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Committee Bill 5125

Public Hearing: March 22, 2021

TO: MEMBERS OF JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: March 22, 2021

RE: OPPOSITION TO COMMITTEE BILL 5125, AN ACT CONCERNING THE PROVISION OF IMMUNITY FROM CIVIL LIABILITY FOR ENTITIES THAT HAVE OPERATED PURSUANT TO HEALTH AND SAFETY GUIDELINES DURING THE COVID-19 PANDEMIC

CTLA strongly opposes CB 5125 which unnecessarily provides immunity to businesses. Under current law, businesses or "entities", as defined in the bill, cannot be held liable if they comply with applicable health and safety operation guidelines. Accordingly, the proposed bill is unnecessary and counterproductive.

Current law only requires corporations to act reasonably. In fact, the civil justice system adapts well to a crisis without requiring a change to existing law. Reasonable care sets a clear standard that already protects business entities. The standard of care under which a jury or judge would determine whether conduct is reasonable is, what would a reasonable party do under the same or similar circumstances? Circumstances includes the circumstances of a pandemic. Accordingly, businesses are judged under the standard of care of what a reasonable business professional would do during a pandemic. CMS and the CDC have been issuing practice guidance for both health care professionals and businesses since early March that are, effectively setting what the standard of care is during this pandemic. As long as corporations take reasonable steps to protect their workers and their customers, they have immunity from lawsuits. Moreover, the standard evolves over time. The standard of care today is not the same as the standard of care that applied at the height of the crisis in April. Since the standard of care adapts based on changes in circumstances there is clearly no need for a change in the law.

Even for business owners who fail to take reasonable precautions, the prospect of a lawsuit is still very remote. To successfully sue a business for coronavirus transmission, an employee or consumer would have to prove that he or she contracted the virus from the business and not from some other source. However, most people infected with COVID-19 currently have no reliable way of identifying the source of their infection. The gap of three to 11 days between infection and illness, the difficulty of recalling all of one's contacts during that interval and testing issues present formidable obstacles to establishing causation. These cases are hard to bring.

Here are four reasons why:

"Reasonableness": Under the law, businesses need only act "reasonably" under COVID-19. The law holds no one to a standard of perfection. By following the law and applying well-publicized safeguards that the community would consider reasonable, there can be no claim of negligence

"Causation": To win a COVID-19 lawsuit, a claimant would have to prove that their COVID-19 exposure happened at a particular business. There is no signature tracer for this virus. Almost everyone - and certainly those who are venturing out to shop or dine -will have multiple potential exposure locations. Nailing down proof of which location was responsible for a claimant's exposure would be exceedingly difficult, which means the lawsuit will likely fail.

"Damages": According to the Johns Hopkins University Coronavirus Dashboard, with obviously sad and sometimes tragic exceptions, nearly everyone who gets coronavirus recovers. Typically, that recovery takes two to six weeks. To win money damages in a lawsuit, you have to prove enough harm that a court or jury will want to compensate for it. Without minimizing how difficult that recovery period can be for some, for most people the recovery will not merit a substantial damage award. And for those whose recovery is much longer or more difficult-and for those who die -there are usually other health factors that create uncertainty about whether COVID-19 is the culprit (see "causation" above).

"Comparative fault": State law requires that a claimant's conduct be factored in, too. Often called "comparative fault" it allows the court and jury to consider whether a claimant's own conduct was reasonable. If a claimant ignores a business' safety protocols- refuses to keep 6-foot buffers from others while inside the business, for example- the claimant can be at fault and thus denied damages. Similarly, those in high-risk categories have a responsibility to protect themselves, which means avoiding places that, even with safety protocols in place, carry at least some risk of exposure.

As a result of the foregoing, there has been minimal Covid related litigation nationwide and essentially no Covid related litigation in Connecticut. *See, attached.*

In addition, immunity is bad for business and the general welfare of the community because it spreads the coronavirus. Immunity doesn't protect all businesses, only those that choose to act unreasonably. Companies who act reasonably to prevent the spread of the coronavirus don't need this bill. The only beneficiaries of this bill are companies that choose to not follow safety protocols. Meanwhile, those that follow the rules will not benefit from their efforts if their competitors can act unreasonably without consequence. Our health and safety depends on companies doing unseen, but critical, work to prevent the spread of the virus. In order to ensure the economic interests of all businesses to act responsibly, every corporation must be held to account if they fail to act reasonably. When companies have to pay for the consequences of their choices, they make better choices.

Immunizing corporations only promotes the making of dangerous decisions that put the public and Connecticut families at risk. This bill is counterproductive and will unnecessarily permit businesses to lower the standards designed to protect the public.

WE URGE YOU TO OPPOSE COMMITTEE BILL 5125