



American Tort Reform Association

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| Executive Orders Automatically Triggering Existing Statutory Liability Protection | Page | Provisions |
|---|------|------------|
| 1. Delaware Twelfth Modification of the Declaration of a State of Emergency (April 23, 2020)..... | 1 | HC |
| 2. Maryland Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19 (March 5, 2020) | 1 | HC |
| 3. New Hampshire Executive Order 2020-04 (March 13, 2020) | 1 | HC |
| 4. Tennessee Executive Order 14 (March 12, 2020) | 2 | HC |
| 5. Virginia Executive Order No. 51 (March 12, 2020) | 2 | HC |
| Executive Orders and Administrative Orders Related to COVID-19 Liability (21 states) | | |
| 1. Alabama Proclamation (May 8, 2020) | 3 | HC PR PPE |
| 2. Arizona Executive Order No. 2020-27 (April 9, 2020)..... | 4 | HC |
| 3. Arkansas Executive Order No. 20-18 (April 13, 2020) | 4 | HC |
| 4. Arkansas Executive Order No. 20-33 (June 15, 2020)..... | 4 | PR |
| 5. Arkansas Executive Order No. 20-34 (June 15, 2020)..... | 5 | HC |
| 6. Arkansas Executive Order No. 20-35 (June 15, 2020)..... | 6 | WC |
| 7. Connecticut Executive Order No. 7V (April 7, 2020)..... | 6 | HC |
| 8. Colorado Executive Order D 2020 260 (November 23, 2020) | 6 | HC |
| 9. Georgia Executive Order 04.14.20.01 (April 14, 2020) | 7 | HC |
| 10. Georgia Executive Order 04.20.20.01 (April 20, 2020) | 7 | HC |
| 11. Georgia Executive Order 05.12.20.02 (May 12, 2020)..... | 7 | HC |
| 12. Hawaii Executive Order 20-05 (April 16, 2020)..... | 7 | HC |
| 13. Illinois Executive Order No. 19 (COVID Order 2020-17) (April 1, 2020) (superseded)..... | 8 | HC |
| 14. Illinois Executive Order No. 2020-37 (May 13, 2020), re-issued by Executive Order No. 2020-39 (May 29, 2020) (COVID-19 Order 37) (expired June 27, 2020) | 8 | HC |
| 15. Iowa Department of Health, PPE Shortage Order (April 9, 2020) | 10 | HC PPE |
| 16. Kansas Executive Order No. 20-26 (April 22, 2020)..... | 10 | HC |
| 17. Maryland Proclamation, Renewal of Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19 (May 6, 2020) (renewed June 3 , July 1 , July 30 , August 10 , September 8 , October 6 , October 30 , November 25) | 10 | HC |
| 18. Michigan Executive Order No. 2020-30 (March 29, 2020), rescinded and replaced with Executive Order No. 2020-61 (April 26, 2020), extended by Executive Order No. 2020-100 (May 22, 2020), and rescinded by Executive Order No. 2020-150 (July 13, 2020) | 11 | HC |
| 19. Mississippi Executive Order No. 1471 (April 10, 2020)..... | 12 | HC |
| 20. Nevada Declaration of Emergency Directive 011 (April 1, 2020)..... | 12 | HC |
| 21. New Jersey Executive Order No. 112 (April 1, 2020) | 12 | HC |
| 22. New York Executive Order No. 202.10 (March 23, 2020) | 13 | HC |
| 23. Pennsylvania Order of the Governor to Enhance Protections for Health Care Professionals (May 6, 2020).13 | 13 | HC LL |
| 24. Pennsylvania Order of the Governor for Mitigation, Enforcement, and Immunity Protections (November 23, 2020) | 13 | PR |
| 25. Rhode Island Executive Order No 20-21 (April 10, 2020) | 15 | HC LL |
| 26. Rhode Island Executive Order No. 20-33 (May 8, 2020)..... | 15 | HC LL |
| 27. Tennessee Executive Order No. 53 (July 1, 2020) | 15 | HC |
| 28. Vermont Addendum 9 to Exec. Order 01-20 (April 10, 2020) | 16 | HC |
| 29. Virginia Executive Order No. 60 (April 28, 2020)..... | 17 | HC |
| Enacted State Legislation (21 states + DC) | | |
| 1. Alaska S.B. 241 (enacted April 9, 2020)..... | 18 | HC PPE WC |

| | | |
|---|--------------------|------------|
| 2. District of Columbia Act 23-283 (effective April 10, 2020) as amended by D.C. Act 23-299 (effective May 1, 2020) | 19 | HC |
| 3. Georgia S.B. 359 (enacted August 5, 2020) | 20 | HC PR PPE |
| 4. Idaho Coronavirus Limited Immunity Act, H.B. 6 (enacted August 27, 2020) | 21 | PR |
| 5. Iowa S.F. 2338 (enacted June 18, 2020) | 21 | HC MI PRPL |
| 6. Kansas H.B. 2016 (enacted June 8, 2020) | 22 | HC PR PL |
| 7. Kentucky S.B. 150 (enacted March 30, 2020) | 24 | HC PPE |
| 8. Louisiana H.B. 826 (Act No. 336) (enacted June 13, 2020) | 25 | PR PPE WC |
| 9. Louisiana S.B. 435 (Act No. 362) (enacted June 12, 2020) | 26 | PR |
| 10. Louisiana S.B. 491 (Act No. 303) (enacted June 12, 2020) | 26 | PL |
| 11. Louisiana S.B. 508 (Act. No. 305) (enacted June 12, 2020) | 26 | PR |
| 12. Louisiana H.B. 59 , 1 st Special Session (Act. No. 9) (enacted July 8, 2020) | 27 | PR |
| 13. Massachusetts S. 2640 (enacted April 17, 2020) | 27 | HC VOF |
| 14. Michigan H.B. 6030, 6031, 6032, and 6101 (enacted October 22, 2020) | 28 | PR |
| 15. Michigan Pandemic Health Care Immunity Act, H.B. 6159 (enacted October 22, 2020) | 29 | HC |
| 16. Mississippi Back-to-Business Liability Assurance Act and Healthcare Emergency Response Liability Protection Act, S.B. 3049 (enacted July 8, 2020) | 30 | HC PR PL |
| 17. Nevada S.B. 4 (enacted August 11, 2020) | 31 | PR |
| 18. New Jersey S.B. 2333 (enacted April 14, 2020) | 32 | HC |
| 19. New York S. 7506 / A. 9506 (enacted April 3, 2020) | 33 | HC VOF |
| 20. New York S. 8835 (enacted August 3, 2020) | 33 | HC |
| 21. North Carolina Emergency or Disaster Treatment Protection Act , S.B. 704 (enacted May 4, 2020) | 34 | HC PR VOF |
| 22. North Carolina COVID-19 Limited Immunity, H. 118 (enacted July 2, 2020) | 34 | PR |
| 23. Ohio Am. Sub. H.B. 606 (enacted Sept. 14, 2020) | 35 | HC PR |
| 24. Oklahoma COVID-19 Public Health Emergency Limited Liability Act, S.B. 300 (enacted May 6, 2020) | 36 | HC |
| 25. Oklahoma S.B. 1946 (enacted May 21, 2020) | 37 | PR |
| 26. Oklahoma COVID-19 Product Protection Act, S.B. 1947 (enacted May 21, 2020) | 37 | PL |
| 27. Tennessee COVID-19 Recovery Act, S.B. 8002 (enacted August 17, 2020) | 37 | HC PR PL |
| 28. Utah S.B. 3002 (enacted April 22, 2020) | 38 | HC |
| 29. Utah S.B. 3007 (enacted May 4, 2020) | 39 | PR |
| 30. Virginia S.B. 5082 (enacted October 7, 2020) | 40 | HC |
| 31. Wisconsin A.B. 1038 (2019 Wis. Act 185) (enacted April 15, 2020) | 40 | HC PL |
| 32. Wyoming S.F. 1002 (enacted May 20, 2020) | 41 | PR WC |

LL-Landlord Repurposing of Property
PPE-Personal Protective Equipment
VOF-Volunteer Organization Facility

HC-Healthcare
PR-Premise Liability/Exposure
WC-Also Addresses Workers' Compensation

MI-Minimum Injury Required
PL-Product Liability

Executive Orders Automatically Triggering Existing Statutory Liability Protection

(Listed Alphabetically)

Delaware Twelfth Modification of the Declaration of a State of Emergency Due to a Public Health Threat (April 23, 2020)

- The Order designates as “qualified medical personnel” health care volunteers who have held an active license or certification in any state that is now inactive, expired, or lapsed, and who register with the Medical Reserve Corps and work in a hospital that activates a crisis standard of care for COVID-19 that has been granted written approval by the Public Health Authority.
- This designation provides health care volunteers with immunity for any loss resulting from relief activities under [20 Del. C. § 3129](#).
- Does not apply if the death, injury, or damage to property was intentional or caused by the willful or wanton disregard of the rights of others.

Maryland Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19 (March 5, 2020)

- Issuance of a catastrophic health emergency proclamation automatically triggers liability protection for health care providers.
- Md. Code Ann. Pub. Safety § 14-3A-06 provides: “A health care provider is immune from civil or criminal liability if the health care provider acts in good faith and under a catastrophic health emergency proclamation.”
 - A “health care provider” includes:
 - 1) a health care facility, including a hospital, a related institution, an ambulatory surgical facility, an inpatient rehabilitation facility, a home health agency, a hospice, any other health institution, service, or program that requires a certificate of need.
 - 2) a health care practitioner includes any individual who is licensed, certified, or otherwise authorized under the Health Occupations Article to provide health care services.
 - 3) an individual licensed or certified as an emergency medical services provider under Maryland law.

New Hampshire Executive Order 2020-04 (March 13, 2020)

- The state’s existing emergency powers law provides that no “private corporations . . . complying with or reasonably attempting to comply with . . . any order . . . adopted . . . pursuant to the provisions of this subdivision . . . shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.” N.H. Rev. Stat. § [21-P:41](#)(I).
- EO 2020-24:
 - Orders facilities providing residential care to elderly or infirm patients to prohibit visitor access to reduce transmission of COVID-19, with exceptions such as for medically necessary personnel.
 - Permits the waiver of licensing or credentialing requirements for hospitals and health facilities to allow the facilities to treat patients who are infected with COVID-19 or are legally isolated as a result of COVID-19.

- Permits the waiver of licensing requirements for day care facilities.
- As a result of EO 2020-04 and the existing statute, nursing homes are immune from liability for any injury or death at a nursing home caused by denying access to visitors who are not permitted entrance under the Order. Liability premised on a failure to meet licensing requirements may also be limited.
- Following EO 2020-04, Governor Sununu has issued 65 COVID-19 emergency orders (as of August 26, 2020). Compliance with these orders may trigger liability protection under N.H. Rev. Stat. § 21-P:41.

Tennessee Executive Order 14, An Order Suspending Provisions of Certain Statutes and Rules in Order to Facilitate the Treatment and Containment of COVID-19 (Mar. 12, 2020)

- Declaration of an emergency in response to a catastrophic or major disaster automatically triggers civil immunity for voluntary health care providers, including hospitals and community mental health care centers, that participate in the Emergency Management Assistance Compact or Southern Regional Emergency Management Assistance Compact in providing healthcare to victims of the disaster as long as the services are provided within the limits of the provider’s license, certification, or authorization. Tenn. Code Ann. § 58-2-107(l)(1).
- If additional medical resources are required, the governor *may* extend this liability protection to certain other health care providers.
- Does not apply to gross negligence or willful misconduct.
- The liability protection does not extend for more than 30 days unless extended by the governor for an additional 30 days to ensure the provision of emergency services in response to the catastrophic or major disaster.

