

Senate Bill 359

By: Senators Hufstetler of the 52nd, Tillery of the 19th, Strickland of the 17th, Albers of the 56th, Kirkpatrick of the 32nd and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to
2 provide for certain immunities from liability claims regarding COVID-19; to provide for
3 definitions; to provide for exceptions; to provide for assumption of risk presumptions; to
4 provide for jury instructions; to provide a short title; to provide for findings; to provide for
5 related matters; to provide for an effective date and applicability; to repeal conflicting laws;
6 and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 The General Assembly finds that:

- 10 (1) Healthcare institutions, facilities, and workers require additional flexibility to provide
11 the critical assistance and care needed by this state during the unprecedented COVID-19
12 pandemic; and
13 (2) Certain protections provided to healthcare institutions, facilities, and workers in the
14 Governor's Executive Orders dated April 14, 2020, and May 12, 2020, should continue
15 beyond the Public Health State of Emergency as provided for in this Act.

16 **SECTION 2.**

17 This Act shall be known and may be cited as the "Georgia COVID-19 Pandemic Business
18 Safety Act."

19 **SECTION 3.**

20 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding
21 a new chapter to read as follows:

"CHAPTER 16

22

23 51-16-1.24 As used in this chapter, the term:

25 (1) 'Claimant' means an individual or an individual's survivor, including a decedent's
 26 estate, who seeks or has sought recovery of damages in a COVID-19 liability claim;
 27 provided, however, that all individuals claiming to have sustained damages of a single
 28 individual, are considered a single claimant.

29 (2) 'COVID-19' means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2),
 30 and any mutation or viral fragments thereof, or any disease or condition caused by severe
 31 acute respiratory syndrome coronavirus 2 (SARS-CoV-2), which were the subject of the
 32 public health state of emergency declared by the Governor on March 14, 2020.

33 (3) 'COVID-19 liability claim' means a cause of action for:

34 (A) Transmission, infection, exposure, or potential exposure of COVID-19 to a
 35 claimant:

36 (i) At any healthcare facility or on the premises of any entity, individual, or
 37 healthcare provider, resulting in injury to or death of a claimant; or

38 (ii) Caused by actions of any healthcare provider or individual resulting in injury to
 39 or death of a claimant;

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

45 (C) Manufacturing, labeling, donating, or distributing personal protective equipment
 46 or sanitizer that is directly related to providing such personal protective equipment or
 47 sanitizer to claimant by any entity during a public health state of emergency for
 48 COVID-19, which departs from the normal manufacturing, labeling, donating, or
 49 distributing personal protective equipment of such entity that proximately results in
 50 injury to or death of a claimant.

51 (4) 'Entity' means any association, institution, corporation, company, trust, limited
 52 liability company, partnership, religious or educational organization, political
 53 subdivision, county, municipality, other governmental office or governmental body,
 54 department, division, bureau, volunteer organization; including trustees, partners, limited
 55 partners, managers, officers, directors, employees, contractors, independent contractors,
 56 vendors, officials, and agents thereof, as well as any other organization other than a
 57 healthcare facility.

58 (5) 'Healthcare facility' shall have the same meaning as 'healthcare facility' as provided
59 for in paragraph (17) of Code Section 31-6-2 and all related parties; as 'institution' as
60 provided for in subparagraphs (A) and (C) through (G) of paragraph (4) and paragraph
61 (5) of Code Section 31-7-1 and all related parties; as 'end stage renal disease' as provided
62 for in paragraph (6) of Code Section 31-44-1 and all related parties; and shall mean the
63 recipient of a contract as authorized in paragraph (5) of Code Section 37-1-20 and any
64 clinical laboratory certified under the Clinical Laboratory Improvement Amendments in
65 Section 353 of the Public Health Service Act, 42 U.S.C. Section 263a. Such term shall
66 not be construed to include premises.

67 (6) 'Healthcare provider' means any physician or other person licensed or otherwise
68 authorized in this state to furnish healthcare services, including, but not limited to, any
69 dentist, podiatrist, optometrist, pharmacist, psychologist, clinical social worker, advanced
70 practice registered nurse, registered optician, licensed professional counselor, physical
71 therapist, massage therapist, marriage and family therapist, chiropractor, athletic trainer
72 qualified pursuant to Code Section 43-5-7, occupational therapist, speech-language
73 pathologist, audiologist, dietitian, physician assistant, cardiac technician, emergency
74 medical technician, paramedic, or related parties.

75 (7) 'Medical care' means any act defined as the practice of medicine under Code Section
76 43-34-21.

77 (8) 'Personal protective equipment' means equipment worn to minimize exposure to
78 hazards that cause injuries and illnesses, including but not limited to items such as gloves,
79 masks, face shields, safety glasses, shoes, earplugs, muffs, respirators, coveralls, vests,
80 and full body suits.

