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What Georgia's COVID-19 Pandemic Business Safety Act Means for Your Business's Liability

Authors: Michelle A. Williams
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Georgia Governor Brian Kemp signed Georgia Senate Bill 359 into law last week. Georgia's COVID-19 Pandemic Business Safety Act (the Act) is an undoubted win for businesses, health care and otherwise, as Georgia's legislature cited the need for "additional flexibility to provide critical assistance and care during the unprecedented COVID-19 pandemic." In what is likely a sign of similar pieces of legislation and executive action to come, businesses in other states need to be on the watch for similar acts to be best prepared to face COVID-19 claims.

The Act provides protection for health care facilities, providers, entities, and individuals against simple negligence claims in liability actions involving COVID-19 by requiring that claimants prove gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm. Georgia's legislators also provided protection for health care facilities and providers for simple negligence in the "transmission, infection, exposure, or potential exposure of COVID-19," providing a rebuttable presumption of assumption of the risk if the provider has posted a specific liability disclaimer sign at the point of entry.

The Act, however, doesn't stop at protecting health care facilities and providers, as it also protects businesses from liability for damages involving COVID-19 liability claims "[e]xcept for [acts of] gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm … for transmission, infection, exposure, or potential exposure of COVID-19 to a claimant on the premises" of the business. For included claims, "there shall be a rebuttable presumption of assumption of the risk by claimant when"

- Claimant received a receipt, paper ticket, wristband, or other proof of entry with the statement, in at least ten-point Arial font placed apart from any other text, stating the following warning: "[a]ny 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"; OR

- The individual or entity posted at a point of entry a sign at least one-inch Arial font placed a part from other text, stating the following: "Warning, [u]nder 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 the risk by entering these premises."[1]

Finally, Section Four of the Act explicitly provides a sunset provision that states "[t]his Act shall apply to causes of action accruing until July 14, 2021, and shall not apply to any causes of action according thereafter."

Liability Beyond Georgia

Georgia is just one of ten states to have enacted, by legislation or executive order, a liability shield to COVID-19-related claims. To date, Alabama, Arkansas, Iowa, Kansas, Louisiana, North Carolina, Oklahoma, Tennessee, Utah, and Wyoming preceded Georgia's Act. Nationally, due to the rise in COVID-19-related

claims across the country, business groups have been urging Congress to enact similar liability shields since as early as April 2020.[2]

This newest state to enact such legislation gives rise to inherent questions related to liability waivers and contract law that businesses will need to be wary of as they seek to take advantage of the Act. Primarily, the broad language of the Act leaves room for multiple interpretations that will be challenged in the months and years to come. Liability waivers are subject to constant court interpretation and the expectation is that the Act will come under equal scrutiny. Nevertheless, for the time being, businesses should take advantage of the specific steps the Act lays out in order to shield themselves from liability from COVID-19-related claims.

The Act creates a rebuttable presumption of assumption of the risk of COVID-19-related ailments if the business complied with the Act. There still remains, however, the possibility that in jurisdictions without the protections afforded by the Act, employers can argue customers, invitees, employees, and others assumed the risks of COVID-19 by entering facilities with the designated signage or language conspicuously listed on their receipts. The primary argument for such businesses would be that, merely because the jurisdiction does not have a liability shield, does not mean that assumption of the risk does not remain a valid and viable defense to negligence claims.

All said, health care and other businesses should consult with their counsel to determine the best way to preemptively build defenses to these types of actions. If your business is fortunate to be located in a jurisdiction where a liability shield already exists, consultation with your counsel would be helpful in ascertaining the framework of the COVID-19 liability shield to ensure that your business takes advantage of the liability shield of your jurisdiction to the greatest extent possible.

If you have any questions, please contact one of the authors or visit our Coronavirus (COVID-19): Navigating the Path Ahead resource page.

[1] The Act applies strictly to customers, the public, and employees, to the extent employees seek damages for COVID-19-related exposure. The Act does not affect workers' compensation or Occupational Health and Safety Act claims.

[2] *See* Ruger, Todd, *Health and Business Concerns Clash in Debate Over COVID-19 Liability*, MSN (Jul. 22, 2020).