Virginia Executive Order No. 51 (March 12, 2020)

- Issuance of a State of Emergency automatically triggers liability protections related to abandonment for health care providers and credentialing for hospitals under [Va. Code Ann. § 8.01-225.01\(A\)](#).
 - A health care provider who responds to a disaster by delivering health care to persons injured in such disaster is immune from civil liability for any injury or wrongful death arising from abandonment by the health care provider of a person to whom such health care provider owes a duty to provide health care when (i) a state or local emergency has been or is subsequently declared; and (ii) the provider was unable to provide the requisite health care to the person to whom he owed such duty of care as a result of the provider's voluntary or mandatory response to the relevant disaster.”
 - A hospital or other entity credentialing health care providers to deliver health care in response to a disaster is immune from civil liability for any cause of action arising out of such credentialing or granting of practice privileges if (i) a state or local emergency has been or is subsequently declared and (ii) the hospital has followed procedures for such credentialing and granting of practice privileges that are consistent with the applicable standards of an approved national accrediting organization for granting emergency practice privileges.
 - Does not apply to gross negligence or willful misconduct.
 - Health care provider is defined broadly under [Va. Code Ann. § 8.01-581.1](#).

**Executive Orders and Administrative Orders
Related to COVID-19 Liability**
(Listed Alphabetically)

Alabama Proclamation (May 8, 2020)

- A business, health care provider (including a facility or professional), or other covered entity is not liable for injury, death, or property damage arising from any act or omission related to COVID-19 transmission or a “covered COVID-19 response activity,” unless a claimant shows by clear and convincing evidence that the injury was caused by wanton, reckless, willful, or intentional misconduct.
 - A “covered COVID-19 response activity” includes:
 - 4) Testing, distribution of testing materials, monitoring, collecting, reporting, tracking, tracing, investigating, or disclosing exposures or other information in connection with COVID-19;
 - 5) Providing health care services or treatment in response to COVID-19 that was negatively affected or impacted by a lack of resources caused by COVID-19 in done in response to the COVID-19 pandemic or the State’s response to the pandemic;
 - 6) Designing, manufacturing, distributing, using or not using precautionary equipment or supplies such as PPE in connection with COVID-19 during the state of emergency; and
 - 7) Designing or manufacturing of testing materials under the direction of the Alabama Department of Public Health.
- Unless there is a “serious physical injury,” liability is limited to actual economic compensatory damages. Noneconomic and punitive damages are not available. Punitive damages are the only relief in a wrongful death action.
 - “Serious physical injury” is defined as “a death or an injury that requires either in-patient hospitalization of at least 48 hours, permanent impairment of a bodily function, or permanent damage to a body structure.”
- For a cause of action that accrued before the Proclamation and where a court finds the liability protections above do not apply, a covered entity is not liable for negligence, premises liability, or for any non-wanton, non-willful, or non-intentional civil cause of action relating to covered COVID-19 response activity unless the claimant proves by clear and convincing evidence that the business, health care provider, or other covered entity did not reasonably attempt to comply with the then applicable public health guidance.
- If a court holds the standard of care (wanton, reckless, willful, or intentional misconduct) is invalid, then the standard is (1) failure to comply with or reasonably attempt to comply with applicable public health guidance, or (2) willful misconduct, gross negligence, or bad faith.

Arizona Executive Order No. 2020-27 (April 9, 2020)

- An Arizona-licensed healthcare professional, a registered and recruited volunteer health professional, or an EMT in the course of providing medical services in support of the state's COVID-10 public-health emergency is presumed to have acted in good faith and is immune from civil liability.
- A healthcare professional, EMT, healthcare institution, or any other entity operating a modular field treatment facility or other site in support of the state's COVID-19 response, whether or not it is a licensed healthcare institution, designated by the Director of the Arizona Department of Health Services for temporary use is immune from civil liability for triage decisions based on good faith reliance on mandatory or voluntary state-approved protocols.
- Any entity operating a modular field treatment facility or other site is also immune from civil liability for acts or omissions undertaken in good faith by its agents, officers, employees, representatives, or volunteers while providing healthcare services in support of the state's COVID-19 response.
- This liability protection does not extend to gross negligence or reckless or willful misconduct, such as a healthcare professional or volunteer render medical services under the influence of alcohol or an intoxicating drug.
- Expires on June 30, 2020 unless extended.

Arkansas Executive Order No. 20-18 (April 13, 2020)

- Provides immunity to physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered nurses, and licensed practical nurses for injury or death sustained directly as a result of an act or omission by the medical professional in the course of providing services in support of the State's COVID-19 response or the implementation of measures to control the causes of the COVID-19 epidemic.
 - Expands the definition of "emergency responder" in the Arkansas Emergency Services Act of 1973, which are protected from liability when complying with or reasonably attempting to comply with that law except in cases of willful misconduct, gross negligence, or bad faith. Ark. Code § 12-75-128.
- Does not apply when:
 - The person acts outside the scope of his or her practice unless the person has been redeployed to the extent necessary to respond to the COVID-19 outbreak; or
 - The person acts with gross negligence, willful misconduct, or bad faith.
- Applies for the duration of the COVID-19 emergency declared on March 11, 2020.

Arkansas Executive Order No. 20-33 (June 15, 2020) (premises liability)

- Businesses that open or remain open during the COVID-19 emergency are immune from civil liability for damages or injuries caused by an individual's exposure to COVID-19 on their premises or during any activity managed by them.
- Does not apply to willful, reckless, or intentional misconduct.

- Provides a presumption that a person has not committed willful, reckless, or intentional misconduct if the person and its agents are:
 - Substantially complying with health and safety directives or guidelines issued by the Governor or Department of Health; and
 - Acting in good faith while attempting to comply with these directives and guidelines.
- Applies to claims against the state.
- Applies to lawsuits filed on or after June 15, 2020 and expires when the emergency ends.

Arkansas Executive Order No. 20-34 (June 15, 2020) (healthcare liability)

- All individuals and entities that are healthcare providers are designated as emergency responders during the COVID-19 public health emergency.
- “Healthcare providers” include anyone licensed, certified, or otherwise authorized by law to administer health care in Arkansas, and any partnership, association, corporation, or other facility or institution that employs or contracts with a healthcare provider to provide healthcare services in their normal course of business or operation.
- Requests that emergency responders perform healthcare services directed at the prevention, treatment, mitigation, or cure of COVID-19 and other emergency management functions within the scope of their licensure, including:
 - Triage, diagnostic testing, and/or treatment to individuals with known or suspected COVID-19;
 - Cancelling, postponing, or denying elective procedures for an illness or condition that does not fall within the scope of the COVID-19 public health emergency;
 - Redeploying or cross training staff not typically assigned to such duties, to the extent necessary to respond to the COVID-19 public health emergency;
 - Planning to or enacting crisis standards of care measures, such as modifying numbers of beds, preserving personal protective equipment, and triaging access to services or equipment; and
 - Reducing recordkeeping requirements to the extent necessary for healthcare providers to perform tasks as may be necessary to respond to the COVID-19 public health emergency.
- As emergency responders, healthcare providers are immune from liability for any death, injury, or property damage allegedly sustained as a result of any act or omission in the course of providing COVID-19 related emergency management functions during the public health emergency if the act or omission occurs as a result of a good faith effort on the part of the healthcare provider and was the direct result of providing healthcare service to a patient for treatment and mitigation of COVID-19 or the symptoms of COVID-19 during the public health emergency.
 - Does not extend to willful, reckless, or intentional misconduct.
- Healthcare providers are also immune from liability for using any prescription drug or device to treat a known or suspected COVID-19 infection provided that the prescription is within the scope of the healthcare provider’s license, the healthcare provider prescribes the drug or device in accordance with

the most recent recommendations of a federal agency; and the healthcare provider informs the patient of the known positive and negative outcomes of documents the patient's informed consent.

Arkansas Executive Order No. 20-35 (June 15, 2020) (workers' compensation)

- An employer's knowledge that it is possible or likely that an employee will be exposed to COVID-19 during the normal course and scope of an employee's job performance does not constitute intentional conduct that permits a civil action outside the exclusivity of the workers' compensation law.
- COVID-19 qualifies as an "occupational disease" for workers' compensation purposes and is not considered a "ordinary disease of life to which the general public is exposed," allowing those who are exposed to COVID-19 at work to file workers' compensation claims. An employee asserting a workers' compensation claim, however, must meet all requirements of proof for an occupational disease, including a causal connection between employment and the disease.

Connecticut Executive Order No. 7V (April 7, 2020)

- A health care professional or facility is immune from civil liability for an injury or death allegedly sustained allegedly sustained because of an act or omission undertaken in good faith while providing care in support of the state's COVID-19.
 - Examples are acts of omissions undertaken because of a lack of resources attributable to the COVID-19 pandemic that renders the health care professional or facility unable to provide the level or manner of care that otherwise would have been required in absence of the COVID-19 pandemic.
- This liability protection does not apply to acts or omissions that constitute a crime, or constitute fraud, malice, gross negligence, willful misconduct, or a false claim.
- Applies to acts or omissions occurred any time after the declaration of a public health emergency on March 10, 2020, including actions prior to issuance of the Order, and remains in effect for the duration of the emergency.

Colorado Executive Order D 2020 260 (November 23, 2020)

- Hospitals, physicians, health insurers or managed health care organizations, health care providers, public health workers, or emergency service providers that in good faith comply completely with an Executive Order regarding admission of patients when operating at full capacity are immune from civil or criminal liability for any action taken to comply pursuant to Colorado's epidemic response law, Colo. Rev. Stat. § 24-33.5-711.5(2).
- The Executive Order requires a hospital or free standing emergency department to notify the Colorado Department of Public Health and Environment (CDPHE) when it reaches capacity.
- CDPHE may then, pursuant to Colo. Rev. Stat. § 24-33.5-704.5(1)(e)(II):
 - 1) Direct the hospital or freestanding emergency department to cease admitting patients and direct persons seeking treatment to another hospital or facility designed by the agency;
 - 2) Direct the transfer patients from the hospital or freestanding emergency department to another hospital, skilled nursing facility, dormitory, alternative care facility, or other facility without obtaining written or informed consent to the transfer; and

- 3) Direct a hospital, skilled nursing facility, or other facility to accept patients transferred from a hospital or free standing emergency department.
- Hospitals and freestanding emergency departments:
 - Must comply with certain provisions of the federal Emergency Medical Treatment and Active Labor Act (EMTALA) including the requirements to provide stabilizing treatment within the hospital’s capabilities and capacity prior to the initiation of a transfer to another hospital, and to provide a medical screening examination to any individual who comes to the emergency department and requests examination or treatment.
 - Cannot consider a patient’s insurance status or ability to pay when making transfer decisions.
- Expires 30 days from November 23, 2020, unless extended.

Georgia Executive Order 04.14.20.01 (April 14, 2020)

- Designates the following as “auxiliary emergency management workers” and their services as “emergency management activities” during the Public Health State of Emergency:
 - Employees, staff, and contractors of healthcare institutions and medical facilities.
- This designation entitles them to immunity except for willful misconduct, gross negligence, or bad faith under Ga. Code Ann. § 38-3-35.

