

December 1, 2020

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate  
S-230, The Capitol  
Washington, D.C. 20510

The Honorable Charles E. Schumer  
Minority Leader  
U.S. Senate  
S-221, The Capitol  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
Speaker of the House  
U.S. House of Representatives  
H-232, The Capitol  
Washington, D.C. 20515

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
H-204, The Capitol  
Washington, D.C. 20515

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Pelosi, and Minority Leader McCarthy:

The associations signed onto this letter urge you to address the issue of liability during the pandemic in the next piece of COVID-19 relief legislation. It is increasingly important that Congress act to protect the businesses that have taken necessary precautions to protect their employees and customers while serving the country during the crisis. The undersigned associations represent industries across the nation that were designated as part of the nation's essential critical infrastructure by the U.S. Department of Homeland Security.

Throughout this public health crisis, these companies and their employees have strived to support their fellow Americans by providing them with many necessities of life: food, water and beverages, medication, fuel, and other goods and services, including financial services. Businesses have worked hard to serve their communities, overcoming numerous hurdles, such as constantly changing health guidelines and supply shortages, in order to do so. These businesses that have taken responsible steps to mitigate the spread of the virus should not face costly and harmful litigation simply because they are open to the public during a time when we all face a highly contagious virus.

For these reasons, we support legislation protecting all businesses from unfounded lawsuits if they make efforts to protect their employees and guests from COVID-19. In the Senate, we have endorsed the SAFE TO WORK Act (S. 4317) sponsored by Senators Cornyn (R-TX) and McConnell. In the House, we have endorsed the Get America Back to Work Act (H.R. 7528) sponsored by Representatives Garrett Graves (R-LA) and Henry Cuellar (D-TX).

Unfortunately, there has been an uptick in outreach from some lawyers aggressively seeking plaintiffs to bring tort lawsuits against businesses. For example, one plaintiffs' law firm that applied for Paycheck Protection Program loans of between \$12 million and \$27 million boosted its advertising spending from \$50,000 per day to \$300,000 per day during the pandemic.<sup>1</sup> In fact, legal advertising by plaintiffs' firms saw a substantial increase from 2019 levels.<sup>2</sup> These firms spend money on

---

<sup>1</sup> Daniel Fisher, "Did taxpayers just fund a lawyer advertising boom?" *Legal Newline* (July 15, 2020)(available at <https://www.tortreform.com/news/did-taxpayers-just-fund-a-lawyer-advertising-boom/#>).

<sup>2</sup> *Id.*

advertising because it successfully leads to more clients and more personal injury cases – and we have seen increases in those cases related to COVID.<sup>3</sup>

To emphasize, we are not asking lawmakers to shield bad actors. Liability protection should not be given to any business that willfully ignored the risks of the spread of COVID-19 and committed gross negligence. Rather, businesses that made reasonable, good faith efforts to keep their doors open in a way that was safe for their communities should be protected from liability. While navigating often vague and evolving health and safety guidelines, businesses continue to make substantial investments to protect individuals from exposure by implementing unprecedented virus mitigation protocols, such as enhanced cleaning and sanitation practices as well as social distancing measures. It is only appropriate that Congress should protect these companies from claims of virus exposure beginning from the time when this crisis first hit the nation.

Please protect the businesses that have gone to extraordinary lengths to support this nation and its citizens during this perilous time. It would be tragic if businesses that had kept their doors open to serve their communities were forced to close because of the high costs of dealing with frivolous lawsuits. For these reasons, we call upon Congress to pass legislation protecting our members' businesses in the next COVID-19 relief package.

Sincerely,

American Bakers Association  
American Beverage Association  
American Frozen Food Institute  
American Trucking Associations  
ATM Industry Association  
Coalition of Franchisee Associations  
Convenience Distribution Association  
Distilled Spirits Council of the United States  
Electronic Funds Transfer Association  
Electronic Transactions Association  
Energy Marketers of America  
FMI, The Food Industry Association  
Franchise Business Services  
Global Cold Chain Alliance  
Healthcare Distribution Alliance  
Independent Lubricant Manufacturers Association  
International Dairy Foods Association  
International Foodservice Distributors Association  
International Franchise Association  
National Armored Car Association

---

<sup>3</sup> See Hunton Andrews Kurth COVID-19 Complaint Tracker at <https://www.huntonak.com/en/covid-19-tracker.html>.

National Association of Chain Drug Stores  
National Association of Convenience Stores  
National Association of Professional Employer Organizations  
National Association of Specialty Pharmacy  
National Association of Truckstop Operators  
National Beer Wholesalers Association  
National Chicken Council  
National Community Pharmacists Association  
National Confectioners Association  
National Fisheries Institute  
National Franchisee Association  
National Grocers Association  
North American Meat Institute  
North American Millers' Association  
SNAC International  
Society of Independent Gasoline Marketers of America  
United Fresh Produce Association

cc:

Members of the U.S. House of Representatives

Members of the U.S. Senate