



Center for Justice & Democracy's
Public Policy Clinic
New York Law School
185 West Broadway
New York, NY 10013

April 15, 2022

Governor John Bel Edwards
Office of the Governor
PO Box 94004
Baton Rouge, LA 70804

Dear Governor Edwards,

Re: Expiration of House Bill No. 826, Liability Shield for Businesses

My name is Amy Cheng, and I am a student intern with the Center of Justice & Democracy. At the Center, we have been studying the impact of liability shields on businesses. I am writing to thank you for allowing House Bill No. 826 or Act No. 336,¹ which was tied to the state's Covid health emergency², to expire on March 16, 2022.³ Louisiana had been one of the few states that still had a business liability shield on its books.⁴ The law took away important legal rights from Louisiana's citizens. Now that this emergency has passed, we are grateful those rights have now been restored.

Background

House Bill No. 826, introduced in the very early stages of the Covid-19 pandemic, immunized negligent businesses from Covid-related liability claims.⁵ It became effective on June 13, 2020,

¹ 2020 Regular Session: HB 826, Liability: Provides Relative to the Limitations of Liability due to the COVID-19 Public Health Emergency, *Louisiana State Legislature*,

<https://www.legis.la.gov/legis/BillInfo.aspx?s=20RS&b=HB826&sbi=y>

² 2020 Regular Session: HB 826/Act 336, *Louisiana State Legislature*, (pg. 1)

<https://legis.la.gov/legis/ViewDocument.aspx?d=1182532>

³ "With Cases and Hospitalizations Declining and Vaccines Widely Available, Gov. Edwards Will Not Renew COVID Public Health Emergency Order", *Office of the Governor* (Mar. 14, 2022), <https://gov.louisiana.gov/index.cfm/newsroom/detail/3589> (See also Proclamation Number 18 JBE 2022, "Extension of Emergency Provisions Due to Covid-19 Public Health Emergency", *Office of the Governor* (pg. 3)

<https://gov.louisiana.gov/assets/Proclamations/2022/18JBE2022StateofEmergency.pdf>)

⁴ 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>

⁵ 2020 Regular Session: HB 826/Act 336, *Louisiana State Legislature*, (pg. 1-2)

<https://legis.la.gov/legis/ViewDocument.aspx?d=1182532>

and it stayed in effect until the state’s public health emergency expired last month.⁶ The Bill provided a liability shield for negligent businesses that cause injury or death related to Covid exposure, so long as the business “substantially complied” with a local, state, or federal Covid guideline, no matter how vague or ineffective.⁷ Only “gross negligence or wanton or reckless misconduct” was exempted from the scope of the law.⁸

The Liability Shield Was Potentially Harmful and Unnecessary

While House Bill No. 826 was being considered, opponents expressed concern that the law’s burdensome legal standards “could have unintended consequences of keeping people from being able to file legitimate lawsuits.”⁹ Labor unions and some public health advocates have fought against liability shields around the country as potentially giving “businesses a green light to take fewer or even no precautions to limit spread of the virus among their customers and workers.”¹⁰ Immunity can have real-life consequences because the potential for being held liable for harm caused by failure to take reasonable care is one of the most powerful incentives the system has to ensure that businesses operate safely.

Moreover, liability shields for Louisiana businesses were unnecessary. At the time the liability shield was being considered, Louisiana Association of Business and Industry, which played a part in the passage of the Bill¹¹, engaged in a great deal of fear-mongering about an expected wave of lawsuits.¹² Congressman Garret Graves similarly stated “that thousands of lawsuits seeking damages for alleged Covid-19 exposure already have been filed across the country.”¹³ This was wrong. There was and continues to be no evidence whatsoever that a wave of exposure lawsuits has been filed anywhere in the country, including in Louisiana.

