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Act No. 588

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

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

The General Assembly finds that:

(1) Healthcare institutions, facilities, and workers require additional flexibility to provide the critical assistance and care needed by this state during the unprecedented COVID-19 pandemic; and

(2) Certain protections provided to healthcare institutions, facilities, and workers in the Governor's Executive Orders dated April 14, 2020, and May 12, 2020, should continue beyond the Public Health State of Emergency as provided for in this Act.

SECTION 2.

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

SECTION 3.

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

"CHAPTER 16

51-16-1.

As used in this chapter, the term:

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

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

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

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

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

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

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

(C) Manufacturing, labeling, donating, or distributing personal protective equipment or sanitizer that is directly related to providing such personal protective equipment or sanitizer to claimant by any entity during a public health state of emergency for COVID-19, which 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.

(4) 'Entity' means 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, independent contractors, vendors, officials, and agents thereof, as well as any other organization other than a healthcare facility.

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

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

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

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

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

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

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

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

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

51-16-2.

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

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

51-16-3.

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

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

'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.'; or

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

'Warning

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.'

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

51-16-4.

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

'Warning

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.'

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

51-16-5.

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

(1) Title 16, relating to crimes and offenses;

(2) Title 31, relating to health or any state regulations related thereto;

(3) Chapter 9 of Title 34, relating to workers' compensation; and

(4) Chapter 3 of Title 38, relating to emergency management."

SECTION 4.

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

SECTION 5.

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

SECTION 6.

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

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