



DRAFT

April XX, 2020

Honorable Gavin Newsom
Governor, State of California
State Capitol
Sacramento, CA 95814

Dear Governor Newsom:

The Civil Justice Association of California (CJAC)¹ and the below-listed business organizations representing a broad range of California industry sectors commend you and your Administration for your ongoing leadership in quickly and decisively responding to the COVID-19 pandemic crisis.

We write to request your assistance and leadership in an area of mounting concern for numerous private businesses and organizations and their workforces who are providing critical services, goods, and facilities during the crisis – the imminent threat of litigation surrounding these efforts.

California businesses are in survival mode, yet they have stepped up in amazing and heroic ways to respond to the crisis. They should not be punished with class actions and private rights of action that attempt to capitalize on this crisis. Our businesses and the economy cannot sustain further damage.

California has already recognized the need for protection from civil liability during times of crisis under the Emergency Services Act (Cal. Gov't Code §§8550, et seq.). The act gives state and political subdivisions sweeping immunity for discretionary functions (§8655). To certain private entities, the act gives immunity from civil liability, while preserving the ability for harmed individuals to seek remedies for gross negligence and willful misconduct (§8657.5).

While this statute and some Executive Orders issued to date provide liability relief in limited contexts, greater protections are needed. To encourage and support critical response efforts, the state needs to provide assurances of immunity to **all** industry sectors providing critical services, goods, and facilities. Specifically, we request your Administration take the following actions:

¹ A trusted source of expertise in legal reform and advocacy for almost half a century, CJAC confronts legislation, laws, and regulations that create unfair litigation burdens on California businesses, employees, and communities. Towards that end, CJAC offers research and guidance on civil liability policy issues.

1. Issue an executive order at the earliest possible time clarifying and expanding the immunity provisions of Government Code section 8657.5 to apply to all private entities and their workers providing critical services, goods, and facilities during the COVID-19 state of emergency.
2. Advance and support urgency legislation, to be acted upon when the Legislature returns from recess, to address any gaps in this immunity expansion not addressable by executive order.

In the attached Appendices A and B, we provide more detail on our recommended approach for the above action items.

Conclusion

We urge you to take action to protect all private entities providing critical services, goods, and facilities during the COVID-19 crisis from the threat of unwarranted lawsuits that can be financially devastating and close doors. During this time of economic uncertainty, California needs businesses – large and small – to continue to operate, produce, and employ.

The foregoing clarifications and expansions by executive order, and if necessary, urgency legislation, will provide certainty businesses need right now and will promote their vital contributions in response to the crisis.

Thank you for your consideration of this request, and please let us know if we can be a resource.

Respectfully Submitted,

Kyla Christoffersen Powell
President and Chief Executive Officer

On behalf of the below-listed organizations:

Civil Justice Association of California
Agricultural Council of California
Association of California Life and Health
Insurance Companies
California Apartment Association
California Association of Boutique &
Breakfast Inns
California Cable & Telecommunications
Association

California Credit Union League
California Hotel & Lodging Association
California League of Food Producers
California Manufacturers and Technology
Association
California Restaurant Association
California Retailers Association
California Trucking Association
Can Manufacturers Institute

Cooperative of American Physicians, Inc.
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Folsom Chamber of Commerce
Hotel Association of Los Angeles
Industrial Environmental Association
Long Beach Hospitality Alliance
National Federation of Independent Business
Palm Desert Area Chamber of Commerce

Pharmaceutical Research and Manufacturers
of America
Rancho Cordova Chamber of Commerce
Roseville Area Chamber of Commerce
Silicon Valley Leadership Group
United Chamber Advocacy Network
Western Growers Association
Western Manufactured Housing
Communities Association
Yuba Sutter Chamber of Commerce

DRAFT

Appendix A

Proposed Expansions to California Government Code Section 8657.5

To effectively provide immunity to all private entities providing critical services, goods, and facilities during the COVID-19 state of emergency, Government Code section 8657.5 needs to be clarified and expanded by executive order, and if necessary, urgency legislation, as follows. Appendix B provides suggested amendment language should urgency legislation be required to fully effect these expansions of section 8657.5.

1. Clear statement of application to current state of emergency

Although Government Code section 8657.5 states that its provisions apply during states of emergency, no Executive Order issued to date has provided clear confirmation that the immunity protections of the provision apply to the COVID-19 state of emergency, declared on March 4, 2020. We ask for express confirmation.

2. Expand to include all private donations of critical services, goods, and facilities, without regard to volunteer status or compensation

The executive order/legislative needs to clarify that all private entities who provide donations during the current crisis are protected from liability under section 8657.5, without regard to volunteer status or receipt of compensation. While strictly volunteer or charitable efforts are laudable, many businesses may need to provide workers with regular pay and recoup operating costs to sustain provision of their services, goods, or facilities.