Georgia Executive Order 04.20.20.01 (April 20, 2020)

- In addition to those above, designates as “auxiliary emergency management workers” and provides that their services are “emergency management activities” during the Public Health State of Emergency:
 - Cardiac technicians
 - Emergency medical technicians
 - Paramedics
 - Paramedic clinical preceptors
 - Officers and directors, employees, staff, and contractors of air ambulance service
 - Ambulance providers
 - Emergency services systems
 - EMSC programs
 - Local coordinating entities
- This designation entitles them to immunity except for willful misconduct, gross negligence, or bad faith under Ga. Code Ann. § 38-3-35.

Georgia Executive Order 05.12.20.02 (May 12, 2020)

- In addition to those above, designates the following as “auxiliary emergency management workers” and their services as “emergency management activities” during the Public Health State of Emergency:
 - Dialysis technicians at health care facilities, including end stage renal disease facilities.

Hawaii Executive Order 20-05 (April 16, 2020)

- Orders all health care facilities, professionals, and volunteers to render assistance in support of the State’s response to the COVID-19 disaster recognized by Emergency Proclamations.
 - For health care facilities, rendering assistance includes cancelling or postponing elective surgeries and procedures as each facility determines to be appropriate under the circumstances presented by the COVID-19 emergency if elective surgeries or procedures are performed at the health care facility. In addition, for health care facilities, rendering assistance must include measures such as increasing the number of beds, preserving personal protective equipment, or taking necessary steps to prepare to treat patients with COVID-19.
 - For health care professionals, rendering assistance means providing health care services at a health care facility in response to the COVID-19 outbreak, or working under the direction of HIEMA or HDOH pursuant to the Emergency Proclamations.
 - For health care volunteers, rendering assistance means providing services, assistance, or support at a health care facility in response to the COVID-19 outbreak, or working under the direction of HIEMA or HDOH pursuant to the Emergency Proclamations.
- During the Emergency Proclamations, health care facilities, professionals, and volunteers that in good faith comply completely with all state and federal orders regarding the disaster emergency are immune from civil liability for any death or injury to persons, or property damage alleged to have been caused by any act or omission that occurred in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak.
- Does not apply to willful misconduct, gross negligence, or recklessness.
- Does not preempt or limit any applicable immunity from civil liability available to any health care facility, professional, or volunteer.

Illinois Executive Order 2020-19 (COVID-19 Order 17) (April 1, 2020) (superseded)

- During the COVID-19 emergency, health care facilities, professionals, and volunteers are immune from civil liability for any injury or death allegedly caused by any act or omission while that person or entity was engaged in the course of rendering assistance to the state by providing health care services in response to the COVID-19 outbreak.
- For health care professionals and volunteers, rendering assistance means working under the direction providing health care services at a health care facility in response to the COVID-19 outbreak, or working under the direction of IEMA or DPH in response to the Gubernatorial Disaster Proclamations.
- Health care facilities, rendering assistance includes:
 - Cancelling or postponing elective surgeries and procedures;
 - Measures such as increasing the number of beds, preserving personal protective equipment, or taking necessary steps to prepare to treat patients with COVID-19.
- This liability protection does not apply to the gross negligence or willful misconduct of a health care facility or professional, or to the willful misconduct of a health care volunteer.
- Superseded by Executive Order No. 2020-37 on May 13, 2020.

Illinois Executive Order No. 2020-37 (May 13, 2020),

re-issued by Executive Order No. 2020-39 (May 29, 2020) (COVID-19 Order 37) (expired June 27, 2020)

- Hospitals that conduct elective surgeries or procedures beginning on or after May 11, or health care professionals providing services in a hospital, are immune from civil liability for any injury or death relating to the diagnosis, transmission, or treatment of COVID-19 alleged to have been caused by any act or omission by the hospital or professional, which injury or death occurred at a time when a hospital or professional was rendering assistance to the State in response to the COVID-19 outbreak by providing health care services consistent with current IDPH guidance.
- Health care facilities or health care professionals providing services in a health care facility are immune from civil liability for any injury or death relating to the diagnosis, transmission, or treatment of COVID-19 alleged to have been caused by any act or omission by the facility or professional, which injury or death occurred at a time when a facility or professional was rendering assistance to the State in response to the COVID-19 outbreak by providing health care services consistent with current IDPH guidance.
- A health care volunteer is immune from civil liability for any injury or death alleged to have been caused by any act or omission by the volunteer, which injury or death occurred at a time when the volunteer was rendering assistance to the State in response to the COVID-19 outbreak by providing services, assistance, or support consistent with current IDPH guidance.
- “Rendering assistance” in support of the State’s response includes:
 - For hospitals and health care facilities, measures such as increasing the number of beds, preserving and properly employing personal protective equipment, conducting widespread testing, and taking necessary steps to provide medical care to patients with COVID-19 and to prevent further transmission of COVID-19.
 - For health care professionals and health care volunteers, providing health care services at a hospital or health care facility in response to the COVID-19 outbreak, or working under the direction of IEMA or IDPH in response to the Gubernatorial Disaster Proclamations.
 - To qualify as rendering assistance to the State:
 - 8) Hospitals conducting elective surgeries or procedures must comply with IDPH’s current guidance on conducting elective surgeries and procedures.
 - 9) Hospitals must accept a transfer of a COVID-19 patient from another hospital that does not have the capacity and capability necessary to provide treatment for a COVID-19 patient if it has sufficient capacity and capability necessary to provide treatment for the COVID-19 patient.
 - 10) Health care facilities must, consistent with current guidance and recommendations from IDPH, (1) conduct widespread testing of residents and widespread and regular testing of staff for COVID-19, and (2) accept COVID-19 patients upon transfer or discharge from a hospital or health care facility.
- Inapplicable to injuries caused by:

- Gross negligence or willful misconduct by hospitals, health care facilities and health care professionals.
- Willful misconduct by a health care volunteer.
- Applies during the pendency of the Gubernatorial Disaster Proclamations.
- Extended by EO 2020-39 through June 27, 2020, but was not extended further through [EO 2020-44](#).

Iowa Department of Health, PPE Shortage Order (April 9, 2020)

- Following the governor’s declaration of a public health disaster emergency on March 17, 2020 in response to the COVID-19 pandemic, the Department is authorized to control, restrict, and regulate the use, sale, dispensing, distribution, or transportation of PPE.
- PPE includes protective clothing, gloves, face shields, goggles, facemasks, respirators, gowns, aprons, coveralls, or other equipment designed to protect the wearer from injury or the spread of infection or illness.
- Orders all Iowa health care providers, hospitals, health care facilities, clinics, local public health agencies, medical and response organizations, and any other person or facility utilizing PPE in the care or treatment of a patient or resident to cooperate with the Department and local boards of health to assess and monitor the supply of PPE by:
 - Decreasing demand by taking actions such as minimizing patient contacts and banning nonessential medical services, and canceling elective procedures.
 - Implementing contingency capacity strategies, such as extended use of facemasks and respirators.
 - Implementing crisis capacity strategies, such as reusing facemasks and respirators.
- Iowa Code § 135.147 provides immunity for persons, corporations, and other entities, and their employees and agents who provide medical care or assistance in good faith under the direction of the Department of Public Health during a public health disaster.
 - Does not apply reckless conduct.
- A health care provider, hospital, health care facility, and any other person, corporation, or other legal entity or employee of all such entities acting in compliance with this Order, or other guidance issued by the Iowa Department of Public Health or the CDC related to optimizing PPE supply, in good faith is acting at the request of and under the direction of the Department and qualifies for immunity.

Kansas Executive Order No. 20-26 (April 22, 2020)

- Healthcare providers making clinical triage decisions and rendering assistance, testing, care, or advice in the care of suspected or confirmed COVID-19 patients are immune from suit.
- Does not apply to an adverse event or injury caused by the willful misconduct, gross negligence, recklessness, or bad faith.
- The order is “not intended to extend to medical treatment or procedures performed in the ordinary or customary course of practice.”
- Applies beginning April 22, 2020, until the later of May 31, 2020, or the expiration of the statewide COVID-19 State of Disaster Emergency.

Maryland Proclamation, Renewal of Declaration of State of Emergency

and Existence of Catastrophic Health Emergency – COVID-19 (May 6, 2020)

(renewed June 3, July 1, July 30, August 10, September 8, October 6, October 30, November 25)

- Health care providers who act in good faith under this catastrophic health emergency proclamation, including orders issued under the proclamation by the Governor and by other State officials acting at the direction of or under delegated authority from the Governor, have the immunity provided by § 14-3A-06 of the Public Safety Article of the Maryland Code.
- Md. Code Ann. Pub. Safety § 14-3A-06 provides: “A health care provider is immune from civil or criminal liability if the health care provider acts in good faith and under a catastrophic health emergency proclamation.”
 - A “health care provider” includes:
 - 11) a health care facility, including a hospital, a related institution, an ambulatory surgical facility, an inpatient rehabilitation facility, a home health agency, a hospice, any other health institution, service, or program that requires a certificate of need.
 - 12) a health care practitioner includes any individual who is licensed, certified, or otherwise authorized under the Health Occupations Article to provide health care services.
 - 13) an individual licensed or certified as an emergency medical services provider under Maryland law.

[Michigan Executive Order No. 2020-30](#) (March 29, 2020), rescinded and replaced with [Executive Order No. 2020-61](#) (April 26, 2020), extended by [Executive Order No. 2020-100](#) (May 22, 2020), and rescinded by [Executive Order No. 2020-150](#) (July 13, 2020)

- Any licensed health care professional or designated health care facility that provides medical services in support of the state’s response to the COVID-19 pandemic is not liable for an injury sustained by a person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained.
- Does not apply if the injury or death was caused by the gross negligence of the health care professional or designated health care facility.
- “Gross negligence” is defined by Michigan law as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.”
- A “designated health care facility” includes (1) (a) an ambulance operation, aircraft transport operation, nontransport prehospital life support operation, or medical first response service; (b) a county medical care facility; (c) a freestanding surgical outpatient facility; (d) a health maintenance organization; (e) a home for the aged; (f) a hospital; (g) a nursing home; (h) a hospice; (i) a hospice residence; (j) a facility or agency listed in subdivisions (a) to (g) located in a university, college, or other educational institution; (2) state-owned surgical centers; (3) state-operated outpatient facilities; (4) state-operated veterans facilities; and (5) entities used as surge capacity by any of the entities above.
- EO 2020-30 was rescinded and replaced with EO 2020-61.
- EO 2020-100 (May 22, 2020) extends EO 2020-61 and provides that EO 2020-61 remains in effect until the end of the states of emergency declared in EO 2020-99 or the end of any subsequently declared states of disaster of emergency arising out of the COVID-19 pandemic, whichever comes later.

- EO 2020-15- (July 13, 2020) rescinded these liability protections, finding “As the pressure on hospitals has eased, the importance of the broad relief afforded in Executive Orders 2020-30 and 2020-61 has waned. Today’s circumstances require a narrower form of relief than was provided in these earlier orders” such as suspending certain licensing and certification requirements.

Mississippi Executive Order No. 1471 (April 10, 2020)

- A healthcare professional or facility is immune from civil liability for an injury or death allegedly sustained because of acts or omissions while providing healthcare services.
- This immunity includes, but is not limited to:
 - Screening, assessing, diagnosing, treating patients for COVID-19 or otherwise acting in support of the State’s COVID-19 response.
 - Acts or omissions stemming from a lack of resources attributable to the COVID-19 pandemic that renders the healthcare professional or facility unable to provide the level or manner of care that otherwise would have been required in the absence of the COVID-19 pandemic.
- This liability protection does not apply to acts or omissions that constitute a crime, fraud, malice, reckless disregard, willful misconduct, or would otherwise constitute a false claim.
- Expires on May 15, 2020, unless modified, amended, rescinded, or superseded.

