STATE-BY-STATE LIABILITY PROTECTIONS UPDATE

As of this week, the following states have enacted—either through the state legislature or by gubernatorial executive order—liability protections that in some way touch the business community. Excluded from the list are states that have passed liability protections only for health care workers or medical facilities.

- **Alabama**: Governor Kay Ivey (R) issued Executive Order No. 8, providing liability protections for businesses and health care providers. Claimants must show by clear and convincing evidence that death or injury was caused by wanton, reckless, willful or intentional misconduct. Punitive damages are available only in wrongful death cases. The EO is retroactive to March 13, 2020 and remains in effect until the State COVID-19 public health emergency is terminated.

- **Alaska**: The state legislature enacted SB 241, providing immunity from civil damages for health care providers and manufacturers of PPE except in cases of gross negligence, recklessness, or intentional misconduct. The provision is retroactive to March 11, 2020. The same bill makes COVID-19 a compensable occupational disease under the state’s workers’ compensation system if the employee is a firefighter, emergency medical technician, paramedic, peace officer, or health care provider.

- **Arkansas**: Governor Asa Hutchinson (R) has issued a series of COVID-related executive orders, including AR E.O. No. 20-33, which protects businesses that open or remain open during the COVID-19 emergency from civil liability, except in cases of willful, reckless, or intentional misconduct. The order is effective from June 15, 2020 until the state emergency is terminated. A separate order, E.O. 20-35, makes COVID-19 an occupational disease for workers’ compensation purposes, although employees are still required to prove a causal connection between employment and the disease.

- **Georgia**: The general assembly passed SB 359, the “Georgia COVID-19 Pandemic Business Safety Act,” providing liability protections to healthcare providers and other entities (defined broadly to include associations, corporations, companies, partnerships, religious or educational organizations, political subdivisions or municipalities, etc.) from premises liability claims, medical liability claims, and personal protective equipment claims, except in cases of gross negligence, willful or wanton misconduct, reckless infliction of harm, or intentional infliction of harm. The Act contains a rebuttable presumption that claimants assumed the risk of COVID-19 exposure when (1) a receipt or proof of purchase for entry includes specific language waiving liability caused by the inherent risk associated with contracting COVID-19 at public gatherings; or (2) the premises owner posts a sign warning that, under Georgia law, there is no liability for injury or death of a person entering the premises that results from the inherent risks of contracting COVID-19.

- **Iowa**: The state legislature passed S.F. 2338, a robust liability protection bill that limits premises liability claims, product liability claims, and health care provider liability claims except in cases of reckless, willful or intentional misconduct. 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), except where the act was intended to cause harm or constitutes actual malice. The protections apply retroactively to January 1, 2020.

- **Kansas**: The state legislature passed the “COVID-19 Response and Reopening for Business Liability Protection Act,” providing a safe harbor from civil liability, absent gross negligence or willful, wanton, or reckless conduct, for “any claim for damages, losses, indemnification, contribution or other relief arising out of or based on exposure or potential exposure to COVID-19.” The protections apply only where the defendant was “acting pursuant to and in substantial compliance with public health directives.” Public health directives include state statutes, rules and regulations or executive orders issued by the governor, federal statutes or regulations from federal agencies. The law also contains a fairly broad “Good Samaritan”
provision, protecting manufacturers, sellers, and distributors of PPE, medical devices, medications, diagnostics, disinfecting and cleaning supplies, and clinical laboratory services. The law is retroactive to March 12 and will expire on January 26, 2021.

- **Kentucky**: The state legislature passed S.B. 150, providing protection from “ordinary negligence” claims to health care providers and manufacturers or distributors of PPE and personal hygiene supplies. The product liability provision “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.” The protections took effect upon Governor Andy Beshear’s (D) signature on March 30, 2020.

- **Louisiana**: The state legislature passed LA H.B. 826, providing liability protections from premises liability claims, employer liability claims, product liability claims, as well as event planner claims (defined as claims against any person, entity, or government that is “promoting, producing, or otherwise organizing an event of any kind.”). Each provision makes an exception for gross negligence or wanton or reckless misconduct. The employer liability provision prohibits tort claims for COVID-19 exposure, both for employees covered by workers’ compensation and those that are not covered, except where the exposure was caused by an intentional act. The law became effective on June 13, 2020 and applies retroactively to March 11, 2020. A separate measure, LA S.B. 508, specifically protects restaurants from COVID claims.

- **Mississippi**: The state legislature passed S.B. 3049, the “Back-to-Business Liability Assurance Act and Healthcare Emergency Response Liability Protection Act.” The robust Act covers exposure and premises liability claims, product liability claims, and medical/health care provider liability claims. Specifically, it protects any individual, governmental entity, association, educational entity, for-profit or nonprofit entity, religious organization or charitable organization that “attempts in good faith to follow applicable public health guidance,” defined as written guidance issued by a federal or state agency. The bill creates an exception for plaintiffs that show by clear and convincing evidence that a defendant acted with malice or willful, intentional misconduct. The bill is retroactive to March 14, 2020 and contains a two-year statute of limitations period.

- **North Carolina**: Back in early May, the state legislature passed S.B. 704, providing liability protections to health care providers/facilities, volunteer organizations, and essential businesses, except for cases of gross negligence, reckless misconduct, or intentional infliction of harm. A second, broadly worded bill, H. 118, is awaiting Governor Roy Cooper’s (D) signature. It states that “no person is liable for contraction of COVID-19 in absence of gross negligence, willful or wanton conduct, or intentional wrongdoing.” Further, “[e]very person must provide reasonable notice of the actions taken on the premises for reducing the risk of transmission of COVID-19, but there is no liability for failing to comply with the actions contained in the notice.” Like S.B. 704, the provision does not affect workers’ compensation claims.

- **Oklahoma**: OK S.B. 1946 protects individuals, firms, partnerships, corporations or associations from liability for any “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.” The provision took effect in May and applies to civil actions filed on or after the effective date. Separate bills address health care providers and product liability claims, though the latter is awaiting Governor Kevin Stitt’s (R) signature.

- **Utah**: One of the first movers on liability protections, Utah’s state legislature passed S.B. 3002 during its first virtual special session called in response to the coronavirus. The bill provides that “a person is immune from civil liability for damages or an injury resulting from exposure of an individual to COVID-19 on the premises owned or operated by the person, or during an activity managed by the person.” The bill expressly excludes from coverage willful, reckless, or intentional misconduct.

- **Wisconsin**: The state legislature passed A.B. 1038 (2019 Wis. Act 185), providing liability protection to health care professionals and manufacturers, distributors, and sellers of “emergency medical supplies,”
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.” Both provisions exclude willful or wanton acts or omissions. The product liability provision applies through the duration of the public health emergency.

- **Wyoming:** The state legislature passed S.F. 1002, providing liability protection for health care providers and business entities that follow “the instructions of a state, city, town or county health officer in responding to a public health emergency” or “act[s] in good faith.” The provision excludes acts of gross negligence or willful or wanton misconduct. The law also creates a presumption, valid through December 30, 2020, “that the risk of contracting illness or communicable disease was increased by the nature of the employment,” making it easier for employees who contract COVID-19 to file a workers’ compensation claim.