



American Justice Partnership

AJP State Survey Initiative

How Kentucky Business Leaders Regard The Legal Climate in Kentucky

May 2007

Results of An Opinion Survey
Conducted By:



The **AJP State Survey Initiative** is an ongoing effort to identify the impact of state liability laws on the ability of businesses to create jobs, develop new products and services, and contribute to economic prosperity. The American Justice Partnership is a national nonprofit coalition of leading corporations, think tanks, foundations, trade associations, individuals and organizations advocating for legal reform, primarily at the state level. Dan Pero, President, 600 South Walnut Street, Lansing, MI 48933 517-371-7276 © 2007 American Justice Partnership www.AmericanJusticePartnership.org



About This Survey

This survey was sponsored and implemented by The Kentucky Chamber of Commerce in March 2007 with assistance and technical support from the American Justice Partnership.

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How Kentucky Business Leaders Regard The Legal Climate in Kentucky

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Introduction

The Kentucky Chamber of Commerce, with assistance from the American Justice Partnership, completed a survey in March 2007 among Kentucky business owners and managers. The survey reveals how the legal climate in Kentucky is seen by Kentucky business leaders.

Leaders in Kentucky businesses were invited to anonymously complete an internet-based questionnaire.

Almost half of the business owners and managers participating in this survey, 45%, have 49 or fewer employees. Another 17% have 50 to 99 employees and 25% have 100 to 499 employees. Leaders representing businesses with 500 or more employees comprise 13% of the respondents.

Thus, the survey respondents reflect the group of small and medium size businesses that traditionally generate the greatest share of new jobs and fuel local economic growth. The future economic prosperity of the state is, without a doubt, tied to the ability of these companies to expand their activities and create new jobs that provide attractive opportunities for employees and their families to remain in or move to Kentucky.

Simply put, Kentucky cannot achieve economic growth in the future unless companies represented by the survey respondents are able to prosper and expand job opportunities. These companies generate the payroll and taxes that fuel every aspect of community life in our state.

Thus, it is of paramount importance that Kentucky state government officials take into account these survey findings when considering ways to ensure that Kentucky remains competitive in the U.S. and global markets of the 21st century. The bottom line is that the legislature needs to make comprehensive legal reform a priority.



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Key Findings

- **87% of those business leaders responding say that the legal climate in Kentucky imposes costs on businesses that hurt job growth.**
- More than three-quarters of those responding, 78%, say that the legal climate in Kentucky creates disadvantages for businesses in Kentucky compared with other states.
- Nearly six out of ten, 57%, say that the legal climate in Kentucky discourages them from spending to create or improve products and/or services.
- More than half of those responding, 55%, say that the legal climate in Kentucky encourages them to want to move their businesses to another state.
- More than nine out of ten, 91%, say that the legal climate in Kentucky increases the cost of everything consumers buy in Kentucky.
- More than eight out of ten, 83%, say that they now spend more time than ever before trying to manage the risks of being sued.
- More than three-quarters, 77%, have increased their liability insurance; more than three-quarters, 77%, have paid lawyers for advice on liability issues; and more than eight out of ten, 84% have trained their employees to avoid liability problems.
- More than eight out of ten, 83%, have experienced increases in the cost of liability insurance over the last two years. These insurance cost increases range from a low of 5% (12% of respondents), to a high of 20% or more (20% of respondents).
- More than half, 57%, have decided against developing new products and/or services in order to avoid liability lawsuits.
- More than three out of ten, 31%, spend more time on potential or actual liability problems than they spend on improving productivity in their business.
- Approximately one-third spend more time on potential or actual liability problems than they do on developing new products (31%) or on plans to expand the business (35%).
- Almost half, 48%, are dissatisfied with state government efforts to restore fairness and predictability to state liability laws.

I. Impact of The Legal Climate in Kentucky

According to more than nine out of ten business leaders completing the survey, 91%, the legal climate in Kentucky increases the cost of everything that consumers buy in Kentucky.

