

2020 Regular Session

HOUSE BILL NO. 826

BY REPRESENTATIVES PRESSLY, AMEDEE, BAGLEY, ROBBY CARTER, CREWS,
EMERSON, FIRMENT, FREIBERG, FRIEMAN, GAROFALO, HARRIS,
HORTON, LACOMBE, MCCORMICK, SEABAUGH, THOMAS, AND WHEAT

LIABILITY: Provides relative to the limitations of liability due to the COVID-19 public health emergency

1 AN ACT

2 To enact R.S. 9:2800.25, relative to the limitation of liability; to provide for the limitation
3 of liability during the COVID-19 public health emergency; to provide for the liability
4 of certain property owners; to provide for the liability of certain natural and juridical
5 persons; to provide for the liability of state and local governments and political
6 subdivisions; to provide for liability related to the design, manufacture, distribution,
7 use, and administration of personal protective equipment; to provide for the rights
8 of employees; to provide for liability related to business operations; to provide for
9 claims pursuant to the Louisiana Workers' Compensation Law; to provide for
10 retroactive application; to provide an effective date; and to provide for related
11 matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 9:2800.25 is hereby enacted to read as follows:

14 §2800.25. Limitation of liability during the COVID-19 public health emergency

15 A. During the COVID-19 public health emergency, no natural or juridical
16 person owning or controlling real estate or other premises who voluntarily and
17 without compensation grants a license or privilege, or otherwise permits the
18 designation or use of the whole or any part or parts of such real estate or premises
19 for the purpose of sheltering individuals shall be liable for any civil damages to such

1 individuals as a result of any act or omission relating to such real estate or premises
2 under such license, privilege, or other permission, unless such damages were caused
3 by the gross negligence or willful or wanton misconduct of that person.

4 B. During the COVID-19 public health emergency, no natural or juridical
5 person who voluntarily and without compensation is engaged in the performance of
6 a contract with and under the direction of the state or its political subdivision shall
7 be liable for any civil damages as a result of any act or omission relating to the
8 performance of such contract, unless such damages were caused by the gross
9 negligence or willful or wanton misconduct of that person.

10 C. During the COVID-19 public health emergency as declared by
11 Proclamation Number 25 JBE 2020, any private person, firm, or corporation and
12 employees and agents of such person, firm, or corporation, who renders assistance
13 or advice at the request of the state or its political subdivisions shall not be civilly
14 liable for causing the death of, or injury to, any person or damage to any property
15 except in the event of gross negligence or willful misconduct.

16 D. During the COVID-19 public health emergency, no person who
17 gratuitously renders emergency care, first aid, or rescue aid relating to the emergency
18 shall be liable for civil damages as a result of such care or aid, unless such damages
19 were caused by the gross negligence or willful or wanton misconduct of that person.

20 E. No natural or juridical person, state or local government, or political
21 subdivision thereof shall be liable for any civil damages for injury or death resulting
22 from or related to actual or alleged exposure to COVID-19 in the course of or
23 through the performance or provision of the person's, government's, or political
24 subdivision's business operations unless the person, government, or political
25 subdivision failed to substantially comply with the applicable COVID-19 procedures
26 established by the federal, state, or local agency which governs the business
27 operations and the injury or death was caused by the person's, government's, or
28 political subdivision's gross negligence or wanton or reckless misconduct. If two or
29 more sources of procedures are applicable to the business operations at the time of

1 the actual or alleged exposure, the person, government, or political subdivision shall
2 substantially comply with any one applicable set of procedures.

3 F. No natural or juridical person that designs, manufactures, labels, or
4 distributes personal protective equipment in response to the COVID-19 public health
5 emergency and any other subsequent related proclamations shall be liable for civil
6 damages for injury or death caused by such personal protective equipment unless
7 such damages were caused by the gross negligence or willful or wanton misconduct
8 of that person.