81 (9) 'Premises' means, other than a healthcare facility, any property owned, occupied,
82 leased, operated, maintained, or managed by an individual or entity, whether residential,
83 agricultural, commercial, industrial, or other real property located within the State of
84 Georgia.

85 (10) 'Public health state of emergency' means a state of emergency as a result of a public
86 health emergency as defined in Code Section 38-3-3 and as declared by the Governor and
87 approved by the General Assembly pursuant to Code Section 38-3-51.

88 (11) 'Related parties' includes persons, business corporations, general partnerships,
89 limited partnerships, limited liability companies, limited liability partnerships, joint
90 ventures, nonprofit corporations, or any other for profit or not for profit organization that
91 owns or controls, is owned or controlled by, or operates under common ownership or
92 control, of a healthcare provider or healthcare facility, or has legal responsibility for the
93 acts or omissions of such healthcare facility or healthcare provider.

94 (12) 'Sanitizer' means a liquid, gel, or foam generally used to decrease infectious agents
 95 such as viruses on the body, objects, or other spaces which receive human contact.

96 (13) 'State of emergency' shall have the same meaning as set forth in Code Section
 97 38-3-3.

98 51-16-2.

99 (a) No healthcare facility, healthcare provider, entity, or individual, shall be held liable for
 100 damages in an action involving a COVID-19 liability claim against such healthcare facility,
 101 healthcare provider, entity, or individual, unless the claimant proves that the actions of the
 102 healthcare facility, healthcare provider, entity, or individual, showed: gross negligence,
 103 willful and wanton misconduct, reckless infliction of harm, or intentional infliction of
 104 harm.

105 (b) The immunity set forth in subsection (a) of this Code section shall be provided in
 106 addition to, and shall in no way limit, any other immunity protections that may apply in
 107 state or federal law.

108 51-16-3.

109 (a) Except for gross negligence, willful and wanton misconduct, reckless infliction of
 110 harm, or intentional infliction of harm, in an action involving a COVID-19 liability claim
 111 against an individual or entity for transmission, infection, exposure, or potential exposure
 112 of COVID-19 to a claimant on the premises of such individual or entity, there shall be a
 113 rebuttable presumption of assumption of the risk by the claimant when:

114 (1) Any receipt or proof of purchase for entry, including but not limited to an electronic
 115 or paper ticket or wristband, issued to a claimant by the individual or entity for entry or
 116 attendance, includes a statement in at least ten-point Arial font placed apart from any
 117 other text, stating the following warning:

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

123 (2) An individual or entity of the premises has posted at a point of entry, if present, to
 124 the premises, a sign in at least one-inch Arial font placed apart from any other text, a
 125 written warning stating the following:

126 'Warning

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

130 (b) The provisions in this Code section shall not be construed so as to limit or restrict the
 131 immunities from liability provided in Code Section 51-16-2; further failure to participate
 132 as provided in subsection (a) of this Code section shall in no way limit or restrict the
 133 immunities from liability provided in Code Section 51-16-2 nor shall such failure to
 134 participate be admissible.

135 51-16-4.

136 (a) Except for gross negligence, willful and wanton misconduct, reckless infliction of
 137 harm, or intentional infliction of harm, in an action involving a COVID-19 liability claim
 138 for transmission, infection, exposure, or potential exposure of COVID-19 to a claimant at
 139 any healthcare facility or on the premises of any healthcare provider, resulting in injury to
 140 or death of a claimant there shall be a rebuttable presumption of assumption of the risk by
 141 the claimant when a healthcare facility or a healthcare provider has posted at a point of
 142 entry, if present, to the premises, a sign in at least one-inch Arial font placed apart from any
 143 other text, a written warning stating the following:

144 'Warning

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

148 (b) The provisions in this Code section shall not be construed so as to limit or restrict the
 149 immunities from liability provided in Code Section 51-16-2; further failure to participate
 150 as provided in subsection (a) of this Code section shall in no way limit or restrict the
 151 immunities from liability provided in Code Section 51-16-2 nor shall such failure to
 152 participate be admissible.

153 51-16-5.

154 This chapter shall not modify or supersede the terms or application of:

- 155 (1) Title 16, relating to crimes and offenses;
- 156 (2) Title 31, relating to health or any state regulations related thereto;
- 157 (3) Chapter 9 of Title 34, relating to workers' compensation; and
- 158 (4) Chapter 3 of Title 38, relating to emergency management."

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SECTION 4.

160 This Act shall apply to causes of action accruing until July 14, 2021, and shall not apply to
161 any causes of action accruing thereafter.

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SECTION 5.

163 This Act shall become effective upon its approval by the Governor or upon its becoming law
164 without such approval or on August 7, 2020, whichever occurs first.

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SECTION 6.

166 All laws and parts of laws in conflict with this Act are repealed.