

**LEGISLATION**

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**IOWA CODE SECTION  
686D**  
"Covid-19 Response and Back-to-  
Business Limited Liability Act"

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**Iowa Legislation**

- Signed by Gov. Reynolds on June 18, 2020.
- Attached to Med-Mal bill.

Sec. 7. NEW SECTION. 686D.5 Safe harbor for compliance with regulations, executive orders, or public health guidance.  
A person in this state shall not be held liable for civil damages for any injuries sustained from exposure or potential exposure to COVID-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent with any federal or state statute, regulation, order, or public health guidance related to COVID-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.

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**Iowa Legislation**

- ☐ Section to protect health-care providers.
- ☐ Section to protect product manufacturers and anyone who donated supplies.

Sec. 5. **NEW SECTION. 686D.3 Actual injury requirement in civil actions alleging COVID-19 exposure.**  
 A person shall not bring or maintain a civil action alleging exposure or potential exposure to COVID-19 unless one of the following applies:

1. The civil action relates to a minimum medical condition.
2. The civil action involves an act that was intended to cause harm.
3. The civil action involves an act that constitutes actual malice.

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**Iowa Legislation**

- ☐ Premises Liability protection

Sec. 6. **NEW SECTION. 686D.4 Premises owner's duty of care — limited liability.**  
 A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, shall not be liable for civil damages for any injuries sustained from the individual's exposure to COVID-19, whether the exposure occurs on the premises or during any activity managed by the person who possesses or is in control of a premises, unless any of the following apply to the person who possesses or is in control of the premises:

1. The person who possesses or is in control of the premises recklessly disregards a substantial and unnecessary risk that the individual would be exposed to COVID-19.
2. The person who possesses or is in control of the premises exposes the individual to COVID-19 through an act that constitutes actual malice.
3. The person who possesses or is in control of the premises intentionally exposes the individual to COVID-19.

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**Coverage Legislation**

- ☐ Nothing in Iowa
- ☐ Illinois legislation created a task force to study business interruption policies and propose how to address this issue for the "next one"
- ☐ (Credit APCA for the following demonstrative)

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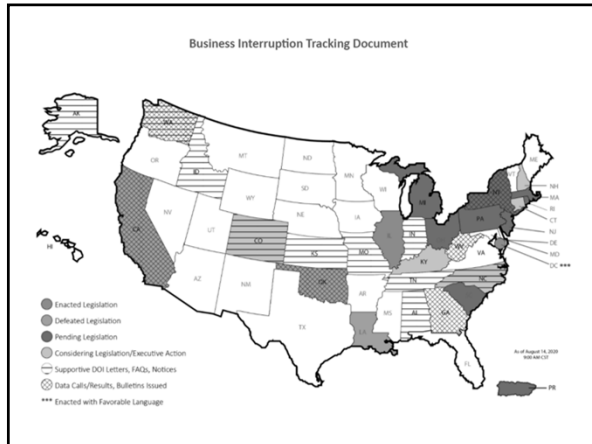
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### Federal Statute...?

- ☐ Senate Republican proposal....
  - Federal preemption
  - 1 year statute of limitations
  - Requirement for actual exposure
  - Immunity unless:
    - Gross negligence or willful misconduct, or:
    - By clear and convincing evidence
      - Defendant did not make reasonable efforts to comply with applicable guidance and standards the time [material] time

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## LITIGATION

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**Business Interruption**

- ❑ Majority of litigation relates to denials of insurance coverage related to closures during lockdown.
- ❑ New lawsuits are being filed daily, many as class-actions.
- ❑ Federal Courts have seen a 30% increase in filings from June 2019 to June 2020.
- ❑ More than 1,000 coverage suits have been filed as of August 2020.

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**Business Interruption**

- ❑ Lots of attempts to consolidate in the multi-district federal litigation venue. All been denied to date.
- ❑ Coverage lawsuits now comprise the biggest category of cases in Fed. Ct., more than civil rights and habeas petitions.
- ❑ Not just service industry in the coverage issues...Ralph Lauren seeking 700M in coverage from decreased retail sales.

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**11<sup>th</sup> Circuit case**  
Mama Jo's v. Sparta Insurance Company - Case NO. 18-12887

- ❑ In 2014 a Miami restaurant alleges they lost \$300k in business due to road construction interrupting their business...
- ❑ Restaurant alleged damage due to dust and dirt, in addition to lost business.
- ❑ Coverage was denied by the restaurant's insurance carrier based upon the [lack of] "direct physical loss" issue.
- ❑ 11<sup>th</sup> Circuit held...applying FLORIDA law... "an item or structure that merely needs to **be cleaned** has not suffered a 'loss' which is both 'direct' and 'physical'.

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## Victories for Insurers...

- ▣ Recent victory in Fed. District Court for Insurers: (5:20-cv-461-DAE – Western District of Texas)
- ▣ (Similar outcomes in Michigan, D.C. and other venues)
  - Barbershops sued for business interruption coverage.
  - Court granted motion to dismiss
    - No direct physical loss
    - Virus exclusion

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## Setback for Insurers...

- ▣ Recent Fed. Ct. decision in Kansas City denied a motion to dismiss and moved case to discovery (20-cv-03127-SRB – Western District of Missouri)
  - First case to survive a motion to dismiss.
  - No virus exclusion.
  - Alleged Covid on premises and attached to the property causing direct physical loss.
  - Court as such held the pleading met the sufficient allegation standard to proceed to discovery.

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## Covid Litigation

- ▣ Class-action suits involving:
  - Airlines for cancelled flights
  - Cruise companies for cancelled flights and actual exposure
  - Nursing Homes
  - Cleaning products (false representations)
  - Colleges for “online” school transitions
  - Service industry with monthly renewals during closures

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## Covid Litigation

- ▣ Administrative law bonanza:
  - Health Care industry
  - Workers' Compensation
  - Nursing Home regulations
  - Liquor licenses
    - 83 liquor license suspensions in NYC as of August 1st...

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## THE FUTURE?

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## Things to come...

- ▣ Remote hearings and discovery are likely going to last....
  - Reduction in expenses
  - Technology continues to expand
    - Break out rooms on platforms like Zoom
    - Screen sharing for exhibits
    - Ability to easily video and to sync video and transcripts

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## Things to come...

- ▣ Trends include
  - Voluntary retirement packages.
  - Early retirement for lawyers specifically.
  - Multiple age discrimination lawsuits based on layoffs, including in the legal industry.

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## Jury Trials

- ▣ Iowa - Nothing until September 14th...at least
- ▣ Florida pilot program:
  - Remote jury selection via Zoom
  - Each juror given their own exhibit book
  - All jurors over 70 years old - automatically excused

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## Leave you with this...

- ▣ In Pennsylvania;
  - Lawyer requests continuance of hearing due to stating her son is Covid +.
  - Court denies motion, instructs lawyer to appear remotely.
  - Lawyer shows up in person for hearing, unannounced.
  - Judge blows a gasket and bans lawyer from courthouse until proof of negative test AFTER 14-day quarantine.
  - Lawyer refused to leave and was arrested.

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