occurred on or after the date of the COVID-19 emergency declaration and on or prior to the expiration date of such declaration; provided, however, this act shall not apply to any act or omission after the expiration of the COVID-19 emergency declaration.</p> | |
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| <p>North Carolina SB 704 Signed on May 4, 2020</p> | <p>I. Emergency or Disaster Treatment Protection Act</p> <p>Purpose. It is the purpose of this Article to promote the public health, safety, and welfare of all citizens by broadly protecting the health care facilities and health care providers in this State from liability that may result from treatment of individuals during the COVID-19 public health emergency under conditions resulting from circumstances associated with the COVID-19 public health emergency. A public health emergency that occurs on a statewide basis requires an enormous response from State, federal, and local governments working in concert with private and public health care providers in the community. The rendering of treatment to patients during such a public health emergency is a matter of vital State concern affecting the public health, safety, and welfare of all citizens.</p> | <p>COVID-19 emergency rule. Any executive order, declaration, directive, request, or other State or federal authorization, policy statement, rule making, or regulation that waives, suspends, or modifies applicable State or federal law regarding scope of practice, including modifications authorizing health care providers licensed in another state to practice in this State, or the delivery of care, including those regarding the facility space in which care is delivered and which equipment is used during the COVID-19 emergency declaration.</p> |

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| <p>North Carolina SB 704 (Cont.)</p> | <p>Immunity.</p> <p>(A) Notwithstanding any law to the contrary, except as provided in subsection (b) of this section, any health care facility, health care provider, or entity that has legal responsibility for the acts or omissions of a health care provider shall have immunity from any civil liability for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services only if all of the following apply:</p> <ol style="list-style-type: none"> (1) The health care facility, health care provider, or entity is arranging for or providing health care services during the period of the COVID-19 emergency declaration, including, but not limited to, the arrangement or provision of those services pursuant to a COVID-19 emergency rule. (2) The arrangement or provision of health care services is impacted, directly or indirectly: <ol style="list-style-type: none"> a. By a health care facility, health care provider, or entity's decisions or activities in response to or as a result of the COVID-19 pandemic; or b. By the decisions or activities, in response to or as a result of the COVID-19 pandemic, of a health care facility or entity where a health care provider provides health care services. (3) The health care facility, health care provider, or entity is arranging for or providing health care services in good faith. <p>(B) When immunity does not apply. The immunity from any civil liability provided in subsection (A) of this section shall not apply if the harm or damages were caused by an act or omission constituting gross negligence, reckless misconduct, or intentional infliction of harm by the health care facility or health care provider providing health care services; provided that the acts, omissions, or decisions resulting from a resource or staffing shortage shall not be considered to be gross negligence, reckless misconduct, or intentional infliction of harm.</p> | <p>Health care provider.</p> <ol style="list-style-type: none"> 1. An individual who is licensed, certified, or otherwise authorized under Chapter 90 or 90B of the General Statutes to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program. 2. A health care facility where health care services are provided to patients, residents, or others to whom such services are provided as allowed by law. 3. Individuals licensed under Chapter 90 of the General Statutes or practicing under a waiver in accordance with G.S. 90-12.5. 4. Any emergency medical services personnel as defined in G.S. 131E-155(7). 5. Any individual providing health care services within the scope of authority permitted by a COVID-19 emergency rule. 6. Any individual who is employed as a health care facility administrator, executive, supervisor, board member, trustee, or other person in a managerial position or comparable role at a health care facility. 7. An agent or employee of a health care facility that is licensed, certified, or otherwise authorized to provide health care services. 8. An officer or director of a health care facility. 9. An agent or employee of a health care provider who is licensed, certified, or otherwise authorized to provide health care services. <p>(C) Health care service. Treatment, clinical direction, supervision, management, or administrative or corporate service, provided by a health care facility or a health care provider during the period of the COVID-19 emergency declaration, regardless of the location in this State where the service is rendered:</p> <ol style="list-style-type: none"> (1) To provide testing, diagnosis, or treatment of a health condition, illness, injury, or disease related to a confirmed or suspected case of COVID-19. (2) To dispense drugs, medical appliances, or medical goods for the treatment of a health condition, illness, injury, or disease related to a confirmed or suspected case of COVID-19. |

