

2021 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1175

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1175
1/27/2021

Business immunity from COVID-19 liability claims, provide for retroactive application & to declare an emergency.

(9:03) Chairman Lefor calls the hearing on HB 1175.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	P
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

Discussion Topics:

- Frivolous lawsuits protection
- Broad safe harbor provision
- Civil liability protection

Rep Mike Howe~District 22 introduces the bill. Attachment # 3638 & 3874.

Arik Spencer~President & CEO of the Greater ND Chamber. Attachment # 3876.

Shelly Peterson~President of ND Long Term Care Association. Attachment # 2823.

Mike LeBeau~Bismarck Region President-Sanford Health. Attachment # 3494

Mike Rud~Behalf of NDRA, NDPMA & NDPGA. Attachment # 3073.

Shane Goettle~National Federation of Independent Business. Testified in favor.

Kimberly Heidt~VP of People & Culture-Steffes, LLC. Attachment # 3223.

Kim Kessler~Owner/operator of Bronson's Market Place Foods. Attachment # 3512.

Dave Schweigert~Attorney in Bismarck. Attachment # 3766.

Nathan Severson~Trial Lawyer-Fargo. Testified in opposition.

Jaclyn Hall~Executive Director-ND Association for Justice. Attachment # 3597.

Landis Larson~ND AFL-CIO. Attachment 3626.

Tim O'Keeffe~Attorney-Fargo.

(10:38) Chairman Lefor closes the hearing. The bill will be held.

Additional written testimony: Attachments #2387, 2716, 3188, 3194, 3218, 3426, 3453, 3469, 3474, 3477, 3516, 3600, 3716, 3720, 3729, 3730, 3733, 3738, 3742.

(10:38) End time.

Ellen LeTang, Committee Clerk

Mr. Chairman, members of the committee. My name is Michael Howe, House of Representatives from District 22.

I'm bringing forward HB 1175 on behalf of the businesses in my District and businesses across the state of North Dakota.

Throughout this global pandemic, North Dakota businesses across all industries have worked hard to stay open and have provided essential goods and services that we all rely on.

The goal of HB 1175 is to provide needed protection and clear up any uncertainty during these difficult times as it relates to frivolous lawsuits due to the COVID-19 pandemic.

This bill will

- Protect business owners, property owners and tenants from frivolous civil liability lawsuits who acted in good faith and followed COVID-19 applicable laws, regulations and executive orders issued by the federal government and the state;
- Specifically address health care facilities and providers because they were asked to respond quickly with uncertain guidance and limited resources; and
- Address manufacturers that adapted quickly to meet demands during the pandemic. They were called to produce personal protective equipment(PPE), ventilators, hand sanitizer, and other health related products to combat the pandemic that they wouldn't normally produce.

The protections in this bill WILL NOT cover business owners, property owners, and tenants that acted with malice and/or total disregard of the laws or executive orders during the COVID-19 pandemic.

Mr Chairman and Members of the committee, this bill has the support of hundreds of North Dakota businesses from many different industries, as well as our state's healthcare industry. These same folks asked Congress back in May for this protection on a federal level. As Congress often does, they didn't act. State Legislatures from all over the country have instituted nearly identical protections for their business community. It's time we do our part to protect North Dakota and keep our state one of the most business friendly in the Country.

Mr Chairman, I know there will be several organizations and businesses that will be speaking after me and can add why this is needed. You will see this has an emergency clause and is retroactive to January 1, 2020.

21.0247.02001
Title.

Prepared by the Legislative Council staff for
Representative Howe
January 20, 2021



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1175

Page 4, remove lines 6 through 10

Page 4, line 11, replace "(4)" with "(2)"

Page 4, line 13, replace "(5)" with "(3)"

Page 4, line 19, replace "(6)" with "(4)"

Page 4, line 21, replace "(7)" with "(5)"

Page 4, line 24, remove "when those acts or omissions"

Page 4, remove line 25

Page 4, line 26, remove "emergency"

Renumber accordingly

**Greater North Dakota Chamber
HB 1175
House Industry, Business, and Labor Committee
January 27, 2021**

Mr. Chairman and members of the House Industry, Business, and Labor Committee, my name is Arik Spencer, President and CEO of the Greater North Dakota Chamber. GNDC is North Dakota's largest statewide business advocacy organization. We are affiliated with the US Chamber of Commerce and the National Association of Manufacturers and stand in strong support of House Bill 1175. We also thank Representative Howe for introducing this critical legislation.

Not only does GNDC support HB 1175, but so does a coalition of nearly 30 statewide and regional business groups and medical providers. Most coalition members are either testifying today or have submitted written testimony for your review. The full list of coalition members can be found on the final page of my handout. The size and breadth of industry engagement underscore how important this issue is to North Dakota's business community.

Since the onset of the pandemic, the business community has faced many challenges. These include retaining the state's workforce, navigating assistance programs, maintaining operations, and responding to restrictions on hours of operations and government ordered closures. Last but certainly not least has been trying to keep employees, customers, and stakeholders safe in the face of rapidly changing federal, state, and local laws, rules, regulations, orders, and guidelines. In short, like everyone else, businesses have been doing their best to navigate safely through the pandemic.

Last May, when the future of many business sectors was uncertain, the United States Chamber of Commerce and state chambers across the country, including GNDC, were calling on Congress to provide COVID-19 civil liability protections. This shield was requested to protect businesses from frivolous lawsuits while allowing poor decisions and ill intentions to be punished. Although the U.S.

House and Senate could not compromise and pass these liability protections, we have heard from North Dakota business leaders repeatedly that these protections are still critically needed.

To date, over thirty states have passed COVID-19 business liability protection, with many others considering legislation as we speak. HB 1175 is based on model legislation passed in Iowa and offers broad and robust protection from frivolous lawsuits. Without your action, businesses right here in North Dakota, trying to do the right things, remain unprotected and exposed to frivolous civil lawsuits.

After first narrowing civil actions to cases involving intention or harm or malice in general, HB 1175 then layers in four other main components – targeted safe harbor protection, immunity defense for owners of premises, manufacturer protection, and a special section for medical providers which are held to a higher standard.

The broad safe harbor provision (page three, lines 16-21) offers civil liability protection for substantial compliance with COVID-19 related federal or state statute, regulation, or any order. The term "orders" includes executive orders, state health orders, or orders issued by a political subdivision or local public health unit unless the person's conduct was willful. The term "Person" used in this legislation applies to more than just business. N.D.C.C. 1-01-49 defines "Person" as any individual, organization, government, political subdivision, or government agency. This means that these protections apply to any individual, business, church, or school, to name several examples. I would note that this provision does not include the requirement to follow guidance. Due to the pandemic's flux, guidance frequently changed in response to changing conditions and knowledge. To further demonstrate this, at times, the state did not even follow its guidance.

The second component (page three, lines 8-15) limits property owners' and tenants' civil liability unless the property owner acted with malice or intentionally exposed an individual to COVID-19 with the intent to harm.

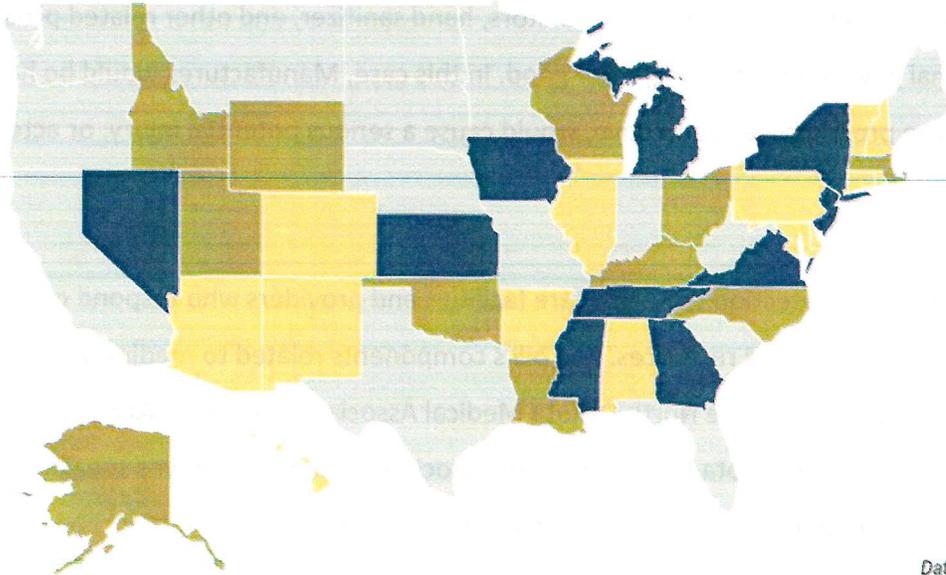
The third component of the bill (page five) protects manufacturers that responded to the pandemic in the spirit of being a Good Samaritan. These businesses reacted quickly to adapt production lines to make personal protective equipment, ventilators, hand sanitizer, and other related products outside of normal production for the greater good. In this case, Manufacturers would be held liable if they knew these products were defective, would cause a serious potential injury, or acted with malice.

Finally, HB 1175 offers protection to health care facilities and providers who respond quickly with uncertain direction and limited resources. The bill's components related to medical providers were developed in partnership with the North Dakota Medical Association, North Dakota Hospital Association, and the North Dakota Long Term Care Association. Representatives speaking to the necessity for these components will provide additional testimony.

While we have not previously needed liability protections for other viruses, the lawsuits that are being brought against businesses across the country compel this conversation to happen. This is not to say that COVID-19 isn't serious, but rather this virus is contagious, and tracking transmission is not simple or straightforward. The passage of this legislation is essential to maintain a healthy business climate and not hinder our economic recovery, which is vital for all North Dakotans. Further, this legislation will help keep costs to business down as insurance companies weigh the risk of business liability pertaining to COVID-19.

Mr. Chairman, this concludes my remarks. I urge the committee to adopt a do pass recommendation on HB 1175. GNDC has retained Mr. Shane Goettle of Goettle Law to respond to any legal questions you have about this bill. In closing, I would stand for any questions you have.

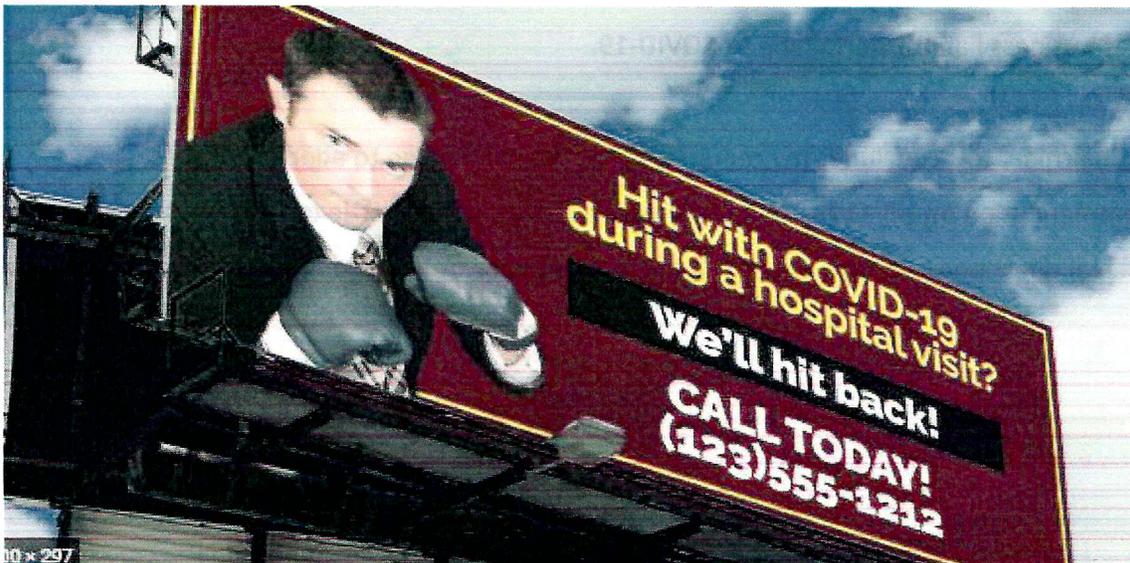
States with Liability Legislation in Place



Data as of 11/30/2020

- Executive Order ● Legislation ● Legislation & E.O.
- Source: American Tort Reform Association

Looking for Lawsuits



HB1175 - COVID-19 Liability Protection

Due to 2020, North Dakota businesses have adjusted to a new normal with the focus on maintaining employment positions while continuing ongoing operations. These businesses have adapted to new policies, created in response to federal and state regulations to ensure safety. In the turmoil of adjustment, business leaders have a growing concern that their continued operations, despite making changes, have created a vulnerability to civil liability lawsuits.

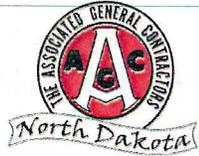
Currently, over thirty states have passed COVID-19 liability protections. North Dakota has not created legislation that truly holds poor decisions and ill intentions accountable while protecting companies that are striving to meet public health regulations. Businesses, healthcare providers/workers, manufacturers, and others need a safe harbor from COVID-19 related lawsuits that have been cropping up across the country.

A coalition of over 25 organizations is calling for legislation that protects businesses and the workers that rely on them. HB1175 is based on model legislation from Iowa, which has served as an example for other states. By offering civil liability protection, the bill recognizes that businesses and organizations from all industries have worked hard to stay open and provide ongoing goods, services, and employment that North Dakota relies on.

Recognizing that the highly-contagious virus, COVID-19, has been officially classified as a pandemic due to the nature and location of its transmission, HB1175 specifically offers:

- **Protection** for business owners, property owners and tenants from frivolous civil liability lawsuits who acted in good faith and followed COVID-19 applicable laws, regulations and orders;
- **Civil accountability** for business owners, property owners, and tenants if they acted with malice and/or total disregard of the laws during the COVID-19 pandemic;
- **Protection** for health care facilities and providers who responded quickly with uncertain guidance and limited resources
- **Help** to manufacturers that adapted quickly to meet pandemic demands and produced personal protective equipment (PPE), ventilators, hand sanitizer, and/or other health-related products that were outside normal production lines.

Coalition Partners



**Testimony on HB 1175
House Industry, Business and Labor Committee
January 27, 2021**

Good morning Chairman Lefor and members of the House Industry, Business and Labor Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent 211 assisted living, basic care, and skilled nursing facilities in North Dakota. I am here in support of HB 1175.

COVID-19 has had a devastating impact on individuals living in a congregate care setting, their families, the staff taking care of residents, and the facilities themselves. The global outbreak of COVID-19 has been traumatic unlike anything we have ever experienced in long term care. Soon to enter the eleventh month of the pandemic, everyone is feeling the toll, including the dedicated facility staff members who are doing everything in their power to provide the best possible care in an extremely difficult situation. In the United States, long term care facilities have emerged as hotspots for COVID-19 outbreaks.

North Dakota long term care facilities, residents and staff, represent 9.6% of all the cases, yet bear 60% of all deaths. Of the 1385 total deaths related to COVID-19 in North Dakota, 830 were deaths in long term care. Of the 215 long term care facilities counted in the data, 170 facilities have had outbreaks, (79%). Since the beginning we have had 4054 positive resident cases and 5131 positive staff. Estimating our total number of residents today around 8000, over half of our residents had COVID-19

North Dakota long term cases and deaths through 1-14-21:

Total Cases in North Dakota	95,378
Total Cases in Long Term Care	9,185 (9.6%)
Staff	5,131
Residents	4,054
Total Deaths in North Dakota	1,386
Total Deaths in Long Term Care	830 (60%)

States with the highest percent of COVID-19 deaths occurring in long term care as of 1-14-21:

NH	74%
RI	67%
KY	66%
MN	64%
ND	60%

At the beginning and mid-summer, we thought we could beat this virus. We thought we would be spared the ravages of what some other states were experiencing. In March, prior to the declaration of the public health emergency, all long term care shut down visitation, put stringent mitigation strategies in place and learned everything we could. We were distraught to see and hear what was occurring in some nursing facilities across the nation. CMS, CDC, Health Department guidance and executive orders have dictated what we should and must be doing during this pandemic. And we have relied upon the guidance and mandates as we wanted to protect every single person in our care. No one wanted to be the first case or have the first death. I do not know if facilities and staff will ever fully recover. It has been tremendously difficult to lose each resident. Facilities have fought hard to save every single person. The one single issue we can point to nationally and in North Dakota that caused our outbreaks and numbers to rise, the number of cases within the community. As the community numbers increased, so did our numbers and deaths. We have been aggressively testing all residents and staff, with a couple of facilities having up to 50% of all staff test positive and then within the week almost all the rest of their staff. Can you imagine the panic that could set in when you provide 24 hour care and you lose

the majority of your staff in one testing event? Thank God for dedicated staff and facilities, they had plans in place and worked long hours to make sure residents got the care they needed. It was not always ideal, but facilities worked overtime to try and care for every resident.

To say the least, the vast majority of facilities are financially devastated and census has dropped. People are afraid of the inherent risk of living in a long term care setting and of the visitor restrictions meant to safeguard residents. It will take a while to recover emotionally and financially. Attached to my testimony is an article, "What will the Senior Living Market Look Like for Insurers Post-Pandemic?" We have already been told that major insurance companies who provide professional and general liability are in the process of adding COVID-19 exclusions.

To say the least, we need your help. We need this legislation.

Long term care facilities provided essential services that were not suspended during COVID-19. Their residents and tenants did not go away when the virus started. Our heroic health care workers were there and continue to be there to provide care to residents needs despite COVID-19. COVID-19 is still present today. Although the number of cases has diminished, every day our members continue to serve the residents with COVID-19 and continue striving to protect others they serve from contracting the virus.

As you are well aware, the COVID-19 pandemic is a hundred-year event that goes far beyond anything any of us have experienced. The rapid spread, the high prevalence of negative outcomes amongst the elderly and people with underlying medical conditions, and the fact that the virus

can be transmitted by people who show no outward symptoms make our members' job in providing care exceedingly difficult.

Something that is unique to North Dakota is the age of our nursing facility residents. We care for the oldest of the old, with North Dakota often times leading the nation in the number of residents over the age of 90 in our facilities.

Facilities feel privileged to care for our greatest generation, they have contributed significantly to North Dakota's quality of life, they have helped make North Dakota great. Through the direct actions of staff, thousands of residents in our care have recovered from COVID-19, but the ones who have died, we grieve each loss.

I want to assure you we are only asking for protection so we can continue to care for North Dakotans when they need help the most. When they are unable to care for themselves. The immunity provided in this bill does not apply to an act or omission that constitutes: willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.

Thank you for the opportunity to testify in support of HB 1175. I ask for your favorable consideration of the bill and would be happy to answer any questions you may have.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660



This article can be viewed online at: <https://www.mynewmarkets.com/articles/183707/what-will-the-senior-living-market-look-like-for-insurers-post-pandemic>

What Will the Senior Living Market Look Like for Insurers Post-Pandemic?

December 2, 2020 by Joe Levy

Property/casualty insurance for senior living facilities has taken a hit this year. The insurance market has been hardening for the last year or two, and the COVID-19 pandemic brought on a wave of new challenges that has only compounded the problem. Brokers who are working with these health care organizations should be particularly wary of increased liability and more stringent underwriting as we move into 2021.

This past year has only accelerated the pace of premium rate increases that the senior living world was already facing. Insurance companies are reluctant to provide coverage for organizations because they carry inherent risk. As a result of the intense media coverage and negative publicity directed at the senior living industry, we anticipate families are more likely to file negligence, quality of care issues or wrongful death claims as a result of COVID-19.

The expectation among insurance company executives and plaintiffs' attorneys are that the COVID-19 related liabilities are going to impact the liability market for the next several years. Even with strong risk management plans in place, senior living facilities cannot eliminate this liability altogether.

With COVID-19, the potential for liability claims could far outpace collected premiums. Paying out more in claims than they're bringing in has forced insurance companies to raise rates. Some insurance companies have elected to stop insuring these organizations altogether, which also drives up rates.

It's a supply-and-demand marketplace. When there is significantly less supply, the cost rises. Even newer carriers in this space are being hit with higher than expected claims volumes.

None of this is good news for senior living operators who, historically, have already been operating on thin margins. Over the past several months, they have taken on significant additional expenses to disinfect facilities and obtain additional personal protective equipment. Now, they are faced with the fact that most of the major insurance companies who provide professional and general liability coverage are in the process of adding COVID-19 exclusions.

This is almost certainly going to be a universal change for future policies, and brokers should start informing clients to prepare for this at their next renewal. Clients will likely be facing additional exclusions and rising rates for the foreseeable future as insurers continue to grapple with the effects of this tumultuous year and what lies ahead.

Looking Ahead

The bottom line heading into 2021 is that everything is more challenging and taking more time. The liability impact and escalating rates have clients and insurance companies determined to do their due diligence and avoid more financial fallout. Underwriters are scrutinizing risks more closely than ever. Agents and brokers need to demonstrate that their clients are meeting the insurance companies' requirements before they can secure coverage.

In order to prepare for extremely lengthy and protracted renewals, agents and brokers should be starting the process earlier than under normal market conditions. Their aim should be to be as proactive as possible. Most insurance companies are now requesting a COVID-19 questionnaire. These questionnaires ask reasonable questions about what's going on in the facility, what additional safety measures have been put in place, how many cases of COVID-19 the facility has had, and how they were dealt with. This might make some clients nervous, but it actually creates an opportunity for open and honest dialogue.

A big part of the agent's job now will be to proactively manage cases and help to prepare clients for anticipated and unanticipated financial challenges. Hopefully, there will soon be a vaccine and abatement of the virus, but even with a solution, we are unlikely to see premiums decrease for the foreseeable future. Agents and brokers will need to take the lessons learned in 2020 with them into the next year.

The organizations that thrive will be those that have maintained financial stability and improved their operations to effectively manage and minimize the spread of disease. Hopefully, no matter what the new year holds, we will have learned enough to ensure that we will be better prepared for what lies ahead.



About Joe Levy

Levy is a senior vice president at Risk Strategies.

3494

House Industry, Business and Labor Committee
Rep. Mike Lefor, Chair
Jan. 27, 2021
HB 1175

Good afternoon, Chairman Nelson and members of the committee. My name is Michael LeBeau, M.D., and I serve as President for Sanford Health's western North Dakota region.

Let me begin by thanking each of you for your support and your leadership. North Dakota's lawmakers are a frontrunner in making decisions important to providing uninterrupted care for the patients we serve. As you know, providing high-quality healthcare in a rural state is uniquely challenging. But while other states struggle through hospital closures and shrinking access to care, North Dakota's hospitals are supported by sound policy decisions.

Sanford Health supports HB 1175. Please allow me to explain why. Immunity is necessary to prohibit liability against providers that are acting reasonably based upon the circumstances, and the COVID-19 pandemic has been a perfect example of extenuating circumstances. As this virus descended quickly upon the communities we serve, emerging treatments and treatment modalities required some trial and error to find the best solutions. At times, there were recommendations to use existing drugs outside of their generally accepted use. This produced successes and, at times, confirmation said treatment was ineffective.

With these constraints and new treatments came the unknown regarding how many of our own healthcare workers might become sick and unable to care for patients or how it would impact our communities versus what we saw and continue to see across the world. We still operate with unknowns as new strains are discovered and we still do not know if we will experience additional surges, or if our hospitals will become overwhelmed.

We also worked through enormous constraints on resources—limited personal protective equipment (PPE) and other supply chain shortages, a nationwide nursing shortage and our own frontline workers falling ill due to the virus.

At the outset of the COVID-19 pandemic there were many unknowns, yet hospitals and providers have remained dynamic by responding and pivoting in the face of rapid, new information as the pandemic continues. Treatments for this disease continue to evolve. This bill provides specific protection for health care providers and facilities who responded to the COVID-19 outbreak during great uncertainty about how best to treat a novel disease.

This bill does not provide unlimited protection; rather it provides the protection necessary for providers who stepped up quickly to care for patients. This is important to note because there were, and continue to be, many uncertainties with COVID-19.

Throughout this pandemic, we planned and strategized scenarios that at one time may have been unthinkable, whether we would have enough beds, PPE, staff, ventilators, etc. We had to think about what we might do if we had to allocate scarce resources among patients.

What we did know is that we needed to do what was the best for patients and our communities—whether it was getting a new facility online or purchasing large amounts of PPE. Healthcare did not shy away from what was right for our patients and this bill provides protections for just that—so long as the provider was trying to do the right thing based on information known at that time, this statutory immunity applies.

Since the outset of COVID-19, we have learned many things. Treatments are improving and we have seen the mortality rate decrease because of additional therapies. Providers have been maximizing oxygen usage, determining how best to position patients by proning them and vent management has improved significantly. We have seen the expansion of drugs in the combat of the virus, such as Remdesivir and monoclonal antibodies. Now we have added vaccine options—but we still have a long way to go and with this bill, it supports the work providers are doing and shielding them from liability when they are doing the right thing.

