

US COVID-19: GEORGIA PASSES LEGISLATION CREATING IMMUNITY FOR COVID-19 LIABILITIES

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On June 26, 2020, and in the midst of the ongoing coronavirus pandemic, Georgia's Legislature passed the "Georgia COVID-19 Pandemic Business Safety Act" (the "Act"). The Act provides Georgia businesses with certain defenses and immunities for potential liability from claims related to the spread of COVID-19.

WHAT IMMUNITIES DOES THE ACT PROVIDE?

Under the Act, no covered entity or individual will "be held liable for damages in an action involving a COVID-19 liability claim . . . unless the claimant proves that the actions . . . showed: gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm."

The Act defines a "COVID-19 liability claim" as a cause of action for:

1. Transmission, infection, exposure, or potential exposure of COVID-19: (i) at any healthcare facility or on the premises of any entity, individual, or healthcare provider, that results in injury to or death of a claimant; or (ii) caused by actions of any healthcare provider or individual resulting in injury or death of a claimant;
2. Acts or omissions by a healthcare facility or healthcare provider in arranging for or providing healthcare services or medical care to the claimant; or
3. Manufacturing, labeling, donating, or distributing personal protective equipment or sanitizer that is directly related to providing personal protective equipment or sanitizer to claimant and which departs from the normal manufacturing, labeling, donating, or distributing of this equipment by such entity that proximately results in injury to or death of the claimant.

TO WHOM DO THESE IMMUNITIES APPLY?

These immunities apply broadly to the health care facilities and providers as well as many other business entities and individuals.

1. HEALTHCARE FACILITIES:

Healthcare facilities are defined by the Act to include “hospitals; destination cancer hospitals; other special care units, including but not limited to podiatric facilities; skilled nursing facilities; intermediate care facilities; personal care homes; ambulatory surgical centers or obstetrical facilities; health maintenance organizations; home health agencies; and diagnostic, treatment, or rehabilitation centers” O.C.G.A. § 31-6-2(17).

2. HEALTHCARE PROVIDERS:

The Act’s definition of a “healthcare provider” includes physicians and anyone else “licensed or otherwise authorized in [Georgia] to furnish healthcare services” The Act expressly identifies the following physicians and other licensed persons as immune from liability:

dentists, podiatrists, optometrists, pharmacists, psychologists, clinical social workers, registered nurses, registered opticians, licensed professional counselors, physical therapists, massage therapists, marriage and family therapists, chiropractors, certain athletic trainers, occupational therapists, speech-language pathologists, audiologists, dietitians, physician assistants, cardiac technicians, emergency medical technicians, paramedics, and other “related parties.”

3 ENTITIES:

The entities deemed to be immune under the Act include: any association, institution, corporation, company, trust, limited liability company, partnership, religious or educational organization, political subdivision, county, municipality, other governmental office, or governmental body, department, division, bureau volunteer organization, including trustees, partners, limited partners, managers, officers, directors, employees, contractors, vendors, officials, and agents thereof, as well as any other organization other than a healthcare facility.

THE ACT CREATES AN ASSUMPTION OF RISK DEFENSE.

Other than in cases of gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm, the Act creates a rebuttable presumption that claimants—as well as the claimants’ survivors or their estates—assumed the risk of the damages or injuries suffered when a covered entity or individual provides a specific warning.

In order for this rebuttable presumption to apply, a warning sign must read as follows:

“Under Georgia law, there is no liability for an injury or death of an individual entering these premises if such injury or death results from the inherent risks of contracting COVID-19. You are assuming this risk by entering these premises.”

For the rebuttal presumption to apply to healthcare facilities and providers, they must post the above warning sign at the entry to their premises.

Alternatively, an individual or entity can print on a receipt or proof of purchase for entry, such as a paper ticket or a wristband, including the statement:

“Any person entering the premises waives all civil liability against this premises owner and operator for any injuries caused by the inherent risk associated with COVID-19 at public gatherings, except for gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm by the individual or entity of the premises”

The warnings must be printed in “at least one-inch Arial font placed apart from any other text” in order to establish the rebuttable presumption.

FOR HOW LONG ARE THESE IMMUNITIES IN EFFECT?

The immunities created by the Act are not retroactive and they do not last in perpetuity.

The immunities only apply to causes of action accruing from the date the Act becomes law, or from August 7, 2020, whichever is earlier. At present, the Act has not yet been signed by Georgia’s Governor or otherwise become law without such approval. It appears that any potential liability which may have already accrued or will accrue *before* the Act becomes law is not immune under the Act.

The immunity the Act does create will also expire on July 14, 2021.

A copy of the Act—SB 359—as passed on June 26, 2020 can be found [here](#).

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