For example, a business that volunteers its space as a homeless shelter may receive funding from federal, state, or local sources to help cover salaries and costs. It is not clear whether such a business or its workers are considered volunteers and not compensated within the meaning of section 8657.5. Compensation or not, these businesses and their workers are on the frontlines providing safety, health and security and deserve immunity protection. The executive order needs to clarify that they are protected.

State and political subdivisions working under a state of emergency receive immunity for their discretionary functions without regard to voluntariness or compensation. Private sector entities providing critical services, goods, and facilities in collaboration with the state and political subdivisions during this unprecedented crisis should too.

3. Expand to include all state-designated Essential Critical Infrastructure Workers

Section 8657.5 should also be expanded to by executive order/legislation to apply to all private entities and their workers designated by [Executive Order N-33-20](#) and the State Public Health Officer as "[Essential Critical Infrastructure Workers](#)." They have been recognized as necessary "to help state, local, tribal, and industry partners as they work to protect communities, while ensuring

continuity of functions critical to public health and safety, as well as economic and national security.”

These businesses and their workers are no less deserving of protection under section 8657.5 as their public and private sector counterparts providing other critical services and should also receive immunity from civil liability.

4. Clearly define duration of coverage

The executive order/legislation should clearly spell out the duration of the expanded immunity protection. We propose the duration should begin with the declaration of the state of emergency by the Governor on March 4, 2020 and end on the date the Governor declares the emergency has ceased. This appropriately limits the period of protection and provides clarity to businesses and plaintiffs.

5. Provide clear registration and confirmation process

By executive order, the Office of Emergency Services should be required to provide instructions and the process by businesses can confirm they are in the state registry and subject to section 8657.5 protections. While there is a web page that allows businesses to register to provide donations, the web page does not clearly state that registered businesses are protected under section 8657.5. The web page should also provide a process by which businesses designated as Critical Infrastructure Workers can also register or otherwise receive confirmation they are protected under section 8657.5.

6. Extend liability limits to state regulations

Private entities also need greater certainty with respect to potential liability created by requirements promulgated by state administrative and regulatory bodies. Various agencies and departments have issued or are considering issuing extensions, stays, and guidance. By executive order, all state and local regulatory and law enforcement entities with authority to enforce state regulations should be required to uniformly recognize and apply any stay or extension of a state regulation during the COVID-19 state of emergency.

Moreover, the immunity provisions of Government Code section 8657.5, as requested to be expanded above, should be extended by executive order to apply to any liability created by state regulations or administrative requirements.

7. Extend liability limits to local regulations

Local governments have issued a variety of requirements in response to COVID-19. For example, some counties have issued requirements that all individuals wear masks out in public. While local

regulations may be needed to address unique demands of each jurisdiction, they are difficult for businesses to track across the state while in crisis mode.

To address liability concerns arising out of this lack of uniformity, the immunity provisions of Government Code section 8657.5, as requested to be expanded above, should be extended by executive order to apply to any liability created by local regulations.

DRAFT

Appendix B
Proposed Changes to Text of California Government Code Section 8657.5

(a) (1) A private business included on the statewide registry pursuant to Section 8588.2 that voluntarily and without expectation and receipt of compensation donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2, during a declared state of war, state of emergency, or state of local emergency shall not be civilly liable for a death, injury, illness, or other damage to a person or property caused by the private business's donation of services, goods, labor, equipment, resources, or dispensaries or other facilities.

(2) A private business included on the statewide registry that voluntarily and without expectation and receipt of compensation donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2, during an emergency medical services training program conducted by the Office of Emergency Services and a city, a county, or a city and county shall not be civilly liable for damages alleged to have resulted from those training programs, as described in Section 1799.100 of the Health and Safety Code.

(b) (1) A nonprofit organization included on the statewide registry pursuant to Section 8588.2 that voluntarily and without expectation and receipt of compensation from victims of emergencies and disasters donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2, during a declared state of war, state of emergency, or state of local emergency shall not be civilly liable for a death, injury, illness, or other damage to a person or property caused by the nonprofit organization's donation of services, goods, labor, equipment, resources, or dispensaries or other facilities.

(2) A nonprofit organization included on the statewide registry that voluntarily and without expectation and receipt of compensation donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2, during an emergency medical services training program conducted by the Office of Emergency Services and a city, a county, or a city and county, shall not be civilly liable for damages alleged to have resulted from those training programs, as described in Section 1799.100 of the Health and Safety Code.

(c) A private business or nonprofit organization that discriminates against a victim of an emergency or disaster based on a protected classification under federal or state law shall not be entitled to the protections in subdivision (a) or (b).

(d) This section shall not relieve a private business or nonprofit organization from liability caused by its grossly negligent act or omission, or willful or wanton misconduct.

(e) For the duration of the state of emergency declared in connection with COVID-19 on March 4, 2020, this section shall apply to all services, goods, labor, equipment, resources,

or dispensaries or other facilities provided by a private business, nonprofit organization, or a state-designated Essential Critical Infrastructure Worker, without regard to whether provided voluntarily or without expectation and receipt of compensation.

DRAFT