

## GEORGIA GENERAL ASSEMBLY SENDS COVID-19 LIABILITY PROTECTION BILL TO GOVERNOR KEMP

On Tuesday, June 29, 2020, the Georgia General Assembly sent the Georgia COVID-19 Pandemic Business Safety Act (“GCPBSA”) to Georgia Governor Brian Kemp. If signed by Governor Kemp, the GCPBSA will afford businesses in Georgia with liability protection against claims related to the contraction of COVID-19 that accrue before July 14, 2021. Importantly, the GCPBSA creates a rebuttable presumption of assumption of the risk except in cases of gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.

Generally, assumption of the risk is a defense to liability that applies when a claimant has actual knowledge of the danger, understood and appreciated the risk associated with such danger, and voluntarily exposed himself to those risks. The claimant must have actual and subjective knowledge of the specific, particular risk of harm associated with the activity or condition that causes injury, rather than general, non-specific risks. The burden to prove that the claimant assumed the risk is ordinarily on the business or individual sued.

The GCPBSA, however, would create a rebuttable presumption that the claimant assumed the risk of injury. A rebuttable presumption is a presumption that is assumed to be true absent evidence to the contrary. Therefore, under the GCPBSA, a business would not need to prove the elements of assumption of the risk where a claimant sues for injuries related to the contraction of COVID-19: it is automatically presumed that the claimant assumed the risk. However, the presumption is rebuttable. This means that any claimant that sues a business for injuries related to the contraction of COVID-19 is presumed to have assumed the risk, unless the claimant can put forth evidence that they did not assume the risk.

In order to qualify for the rebuttable presumption under the GCPBSA, businesses selling tickets for entry would need to include the following statement on receipts or proof of purchase for entry (i.e. electronic/paper tickets or wrist bands):

“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 of entity of the premises.”

The statement must be printed in at least ten (10) point Arial font and placed apart from any other text.

For businesses who do not sell tickets for entry, the liability protections under the GCPBSA can be achieved by posting large signs at the point of entry that state the following:

“Warning:

Under Georgia law, there is no liability for any 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.”

The statement must be printed in at least one (1) inch Arial font and placed apart from any other text.

It is important to note that the GCPBSA will not absolve businesses completely of liability or of their obligation to prevent unnecessary risk and harm to their customers. Similar to liability releases and waivers, the GCPBSA does not afford the protection of the rebuttable presumption of assumption of the risk in cases of gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm. Under Georgia law, these claims will generally arise where businesses fail to offer even minimal protections to their customers.

Therefore, even with the additional liability protection that would be offered by the GCPBSA, businesses must continue to use common sense to combat COVID-19 and to protect themselves from liability and their customers from unnecessary exposure. All Georgia businesses should therefore comply with Governor Kemp’s executive orders that can be found online at <https://gov.georgia.gov/executive-action/executive-orders/2020-executive-orders>. Additionally, Georgia businesses should continue to adhere to the latest CDC guidance related to COVID-19 published online at <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

The combination of Governor Kemp’s executive orders and the CDC’s guidance should also aid in reducing the chances of infection and spread as they are presumably based on the latest science and data available. Additionally, whatever businesses can do to document proof of compliance with the executive orders governing specific business operations, they would be well-served to do so for evidence to combat potential claims may arise in the future.

The GCPBSA in its entirety may be found online at <http://www.legis.ga.gov/legislation/en-US/Display/20192020/SB/359>.