

This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

NEW GEORGIA LAW PROVIDES SOME PROTECTION FOR NONPROFITS AND HEALTH CARE PROVIDERS FROM COVID-RELATED LIABILITY

On Wednesday, August 5th, Georgia enacted a law that provides immunity from certain civil lawsuits that may arise in the wake of the COVID-19 Pandemic. The *Georgia COVID-19 Pandemic Business Safety Act* (the “Act”) contains sweeping provisions that will provide much needed peace of mind during these uncertain times. However, there are important limitations to the Act’s reach that your nonprofit should consider before relying upon its protections. Please contact your PBPA attorney for specific guidance.

Here are the key provisions of the Act:

- **The Act provides immunity from certain “COVID-19 liability claims” unless the claimant proves that the actions “showed gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.”**

The term “COVID-19 liability claim” broadly encompasses any cause of action for the transmission, infection, exposure or potential exposure of COVID-19. It also includes actions involving the “manufacturing, labeling, donating, or distributing” of personal protective equipment (PPE) or sanitizer that does not conform with industry norms that resulted in injury or death.

While the new law may provide immunity in the event of an unfortunate error, it does not provide free rein to disregard the threats posed by COVID-19. The Act’s immunity applies *unless* there was “gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.” These exceptions include deliberate acts, but also highly careless conduct. For example, gross negligence is defined in Georgia as the absence of the degree of care that persons of common sense, however inattentive they may be, use under the same or similar circumstances.

- **Health care providers, nonprofits, board members, employees and independent contractors are covered under the Act.**

The law is written broadly to include almost any conceivable type of individual or group including:

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- **Health care providers:** A health care provider is defined as any physician or other person licensed or otherwise authorized in Georgia to furnish healthcare services, such as dentists, counselors, social workers, nurses, psychologists, dietitians, certain athletic trainers, technicians, and more. The definition also encompasses health care facilities, and entities such as nonprofits that own or are owned by a health care provider.
- **Entities:** While the Act does not *specifically* identify nonprofit organizations, the laundry list of covered entities is so broad that most (if not all) nonprofits would be covered. An entity is defined to include the following: “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.”
- **Individuals:** The Act also applies to individuals including “trustees, partners, limited partners, managers, officers, directors, employees, contractors, independent contractors, vendors, officials, and agents thereof.”

- **Additional protections are given to health care providers.**

The Act also applies to acts or omissions of health care providers that resulted in injury or death in “arranging for or providing healthcare services or medical care... or where the response to COVID-19 reasonably interfered with the arranging for or the providing of healthcare services or medical care.” (These protections also do not include grossly negligent, reckless and deliberate conduct as described above.)

- **Only acts and omissions that occurred from August 5, 2020 through July 14, 2021 are covered.**

The Act provides protection for acts or omissions that occurred on or after August 5, 2020 (the day that the law became effective) through July 14, 2021.

- **Warning notices on event materials and posted signs at your premises can provide additional protection from lawsuits.** Other than cases where there was “gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm”, the law provides a rebuttable presumption¹ that anyone attending an event or entering a premises assumes the risk² of contracting COVID-19 if the following warnings are provided:

¹ A “rebuttable presumption” means that it can be assumed to be true unless someone comes forward with evidence to the contrary.

² “Assumption of the risk” is a common legal defense raised when a participant is aware of a particular danger associated with an activity but proceeds anyway (e.g. a bungee jumping company might raise this defense when a client suffers a back injury after voluntarily jumping off a cliff tied to a long elastic cord).

- **Entry to events:** (to be placed on a receipt, proof of purchase for entry, electronic or paper ticket or wristband in at least ten-point Arial font placed apart from any other text):

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.

- **Entry into premises:** (applies to all entities and health care providers) (to be posted at the point of entry as a sign in at least one-inch Arial font placed apart from any other text):

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.

While the Act is welcomed relief for those who have been concerned about liability issues surrounding COVID-19, as cases continue to surge both here and across the country, it is best practice to continue taking the necessary steps to protect your employees, clients and volunteers. Visit PBPA's website for [resources](#) on safety considerations for your workplace, [volunteer and client waivers](#) that are essential supplements to Georgia's new immunity law, and sample [forms](#) that visitors and volunteers should sign before entering your building or site.