

HOUSE BILL 112¹: TORTS; PROVIDE CERTAIN IMMUNITIES FROM LIABILITY CLAIMS REGARDING COVID-19; EXTEND APPLICABILITY FOR ONE YEAR

Amending O.C.G.A. § 51-16-1(4)

First signature: Representative Trey Kelley (16th)

Co-Sponsors: Representative Sharon Cooper (43rd), Representative Kasey Carpenter (4th), Representative Mark Newton (123rd), Representative Lee Hawkins (27th), and Representative John LaHood (175th).

Summary: “A BILL to be entitled an Act to amend an Act relating to torts to provide certain immunities from liability claims regarding COVID-19, approved August 5, 2020, (Ga L. 2020, p. 798), so as to extend applicability for one year; to repeal conflicting laws; and for other purposes.”²

Status: House Date Signed by Governor May 4th, 2021.³

TEXT OF HOUSE BILL 112

A BILL TO BE ENTITLED AN ACT

To amend an Act relating to torts to provide certain immunities from liability claims regarding COVID-19, approved August 5, 2020, (Ga L. 2020, p. 798), so as to extend applicability for one year; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

¹ H.B. 112, 156th Gen. Assemb., 1st Reg. Sess. (Ga. 2021), *available at* <https://www.legis.ga.gov/api/legislation/document/20212022/200699>.

² *2021-2022 Regular Session-H.B. 112, Torts; provide certain immunities from liability claims regarding covid-19; extend applicability for one year*, GA. GEN ASSEMB., <https://www.legis.ga.gov/legislation/58959> (last visited Nov. 6, 2021) [hereinafter H.B. 112 Status Sheet].

³ *Id.*

An Act relating to torts to provide certain immunities from liability claims regarding COVID-19, approved August 5, 2020, (Ga L. 2020, p. 798), is amended by revising Section 4 as follows:

“SECTION 4.

This Act shall apply to causes of action accruing until July 14, ~~2021~~ 2022, and shall not apply to any causes of action accruing thereafter.”

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

SPONSOR’S RATIONALE

The original Senate Bill 359 was unanimously passed in July 2020 in an effort to provide certain protections from liability claims for businesses relating to COVID-19.⁴ The latter counterpart, House Bill 112 (“H.B. 112” or “the Bill”), did not change any substantive portion of Senate Bill 359, but rather extended the bill for another year because of the growing concerns for COVID-19’s continuing existence.⁵ Although met with opposition from the counter party, H.B. 112 was passed and adopted by majority on February 9th, 2021.⁶

Representative Kelley, leading sponsor for H.B. 112, stated that the Bill was “simple” because it was only extending the liability immunity for businesses for one year and there would be no substantive change to the Bill.⁷ He firmly expressed that no existing employee rights would be limited or eliminated upon the passage of the H.B. 112 because the Bill [does not] change any of the current protections that a single employee in the State of

⁴ Ross Williams, *Bill Shielding Businesses from COVID-19 Liability Awaits the Governor*, GEORGIA RECORDER, (July 2, 2020), <https://georgiarecorder.com/2020/07/02/Bill-shielding-businesses-from-COVID-19-liability-awaits-the-governor>; *see also* O.C.G.A. § 51-16-4 (2020).

⁵ *Georgia Extends Limited COVID-19 Liability Protections*, FISHER PHILIPS, (May 18, 2021), <https://www.fisherphillips.com/news-insights/Georgia-Extends-Limited-COVID-19-Liability-Protections.html>.

⁶ H.B. 112 Status Sheet, *supra* note 2.

⁷ GPB Lawmakers, *House Floor Day 14*, YOUTUBE (Nov. 8, 2021), https://www.youtube.com/watch?v=f0WE_X2h4sM&ab_channel=GeorgiaHouseofRepresentatives (beginning at 1:19:23).

