



Testimony in Support of COVID-19 Business Liability Protections
Mr. Daniel Murray
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Senate Judiciary Committee
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Madam Chair and members of the committee, I am pleased to submit testimony in strong support of COVID-19 business liability legislation, as presented by the Kansas Chamber, on behalf of NFIB Kansas. NFIB Kansas is the leading small business organization in Kansas representing small and independent businesses. A non-profit, nonpartisan organization founded in 1943, NFIB Kansas represents the consensus views of its over 4,000 members in Kansas.

During the pandemic, NFIB issued a set of Liability Protection Principles, intended to protect small businesses from the threat of unfounded lawsuits as they begin to reopen. An [NFIB survey](#) released last year showed that nearly 70% of small business owners are concerned about liability claims increases, while only 6% are not at all concerned.

As small business owners across America continue the process of reopening and operating in the COVID-19 environment, it's imperative that we establish protections from the threat of lawsuits that exploit the already damaging effects of COVID-19. According to our survey's results, small business owners are concerned about increases in liability claims when reopening their businesses. We urge the Legislature to address these Liability Protection Principles so that our nation's small businesses who have fought to survive over the course of this pandemic can get back to work without fear of costly legal battles.

NFIB Kansas and small business owners were very appreciative of last year's bipartisan effort to provide protections and certainty for the business community. We strongly support the extension of the business and product liability protections that were included in 2020 Kansas House Bill 2016.

In addition to the protections we urge you to extend, below is NFIB's set of Liability Protection Principles designed to address the legal issues of most concern to small business. Our members welcome the inclusion of policy addressing all of these principles if the opportunity presents in the future.

1. **The Workers Compensation system should be the exclusive vehicle employees who suffer serious physical injury at work use to adjudicate their claims.** The workers compensation systems developed in each State are best-situated for determining whether a worker contracted COVID-19 at work and is eligible for compensation as a result. **But, we do not think COVID-19, or any other mass communicable virus, can be reasonably proved to have generated at the workplace.**

NFIB recommends that the Legislature provide that no separate state tort liability should be permitted for employee injury claims due to the virus. TO THE EXTENT SUCH LIABILITY EXISTS, claims that an employer is liable for physical injury due to COVID-19 should be adjudicated under state workers compensation laws—not the civil courts.

2. **Businesses should be protected from liability to customers and other third-parties unless those customers or parties prove the business knowingly failed to develop and implement a reasonable plan for reducing the risk of exposure to COVID-19 and that failure caused the injury.** When reopening a business both the Occupational Safety and Health Administration and the Centers for Disease Control offer guidelines for keeping workplaces safe. In addition, KDHE and county health departments may also have suggested procedures. These guidelines are instructive; however, they are often not legally binding and should not be used as a “get into court” free card for the unscrupulous trial attorney. Business owners should develop and implement plans to reduce the risk of COVID-19 exposure in the customer and third-party “facing” locations of their business.

NFIB recommends that business owners be shielded from liability from lawsuits brought by customers or other third parties unless the customer or third party proved that the business knowingly failed to develop and implement a reasonable plan to reduce the risk of COVID-19 by customers and other third parties and that the failure caused the injury.

3. **Permitted lawsuits should be limited to persons who experience a serious physical injury due to COVID-19 resulting in hospitalization.** Although there is still much to be learned about COVID-19, one thing scientists do know is that it affects different people in different ways. Indeed, we continue to hear of people who test positive for the virus but experience few if any symptoms.

NFIB recommends that Legislature grant businesses immunity from coronavirus-related litigation except in cases of gross negligence that causes the plaintiff serious physical injury resulting in hospitalization or death. No claims for emotional injury due to contracting the virus should be permitted.

4. **Fines should be imposed on unscrupulous trial attorneys bringing frivolous COVID-19-related lawsuits.** Small business owners do not have in-house counsel and the vast majority cannot afford to hire lawyers to defend their business and reputations in court. Trial lawyers know this and, as a result, small business owners are easy targets for the plaintiff’s attorney looking for a quick payout. Trial attorneys should be penalized – not incentivized – for bringing a frivolous COVID-19-related lawsuit.

NFIB recommends that the Legislature impose sanctions on attorneys found to bring a frivolous COVID-19-related claim. In addition to sanctions, the plaintiff’s attorney should be required to pay the defendant’s attorneys’ fees and other costs relating to the litigation.

Thank you for the opportunity to provide comments on this critical piece of legislation. Again, we urge the extension of the business and product liability provisions contained in last year’s COVID-19 Response and Reopening for Business Liability Protection Act.