

## Wisconsin COVID-19 law includes limited civil liability immunities for suppliers of essential equipment and medical professionals



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On April 15, 2020, Wisconsin Governor Tony Evers signed into law [2019 Wisconsin Act 185](#) (Act 185) in response to the 2019 novel coronavirus (COVID-19) pandemic. Act 185 is meant to provide wide-ranging support for the response to the health and economic suffering caused by COVID-19. Act 185 includes provisions providing limited immunity from civil liability to manufacturers, distributors and sellers of specified essential medical supplies as well as specified health care providers.

### Immunity for manufacturers and suppliers of essential medical supplies

Act 185 provides immunity from civil liability for manufacturers, distributors and sellers of emergency medical supplies for death or injury caused by those supplies if certain conditions are met. Emergency medical supplies are defined in Act 185 as “any medical equipment or supplies necessary to limit the spread of, or provide treatment for, a disease associated with the public health emergency related to the 2019 novel coronavirus pandemic, including life support devices, personal protective equipment, cleaning supplies, and any other items determined to be necessary by the secretary of health services.”

The Wisconsin secretary of health services has not yet provided guidance as to which items specifically are necessary, how that determination will be made or if companies can inquire as to whether their items are necessary.

The scope of immunity is narrow and focused on essentially what are “Good Samaritan” suppliers. Act 185’s protection only applies where a manufacturer, distributor or seller donates or “sells, at a price not to exceed the cost of production” the emergency medical supplies to a charitable organization or government. The cost of production is defined as the total cost of inputs, wages, operating the manufacturing facility and transporting the product. In turn, charitable organizations who receive qualifying emergency medical supplies are immune from liability stemming from their distribution, so long as the distribution is made free of charge.

### Immunity for health care providers and professionals

Act 185 also provides immunity from civil liability to health care professionals and health care providers and their employees, agents, and contractors for accidents and omissions resulting in death or personal injury under limited circumstances. The conditions required for immunity are:

1. The incident occurs during the state of emergency declared by Governor Evers’ Executive Order #72 or within 60 days of its expiration. [Emergency Order #12, Safer at Home Order](#), issued pursuant to Executive Order 72, [has been extended until May 26, 2020](#). Therefore, this immunity will last until approximately July 25, 2020, unless the order is rescinded earlier.

*The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice and does not create an attorney-client relationship. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.*

2. The actions are consistent with directions, guidance or recommendations by federal, state or local officials to address the emergency, or publications issued by the state or federal departments of health and human services.
3. The actions do not involve reckless, wanton or intentional misconduct.

Act 185's definition of health care professionals and providers is expansive and includes, among others, physicians, nurses, dentists, pharmacists, social workers and EMTs.

### **Key takeaways for manufacturers and suppliers of medical supplies**

The immunity afforded manufacturers, distributors and sellers of emergency medical supplies does not extend to market transactions. Rather, it is designed to facilitate donations and at-cost sales. Additionally, there is no guidance on what items the Wisconsin secretary of health services will deem necessary to fight COVID-19, other than specified items such as masks, gowns, ventilators and medications. The immunity provided manufacturers, distributors and sellers is extremely limited and, in the case of sales at cost, requires diligent tracking of production costs.

### **Key takeaways for health care providers and professionals**

The immunity provided by Act 185 to Wisconsin health care professionals and providers is geared toward protecting them from adverse outcomes in treating COVID-19 patients, and is perhaps an implicit recognition that there is not consensus within the medical community as to how to treat the virus. This immunity appears to provide beneficial protection, so long as the health care actions are based on government advice, publications or guidance.