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| <p>North Carolina SB 704 (Cont.)</p> | <p>(C) Immunity for volunteer organizations. Notwithstanding any law to the contrary, a volunteer organization shall have immunity from any civil liability for any harm or damages occurring in or at its facility or facilities arising from the State's response and activities under the COVID-19 emergency declaration and in accordance with any applicable COVID-19 emergency rule, unless it is established that such harm or damages were caused by the gross negligence, reckless misconduct, or intentional infliction of harm by the volunteer organization.</p> <p>Liberal construal and severability. This Article shall be liberally construed to effectuate its public health emergency purpose as outlined in G.S. 90-121.131. The provisions of this Article are severable. If any part of this Article is declared to be invalid by a court, the invalidity does not affect other parts of this Article that can be given effect without the invalid provision."</p> <p>Duration. This section is effective when it becomes law and applies to acts or omissions occurring during the time of Executive Order No. 116 issued on March 10, 2020, by Governor Roy A. Cooper, and any subsequent time period during which a state of emergency is declared to be in effect during calendar year 2020 by the Governor in response to COVID-19.</p> <p>II. Limited Business Immunity for Essential Businesses</p> <p>Essential businesses; emergency response entities; liability limitation. Notwithstanding any other provision of law and subject to G.S. 66-461, the following entities shall have immunity from civil liability:</p> <p>(1) An essential business that provides goods or services in this State with respect to claims from any customer or employee for any injuries or death alleged to have been caused as a result of the customer or employee contracting COVID-19 while doing business with or while employed by the essential business.</p> | <p>(3) To provide care to any other individual who presents or otherwise seeks care at or from a health care facility or to a health care provider during the period of the COVID-19 emergency declaration.</p> <p>Definitions.</p> <p>(A) COVID-19 emergency declaration. Executive Order No. 116 issued March 10, 2020, by Governor Roy A. Cooper, including any amendments issued by executive order, subject to extensions under Chapter 166A of the General Statutes.</p> <p>(B) COVID-19 essential business executive order. Executive Order No. 121 issued March 27, 2020, by Governor Roy A. Cooper, including any amendments issued by executive order, subject to extensions under Chapter 166A of the General Statutes.</p> |

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| <p>North Carolina SB 704 (Cont.)</p> | <p>(2) An emergency response entity with respect to claims from any customer, user, or consumer for any injuries or death alleged to have been caused as a result of the COVID-19 pandemic or while doing business with the emergency response entity.</p> <p>When immunity does not apply. The immunity from civil liability provided in this section shall not apply if the injuries or death were caused by an act or omission of the essential business or emergency response entity constituting gross negligence, reckless misconduct, or intentional infliction of harm. This section does not preclude an employee of an essential business or emergency response entity from seeking an appropriate remedy under Chapter 97 of the General Statutes for any injuries or death alleged to have been caused as a result of the employee contracting COVID-19 while employed by the essential business or emergency response entity.</p> <p>Duration. This Article applies to acts or omissions occurring on or after the issuance of the COVID-19 essential business executive order and expires when the COVID-19 emergency declaration is rescinded or expires.</p> | <p>(C) Emergency response entity. Businesses, not-for-profit organizations, educational institutions, and governmental entities that manufacture, produce, or distribute personal protective equipment, testing equipment, or ventilators, or process COVID-19 testing results.</p> <p>(D) Essential business. – Businesses, not-for-profit organizations, educational institutions, and governmental entities identified in the COVID-19 essential business executive order. The term also applies to any business that the Department of Revenue determines is essential.</p> |
| <p>Ohio HB 606 Sent to Governor for Signature on September 3, 2020.</p> | <p>Section (I).</p> <p>(A) General immunity.</p> <p>(1) Immunity for HCPs. Subject to division (B)(3) of this section (I), a HCP that provides health care services, emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical equipment or product, as a result of or in response to a disaster or emergency is not subject to professional disciplinary action and is not liable in damages to any person or government agency in a tort action for injury, death, or loss to person or property that allegedly arises from any of the following:</p> <p>(a) An act or omission of the HCP in the HCP 's provision, withholding, or withdrawal of those services;</p> <p>(b) Any decision related to the provision, withholding, or withdrawal of those services;</p> | <p>"Facility" means an institution or setting where health care services are provided, including, without limitation, a hospital, inpatient, ambulatory, surgical, emergency care, urgent care, treatment, laboratory, adult day-care, residential care, residential treatment, long-term care, or intermediate care facility, or a facility for individuals with developmental disabilities; a physician's office; a developmental, diagnostic, or imaging center; a rehabilitation or therapeutic health setting; a federally qualified health center or federally qualified health center look-alike; or any modular field treatment facility or alternative care site designated for temporary use for the purposes of providing health care services in response to a disaster or emergency.</p> <p>"Gross negligence" means a lack of care so great that it appears to be a conscious indifference to the rights of others.</p> |