As a recent *Bloomberg* article put it, “[a]lthough more than 13,000 lawsuits have been filed related to Covid-19, according to a litigation tracker set up by the law firm Hunton Andrews Kurth LLP, relatively few have been the personal injury or Covid-exposure types of claims that

⁶ “With Cases and Hospitalizations Declining and Vaccines Widely Available, Gov. Edwards Will Not Renew COVID Public Health Emergency Order”, *Office of the Governor* (Mar. 14, 2022), <https://gov.louisiana.gov/index.cfm/newsroom/detail/3589>

⁷ 2020 Regular Session: HB 826/Act 336, *Louisiana State Legislature*, (pg. 1-2) <https://legis.la.gov/legis/ViewDocument.aspx?d=1182532>

⁸ *Id.*

⁹ Melinda Deslatte, “Louisiana Businesses to be Shielded from Most Virus Lawsuits”, *The Advocate* (Jun. 17, 2020), https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_92756f4c-b0d6-11ea-811c-43fc916de73a.html

¹⁰ 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>

¹¹ Nicole Turner, “Act 336 Provides Limitations of Liability Due to Covid-19”, *Louisiana Society of Association Executives* (Aug. 19, 2020), <https://www.lsaec.org/news/524007/Alert-Act-336-Provides-Limitations-of-Liability-Due-to-COVID-19.htm>

¹² House Bill 826, *Louisiana Association of Business and Industry*, <https://mcusercontent.com/d616f4ff223569233b1cf9025/files/3adbf765-defa-462d-a665-414797b8b2d8/HouseBill826.pdf>

¹³ David Jacobs, “Advocates Seek Liability Shield During Covid Pandemic”, *St. Mary Now* (July 28, 2020), <https://www.stmarynow.com/state/advocates-seek-liability-shield-during-covid-pandemic>

states' liability shield laws tend to cover."¹⁴ This 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. As Georgetown Professor David Vladeck testified before the U.S. Senate Judiciary Committee in relation to these laws, "[t]he unprecedented transmissibility of this virus will generally make causation guesswork at best, and guesswork is insufficient for pleading in a tort case."¹⁵

Even if the law was needed when it was first enacted on June 13, 2020¹⁶, when there were still many unknowns about the pandemic, Louisiana's economy has dramatically changed since then and is surpassing pre-pandemic conditions¹⁷. The downward curve of new Covid cases in Louisiana is continuing¹⁸, which is why the public health emergency was not extended¹⁹.

For these reasons, we thank you for allowing HB 826 to expire. If you have any questions, please contact me at Amy.Cheng@law.nyls.edu or Professor Joanne Doroshow at Joanne.Doroshow@nyls.edu. Thank you for your time and consideration.

Sincerely,



Amy Cheng

¹⁴ 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>

¹⁵ Testimony of Professor David C. Vladeck, Georgetown University Law Center, Before the Senate Judiciary Committee Examining Liability During the Covid-19 Pandemic, *Committee on the Judiciary*, (pg. 12) <https://www.judiciary.senate.gov/imo/media/doc/Vladeck%20Testimony.pdf>

¹⁶ 2020 Regular Session: HB 826, Liability: Provides Relative to the Limitations of Liability due to the COVID-19 Public Health Emergency, *Louisiana State Legislature*, <https://www.legis.la.gov/legis/BillInfo.aspx?s=20RS&b=HB826&sbi=y>

¹⁷ For example, Louisiana's Gross Domestic Product (GDP) for the fourth quarter of 2021 was \$267,126.3 million versus the second quarter of 2020 at \$219,516.3 million. Additionally, Louisiana's GDP for the fourth quarter of 2019 was \$254,848.4 million.

U.S. Bureau of Economic Analysis, "Gross Domestic Product: All Industry Total in Louisiana [LANQGSP]", *FRED, Federal Reserve Bank of St. Louis* (Updated Mar. 31, 2022) <https://fred.stlouisfed.org/series/LANQGSP>

¹⁸ "Tracking Coronavirus in Louisiana: Latest Map and Case Count", *The New York Times* (Updated Apr. 14, 2022), <https://www.nytimes.com/interactive/2021/us/louisiana-covid-cases.html>

¹⁹ "With Cases and Hospitalizations Declining and Vaccines Widely Available, Gov. Edwards Will Not Renew COVID Public Health Emergency Order", *Office of the Governor* (Mar. 14, 2022), <https://gov.louisiana.gov/index.cfm/newsroom/detail/3589>