Nevada Declaration of Emergency Directive 011 (April 1, 2020)

- All providers of medical services related to COVID-19 are considered agents of the state for tort liability and immunity purposes.
- Liability protection does not extend to willful misconduct, gross negligence, or bad faith as provided in the state’s emergency management statute, [Nev. Rev. Stat. § 414.110](#).
- Effective April 1, 2020. Remains in effect until modified or terminated by a subsequent directive.

New Jersey Executive Order No. 112 (April 1, 2020)

- A licensed healthcare professional or individual granted a temporary license to practice in connection with the state’s COVID-19 response is immune from liability in the course of providing healthcare serves in good faith in support of the state’s COVID-19 response. This protection applies regardless of whether the individual’s acts were in the scope of his or her licensed practice.
- A healthcare facility, modular field treatment facility, and any other site designated by the Commissioner of the Department of Health for temporary use to provide essential services in support of the state’s COVID-19 response, including hotels and student dormitories, are immune from civil liability for any damages allegedly sustained as a result of an act or omission undertaken in good faith in support of the state’s COVID-19 response by its agents, officers, employees, servants, representatives or volunteers.
- These liability protections do not apply to acts or omissions that constitute a crime, actual fraud, gross negligence, or willful misconduct.

- Applies to acts or omissions occurring at any time during the State of Emergency or Public Health Emergency, including those occurring prior to issuance of the Order.
- Remains in effect for the duration of the Gubernatorial Disaster Proclamations.

New York Executive Order No. 202.10 (March 23, 2020)

- Health care professionals are immune from civil claims for any injury or death alleged to have been sustained directly as a result of an act or omission in the course of providing medical services in support of the State’s response to the COVID-19 outbreak.
- Applies to physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses.
- This liability protection does not apply if the injury or death was caused by the gross negligence of the medical professional.
- Expires April 22, 2020.

Pennsylvania Order of the Governor to Enhance Protections for Health Care Professionals (May 6, 2020)

- Designates licensed, certified, registered, or otherwise authorized health care professionals who is engaged in providing COVID-19 care as “agents of the commonwealth” solely for purposes of immunity from civil liability related to the Commonwealth’s COVID-19 disaster emergency response.
- Covers practitioners providing care at any health care facility, nursing facility, personal care home, and assisted living facility, as well as at an alternate care site, community-based testing site, or non-congregate care facility used for the purpose of conducting emergency services activities or the provision of disaster services activities related to the Commonwealth’s COVID- 19 disaster emergency response.
 - Does not extend to health care “facilities or entities themselves.”
 - Does not extend to “health care professionals rendering non-COVID-19 medical and health treatment or services.”
- Affirms immunity for any person, organization or authority allowing real estate or other premises used for emergency services *without compensation* for negligently causing death, injury, or loss or damage to the property of any person who is on the premises for the purpose of those emergency services.
- Does not include acts or omissions that constitute gross negligence or willful misconduct.
- Effective immediately and remains in effect for the duration of the disaster emergency.

Pennsylvania Order of the Governor for Mitigation, Enforcement, and Immunity Protections (November 23, 2020)

- Provides civil liability protection when enforcing the Secretary of Health’s Updated Order Requiring Universal Face Coverings to:
 - Businesses (including not-for-profit) and restaurant owners and employees;
 - Commonwealth of Pennsylvania employees and authorized agents;
 - Personnel of local health departments;
 - State and local law enforcement personnel; and
 - Personnel of other authorized government agencies

- Declares that these individuals and entities are engaged in essential emergency services activities and disaster services activities when enforcing the Universal Face Coverings Order, pursuant to 35 Pa. C.S. § 7301, and entitled to immunity from civil liability pursuant to 35 Pa. C.S. § 7704(a) of the Emergency Management Services Code.
 - The Universal Face Coverings Order:
 - 14) Requires every person, age two or older, to wear a face covering when in indoors or in an enclosed space where other people who are not part of the person’s household are present, irrespective of physical distance, and outdoors where physical distance (at least six feet) is not sustainable.
 - 15) Requires face coverings, regardless of physical distance, in indoor physical activities, public transportation including waiting areas, private car service and ride sharing, health and pet care settings, and in any space where food is prepared or distributed.
 - 16) Facilities such as hospitals, shelters, long-term care facilities, residential treatment facilities, and correctional facilities may require visitors and residents, patients, or inmates to wear face coverings except when in a living unit.
 - 17) Provides exceptions when wearing a face covering while working creates a safety issue, for persons with medical conditions, when necessary to confirm a person’s identity, when services that require temporary removal of the face covering, when working in alone and isolated from others, and when communicating with a person who is hearing-impaired or has another disability.
 - 18) Face coverings can be factory made or improvised, including masks, scarfs, bandanas, t-shirts, sweatshirts, or towels.
 - 19) Businesses and schools must require all people to wear a face covering and take reasonable steps to enforce this requirement. They must:
 - Mitigate or eliminate exposure to people who cannot or will not wear a face covering;
 - Post prominent signs stating that face coverings are required; and
 - Provide reasonable accommodations to people when it is unreasonable to require a person to wear a face covering due to a medical condition or disability.
 - 20) Businesses and schools may decline to provide service to those who do not wear a face covering or who claim to have a condition preventing them from wearing a face covering or an alternative to a face covering (such as a face shield or service options that do not require a customer to enter a business, i.e. curbside service), so long as they attempt to provide a reasonable accommodation.
 - 21) A business or school should not:
 - Enforce face covering requirements when it is unsafe to do so;
 - Restrain, assault, use force, or physically remove those who refuse to comply with the Order when it would not otherwise be legal to do so; or

- Violate other laws, including state or federal anti-discrimination laws.
- Applies to liability for the death of or any injury to a person or for loss of or damage to property.
- Applies regardless of whether a person receives remuneration.
- Does not apply to:
 - Cases of willful misconduct, gross negligence, recklessness or bad faith; or
 - Liability of employers with respect to their employees.
 - The individuals above when rendering non-COVID-19 enforcement emergency services.
- Effective November 18, 2020.

Rhode Island Executive Order No. 20-21 (April 10, 2020)

- Extends immunity provided to “disaster response workers” under R.I. Gen. Laws § 30-15-15(a) to:
 - Health care facilities, health care professionals and other individuals and organizations assisting in responding to the virus and treating COVID-19 patients, whether delivering services in existing hospitals or surge hospitals, nursing facilities, or alternative nursing care sites.
 - 22) Does not provide immunity for negligence that occurs in the course of providing patient care to patients without COVID-19 whose care has not been altered by the existence of the disaster emergency.
 - Landlords making the surge hospital locations and alternative nursing care sites available to the State, plus their employees, management companies, and contractors providing services to construct, operate or decommission the surge hospital locations.
 - Existing law does not limit liability for willful misconduct, gross negligence, or bad faith.
- Permits health care workers to provide services beyond or without a license as permitted by R.I. Gen. Laws 30-15-15(b).
- Effective April 10, 2020 and remains in effect until May 8, 2020, unless renewed, modified or terminated by a subsequent Executive Order.

Rhode Island Executive Order No. 20-33 (May 8, 2020)

- Expands the definition of “disaster response workers” entitled to immunity under Executive Order No. 20-21 to include health care entities, health care professionals and health care workers providing community-based health care, long term care, congregate care, services at alternative hospitals and services in existing hospitals, nursing facilities, assisted living residences, home health care, hospice, adult day care and PACE organizations.
- Renews other provisions of Executive Order No. 20-21, including immunity for landlords that make alternative hospital sites available to the state.
- Effective May 8, 2020 and remains in effect until June 7, 2020, unless renewed, modified or terminated by a subsequent Executive Order.

Tennessee Executive Order No. 53 (July 1, 2020)

- Health care providers are not liable for personal injury or death claims related to COVID-19 alleged to have been caused by acts or omissions within the limits of the provider’s license, certification, registration, or authorization, including acts or omissions resulting from lack of resources attributable to or arising out of the provider’s COVID-19 response that renders the health care provider unable to provide the level or manner of care or services that would otherwise be required in the absence of the COVID-19 pandemic.
- Applies to health care providers licensed, certified, authorized under title 33 (mental health, substance abuse, and intellectual and developmental disabilities), title 63 (healing arts), and title 68 (health safety and environmental protection).
 - Title 63 provides for licensing of a broad range of health care professionals, such as physicians, physician assistants, nursing home administrators, respiratory therapists, and pharmacists.
 - Title 68 provides for licensing of hospitals, recuperation centers, nursing homes, homes for the aged, assisted-care living facilities, home care organizations, residential hospices, renal dialysis clinics, ambulatory surgical treatment centers, outpatient diagnostic centers, and adult care homes, among others.
- Does not include acts or omissions caused by gross negligence or willful misconduct.
- Effective July 2, 2020 to July 31, 2020, unless extended.

Vermont Addendum 9 to Exec. Order 01-20 (April 10, 2020)

- Health care facilities, providers, and volunteers who provide COVID-19 emergency management services or response activities are immune from civil liability for any death, injury, or loss resulting from these services or activities.
 - For health care facilities and providers, an emergency management service or response activity, includes, but is not limited to:
 - 23) Expedited postponement of non-essential adult elective surgery and medical and surgical procedures, including dental procedures, in the safest but most expedient way possible, as ordered by Addendum 3 of the Executive Order, if elective surgeries and medical and surgical procedures are performed at the Health Care Facility or by the Health Care Provider;
 - 24) Cancelling or denying elective surgeries or procedures or routine care to the extent determined necessary for the health, safety and welfare of a patient or as necessary to respond to the COVID-19 outbreak;
 - 25) Redeployment or cross training of staff not typically assigned to such duties, to the extent necessary to respond to the COVID-19 outbreak;
 - 26) Planning, or enacting, crisis standard-of-care measures, including, but not limited to, modifying numbers of beds, preserving PPE, and triaging access to services or equipment as necessary to respond to the COVID-19 outbreak; and
 - 27) Reduced record-keeping to the extent necessary for Health Care Providers to respond to the COVID-19 outbreak.

- For health care volunteers, emergency management services or response activities also includes providing services, assistance, or support at a health care facility in response to the COVID-19 outbreak.
- Does not apply to gross negligence or willful misconduct.
- Initially effective April 10 through May 15, 2020. Extended to June 15, 2020 by Addendum 14 to Executive Order 01-20.

Virginia Executive Order No. 60 (April 28, 2020)

- Clarifies application of existing Virginia law that provides liability protection to healthcare providers when responding to a disaster to COVID-19.
- The liability protection applies to conduct including:
 - Temporary withholding of the provision of procedures, consultations or surgeries performed in an inpatient or outpatient surgical hospital, free-standing emergency department or endoscopy center, physicians' office, or dental, orthodontic, oral surgeon, or endodontic offices that require PPE, the delay of which was not anticipated to cause harm to the patient by negatively affecting the patient's health outcomes, or leading to disability or death.
- The liability protection also extends to emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency" including claims arising from:
 - Insufficient availability of PPE, ventilators, or other drugs, blood products, supplies or equipment;
 - Insufficient availability of trained staff;
 - Having licensed healthcare professionals deliver care that, while included in the scope of their licensure, exceeds the scope of their credentials at the hospital or other health care facility at which they deliver services or exceeds the scope of the services that they normally provide;
 - Implementation or execution of triage protocols or scarce resource allocation policies necessitated by healthcare provider declaration of crisis standards of care; and
 - Using supplies or equipment in innovative ways that are different from the way that these supplies and equipment are normally used.
- Does not include injuries resulting from gross negligence or willful misconduct.
- Remains in effect until the expiration of the State of Emergency.