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| <p>Ohio HB 606 (Cont.)</p> | <p>(c) Compliance with an executive order or director's order issued during and in response to the disaster or emergency.</p> <p>(2) When immunity does not apply to a tort action. Section (1) of this Section (I) does not apply in a tort action if the HCP 's action, omission, decision, or compliance constitutes a reckless disregard for the consequences so as to affect the life or health of the patient or intentional misconduct or willful or wanton misconduct on the part of the person against whom the action is brought.</p> <p>(3) When immunity does not apply to a professional disciplinary action. Section (1) of this Section (I) does not apply in a professional disciplinary action if the HCP 's action, omission, decision, or compliance constitutes gross negligence.</p> <p>(4) Immunity for inability to treat due to an executive order. A HCP is not subject to professional disciplinary action and is not liable in damages to any person or government agency in a tort action for injury, death, or loss to person or property that allegedly arises because the provider was unable to treat, diagnose, or test the person for any illness, disease, or condition, including the inability to perform any elective procedure, due to an executive or director's order or an order of a board of health of a city or general health district issued in relation to an epidemic or pandemic disease or other public health emergency.</p> <p>(B) What the new law does not do.</p> <p>(1) No new cause of action. This Section (I) does not create a new cause of action or substantive legal right against a health care provider.</p> | <p>"Health care professional" means an advanced practice registered nurse, a registered nurse, a licensed practical nurse, a pharmacist, a dentist, a dental hygienist, an optometrist, a physician, a physician assistant, a chiropractor, a physical therapist, an occupational therapist, an athletic trainer, a speech-language pathologist, an audiologist, a laboratory worker, a massage therapist, or a respiratory care professional.</p> <p>"Health care provider" means a health care professional, health care worker, direct support professional, behavioral health provider, or emergency medical technician or a home health agency, hospice care program, home and community-based services provider, or facility, including any agent, board member, committee member, employee, employer, officer, or volunteer of the agency, program, provider, or facility acting in the course of the agent's, board member's, committee members, employee's, employer's, officer's, or volunteer's service or employment.</p> <p>"Health care services" means services rendered by a HCP for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease, including the provision of any medication, medical equipment, or other medical product. "Health care services" includes personal care services and experimental treatments.</p> <p>"Reckless disregard" means, as it applies to a given HCP rendering health care services, emergency medical services, first-aid treatment, or other emergency professional care, conduct by which, with heedless indifference to the consequences, the HCP disregards a substantial and unjustifiable risk that the HCP 's conduct is likely to cause, at the time those services or that treatment or care were rendered, an unreasonable risk of injury, death, or loss to person or property.</p> |

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| <p>Ohio HB 606 (Cont.)</p> | <p>(2) No effect on existing immunities or defenses. This Section (I) does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a HCP may be entitled in connection with the provision of health care services, emergency medical services, first-aid treatment, or other emergency professional care, including the provision of medication, medical equipment, or other medical product.</p> <p>(3) No immunity for actions outside of skills unless provided in good faith. This Section (I) does not grant an immunity from tort or other civil liability or a professional disciplinary action to a HCP for actions that are outside the skills, education, and training of the health care provider, unless the HCP undertakes the action in good faith and in response to a lack of resources caused by a disaster or emergency.</p> <p>(4) No effect on legal responsibility to comply with laws and rules. This section does not affect any legal responsibility of a HCP to comply with any applicable law of this state or rule of an agency of this state.</p> <p>(C) Application of Section (A). Section (A) of this Section (I) applies only to the provision, withholding, or withdrawal of health care services, emergency medical services, first-aid treatment, or other emergency professional care, including the provision of any medication or other medical equipment or product, decisions related to such services or care, or compliance with an executive order or director's order by a HCP as a result of or in response to a disaster or emergency and through the duration of the disaster or emergency.</p> <p>(D) Relation of Section (A) to class actions. If the immunity described in section (A) of this Section (I) does not apply, no class action shall be brought against any HCP alleging liability for damages for injury, death, or loss to person or property on a cause of action specified in that division.</p> | <p>"Tort action" means a civil action for damages for injury, death, or loss to person or property and includes claims arising under resident or patient bills of rights and contractual claims arising out of statutory or regulatory requirements applicable to HCP s. "Tort action" includes an action on a medical claim.</p> |

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| <p>Ohio HB 606 (Cont.)</p> | <p>(E) Duration of this new law. This Section (I) applies 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 September 30, 2021, and supersedes section 2305.2311 of the Revised Code during that period.</p> <p>Section (II).</p> <p>(A) Immunity with respect to exposure, transmission, or contraction. 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 conduct or intentional misconduct or willful or wanton misconduct on the part of the person against whom the action is brought.</p> <p>(B) Governmental guidelines do not create a duty of care and is presumed inadmissible. 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.</p> | <p>"MERS-CoV" means the coronavirus that causes middle east respiratory syndrome.</p> <p>"Reckless conduct" means conduct by which, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause an exposure to, or a transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2, or any mutation thereof, or is likely to be of a nature that results in an exposure to, or a transmission or contraction of, any of those viruses or mutations. A person is reckless with respect to circumstances in relation to causing an exposure to, or a transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2, or any mutation thereof, when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.</p> <p>"SARS-CoV" means the coronavirus that causes severe acute respiratory syndrome.</p> <p>"SARS-CoV-2" means the novel coronavirus that causes coronavirus disease 2019 (COVID-19).</p> |