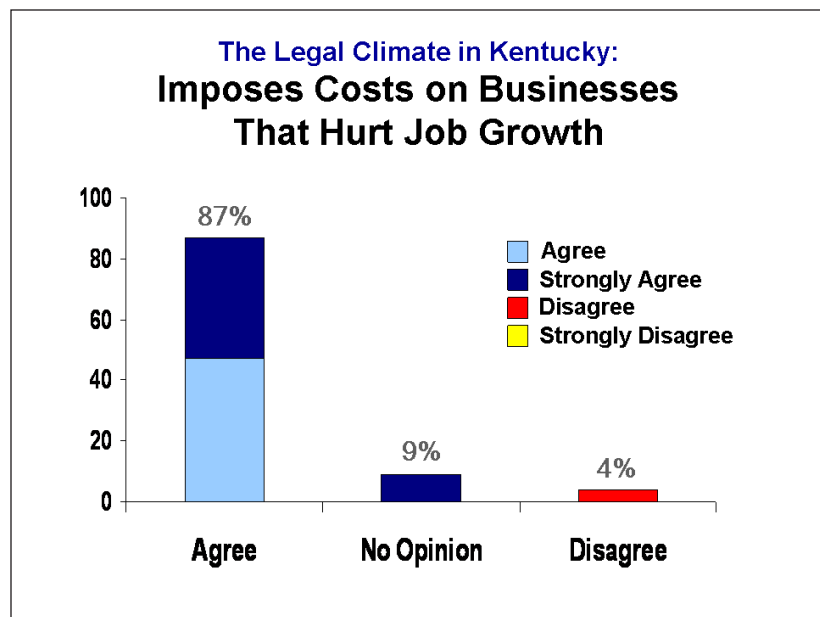
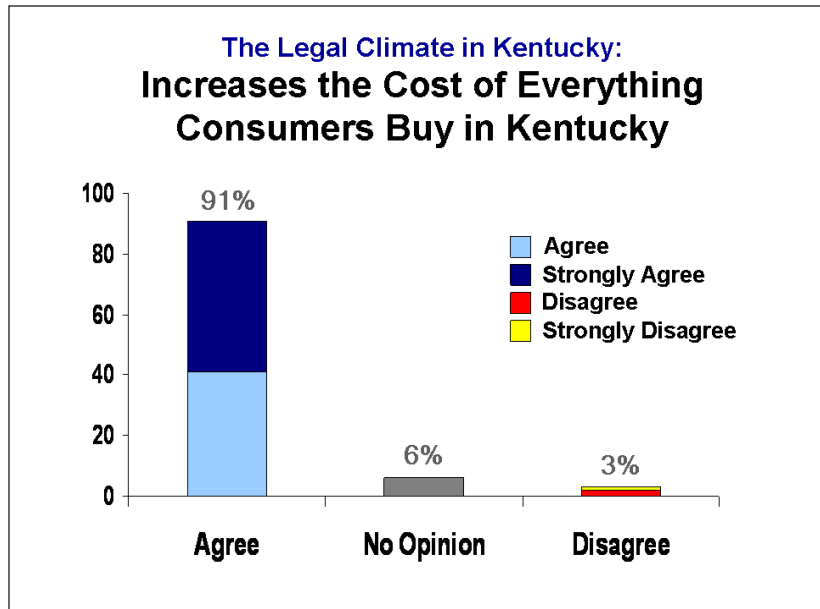
These leaders, who reflect a very diverse group of small and medium size businesses in the state, have a first-hand understanding of how the costs associated with lawsuit abuse and unwarranted litigation drive up the cost of doing business.

These costs include the increasing costs of liability insurance, the costs of defending lawsuits and paying settlements and awards, and many indirect costs such as management and employee time spent on dealing with potential or actual liability issues.

Even while consumers are paying more in Kentucky for everything they buy, not all costs to businesses are passed along to consumers. For example, when a Kentucky business sells a product that is also offered by a business from another state or country that maintains a fairer legal climate, the Kentucky business cannot raise prices to cover legal costs without risking that its prices will be higher than those of the competition.

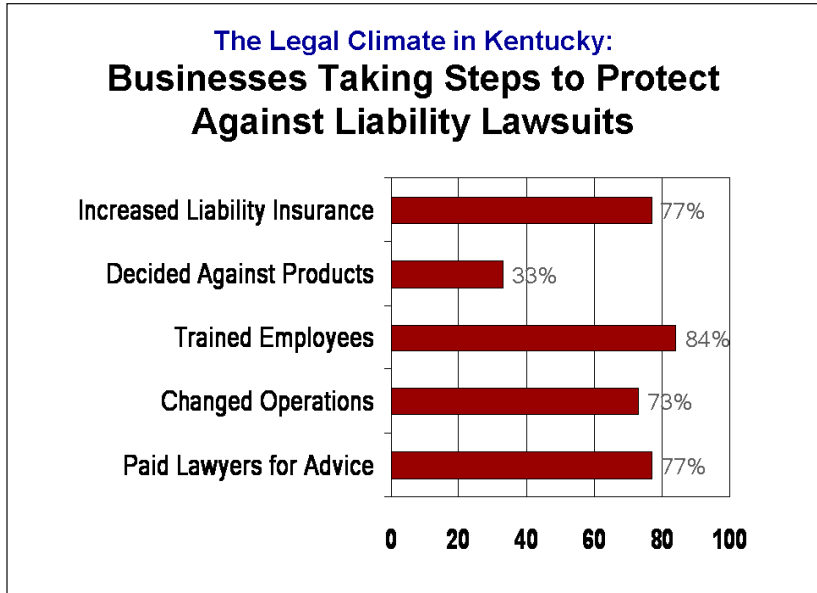
As the chart on the right shows, more than eight out of ten business leaders, 87%, report that the legal climate in Kentucky imposes costs on business that hurt job growth.

Such costs take many forms, including direct costs that involve financial expenses, and indirect costs such as the distraction of liability problems taking the attention of managers away from business expansion activities.



The two graphs below depict the percentage of managers reporting how their businesses have experienced both direct and indirect costs triggered by the legal climate.

As shown in the graph to the right, 77% of participating managers report that they have increased their liability insurance to protect against liability lawsuits. One-third, 33%, report they have decided against developing new products, services or improvements to existing products or services. No doubt these decisions have deprived Kentuckians of valuable products and services.



More than eight out of ten, 84%, report that they have trained employees to protect against liability lawsuits, a defensive measure that demonstrates that most businesses are alert to the possibility of liability problems and taking responsibility for proactively preventing problems. Similarly, nearly three-quarters, 73%, report that they have changed their operations to protect against liability lawsuits.

However, even with these steps, more than three-quarters, 77%, have paid one or more lawyers for advice to help them protect the business and/or the business owners from possible liability lawsuits.

