

**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.

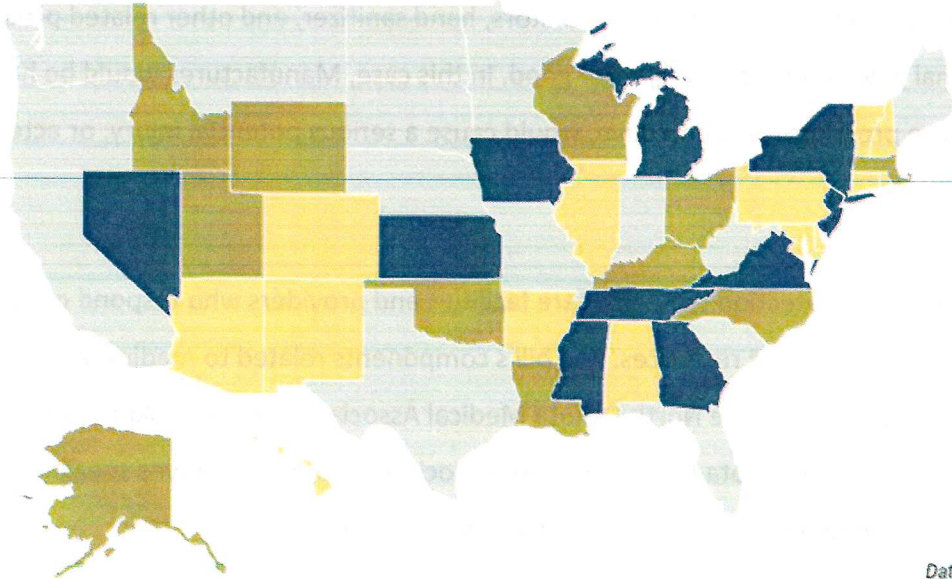
The third component of the bill (page five) protects manufacturers that responded to the pandemic in the spirit of being a Good Samaritan. These businesses reacted quickly to adapt production lines to make personal protective equipment, ventilators, hand sanitizer, and other related products outside 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.

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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

