SENATE, No. 3890

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 10, 2021

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)

SYNOPSIS

Creates presumption regarding standard of care for certain persons and entities in legal actions relating to coronavirus disease pandemic.

CURRENT VERSION OF TEXT

As introduced.

AN ACT creating a presumption against liability for certain persons and entities in legal actions relating to the coronavirus disease 2019 pandemic, and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. The Legislature finds and declares that the public health, safety, and welfare of the citizens of this State will be advanced by the adoption of a rebuttable presumption regarding the standard of care applicable in civil actions and administrative proceedings arising from a person's inadvertent exposure to COVID-19, and that the adoption of a rebuttable presumption will incentivize the community at large to adopt health and safety measures, thereby reducing the rate of community spread of the disease.

2. a. As used in this act:

"Applicable health and safety measures" means any prescribed or recommended course of conduct, steps, policies, practices or guidelines to prevent or mitigate a person's exposure to the virus SARS-CoV-2 or the disease caused by the virus, Coronavirus disease 2019, also referred to as COVID-19, or a related viral strain to that virus or a disease caused or exacerbated by the related viral strain in subsequent years, which are in effect at the time of an alleged exposure to SARS CoV-2, a related strain, or disease caused by either one, and which measures are based on guidance, regulations, rules, and administrative orders promulgated by the federal Centers for Disease Control and Prevention, the federal Occupational Safety and Health Administration, the State Departments of Health, Human Services, and Labor and Workforce Development, or any other applicable federal or State department, division, commission, board, bureau, or agency, as well as applicable Executive Orders or portions of those orders issued by the Governor.

"Business" means any non-governmental, for-profit or non-profit corporation, company, partnership, firm, sole proprietorship, society, association, business trust, or other form of business organization or entity.

Notwithstanding any provisions of law to the contrary, a business, and its trustees, directors, officers, employees, agents, servants, and volunteers, that substantially complies with or exceeds applicable health and safety measures shall be presumed to have met the required standard of care applicable to any act or omission resulting in damages arising from or related to a person's exposure to SARS-CoV-2, a viral strain, or disease caused or exacerbated by either one in any civil action or any administrative proceeding,

including but not limited to professional disciplinary actions, or actions concerning the suspension, revocation, refusal to issue or refusal to renew any license, certification, certificate, or permit, as applicable, for any act of commission or omission resulting in damages arising from a person's exposure to SARS-CoV-2, a related viral strain, or disease caused by either one.

b. The presumption established in subsection a. of this section may only be rebutted by the presentation of evidence that the business did not meet or comply with applicable health and safety measures. Mere opinion evidence shall not be sufficient to rebut the presumption.

c. (1) The rebuttable presumption provided to a business, and its trustees, directors, officers, employees, agents, servants, and volunteers by this section applies in addition to any other available immunity or defense, and applies regardless of how the exposed person came into contact with the business or onto the business property.

(2) Nothing in this section shall be deemed to:

(a) provide a defense to any business or person causing damage by a willful, wanton, or grossly negligent act of commission or omission; or

(b) affect a worker' compensation claim or award pursuant to any applicable State or federal law.

3. a. Notwithstanding any provisions of law to the contrary, any public or private institution of higher education, and its trustees, directors, officers, administrators, employees, agents, servants, and volunteers, that substantially complies with or exceeds applicable health and safety measures, shall be presumed to have met the required standard of care applicable to any act or omission resulting in damages arising from or related to a person's exposure to SARS-CoV-2, a related viral strain, or disease caused or exacerbated by either one in any civil action or any administrative proceeding**,** including but not limited to, professional disciplinary actions, or actions concerning the suspension, revocation, refusal to issue or refusal to renew any license, certification, certificate, or permit, as applicable.

b. The presumption established in subsection a. of this section may only be rebutted by the presentation of evidence that the public or private institution of higher education did not meet or comply with applicable health and safety measures. Mere opinion evidence shall not be sufficient to rebut the presumption.

c. (1) The rebuttable presumption provided to a public or private institution of higher education, and its trustees, directors, officers, administrators, employees, agents, servants, and volunteers by this section applies in addition to any other available immunity or defense, and applies regardless of how the exposed person came

into contact with the public or private institution or onto its property including if exposure occurred at some other place in the course of conducting activities and operations, providing services, or doing volunteer work on behalf of the a public or private institution of higher education as authorized by it.

(2) Nothing in this section shall be deemed to:

(a) provide a defense to any public or private institution of higher education or person causing damage by a willful, wanton, or grossly negligent act of commission or omission; or

(b) affect a workers' compensation claim or award pursuant to any applicable State or federal law.

