

ALERT: Civil Immunity Legislation and Compliance with Latest Executive Order

July 2, 2020

Message to Dealers: Comply with Governor Kemp's Executive Orders. This will help protect your businesses from lawsuits due to COVID-19. More importantly, this will help protect your employees and customers.

The coronavirus pandemic continues to impact communities in Georgia and throughout the country. Governor Kemp recently extended the Public Health Emergency through August 11, 2020. In the process, he also renewed the requirements for Georgia businesses, including dealerships, to continue operations.

What are the requirements for new car dealers under the current Executive Order?

The requirements for new car dealers under Governor Kemp's current Executive Order, which took effect July 1, 2020, are identical to those in his previous order. GADA's summary of this Order for franchised car dealers is available [here](#), and a copy of the Governor's current Executive Order is available [here](#).

GADA strongly encourages dealers to review this summary and Governor Kemp's Order and implement all measures needed to comply.

What are the penalties for not complying with the Executive Order?

Violating these Orders is a misdemeanor. State and local law enforcement are empowered to enforce these Orders by issuing citations and shutting down businesses. **GADA has learned that the Georgia State Patrol has visited new-car dealerships** to ensure compliance with the Governor's Executive Orders.

What about the civil immunity bill passed by the General Assembly?

To help protect Georgia businesses and healthcare facilities from frivolous lawsuits, the General Assembly recently passed **Senate Bill (SB) 359**. Under this bill, any claim brought against a business alleging transmission of, exposure to or potential exposure to COVID-19 on the business premises would be barred unless the claimant proves the business showed "gross negligence... reckless infliction of harm, or intentional infliction of harm." This bill has not yet been signed into law by Governor Kemp.

Does this bill provide total immunity from COVID-related lawsuits for Georgia businesses?

No. This bill provides a defense to lawsuits that allege mere negligence. It does not bar lawsuits in which the plaintiff proves the business was grossly negligent or intended to inflict harm.

Also, this bill does not change workers' compensation laws in Georgia.

What is gross negligence?

Gross negligence is a legal term which Georgia courts have defined as "the failure to exercise even a slight degree of care, or the lack of the diligence that even careless men are accustomed to exercise." Sw. Emergency Physicians, P.C. v. Quinney, 347 Ga.App. 410, 424, 819 S.E.2d 696 (Ga. App. 2018).

Gross negligence is worse than mere negligence. For example, a customer who contracts COVID-19 may claim a business was negligent if the business tried to follow the Governor's executive order but did so incorrectly. On the other hand, a customer may claim a business was grossly negligent if the business failed to implement any, or most, of the safety measures included in the Governor's order.

Do I need to post signs warning customers about COVID-19?

SB 359 provides a separate defense to lawsuit for businesses who post a sign, at a point of entry to the premises, with the following warning:

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.

The warning listed above must be in at least one-inch Arial font placed apart from any other text on the sign, according to SB 359.

Businesses who post this sign would have a rebuttable presumption against the plaintiff for assumption of risk in a lawsuit alleging COVID-19 exposure. This rebuttal presumption defense would be in addition to the tort immunity defense mentioned above.

Consequently, dealers are not required to post this warning sign but doing so would bolster your defense to COVID-19 related lawsuits during this pandemic.

So, what is the best strategy GADA members can follow during this pandemic?

First, please review the [Governor's Executive Order](#) and implement the safety measures recommended.

Second, review the general guidance provided by the CDC, OSHA and the Georgia Department of Public Health. These resources provide valuable guidance for businesses on issues such as reopening strategies, virus mitigation, sanitation, and isolating employees.

Third, consider posting a sign at your dealership in accordance with SB 359, above.

Fourth, stay tuned for additional updates from GADA and NADA. We are working hard to keep dealers informed of government actions related to the pandemic that may impact your business.