Georgia enjoys through our workers compensation system.”⁸ Businesses would have civil suit immunity against civil suits for contracting COVID-19.⁹

According to Representative Carpenter, legislators created H.B. 112 to protect small businesses from frivolous lawsuits.¹⁰ For instance, any person who is an owner or the head of a business, hospital, or in any medical communities, are at risk of civil suits from anyone who contracted COVID-19 while in the scope or course of their employment.¹¹ The Sponsors relied on the premise of the Bill, which is to protect Georgia businesses from lawsuits.¹² In Representative Kelley’s opinion, this in turn will help continue to stimulate the Georgian economy by preventing business shutdowns.¹³ For this reason, he believes that this Bill will protect the future economy of Georgia by preventing unnecessary obstacles to Georgia businesses.¹⁴ To further explain the intent of the Bill, Representative Kelley stated three main ideas to illustrate the need of the Bill.¹⁵

First, the novel coronavirus has immensely impacted Georgians and Georgia businesses.¹⁶ Numerous businesses were shut down due to the inability to continue their operations.¹⁷ Second, the Bill is necessary to help keep businesses open and to help medical communities continue treating Georgians.¹⁸ The Bill will assist businesses with remaining open and running because it will prevent frivolous lawsuits from happening, which could lead to business shut downs due to the erasure of assets. Finally, this Bill will allow employers to continue to pay employees, which then in effect will help support their families.¹⁹ In conclusion, the Bill will help maintain businesses

⁸ *Id.* (beginning at 1:21:01).

⁹ Chris Marr, *Covid-19 Shield Laws Proliferate Even as Liability Suits Do Not*, BLOOMBERG LAW, <https://news.bloomberglaw.com/daily-labor-report/covid-19-shield-laws-proliferate-even-as-liability-suits-do-not>.

¹⁰ GPB Lawmakers, *supra* note 7, at 1:48:24.

¹¹ *Id.*

¹² Todd Van Dyke & Raymond Perez, *Georgia Passes Bill to Extend COVID-19 Legal Immunity Protection a Year; Governor Considering*, THE NAT’L L. REV., (April 4, 2021), <https://www.natlawreview.com/article/georgia-Passes-Bill-to-Extend-COVID-19-Legal-Immunity-Protection-Year-Governor>.

¹³ GPB Lawmakers, *supra* note 7, at 1:52:31.

¹⁴ See Beau Evans, *COVID-19 Liability Protections in Georgia Set for One-year Extension*, THE AUGUSTA CHRONICLE (Mar. 17, 2021, 3:20 PM), <https://www.augustachronicle.com/story/news/2021/03/17/COVID-19-liability-protections-Georgia-set-one-year-extension-general-assembly/4738077001/>.

¹⁵ GPB Lawmakers, *supra* note 7 (beginning at 1:21:40).

¹⁶ *Id.* at 1:20:09

¹⁷ *Id.*

¹⁸ *Id.* at 1:20:01.

¹⁹ GPB Lawmakers, *supra* note 7 (beginning at 1:21:40).

and prevent frivolous lawsuits, which then will allow businesses to provide paychecks to their employees.²⁰

In general, Republicans support the Bill in order to relieve businesses and medical communities from frivolous lawsuits that may arise due to expose from COVID-19.²¹ Republican legislators worry that allowing lawsuits may close down businesses due to litigation expenses and in turn lower the labor force in Georgia.²²

OPPOSITION'S RATIONALE

On the House Floor, the Bill was met with opposition.²³ All opponents, including the Georgia Defense Lawyers Association,²⁴ concluded with a similar theme: H.B. 112 is not for the workers, but for the businesses.²⁵ Representative Wilson, who voted for the original bill, S.B. 359 in 2020,²⁶ voiced his concern for H.B. 112 by questioning the effectiveness of the original bill, S.B. 359.²⁷ He stated that even though S.B. 359 created a legal responsibility for businesses to “behave appropriately,” it was not successful.²⁸ He also questioned the future effectivity of H.B. 112 by asserting that there was not a mass amount of lawsuits that crippled small businesses nor were there any successful recoveries for Georgians who had been negligently or maliciously exposed to COVID-19.²⁹

Representative McClain strongly condemned H.B. 112 and outright affirmed that workers were not being protected, nor were they being

²⁰ *Id.* at 1:21:44.

²¹ *Id.*

²² Mark Niese, *Georgia House Passes Bill to Stop COVID Lawsuits Against Businesses*, THE ATLANTA JOURNAL CONSTITUTION, (Feb. 9, 2021), <https://www.ajc.com/politics/Georgia-House-passes-bill-to-stop-COVID-19-lawsuits-against-businesses/GCHKL7VJTZBKLCCTUSATQTGPOE/>.