4. a. Notwithstanding any provisions of law to the contrary, a public entity, which substantially in good faith reasonably complies with or exceeds applicable health and safety measures to prevent or mitigate a person's exposure to the virus SARS-CoV-2 or the disease caused by the virus, Coronavirus disease 2019, also referred to as COVID-19, or a related viral strain to that virus or a disease caused by the related viral strain in subsequent years, which are in effect at the time of an alleged exposure to SARS-CoV-2, a related strain, or disease caused by either one, and which measures are based on guidance, regulations, rules, and administrative orders promulgated by the federal Centers for Disease Control and Prevention, the federal Occupational Safety and Health Administration, the State Departments of Health, Human Services, and Labor and Workforce Development, or any other applicable federal or State department, division, commission, board, bureau, or agency, as well as applicable Executive Orders or portions of those orders issued by the Governor, shall be presumed to have met the required standard of care in any civil action for any act of commission or omission resulting in damages arising from a person's exposure to SARS-CoV-2, a related viral strain, or disease caused or exacerbated by either one.

b. The presumption established in subsection a. of this section may only be rebutted by the presentation of documentary evidence that an authoritative governmental entity had established a more protective standard of care which was in effect at the time of an alleged exposure to Sars-CoV-2, a related strain, or disease caused by either one. Mere opinion evidence shall not be sufficient to rebut the presumption.

c. (1) The rebuttable presumption provided to a public entity by this section applies in addition to any other available immunity or defense, and applies regardless of how the exposed person came into contact with the public entity or onto its property, including if exposure occurred at some other place in the course of providing government services, or doing volunteer work on behalf of the public entity as authorized by it.

(2) Nothing in this section shall be deemed to provide a defense to any public entity causing damage by a willful, wanton, or grossly negligent act of commission or omission; or any applicable State or federal law.

5. a. Notwithstanding any provisions of law to the contrary, a public employee, who substantially complies with or exceeds applicable health and safety measures to prevent or mitigate a person's exposure to the virus SARS-CoV-2 or the disease caused by the virus, Coronavirus disease 2019, also referred to as COVID-19, or a related viral strain to that virus or a disease caused by the related viral strain in subsequent years, which are in effect at the **time** shall be presumed to have met the required standard of care applicable to any act or omission resulting in damages arising or related to a person's exposure to SARS-CoV-2, a related viral strain, or disease caused or **exacerbated** by either one in any civil action or administrative proceeding, including but not limited to, professional disciplinary actions or actions concerning the suspension, revocation, refusal to issue or refusal to renew any license, certification, certificate, or permit, as applicable.

b. The presumption established in subsection a. of this section may only be rebutted by the presentation of documentary evidence that an authoritative governmental entity had established a more protective standard of care which was in effect at the time of an alleged exposure to Sars-CoV-2, a related strain, or disease caused by either one. Mere opinion evidence shall not be sufficient to rebut the presumption.

c. (1) The rebuttable presumption provided to a public employee by this section applies in addition to any other available immunity or defense, and applies whether the exposure to SARS-CoV-2, a related viral strain, or disease caused or exacerbated by either one, occurred because the person was required to be on the same public property as the public employee, or entered or remained on the property by express or implied invitation or permission, or exposure occurred at some other place in the course of the public employee providing government services, or doing volunteer work on behalf of a public entity as authorized by it.

(2) Nothing in this section shall be deemed to:

(a) provide a defense to any public employee causing damage by a willful, wanton, or grossly negligent act of commission or omission; or

(b) affect a workers' compensation claim or award pursuant to any applicable State or federal law.

6. This act shall take effect immediately, and apply retroactively to March 9, 2020.

STATEMENT

This bill would establish a rebuttable presumption for business entities, including non-profits, and institutions of higher education, and their officers, employees, agents, and volunteers, as well as public entities, including primary and secondary schools, and their employees, regarding the applicable standard of care in civil actions and administrative proceedings relating to a person's exposure to the virus SARS-CoV-2 or the disease caused by the virus, Coronavirus disease 2019, also referred to as COVID-19, or a related viral strain to that virus or a disease caused by the related viral strain in subsequent years. The immunity against liability created by the rebuttable presumption would be based on good faith reasonable compliance with or exceeding applicable health and safety measures to prevent or mitigate a person's exposure to SARS-CoV-2, a related viral strain, or disease caused by either one, which are in effect at the time of an alleged exposure to SARS-CoV-2, a related strain, or disease caused by either one, and which measures are based on guidance, regulations, rules, and administrative orders promulgated by applicable federal or State departments, divisions, commissions, boards, bureaus, or agencies, as well as applicable Executive Orders or portions of those orders issued by the Governor.

The establishment of a rebuttable presumption would incentivize public and non-public entities to adopt "best practices" regarding practices to mitigate and reduce the spread of COVID-19.

The rebuttable presumption provided by the bill would apply in addition to any other defense, and would apply whether the exposure to SARS-CoV-2, a related viral strain, or disease caused **or** exacerbated by either one, occurred because a person was required to be on a business' property, the campus or other property of an institution of higher education, or public property, or entered or remained on the property or campus by express or implied invitation or permission, or the exposure occurred at some other place in the course of conducting business, activities and operations, providing services, or doing volunteer work on behalf of a business, institution of higher education, or public entity as authorized by it. However, nothing in the bill would be deemed to create a rebuttable presumption for an entity's or person's willful, wanton, or grossly negligent act or omission. Additionally, the bill would not affect a workers' compensation claim or award pursuant to any applicable State or federal law.

The bill would take effect immediately, and apply retroactively to March 9, 2020, the date the Public Health Emergency and State of Emergency was declared by the Governor's Executive Order 103 of 2020 concerning the coronavirus disease 2019 pandemic.