Enacted State Legislation
(Listed Alphabetically)

Alaska FCCS S.B. 241 (enacted April 9, 2020)

- A health care agent or health care provider who takes action based on a standing order issued by the chief medical officer in the Department of Health and Social Services related to essential public health services and functions for COVID-19 is not liable for civil damages resulting from an act or omission in implementing the standing order.
 - “Health care agent” is defined by current law as an official or employee of the Department of Health and Social Services.
 - “Health care provider” is defined by current law as “any person that provides health care services” and includes “a hospital, medical clinic or office, special care facility, medical laboratory, physician, pharmacist, dentist, physician assistant, nurse, paramedic, emergency medical or laboratory technician, community health worker, and ambulance and emergency medical worker.”
 - Does not apply to gross negligence, recklessness, or intentional misconduct.
 - This section is effective April 10, 2020.
- A health care provider or manufacturer of personal protective equipment is not liable for civil damages resulting from an act or omission in issuing, providing, or manufacturing PPE in the event of injury or death 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 gross negligence, recklessness, or intentional misconduct.
 - A health care provider or manufacturer under this section must notify the user of the PPE that the equipment may not meet established standards and requirements.
 - “Health care provider” has the same definition as above and also includes a nursing home for this section.
 - This section is retroactive to March 11, 2020.
- A workers’ compensation claim is presumptively compensable as an occupational disease arising out of the course of employment if, during the health disaster emergency, the employee is:
 - A firefighter, emergency medical technician, paramedic, peace officer, or health care provider, is exposed to COVID-19 in the course of this employment, and receives a COVID-19 diagnosis from a physician, presumptive positive test result, or laboratory-confirmed COVID-19 diagnosis.
 - This section is retroactive to March 11, 2020.
- Increasing a price after the March 11 public health disaster emergency by more than 10% for food, medicine, medical equipment, and fuel sanitation products, hygiene products, essential household supplies, and other essential goods is a violation of the Alaska Unfair or Deceptive Trade Practices and Consumer Protection Act.
 - This provision is retroactive to March 11, 2020.

**District of Columbia Act 23-283 (effective April 10, 2020),
as amended by D.C. Act 23-299 (effective May 1, 2020)**

- An existing law, [D.C. Code 7-2304.01](#), authorizes the Mayor, when declaring a public emergency, to issue a public health emergency executive order that exempts licensed health care providers, either from the District of Columbia or from other jurisdictions, from civil liability for damages for any actions taken within the scope of the provider's employment or voluntary service to implement the provisions of the District of Columbia response plan, except in instances of gross negligence, and solely for actions taken during the public health emergency.
- The enacted law, which is codified at [D.C. Code § 7-311](#), is specific to COVID-19 treatment and does not require issuance of an executive order to provide liability protection. The statute:
 - Exempts from liability in a civil action, a healthcare provider, first responder, or volunteer who renders care or treatment to a potential, suspected, or diagnosed individual with COVID-19 for damages resulting from such care or treatment of COVID-19, or from any act or failure to act in providing or arranging medical treatment for COVID-19 during a declared public-health emergency;
 - Exempts from liability in a civil action, a donor of time, professional services, equipment, or supplies for the benefit of persons or entities providing care or treatment for COVID-19 to a suspected or diagnosed individual with COVID-19, or care for the family members of such individuals for damages resulting from such donation during a declared public-health emergency; or
 - Exempts from liability in a civil action, a contractor or subcontractor on a District government contract that has contracted to provide health care services or human care services related to a declared public health emergency related to the District government's COVID-19 response.
- The limitation on COVID-19 liability applies to any healthcare provider, first responder, volunteer, or District government contractor or subcontractor of a District government contractor, including a party involved in the healthcare process at the request of a health-care facility or the District government, and acting within the scope of the provider's employment or organization's purpose, or contractual or voluntary service, even if outside the provider's professional scope of practice, state of licensure, or with an expired license, who:
 - 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.
 - Provides direct or ancillary health-care services or health-care products, including direct patient care, testing, equipment or supplies, consultations, triage services, resource teams, nutrition services, or physical, mental, and behavioral therapies; or
 - Utilizes equipment or supplies outside of the product's normal use for medical practice and the provision of health-care services to combat the COVID-19 virus.
- The limitation on COVID-19 liability does not apply to acts or omissions that:
 - Constitute a crime, actual fraud, actual malice, recklessness, breach of contract, gross negligence, or willful misconduct; or

- Are unrelated to direct patient care; provided, that a contractor or subcontractor shall not be liable for damages for any act or omission alleged to have caused an individual to contract COVID-19.
- The statute does not define “healthcare provider,” but another [section](#) of the D.C. Code, which governs medical malpractice claims, provides a broad definition that includes nursing homes.
- Applies to acts, omissions, and donations performed or made during the declared public health emergency, and to damages that ensue at any time from acts, omissions, and donations made during the emergency.

Georgia COVID-19 Pandemic Business Safety Act, S.B. 359 (enacted August 5, 2020)

- Healthcare facilities, healthcare providers, other entities, or individuals are not liable for a COVID-19 liability claim unless the claimant proves gross negligence, willful or wanton misconduct, reckless infliction of harm, or intentional infliction of harm.
 - A COVID-19 liability claim includes:
 - 28) **Premises liability claims.** Transmission, infection, exposure, or potential exposure of COVID-19 to a claimant at any healthcare facility or on the premises of any entity, individual, or healthcare provider, resulting in injury to or death of a claimant; or caused by actions of any healthcare provider or individual resulting in injury to or death of a claimant.
 - 29) **Medical liability claims.** Acts or omissions by a healthcare facility or healthcare provider 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.
 - 30) **Personal protective equipment claims.** Manufacturing, labeling, donating, or distributing PPE or sanitizer that is directly related to providing 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.
- There is a rebuttable presumption in an action alleging transmission, infection, exposure, or potential exposure to COVID-19 that a claimant assumed that risk when:
 - A receipt or proof of purchase for entry, including an electronic ticket or wristband, includes specific language waiving liability caused by the inherent risk associated with contracting COVID-19 at public gatherings; or
 - The premise owner posts a sign warning that under Georgia law there is no liability for injury or death of a person entering the premise that results from the inherent risks of contracting COVID-19;
 - The actions do not constitute gross negligence, willful or wanton misconduct, reckless infliction of harm, or intentional infliction of harm.

- Effective upon approval (August 5, 2020) (it is not retroactive).
- Applies to causes of action accruing until July 14, 2021 and not to any cause of action thereafter.

Idaho Coronavirus Limited Immunity Act, H.B. 6 (enacted August 27, 2020)

- Provides immunity from civil liability for damages or injury resulting from exposure to coronavirus.
- Applies 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.
 - Excludes from coverage any Idaho public health district, the federal government, the state (except colleges, universities, and other institutions of higher education), and foreign governments.
- Does not apply to an intentional tort or willful or reckless misconduct.
 - Idaho law [defines](#) "willful or reckless misconduct" as "conduct in which a person makes a conscious choice as to the person's course of conduct under circumstances in which the person knows or should know that such conduct both creates an unreasonable risk of harm to another and involves a high probability that such harm will actually result."
- Effective immediately.
- Expires July 1, 2021.

Iowa S.F. 2338 (enacted June 18, 2020)

- **Actual injury requirement.** A claim for COVID-19 exposure may not be filed unless it alleges a minimum medical condition (a diagnosis of COVID-19 that requires inpatient hospitalization or results in death), unless the act was intended to cause harm or constitutes actual malice.
- **Limit on premises liability.** A person who directly or indirectly invites or permits an individual onto a premises is not liable for any injuries sustained from the individual's exposure to COVID-19 unless the person (1) recklessly disregards a substantial and unnecessary risk that the individual would be exposed to COVID-19; (2) acted with actual malice; or (3) intentionally exposes the individual to COVID-19.
- **Safe harbor for compliance.** A person is not liable for 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.
 - Public health guidance includes written guidance issued by the CDC, Centers for Medicare and Medicaid Services, OSHA, Office of the Governor, or any state agency.
- **Limit on health care provider liability.** A health care provider (including a professional, health care facility, home health care facility, or any other person or facility authorized to administer health care) is not liable for causing or contributing, directly or indirectly, to the death or injury of an individual resulting from the provider's acts or omissions in support of the state's response to COVID-19.
 - Applies to:
 - An injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with COVID-19;

- Prescribing, administering, or dispensing pharmaceuticals for off-label use to treat a patient with COVID-19; or
 - Acts or omissions while providing health care to individuals unrelated to COVID-19 when care is affected by COVID-19 (includes examples).
- Does not apply to reckless or willful misconduct.
- **Product liability protections.**
 - A person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to COVID-19 is not liable in an action alleging personal injury, death, or property damage resulting from:
 - 31) The product’s design, manufacturing, labeling, sale, distribution, or donation; or
 - 32) A failure to provide proper instructions or sufficient warnings.
 - A qualified product includes:
 - 33) Personal protective equipment used to protect the wearer from COVID-19 or to prevent the spread of COVID-19.
 - 34) 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.
 - 35) Medical devices, equipment, and supplies used outside of their normal use to treat COVID-19 or to prevent the spread of COVID-19.
 - 36) Medications used to treat COVID-19, including medications prescribed or dispensed for off-label use to attempt to treat COVID-19.
 - 37) Tests to diagnose or determine immunity to COVID-19.
 - 38) Any component of these products.
 - Does not apply if a person:
 - 39) Had actual knowledge of a defect in the product when put to the use for which the product was designed, manufactured, sold, distributed, or donated, and the person recklessly disregarded a substantial and unnecessary risk that the product would cause serious personal injury, death, or serious property damage; or
 - 40) Acted with actual malice.
- Applies retroactively to January 1, 2020.

Kansas H.B. 2016, §§ 8-15 (enacted June 8, 2020)

- The COVID-19 response and reopening for business liability protection act.
- **Healthcare provider liability:**

- A healthcare provider 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 declared state of disaster emergency related to the COVID-19 public health emergency.
- Applies to any claims for damages or liability that arise out of or relate to acts, omissions or healthcare decisions occurring during any declared state of disaster emergency related to the COVID-19 public health emergency.
- Applies to any person or entity that is licensed, registered, certified or otherwise authorized by the state of Kansas to provide healthcare services in this state, including a hospice certified to participate in the Medicare program.
- Does not apply to:
 - 41) Gross negligence or willful, wanton or reckless conduct.
 - 42) Healthcare services not related to COVID-19 that have not been altered, delayed or withheld as a direct response to the COVID-19 public health emergency.
 - 43) An entity licensed under chapter 39, which includes adult care homes, adult family homes, and programs providing care to individuals with disabilities.
- **Adult care facilities**
 - Provides an adult care facility with an affirmative defense to liability in a civil action for a COVID-19 exposure claim if the facility:
 - 44) 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
 - 45) Treats a resident who has tested positive for COVID-19 in such facility in compliance with a statute or rule and regulation; and
 - 46) Is acting pursuant to and in substantial compliance with public health directives.
- **Defense for compliance with public health directives**
 - A person is immune from liability in a COVID-19 exposure claim if the person acted 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.
 - "Public health directives" means any of the following that is required by law to be followed related to public health and COVID-19:
 - 47) State statutes, rules and regulations or executive orders issued by the governor;
 - 48) federal statutes or regulations from federal agencies, including the CDC and OSHA; or
 - 49) 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.