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| <p>Ohio HB 606 (Cont.)</p> | <p>Section (III). Legislative findings</p> <p>(A) The General Assembly makes the following findings:</p> <ol style="list-style-type: none"> (1) The General Assembly is aware that lawsuits related to the COVID-19 health emergency numbering in the thousands are being filed across the country. Ohio business owners, small and large, as they begin to re-open their businesses are unsure about what tort liability they may face. (2) It also is a fact that recommendations regarding how best to avoid infection with COVID19 change frequently, and such recommendations are often not based on well-tested scientific information. For example, the Centers for Disease Control and Prevention (CDC) for the first eight weeks of the COVID-19 health emergency recommended that members of the general public not wear masks since most masks are ineffective in protecting individuals from viruses. The CDC then reversed its recommendation and started encouraging members of the general public to wear masks in public places. Ohio businesses need certainty and consistency to enable them to reopen. (3) The General Assembly is further aware that businesses and premises owners have not historically been required to keep members of the public from being exposed to airborne viruses, bacteria, and germs. In Ohio, it has been the responsibility of individuals going into public places to avoid exposure to individuals who are sick. The same is true today: those individuals who decide to go out into public places are responsible to take those steps they feel are necessary to avoid exposure to COVID-19, such as social distancing and wearing masks. (4) The current COVID-19 health emergency is new and novel. Past opinions of the Ohio Supreme Court do not deal with COVID-19 or duties to protect the public from exposure in public places to airborne germs and viruses. Nothing in the Ohio Revised Code establishes duties upon businesses and premises owners to ensure that members of the general public will not be exposed to such airborne germs and viruses. (5) Additionally, the General Assembly has not delegated to the Executive Branch of Ohio's government the authority or power to create new legal duties for businesses and premises owners. In Ohio's system of government, the General Assembly makes Ohio's laws, and the Executive Branch enforces those laws. <p>(B) Based on its findings in division (A) of this section, 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.</p> <p>Section IV. Duration of the new law. This act 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 September 30, 2021.</p> |

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| <p>Oklahoma SB 300. Approved by Governor on May 12, 2020.</p> | <p>Creates the "COVID-19 Public Health Emergency Limited Liability Act."</p> <p>Immunity for HCFs or HCPs. A HCF or HCP shall be immune from civil liability for any loss or harm to a person with a suspected or confirmed diagnosis of COVID-19 caused by an act or omission by the HCF or HCP that occurs during the COVID-19 public health emergency, if:</p> <ul style="list-style-type: none"> (1) the act or omission occurred in the course of arranging for or providing COVID-19 health care services for the treatment of the person who was impacted by the decisions, activities or staffing of, or the availability or capacity of space or equipment by, the HCF or provider in response to or as a result of the COVID-19 public health emergency; and (2) the act or omission was not the result of gross negligence or willful or wanton misconduct of the HCF or HCP rendering the health care services. <p>Limitation to COVID-19 diagnoses. In no event shall this act be construed to grant immunity from civil liability for an act or omission in the provision of health care services to a person who did not have a suspected or confirmed diagnosis of COVID-19 at the time of the services.</p> <p>How long the act will be in effect. This act shall apply to any civil action filed on or after the effective date of this act. The provisions of this act shall be in effect until October 31, 2020, or until such time as the Governor affirmatively concludes emergency declarations, whichever is later.</p> <p>Effective date. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.</p> <p>"Health care services" means any services provided by a HCF, HCP, or by an individual working under the supervision of a HCF or HCP, that relate to the diagnosis, assessment, prevention, treatment, aid, shelter, assistance, or care of illness, disease, injury, or condition.</p> |

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| <p>Oklahoma SB 1946. Approved by Governor May 21, 2020.</p> | <p>Immunity for businesses. 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.</p> <p>Application to civil actions. The provisions of this section shall apply to a civil action filed on or after the effective date of this act.</p> <p>Effective date. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.</p> <p>“Guidance” means 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.</p> | |
| <p>Oklahoma SB 1947. Approved by Governor on May 21-2020.</p> | <p>This bill creates the “COVID19 Product Protection Act”.</p> <p>(1) Immunity for persons distributing cleaning supplies or PPE. Except as provided by subsection (3) of this section, any person that designs, manufactures, labels, sells, distributes, or donates disinfecting and cleaning supplies or PPE 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.</p> <p>(2) Immunity for HCPs, HCFs and other utilizing a product. Except as provided by subsection (3) of this section, a government entity, HCF, HCP, first responder, or any business, or the employer or agent of such business, that utilizes a product meeting the qualifications of either subsection (1) or (2) of this section, shall not be liable in a civil action alleging personal injury, death or property damage caused by or resulting from the selection, distribution, or use of such product.</p> | <p>“COVID-19” means the novel coronavirus identified as SARSCoV-2, the disease caused by SARS-CoV-2, and conditions associated with the disease;</p> <p>“Disinfecting and cleaning supplies” includes, but is not limited to, hand sanitizers, disinfectants, sprays, and wipes;</p> <p>“Essential business” means a person or entity:</p> <p>(1) within a critical infrastructure sector as defined by the United States Department of Homeland Security,</p> <p>(2) defined as essential by the Oklahoma Department of Commerce through use of the North American Industry Classification System during the COVID-19 pandemic, or</p> <p>(3) within an industry designated as critical or essential by Executive Order or Executive Memorandum;</p> <p>“First responder” means state and local law enforcement personnel, fire department personnel and emergency medical personnel. First responder includes a person authorized by executive order who will be deployed in response to the COVID-19 pandemic;</p> |