²³ Dave Williams, *July 1 Brings in Controversial Election Overhaul*, ATHENS BANNER-HERALD, (June 29, 2021, 3:42 PM), <https://www.onlineathens.com/story/news/2021/06/29/new-georgia-laws-set-take-effect-thursday/7801701002/>.

²⁴ Greg Land, *With Legislative Session Over, Georgia Legal Community Ponders Bills Passed and Defeated*, DAILY REP., (Apr. 1, 2021, 6:05 PM), <https://www.law.com/dailyreportonline/2021/04/01/With-Legislative-Session-Over-Georgia-Legal-Community-Ponders-Bills-Passed-and-Defeated/?slreturn=20211128204627>.

²⁵ Nelson Mullins et al., *Gold Dome Report — Legislative Day 14*, JD SUPRA, (Feb. 10, 2021), <https://www.jdsupra.com/legalnews/Gold-Dome-Report-legislative-day-14-3918665/>.

²⁶ GPB Lawmakers, *supra* note 7 (beginning at 1:25:10).

²⁷ *Id.*

²⁸ *Id.* at 1:27:03.

²⁹ *Id.* at 1:27:27.

supported by the Bill.³⁰ . Next, Representative Boodie also declared that under H.B. 112, workers would not be protected.³¹ Contrasting from the two previous opposition arguments, Representative Boodie’s argument focused primarily on knowing what COVID-19 entails.³² He furthered stated that if the Bill goes into effect, current and future workers of Georgia would not be protected through civil litigation.³³ He explains that COVID-19 has caused pain and suffering for families across America, layoffs for those who contracted COVID, and deaths.³⁴ Since COVID-19 had taken more than one million American lives, according to Representative Boodie, H.B. 112’s passage will not protect workers.³⁵

Finally, Representative Wen, also affirming the previous statements, took the approach slightly different from Representative McClain and Representative Boodie.³⁶ She expressed that if this Bill were to pass, employers would continue to abuse their power and fail to follow state guidelines.³⁷ In her conclusion, she firmly stated that H.B. 112 does not incentivize employers to keep a safe workplace for workers.³⁸

In general, Georgia Budget & Policy Institute opposes this Bill because there are no benefits to the workers in Georgia. They worry that employers will abuse their power and negligently allow workers to be exposed to COVID-19.³⁹

IMPLICATIONS IN GEORGIA

Given an extension of this Bill, employers will continue to have protections against claims for injury by exposure to COVID-19.⁴⁰ The Bill’s enactment will reduce COVID-19 liability for businesses that have employees.⁴¹ Although the Bill does not shield liability for businesses where there is evidence of “gross negligence, willful and wanton misconduct, reckless infliction of harm or intentional infliction of harm . . .,” employees

³⁰ *Id.* at 1:33:28.

³¹ GPB Lawmakers, *supra* note 7 (beginning at 1:38:08).

³² *Id.*

³³ *Id.* at 1:40:37.

³⁴ *Id.* at 1:40:21.

³⁵ *Id.* at 1:40:34.

³⁶ *See* GPB Lawmakers, *supra* note 7 (beginning at 1:44:12).

³⁷ *Id.* at 1:46:24.

³⁸ *Id.* at 1:46:31.

³⁹ Ray Khalfani, *Risk without Reward: Georgia Workers Deserve Better*, GBPI, (Sept. 2, 2021), <https://gbpi.org/Risk-without-Reward-Georgia-Workers-Deserve-Better/>.

⁴⁰ *Id.*

⁴¹ Nick Gibson, *House Bill 112 Would Continue to Protect Businesses from Pandemic Related Lawsuits*, WGXA NEWS, (Mar. 1, 2021), <https://wgxa.tv/news/local/house-bill-112-would-continue-to-protect-buinesses-from-pandemic-related-lawsuits>.

would still have a narrower path to a successful COVID-19 claim.⁴² For instance, even though there were around fifteen million cases of COVID-19 in the United States, “only 129 lawsuits were employment related claims for lack of personal protective equipment (PPE), exposure to COVID-19, or wrongful death.”⁴³

