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Categories:

[Coronavirus Response Team](#)

Authors:

[Jennifer R. Asbrock](#)
[Souhila EL Moussaoui](#)

Kentucky Expands Civil Immunity Law to Cover COVID-19

Kentucky lawmakers created a legal safe haven for an array of essential services and healthcare providers looking to avoid potential COVID-19-related lawsuits. Part of Senate Bill 5, Section 1, aims to help ailing businesses and service providers recover from the crushing blow inflicted by the COVID-19 pandemic. The bill became law on April 11, 2021, following Kentucky Governor Andy Beshear's failure to sign or veto it. Section 1 of the new law has two major parts: the first part addresses premises liability, and the second part addresses service provider liability.

Premises Liability

The law provides that healthcare facilities and other premises owners (e.g., owners of roads, waterways, buildings, structures, vehicles, boats, aircraft, etc.) who follow any executive action to prevent the spread of COVID-19 cannot be held liable for COVID-19-related injuries occurring while a virus-declared emergency affecting such facilities or premises remains in effect, unless they engaged in "gross negligence, or wanton, willful, malicious, or intentional misconduct." See Senate Bill 5, §§ 1(1)(a-i). "Executive actions" under this new law refer to orders and guidelines related to the COVID-19 declared emergency issued by the Kentucky Governor or any state agency, the U.S. President, any federal agency, or local governmental agencies, as well as industry-specific guidelines related to a COVID-19 declared emergency adopted by a state agency that governs the industry. See Senate Bill 5, § 1(1)(d). Notably, "executive action" does not include "informal or indefinite statements or recommendations," nor does it create any new standard or duty of care going forward. See Senate Bill 5, § 1(1)(e).

Provider Liability

The new law defines certain Kentucky businesses and services as "essential service providers" and deems them "agent[s] of the Commonwealth of Kentucky for the limited purpose of providing

essential services arising from COVID-19....” See Senate Bill 5, § 1(9). These “essential service providers” include charitable/social services providers, transportation providers, financial institutions, mailing/shipping services, food production/supply/preparation, home-based care/services, medical/pharmaceutical supply chain, healthcare providers, Medicare waiver providers, public/private elementary and secondary schools, childcare services, funeral homes, local government/political subdivisions, and Kentucky-based manufacturers producing or distributing medical/medicinal/hygienic items and personal protective equipment. See Senate Bill 5, §§ 1(9)(a-h). Any essential service provider is shielded from liability for “any COVID-19 claim” that arises during the declared emergency of the COVID-19 pandemic, unless the claim arises due to the essential service provider’s “gross negligence, or wanton, willful, malicious, or intentional misconduct.” See Senate Bill 5, §§ 1(8)(a-b). The law provides that such healthcare facilities and other premises owners do not “(a) extend any assurance that the premises are safe from any risk of exposure to COVID-19 or to conditions caused by the COVID-19 declared emergency; (b) owe a duty to protect from or warn about any risk related to or caused by COVID-19; or (c) assume responsibility, or incur liability, for any alleged injury, loss, or damage to persons or property arising from a COVID-19 claim.” See Senate Bill 5, §§ 1(2)(a-c).

For more information, please contact [Jennifer Asbrock](#), [Souhila EL Moussaoui](#), or any other attorney in Frost Brown Todd’s [Labor & Employment](#) practice group.

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