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| <p>Oklahoma SB 1947. (Cont.)</p> | <p>(3) When immunity does not apply. The immunity provided in subsections (1) and (2) of this section shall not apply to any person, or any employee or agent thereof, that:</p> <p>(1) (a) had actual knowledge that the product was defective when put to the use for which the product was manufactured, sold, distributed, or donated, and (b) acted with deliberate indifference to or conscious disregard of a substantial and unnecessary risk that the product would cause serious injury to others; or</p> <p>(2) acted with a deliberate intention to cause harm.</p> <p>(4) How the new law should not be construed. Nothing contained in this section shall be construed to:</p> <p>(a) Relieve a plaintiff of the need to satisfy any required element of a claim; or (b) Amend, repeal, alter or affect any other immunity or limitation of liability provided for under the laws of this state.</p> <p>(5) Applicability to claims. The provisions of this section shall apply to any claim arising on or after the emergency declared by the Governor of Oklahoma related to COVID-19 by Executive Order 2020-07 on March 15, 2020.</p> <p>(6) Effective date. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.</p> | <p>“Personal protective equipment” means coveralls, face shields, gloves, gowns, masks, respirators, and other equipment designed to protect the wearer from the spread of infection or illness;</p> <p>“Qualified product” means PPE used to protect the wearer from COVID-19 or the spread of COVID-19; medical devices, equipment, or supplies used to treat COVID-19 including products that are used or modified for an unapproved use to treat COVID-19 or prevent the spread of COVID-19; medical devices, equipment, or supplies utilized outside of such product’s normal use to treat COVID-19 or to prevent the spread of COVID-19; medications used to treat COVID-19 patients including medications prescribed or dispensed for off-label use to attempt to combat COVID-19; tests to diagnose or determine immunity to COVID-19; and components of qualified products.</p> |
| <p>Tennessee HB 8001. Signed by the Governor on August 17, 2020.</p> | <p>This bill enacts the Tennessee COVID-19 Recovery Act and makes other additions to present law concerning limiting liability for any person relating to loss, damage, injury, or death from coronavirus.</p> <p>Tennessee COVID-19 Recovery Act (the "Act")</p> <p>Clear and convincing evidence required. Under the Act, an individual or legal entity (a "person") will not be liable for loss, damage, injury, or death (collectively referred to hereinafter as an "injury") that arises from COVID-19 unless the claimant proves by clear and convincing evidence that the person caused the injury by an act or omission constituting gross negligence or willful misconduct.</p> | <p>"Arising from COVID-19" means caused by or resulting from the actual, alleged, or possible exposure to or contraction of COVID-19, or caused by or resulting from services, treatment, or other actions in response to COVID-19, including, but not limited to:</p> <p>(1) implementing policies and procedures to prevent or minimize the spread of COVID-19;</p> <p>(2) testing;</p> <p>(3) monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19-related information;</p> |

