

NEW HAMPSHIRE UNION LEADER

Coronavirus

NH business leaders seek COVID-19 liability limit

By Kevin Landrigan New Hampshire Union Leader Feb 8, 2021 Updated Feb 9, 2021



Business leaders asked the Senate Commerce Committee for New Hampshire to join 16 states limiting the liability for businesses from COVID-19 damage lawsuits brought by customers or visitors.

Kevin Landrigan/Union Leader

CONCORD — Business leaders want New Hampshire to join 16 other states in limiting their legal liability in lawsuits by customers and employees over exposure to COVID-19.

“Nearly 200 suits have been filed across the country, and they will come here to New Hampshire eventually,” Business & Industry Association of New Hampshire’s David Creer said during a hearing before the Senate Commerce Committee on Monday.

Senate Ways and Means Committee Chairman Robert Giuda, R-Warren, said Senate Bill 63 ([SB 63](#)) would raise the burden of proof to win such a suit to “clear and

convincing evidence” that the business was guilty of “gross negligence, willful misconduct, intentional criminal action or intentional harm.”

“We are dealing with a virus here; we’re not dealing with broken glass or a hot coffee-making machine,” Giuda said.

The current burden in a civil suit is that claims meet the lower “preponderance of the evidence” standard.

Tony Sculimbrene, a personal injury lawyer in Nashua, said in all of New England there have been only four such suits brought regarding COVID-19 damages.

“We are talking less than one in a million; you have the same odds of being killed by a poisonous plant or animal as a business has of getting sued over COVID,” Sculimbrene said.

Legal challenges likely

Neil Nicholson, a Concord lawyer, said the bill would reduce a citizen’s right to a jury trial and would not likely survive a constitutional challenge.

Critics of the bill maintain New Hampshire isn’t an attractive environment to bring these suits because judges cannot award punitive damages that result in multimillion-dollar jury awards.

Customers or other third parties in New Hampshire can file a civil suit only for actual damages, such as lost wages and medical bills along with pain and suffering.

Paul Chant of the Cooper, Carghill, Chant law firm in North Conway said state law already protects businesses from culpability if their owners complied with state and federal regulations about the virus.

“Guess what? New Hampshire’s law already covers this problem, and covers it well,” Chant said.

Employees who come down with virus-related damages in the workplace must seek any redress by filing a workers’ compensation claim.

Since last March 31, there have been 35,000 first reports of injuries at work and 3,200 of them have mentioned COVID-19, according to Lexie Rojas, general counsel with the state Department of Labor.

Only six of those cases have escalated to a level that the affected worker asked the agency to hold a hearing on a denied claim, Rojas said.

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