

States Increasingly Considering COVID-19 Liability Protections

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As we approach one year from the WHO's declaration of the COVID-19 outbreak as a global pandemic, many state legislatures are adopting or considering laws shielding businesses from liability related to COVID-19. Generally, the bills protect businesses that comply with public health requirements from lawsuits alleging injuries related to COVID-19. However, reckless or intentional misconduct is usually specifically excluded. The below overview of select states is representative of the types of legislation being debated or adopted in the country.

The **Missouri** General Assembly is considering an expansive bill shielding healthcare providers, premises owners and business owners. If an entity posts a warning notice, a rebuttable presumption is created that the plaintiff assumed the risk of exposure. The bill specifies the notice's wording. An entity's changes in policies or procedures regarding COVID-19 could not be considered as evidence of liability. The legislature did not adopt an emergency clause to make the law effective upon signing by the governor. Thus, if signed, the protections will not begin until August 28, 2021. This large window before the protections are live may invite a slew of lawsuits.

Colorado has two pending bills to create immunity from civil liability for COVID-19 exposure, loss, damage, injury or death if a business used good faith to comply with public health guidance.

Florida is also currently considering two wide-ranging bills to protect businesses, educational institutions, governments and religious institutions. The legislation would require a plaintiff to submit a physician's affidavit supporting a connection between the COVID-related damages and the defendant's alleged actions or omissions, a process similar to many medical malpractice statutes. If a lawsuit is filed, a defendant can demonstrate good faith efforts to comply with applicable public health requirements and recommendations, and be protected from civil liability. As drafted, the law would apply retroactively.

Numerous states have more targeted COVID-related protections. For example, in **California**, pending bills would provide limited protections to higher education institutions operating in-person classes. An enacted law in **Virginia** shields hospices and assisted living facilities from allegations of COVID-19 exposure or other injury caused by a lack of resources due to the pandemic. Similarly, **Minnesota's** pending legislation aims to protect healthcare providers, healthcare facilities and first responders. **Massachusetts** and **Illinois** both



presently protect healthcare providers and facilities.

In other states, such as **Kansas**, protections for commercial entities have expired.

The COVID-19 pandemic and its impact on businesses is constantly evolving. Regardless of statutory protections, commercial entities should strive to comply with public health guidelines and document such compliance. These steps will strengthen defense to any COVID-19 claims made against an entity.

Each individual state law and business is unique and must be analyzed separately. If any organization has concerns regarding its legal obligations or exposure, or other legal matters, it should consult with an attorney.

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