

Commercial Law and Consumer Protection

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H118 - COVID-19 Liability Safe Harbor. (SL 2020-89)

S.L. 2020-89 provides that no person is liable for any act or omission not amounting to gross negligence, willful or wanton conduct, or intentional wrongdoing in a claim alleging damages for contraction of COVID-19. This immunity does not apply to claims arising later than 180 days after the expiration or rescission of Executive Order No. 116, issued on March 10, 2020, and does not apply to workers' compensation claims.

The act requires persons to provide reasonable notice of actions taken by them to reduce the risk of COVID-19 transmission on premises owned by them or under their control. This requirement does not apply to premises owned by an individual unless the premises are used in operating a sole proprietorship.

The act does not affect any immunity granted under S.L. 2020-3 (Senate Bill 704).

The act became effective on July 2, 2020 and applies to claims arising on or after that date.

H258 - Open Amusement Parks/Arcades/Venues. (Ratified)

OVERVIEW: House Bill 258 would have done the following:

- Authorize amusement parks, any fair or carnival, which is a member of the North Carolina Association of Agricultural Fairs, and gaming and business establishments with video games and arcade games to open and resume operations, provided specific conditions are met.
- Authorize existing venues for receptions or parties to resume operations, provided specific conditions are met.
- Authorize outdoor stadiums having a spectator capacity of 12,000 or less that are operating restaurants on the stadium premises to open and operate food and drink service for on-premises consumption, provided specific conditions are met.
- Allow the Governor, with a concurrence of the majority of the Council of State, to exercise emergency powers to exercise emergency powers with regard to amusement parks, gaming and business establishments with video games and arcade games, any fair or carnival which is a member of the North Carolina Association of Agricultural Fairs, venues for receptions or parties, and outdoor stadiums that operate restaurants, provided the concurrence is documented and released.
- Require the Secretary of Health and Human Services or the Secretary of Environmental Quality to notify the Governor and obtain the concurrence of a majority of the Council of State before issuing an order of abatement related to COVID-19 that requires closure of amusement parks, gaming and business establishments with video games and arcade games, any fair or carnival which is a member of the North Carolina Association of Agricultural Fairs, venues for receptions or parties, and outdoor stadiums that operate restaurants, and to document and release the majority concurrence of the Council of State.

House Bill 258 was ratified by the General Assembly on June 24, 2020, and vetoed by the Governor on July 2, 2020.

H594 - Temporarily Open Gyms/Health Clubs/Fitness Centers. (Ratified)

House Bill 594 would have done the following:

- Authorize existing indoor or outdoor exercise and fitness facilities, gyms, health clubs, and fitness centers to open and resume operations, provided specific conditions are met, although temporarily closed by executive order due to COVID-19.
- Authorize existing food establishment, private clubs or private bars, wineries, and distilleries to offer and operate outdoor dining and beverage service options, provided specific conditions are met, although temporarily closed by executive order due to COVID-19.
- Allow the Governor, with a concurrence of the majority of the Council of State, to exercise emergency powers to reclose the restaurants, bars, and fitness facilities opened by HB594, provided the concurrence is documented and released.
- Require the Secretary of Health and Human Services or the Secretary of Environmental Quality to seek the concurrence of the majority of the Council of State has been obtained and released when issuing an order of abatement related to COVID-19 that requires closure of restaurants, bars, and fitness facilities.

House Bill 594 was ratified by the General Assembly on June 10, 2020, and vetoed by the Governor on June 19, 2020.

H806 - Open Exercise & Fitness Facilities. (Ratified)

House Bill 806 would have authorized the reopening and resumption of activities by existing indoor or outdoor exercise and fitness facilities, gyms, health clubs, and fitness centers temporarily closed by executive order due to COVID-19, provided specific conditions were met.

The act would have become effective when it became law and expired when Executive Order No. 147, issued on June 24, 2020, was repealed, replaced, or rescinded.

House Bill 806 was ratified by the General Assembly on June 26, 2020, and vetoed by the Governor on July 2, 2020.

