

The Senate Committee on Public Safety offered the following substitute to HB 216:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to
2 general provisions regarding torts, so as to provide for certain immunities from civil liability
3 for damages or injury resulting from COVID-19; to provide for applicability; to provide for
4 definitions; to protect Georgia citizens and businesses from unwarranted liability given the
5 nature of COVID-19; to provide for applicability; to provide for exceptions; to provide for
6 a short title; to provide for findings; to provide for automatic repeal; to provide for related
7 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Georgia Pandemic Business Immunity
11 Act."

12 **SECTION 2.**

13 The General Assembly finds that COVID-19 is a virus that is both easily transmissible and
14 difficult to detect in the absence of scientific testing, that Georgia citizens may not display
15 any symptoms when infected with COVID-19 and yet may be capable of infecting others.
16 The General Assembly further finds that no methods to prevent transmission, however well
17 designed, are completely effective in preventing its transmission absent shutting down the
18 many normal, essential, and desirable operations and activities of our society. The General
19 Assembly also finds that, after having previously employed drastic measures to limit the
20 normal operations of society so that steps could be taken to effectively manage the virus, it
21 is now desirable to begin the reopening of society, with adequate hygienic precautions, so
22 that citizens may have access to both essential and nonessential goods and services and so
23 that they may enjoy the guarantees of freedom set forth in the Georgia Constitution and the
24 United States Constitution including, but not limited to, life, liberty, and the pursuit of
25 happiness. In order to ensure that these freedoms are adequately protected and so that

26 citizens and businesses may return to some sense of normality without fear of civil liability
 27 that may arise from risks which no one can fully control, and so that the citizens of Georgia
 28 may focus upon the rebuilding of the state's damaged economy and not be burdened by the
 29 costs of crippling litigation, and so that businesses can continue to obtain access to affordable
 30 insurance coverage for their operations, and further, so that state and local governments will
 31 be able to continue to obtain the necessary revenue that they need to provide critical services
 32 to their citizens, the General Assembly has passed the "Georgia Pandemic Business
 33 Immunity Act."

34 SECTION 3.

35 Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general
 36 provisions regarding torts, is amended by adding a new Code section to read as follows:

37 "51-1-56.

38 (a) As used in this Code section, the term:

39 (1) 'COVID-19' means the virus generally known as severe acute respiratory syndrome
 40 coronavirus 2 (SARS-CoV-2) or any mutation or viral fragments thereof, any disease or
 41 condition caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2),
 42 and any other virus in the family of viruses known as coronaviruses.

43 (2) 'Facility' or 'facilities' means any institution as provided for in paragraph (17) of Code
 44 Section 31-6-2 and subparagraphs (A) and (C) through (G) of paragraph (4) and
 45 paragraph (5) of Code Section 31-7-1.

46 (3) 'Person' means an individual, association, property owners' association, institution,
 47 corporation, charitable organization, company, trust, limited liability company,
 48 partnership, political subdivision, county, municipality, governmental office, department,
 49 division, bureau, or other body of state government, and any other organization or entity.
 50 Such term shall also include the trustees, partners, limited partners, managers, officers,
 51 directors, employees, officials, and agents of all such governmental bodies, organizations,
 52 or entities.

53 (4) 'Premises' means any property owned, occupied, leased, operated, maintained, or
 54 managed by a person, whether residential, agricultural, commercial, industrial, a facility,
 55 or other real property located within this state.

56 (5) 'Provider' means any physician or other individual licensed or otherwise authorized
 57 in this state to furnish healthcare services, including, but not limited to, any dentist,
 58 podiatrist, optometrist, psychologist, clinical social worker, advanced practice registered
 59 nurse, registered optician, licensed professional counselor, physical therapist, marriage
 60 and family therapist, chiropractor, athletic trainer qualified pursuant to Code Section

61 43-5-8, occupational therapist, speech-language pathologist, audiologist, dietitian,
 62 physician assistant, cardiac technician, emergency medical technician, or paramedic.

63 (6) 'Reckless' means a conscious disregard for the safety of others. Such term shall not
 64 mean an attempt in good faith to comply with the guidelines for the operation of a
 65 premises issued by the Governor, the Georgia Department of Public Health, or the federal
 66 Centers for Disease Control and Prevention.

67 (b) Notwithstanding any other provisions of this Code section, the immunity provided for
 68 under this Code section shall only be in effect upon the Governor issuing an executive
 69 order, pursuant to Part 1 of Article 3 of Chapter 3 of Title 38, declaring that a state of
 70 emergency or disaster exists due to COVID-19 and the concurrence with such declaration
 71 by the General Assembly. Such immunity shall apply to causes of action that occur
 72 between the date of the declaration of such state of emergency or disaster and two years
 73 after the date of the last executive order issued by the Governor declaring or extending such
 74 state of emergency or disaster.

75 (c) Except as otherwise provided in subsection (e) of this Code section, all persons shall
 76 be immune from any civil liability for any damages arising from exposure of an individual
 77 to, or contraction by an individual of, COVID-19 on the premises of such persons and any
 78 injury or death resulting therefrom. Such immunity shall apply in all circumstances,
 79 including, but not limited to, whether such exposure is the result of:

80 (1) Conditions and activities occurring on said premises;

81 (2) The acts or omissions of any partner, limited partner, trustee, official, agent,
 82 employee, officer, director, or independent contractor of such person; or

83 (3) The acts or omissions of other persons on the premises whether present as invitees,
 84 licensees, or trespassers.

85 (d) Except as otherwise provided in subsection (e) of this Code Section, all providers and
 86 facilities shall be immune from any civil liability for any injury or death alleged to have
 87 been sustained because of the facility's or provider's acts or omissions undertaken in good
 88 faith while providing health care services in support of this state's response to COVID-19,
 89 including, but not limited to, acts or omissions undertaken because of a lack of resources
 90 or staff shortages attributable to such response that renders the facility or provider unable
 91 to provide the level or manner of care that otherwise would have been required in the
 92 absence of such response and which resulted in the damages at issue.

93 (e) The immunity provided for under subsections (c) and (d) of this Code section shall not
 94 apply to:

95 (1) Gross negligence;

96 (2) Willful and wanton misconduct;

97 (3) Reckless infliction of harm; or

98 (4) Intentional infliction of harm.

99 (f) The immunity provided for under subsections (c) and (d) of this Code section shall only
100 apply to causes of action that arise after the effective date of this Code section, except that
101 punitive damages shall not be awarded or recovered against facilities, persons, or providers,
102 or in any case in which liability is assessed against them for compensatory damages arising
103 out of exposure of an individual to, or contraction by an individual of, COVID-19
104 regardless of when such cause of action arose.

105 (g) This Code section shall not modify or supersede the terms or application of:

106 (1) Chapter 9 of Title 34, relating to the workers' compensation;

107 (2) Title 16, relating to crimes and offenses;

108 (3) Title 31, relating to health, or any regulations related thereto, or

109 (4) Chapter 3 of Title 38, relating to emergency management, or any order of the
110 Governor issued pursuant thereto.

111 (h) The immunity provided for under subsections (c) and (d) of this Code section shall be
112 provided in addition to, and shall in no way limit, any other immunity protections that may
113 apply under state or federal law."

114 **SECTION 4.**

115 This Act shall become effective upon its approval by the Governor or upon its becoming law
116 without such approval. This Act shall apply for all declarations of a state of emergency or
117 disaster which occur or have occurred on or after January 1, 2020.

118 **SECTION 5.**

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