



Center for Justice & Democracy's
Public Policy Clinic
New York Law School
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Wilton Simpson, President
The Florida Senate
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chris Sprowls, Speaker of the House
Florida House of Representatives
402 S. Monroe Street
Tallahassee, FL 32399-1300

Dear Sen. Simpson and Rep. Sprowls:

Re: Urging Action to Repeal SB 72 - Civil Liability for Damages Relating to COVID-19

My name is Marlee Belford, and I am a student intern with the Center for Justice & Democracy studying the impact of COVID liability shields for businesses, including Florida's SB 72. While I am currently attending law school in New York, I have a deep connection to Florida. I grew up in Tampa, Florida and attended Florida State University for my undergraduate degree. I am writing to urge the Florida Legislature to repeal the business immunity sections of Senate Bill 72, a liability shield that is extremely broad, harmful, and unnecessary.

Background

As you may know, the Florida State Senate passed Senate Bill 72 in March 2021, and Governor Ron DeSantis signed it into law later that month.¹ The bill created pandemic-related legal immunity for negligent businesses as well as health care workers.² The health care immunity provisions were set to expire in 2022 so a new law establishing June 1, 2023, as the new expiration date was recently passed.³ However, the business immunity provisions have no expiration date and could go on indefinitely. This letter will be limited to discussion of the business immunity provisions of the law.

SB 72 immunizes negligent businesses from pandemic-related injury claims. Immunity is conferred so long as the business follows some safety regulation, guideline, or suggestion no

¹ Fla. SB 72 (2021) (proposed Fla. Stat. § 768.38)).

² *Id.*

³ Fla. SB 7014 (2022).

matter how vague, and irrespective of how unsafe the workplace actually is. Even businesses that do not comply with guidelines are immunized from claims so long as they tried to comply “in good faith.”⁴ For anyone trying to bring a claim, there is a complicated procedure whereby courts initially determine whether the suit may proceed by deciding if defendants made the requisite good faith effort.⁵ Infected workers or consumers must convince a court that the defendant was “grossly negligent,” instead of just proving they acted unreasonably, a much higher legal standard than in ordinary injury cases.⁶ They also must provide a physician’s affidavit of merit “to essentially ‘vouch’ for’ [their] injury claim and its connection to the defendant’s acts or omissions.”⁷ These evidentiary standards are so high as to provide virtual immunity to unsafe businesses. That is why the law drew widespread opposition from a variety of groups, including labor unions, consumer advocates, the AARP, and many lawmakers, just to name a few.⁸

The Law is Harmful and Unsafe

Because unsafe businesses have to do little or nothing to make their establishments safe in order to benefit from the law’s immunity, SB 72 allows businesses to evade other laws and regulations that are in place to save workers’ lives and protect their livelihoods. Businesses that know they are shielded from liability have little or no financial incentive to create safe environments.⁹ Immunity is counterproductive, and it sends the wrong signal to businesses as it protects only the non-compliant.¹⁰

As explained by Paul Jess, the executive director of the Florida Justice Association, “the whole point of our civil justice system [is] to encourage safe conduct, to deter unsafe practices, and to hold wrongdoers accountable” and “SB 72 does the opposite and gives negligent businesses and health care facilities a free pass.”¹¹ Jess noted that the law protects unsafe companies but does nothing to protect employees, customers, and front-line workers who have sacrificed to keep communities safe and the economy open.¹² As others have also said, liability shields could give businesses a green light to take fewer or even no precautions to limit spread of the virus among their customers and workers.¹³

⁴ Fla. SB 72 (2021).

⁵ *Id.* § 3(c).

⁶ *Id.*

⁷ The National Law Review, *Florida Enacts COVID-19 Business Liability Shield* (Mar. 30, 2021).

<https://www.natlawreview.com/article/florida-enacts-covid-19-business-liability-shield>

⁸ Billy Corriher, *GOP’s COVID-19 lawsuit immunity effort shifts to the states*, Facing South (Mar. 8, 2021).

<https://www.facingsouth.org/2021/03/gops-covid-19-lawsuit-immunity-effort-shifts-states>

⁹ The Senate Judiciary Committee, *Written Testimony of Professor David C. Vladeck Georgetown University Law Center Examining Liability During the Covid-19 Pandemic*

¹⁰ *Id.*

¹¹ Nathan Hale, *Fla. Gov. Signs Sweeping COVID-19 Liability Protection Law*, Law360 (Mar. 29, 2021).

<https://www.law360.com/articles/1369972/fla-gov-signs-sweeping-covid-19-liability-protection-law>

¹² *Id.*

¹³ Chris Marr, *Dying Covid Liability Shield Laws Prompt Push for Their Revival*, Bloomberg Law (Jan. 27, 2022).

<https://news.bloomberglaw.com/daily-labor-report/dying-covid-liability-shield-laws-prompt-push-for-their-revival>

The Law is Unnecessary

At the time the bill passed, there were very few COVID related suits filed in Florida. One study found that although more than 13,000 lawsuits have been filed related to COVID-19, relatively few have been the personal injury or exposure types of claims that states' liability shield laws tend to cover.¹⁴ This remains true today. According to a litigation tracker set up by the law firm Hunton Andrews Kurth LLP,¹⁵ relatively few have filed COVID-exposure claims around the country, whether or not a liability shield like Florida's exists. That is because the tort system already places significant obstacles in the way of negligence suits by requiring proof of causation, something nearly impossible to do without precise contact tracing which does not exist in this country. This law creates an extremely high and unnecessary substantive and procedural threshold for Plaintiffs to overcome in bringing a successful claim.

Even when it comes to health care workers, legislators considering whether to extend immunity into 2023 could articulate no clear reason as to why these liability shields should be extended. When questioned on an exact estimate on the number of potential impending claims, Rep. Colleen Burton could point to no specific data and instead simply argued that "we are still dealing with the COVID-19 virus in all our communities across the state of Florida...therefore, that is a good reason to extend the liabilities."¹⁶ The same lack of data clearly applies to business liability shields. Moreover, Florida employers are already largely protected from suits under the state's workers' compensation law.¹⁷ There is no clear reason why such immunity should continue.

Even assuming there were reasons to pass the law in 2021, there is clearly no crisis today requiring Florida residents to give up important legal rights, which should never have been done lightly even in an emergency. State officials and forecasters boast about the state's economic recovery and increase in job growth.¹⁸ Given that there is no current state of crisis, there is no reason anyone should be stripped of their legal rights as SB 72 does.

We strongly urge you to repeal SB 72, which protects negligent businesses from liability. Thank you for your time and consideration. If you have any questions or should need any additional information, please feel free to contact me at marlee.belford@law.nyls.edu or Professor Joanne Doroshow, joanne.doroshow@nyls.edu.

Very sincerely,

Marlee Belford

Marlee Belford

¹⁴ *Id.*

¹⁵ *COVID-19 Complaint Tracker*, Hunton Andrews Kurth LLP (last visited Mar. 19, 2022).

<https://www.huntonak.com/en/covid-19-tracker.html>

¹⁶ Christine Jordan Sexton, *COVID-19 liability extensions for health care providers nears final passage*, Florida Politics (Feb. 9, 2020). <https://floridapolitics.com/archives/495172-covid-19-liability-extensions-for-health-care-providers-nears-final-passage/>

¹⁷ Fla. Stat. § 440.

¹⁸ Governor Ron DeSantis, *Governor Ron DeSantis Announces Florida Continues to Outperform the Nation in Job Growth* (Jan. 21, 2022). <https://www.flgov.com/2022/01/21/governor-ron-desantis-announces-florida-continues-to-outperform-the-nation-in-job-growth/>