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| <p>Tennessee HB 8001. (Cont.)</p> | <p>Specific pleading requirements/certificate of good faith. The Act requires that a claimant in any action alleging injury arising from COVID-19 must file a verified complaint pleading specific facts with particularity from which a trier could reasonably conclude that the injury was caused by the defendant's gross negligence or willful misconduct. In an action alleging injury based on exposure to or contraction of COVID-19, the Act further requires that the claimant file a certificate of good faith stating that the claimant or claimant's counsel has obtained a signed, written expert medical opinion that the claimant's injury was caused by the alleged act or omission of the defendant. A claimant's failure to comply with the Act's pleading requirements will, upon motion, make the claim subject to dismissal with prejudice.</p> <p>What the Act does not do. The Act does not:</p> <ol style="list-style-type: none"> (1) create a cause of action; (2) eliminate a required element of any existing cause of action; (3) affect workers' compensation claims; or (4) amend, repeal, alter, or affect any immunity or limitation of liability available under current law or contract. <p>This bill makes the following additions pertaining to COVID-19-related claims to present law limited liability provisions.</p> <ol style="list-style-type: none"> (1) Extension of immunity under the Tennessee Governmental Tort Liability Act for governmental entities. This bill extends immunity under the Tennessee Governmental Tort Liability Act for governmental entities in connection with any injury arising from COVID-19, unless the claimant proves by clear and convincing evidence that the injury was caused by an act or omission of the governmental entity or the entity's employees constituting gross negligence. (2) Prohibition from claims or judgments under the Tennessee Governmental Tort Liability Act for governmental entity employees. This bill prohibits claims being brought, or judgements entered, under the Tennessee Governmental Tort Liability Act against an employee of a governmental entity for an injury arising from COVID-19 and | <ol style="list-style-type: none"> (4) using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, such as PPE; (5) closing or partially closing to prevent or minimize the spread of COVID-19; (6) delaying or modifying the schedule or performance of any medical procedure; or (7) providing services or products in response to government appeal or repurposing operations to address an urgent need for PPE, sanitation products, or other products necessary to protect the public. <p>"COVID-19" means the novel coronavirus, SARS-CoV-2, and coronavirus disease 2019, commonly referred to as COVID-19, including any mutation of SARS-CoV-2 or COVID-19.</p> <p>"Healthcare provider" means a healthcare practitioner, person, or facility licensed, authorized, certified, registered, or regulated under title 33, title 63, title 68, federal law or order, or an executive order of the governor, including but not limited to any employees, agents, or contractors of such a practitioner, person, or facility, and residents, interns, students, fellows, or volunteers of an accredited school or of such school's affiliated teaching or training hospitals or programs in Tennessee.</p> <p>"Person" means an individual, healthcare provider, sole proprietorship, corporation, limited liability company, partnership, trust, religious organization, association, nonprofit organization described in § 501(c) of the Internal Revenue Code that is exempt from federal income taxation under § 501(a) of the Internal Revenue Code, 26 U.S.C. § 501(a), or any other legal entity whether formed as a for-profit or not-for-profit entity.</p> |

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| <p>Tennessee HB 8001. (Cont.)</p> | <p>proximately caused by an act or omission of the employee within the employee's scope of employment for which the governmental entity is immune, unless the claimant proves by clear and convincing evidence that the injury was caused by an act or omission that was willful, malicious, criminal, or performed for personal financial gain.</p> <p>(3) State does not waive sovereign immunity/clear and convincing evidence. This bill specifies that the state does not waive state sovereign immunity for civil liability for any injury arising from COVID-19, unless the claimant proves by clear and convincing evidence that the injury was caused by an act or omission of the state entity, or a state employee or agent, constituting gross negligence.</p> <p>(4) Limitation of liability applicable to public postsecondary institutions. Limits a public postsecondary institution's liability for any injury arising from COVID-19 to claims where the claimant proves by clear and convincing evidence that the injury was caused by an act or omission of the institution, or the institution's employee or agent, constituting gross negligence or willful misconduct.</p> <p>Pleading requirements applicable. The pleading requirements that a claimant bears under the Tennessee COVID-19 Recovery Act will apply to any claim filed under (1)-(4).</p> <p>Effective Date. The provisions of this bill take effect upon becoming a law.</p> <p>Claims to which the new law applies. This bill applies to all claims arising from COVID-19, except those which, on or before August 3, 2020:</p> <ul style="list-style-type: none"> (1) a complaint or civil warrant was filed; (2) a notice of a claim was with the Tennessee claims commission; or (3) notice was satisfied under the laws pertaining to healthcare liability claims. <p>Date on which the new is repealed. This bill will be repealed on July 1, 2022 but continues to apply to any injury occurring before that date to which none of the exceptions in (1)-(3) apply.</p> |

