



# BUSINESS BRIEFCASE

OKLAHOMA'S COVID-19 LIABILITY PROTECTION

LEGAL REFORM

## WHAT IS COVID-19 LIABILITY PROTECTION?

The State Chamber recognized early on how businesses responded to the pandemic with the Oklahoma standard. We wanted to ensure they were not repaid with a lawsuit.

When COVID-19 first appeared in Oklahoma in March 2020, The State Chamber immediately began working with national tort reform expert Cary Silverman at Shook, Hardy and Bacon to draft and pass legislation limiting COVID-19 liability in Oklahoma. SB 1946, the Back to Business Regulatory Compliance Act and SB 1947, the COVID-19 Product Protection Act, were signed into law on May 21, 2020 and took effect immediately.

Many states throughout the nation are just now recognizing the need for this type of legislation. Our timely response allowed Oklahoma to adapt to the pandemic and kickstart economic recovery. Our legislature and governor deserve recognition for their foresight.

### **SB 1946: Back to Business Regulatory Compliance Act**

Use the language in the attached handout (page 2) but add in the next bullet as well.

- Takes effect immediately and applies to civil actions filed on or after the effective date.

### **SB 1947: COVID-19 Product Protection Act**

Use the language from the attached handout (page 1) but with new branding. Add in the next bullet as well.

- Applies to any claim arising on or after the emergency declaration of March 15, 2020.

## COVID-19 PRODUCTS PROTECTION ACT

**What this does:** Provides relief from liability for product manufacturers trying to meet the increased and shifting demands of the COVID-19 pandemic.

### **Why it is needed:**

- Distilleries have had to step in to manufacture hand sanitizer.
- Individuals have sewn masks and PPE.
- Companies have shifted manufacturing plants to create ventilators.
- Pharmaceutical and diagnostic companies have quickly ramped up and shifted manufacturing to meet demand for novel tests, treatments and preventions.

Individuals, nonprofits and companies across America have stepped up to help us tackle COVID-19. The last thing they need is to face lawsuits over a mask not preventing exposure or an FDA-approved treatment not panning out.

**Carefully crafted:** This legislation is carefully crafted to protect good actors responding to the crisis while not protecting intentional bad actors.

**Details:**

**No product liability when:**

- A business that manufactures, sells, distributes or donates “qualified products” (PPE, medical devices, medical supplies, medications, or diagnostic tests).
- To a government entity, health care provider, health care facility, first responder, or essential business.
- In response to the COVID-19 pandemic.

**No product liability when:**

- A person or business makes, sells, distributes or donates household cleaning and disinfectant supplies or PPE.
- When the business does not ordinarily make these products.
- But does so in response to the COVID-19 pandemic.

**Does not apply if the business:**

- Knew the product was defective when put to the use for which it was provided.
- Acted with complete indifference to or conscious disregard of a substantial and unnecessary risk that the product would cause serious harm to others.
- Plaintiff must still prove all elements of a tort claim (such as causation).

## COVID-19 BACK TO BUSINESS REGULATORY COMPLIANCE ACT

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**What this does:** Provides relief from liability when a business follows government guidance related to the COVID-19 pandemic.

**Why it is needed:**

- As businesses look to reopen per government guidance, the risk to their customers of exposure to COVID-19 will understandably be heightened and they may face liability if customers contract the virus at their establishment.
- Businesses don't generally have the healthcare and epidemiological expertise to assess how best to operate during a pandemic. For this reason, many businesses are afraid to reopen.
- The Oklahoma Departments of Health and Commerce have been working hard to provide guidance to businesses but without complimentary liability reform, this guidance would do little to provide liability protection to well-intending businesses either reopening or who have been operating as a government-directed essential business during the states of emergency.
- This reform will help reopen and safeguard the Oklahoma Economy.

**Carefully crafted:** While some states are considering blanket liability protection for all businesses open during the COVID-19 emergency against customers claiming they were exposed to the virus at their facility, the Back to Business Act provides liability protection to businesses where they complied with government guidance.

- This provides thoughtful liability relief for businesses trying to do the best they can in uncertain times.

**Details:**

**Defense from liability in any civil action alleging injury from exposure to COVID-19 when:**

- The act or omission alleged to violate a duty of care complied or was consistent with federal or state regulations, an Executive Order, or guidance applicable at the time of the alleged exposure that addressed the conduct or risk that allegedly caused harm.
- This guidance must be written guidance related to COVID-19 and it can be issued by the CDC, Occupational Safety & Health Administration of the United States Department of Labor (OSHA), Oklahoma State Department of Health, the Oklahoma Department of Commerce, or any other relevant state agency, board or commission.
  - Following any written guidance is sufficient if there are multiple sources with conflicting messages.

**Applies to any person or entity conducting business in the state.**



THE STATE CHAMBER