

Covid-19 Liability Protections

BY LIZ CRAMPTON AND CRISTINA RIVERO | 04/14/2021 03:51:39 PM EDT

PRO POINTS

- **Almost every state has granted some sort of liability protection to health care providers, businesses or schools** since the pandemic started, as a means of discouraging coronavirus-related lawsuits that aren't centered on genuine negligence or foul play. As the pandemic has started to wane with the distribution of vaccines, about 30 states are debating legislation to extend or sunset their liability shields.
- **Each state is charting its own path on when to retire their legal protections after Congress failed to reach an agreement on federal standards.** But the U.S. Chamber of Commerce and other business groups are pressuring governors and state lawmakers to maintain liability protections through the duration of the pandemic. Consumer advocates, however, have said that the protections eliminate any incentive for businesses to take reasonable precautions to keep their employees and customers safe.
- **Thousands of Covid-19-related lawsuits have been filed in the past year, according to multiple law firms tracking the litigation.** But as of April 9, 2021, just 281 cases were filed that specifically concern medical malpractice, personal injury or wrongful death from exposure to the virus, according to an analysis from law firm Hunton Andrews Kurth.

HOW WE GOT HERE

As the pandemic shuttered schools and office buildings last year, companies quickly found themselves faced with a new legal question: How liable are they if an employee, customer or patient believes they caught Covid-19 at their business? Alongside federal loans and grants, liability protections became one of the business community's most prominent demands of Congress. By the end of 2020, 26 states had some kind of Covid legal shield – through executive orders or legislation, or both – for businesses, health care providers and schools still operating through the pandemic.

State-level protections vary considerably – including the type of entities that qualify – but they all aim to minimize the legal exposure for different businesses. Companies can still be sued on civil or criminal claims related to Covid under the pandemic-era rules, but a higher-threshold immunity defense makes it more difficult for people to bring lawsuits that aren't centered on negligence. Critics argue the liability shield has

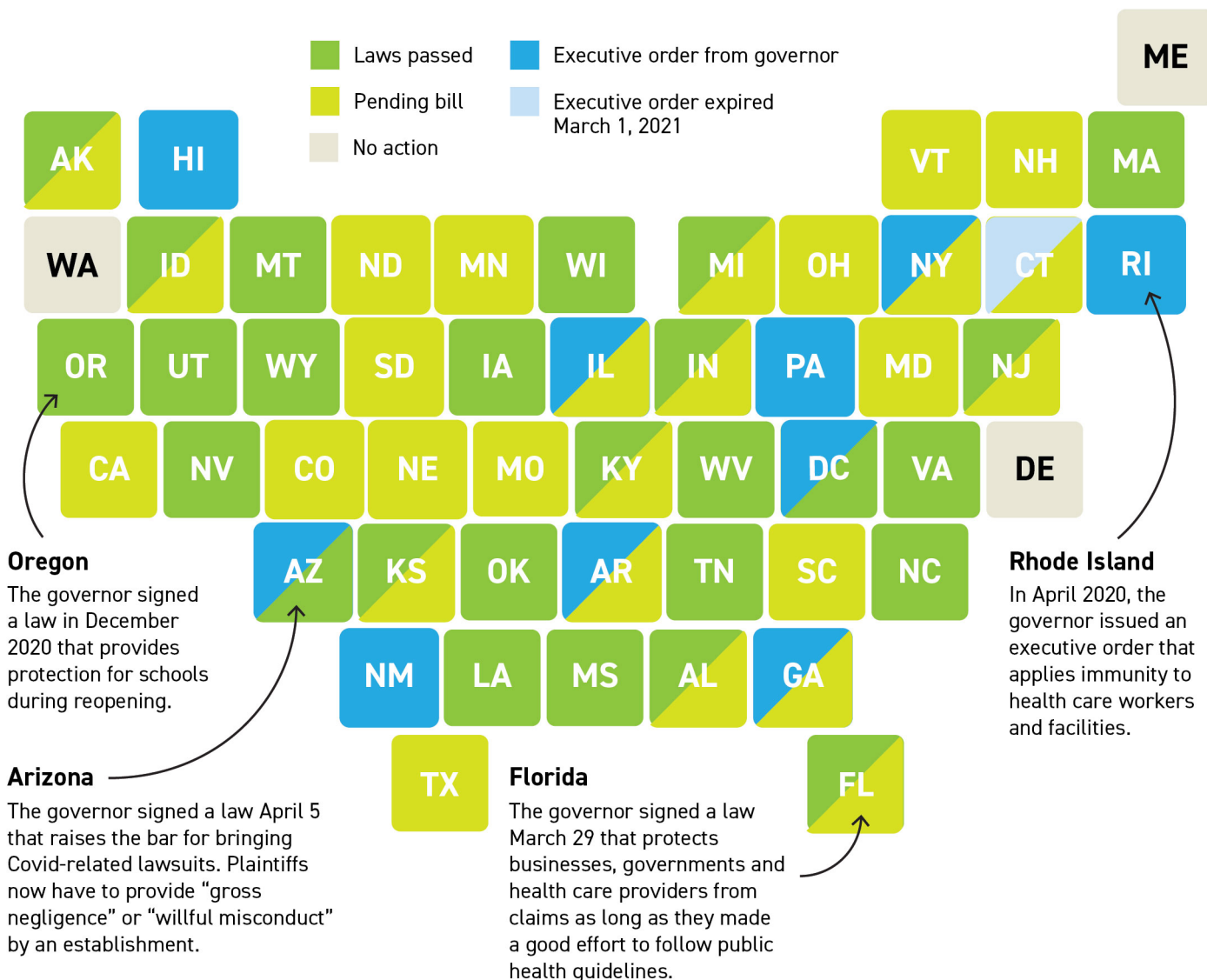
complicated efforts to hold health care providers, especially nursing homes, accountable for avoidable deaths sustained during the first wave of Covid-19.

