



House Committee on Judiciary

Testimony in Support of Business Liability Protections Related to COVID-19 Presented by Eric Stafford, Vice President of Government Affairs

Wednesday, May 13, 2020

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium and large businesses of all industry segments across the state. We appreciate the opportunity to testify in support of our proposed legislation which offers protections for Kansas businesses specific to COVID-19.

The last two months have been a difficult time for everyone from students, to business owners, to government officials. This virus has shut down the world economy and grinded to a standstill the economic growth experienced over the past several years. In this new, uncharted era, businesses are adapting for survival. Remote work is normal. Travel has been restricted or stopped all together. Safety precautions such as protective equipment and additional sanitization requirements have been put in place by businesses whose top concern is employee and customer safety.

The bill language before you was carefully drafted to protect businesses from no-injury COVID-related litigation, while still allowing for businesses to be held responsible when acting maliciously failing to guard or warn against risk. Liability protection for a viral disease is essential for businesses seeking to reopen.

This bill has four key parts. Section 2 states that no claim may be brought forward in the absence of a minimum medical condition. In other words, one must have physically contracted and been infected with COVID to have a claim. This section provides a minimum threshold injury requirement that must be satisfied to bring any exposure-related claim. There are cases today in this country where individuals are suing for emotional harm against businesses when they have not actually contracted COVID-19.

Section 3 of the bill provides protection to property owners who permit persons onto their premises, unless “the possessor of real property willfully or maliciously fails to guard or warn against a substantial and unnecessary risk that a person would be exposed to COVID-19.”

Section 4 offers a defense for businesses who show that they operated in compliance with a federal or state statute or regulation, Executive Order, or public health guidance applicable to the person or activity at issue at the time of alleged exposure. If a company is following the proposed guidance and requirements published by the government, this should serve as a

proper defense in our view.

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Finally, Section 5 of the bill offers protection for manufacturers, sellers, distributors or donations of personal protective equipment or cleaning/disinfectant supplies with two exceptions: 1) anyone that had actual knowledge of a defect in the product and willfully disregarded a substantial and unnecessary risk that the product would cause serious injury to others; and 2) acted with actual malice.

We believe this legislation strikes a fair balance of protecting both businesses who take proper precaution for its customers and employees, and individual who have a legitimate claim for negligence against a person who allegedly exposes such individual to COVID-19. A recent Wall Street Journal article highlighted that 12 states have already provided civil protections to health care providers, and more are passing business/manufacturing and health care provider legislation as Kansas considers this same policy proposal (Wisconsin and Michigan for example).

We appreciate the opportunity to testify in support of this proposal and are happy to answer any questions at the appropriate time.