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Georgia Legislature Passes Bill to Protect Businesses and Healthcare Providers From COVID-19 Lawsuits

Real Estate Update - Georgia Legislature Passes Bill to Protect Businesses and Healthcare Providers From COVID-19 Lawsuits

August 7, 2020

In late June, the Georgia Legislature passed the Georgia COVID-19 Pandemic Business Safety Act, SB 359. The bill will become law this Friday, on August 7, 2020.

What does the bill do?

The bill seeks to protect businesses, business owners, healthcare facilities and providers and individuals from certain types of premises liability civil lawsuits related to COVID-19.

Who is protected?

The bill offers protections to healthcare facilities, healthcare providers, entities and individuals. An "entity" entitled to protection under the bill is defined broadly to include any corporation, limited liability company, religious or education organization, county, volunteer organization and the managers, officers, directors and employees of such entities.

How does it work?

Specifically, the bill provides that no healthcare facility, healthcare provider, entity or individual will be liable for damages involving a COVID-19 liability claim unless the claimant proves gross negligence, willful or wanton misconduct, or reckless or intentional infliction of harm.

The bill further provides that a business, individual, or healthcare provider creates a rebuttable presumption of any potential claimant's assumption of the risk of contracting COVID-19 by posting the following warning at the entrance to its premises:

'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.'

Per the bill, the warning at the entrance of the premises must be posted in Arial font in a size not less than one-inch.

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Alternatively, or in conjunction with the previous warning, the bill further provides for a rebuttable presumption of assumption of the risk if any receipt or proof of purchase of entry to a premises, including an electronic ticket or wristband, includes the following 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 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.'

Per the bill, the foregoing warning printed on any receipt or proof of purchase of entry to a premises must be in Arial font in at least a ten-point size.

What is a rebuttable presumption of assumption of the risk and why does it matter?

A “rebuttable presumption of assumption of the risk” means that if a claimant sues a business which has posted either of the above-warnings in accordance with SB 359, then the court will assume that the claimant assumed all risks of contracting COVID-19 at the business premises unless the claimant can prove otherwise.

Compliance with either of the above-warnings in accordance with SB 359 will further result in protection to businesses, individuals, or healthcare providers because any potential claimant will be required to prove that the business acted in a manner that exceeded ordinary negligence or carelessness. Instead, a potential claimant will be required to demonstrate that the business acted with gross negligence, willful and wanton misconduct, recklessness, or with the intent to inflict harm on the claimant. Proving any of these claims places a significantly higher burden on a potential claimant, as such contentions require the claimant to show the business acted willfully or recklessly, or that it acted so carelessly that its actions appear to be a conscious indifference to others' safety. It follows that the higher the standard, the more difficult it is for a potential claimant to prove liability on the part of the property owner.

What's next, and what should property owners do?

The Bill awaits Governor Kemp's signature, but unless vetoed by the Governor, it automatically becomes law this Friday, August 7, 2020. The protections will apply to causes of action which accrue prior to July 14, 2021.

We recommend that all property owners, including landlords, and business owners and individuals:

- 1 Post the warning regarding assumption of risk of contracting COVID-19 at the entrance(s) to their premises in the required font and size;
- 2 If a ticket is required for entry to the premises, include the applicable warning language on such ticket or wristband; and,
- 3 Inform themselves of the Centers for Disease Control and applicable State and Federal guidelines and recommendations with regard to policies and sanitation practices at their premises. The guidelines may change so it is important to stay on top of the issues and adjust procedures and policies at the premises as needed.

Should you have any questions about your obligations as a property owner, we recommend consulting counsel to discuss.

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