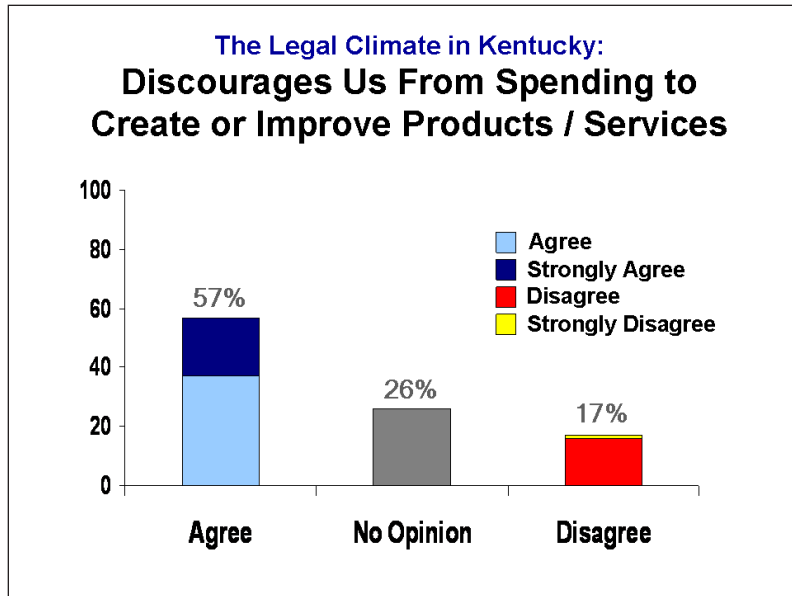
There is also the indirect cost to the economy and businesses when the CEO and other managers are distracted from expansion activities to spend time on actual or potential liability problems and lawsuits.

As the chart to the right indicates, a substantial number of business managers in Kentucky spend more time dealing with liability issues than they spend developing growth opportunities.



Considering how important it is for the leadership of a business to be focused on planning for and building for the future, particularly in smaller businesses which comprise the majority of those in this survey, it is alarming that more than one-third of the CEOs feel the need to spend more time on liability issues than they spend on growing their businesses.

Not surprisingly, more than half of Kentucky business leaders, 57%, feel that the state's legal climate discourages them from spending to create or improve products and services as depicted by the graph to the right.

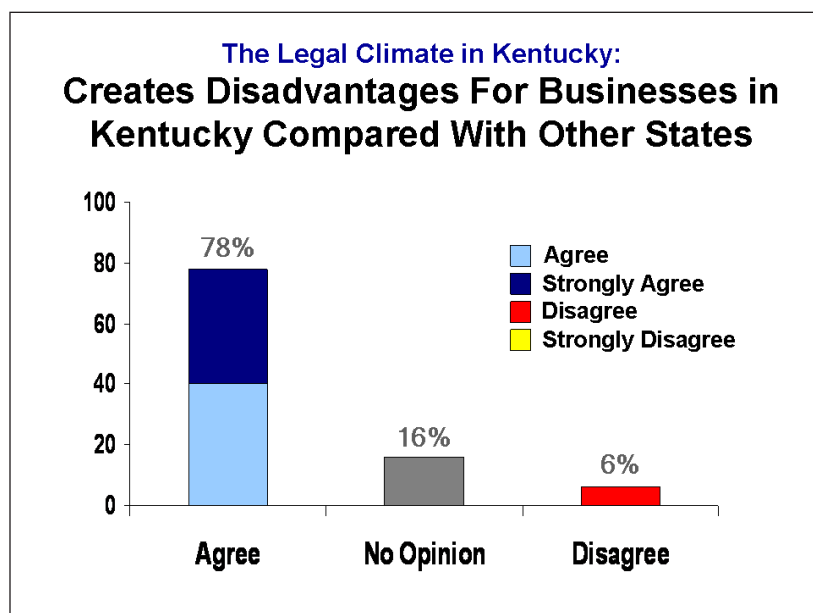


The businesses represented by these respondents, 62% of which have 99 or fewer employees, comprise the group of companies to which Kentucky needs to look for precisely the type of product and service innovation that will fuel future economic growth in the state.

Businesses such as these traditionally serve as seedbed for major job expansion. So, if this group of managers is discouraged now from investing in the future, Kentucky is likely to face lower economic growth in the future when the new products and services that should be in development now would be expected to come to market.

Again not surprisingly, business leaders who naturally want to invest in their businesses are very aware of how the state's legal climate creates disadvantages for them compared to the legal climates in other states.

As the graph to the right illustrates, more than three-quarters of those completing the survey, 78%, believe that Kentucky's legal climate creates disadvantages for businesses in the state compared with the legal climates in other states.



It should be alarming to state government leaders that

nearly four out of five of those leaders completing the survey, 78%, agree that the legal climate in Kentucky creates disadvantages for their businesses, compared to the legal climates in other states.

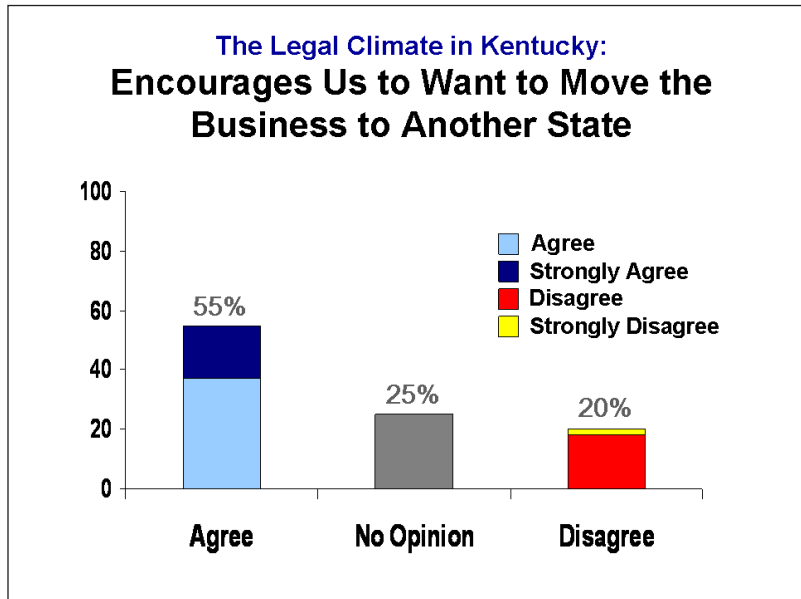
This high response demonstrates a level of intense concern among business leaders that needs to be addressed because these business leaders are making decisions on a daily basis about whether and how to continue to invest in business activities in Kentucky.