In closing, as a result of COVID-19, the provision of health care across the country has rapidly changed based on guidance and recommendations from regulatory agencies such as the CDC and public health directives. We continue to provide high quality patient care, while adhering to these recommendations and directives. At times,

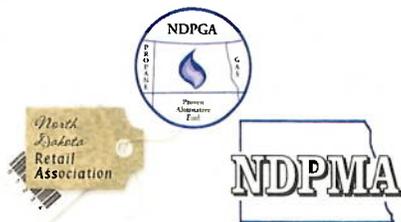
this care may have to be provided without the appropriate or optimal equipment, supplies or health care team members. We feel it is important to protect the providers who are on the front lines providing care to COVID-19 patients during this challenging time.

Sanford is supportive of this bill and, as a medical doctor, I, too, am supportive of this bill as amended by GNDC.

I would be happy to answer any questions. Thank you for your time today.

Mike LeBeau, M.D.
Sanford Health Bismarck President
Health Policy Consortium Board Member
Michael.LeBeau@SanfordHealth.org
701-323-6104

North Dakota Retail Association
ND Petroleum Marketers Association
North Dakota Propane Gas Association



LEGISLATIVE BULLETIN

HB 1175

January 27, 2021 – House IBL Committee

Chairman Lefor and Members of the House IBL Committee:

For the record, my name is Mike Rud. I'm writing on behalf of NDRA, NDPMA and NDPGA. As leaders from North Dakota business associations representing over 1500 retail store fronts and thousands of employees across the state, the North Dakota Retail and Petroleum Marketers Association as well as the North Dakota Propane Gas Association urge a "DO PASS" recommendation on HB 1175.

Our associations have been on the front lines providing essential services such as household goods, clothing, food and fuels since the pandemic began. NDRA/NDPMA and NDPGA believe the health and safety of our members, their employees, our customers and the general public is of paramount importance and remains our top priority.

Our associations have been working with national leaders in Washington, DC for about this same period of time attempting to get some business liability language in place. We feel strongly some liability language needs to be passed at both the federal and state levels to balance public health and safety with the economic realities that our members are facing. As the private sector contributes to the response, it faces liability challenges that governments do not. As a result, private companies require protection from unreasonable exposure.

Retailers are continually balancing the welcome prospect of renewed business and cash flow against the fear and cost of claims that could be made against them by customers, vendors, subcontractors, and others. These "third-party" claims, fueled by hungry plaintiffs' lawyers and a "lawsuit happy" culture pose real threats to our emerging business recovery. **It's our**

Association's understanding that over 6,000 lawsuits of this nature are pending already nationwide. These threats are so obvious that Congress continues to contemplate legislation to protect companies from such claims. Similarly, insurers are girding for increased third-party claims, sharpening pencils to invoke exclusions and issue reservation of rights letters.

As businesses remain open, they will face inevitable claims their retail outlet failed to protect third parties from exposure to the virus. The claims will be made by customers, as well as invitees who come on site to service the business and premises.

The claims will be that the business failed to take adequate protective measures with respect to people management and facilities maintenance. On people management, the claims will include that the business did not reconfigure and structure the premises consistent with various guidelines (e.g., CDC, state, and local guidelines regarding social distancing, mask wearing, flow and physical structure of the business). On facilities maintenance, the claims will predominantly be a failure to disinfect and filter air adequately, likely in terms of frequency, scope, and manner. While the CDC has been the leader in defining guidelines, the fact is not all businesses are created equal. Akin to the Americans with Disabilities Act compliance space, there will be plenty of room for hyper-technical "failures" to give rise to claims.

Customer and third-party claims will usually sound in negligence. Vendor claims (and anyone else who is on premises pursuant to a contractual relationship) will typically be negligence claims as well. The standard against which business is conducted will be measured in a lawsuit with a negligence claim will be that of the reasonably prudent business: what would a reasonably prudent business in these circumstances have done to protect its customers and invitees from contracting the virus? "Comply with the applicable guidelines" is just a starting point to mitigate the claims, but, by itself, it's insufficient. This is because the standard of care against which your business will be measured in any third-party claim will be a moving target.

Secondly, there is not a one-size-fits-all solution. The current understanding of the risk of infection rests on two key variables—time of exposure and proximity of infection source—both of which will vary considerably depending on the nature of the business and on geographic the

location of the business (population density, current infection rate). For example, big box retailers have the luxury of space that small shops do not. Businesses involving brief transactions (gas stations) have lower risk than experiential businesses (movie theaters, hair salons). And the risk of customer touch varies considerably: compare high-touch stores that have items that are not easily disinfected like furniture and home goods stores, with lower-touch venues with limited or easily disinfected touch surfaces, like restaurants. Some retailers have combinations of these differential risks under one roof.

House IBL Committee Members, as you can see there are just so many variables to this battle. Bottom line, if a business is doing all it can in terms of following Federal, State and local guidelines set forth during this pandemic to protect customers, employees and other folks visiting their stores, the state should help see to it a retailer will not be subject to a frivolous lawsuit while providing essential services in these unprecedented times.

Please vote "DO PASS" on HB 1175.

HB 1175 – Steffes Testimony

Steffes has been headquartered in Dickinson, North Dakota since it was founded in Dickinson more than 40 years ago. We also have two facilities in Grand Forks and one in Midland, TX. Steffes is a primary sector business who manufacturers fabricated metal products in support of the oil exploration industry in North Dakota. We also manufacture component parts for heavy equipment manufacturers such as Doosan / Bobcat.

March 11, 2020 was the first reported COVID-19 case in North Dakota. In the months to follow, we navigated through what this meant for Steffes, an essential business. There were continued uncertainties on how the virus was transmitted, continuous additions to possible symptoms, and ever-changing updates and recommendations from the Center for Disease Control and Prevention (CDC), North Dakota Department of Health (NDDOH), and OSHA. Our main goal throughout this entire pandemic was and continues to be keeping our employees working in a safe environment.

Like many other fellow North Dakota businesses, Steffes has been operating under our “new normal” since March 2020. Safety is a “core value” at Steffes, and as such, immediate actions were taken in March to create a COVID-19 prevention strategy as we are committed to the health and safety of our employees and visitors. This multi-layered prevention approach was created based on the recommendations from the CDC, NDDOH, and OSHA. Our major preventive strategy factors are listed below:

- 1) Communication & Awareness - consistent communication is provided to our employees with topics that include the benefits of mask wearing not only in the workplace, but also in the community; holiday guidelines and group gathering precautions; and the importance of mental health, just to name a few. A COVID-19 Steffes SharePoint site was created specifically for our employees and their family members to access all communication regarding COVID-19, such as an active case dashboard, links to the CDC and NDDOH websites, etc., as well as contact information for our Steffes Task Force members. This information is consistently updated and displayed on all breakroom televisions.
- 2) Case Management – employees who report symptoms of COVID-19 or have been identified as a close or household contact are assigned an internal HR Case Manager. When NDDOH was inundated; state contact tracers could not keep up and stopped communication with these affected individuals. Because of our internal case management process, we did not skip a beat.
- 3) Site Entry Process – all employees and visitors are required to complete our site entry process which includes standard entry questions and daily temperature checks.
- 4) Sanitization – in the Spring of 2020 any type of disinfectant was hard to find. To effectively pivot, we utilized OSHA guidance and protocols to make our own disinfectant. We put together disinfecting totes which included the disinfectant, multiple cloth rags, disposable gloves, and instructions. These totes were placed in all highly utilized areas.

- 5) Physical Distancing and Mask Usage – we started utilizing designated meeting rooms for additional break areas as well as staggered break times to reduce the number of employees in each area. All employees are required to wear a mask while at work. Because of this protocol, employees were provided with four complimentary face masks and proper laundering instructions.

Our employees' health and safety has always been our top priority; it was imperative to take quick action with the preventative strategy mentioned above. We highly encourage our employees to practice these efforts outside of work and to share our updated communications with their household members as well. As one of the largest employers in Stark County, we are committed to keeping our communities safe and help mitigate the spread of COVID-19.

Currently, our Steffes total positive COVID-19 case count since March 2020 is 35, which encompasses our four locations. Our less than 10% positivity rate is highly attributed to our ever-changing workplace prevention strategy that aides to mitigate the spread of COVID-19.

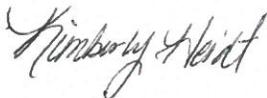
As we all navigate through these uncertain times, we must ask ourselves the question – why through the best mitigation efforts and procedures a company puts into practice to help keep employees safe, does it make sense to risk expensive lawsuits that do not help the situation and only cost citizens and employers money to litigate? In fact, all we can do as employers is implement the guidelines mentioned above. However, the moment our employees clock out, we can only hope they are practicing the same type of prevention strategies in our communities.

Even though there is still much uncertainty surrounding COVID-19; such as transmission, symptoms, infectious periods, and safeguards, we have remained diligent to routinely review and identify new data and precautions from trusted sources to make sure we are doing everything within our control to prevent workplace spread. We have updated our internal protocols 6 times so far with a 7th revision in the works to remain up to date as guidance is ever-changing.

In summary, we encourage this committee to recommend “Do Pass” for HB1175 on behalf of all North Dakota businesses.

Thank you for your time.

Sincerely,



Kimberly Heidt
VP of People & Culture



Bethany Kovash
Environmental, Health and Safety (EHS) Manager

Chairperson Lefor and members of the Industry, Business, and Labor Committee

I am Kim Kessler and I and my husband own and operate Bronson's Marketplace grocery stores in Beulah and Bowman North Dakota. I am here to support House Bill 1175

Below is the timeline our stores experienced with Covid 19 pandemic:

- In early March, we noticed the uptick in shopping and buying trends, leading us to post on our business Facebook "We have Toilet Paper" 😊. Little did we know this was more than just a 'bad weather forecast' which also leads to an uptick in shopping and buying trends in a grocery store.
- One week later, we again used Facebook to let customers know 'We apologize for empty shelves, we are doing everything we can to keep what you need stocked in our store'. We were very busy. Our business is used to working hard during holidays or bad weather forecasts to supply our customers with what they need, so this felt like a long holiday season or major blizzard warning.
- One day later our status changed again. Our Facebook post was now "Please do not come in our store if you are sick. Only elderly and people with compromised health should shop the first two hours of the day". After this first week of experiencing the onset of the Covid pandemic:
 - We closed business early so that staff could stay and clean and disinfect every door, edge of cases, all high touch surfaces in our grocery store and back room.
 - We searched for alternate suppliers so that we would be able to offer eggs, bread, flour, hand sanitizer and basic things like spray bottles.
 - We Limited what customers could buy in order for everyone to be able to get what they needed.
 - We encouraged staff to stay home if they were at all sick.
 - We closed our Deli/Bakery by the end of March as one person was sick and we feared that all working in that area had been exposed. Once their covid test was negative, we had them all come back to work.
 - Being in customer service, it was hard to stagger work shifts; but we did as much as possible. Customer service was put on the back burner as we had less staff during the busiest hours of the day so that employees could work early shift and others work late shifts; making their time spent working together less.
 - Our policies changed as we required people to stay 6 ft apart as much as possible. To wear a mask, and to clean/disinfect throughout the day.
 - We limited talking with customers even, we were basically trying to keep our employees healthy so we could stay open.
- In a couple weeks' time, we had totally changed the way we do business. Customers waiting was now normal, out of stocks was not our top priority anymore. Keeping people healthy and trying to supply basic needs was now all we focused on.
- We also had to ask customers to please get their groceries and leave our store. Social gatherings were happening in our stores and we knew that this was not ok for our employees to have to deal with.
- We are Thankful for all the resources from the State Commerce Dept and places like NDGA that we received. There direct communication helped in sorting thru the mounds of information that

was being sent to businesses. Frankly, we were so busy trying to keep our business open, we depended on our Grocer's Association to keep us up-to-date on the latest info and policies that.

We took many steps to protect our employees who were literally at the forefront and working front-&-center with a disease that we were still unsure of. We supplied masks, gloves, plexiglass, and face shields. We changed our breakroom to allow for social distancing and disinfecting after each use. We allowed any staff that wanted to cut their hours of work or wanted to limit their exposure - to take a leave of absence. They were able to come back to their jobs with no change in status.

In closing I would like to remind the Committee that we were designated as an "essential business". We were expected to stay open and to provide for the needs of our communities. House Bill 1175 recognizes the difficult situation we were put in and affords us protection from frivolous civil law suits. The grocery industry in North Dakota rose to the challenge and provided goods and services in a manner that protected their customers and employees.

We ask that the Industry, Business and Labor Committee acknowledge the commitment we made and support HB1175

Thank you and I will take questions

Chairman Lefor and members of the House Industry Business and Labor committee, my name is David Schweigert and I am an attorney in Bismarck, ND. I am here in opposition to HB 1175, due primarily to the fact it is not needed.

The existing tort system provides ample protections for defendants accused of negligently spreading COVID-19 during the crisis. Current law puts the burden on the *accuser* to come forward with sufficient evidence to prove that the defendant (1) had a duty to protect them (2) *breached* that duty negligently by acting unreasonably under the circumstances, and (3) caused the plaintiffs harm—not just in a cosmological cause-and-effect sense, but in a common-sense way as well. All of these factors are potential hurdles to plaintiff.

The standard of care changes with time, guidance, and the facts on the ground. Early on in the pandemic, it was unclear how the virus spread. Guidance provided by state and federal authorities as well as the care administered by health professionals in March and April is insufficient given what we later learned. Businesses accused of acting unsafely will be judged by the standards *at the time* and their access to materials they did or should have had on hand. Yet as the guidance, standards, and material facts change, so does negligence law.

Proving that the defendant caused the plaintiff's harm can be impossible. When the harm is based on where the plaintiff was infected with the virus, proving one party infected them is extremely challenging. Given how easily this virus spreads, there are certain classes of cases where causation will be impossible to prove. To keep the system fair, the plaintiff is required to prove that they were infected by the defendant in these cases, rather than a third party. *Even if they were neglecting the health and safety of the plaintiff*, whole categories of business interests will find a defense readily available to them. Almost everyone - and certainly those who are venturing out to shop or dine - will have multiple potential exposure locations. Nailing down proof of which location was responsible for a claimant's exposure would be exceedingly difficult, which means the lawsuit will likely fail.

State law requires that a claimant's conduct be factored in, too. Often called "comparative fault" or "assumption of risk" it allows the court and jury to consider whether a claimant's own conduct was reasonable. If a claimant ignores a business' safety protocols - refuses to keep 6-foot buffers from others while inside the business, for example - the claimant can be at fault and thus denied damages. Similarly, those in high-risk categories have a responsibility to protect themselves, which means avoiding places that, even with safety protocols in place, carry at least some risk of exposure.

Currently, there are no injury claims or medical malpractice claims in North Dakota involving COVID-19 despite being almost a year into the crisis. These claims will be difficult to prove and won't be taken lightly. However, they are still critically important. The few claims that have been filed in other states have exposed

grotesque working conditions and forced employers to provide adequate PPE—saving lives in the process. A blanket immunity included in this bill will make it impossible to protect workers and consumers from poor business practices.

Health care providers, first responders, and all the workers in critical industries are heroes working through extraordinary conditions, and no lawyer would bring a claim against a health care provider treating a COVID-19 patient who is doing the best he or she can under the circumstances.

In conclusion, HB1175 is legislation that is not needed to provide a blanket immunity to businesses or healthcare providers. Tort law - injury law - has at its base three core values. It should deter unsafe activities. It should compensate victims for their injuries. And it should be fair to all parties. Both State and Federal Constitutions protect the right to have a jury—not the legislature—decide if a defendant has acted unlawfully and caused harm. Because of this, I ask you to vote DO NOT PASS on HB 1175.



North Dakota Association for Justice

“The Trial Lawyers of North Dakota
PO Box 365
Mandan, ND 58554
www.ndaj.org

Jaclyn Hall, Executive Director
(701) 663-3916
jaclyn@ndaj.org

3597

DO NOT PASS - HB 1175

Chairman Lefor and members of the House Industry, Business and Labor Committee, my name is Jaclyn Hall and I am the Executive Director of the North Dakota Association for Justice. I am here today to ask for a DO NOT PASS on HB 1175 as it is currently written.

House Bill 1175 provides immunity for things that have nothing to do with COVID-19.

- **Currently, there are NO LAWSUITS related to transmission of the coronavirus that have been filed in North Dakota.** This is because proving duty and causation in these cases can be impossible in many instances. However, this in no way justifies relieving businesses of their duty to act reasonably under the circumstances.
 - The *threat* of lawsuits keeps businesses in line and providing proper protections to their customers and patients. As bad as the disease was in North Dakota, if businesses had been allowed to act negligently it would have been a whole lot worse.
 - The cases that have been brought elsewhere illustrate this vividly. In some states with immunity, the virus wiped out whole nursing home facilities - in many states, [over half of all deaths have come from long term care facilities](#) who neglected the health and safety of their residents.
 - Letting businesses spread the virus by neglecting the health and safety of customers and residents will only prolong the pain caused by COVID-19, making it harder for us all to return to normal. It will keep COVID-19 on the front of everyone’s mind longer than it needs to be.
- **There is no incentive to bring unwinnable cases.** Plaintiffs’ lawyers work under a “no win, no fee” or contingent fee system, so there is no incentive for bringing unmeritorious claims. Health care providers, first responders, and all the workers in critical industries are heroes working through extraordinary conditions, and no lawyer would bring a claim against a health care provider treating a COVID-19 patient who is doing the best he or she can under the circumstances.
- **Nevertheless, companies need to know they have an obligation to act responsible.** If corporations prioritize profits over the health and safety of their workers and customers during this pandemic – particularly as many of these same corporations receive huge taxpayer bailouts – they should be held



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Mandan, ND 58554
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Jaclyn Hall, Executive Director
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jaclyn@ndaj.org

accountable for those actions. Bad actors must be shown there are consequences for their actions.

- **These cases are hard to bring.** Here are the five ways:
 - **“Reasonableness”:** Under the law, businesses need only act “reasonably” under COVID-19. The law holds no one to a standard of perfection. By following the law and applying well-publicized safeguards that the community would consider reasonable, there can be no claim of negligence.
 - **“Causation”:** To win a COVID-19 lawsuit, a claimant would have to prove that their COVID-19 exposure happened at a particular business. There is no signature tracer for this virus. Almost everyone - and certainly those who are venturing out to shop or dine - will have multiple potential exposure locations. Nailing down proof of which location was responsible for a claimant’s exposure would be exceedingly difficult, which means the lawsuit will likely fail.
 - **“Damages”:** According to the [Johns Hopkins University Coronavirus Dashboard](#), with obviously sad and sometimes tragic exceptions, nearly everyone who gets coronavirus recovers. Typically, that recovery takes two to six weeks. To win money damages in a lawsuit, you have to prove enough harm that a court or jury will want to compensate for it. Without minimizing how difficult that recovery period can be for some, for most people the recovery will not merit a substantial damage award. And for those whose recovery is much longer or more difficult - and for those who die - there are usually other health factors that create uncertainty about whether COVID-19 is the culprit (see “causation” above).
 - **“Comparative fault” or “Assumption of Risk”:** State law requires that a claimant’s conduct be factored in, too. Often called “comparative fault” or “assumption of risk” it allows the court and jury to consider whether a claimant’s own conduct was reasonable. If a claimant ignores a business’ safety protocols - refuses to keep 6-foot buffers from others while inside the business, for example - the claimant can be at fault and thus denied damages. Similarly, those in high-risk categories have a responsibility to protect themselves, which means avoiding places that, even with safety protocols in place, carry at least some risk of exposure.
 - **“Waiver”:** As companies have started to reopen, they have often been requiring any patron to sign a waiver before being allowed into the establishment. These waivers often require the customer to attest that they do not have COVID-19 symptoms and have not visited a hot-spot recently. They then disavow responsibility for unintentional exposure to



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Mandan, ND 58554
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Jaclyn Hall, Executive Director
(701) 663-3916
jaclyn@ndaj.org

the virus on sight. The companies employing such tactics go from the local hair salon all the way to entering the state capitol this morning.

- **HB 1175 goes far beyond COVID-19 related claims.** The legislation would provide health care providers with total immunity from any litigation in a class of claims so expansive it protects providers who deliberately understaffed their facility and left patients to die from bedsores or other forms of neglect.
 - This provision is entirely unnecessary. The standard of care for health care providers adjusts with the circumstances on the ground *already*. Delaying surgery, practicing outside the premise of a health care facility, and other reasonable chances that needed to be made are *already* accounted for. This bill is unnecessary to address those.
 - Adhering to this new standard of care becomes more important in order to reduce the spread of (and death toll from) the COVID-19 outbreak. If professionals and facilities are excused for failing to meet the standard of care, they are effectively excused from following these important guidelines regarding how to act reasonably under the circumstances.
 - Long Term Care providers have had requirements in place for decades to protect individuals from respiratory illnesses that were in place long before COVID-19 hit. According to a May 20, [2020 U.S. Government Accounting Office](#) report, there were widespread deficiencies among nursing homes prior to the COVID-19 outbreak.
 - An [NPR story](#) In North Carolina details how immunity laws have impacted nursing home clients. HB1175 will retroactively immune nursing homes from cases that are unrelated to or preceded the pandemic.
 - Instead, this bill offers indefinite immunity to health care providers for failing to treat patients as they deserve to be treated. We *have a [standard of care](#)* for treating COVID-19 and many facilities have the capacity to treat other patients as they would, and should, under any other circumstance. Relieving them of this requirement to treat each patient with the care they are due will only increase the death and misery that COVID-19 has already wrought.
 - Businesses who have received payment from insurance companies for business interruption insurance will be at risk of having to pay it back. With no immunity from COVID-19, businesses are at no risk when they shut down their businesses during the statewide mandate. This mandate was not law, so it was merely a suggestion. HB 1175 removes the ability for businesses to keep their doors open and receive payment from insurance premiums they paid for.



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- **HB 1175 rewrites the rules in the middle of the pandemic.** Everyone has an expectation that companies will treat them with reasonable care and not neglect their health and safety. This bedrock principle applies in nursing homes, retail establishments, and every other business across the state. If they fail to meet that obligation and cause the plaintiff harm, then they are responsible for paying for that harm. HB 1175 changes that rule—effectively pardoning businesses who neglected the health and safety of their customers—forcing *consumers* to pay for that harm caused by corporate neglect. In effect, the legislation would steal from the plaintiff who was hurt through no fault of their own to benefit the businesses who neglected them.
- **Retroactive application is an unfair betrayal of a citizen’s reasonable expectations.** People have an expectation that the people and companies they deal with are required to act with reasonable care toward them. This foundational belief is captured by negligence law—where a person who acts unreasonably is responsible for paying for the harm their unreasonable actions cause. When people were hurt or killed by COVID-19, they had this expectation that the harm would be paid for by the people who acted unreasonably and caused the harm. HB1175 retroactively changes the rules to benefit the company who acted unreasonably. At a time when we see the fabric of society stretching to its limit, a retroactive change of the rules to benefit the largest companies in America would betray our social expectations and confirm that the legislature is rigging the rules against them.
- **Retroactive application is unconstitutional.** It is plainly unconstitutional for the legislature to retroactively go back and change the rules of the game after the fact. This isn’t a controversial point. Companies demanding retroactive immunity today will fight tooth and nail against a law retroactively imposing liability on them in the future. The prohibition on retroactive application of the laws allows people to conduct business knowing that the rules won’t change on them three months down the line.
- **ND Constitution guarantees meaningful access to the courts system.** HB1175 allows for a blanket immunity to both businesses and health care providers. This legislation goes against the ND constitution that guarantees the ability to defend life and liberty, pursuing and obtaining safety and Section 9 requires that all courts be open for an injury done. Section 13 of the ND Constitution allows for a trial by jury. The Legislature cannot strip the jury of its role by unilaterally deciding that a plaintiff must bear the full cost of the defendant’s tortious conduct.
- **Immunity actually *hurts* businesses acting reasonably.** This can happen in a number of ways:



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Jaclyn Hall, Executive Director
(701) 663-3916
jaclyn@ndaj.org

- **Direct Immunity:** Under the plan proposed by the Chamber of Commerce, one business that harms another business by acting unreasonably and spreading COVID-19 is immune for the harm that they cause. For example, a plumbing company may see all employees quarantined for weeks when they are exposed to the coronavirus after responding to a call at a negligent company. While normally the negligent company would be responsible for the harm they negligently cause, now that plumber bears the risk that negligence will put them out of businesses.
- **Causing a localized shutdown:** The LM Wind Power in Grand Forks caused a tremendous spike in cases This hotspot triggered public health crackdowns that have forced Grand Forks and surrounding communities into tighter restrictions and more fearful consumers. If this facility had been acting reasonably, then the community of businesses around them would have been spared the effects of the company’s negligence. Under HB1175, you give LM Wind Power a pass for their negligence.
- **Letting bad actors spread fear.** When every barbershop’s economic success is tied to the coffee shop implementing reasonable protections, it is irresponsible to let one, or the other, off the hook. If one can operate unreasonably, then people are less likely to visit *both*. Fear is the biggest impediment to economic revival and, until we all have access to the vaccine, fighting fear means acting responsibly to slow the spread of the virus.
- **HB1175** is being pushed as a narrow, temporary “safe harbor,” however, upon examination of the language, it becomes clear that the only companies that would ever be held accountable in a court of law under the Chamber’s proposal are companies that meet a standard comparable to how most states define second degree murder

In conclusion, HB 1175 provides the following:

- An unconstitutional blanket immunity that goes against the ND Constitution and the ability for your constituents to have a right to a trial by jury or the ability to seek access to the courts
- The inability for seniors to get recourse when the healthcare facility takes no precautions in their care
- The ability for businesses to be careless in how they take responsibility in the safety and security of their workers, consumers and the community they live in.