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| <p>Utah SB 3002. Signed by the Governor on April 22, 2020.</p> | <p>(1)(a) Immunity applicable to HCPs generally. A HCP is immune from civil liability for any harm resulting from any act or omission in the course of providing health care during a declared major public health emergency if:</p> <ul style="list-style-type: none"> (i) (A) the health care is provided in good faith to treat a patient for the illness or condition that resulted in the declared major public health emergency; or (B) the act or omission was the direct result of providing health care to a patient for the illness or condition that resulted in the declared major public health emergency; and (ii) the acts or omissions of the HCP were not: <ul style="list-style-type: none"> (A) grossly negligent; or (B) intentional or malicious misconduct. <p>(b) Immunity applicable even if remuneration expected. The immunity in Subsection (1)(a) applies:</p> <ul style="list-style-type: none"> (i) even if the HCP has a duty to respond or an expectation of payment or remuneration; and (ii) in addition to any immunity protections that may apply under state or federal law. <p>(c) Breach of standard of care-education, training, or experience. During a declared major public health emergency, it is not a breach of the applicable standard of care for a HCP to provide health care that is not within the HCP’s education, training, or experience, if:</p> <ul style="list-style-type: none"> (i) the health care is within the applicable scope of practice for the type of license issued to the HCP; (ii) (A) the health care is provided in good faith to treat a patient for the illness or condition that resulted in the declared major public health emergency; or (B) there is an urgent shortage of HCPs as a direct result of the declared major public health emergency; and (iii) providing the health care is not: <ul style="list-style-type: none"> (A) grossly negligent; or (B) intentional or malicious misconduct. | <p>"Major public health emergency" means an occurrence of imminent threat of an illness or health condition that:</p> <ul style="list-style-type: none"> (i) is believed to be caused by: <ul style="list-style-type: none"> (A) bioterrorism; (B) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; (C) a natural disaster; (D) a chemical attack or accidental release; or (E) a nuclear attack or accident; and (ii) poses a high probability of: <ul style="list-style-type: none"> (A) a large number of deaths in the affected population; (B) a large number of serious or long-term disabilities in the affected population; or (C) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population. <p>"Qualified treatment" means the use of a prescription drug or prescription device:</p> <ul style="list-style-type: none"> (1) during a declared major public health emergency; (2) to treat a patient who has been diagnosed with the illness or condition that resulted in the declared major public health emergency; and (3) that has been approved for sale but not indicated by the United States Food and Drug Administration to treat the illness or condition described in (2). |

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| <p>Utah SB 3002. (Cont.)</p> | <p>(2)(a) Immunity for providing a qualified treatment. A HCP is not subject to civil liability, criminal liability, or sanctions against the HCP’s license for providing a qualified treatment to a patient if:</p> <ul style="list-style-type: none"> (i) the qualified treatment is within the scope of the HCP’s license; (ii) if written recommendations have been issued by a federal government agency regarding the use of the qualified treatment for treatment of the illness or condition that resulted in the declared major public health emergency, the HCP provides the qualified treatment in accordance with the most current written recommendations issued by the federal government agency; (iii) the HCP: <ul style="list-style-type: none"> (A) describes to the patient or the patient's representative, based on the HCP’s knowledge of the qualified treatment, the possible positive and negative outcomes the patient could experience if the HCP treats the patient with the qualified treatment; and (B) documents in the patient's medical record the information provided to the patient or the patient's representative under Subsection (2)(a)(iii)(A) and whether the patient or the patient's representative consented to the treatment; and (iv) the acts or omissions of the HCP were not: <ul style="list-style-type: none"> (A) grossly negligent; or (B) intentional or malicious misconduct. <p>(b) Satisfying written recommendations. If two or more written recommendations described in Subsection (2)(a)(ii) are issued by federal government agencies, a HCP satisfies the requirement described in Subsection (2)(a)(ii) by providing the qualified treatment in accordance with the most current written recommendations of any one federal government agency.</p> <p>Use of investigational drugs and devices during a major public health emergency -- Limitations – Immunity</p> <p>(1)(a) Qualified patients obtaining investigational drugs. To the extent permitted under federal law, a qualified patient may obtain an investigational drug through an agreement with the investigational drug's manufacturer and the qualified patient's physician that provides:</p> <ul style="list-style-type: none"> (i) for the transfer of the investigational drug from the manufacturer to the physician; and (ii) that the physician will administer the investigational drug to the qualified patient. <p>(b) Qualified patients obtaining investigational devices. To the extent permitted under federal law, a qualified patient may obtain an investigational device through an agreement with the investigational device's manufacturer and the qualified patient's physician that provides:</p> <ul style="list-style-type: none"> (i) for the transfer of the investigational device from the manufacturer to the physician; and (ii) that the physician will use the investigational device to treat the qualified patient. |

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| <p>Utah SB 3002. (Cont.)</p> | <p>(c) Informed consent document. The agreement described in Subsection (1)(a) or (b) shall include an informed consent document that, based on the physician's knowledge of the relevant investigational drug or investigational device:</p> <ul style="list-style-type: none"> (i) describes the possible positive and negative outcomes the qualified patient could experience if the physician treats the qualified patient with the investigational drug or investigational device; (ii) states that an insurer is not required to cover the cost of providing the investigational drug or investigational device to the qualified patient; (iii) states that, subject to Subsection (4) below, an insurer may deny coverage for the qualified patient; and (iv) states that the qualified patient may be liable for all expenses caused by the physician treating the patient with the investigational drug or investigational device, unless the agreement provides otherwise. <p>(2) Physician notification obligations. The physician of a qualified patient shall notify the qualified patient's insurer of:</p> <ul style="list-style-type: none"> (a) the day on which the physician treated the qualified patient with an investigational drug or investigational device; and (b) the investigational drug or investigational device used under an agreement described in Subsection (1). <p>(3)(a) Not a breach of the applicable standard of care. It is not a breach of the applicable standard of care for a HCP to treat a qualified patient with an investigational drug or investigational device under this section.</p> <p>(b) Immunity for HCPs. A HCP that treats a qualified patient with an investigational drug or investigational device in accordance with this section is not subject to civil liability, criminal liability, or sanctions against the HCP's license for any harm to the qualified patient resulting from the qualified patient's use of the investigational drug or device.</p> <p>(4)(a) What this bill does not require with respect to physicians, HCPs, or manufacturers. This section does not:</p> <ul style="list-style-type: none"> (i) require a manufacturer of an investigational drug or investigational device to agree to make an investigational drug or investigational device available to a qualified patient or a qualified patient's physician; (ii) require a physician to agree to: <ul style="list-style-type: none"> (A) administer an investigational drug to a qualified patient under this section; or (B) treat a qualified patient with an investigational device under this section; (iii) create a private right of action for a qualified patient against a HCP for the HCP's refusal to: <ul style="list-style-type: none"> (A) administer an investigational drug to a qualified patient under this section; or (B) treat a qualified patient with an investigational device under this section; or (iv) create a private right of action for a qualified patient against a manufacturer for the manufacturer's refusal to provide a qualified patient with an investigational drug or an investigational device under this section. |

