



July 24, 2020

Members of the Business Liability Work Group:

Thank you for the opportunity to provide feedback on the legislative business liability work group's proposal. On behalf of the more than 50 organizations we represent, including schools, local governments, businesses across many sectors and non-profits, thank you for your efforts to address this issue and for your willingness to engage those most impacted by the threat of COVID-19 lawsuits in the conversations.

COVID-19 has brought unprecedented challenges to Oregonians statewide. As the state reacts to the changing conditions and increases in cases, regulations and requirements are changing in real time to protect the health and safety of Oregonians. The vast majority of businesses and organizations are making every effort to follow all regulations set forth by the Governor and the Legislature, yet they are still vulnerable to unwarranted lawsuits.

This group is asking that you ensure that schools, local governments and businesses that are acting in good faith are protected from unwarranted lawsuits, except in cases of gross negligence or reckless, wanton or intentional misconduct. This request is limited in scope and limited in duration.

Our coalition has asked that you pass legislation that provides the following:

- Protection for following State Guidance – entities who make a good-faith effort to follow guidance from the government about how they can safely operate should be protected from unwarranted lawsuits
- Recognition of the COVID-19 situation – entities should not be liable for circumstances beyond their control including limited PPE, limited testing and workforce shortages due to the crisis
- Limited Duration for Liability Protection – entities should have protection for acts or omissions during the COVID-19 Emergency (effective with the first order: EO 20-03 March 8, 2020)
- Limited Scope of Liability Protection – allow for gross negligence, reckless or willful misconduct claims to move forward (not looking to protect bad actors!)

We agree that the scope of the liability protection should not include liability in the workers compensation system. Oregon has one of the best workers compensation systems in the country relying on the exclusive remedy doctrine granting employer immunity from lawsuits in exchange for coverage of medical costs, missed work and other injury-related expenses for workplace injuries. Based on the data compiled by the Workers Compensation Division (WCD), we believe the system is working as intended under COVID-19 with benefits being paid for work related claims. Workers Compensation is a separate subject that has been fully vetted by the Management Labor Advisory Committee (MLAC).

That being said, we are concerned the proposal leaves potential gaps if it excludes employee lawsuits outside the workers compensation system. This proposal is a departure from our initial discussions, and we are concerned about the unintended consequences of specifically excluding employee suits against employers or including limitations as to the types of entities this applies to. From our perspective, legislation should be applicable to all entities and all COVID-19 related suits regardless of who files them. For this reason we do not believe the legislation should focus on language related to the UTPA. Additionally, we understand the need for separate, more specific language addressing the medical liability issue, but also believe this language should serve as the basis for liability protection for all entities who are acting in good-faith to comply with the Governor's executive orders and guidance issued concerning COVID-19.

The need for liability protection for those who are making a good-faith effort to follow the guidelines about how to safely operate their organization has only increased since the conversations began. We have already seen that the scope of COVID-19-related lawsuits is broader than anything we could have imagined three months ago. Virtually every Oregonian has some exposure to COVID-19 lawsuits – providing basic liability protection for all entities will help ensure there is a standard that Oregonians can rely on as they work to protect customers, employees and the general public from this public health crisis.

We are uncertain about how this approach might affect potential lawsuits based on perceived discrimination as it relates to instituting guidelines issued by the state. We are also concerned about how this proposal would affect second-hand exposure cases brought by people who have not been in direct contact with the business or entity. One thing we know about this situation is that it is ever-changing. The potential for lawsuits is expansive, and we believe it is important to ensure there is liability protection that, while limited in scope, applies broadly to all entities and potential causes of action for those who are in compliance. We ask that you adjust the framework of your proposal to reflect these concerns and protect Oregonians who are doing the best they can in a very difficult situation.

We have attached for your consideration a revised version of the -38 amendments that takes into account the work done by the medical liability work group and your work group but that we believe is more reflective of the intent of the -38 amendments. This draft includes several "Whereas" clauses in an attempt to establish legislative intent, an important component in these uncertain times. We ask that you consider the recommended language in your discussions and look forward to additional conversations with you as we move forward on this important issue. We are also including additional information that includes the broad array of executive orders and compliance requirements entities are facing, along with a summary of actions taken by other states and articles relating to liability concerns that may be helpful as you consider this issue.

Thank you again for your work to ensure entities in Oregon have a limited amount of liability protection during this difficult and uncertain time.