

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.

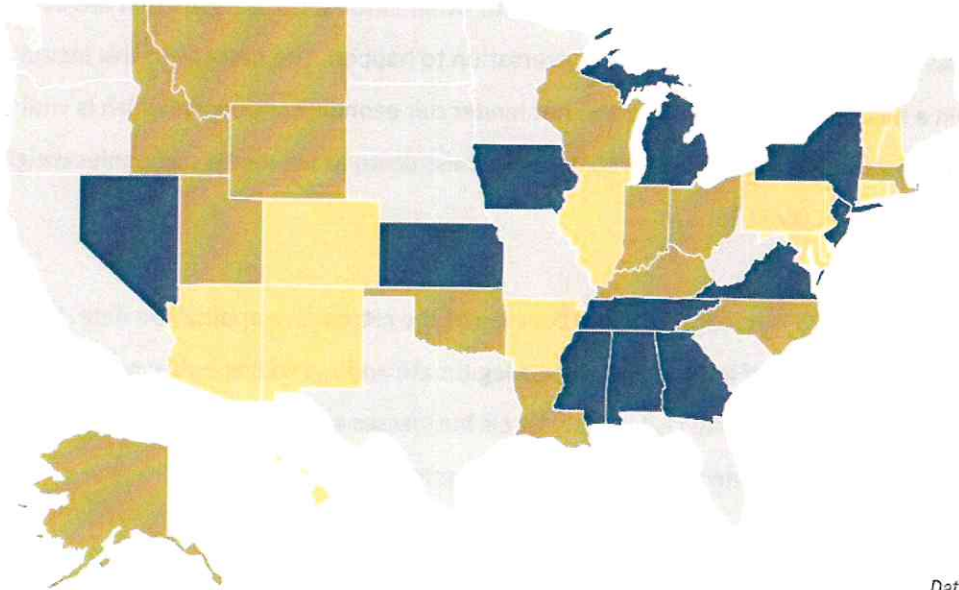
Some have claimed that HB 1175 is unconstitutional because of the retroactive application date. It is not. Case law allows retroactive application dates if it is supported by a legitimate and overriding public purpose. Certainly, the legislature weighing in on the appropriate civil liability levels businesses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