H807 - Championship NC Act. (SL 2020-96)

Session Law 2020-96 (i) modifies the Site Infrastructure Development Fund (SIDF) to permit businesses meeting eligibility criteria as a sports championship employer to be eligible for a site development award for a project and (ii) reallocates \$3.6M from funds available in the One NC Fund (\$3.5M) and the JDIG Special Revenue fund (\$100k). The act became effective September 4, 2020.

H1043 - 2020 COVID-19 Recovery Act.

Sec. 4.2: Small Business Loan Assistance. (SL 2020-4)

Section 4.2 of S.L. 2020-4 allocates \$125 million to the Golden Leaf Foundation (GLF) for grants to entities for the purpose of providing emergency bridge loan funding for small businesses adversely affected by the COVID-19 epidemic. The section, in large part, mimics the existing bridge loan program GLF provides with non-State funds. The funds appropriated for this section of the act come from the Coronavirus Relief Fund, into which federal COVID-19 assistance has been transferred.

This section became effective May 4, 2020.

The program was amended by Section 1.6 of S.L. 2020-97 by changing loan terms and loan prioritization and making technical changes. This section became effective September 4, 2020.

H1043 - 2020 COVID-19 Recovery Act.

Sec. 4.2B: Job Retention Grants. (SL 2020-4)

Sec. 4.2B of S.L. 2020-4, as enacted by Sec. 1.1(e) of S.L. 2020-80, and amended by Sec. 1.5(a) of S.L. 2020-97, appropriates additional money from the Coronavirus Relief Fund to the Office of State Budget and Management (OSBM) and allocates \$15 million to be used to establish a Job Retention Grant program.

This section became effective July 1, 2020.

H1043 - 2020 COVID-19 Recovery Act.

Sec. 4.17: Special Supplementary GREAT Act Grant Process. (SL 2020-4)

S.L. 2020-4, Sec. 4.17, as enacted by S.L. 2020-97, Sec. 1.3, modifies criteria and guidelines established under G.S. 143B-1373 for a discrete, supplementary broadband infrastructure grant period to be administered by the Department of Information Technology.

EFFECTIVE DATE: This section became effective September 4, 2020.

H1105 - Coronavirus Relief Act 3.0.

Sec. 1.5: Job Retention Grant Program. (SL 2020-97)

This provision does the following:

- Allocates an additional \$45.5 million of the federal funds in the Coronavirus Relief Fund to the Job Retention Grant program created by S.L. 2020-80.
- Corrects a statutory reference that will enable 501(c)(6) entities to be eligible for a grant under this program.
- Provides that if any funds remain available after the first round of grants, a second round of grants will be made available solely for a business or nonprofit that employs 20 or fewer employees.

S364 - NC Commercial Receivership Act Revisions. (SL 2020-75)

S.L. 2020-75 enacts the North Carolina Commercial Receivership Act, repeals statutory provisions governing receiverships and assignments for the benefit of creditors, and requires any action seeking appointment of a general receiver for an entity debtor with assets worth at least \$5 million to be designated a mandatory complex business case. The act becomes effective January 1, 2021 and applies to receiverships commenced on or after that date.

CURRENT LAW: Article 38 of Chapter 1 of the General Statutes governs the appointment and duties of receivers. A receiver is appointed by the court to take control of a debtor's property to preserve and manage it before judgment or in aid of execution after judgment, or when the debtor is a corporation that is insolvent or in imminent danger of insolvency, to liquidate the corporate assets as part of a creditor's action.

Articles 1 and 2 of Chapter 23 of the General Statutes govern the procedure by which debtors can make an assignment of their assets for the benefit of their creditors, through which the debtor's assets are assigned to a trustee charged with determining the amounts owed to each creditor and liquidating the property of the debtor to distribute to the creditors.