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Mandan, ND 58554
www.ndaj.org

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jaclyn@ndaj.org

We ask you to Recommend a DO NOT PASS on HB 1175 as written. As you take this bill into consideration, we ask that you consider the following amendments:

1. The removal of the emergency clause and the retroactivity of the law back to January 1, 2020. This retroactivity is unconstitutional and opens the doors for others to ask that their reckless behavior be circumvented.

2. A Sunset of the legislation to December 31, 2022. This will remove the legislation after no lawsuits have come forward. It will also deter businesses from careless practices they may become accustomed to. Finally, it will show insurance companies that they are unable to create lasting changes to business policies because they are not long lasting.

3. The addition of the following code under subsection 1 and Subsection 2:

Liability of health care providers and health care facilities.

1. A health care provider or health care facility is immune from civil liability for any act or omission in response to COVID - 19 that causes or contributes, directly or indirectly, to the death or injury of an individual **where the complained of injury or death was due to underlying Covid-19. A health care provider or health care facility claiming immunity from civil liability under this statute shall provide an affidavit containing an admissible expert opinion to support the defense within three months of service of the responsive pleading to the Complaint, or the defense is dismissed with prejudice. The expert's affidavit must identify the name and business address of the expert, indicate the expert's field of expertise, and contain a brief summary of the basis for the expert's opinion.** The immunity provided under this subsection includes:

The immunity provided under subsection 1 does not apply to an act or omission that constitutes:

- a. Willful and wanton misconduct;
- b. Reckless infliction of harm;
- c. Intentional infliction of harm; **or**
- d. **Gross negligence.**

This amendment relates to current statutes where expert opinions are required.

Thank you for the opportunity to provide testimony. We respectfully request to be included in further discussion on this bill and other COVID-19 related bills.

Sincerely,
Jaclyn Hall
NDAJ



North Dakota AFL-CIO
1323 East Front Ave.
Bismarck ND 58504
llarson@ndaflcio.org
701-526-8787

**Testimony of Landis Larson, ND AFL-CIO President
In Opposition to HB 1175
January 27, 2021**

Chairperson Lefor and members of the House Industry, Business and Labor Committee:

My name is Landis Larson, President of the North Dakota AFL-CIO. The North Dakota AFL-CIO is the federation of labor unions in North Dakota, representing the interests of all working people in our state.

I am testifying on behalf of the North Dakota AFL-CIO in opposition to House Bill 1175.

The North Dakota AFL-CIO strongly opposes any attempts to shield corporations or other employers from civil liability, particularly in regard to COVID-19.

We know that many employers are good actors doing the best they can to protect their employees, but we also know that there are also many employers that are not doing everything they can to protect their workers. We have read the headlines about some of these employers, but many we haven't because workers fear retaliation for speaking up about unsafe working conditions or their concerns go unheard.

This bill relies on a well-defined and fully-functioning regulatory structure in place to ensure that corporations and other employers are in fact doing all they can to protect employees without the threat of civil liability. We know that up to this point, neither employers or workers have much to go on as far as enforceable safety rules from federal, state or local officials when it comes to infectious diseases in the workplace. Shielding these bad actors from litigation would only encourage them to ignore the scant guidelines on infectious diseases in the workplace and putting working families at risk of COVID-19 without legal recourse.

I recommend a "Do Not Pass" recommendation on House Bill 1175.

Respectfully Submitted,
Landis Larson
North Dakota AFL-CIO President

Associated General Contractors of North Dakota



422 North 2nd Street, PO Box 1624, Bismarck, North Dakota 58502 • Phone: 701-223-2770 • FAX: 701-223-6719 • www.agcnd.org

Testimony HB 1175 House Industry Business & Labor Committee January 27, 2021

Mr. Chairman and members of the House Industry, Business, & Labor Committee, my name is Russ Hanson of the Associated General Contractors of North Dakota. AGC of ND is a 400-member association which has been in existence since 1951. Our membership consists of all aspects of commercial construction - highway contractors, vertical contractors, civil/heavy, specialty contractors, subcontractors as well as material and equipment suppliers.

I appreciate the opportunity to submit testimony today and would like to offer our association's support of HB 1175 and other efforts to provide COVID Liability protection.

We hoped Congress would implement this on the federal level to create a national standard. Obviously, that didn't occur, so the individual states are deliberating legislation. It is my understanding HB 1175 is similar to legislation being considered in a number of states.

Construction, like so many other businesses, worked hard to stay in operation during this pandemic and we were successful. Construction never took a major pause in 2020 nor thus far in 2021. With that, businesses need protection from frivolous civil liability lawsuits when we, amongst others, have acted in good faith and followed applicable COVID 19 regulations/orders to keep employees safe while continuing to provide the essential service our industry provides. We believe HB 1175 provides that.

Thanks for the opportunity to comment on HB 1175 and we request your consideration for a due pass recommendation. If you have any questions, I am a regular in the Capitol hallways and happy to have a subsequent conversation.

BUILD WITH THE BEST





House Industry Business & Labor Committee – HB 1175

Representative Mike Lefor, Chair

January 27, 2021

Chairman Lefor, Members of the Committee:

My name is Brian Ritter and I'm President of the Bismarck Mandan Chamber EDC. Please accept this testimony on behalf of our organization's approximately 1,200 members in support of HB 1175.

Over the past year, Bismarck-Mandan businesses have adjusted to a 'new normal' brought about by COVID-19. This includes implementing new policies, creating new business practices and adapting to new federal and state regulations. Despite all of their hard work, many of our members have a growing concern that continued COVID-19 infections may make them vulnerable to civil liability lawsuits.

We are proud to join a coalition of more than 25 business organizations from around the State in support of HB 1175, which offers:

- Businesses protection from civil liability lawsuits when they acted in good faith and followed applicable COVID-19 laws and regulation.
- Protection for health care facilities and health care providers who responded quickly to the COVID-19 pandemic with uncertain guidance.

- Assistance to manufacturers who quickly adapted to meet the demands for PPE, ventilators and more brought on by the COVID-19 pandemic.

Our organization's 2021 Legislative Agenda states that the Chamber EDC will, "*Support legislation that provides employers liability protection if they follow federal and state guidance for re-opening and establishing safety practices, including adverse employment actions.*" HB 1175 does just that and consequently, we fully support it.

Thank you for your consideration.



3155 Bluestem Dr #378, West Fargo, North Dakota 58078 • Phone (701)223-4106 •
www.ndgrocers.com

Chairman Lefor, and Members of the Industry, Business, and Labor committee

RE: HB 1175

The North Dakota Grocers Association (NDGA) represents the retail grocers, suppliers, and wholesalers in North Dakota. Our membership includes over 125 grocers and over 80 vendors/suppliers located throughout our state. NDGA supports passage of HB 1175.

Last spring COVID-19 drastically changed our industry. We were designated as “essential businesses” which required us to stay open to serve the needs of the public. Our industry like many others were not prepared to completely change to a new retail environment. State and Federal guidelines were confusing and many times conflicting with each other. The rules would change week to week and sometimes day to day. Our employees and customers were concerned about their safety, our vendor supply chains were stretched to the point that many items were out of stock. NDGA along with the National Grocers Association immediately started to sort through the volumes of guidelines from the CDC and our North Dakota state agencies. Materials were developed and sent to members so that they could use “best practices” to help control the spread of the virus. Slowly our efforts paid off and employees and customers came to trust that we were doing all we could to safely stay open and provide for our customers.

HB 1175 COVID-19 Liability Protection is legislation that recognizes the unique circumstances of the pandemic. Its provision of protecting businesses and industries, that were tasked with staying open, from unwarranted lawsuits recognizes the efforts businesses made to provide needed goods and services.

NDGA request that the ND House -Industry, Business, and Labor committee vote DO PASS on HB 1175.

Thank you

A handwritten signature in black ink, appearing to read "John Dyste", is written over a horizontal line.

John Dyste

President

North Dakota Grocers Association

TESTIMONY OF RICK CLAYBURGH, PRESIDENT AND CEO OF THE NORTH DAKOTA BANKERS ASSOCIATION IN SUPPORT OF HOUSE BILL NO. 1175

**HOUSE BILL NO. 1175
CREATION AND ENACTMENT OF TITLE 32, N.D.C.C.
RETROACTIVE BUSINESS IMMUNITY FROM COVID-19 LIABILITY CLAIMS**

North Dakota Bankers Association lends its support to [HB 1175](#), which protects businesses from civil liability lawsuits for their decisions made during the COVID-19 pandemic.

First, banks may have been more prepared than most businesses. Back in 2007, when the Avian flu was a topic, banks developed pandemic preparedness plans that would minimize the potential adverse effects of a pandemic. Before COVID-19 was declared a pandemic, the North Dakota Department of Financial Institutions issued a [memorandum](#) directing banks to review those preparation plans.

In March 2020, the Cybersecurity and Infrastructure Security Agency (CISA) issued guidance identifying financial services sector workers as essential critical infrastructure workers during the COVID-19 emergency.¹ Essential workers included those needed to process and maintain systems for processing financial transactions and services; those needed to provide consumer access to banking and lending services; and those supporting financial operations. At the time, U.S. Treasury Secretary Steven T. Mnuchin stated: “The American people need access to financial sector services, and State and local governments must ensure the continuity of critical financial sector functions. Everyone should follow guidance from the Centers for Disease Control and Prevention as well as State and local officials regarding strategies to limit disease spread.”²

While open, North Dakota banks have done just that. They were there to make sure their customers had what they needed and made special accommodations for their customer throughout the pandemic. Banks took all of the precautions they could to protect their customers and their employees while continuing to provide continued financial services, loans and support to their customers and communities. Banks provided closed or reduced services by providing drive-up only and requiring other services to be provided by appointment. Moreover, banks were essential to the survival of other North Dakota businesses, issuing more than \$1.7 billion in PPP loans during the pandemic.³

North Dakota banks did their best and we are proud of what they have done for our communities. NDBA supports HB 1175 because despite our banks’ best efforts, no business can fully prepare for or take control of a pandemic. This law would protect our North Dakota banks from frivolous lawsuits while still providing protecting for those who are wrongfully harmed.

¹ Identification of Essential Critical Infrastructure Workers During the COVID-19 Response Efforts, FIL-25-2020, March 26, 2020, available at <https://www.fdic.gov/news/financial-institution-letters/2020/fil20025.html>; SR-20-6: Identification of Essential Critical Infrastructure Workers in the Financial Services Sector During the COVID-19 Response, available at <https://www.federalreserve.gov/supervisionreg/srletters/SR2006.htm>.

² Statement by Secretary Steven T. Mnuchin on Essential Financial Services Workers, available at <https://home.treasury.gov/news/press-releases/sm956>.

³ <https://www.grandforksherald.com/news/government-and-politics/6565412-North-Dakota-companies-got-more-than-1.7-billion-in-PPP-loans-during-pandemic>; <https://www.washingtonpost.com/business/2020/05/15/north-dakota-small-business-ppp-coronavirus/>.

HB 1175
House IBL Committee
January 27, 2021

RE: North Dakota Concrete Council – Support of HB 1175

Chairman Lefor and members of the committee,

When the COVID-19 crisis began in early 2020, the construction and construction materials sectors safely, quickly and effectively rolled up their collective sleeves and went to work to keep the United States economy rolling to the best of its ability. Here in North Dakota, we were fortunate to be able to operate with safeguards but no shutdowns. Construction is essential.

The safety of our workforce is the top priority for members of the North Dakota Concrete Council. Following local and federal guidelines, as well as industry-developed safety best practices, and employing extra precautions recommended by the Center for Disease Control and Occupational Safety and Health Administration, our members were able to provide well-paying jobs to thousands of North Dakotans at a time when many other businesses were struggling to keep workers employed or were shutting down.

Our members acted in good faith to protect our workforce and the general public while conducting business. We are asking for safe harbor from COVID-19 related lawsuits that have been cropping up across the country.

Over 30 states have passed COVID-19 liability protection. North Dakota needs to follow suit and pass legislation that holds poor decisions and ill intentions accountable while protecting businesses that strive to meet or exceed public health regulations.

On behalf of the members of the North Dakota Concrete Council and our industry, we urge a DO PASS recommendation on HB 1175.

Respectfully submitted,



Art Thompson
Executive Director, NDCC

About

The North Dakota Concrete Council is comprised of ready-mix concrete production companies, cement manufacturers, raw material suppliers, and concrete pavement contractors throughout the state. All totaled, the production and distribution of concrete is a \$100 million annual industry for the state; factor in the placement aspect and the industry provided conservatively \$500 million of economic impact. Ready-mix concrete production companies are locally operated facilities with a limited-service area due to the perishable nature of our product. Unlike other specialized industries, we provide economic impact throughout every corner of the state and we employ thousands North Dakotans.



Chamber of Commerce

January 25, 2021

House Industry, Business, and Labor Committee

North Dakota State Capitol

Bismarck, ND 58501

Dear Committee Members,

On behalf of GNDC, I am writing to express our support of HB1175-COVID-19 Liability Protection. The Hazen Chamber of Commerce believes this piece of legislation to play a vital role in maintaining and protecting businesses owners, property owners and tenants in North Dakota from any insubstantial civil liability lawsuits while acting in good faith and following COVID-10 laws, guidelines and orders. Furthermore, this bill will recognize businesses and organizations who have worked diligently to stay open and provide goods and services during this pandemic. Showing support to local businesses will further the confidence for owners and consumers in return. For these reasons, the Hazen Chamber of Commerce extends their support to HB1175-COVID-19 Liability Protection.01

Sincerely,

A handwritten signature in black ink that reads "Antoinette Heier". The signature is written in a cursive style.

Antoinette Heier
Executive Director Hazen Chamber of Commerce
Hazen, North Dakota



AMERICAN
KENNEL CLUB®

3453

Phil M. Guidry, J.D.
Director, Policy Analysis
Government Relations

Tuesday, January 26, 2021

North Dakota House Industry, Business and Labor Committee
State Capitol
600 East Boulevard
Bismarck, North Dakota 58505-0360

RE: AKC Supports HB 1175

Chairman Lefor and Members of the House Industry, Business and Labor Committee:

The American Kennel Club (AKC) writes on behalf of our nine AKC dog clubs and the thousands of responsible dog owners in North Dakota to express support of House Bill 1175, which you are scheduled to consider on Wednesday, January 27, 2021.

As you may know, the American Kennel Club was founded in 1884 and is the world's largest purebred dog registry and the only not-for-profit purebred dog registry devoted to the health and wellbeing of all dogs. The AKC, along with our North Dakota local dog clubs, all of which are non-profit organizations, are dedicated to promoting responsible dog ownership and breeding throughout the state, including hosting dog events such as breed conformation shows, field trials, obedience trials, and other performance events that focus on a dog's ability to perform jobs for which its breed was originally developed. In 2019, the AKC licensed and sanctioned 76 events in North Dakota, in which more than 7,700 dogs participated.

Last year, in an effort to ensure the safety of exhibitors and animals, the American Kennel Club provided our local clubs with extensive procedures to be used in conjunction with U.S. Centers for Disease Control and state guidelines to follow when hosting events and shows. The ability for local clubs to host events is crucial, as they generally rely on competitor entry fees as their primary source of revenue. However, due to both gathering restrictions that were imposed in 2020 and concerns that a competitor or volunteer's exposure to COVID-19 may leave them financially responsible for such exposure, local non-profit dog clubs were unable to host events throughout much of last year. Without conducting events to earn revenue and without reasonable protections from liability exposure, many clubs are facing uncertain, even existential, futures because of COVID-19. The AKC believes HB 1175 represents a reasonable step that would help address these concerns and free organizations from unreasonable liability exposure while not protecting malicious actions or those intended to cause harm. For these reasons, we support HB 1175 and encourage its passage.

Thank you for your time and consideration. I would be pleased to further discuss our position with you at your convenience. I can be reached at 919-816-3503 or phil.guidry@akc.org.

Sincerely,

Phil M. Guidry, J.D.
Director, Policy Analysis

Founded in 1884; a not-for-profit corporation

8051 Arco Corporate Drive Raleigh, NC 27617 Tel 919-816-3600 www.akc.org



3469

North Dakota Association of REALTORS®

To advocate for the success of our members in partnership with our local Associations and the National Association of REALTORS®

January 26, 2021

Chairman Lefor and Members of the House Industry, Business and Labor Committee, my name is Jill Beck and I am the CEO for the North Dakota Association of REALTORS® (NDAR). Our membership consists of more than 2,100 REALTORS® and more than 250 Business Partner members in the state of North Dakota.

We support the passage of HB 1175 and are happy to be part of the twenty-five plus organizations that have joined in the coalition.

Last spring, as the pandemic started, we did not know where our industry would head as real estate is typically a business with face-to-face contact from all aspects starting with the initial client contact with a REALTOR® to the closing table and everything in between. We were happy that real estate was able to keep moving our economy forward during this time and did not have to shut down business. State and federal guidelines were put in place (sometimes changing daily), we created some of our own guidance for our members as well as best practices. There were drive up closings for those that got to the closing table. Title workers, bankers, and REALTORS® dressed according to the weather and met their clients in the parking lot to get the properties closed, all while practicing social distancing guidelines.

While some members and consumers opted for the virtual showings and open houses through video there were still those that wanted to see the homes in person. Guidelines were put in place concerning who could be in the home, how many at a time, instructions that masks had to be worn and who could be opening and closing doors and closets. Our members were adaptable at a time when it was needed while following safety protocols.

Safety of our members and the clients they serve is a top priority. HB 1175 COVID Liability Protection bill is needed, joining thirty plus other states that have it implemented, that protects businesses from those that made (make) poor decisions and are out for frivolous lawsuits.

Thank you for your time and on behalf of our 2,200 members and our industry, we strongly urge a DO PASS on HB 1175.

Respectfully Submitted,

NORTH DAKOTA ASSOCIATION OF REALTORS®

A handwritten signature in black ink that reads "Jill Beck". The signature is written in a cursive, flowing style.

Jill Beck, CEO

318 W. Apollo Ave. | Bismarck, ND 58503

office: 701-355-1010 | toll free: 800-279-2361 | fax: 866-665-1011

info@ndrealtors.com | www.ndrealtors.com





House Bill 1175

Presented by: Barry Haugen
President
Independent Community Banks of North Dakota (“ICBND”)

Before: House Industry, Business and Labor Committee
Representative Mike Lefor, Chairman

Date: January 27, 2021

Chairman Lefor and members of the House Industry, Business and Labor Committee. For the record, my name is Barry Haugen and I am President of the Independent Community Banks of North Dakota (ICBND). ICBND membership totals nearly 60 independent community banks throughout our state. ICBND strongly supports HB 1175 and requests a “Do Pass” recommendation from the committee.

COVID-19 is a highly communicable disease that quickly spread across the globe including North Dakota. During this very stressful and uncertain pandemic, every community bank in North Dakota has worked hard to stay open and provided essential financial services that we all rely upon. The goal of this bill is to provide needed protection and clear up any uncertainty during these difficult times as it relates to frivolous lawsuits due to the COVID-19 pandemic. Community banks have continued to provide an essential service to the citizens of North Dakota and those institutions have taken every possible precaution to protect their employees and customers and visitors to their institutions. Having said that, all risks cannot be eliminated. Community banks and other businesses in our state who did provide these essential services should not be penalized for serving that obligation.

House Bill 1175 seeks to do the following:

- Protect business owners, property owners and tenants from frivolous civil liability lawsuits who acted in good faith and followed COVID-19 applicable laws, regulations and executive orders issued by the federal government and the state;
- Not cover business owners, property owners, and tenants that acted with malice and or total disregard of the laws during the COVID-19 pandemic;
- Specifically address health care facilities and providers because they were asked to respond quickly with uncertain guidance and limited resources; and
- Address manufacturers that adapted quickly to meet demands during the pandemic. They were called to produce personal protective equipment (PPE), ventilators, hand sanitizer, and other health related products to combat the pandemic that they wouldn’t normally produce.

Chairman Lefor and members of the House Industry, Business and Labor Committee, ICBND respectfully requests a “Do Pass” recommendation for House Bill 1175. Thank you for your time and consideration.



House Industry, Business and Labor Committee

IN OPPOSITION- HB 1175

January 27, 2021

Janelle Moos, AARP North Dakota

jmoos@aarp.org – (701) 355-3641

Chair Lefor and Members of the House Industry, Business and Labor Committee-

AARP North Dakota, on behalf of our 84,000 members and all older North Dakotans, we are sharing our strong opposition to HB 1175 to grant immunity related to COVID-19 for healthcare facilities and nursing homes, assisted living facilities, and other long-term care (LTC) facilities. AARP has long fought for the rights of residents in nursing homes and other residential care facilities and to ensure their health, safety, quality of care, and quality of life. This includes the right of residents and their families to seek legal redress through the courts to hold facilities accountable when residents are harmed, neglected, or abused.

Nursing homes and other LTC facilities play an important role in America's long-term services and supports (LTSS) system. There are approximately 5,000 North Dakota residents in LTC facilities.¹ During this time of pandemic, nursing homes and other residential care facilities face unprecedented challenges, and tragically, over 835 deaths have occurred in long-term care facilities in North Dakota, or about 60% of the total deaths in the state due to COVID-19.

While there may be some circumstances beyond facilities' control for which they should not be held responsible, it is essential that long-term care providers, as well as health care providers more broadly, remain responsible for any negligent actions to ensure long-term care residents have some protection and opportunity for redress.

Over the course of the pandemic, most inspections of nursing homes have been suspended, family in-person visits are effectively prohibited except in limited circumstances, and in-person long-term care Ombudsman visits are similarly restricted, there are fewer eyes observing what is happening in facilities. Residents of nursing homes and other LTC facilities may be unable to advocate for themselves and now have limited access to people who can advocate on their

¹ <https://www.kff.org/other/state-indicator/number-of-nursing-facility-residents/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

behalf. This lack of oversight is alarming, and requires us to ensure that, when all else fails, residents and their families will still have access to the courts to seek redress.

Pursuing a nursing home neglect or abuse case in court is not easy to do. In North Dakota, there are already many significant barriers to accessing the courts including being unaware of their rights, access to legal services, physical barriers such as lack of transportation and living on a fixed income. No family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. It is always an option of last resort, but it must remain an option.

North Dakota should not strip away the rights and protections of residents. Nursing homes and other LTC facilities should know they will continue to be held responsible for providing the level of quality care that is required of them, and for which they are being compensated. This also incentivizes facilities to self-correct by addressing problems to improve care.

AARP North Dakota appreciates your consideration of these views and urges you to reject HB 1175. Families all across North Dakota are looking to you to protect the health and safety of their loved ones living in nursing homes and other residential care facilities.

Thank you.



Bill Number	Name	Lobbyist #	Support	Oppose	Neutral
HB 1175	Jean Schafer, Basin Electric	8	X		

We stand in support of this bill and would reiterate the testimony provided by the Greater North Dakota Chamber.



House IBL Committee

HB 1175

January 27, 2021

Chairman Lefor and Committee Members, I am Courtney Koebele, the Executive Director of the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents, and medical students.

NDMA supports HB 1175. HB 1175 supports our health care workforce by reducing unreasonable liability exposure, as current liability standards do not adequately contemplate the extreme circumstances under which clinical care was being provided during this pandemic.

The COVID-19 pandemic created a public health emergency that is rapidly altering the provision of health care services across the country based on guidance and recommendations from the Centers for Disease Control and Prevention and other federal, state and local government directives. Although necessary, these measures have raised concern about the potential liability of physicians and other health care professionals who are responding to the pandemic and continue to provide high-quality patient care while adhering to these guidance and recommendations. As a result, physicians face an increased threat of medical liability lawsuits due to circumstances that are beyond their control.

This is an issue important to physicians nationwide, because during the crisis, physicians were putting themselves at risk every day while facing shortages of medical supplies and safety equipment. Physicians are susceptible to the threat of unwarranted lawsuits as they continue heroic efforts to treat patients with COVID-19 while meeting the needs of other non-COVID-19 patients. These lawsuits may come months or even years after the current ordeal ends, when the public memory of their sacrifices may be forgotten.

