

BURR ALERT

Governor Kay Ivey grants immunity to Alabama health care providers and businesses responding to COVID-19

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On May 8, 2020, Governor Kay Ivey issued an Executive Order granting civil immunity to businesses and healthcare providers who are responding to or impacted by the COVID-19 national pandemic. The immunity provisions apply to covered response activities and transmissions, including businesses or health care providers engaged in:

- Testing, distribution of testing materials, monitoring, collecting, reporting, tracking, tracing, investigating or disclosing exposures;
- Performance of any healthcare service or treatment by healthcare provider resulting from, negatively affected by, negatively impacted by, lack of resources, caused by or done in response to the COVID-19 pandemic;
- Any design, manufacture, distribution, allowance, use or non-use of precautionary equipment such as PPE; or
- Any design, manufacture of testing materials done under the direction of ADPH or in accordance with ADPH's specifications.

To avail itself of immunity, the business or health care provider described above must not be acting with willful, wanton, reckless, or intentional misconduct. Additionally, businesses and health care providers receive the same level of immunity-related to actual, alleged or feared exposures during the state of emergency. As an additional protection, there is a limitation on damages. Where the acts or omissions are found to be willful, wanton, reckless, or intentional misconduct, the damages for non-serious physical injury are limited to actual economic damages.

Causes of action that accrued prior to the enactment of the proclamation are preserved, but in those cases, the standard of care requires that the claimant proves by clear and convincing evidence that the business or health care provider was acted wantonly, willfully, recklessly or intentionally or failed to reasonably attempt to comply with applicable health guidance. Additionally, the limitation on damages for non-serious physical injury is actual economic damages.

The proclamation is effective and retroactive to March 13, 2020, and continues until the State COVID-19 public health emergency is terminated.

Burr & Forman is monitoring other states' activity related to immunity. We have worked diligently to compile a [list of immunity orders/legislation](#) and we can continue to update that.

Stay up to date by monitoring the latest COVID-19 resources on our [CORONAVIRUS RESOURCE CENTER](#).

To discuss this further, please contact:

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or the Burr & Forman attorney with whom you normally consult.

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