- Expires January 26, 2021.
- **Product liability**
 - A person who designs, manufactures, labels, sells, distributes, provides or donates a qualified product in response to the COVID-19 public health emergency is immune from liability in a civil action alleging a product liability claim arising out of such qualified product if:
 - 50) 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
 - 51) 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.
 - A "qualified product" includes:
 - 52) Personal protective equipment used to protect the wearer from COVID-19 or the spread of COVID-19;
 - 53) 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;
 - 54) 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;
 - 55) Medications used to treat COVID-19, including medications prescribed or dispensed for off label use to attempt to combat COVID-19;
 - 56) Tests used to diagnose or determine immunity to COVID-19;
 - 57) Disinfecting or cleaning supplies;
 - 58) Clinical laboratory services certified under the federal clinical laboratory improvement amendments in section 353 of the public health service act;
 - 59) Components of qualified products.

Kentucky S.B. 150 (enacted March 30, 2020)

- **Health care provider liability**
 - A health care provider who cares for or treats a COVID-19 patient in good faith during the state of emergency is not liable for ordinary negligence for any personal injury resulting from that care or treatment, or in providing or arranging further medical treatment.
 - 60) This protection applies so long as the health care provider acts as an ordinary, reasonable, and prudent health care provider would have acted under the same or similar circumstances.
 - 61) This protection includes (1) prescribing or dispensing medicines for off-label use to attempt to combat COVID-19 in accordance with the federal or state Right to Try Act

laws; (2) providing 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 (3) utilizing equipment or supplies outside of the product's normal use for medical practice and the provision of health care services.

- **Personal protective equipment**

- Any business in the Commonwealth that makes or provides personal protective equipment or personal hygiene supplies in response to COVID-19, such as masks, gowns, or sanitizer, is not liable for ordinary negligence and in product liability claims.
- This protection applies only if (a) the business does not make or provide such products in the normal course of its business; (b) the business has acted in good faith; and (c) the business acted in an ordinary, reasonable, and prudent manner under the same or similar circumstances.
- Takes effect immediately. Does not address application to conduct prior to enactment.

Louisiana H.B. 826 (Act No. 336) (enacted June 13, 2020)

- **Premises liability**

- No person, entity, or government is liable for any civil damages for injury or death resulting from exposure to COVID-19 in the course of providing business operations unless:
 - 62) The person, entity, or government failed to substantially comply with the applicable COVID-19 procedures established by the federal, state, or local agency which governs the business operations; and
 - 63) The injury or death was caused by the person, entity, or government'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, entity, or government satisfies this requirement by substantially complying with any one applicable set of procedures.

- **Event planner liability**

- No person, entity, or government, nor specifically a business event strategist, association meeting planner, corporate meeting planner, independent trade show organizer or owner, or any other entity housing, promoting, producing or otherwise organizing an event of any kind is liable for any civil damages for any injury or death resulting from exposure to COVID-19 resulting from such activities unless the damages were caused by gross negligence or willful and wanton misconduct.

- **Employer liability**

- Employees who are covered by workers' compensation cannot bring a tort claim for COVID-19 exposure against his or her employer or any other person potentially liable under the workers' compensation law unless the exposure was intentional as provided by that law (R.S. 23:1032(B)).

- Employees who are not covered by workers’ compensation cannot bring a tort claim for COVID-19 exposure against an employer or any other person potentially liable under the workers’ compensation law unless the exposure was caused by an intentional act.
- **Personal protective equipment**
 - A person or entity that designs, manufacturers, labels, or distributes personal protective equipment in response to the COVID-19 public health emergency is not liable for an injury or death caused by the product unless caused by gross negligence or willful or wanton misconduct.
 - A person or entity that uses, employs, dispenses, or administers personal protective equipment is not liable for an injury or death resulting from the product unless the person failed to substantially comply with the applicable procedures established by federal, state, or local agencies which govern the personal protective equipment and the injury or death was caused by gross negligence or wanton or reckless misconduct.
 - 64) If two or more sources of procedures are applicable to the business operations at the time of the actual or alleged exposure, the person, entity, or government satisfies this requirement by substantially complying with any one applicable set of procedures.
- Effective June 13, 2020 and applies retroactively to the declaration of a statewide public health emergency, March 11, 2020.

Louisiana S.B. 435 (Act No. 362) (enacted June 12, 2020) (premise liability)

- Contains a substantively identical premises liability protection as H.B. 826, but codifies the new provision within a statute governing immunity of homeland security and emergency preparedness personnel, R.S. 29:735, rather than as a new section within the Civil Code, R.S. 9:2800.25.
- Does not apply to “gross negligence, willful misconduct, or intentional criminal misconduct” (H.B. 826 uses “negligence or willful and wanton misconduct”).
- Does not affect workers’ compensation claims.
- Effective June 12, 2020, and applies retroactively to the declaration of a statewide public health emergency, March 11, 2020.

Louisiana S.B. 491 (Act No. 303) (enacted June 12, 2020) (product liability)

- Extends an existing law providing that persons or entities who “gratuitously and voluntarily” provide disaster relief or recovery services in coordination with the state or a political subdivision are not liable to the recipient for any injury, death, or damage to property absent gross negligence or willful misconduct to include providing products.
- Adds a section providing that a person or entity who renders disaster relief, recovery services, or products “outside the typical course and scope of their operations” in coordination with the federal government, the state, or its political subdivisions is not liable to the recipient for any injury, death, or damage to property resulting from the product except in the event of gross negligence or willful misconduct.

Louisiana S.B. 508 (Act. No. 305) (enacted June 12, 2020) (restaurant liability)

- An owner, operator, employee, contractor, or agent of a restaurant is not liable for COVID-19 infections transmitted through preparation and serving of food during the COVID-19 public health emergency so long as it:
 - Operated in substantial compliance with Proclamation No. 25 JBE 2020 (which declared a state of emergency on March 11, 2020) and any subsequent proclamations and applicable COVID-19 procedures established by a federal, state, or local agency; and
 - The injury or death was not caused by gross negligence or willful and wanton misconduct.
- 65) If two or more sources of procedures are applicable to the business operations at the time of the actual or alleged exposure, the person, entity, or government satisfies this requirement by substantially complying with any one applicable set of procedures.
- Applies to dine-in, takeout, drive-through, or delivery throughout the duration of the COVID-19 public health emergency.
- An employee retains the rights and remedies granted by workers' compensation.
- Effective June 12, 2020, and applies retroactively to the declaration of a statewide public health emergency, March 11, 2020.

**Louisiana H.B. 59, 1st Special Session (Act. No. 9) (enacted July 8, 2020)
(public and private schools and postsecondary institutions)**

- Public and private schools, postsecondary institutions, and their governing authorities, officers, employees, and agents are not liable for any civil damages for injury or death resulting from or related to actual or alleged exposure to COVID-19 or acts undertaken in the effort to respond to actual or alleged exposure to COVID-19 or the COVID-19 public health emergency. There is no cause of action for contracting COVID-19 at a school or school-sponsored event.
- This immunity is unavailable if the public or private school violated any procedure mandated by law or by rule or regulation adopted by a federal or state agency and that act or inaction constituted gross negligence or wanton or reckless conduct.
- Requires the State Board of Elementary and Secondary Education, each public school governing authority, and Board of Supervisors of various postsecondary institutions to adopt minimum standards, policies, medical exceptions, and regulations to govern the reopening of schools for 2020-21 school year to ensure protection to the extent possible and practical from COVID-19.
- This liability protection is retroactive to March 11, 2020.

Massachusetts S. 2640 (enacted April 17, 2020)

- Health care professionals and facilities are immune from civil liability for any damages allegedly sustained by an act or omission in the course of providing care during the COVID-19 emergency when:
 - The health care provider or facility is arranging for or providing health care services pursuant to a COVID-19 emergency rule and in accordance with otherwise applicable law;
- 66) A "COVID-19 emergency rule" is 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: (i) scope of practice or conditions of licensure, including modifications authorizing health care professionals licensed in another state to practice in the commonwealth; or (ii) 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.

67) "Health care services" involve the: (i) treatment, diagnosis, prevention or mitigation of COVID-19; (ii) assessment or care of an individual with a confirmed or suspected case of COVID-19; or (iii) care of any other individual who presents at a health care facility or to a health care professional during the period of the COVID-19 emergency.

- Arranging for or providing care or treatment of an individual impacted by the health care facility's or professional's decisions or activities in response to treatment conditions resulting from the COVID-19 outbreak or COVID-19 emergency rules; and
- The health care facility or professional is arranging for or providing health care services in good faith.
- This liability protection does not apply to:
 - Acts or omissions that constitute gross negligence, recklessness or conduct with an intent to harm;
 - Discrimination based on race, ethnicity, national origin, religion, disability, sexual orientation or gender identity by a health care facility or professional providing health care services;
 - Consumer protection actions brought by the attorney general; or
 - False claims actions brought by or on behalf of the Commonwealth.
- Volunteer organizations are immune from 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 COVID-19 emergency.
 - Does not apply to gross negligence, recklessness or conduct with an intent to harm.
- Effective immediately and applies to claims based on acts or omissions that occur or have occurred during the COVID-19 emergency declared March 10, 2020 and until terminated or rescinded.

[Michigan H.B. 6030](#), [6031](#), [6032](#), and [6101](#) (enacted October 22, 2020)

- H.B. 6030 provides a regulatory compliance defense in COVID-19 exposure claims. It was part of a package of four bills, all of which were required to pass for any to go into effect.
 - A person is immune from a tort claim related to exposure or potential exposure to COVID-19 when a person acts in compliance with all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the conduct or risk that allegedly caused harm.
 - A COVID-19 claim includes conduct intended to reduce transmission of COVID-19, such as tort claims based on testing or contact tracing, for example.

- A de minimis deviation from strict compliance unrelated to the plaintiff's injuries does not deny the person the immunity.
- H.B. 6031 is similar to H.B. 6030, providing a regulatory compliance defense for litigation brought under the Michigan Occupational Safety Act.
 - An employer is not liable for an employee's exposure to COVID-19 under the Michigan OSH Act when the employer operated in compliance with all federal, state, and local statutes, rules, and regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the exposure.
 - A de minimis deviation from strict compliance unrelated to the employee's exposure does not deny the person the immunity.
- H.B. 6032 provides employment protections and responsibilities related to COVID-19 that were a condition of enacting the COVID-19 liability protections.
 - An employer cannot fire, discipline, or retaliate against an employee who (1) does not report to work because the employee has symptoms of COVID-19; (2) opposes a violation of the act; or (3) reports health violations related to COVID-19.
 - 68) An employee can bring a civil action seeking injunctive relief and damages and is entitled to minimum damages of \$5,000.
 - 69) An employee who displays symptoms of COVID-19 is not eligible for this protection if he or she does not make reasonable efforts to schedule a COVID-19 test within 3 days of an employer's request to get tested.
 - An employee who has the principal symptoms of COVID-19 is prohibited from returning to work until all of these conditions are met: (1) 24 hours have passed since a fever stopped without use of medication; (2) the later of 10 days from when the employee's symptoms first appeared or the employee's positive test result; and (3) the employee's principal symptoms have improved.
 - An employee who has close contact with a person who tests positive for COVID-19 or displays the principal symptoms of COVID-19 is prohibited from returning to work unless either 14 days has passed since close contact or the individual with whom the employee had close contact is determined not to have COVID-19 at the time of contact. This quarantine requirement does not apply to healthcare professionals and workers, first responders, child care workers, adult foster care workers, or correction facilities workers. An
- H.B. 6101 defines COVID-19 for purposes of the Michigan Occupational Health and Safety Act as "the novel coronavirus identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2, and conditions associated with the disease."
- Each of the bills is retroactive to March 1, 2020.