More than half of those responding, 55%, believe that the legal climate in Kentucky actually encourages them to move their businesses to another state, as illustrated in the chart to the right.

It should be of special concern that the industries represented by this group of leaders are predominately manufacturing and service firms such as healthcare, education and engineering.

Again, the companies represented by this group of leaders are exactly the type of companies and jobs that Kentucky should be striving to retain in Kentucky and attract to the state so as to ensure a diverse and economically sound business base in the state.

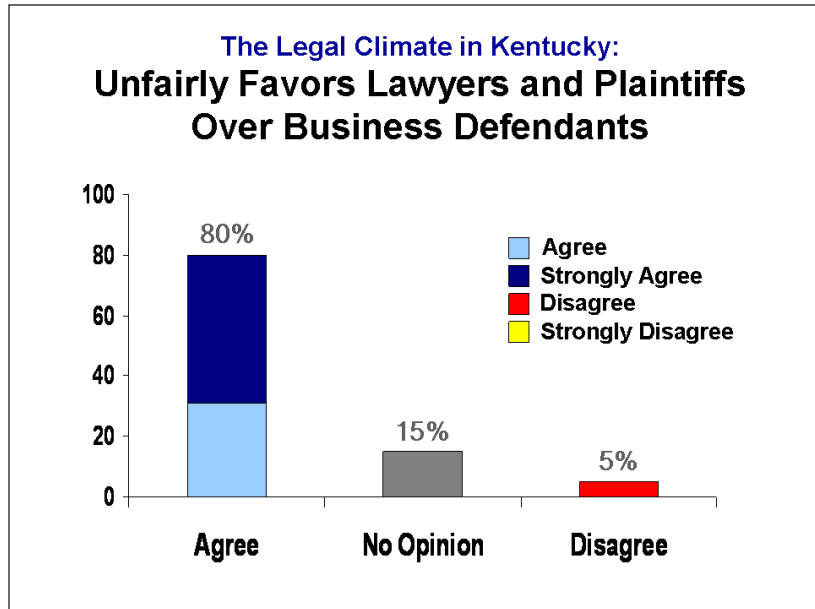
To further illustrate the intensity of concern among these leaders for Kentucky's legal climate, nearly half, 48%, are dissatisfied with the efforts of state government to enact laws that will restore fairness and predictability to the liability laws of Kentucky. More than one-quarter participating business leaders, 26%, are *very* dissatisfied with these efforts.



II. The Legal Climate Unfairly Favors Lawyers and Plaintiffs

Eight out of ten business leaders, 80%, believe that the legal climate in Kentucky unfairly favors lawyers and plaintiffs over business defendants, as illustrated by the graph to the right.

Importantly, almost half, 49%, agree *strongly* with this statement, showing that the business community intensely believes that the legal climate in Kentucky is skewed to create unfair advantages for trial lawyers and plaintiffs at the expense of businesses.

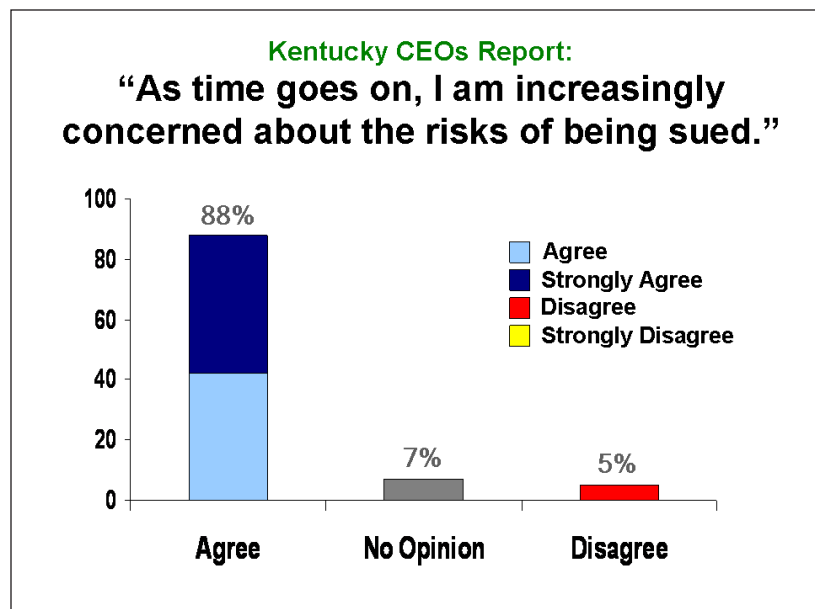


In light of today’s legal climate in Kentucky, business owners and managers are forced to focus on managing legal risks as a key component of their daily activities rather than focusing on building the business and creating jobs.

As this graph depicts, Kentucky business leaders are “increasingly concerned about the risks of being sued”. Almost half, 46%, strongly agree and another 42% agree with this statement.