9 G. During the COVID-19 public health emergency, no natural or juridical
10 person who uses, employs, dispenses, or administers personal protective equipment
11 shall be liable for civil damages for injury or death resulting from or related to such
12 personal protective equipment unless the person failed to substantially comply with
13 the applicable procedures established by federal, state, or local agencies which
14 govern such personal protective equipment and the injury or death was caused by the
15 person's gross negligence or wanton or reckless misconduct. If two or more sources
16 of procedures are applicable to the use, employment, dispensing, or administering
17 of personal protective equipment at the time of the actual or alleged exposure, the
18 person shall substantially comply with any one applicable set of procedures.

19 H. An employee whose contraction of COVID-19 is determined to be
20 compensable under the Louisiana Workers' Compensation Law shall have no remedy
21 based in tort for such exposure against his employer, joint employer, borrowed
22 employer, statutory employer, any other person or entity listed in R.S.
23 23:1032(A)(1)(b), and any other person or entity potentially liable pursuant to the
24 Louisiana Workers' Compensation Law unless the exposure was intentional as
25 provided by R.S. 23:1032(B).

26 I. Notwithstanding the rights of employees as provided by R.S. 23:1032(B),
27 employees who contract COVID-19 and are not covered by the Louisiana Workers'
28 Compensation Law shall have no remedy in tort for such exposure against their
29 employer, joint employer, borrowed employer, statutory employer, any other person

1 or entity listed in R.S. 23:1032(A)(1)(b), and any other person or entity potentially
 2 liable pursuant to the Louisiana Workers' Compensation Law unless the exposure
 3 was caused by intentional act.

4 J. For purposes of this Section, "the COVID-19 public health emergency"
 5 means the COVID-19 public health emergency as declared by Proclamation Number
 6 25 JBE 2020 and as extended by any subsequent proclamations.

7 Section 2. The provisions of this Act shall apply to all causes of action arising from
 8 any act or omission occurring on or after March 11, 2020.

9 Section 3. This Act shall become effective upon signature by the governor or, if not
 10 signed by the governor, upon expiration of the time for bills to become law without signature
 11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 12 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 13 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 826 Reengrossed

2020 Regular Session

Pressly

Abstract: Limits liability for certain business operations for the voluntary performance of public contracts, for gratuitous emergency care, for the performance of business operations, for the manufacture and use of personal protective equipment, and provides for the rights of employees during the COVID-19 public health emergency.

Proposed law provides that during the public health emergency declared during the outbreak of COVID-19, the following classes of persons shall not be civilly liable for any act or omission related thereto except in the event of gross negligence or willful and wanton misconduct:

- (1) Persons owning or controlling real estate who voluntarily and without compensation allow such real estate or premises to be used for the purpose of sheltering persons.
- (2) Persons who perform in contract with and under the direction of the state or its political subdivisions.
- (3) Persons who render assistance or advice at the request of the state or its political subdivisions.
- (4) Persons who gratuitously render emergency care.
- (5) Manufacturers, distributors, and users of personal protective equipment.

Proposed law provides that no person or local or state government or political subdivision thereof shall be liable for civil damages for injury or death resulting from exposure to COVID-19 in the course of or through the performance of a person's business operations unless it is proven that the person, government, or political subdivision was not in substantial compliance with applicable COVID-19 procedures.

Proposed law provides that when two or more sets of COVID-19 procedures apply to a business operation or to the use, dispensing, or administering of personal protective equipment, the responsible party need only substantially comply with one applicable set of procedures.

Proposed law provides that employees not covered by Worker's Compensation shall have no remedy in tort against their employer for exposure to COVID-19 unless caused by an intentional act.

Proposed law is retroactive to March 11, 2020.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 9:2800.24)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Add provisions relative to liability for the voluntary performance of public contracts, gratuitous emergency care, business operations, personal protective equipment, and the rights of employees.
2. Remove provisions relative to healthcare providers and persons who perform an action outside their usual scope of business.
3. Provide for retroactive application.

The House Floor Amendments to the engrossed bill:

1. Extend protections for business operations to those run by a state or local government or a political subdivision thereof.
2. Remove the burden of proof standard to establish substantial non-compliance with procedures applicable to business operations.
3. Require persons to comply with only one set of COVID-19 procedures for business operations and the use of personal protective equipment when multiple sets of procedures apply.
4. Clarify the classes of employers and persons potentially liable pursuant to the Louisiana Worker's Compensation Law.
5. Add technical amendments.