This bill does nothing to alter the standard of care owed to patients in North Dakota; instead, it heightens the degree of negligence required to prove liability relative to that standard. As a result, patients will continue to be assured of the best possible care in light of the circumstances, while healthcare professionals will be assured that their dutiful efforts to provide care in these trying times will be recognized through commensurate liability protections.

There are state and federal liability protections that exist for volunteers responding to this pandemic, however, those liability protections do not apply to most paid physicians. Many states have provided similar liability protection through Executive Order, while other states have enacted statutes similarly limiting physician liability in a public health emergency. This legislation strikes an appropriate balance between supporting physicians and protecting patients.

NDMA urges a DO PASS recommendation on HB 1175.

Thank you.

Courtney Koebele
Executive Director
North Dakota Medical Association

Testimony in Favor of HB 1175
Rudie Martinson, Executive Director, ND Hospitality Association
Before the House Industry, Business, and Labor Committee
January 27, 2021

Chairman Lefor and members of the House Industry, Business, and Labor Committee,

My name is Rudie Martinson, and I appear before you today as Executive Director of the ND Hospitality Association. We are North Dakota's trade association for the restaurant, lodging, and retail beverage industries. We appreciate the opportunity to stand before you today and express our support for House Bill 1175.

We are happy to join our friends in the broader business community to express support for this policy. As you know, the hospitality industry suffered disproportionately during 2020 due to the COVID-19 pandemic – cancelled travel, cancelled events, and government policy limiting our ability to operate normally were all factors harmful to our bottom line. Our industry, like many others, responded to rapidly changing regulations and guidelines at all levels of government – all while maintaining the safety of our employees, customers, and vendors.

HB 1175 represents an opportunity for the legislature to join 30 other states in providing critical protection for the business community that congress has so far been unable to provide at the national level.

The passage of this legislation is critical to continue to foster economic recovery after the pandemic for all North Dakota businesses, including those in the hospitality sector. For these reasons, the ND Hospitality Association supports HB 1175, and asks the committee for favorable consideration of a “do pass” recommendation.

Thank you.



3720

January 27, 2021

FMWF Chamber Support for HB 1175

Chair Lefor, Members of the House IBL Committee,

For the record my name is Katie Mastel, and I serve as the Government Affairs & Advocacy Manager at the Fargo Moorhead West Fargo Chamber of Commerce (The Chamber). On behalf of our over 2,000 Chamber member businesses, **we urge support for business liability protection as reflected in House Bill 1175.**

Businesses across North Dakota of all sizes and industries have worked tirelessly to protect employees and customers from the threat of COVID-19. Often following burdensome precautions, businesses put the health and safety of others in front of their business's economic stability. As businesses continue to navigate through, and enter into, the recovery phase of the COVID-19 crisis, the concern of frivolous lawsuits claiming COVID-19 related damages is looming. Masses of lawsuits in a time of economic recovery would be detrimental to many businesses and our overall economy. The threat frivolous lawsuits impose particularly on our small businesses is damaging revenue losses, or in some cases, closure.

Many businesses, in good faith, followed public health guidelines to the best of their ability, and as such, deserve the assurance that their responsibility in taking those appropriate measures relieves them from facing additional financial hardships due to frivolous lawsuits.

As session began, our members were very vocal about their need for liability protection from unwarranted COVID-19 lawsuits as they recognize the sizeable threat that these lawsuits carry. On behalf of our over 2,000 members, our Chamber is in strong support of business liability protection.



It is imperative to secure this protection for our businesses who worked so hard to protect the health and safety of their employees and customers in the toughest of times. **We support business liability protection as reflected in House Bill 1175.** Thank you for your consideration.

Sincerely,
Katie Mastel

**HB 1405
NDACP Testimony
House Industry Business and Labor Committee
Human Resources Division
Hon. Mike Lefor, Chairman
January 27, 2021**

Chairman Lefor and members of the House Industry Business and Labor Committee, good morning, and thank you for this opportunity. I am Bruce Murry, Executive Director of the North Dakota Association of Community Providers (NDACP.org). NDACP is the membership organization of 30 licensed providers of services to North Dakotans with developmental disabilities (DD). NDACP supports HB 1405 as a priority in serving people with DD.

HB 1405 seeks to extend an opportunity your committee supported last session to give people with disabilities a better chance at employment. The effort was interrupted just as people were starting to work their way into the application process with the outbreak of the COVID 19 emergency. We thank Representative Steiner and the other sponsors for this bill.

Vocational Rehabilitation Division recently reached out to The Arc of North Dakota and NDACP and pointed out a language change that could make the bill more effective. NDACP respectfully requests the following amendment:

On page 1, line 23, after the words “customized employment” insert the words “supported employment” and renumber accordingly.

We believe this bill, especially as amended, will increase employment prospects for people with disabilities. This is especially important if the new Presidential administration continues with its efforts to abolish all sub-minimum wage employment and to raise the minimum wage. NDACP would find it tragic if some people with disabilities are unable to be employed at all.

My colleague, Angela Dinius, and I are both happy to answer any questions that may arise about HB 1405, NDACP, its members’ services to people, and our priorities. Our contact information is below.

Thank you again to the sponsors and for your kind attention.



Bruce Murry
Executive Director

Phone: (701) 390-1021
Cell: (701) 220-4933

brucemurry@ndacp.org
NDACP.org

1500 E Capitol Ave
Suite **205**
Bismarck, ND 58501



1500 E Capitol Ave
Suite 205
Bismarck, ND 58501

Angela Dinius

Workforce
Development Director

Phone: (701) 204-4837
Cell: (701) 226-4493

workforce@ndacp.org

**HB1175**

House Industry, Business, and Labor Committee

January 27, 2021

Mark Hagerott, Chancellor, NDUS

701.328.2963 | mark.hagerott@ndus.edu

Chair Lefor and Committee Members: My name is Mark Hagerott, and I serve as the Chancellor of the North Dakota University System. I am here today on behalf of the North Dakota University System and the presidents of its eleven institutions in support of HB 1175. However, I am not here on behalf of the State Board of Higher Education, as it has not met since this bill was introduced.

The last ten months has been a difficult time for everyone in the state, but I am happy to report that the North Dakota University System has met the challenges posed by the COVID-19 pandemic, including the resumption of in-person education from the start of the 2020-21 academic year. We were able to achieve this feat thanks to the hard work of everyone who works in and for the University System, and especially with the financial support approved by the Emergency Commission and the Budget Section, and I thank you for your support.

Despite everything that we have accomplished since the beginning of the pandemic, the NDUS still faces significant risk related to the decision to re-open our campuses and adjust to this new normal. The campuses have had to implement new policies and procedures designed to limit the risk of spreading COVID-19 and adapted to an ever-changing set of federal regulations. However, despite all of this hard work, NDUS institutions still face the risk of civil lawsuits that could undermine all the success we have seen.

In addition to the benefits to private businesses that many others have discussed, HB 1175 will provide immunity from civil liability for potential exposure to COVID-19 based on the decision to re-open, so long as the actions were taken in good faith and followed applicable COVID-19 laws and guidelines – which the NDUS and its institutions have at all times. When combined with several other related pieces of legislation that is before the legislature this session, including HB 1271, the NDUS will have protection from civil liability which could derail its success.



Thank you for your consideration of HB 1175. I respectfully request that the members of the Committee vote for a “do pass” recommendation, and I stand ready to answer your questions. Thank you for your time.

**TESTIMONY OF
KAYLA PULVERMACHER
TO THE
HOUSE INDUSTRY, BUSINESS AND LABOR
ON
HB 1175
January 26, 2021**

Chairman Lefor:

My name is Kayla Pulvermacher, and I represent the members of Dakota Credit Union Association (DakCu). DakCu is the professional trade association serving 492,000 members in 71 credit unions with 230 branches between North Dakota and South Dakota. We support HB 1175.

The COVID-19 pandemic has been challenging for everyone during the past, including credit union members. This past year, during the COVID-19 pandemic, credit unions across the Dakotas banded together to meet our members' changing needs. In response to these unprecedented circumstances many Dakota credit unions offered PPP small business loans and other loan relief, waived fees, and participated in many different forms of community support. Dakota Credit Unions exist to serve their members in good times and in times of trouble. That is the credit union difference.

Credit unions are businesses that have the added responsibility of protecting their employees and members. HB 1175 simply gives businesses peace of mind. That if they follow state statute, orders, and regulations they will be protected from frivolous litigation. And most importantly, those that choose not to follow will face the consequences.

DakCu members are looking for certainty. HB 1175 will provide it.

Thank you, Mr. Chairman.

House Bill 1175
Testimony of Brady Pelton
House Industry, Business, and Labor Committee
January 27, 2021

Chairman Lefor and members of the House Industry, Business, and Labor Committee, my name is Brady Pelton, general counsel and director of government affairs for the North Dakota Petroleum Council (“NDPC”). The North Dakota Petroleum Council represents more than 650 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in support of House Bill 1175.

The COVID-19 global pandemic has created a multitude of negative impacts on North Dakota’s oil and gas industry and the business community as a whole. Cratering of worldwide oil demand coupled with continued high oil production both domestically and internationally have forced the businesses within the oil and gas sector to adjust to a new normal focused on preserving employment positions while continuing to survive ongoing market constraints. Safety has remained a top priority for the oil and gas industry throughout the pandemic, resulting in the wide adaptation of new policies influenced by federal and state regulations and designed to protect the health of employees.

Despite making these significant changes, concerns of the oil and gas industry have shifted toward protecting against the vulnerability of businesses to civil liability lawsuits. House Bill 1175 creates a safe harbor from COVID-19-related lawsuits, many of which have arisen across the country. Specifically, House Bill 1175 offers protection from frivolous civil liability lawsuits for business owners and property owners who have acted in good faith and followed applicable COVID-19 laws, regulations, and orders. Civil

accountability remains for business and property owners if actions are taken with malice and/or in total disregard of the laws in place during the COVID-19 pandemic.

Having safe harbor provisions in statute that protect businesses from COVID-19-related civil liability lawsuits is important to maintaining a stable business-friendly environment, especially during such volatile times as businesses are presently facing. We therefore urge a **Do Pass** on House Bill 1175. I would be happy to try to answer any questions.



House Industry Business and Labor Committee

01/27/21

HB 1175

Chairman Lefor and committee members, my name is Don Larson and I am speaking today on behalf of the National Federation of Independent Business (NFIB). NFIB is a non-profit, non-partisan organization and is the nation's largest small business advocacy group.

In North Dakota we represent more than 2,000 small businesses. Our average member has 10 employees and gross sales of approximately \$500,000 per year.

NFIB research shows 70% of small businesses are very concerned about liability protections. And we now have the results of the 2021 NFIB North Dakota Ballot. 92% of our North Dakota members support liability protection.

Liability protection would not be extended to those businesses exhibiting gross misconduct or negligence. Liability protection would only apply to those that follow federal, state and local guidance. Therefore, if a business makes a good faith effort to follow guidelines to safeguard employees and customers, it should be protected from frivolous lawsuits.

Small businesses are particularly sensitive to frivolous legal action. Even when doing everything correctly, simply fighting such a lawsuit could put the viability of the business in danger. These lawsuits can be extremely costly to a small business owner, financially and emotionally. The last thing our beleaguered businesses need is to fend off a costly and frivolous lawsuit. If they are still in

business, many may be one frivolous lawsuit away from closing for good, taking the livelihoods and the jobs they created with them.

This legislation is a no-brainer. Small businesses create most of the net new jobs. It only makes sense to protect them from frivolous legal action.

Thank you, Chairman Lefor and members of the committee.

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1175
2/1/2021

Business immunity from COVID-19 liability claims, provide for retroactive application & to declare an emergency.

(4:40) Chairman Lefor calls the hearing to order.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	P
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

Discussion Topics:

- Committee work

Rep Thomas moved Rep Howe's Amendment #21.0247.02001. Attachment #3874.

Rep Nehring seconded the motion.

Voice Vote. Motion carried.

Rep D Ruby moved to add a sunset clause verbally.

Rep O'Brien seconded the motion

Voice Vote Motion carried.

(4:47) End time.

Ellen LeTang, Committee Clerk



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1175

Page 4, remove lines 6 through 10

Page 4, line 11, replace "(4)" with "(2)"

Page 4, line 13, replace "(5)" with "(3)"

Page 4, line 19, replace "(6)" with "(4)"

Page 4, line 21, replace "(7)" with "(5)"

Page 4, line 24, remove "when those acts or omissions"

Page 4, remove line 25

Page 4, line 26, remove "emergency"

Renumber accordingly

21.0247.02001
Title.

Prepared by the Legislative Council staff for
Representative Howe
January 20, 2021



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1175

Page 4, remove lines 6 through 10

Page 4, line 11, replace "(4)" with "(2)"

Page 4, line 13, replace "(5)" with "(3)"

Page 4, line 19, replace "(6)" with "(4)"

Page 4, line 21, replace "(7)" with "(5)"

Page 4, line 24, remove "when those acts or omissions"

Page 4, remove line 25

Page 4, line 26, remove "emergency"

Renumber accordingly

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1175
2/2/2021

Business immunity from COVID-19 liability claims, provide for retroactive application & to declare an emergency.

(3:57) Chairman Lefor calls the hearing on HB 1175.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	P
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	A
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

Discussion Topics:

- Frivolous lawsuits protection.

Rep Thomas moved Do Pass as Amended. (Amendment #21.0247.02003)

Rep Stemen second.

Representatives	Vote
Chairman Lefor	Y
Vice Chairman Keiser	N
Rep Hagert	Y
Rep Jim Kasper	N
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	N
Rep Ruby	Y
Rep Schauer	A
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	N

Vote roll call taken Motion carried 9-4-1 & Rep Nehring is the carrier.

(4:08) End time.

Ellen LeTang, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1175

Page 1, line 3, after the semicolon insert "to provide an expiration date;"

Page 4, remove lines 6 through 10

Page 4, line 11, replace "~~(4)~~" with "(2)"

Page 4, line 13, replace "~~(5)~~" with "(3)"

Page 4, line 19, replace "~~(6)~~" with "(4)"

Page 4, line 21, replace "~~(7)~~" with "(5)"

Page 4, line 24, remove "when those acts or omissions"

Page 4, remove line 25

Page 4, line 26, remove "emergency"

Page 6, after line 6, insert:

"SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2023,
and after that date is ineffective."

Re-number accordingly

REPORT OF STANDING COMMITTEE

HB 1175: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1175 was placed on the Sixth order on the calendar.

Page 1, line 3, after the semicolon insert "to provide an expiration date;"

Page 4, remove lines 6 through 10

Page 4, line 11, replace "(4)" with "(2)"

Page 4, line 13, replace "(5)" with "(3)"

Page 4, line 19, replace "(6)" with "(4)"

Page 4, line 21, replace "(7)" with "(5)"

Page 4, line 24, remove "when those acts or omissions"

Page 4, remove line 25

Page 4, line 26, remove "emergency"

Page 6, after line 6, insert:

"SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2023, and after that date is ineffective."

Renumber accordingly

2021 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1175

2021 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Fort Union Room, State Capitol

HB 1175
3/10/2021 AM

relating to business immunity from COVID-19 liability claims

Chair Klein opened the hearing at 8:29 a.m. All members were present. Senators Klein, Larsen, Burckhard, Kreun, and Marcellais.

Discussion Topics:

- Guidelines for COVID-19 put in place by the state
- Businesses in relation to COVID-19 guidelines

Representative Michael Howe introduced the bill and submitted testimony #8470 [8:30].

Troy Sieble, Chief Deputy for the Attorney General testified in favor [8:34].

Arik Spencer, Greater North Dakota Chamber testified in favor and submitted testimony #8546 [8:37].

Shane Goettle, Attorney for Greater North Dakota Chamber testified in favor [8:47].

Shelly Peterson, President of the ND Long Term Care Association testified in favor and submitted testimony #8545 [8:49].

Michael LeBeau, Health Policy Consortium testified in favor and submitted testimony #8170 [8:59].

Blaire Thoreson, ND Hospitality Association testified in favor and submitted testimony for Rudie Martinson #8318 [9:11]

Don Larson, National Federation of Independent Business testified in favor and submitted testimony #8501 [9:12].

Kim Heidt, STEFFES testified in favor and submitted testimony #7551 [9:15].

Katie Mastel, FMWF Chamber of Commerce testified in favor and submitted testimony #8489 [9:17].

Josh Askvig, ND AARP testified in opposition and submitted testimony #8394 [9:18].

Landis Lars, ND AFLCIO testified in opposition and submitted testimony #8451 [9:25].

Jaclyn Hall, North Dakota Association for Justice testified in opposition [9:29].

Nathan Severson, Business Owner and Attorney in West Fargo ND testified in opposition and submitted testimony #8472 and 8473 [9:38].

Additional written testimony:

7525, 7630, 7644, 7663, 7703, 7811, 7825, 7836, 8070, 8221, 8249, 8251, 8273, 8279, 8384, 8391, 8407, 8466, 8489, 8496, and 8512.

Chair Klein ended the hearing at 9:41.

Isabella Grotberg, Committee Clerk

Mr. Chairman, members of the committee. My name is Michael Howe, House of Representatives from District 22.

I'm bringing forward HB 1175 on behalf of the businesses in my District and businesses across the state of North Dakota.

Throughout this global pandemic, North Dakota businesses across all industries have worked hard to stay open and have provided essential goods and services that we all rely on.

The goal of HB 1175 is to provide needed protection and clear up any uncertainty during these difficult times as it relates to frivolous lawsuits due to the COVID-19 pandemic.

This bill will

- Protect business owners, property owners and tenants from frivolous civil liability lawsuits who acted in good faith and followed COVID-19 applicable laws, regulations and executive orders issued by the federal government and the state;
- Specifically address health care facilities and providers because they were asked to respond quickly with uncertain guidance and limited resources; and
- Address manufacturers that adapted quickly to meet demands during the pandemic. They were called to produce personal protective equipment(PPE), ventilators, hand sanitizer, and other health related products to combat the pandemic that they wouldn't normally produce.

The protections in this bill WILL NOT cover business owners, property owners, and tenants that acted with malice and/or total disregard of the laws or executive orders during the COVID-19 pandemic.

Mr Chairman and Members of the committee, this bill has the support of hundreds of North Dakota businesses from many different industries, as well as our state's healthcare industry. These same folks asked Congress back in May for this protection on a federal level. As Congress often does, they didn't act. State Legislatures from all over the country have instituted nearly identical protections for their business community. It's time we do our part to protect North Dakota and keep our state one of the most business friendly in the Country.

Mr Chairman, I know there will be several organizations and businesses that will be speaking after me and can add why this is needed. You will see this has an emergency clause and is retroactive to January 1, 2020.

The House IBL committee did add a 2-year sunset clause. There are some problems with that 2-year sunset. The statute of limitations I believe is 6-years in these types of Civil Cases. So I'd ask the committee to change the 2 year sunset to 6 years.

Greater North Dakota Chamber
HB 1175
Senate Industry, Business, and Labor Committee
March 10, 2021

Mr. Chairman and members of the Senate Industry, Business, and Labor Committee, my name is Arik Spencer, President and CEO of the Greater North Dakota Chamber. GNDC is North Dakota's largest statewide business advocacy organization. We are affiliated with the US Chamber of Commerce and the National Association of Manufacturers and stand in strong support of House Bill 1175. We also thank Representative Howe for introducing this critical legislation.

Not only does GNDC support HB 1175, but so does a coalition of nearly 30 statewide and regional business groups and medical providers. Most coalition members are either testifying today or have submitted written testimony for your review. The full list of coalition members can be found on the final page of my handout. The size and breadth of industry engagement underscore how important this issue is to North Dakota's business community.

Since the onset of the pandemic, the business community has faced many challenges. These include retaining the state's workforce, navigating assistance programs, maintaining operations, responding to restrictions on hours of operations and government ordered closures. Last but certainly not least has been trying to keep employees, customers, and stakeholders safe in the face of rapidly changing federal, state, and local laws, rules, regulations, orders, and guidelines. In short, like everyone else, businesses have been doing their best to navigate safely through the pandemic.

Last May, when the future of many business sectors was uncertain, the United States Chamber of Commerce and state chambers across the country, including GNDC, were calling on Congress to provide COVID-19 civil liability protections. This shield was requested to protect businesses from frivolous lawsuits while allowing poor decisions and ill intentions to be punished. Although the U.S. House and Senate could not compromise and pass these liability protections, we have heard from North Dakota business leaders repeatedly that these protections are still critically needed.

As of January 2021, over thirty states have passed COVID-19 business liability protection, with many others considering legislation as we speak. HB 1175 is based on model legislation passed in Iowa and offers broad and

robust protection from frivolous lawsuits. Without your action, businesses right here in North Dakota, trying to do the right things, remain unprotected and exposed to frivolous civil lawsuits at a time when some law firms are actively looking for COVID-19 clients in North Dakota as we speak.

After first narrowing civil actions to cases involving intention of harm or malice in general, HB 1175 then layers in four other main components – targeted safe harbor protection, immunity defense for owners of premises, manufacturer protection, and a special section for medical providers which are held to a higher standard.

The broad safe harbor provision (page three, lines 16-21) offers civil liability protection for substantial compliance with COVID-19 related federal or state statute, regulation, or any order. The term "orders" includes executive orders, state health orders, or orders issued by a political subdivision or local public health unit unless the person's conduct was willful. The term "Person" used in this legislation applies to more than just business. N.D.C.C. 1-01-49 defines "Person" as any individual, organization, government, political subdivision, or government agency. This means that these protections apply to any individual, business, church, or school, to name several examples. I would note that this provision does not include the requirement to follow guidance. Due to the pandemic's flux, guidance frequently changed in response to changing conditions and knowledge. To further demonstrate this, at times, the state did not even follow its guidance.

The second component (page three, lines 8-15) limits property owners' and tenants' civil liability unless the property owner acted with malice or intentionally exposed an individual to COVID-19 with the intent to harm.

The third component of the bill (page five) protects manufacturers that responded to the pandemic in the spirit of being a Good Samaritan. These businesses reacted quickly to adapt production lines to make personal protective equipment, ventilators, hand sanitizer, and other related products outside of normal production for the greater good. In this case, Manufacturers would be held liable if they knew these products were defective, would cause a serious potential injury, or acted with malice.

Finally, HB 1175 offers protection to health care facilities and providers who respond quickly with uncertain direction and limited resources. The bill's components related to medical providers were developed in partnership with the North Dakota Medical Association, North Dakota Hospital Association, and the North Dakota Long Term

Care Association. Representatives speaking to the necessity for these components will provide additional testimony.

While we have not previously needed liability protections for other viruses, the lawsuits that are being brought against businesses across the country compel this conversation to happen. The passage of this legislation is essential to maintain a healthy business climate and not hinder our economic recovery, which is vital for all North Dakotans. Further, this legislation will help keep costs to business down as insurance companies weigh the risk of business liability pertaining to COVID-19.

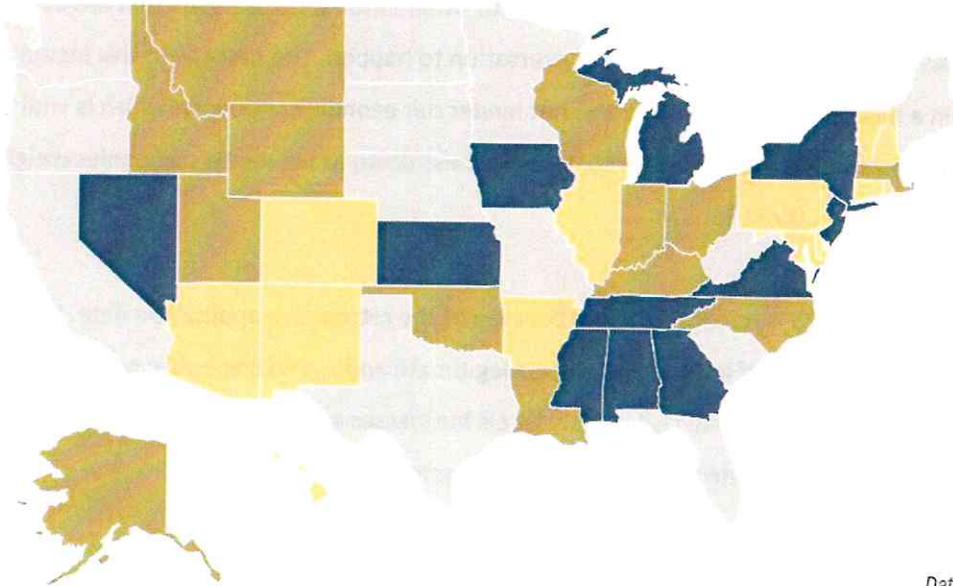
Some have claimed that HB 1175 is unconstitutional because of the retroactive application date. It is not. Case law allows retroactive application dates if it is supported by a legitimate and overriding public purpose. Certainly, the legislature weighing in on the appropriate civil liability levels businesses and others may face in response to an unprecedented pandemic is a legitimate and overriding public purpose.

