

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.¹ In fact, legal advertising by plaintiffs' firms saw a substantial increase from 2019 levels.² These firms spend money on

¹ 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/#>).

² *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.³

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

³ 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