Thus, a total of more than eight out of ten, 88%, are focusing more and more attention on legal risks instead of entrepreneurial business priorities.

Conversely, it is striking that only 5% of the business leaders responding to the survey disagree that they are *increasingly* concerned about the risks of being sued. Many in this group are likely to be concerned about being sued even though their concerns are not necessarily increasing over time.



More than eight out of ten of the business leaders completing the survey, 83%, indicate that they “now spend more time than ever before trying to manage the risks of being sued”, as the graph on the right illustrates. More than one-third, 39%, agree strongly with this statement, indicating that their focus on legal liability figures heavily in their responsibilities.

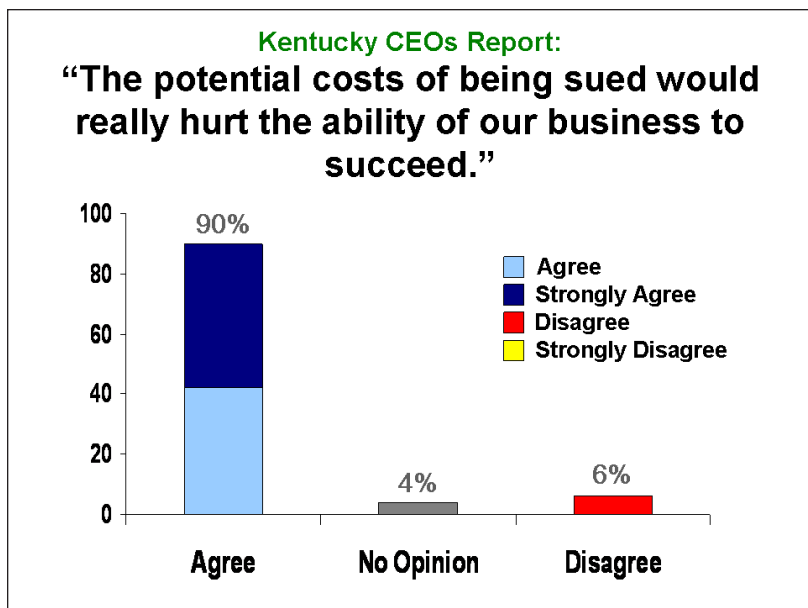
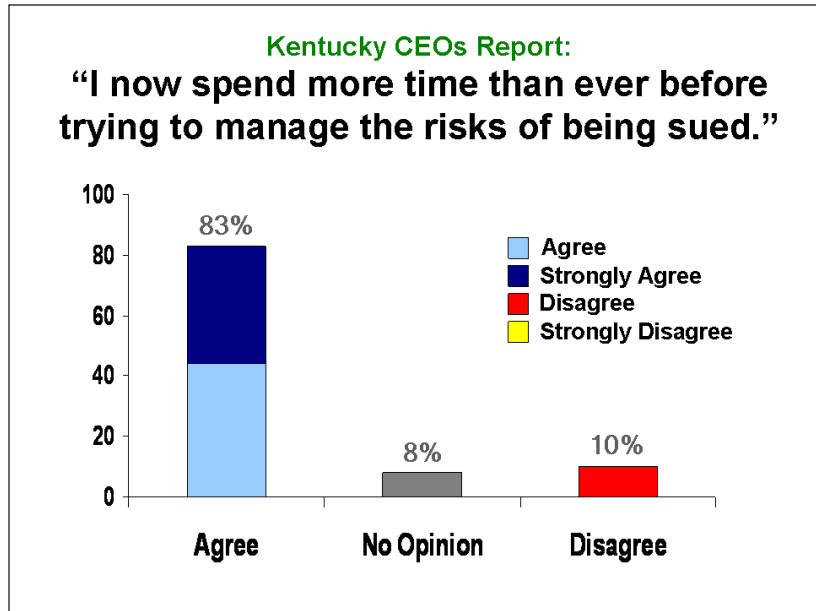
Three-quarters, 75%, represent companies with fewer than 200 employees. Here

again, this shows that the very leaders that Kentucky needs to depend on to build the economy and expand jobs in the future are having to focus seriously on managing the risks of being sued instead of building the future economy for the state.

It is clear that Kentucky business leaders recognize that, with increasing competition from companies based in other states and other countries that have more favorable legal climates, the high costs of defending against frivolous and unwarranted lawsuits are potentially fatal to their operations.

In small companies, lawsuits can be disastrous *even when the business defendants win*. The cost of legal representation, much of which is not covered by insurance, can represent most or all of the profits from one or more years of operation. Importantly, in smaller companies, such lawsuits are highly distracting to the business owner and manager and this can tremendously diminish the focus on running the business.

As the chart to the right depicts, nine out of ten business leaders, 90%, report that “the potential costs of being sued would really hurt the ability of our business to succeed”. Again, almost half of those responding to the survey, 48%, agree strongly with this statement.