S599 - Open Skating Rinks/Bowling Alleys. (Ratified)

OVERVIEW Senate Bill 599 would have done the following:

- Authorized existing skating rinks and bowling alleys to open and resume operations, provided specific conditions were met.
- Temporarily allowed minor league baseball stadiums with existing food and beverage establishments to have outdoor seating up to ten percent (10%) of the permanent seating capacity of the stadium, provided certain conditions were met.
- Allowed the Governor, with a concurrence of the majority of the Council of State, to exercise emergency powers to reclose the skating rinks and bowling alleys opened by Senate Bill 599, provided the concurrence was documented and released.
- Required the Secretary of Health and Human Services or the Secretary of Environmental Quality to notify the Governor, obtained a concurrence of a majority of the Council of State, and released that concurrence before issuing an order of abatement related to COVID-19 that required closure of skating rinks and bowling alleys.

Senate Bill 599 was ratified by the General Assembly on June 19, 2020, and vetoed by the Governor on July 2, 2020.

S681 - Agency Policy Directives/2019-2020.

Sec. 6.1: Commerce Report Change. (SL 2020-78)

Section 6.1 of this act amends G.S. 143B-434.01(b) by changing the recipients of the Comprehensive Strategic Economic Development Plan annual update sent each year by the Secretary of Commerce.

This section became effective July 1, 2020.

S704 - COVID-19 Recovery Act .

Sec. 4.5: Extend Time Period to Claim Lottery Prizes.. (SL 2020-3)

Section 4.5 of S.L. 2020-3 allows a lottery prize winner to submit a delayed claim for a lottery prize that is expiring between March 10, 2020, and August 1, 2020. The claim must be submitted no later than November 1, 2020.

EFFECTIVE DATE: This section became effective May 4, 2020.

S704 - COVID-19 Recovery Act .

Sec. 4.6: Lottery Commission Report. (SL 2020-3)

Section 4.6 of SL 2020-3 requires the NC State Lottery Commission to submit a report on the impact of COVID-19 that contains the elements outlined below.

- The impact on sales of lottery games, including county-level data.
- The impact on revenues.
- The impact on retailers, included changes to the number of retailers.
- The impact on expenses of the lottery.
- The impact on transfers of net revenue under the law (G.S. 18C-64) that defines the net revenues for the NC State Lottery Fund and requires that they be transferred at least four times a year to the Education Lottery Fund.

The report must be submitted to the Joint Legislative Oversight Committee on the North Carolina State Lottery and the Fiscal Research Division on or before September 1, 2020.

This section became effective May 4, 2020.

S704 - COVID-19 Recovery Act .

Sec. 4.14: Limited Business Immunity for Essential Businesses. (SL 2020-3)

Sec. 4.14 of S.L. 2020-3 provides civil liability immunity for a limited time to:

- Essential businesses with respect to employee or customer claims for injury or death alleged to have been caused by contracting COVID-19 while doing business with or employed by the essential business.
- Emergency response entities with respect to customer, user, or consumer claims for injury or death alleged to have been caused by the COVID-19 pandemic or while doing business with the emergency response entity.

As used in this section, the term "essential business" means businesses, not-for-profit organizations, educational institutions, and governmental entities identified in Executive Order No. 121 issued on March 27, 2020, as amended by executive order, and the term "emergency response entity" means businesses, not-for-profit organizations, educational institutions, and governmental entities that manufacture, produce, or

distribute personal protective equipment, testing equipment, or ventilators, or process COVID-19 testing results.

This section does not apply to claims based on acts or omissions constituting gross negligence, reckless misconduct, or intentional infliction of harm, and does not preclude an employee of an essential business or emergency response entity from seeking an appropriate remedy under the Workers' Compensation Act for injuries or death alleged to have been caused as a result of the employee contracting COVID-19 while employed by the essential business or emergency response entity.

These provisions for immunity from civil liability apply to acts or omission occurring after March 27, 2020 and expire upon the rescission or expiration of the COVID-19 emergency declaration (Executive Order No. 116) issued on March 10, 2020.

Section 2 of S.L. 2020-89 (House Bill 118) states that nothing in that act affects the immunity provided by this section.

This section became effective on May 4, 2020 and applies to claims filed on or after March 27, 2020.

S739 - Personal Delivery Device/Delivery Robots. (SL 2020-73)

S.L. 2020-73 authorizes the use of personal delivery devices by businesses in pedestrian areas and on portions of highways and regulates their use.

The act becomes effective December 1, 2020, and applies to offenses committed on or after that date.