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| <p>Utah SB 3002. (Cont.)</p> | <p>(b) What this bill does not require with respect to insurers. This section does not:</p> <ul style="list-style-type: none"> (i) require an insurer to cover the cost of: <ul style="list-style-type: none"> (A) administering an investigational drug under this section; or (B) treating a patient with an investigational device under this section; or (ii) prohibit an insurer from covering the cost of: <ul style="list-style-type: none"> (A) administering an investigational drug under this section; or (B) treating a patient with an investigational device under this section. <p>(c) When an insurer may deny coverage. Except as described in Subsection (4)(d), an insurer may deny coverage to a qualified patient who is treated with an investigational drug or investigational device for harm to the qualified patient caused by the investigational drug or investigational device.</p> <p>(d) When an insurer may not deny coverage. An insurer may not deny coverage to a qualified patient under Subsection (4)(c) for:</p> <ul style="list-style-type: none"> (i) the qualified patient's preexisting condition; (ii) benefits that commenced before the day on which the qualified patient was treated with the investigational drug or investigational device; or (iii) palliative or hospice care for a qualified patient that has been treated with an investigational drug or investigational device but is no longer receiving curative treatment with the investigational drug or investigational device. <p>Effective date. If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.</p> <p>(1) Immunity for persons/premises. Subject to the other provisions of this section, 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. Immunity as described in this Subsection (2) does not apply to:</p> <ul style="list-style-type: none"> (a) willful misconduct; (b) reckless infliction of harm; or (c) intentional infliction of harm. <p>(2) Laws not modified. This section does not modify the application of:</p> <ul style="list-style-type: none"> (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. |

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| <p>Utah SB 3007. Signed by the Governor on May 4, 2020.</p> | <p>(3) Immunity in addition to other immunities. The immunity in Subsection (1) is in addition to any other immunity protections that may apply in state or federal law.</p> <p>Effective date. If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.</p> <p>"COVID-19" means:</p> <ul style="list-style-type: none"> (i) severe acute respiratory syndrome coronavirus 2; or (ii) the disease caused by severe acute respiratory syndrome coronavirus 2. <p>"Premises" means real property and any appurtenant building or structure.</p> |
| <p>Wisconsin AB 1038. Approved by Governor on May 15, 2020.</p> | <p>(1) Immunity for health care professionals, HCPs and others. Subject to sub. (3), any health care professional, HCP, or employee, agent, or contractor of a health care professional or HCP is immune from civil liability for the death of or injury to any individual or any damages caused by actions or omissions that satisfy all of the following:</p> <ul style="list-style-type: none"> (a) The action or omission is committed while the professional, provider, employee, agent, or contractor is providing services during the state of emergency declared under s. 323.10 on March 12, 2020, by executive order 72, or the 60 days following the date that the state of emergency terminates. (b) The actions or omissions relate to health services provided or not provided in good faith or are substantially consistent with any of the following: <ul style="list-style-type: none"> (i) Any direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster declared as described under par. (a). (ii) Any guidance published by the department of health services, the federal department of health and human services, or any divisions or agencies of the federal department of health and human services relied upon in good faith. (iii) The actions or omissions do not involve reckless or wanton conduct or intentional misconduct. <p>Inapplicable if other laws apply. This section does not apply if s.257.03, 257.04, 323.41, or 323.44 applies.</p> |
| <p>Wyoming SF 1002. Governor signed on May 20, 2020.</p> | <p>Immunity from liability.</p> <p>During a public health emergency as defined by W.S. 35-4-115(a)(i), any HCP 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 apply to HCPs 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 as defined by W.S. 35-4-115(a)(i). This immunity shall not apply to acts or omissions constituting gross negligence or willful or wanton misconduct.</p> |