



House Budget and Research Office

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The 'Georgia COVID-19 Pandemic Business Safety Act'

After returning to a session brought to a standstill by the COVID-19 pandemic, the Georgia General Assembly crafted a bill to reasonably insulate Georgia's health care and business communities from novel COVID-19 liability claims and to protect Georgians from bad actors operating with blatant disregard to the contagious nature of the virus. Senate Bill 359, the 'Georgia COVID-19 Pandemic Business Safety Act,' passed both chambers on June 26 and was signed by the governor on August 5, 2020. The act affords two protections from liability for healthcare providers and facilities, businesses, and individuals, while also recognizing a cause of action for Georgians to seek recourse against bad actors.

COVID-19 Liability Claim Defined

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

- 1) Transmission, infection, exposure, or potential exposure of COVID-19 to a claimant:
 - a) At any healthcare facility or on the premises of any entity, individual, healthcare provider, resulting in injury or death of a claimant; or
 - b) Caused by actions of any healthcare provider or individual resulting in injury to or death of a claimant.

- 2) Acts or omissions by a healthcare facility or healthcare provider in arranging for providing healthcare services or medical care to the claimant resulting in injury or death claimant for COVID-19 or where the response to COVID-19 reasonably interfered with the arranging for or providing of healthcare services or medical care at issue to the claimant; or

- 3) Manufacturing, labeling, donating, or distributing personal protective equipment or sanitizer that is directly related to providing such personal protective equipment or sanitizer to the claimant by an entity during a public health state of emergency for COVID-19 departs from the normal manufacturing, labeling, donating, or distributing personal protective equipment of such entity that proximately results in injury to or death of a claimant.¹

¹ O.C.G.A. § 51-16-1(3).

Protections

1) Conduct Must Rise to the Level of Gross Negligence

To hold a health care provider, health care facility, business, or individual liable for a COVID-19 liability claim, a claimant must prove that the entity (or individual) acted grossly negligent, at a minimum,² and the result of such conduct caused the claimant's COVID-19 related injury.

Beyond ordinary negligence, which involves merely acting unreasonably, or failing to act reasonably, gross negligence requires conduct that even a careless person would not do, or the failure to do something that even a careless person would. By elevating this conduct threshold, the act protects health care providers and businesses who were hesitant to offer services out of fear that they could be sued for conduct deemed unreasonable; however, gross negligence remains a threshold below obvious intent and will allow Georgia's consumers to hold bad actors accountable when behavior shows careless disregard for public health and safety.

2) Rebuttable Presumption of Assumption of the Risk

As a "belt and suspenders" measure, the act also provides the owner of a premises the ability to establish a rebuttable presumption of assumption of the risk by those entering their premises if the owner displays specific warning language at an entry point to the property or on receipt of proof of purchase for entry (i.e., tickets for admission).

It is important to note that appropriately displayed language alone will not shield a premises owner from liability; they remain liable for grossly negligent conduct. However, the warning language may serve as additional evidence that they were not acting grossly negligent.

Proof of Purchase for Entry*	Signage at Entry Point**
<p>ATTENTION:</p> <p>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 contracting 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.</p>	<p>WARNING:</p> <p>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.</p>
*Must be at least 10-point Arial font and set apart from any other text	**Must be at least one-inch Arial font and set apart from any other text

Duration

The act concludes with a sunset provision specifying that it applies to claims accruing on or before July 14, 2021. The potential lapse of protection in the future was addressed explicitly during committee hearings. Members agreed to revisit the act during the 2021 Session and reenact legislation to best address the pandemic as needed.

² Health care providers, health care facilities, businesses, and individuals may also be held liable for conduct constituting willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm; however, gross negligence is the least egregious conduct for which they may be held liable pursuant to the act.