Regarding the amendments to HB 1175 that have been presented.

- The exceptions called for on page five, after line 25, were at the request of the Attorney General's Office and ensure that COVID-19 liability protections do not prevent enforcement of actions related to Medicaid fraud, antitrust violations, or violations of the Unlawful Sales or Advertising Practices Act.
- The extension of the expiration date on page six is related to the statute of limitations on these types of claims, which is up to six years. When the expiration date was added in the House, it was simply to remove the language in the Century Code once it's no longer needed and was done without much discussion.

Mr. Chairman, this concludes my remarks. I urge the committee to adopt the amendments that have been provided and give a do pass recommendation on HB 1175. GNDC has retained Mr. Shane Goettle of Goettle Law to respond to any legal questions you have about this bill. In closing, I would stand for any questions you have.

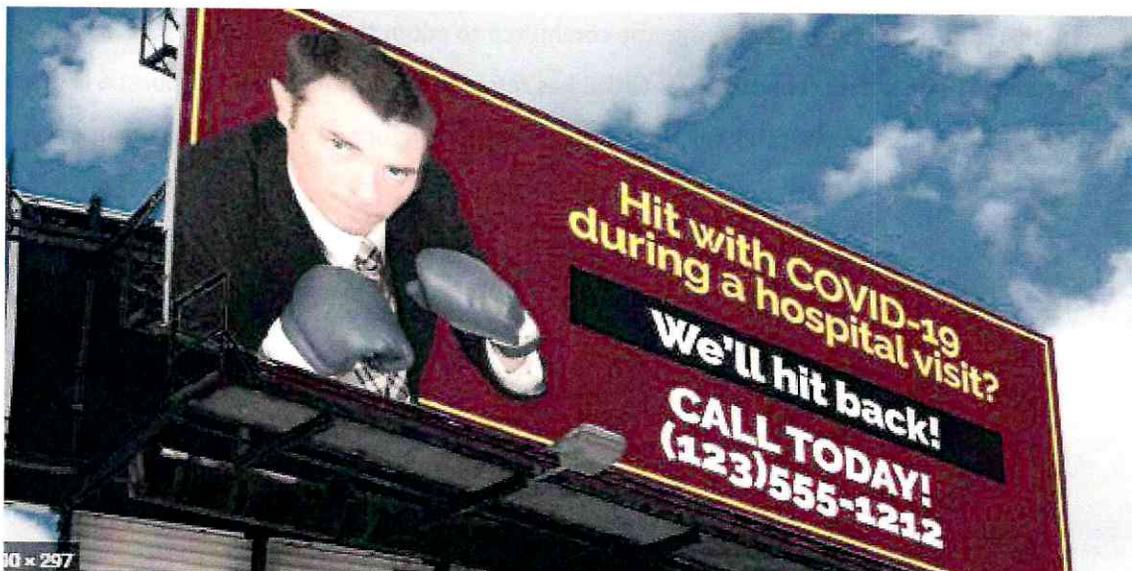
States with Liability Legislation in Place



Data as of 2/18/2021

- Executive Order
 - Legislation
 - Legislation & E.O.
- Source: American Tort Reform Association

Looking for Lawsuits



HB 1175: COVID-19 Liability Protection

Due to COVID19, North Dakota businesses adjusted to a new normal with a focus on maintaining employment positions while continuing ongoing operations. They adapted to new policies created in response to federal/state safety regulations, which often shifted and weren't black-and-white. Due to this, business leaders have a growing concern that their continued operations, despite making changes, have created a vulnerability to civil liability lawsuits. North Dakota has not created legislation that truly holds poor decisions and ill intentions accountable. ***This bill does not provide a "get out of jail free" card for bad actors; instead, HB 1175 provides a safe harbor for businesses to operate in order to serve their customers, employ their workforce, and contribute to our economy.***

A coalition of 30 organizations is calling for legislation that protects businesses and their workers. Currently, over thirty states have passed COVID-19 liability protections. HB 1175 is based on model legislation from Iowa, which has served as an example for other states. Montana and South Dakota have liability protection bills that have already passed through their chambers of origin. Claims will be diverted to North Dakota if the state falls behind others and does not pass liability protections.

Trial lawyers argue that these types of cases are so difficult that they doubt any will be filed, except in the most egregious circumstances. The liability protections in North Dakota or elsewhere would not limit claims and would not prevent attorneys from filing such.

HB 1175 specifically offers:

Protection for business owners, property owners and tenants from frivolous civil liability lawsuits who acted in good faith and followed COVID-19 applicable laws, regulations and orders

Civil accountability for business owners, property owners, and tenants if they acted with malice and/or total disregard of the laws during the COVID-19 pandemic

Protection for health care facilities and providers who responded quickly with uncertain guidance and limited resources

Help to manufacturers that adapted quickly to meet pandemic demands and produced PPE, ventilators, hand sanitizer, and/or other health-related products that were outside normal production lines

Protection to: Independent contractors, employees, school, churches, and the general public

Currently, we are aware of two legal firms in North Dakota that are shopping for clients.

HB 1175 Coalition Partners



Testimony on HB 1175
Senate Industry, Business and Labor Committee
March 10, 2021

Good morning Chairman Klein and members of the Senate Industry, Business and Labor Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent 211 assisted living, basic care, and skilled nursing facilities in North Dakota. I am here in support of HB 1175, and ask that you support the amendments proposed by the Greater ND Chamber this morning.

COVID-19 has had a devastating impact on individuals living in a congregate care setting, their families, the staff taking care of residents, and the facilities themselves. The global outbreak of COVID-19 has been traumatic unlike anything we have ever experienced in long term care. This week we reach the one year milestone of the pandemic, everyone is feeling the toll, including the dedicated facility staff members who are doing everything in their power to provide the best possible care in an extremely difficult situation. In the United States, long term care facilities have emerged as hotspots for COVID-19 outbreaks.

North Dakota long term care facilities, residents, and staff represent 9.6% of all the cases, yet bear 60% of all deaths. Of the 1448 total deaths related to COVID-19 in North Dakota, 880 were deaths in long term care. Of the 215 long term care facilities counted in the data, 170 facilities have had outbreaks, (79%). Since the beginning we have had 4012 positive resident cases and 5109 positive staff. Estimating our total number of residents today around 8000, over half of our residents had COVID-19.

NORTH DAKOTA LONG TERM CARE CASES AND DEATHS THROUGH FEBRUARY 25, 2021

Cases and Deaths	Number (%)
Total Cases in ND	99,621
Total Cases in LTC (%)	9,121 (9.6%)
Staff	5,109
Residents	4,012
Total Deaths in ND	1,441
Total Deaths in LTC (%)	877 (61%)

States with the highest percent of COVID-19 deaths occurring in long term care as of 1-14-21:

NH	74%
RI	67%
KY	66%
MN	64%
ND	60%

At the beginning and mid-summer, we thought we could beat this virus. We thought we would be spared the ravages of what some other states were experiencing. In March 2020, prior to the declaration of the public health emergency, all long term care shut down visitation, put stringent mitigation strategies in place and learned everything we could. We were distraught to see and hear what was occurring in some nursing facilities across the nation. CMS, CDC, Health Department guidance and executive orders have dictated what we should and must be doing during this pandemic. And we have relied upon the guidance and mandates as we wanted to protect every single person in our care. No one wanted to be the first case or have the first death. I do not know if facilities and staff will ever fully recover. It has been tremendously difficult to lose each resident. Facilities have fought hard to save every single person. The one single issue we can point to nationally and in North Dakota that caused our outbreaks and numbers to rise, the number of cases within the community. As the community numbers increased, so did our numbers

and deaths. We have been aggressively testing all residents and staff, with a couple of facilities having up to 50% of all staff test positive and then within the week almost all the rest of their staff. Can you imagine the panic that could set in when you provide 24 hour care and you lose the majority of your staff in one testing event? Thank God for dedicated staff and facilities, they had plans in place and worked long hours to make sure residents got the care they needed. It was not always ideal, but facilities worked overtime to try and care for every resident.

To say the least, the vast majority of facilities are financially devastated and census has dropped. People are afraid of the inherent risk of living in a long term care setting and of the visitor restrictions meant to safeguard residents. It will take a while to recover emotionally and financially. Attached to my testimony is an article, "What will the Senior Living Market Look Like for Insurers Post-Pandemic?" We have already been told that major insurance companies who provide professional and general liability are in the process of adding COVID-19 exclusions. We need your help. We need this legislation.

Long term care facilities provided essential services that were not suspended during COVID-19. Their residents and tenants did not go away when the virus started. Our heroic health care workers were there and continue to be there to provide care to residents needs despite COVID-19. COVID-19 is still present today. Although the number of cases has diminished, every day our members continue to care for the residents with COVID-19 and continue striving to protect others they serve from contracting the virus.

As you are well aware, the COVID-19 pandemic is a hundred-year event that goes far beyond anything any of us have experienced. The rapid spread, the high prevalence of negative outcomes amongst the elderly and people with underlying medical conditions, and the fact that the virus

can be transmitted by people who show no outward symptoms make our members' job in providing care exceedingly difficult.

Something that is unique to North Dakota is the age of our nursing facility residents. We care for the oldest of the old, with North Dakota often times leading the nation in the number of residents over the age of 90 in our facilities.

Facilities feel privileged to care for our greatest generation, they have contributed significantly to North Dakota's quality of life, they have helped make North Dakota great. Through the direct actions of staff, thousands of residents in our care have recovered from COVID-19, but the ones who have died, we grieve each loss.

I want to assure you we are only asking for protection so we can continue to care for North Dakotans when they need help the most. When they are unable to care for themselves. The immunity provided in this bill does not apply to an act or omission that constitutes: willful misconduct, reckless infliction of harm, or intentional infliction of harm.

Thank you for the opportunity to testify in support of HB 1175. I ask for your favorable consideration of the bill and would be happy to answer any questions you may have.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660



This article can be viewed online at: <https://www.mynewmarkets.com/articles/183707/what-will-the-senior-living-market-look-like-for-insurers-post-pandemic>

What Will the Senior Living Market Look Like for Insurers Post-Pandemic?

December 2, 2020 by Joe Levy

Property/casualty insurance for senior living facilities has taken a hit this year. The insurance market has been hardening for the last year or two, and the COVID-19 pandemic brought on a wave of new challenges that has only compounded the problem. Brokers who are working with these health care organizations should be particularly wary of increased liability and more stringent underwriting as we move into 2021.

This past year has only accelerated the pace of premium rate increases that the senior living world was already facing. Insurance companies are reluctant to provide coverage for organizations because they carry inherent risk. As a result of the intense media coverage and negative publicity directed at the senior living industry, we anticipate families are more likely to file negligence, quality of care issues or wrongful death claims as a result of COVID-19.

The expectation among insurance company executives and plaintiffs' attorneys are that the COVID-19 related liabilities are going to impact the liability market for the next several years. Even with strong risk management plans in place, senior living facilities cannot eliminate this liability altogether.

With COVID-19, the potential for liability claims could far outpace collected premiums. Paying out more in claims than they're bringing in has forced insurance companies to raise rates. Some insurance companies have elected to stop insuring these organizations altogether, which also drives up rates.

It's a supply-and-demand marketplace. When there is significantly less supply, the cost rises. Even newer carriers in this space are being hit with higher than expected claims volumes.

None of this is good news for senior living operators who, historically, have already been operating on thin margins. Over the past several months, they have taken on significant additional expenses to disinfect facilities and obtain additional personal protective equipment. Now, they are faced with the fact that most of the major insurance companies who provide professional and general liability coverage are in the process of adding COVID-19 exclusions.

This is almost certainly going to be a universal change for future policies, and brokers should start informing clients to prepare for this at their next renewal. Clients will likely be facing additional exclusions and rising rates for the foreseeable future as insurers continue to grapple with the effects of this tumultuous year and what lies ahead.

Looking Ahead

The bottom line heading into 2021 is that everything is more challenging and taking more time. The liability impact and escalating rates have clients and insurance companies determined to do their due diligence and avoid more financial fallout. Underwriters are scrutinizing risks more closely than ever. Agents and brokers need to demonstrate that their clients are meeting the insurance companies' requirements before they can secure coverage.

In order to prepare for extremely lengthy and protracted renewals, agents and brokers should be starting the process earlier than under normal market conditions. Their aim should be to be as proactive as possible. Most insurance companies are now requesting a COVID-19 questionnaire. These questionnaires ask reasonable questions about what's going on in the facility, what additional safety measures have been put in place, how many cases of COVID-19 the facility has had, and how they were dealt with. This might make some clients nervous, but it actually creates an opportunity for open and honest dialogue.

A big part of the agent's job now will be to proactively manage cases and help to prepare clients for anticipated and unanticipated financial challenges. Hopefully, there will soon be a vaccine and abatement of the virus, but even with a solution, we are unlikely to see premiums decrease for the foreseeable future. Agents and brokers will need to take the lessons learned in 2020 with them into the next year.

The organizations that thrive will be those that have maintained financial stability and improved their operations to effectively manage and minimize the spread of disease. Hopefully, no matter what the new year holds, we will have learned enough to ensure that we will be better prepared for what lies ahead.



About Joe Levy

Levy is a senior vice president at Risk Strategies.

North Dakota Long Term Care Association Assisted Living, Basic Care, Nursing Facility Death Data

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
January	192	247	224	241
February	195	203	174	219
March	197	191	183	242
April	185	179	217	230
May	183	176	200	201
June	184	158	180	160
July	150	147	164	158
August	169	140	186	152
September	168	172	203	215
October	219	200	195	306
November	191	188	205	348
December	193	211	201	230
	<u>2226</u>	<u>2212</u>	<u>2332</u>	<u>2702</u>

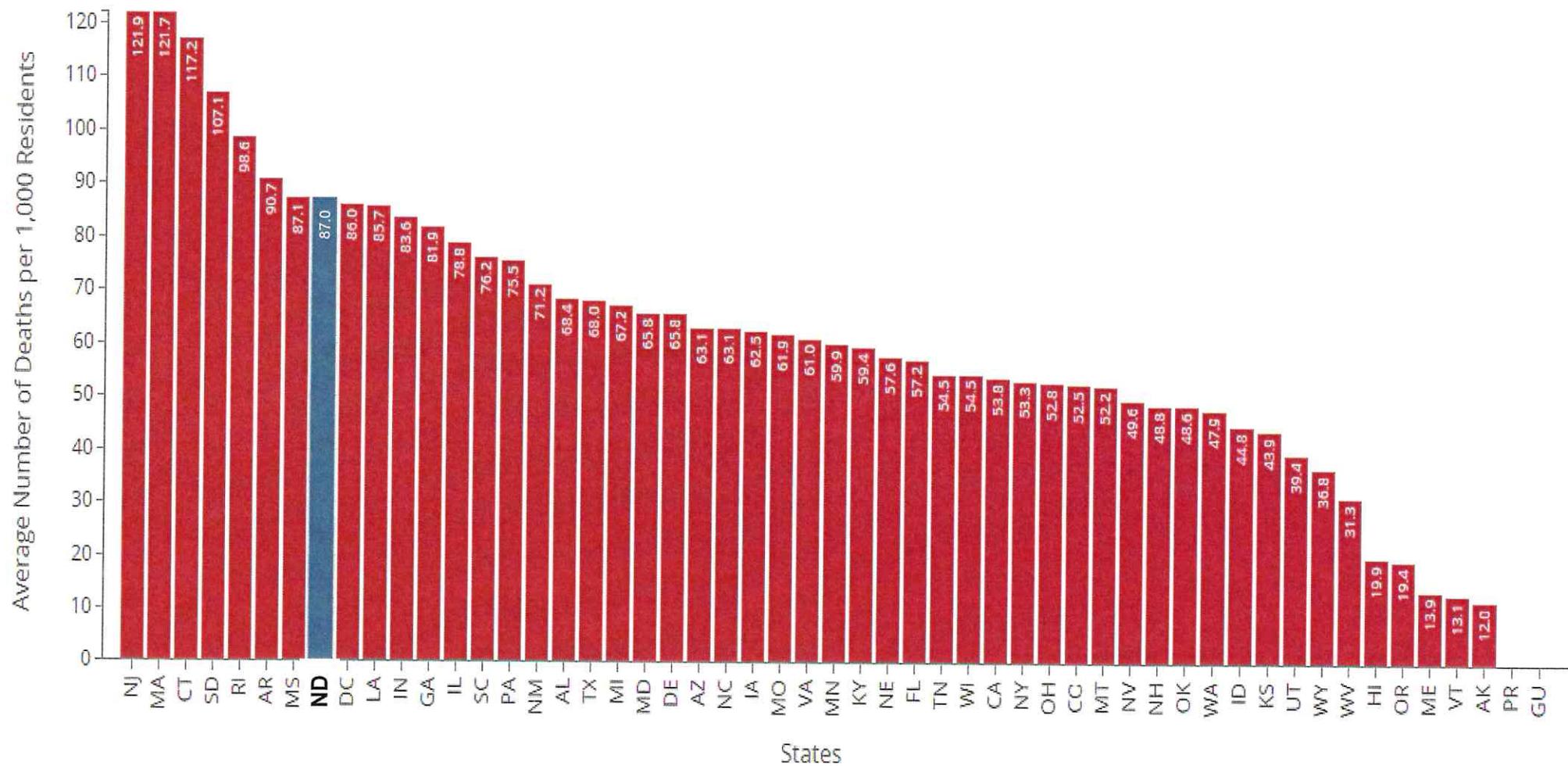
Please Note:

1. 2017, 2018, 2019 Death Data from Vital Records/DOH.
2. 2020 Data based on survey of assisted living, basic care and nursing facilities.
3. The data for 2020 is preliminary and not complete. Data for 2020 will not be final until reported by Vital Records in July 2021.
4. This data only includes residents who died in long term care facilities. It does not include residents that died in a hospital.
5. 20 assisted living, 13 basic care and 1 nursing facility did not report 2020 deaths for January - October.
6. 30 assisted living, 23 basic care and 11 nursing facilities did not report November and December 2020 Deaths.
7. In 2020 there are approximately 700 fewer residents in long term care than in 2019.
8. Cause of death is not tracked in this survey, in 2020 this data reflects all deaths not just COVID-19.



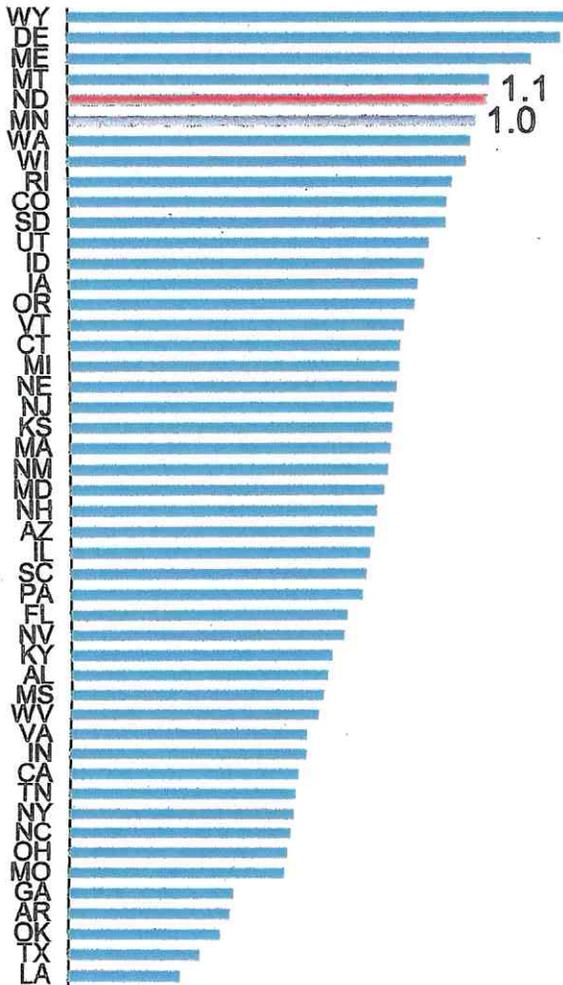
updated 02-11-2021

Resident Average Deaths per 1,000 Residents – Through Week of 11/22/20

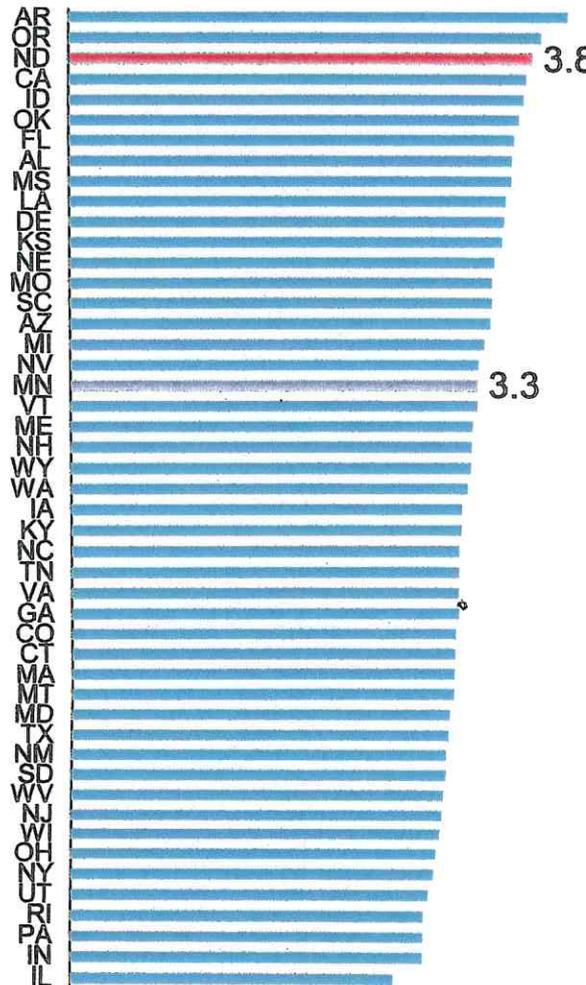


ND has the highest avg total staffing levels in the contiguous US

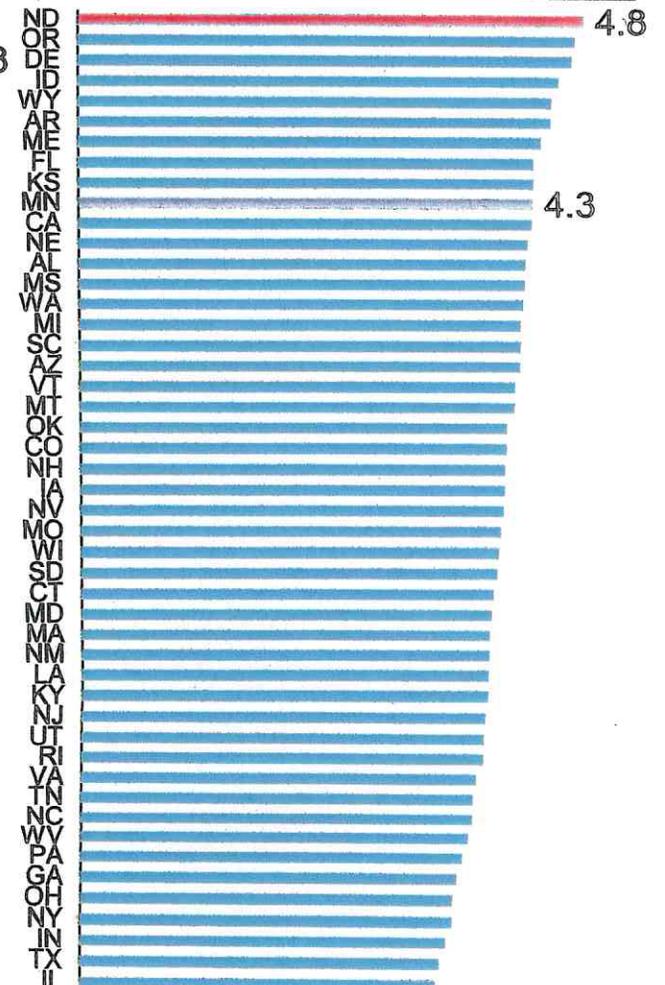
RN Staffing Levels
(Avg of Facilities)



CNA + LPN Staffing Levels
(Avg of Facilities)



Total Nurse Staffing Levels
(Avg of Facilities)



Source: CMS Nursing Home Compare



Senate Industry, Business and Labor Committee
Sen. Jerry Klein, Chair
March 10, 2021
HB 1175

Good morning, Chairman Klein and members of the committee. My name is Michael LeBeau, M.D., and I serve as President for Sanford Health's western North Dakota region. I am here today representing the Health Policy Consortium, a healthcare advocacy group that includes Trinity Health in Minot, Altru in Grand Forks and Sanford Health in Fargo and Bismarck. Collectively we provide 80 percent of the acute healthcare services in North Dakota.