There are concerns over whether the Bill will provide civil suit benefits to employees.⁴⁴ Although employees have a right to workers compensation once they contract COVID-19 on the job, there is a higher burden of proof to establish an occupational disease.⁴⁵ An occupational disease requires proof of a direct causal connection between the conditions which the work is performed; the disease was a natural incident of exposure of the employment; the disease could not have been contracted anywhere else but inside the employment; the disease is not an ordinary disease of life where the general public is exposed; the disease must appear to have had its origin in a risk connected with the employment and to have been from that source as a natural consequence.⁴⁶ All of these elements must be satisfied in order for the employee to receive workers compensation for an occupational disease.⁴⁷ Since the burden of proof is on the employees, a hardship could arise when trying to receive the benefits.⁴⁸ For instance, to recover income benefits for an occupational disease, the employee who filed a workers compensation claim “must show disability.”⁴⁹ Some States have already

⁴² O.C.G.A. § 51-16-2 (2020); *see also* Hendrix v. Arbor Mgmt. Servs., 2021 Ga. State LEXIS 792 (State Ct. Fulton Cnty. 2021) (interpreting O.C.G.A. § 51-16-2) Plaintiffs brought forth a wrongful death action of deceased Catherine Hendrix’s alleged exposure to COVID-19 in a senior assisted living facility. The issue in the case was whether the State Law immunity applied. The court held that plaintiffs were barred by O.C.G.A. § 51-16-2 unless they were able to prove that the actions of healthcare facility, healthcare provider, entity, or individual showed gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.

⁴³ Victor Cruz, *Business Impacted by COVID-19: Liability Shields are Not the Answer*, 43 U. LA VERNE L. REV. 50, 53 (2021) (discussing the number of COVID-19 related lawsuits).

⁴⁴ Nick Gibson, *supra* note 40.

⁴⁵ Risk Mgmt. Servs. *Frequently Asked Questions – Workers’ Compensation and COVID-19 Supervisors*, DEP’T OF ADMIN.SERVS., <https://doas.ga.gov/assets/Risk%20Management/Risk%20Management%20COVID19%20Response/FAQ%20COVID-19%20for%20Supervisors.pdf> (last accessed Nov. 15, 2021).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* Under Georgia’s workers compensation, employees are entitled to medical care and treatment that is reasonably required and appears likely to affect a cure, give relief, or restore suitable employment. Risk Mgmt. Servs. *Frequently Asked Questions – Workers’ Compensation and COVID-19 Supervisors*, Dep’t of Admin. Servs., <https://doas.ga.gov/assets/Risk%20Management/Risk%20Management%20COVID19%20Response/FAQ%20COVID-19%20for%20Supervisors.pdf> (last accessed Nov. 15, 2021);

enacted newer bills that “create[] a rebuttable presumption that essential workers who contracted COVID-19 did so in the course of their employment and would be entitled to workers’ compensation benefits.”⁵⁰

LEGISLATIVE GENEALOGY

The Bill was first introduced in the House as House Hopper on January 26, 2021.⁵¹ The Bill was first read by House First Readers on January 27, 2021.⁵² The second House readers occurred on January 28, 2021.⁵³ The House Committee favorably reported the Bill on February 4, 2021.⁵⁴ The Bill was read a third time by House Third Readers and passed/adopted by the House on February 9, 2021.⁵⁵ The Senate then read and referred on February 10, 2021.⁵⁶ The Senate read for the second time on March 15, 2021.⁵⁷ Senate read for the Third time and passed/adopted the Bill on March 17th, 2021.⁵⁸ The House sent the Bill to the Governor on April 4, 2021.⁵⁹ The Bill was signed by the Governor on May 4, 2021.⁶⁰

Prepared by: *Esther Ko*

see also Fisher Phillips & J. Micah Dickie, *Georgia Extends Limited COVID-19 Liability Protections*, JD SUPRA, (May 18, 2021), <https://www.jdsupra.com/legalnews/georgia-extends-limited-covid-19-3713249/>. There is no compensable income unless the worker has a disability. *Id.* Hence, if employees are to miss days off of work, they would be financially constrained while sick with COVID. *Id.* Thus, the intent of this bill raises questions as to whether the bill can provide the necessary protections for the employees who develop COVID during the course of their job. *Id.*

⁵⁰ Alan G. Brackett & Daniel P. Sullivan, *Analyzing Workers’ Compensation Liability for Covid-19 Infections*, REUTERS, (Sept. 13, 2021, 12:38 PM), <https://www.reuters.com/legal/legalindustry/Analyzing-workers-compensation-liability-covid-19-infections-2021-09-13/>.

⁵¹ H.B. 112 Status Sheet, *supra* note 3.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ H.B. 112 Status Sheet, *supra* note 3.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*