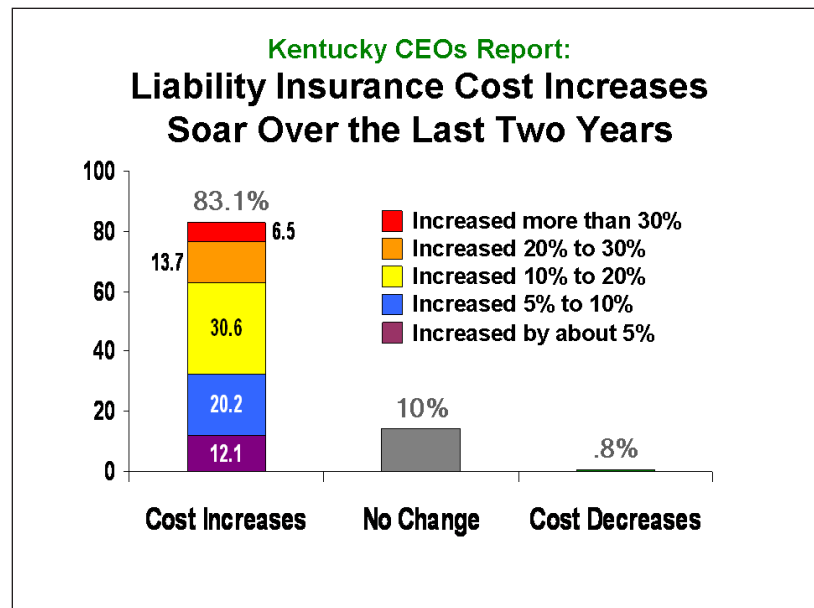
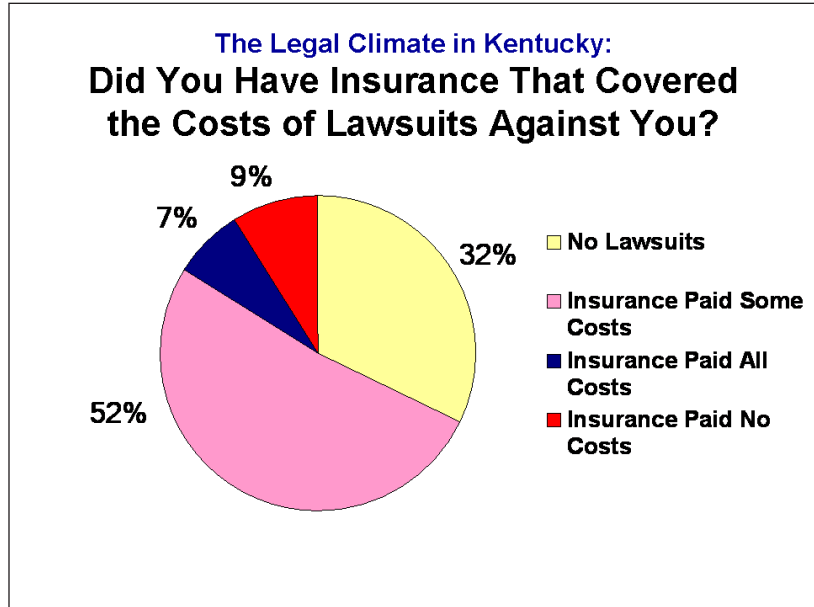
In this context, it is easy to understand why Kentucky business owners and managers are so concerned about the fairness of the legal climate in the state: As if the demands of running their businesses in the highly competitive global economy of the 21st century are not challenging enough, the civil justice system in the state provides unfair advantages for trial lawyers and plaintiffs to sue businesses. Even if the businesses win their lawsuits, the cost and time involved in defending themselves can be ruinous.

Not even liability insurance provides adequate protection against the threat of being sued. As this graph shows, nearly seven out of ten of those completing the survey, 68%, report that they have been sued in the last five years. (Some have not been in business for a full five years.)

More than half, 52%, report that insurance paid *some* of the costs associated with the lawsuits and less than one in ten, 9%, indicate that insurance paid *none* of the costs. This shows that 61% of the companies in the survey have incurred lawsuit costs that were *not* covered by insurance.

The increasing cost of liability insurance is also a growing burden for Kentucky companies. As the chart on the right shows, eight out of ten business owners and managers, 83%, report that the costs of liability insurance have increased in the last two years.

In fact, several industry groups have been the hardest hit with increases of 10% to 30% or more. These include manufacturing, construction, and financial services firms as well as service firms in the healthcare, education and engineering sectors.

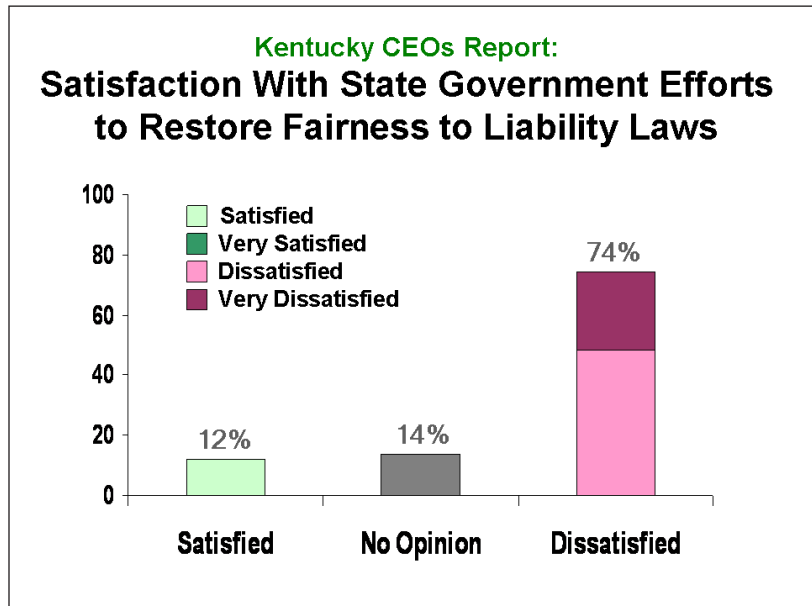


III. Satisfaction With State Government Efforts

Nearly three-quarters of business owners and managers responding to the survey, 74%, are dissatisfied with the efforts of state government to enact laws that will restore fairness and predictability to the liability laws of Kentucky.

