

Coronavirus Liability Act

Summary

Lawsuits against businesses for alleged exposures to COVID-19 during lawful, good-faith business operations are an existential threat to companies large and small. As a result, a wave of such lawsuits (including those that lack any foundation) threatens to undermine the economic and social recovery of our country. Unfortunately, these types of exposure claims will likely be the bulk of civil litigation arising out of the COVID-19 pandemic.

To address these concerns, the proposed “Coronavirus Liability Act” would do the following:

Liability Protection

- Provide liability protection to a person or entity that is providing business services against personal injury claims related to actual or alleged exposure to COVID-19 in the course of providing such business services;
 - For this protection to apply, the business must have been generally following applicable government standards and guidance related to COVID-19 exposure at the time the actual or alleged exposure occurred;
- Allow liability, without limitation, in cases where clear and convincing evidence shows that a business was grossly negligent, intended to inflict harm, engaged in willful misconduct, or intentionally committed a crime.

Procedural Implementations

- Preempt state law to the extent that there is a conflicting state law that allows for a lesser level of protection;
- Create a one-year statute of limitations;
- Apply to all actions for an actual or alleged exposure to Coronavirus between December 1, 2019 and the later of October 1, 2024 or the expiration of any Declaration under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 issued by the Secretary of Health and Human Services; and
- Provide federal minimal diversity jurisdiction for claims covered by the legislation, if the amount in controversy exceeds \$75,000.

Analysis

Liability Protection

- One of the key provisions of this legislative proposal provides liability protection to businesses under a narrow set of circumstances against claims for personal injury claims related to COVID-19 exposures allegedly resulting from that business's operations.
 - This limited protection will help protect businesses operating in good faith from opportunistic lawsuits that suggest the businesses' owners should have taken greater precautions to prevent COVID-19 exposures, despite generally following appropriate government regulations and guidance on doing such.
 - Depending on the legal theory underlying the claim, proving causation in COVID-19 exposure lawsuits may be challenging for plaintiffs. However, if enough claims are brought, litigation may still exert enough pressure to threaten businesses or industries with bankruptcy. The threat of exposure-related lawsuits will also deter some businesses from reopening even after it is determined that they could safely operate by following the guidance of appropriate health authorities. The liability protection contemplated by this legislation would implement a degree of protection against such coercive litigation tactics.
 - This proposal ensures that individuals injured by businesses operating in a grossly negligent or intentionally harmful manner have recourse against such bad actors.

Procedural Protections

- **Federal preemption:** A federal minimum (or “floor”) for liability protection is implemented and applied equally nationwide. COVID-19 continues to impact every state in the Union. Many businesses with multi-state operations will be met with pandemic-related liability challenges. This provision provides baseline uniformity and predictability for those businesses. States can still provide greater protections on top of this minimum standard.
- **Statute of limitations:** Ensures exposure-related claims are made in a timely fashion (one year) and businesses can reopen with a degree of predictability and certainty about their liability exposure. This also incentivizes plaintiffs to pursue claims with a reasonable degree of diligence and safeguards against evidence deterioration.
- **Retroactivity & sunset:** These provisions ensure liability protection is in force for the entire pandemic, including a lookback to when infections were first detected until at least October 1, 2024 or when the virus can be deemed no longer such a substantial risk as to warrant such protections. However, claims arising out of exposures during this period will continue to remain subject to the protections provided in the legislation even after the legislation sunsets.
- **Federal jurisdiction:** To ensure that certain state jurisdictions do not become magnets for COVID-19 litigation and unnecessarily drag businesses with little or no involvement in the underlying alleged exposure into court (solely for purposes of keeping lawsuits in certain state courts), this provision authorizes federal court jurisdiction if at least one plaintiff is a citizen of a different state from at least one defendant and the amount in controversy exceeds \$75,000.