Michigan Pandemic Health Care Immunity Act, H.B. 6159 (enacted October 22, 2020)

- A health care provider or health care facility is not liable for any injury sustained by reason of health care services provided in support of the state's response to the COVID-19 pandemic regardless of how, under what circumstances, or by what cause those injuries are sustained.

- Broadly defines a “health care provider” to include licensed individuals, certain individuals who are permitted to practice in a health profession without a license, emergency service personnel, or a student, volunteer, or any other licensed health care professional at a health care facility.
- Broadly defines a “health care facility” that qualifies for protection as including:
 - An ambulance operation, aircraft transport operation, non-transport prehospital life support operation, or medical first response service;
 - A county medical care facility;
 - A freestanding surgical outpatient facility;
 - A health maintenance organization;
 - A home for the aged;
 - A hospital;
 - A nursing home;
 - A hospice;
 - A hospice residence;
 - A facility or agency listed above located in a university, college, or other educational institution;
 - A state-owned surgical center, outpatient facility, or veterans facility;
 - A facility used for surge capacity for any of the facilities included in the law.
- Maintains liability for providing services in a manner that constitutes willful misconduct, gross negligence, intentional and willful misconduct, or intentional infliction of harm.
 - “Gross negligence” is defined as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.”
 - “Willful misconduct” is defined as “conduct or a failure to act that was intended to cause harm.”
- Applies retroactively to March 29, 2020 and before July 14, 2020.

Mississippi Back-to-Business Liability Assurance Act and Healthcare Emergency Response Liability Protection Act, S.B. 3049 (enacted July 8, 2020)

- **Exposure claims.** A person that provides functions or services, or invites or permits any person onto its premises, is immune from a civil action alleging an injury from actual or potential exposure to COVID-19 when the person attempted in good faith to follow applicable public health guidance.
 - If the exposure occurred before applicable public health guidance was available, the person is immune from such a claim.
 - “Public health guidance” includes written guidance issued by a federal or state agency.
- **Medical liability claims.** Health care professionals and facilities are immune from any lawsuit alleging an injury or death directly or indirectly sustained because of acts or omissions while providing health care services related to a COVID-19 state of emergency.
 - Includes nonexclusive list of a broad range of health care services that support the state’s response to the COVID-19 state of emergency that fall within the immunity, such as delaying or cancelling non-urgent or elective surgical procedures or using equipment or supplies outside their normal use.

- **Product liability claims.**

- A person that designs, manufactures, labels, sells, distributes, or donates a qualified product in response to COVID-19 is immune from suit for any injuries resulting from *actual or potential exposure* to COVID-19 caused by the product.

70) A “qualified product” includes:

- Personal protective equipment 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 FDA for approval within FDA-prescribed time periods; and
- Components of qualified products.

- A person that designs, manufactures, labels, sells, distributes, or donates disinfecting or cleaning supplies or personal protective equipment in response to COVID-19 outside the ordinary course of the person’s business is immune from suit for any injuries resulting from *actual or potential exposure* to COVID-19 caused by the product.

- **Exception to immunity.** The immunities above do not apply where a plaintiff shows, by clear and convincing evidence, that a defendant acted with actual malice or willful, intentional misconduct.
- **Statute of limitations.** A person must bring a claim alleging an injury arising from COVID-19 within two years of accrual. Does not apply to claims against a government entity, which are governed by the Mississippi Tort Claims Act.
- **Applicability.**
 - The medical liability provisions apply during the state of emergency, during any period of renewal or extension, and terminates one year after the end of the COVID-19 state of emergency.
 - The Act applies retroactively to March 14, 2020 and expires one year after the state of the COVID-19 state of emergency.
 - Any civil liability arising out of acts or omissions that occurred during the operation of the act are subject to its provisions in perpetuity.

Nevada S.B. 4, §§ 24-29, 39 (enacted August 11, 2020)

- Any civil action alleging personal injury or death as a result of exposure to COVID-19 while on an premises or during an activity managed by an entity:
 - The complaint must plead with particularity.

- The court determines as a matter of law whether an entity was in substantial compliance with controlling health standards at the time of the alleged exposure. The plaintiff has the burden of proving the business was not in substantial compliance.
 - 71) “Controlling health standards” includes federal, state or local law, or a written order or other document published by a federal, state, or local government or regulatory body that is related to COVID-19 and prescribed the manner in which an entity must operate at the time of the alleged exposure.
 - 72) Substantial compliance” is defined as good faith efforts to help control the spread of COVID 19 in conformity with controlling health standards. An 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.
- If an entity operated in substantial compliance with controlling health standards, it is not liable for a COVID-19 exposure claim unless the entity violated controlling health standards with gross negligence and that gross negligence was the proximate cause of the person’s injury or death.
- If an entity did not operate in substantial compliance with controlling health standards, there is no liability protection.
- An “entity” that qualified for the liability protection includes businesses, government entities, or nonprofit organizations, and their officers or employees. However, the bill excludes from protection:
 - 73) Nursing homes, hospices, intermediate care facilities, skilled nursing facilities, hospitals, independent centers for emergency care.
 - 74) Any public school offering preschool, kindergarten, or grades 1 through 12.
- These liability protections and procedures apply to any cause of action that accrues before, on, or after the effective date of the bill (August 11, 2020). The protections expire the later of the date on which the governor terminates the COVID-19 emergency declaration issued on March 12, 2020 or July 1, 2023.

New Jersey S.B. 2333 (enacted April 14, 2020)

- A health care professional, facility, or system is immune from civil liability for any injury alleged to have been sustained from an act or omission undertaken in the course of providing medical services in support of the state’s response to coronavirus.
- This immunity also includes any act or omission undertaken in good faith to support of efforts to treat COVID-19 patients and to prevent the spread of COVID-19 during the public health emergency, including in telemedicine or telehealth, and diagnosing or treating patients outside the normal scope of the health care professional’s license or practice.
- The immunity does not apply to acts or omissions constituting a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct.

- A healthcare facility or system, and its agents, employers, and volunteers, are not criminally or civilly liable for damages for injury or death allegedly sustained as a result of an act or omission during the public health emergency in connection with the allocation of mechanical ventilators or other scarce medical resources, if the health care facility or system adopts and adheres to a scarce critical resource allocation policy that at minimum incorporates the core principles identified by the Commissioner of Health in an executive directive or administrative order.
- Applies retroactively to March 9, 2020, when Governor Murphy declared a public health emergency.

[New York S. 7506 / A. 9506 \(enacted April 3, 2020\)](#)

- Provides liability protections for health care facilities and medical professionals that treat, or arrange for treatment of COVID-19 patients, and any other individual who sought health care services during the COVID-19 emergency declaration.
- A health care facility or professional is immune from civil or criminal liability for any harm alleged to have been sustained as a result of an act or omission in the course of arranging for or providing medical services, if:
 - The health care facility or professional acts pursuant to a COVID-19 emergency rule or other applicable law;
 - Its care is impacted by the facility’s or 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
 - The health care facility or professional acts in good faith.
- This immunity does not apply if the harm was caused by a healthcare facility’s or professional’s willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm. Omissions or decisions resulting from a resource or staffing shortage does not fall within this exception.
- A volunteer organization is immune from civil or criminal liability for any harm occurring in or at its 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. This immunity does not apply if the harm resulted from the organization’s willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.
- Takes effect on March 7, 2020 and applies to a harm that occurred on or after the date of the emergency declaration until the declaration expires.
- NOTE: This liability protection was narrowed by S. 8835 below.

[New York S. 8835 \(enacted August 3, 2020\)](#)

- Narrows the scope of S. 7506’s liability protections to apply only when a health care facility or medical professional is providing direct care related to the diagnosis or treatment of COVID-19 and the care is impacted by COVID-19 by eliminating liability protection when:
 - health care services relate to “prevention” of COVID-19, rather than treating COVID-19;
 - care involves treatment of a condition other than COVID-19 during the emergency declaration;

- the act or omission involved “arranging for,” rather than providing, health care services.
- Takes effect immediately, applies to acts or omissions that occurred on or after the effective date, and does not apply to acts or omissions occurring after expiration of the COVID-18 emergency declaration.

North Carolina Emergency or Disaster Treatment Protection Act,

S.B. 704 (enacted May 4, 2020)

- Provides immunity to health care facilities, health care providers, and entities that have legal responsibility for the acts or omissions of health care providers when they act in good faith and the arrangement or provision of health care services has been impacted by a decision or activity flowing from the COVID-19 pandemic.
 - Does not apply to acts or omissions that constitute gross negligence, reckless misconduct, or intentional infliction of harm.
 - Acts, omissions, and decisions resulting from resource or staffing shortages do not fall within this exception.
- Provides liability protections to volunteer organizations that have volunteered their facilities to support the state’s COVID-19 response.
 - Does not apply to gross negligence, reckless misconduct, or intentional infliction of harm.
- Essential businesses are not subject to liability for harms to customers or employees who contract COVID-19.
- An emergency response entity is not subject to liability with respect to claims from a customer, user, or consumer for injuries or death resulting from the COVID-19 pandemic or while doing business with the emergency response entity.
 - These immunities do not apply to injuries or death caused by an act or omission of the essential business or emergency response entity constituting gross negligence, reckless misconduct, or intentional infliction of harm.
 - Employees of essential businesses or emergency response entities are not precluded from seeking workers’ compensation benefits for an injury or death alleged to be the result of contracting COVID-19 while employed by the essential businesses or emergency response entity.
- Application
 - Healthcare and volunteer liability protections apply to acts or omissions after the Governor’s COVID-19 emergency declaration (March 10, 2020).
 - The essential business emergency response protections apply to acts or omissions occurring from the issuance of the state’s COVID-19 essential business executive order until the COVID-19 emergency declaration ends.

North Carolina COVID-19 Limited Immunity, H. 118 (enacted July 2, 2020)

- No person is liable for contraction of COVID-19 in absence of gross negligence, willful or wanton conduct, or intentional wrongdoing.

- Every person must provide reasonable notice of the actions taken on the premises for reducing the risk of transmission of COVID-19 to individuals present on the premises, but there is no liability for failing to comply with the policies contained in the notice.
- Does not affect workers' compensation claims.
- Effective immediately and does not apply to claims arising 180 days after the expiration or rescission of the state of emergency declared on March 10, 2020.

Ohio Am. Sub. H.B. 606 (enacted September 14, 2020)

- **Health care liability.**
 - A health care provider 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:
 - An act or omission of the health care provider in the health care provider's provision withholding, or withdrawal of those services;
 - Any decision related to the provision, withholding, or withdrawal of those services;
 - Compliance with an executive order or director's order issued during and in response to the disaster or emergency.
 - Does not apply in a tort action if the health care provider'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.
 - "Reckless disregard" is defined as "conduct by which, with heedless indifference to the consequences, the health care provider disregards a substantial and unjustifiable risk that the health care provider'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."
 - Does not apply in a professional disciplinary action if the health care provider's action, omission, decision, or compliance constitutes gross negligence.
 - "Gross negligence" is defined as "a lack of care so great that it appears to be a conscious indifference to the rights of others."
 - Prohibits class actions when the immunity above does not apply.
 - A health care provider 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.