Importantly, nearly 26%, are *very* dissatisfied with state government’s performance.

Leaders in manufacturing, financial services, construction and wholesale industries comprise more than half of those who are most dissatisfied with state government’s efforts.

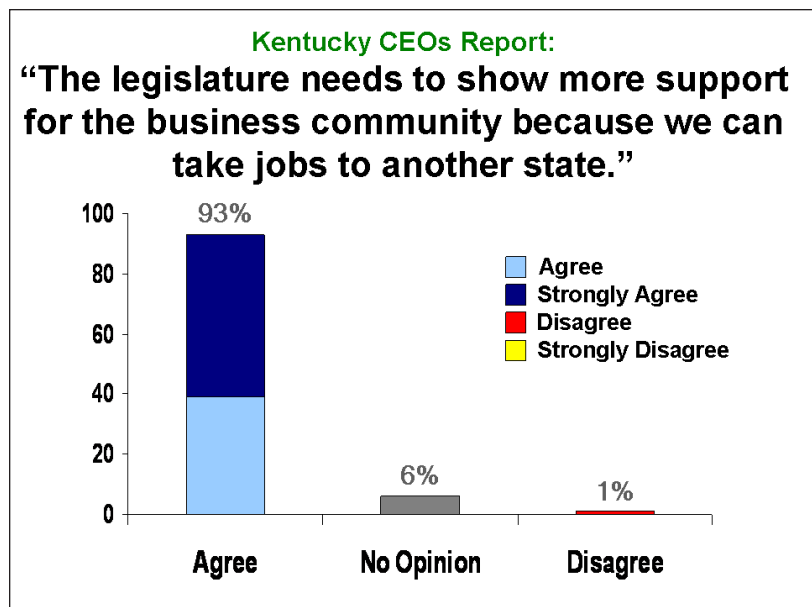


In recent years, well publicized efforts by various states, including Texas, Illinois and Kansas have made it clear that there are alternatives to remaining in Kentucky. Additionally, business owners and managers can elect to expand their businesses in a state other than in Kentucky.

Business leaders believe that the state legislature needs to show more support for the business community because business can elect to take jobs to another state if the legal climate is not improved.

As the graph on the right shows, more than nine out of ten business leaders share this view.

In fact, more than half of all survey participants, 54%, *agree strongly* with this statement.



This highlights the disconnect between the state’s current economic development goals and the perception held by the business community that the legislature should address the very real challenges of successfully managing a business in Kentucky.

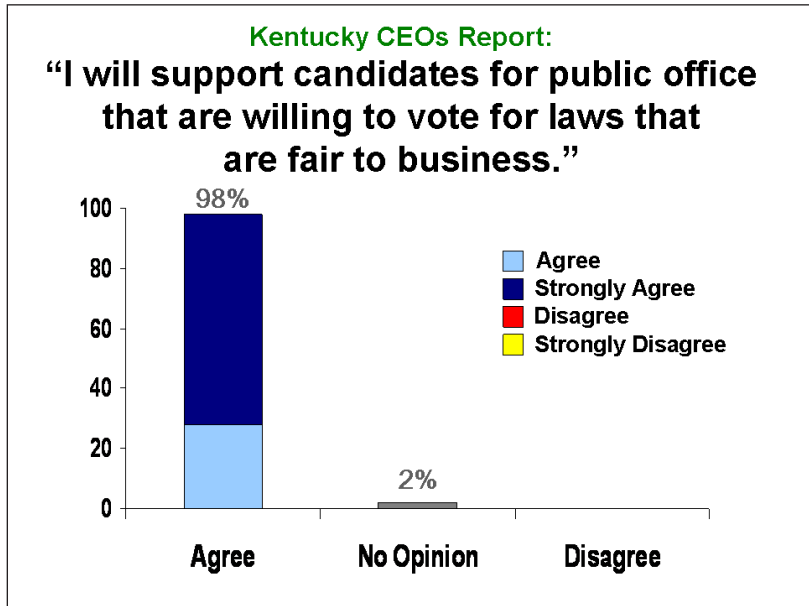
Business leaders are prepared to support candidates for public office who are willing to

vote for laws that are fair to business.

Almost all of the respondents, 98%, indicate that they will support candidates who vote for laws that are fair to business. Seven out of ten, 70%, agree strongly that they will support such candidates. Not one respondent disagrees.

More than half of those responding, 58%, indicated they would definitely or probably contribute to the candidate's campaign.

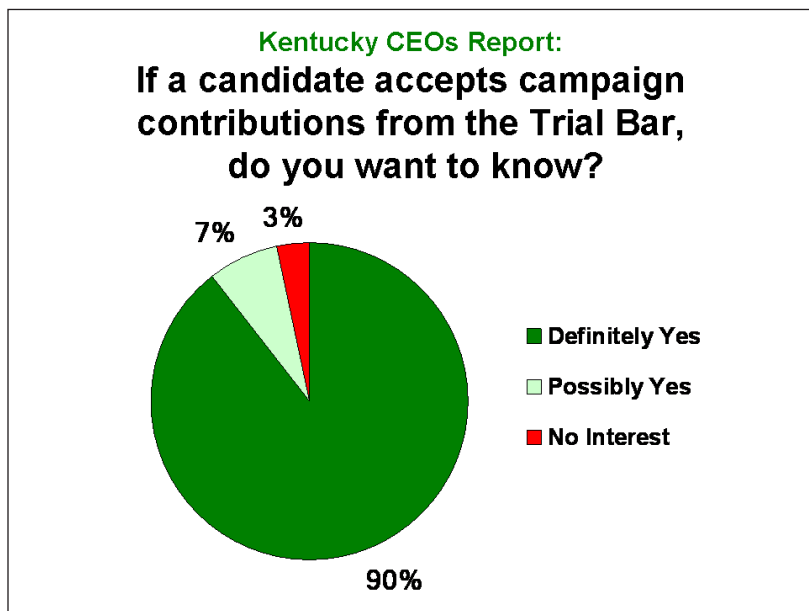
More than nine out of ten respondents, 92%, said that they would definitely or probably encourage friends and neighbors to vote for such candidates.