Let me begin by thanking each of you for your support and your leadership. North Dakota's lawmakers are a frontrunner in making decisions important to providing uninterrupted care for the patients we serve. As you know, providing high-quality healthcare in a rural state is uniquely challenging. But while other states struggle through hospital closures and shrinking access to care, North Dakota's hospitals are supported by sound policy decisions.

Sanford Health supports HB 1175. Please allow me to explain why. Immunity is necessary to prohibit liability against providers that are acting reasonably based upon the circumstances, and the COVID-19 pandemic has been a perfect example of extenuating circumstances. As this virus descended quickly upon the communities we serve, emerging treatments and treatment modalities required some trial and error to find the best solutions. At times, there were recommendations to use existing drugs outside of their generally accepted use. This produced successes and, at times, confirmation said treatment was ineffective.

With these constraints and new treatments came the unknown regarding how many of our own healthcare workers might become sick and unable to care for patients or how it would impact our communities versus what we saw and continue to see across the world. We still operate with unknowns as new strains are discovered and we still do not know if we will experience additional surges, or if our hospitals will become overwhelmed.

We also worked through enormous constraints on resources—limited personal protective equipment (PPE) and other supply chain shortages, a nationwide nursing shortage and our own frontline workers falling ill due to the virus.

At the outset of the COVID-19 pandemic there were many unknowns, yet hospitals and providers have remained dynamic by responding and pivoting in the face of rapid, new information as the pandemic continues. Treatments for this disease continue to evolve. This bill provides specific protection for health care providers and facilities who responded to the COVID-19 outbreak during great uncertainty about how best to treat a novel disease.

This bill does not provide unlimited protection; rather it provides the protection necessary for providers who stepped up quickly to care for patients. This is important to note because there were, and continue to be, many uncertainties with COVID-19.

Throughout this pandemic, we planned and strategized scenarios that at one time may have been unthinkable, whether we would have enough beds, PPE, staff, ventilators, etc. We had to think about what we might do if we had to allocate scarce resources among patients.

What we did know is that we needed to do what was the best for patients and our communities—whether it was getting a new facility online or purchasing large amounts of PPE. Healthcare did not shy away from what was right for our patients and this bill provides protections for just that—so long as the provider was trying to do the right thing based on information known at that time, this statutory immunity applies.

Since the outset of COVID-19, we have learned many things. Treatments are improving and we have seen the mortality rate decrease because of additional therapies. Providers have been maximizing oxygen usage, determining how best to position patients by proning them and vent management has improved significantly. We have seen the expansion of drugs in the combat of the virus, such as Remdesivir and monoclonal antibodies. Now we have added vaccine options—but we still have a long way to go and with this bill, it supports the work providers are doing and shielding them from liability when they are doing the right thing.

In closing, as a result of COVID-19, the provision of health care across the country has rapidly changed based on guidance and recommendations from regulatory agencies such as the CDC and public health

directives. We continue to provide high quality patient care, while adhering to these recommendations and directives. At times, this care may have to be provided without the appropriate or optimal equipment, supplies or health care team members. We feel it is important to protect the providers who are on the front lines providing care to COVID-19 patients during this challenging time.

HPC is supportive of this bill and, as a medical doctor, I, too, am supportive of this bill.

I would be happy to answer any questions.

Mike LeBeau, M.D.
Sanford Health Bismarck President
Health Policy Consortium Board Member
Michael.LeBeau@SanfordHealth.org
701-323-6104

Testimony in Favor of HB 1175
Rudie Martinson, Executive Director, ND Hospitality Association
Before the Senate Industry, Business, and Labor Committee
March 9, 2021

Chairman Klein and members of the Senate Industry, Business, and Labor Committee,

My name is Rudie Martinson, and I appear before you today as Executive Director of the North Dakota Hospitality Association. We are North Dakota's trade association for the restaurant, lodging, and retail beverage industries. We appreciate the opportunity to stand before you today and express our support for House Bill 1175.

We are happy to join our friends in the broader business community to express support for this policy. As you know, the hospitality industry suffered disproportionately during 2020 due to the COVID-19 pandemic – cancelled travel, cancelled events, and government policy limiting our ability to operate normally were all factors harmful to our bottom line. Our industry, like many others, responded to rapidly changing regulations and guidelines at all levels of government – all while maintaining the safety of our employees, customers, and vendors.

HB 1175 represents an opportunity for the legislature to join 30 other states in providing critical protection for the business community that congress has so far been unable to provide at the national level.

The passage of this legislation is critical to continue to foster economic recovery after the pandemic for all North Dakota businesses, including those in the hospitality sector. For these reasons, the ND Hospitality Association supports HB 1175, and asks the committee for favorable consideration of a “do pass” recommendation.

Thank you.



House Industry Business and Labor Committee

03/10/21

HB 1175

Chairman Klein and committee members, my name is Don Larson and I am speaking today on behalf of the National Federation of Independent Business (NFIB). NFIB is a non-profit, non-partisan organization and is the nation's largest small business advocacy group.

In North Dakota we represent more than 2,000 small businesses. Our average member has 10 employees and gross sales of approximately \$500,000 per year.

NFIB research shows 70% of small businesses are very concerned about liability protections. And, according to our 2021 NFIB North Dakota Ballot, 92% of our North Dakota members support liability protection.

Liability protection would not be extended to those businesses exhibiting gross misconduct or negligence. Liability protection would only apply to those that follow federal, state and local guidance. Therefore, if a business makes a good faith effort to follow guidelines to safeguard employees and customers, it should be protected from frivolous lawsuits.

Small businesses are particularly sensitive to frivolous legal action. Even when doing everything correctly, simply fighting such a lawsuit could put the viability of the business in danger. These lawsuits can be extremely costly to a small business owner, financially and emotionally. The last thing our beleaguered businesses need is to fend off a costly and frivolous lawsuit. If they are still in

business, many may be one frivolous lawsuit away from closing for good, taking the livelihoods and the jobs they created with them.

This legislation is a no-brainer. Small businesses create most of the net new jobs. It only makes sense to protect them from frivolous legal action.

Thank you, Chairman Klein and members of the committee.

HB 1175 – Steffes Testimony

Steffes has been headquartered in Dickinson, North Dakota since it was founded more than 40 years ago. We also have two facilities in Grand Forks and one in Midland, TX. Steffes is a primary sector business who manufacturers fabricated metal products in support of the oil exploration industry in North Dakota. We also manufacture component parts for heavy equipment manufacturers such as Doosan / Bobcat.

March 11, 2020 was the first reported COVID-19 case in North Dakota. In the months to follow we navigated through what this meant for Steffes, an essential business. There were continued uncertainties on how the virus was transmitted, continually additions to possible symptoms, and ever-changing updates and recommendations from the Center for Disease Control and Prevention (CDC), North Dakota Department of Health (NDDOH), and OSHA. Our main goal throughout this entire pandemic was and continues to be - keeping our employees working in a safe environment.

Like many other fellow North Dakota businesses, Steffes has been operating under our “new normal” since March 2020. Safety is a “core value” at Steffes and as such immediate actions were taken in March to create a COVID-19 prevention strategy as we are committed to the health and safety of our employees and visitors. This multi-layered prevention approach was created based on the recommendations from the CDC, NDDOH, and OSHA. Our major preventive strategy factors are listed below:

- 1) Communication & Awareness - consistent communication is provided to our employees with topics that include the benefits of mask wearing not only in the workplace but also in the community, holiday guidelines and group gathering precautions, the importance of mental health and that is just to name a few. A COVID-19 Steffes SharePoint site was created specifically for our employees and their family members to access all communication regarding COVID-19, active case dashboard, links to websites such as CDC, NDDOH, etc., as well as contact information for our Steffes Task Force members. This information is consistently updated and displayed on all breakroom televisions.
- 2) Case Management – employees who report symptoms of COVID-19 or have been identified as a close or household contact are assigned an internal HR Case Manager. When NDDOH was inundated; state contact tracers could not keep up and stopped communication with these affected individuals – because of our internal case management process we did not skip a beat.

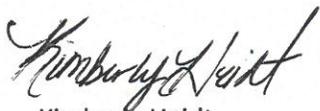
- 3) Site Entry Process – every employee and visitor completes our site entry process which includes standard entry questions and temperature checks daily.
- 4) Sanitization – in the Spring of 2020 any type of disinfectant was hard to find – to effectively pivot – we utilized OSHA guidance and protocols making our own disinfectant. We put together disinfecting totes – which included the disinfectant, multiple cloth rags, disposable gloves, and instructions – these totes were placed in all highly utilized areas.
- 5) Physical Distancing and Mask Usage – we started utilizing designated meeting rooms for additional break areas as well as staggered break times to reduce the number of employees in each area. All employees are required to wear a mask while at work- because of this protocol, employees were provided with four complimentary face masks and proper laundering instructions.

Our employees' health and safety is our top priority – it was imperative to take quick action with the preventative strategy mentioned above. We highly encourage our employees to practice these efforts outside of work and to share our updated communications with their household members as well. As one of the largest employers in Stark County – we are committed to keeping our communities safe and help mitigate the spread of COVID-19.

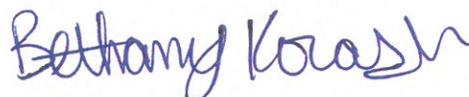
As we are all navigating through these times of uncertainty – we must ask ourselves the question – why through the best mitigation efforts and procedures a company puts into practice to help keep employees safe – does it make sense to risk expensive lawsuits that do not help the situation and only cost citizens and employers money to litigate? When in fact, all we can do as employers is implement the guidelines mentioned above – but the second our employees clock out – we can only hope they are practicing the same type of prevention strategies in our communities.

Even though there is still much uncertainty regarding COVID-19 regarding transmission, symptoms, infectious periods, and safeguards, we have remained diligent to routinely review and identify new data and precautions from trusted sources to make sure we are doing everything within our control to prevent workplace spread. We have updated our internal protocols 7 times so far with an 8th revision in the works to remain up to date as guidance is everchanging.

In summary, we encourage this committee to recommend “Do Pass” for HB1175 on behalf of all North Dakota businesses.



Kimberly Heidt
VP of People and Culture



Bethany Kovash
Environmental, Health and Safety Manager



#8489

THE CHAMBER
FARGO MOORHEAD WEST FARGO

To: Senate IBL Committee
From: Katie Mastel, Government Affairs Manager, FMWF Chamber of Commerce
Date: March 10, 2021
RE: **Support HB 1425**

Chair Klein, members of the Senate IBL Committee,

For the record my name is Katie Mastel, and I serve as the Government Affairs & Advocacy Manager at the Fargo Moorhead West Fargo Chamber of Commerce. On behalf of our over 2,000 Chamber member businesses, **we urge support for business liability protection as reflected in House Bill 1175.**

Businesses across North Dakota of all sizes and industries have worked tirelessly to protect employees and customers from the threat of COVID-19. Often following burdensome precautions, businesses put the health and safety of others in front of their business's economic stability. As businesses continue to navigate through, and enter into, the recovery phase of the COVID-19 crisis, the concern of frivolous lawsuits claiming COVID-19 related damages is looming. Masses of lawsuits in a time of economic recovery would be detrimental to many businesses and our overall economy. The threat frivolous lawsuits impose particularly on our small businesses is damaging revenue losses, or in some cases, closure.

Many businesses, in good faith, followed public health guidelines to the best of their ability, and as such, deserve the assurance that their responsibility in taking those appropriate measures relieves them from facing additional financial hardships due to frivolous lawsuits.

Our members were very vocal about their need for liability protection from unwarranted COVID-19 lawsuits as they recognize the sizeable threat that these lawsuits carry. It is imperative to secure this protection for our businesses who worked so hard to protect the health and safety of their employees and customers in the toughest of times.

We were glad to see this legislation gain the overwhelming support of the House. We respectfully request a do pass recommendation for **House Bill 1175** from this committee. Thank you for your consideration.

Katie Mastel
kmastel@fmwfcchamber.com | 701.516.2114



Senate Industry, Business and Labor Committee

IN OPPOSITION- HB 1175

March 9, 2021

Josh Askvig, AARP North Dakota

jaskvig@aarp.org – (701) 355-3642

Chair Klein and Members of the Senate Industry, Business and Labor Committee, I am Josh Askvig, State Director at AARP North Dakota.

AARP North Dakota, on behalf of our 84,000 members and all older North Dakotans, we are sharing our strong opposition to HB 1175 to grant immunity related to COVID-19 for healthcare facilities and nursing homes, assisted living facilities, and other long-term care (LTC) facilities.

AARP has long fought for the rights of residents in nursing homes and other residential care facilities and to ensure their health, safety, quality of care, and quality of life. This includes the right of residents and their families to seek legal redress through the courts to hold facilities accountable when residents are harmed, neglected, or abused. Nursing homes and other LTC facilities play an important role in America's long-term services and supports (LTSS) system.

There are approximately 5,000 North Dakota residents in LTC facilities. During this time of pandemic, nursing homes and other residential care facilities face unprecedented challenges, and tragically, over 835 deaths have occurred in long-term care facilities in North Dakota, or about 60% of the total deaths in the state due to COVID-19. While there may be some circumstances beyond facilities' control for which they should not be held responsible, it is essential that long-term care providers, as well as health care providers more broadly, remain responsible for any negligent actions to ensure long-term care residents have some protection and opportunity for redress.

Over the course of the pandemic, most inspections of nursing homes have been suspended, family in-person visits are effectively prohibited except in limited circumstances, and in-person long-term care Ombudsman visits are similarly restricted, there are fewer eyes observing what is happening in facilities. Residents of nursing homes and other LTC facilities may be unable to advocate for themselves and now have limited access to people who can advocate on their behalf. This lack of oversight is alarming, and requires us to ensure that, when all else fails, residents and their families will still have access to the courts to seek redress. Pursuing a

nursing home neglect or abuse case in court is not easy to do. In North Dakota, there are already many significant barriers to accessing the courts including being unaware of their rights, access to legal services, physical barriers such as lack of transportation and living on a fixed income. No family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. It is always an option of last resort, but it must remain an option. North Dakota should not strip away the rights and protections of residents. Nursing homes and other LTC facilities should know they will continue to be held responsible for providing the level of quality care that is required of them, and for which they are being compensated. This also incentivizes facilities to self-correct by addressing problems to improve care.

AARP North Dakota appreciates your consideration of these views and urges you to reject HB 1175. Families all across North Dakota are looking to you to protect the health and safety of their loved ones living in nursing homes and other residential care facilities.

Thank you.



North Dakota AFL-CIO
1323 East Front Ave.
Bismarck ND 58504
llarson@ndaflcio.org
701-526-8787

**Testimony of Landis Larson, ND AFL-CIO President
In Opposition to HB 1175
March 10, 2021**

Chairperson Klein and members of the Senate Industry, Business and Labor Committee:

My name is Landis Larson, President of the North Dakota AFL-CIO. The North Dakota AFL-CIO is the federation of labor unions in North Dakota, representing the interests of all working people in our state.

I am testifying on behalf of the North Dakota AFL-CIO in opposition to House Bill 1175.

The North Dakota AFL-CIO strongly opposes any attempts to shield corporations or other employers from civil liability, particularly in regard to COVID-19.

We know that many employers are good actors doing the best they can to protect their employees, but we also know that there are also many employers that are not doing everything they can to protect their workers. We have read the headlines about some of these employers, but many we haven't because workers fear retaliation for speaking up about unsafe working conditions or their concerns go unheard.

This bill relies on a well-defined and fully-functioning regulatory structure in place to ensure that corporations and other employers are in fact doing all they can to protect employees without the threat of civil liability. We know that up to this point, neither employers or workers have much to go on as far as enforceable safety rules from federal, state or local officials when it comes to infectious diseases in the workplace. Shielding these bad actors from litigation would only encourage them to ignore the scant guidelines on infectious diseases in the workplace and putting working families at risk of COVID-19 without legal recourse.

I recommend a "Do Not Pass" recommendation on House Bill 1175.

Respectfully Submitted,
Landis Larson
North Dakota AFL-CIO President

Chairman Klein and members of the Industry, Business and Labor Committee, my name is Jaci Hall and I am the Executive Director for the North Dakota Association for Justice. Today, I am here opposed to HB 1175 as it is written.

As currently written, HB1175 creates unearned protection to businesses and healthcare practitioners and facilities and forgets about the consumer and the employee's concerns for their safety and wellbeing.

The intent of this legislation is to provide relief to North Dakota businesses and the healthcare community from unnecessary lawsuits due to the impact of COVID-19. We believe that the support of businesses and the healthcare community is needed, as the pandemic caused uncertainty and swift changes needed to be made to try and keep up with federal, state and local policy changes.

HB1175 is one of many efforts to provide relief and is modeled after many others that have been introduced in legislatures all over the country. Over 40 states have some sort of legislation to support the business community.

Dr. Michael Lebeau submitted testimony in support of HB1175 to **“protect providers who are on the front lines providing care to COVID-19 patients during this challenging time.”** We believe the same, which is why we are asking to an amendment to clarify HB1175 and protect providers who are caring for those with COVID-19.

The amendment is as follows: Page 3 lines 23-26 of subsection 1.

1. A healthcare provider or healthcare facility is immune from civil liability for any act or omission in response to COVID-19 that causes or contributes, directly or indirectly, to the death or injury of an individual where the complained of injury or death was due to underlying COVID-19. The immunity provided under this subsection includes:

The reason for the amendment is to clarify that this immunity is to protect providers providing care to COVID-19 patients.

Medical Negligence happens more often than one would want, for a variety of different reasons. HB1175 was created to protect providers providing care to COVID-19 patients, not to give a blanket immunity to any provider or institution who does not provide the standard of care they are required to provide.

The medical community works hard to provide care to those in need. Systems and processes are already in place within the Civil Justice System that protect frivolous medical negligence claims against facilities and providers. The amendment to HB1175 clarifies that any negligence claim that is not associated with COVID-19 is able to go through the legal channels to determine merit.

Since HB1175 is modeled legislation in other states as well, I would like to highlight an example in North Carolina:

A patient in a long term care facility in North Carolina had recently lost her legs to diabetes and suffered for months with bedsores. After a few months the sore became infected and had transitioned to a stage 4 pressure ulcer. Her children advocated for her to be transitioned to a hospital, but the advocacy went unanswered and the patient died. The patient was not diagnosed with COVID-19 during this time. The children later filed a lawsuit for negligence. The suit was thrown out due to vague legislation, like HB1175 as it is currently written.

North Dakota citizens deserve to have the ability to file negligence claims when they are warranted. The amendment to HB1175 will provide an avenue for those who are not impacted with COVID-19 during the window this legislation serves.

Today we ask you to continue to do what is needed to protect businesses and the medical community from the impacts of COVID-19. But as Melissa Hauer of the North Dakota Hospital Association states in her supportive testimony - **“protect the providers who are on the front lines providing care to COVID-19 patients during this challenging time.”** The amendment we are requesting will do just that - **protect providers who are providing care to COVID-19 patients.**

During the house hearings, the IBL committee added the sunset clause to the original bill. The clause came from the understanding that medical negligence claims have a two-year window. We ask you to keep this sunset in the current form of the bill as well. North Dakota is on the downward trend in COVID-19 cases and by this summer, the state will have enough vaccines to provide immunizations to all who want them. There is no need to prolong this legislation or to provide COVID immunity once the ‘pandemic’ is over.

Currently, there are no open lawsuits in the state of ND for medical negligence claims in North Dakota, and no licensed attorneys are seeking cases. By adding the amendment, you will clarify the intent and remove additional frivolous lawsuits the business community is concerned about.

In closing, the North Dakota Association for Justice is here today to ask you to clarify HB1175 by adding this important amendment and provide the protection as Ms. Hauer, Dr. Lebeau and Ms. Koebele ask of you in their supportive testimony of HB1175- **to protect providers who are providing care to COVID-19 patients.**

Thank you for the opportunity to speak. Online today is one of NDAJ’s members, Nathan Severson, who will further clarify the difference in how the legislation will be interpreted with and without the amendment. I look forward to working with the committee and others in this room to ensure that this legislation does as it was intended - **to protect providers who are providing care to COVID-19 patients.**

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1175

Introduced by

Representatives Howe, Bosch, Devlin, Lefor, Mock, Stemen

Senators Burckhard, Klein, Bell

1 A BILL for an Act to create and enact a new chapter to title 32 of the North Dakota Century
2 Code, relating to business immunity from COVID-19 liability claims; to provide for retroactive
3 application; to provide an expiration date; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new chapter to title 32 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Definitions.**

8 As used in this chapter:

9 1. "COVID-19" means:

10 a. Severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2 and
11 any mutation or viral fragments of SARS-Cov-2; and

12 b. Any disease or condition caused by severe acute respiratory syndrome
13 coronavirus 2 identified as SARS-CoV-2.

14 2. "Disinfecting or cleaning supplies" includes hand sanitizers, disinfectants, disinfecting
15 sprays, and disinfecting wipes.

16 3. "Health care facility" means any facility in which health care services are provided and
17 includes a hospital, special care unit, skilled nursing facility, intermediate care facility,
18 basic care facility, assisted living facility, ambulatory surgical center, freestanding
19 emergency department, rural primary care hospital, critical access hospital, inpatient
20 hospice facility, including a clinic not located on a hospital's primary campus, health
21 maintenance organization, home health agency, any field hospital, modular
22 field-treatment facility, or other alternative care facility designated by the state
23 department of health for temporary use related to the COVID-19 state of emergency,
24 and a diagnostic, examination, treatment, imaging, or rehabilitation center.

- 1 4. "Health care provider" means an individual or entity licensed, certified, or otherwise
2 authorized to provide health care services in this state whether paid or unpaid. The
3 term includes:
- 4 a. The employer or agent of a health care provider that provides or arranges a
5 health care service;
- 6 b. A person engaged in telemedicine or telehealth; and
- 7 c. A volunteer or military member who is approved by or works under the direction
8 of the state department of health and who provides health care services in
9 response to the COVID-19 state of emergency.
- 10 5. "Intentional" means when engaging in the conduct, it is the person's purpose to do so.
- 11 6. "Personal protective equipment" means equipment worn to prevent or minimize
12 exposure to hazards that cause injuries or illnesses.
- 13 7. "Premises" means any real property, any appurtenant building or structure, and any
14 vehicle serving a residential, agricultural, commercial, industrial, educational, religious,
15 governmental, cultural, charitable, or health care purpose.
- 16 8. "Qualified product" means:
- 17 a. Personal protective equipment used to protect the wearer from COVID-19 or to
18 prevent the spread of COVID-19.
- 19 b. A medical device or equipment used to treat COVID-19, including a medical
20 device or equipment used or modified for an unapproved use to treat COVID-19
21 or to prevent the spread of COVID-19.
- 22 c. A medical device or equipment used outside its normal use to treat COVID-19 or
23 to prevent the spread of COVID-19.
- 24 d. Medication or treatment used to treat or prevent COVID-19, including medication
25 or treatment prescribed or dispensed for off-label use to treat or prevent
26 COVID-19.
- 27 e. A test to diagnose or determine immunity to COVID-19.
- 28 9. "Reckless" means conduct engaged in a conscious and clearly unjustifiable disregard
29 of a substantial likelihood of the existence of the relevant facts or risks, such disregard
30 involving a gross deviation from acceptable standards of conduct.

1 10. "Unapproved" means not authorized, accredited, or certified by a federal or state
2 agency for any other use, purpose, or design.

3 11. "Willful" means the conduct is engaged in intentionally, knowingly, or recklessly.

4 **Actual injury requirement in civil actions alleging COVID-19 exposure.**

5 A person may not bring or maintain a civil action alleging exposure or potential exposure to
6 COVID-19 unless the civil action involves an act intended to cause harm or an act that
7 constitutes actual malice.

8 **Premises owner's duty of care - Limited liability.**

9 A person that possesses, owns, or is in control of premises, including a tenant, lessee, or
10 occupant of a premises, which directly or indirectly invites or permits an individual onto the
11 premises is immune from civil liability for any act or omission resulting in damage or injury
12 sustained from the individual's exposure to COVID-19, unless the person that possesses, owns,
13 or is in control of the premises:

14 1. Exposes the individual to COVID-19 through an act that constitutes actual malice; or

15 2. Intentionally exposes the individual to COVID-19 with the intent to cause harm.

16 **Safe harbor for compliance with statutes, regulations, or executive orders.**

17 A person is immune from civil liability for an act or omission resulting in damage or injury
18 sustained from exposure or potential exposure to COVID-19 if the act or omission was in
19 substantial compliance or was consistent with a federal or state statute, regulation, or order
20 related to COVID-19 which was applicable to the person or activity at issue at the time of the
21 alleged exposure or potential exposure.