Several governors were quick to sign executive orders or new laws in the early months of the pandemic and some immunity laws are sweeping. Alabama, for example, extended broad legal protections to businesses, health care providers, education facilities, churches and government institutions. The measure was retroactive too, thwarting lawsuits dating back to March 13, 2020, when then-President Donald Trump declared the Covid-19 outbreak a national emergency. Protections run through the end of 2021.

Other states have taken a more narrow approach. An Oregon law signed in December grants liability protection only to schools that open during the pandemic, so long as they follow safety protocols. Vermont, for instance, bars people from suing state agencies and employees and others involved with “emergency management activities” for injuries and death during crises like a pandemic.

State actions on Covid-19 liability protections

Twenty-five states and Washington, D.C., have passed laws providing Covid-19 liability protections for health care workers and facilities, businesses and educational institutions. Ten governors and D.C. have issued executive orders creating the legal protections (one expired on March 1, 2021). Below, Arizona, Florida, Oregon and Rhode Island are highlighted because each state has taken a different approach to the policy.



Source: POLITICO research

WHAT'S NEXT

Covid liability shields were a key demand of Sen. Mitch McConnell when he negotiated multibillion-dollar Covid relief bills in Congress last year. He only conceded on passing the December stimulus package without that language – which sought legal protections spanning five years – after

Democrats shelved their push for money for state and local governments. That inaction in Washington, however, has fueled a new surge of policymaking in the states.

By the spring of 2021, around 30 states are considering legislation that will either grant immunity or make tweaks to existing laws or executive orders. Texas Gov. Greg Abbott is pushing state lawmakers to offer broad protections to individuals and companies that stayed open during the pandemic from coronavirus-related lawsuits.

But as infections slow and hospitalizations decline because more Americans are getting vaccinated, some states are walking back protections issued in a frenzy during the chaotic early phase of the pandemic. After initially providing broad immunity for long-term care facilities in New York, Gov. Andrew Cuomo signed legislation earlier this month [repealing those liability protections](#) after a scandal erupted around how his administration lowballed Covid-19 deaths at nursing homes. New Jersey lawmakers, meanwhile, are [considering rescinding a liability shield](#) granted to hospital systems and long-term care facilities.

Many state legislatures only [operate for a few months early in the year](#), and adjourn in the spring or summer. While lawmakers and governors may call for special sessions later, April, May and June are particularly busy months in state Capitols and the period many of them will consider legal protections for businesses.

POWER PLAYERS

- **U.S. Chamber of Commerce:** The Chamber and its state-level sister organizations have been urging governors and lawmakers to extend protections, arguing the potential for lawsuits threatens businesses as well as the nation's economic recovery. Members of the Chamber and its local chapters have testified in state Capitols all over the country. Travel and tourism-related trade associations have been particularly vocal.
- **AARP:** The well-known interest group for people over age 50 wants to see nursing homes excluded from liability protections so family members might have an easier time holding residential care facilities accountable for the death of a loved one. Members representing local chapters have lobbied state lawmakers and testified at hearings.
- **Consumer Federation of America:** CFA and its allies Consumer Reports, U.S. PIRG and Public Citizen argue that granting businesses broad immunity undermines consumer and worker protections. They say covid-specific legislation is unnecessary because states already have liability laws, and while they vary, those statutes provide adequate protection to companies that take proper precautions.
- **Sen. Dick Durbin:** The Illinois Democrat has been one of the most vocal opponents of covid immunity in the Senate, arguing that extending additional protections to businesses would take pressure off of them to follow public health standards. The No. 2 Democrat in the Senate also chairs the Judiciary Committee, the panel liability shield legislation would likely have to clear.