

Liability Immunity Laws for Businesses May Impact Insurance Industry, ABA Business Law Section

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Insurance litigation with respect to COVID-19 claims inevitably will be impacted by state and possible federal legislative initiatives currently being proposed. Businesses and insurers should particularly monitor legislative efforts at the state level designed to address civil liability claims derived from COVID-19 as businesses assess reopening scenarios and insurers assess the attendant potential litigation risks.

Various states, including North Carolina, Oklahoma, Utah, Wyoming, Louisiana and Kansas, have already adopted state legislation providing businesses with some type of limited civil liability immunity if customers and employees contract COVID-19 at their premises. In some of these states, the laws cover acts or omissions arising after the date of the emergency order, while in other states, the laws are effective from and after the date of adoption. For example, Iowa's legislature has approved a measure supported by the Iowa Insurance Institute and NAMIC that provides retroactive immunity from COVID-19 lawsuits.

Under the legislation adopted in these states, businesses in compliance with state and federal guidance, such as that issued by the Centers for Disease Control and Prevention, the Occupational Safety and Health Administration, and/or the state's Department of Health, would be afforded liability shield protection for potential claims of persons alleging that they contracted COVID-19 on the businesses' premises. However, immunity typically would not be available if the business acted in a manner deemed to constitute gross negligence, recklessness, or the intentional infliction of harm.

There are few differences in the legislation enacted by these states. In North Carolina, civil immunity is afforded to an emergency response entity or an "essential business" (as listed in the North Carolina Stay at Home Order; as amended, including industries such as health care, critical infrastructure, law enforcement, grocery, hardware stores, pharmacy, banking, eateries for takeout, and lawyers). North Carolina law provides this immunity for acts or omissions taking place on or after March 27, 2020, and until such time as North Carolina's emergency declaration is rescinded or expires. In Oklahoma, Utah, and Wyoming, the immunity is not limited to essential businesses and appears to be provided to every type of business.