22 **Liability of health care providers and health care facilities.**

23 1. A health care provider or health care facility is immune from civil liability for any act or
24 omission in response to COVID-19 that causes or contributes, directly or indirectly, to
25 the death or injury of an individual **where the complained of injury or death was due to**
26 **underlying COVID-19.** The immunity provided under this subsection includes:

27 a. Injury or death resulting from screening, assessing, diagnosing, caring for,
28 triaging, or treating an individual with a suspected or confirmed case of COVID
29 19.

30 b. Prescribing, administering, or dispensing a pharmaceutical for off-label use to
31 treat or prevent a suspected or confirmed case of COVID-19.

- 1 c. An act or omission while providing a health care service to an individual unrelated
2 to COVID-19 if the act or omission supports the state's response to COVID-19,
3 including:
4 (1) Delaying or canceling a nonurgent or elective dental, medical, or surgical
5 procedure, or altering the diagnosis or treatment of an individual.
6 (2) Conducting a test or providing treatment to an individual outside the
7 premises of a health care facility.
8 (3) An act or omission undertaken by a health care provider or a health care
9 facility because of a lack of staff, facility, medical device, treatment,
10 equipment, or other resource, attributable to COVID-19 which renders the
11 health care provider or health care facility unable to provide the level or
12 manner of care to an individual which otherwise would have been required
13 in the absence of COVID-19.
14 (4) An act or omission undertaken by a health care provider or a health care
15 facility relating to use or nonuse of personal protective equipment.
16 (5) An act or omission undertaken by a health care provider or a health care
17 facility relating to the administration, delivery, distribution, allocation,
18 prioritization, or dispensing of scarce resources among individuals such as
19 medical devices, treatment, and equipment.
20 2. The immunity provided under subsection 1 does not apply to an act or omission that
21 constitutes:
22 a. Willful and wanton misconduct;
23 b. Reckless infliction of harm; or
24 c. Intentional infliction of harm.

25 **Supplies, equipment, and products designed, manufactured, labeled, sold,**
26 **distributed, and donated in response to COVID-19.**

- 27 1. A person that designs, manufactures, labels, sells, distributes, or donates disinfecting
28 or cleaning supplies, personal protective equipment, or a qualified product in response
29 to COVID-19 is immune from civil liability for any personal injury, death, or property
30 damage caused by or resulting from the design, manufacturing, labeling, selling,

- 1 distributing, or donating of the disinfecting or cleaning supplies, personal protective
2 equipment, or a qualified product.
- 3 2. A person that designs, manufactures, labels, sells, distributes, or donates disinfecting
4 or cleaning supplies, personal protective equipment, or a qualified product in response
5 to COVID-19 is immune from civil liability for any personal injury, death, or property
6 damage caused by or resulting from a failure to provide proper instruction or sufficient
7 warning.
- 8 3. The immunity provided under subsections 1 and 2 does not apply:
- 9 a. To a person that designs, manufactures, labels, sells, distributes, or donates
10 disinfecting or cleaning supplies, personal protective equipment, or a qualified
11 product:
- 12 (1) With actual knowledge of a defect in the disinfecting or cleaning supplies,
13 personal protective equipment, or a qualified product when put to the use for
14 which the disinfecting or cleaning supplies, personal protective equipment,
15 or a qualified product was designed, manufactured, sold, distributed, or
16 donated; and
- 17 (2) If the person recklessly disregarded a substantial and unnecessary risk the
18 disinfecting or cleaning supplies, personal protective equipment, or a
19 qualified product would cause serious personal injury, death, or serious
20 property damage; or
- 21 b. If the person that designs, manufactures, labels, sells, distributes, or donates
22 disinfecting or cleaning supplies, personal protective equipment, or a qualified
23 product acts with actual malice.

24 **Construction.**

25 This chapter may not be construed to:

- 26 1. Create, recognize, or ratify a liability claim or cause of action.
- 27 2. Eliminate or satisfy a required element of a liability claim or cause of action.
- 28 3. Amend, repeal, affect, or supersede any other immunity protection that may apply
29 under state or federal law.

30 **SECTION 2. RETROACTIVE APPLICATION.** This Act applies retroactively to January 1,
31 2020.

1 **SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2023, and after that
2 date is ineffective.

3 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.



Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.476.4083
www.FargoCassPublicHealth.com

#7525



Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

March 9, 2021, 2:30 pm CST
Senate Industry, Business and Labor Committee for the 67th ND Legislative Assembly

Chairman Klein and members of the Senate Industry, Business and Labor Committee, thank you for your time today. My name is Melissa Markegard. I am the Tobacco Prevention Coordinator at Fargo Cass Public Health. I am writing to provide education regarding HB1152.

Fargo Cass Public Health has provided tobacco prevention and control programs and resources for the residents of Fargo and Cass County since 2003. Our statewide Smoke Free Indoor Air Law passed and went into effect December 2012. The passage of this law was incredibly important to the citizens of North Dakota. They overwhelmingly voted in favor of it.

Fargo Cass Public Health's opposition to this bill is focused on protecting the health of all North Dakota citizens by preventing exposure to secondhand smoke. This bill includes a requirement for a special ventilation system; however, there is no filtration and ventilation systems proven to effectively remove secondhand smoke from enclosed areas. I must reiterate that the goal of public health, and the goal of the state smoke-free law, is to protect patrons and employees from exposure to secondhand smoke.

This bill is also nearly an exact copy of the bill presented during last legislative session – a bill that was voted down. Very few changes were made – no mechanisms for enforcement and no penalties are included – making this a poorly written piece of policy.

The ONLY way to effectively protect against this harm is to maintain the state smoke-free law, keeping current smoke-free environments completely smoke-free. North Dakota's current smoke-free law is one of the strongest in the nation as it includes electronic nicotine products and includes very few exemptions. By allowing additional exemptions to the Smoke Free Indoor Air Law, we weaken the law and knowingly put the health of our citizens in jeopardy.

Additionally, the COVID-19 pandemic has placed increased attention on lung health. Since smoking of any kind, including cigars, increases the risk of the most severe impacts of COVID-19, preventing and reducing all tobacco use is more critical than ever.

I implore you to vote to maintain all current provisions of the state-wide smoke-free law. Keeping this law fully intact would ensure continued protection from the dangers of second-hand smoke in public places in our great state. Please feel free to reach out if you have any additional questions related to smoke-free policy.

Chairman and Committee members, thank you for the opportunity to provide this testimony.

Melissa Markegard
Tobacco Prevention Coordinator, Fargo Cass Public Health
701.476.4083
MMarkegard@FargoND.gov



Senate Industry, Business & Labor Committee – HB 1175

Senator Jerry Klein, Chair

March 10, 2021

Chairman Klein, Members of the Committee:

My name is Brian Ritter and I'm President of the Bismarck Mandan Chamber EDC. Please accept this testimony on behalf of our organization's approximately 1,200 members in support of HB 1175.

Over the past year, Bismarck-Mandan businesses have adjusted to a 'new normal' brought about by COVID-19. This includes implementing new policies, creating new business practices and adapting to new federal and state regulations. Despite all of their hard work, many of our members have a growing concern that continued COVID-19 infections may make them vulnerable to civil liability lawsuits.

We are proud to join a coalition of more than 25 business organizations from around the State in support of HB 1175, which offers:

- Businesses protection from civil liability lawsuits when they acted in good faith and followed applicable COVID-19 laws and regulation.

- Protection for health care facilities and health care providers who responded quickly to the COVID-19 pandemic with uncertain guidance.

- Assistance to manufacturers who quickly adapted to meet the demands for PPE, ventilators and more brought on by the COVID-19 pandemic.

Our organization's 2021 Legislative Agenda states that the Chamber EDC will, "*Support legislation that provides employers liability protection if they follow federal and state guidance for re-opening and establishing safety practices, including adverse employment actions.*" HB 1175 does just that and consequently, we fully support it.

Thank you for your consideration of a DO PASS recommendation for HB 1175.

Rationale for passing HB 1175 begins with a simple axiom:

Government will not admit its mistakes!

This is particularly true for the government actions taken against citizens in the context of a COVID-19 emergency:

- Lockdowns and quarantines
- Mask mandates
- **Business shutdowns or restrictions**

“Not Needed!” is the primary objection.

Normally that is a reasonable response to new legislation. This is not a normal situation. In the wake of the government’s damaging actions in the context of COVID-19, many related state legislative actions are warranted. HB 1175 deals with the fact that 1) government has made painful mistakes, and 2) those mistakes cannot be allowed to redefine our society.

Consider the role of businesses to North Dakota:

- Businesses give purpose to many people
- Businesses provide for the economic security of North Dakotans
- Businesses are essential to paying for government
- There is NO REPLACEMENT for the role of businesses in society

Consider the government’s actions against businesses due to COVID-19:

- There was no data to justify government-imposed restrictions on businesses. Yet government did, and:
 - Business closed.
 - People lost jobs.
 - Lives were impacted.
- No proof that business restriction had a material impact upon the viral curve

exists.

Consider how ongoing legal fear within businesses affects North Dakotans:

- Businesses were mandating masks upon their customers long before government did.
- Businesses continue to compel their customers to wear masks after government relaxes.
- **This is fueling mask conflict within our state** (picture examples of citizen-on-citizen coercion, shaming, and quasi-enforcement of mask wearing). **This vicious cycle will continue as long as businesses are fearful.**

Businesses are not just mechanical sources of profit generation. They represent the lives, futures, and well-being of all North Dakotans. Businesses should be protected against opportunistic predators.

Please DO PASS HB 1175 so that North Dakota businesses can make decisions without fear of COVID-19 tyranny.

Testimony HB 1175
Senate Industry Business & Labor Committee
March 10, 2021

Mr. Chairman and members of the Senate Industry, Business, & Labor Committee, my name is Russ Hanson of the Associated General Contractors of North Dakota. AGC of ND is a 400-member association which has been in existence since 1951. Our membership consists of all aspects of commercial construction - highway contractors, vertical contractors, civil/heavy, specialty contractors, subcontractors as well as material and equipment suppliers.

I appreciate the opportunity to submit testimony today and would like to offer our association's support of HB 1175 and other efforts to provide COVID Liability protection.

We hoped Congress would implement this on the federal level to create a national standard. Obviously, that did not occur, so the individual states are deliberating legislation. It is my understanding HB 1175 is similar to legislation being considered in a number of states.

Construction, like so many other businesses, worked hard to stay in operation during this pandemic and we were successful. Construction never took a major pause in 2020 nor thus far in 2021. With that, businesses need protection from frivolous civil liability lawsuits when we, amongst others, have acted in good faith and followed applicable COVID 19 regulations/orders to keep employees safe while continuing to provide the essential service our industry provides. We believe HB 1175 provides that.

Thanks for the opportunity to comment on HB 1175 and we request your consideration for a due pass recommendation. If you have any questions, I am a regular in the Capitol hallways and happy to have a subsequent conversation.

TESTIMONY OF RICK CLAYBURGH, PRESIDENT AND CEO OF THE NORTH DAKOTA BANKERS ASSOCIATION IN SUPPORT OF HOUSE BILL NO. 1175

**HOUSE BILL NO. 1175
CREATION AND ENACTMENT OF TITLE 32, N.D.C.C.
RETROACTIVE BUSINESS IMMUNITY FROM COVID-19 LIABILITY CLAIMS**

North Dakota Bankers Association supports [HB 1175](#), which protects businesses from civil liability lawsuits for their decisions made during the COVID-19 pandemic.

First, banks may have been more prepared than most businesses. Back in 2007, when the Avian flu was a topic, banks developed pandemic preparedness plans that would minimize the potential adverse effects of a pandemic. Before COVID-19 was declared a pandemic, the North Dakota Department of Financial Institutions issued a [memorandum](#) directing banks to review those preparation plans.

In March 2020, the Cybersecurity and Infrastructure Security Agency (CISA) issued guidance identifying financial services sector workers as essential critical infrastructure workers during the COVID-19 emergency.¹ Essential workers included those needed to process and maintain systems for processing financial transactions and services; those needed to provide consumer access to banking and lending services; and those supporting financial operations. At the time, U.S. Treasury Secretary Steven T. Mnuchin stated: “The American people need access to financial sector services, and State and local governments must ensure the continuity of critical financial sector functions. Everyone should follow guidance from the Centers for Disease Control and Prevention as well as State and local officials regarding strategies to limit disease spread.”²

While open, North Dakota banks have done just that. They were there to make sure their customers had what they needed and made special accommodations for their customer throughout the pandemic. Banks took all of the precautions they could to protect their customers and their employees while continuing to provide continued financial services, loans and support to their customers and communities. Banks provided closed or reduced services by providing drive-up only and requiring other services to be provided by appointment. Moreover, banks were essential to the survival of other North Dakota businesses, issuing more than \$1.7 billion in PPP loans during the pandemic.³

North Dakota banks did their best and we are proud of what they have done for our communities. NDBA supports HB 1175 because despite our banks’ best efforts, no business can fully prepare for or take control of a pandemic. This law would protect our North Dakota banks from frivolous lawsuits while still providing protecting for those who are wrongfully harmed.

The North Dakota Bankers requests a “Do Pass” recommendation on House Bill 1175.

¹ Identification of Essential Critical Infrastructure Workers During the COVID-19 Response Efforts, FIL-25-2020, March 26, 2020, available at <https://www.fdic.gov/news/financial-institution-letters/2020/fil20025.html>; SR-20-6: Identification of Essential Critical Infrastructure Workers in the Financial Services Sector During the COVID-19 Response, available at <https://www.federalreserve.gov/supervisionreg/srletters/SR2006.htm>.

² Statement by Secretary Steven T. Mnuchin on Essential Financial Services Workers, available at <https://home.treasury.gov/news/press-releases/sm956>.

³ <https://www.grandforksherald.com/news/government-and-politics/6565412-North-Dakota-companies-got-more-than-1.7-billion-in-PPP-loans-during-pandemic>; <https://www.washingtonpost.com/business/2020/05/15/north-dakota-small-business-ppp-coronavirus/>.

Senators,

This bill is essential to North Dakota business community, large and small. The immunity only makes sense, please support this Bill by a wide margin so emergency clause carries.

Thank you!

Roscoe Streyle

March 9, 2021

Senate Industry, Business and Labor Committee

Chairman Klein

Re: HB 1175

The American Property Casualty Insurance Association (APCIA) is composed of over 1,200 member companies and 330 insurance groups and represents the broadest cross-section of home, auto, and business insurers of any national insurance trade association. In North Dakota, APCIA member insurers provide almost 69 percent of all the insurance purchased by the state's citizens and businesses.

We urge you to support HB 1175, comprehensive liability protection legislation that will benefit businesses and other organizations who have been doing their very best to operate in a COVID-19 environment that has caused many entities to alter and adjust their usual business and health care practices.

The private sector is actively engaged as an indispensable partner in the response to COVID-19. From health care to transportation to property owners to manufacturers and more, many private sector participants are in the fight against this virus. In many instances they are volunteering in the effort. In still others, the private sector is acting under state and federal emergency orders.

Nonetheless, unlike our government partners, private sector responders do not have the force and authority of the government to act and do not have immunity from liability even when acting in good faith to advance the COVID-19 response and recovery. It is inherently unfair for private sector entities to face liability in such situations when the governments themselves do not.

HB 1175 will afford these businesses and organizations the liability protections they need to continue to function.

We urge you to support HB 1175.

Thank you.

Steve Schneider
Vice President, State Affairs
Midwest Region
APCIA
Steve.schneider@apci.org
312.782.7720

Rationale for passing HB 1175 begins with a simple axiom:

Government will not admit its mistakes!

This is particularly true for the government actions taken against citizens in the context of a COVID-19 emergency:

- Lockdowns and quarantines
- Mask mandates
- **Business shutdowns or restrictions**

“Not Needed!” is the primary objection.

Normally that is a reasonable response to new legislation. This is not a normal situation. In the wake of the government’s damaging actions in the context of COVID-19, many related state legislative actions are warranted. HB 1175 deals with the fact that 1) government has made painful mistakes, and 2) those mistakes cannot be allowed to redefine our society.

Consider the role of businesses to North Dakota:

- Businesses give purpose to many people
- Businesses provide for the economic security of North Dakotans
- Businesses are essential to paying for government
- There is NO REPLACEMENT for the role of businesses in society

Consider the government’s actions against businesses due to COVID-19:

- There was no data to justify government-imposed restrictions on businesses. Yet government did, and:
 - Business closed.
 - People lost jobs.
 - Lives were impacted.
- No proof that business restriction had a material impact upon the viral curve

exists.

Consider how ongoing legal fear within businesses affects North Dakotans:

- Businesses were mandating masks upon their customers long before government did.
- Businesses continue to compel their customers to wear masks after government relaxes.
- **This is fueling mask conflict within our state** (picture examples of citizen-on-citizen coercion, shaming, and quasi-enforcement of mask wearing). **This vicious cycle will continue as long as businesses are fearful.**

Businesses are not just mechanical sources of profit generation. They represent the lives, futures, and well-being of all North Dakotans. Businesses should be protected against opportunistic predators.

Please DO PASS HB 1175 so that North Dakota businesses can make decisions without fear of COVID-19 tyranny.



Senate IBL Committee

HB 1175

March 10, 2021

Chairman Klein and Committee Members, I am Courtney Koebele, the Executive Director of the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents, and medical students.

NDMA supports HB 1175. HB 1175 supports our health care workforce by reducing unreasonable liability exposure, as current liability standards do not adequately contemplate the extreme circumstances under which clinical care was being provided during this pandemic.

The COVID-19 pandemic created a public health emergency that is rapidly altering the provision of health care services across the country based on guidance and recommendations from the Centers for Disease Control and Prevention and other federal, state and local government directives. Although necessary, these measures have raised concern about the potential liability of physicians and other health care professionals who are responding to the pandemic and continue to provide high-quality patient care while adhering to these guidance and recommendations. As a result, physicians face an increased threat of medical liability lawsuits due to circumstances that are beyond their control.

This is an issue important to physicians nationwide, because during the crisis, physicians were putting themselves at risk every day while facing shortages of medical supplies and safety equipment. Physicians are susceptible to the threat of unwarranted lawsuits as they continue heroic efforts to treat patients with COVID-19 while meeting the needs of other non-COVID-19 patients. These lawsuits may come months or even years after the current ordeal ends, when the public memory of their sacrifices may be forgotten.

This bill does nothing to alter the standard of care owed to patients in North Dakota; instead, it heightens the degree of negligence required to prove liability relative to that standard. As a result, patients will continue to be assured of the best possible care in light of the circumstances, while healthcare professionals will be assured that their dutiful efforts to provide care in these trying times will be recognized through commensurate liability protections.

There are state and federal liability protections that exist for volunteers responding to this pandemic, however, those liability protections do not apply to most paid physicians. Many states have provided similar liability protection through Executive Order, while other states have enacted statutes similarly limiting physician liability in a public health emergency. This legislation strikes an appropriate balance between supporting physicians and protecting patients.

NDMA urges a DO PASS recommendation on HB 1175.

Thank you.

Courtney Koebele
Executive Director
North Dakota Medical Association

Miller's fresh foods

MAYVILLE, COOPERSTOWN, HATTON,
NEW ROCKFORD, OAKES, LARIMORE, EDGELEY,
NORTHWOOD, Hankinson, Hillsboro

Chairperson Klein and members of the Industry, Business and Labor Committee.

I am Torry Reutter the General Manager of Miller's Fresh Foods, we own and operate ten grocery stores in ND. I am here to support House Bill 1175

In early March of 2020 COVID-19 drastically changed our retail business. In a short period of time our businesses were impacted as I would compare it to a big ND storm being predicted yet even bigger. We dealt with new mandates and changes sometimes on a daily basis. Thankful to NDGA, National Grocers Association, CDC and our local community health departments they all contributed to the direction we should proceed in.

Such As: Wearing masks, 6 feet distancing, markings on our floors to guide customers, Plexiglas guards put in place, sanitation stations for us and our customers, cleaning and disinfecting not just regularly but all the time. Our company put one person in charge and immediately designed a COVID-19 manual for all of our employees to follow and document what changes we put in place as we are considered "essential businesses" to serve our communities we live in. We did not take the spread of this disease lightly and maintained our stores for the safety of our customers and employees. We encouraged hand sanitization, frequent hand washing, glove wearing, mask wearing and try to keep the customers moving and not standing around talking or touching things. This in its self was a hard task at first as you all know small town friendly talk is a must with our customers and of course COVID-19 was the topic of conversation, kept short and sweet of course these days.

We informed our customers through signage and Social Media all while trying to keep our customers and our employees healthy and happy. Trying to keep everyone informed on all the changes was another challenge that we faced but handled on a daily basis. Trying to explain to customers there are certain products we just can't get was challenging but eventually they listened to us and understood the problems we faced. All in all throughout the entire Pandemic I believe our employees and team leaders did an excellent job in reducing the spread of the Corona Virus and as of today we continue to follow those same procedures we implemented and will continue on this path.

In closing I would like to remind the Committee that we are designated as an "essential business". We were expected to stay open and provide for our communities, and we did that with PRIDE.

House Bill 1175 recognizes the difficult situation we were put in and affords us protection from frivolous civil law suits. The grocery industry in North Dakota rose to the challenge and provided goods and services in a manner that protected their customers and employees.

We ask that the Industry, Business and Labor Committee acknowledge the commitment we made and support HB1175

Thank You, Torry Reutter



House Bill 1175

Presented by: Barry Haugen
President
Independent Community Banks of North Dakota (“ICBND”)

Before: Senate Industry, Business and Labor Committee
Representative Jerry Klein, Chairman

Date: March 10, 2021

Chairman Klein and members of the Senate Industry, Business and Labor Committee. For the record, my name is Barry Haugen and I am President of the Independent Community Banks of North Dakota (ICBND). ICBND membership totals nearly 60 independent community banks throughout our state. ICBND strongly supports HB 1175 and requests a “Do Pass” recommendation from the committee.

COVID-19 is a highly communicable disease that quickly spread across the globe including North Dakota. During this very stressful and uncertain pandemic, every community bank in North Dakota has worked hard to stay open and provided essential financial services that we all rely upon. The goal of this bill is to provide needed protection and clear up any uncertainty during these difficult times as it relates to frivolous lawsuits due to the COVID-19 pandemic. Community banks have continued to provide an essential service to the citizens of North Dakota and those institutions have taken every possible precaution to protect their employees and customers and visitors to their institutions. Having said that, all risks cannot be eliminated. Community banks and other businesses in our state who did provide these essential services should not be penalized for serving that obligation.

House Bill 1175 seeks to do the following:

- Protect business owners, property owners and tenants from frivolous civil liability lawsuits who acted in good faith and followed COVID-19 applicable laws, regulations and executive orders issued by the federal government and the state;
- Not cover business owners, property owners, and tenants that acted with malice and or total disregard of the laws during the COVID-19 pandemic;
- Specifically address health care facilities and providers because they were asked to respond quickly with uncertain guidance and limited resources; and
- Address manufacturers that adapted quickly to meet demands during the pandemic. They were called to produce personal protective equipment (PPE), ventilators, hand sanitizer, and other health related products to combat the pandemic that they wouldn’t normally produce.

Chairman Klein and members of the Senate Industry, Business and Labor Committee, ICBND respectfully requests a “Do Pass” recommendation for House Bill 1175. Thank you for your time and consideration.



AMERICAN
KENNEL CLUB®

Phil M. Guidry, J.D.
Director, Policy Analysis
Government Relations

Tuesday, March 9, 2021

North Dakota Senate Industry, Business and Labor Committee
State Capitol
600 East Boulevard
Bismarck, North Dakota 58505-0360

RE: AKC Supports HB 1175

Chairman Klein and Members of the Senate Industry, Business and Labor Committee:

The American Kennel Club (AKC) writes on behalf of our nine AKC dog clubs and the thousands of responsible dog owners in North Dakota to express support of House Bill 1175, which you are scheduled to consider on Wednesday, March 10, 2021.

As you may know, the American Kennel Club was founded in 1884 and is the world's largest purebred dog registry and the only not-for-profit purebred dog registry devoted to the health and wellbeing of all dogs. The AKC, along with our North Dakota local dog clubs, all of which are non-profit organizations, are dedicated to promoting responsible dog ownership and breeding throughout the state, including hosting dog events such as breed conformation shows, field trials, obedience trials, and other performance events that focus on a dog's ability to perform jobs for which its breed was originally developed. In 2019, the AKC licensed and sanctioned 76 events in North Dakota, in which more than 7,700 dogs participated.

Last year, in an effort to ensure the safety of exhibitors and animals, the American Kennel Club provided our local clubs with extensive procedures to be used in conjunction with U.S. Centers for Disease Control and state guidelines to follow when hosting events and shows. The ability for local clubs to host events is crucial, as they generally rely on competitor entry fees as their primary source of revenue. However, due to both gathering restrictions that were imposed in 2020 and concerns that a competitor or volunteer's exposure to COVID-19 may leave them financially responsible for such exposure, local non-profit dog clubs were unable to host events throughout much of last year. Without conducting events to earn revenue and without reasonable protections from liability exposure, many clubs are facing uncertain futures, and even existential threats, because of COVID-19. The AKC believes HB 1175 represents a reasonable step that would help address these concerns and free organizations from unreasonable liability exposure while not protecting malicious actions or those intended to cause harm. For these reasons, we support HB 1175 and encourage its passage.

