



COVID-19 LIABILITY PROTECTION LEGISLATION FOR BUSINESSES DESIGNATED AS AN “EMERGENCY ITEM” FOR PASSAGE THIS YEAR

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The Texas Legislature recently introduced House Bill 3, providing broad COVID-19 liability protections to Texas businesses. Governor Greg Abbott, [who announced a rollback of COVID restrictions earlier this week](#), designated the legislation as an “emergency item.” Emergency items are provided the highest priority numbers in the legislative session, which means they must be considered before any other pending bills. The emergency designation also signals to the legislature that the governor might call it back to further debate if the legislation fails to pass during the regular session.

Similar federal legislation was unsuccessful last fall, but the Texas bill has a strong chance of passage, due to the high priority given to it by the Governor and members of the Texas Legislature.

House Bill 3 will significantly limit a plaintiff's ability to sue certain Texas businesses for damages from exposure to COVID-19. Central to the proposed bill is immunity for injury caused by exposing an individual to COVID-19 if:

1. the business is authorized to do business in Texas;
2. the business knew of the risk of exposure or potential exposure to COVID-19;
3. the business made a reasonable effort to comply with applicable federal, state, and local laws, rules, ordinances, declarations, and proclamations related to the pandemic disaster; and

4. the act or omission giving rise to the exposure or potential exposure to COVID-19 was not willful, reckless, or grossly negligent.

This shield eliminates mere negligence as a potential cause of action. Further, to defeat the immunity shield, the plaintiff will be required to produce evidence showing the business' act or omission actually caused the plaintiff to contract the disease and suffer injury or death. For example, the plaintiff will have to provide reliable evidence he or she actually caught COVID-19 at the place of business and not somewhere else.

In essence, the use of the terms "willful, reckless, or grossly negligent" and the requirement for evidence of where the COVID-19 was contracted will make COVID-19 damage cases difficult to prove except for gross violations (e.g., requiring someone to work near someone that an employer knows has COVID-19 or having no safety protocols at all despite a known risk of exposure).

The bill will make this liability protection applicable to any suit filed on or after March 13, 2020, thereby applying to all covered claims for COVID-19 damages currently pending.

The entities the proposed legislation will apply to include health care providers, businesses, manufacturers and distributors, non-profits, schools, and religious institutions.

If passed, this legislation will provide clear guidance to businesses that have reopened or are planning to reopen during the national pandemic.

Bell Nunnally will provide an update regarding the specifics of the bill upon its introduction and any passage. In the meantime, contact your Bell Nunnally attorney to discuss how you can best protect yourself from any suits related to COVID-19 liability.

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