

March 9, 2021

Dear Representative,

Senate Bill 5 will provide meaningful COVID-19 legal liability protections for businesses and organizations including schools. SB 5 has broad support from organizations who all want the same thing: certainty. More than 30 states have adopted meaningful COVID-19 liability protections, and Kentucky is quickly becoming an outlier.

To explain the bill and because it was amended prior to Senate passage, the following summarizes what the bill does and does *not* do.

What Senate Bill 5 does:

- SB 5 protects businesses and organizations in two ways.
 - 1.) The bill **extends governmental immunity to a narrow group** of *essential service providers* such as health care providers caring for COVID-19 patients, grocery stores that stayed open to supply food, schools, and manufacturers that made masks, gloves, and hand sanitizer. These providers assisted the government in responding to the COVID-19 emergency.
 - 2.) The bill provides that churches, stores, restaurants, universities, and other **premises that followed COVID-19 health guidelines met their duty to protect** people from COVID-19.
- **SB 5 aligns with Kentucky's constitution**, specifically the jural rights doctrine that ensures access to the courts and often prevents liability protections. The bill follows case law related to the extension of governmental immunity to those acting as agents of the state, especially during an emergency, and is based on existing statutory language that acknowledges governments must call on private, non-governmental entities to respond to emergencies.
- SB 5 recognizes that COVID-19 is an isolated but extreme situation that calls for protections provided. The legislation also contemplates an end to the emergency and explicitly **ends the protections outlined above after Dec. 31, 2023**. Also, the protections for essential service providers will extend one year after the emergency declaration ends.

What SB 5 does NOT do:

- SB 5 **does not limit liability for future emergencies** unrelated to COVID-19.
- SB 5 **does not limit liability for intentional, malicious or grossly negligent acts** or when public health orders are ignored.
- SB 5 **does not limit liability related to slips and falls** and other accidents **not related** to COVID-19 even though they occurred during the declared emergency.

- SB 5 **does not protect people from charges related to criminal activity** such as abuse and acts of violence.
- SB 5 **does not bail out insurers**. Insurance policies often exclude coverage for intentional, malicious or grossly negligent acts. However, insurers have a *duty to defend* until a court has deemed actions to be intentional, malicious or due to gross negligence.
- SB 5 **does not limit liability for non-COVID-19 related motor vehicle accidents**, including those negligent acts under the Motor Vehicle Reparations Act.

SB 5 is not overly broad. It is specific to COVID-19, and the protections provided have limits in terms of the scope of the protections, their use and duration. It is important to reopen our economy with smart and measured protections in place for the heroes that stepped up to protect us; now it's time to protect them.

Sincerely,

American Heart Association
 American Pharmacy Services Corporation
 Association of Independent Kentucky Colleges and Universities (AIKCU)
 Baptist Health
 Brown-Forman
 Cardinal Hill Rehabilitation Hospital
 Christian County Chamber of Commerce
 Commerce Lexington
 Floyd County Chamber
 Forcht Group of Kentucky
 Frankfort Area Chamber of Commerce
 Hardin County Chamber
 Henderson Chamber
 Hinton Mills
 Home Builders Association of Kentucky
 Hopkins County Regional Chamber
 Houchens Industries, Inc.
 Integrated Sign & Graphic, Inc.
 Isaiah House Inc.
 Jessamine County Chamber
 Kentucky Association of Health Care Facilities/Kentucky Center for Assisted Living
 Kentucky Bankers Association
 Kentucky Chamber
 Kentucky Health Collaborative
 Kentucky Hospital Association
 Kentucky Medical Association
 Kentucky Oil and Gas Association

Kentucky Pharmacists Association
Kentucky Restaurant Association
Kentucky Retail Federation
Kentucky School Boards Association
Kentucky Senior Living Association (KSLA)
McLean County Chamber
Northern Kentucky Chamber
Paducah Area Chamber
Southern Kentucky Chamber
Westlake Chemical
Wine & Spirits Wholesalers of Kentucky