Thank you for your time and consideration. I would be pleased to further discuss our position with you at your convenience. I can be reached at 919-816-3503 or phil.guidry@akc.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Phil Guidry', written over a horizontal line.

Phil M. Guidry, J.D.
Director, Policy Analysis

North Dakota Petroleum Marketers Association
North Dakota Retail Association
North Dakota Propane Gas Association
1014 E Central Avenue
Bismarck, ND 58501
701-223-3370



Testimony - HB 1175

Senate IBL Committee

March 10, 2021

For the record, my name is Mike Rud. I'm writing on behalf of NDRA, NDPMA and NDPGA. As leaders from North Dakota business associations representing over 1500 retail store fronts and thousands of employees across the state, the North Dakota Retail and Petroleum Marketers Association as well as the North Dakota Propane Gas Association urge a "DO PASS" recommendation on HB 1175.

Our associations have been on the front lines providing essential services such as household goods, clothing, food and fuels since the pandemic began. NDRA/NDPMA and NDPGA believe the health and safety of our members, their employees, our customers and the general public remains our top priority.

We feel strongly some liability language needs to be passed at both the federal and state levels to balance public health and safety with the economic realities that our members are facing. Retailers are continually balancing the welcome prospect of renewed business and cash flow against the fear and cost of claims that could be made against them by customers, vendors, subcontractors and others. As businesses remain open, they will face inevitable claims their retail outlet failed to protect third parties from exposure to the virus. The claims will be made by customers, as well as invitees who come on site to service the business and premises.

Claims will be made the business failed to take adequate protective measures with respect to people management and facilities maintenance. On people management, the claims will include that the business did not reconfigure and structure the premises consistent with various guidelines (e.g., CDC, state, and local guidelines regarding social distancing, mask wearing, flow and physical structure of the business). On facilities maintenance, the claims will predominantly be a failure to disinfect and filter air adequately, likely in terms of frequency, scope, and manner. Customer, vendor and third-party claims will usually sound a tone of negligence.

The standard against which business is conducted will be measured in a lawsuit with a negligence claim will be that of the reasonably prudent business: what would a reasonably prudent business in these circumstances have done to protect its customers and invitees from contracting the virus? "Comply with the applicable guidelines" is just a starting point to mitigate the claims, but, by itself, it's insufficient. This is because the standard of care against which your business will be measured in any third-party claim will be a moving target.

Secondly, there is not a one-size-fits-all solution. The current understanding of the risk of infection rests on two key variables—time of exposure and proximity of infection source—both of which will vary considerably depending on the nature of the business and on geographic the location of the business (population density, current infection rate). For example, big box retailers have the luxury of space that small shops do not. Businesses involving brief transactions (gas stations) have lower risk than experiential businesses (movie theaters, hair salons). And the risk of customer touch varies considerably: compare high-touch stores that have items that are not easily disinfected like furniture and home goods stores, with lower-touch venues with limited or easily disinfected touch surfaces, like restaurants. Some retailers have combinations of these differential risks under one roof. Private companies require protection from unreasonable exposure.

Senate IBL Committee Members, as you can see there are just so many variables to this battle. Bottom line, if a business is doing all it can in terms of following Federal, State and local guidelines set forth during this pandemic to protect customers, employees and other folks visiting their stores, the state should help see to it a retailer will not be subject to a frivolous lawsuit while providing essential services in these unprecedented times.

Please vote “DO PASS” on HB 1175.



3155 Bluestem Dr #378, West Fargo, North Dakota 58078 • Phone (701)223-4106 •
www.ndgrocers.com

Chairman Klein, and Members of the Industry, Business, and Labor committee

RE: HB 1175

The North Dakota Grocers Association (NDGA) represents the retail grocers, suppliers, and wholesalers in North Dakota. Our membership includes over 125 grocers and over 80 vendors/suppliers located throughout our state. NDGA supports passage of HB 1175.

Last spring COVID-19 drastically changed our industry. We were designated as “essential businesses” which required us to stay open to serve the needs of the public. Our industry like many others were not prepared to completely change to a new retail environment. State and Federal guidelines were confusing and many times conflicting with each other. The rules would change week to week and sometimes day to day. Our employees and customers were concerned about their safety, our vendor supply chains were stretched to the point that many items were out of stock. NDGA along with the National Grocers Association immediately started to sort through the volumes of guidelines from the CDC and our North Dakota state agencies. Materials were developed and sent to members so that they could use “best practices” to help control the spread of the virus. Slowly our efforts paid off and employees and customers came to trust that we were doing all we could to safely stay open and provide for our customers.

HB 1175 COVID-19 Liability Protection is legislation that recognizes the unique circumstances of the pandemic. Its provision of protecting businesses and industries, that were tasked with staying open, from unwarranted lawsuits recognizes the efforts businesses made to provide needed goods and services.

NDGA request that the ND Senate -Industry, Business, and Labor committee vote DO PASS on HB 1175.

Thank you

A handwritten signature in blue ink, appearing to read "John Dyste", is written over a horizontal line.

John Dyste

President

North Dakota Grocers Association



HB 1175
Senate IBL Committee
March 10, 2021

RE: North Dakota Concrete Council – Support of HB 1175

Chairman Klein and Members of the Senate IBL Committee,

When the COVID-19 crisis began in early 2020, the construction and construction materials sectors safely, quickly and effectively rolled up their collective sleeves and went to work to keep the United States economy rolling to the best of its ability. Here in North Dakota, we were fortunate to be able to operate with safeguards but no shutdowns. Construction is essential.

The safety of our workforce is the top priority for members of the North Dakota Concrete Council. Following local and federal guidelines, as well as industry-developed safety best practices, and employing extra precautions recommended by the Center for Disease Control and Occupational Safety and Health Administration, our members were able to provide well-paying jobs to thousands of North Dakotans at a time when many other businesses were struggling to keep workers employed or were shutting down.

Our members acted in good faith to protect our workforce and the general public while conducting business. We are asking for safe harbor from COVID-19 related lawsuits that have been cropping up across the country.

Over 30 states have passed COVID-19 liability protection. North Dakota needs to follow suit and pass legislation that holds poor decisions and ill intentions accountable while protecting businesses that strive to meet or exceed public health regulations.

On behalf of the members of the North Dakota Concrete Council and our industry, we urge a DO PASS recommendation on HB 1175.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Art Thompson".

Art Thompson
Executive Director, NDCC

About

The North Dakota Concrete Council is comprised of ready-mix concrete production companies, cement manufacturers, raw material suppliers, and concrete pavement contractors throughout the state. All totaled, the production and distribution of concrete is a \$100 million annual industry for the state; factor in the placement aspect and the industry provided conservatively \$500 million of economic impact. Ready-mix concrete production companies are locally operated facilities with a limited-service area due to the perishable nature of our product. Unlike other specialized industries, we provide economic impact throughout every corner of the state and we employ thousands North Dakotans.



2021 HB 1175

Senate Industry, Business and Labor Committee

Senator Jerry Klein, Chairman

March 10, 2021

Chairman Klein and members of the Senate Industry, Business and Labor Committee, I am Melissa Hauer, General Counsel of the North Dakota Hospital Association (NDHA). NDHA is a voluntary, not-for-profit organization comprised of hospitals and health systems, related organizations, and other members with a common interest in promoting the health of the people of North Dakota. NDHA supports Engrossed House Bill no. 1175, and we ask that you give it a **Do Pass** recommendation.

The bill provides important protections for businesses and, specifically, health care as we work through all the uncertainty and difficulty of the COVID-19 pandemic. The bill provides temporary immunity from civil lawsuits for businesses and specifically for health care providers who responded to the COVID-19 outbreak in the middle of great uncertainty about how best to treat a novel disease. Immunity applies so long as the health care provider acted reasonably based upon the knowledge of the circumstances at that time as it relates to COVID-19. However, this immunity does not apply to willful and wanton misconduct or reckless or intentional infliction of harm.

The pandemic has created an unprecedented landscape for potential medical malpractice liability, given the lack of any uniformly recognized protocol for treating the disease and the absence of a prevailing standard of care against which a practitioner's actions can be fairly and reliably measured. As hospitals care for COVID patients, we have learned how to better deal with the virus through trial and error. We continue to adjust our approach as we learn more and treatments for the disease continue to be discovered. With increasing knowledge, treatment standards will continue to evolve. While some believe that patient or employee claims against a

health care provider for origination of a COVID-19 illness would be difficult to prove and thus less likely to be brought, the economic burden to a provider of having to defend or settle such claims could be catastrophic. With that in mind, we want to make sure providers are given some measure of protection from liability if they used the best guidance they had available at the time the care was provided.

It is important to note that this bill does not provide unlimited protection; rather it provides temporary protection necessary for providers who stepped up quickly to care for patients amid the many uncertainties with COVID-19, putting themselves at risk while facing constraints on resources such as scarce personal protective equipment (PPE), ICU beds, ventilator availability, as well as strained staffing resources. Immunity applies to situations not only when a provider acted, but also when a provider did not, or could not, act. It is important that health care providers are protected from lawsuits not only for the provision of care but also for the times when they had to make the decision that a certain treatment or level of care was either not necessary or not available.

The challenge of an unknown virus necessitated novel approaches to care for patients. Providers were forced to plan for scenarios that at one time may have been unthinkable, whether we would have enough beds, staff, PPE, ventilators, etc. Providers had to think about what they might do if scarce resources had to be allocated among patients. We still operate with unknowns as new strains are discovered and we still do not know if we will experience additional surges, or if our hospitals will become overwhelmed. This bill provides protections for that incredible effort in the midst of such uncertainty, so long as the health care provider was trying to do the right thing based on information known at the time.

Businesses and health care providers need to be protected from what many fear will be a deluge of frivolous lawsuits that, while perhaps ultimately unsuccessful, would be prohibitively costly to defend. This feared flood of lawsuits could amount to a second pandemic. The immunity provided in the bill is necessary to reassure tireless and selfless health care providers that their efforts to care for patients amid such uncertainty will not be threatened by the specter of protracted coronavirus-related litigation. Some argue against such protections, stating that liability would be particularly difficult to establish, given both the relatively long incubation period of the virus and the resultant difficulty of proving that any particular place was the source of infection. But these lawsuits may come months or even years after the current ordeal ends,

when the public memory of the great uncertainty surrounding how best to treat those infected with the virus or the sacrifices of health care providers may be forgotten.

The bill strikes a balance between patients and providers. It does not alter the standard of care owed to patients by health care providers. Rather it heightens the degree of negligence required to prove liability relative to that standard. As a result, patients will continue to be assured of the best possible care in light of what was known at the time, while healthcare professionals will be assured that their amazing efforts to provide care in these trying times will be recognized through common sense liability protections. Again, as long as the provider was acting on the best available information and not recklessly or intentionally trying to cause harm, there would be protection. This legislation strikes an appropriate balance between supporting health care providers and protecting patients.

In summary, the provision of health care due to COVID-19 has rapidly changed based on what we have learned along the way as well as guidance and recommendations from regulatory agencies such as the CDC and public health directives. Hospitals continue to provide high quality patient care, while adhering to these recommendations and directives. At times, care may have to be provided without the appropriate or optimal equipment, supplies, or health care staff. We feel it is important to protect the providers who are on the front lines providing care to COVID-19 patients during this challenging time. It supports the work providers are doing and protects them from liability when they are doing the right thing.

NDHA is supportive of this bill and we ask that you give it a Do Pass recommendation. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel
North Dakota Hospital Association



#8407

North Dakota Association of REALTORS®

To advocate for the success of our members in partnership with our local Associations and the National Association of REALTORS®

March 10, 2021

Chairman Klein and Members of the Senate Industry, Business and Labor Committee, my name is Jill Beck and I am the CEO for the North Dakota Association of REALTORS® (NDAR). Our membership consists of more than 2,100 REALTORS® and more than 250 Business Partner members in the state of North Dakota.

We support the passage of HB 1175 and are happy to be part of the twenty-five plus organizations that have joined in the coalition.

Last spring, as the pandemic started, we did not know where our industry would head as real estate is typically a business with face-to-face contact from all aspects starting with the initial client contact with a REALTOR® to the closing table and everything in between. We were happy that real estate was able to keep moving our economy forward during this time and did not have to shut down business. State and federal guidelines were put in place (sometimes changing daily), we created some of our own guidance for our members as well as best practices. There were drive up closings for those that got to the closing table. Title workers, bankers, and REALTORS® dressed according to the weather and met their clients in the parking lot to get the properties closed, all while practicing social distancing guidelines.

While some members and consumers opted for the virtual showings and open houses through video there were still those that wanted to see the homes in person. Guidelines were put in place concerning who could be in the home, how many at a time, instructions that masks had to be worn and who could be opening and closing doors and closets. Our members were adaptable at a time when it was needed while following safety protocols.

Safety of our members and the clients they serve is a top priority. HB 1175 COVID Liability Protection bill is needed, joining thirty plus other states that have it implemented, that protects businesses from those that made (make) poor decisions and are out for frivolous lawsuits.

Thank you for your time and on behalf of our 2,200 members and our industry, we strongly urge a DO PASS on HB 1175.

Respectfully Submitted,

NORTH DAKOTA ASSOCIATION OF REALTORS®

A handwritten signature in black ink that reads "Jill Beck". The signature is written in a cursive, flowing style.

Jill Beck, CEO

318 W. Apollo Ave. | Bismarck, ND 58503

office: 701-355-1010 | **toll free:** 800-279-2361 | **fax:** 866-665-1011

info@ndrealtors.com | www.ndrealtors.com



**TESTIMONY OF
KAYLA PULVERMACHER
TO THE
SENATE INDUSTRY, BUSINESS AND LABOR
ON
HB 1175
March 10, 2021**

Chairman Klein and members of the committee:

My name is Kayla Pulvermacher, and I'm here to represent the members of Dakota Credit Union Association (DakCU). DakCU is the professional trade association serving 492,000 members in 71 credit unions with 230 branches between North Dakota and South Dakota. We support HB 1175.

The COVID-19 pandemic has been challenging for everyone during the past year. Businesses have had the added responsibility of protecting their employees and customers. And we believe that our credit unions have done a respectable job of keeping everyone safe.

HB 1175 simply gives businesses peace of mind. That if they follow state statute, orders, and regulations they will be protected from frivolous litigation. And most importantly, those that choose not to follow will face the consequences.

DakCu members are looking for certainty. HB 1175 will provide it.

Thank you, Mr. Chairman.



#8489

THE CHAMBER
FARGO MOORHEAD WEST FARGO

To: Senate IBL Committee
From: Katie Mastel, Government Affairs Manager, FMWF Chamber of Commerce
Date: March 10, 2021
RE: **Support HB 1425**

Chair Klein, members of the Senate IBL Committee,

For the record my name is Katie Mastel, and I serve as the Government Affairs & Advocacy Manager at the Fargo Moorhead West Fargo Chamber of Commerce. On behalf of our over 2,000 Chamber member businesses, **we urge support for business liability protection as reflected in House Bill 1175.**

Businesses across North Dakota of all sizes and industries have worked tirelessly to protect employees and customers from the threat of COVID-19. Often following burdensome precautions, businesses put the health and safety of others in front of their business's economic stability. As businesses continue to navigate through, and enter into, the recovery phase of the COVID-19 crisis, the concern of frivolous lawsuits claiming COVID-19 related damages is looming. Masses of lawsuits in a time of economic recovery would be detrimental to many businesses and our overall economy. The threat frivolous lawsuits impose particularly on our small businesses is damaging revenue losses, or in some cases, closure.

Many businesses, in good faith, followed public health guidelines to the best of their ability, and as such, deserve the assurance that their responsibility in taking those appropriate measures relieves them from facing additional financial hardships due to frivolous lawsuits.

Our members were very vocal about their need for liability protection from unwarranted COVID-19 lawsuits as they recognize the sizeable threat that these lawsuits carry. It is imperative to secure this protection for our businesses who worked so hard to protect the health and safety of their employees and customers in the toughest of times.

We were glad to see this legislation gain the overwhelming support of the House. We respectfully request a do pass recommendation for **House Bill 1175** from this committee. Thank you for your consideration.

Katie Mastel
kmastel@fmwfcchamber.com | 701.516.2114

Engrossed House Bill 1175
Testimony of Brady Pelton
Senate Industry, Business, and Labor Committee
March 10, 2021

Chairman Klein and members of the Senate Industry, Business, and Labor Committee, my name is Brady Pelton, general counsel and director of government affairs for the North Dakota Petroleum Council (“NDPC”). The North Dakota Petroleum Council represents more than 650 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in support of Engrossed House Bill 1175.

The COVID-19 global pandemic has created a multitude of negative impacts on North Dakota’s oil and gas industry and the business community as a whole. Cratering of worldwide oil demand coupled with continued high oil production both domestically and internationally have forced the businesses within the oil and gas sector to adjust to a new normal focused on preserving employment positions while continuing to survive ongoing market constraints. Safety has remained a top priority for the oil and gas industry throughout the pandemic, resulting in the wide adaptation of new policies influenced by federal and state regulations and designed to protect the health of employees.

Despite making these significant changes, concerns of the oil and gas industry have shifted toward protecting against the vulnerability of businesses to civil liability lawsuits. House Bill 1175 creates a safe harbor from COVID-19-related lawsuits, many of which have arisen across the country. Specifically, House Bill 1175 offers protection from frivolous civil liability lawsuits for business owners and property owners who have acted in good faith and followed applicable COVID-19 laws, regulations, and orders. Civil

accountability remains for business and property owners if actions are taken with malice and/or in total disregard of the laws in place during the COVID-19 pandemic.

Having safe harbor provisions in statute that protect businesses from COVID-19-related civil liability lawsuits is important to maintaining a stable business-friendly environment, especially during such volatile times as businesses are presently facing. We therefore urge a **Do Pass** on Engrossed House Bill 1175. I would be happy to try to answer any questions.



HB1175

Senate Industry, Business, and Labor Committee

March 10, 2021

Mark Hagerott, Chancellor, NDUS

701.328.2963 | mark.hagerott@ndus.edu

Chair Klein and Committee Members: My name is Mark Hagerott, and I serve as the Chancellor of the North Dakota University System. I am here today on behalf of the North Dakota University System and the presidents of its eleven institutions in support of HB 1175. However, I am not here on behalf of the State Board of Higher Education, which has not taken a position on the bill.

The last ten months has been a difficult time for everyone in the state, but I am happy to report that the North Dakota University System has met the challenges posed by the COVID-19 pandemic, including the resumption of in-person education from the start of the 2020-21 academic year, which was a decision made in the best interests of our students' educational outcomes. We were able to achieve this feat thanks to the hard work of everyone who works in and for the University System, and especially with the financial support approved by the Emergency Commission and the Budget Section, and I thank you for your support.

Despite everything that we have accomplished since the beginning of the pandemic, the NDUS still faces significant risk related to the decision to re-open our campuses and adjust to this new normal. The campuses have had to implement new policies and procedures designed to limit the risk of spreading COVID-19 and adapted to an ever-changing set of federal regulations. However, despite all of this hard work, NDUS institutions still face the risk of civil lawsuits that could undermine all the success we have seen.

In addition to the benefits to private businesses that many others have discussed, HB 1175 will provide immunity from civil liability for potential exposure to COVID-19 based on the decision to re-open, so long as the actions were taken in good faith and followed applicable COVID-19 laws and guidelines – which the NDUS and its institutions have at all times. HB 1175 provides the NDUS and its institutions with needed certainty when it comes to potential litigation about the decision to re-open in the best interests of the students.

Thank you for your consideration of HB 1175. I respectfully request that the members of the Committee vote for a “do pass” recommendation. Thank you for your time.

2021 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Fort Union Room, State Capitol

HB 1175
3/10/2021 PM

relating to business immunity from COVID-19 liability claims

Chair Klein opened the meeting 2:15 p.m. All members were present. Senators Klein, Larsen, Burckhard, Vedaa, Kreun, and Marcellais.

Discussion Topics:

- Wording in both amendment and bill

Senator Burckhard moved amendment 21.0247.03001 [14:17].

Senator Larsen seconded the motion [14:17].

[14:17]

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion passed: 6-0-0

Senator Burckhard moved a DO PASS AS AMENDED [14:19].

Senator Kreun seconded the motion [14:19].

[14:19]

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	N
Senator Shawn Vedaa	Y

Motion passed: 5-1-0

Senator Klein will carry the bill [14:19].

Chair Klein ended the meeting at 2:20 P.M.

Isabella Grotberg, Committee Clerk

March 4, 2021

CS
3/10
1051

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1175

Page 5, after line 29, insert:

"Exception.

This chapter does not apply to enforcement actions under chapters 50-24.8,
51-08.1, and 51-15."

Page 6, line 1, replace "2023" with "2027"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1175, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1175 was placed on the Sixth order on the calendar.

Page 5, after line 29, insert:

"Exception.

This chapter does not apply to enforcement actions under chapters 50-24.8, 51-08.1, and 51-15."

Page 6, line 1, replace "2023" with "2027"

Re-number accordingly

2021 CONFERENCE COMMITTEE

HB 1175

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1175
4/7/2021
Conference Committee

Business immunity from COVID-19 liability claims, provide for retroactive application & to declare an emergency.

(3:00) Chairman Nehring calls the conference committee to order.

Representatives	Attendance	Senators	Attendance
Chairman Nehring	P	Sen Klein	P
Rep Lefor	P	Sen Vedaa	P
Rep Stemen	P	Sen Marcellais	P

Discussion Topics:

- Frivolous lawsuits protection.

Rep Lefor discussed amendment #21.0247.03004. Attachment #11487

Senator Klein responded in support of the amendment.

Representative Lefor moved amendment #21.0247.03004.

Senator Klein seconded the motion.

Roll call vote Amendment motion carried 6-0-0.

Representative Lefor moved the Senate recede from Senate amendments & amend as follows with amendment #21.0247.03004.

Senator Klein seconded the motion.

Roll call vote. Motion carried 6-0-0 & Chairman Nehring & Sen Klein are the carriers.

Chairman Nehring adjourned the hearing.

(3:08) End time.

Ellen LeTang, Committee Clerk

JS
4/1/21

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1175

That the Senate recede from its amendments as printed on page 1203 of the House Journal and pages 856 and 857 of the Senate Journal and that Engrossed House Bill No. 1175 be amended as follows:

Page 1, line 3, remove "to provide an expiration date;"

Page 4, line 5, replace ", or altering" with "; delaying"

Page 4, line 5, after "diagnosis" insert "of an individual."

Page 4, line 5, after the second "or" insert "altering the"

Page 5, after line 29, insert:

Exception.

This chapter does not apply to enforcement actions under chapters 50-24.8, 51-08.1, and 51-15."

Page 6, remove lines 1 and 2

Renumber accordingly

Date: 4/7/2021

Roll Call Vote #: 1

2021 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1175 as (re) engrossed

House IBL Committee

- Action Taken
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep Lefor Seconded by: Sen Klein

Representatives	4-7		Yes	No	Senators	4-7		Yes	No
Chairman Nehring	P		Y		Sen Kline	P		Y	
Chairman Lefor	P		Y		Sen Vedaa	P		Y	
Rep Stemen	P		Y		Sen Marcellais	P		Y	
Total Rep. Vote			3		Total Senate Vote			3	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Chairman Nehring Senate Carrier Sen Klein

LC Number 21.0247 . 03004 of amendment

LC Number 21.0247 . 05000 of engrossment

REPORT OF CONFERENCE COMMITTEE

HB 1175, as engrossed: Your conference committee (Sens. Klein, Vedaa, Marcellais and Reps. Nehring, Lefor, Stemen) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1203, adopt amendments as follows, and place HB 1175 on the Seventh order:

That the Senate recede from its amendments as printed on page 1203 of the House Journal and pages 856 and 857 of the Senate Journal and that Engrossed House Bill No. 1175 be amended as follows:

Page 1, line 3, remove "to provide an expiration date;"

Page 4, line 5, replace ". or altering" with "; delaying"

Page 4, line 5, after "diagnosis" insert "of an individual;"

Page 4, line 5, after the second "or" insert "altering the"

Page 5, after line 29, insert:

Exception.

This chapter does not apply to enforcement actions under chapters 50-24.8, 51-08.1, and 51-15."

Page 6, remove lines 1 and 2

Renumber accordingly

Engrossed HB 1175 was placed on the Seventh order of business on the calendar.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1175

That the Senate recede from its amendments as printed on page 1203 of the House Journal and pages 856 and 857 of the Senate Journal and that Engrossed House Bill No. 1175 be amended as follows:

Page 1, line 3, remove "to provide an expiration date;"

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