Business leaders also recognize that the Trial Bar makes significant contributions to the campaigns of legislators who are willing to vote against liability law reforms to preserve the current unfair advantages for lawyers and plaintiffs.

Nine out of ten business leaders, 90%, indicated that they would *definitely* want to know if a candidate for political office accepts campaign contributions from the Trial Bar.

Another 7% said they would possibly be interested in knowing. Only 3% indicated that they have no interest in knowing whether the candidate accepts Trial Bar campaign contributions.



IV. Survey Demographics

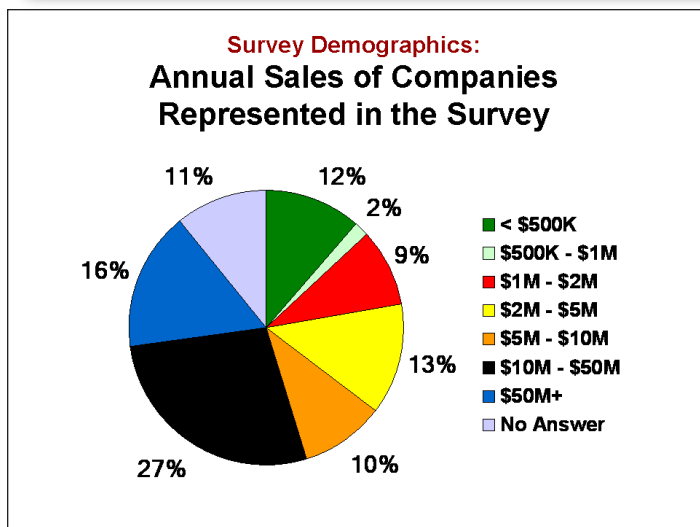
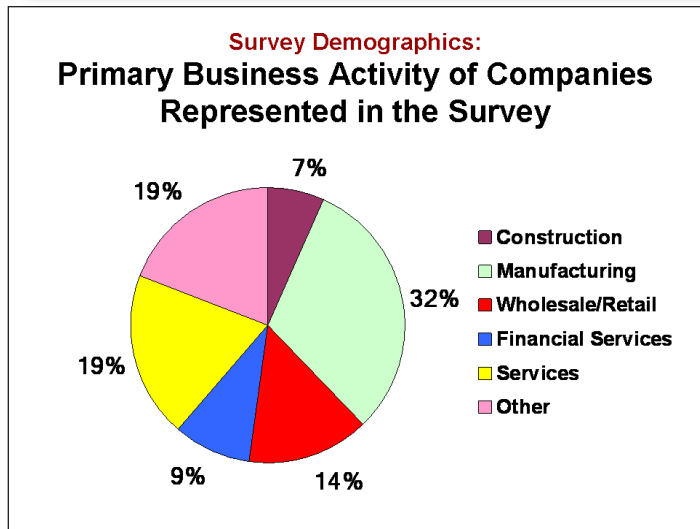
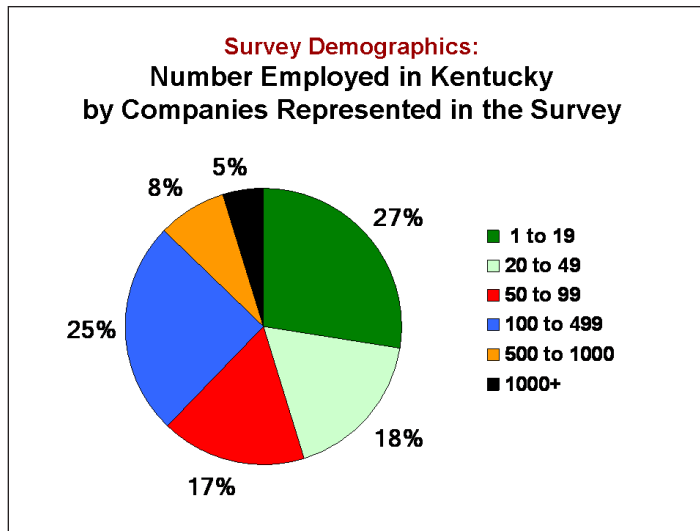
Almost half of the business owners and managers participating in this survey, 45%, have 49 or fewer employees. Another 17% have 50 to 99 employees and 25% have 100 to 499 employees. Leaders representing businesses with 500 or more employees comprise 13% of the respondents.

Eight out of ten survey participants, 80%, represent businesses that have their main offices in Kentucky.

Business leaders participating in the survey represent the wide diversity of industries in Kentucky, although manufacturing companies represent about one-third of all participants.

Similarly, businesses represented in the survey reflect many levels of annual sales revenue. Overall, the survey respondents are small and medium size Kentucky-based businesses.

About one in five of the companies, 22%, have annual sales revenue of less than \$2 million. Another 23%, have sales between \$2 million and \$10 million. About one-quarter, 27%, have sales between \$10 million and \$50 million. More than one in ten, 16%, of the companies represented in the survey have sales above \$50 million.





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