



Update from AAJ Linda A. Lipsen

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AAJ fighting against COVID-19 immunity laws

REPUBLICANS SEEK BROAD IMMUNITY FOR CORPORATIONS IN THE SAFE TO WORK ACT

WASHINGTON UPDATE

As many of you know, the U.S. Chamber and corporate America have pushed aggressively to enact transmission immunity legislation in the states during the COVID-19 pandemic. So far, 12 states have passed legislation or issued executive orders to give companies immunity from coronavirus lawsuits for neglect.

These immunity laws do nothing to help the economy and create a perverse incentive for businesses to cut corners on employee and customer safety. I know many of you are concerned for your practices and your clients' rights. I assure you that AAJ and the state trial lawyer associations (TLAs) are working together to ensure that businesses act responsibly to protect workers and consumers.

We are also advocating in Washington, D.C., on behalf of you and your clients. Here are some highlights:

An attack on America's workers and consumers

Mitch McConnell and his allies recently introduced the Safe to Work Act – a corporate giveaway that provides broad liability immunity to corporations and will lead to increased infection rates, make consumers and workers less safe, and prolong the pandemic. The ironically named Safe to Work Act is the most aggressive attack on workers' and consumers' rights ever introduced in Congress – or at the state level.

Notably, this bill preempts all state laws including tort law except for those that are less protective of individuals and moves all COVID-19 exposure, injury, or death claims to federal court.

Senators Cornyn and McConnell want to remove liability – the most effective and often the only protection that workers, patients, and consumers have to encourage businesses to act reasonably and promote safety. The bill would essentially wipe out medical malpractice cases for the next five years, and:

- Plaintiffs must prove that a business acted with conscious disregard because of an extremely heightened gross negligence standard and would have to meet raised evidentiary burdens;
- Suspends federal employment and disability rights statutes such as the ADA, the Civil Rights Act, and the Fair Labor Standards Act for five years;
- Eliminates or severely limits non-economic damages in many health-related claims including nursing home claims.

AAJ is fighting back through our communications with reporters, advocacy on Capitol Hill, and outreach to the public through social media. We've also set up a rapid response NoCorporateImmunity.com site where you can read the stories of people devastated by COVID-19 who, if this bill passes, will have no remedy when corporations put consumers or workers at risk.

As of this writing (August 14), the bill has not been put to a vote in the Senate. We remain focused on ensuring that corporate America and the U.S Chamber do not succeed in using the COVID-19 crisis to achieve their anti-worker, anti-consumer agenda. Watch this space for more updates.

AAJ and state associations work together on health care liability

While Congress debates granting broad immunity to businesses that fail to protect workers and customers from COVID-19 exposure, some states that enacted legal protections for health care providers and facilities have let them expire or are attempting to roll them back.

In April – with the virus surging – New York granted liability protections for the health care industry. But by July, legislators decided this language protected hospitals and nursing homes at the expense of injured patients. That month, they passed S.8835/A.10840 to roll back immunity for negligence for health care facilities and providers for non-COVID care. Governor Andrew Cuomo signed the bill into law on August 3, and legislators have indicated more must be done to fully restore patients' rights.

Early in the pandemic, Illinois Governor J.B. Pritzker signed an executive order granting immunity to health care providers and facilities for the duration of his Gubernatorial Disaster Proclamation. But six weeks later, he signed another executive order limiting immunity from negligence to health care facilities and providers providing COVID-19 care. That executive order expired on June 28.

Additionally, Michigan Governor Gretchen Whitmer signed an executive order granting immunity for negligence for health care professionals and certain health care facilities for providing medical services in support of the state's response to the global pandemic. This order expired on April 26, 2020, and a subsequent executive order was ruled unconstitutional by the Michigan Supreme Court. Legislators then passed S. 899, which granted immunity from negligence to health care facilities and providers. It has been sent to Gov. Whitmer, who as of this writing has not indicated whether she will sign or veto the bill.

AAJ and the TLAs have provided lawmakers with principles to protect the rights of COVID and non-COVID patients who are harmed during treatment. We are working with federal and state lawmakers to ensure that the rights of injured patients and their families are protected.

Fighting for you and your clients

Thank you for your support. Despite these difficult times, AAJ continues to fight all attempts to deny access to justice. We will keep you informed about important developments and welcome your input. You can reach me at advocacy@justice.org.