- Does not grant an immunity from tort or other civil liability or a professional disciplinary action to a health care provider for actions that are outside the skills, education, and training of the health care provider, unless the health care provider undertakes the action in good faith and in response to a lack of resources caused by a disaster or emergency.
- Broadly applies to health care professionals, providers, workers, facilities, and services, including nursing homes.
- **Exposure claims.**
 - Precludes a civil action for damages for injury, death, or loss to person or property against any person if 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.
 - Does not apply if the exposure, transmission, or contraction resulted reckless conduct or intentional misconduct or willful or wanton misconduct.
 - Defines "reckless conduct" as "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 . . . when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist."
 - Prohibits class actions when the immunity above does not apply.
 - A government order, recommendation, or guideline does not create 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. Provides a presumption that a 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.
- **Application.** Effective 90 days from approval. Both the healthcare and exposure liability provisions apply retroactively to the state of emergency declared on March 9, 2020 through September 30, 2021.

Oklahoma COVID-19 Public Health Emergency Limited Liability Act, S.B. 300
(enacted May 12, 2020)

- A health care facility or provider is immune from civil liability for any loss to a person with a suspected or confirmed diagnosis of COVID-19 caused by an act or omission during the COVID-19 public health emergency first declared on March 15, 2020.
- Applies if 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 health care facility or provider in response to or as a result of the COVID-19 public health emergency.

- Does not apply to gross negligence or willful or wanton misconduct.
- Does not apply to health care services provided to a person who did not have a suspected or confirmed diagnosis of COVID-19.
- Effective immediately. Applies to any civil action filed on or after the effective date.
- Remains in effect until October 31, 2020 or until the Governor affirmatively concludes the public health emergency, whichever is later.

Oklahoma S.B. 1946 (enacted May 21, 2020)

- A person is not liable in an action claiming an injury from exposure or potential exposure to COVID-19 if the act or omission alleged to violate a duty of care complied or was 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 is not liable if the conduct is consistent with any applicable guidance.
- “Guidance” is defined as written guidelines related to COVID-19 issued by the Centers for Disease Control and Prevention, Occupational Safety and Health Administration of the United States Department of Labor, Oklahoma State Department of Health, the Oklahoma Department of Commerce, or any other state agency, board or commission.
- Takes effect immediately. Applies to civil actions filed on or after the effective date.

Oklahoma COVID-19 Product Protection Act, S.B. 1947 (enacted May 21, 2020)

- A person that designs, manufacturers, labels, sells, distributes, or donates disinfecting and cleaning supplies or personal protective equipment during and in response to the COVID-19 public health emergency is not liable for injuries or damage caused by the product’s manufacturing or design, or a failure to provide proper instructions or sufficient warnings.
 - Applies only to those who do not make such products in the ordinary course of business.
- A government entity, health care facility, health care provider, first responder, or any business, or the employer or agent of that business, that utilizes a product meeting the qualifications above is not liable for injuries resulting from the selection, distribution, or use of such product.
- Does not apply if a person had actual knowledge that a product was defective when put to the use for which the product was manufactured, sold, distributed, or donated, and acted with deliberate indifference to or conscious disregard of a substantial and unnecessary risk that the product would cause serious injury to others, or acted with a deliberate intention to cause harm.
- Applies to any claim arising on or after the emergency declaration of March 15, 2020.

Tennessee COVID-19 Recovery Act, S.B. 8002 (enacted August 17, 2020)

- Provides liability protections for claims “arising from COVID-19” which means injuries caused or resulted from 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. The scope of the Tennessee law is broadly worded to include premises liability, product liability, and medical liability claims, including:

- Implementing policies and procedures to prevent or minimize the spread of COVID-19;
 - Testing;
 - Monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 related information;
 - Using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, such as personal protective equipment;
 - Closing or partially closing to prevent or minimize the spread of COVID-19;
 - Delaying or modifying the schedule or performance of any medical procedure; or
 - Providing services or products in response to government appeal or repurposing operations to address an urgent need for personal protective equipment, sanitation products, or other products necessary to protect the public.
- A claim alleging loss, injury, or death from COVID-19 must prove by clear and convincing evidence that the injury was caused by gross negligence or willful misconduct.
 - In COVID-19 cases brought against the state under the Tennessee Governmental Tort Liability Act, a claimant must prove by clear and convincing evidence that injury was caused by the state or a state employee's gross negligence.
 - In COVID-19 cases brought against an employee of a government entity, a claimant must prove by clear and convincing evidence that the employee's act or omission was willful, malicious, criminal, or performed for personal gain. The pleading standard and certificate of good faith requirements above also apply.
 - Limits the liability of public institutions of higher education for any loss, damage, injury, or death arising from COVID-19 by requiring a claimant to prove by clear and convincing evidence that the injury was caused by gross negligence or willful misconduct.
 - All claims above must be filed in a verified complaint pleading specific facts with particularity.
 - Any claim alleging exposure to or contraction of COVID-19 must include a certificate of good faith stating that the claimant or claimant's counsel has consulted with a physician duly licensed to practice in the state or a contiguous bordering state, and the physician has provided a signed written statement that the physician is competent to express an opinion on exposure to or contraction of COVID-19 and believes the injury was caused by an alleged act or omission of the defendant.
 - Takes effect immediately and applies to all claims arising from COVID-19, except those which, on or before August 3, 2020: (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.
 - Sunsets on July 1, 2022, but continues to apply to any loss, illness, injury, or death occurring before that date where otherwise applicable.

Utah S.B. 3002 (enacted April 22, 2020) (medical liability)

- This legislation provides several liability protections to health care providers who treat patients during a major public health emergency. The bill is not COVID-19 specific. The protections apply regardless of whether a health care provider is compensated or not.
- **General standard of care during emergency.** A health care provider is immune from civil liability when:
 - 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
 - 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
 - the acts or omissions of the health care provider were not grossly negligent or intentional or malicious misconduct.
- **Acting outside scope of practice.** During a major public health emergency is not a breach of the applicable duty of care for a health care provider to provide care that is not within the provider's education, training, or experience when:
 - acting within the licensed scope of practice;
 - the care is provided in good faith to treat a patient for the illness or condition that resulted in the emergency; or
 - there is an urgent shortage of health care providers as a direct result of the emergency; and
 - the acts are not grossly negligent, or intentional or malicious misconduct.
- **Unapproved use of drug or device.** A health care provider is not subject to civil or criminal liability, sanctions against the provider's license if the provider uses a prescription drug or device to treat a patient diagnosed with the illness or condition that resulted in the emergency that has been approved for sale but not approved (indicated) for the illness or condition at issue.
 - To qualify, the treatment must be within the scope of the provider's license, the treatment must be provided in accordance with the most current written recommendations issued by a federal government agency, and the provider must describe the positive and negative outcomes of the treatment with the patient or patient's representative and document consent.
 - If there are two or more written recommendations of an agency, a healthcare provider qualifies by satisfying the most current written recommendations of any one agency.
 - Does not apply to gross negligence, or intentional or malicious misconduct.
- **Use of investigational drug or device.** A health care provider not subject to civil or criminal liability, or sanctions against the provider's license for any harm resulting from the provider's treatment of a patient with an investigational drug or device during a major public health emergency for a condition that resulted from that emergency.
 - A physician is not required to make such a treatment available or agree to administer an investigational drug or treat a patient with an investigational device.
 - Does not create a private right of action against a health care provider for the above or against a manufacturer what refuses to provide a patient with an investigational drug or device.

- Takes effect immediately upon enactment, August 17, 2020.

Utah S.B. 3007 (enacted May 4, 2020) (premise liability)

- A person is immune from civil liability for damages or an injury result 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.
- Does not apply to willful misconduct, reckless infliction of harm, or intentional infliction of harm.
- Does not modify application of Utah’s Workers’ Compensation Act, Occupational Disease Act, Occupational Safety and Health Act, or Governmental Immunity Act.
- Effective immediately.

Virginia S.B. 5082 (enacted October 7, 2020)

- Applies to a licensed hospice, home care organization, private provider of behavioral health and developmental services, assisted living facility, or adult day care center.
- A provider is not liable for injury or wrongful death arising from the delivery or withholding of care to a patient, resident, or person receiving services who is diagnosed, or believed to be infected, with COVID-19 when the emergency and subsequent conditions caused by the emergency result in a lack of resources, attributable to the disaster, that render the provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and that resulted in the injury or wrongful death at issue.
- Does not apply to gross negligence or willful misconduct.
- Applies to causes of arising between March 12, 2020 and the conclusion of the COVID-19 state of emergency.

Wisconsin A.B. 1038 (2019 Wis. Act 185) (enacted April 15, 2020)

- Health care professionals, health care providers, and their employees, agents, and contractors are immune from civil liability for death or injury to any individual if:
 - The act or omission occurred during the COVID-19 state of emergency or the 60 days following the termination of the state of emergency;
 - The acts or omissions relate to health care services provided or not provided in good faith, or are substantially consistent with:
 - 75) Any direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the COVID-19 emergency; or
 - 76) 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.
- Does not apply to reckless or wanton conduct or intentional misconduct.
- Any person that engaged in the manufacturing, distribution, or sale of “emergency medical supplies” is not liable for the death of or injury to an individual caused by the products donated or sold. This protection applies only if the products are donated or sold at cost. Charitable organizations that distribute emergency medical supplies free of charge are also covered by the liability protection.
 - Amends an existing law that immunizes persons that sell at cost or donate food or emergency household products to a charitable organization or governmental unit in response to a state of emergency unless the harm was caused by willful or wanton acts or omissions, Wis. Code § 895.51, to apply to “emergency medical supplies” related to COVID-19.
 - “Emergency medical supplies” is defined as “any medical equipment or supplies necessary to limit the spread of, or provide treatment for, a disease associated with the [COVID 19 public health emergency], including life support devices, personal protective equipment, cleaning supplies, and any other items deemed necessary by the secretary of health services.

- Does not apply to willful or wanton acts or omission, per existing law.
- Applies only during the period of the public health emergency.
- Presumes that when a first responder contracts COVID-19 during the public health emergency and 30 days after termination of the emergency that the injury is due to the person's employment and compensable through a workers' compensation claim. "First responder" includes an employee or volunteer for any employer that provides firefighting, law enforcement, or medical treatment of COVID-19, and who has regular, direct contact with, or is regularly in close proximity to, patients or other members of the public requiring emergency services.

Wyoming S.F. 1002 (enacted May 20, 2020)

- A business entity that follows the instructions of a state, city, town or county health officer in responding to a public health emergency is immune from liability arising from complying with those instructions or acting in good faith.
 - Amends an existing Wyoming law that provides immunity during a public health emergency to any health care provider or other person, who in good faith follows the instructions of a state health officer from any liability arising from complying with those instructions.
 - Does not apply to gross negligence or willful or wanton misconduct.
 - Applies during a public health emergency.
- From January 1 to December 30, 2020, it is presumed that the risk of contracting COVID-19 was increased by the nature of the employment, allowing employees in covered employment sectors who contract COVID-19 to file a workers' compensation claim.
- Effective immediately upon enactment (May 20, 2020).